



Australian Government
Indigenous Business Australia

IBA Management and Accountability
(IBA Board to Chief Executive Officer)
Delegation 2017 (No. 2)

Made under subsection 190(1) of the *Aboriginal and Torres Strait Islander Act 2005* (Cth).



Australian Government
Indigenous Business Australia
INSTRUMENT OF DELEGATION
No. 2 of 2017

Indigenous Business Australia (IBA) makes this Delegation under seal in accordance with subsection 190(1) of the Aboriginal and Torres Strait Islander Act 2005 (Cth).



Dated: 10 October 2017

The Common Seal of Indigenous Business Australia is duly affixed by order of the Board, in the presence of:

[Signature])
 Signature of Authorised Person)
Senior Lawyer)
 Office Held)
10 October 2017)
 Date)
NADIA ROSENMAN)
 Name of Authorised Person)

T Cole-Adams)
 Signature of Authorised Person)
Lawyer)
 Office Held)
10 October 2017)
 Date)
TESS COLE-ADAMS)
 Name of Authorised Person)

1 Name of Delegation

This Delegation is the IBA Board to Chief Executive Officer Delegation 2017 (No. 2) (**Delegation**).

2 Commencement

This Delegation commences on the day after it is executed under seal.

3 Revocation

All previous delegations made to the IBA Chief Executive Officer (previously IBA General Manager) in relation to the functions and powers of IBA under subsection 190(1) of the ATSI Act, including the IBA Board to Chief Executive Officer Delegation 2017 (No. 1) dated 27 February 2017, are revoked.

Note: Revocation of a particular delegation by this Delegation does not invalidate the performance of a function or the exercise of a power by the delegate before the delegation was revoked.

4 Definitions

In this Delegation:

ATSI Act means the *Aboriginal and Torres Strait Islander Act 2005 (Cth)* and includes any regulations or instruments made under this legislation.

Board means the Board of IBA established by section 155 of the ATSI Act. *IBA* means Indigenous Business Australia.

PGPA Act means the *Public Governance, Performance and Accountability Act 2013 (Cth)* and includes any rules or instruments made under this legislation.

Schedule means the schedule attached to this Delegation.

5. Role of the Chief Executive Officer

- (1) Under subsection 168(2) of the ATSI Act, the Chief Executive Officer is to manage the day-to-day administration of IBA.
- (2) In accordance with subsection 168(3) of the ATSI Act, the Chief Executive Officer must, in managing the administration of IBA and in exercising any powers conferred on him or her by the ATSI Act, act in accordance with policies determined, and any directions given, by the Board in writing.
- (3) The role of the Chief Executive Officer is detailed in the Board Governance Charter and the instrument of appointment and terms and conditions of the Chief Executive Officer.
- (4) The purpose of this Delegation is to ensure that the Chief Executive Officer can perform specified functions and exercise specified powers of IBA.

Note: Section 168 of the ATSI Act provides that the CEO is to manage the day to day administration of IBA (subject to policies and directions of the Board). Accordingly, this Delegation may overlap with section 168 (and sections 175 to 178).

6. Delegation

- (1) The delegate is the person from time to time holding, occupying or performing the duties of the position of Chief Executive Officer of IBA.
- (2) The delegate is delegated the functions and powers of IBA set out in the column under the heading "Summary of function or power" in the Schedule.
- (3) If a limitation or special arrangement on the performance of a function or the exercise of a power is specified in the column under the heading "Limitations or special arrangements" in the Schedule, the function or power is delegated subject to the limitation or special arrangement.
- (4) Delegated functions must be performed and delegated powers must be exercised consistently with:
 - a. the ATSI Act, the PGPA Act and any other relevant legislation;
 - b. any policy, approval and instruction of the Board in writing;
 - c. any financial or other conditions set by the Board in relation to a particular contract or agreement;
 - d. any relevant financial or other condition contained in a funding agreement with a Commonwealth Department or agency; and
 - e. in respect of the implementation of a specific proposal subject to Government budget approval, the financial limit set by that process.
- (5) In the Schedule, a delegation of a function or power to approve a thing (as specified in the column under the heading "Summary of function or power") includes a function or power to decline that thing.
- (6) This Delegation does not prevent the performance of a function, or the exercise of a power by IBA itself.
- (7) Financial limits described in the Schedule are exclusive of GST.
- (8) Delegations are limited to available funds (unless a lower limit is specified).
- (9) Where the delegate approves expenditure in relation to a transaction in multiple parts, the financial limit on the delegation applies to the total value.
- (10) The delegate must not approve proposed expenditure of relevant money unless satisfied, after making reasonable inquiries, that the expenditure would be a proper use of relevant money
- (11) Once a power has been exercised to approve an arrangement, all necessary payments under the arrangement are authorised.
- (12) This Delegation must not be used to approve any transaction by an IBA subsidiary.
- (13) The Delegate must not exercise a power that results in a direct personal benefit (for example, improving his or her own travel).

SCHEDULE

Delegations under subsection 190(1) of the *Aboriginal and Torres Strait Islander Act 2005* – being powers of IBA delegated to the Chief Executive Officer

Schedule Delegation of powers conferred by the *Aboriginal and Torres Strait Islander Act 2005* (Cth)

Item	Summary	Provision of Act	Summary of function or power	Limitations or special arrangements
IBA 1.1	Contracting	s 152(2)(a)	To enter into contracts or agreements and for financial contracts, commit funds.	This power is subject to a limit of AUD 5,000,000 (Five Million Dollars). To avoid doubt, this delegation does not apply in circumstances where another more specific delegation in this Schedule would apply if it were not subject to a financial limit or other limitation.
IBA 1.2	Exercise contractual rights	s 152(1)	To vary, manage, enforce or terminate contracts or agreements.	
IBA 1.3	Form companies/trusts/partnerships and joint ventures	s 152(2)(d) s 152(1) s 152(2)(f)	To form and participate in the formation of, companies*, trusts, partnerships and joint ventures.	

*Pursuant to section 72 of the PGPA Act, the Minister is required to inform Parliament when IBA exercises any of the following functions:

- forms or participates in forming a company; or
- becomes or ceases to be a member of a company; or
- a variation occurs in the rights of IBA as a member of a company; or
- IBA acquires shares (either by purchase or subscription) or disposes of shares in a company; or
- a variation occurs in the rights attaching to shares held by IBA in a company.

IBA should notify the Board who should in turn notify the Minister when any of these delegations are exercised.

SCHEDULE

Delegations under subsection 190(1) of the *Aboriginal and Torres Strait Islander Act 2005* – being powers of IBA delegated to the Chief Executive Officer

IBA 1.4	Invest the money of IBA	s 152(2)(b) s 152(1) s 152(2)	To invest, pursuant to section 152(2)(b) of the ATSI Act, the money of IBA by way of (including, but not limited to) shares*, debentures, units in a unit trust, bank deposit or other securities or by participating in a partnerships or joint venture or other arrangement for the sharing of profits.	This power is subject to a limit of AUD 10,000,000 (Ten Million Dollars) per transaction and a total aggregate of AUD 20,000,000 (Twenty Million Dollars) per rolling six months, except to the extent that owing to its nature, scale, industry structure or counterparts, the transaction is reasonably likely to result in a material risk (i.e. inherent risk of 'high' or 'very high') to IBA. Each transaction approved under this delegation must be formally reported to the Board. To avoid doubt, this delegation does not apply in circumstances where delegation 1.27 (Cash Management) applies.
IBA 1.5	Exercise shareholder/ debenture holder/unit holder/beneficiary rights	s 152(1) s 152(2)(e) s 152(2)(f) s 152(2)(g)	To exercise IBA's rights and powers as a holder of shares*, debentures, units or other securities including as a member of a company* or as a beneficiary of a trust, a partner of a partnership, or as a joint venture partner or as a participant in any other arrangement for the sharing of profits.	Except in relation to exercising the rights and powers of a shareholder, the Chief Executive Officer will not be delegated the power to appoint directors. This delegation must not be exercised in respect of a consent right regarding acquisitions or divestments in which IBA's ownership share will be worth more than \$10 million unless the Finance, Investment and Performance Committee has approved the proposed acquisition or divestment.
IBA 1.6	Act as trustee	s 152(2)(j) s s 152(2)(c)	To agree to IBA acting as a trustee of money and other property or as an agent for other persons.	
IBA 1.7	Exercise trustee powers	s 152(2)(j)	To exercise IBA's rights and powers as a trustee or as an agent for other persons.	

*Pursuant to section 72 of the PGPA Act, the Minister is required to inform Parliament when IBA exercises any of the following functions:

- forms or participates in forming a company; or
- becomes or ceases to be a member of a company; or
- a variation occurs in the rights of IBA as a member of a company; or
- IBA acquires shares (either by purchase or subscription) or disposes of shares in a company; or
- a variation occurs in the rights attaching to shares held by IBA in a company.

IBA should notify the Board who should in turn notify the Minister when any of these delegations are exercised.

SCHEDULE

Delegations under subsection 190(1) of the *Aboriginal and Torres Strait Islander Act 2005* – being powers of IBA delegated to the Chief Executive Officer

Item	Summary	Provision of Act	Summary of function or power	Limitations or special arrangements
IBA 1.8	Appoint agent and attorney	s 152(2)(c)	To appoint agents and attorneys for IBA.	
IBA 1.9	Exercise rights under agency or attorney arrangement	s 152(1)	To exercise IBA's right and powers under either the agency or attorney arrangements referred to in IBA 1.8 above.	
IBA 1.10	Lease assets and charge lease payment	s 152(1)	To lease assets and charge a lease payment to the lessee for the lease of the assets.	
IBA 1.11	Provide a guarantee*	s 153(1A)	To guarantee, pursuant to section 153(1A)* of the ATSI Act, the due payment of all moneys (including interest) payable by the borrower in accordance with the terms and conditions of the loan.	This power is subject to a limit of AUD 5,000,000 (Five Million Dollars) or such limits as the Finance Minister determines from time to time on the total amount of money that may be the subject of guarantees by IBA; s 153(2) of the ATSI Act. Note: Under section 153(1A) of the ATSI Act the power to give the guarantee is conditional on IBA being satisfied that a housing or business loan made, or to be made, to any person, will further the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.
IBA 1.12	Borrow money on overdraft	s 183	To borrow money on overdraft from a bank for the purpose of meeting a temporary deficit in the money of IBA.	This power is subject to a limit of AUD 100,000 (One Hundred Thousand Dollars) or such limits as the Finance Minister determines: s183(2) of the ATSI Act.

*Under section 153 there are two powers to give guarantees – section 153(1) and section 153(1A). Under section 153(1) of the ATSI Act the power to give the guarantee is conditional on the IBA Board being satisfied that the money will be used in a way that furthers the commercial or economic development of Aboriginal persons or Torres Strait Islanders, up to but not exceeding the limit determined by the Board. This power is subject to such limits as the Finance Minister determines from time to time as the total amount of money that may be the subject of guarantees by IBA; s 153(2).

SCHEDULE

Delegations under subsection 190(1) of the *Aboriginal and Torres Strait Islander Act 2005* – being powers of IBA delegated to the Chief Executive Officer

Item	Summary	Provision of Act	Summary of function or power	Limitations or special arrangements
IBA 1.13	Give security over IBA assets	s 185	To give security over the whole, or part of the assets of IBA for the repayment of money borrowed on overdraft (including the payment of interest) under section 183 or in connection with a guarantee given by IBA under section 153.	This power is subject to a limit of AUD 5,000,000 (Five Million Dollars).
IBA 1.14	Accept gifts, grants and bequests	s 152(2)(h)	To accept gifts, grants, bequests and devises made to IBA.	
IBA 1.15	Charge for IBA services	s 152(2)(k)	To charge for the provision of services by IBA.	
IBA 1.16	Approve enforcement	s 152(1)	To take or approve action for the enforcement of IBA's legal rights.	To be exercised following receipt of legal advice.
IBA 1.17	Lodge default on credit reporting database	s 152(1)	To approve the lodging of a financial default by an IBA borrower on a credit reporting database.	
IBA 1.18	Set a reserve price/accept an offer	s 152(1)	To: a) set a reserve sale price for assets secured by IBA; and b) approve an offer to purchase assets secured by IBA.	
IBA 1.19	Approve write-offs	s 152(1)	To approve the write-off or the waiver of the recovery of: a) an amount due under a loan; b) losses or deficiencies of IBA money;	This power is subject to a limit of AUD 500,000 (Five Hundred Thousand Dollars).

SCHEDULE

Delegations under subsection 190(1) of the *Aboriginal and Torres Strait Islander Act 2005* – being powers of IBA delegated to the Chief Executive Officer

Item	Summary	Provision of Act	Summary of function or power	Limitations or special arrangements
			c) irrecoverable amounts of revenue; or d) irrecoverable debts and overpayments.	
IBA 1.20	Settle a claim	s 152(1)	Subject to the Legal Services Directions as in force from time to time, to take or approve action, or approve a payment, for the purpose of settling a claim arising from a dispute as to IBA's legal rights (including a work place dispute or dismissal).	To be exercised following receipt of legal advice.
IBA 1.21	Approve travel	s 152(1)	To approve expenditure on travel on official business.	The Chief Executive Officer must not approve overseas travel of IBA staff unless the Board has endorsed the travel arrangements or the travel is within Australian territory or New Zealand. The power to approve overseas travel cannot be sub-delegated by the Chief Executive Officer. The Chief Executive Officer may only approve an air charter where the journey cannot be undertaken by scheduled air service, or where satisfied there are other sound economic reasons for the approval.
IBA 1.22	Approve loan	s 152(2)(a)	To enter into a contract for the provision of a loan.	This power is subject to a limit of AUD 5,000,000 (Five Million Dollars). The Chief Executive Officer must not make loans or approve cash advances to entities in which IBA has a shareholding or other interest giving rise to a potential conflict of interest unless the Chief Executive Officer, after taking legal and financial advice, is satisfied that the loan or cash advance is consistent with sound business principles.

SCHEDULE

Delegations under subsection 190(1) of the *Aboriginal and Torres Strait Islander Act 2005* – being powers of IBA delegated to the Chief Executive Officer

Item	Summary	Provision of Act	Summary of function or power	Limitations or special arrangements
IBA 1.23	Approve grant	s 152(2)(aa)	To make a grant for purposes associated with business or housing loans.	This power is subject to a limit of AUD 500,000 (Five Hundred Thousand Dollars). The Chief Executive Officer must not make grants to entities in which IBA has a shareholding or other interest giving rise to a potential conflict of interest unless the Chief Executive Officer, after taking legal and financial advice, is satisfied that the grant is consistent with subsection 148(1) of the ATSI Act except to the extent that section 148(3) of the ATSI Act applies.
IBA 1.24	Exercise lessor, lender, or grantor rights	s 152(1)	To exercise IBA's rights as a lessor, lender, or grantor as the case may be in respect of any leases, loans or grants issued under IBA 1.10, IBA 1.22 and IBA 1.23.	
IBA 1.25	Restructure loans	s 152(1)	To approve the restructuring of loans or other financial accommodation associated with an IBA investment.	This power is subject to a total exposure limit of AUD 1,000,000 (One Million Dollars) per investment.
IBA 1.26	Approve write-down	s 152(1)	To approve the write-downs of the carrying value of an IBA investment.	This power is subject to a limit of AUD 1,000,000 (One Million Dollars) per investment.
IBA 1.27	Cash Management	s 152(1) s 152(2)(b)	To invest the funds of IBA which form part of its accumulated capital asset in the IPF Cash Fund, for cash management purposes.	No more than AUD 200,000,000 (Two Hundred Million Dollars) invested pursuant to this delegation may be held in the the IPF Cash Fund at any one time.