



Australian Government
Indigenous Business Australia

In Confidence

Chairman
Directors

Directions on the Administration of IBA

In my discussions with the Board on Tuesday 16 February 2010, I indicated where problems and difficulties had arisen between the responsibilities and role of, and communications between the General Manager and the IBA Board. The respective role and responsibilities are set out in the *Aboriginal and Torres Strait Islander Act 2005* and the *Commonwealth Authorities and Companies Legislation 2008*.

I have prepared a summary of our discussions outlining some examples where I believe the Board could be exposed and likely to be further exposed if these issues are not addressed.

In essence I believe the Board must lead by example and I offer the comments in this letter to provide my perspective and some more detail to the issues I raised in the last Board meeting. I am informally aware that the Board now intends to terminate its contract with me for the remaining period.

I want to stress that I have indicated quite clearly that I am prepared to work with the Board in addressing these issues but given the failure by the Board to address these matters I believe there is not much room for me to do my job to the standards I have and to the standards that the relevant legislation requires of me.

My comments should therefore be seen as placing on the record the points I made on 16 February to address emerging trends which I believe demonstrate a need to reassess leadership at the Board level and to resurrect a partnership between the Board and the administrative arm.

The administrative team is made up of high calibre staff who have strong commitments to their work and they deserve to be treated by the Board with professionalism, respect and some dignity for their substantial efforts to deliver quality administration of IBA.

While it would be easy to say that my comments are a demonstration of some form of resistance or anger on my part to a reform agenda, I can genuinely say the issues raised are of serious concern to me. I have always considered my role in Indigenous



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affairs as being bigger than personalities because what we do affects the lives of Indigenous Australians. Throughout my career I have always strived to bring about improvements for the clients, as well as provide quality support to the Board and the Government of the day.

I believe IBA over the past 12 years has been an agent of change and it has been successful because it has stuck to a fundamental principle of avoiding the temptation to mix social/welfare objectives with commercial. This is something the Parliament clearly had in mind when it established IBA.

I could have sat on these issues and just completed the next nine months to avoid a confrontation but after carefully weighing up my options and going through an increasing set of frustrations in not being able to deliver quality administration in partnership with the Board, to my standards, I believe I need to formally place these issues on the record.

At the conclusion of the discussions on Tuesday 16 February, I became concerned at some of the specific comments made by the Board; which included:

1. A clear signal that despite my strong recommendations to the contrary, that most currently vacant SES position can be filled on a permanent basis, (I do believe I have agreement to fill the Legal position). This verbal decision would appear to be in contravention of section 175 (1) of *the Aboriginal and Torres Strait Islander Act 2005*.
2. That I am to reinstate an Investments unit in WA, without any opportunity for me to fully detail why the decision was made and explain the new arrangements put in place to keep the Investment profile high in the State.
3. If necessary I am to reinstate the two staff who I recently declared surplus to requirements in the Investments unit in WA.
4. The Board is seeking a total organisational review to consider more innovative ways in which the organisation can be more responsive and more creative in the way it services clients.

The Board is aware that I have continually expressed a view that the Board's active involvement in the day to day administration is impeding my ability to get on with the job and does not in my opinion fit with normal good governance and the provisions of the enabling legislation and Division 4 the CAC Act.

I have not resisted the Board's attempts to innovate and have fully responded to all new requests, as far as I am aware. My point in raising my concerns is about implementation and day to day administrative matters which most of the Board are probably not fully aware of.

Some of the directions from the Board's last meeting are a clear demonstration of the concerns I have expressed. In my opinion, once the Board starts to make management decisions then normal good governance is the consequence.

An example of the issues I have raised centres on the Deputy CEO position, which has been vacant for ten months and is now likely to remain unfilled until late this year. I have stated to both the Chair and the full Board that this vacancy is placing an enormous strain on me personally as I have to carry a much greater workload. Reluctantly I have agreed, up until recently, that we should wait until the new CEO is

appointed before we fill this position but the workload pressures are growing and filling is, in my opinion, vital for me to provide the Board with quality management of this corporation. Secondly I have explained the consequences of not filling the two other vacant program AGM positions and the flow on effects in not being able to back fill other more junior level executive positions.

On top of the above I believe I presented the Board with a hard hitting and disturbing report on the Enterprise program and was advised that the Board would only note the issues and not respond to my specific recommendations. The independent author of the Enterprise review report indicated quite forcefully to the Board that we have a clear picture of the extent of the issues and some ideas about immediate remedial actions needed. In my opinion we don't have the luxury of sitting on this issue and focussing on apportioning blame.

As a consequence of my inability to move forward I indicated to the Board it was time for me to leave and I invited the Board to terminate my services as General Manager. The Board indicated it needed time to discuss the day's events. A month after that meeting I received a phone call to advise that the Board had decided to terminate its contract with me and I would be receiving a formal letter soon.

This is not the way I wanted to end my career of 35 years of service.

I have drafted a record of the points discussed during the last meeting as I want it on the record that I have indicated to the Board I have some serious concerns about governance at the Board level. At the last meeting I felt it inappropriate to give more than a couple of very broad examples, as I indicated that I had verbally discussed most of the detail with the Chair in December 2009. I now attach the list of matters which I was referring to. (SEE ATTACHMENT A) The Board can consider whether these matters constitute serious governance issues.

The issues of governance affect the whole organisation. As my concerns have grown I have pointed out that as the CEO of a significant corporation, a balance sheet of \$1 billion dollars; with considerable commercial assets and holdings and extensive reporting responsibilities, I am extremely uncomfortable with the extent of overlap/intrusion in what are essentially day to day matters.

I believe it would be unreasonable to suggest that I am simply ignoring change and a new direction as I and the administration have promptly responded to new initiatives and decisions the Board has made. I have raised these issues in the hope that they can be addressed promptly and in the best interests of an incoming CEO who might also feel obliged to raise these matters with the Board, if they persist.

The Board must take responsibility for any consequences which flow from the matters I have raised.

One of the strongest demonstration points of the issue of governance centres on the Board's practice of holding lengthy in-camera sessions at the beginning of each Board meeting. When they first started I was concerned about how the issues, which might emerge from these Board member only sessions, be dealt with as all offers on my part to offer staff to record the discussions and any decisions were rejected with comments like "don't worry we are not talking about you".

No process of feedback to the General Manager has been implemented and I have often had comments from the Chair to the effect that a matter has been decided by the Board. When I attempt to trace the record of the decision they cannot be located;

they simply don't exist. Clearly the Board and I have very different views on this issue of governance.

From my perspective there are two aspects to this practice. Firstly It is creating an impression of a growing rift between the administration and the Board and secondly the people who are responsible for implementing Board decisions have no way of knowing what is being decided. To drop outcomes into later conversations and say "I told you about that" illustrates how these simple issues can create difficulties for the administrative arm. I believe a more professional way would be to have the minute taker record the issues and the decisions. If you cannot trust your General Manager then get an external minute taker and the administration will have some way of being able to implement Board decisions.

I have been made aware of a growing number of staff who openly speak about being in contact with the Chair and some Directors. Some of these staff may be inclined to push their own agenda's. The Board needs to consider whether this might expose IBA to claims by staff that they have some form of understanding with the Chair. Secondly, it is bad practice as it breaks down the lines of administrative control. Staff openly say that the Chair extended an invitation to feel free to approach her, at the last Christmas drinks with the Board, and some are taking that up.

A further and disturbing example emerged after I last met with the Board. I have seen correspondence from the Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA) that they have been asked to copy all correspondence between the Department and IBA, to the IBA Chair. Quite frankly this comes as a complete surprise as it suggests a complete lack of trust in my leadership. In addition I find it embarrassing. I have never felt the need to hide information from the Board and would have supplied this information, if it was requested.

Putting aside the cosmetics of this action the issue of trust is paramount to being able to work with the Board.

I have been involved in public administration over thirty-five years and worked with several Boards and this action is not only personally distressing to me but the type of practice that I would seek to avoid at all costs.

Finally in relation to the issues raised on the administration of the Enterprise program; I do accept responsibility for the matters identified in the initial report and I have taken action where I have felt I needed to. I have fully briefed the Board on what I know and obviously the next stage will further inform. There is a strong trail of evidence to demonstrate I had concerns but was continually being assured that everything is fine. My judgement told me there were issues still to be addressed and when I became aware of problems I sought to address them first by commissioning the review and by looking at practical solutions. I have always considered this is one of my leadership strengths.

The Board must also take responsibility for its recruitment decisions for senior level positions which I believe has added to the deterioration of administrative scrutiny over this program area.

I have indicated that I believe a process of remediation and enhancement of this program is possible in the coming months and I offered to put my attention and resources to resolving the issues in partnership with the Board.

A number of recommendations were presented to the Board to enable me to confidently proceed to address the issues raised in my brief. The Board has chosen to just note the brief. This leaves me in an untenable position as I stressed that a number of strategies were being examined to improve the quality of management of the Enterprise program, particularly at the national level.

I have a strong respect for the Board members and I have worked with a number of you over a considerable period of time. I have received very complimentary performance assessments and I am not aware of any concerns by Board members. I ask the Board to respect the fact that I not only have obligations to the Board but I also have responsibilities to the Parliament. In addition, my strong commitment to the economic growth of Aboriginal and Torres Strait Islander peoples compels me to ensure that the good work that IBA has achieved is not tarnished by administrative and governance issues. I have seen this happen in many former national organisations and would be very distressed to see the same happen to IBA.

To summarise my position, I am proud of my record with IBA where I have worked with the Board to produce a robust, effective and dynamic organisation that provides real benefits to Aboriginal and Torres Strait Islander peoples. We have built an organisation which has made and continues to make profits, even in times of Global financial crisis. IBA has an impressive record of achievements that few Aboriginal organisations can claim. The team of staff are of a high standard and their commitment to their work is a real feature of the sort of person we attract. I have proudly led the administration of IBA for over 12 years.

In the best interests of the organisation and Indigenous Australians I respectfully ask the Board to address these issues of responsibility, governance and timeliness as a matter of urgency.

I have raised my concerns about governance for obvious reasons. I hope that Board members appreciate the fact that like each of you I do have a number of years of experience at the leadership level and if I disagree with an approach I reserve the right to express an opinion. I believe my record entitles me to be able to make comment and provide advice with some considerable experience behind me. I fully appreciate and respect the Board's right to take a different position on policy or directions to that which I or the administrative arm of the Corporation may suggest.

I wish the Board well in its future leadership of Indigenous Business Australia.

Regards

Ron Morony
General Manager

17 March 2010

Attachment A

Examples of Governance issues

In addition to the matters outlined in the attached letter I have added more detail in order that the full Board can consider in depth whether the matters are serious or not. They are certainly disheartening for staff who put in well above average efforts and often are finding their work is often just unanswered. I believe a review by an independent party like the Australian Institute of Company Directors may be worth considering.

The additional examples include:

1. Failure to conclude board minutes in 6 months. (Corporate law requires this be done within a month). Despite many attempts we have not been able to get the September 2009 minutes addressed. I reworked them in December in an attempt to get them moving and still no response from the Chair. We finally got a response on Friday 12 January 2010. The December decision sheets were unsigned so we went to Sydney to get them signed. (They are normally signed at the meeting). We now have all but five signed from the December meeting as the Chair wanted to reword the draft decisions. We received the December minutes on 12 February from the Chair but still don't have the five decision sheets signed. As the minutes were not discussed at the February 16 2010 meeting they are now being circulated for individual Board member comments and will probably be cleared at the next meeting. This has had an effect on the administration of the HOP program as one of the decisions relates to transferring \$2.7 million to this program from interest earned. Had the administration had the decision ratified we could have had this money spent/committed on new home loans. (Normally minutes are completed soon after meetings, sent to the Chair for initial clearance, and then sent to Directors for comment and then cleared at the next meeting).
2. On 5 August 2009 we sent a draft brief for the Minister, to the Chair. It contained a summary of the July Board meeting decisions. Despite several attempts we can't get that brief cleared. I would quite frankly be embarrassed to be sending it so late. The Minister wrote to me on this very issue in early 2009.
3. On 8 August 2009 I submitted a detailed performance assessment for the previous year. A discussion occurred in December 2009 and the matter is still not resolved. I received an email in early January 2010 to advise me that the matter would be dealt with promptly. My contract states that this will occur within three months of the end of each financial year. It is now March 2010 and the matter is outstanding. Most professional organisations make sure that the CEO is promptly informed of his/her performance while I have been waiting seven months.
4. On 4 September 2009 the WA Director General of Indigenous Affairs wrote to the Chair inviting her to visit WA. I sent a note to Chair asking how she wanted to respond. I have not received a reply and IBA is now embarrassed as the DG has since written attaching a copy of his letter seeking the courtesy of a reply. The matter remains

outstanding.

5. There are a significant number of letters where we draft suggested responses to clients or various parties who write to the Chair. We simply don't know if they have been answered. Operational units in IBA cannot conclude matters if the Chair has not decided on the content of replies. This affects our image and creates significant confusion for the administration.
6. On 23 September 2009 the GM's contract extension for a further year was signed. The human resource area sought evidence that full consultation had occurred with the Board. We were advised that a full audit trail in the form of emails to Directors would be sent for file records. After not receiving copies of the email trail the administration ratified it in the decision sheets in order to place the Board's approval on the record. IBA is subject to such high scrutiny and I have always stressed to staff the importance of recording decisions and contact with clients on file. Any appeal can then be addressed with accurate file records. The Board should be leading by example in ensuring appropriate audit trails are in place.
7. In September 2009 the remuneration tribunal determined an annual increment on the GM's salary. I was advised by the Chair in emails that it had been approved by the Board. I went back and asked for evidence and was told there was contact by the Chair with Board members and it had been approved and copies of the emails would follow. We have never received copies of those emails. The payroll staff were uncomfortable that no clear audit trail was available but in the end accepted the word of the Chair that due process had been followed. Again the Board should be leading by example.
8. In July 2009 the GM was advised of freeze on recruitment of SES positions, particularly the Deputy General Manager, Commercial. After discussions with the Chair the freeze was lifted on the Legal position. I have subsequently advised that the vacancies over such a long period of time is creating difficulties. In my opinion, the CAC Act provisions and the delegations from the Board place the responsibility for recruitment with the General Manager. I accept consultation with the Board on senior appointments is vital. Put simply, for a CEO of a \$1 billion dollar corporation to have to request permission to fill vital positions is not, in my opinion, good practice. In November 2009 I advised the Chair that I was under some strain carrying the two jobs and sought agreement to at least see if I could find a suitable person to act in the Deputy General Manager's position. It was agreed that I could see if I could get someone to act in the job pending the appointment of the new CEO. I did so but have not been able to find a suitable person to act given the uncertainties around the longer term. This position has now been vacant for 10 months since Mr Dalzell left IBA. While I have accepted some responsibility for the issues with the Enterprise program this decision not to allow recruitment of a key oversight/ leadership position for the Enterprise program area, in my opinion, also makes the Board directly accountable.

9. On 23 October 2009 I advised the Chair that the Minister was about to write to the Prime Minister about the 2010 Budget process as the Minister was required to list her priorities for the 2010/2011 financial year. A letter was sent to the Chair stressing the urgency of the process and requesting a quick turn-around. We were seeking more money for the HOP program and also an ability to transfer monies from HOILP to HOP. We offered the Chair a choice of two amounts that IBA might bid for in the next budget. The Chair did not meet the deadline and when pressed said she wanted to redraft the letter. We were advised that the Chair would separately liaise with the Minister's Office. While I accept the tight budget situation I believe we missed any opportunity to obtain additional funds from the Government for the Home Ownership Program. The Chair then announced she was meeting with the Minister to discuss budgetary and other matters and had redrafted the letter which we had sent to her. I asked for a copy of the letter for file records and was assured it would be sent. The Chair rang me after her meeting with the Minister and appraised me of the discussions. I again asked for a copy of the letter as we were in discussions with the Departments of Finance, Treasury, Prime Minister and Cabinet, a special Budget/Finance committee and FAHCSIA about the budget. We didn't receive a copy so when I met with the Chair in late December 2009 I asked for a copy of the letter and was told "I have fully briefed you on matters discussed with the Minister". I made the point I don't know what's in the letter and that makes it difficult for me to liaise with other agencies without a copy. I received a copy of the letter on 12 February 2010, some five months after we had sent a draft through. The IBA senior managers concerned with negotiating the budget have been stressing to me they are in contact with Finance, Treasury as well as FAHCSIA and were hampered in discussions as they did not know, with absolute certainty, what was in the letter given by the Chair to the Minister (ie. what was the amount of additional money we were going to seek so we could tell Department of Finance).
10. On 22 September 2009, a day before interviews were due, I received a call from the Chair stating that she had received a phone call from a job applicant for the Senior in-house Legal position, who was apparently concerned that Mallesons were on the interview panel and the applicant perceived a possible conflict of interest. I was told to cancel the interviews and get a better panel. My attempts to explain there was no conflict of interest went unheeded. I was also advised that only one IBA person would be allowed on the new panel because of potential conflicts. I eventually managed to convince the Chair that it was standard practice in Canberra to have two internal people and one external on interview panels and in this particular case we needed a panel member with specific Legal skills to test the claims of applicants. To take the word of a job applicant over the General Manager has some serious relationship implications. I took this up on another occasion with the Chair but was told her opinion stands. (In normal circumstances this is not a matter a Chair would get involved in).
11. In January 2010 I initiated a review of the State Co-ordinators' functions. Given that we had some two and a half years' experience with these positions a review was now appropriate. There are a

number of factors I considered in deciding to undertake the review including the fact that each of them is going about their job in a different way. I was also conscious of the fact that the Chair has some strong views about linking into the COAG process. The review is designed to undertake an assessment of workloads and the extent of co-ordination with other Commonwealth and State agencies. My plan was to then talk to the Board about the findings and address the issue of IBA's role in respect to COAG. (The Chair has also on at least two occasions raised the issue of lifting the level of these positions to SES). Within 30 minutes of the four coordinators being briefed on the review I received a call from the Chair asking what I was up to and for copies of the terms of reference. I had attempted to forewarn her of the review in our meeting in late December but time ran out and I didn't get through all of my topics. In normal circumstances a CEO will need to undertake small internal assessments. Having to fully brief the Chair before and during such an examination will bog me down to justification and explanation when this is a simple management measure. I was not looking to abolish the positions but rather put some structure to them particularly given the changing dynamics in Indigenous affairs.

12. On 22 January 2010 we received a letter, addressed to the Chair, from an Official in the NT Government seeking funding for two jobs for a further 2 years for NT Pastoral properties. I briefed the Chair and suggested she write back thanking them for the letter and advising that the matter would be handled by the General Manager. I have no indication of whether the Chair has signed the letter or if I can start working on it from an administrative perspective. *It is now March and the administration cannot do anything until we know what the Chair intends to do about the matter.* In addition there is a growing perception that in order to get decisions in IBA it is better to contact the Chair direct. The Board should be concerned if the Board is seen by clients and State and Federal agencies as the way to get decisions made. This was a strong weakness by the ATSIC Board and eventually poorly considered decisions were part of the reason why that organisation failed. The Board should be further concerned that simple administrative issues are not being addressed because we can't get a reply from the Chair.
13. In July and August 2009 I was advised by the Chair, on a number of occasions, that the relationship with the Minister was not good. This was then used in discussions with me about my performance in December 2009. I was also told when the Chair first joined IBA that IBA was seen as arrogant and unresponsive. I was a bit surprised as I make a point of visiting the Minister's Office every fortnight and was not picking up these sentiments. I am aware of a disagreement over my appointment. In November/December 2009 I was advised that the Minister was concerned about the Leighton's/ Ord project. I visited the Minister's Office in December and asked Mike Dillon if there were concerns with me and secondly what the concerns were about the Leighton's/ Ord scheme as this seemed to fit the profile of what the Government was trying to achieve. I was advised that there were no concerns but the Minister wanted to be assured that locals would benefit. When I explained why we were embedded into the project he was very comfortable and said he would pass on the details to the

Minister. I feel it is easy to interpret a strict adherence to principles around commercial viability as arrogant and unresponsive. The commercial discipline which I have insisted on in the administration of the organisation is very different from past welfare approaches but it is consistent with the provisions of our enabling legislation which requires IBA to behave in a "Business like manner". My dealings with the Ministers office have been courteous and responsive to the governments agenda.

14. With regard to the issue of IBA being unresponsive I receive differing messages from the community about IBA but overall we receive good responses. The two main points of contact with the Indigenous community relate to the Home Loans program and the Enterprise program and in the main we get very positive feedback. I have however been concerned at the extent of comments about the Enterprise program and that caused me to investigate the matter further. I fully accept that we can improve our level of service in this program area. I feel the introduction of the State Coordinators has been a significant improvement on our ability to engage at the State and Territory levels.

15. In mid 2009 the Board indicated it wanted to hold two roundtable discussions with selected groups to gain an outside perspective on IBA and identify some areas for improvement. The administration immediately set up a program of implementation including drawing up lists of invitees, letters of invitation, background briefings, appointing/identifying facilitators and identifying possible venues. Letters and lists were sent to the Chair for consideration and we settled on early December for the meetings. The Chair indicated she wanted to redraft the letters of invite and make personal contact with a number of individuals who would subsequently be invited. We researched the individuals on the lists and obtained profiles on their particular expertise and contact details. We booked venues and appointed the two facilitators. Despite many attempts, the Chair was not able to provide the updated letters or decide on the final list of invitees so the events in December were cancelled. In late December the General Manager sought direction on how to proceed and was advised that there would now be three meetings and a set of three dates in March were given. The administration was still waiting for the redrafted letters and lists of who would be invited and has not received a response. The General Manager suggested to the Chair that the newly formed Indigenous Business Council of Australia was planning to meet soon and we might persuade them to meet in Sydney and achieve one of the discussions with Indigenous Australia in this way. The Chair agreed and that has proceeded. We are now advised that the dates in March are no longer suitable for the other two meetings. We still to this point don't know who is to be invited, when they will occur and if changes to the letters will occur. The administrative arms response to this has always been positive and professional. It is very disheartening for staff who responded quickly and in some detail to find their work just keeps getting deferred. The administration is very capable of putting these types of arrangements in place and getting people to such venues provided direction is clear. The point is nine months have elapsed and considerable effort has been made to

achieve the Board's objectives and we still don't know when and if these meetings will occur.

16. At the December Board meeting it was agreed that a further paper on options for Tjapakai were to be considered and along with the administrative staff the Chair and Deputy Chair would visit and undertake an analysis of the options for this business. The Board were informed at the December 2009 Board meeting that this business has suffered from a serious downturn in visitor numbers and it is incurring a substantial loss. Staff at the centre have been anxious to know what the future holds for them and the IBA Board needs to quickly decide whether to inject a substantial capital injection or close it down. Since the December board meeting the administration has tried on a number of occasions to find a date suitable to the Chair to undertake the visit and no date has been agreed to as of mid March. The business got close to insolvency in Feb and I had to inject extra capital into the business to keep it afloat until the full assessment is undertaken and the Board makes a decision on the future of the venture. The venture continues to make losses and the small capital injection I approved will not keep it solvent for much longer. The continuing delays exposes IBA to considerable risk and the longer we delay the assessment process the closer we get to insolvency. Added to that are the lives of the staff in the venture who are entitled to expect IBA makes a prompt and responsible decision about the future of the business.

17. A number of other examples could be provided, like setting Board meeting dates and advising staff to feel free to make contact on any issue at any time, but I believe I have made my point. I appreciate the fact that the Chair has a full time job but IBA cannot be run administratively on a part-time basis and be unable to respond to Government and other priorities on the basis that it sometimes takes several months to get direction from the Board.

March 2010