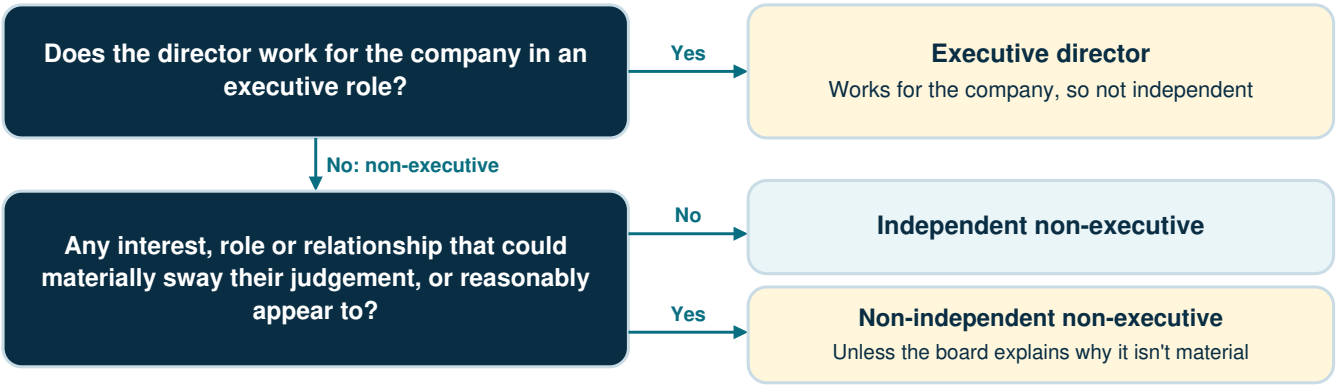
Officers and independence

MODULE 3 | PART A.3 | STUDENT COMPANION

Every independent director is non-executive, but not every non-executive director is independent. Use the flowchart to classify a director, then check the relationships listed at the bottom.



Relationships that raise doubts

Executive role in the last three years | material professional services, supplier or customer link | substantial shareholder or associate | material contract | close family ties | very long service (the UK code flags more than nine years)

Officers at a glance

Officer	What to remember
Directors	At least 18, consent to act, not disqualified. Pty: one director ordinarily resident in Australia; public: at least three directors, two resident. Every director needs a director ID (since November 2021).
Chief executive (often managing director)	Runs operations; may wear two hats as director and executive.
Chief financial officer	Leads financial reporting and controls; a qualified executive may face a higher standard of care.
Company secretary	Compliance: lodgements with ASIC, fees, registers. At least 18 and resident in Australia. Optional for proprietary companies, required for public companies.
Legal counsel, internal auditor	Titles mean little until responsibilities and delegations are documented.

Who holds which power?

MODULE 3 | PART A.3 | DIVISION OF CORPORATE POWERS

Power flows down as appointment and delegation; accountability flows back up as reporting. Each downward step is an agency relationship.



The two strikes rule (listed companies)

Step	What happens
First AGM	25% or more of votes cast are against the remuneration report: a first strike. The vote is advisory only.
Second AGM in a row	25% or more against again: a second strike, so a spill resolution is put to the same meeting.
Spill resolution	Passes only with at least 50% of votes cast.
Spill meeting	A meeting within 90 days at which the directors must stand for re-election.

Real example. At Qantas's annual general meeting in November 2023, more than 80% of votes cast were against the remuneration report - a first strike and one of the largest protest votes on pay seen in the Australian market.

Practice questions

MODULE 3 | PART A.3 | TRY THESE BEFORE THE WORKED ANSWERS

Question 1 - classify three more Coral Coast directors

Imagine **Coral Coast Health Ltd** (listed). Classify each director as executive, non-independent non-executive, or independent non-executive, and give your reason. **Lena** is a partner of the law firm that does most of the company's legal work. **Raj** was appointed at the request of, and is a senior executive of, a superannuation fund that owns 20% of the shares. **Hugh** has no business or family ties to the company and has been a director for 13 years.

Question 2 - two strikes at Northwind Energy Ltd

Imagine a listed company, **Northwind Energy Ltd**. At its 2025 AGM, 31% of votes cast were against the remuneration report. At its 2026 AGM, 27% were against, and the spill resolution then received 44% support. (a) How many strikes has Northwind received? (b) Must a spill meeting be held? (c) What would change if the spill resolution had received 52%?

Coral Coast Health and Northwind Energy are imagined examples. Real example: Qantas Airways Ltd AGM, 3 November 2023. Study guide reference: Module 3, Part A, sections 3.2 and 3.3.

Worked answers

MODULE 3 | PART A.3 | WORKED ANSWERS - ATTEMPT THE QUESTIONS FIRST

Question 1 - Coral Coast directors

Director	Classification	Reason
Lena	Non-independent non-executive	Partner of a firm that provides the company with significant professional services.
Raj	Non-independent non-executive	Associated with a substantial shareholder (a senior executive of the fund that holds 20%). He must still act for the company as a whole when deciding.
Hugh	Independent only if the board can justify it	No business or family ties, but 13 years' service may have compromised independence. The board must assess it, disclose his length of service, and explain any decision to treat him as independent. Under the UK code, service beyond nine years is a flagged factor.

Taking the whole board from the lesson and this question: Priya is executive; Tom, Lena and Raj are non-independent non-executives; Grace is independent; Hugh is doubtful. At most two of six are independent, so the board does not have an independent majority.

Question 2 - Northwind Energy Ltd

- **(a)** Two strikes: 31% and 27% are both at or above the 25% threshold at consecutive AGMs.
- **(b)** No. The spill resolution needs at least 50% of votes cast; 44% is not enough, so the board stays in office.
- **(c)** At 52% the spill resolution passes, so a spill meeting takes place within 90 days and the directors must stand for re-election.

Common slip: mixing up the two thresholds. Twenty-five per cent against the report creates a strike; the spill itself needs fifty per cent support.

Two strikes rule: Corporations Act 2001 (Cwlth) ss250R, 250U, 250V, 250W. Independence factors: ASX Corporate Governance Principles (4th edn) Box 2.3 and the UK Corporate Governance Code 2018.