

s22

From: Sean WORTH
Sent: Friday, 4 October 2024 5 03 PM
To: Cherelle Wurrawilya <cherelle.wurrawilya@alcnt.com.au>
Subject: ALC CEO options

Good afternoon Cherelle

Following our discussions last week, please find below our assessment of the options available to the ALC Board in relation to the employment of the ALC CEO, Mr Mark Hewitt.

The options have been identified and considered with reference to the employment contract you sent me last week and the various views expressed by the Board in the meeting on 25 September.

It is noted that the Board remains extremely concerned as to the impact that ongoing allegations on the conduct of Mr Hewitt is having on the reputation of the ALC.

The options below are only the options available to the ALC Board and don't include options available to the Boards of GHAC or Winchelsea regarding Mr Hewitt's roles with those organisations.

1. Do nothing and allow existing arrangements to remain in place until outcome of potential investigations is known
2. Accept the proposal put forward by Mr Hewitt to resign as ALC CEO on the terms proposed
3. Withdraw Board approval for the CEO to perform roles other than ALC CEO and allow him to continue to operate as ALC CEO
4. Withdraw Board approval for the CEO to perform roles other than ALC CEO and stand him down as ALC CEO (on 'gardening leave') pending outcomes on any potential investigations being undertaken by the Commonwealth Ombudsman or NACC
5. Stand down Mr Hewitt while undertaking an investigation as to whether his actions are a breach of the PGPA Act and terminate him if this is proven
6. Terminate Mr Hewitt's employment arrangements in line with his employment contract

Options 2 and 6 would require the ALC to go to market to recruit a new permanent CEO.

Option 4 and 5 would require the ALC to appoint an acting CEO pending outcomes of any potential investigations

The advantages, disadvantages and risks of each option are examined in more detail below.

Option	Advantages	Disadvantages	Risk
1. Do nothing and allow existing arrangements to remain in place until outcome of potential investigations is known	<ul style="list-style-type: none"> No action required or additional cost If investigation finds no wrongdoing, ALC and CEO reputation upheld If investigation finds wrongdoing, Board may be able to terminate CEO employment at no cost 	<ul style="list-style-type: none"> Does not address conflict of interest If investigation finds wrongdoing Board will be criticised for not having acted sooner ALC reputation remains damaged due to lack of action ALC effort and focus continues to be distracted from good work 	<ul style="list-style-type: none"> The outcome of investigation may confirm wrongdoing Even if no wrongdoing found, reputational damage might remain
2. Accept the proposal put forward by Mr Hewitt to resign as ALC CEO on the terms proposed	<ul style="list-style-type: none"> Distraction of CEO's ongoing presence removed ALC Board can recruit CEO without reputation concerns or conflicts Allows for orderly transition to new CEO 	<ul style="list-style-type: none"> Has appearance that board did not act Requires 9 months payout in addition to notice period Requires positive statement regarding CEO that might be undermined if a finding is made Allows for ongoing presence of CEO in other businesses on the island with potential for ongoing ALC reputational damage 	<ul style="list-style-type: none"> ALC Board reputation damaged as seen a rewarding poor CEO behaviour and failing to act strongly
3. Withdraw Board approval for the CEO to perform roles other than ALC CEO and allow him to continue to operate as ALC CEO	<ul style="list-style-type: none"> Removes conflict of interest of CEO and other roles If investigation finds no wrongdoing, ALC and CEO reputation upheld If investigation finds wrongdoing, Board may be able to terminate CEO employment at no cost 	<ul style="list-style-type: none"> If investigation finds wrongdoing Board will be criticised for not having acted ALC reputation remains damaged due to lack of action ALC effort and focus continues to be distracted from good work 	<ul style="list-style-type: none"> The outcome of investigation may confirm wrongdoing Even if no wrongdoing found, reputational damage might remain
4. Withdraw Board approval for the CEO to perform roles other than ALC CEO and stand him down as ALC CEO (on 'gardening leave') pending outcomes on any potential investigations being undertaken by the Commonwealth Ombudsman or NACC	<ul style="list-style-type: none"> Removes conflict of interest of CEO and other roles ALC Board seen to act If investigation finds no wrongdoing, ALC and CEO reputation upheld If investigation finds wrongdoing, Board may be able to terminate CEO employment at no cost 	<ul style="list-style-type: none"> Timeframe for potential investigations unknown ALC pays for CEO while on gardening leave and a/g CEO delays recruitment of permanent CEO if wrongdoing found ALC effort and focus continues to be distracted from good work 	<ul style="list-style-type: none"> Investigations may take significant length of time and not result in a clear outcome The outcome of investigation may confirm wrongdoing Even if no wrongdoing found, reputational damage might remain
5. Stand him down as ALC CEO (on 'gardening leave') pending investigation of breach of PGPA Act obligations	<ul style="list-style-type: none"> ALC Board seen to act If investigation finds wrongdoing, Board may be able to terminate CEO 	<ul style="list-style-type: none"> Timeframe and outcome of investigations unknown Contract only allows for 2 weeks stand 	<ul style="list-style-type: none"> Investigations may take significant length of time and not result in a clear outcome Even if no wrongdoing found, reputational

	employment at no cost	down period <ul style="list-style-type: none">• ALC pays for CEO while on gardening leave and a/g CEO• delays recruitment of permanent CEO if wrongdoing found• ALC effort and focus continues to be distracted from good work	damage might remain
6. Terminate Mr Hewitt's employment arrangements in line with his employment contract	<ul style="list-style-type: none">• ALC Board seen to act• Distraction of CEO's ongoing presence removed• ALC Board can recruit CEO without reputation concerns or conflicts	<ul style="list-style-type: none">• Requires 9 months payout in addition to notice period• Allows for ongoing presence of CEO in other businesses on the island with potential for ongoing ALC reputational damage• Could result in legal action for wrongful termination	<ul style="list-style-type: none">• ALC Board reputation damaged as seen a rewarding poor CEO behaviour with big payout

If the Board wishes to resolve Mr Hewitt's situation as soon as possible to allow the appointment of a new CEO and resolve the reputational issues, Option 6 is best, noting it will require payment of 12 months remuneration to Mr Hewitt (3 months' notice plus 9 months early termination). This option also allows for his removal from GHAC and potentially Winchelsea and the Board can publicly state they have terminated Mr Hewitt's employment.


Let's have a chat once you've had a chance to think about these – call me whenever suits.

Regards
Sean





Sean Worth
Group Manager Integrity | Enabling Services Portfolio
National Indigenous Australians Agency
§22 §22 | Sean.Worth@niaa.gov.au
Charles Perkins House 16 Bowes Place Phillip ACT 2606
[w. niaa.gov.au](http://w.niaa.gov.au) [w. indigenous.gov.au](http://w.indigenous.gov.au)

Executive Officer: §22 §22 §22
Group Coordinator: §22 §22 §22





The National Indigenous Australians Agency acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land waters and community. We pay our respects to the people the cultures and the elders past present and emerging.





MS24-000618

Subject: Anindilyakwa Land Council - balance of 2024-25 funding	
For: Minister for Indigenous Australians	Minister's Office Action Requested By Not Applicable
	Reason for Urgency Not Applicable

Clearance	
Final Clearing Officer	Julie-Ann Guivarra
Position	Deputy Chief Executive Officer, Policy and Programs
Phone	Ph: s22
Primary Contact Officer	
Name	Rachel Kerrigan
Position	Branch Manager, Land and Native Title
Phone	s22
Date Cleared	22/11/2024
Date Sent to MO (MinParl use only)	22/11/2024
Received in the MO (MO use only)	Click to enter date

Key Points:



s22

Additional budget items requested

11. ALC interim Chief Executive Officer (CEO) Colin Wakefield submitted a supplementary bid for operational funding on 6 November 2024 (**Attachment C**). Requested items are summarised below s22

s22

13. However, pending legal advice, NIAA does not support reimbursement of the former CEO's termination payment and legal costs, s22 as outlined below.

- a) *Termination payouts to former CEO Mark Hewitt comprising salary costs gross payment of \$439,000 and legal expenses to review the contract \$11,000*

Recommend funding is not supported pending the provision of legal advice regarding the capacity to recover funds if any wrongdoing on behalf of the former CEO is identified.

s22

s22

Released under the FOI Act by the
National Indigenous Australians Agency (NIAA)

s22

Released under the FOI Act by the
National Indigenous Australians Agency (NIAA)

Attachments:

s22

C. Incoming correspondence

C1.CEO termination payment details

s22

Distribution	
Name of Advisor/s in Minister's Office to whom a copy of this submission/brief is to be provided	<ul style="list-style-type: none"> Ms Kerin
Name of Officers in the NIAA to whom a copy of this submission/brief is to be provided	<ul style="list-style-type: none"> Ms Broun Ms Guivarra Mr Brahim Ms Jackson Mr Jamble NIAA Executive Coordination Ms Fulton Mr Worth

Updates/Redraft: (refer to 'MO Comments' below)	Yes / No
Updates/Redraft due date	

MO Comments

Minister's Office Feedback:

- ☐ No Changes required.
- ☐ Minor stylistic changes
- ☐ Minor but essential changes
- ☐ Major changes
- ☐ Substantive rewrite



6th November 2024

s22

PO Box 2191
CANBERRA ACT 2601

Dear s22

Supplementary Bid ALC Operational Funding 2024-25

Following the final Bellchambers Barrett (BCB) Independent Review dated 27th August 24 regarding the progress of ALC's response to the ANAO audit report, Board decisions have been made in response to their findings that have resulted in additional costs outlined below that we are now seeking operational funding to cover these costs.

1. Termination of the CEO's employment (Identified Enhancement BCB 3.1) Details attached
 - a. Salary Costs Gross Payment \$439,000
 - b. Legal Expenses reviewing Contract \$11,000

s22

s22

We would appreciate your consideration to fund these important improvements to our Governance program.

Yours faithfully

Colin Wakefield
Interim CEO



CEO Termination Payment Details

Summary as below:

Summary	
Taxable ETP	
3 months: 16/10/2024 - 16/01/2025 - 469 hours	\$76,825.73
9 months: 16/10/2024 - 16/07/2025 - 1,372 hours	\$224,743.92
17% Tax Withheld	-\$51,266.84
Unused Annual Leave 173.65 hours	\$28,445.18
Unused Annual Leave Loading 17.5% of 173.65 hours	\$4,977.91
Unused Long Service Leave 586.63 hours	\$96,093.59
Marginal Tax Withheld	-\$60,840.00
Net Payment	\$318,979.48
Superannuation 11.5% of 3 months - 469 hours	\$8,834.96



EC24-001190

SINGLE MEETING BRIEF	
To:	Chief Executive Officer
CC/Info:	Deputy CEO, Policy and Programs
Subject:	CEO quarterly meeting with CEO, Anindilyakwa Land Council

Date	30/08/2024
Time	1:00pm – 1:45pm
Location	Microsoft Teams
Meeting with	<ul style="list-style-type: none">Mark Hewitt, Chief Executive Officer, Anindilyakwa Land Council
Prior meetings	<ul style="list-style-type: none">5 June 2024
What we want	<ul style="list-style-type: none">Quarterly meeting to discuss priorities
What they want	<ul style="list-style-type: none">Quarterly meeting to discuss priorities
Data	<ul style="list-style-type: none">Nil
Issues/Sensitivities	<ul style="list-style-type: none">The final draft report from independent reviewer tabled at ALC Board meeting held 22-23 August 2024 for discussion and clearance of Board / Management responses (these are contained in the final report).ALC Board and management response within the review has been finalised and was provided to NIAA Tuesday 27 August 2024.ALC CEO has put proposal to Board to resign and become a contractor to continue oversight of development of the island.Board has deferred decision on the proposal pending commencement of a new board until after board election.The Minister received a walkthrough of the report in its final status on Tuesday 27 August 2024 by NIAA.A brief (refer MS24-000439) has been provided to the Minister that includes the final report, options for response, draft letter to ALC Board members and draft media release.On Thursday 29 August 2024, the Minister wrote to the ALC Board expressing disappointment that the review flags a lack of progress advancing governance improvements (<u>Attachment B</u>). In the letter, the Minister informs the Board that she will only approve budget



National Indigenous Australians Agency

	<p>funding until 1 December 2026 pending ALC action to produce a plan for governance improvement and acceptance by the NIAA.</p> <ul style="list-style-type: none">• The Minister made a public announcement regarding the report largely echoing the letter to the ALC Board (<u>Attachment C</u>).• In line with the Ministerial announcement, the NIAA has published the review report on NIAA's website.• The ALC's budget for this financial year has not yet been approved and the ALC has raised cashflow issues if funding is not received shortly. In line with the Minister's letter to the Board, the Minister is approving funding until 1 December 2024 pending ALC action (refer MS24-000296).• The NIAA's Integrity Group and Land Branch are ready to support the ALC as required to respond to the Minister's requests.
Consultation	<p>YES</p> <ul style="list-style-type: none">• Arnhem Land and Groote Eylandt Regional Office• Integrity Group
Attachments	<p>A. Additional information</p> <p>s22</p>

Clearance*:	
Final Clearing Officer	Sean Worth
Position	Group Manager, Integrity Group
Phone	Ph: Mobile: s22
Date Cleared	29/08/2024
Date Sent to MO	[Date – Min Parl to complete]
Primary Contact Officer	
Name	Rachel Kerrigan
Position	Branch Manager, Land Rights Policy, Land and Native Title
Phone	s22 / s22



National Indigenous Australians Agency

Distribution

Name of Officers in the NIAA to whom a copy of this submission/brief is to be provided

- Ms Broun
- Ms Guivarra
- Mr Brahim
- Ms Jackson
- Mr Worth
- Mr Jamble
- NIAA Executive Coordination
- Ms Bellenger
- Mr Dyer
- Ms Fulton
- Ms Kerrigan
- Mr Wanganeen



Attachment A – Additional Information

EC24-001190

CEO quarterly meeting with CEO, Anindilyakwa Land Council (ALC)

Talking Points

s22

Australian National Audit Office (ANAO) governance audit of the ALC

- In 2023 the ANAO completed performance audits of the four Northern Territory (NT) Land Councils. The audits assessed the effectiveness of their respective governance under the ALRA and *Public Governance, Performance and Accountability Act 2013* (PGPA).
- On 31 May 2023 the ANAO presented its governance audit report of the ALC to Parliament. The ANAO made 15 recommendations, with two related to the exercise of decision making authority, eight at improving governance under the ALRA and five at improving governance under the PGPA.
- The ALC agreed all recommendations, except for one relating to strengthening its royalty equivalents distribution process.
- The NIAA's Integrity Group has commissioned an independent review into the ALC's responses to the issues and recommendations raised in the ANAO audit report on governance.
- The reviewer and Integrity Group Manager visited Groote to gather additional information and meet the ALC Board and management to discuss draft findings. A draft report is expected shortly.
- The final independent review report was received by NIAA on Tuesday 27 August 2024 that included ALC's responses. The ALC



National Indigenous Australians Agency

Board and management have considered the review findings and provided comment within the report. In summary, the conclusions and recommendations made by the report have been accepted by the ALC. The ALC notes that implementation of one recommendation (appointment of an Independent Board Advisor) may require additional funding.

Complaints and allegations about the CEO

- The NIAA's Integrity Group has also referred information received in relation to the ALC CEO's conduct to the National Anti-Corruption Commission for their assessment and, if warranted, investigation.
- Separately, the Agency understands other referrals have been made to the NACC on this issue and a complaint has also been referred to the Commonwealth Ombudsman.
- The referral to the NACC references alleged corruption by the ALC Chief Executive Officer, Mark Hewitt in relation to his attempt to gain part ownership of a mining operation (Winchelsea) substantially funded by ALC royalties. Reports also allege conflicts of interest were not appropriately managed at the ALC and decisions about distributions of royalties lack transparency.
- A House of Representatives petition calling for an independent investigation into potential gross misconduct of terms of employment of the ALC executive and elected positions was presented to the House of Representatives on 12 February 2024 from Anindilyakwa people and Traditional Owners of the Groote Archipelago. There were 235 signatories to the petition.
- The Ministerial response to the petition was tabled on 29 February 2024. The response stated the Agency's Integrity Group will examine the matters raised and determine appropriate action, including investigation or referral to relevant Commonwealth and Territory agencies.
- Independent Senator Lidia Thorpe has used the media reports to renew her call for an inquiry into the NT Land Councils.

s22



s22

Winchelsea

- Winchelsea Mining is a joint venture that is majority owned by the Anindilyakwa Advancement Aboriginal Corporation and has been established as a future Groote enabling project with a core vision to raise enough revenue to support the economic and social future of the Traditional Owners of the Groote Archipelago.
- Winchelsea mine is expected to be operational for 10 years once the mine goes into production, which is expected in 2025. The mining venture will provide annual fixed payments to impacted clans, provide guaranteed payments into the Anindilyakwa Mining Trust and surplus profits will be reinvested into major projects for the benefit of Traditional Owners.
 - Public consultation on the Draft Environmental Impact Statement was conducted between 5 February to 9 April 2024, with the findings referred to the NT Environmental Protection Agency and the Department of Climate Change, Energy, the Environment and Water for assessment.
- Mr Hewitt has concurrent roles as the CEO of ALC and a director of Winchelsea Mining. He has led the development of the mine and media reports allege Mr Hewitt has sought a personal stake of up to 10 per cent in Winchelsea Mining through a family trust controlled by his wife and himself and could receive up to \$50 million in shared profits if the share is granted and if the mine is successful. These reports are the basis for a referral to the NACC made by the NIAA Integrity Group.

s22



s22



s22

Background

Facts & Figures



Delivered by email only

Senator the Hon. Malarndirri McCarthy
Minister for Indigenous Australians
Commonwealth Government
Parliament House
Canberra, ACT

16 October 2024

PRIVATE AND CONFIDENTIAL

Dear Minister McCarthy,

In accordance with our obligations under the Public Governance Performance and Accountability Act 2013, I am writing to inform you that at the ALC's Board Meeting today, the Directors resolved to terminate, on notice, the employment of CEO Mark Hewitt.

The Board had been considering the CEO's position for some time, following recommendations made in the NIAA's independent review report into the ALC's response to the 2023 ANAO governance audit report.

Our current Chief Financial Officer Colin Wakefield has been appointed as interim CEO and a recruitment process for a new CEO will be underway shortly.

As you may be aware, today, officers from the National Anti-Corruption Commission attended our Alyangula office. We understand this is part of NACC's investigation process following the referral of a complaint.

As you know, a new Board was elected in September 2024. The new ALC Board looks forward to a fresh start, getting on with the important functions of the land council and addressing the ANAO governance recommendations as a priority.

The Board has given strong direction to the officers of the ALC to work with the NIAA Integrity Group to implement the recommendations for both the ANAO audit and independent review. The ALC team has been working collaboratively with the NIAA to develop the Governance Framework you requested.

We will inform you of any further developments and should you wish to discuss these matters, please do not hesitate to call me.

Yours Sincerely,

s22

Cherelle Wurrawilya
Chairperson



FOI/2626/015

 anindilyakwa.com.au

T • (08) 8987 4006
E • admin@alcnt.com.au

OFFICIAL

PO Box 172, Alyangula NT 0885
30 Bougainvillea Drive, Alyangula NT



Released under the FOI Act by the
National Indigenous Australians Agency (NIAA)

From: [Cherelle Wurrawilya](#)
To: [Minister McCarthy](#)
Cc: [Jody BROUIN](#)
Subject: Anindilyakwa Land Council CEO Update
Date: Wednesday, 16 October 2024 9:54:20 PM
Attachments: [alc_logo_cmyk_horizontal_teal_a897c6da-08a7-435d-891b-cfd5e0d6829.png](#)
[2024.10.16 BRIEF to Minister McCarthy Anindilyakwa Land Council CEOUpdate.pdf](#)

Dear Minister,

Please see attached letter from the ALC concerning the CEO of ALC.

Kind regards

Cherelle Wurrawilya
ALC Chairperson



Anindilyakwa
Land Council

Cherelle Wurrawilya

Chair

30 Bougainvillea Drive, Alyangula NT 0885

T: s22 | **M:** s22 | **E:** cherelle.wurrawilya@alcnt.com.au
anindilyakwa.com.au

This message and any attached files may contain information that is confidential and/or subject of legal privilege intended only for use by the intended recipient. If you are not the intended recipient or the person responsible for delivering the message to the intended recipient, be advised that you have received this message in error and that any dissemination, copying or use of this message or attachment is strictly forbidden, as is the disclosure of the information therein. If you have received this message in error please notify the sender immediately and delete the message.