

ELECTION POLICY & PROCEDURE

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| Applies to: Directors, Employees, Members & Contractors. | Policy Number: Version: 1 |
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1. PURPOSE

Banjima Native Title Aboriginal Corporation RNTBC (**BNTAC**) is the Prescribed Body Corporate for the Banjima People pursuant to *Banjima People v State of Western Australia (No 3) [2014] FCA 201* (12 March 2014) (**Banjima Determination**) and is registered as the Registered Native Title Prescribed Body Corporate with the National Native Title Tribunal.

It is critical that all elections conducted by BNTAC are conducted with the highest degree of integrity, fairness and transparency.

This Policy takes into account, and must be read alongside, the BNTAC Rule Book and any other document which allows the Banjima People to appoint representatives to a committee or some other governing body (**Governing Document**). In the event of an inconsistency between this Policy and the Rule Book or a Governing Document, the Rule Book or Governing Document, as the case may be, prevails.

2. SCOPE

The Rule Book provides limited guidance on the manner in which director elections are to be conducted. Rule 12.4.2 of the Rule Book provides that the Directors will appoint new directors, subject to an Ordinary Resolution passed by the Members at a General Meeting.

Governing Documents generally provide limited guidance on the manner in which Banjima People may appoint representatives (**Banjima Representatives**).

This Policy establishes a process and procedure for the election of:

- a. Directors; and
- b. Banjima Representatives
(**Election**)

2.1 Application

This policy only applies to elections:

- a. Where a vote is taken at a General Meeting in respect of the appointment of Directors; and
- b. Held by postal or electronic means in respect of the appointment of Banjima Representatives to the:
 - i. Local implementation Committee (**LIC**) established pursuant to the Banjima & RTIO Participation Agreement (**RTIO Agreement**);
 - ii. Regional Implementation Committee (**RIC**) established pursuant to the RTIO Agreement; and

- iii. Implementation Committee (IC) pursuant to the BHP Billiton Iron Ore and Banjima People Comprehensive Agreement (**BHP Agreement**).

3. POLICY DETAILS & PROCEDURE

3.1 Requirements Under Governing Documents

The appointment of Directors and Banjima Representatives must comply with the relevant provisions of the Rule Book and the Governing Documents.

Schedule 1 provides a summary of the process to appoint:

- a. Directors, as set out by the Rule Book;
- b. Banjima Representatives to the LIC and RIC, as set out in the RTIO Agreement; and
- c. Banjima Representatives to the IC, as set out in the BHP Agreement.

3.2 Oversight of Elections

The board has appointed a [delegate] to assist with the conduct of each Election (**Delegate**)

The Delegate must remain impartial and not be seen to show support to any Candidate.

The Delegate may delegate tasks required under this Policy to an employee of, or a consultant engaged by, BNTAC. The Delegate must oversee any tasks undertaken by a BNTAC employee or consultant under this Policy.

The Board may, in its discretion, decide to engage an independent third party to assist BNTAC, the chairperson or the Delegate with any of the processes outlined in this policy.

The Delegate may take such action, and give such directions, as the Delegate considers reasonably necessary to remedy any inadequacy or inconsistency with this Policy or any other applicable rules during the conduct of an Election.

3.3 Process for Conducting Elections

Schedule 2 sets out a flow chart of the process for conducting Elections.

3.3.1 Members entitled to vote in Elections

Members are entitled to vote in each Election, provided that they are listed on the Register of Members:

- a. where a vote is to take place at a General Meeting, when the notice of General Meeting is sent; and
- b. where a vote is conducted by post or electronic means, on the Voting Date.

3.3.2 Calling an Election

The Board must call an Election at least 6 weeks before the term of a Director or a Banjima Representative ends.

When calling an Election, the Board must:

- a. confirm what, and how many, positions are to be filled by Election; and
- b. in respect of an Election for directors, determine what criteria will be adopted for the evaluation of Candidates.

3.3.3 Calling for Nominations

At least 14 days before the Nomination Date, the Delegate must ensure that Members are given, by any reasonable means:

- a. a notice inviting Members to nominate as a Director or a Banjima Representative, a template of which is set out in **Error! Reference source not found. (Notice)**; and
- b. an 'Expression of Interest to be appointed as a Director / Banjima Representative' form as set out in Schedule 4 (**Nomination Form**).

In accordance with rule 12.4.1 of the Rule Book, the Nomination Date must be at least 30 days before the date of a General Meeting.

Nominations must be received by close of business on the Nomination Date. Nominations received after the Nomination Date must be deemed ineligible to ensure that the process is conducted in a fair manner.

3.3.4 Assessing nominations

The Delegate must:

- a. receive and collate nominations;
- b. review nominations and verify eligibility of Candidates; and
- c. notify Candidates in writing if their nomination is eligible or ineligible.

A committee of the Board must review each eligible nomination and determine their suitability for appointment as a Director or a Banjima Representative.

Where the committee of the Board determines that a person is not suitable for appointment, the Delegate must notify the Candidate in writing.

3.3.5 Candidates elected unopposed

Where an Election has been called and the number of eligible Candidates for a position equals the number of vacancies, those Candidates will be deemed elected and the voting process will not be conducted.

However, where an Election is held for the appointment of directors, the Candidates will need to be formally appointed as Directors by the Members in accordance with rule 12.4.2(a) of the Rule Book.

3.3.6 Election Materials

The Delegate must ensure that Election Materials are prepared and distributed in accordance with this Policy.

Preparation of Election Materials

A summary sheet must be prepared that provides information about each Candidate (**Candidate Information Sheet**), including:

- a. the name of each candidate; and
- b. a summary of the Candidate's experience, skills and qualities, as set out in the Candidate's Nomination Form.

Ballot papers must be prepared for each Election. Ballot papers must:

- a. state the position to which the Election relates;
- b. state the number of vacant positions;
- c. list the names of Candidates for the respective position in alphabetical order by surname; and
- d. provide clear instructions as to how to vote (i.e. indicate preferred Candidates by placing a tick next to their name, noting that the number of ticks marked on the ballot paper must not be more than the number of positions that are being filled).

A voter declaration slip must be prepared for Elections conducted by post or by electronic means. A voter declaration slip must:

- a. clearly state the date on which the voter declaration slip and the ballot paper must be returned to BNTAC, and the address to which it must be returned;
- b. require each voter to provide sufficient information to allow the Delegate to confirm that the voter is eligible to cast a vote in the Election (i.e. name, date of birth, signature); and
- c. not be printed on the same page as a ballot paper (i.e. it must be able to be easily removed from a ballot paper).

Distribution of Election Materials

Where a vote is held at a General Meeting a Candidate Information Sheet must be made available to Members before and during the General Meeting.

Where an Election is to be held by post or electronic means, all Election Materials must be made available to Members at least 14 days prior to the Voting Date.

3.3.7 Conducting a vote at a General Meeting

The chairperson of the meeting must advise the Members that:

- a. nominations for director positions were received prior to the meeting;
- b. only eligible nominations have been put forward for election;
- c. nominations from the floor will not be accepted; and
- d. Candidate Information Sheets are available for consideration.

The Delegate or chairperson must explain to the Members:

- a. how to cast a vote, as set out on the Ballot Paper; and
- b. what constitutes an invalid ballot paper.

Candidates will be given the opportunity to speak prior to Members casting their votes.

Each Member attending a General Meeting in person will receive one ballot paper.

Each location attending a General Meeting electronically will receive one ballot paper or other opportunity to vote, regardless of how many Members may be present at the location.

The Delegate may choose to initial each ballot paper before providing them to Members.

Members shall be provided with an appropriate physical space in which to cast their vote confidentially.

If a Member makes a mistake when voting, a replacement ballot paper can be given in exchange for the spoiled one.

Each completed ballot paper must be placed in the ballot box.

3.3.8 Conducting a vote by post or other electronic means

The Delegate must ensure that:

- a. Election Materials are made available to Members in accordance with section 3.3.6;
- b. each voter declaration slip that is received is reviewed to confirm that the voter is eligible to cast a vote;
- c. only ballots received from eligible voters on or by the Voting Date are placed in the ballot box; and
- d. one ballot paper received from each eligible voter prior to the Voting Date is placed in the ballot box.

3.3.9 Counting of votes

An independent person, nominated by the Board, will be present during the counting process (**Returning Officer**).

The Returning Officer must ensure the security and integrity of the completed ballot papers at all times. Once each ballot paper has been placed in the ballot box, the Returning Officer will:

- a. remove each ballot paper;
- b. consider each ballot paper to determine if it is valid; and
- c. count each vote cast on a valid ballot paper.

A ballot paper will be deemed to be invalid if:

- a. the voter's intention is not clear; or

- b. where the Delegate has chosen to initial each ballot paper, it has not been initialled by the Delegate.

The Returning Officer may, in their sole discretion and exercising reasonable judgment, determine if a ballot paper is valid.

The Returning Officer must declare as elected those Candidates who have the highest vote.

Where there are particular composition requirements, the Returning Officer must not declare any further Candidates elected where such declaration would result in non-compliance with a composition requirement. Candidates with the next highest number of votes and whose election would not result in non-compliance with composition requirements will be declared elected.

In the event that two or more Candidates have an equal number of votes, the name of each Candidate will be placed into separate, identical, unmarked envelopes (one name per envelope). The envelopes will be placed into a box, and the Returning Officer will draw one envelope from the box. The Candidate whose name is in the envelope drawn by the Returning Officer will be the successful candidate.

3.3.10 Scrutineers

Each Candidate may nominate one person who is not a Candidate to observe the counting of votes.

A scrutineer:

- a. may be present while the Returning Officer performs their duties;
- b. must not touch any ballot paper, voter declaration slip or envelope that may contain a ballot paper or voter declaration slip;
- c. may request that the Returning Officer reconsider their decision regarding the validity of a ballot paper or the counting of votes contained on a ballot paper, provided that such a request is made only once in respect of each ballot paper; and
- d. must comply with a direction given by the Returning Officer.

The Returning Officer may direct a scrutineer to leave the place where the Returning Officer is performing their duties where the scrutineer:

- a. interrupts the counting of votes, other than as outlined above; or
- b. refuses to comply with a reasonable direction given by the Returning Officer.

3.3.11 Appointment of Directors and Banjima Representatives

Once the result of the Election has been determined, the Returning Officer must inform the Delegate, in writing, of the:

- a. result of the Election;
- b. number of valid ballot papers;
- c. number of invalid ballot papers;
- d. total number of votes cast; and

- e. number of votes received by each Candidate.

Where votes are cast at a General Meeting, the chairperson must announce the results of the Election to the meeting, including the information specified in paragraph 0, and propose a resolution to appoint those Candidates that were elected as directors of BNTAC.

An elected Candidate will be appointed:

- a. as a Director once the:
 - i. Members pass a resolution to appoint the candidate as a Director;
 - ii. Candidate has provided the Delegate with a signed consent to act form; and
 - iii. General Meeting has concluded; and
- b. as a Banjima Representative once the Board passes a resolution confirming the outcomes of the Election.

3.4 Process Following an Election

The Delegate must retain all materials relating to the Election for a period of at least 6 months following the conclusion of an Election.

4. DEFINITIONS

Capitalised terms that are not otherwise defined in this Policy have the meaning given in the Rule Book.

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| Banjima Representatives | has the meaning given in section 2. |
| BHP Agreement | has the meaning given in section 2.1. |
| BNTAC | means Banjima Native Title Aboriginal Corporation RNTBC (ICN 7971). |
| Candidate | means a person who has been nominated for appointment as a Director or a Banjima Representative. |
| Candidate Information Sheet | has the meaning given in section 3.3.6. |
| Delegate | has the meaning given in section 3.2. |
| Election | has the meaning given in paragraph Error! Reference source not found. |
| Election Materials | means the Candidate Information Sheet, ballot paper (see paragraph 0) and voter declaration slip (see paragraph Error! Reference source not found.). |
| Governing Document | has the meaning given in section 2. |
| IC | has the meaning given in section 2.1, b, iii. |
| LIC | has the meaning given in section 2.1, b, i. |
| Nomination Date | means the date stated in the Invitation by which BNTAC must receive a Nomination Form. |

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| Nomination Form | has the meaning given in section 3.3, b. |
| Notice | has the meaning given in section 3.3, a. |
| Policy | means this Election Policy and Procedure. |
| Returning Officer | has the meaning given in section 3.3.9. |
| RIC | has the meaning given in section 2.1, b, ii. |
| RTIO Agreement | has the meaning given in section 2.1, b, ii. |
| Rule Book | means the Rule Book of BNTAC. |
| Voting Date | means the date on which ballot papers cast in a vote conducted by post or electronic means must be received by BNTAC. |

5. AUTHORITY

This Policy has been approved by the BNTAC Board on the 13 June 2024

Schedule 1 – Appointment requirements

Directors

Appointment

1. Directors are to be appointed by a resolution of the Board subject to an Ordinary Resolution of the Members at a General Meeting, in accordance with rule 12.4.2(a) of the Rule Book.
2. Under rule 12.4.2 of the Rule Book, the Board must:
 - (a) adopt criteria to assess the suitability of candidates that aims to ensure that the Board:
 - (i) is broadly representative of the Banjima People;
 - (ii) includes a majority of Directors who are senior Banjima People;
 - (iii) has representation of:
 - (A) female Banjima Persons; and
 - (B) younger Banjima Persons; and
 - (b) evaluate the suitability of Candidates against the criteria adopted.

Eligibility criteria

3. The eligibility criteria for Directors is set out in rule 12.2 of the Rule Book. A Director must:
 - (a) be at least 18 years old;
 - (b) be a Member of BNTAC, unless that person is an Independent Director; and
 - (c) able to demonstrate, or be willing to learn, the following qualifications:
 - (i) financial literacy;
 - (ii) leadership experience;
 - (iii) experience with directorships and boards;
 - (iv) commitment to uphold all the legal duties, responsibilities and obligations of a Director;
 - (v) absence of conflicting commitments;
 - (vi) is of high repute and recognised integrity and has not been convicted in, or named in a pending, a criminal proceeding; and
 - (vii) standing and respect within the Banjima People.

4. In addition, BNTAC must comply with legislation regarding the suitability of individuals to be involved in the governance of BNTAC. This may impact on a person's eligibility be appointed as a director.

Appointment of Banjima Representatives to the LIC

5. Six Banjima Representatives are appointed to the LIC by the Banjima People (clause 32.9 of the RTIO Agreement).
6. The LIC must include at least two Banjima Representatives who are Directors of BNTAC.

Appointment of Banjima Representatives to the RIC

7. Two Banjima Representatives are appointed to the RIC by the Banjima People.
8. The RIC must include at least one Banjima Representative who is a Director of BNTAC.

Appointment of Banjima Representatives to the IC

9. Six Banjima Representatives are appointed to the IC by the Banjima People (clause 43.4 of the BHP Agreement).
10. The IC must include:
 - (a) the CEO or other employee of BNTAC;
 - (b) at least one person who is a Director of BNTAC; and
 - (c) at least one person who is on the Decision Making Committee (as that term is defined in the BHP Agreement).

Schedule 2 – Flow Chart of the process for conducting Elections

