



Director Nomination Guidelines

These guidelines provide information relevant to prospective candidates for the five (5) member director positions, to be appointed at the 2019 Congress Annual General Meeting (AGM)..

These guidelines include:

- **Governance Processes**
- **Composition of the Congress Board**
- **Functions of the Board**
- **Directors' Duties**
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- **Nomination for Director Vacancy Process**
- **Congress Governance Processes**

Governance Processes

At Congress, our governance framework and processes continue to develop in response to corporate regulation and the changing nature of our business environment, with the aim to ensure the highest level of accountability.

Congress is incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act). The CATSI Act sets out requirements that ensure a corporation can operate with better and clearer governance, bringing members' rights into line with the *Corporations Act 2001*. Provisions include:

- A Rule Book – the corporation must have a Rule Book (constitution) written in English, which is publicly available from the Office of the Registrar of Indigenous Corporations (ORIC). The Rule Book must cover the matters that the CATSI Act sets out, including a dispute resolution process. The rules for internal governance must be workable and consistent.
- Anti-nepotism measures – these prevent corporations from giving financial benefits to directors or related parties (such as a spouse of a director) unless approved by members.
- Strengthening members' capacity to participate in the affairs of the corporation – being a member enables input on key policy issues as well as ensuring that the service and program needs of the community are known to Congress through consultation. As part of the collective membership of Congress, through its policy and programs it is possible to shape and change government policy.

Composition of the Congress Board

The Congress Board consists of 11 directors of whom eight (8) are members of Congress and up to three (3) are independent directors who bring

complimentary skills and together make up the Congress Board.

Of the member directors, one (1) must be a youth representative, aged between 18 and 30 years and up to two (2) must be from remote communities where Congress delivers primary health care services. There is a separate nomination process conducted to seek candidates for the remote representative positions. For the purpose of the 2019 elections, this process for seeking remote representative nominations has already taken place within the remote communities to fill the two (2) vacant remote representative positions.

If there are no suitable candidates nominating for the member director positions, the directors shall appoint eligible members of Congress to fill the vacancy until the next AGM.

The Board Chair and Deputy Chair are elected by the member directors for a one year term at the first meeting of the directors immediately following the AGM.

Functions of the Board

The primary functions of a Board include:

- Strategic leadership.
- Set Board policy.
- Monitor results.
- Manage risk.
- Ensure accountability.
- Working with and through the CEO.

Duties of directors and other officers

The CATSI Act sets out the duties required of directors, who are appointed by members of a corporation to govern the corporation, and other senior officers including the CEO and secretaries for large corporations, to ensure accountability.

These duties are consistent with those of the *Corporations Act 2001*. Each individual director must ensure the corporation complies with the duties expected, as prescribed by law. Special duties are imposed on directors and other senior officers of a corporation by the common law (the non-statutory law developed by judges).

Directors have authority over the corporation and are ultimately accountable for it. This is why the duties exist, to ensure that directors are accountable to the corporation and its members. Directors' duties apply individually to each director, so each individual must ensure the corporation complies with the law.

The CEO is the most senior officer in the corporation and is appointed by the directors to manage the day-to-day business of the organisation.

The following duties apply to the directors and officers of a corporation:

- care and diligence
- good faith
- not to improperly use position or information

The following duties apply to the directors:

- disclosing conflicts of interest
- not trading while insolvent

Duty of care and diligence

Directors and other officers are required to exercise their powers and discharge their duties with reasonable care and diligence.

Directors should act carefully and diligently to ensure they are properly informed about their corporation's affairs. For example, this includes reading papers before a meeting, attending meetings, asking questions and seeking more information if they do not understand the information being presented to them.

The duty is subject to the business judgement rule. This means that a court will not normally intervene if a business decision is within the director's power and made honestly. Breach of this duty may result in a civil penalty.

Duty of good faith

Directors and other officers are required to act honestly and loyally in their dealings with other directors and with the corporation, and in the best interests of the corporation.

For example, directors who are acting in good faith will not make a decision for their own personal self-interest but in the best interests of the corporation as a whole.

A breach of this duty may lead to civil liability or criminal liability if the breach is reckless or intentionally dishonest.

Duty of disclosure of conflicts of interest

Directors are required to disclose any conflict of interest, related to the corporation's affairs, to the other directors, including potential or perceived conflicts of interest.

For example, a director must not allow conflicting interests or personal advantage to take priority over the interests of the corporation. The corporation must always come first. This means that a director must avoid making a decision about the corporation's affairs which might be

affected, even if not actually affected, in some important way by another business or personal interest of the director or even a relative of the director. So a director needs to avoid not only actual conflicts of interest but the perception of a conflict, or potential conflict, of interest.

To manage conflicts of interest, a director is required to disclose any interest. The disclosure can take the form of a standing notice or notice to a meeting where the interest may be raised. Disclosing an interest does not mean that a director cannot participate in the meeting, but may mean that they cannot be involved in a decision about that particular matter.

Failing to disclose a conflict of interest may be a criminal offence.

There is nothing wrong with having a conflict of interest, so long as directors disclose these interests.

Duty not to improperly use position or information

Directors must not improperly use their position, or use information obtained as a director, for any purpose other than the business of the corporation and not for their own personal gain to the detriment of the corporation.

To do so may incur civil liability or criminal liability if the breach is reckless or dishonest.

Duty not to trade while insolvent

Directors must not allow their corporation to trade when the corporation is insolvent or if there are reasonable grounds to suspect insolvency.

Directors should always know and understand the corporation's financial position to make sure they know it is not insolvent.

This duty applies to each director individually and together as a group.

Consequences of Breach

When the duties of directors and officers are breached, there may be consequences, depending on the type of duty and the nature of the breach.

These include:

- Disqualification—under the CATSI Act, a director can be automatically disqualified from governing a corporation if they have been convicted of certain serious criminal offences including fraud or if they are bankrupt. Directors may also be disqualified by a court for breach of a civil penalty provision of the CATSI Act. The Registrar maintains a public register of people who are disqualified from governing corporations.
- Civil penalties—if a person breaches a civil penalty provision, for example, a director who fails to exercise reasonable care and diligence in carrying out their duties, the Registrar may apply to a court for a “declaration of

contravention”. The court’s declaration provides conclusive evidence of the breach. If the contravention is serious, the court may order the person to pay a penalty and/or compensate the corporation for damage suffered as a result of the contravention. The person may also be disqualified from managing the corporation.

- Criminal penalties—breach of certain duties may attract criminal penalties. If a person is found guilty by a court of breaching a duty where a criminal penalty applies, the person may be fined and/or sentenced to imprisonment.

Nomination for Director Vacancy

In seeking to maintain and strengthen Congress’ high reputation, the Congress Board has implemented a process that seeks to ensure a balanced Board, consistent with the following attributes:

diversity, quality, integrity, capacity, sustainability

The process for endorsement of applications for nomination of directors is administered on behalf of the Congress Board by the Governance Subcommittee. The Governance Subcommittee will assess the eligibility of each applicant and once they have made their assessment, a recommendation will be made to the Board on the eligibility of all persons applying for nomination to the Board. The Board will endorse those applicants for nomination who meet the eligibility requirements.

Who can apply

Any member of Congress, of good standing, is eligible to nominate for election to fill a vacancy on the Congress Board, however, any former employee of the corporation must usually wait out a period of two (2) years from the date of cessation of employment prior to nomination.

A person is also not eligible to be a director if they have been disqualified from managing corporations or have been convicted of a criminal offence in the last five (5) years and sentenced to imprisonment for more than twelve (12) months.

Selection Criteria

The Governance Subcommittee will assess the following qualifications and experience relevant to undertaking the functions of a director:

- previous experience in a similar role of responsibility
- demonstrated leadership skills
- demonstrated analytical skills
- demonstrated strategic skills
- formal qualifications
- specific technical skills
- communication skills
- community/cultural understanding

The following additional criteria will also be considered, as well as relevance considering passage of time:

- connection to the region

- demonstrated commitment to Aboriginal health and wellbeing
- demonstrated community involvement and recognition
- demonstrated reputation as a fit and proper person
- availability to make a genuine contribution
- knowledge of a person’s behaviour (See Rule Book, Rule 3.7)
- personal qualities
- past performance as a director of Congress or in similar organisations
- criminal history check and working with children card
- personal and professional referees

Eligibility to nominate as a director of Congress and other matters relating to directors are generally set out in Rule 5.4 of Congress’ Rule Book.

How to apply

In order to nominate for a Board vacancy, each applicant must complete the following compulsory steps:

- Read the Director Nomination Guidelines carefully.
- Complete the Application for Nomination to a Board Vacancy Declaration by outlining your merits, qualities, experience and potential to make measurable contributions to Congress.
- Provide a national criminal history check and working with children card or proof of an application for each.
- Sign the Conflict of Interest Declaration.
- Sign a consent to act as Director form.
- Certify the correctness of all details contained in your application.
- Provide a short biography and photo.

Applicants who do not comply with the specified process will not be recommended or endorsed for nomination to a Congress Board vacancy.

Applications for nomination must be lodged by close of business on 5pm Friday 30 August 2019 ACST.

Applications received after the closing date will not be accepted nor will they be accepted from the floor at the AGM.

The lodgement of an application for nomination does not convey an automatic guarantee of election to a Congress Board vacancy or nomination as a candidate for election.

Receipt of all nominations will be acknowledged within 14 days and advised of the assessment outcome.

If you require assistance completing the application form, please contact the Company Secretary, Marina Boyle on (08) 8959 4713.

These guidelines have been compiled using information obtained from the ORIC. For more information, visit www.oric.gov.au or call 1800 622 431.