



SOUTH WEST ABORIGINAL LAND AND SEA COUNCIL DIRECTOR BY-ELECTION NOTICE AND CALL FOR CANDIDATES TO SEEK ELECTION

By resolution of the directors, the South West Aboriginal Land and Sea Council is seeking experience and skilled Corporation members to become Directors of the South West Aboriginal Land and Sea Council. A ballot is scheduled to open on 28 May 2024 for two (2) Directors Positions being one (1) member-elected Director for the Whadjuk and Gnaala Karla Booja Wards of the Corporation.

The nomination period for the above positions will commence on 8 March 2024 and will close on 12 April 2024 at 5:00pm.

Nominations

A Nomination must include:

- A completed South West Aboriginal Land and Sea Council Director Nomination Form
- Director ID number
- A Cover Letter addressing the Selection Criteria
- A current Curriculum Vitae
- Referee Details
- A Candidate Statement for Ballot Information material to members (Candidate Profile not exceeding 150 characters)
- A current National Police Certificate.

You must attach your National Police Certificate (NPC) to your completed application. As National Police Certificates can take 2 – 3 weeks to process, we recommend you apply for your NPC as soon as possible. Applications without a valid NPC will not be accepted.

Nomination forms will be made available once the nomination period commences and can be obtained from the SWALSC Office (Level 2/100 Royal Street East Perth) or via the SWALSC website at noongar.org.au/elections.

Please submit completed nomination forms to the Returning Officer by:

Email: shawn@boyleandassociates.com.au

Post: Attn: Returning Officer – SWALSC Director By-Election
Shawn Boyle and Associates
PO Box 761
Mount Lawley WA 6929

Deadline for nominations: Friday, 12 April 2024 by 5:00pm.

Shawn Boyle
Independent Returning Officer



Outline of Nomination and Election Process

1 March 2024

Notice of Election and Call for Nominations released

8 March 2024

Nominations open

5pm 12 April 2024

Nominations close

16 - 30 April 2024

Selections Committee check eligibility and notify candidates

28 May 2024

Mailout of Election Packages

25 June 2024

Close of poll

27 June 2024

Election count

28 June 2024

Election Declaration at General Meeting



Roles and Responsibilities

The Director, Secretary, and other Officers and employees must comply with the duties imposed on them by the CATSI Act, ACNC Act and the general law. These may include, for example:

- a. A duty of care and diligence;
- b. A duty of good faith in the best interests of the Corporation and to further the charitable purposes of the Corporation set out in rule 3;
- c. A duty of disclosure of actual or perceived Material Personal Interests (see rule 10.3);
- d. A duty not to improperly use position or information;
- e. A duty to prevent insolvent trading; and
- f. To ensure that the financial affairs of the Corporation are managed responsibly.

The Directors will be liable for debts and other obligations incurred by the Corporation while acting, or purporting to act, as trustee.

Eligibility Criteria

An individual is only eligible for appointment as a Director if the individual:

- a. Is at least 18 years of age;
- b. Is an Australian resident;
- c. Has never been disqualified from managing corporations or disqualified from being a director of a company or a responsible person of a charity under the ACNC Act;
- d. Substantially satisfies the following qualifications and requirements:
 - i. Financial literacy;
 - ii. Leadership experience;
 - iii. Experience with directorships and boards, or can demonstrate a preparedness to questions, challenge and critique; and a willingness to understand and commit to the highest standards of governance;
 - iv. Commitment to uphold all the legal duties, responsibilities and obligations of a Director;
 - v. Absence of other commitments which would restrict the ability of the person to act effectively as a Director;
 - vi. Is of high repute and recognised integrity;
 - vii. Has not been convicted in the last five years of an indictable offence or criminal offence punished by imprisonment of 12 months or more by any Australian jurisdiction; and
- e. Is able to produce a National Police Certificate which is acceptable to the Selections Committee.

Outline of the Nomination and Election Process

- The South West Aboriginal Land and Sea Council (SWALSC) has appointed an independent Returning Officer to oversee and manage the nomination and election process for member-elected Directors.
- The Returning Officer will determine the election timetable, call for nominations and accept completed nomination forms.
- Completed nomination forms will be assessed by the Noongar Boodja Trust Nominations Com-mittee. The Nominations Committee will assess each candidate's application and determine their eligibility in accordance with the eligibility criteria outlined in SWALSC Rule Book.
- The Nominations Committee will provide a report of eligible candidates to the Returning Officer. Candidates ruled ineligible by the Nominations Committee will be given an opportunity to appeal the decision.
- The Returning Officer will oversee the postal vote election process.
- The Returning Officer will declare the outcome of the election and the Directors' term will commence upon declaration of the result.

Election process

Step 1 Nominations

Nominations opens 8 March 2024 and close at 5pm on Friday 12 April 2024. Applicants submit a completed nomination form to be a director of SWALSC to the Returning Officer.

Step 2 Eligibility Assessment

The Returning Officer sends completed nomination forms to the Nominations Committee. The Nominations Committee check the eligibility of candidates against criteria in the SWALSC Rule Book and the CATSI Act.

Step 3 Reporting

The Nominations Committee advise the Returning Officer with a list of eligible candidates. Ineligible candidates will be notified of this outcome by the Nominations Committee.

Step 4 Voting

The Returning Officer will conduct the postal vote. SWALSC members registered in the Whadjuk and GKB Wards will receive a voting pack in the mail. Voting opens 28 May 2024 and closes on Friday 25 June 2024.

Step 5 Commencement

The Returning Officer will count the votes and declare the election. The appointment of the directors becomes effective from declaration of the outcome on 28 June 2024.

Eligibility

What do I need to be eligible to become a Director of the South West Aboriginal Land and Sea Council?

To be eligible, you must:

1. Be a member of the South West Aboriginal Land and Sea Council (SWALSC)
2. Be at least 18 years;
3. Be an Australian resident;
4. Not be disqualified from managing corporations.
5. Substantially satisfy the following qualifications and requirements:
 - a. Demonstrate a sound understanding of financial matters;
 - b. Show leadership experience
 - c. Experience with directorships and boards, or can demonstrated a preparedness to question, challenge and critique, and a willingness to understand and commit to the highest standards of governance.
 - d. Commitment to uphold all the legal duties, responsibilities and obligations of a Director;
 - e. Absence of other commitments which would restrict the ability of the person to act effectively as a Director;
 - a. Be of high repute and recognised integrity and not be convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences). Such person shall not have been found in a civil proceeding to have violated any federal or state securities or commodities law, and shall not be subject to any Court or regulatory order or decree limiting his or her business activity, including in connection with the purchase or sale of any security or commodity; and
6. Produce a National Police Certificate no more than 12 months old.

Ineligibility

What will make me ineligible or disqualify me from being a South West Aboriginal Land and Sea Council Director?

You are ineligible to be a director if you:

1. Are an employee of the South West Aboriginal Land and Sea Council; or
2. Are an employee or Director of another Noongar Regional Corporation. You may nominate as a director of more than one Regional Corporation but once you are elected as a director you immediately become ineligible to be a director of any other Noongar Regional Corporation.
3. Are a committee member of any committee, or a director of any company, established in accordance with the Noongar Boodja Trust Deed (for example be a Board member on the Nominations Committee, Noongar Advisory Company, or Investment Committee).
4. Have another immediate or close family member who is elected; including -
 - a. A child of a person
 - b. A parent of a person
 - c. A brother or sister of a person (biological or adopted)
 - d. A spouse or de facto partner of a person

Where the appointment of a director would result in two close family members being elected, the candidate with the most votes will be elected.

5. A disqualified person. A person is automatically disqualified if they:
 - a. are bankrupt.
 - b. were sentenced to three months or more in prison for an offence involving dishonesty in the last five years.
 - c. are disqualified under the Corporations Act 2001 (Corporations Act).
6. An individual who is disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the CATSI Act may only be appointed as a Director of the Corporation if the appointment is made:
 - a. With permission granted by the Registrar, or
 - b. With leave granted by the Court.

Time Commitment

What time will I need to commit to the role?

The successful candidates will be required to:

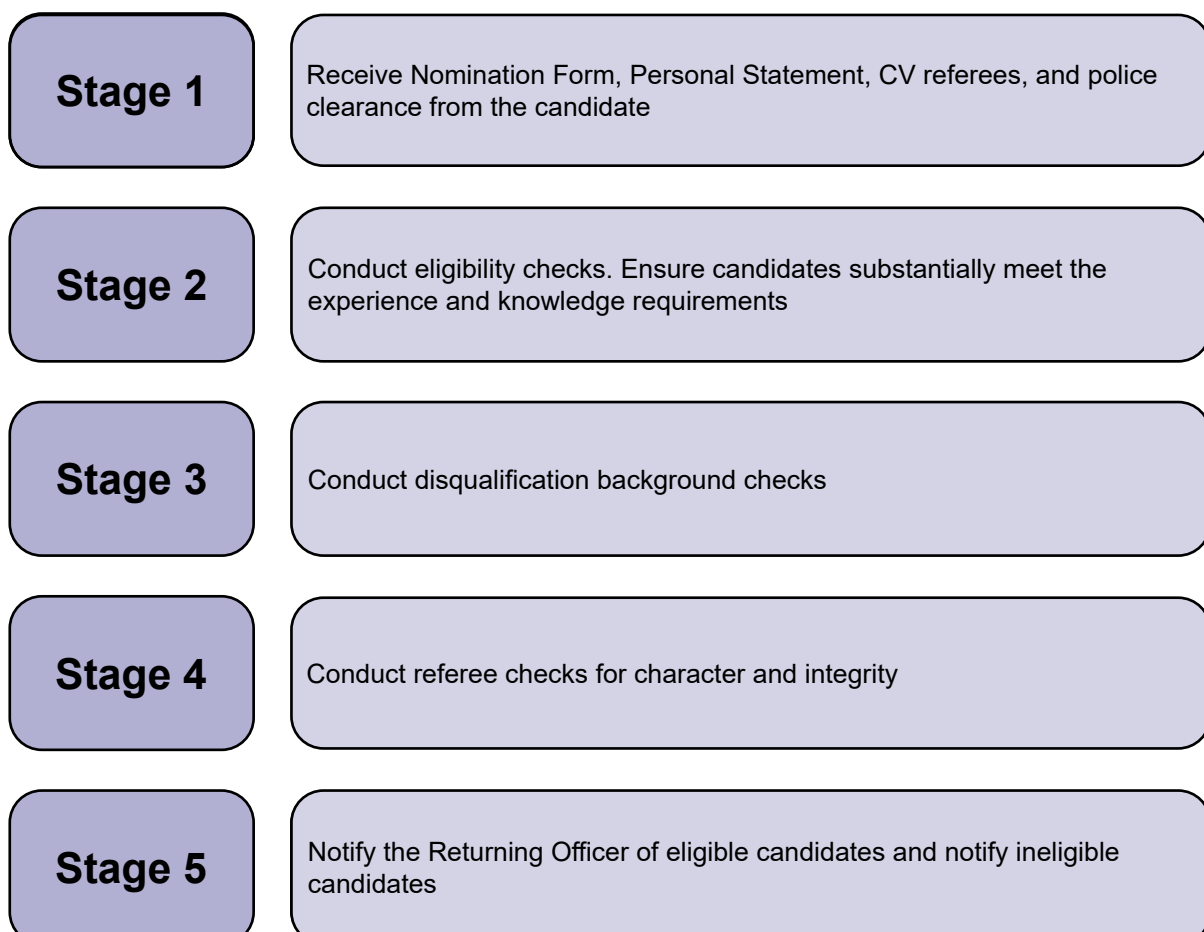
- a. Attend and participate in at least 4 board meetings per year.
- b. Attend to board matters in between meetings as required.

The Chair will be required to attend Noongar Corporations Committee and Noongar Relationship Committee meetings.

Assessment Process

How will my eligibility be assessed?

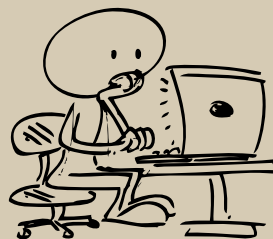
The Nominations Committee will adopt the following process to identify eligible candidates:





Duties of directors and other officers

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) sets out the duties required of directors and other officers. These duties are consistent with the duties under common law and in the *Corporations Act 2001*.



Did you know you can see a corporation's rule book on the ORIC website?

Use 'Search for a corporation' (this searches the public register), put in the corporation's name or ICN and look under 'documents'.

The common law (that's the law developed by judges) imposes special duties on directors and other officers of a corporation, such as a **duty of loyalty** and a **duty of care**. The CATSI Act also imposes duties on directors and other officers. Some of these duties overlap.

Directors and other officers owe these duties to the whole corporation—this means to all its members—and also to stakeholders (such as funding bodies and creditors).

Directors and other officers

The directors make up the governing body of the corporation. They are usually appointed by the members—the corporation's rule book will say how (always check the rule book).

Once appointed the directors have full authority over the corporation and are ultimately responsible for its management. This is why the **directors' duties** exist. They are legal duties that keep the directors loyal and accountable to the corporation—in other words, answerable to the corporation's members—and also to stakeholders.

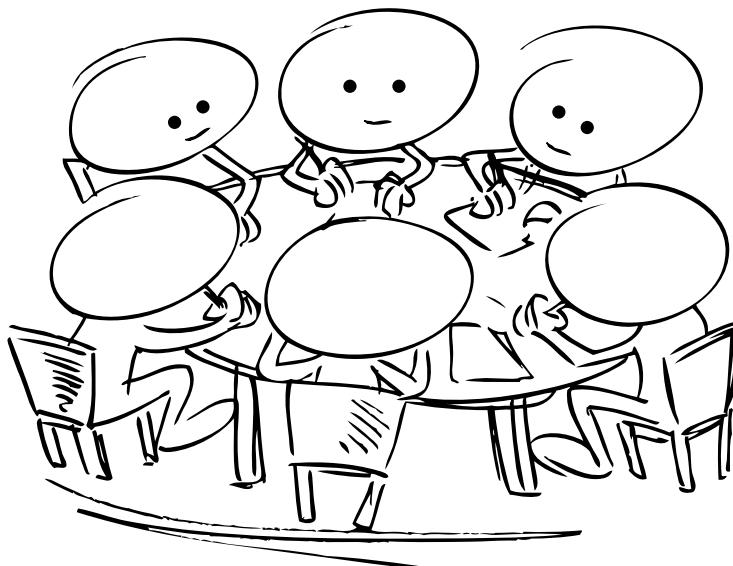
The CATSI Act also extends the scope of some directors' duties to the corporation's other officers and employees.

NOTE: Not every corporation has a CEO—some prefer the title of 'general manager' or 'executive manager'. In every case however, whoever fills this role follows instructions given to them by the board of directors.

Other officers of a corporation are CEOs/general managers, secretaries (in large corporations), chief financial officers (CFOs), special administrators and liquidators—in short, the other people who are involved in making decisions that affect the business of the corporation.

The CEO/general manager is usually the most senior employee and is appointed by the board of directors to look after—or 'manage'—the practical day-to-day business of the corporation, including its property and financial administration.

The duties apply individually—that is to say, each director, officer or employee to whom they apply is personally responsible (and therefore accountable) for meeting them.



THE 5 LEGAL DUTIES



DUTY OF care and diligence

(CATSI Act: section 265-1)

Directors and other officers must exercise their powers and carry out their duties with reasonable care and diligence.

This means they take their responsibilities seriously.

Directors who act carefully and diligently are interested in what's happening at their corporation and are well prepared to make decisions. For example, they are across their corporation's affairs and:

- follow their corporation's rule book
- never miss a directors' meeting and always arrive on time
- read all the pre-meeting background papers
- know their corporation's financial position
- are not afraid to ask a lot of questions—especially if some of the matters presented to them are complicated or unclear.

For other officers of the corporation, acting with care and diligence, could mean, for example, preparing accurate and timely reports for the directors so that they are well informed and in a confident position to make decisions in the best interests of the corporation.

Breach of this duty may result in a civil penalty but not criminal liability.

DUTY OF good faith

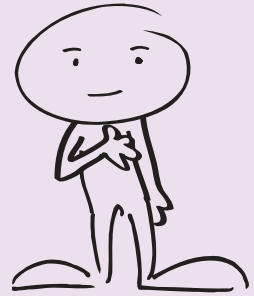
(CATSI Act: section 265-5)

Directors and other officers must exercise their powers and carry out their duties in good faith in the best interests of the corporation.

This means they must be honest and loyal in their dealings with each other and with the corporation.

For example, directors and other officers who act in good faith never make a decision for their own personal advantage. Their one and only concern is to act in the best interests of the corporation as a whole.

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



DUTY TO NOT improperly use position or information

(CATSI Act: sections 265-10 and 265-15)

Directors, other officers and employees must not misuse their position, or use information obtained as a result of their position, to gain a benefit for themselves, someone else or to cause harm to the corporation.

For example, they must never pass on personal details about members to other people nor give out information that might allow someone competing for a corporation contract an unfair advantage.

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

DUTY TO

disclose material personal interests

(CATSI Act: section 268-1)

Directors must tell each other their personal interests in matters relating to the affairs of the corporation.

This is so directors can avoid making decisions about the corporation which could personally benefit them or their family. 'Material personal interest' is better known as a 'conflict of interest'.

If not handled correctly, conflicts of interest may prevent directors from acting only in the best interests of the corporation.

It is very important to remember that *at all times* the corporation's interests come first.

To manage a conflict of interest, a director must declare 'the conflict' to the other directors. This disclosure can take the form of a 'standing notice' or a notice to a specific directors' meeting (where the issue causing the conflict of interest may be up for discussion).

Disclosing a conflict of interest does not automatically mean a director can't be part of a directors' meeting. It may just mean that for a certain part of the meeting (while the matter is discussed) that director steps out. This allows the other directors to talk freely and to make their decision in a neutral environment. Alternatively, the director may be invited to stay if they have 'the fully informed consent of the other directors to be present and vote' — see section 268-20(4) in the CATSI Act.

A breach of this duty may result in a criminal penalty.

There is nothing wrong with having a conflict of interest so long as you, as a director, disclose all of the information about the conflict of interest to the other directors and abide by their decision how it is managed.

DUTY TO

NOT trade while insolvent

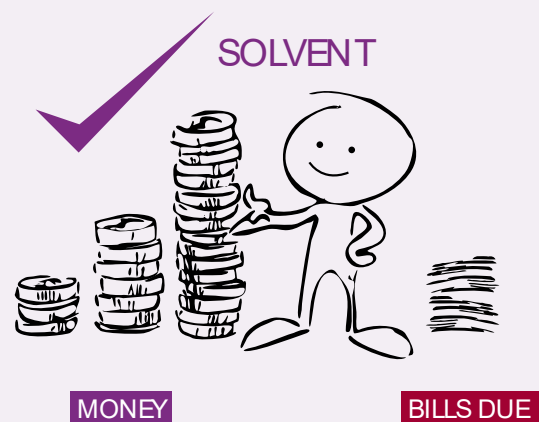
(CATSI Act: section 531-1)

Directors must not allow their corporation to trade when it does not have enough money to pay its bills when they are due.

To be 'insolvent' is to be unable to pay your debts when they fall due. If any one of the directors authorises a transaction, or makes a decision, which causes their corporation to become insolvent, they will have breached their duty to not trade while insolvent.

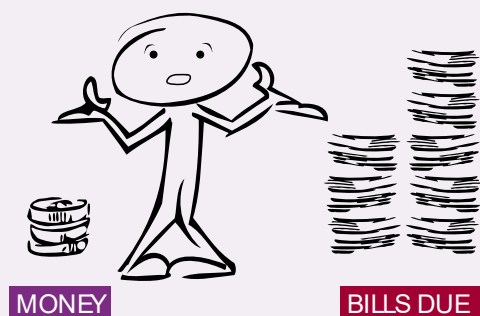
Directors should always know their corporation's financial position. Only then can they be sure that their corporation is not trading while insolvent.

A breach of this duty may result in a civil penalty and, if dishonest, a criminal penalty.



X inso lvent

STOP TRADING
IMMEDIATELY and
call ORIC



Consequences of breach

When a duty is breached the consequences will depend on the nature of the duty and the seriousness of the breach. For example:

- **Action by the corporation**—the corporation can take its own action to remove or dismiss the person involved in the breach. The corporation can also take its own civil action to restrain the person involved in the breach and recover compensation for any loss.
- **Civil penalty proceedings by the Registrar**—if a person breaches a civil penalty provision—for example, if a director 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 a court may then order that person to pay a penalty of up to \$200,000 for each contravention to the Commonwealth. A court may also order payment of compensation to the corporation for the damage it has suffered as a result of the contravention and/or disqualify that person from managing a corporation.
- **Disqualification**—in addition to disqualification by a court for a breach of a civil penalty provision, in some circumstances a person is automatically disqualified from managing a corporation, including if they:
 - have been convicted of certain serious criminal offences (including fraud)
 - are bankrupt.The Registrar maintains a register of disqualified officers at oric.gov.au.
- **Criminal prosecution**—a breach of certain duties may attract criminal prosecution and heavy penalties. If a person is found guilty by a court of breaching a duty to the criminal standard and where a criminal penalty applies, the person may be fined and/or sentenced to imprisonment.

Modifications for native title obligations

Corporations that are formed to hold or manage native title are prescribed bodies corporate (PBCs). After their claim is registered they become known as registered native title bodies corporate (RNTBCs).

The CATSI Act makes sure that directors, officers and employees of these corporations are not put in a position where their duties under native title legislation conflict with their duties under the CATSI Act. For example, if you (as a director of an RNTBC) act in good faith and believe that what you are doing is necessary to comply with native title legislation you will not be in breach of duties that apply under the CATSI Act or their equivalent in common law.



NOTE: This fact sheet is not a substitute for legal advice. It is intended as a quick overview of the topic. For more detail see the CATSI Act or consult a lawyer.



CONTACT ORIC

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(not free from mobiles)

email info@oric.gov.au

website oric.gov.au