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Ref: B15/1210

Routine/Low Complexity

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
Secretary
Ms Carroll
Mr Eccles
Ms Hosking
Mr McMahon
Ms Moss
Ms Lynch

To: Prime Minister

CORRESPONDENCE FROM INDIGENOUS LAND CORPORATION REGARDING
PURCHASE OF AYERS ROCK RESORT

PMO

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File:

Recommendation - that you:

1. Agree that the Department acknowledges the letters to you of 2 March 2015, 14 April 2015 and 27 May 2015 from Dr Dawn Casey, Chair of the Board of the Indigenous Land Corporation (ILC) (Attachment A).


 Agreed/Not Agreed

S22

TONY ABBOTT

Date:

22/7/15

Comments:

Key Points:

1. Dr Casey, Chair of the ILC Board, wrote to you on 2 March 2015, 14 April 2015 and 27 May 2015 to provide information regarding the ILC Board's acquisition of Ayers Rock Resort (ARR).
 - a. These are the latest in a series of letters from Dr Casey to you, the Minister for Finance and the Minister for Indigenous Affairs in relation to the ARR. Dr Casey also wrote to you on 16 January 2015, 26 February 2015 and twice on 23 March 2015 to provide copies of correspondence sent to the Minister for Finance and the Minister for Indigenous Affairs. A summary of correspondence from Dr Casey is at Attachment B. A full set of correspondence has been provided to your office.
 - b. These letters were sent in quick succession and also contained undertakings to provide you with additional advice in further correspondence. Accordingly, a combined response to Dr Casey has been prepared.
2. Dr Casey's most recent letter of 27 May 2015 includes further assertions that previous directors had breached their duties under the *Commonwealth Authorities and Companies Act 1997* (CAC Act). It also includes unspecified allegations of potential breaches of criminal law in connection with the ARR acquisition.
 - a. Dr Casey's comments about "potential breaches of ... perhaps even criminal law" do not appear to be substantiated or further specified in her letter.

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3. Dr Casey's latest letter also states that Senator Scullion "appears to have a direct and unaddressed conflict of interest in these matters". We are not aware of any facts that would substantiate Dr Casey's conflict of interest allegations. The Minister previously requested information, including relevant legal advice, because it might be relevant to the legislative decision-making responsibilities of Ministers Scullion or Cormann.
 - a. Dr Casey goes on to state that the ILC Board intends to provide you with future advice in this matter. Once that information is to hand, we shall provide further advice to you.
4. This is the latest step in a dispute between the ILC and former ILC Board members (including Mr David Baffsky, Ms Shirley MacPherson and Mr Sam Jeffries) over the ARR acquisition. The ILC has voiced concerns for some time, publically and in letters to Government, about the 2010 decision of the then ILC Board to purchase the ARR.
5. Throughout these communications with government, Dr Casey and the ILC Board have continued to call for an inquiry into the acquisition. However, three have occurred previously, the most recent of which was commissioned by the ILC itself (Attachment C refers). In her letter, Dr Casey states that these inquiries, for various reasons, are deficient.
6. The ARR was purchased using ILC funds to provide a hub for Indigenous employment and be an investment for ILC. The value of ARR has fluctuated since the purchase. For 2013–14 it was reported as \$255 million, compared to the \$317 million purchase price.
7. On 29 October 2014, Dr Casey wrote to both Ministers advising that the ILC Board intended to pursue legal action against previous Board members to recover the loss arising from the ARR purchase.

S47C

S42

9. s 47C In the meantime, we recommend the department acknowledges Dr Casey's letters on your behalf.

s 22

Richard Eccles
Deputy Secretary
Indigenous Affairs

30 June 2015

Contact: Robert McMahon
Phone no: s 22
Consultation: Legal, Govt; Finance

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ATTACHMENTS

ATTACHMENT A RESPONSE TO DR CASEY

ATTACHMENT B SUMMARY OF CORRESPONDENCE FROM DR CASEY

**ATTACHMENT C SUMMARY OF PREVIOUS INQUIRIES INTO AYERS ROCK
RESORT PURCHASE**

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Australian Government

Department of the Prime Minister and Cabinet

ANDREW FISHER BUILDING
ONE NATIONAL CIRCUIT
BARTON

Dr Dawn Casey
Chairperson
Indigenous Land Corporation
PO Box 586
CURTIN ACT 2605

Dear Dr Casey

Thank you for your letters dated 23 March 2015, 14 April 2014 and 27 May 2015 to the Prime Minister, the Hon Tony Abbott, regarding the acquisition of Ayers Rock Resort (ARR). The Prime Minister has asked me reply on his behalf. I apologise for the delay in replying.

I note the intention of the Indigenous Land Corporation Board to 'provide further advice in due course' to the Prime Minister on this matter.

The issues you raised are being considered, and will be looked at further in light of the additional information to be provided.

Yours sincerely

Richard Eccles
Deputy Secretary

July 2015

Summary of correspondence from Dr Casey

Date	Content
16 January 2015 (C15/5934)	<p><i>Copy</i> of letter sent to the Minister for Finance dated 12 January 2015:</p> <ul style="list-style-type: none"> • Thanking the call for review of the purchase of Ayers Rock Resort (ARR). • Calling into question the Minister for Indigenous Affairs' independence and capacity to conduct such a review.
26 February 2015 (C15/19191)	<p><i>Copy</i> of letter sent to the Minister for Finance dated 26 February 2015:</p> <ul style="list-style-type: none"> • Expressing concern at advice that no investigation of the purchase of ARR will be conducted. • Calling into question the veracity of past reviews of the ARR purchase and seeking additional independent review. • Re-asserting issues regarding the Minister's independence and alleged conflict of interest.
2 March 2015 (C15/19935)	<p>Dr Dawn Casey writing on behalf of the ILC Board to:</p> <ul style="list-style-type: none"> • Express probity concerns with the written request of the Minister for Indigenous Affairs on 17 February 2015 for the provision of information under the <i>PGPA Act</i> – most relevantly the request for legal advice in relation to conduct of former directors. • Re-assert issues regarding the Minister's independence and alleged conflict of interest. • Seek assistance on how to comply with the Minister's request in light of alleged conflict of interest.
23 March 2015 (C15/28031)	<p><i>Copy</i> of letter sent to the Minister for Indigenous Affairs dated 20 March 2015:</p> <ul style="list-style-type: none"> • Noting request of 17 February 2015 for provision of information by the ILC under the <i>PGPA Act</i>. • Noting the need to review significant volume documentation would delay response to request. • Undertaking to notify the Minister of decision to take legal action against previous directors.
23 March 2015 (C15/27309)	<p><i>Copy</i> of letter sent to the Minister for Indigenous Affairs dated 20 March 2015:</p> <ul style="list-style-type: none"> • Expressing concerns regarding an interview on NITV and comments made regarding the ARR. • Re-assert issues with the veracity of past reviews of the ARR purchase. • Requesting the Minister supports changes to the Land Account.
14 April 2015 (C15/32517)	<p>Dr Dawn Casey writing on behalf of the ILC Board and further to letter of 2 March 2015 to:</p> <ul style="list-style-type: none"> • Note status of ILC's efforts to comply with the Minister's request for legal advice. • Re-assert issues regarding the Minister's independence and alleged conflict of interest. • Raise issues with evidence of a former director (Mr David Baffsky) given at a Senate hearing. • Raise allegations regarding the handling of sensitive information on this matter from within the Prime Minister and Cabinet portfolio.
27 May 2015 (C15/49873)	<p>Dr Dawn Casey writing on behalf of the ILC Board and further to letters dated 23 March 2015 and 14 April 2015 to:</p> <ul style="list-style-type: none"> • Re-assert issues regarding Minister Scullion's independence and alleged conflict of interest. • Provide advice on the events surrounding the purchase of the ARR and a list of source documents that could be provided on request. This includes issues with the price paid for the ARR, the conduct of the lead due diligence adviser, the conduct of former directors including alleged material personal interests and alleged breaches of director's duties. • Allude to allegations of 'potential breaches of civil and perhaps even criminal law'. • Request advice for dealing with alleged conflict of interest.

Note: A full set of correspondence has been provided to your office.

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Note: a copy of all letters has been provided to your office.

ATTACHMENT C

Summary of previous reviews of the ARR purchase

The purchase of the Ayers Rock Resort (ARR) and subsequent actions by the Indigenous Land Corporation (ILC) Board has been subject to significant scrutiny:

- In 2013 the Australian National Audit Office (ANAO) conducted a performance audit of the ILC's administration of the Land Acquisition Programme. The audit included consideration of the ARR transaction and did not make significant negative findings in this regard.
- In 2013 the ILC themselves commissioned McGrathNicol to conduct a review of the financial performance and acquisition of the ARR. The report did not employ formal audit methodologies and was completed on the basis of information provided to McGrathNicol by the ILC. The report does not outline a clear case for any breaches of either the CAC Act or ATSI Act. (Note: this report has been published by the ILC on their website)
- In 2014 former ILC Board members commissioned Aegis Consulting to review the transaction and subsequent commentary about the transaction. This report noted that many of the criticisms of the purchase process were not valid.

Australian National Audit Office

In addition to highlighting that the ILC has not met its revised targets for property acquisition/divestment, the Report also includes a discussion of the ARR purchase where it finds that the ILC's due diligence processes were found wanting. In this regard, the ANAO noted:

"In relation to the ARR acquisition the ILC had undertaken a range of investigations and due-diligence activities although these have not necessarily reduced the identified risks of the acquisition, including potential broader financial consequences for the ILC, and the ILC's ability to deliver indigenous benefits over the longer term. In proposing the acquisition to the board, the ILC supporting papers noted the inherent volatility of the tourism sector and its sensitivity to external influences. The papers identified a range of significant risks including that the purchase price paid over the five-year period would not remain commensurate with ARR's value. This was considered an extreme risk and likely to occur, however following the completion of due-diligence activities, the papers noted that risk had been reassessed as moderate and unlikely to occur" (para 3.47 page 69).

"Minutes of the [ILC] board meeting recorded that frank and interactive discussion occurred around the proposal and that following these discussions, the board ultimately agreed to proceed with the acquisition" (para 19, page 20-21).

McGrathNicol

In relation to appropriateness of the ILC acquiring the ARR, McGrathNicol noted:

- *Clear and strong warning signs were being expressed by the Minister for DoFD and the Minister for FaHCSIA, cautioning the ILC about the ARR purchase.*
- *Significant risks were identified by the ILC's consultants in respect of the transaction. Whilst risk treatment activities were identified, these do not appear to have been sufficiently progressed by the ILC to manage the risks to an acceptable level.*
- *The scale of the transaction was extraordinarily large in light of the ILC's ordinary business operations. The transaction absorbed the ILC's existing cash reserves and all but exhausted the ILC's borrowing limits under the ATSI Act.*
- *In the light of these matters we believe the ILC was deficient in documenting the appropriate deliberation and assessment required to demonstrate sound business principles. This does not of itself mean that the acquisition was inappropriate. However, a transaction of this scale, requiring such significant borrowings, opens the ILC up to the charge that it did not adequately protect itself against downside risk. (para 3, page 12).*

Aegis Consulting

The report outlined 3 key points:

- That there is no clear evidence that the purchase of ARR was flawed.
- That the ongoing public comment by the ILC regarding the ARR has the potential to undermine the asset, which may mean it is a possible breach of the CAC Act.
- There does not seem to be a considered commercial rationale why the ILC is pursuing the public approach it is, and no evidence that this is something the board has actively considered.