



APONT
Aboriginal Governance
& Management Program

Independent director guide

FEB 2016

Why independent directors?

Independent directors can be an asset to the Aboriginal boardroom. Key is finding the right person for your organisation. Below is an outline of the:

1. Advantages and risks of recruiting an independent director
2. Suggested selection tips
3. Advice on introducing candidates to your organisation
4. Independent director orientation and induction
5. Other considerations

1. Advantages and risks

Advantages

- Can offer independence from possible allegiances and interests of some member directors
- Can bring enormous experience and knowledge to the board (legal, financial, constitutional, and regulatory, etc.)
- Can bring new technology, best practice, processes and procedures to the board
- Can add credibility to the organisation
- Can bring an outside perspective, identifying emerging issues not otherwise apparent to the board
- Can bring strategic direction and ideas to the organisation
- Can access networks and facilitate connections otherwise closed to the board
- Might access funding and other supports not otherwise known to the board

Risks

- Unfamiliar with local customs and traditions (e.g. timeframes, family obligations)
- Unfamiliar with membership and local politics
- Can dominate discussion
- Might make other directors feel overpowered and undermined, such that existing capacity is eroded not enhanced
- May be a friend of the CEO (with good and bad consequences) so not truly independent
- Other directors may effectively relinquish their responsibilities to the independent director
- Can stifle the natural leadership on the board
- Board/CEO can develop a dependency on the independent director, contrary to the principles of Indigenous self-determination

2. Selection tips

For organisations who have decided to recruit an independent director, the Office of the Registrar of Indigenous Corporations (ORIC) has developed tips that serve as criteria for selecting suitable independent directors, under the following headings:

- Independence
- Experience
- Qualifications or skills
- Personality
- Capacity
- Availability
- Performance
- Disqualification/convictions/investigations
- Insurance
- Remuneration
- Cultural competence
- References

Question prompts under each heading are available at <http://director.oric.gov.au/tips-selecting-independent-director>. You may wish to add criteria and determine which are essential and desirable in your organisation's circumstances.

ORIC now also has a register called the Independent Directory which attempts to match suitable independent director candidates to Indigenous corporations – <http://director.oric.gov.au/>.

3. Introducing candidates to your organisation

Inviting the candidate to your organisation before they formally become an independent director can be beneficial to both parties. This might involve an informal morning tea or lunch with staff, other directors and other key members.

The candidate might be invited to spend some time at the front line of your corporation's business, at your store or next to the grader driver, for instance. Ideally they would observe a board meeting. A 'buddy' director might show them around the community for the day, even take them out bush.

4. Orientation and induction

Cultural orientation

Once a candidate has been formally appointed some cultural awareness training or orientation may be beneficial, particularly if they are new to an Aboriginal organisation board.

Pitfalls to avoid

The orientation should include a discussion (including possible role plays) of some common mistakes that independent directors make, often around cultural modes of communication:

- Not understanding the dual systems of governance at play in Aboriginal boardrooms
- Thinking silence equals tacit agreement
- Talking over other directors
- Making assumptions about the competency of other directors
- Imposing values and belief systems on the other directors
- Miscommunicating due to language barriers
- Being insensitive to and dismissive (whether intentionally or unintentionally) of other directors' views
- Lack of awareness of how they may be viewed by the other directors
- Not understanding the constant pressure of directors' broader social responsibilities

Where independent directors are appointed for their particular expertise, some 'rules of engagement' may be useful. These may diplomatically recommend when their advice is and isn't warranted, providing the rationale – e.g. to avoid domination of the board.

Making culture clear

The discussion (and role plays) recommended above should include as many relevant examples as possible. Orientation should also include an explanation of the cultural characteristics of your community and country. This might help the candidate understand the wider context: e.g. basic kinship arrangements, traditional and historical connections to land, basic (and only public) aspects of Dreamings and sites in your area. These characteristics might influence how your organisation is structured and some of its core functions e.g. land management.

How culture might impact on board meetings should be made quite clear, e.g. how authority and avoidance relationships might determine attendance and influence discussion; and how sorry business can postpone board meetings at very short notice. The 'buddy' director mentioned above might in fact be or become a cultural mentor to aid this orientation.

A broader induction

A good induction into an independent directorship with an Aboriginal organisation involves more than cultural orientation.

Some of the suggestions in 'introducing candidates to your organisation' above might be replicated more formally once an independent director is actually appointed, e.g. meeting with key staff, namely management.

A written overview of your organisation should be provided and explained, ideally summarising the following and marked confidential where appropriate:

- A brief history of the organisation
- Organisational culture, values, vision, goals and key processes
- Structure
- Functions, services, businesses and key upcoming projects
- Existing board and membership
- Rule book
- Key policies
- Key stakeholders, partners, other organisations and community players
- Funding/legal/enabling environment
- Financial position

A cultural orientation course and/or a broader induction might be developed and presented in-house or outsourced. This may seem excessive just for one independent director but much of the material would be also useful to orient/induct new senior staff, when that time comes.

The independent director may in fact benefit from formal training in a directors' course; and there are several credible providers of these.

5. Other considerations

Do your organisation's rules in fact allow independent directors? Should your independent directors have voting rights (see below)? Are rule changes then required, and how must they be enacted?

Do the rules spell out how independent directors must be selected and appointed? How will you ensure this is transparent, understood by the other directors and members; and that they are comfortable with the actual appointment? That is, the orientation should be in both directions: on the one hand for the independent director and on the other hand to orient the existing directors to this new arrangement.

As all directors, including independent directors, act on behalf of members, the members must be satisfied the independent director understands the roles, responsibilities and legal duties of being a director.

If a match of values and 'personality' between the candidate and your organisation is not yet clear but it otherwise seems a good fit, consider first appointing the candidate to a committee, e.g. a finance committee, or as an observer for a period. (Note: your rules must allow such a committee appointment).

Especially, but not only, when remuneration is involved, the organisation should ensure the commitments of both parties are in writing: covering reasonable duration of the directorship; meeting attendance in person and/or by phone or video; expenses; and – importantly – confidentiality of board papers, minutes and organisational processes.

The commitment may include a probation period.

The independent director may value and benefit from a performance assessment, even if delivered only verbally.

Voting Rights

A critical decision for boards is whether to grant voting rights to the independent director (provided the organisation's rules allow for this). Granting a voting right obviously increases the risk (liability) of the independent director to be sued and they may not want this. On the other hand, it increases their buy-in (duty of care, etc.), namely in knowing they will be more accountable for their advice if they then voted in support of it.