

5 March 2015

Senator Zed Seselja
Chairperson
Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator

I am writing in regard to the appearance before your Committee by Mr Michael Dillon, CEO, Indigenous Land Corporation (ILC) at a public hearing on 13 February 2015 into *The Aboriginal and Torres Strait Islander Amendment Bill 2014*.

I submit that various aspects of Mr Dillon's evidence served to misinform the Committee in relation to the purchase by the ILC of Ayers Rock Resort (ARR) in May 2011. Regrettably, this is the second occasion where Mr Dillon has provided misinformation to your Committee in relation to the purchase of ARR as much of what he said was repeated from his appearance on 28 February 2014. Outlined below are the clear instances of Mr Dillon misinforming the Committee.

- *"It is clear from recent history that there has not been appropriate governance and management within the ILC" (Dillon).*

On the contrary, a report by KPMG in 2011, commissioned by the then Department of Families, Housing, Community Services and Indigenous Affairs and overseen by the Department of Finance, (in its consideration of the ILC borrowing limits and guarantee powers), examined the ARR transaction and related Board governance in detail and concluded that the *"comprehensive and timely due diligence process surrounding the ARR acquisition characterises the ILC performing its functions using sound business principles"*.

- *"I have given evidence before the committee on this topic in the past, so I will not dwell on it, but there has been a huge loss from the purchase of ARR – over \$100 million – to the ILC (Dillon)."*

In fact, according to the ILC's own financial statements for the year ended 30 June 2014, impairment (NOT LOSS) of assets was \$62,359,000 in 2013 and \$19,218,000 in 2014, a total of \$81,577,000.

Interestingly, for the same reporting periods, Indigenous Business Australia (IBA) reported write-down and impairment of assets of \$53,529,000 in 2014 (with a further loss from asset sales of \$1,250,000 in 2014) and \$38,365,000 in 2013, a total of \$93,245,894 representing a loss of \$11,668,894 more than the ILC.

During that time Dawn Casey was Chairperson of both the ILC and IBA. However, Dawn Casey has never called for an enquiry into IBA's losses and the governance processes relating to those losses. Why then is she and the ILC CEO fixated on the purchase of ARR when its impairment losses are less than those of the IBA? More especially so when ILC's contribution to Indigenous training and employment far outweighs IBA's contribution?

The ILC's consideration of the ARR purchase began after the opportunity was referred to it by Mr Dillon, when he was a Senior Adviser in Minister Macklin's office (I note that Mr Dillon did not formally declare his second hat at the opening of his evidence). Mr Dillon indicated to the ILC that the Aboriginal Corporation called Wana Ungkuntja (WU) had a proposal to partner with the ILC to purchase ARR for the eventual divestment of the asset to an Indigenous Corporation consistent with the objectives of the ILC under the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act).

The WU, which represents business interests of the local Anangu communities surrounding Uluru, was granted first right of refusal over the ARR by the previous owners. Following the ILC purchase of the ARR, WU received two seats on Board of the ILC subsidiary (Voyages) created to manage the ARR and other ILC owned tourism assets, and 7% equity ownership in Voyages approximately in 10 years' time. As part of the ARR divestment strategy a process was to be developed by the ILC and Central Land Council to identify an appropriate Indigenous Corporation to which the ARR could be divested once free of any financial encumbrances.

Consequently, the write-down of the asset is immaterial to the ILC as it is obliged to divest (at no cost) the asset, including ARR, to an Indigenous Corporation over time so that fluctuations in its value over time, prior to its divestment, are ultimately of no consequence. The key point is that ILC is not an investor holding the asset for sale, unlike IBA.

It is of considerable concern that neither Mr Dillon nor his Chairperson seem to understand this basic principle. It is also of considerable concern that they don't seem to have even the basic understanding of accounting standards and their consequences.

- "The resort is running very well, but we paid and we borrowed too much" (Dillon).

However, the McGrathNicol report, commissioned by the ILC itself into the purchase of ARR, found that (pages 19-46):

- *"The Grant Samuel financial model was influential on the Board and is standard practice in mergers and acquisitions.*
- *The price was consistent with the Net Present Value (NPV) suggested in the Grant Samuels model.*
- *The assumptions made by the Grant Samuels model about cash flows was conservative, and more conservative than comparable assessments by Colliers and CBRE in their valuations.*
- *Grant Samuel's consideration of forecast CAPEX was higher than that of CBRE and Colliers.*
- *Ultimately value is subjective and it is possible that the Board had good reason to assess the price as appropriate.*
- *The ILC was a motivated purchaser, but the length of time for purchase and negotiations indicate it was not prepared to purchase at any price.*
- *Vendor finance arrangements were reasonable, based on competitive interest rates, and were not disadvantageous to the ILC".*

It should also be noted that Voyages Indigenous Tourism Australia Pty Ltd, was able to borrow \$60 million from the ANZ bank for major works, which was secured by ARR with no collateral or obligation

from the ILC. No doubt the ANZ undertook its own valuation and was happy to facilitate the loan. This gives lie to Mr Dillon's assertions that the ILC paid and borrowed too much money.

- *"In essence, it turns on the question of whether the then directors made a sound business decision. The advice we have is that, prima facie, they did not (Dillon)."*

Mr Dillon has not provided evidence to support his assertions. On the contrary, KPMG's report of 2011, which was not made available to McGrathNicol by the ILC, states, *"comprehensive and timely due diligence process surrounding the ARR acquisition characterises the ILC performing its functions using sound business principles"*.

Furthermore, it is beyond question that the greatest single pathway to achieving the Closing the Gap objectives is scalable, effective and sustainable employment and training programs for Indigenous people that equip them to work in current and future export and other growth markets. The ARR's focus on hospitality training is achieving this and it is arguably the most effective Indigenous training and employment program in Australia by volume, reach and success.

It is estimated that the cost to the Federal Government of supporting welfare dependent Indigenous people is an average of \$75,000 per person each year [H and M Hughes, Centre for Independent Studies 2011]. By this estimate the Voyages employment and training programs, deliverable because of the ARR economies of scale, are saving the Federal Government about \$20M (based on 263 people employed) in welfare payments each year. Over a 40 year period in which these young people will continue to work, rather than collect welfare benefits, the Federal Government is potentially saving up to \$760M (2013 prices). If it is assumed that over the next 40 years the ARR trains for employment a further 7,400 Indigenous people (an average of 185 people per year based on throughput over the last 2 years), and those people gain employment at the ARR or in the broader tourism or other sectors, the Federal Government is saving up to a further \$555M in welfare payments. There would be further savings when taking into account the multiplier effect of each of these trainees working for the rest of their lives, instead of receiving welfare payments. Again, this characterises the ILC performing its functions using sound business principles and foresight.

- *"The audit committee of the ILC of the time did not take a role in the transaction. In fact, the chair of the audit committee at the time was chief driver of the transaction within the ILC ... The members of the audit committee had been members for 12 years. The Auditor General's provisions say six years maximum" (Dillon).*

I was the Chair of the Audit at that time and the McGrathNicol report:

- Does not discuss in any way the role of the ARMC Chair and his involvement in the ARR transaction.
- Does not include any findings, conclusions or recommendations that one Director's chairmanship of the ARMC and involvement in the ARR transaction was a possible reason defining the ARMC role in the transaction, or that the ARMC role was affected by any conflict of interest.
- Does not make any findings, conclusions or recommendations that the ARMC role, operation and membership, was a key corporate governance issue that the ILC should address.

Mr Dillon's evidence asserts that one Director (myself), rather than the Board as a whole, was instrumental in the ARR transaction and purchase. However, in the MN report there are no findings, conclusions or recommendations that support his assertion. There was also no rule, at that time, from the Australian National Audit Office (ANAO) that precluded a Director serving more than six years on the ILC

Audit Committee. If there had been, then ANAO would have pointed this out to the ILC and I would have immediately stood down. I am immensely proud that during my time on the ILC Audit Committee we delivered 12 unqualified audits.

- *“Things like the due diligence that was undertaken was done by Grant Samuel – a very respected firm. The contract required, or allowed, that we would pay them a proportion of the purchase price – one percent – as their fee. The higher the purchase price, the higher the fee the people undertaking the due diligence received” (Dillon).*

The MN report does not find that there was any improper conduct on the part of Grant Samuel. The McGrathNicol report found that (page 9):

“Grant Samuel’s advisory fee was based on a percentage of the purchase price of the ARR. Whilst commonplace in the financial services sector, a fee arrangement of this nature does not incentivise an advisor to seek the lowest possible transaction price or advise against the transaction. We make no finding that Grant Samuel acted improperly in this respect. However, we consider that it may have been prudent for ILC to consider alternative fee structures”.

- *“The McGrathNicol report found that one of the directors – in fact, the director driving the transaction – had a substantial undisclosed conflict-of-interest. That is a concern” (Dillon).*

Mr Dillon’s evidence states the McGrathNicol report considered that I had an undeclared potential conflict of interest arising from my connection with a major shareholder in the vendor of the ARR (General Property Trust) at the time of the ILC’s purchase.

The McGrathNicol report considers conflict of interest issues in section 6.5 (page 69). In relation to the connection referred to by Mr Dillon, the report identified this as a Directorship held by myself of Singapore Airport Terminal Services, a listed public company, which is 43% owned by Temasek Holdings. Temasek Holdings is 100% owned by the Singapore Government. The Singapore Government is also the 100% owner of GIC Private Limited which has an 11.65% shareholding in General Property Trust, the vendor of ARR.

The McGrathNicol report concluded that it *“has no further knowledge regarding this connection, and therefore cannot conclude whether or not it represents a conflict of interest. However, the connection appears to be remote”.*

Mr Dillon has misrepresented McGrathNicol’s findings on this issue and has sought to mislead your Committee.

The Committee might also wish to note that McGrathNicol also considered my role as Honorary Chairman of Accor Asia Pacific, which was awarded the hotel service contract for the ARR by Voyages after a competitive process. It found that I properly declared my conflict of interest and took no part in considerations and decisions by the Voyages Board about the hotel services contract.

It is curious that Mr Dillon ignores McGrathNicol’s findings about the propriety with which I managed an immediate conflict of interest, but seeks to infer that I may have behaved improperly in relation to a connection considered to be remote. So remote in fact that I myself did not know about it.

I ask that the Committee call Mr Dillon to account for his misleading statements at the hearing on 13 February 2015, particularly those relating to me. If Mr Dillon repeated his misleading statements outside the privilege of

Parliament committees I would no doubt have legal remedy. However, he has used parliamentary privilege to defame my good name and I trust that will be seen by the Committee as a misuse of parliamentary privilege by a senior Commonwealth officer.

Finally, to put into context the apparent dysfunction of the ILC and the role of the CEO and Chairperson therein, please find a copy of a staff letter which apparently appears on the ILC's own extranet website. It requires no further comment and this in relation to a person who received a \$60,000 "performance bonus" last year and at a time when the ILC is crying poor.

Yours sincerely

David Baffsky AO

Dear Minister

We are writing to you on behalf of all ILC staff. We have had enough!

The ILC Board and Chief Executive Officer have lost their way in a myriad of endless Board and committee meetings and over-the-top meaningless governance processes. We have now suffered nearly three and a half years of unintelligent 'leadership' that seeks to criticise the past, but fails to pursue outcomes for Indigenous people now or in the future.

It is demonstrably clear that the ILC Board is intrinsically connected to the Labor and Greens parties as evidenced by the absurd and unnecessary legislation (drafted by ILC staff) introduced by the Greens and supported by Labor. Note also the appointment as CEO of Jenny Macklin's former senior advisor, Mike Dillon, who has brought bureaucratic focused and non-commercial policies and procedures to clog up any chance of achieving outcomes for Indigenous landowners.

Staff overwhelmingly celebrated your recent appointment of Ms Shirley McPherson to the Board of IBA. Unfortunately, her appointment made us realise how much we missed her genuine, courageous, intelligent and bipartisan leadership at the ILC. She was an inspiration to all of us, particularly Indigenous staff. In stark contrast, we have Dawn Casey as Chairperson of the ILC. ILC staff have had the misfortune and embarrassment of having to listen to her staff addresses. It is clear to all of us that she has no idea whatsoever about anything the ILC actually does. Her talks are all about her achievements and what a genius she is. However, the most uncomfortable and embarrassing thing is listening to her endless criticisms of the purchase of Ayres Rock Resort. Instead of trying to make the resort a nationally significant Indigenous employment outcome and icon, she bleats about the past and openly defames former ILC Directors. But, we know her efforts are little more than a thinly disguised attack on the reputations of Shirley McPherson, David Baffsky and Sam Jeffries, the previous ILC directors who had the courage to buy the resort. Worse, she re-writes history by failing to note that current ILC Director Ian Trust also voted for the purchase of the resort as a member of the previous Board!

Mike Dillon, as CEO, is widely despised by ILC staff (apart from a handful of hand-picked Labor/Green lackeys in Canberra who have been appointed outside of due process) for his complete lack of leadership and for his outrageous attack on Ms McPherson under parliamentary privilege last year. As you yourself have pointed out, he has no experience in overseeing the operations of commercial businesses or subsidiaries, nor of the land management and land acquisition functions of the ILC. He is a glorified 'bureaucratic policy wonk' who is concentrating the ILC's functions in Canberra. He is setting up the ILC like a public service bureaucracy, specifically aimed at being a tool of the Labor Party and the Greens. For all this he received a \$60,000+ performance bonus from his mates on the ILC Board!! Yet his own leadership has failed over six months to deliver a new enterprise agreement for ILC staff!!

The latest instalment of the politicisation and bureaucratisation of the ILC is the appointment of Kate Gumley as a highly paid senior executive position in charge of Policy, and yes, also based in Canberra. We know that Gumley was finally 'worked out' at PM&C following her dismal performance in implementing the failed *Community Jobs Program* and assisting Andrew Forrest's review of Indigenous employment policy and programs. Gumley has let it be known that she is unhappy about the way she was treated by the leadership of PM&C. However, what goes around comes around! As you can imagine ILC staff are horrified, but not surprised, by her appointment.

subsidiary, National Indigenous Pastoral Enterprises (NIPE). What is even more confusing and incredulous to staff is that Mr Dillon's best mate and co-author of useless books, ILC Director Neil Westbury, has been appointed as Chairperson of NIPE. Westbury, a bureaucrat of 40 years with no real achievements, has absolutely no business experience, let alone agricultural experience, is now in charge of one of Australia's leading pastoral companies. The mind boggles! How can this be allowed to happen?

Similarly, Director Lisa Gay is the Chairperson of Voyages Indigenous Tourism Australia, the owner of ARR, the largest integrated tourism resort in Australia, but she has absolutely no tourism experience. Again, the mind boggles! The only good thing we can say about Ms Gay is that we understand she has made it known to you and another parties how disgusted she is with Casey and Dillon's endless public 'running down' of ARR.

The ILC Board under Casey has been here for more than three years and during that time, for all its rhetoric, it has not delivered any new programs or projects that have benefited Indigenous people. All it has done is brought in overly bureaucratic and over-the-top meaningless governance procedures that have not achieved one benefit for Indigenous people. You would be acutely aware of this now you have seen how the Commonwealth Indigenous bureaucracy operates - "busy as bees in a bottle", but not achieving anything.

To highlight the lack of achievements in the past 3 1/2 years, you only have to read Dillon's Christmas message to ILC staff. Everything he claims as an achievement is in fact a product of the previous Board's policies and programs. When staff read his Christmas message all we could do was laugh, when in reality we wanted to cry, at the wasted 3 1/2 years of damage and pain that Casey and Dillon have wrought upon the ILC. We have enclosed Dillon's Christmas message so you have it on record as a mark of their total lack of achievement. We beg the Parliament to ask the ILC Board to outline its achievements for Indigenous people over the past three years. How many land acquisitions have been made at what expenditure? How many Indigenous landowners have been assisted and at what expenditure? How much of the annual ILC budget has actually hit Indigenous landowners on the ground? How much has been spent in the past three years on administration, especially for Directors' and sub-committee meetings and airfares and travelling allowances? How much has been wasted on consultancies and fees from the Australian Government Solicitor's Office and McGrathNicol etc?

We request you to conduct a high level independent inquiry into the \$2.5M that was given as a political favour to Yawuru, represented by Patrick Dodson for his support on the draft legislation, on the divestment of Roebuck Plains Station last year. It is an outrageous and unprecedented payment by the ILC, not supported by key senior management, and should not be allowed to stand.

Minister, please be aware that Casey and Dillon are plotting against you and using the 20th year celebration (costing \$200K, but crying poor!) of the ILC's founding as the tool for their attack. They know that their time is up in October and they will be using returns from the Land Account to attack you and the Government.

We had hoped that you could have dismissed ILC Directors for bringing the ILC's reputation into disrepute over ARR. While that hasn't been possible, we are looking forward to Casey and her fellow Directors ending their tenure in October 2015 and the closing down of the Labor/Greens ILC office in Canberra. You will excuse us if we take a day off and party like there is no tomorrow, as IBA staff did! For us that tomorrow cannot come quick enough.

Yours sincerely

ILC staff

cc ILC Board and The Australian