



Australian Government
Indigenous Business Australia

Senator Claire Moore
Chair
Community Affairs Legislation Committee
Parliament House
Canberra ACT 2600

Dear Senator,

At the 15 February 2013 hearing of the Senate Community Affairs Legislation Committee, I provided the Committee with a copy of a letter written by the former General Manager, Mr Ron Morony to the IBA Board.

I was asked to provide comments on the letter for inclusion in the Hansard record. Those comments are attached.

Yours sincerely

Leo Bator
Acting Chief Executive Officer



Bonner House East, 5 Neptune Street, Woden ACT 2606
Postal address: PO Box 38, Woden ACT 2606
Document Exchange: DX 24002 Woden ACT

Ph: (02) 6121 2700 or FreeCALL™ 1800 107 107*
Fx: (02) 6121 2730 | www.iba.gov.au | ABN 25 192 932 833

*Calls to 1800 numbers from your home phone are free. Calls from public and mobile phones may be timed and charged at a higher rate.

Submission to the Community Affairs Legislative Committee in response to March 2010 letter from former General Manager

Executive Summary

- The Board refutes Mr Morony's allegations of poor performance and governance. The Board recognises that the letter was written at a difficult time for Mr Morony.
- The Board takes seriously its responsibilities to effectively govern the organisation and meet its statutory obligations. It is the Board's role to shape how the organisation runs; it is obligated to get the best outcomes for IBA. In the interests of good governance the relationship between the Board and the General Manager/CEO needs to be highly effective and aligned. It became clear to the Board that Mr Morony did not share the same strategic direction for IBA as the Board.
- IBA has always maintained strong governance and has worked consistently over the last 3 years to further make improvements including initiating in 2012 a significant review of governance which confirmed that arrangements were working well in IBA including between the Board and the Executive.
- The Board refutes Mr Morony's allegations there may have been breaches of either CAC or ATSI Acts.
- The Board is diligent in its pursuit of best practice in all aspects of its responsibilities, including good governance and program performance
- The subsequent review of the IBA enterprise program is evidence of the Board critically reviewing its program and driving better performance, shown in the better outcomes now being achieved by indigenous businesses over the past three years.
- The Board takes a considered approach to all major decisions to ensure that they represent an effective approach to achieving the organisation's objectives. Mr Morony had a different perspective on the level and quality of information required and the time needed to make major decisions.

Background

Mr Ron Morony commenced as General Manager at IBA on 1 September 1997. His most recent re-appointment was for the period 28 September 2009 to 30 November 2010. Mr Morony and IBA executed a Deed of Mutual Release which terminated Mr Morony's employment effective from 9 April 2010.

Dr Dawn Casey was appointed as Chair of the IBA Board on 29 June 2009. Consistent with contemporary governance practice, the Chair position was at that time moved from a full time to part time position.

Mr Morony provided the IBA Board in March 2010 an 'in-confidence letter' titled 'Directions on the Administration of IBA'.

Detail

Approximately 3 years ago, Mr Ron Morony wrote to the IBA Board detailing a series of concerns and complaints including

- interference in the running of IBA operations by the Board amounting in his view to a breach of the ATSI and CAC Acts
- deteriorating relationship between the Board and he in his role as the General Manager
- differences in perspective on the level and quality of information required and the time needed to make major decisions in relation to the Enterprise program
- differences between Mr Morony and the board on a range of governance issues

Interference in the running of IBA operations amounting in Mr Morony's view to a breach of the ATSI and CAC Acts

The role and responsibilities of the Board and its General Manager (now referred to as Chief Executive Officer) are set out in the Aboriginal and Torres Strait Islander Act 2005 (ATSI Act).

- Section 156 of the ATSI Act states that it is the responsibility of the Indigenous Business Australia Board, subject to any direction from the Minister, to ensure the proper and efficient performance of the functions of Indigenous Business Australia and to determine the policy of Indigenous Business Australia with respect to any matter.
- Section 168 of the Act outlines the role of the Indigenous Business Australia Chief Executive Officer as being to manage the day to day administration of Indigenous Business Australia in accordance with policies determined, and any directions given, by, the Indigenous Business Australia Board in writing.

As the Chief Executive Officer (CEO) and the Board share leadership of IBA, there is necessarily a degree of overlap between the roles. A close and trusting partnership between the Board and CEO is essential for good governance. It is not uncommon for a Board, in overseeing an agency, to monitor management performance, approve restructuring, ratify the appointment and/or removal of Senior Executives, approve key management decisions and provide final approval of management's development of the corporate strategy.

This type of relationship is supported by the provisions of the CAC Act.

There is clear evidence of timely, appropriate and ongoing communication to Mr Morony by the IBA Chair in file records, email and through Board minutes.

The ASX Corporate Governance Principles and Recommendations list the responsibilities of a Board as including approving key management decisions such as restructuring. Matters of this kind are ordinarily put to the Board prior to decisions being taken by the Chief Executive Officer.

For example, the Board believed that a decision to close the Investment Office in Western Australia was a policy decision that should properly be made by the Board. The Board was particularly concerned by the closure because of the substantial investment opportunities that exist in the State. The Board was also mindful of the expectations and likely criticism by the Indigenous community for taking this action without proper consultation and discussion.

The approach taken by Mr Morony to close the Office and terminate employment of the staff was a major issue for the Board.

At the 16 February 2010 meeting the Board were advised by Mr Morony that the restructure was to avoid the lengthy process of managing under performance. The Board advised Mr Morony that restructuring was not an appropriate people management strategy and were seeking contemporary and best practice people management from IBA.

The IBA Board did not agree to the former General Manager's recommendation to advertise the two vacant Assistant General Manager positions for the Enterprises and Investments Branches on the grounds such action would pre-empt findings of an internal program review and may limit the ability to restructure. However, the Board did not require the positions to remain vacant and supported filling on an acting basis. The former General Manager filled both positions on an acting basis for the period in question. For a substantial period there was also an additional Assistant General Manager position filled and available to carry out the work of IBA.

It is not uncommon for a Board to request that options remain open during periods of program and policy review. The IBA Board also sought to create the opportunity for the incoming Chief Executive Officer to select his or her Executive Team.

As part of IBA's continuous improvement strategy for Board and organisational governance, IBA commissioned Deloitte Australia in 2012 to conduct an independent governance review, which assessed IBA against 62 key governance indicators. These indicators were derived from relevant Better Practice Guides from the Australian National Audit Office. The review concluded that there were no significant gaps in IBA's governance processes and recognised that the organisation has a sound governance system.

Deteriorating relationship between the Board and Mr Morony

At the Board meeting of 16 February 2010, a range of policy issues were discussed which highlighted irreconcilable differences between Mr Morony and the Board. Mr Morony said that he was not prepared to continue under these circumstances and he could not continue unless his requests were approved. The Board requested that he present a wider range of options for consideration. The minutes of the meeting record that Mr Morony was unwilling to meet the Board's request.

There were clear differences of opinion between the Board and Mr Morony on what constituted an appropriate decision making process including the adequacy and timing of information being provided by senior management to the Board. The Board approached significant decisions like the Tjapukai investment in a considered way requiring that a clear strategy be developed and adequate professional advice be obtained to support a significant financial investment. In doing this, at no time was the Tjapukai business at risk of insolvency.

While the Board recognised Mr Morony's long experience with IBA, it felt that he was no longer supporting the Board to meet its statutory responsibilities.

Issues concerning the reviewing of Mr Morony's performance and remuneration raised a number of serious issues for the Board.

- Long serving Board members noted that they had not previously been fully consulted about the General Manager's remuneration or performance. The performance benchmarks that the General Manager was required to achieve required updating to reflect current best practice and to align to the Board's strategic policy direction.
- For reasons of good governance, a Remuneration Committee was established.
- The Board now fully engage in reviewing the performance of IBA's Chief Executive Officer.
- Due to the urgency sought by Mr Morony to decide on any increase in remuneration before his next birthday, the matter was dealt with by Board members via email out of session. The decision was later ratified by the Board in an ordinary meeting. The Board's decision was in accordance with the Remuneration Tribunal determination.

Differences in perspective on the level and quality of information required and the time needed to make major decisions in relation to the Enterprise program

The Enterprise Program was not performing well during the time of Mr Morony. While Mr Morony had genuine concerns about the Enterprise Program, IBA Board members had not been made aware of previous reviews of the program commissioned by IBA management.

At the meeting where the Board was to consider changes to the Enterprise program, the Board felt that they had not had adequate time to consider these issues as the Board received the papers relating to the Enterprise Program one day before the actual Board meeting. Consequently, the Board had a limited opportunity to consider and reflect on the matters brought before it. Notwithstanding this the Board noted that the review was not yet completed. Further, it noted that several of the recommendations suggested by Mr Morony pre-empted the final report, whilst others did not relate to the area under review. In addition, preliminary findings indicated that the recommendations of previous reviews had not been implemented. The Board decided it would be prudent to wait for the review to be completed before making decisions on the ultimate recommendations.

Following the departure of Mr Morony, work was undertaken to identify improvements to the Enterprise Program. These improvements were endorsed by the Board and resources committed to implementation. This has resulted in a steady improvement and in the growing success of Indigenous businesses which are served by the program.

Differences in opinion between the then General Manager and the board on a range of governance issues

Mr Morony had been in his role at IBA for over 13 years. During 10 of those years, he had worked to the same IBA Chair. The move from an executive chair embedded within IBA to a conventional independent chair arrangement meant that it was necessary for Mr Morony to engage with the Board in a different manner.

In implementing the changes, the Board remained responsive to the business, ensuring meetings occurred on a timely basis and Board members, including the Chair, were available to consider issues when they arose.

The IBA Chair, supported by the Board, wanted to implement contemporary best practice Board governance arrangements, including developing a strong and independent relationship with IBA management. It was inevitable that these changes would flow through to senior management.

The in-camera sessions are an example of this necessary and essential change. In-camera sessions are regarded as best practice by the Australian Institute of Company Directors. Many matters must be considered by the Board in the absence of management, including CEO performance, audit reports and Board performance. Major decisions taken during the in-camera sessions were minuted and necessary actions were taken by IBA.

The IBA Board is confident that decisions made in in-camera sessions have been acted on by senior management.

The Senior Executive of IBA is responsible for the production of Board agendas, papers and minutes. Accordingly, in the first instance, the timely production and quality of these materials rests with the Executive. There is a strong correlation between the time required by the Board to clear Minutes and the quality of the initial product which was a concern at the time.

Stronger arrangements have been introduced since the departure of Mr Morony to ensure that Board arrangements meet best practice standards. A recent independent review of Board governance arrangements undertaken by Deloitte concluded that there were no significant gaps in IBA's governance processes.

The Board is very conscious of its statutory responsibilities to report to and inform the Minister of IBA activities. Stronger arrangements have also been introduced since Mr Morony departed to ensure that timely and appropriate reporting is undertaken.