



MINISTER FOR INDIGENOUS AFFAIRS

Senator Cory Bernardi
Chair
Senate Finance and Public Administration Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator

I am writing to you in your capacity as Chair of the Senate Finance and Public Administration Legislation Committee to express my deep concern about the statements made by Mr Michael Dillon, Chief Executive Officer of the Indigenous Land Corporation, during the course of the Supplementary Budget Estimates for 2013-14.

Specifically, I refer to his statement about Ms Shirley McPherson, the former chair of the Indigenous Land Corporation. Mr Dillon stated that Ms McPherson's response to the previous government's claimed concerns about Voyagers Indigenous Tourism Australia was as "paltry as a bandicoot's breakfast" and "pathetic".

Can I say how affronted I was to hear such words about an Aboriginal woman who has contributed so much to Australian society and is viewed as an inspiration, not just to indigenous girls and indigenous women all over Australia, but to women everywhere.

Ms McPherson has had a distinguished career, including as the Chair of the Indigenous Land Corporation and as a Director and Chair of the Aboriginal Development Corporation. Ms McPherson is a long standing member of the Australian delegation to the United Nations Permanent Forum on Indigenous Peoples. She is also a qualified accountant completing an accounting course which led her to work in taxation and other areas of industry, including in indigenous affairs.

To have publicly besmirched Ms McPherson in the context of a public inquiry in the manner and language that Mr Dillon did was simply unacceptable.

I ask that you request that the Chair of the Indigenous Land Corporation, Ms Dawn Casey, issue a public apology.

Yours sincerely

NIGEL SCULLION
22 November 2013



2 December 2013

Ms Lyn Beverley
Committee Secretary
Senate Finance and Public Administration Committee
PO Box 6100
Parliament House Canberra ACT 2600

Dear Ms Beverley

Thank you for your letter dated 27 November 2013 inviting me to respond to Minister Scullion's letter to the Chair of the Committee dated 22 November 2013.

I am pleased to be able to clarify the intent of my comments at the Supplementary Budget Estimates Committee hearing in relation to the ILC's response to correspondence from Ministers Wong and Macklin dated September and October 2010 respectively. My comments were not directed at Ms McPherson *per se*, but were explicitly directed at the substance of her response to the Ministers' correspondence.

I intended no adverse reflection on Ms McPherson's character. It is unfortunate that Senator Scullion and perhaps others, misconstrued my intent in making the comments I did.

Ms McPherson is a person of considerable substance who has made a significant and highly regarded contribution over more than two decades to addressing Indigenous disadvantage in Australia.

My intent, and the Hansard transcript reflects this, was solely to comment on the substance of Ms McPherson's response. Without mentioning every instance, I point to two particular instances which were in my mind when I made the comments which were of concern to Minister Scullion.

The first relates to the letter that Minister Wong had written to Ms McPherson on 29 September 2010 seeking six sets of information. She also requested that in accordance with section 16 of the CAC Act the ILC Board provide the information with sufficient time for her to consider it and seek clarification if necessary prior to the ILC proceeding with the purchase. Minister Wong went on to note that she understood this may require a delay to the proposed purchase date and requested of Ms McPherson that this "receives your favourable consideration given the issues of concern".

One day later on 30 September 2010, Ms McPherson responded to Minister Wong providing extensive information, and referred to the proposed acquisition of Ayers Rock Resort (ARR) as "the single biggest opportunity of its nature for Indigenous people in Australia". She noted that the Board would meet shortly to finalise their consideration of the proposed purchase. Ms McPherson went on to state:

I am also happy to provide the further information you requested pursuant to Section 16 (1) (c) of the CAC Act. However, I note your request under section 16 (2) to delay the purchase date until you have had time to consider the information and seek further clarification on any issue. The Board will need to carefully weigh that timing request against the statutory independence of the ILC as set out in section 191L of the ATSI Act and the position of the vendor being a public listed company. In this regard I note the information is voluminous and the commercial sensitivities of the transaction are such that any ongoing delay may jeopardise this unique opportunity for Indigenous Australians.

One day later on 1 October 2010, the ILC Board met and decided to proceed with the transaction.

It was this context, and the content of the paragraph quoted above, which I considered to be 'paltry' and 'pathetic', especially in the light of the subsequent enormous financial losses now exceeding \$100m accrued in less than 3 years by Voyages and the ILC as a result of this 'unique opportunity'.

The second instance relates to Ms McPherson's comments on the due diligence undertaken by the ILC. In her response Ms McPherson extolled the amount and quality of the work undertaken. She noted *inter alia* that:

All aspects of due diligence, planning and financial forecasting for ARR have had a parallel focus of assuring the ILC Board that there will be no adverse impact on the delivery of the ILCs existing programs and operations, including work in relation to native title settlements, further strategic purchases, or its estimated expenditure on programs as contained in the Portfolio Budget Statements 2010/11.

Income received from the Aboriginal and Torres Strait Islander Land Account will continue to be used to fund new and existing land acquisition and land management projects for Indigenous organisations. Indeed, based on conservative cash flow projections, ARR, after 10 years of operation, is predicted to provide additional net income to the ILC of over \$25 million per year, which will enable expansion of the ILC's programs across Australia.

The external borrowings and guarantees are secured by a fixed and floating charge over the assets of ARR, the shares of ILC Tourism, the airport lease and a Sydney office lease. The ILC will provide no other security and accordingly its cash and other assets are not put at risk by this transaction.

In the light of the current outcomes and projections, particularly the financial losses to date exceeding \$100m, the substantial long term debt burden now faced by the ILC as a result of the decision to purchase the Ayers Rock Resort, and the inevitable adverse consequences for ILC programs going forward, the assurances provided in the letter quoted above struck me as especially problematic and unfortunate.

It is increasingly apparent that the cash flow projections considered by the Board were not conservative, that the structural long term decline in visitors to ARR was apparent and identified in the due diligence made available to the Board, and that there were a number of extreme risks with proceeding with the transaction which were not adequately mitigated by the Board. It was for these reasons that I mentioned in my evidence to the Committee that I considered the transaction to be 'inexplicable and perhaps inexcusable'.

In these contexts then, to blithely dismiss repeated expressions of concern in writing from two Ministers on the basis that it was 'a unique opportunity for Indigenous Australians' appears to be a less than adequate and less than appropriate response by the ILC and its then Chair. Again, the terminology I used in the Estimates Committee regarding the then

Chair's response to the Ministers' requests for information and in effect for further consideration to be given prior to proceeding, seems apposite.

I trust this background information provides the Committee with an adequate explanation for my comments in the Supplementary Budget Estimates Committee regarding Ms McPherson's response to Minister Wong's and Minister Macklin's correspondence.

Yours sincerely

M C Dillon
CEO



29 November 2013

Senator Cory Bernardi
Chair
Senate Finance and Public Administration Legislation Committee
PO Box 6100
Parliament House Canberra ACT 2600

Dear Senator

I am writing in relation to the correspondence from Minister Scullion to you dated 22 November 2013 and from the Committee Secretary Ms Beverley to Mr Michael Dillion dated 27 November 2013.

I understand Mr Dillon has responded to Ms Beverley providing further detail in relation to his evidence and the concerns raised by Senator Scullion.

I note that in the correspondence from Ms Beverley she indicated that a decision to issue a public apology is an internal matter for the ILC to determine.

I have considered this matter carefully.

In the light of explanation provided by Mr Dillon that his comments were not directed at Ms McPherson per se, but were directed at the substance of her response, I have reached the conclusion that an apology is not warranted.

Yours sincerely

Dr Dawn Casey PSM FAHA
Chair

9 December 2013

Senator Cory Bernardi
Chairperson
Senate Finance and Public Administration Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Bernardi

I refer to Ms Lyn Beverley's letter of 27 November 2013 inviting me to comment on the evidence of the CEO of the Indigenous Land Corporation (ILC), Mr Michael Dillon on Friday, 22 November 2013 before your Committee.

At the outset, I note Mr Dillon wears two hats in giving his evidence; first as the current CEO of the ILC but secondly as an advisor to Minister Macklin at crucial stages during the ILC's transaction to purchase the Ayers Rock Resort (ARR). It would have been helpful if Mr Dillon had formally declared his second hat at the opening of his evidence. I personally draw no conclusions from his failure to do so, but it would have been instructive to the Committee members if he had made this declaration.

I note the record indicates Mr Dillon's evidence, in part, in the following terms;

"Ministers Wong and Macklin wrote separate and strongly-worded letters expressing reservations and concerns about the purchase. These letters were amongst the strongest—in fact were indeed the strongest—letters I have ever seen from a minister to a statutory corporation in my 30 years of public sector experience..... the response from the then chair, Ms Shirley McPherson, particularly to both Senator Wong and Minister Macklin. If I can summarise her response, it was desultory, paltry and I would liken it to 'as paltry as a bandicoot's breakfast'. It was pathetic."

I consider the most appropriate method for your Committee to scrutinize the written record would be for the entirety of the correspondence between the Ministers and the ILC to be released. I am happy that that written record will speak for itself and I will feel no need to extrapolate on it or provide politically charged commentary about it. I note the Department of Prime Minister and Cabinet (PM&C) has committed to consider that course. The simple release of all the correspondence will then eliminate all subjective and gratuitous commentary about what it might have contained. I support the release of the full correspondence in the interest of transparency and accountability.

Having made this point and in the absence of the correspondence having been released to date, I will take the opportunity to respond to Mr Dillon's evidence on this point. I refute the factual account of Mr Dillon and consider his intemperate description of my correspondence gratuitously offensive.

Ministers Macklin and Wong received considered answers to each of the letters and each issue raised in them. I received no further response from Minister Macklin expressing any concerns about the content of my response or a lack of information. The final response from Senator Wong expressed gratitude for the considerable volume of information provided within a very short time frame. I would characterise the exchanges of correspondence between all parties as courteous, professional, comprehensive and timely. To suggest that at any time in my long career, I would write to a Minister of the Crown in terms that were desultory, paltry or pathetic is both ill informed and highly offensive.

I note the record indicates Mr Dillon's evidence, in part, in the following terms;

"the write-down of \$62 million in Voyages financial statements for the last year and the accompanying full operating loss of \$84 million for 2012 – 2013 gives a sense of the problem..... The losses over the two years total \$109 million".

At the outset, I consider Mr Dillon's analysis misrepresents the situation by implying that the magnitude of the reported statutory losses reflects the actual operating performance of the company; an exercise more directed to securing a headline rather than explaining a fair statement of the financial position.

It should be noted that in the reported loss in the statutory financial statements (2012-13) of \$84m there is a total of \$96m in non-cash items, which when added back gets to the \$12.4m of reported EBITDA for the year. The major non-cash items are the write-down of the ARR assets (impairment loss) of \$62m, interest expense of \$22m (of which \$20m is interest on the ILC shareholder loan) and depreciation and amortisation of \$12m.

The write-down of the asset is basically immaterial to the ILC as it is obliged to divest 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. Also, the \$20 million in interest on the ILC shareholder loan is an intercompany procedure that has no bearing on the ILC's bottom line and Voyages' actual cash profit. The \$20m interest on the shareholder loan eliminates on consolidation of the accounts so that it is of no practical consequence.

The only other issue arising from any asset write down is whether it indicates that the ILC might have paid over the market value in 2010. Robust due diligence was undertaken including a full valuation. I have seen no analysis suggesting the general due diligence was deficient or that the valuation was flawed. The ILC Board at the time was quite entitled to rely on that valuation and a subsequent write down does not of itself suggest otherwise. Furthermore, during the due diligence period, the ILC negotiated a \$25 million contribution to capital works at ARR from the vendor. This effectively reduced the purchase price of ARR by that amount.

In summary on this point while an asset write down is a normal accounting step taken in financial audits, in the context of the ARR purchase, it has no fundamental bearing on whether the purchase was a sound decision.

I note the record indicates Mr Dillon's evidence, in part, in the following terms;

"they wanted to fairly and squarely put on the table the risks of this transaction. I think it is fair to say that ministers and, indeed, departments and agencies must of had concerns about the size of the transaction and the risks involved. I think the second letter from Minister Wong actually asked for information, in particular around sensitivity analysis for the net present value analysis of the transaction, the so-called Grant Samuel projections that went out over 10 years".

Mr Dillon's evidence is highly selective and gives a misleading impression. Mr Dillon neglected to advise the Committee that the ILC then provided that analysis to Senator Wong who then responded in both professional and grateful terms.

On this point, I should also say the evidence generally suggests that the ILC had somehow kept Minister Macklin or her Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) in the dark about the transaction. This impression is not correct.

In the context of a KPMG examination of the transaction (in a jointly commissioned report between the ILC, Department of Finance and Deregulation (DoFD) and FaHCSIA dealing with the ILC's borrowing powers), a written timeline was prepared by the ILC showing the extensive and regular communications between FaHCSIA and the ILC over a period of three years. The report states, *"the comprehensive and timely due diligence process surrounding the ARR acquisition also characterises the ILC performing its functions using sound business principles"*. It would be appropriate for the PM&C to release that timeline together with the KPMG report.

More particularly, during the seven month period between the signing of the contract and actual settlement, and despite Mr Dillon's evidence, not once in my meetings with Minister Macklin during that time, or any other time for that matter, did she ever state she did not wish the ILC to purchase ARR. ILC officers also met with DoFD and FaHCSIA officers and not once during those meetings were they told that the ILC should not purchase ARR. This is despite the KPMG report canvassing that a General Policy Order could be issued under the *Commonwealth Authorities and Companies Act 1997* to limit the ILC's borrowing powers, or to amend the legislation to provide the Finance Minister with the power to approve the ILC's borrowings.

Referring to ILC Board members involved in the purchase decision, I note the record indicates Mr Dillon's evidence, in part, in the following terms;

"key board members expressed reservations and concerns, but they were essentially, sidelined".

I refute Mr Dillon's evidence; it has no basis in fact and is offensive. It clearly suggests that I did not perform my role as ILC Chair properly. If the statement were made outside the context of Parliamentary privilege, in my view, it would be actionable.

While there were differing points of view about the purchase within the ILC Board at the time, the vote was nevertheless five in favour of the purchase and two abstentions. No Board member voted against the purchase, contrary to statements in the media by Mr Ian Trust, then a Board member, and now Deputy Chair of the ILC.

All Board members were allowed to freely, and without any pressure, express any views they wished about ARR's purchase or any other matter concerning the ILC's business. None were sidelined whatsoever and two abstained from the final decision, but did not vote against it. Further, as due diligence progressed, the ILC Board considered the matter at numerous meetings over many months. Any suggestion that individual Board members were sidelined during those meetings is offensive.

If Mr Dillon, who was not present at any such deliberations, now has evidence to the contrary he should present it to the Committee, or withdraw what I consider a baseless and misleading allegation.

I note the record indicates Mr Dillon's evidence, in part, in the following terms;

"how the previous board of the ILC made this decision, to my mind is inexplicable and perhaps even inexcusable. The due diligence process highlighted the risks they faced".

I have no difficulty in accepting that the due diligence did highlight challenges with the acquisition and the ILC Board determined to proceed with the transaction very mindful of those challenges. In particular, the high dollar, the downturn in the tourism industry and the sensitivity of ARR to the vicissitudes of the airline industry were all carefully considered and expert advice obtained. In summary while the Board recognised that it was not a risk free venture, it was nonetheless a sound venture given the tremendous benefits that were potentially available. To this day, I have seen nothing occur that my Board did not anticipate and I very much stand by the decision.

The decision would be inexplicable to certain members of a federal bureaucracy culturally enmeshed in the ideology of welfare dependency as the primary tool of Indigenous assistance. My Board in 2010 was determined to look beyond the welfare cycle to make a bold commercial decision to generate real income and employment paths for Indigenous Australians in a real commercial environment. Regrettably this vision was not shared by some of Minister Macklin's advisors and indeed was inexplicable to them. To many others, including Ministers Ferguson and Arbib, and the tourism industry and most importantly, to the Anangu traditional owners and wider Indigenous community, the decision was seen as a bold innovative game changer to break the welfare cycle and put Indigenous people in sustainable jobs and on sound career paths at one of the world's great tourist icons. On balance, I am confident this narrative is the one that is correct and will prevail over the longer term.

I do not accept that the present challenges of the ARR should in any way detract from the ongoing programs of the ILC. Mr Dillon suggested otherwise but provided no objective evidence in support of such assertions

I also note the record indicates Mr Dillon's evidence, in part, in the following terms;

"... It is not about the management of ARR. The ARR is a well-managed facility with committed and professional staff and it always has had the support of the ILC board. We think it is going extremely well in its own terms".

I find this evidence puzzling and quite at odds with the recent removal of the majority of the Board. For the record, I was involved in the original appointments and worked with my fellow Directors to identify very high calibre industry experts to sit on the inaugural Board. We were delighted at the quality of nominees and were thrilled that they were prepared to take up these positions. As those people had not been involved in the original purchase, and had been on the Board for barely over two years, their removal is puzzling if Mr Dillon's evidence is assumed to be accurate. While it is entirely a matter for the current ILC Board whom it wishes to be on the Voyages Board, one must be concerned about what motivated these removals.

Finally, while I have no difficulty with all ILC decisions made during my tenure as Chair being subjected to robust but informed debate, I do not take kindly to being subjected to gratuitously offensive comments. I found the record of Mr Dillon's evidence to be ill informed and highly selective and at times, intemperate and personally offensive. In my view Mr Dillon's evidence was inappropriate and unbecoming for a Commonwealth agency head before a Parliamentary forum.

I thank you for providing me with the opportunity to provide this response.

Yours sincerely

Shirley McPherson

