

Attachment 1: PROPOSED BLCAC RULE BOOK CHANGES: 17 JANUARY 2024

REVISION 1: FOLLOWING CAG MEETING 24/1/24

The Following changes to the Bunurong Land Council Aboriginal Corporation Rule Book are recommended to strengthen corporate governance standards.

These proposed changes are subject to ORIC approval.

4.3 Deciding membership applications

Insert a new clause to add a requirement for consultation with Elders and members before rejecting an application for membership.

4.3 (d) becomes:

If the directors are unable to approve a membership application, the directors must refer the application for membership to appropriate Bunurong Elders for their review, consideration and advice.

If the Elders fail to respond, the directors must advise the applicant that they may present their application for membership at the next corporation general meeting.

If the Elders recommend the directors refuse a membership application, and the directors agree with that recommendation, the directors must advise the applicant that they may present their application for membership at the next corporation general meeting.

If an application for membership is referred to a general members meeting, decision on membership application acceptance shall be by resolution of the members present at that meeting.

Then existing clause 4.3(d):

The directors may reasonably refuse to accept a person's membership application. If they do, they must notify the applicant in writing of the decision and the reasons for it.

Becomes new clause 4.3(e):

After the process outlined 4.3(d), the directors may reasonably refuse to accept a person's membership application. If they do, they must notify the applicant in writing of the decision and the reasons for it.

7.1 Role of directors

Clause 7.1(a) contains the sentence:

The directors manage, or set the direction for managing, the business of the Corporation.

Directors do not, and should not, manage the corporation (that being the CEO's job). Delete the 'manage' reference to become:

The directors set the strategic direction for the Corporation.

7.2 Number of directors

Increase the maximum number of directors from 12 to 13 to allow for up to three specialist independent directors. (See later clause 7.6)

7.2(a) becomes:

The minimum number of directors is 5 and the maximum number of directors is 13 (including office bearers and non-member specialist independent directors).

Clause 7.2(b) relates to Apical Ancestor Group representation:

At the 2016 AGM rule 7.2(b) takes effect and the five (5) Bunurong apical Ancestors shall be acknowledged and represented on the board of directors. The corporation at this time shall have a minimum of 10 directors and a maximum of 12 directors. Each of the five (5) Apical Ancestor Groups must vote and appoint not more than two (2) directors to represent them on the Corporation's board of directors.

This contains out-of-date content and repetition of clause 7.2(a). Reword to clarify Apical Ancestor Group representation and the maximum number of member directors:

The five (5) Bunurong Apical Ancestors shall be acknowledged and have the opportunity for representation on the board of directors. Each of the five (5) Apical Ancestor Groups must vote and appoint not more than two (2) directors to represent them on the Corporation's board of directors, allowing for a maximum of ten (10) member directors.

This new clause retains the opportunity for all five (5) Apical Ancestor Groups to be represented on the board of directors, but removes the requirement for a Group to have representative directors if they do not vote to do so.

7.3 Eligibility of directors

Add an additional eligibility requirement as clause 7.3(a)(iv) to strengthen board quality:

(iv) have demonstrated knowledge and experience in an area of business, governance and/or another area that is relevant to the objectives of the corporation.

Clause 7.3(b) handles ineligibility criteria and is currently:

The following people are not eligible to become directors of the Corporation:

(i) the persons who were directors of the Corporation immediately prior to the appointment of the special administrator on 28 January 2014 (ineligible for a term of five years after the appointment of the special administrator is terminated); and

(ii) persons who are otherwise disqualified from managing a corporation.

Replacement of this clause is recommended in accordance with current ORIC best practice.

Replace 7.3(b) with:

A person is not eligible to be or become a director if they:

- (i) are an employee of the corporation;*
- (ii) have been convicted of an offence under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 that is punishable by imprisonment for more than 12 months;*

- (iii) *have been convicted of a crime involving fraudulent behaviour;*
- (iv) *have been convicted of a crime against a child;*
- (v) *have been convicted of a criminal offence in the last five years and been sentenced to imprisonment for more than 12 months;*
- (vi) *have been convicted of an offence involving dishonesty that is punishable by imprisonment for at least three months;*
- (vii) *have been convicted of an offence against the law of a foreign country that is punishable by imprisonment for more than 12 months;*
- (viii) *are an undischarged bankrupt;*
- (ix) *have signed a personal insolvency agreement and have not kept to the agreement;*
- (x) *have been disqualified from managing corporations under the Corporations Act 2001 or CATSI Act 2006;*

Add a **new clause 7.3(c)** to stipulate an ineligibility period for directors prior to this special administration:

A person is not eligible to be or become a director if they:

- (i) *Were a director of Bunurong Land Council Aboriginal Corporation at any time from 1 JULY 2020 to 11 SEPTEMBER 2023. These people are not eligible to be appointed as a director for two (2) years from the date of the end of the 2023-24 special administration (15 March 2024).*

Add a **new clause 7.3(d)** to outline requirements for directors on appointment:

Directors must:

- (i) *Provide their Director Identification Number. Director appointments cannot be made without a Director Identification Number.*
- (ii) *Have a current National Police Certificate or within two months of appointment, obtain a National Police Certificate. The appointment is terminated immediately if a National Police Certificate shows any of the offences listed in this clause 7.3.*
- (iii) *Within one month of appointment, sign the Director Confidentiality Agreement. If a signed Director Confidentiality Agreement is not provided within one month of appointment, the appointment is terminated immediately.*
- (iv) *Within one month of appointment, sign the Director Code of Conduct. If a signed Director Code of Conduct is not provided within one month of appointment, the appointment is terminated immediately.*
- (v) *Have completed suitable governance training either prior to their appointment or within a period of twelve months following their appointment.*

Add a **new clause 7.3(e)** to restrict multiple family members becoming directors:

A maximum of one person from a family can be elected or appointed to the board. For the purposes of this clause a 'family member' is defined as person's:

- (i) *Husband or wife.*
- (ii) *Partner in a de facto relationship as defined under the Family Law Act.*
- (iii) *Brother or sister, including half-brother or half-sister.*
- (iv) *Parent or child, including step-parent or step-child.*
- (v) *Sister-in-law or brother-in-law*

7.4 Majority of director requirements

Changes are needed to this clause in relation to the need for employees to be ineligible to be directors.

Remove 7.4(a)(iv) as no longer necessary for majority requirement:

not be employees of the Corporation

Remove 7.4 (b) as a CEO cannot be a director as they are an employee:

Where a chief executive officer is employed the chief executive officer may be a director but cannot chair the directors' meetings.

7.6 Non-member specialist independent directors

Add a **new clause 7.6** to outline requirements for non-member specialist independent directors:

Non-member specialist independent directors shall be appointed to add skills in financial management, corporate governance, accounting, law or a field relating to the corporation's activities.

- (a) There must be a minimum of one (1) and a maximum of three (3) non-member specialist independent directors.*
- (b) The number of specialist independent directors must always be a minority of the total number of directors.*
- (c) The directors appoint (and re-appoint) specialist independent directors by passing a resolution in a directors' meeting.*
- (d) Potential candidates for the position of specialist independent director must provide written evidence of their qualifications, experience and suitability to the role.*
- (e) The board of directors must conduct a proper merit-based selection process based on the skill and experience criteria set out in this clause.*
- (f) Specialist independent directors will be appointed for a term of two years and are eligible for reappointment. Reappointment will be determined by resolution at a director's meeting.*
- (g) Specialist independent directors cannot be members or employees of the corporation and must have no interest in the corporation other than their position as director.*
- (h) Specialist independent directors must meet director eligibility clause 7.3*
- (i) Specialist independent directors have voting rights in the board room.*
- (j) Specialist independent directors may not hold the position of Chair.*

The corporation must notify the Registrar of a non-member specialist independent director's appointment and personal details within 28 days after they are appointed.

7.6 Directors' terms of appointment and rotation (becomes 7.7)

Add **new clause 7.7(d)** to outline the dates specifically for the directors appointed by the special administrator at the end of the 2023-24 special administration on 15 March 2024:

All member directors appointed on the completion of the special administration on 15 March 2024 will be appointed until the 2026 AGM. At the 2026 AGM half of the member directors' appointments will expire and go to election at the AGM. The

remaining member directors' appointments will expire at the 2027 AGM. The board will decide which directors will be standing down by resolution at a directors' meeting prior to the 2026 AGM. The directors standing down will be eligible to be re-elected.

7.14 Conflict of interest (material personal interest) (becomes 7.15)

Add a sentence at the end of this clause to cover board management of conflict of interest matters:

The declaration of any conflicts of interests for directors must be a standing agenda item at the commencement of all directors' meetings and the directors must keep a conflicts of interest register.