

***“Indigenous Business
Owners, Shareholders &
Directors”***

*Presented by
Tom Meagher
Director*

Tom Meagher | Director



Tom has over 30 years' legal and business experience including:

- ✓ Previously working for local law and major national firms
- ✓ Being the national operations manager for a financial advisory IT platform provider
- ✓ Previously being the WA Legal Technology Group Manager for a National Law Firm
- ✓ Owning and managing an IT consultancy business
- ✓ Being a director and in-house counsel for a public company



Tom is also a regular publisher of articles and is one of Australia’s leading presenters of legal seminars to and for various professional bodies, associations and government authorities on a wide range of business law and professional development-training topics including:

WA Department of Commerce	Institute of Public Accountants	CPA Australia
Chartered Accountants Australia & NZ (CAANZ)	Governance Institute of Australia	Mortgage & Finance Association of Australia (MFAA)
Law Society of WA	National Electrical & Communications Association (WA)	City Insolvency Discussion Group
Innovation Centre of WA	Australian Hotels Association (WA)	Forum for Directors of Indigenous Organisations (FIDO)
LegalWise CLE	Small Business Development Corporation	Stirling Business Centre
The Tax Institute	Australian Institute of Conveyances (WA)	Institute of Certified Bookkeepers
Western Suburbs Business Association	Business Foundations Inc	WA Business Assist
Strata Community Association of Australia	Real Estate Institute Western Australia (REIWA)	Australian Institute of Business Brokers (AIBB)

Disclaimer



The contents of this presentation are for general information only and intended only as a guide. It does not constitute legal advice and must not be relied upon as such.



Balfour Meagher expressly disclaims all liability for any loss or damage arising from reliance upon any information in this presentation.



If you have a matter that relates to this presentation topic or you require legal advice, careful review and analysis of your matter's particular facts, information and documents are required before proper legal advice can be given or applied to your matter.

Session Overview

This masterclass provides an overview of the key considerations for Indigenous business owners and directors relating to:

- **Contemporary, compliant company Constitutions and Shareholders Agreements** — with a focus on meeting and exceeding accreditation requirements for Supply Nation, the Aboriginal Business Directory WA (ABDWA) and Indigenous Business Australia (IBA)
- **Governance guidance & best-practices** — to demonstrate genuine Indigenous control
- **'Key Person' protections** — indigenous Keyperson and related succession planning arrangements
- **Shared Services Agreements** — demonstrating commercial independence

PART 1:

The Accreditation Landscape

What is an Indigenous Business?

The term ‘Indigenous enterprise’ is defined in the *Commonwealth Indigenous Procurement Policy (IPP)* as a business that is now, as of **1 July 2026**, is:

- “51% or more Indigenous/First Nations-owned”; **or**
- registered with the Office of the Registrar of Indigenous Corporations (ORIC).

<https://www.niaa.gov.au/our-work/employment-and-economic-development/indigenous-procurement-policy-changing>

There are two tiers of recognition:

No.	Description	Registered	Certified
1.	Ownership	50% Indigenous-owned	51%+ Indigenous-owned
2.	Control	50% Indigenous control	Majority Indigenous control
3.	Management	Indigenous involvement	Led/managed by Indigenous CEO/Managing Director
4.	Revenue	Trading as a business	Min \$50,000 annual revenue
5.	Verification	Supply Nation-verified 	Supply Nation-certified (logo use) 

Key Accreditation Bodies

1. Supply Nation / Indigenous Business Direct (IBD)

- Supply Nation (<https://supplynation.org.au/>) is the National register connecting Indigenous suppliers with corporate and government buyers.
 - Registered businesses listed on Indigenous Business Direct (<https://supplynation.org.au/benefits/supplier/>), is the name of the online directory/ database which Supply Nation manages and maintains.
- Certified businesses use the Supply Nation logo as an identifier

2. Aboriginal Business Directory Western Australia (ABDWA)

- ABDWA is a WA-centric directory (<https://abdwa.icn.org.au/>)
- Registration required for 'WA Government Aboriginal Procurement Policy' targets (<https://www.wa.gov.au/government/publications/aboriginal-procurement-policy-agency-practice-guide>).
- Direct engagement option available for registered indigenous businesses.

Key Accreditation Bodies

3. Indigenous Business Australia (IBA)

- Federal program and body to provide indigenous business finance, support, and investment programs (<https://www.iba.gov.au/>)
 - Publishes the (helpful) “Indigenous Joint Ventures Information Guide” (https://www.iba.gov.au/wp-content/uploads/Indigenous_JV_InfoGuide.pdf)

PART 2:

Supply Nation IJV Registration Criteria

The 8 Primary Registration Criteria

No.	Description
1.	Independently incorporated — registered with ASIC (e.g. for ‘normal’ proprietary limited or limited companies) or the Office of the Registrar of Indigenous Corporations (ORIC) https://www.oric.gov.au/ .
2.	Now, at least 51% Indigenous ownership — either through direct individual shareholding, indigenous-controlled family/discretionary trust or cumulative shareholding through a parent/holding company.
3.	Now, at least 51% Indigenous control — Indigenous persons <i>actively involved in and aware of</i> key business decisions regarding finances, operations, personnel and strategy.
4.	Non-Indigenous members <u>cannot</u> control the Board — following any agreement among shareholders or by any other means.
5.	For profit — able to distribute equity to shareholders; <u>not</u> a registered charity.
6.	Trading as a business in its own right.
7.	Registered in Australia.
8.	Commercially Independent — must reflect a collaboration of the JV parties' resources, skills and assets and not totally or fundamentally depend on non-commercial relationships and use of resources with another non-Indigenous enterprise.

Additional Mandatory Requirements

In addition to the 8 primary criteria, the IJV must also have in place:

- a) A **‘Skills and Capability Transfer Plan’** — identifying what the Indigenous JV partner hopes to gain and how capability transfer will occur (milestones, KPIs, annual reporting); and
- b) An **Indigenous Workforce Plan** — including Indigenous employment goals and continued skills training of Indigenous employees.

➤ <https://supplynation.org.au/joint-venture-changes/>

Practical Tip: Registration vs Certification

	Registration	Certification
Ownership	50% Indigenous	51% Indigenous
Control	50% Indigenous control	Majority Indigenous control
Management	Indigenous involvement	Indigenous CEO/Managing Director leading
Independence	Commercial independence	More rigorous independence tests

Tip: When preparing your documents & agreements, build in the option for the higher certification standard from the outset — this “future-proofs” your compliance documentation and avoids costly re-drafting later.

PART 3:

Documentary Proofs Required

Supply Nation requires the following documentation to register an IJV:

1.	✔	Completed registration application.
2.	✔	Confirmation of Aboriginality/Torres Strait Islander Heritage documents (note: Official Confirmation of Aboriginality or Torres Strait Islander Heritage documents are obtained directly from incorporated Indigenous community organisations, Land Councils, or Registered Native Title Bodies Corporate (RNTBCs). Government registries (like Births, Deaths, and Marriages) and research bodies like AIATSIS <u>cannot</u> issue or certify these documents)
3.	✔	Current, up-to-date and <i>Supply Nation-compliant</i> Company Constitution .
4.	✔	<i>Supply Nation-compliant</i> Joint Venture Agreement <u>or</u> Shareholders Agreement — clearly outlining profit distribution, delegations of authority and power, work portioning levels, to use trade/branding and procurement permissions
5.	✔	<i>Supply Nation-compliant</i> Shared Services Agreement (or Commercial Agreement) with non-Indigenous partners. note: such must be a <i>genuine, compliant arrangement</i> and not to merely effect ‘black cladding’ or otherwise cf. https://supplynation.org.au/about-us/black-cladding/
6.	✔	Skills and Capability Transfer Plan.
7.	✔	Indigenous Workforce Plan.

PART 3:

Verification Process (5 Steps)

- i. Assessing online application for accuracy and compliance
- ii. Verifying ABN/ASIC for company name and current registration
- iii. Verifying Confirmation of Aboriginality documents
- iv. Verifying ownership documents — ensuring 50% Indigenous ownership
- v. Conducting interviews/site visits to verify Indigenous involvement in management and control

Practical Tip: After registration, Supply Nation conducts **annual reviews** and random spot checks. You must advise Supply Nation of any changes to shareholdings, management positions or key agreements.

PART 4:

The Constitution

Why a Bespoke Constitution

A standard "off-the-shelf" ASIC constitution will **not** satisfy Supply Nation, ABDWA or IBA requirements. You need a tailored constitution that includes additional provisions around:

- Board eligibility requirements (Indigenous director requirements)
- Indigenous control and management provisions
- Quorum requirements ensuring Indigenous participation
- Casting vote provisions for Indigenous Chair.

PART 4:

The Constitution

Key Constitutional Provisions for (corporate) IJVs

The constitution must reflect Indigenous involvement in the control and management of the joint venture (agreement). This includes:

- **Mandatory Indigenous director(s)** on the board at all times.
- **Quorum cannot be formed** without the presence of at least one Indigenous director.
- **Indigenous Chair** with a casting vote to resolve deadlocks.
- **Minimum Indigenous shareholding** maintained at all times
- Provisions ensuring the Constitution aligns with (and does not undermine) the Shareholders Agreement.

Practical Tips — Constitution

- The Constitution should be adopted by a **Shareholders/Members' Resolution** to adopt the new, Supply Nation-compliant Constitution.
 - ❖ Keep the Constitution consistent with the Shareholders Agreement — yet include a provision that, where the Agreement would adversely affect Indigenous interest or control, the Constitution prevails to that extent.

PART 5:

The Shareholders Agreement

Why you need one

- A **shareholders agreement** is a particularly useful way of providing guidance and clarifying Indigenous ownership by specifically defining the rights, decision-making powers and obligations of Indigenous parties.
- The *Corporations Act* does not require companies to have a shareholders agreement per se — but it serves to fill the many gaps in areas not covered by the Act or the constitution.

Critical Point: *Indigenous shareholders, who are not directors, may not be able to influence strategy and key business decisions. Also, only directors make decisions about when dividends are paid.*

PART 5:

The Shareholders Agreement

Comprehensive shareholders agreement – key provisions

Drawing from the Succession Planning and Equityholders Agreements framework and adapted for Indigenous IJV requirements:

A. Front-end / Administrative Provisions

#	Provision	Purpose
1.	User-friendly Reference Schedule	company details, members, board, contact addresses, accountant details
2.	Definitions and Interpretation	clear, defined terms
3.	Good Faith & Business Purpose	parties act in good faith; business purpose defined
4.	Conditions Precedent	what must occur before Agreement takes effect

PART 5:

The Shareholders Agreement

B. Indigenous Control & Key Person Provisions

#	Provision	Purpose
5.	Key Person and Indigenous Majority Ownership	Defines the Indigenous person(s) who must maintain control.
6.	Indigenous control requirements	50:50 or <u>majority Indigenous control as per registration/certification.</u>
7.	Board composition	Minimum Indigenous directors; Indigenous Chair with casting vote.
8.	Quorum requirements	Cannot form quorum without Indigenous director present.
9.	Compliance statement	Business will ensure compliance with Supply Nation requirements at all times.
10.	Agreement prevails over Constitution	Except where it would adversely affect Indigenous interest or control.

Practical Tip: The Agreement should provide that the Company must at all times appoint and maintain a sufficient number of nominee directors, one of whom must be an Indigenous Person (the Key Person) with a casting vote, to ensure the Key Person has and maintains control of the Company, subject always to Supply Nation, ABDWA or IBA eligibility criteria as amended from time to time.

PART 5:

The Shareholders Agreement

C. Equity & Transfer Provisions

#	Provision	Purpose
11.	Subscription, allotment and transfer of shares	How shares are issued and transferred
12.	Pre-emptive rights on voluntary sale	Vendor must first offer to other shareholders
13.	Sale to qualifying Indigenous Person	If pre-emptive rights vetoed, vendor may sell to a person satisfying Indigenous Person criteria
14.	Agreed equity-dilution limitations	Protects against unwanted dilution
15.	Drag-along rights	Future-proofs for third-party buy-out offers
16.	Tag-along rights	Minority protection on sale
17.	Minimum ownership thresholds	e.g. 20% shareholding entitles directorship

PART 5:

The Shareholders Agreement

Practical Tip: Pre-emptive rights work as follows:

1. Vendor gives Sale Notice to Company specifying Equity, Voluntary Price, and terms
2. Company sends copy to each other Shareholder (constituting an Offer)
3. Offer remains open for 1 month
4. If not accepted, vendor may sell to third party (with conditions)
5. If unable to sell within 9 months, vendor must re-offer at 20% reduction.

PART 5:

The Shareholders Agreement

D. Succession Events – “Good Leaver” vs “Bad Leaver”

This is critical for protecting the Indigenous interest and the business continuity:

"Bad Leaver" Events (80% of Market Value):

#	Provision
1.	Equity subject to enforcement process (judgment debt >\$10,000)
2.	Breach of Essential Terms not rectified within 14 days
3.	Convicted of indictable offence (possible 12+ months imprisonment)
4.	Unprofessional conduct — licence cancelled/suspended
5.	Bankruptcy or liquidation
6.	Dismissed for serious misconduct
7.	Absent from work >3 months (other than leave)

PART 5:

The Shareholders Agreement

D. Succession Events – “Good Leaver” vs “Bad Leaver”

This is critical for protecting the Indigenous interest and the business continuity:

“Good Leaver” Events (100% of Market Value):

#	Provision
1.	Ill health/unsoundness of mind — incapable for 6+ months
2.	Death
3.	Relationship separation (not settled within 3 months)
4.	Unable to provide monies under Drawdown Notice

Practical Tip: The option mechanism works as follows — the Retiring Shareholder holds a **Sell Option**; each Continuing Shareholder holds a **Buy Option** in respect of a proportion equal to their relative shareholding. Options must be exercised within 3 months of the Succession Date.

PART 5:

The Shareholders Agreement

E. Establishing Market Value

The Agreement should include a clear, pre-agreed valuation methodology:

- ✓ Company instructs Accountants to prepare interim Financial Statements
- ✓ Market Value agreed between Shareholders, or failing agreement within 3 Business Days:
 - Independent Valuer appointed (agreed, or nominated by CAANZ, CPA or President of Law Society of WA etc)
 - Valuer must have 10+ years' experience in valuing similar businesses and companies
 - Subject to Accounting Professional & Ethical Standards Board (APES) 225 Valuation Services standard (https://apesb.org.au/wp-content/uploads/2020/03/Revised_APES_225_July_2019.pdf)
 - Valuer acts as independent expert (not arbitrator)
 - Valuer considers: prospects of business, future maintainable earnings, required yield, net tangible assets

Practical Tip: If the Valuer provides a range, the **mid-point** is taken as Market Value.

PART 5:

The Shareholders Agreement

F. Financial & Operational Provisions

#	Provision	Purpose
18.	Company funding from/by parties	Shareholder loans, drawdown notices
19.	Financial statements	Regular reporting obligations
20.	Bank account authorities & limits	Dual/MFA signatory requirements
21.	Dividend policy	How and when profits distributed
22.	Annual Program/Budget	Board-approved business plan

G. Protective Provisions

#	Provision	Purpose
23.	Restrictive covenants/restraints of trade	Protect goodwill on exit
24.	Confidentiality and IP protection	Protect business information
25.	Guarantees and indemnities	Personal guarantees from directors
26.	Encumbrances & securities	Restrictions on charging shares
27.	Penalties and forfeiture	Consequences of breach

PART 5:

The Shareholders Agreement

H. Governance & Dispute Resolution

#	Provision	Purpose
28.	Dispute resolution	Negotiation → Mediation → Litigation
29.	Deadlock provisions	Breaking impasses
30.	Matters requiring special/unanimous resolutions	Schedule 1 — reserved matters

I. General/Boilerplate Provisions

Waiver, entire agreement, severance, assignment, power of attorney, misuse of assets, governing law (WA), agreement is a deed, time of the essence, voluntary execution and advice, binding effect, variation, termination, further assurances, notices, default in payment.

PART 5:

The Shareholders Agreement

J. Schedule

Schedule	Content
1.	Matters requiring special and unanimous Shareholder Resolutions
2.	Buy Option Notice form
3.	Sell Option Notice form
4.	Exercising Options — Part 1 (Bad Leaver 80%) & Part 2 (Good Leaver 100%)
5.	Deed of Accession
6.	List of Special Conditions
7.	Provisions governing Shared Services
8.	Definitions & Interpretation

PART 6:

Governance Guidance & Best Practices

Demonstrating Genuine Indigenous Control

Supply Nation will verify Indigenous control through interviews and site visits. The following governance practices demonstrate genuine control:

1. Board-Level Control:

- Indigenous director(s) representing Indigenous shareholder must be Indigenous
- Indigenous Chair appointed with casting vote
- Quorum cannot be formed without Indigenous director present
- Board voting based on simple majority; equality of votes resolved by Indigenous Chair's casting vote

PART 6:

Governance Guidance & Best Practices

Demonstrating Genuine Indigenous Control

2. Management and Operations:

- Directors responsible for management of the company.
- Directors' meetings held at regular intervals (monthly or quarterly).
- Directors receive Management Reports to monitor performance against Board-adopted Business Plan and Budget.
- Directors receive reports monitoring **Skills and Capability Transfer Plan** and **Indigenous Workforce Plan**.
- Directors responsible for composition of all tenders.
- Indigenous director(s) must be involved in customer negotiations; particularly tenders arising from Indigenous procurement initiatives
- Indigenous director(s) must be the public face of the company and has final say on all strategic, management and operational decisions.

PART 6:

Governance Guidance & Best Practices

Demonstrating Genuine Indigenous Control

3. Financial Controls:

- Independent billing and financial controls
- Independent client engagement authority
- Independent procurement powers outside of parent/partner entity
- Internal associated costing and cost centre allocations
- Independent brand identity and control over branding

PART 6:

Governance Guidance & Best Practices

Avoiding “Black Cladding” Risks

Black cladding is the unethical practice of non-Indigenous businesses passing themselves off as Indigenous businesses to benefit from Indigenous policies and programs.

Warning signs that may trigger Supply Nation scrutiny:

- ❖ Indigenous shareholders not directors or not involved at executive/board level.
- ❖ Decisions made by non-Indigenous parties without Indigenous parties’ input
- ❖ Unclear Indigenous party roles.
- ❖ Majority Indigenous shareholding yet Indigenous parties not obtaining majority financial benefit.
- ❖ Profits distributed to Indigenous shareholder with no understanding of exchange/value.

PART 6:

Governance Guidance & Best Practices

Practical Tips to Avoid Black Cladding Concerns:

- ✓ Ensure the Indigenous director(s) is genuinely involved in day-to-day decisions.
- ✓ Document board meetings with proper minutes showing Indigenous participation.
- ✓ Ensure the Indigenous shareholder(s) properly understands and approves all financial arrangements.
- ✓ The Indigenous director(s) should be the signatory on key contracts and tenders.
- ✓ Maintain separate branding, email addresses, and business identity from the non-Indigenous partner.

PART 7:

Shared Services Agreements

What must be included:

Supply Nation requires all IJVs to have a Shared Services Agreement that specifies:

1. Financial/bookkeeping and administration services:

- Which shareholder provides these services (if the JV doesn't employ its own personnel)
- How costs are calculated and charged:
 - Fixed monthly fee, OR
 - Percentage of revenue, OR
 - Schedule of rates for different personnel classifications and hours devoted
- What the actual monthly fee, percentage, or hourly rates are

PART 7:

Shared Services Agreements

What must be included:

Supply Nation requires all IJVs to have a Shared Services Agreement that specifies:

2. Management, Labour, Plant & Equipment:

- Who provides these resources to complete projects
- How costs are calculated and charged
- Supply Nation looks for a **transparent quotation process** where shareholder companies provide quotations on a project-by-project basis
- Quotations assessed by the JV company in compilation of project tenders
- Tenders signed off by the JV board prior to submission

3. Services List:

- A list of services provided by each shareholder
- Plus the opportunity for the IJV to source services from providers other than the shareholders

PART 7:

Shared Services Agreements

What must be included:

Supply Nation requires all IJVs to have a Shared Services Agreement that specifies:

4. Reporting:

- Reporting processes to ensure delivery of services is reported regularly to the JV board
- Performance against budget information readily available

Critical Principle: Non-Exclusivity & Commercial Independence

Although shareholders' companies may be providers of the majority of services and resources, to ensure commercial independence, shared services agreements **cannot be exclusive**, with the joint venture board having the authority to procure services and resources from any third party it chooses, including those services and resources available from shareholder companies."

An appropriate Shared Services Agreement should expressly provide *"The Parties agree that the supply of Services by the Shareholders to the Company is non-exclusive, and that the Company may, in its absolute discretion, source services (whether similar to the Services or otherwise) from other third-party suppliers"*.

PART 8:

Directors' Duties & Governance Training

Recommended Training courses

➤ **Australian Institute of Company Directors (AICD):**

Foundations of Directorship course (3-day program) <https://www.aicd.com.au/courses-and-programs/all-courses/foundations-of-directorship-online.html> — recommended starting point.

➤ **Australian Indigenous Governance Institute (AIGI):**

Emerging Directors Program — specifically designed for Indigenous directors <https://aigi.org.au/emerging-directors-program>

PART 8:

Directors' Duties & Governance Training

3. Risk Management — Directors' Duties & Liabilities:

Key duties every Indigenous business director must understand:

Duty	Summary
<i>Good faith</i>	Act in best interests of the company, for proper purpose
<i>Care & diligence</i>	Reasonable person standard
<i>No improper use of position</i>	Cannot gain personal advantage or cause detriment
<i>No improper use of information</i>	Cannot use information gained as director for personal benefit
<i>Disclose material personal interests</i>	Actual, potential and perceived conflicts
<i>Prevent insolvent trading</i>	Positive duty; personal liability for debts incurred during insolvency
<i>PAYG/GST/Super obligations</i>	Director Penalty Notices; personal liability
<i>WHS obligations</i>	Due diligence duty; industrial manslaughter offence

Practical Tip: New directors must do due diligence regarding unpaid PAYG and superannuation **prior to accepting appointment**. Personal liability permanently locks down on a newly appointed director 3 months after they commence.

SUMMARY:

TOP 10 PRACTICAL TIPS FOR INDIGENOUS BUSINESS OWNERS & DIRECTORS

1.	Get proper documents from the start — Constitution, Shareholders Agreement, Shared Services Agreement are all mandatory for Supply Nation registration.
2.	Build for certification, not just registration — include majority Indigenous control provisions as an option from day one.
3.	The Indigenous director must be genuinely involved — public face of the company, involved in tenders, final say on strategic decisions.
4.	Non-exclusivity is essential — your Shared Services Agreement must allow the JV to source services from third parties.
5.	Document everything — board minutes, decisions, financial reports. Supply Nation will interview the Indigenous shareholder to verify genuine involvement.
6.	Invest in director training — AICD Foundations of Directorship and AIGI Emerging Directors Program.
7.	Plan for succession from day one — Key Person insurance and Buy/Sell Agreements protect both the business and the Indigenous interest.
8.	Keep your registrations current — update ABDWA and Supply Nation of any changes to shareholdings, management or key agreements.
9.	Understand your personal liabilities as a director — PAYG, GST, Super, WHS, insolvent trading.
10	Seek specialist legal advice — these documents are complex and must be tailored to your specific circumstances. Generic templates will not satisfy Supply Nation's verification process.



Thank You

Top-tier quality legal work and business advice delivered directly by highly experienced, personable senior lawyers. Balfour Meagher's services include:

- ✓ Commercial Law
- ✓ Business and Equity Sales/M&As
- ✓ Estate & Business Succession Planning
- ✓ Property & Leasing Law
- ✓ Technology & Internet Law
- ✓ Indigenous Corporations, Joint Ventures, Trusts & communities
- ✓ IP Commercialisation and Brand Protection
- ✓ Medical, Pharmacy and Allied Health Services
- ✓ Loans & Security Arrangements
- ✓ Conveyancing and Settlements