

Noongar Governance Structure

Pre-incorporation Directors

Supporting Information for Candidates

**Please read this document before completing your
Pre-incorporation Director Nomination Form**

This document contains relevant information for candidates that wish to apply for a position as a Pre-incorporation Director for their Regional Corporation.

This document was prepared by the WA State Government and SWALSC, in collaboration with the Interim Nominations Committee.

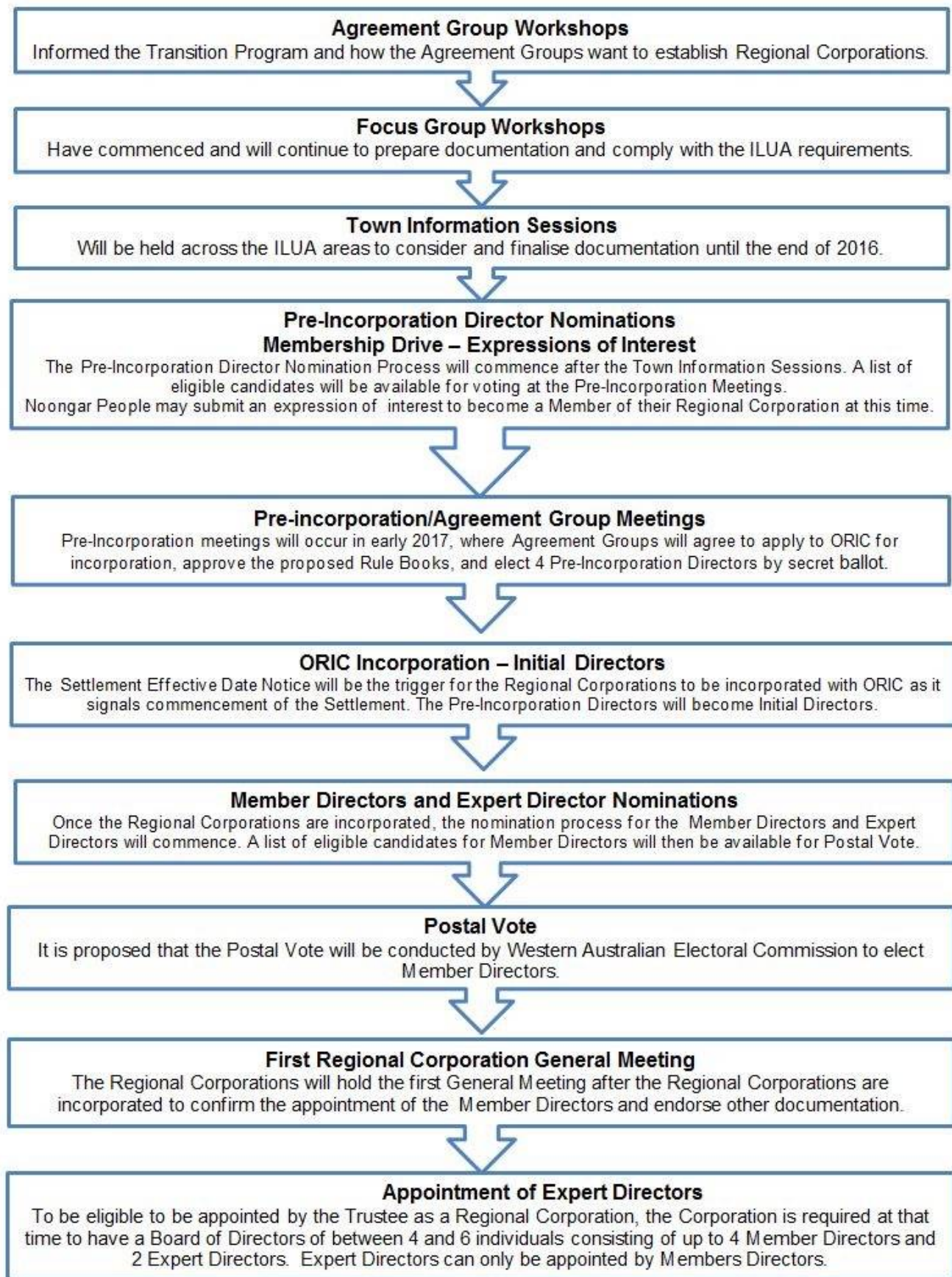
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Section 1. Process for Establishing the Regional Corporations



Section 2. Key Concepts

The following key concepts are relevant for the Pre-incorporation Directors in understanding their role, and the process for establishment of the Regional Corporations.

ILUA	An Indigenous Land Use Agreement containing the details of the South West Native Title Settlement, entered into by the State and each of the Agreement Groups.
Central Services Corporation Principles	The Principles which must be provided for in the Rule Book of the Central Services Corporation. The Principles provide for sound governance arrangements, as set out in Annexure E to the Settlement Terms
Regional Corporation Principles	The Principles which must be provided for in the Rule Books of each Regional Corporation. The Principles provide for sound governance arrangements, as set out in Annexure E to the Settlement Terms.
Transition Principles	The Principles described in Annexure Y of the Settlement Terms to the ILUAs, which are designed to ensure that a transparent and accountable process is undertaken to identify Corporations that can nominate to become Regional Corporations, through maximum community participation in the development of the organisation, and in its membership.
Transition Period	The period in each Region from the execution of the ILUA, through to the appointment by the Trustee of a Regional Corporation for that Region.
CSC Transition Program	The document that outlines the process for establishing the Central Services Corporation during the Transition Period, to assist the Noongar people to understand how and when they can participate in the development and establishment of the Central Services Corporation.
RC Transition Program	The document that outlines the process for establishing the Regional Corporations during the Transition Period, to assist the Noongar people to understand how and when they can participate in the development and establishment of the Regional Corporations.
Initial Directors	The first Directors of the Regional Corporation upon registration with ORIC. Persons who were Pre-incorporation Directors become Initial Directors upon incorporation by ORIC.
Interim Period Advisory Group (IPAG)	A stakeholder group that will advise Perpetual (the Trustee in waiting) during the period between Perpetual being selected and the Trust commencing.
Interim Nominations Committee (INC)	A committee established to pre-qualify candidates as eligible for appointment as directors on the boards of the Regional Corporations and Central Services Corporation before the Trust is established.

Section 3. Becoming a Pre-incorporation Director

Role of Pre-incorporation Director

Each Agreement Group will elect and appoint four Pre-incorporation Directors at their Pre-incorporation meetings. The Pre-incorporation Directors will form the Pre-incorporation Board and will undertake the work required to establish their Regional Corporation.

The Pre-incorporation Directors have an important role commencing the necessary work for the establishment of the Regional Corporations. As their role is interim only, they have limited authority and scope, as they will not have the usual rights, powers, duties and responsibilities of a director.

The primary functions of the Pre-incorporation Directors are:

- Making recommendations regarding membership applications for the Regional Corporation. These applications will be formally endorsed by the Initial Directors once the Regional Corporations are incorporated with ORIC.
- Promoting and assisting with the continuation of the Membership Drive.
- Considering the Expert Director skill set.

Once the Regional Corporation is incorporated with ORIC the Pre-incorporation Directors will become the Initial Directors (subject to being eligible).

See the **Terms of Reference for a Pre-incorporation Director**.

The Pre-incorporation Director Nomination Form must be submitted no later than 12 noon WST, on Friday, 25 November 2016.

How to be Elected

Self Assessment: Candidates should consider if they are eligible before they apply for a Pre-incorporation Director position, and make sure they are not disqualified. Further information on eligibility is set out in section 4 below - **Eligibility Information**. Information about disqualification is found at **Disqualification of Candidates**.

Submit Form: Candidates who wish to run for election as a Pre-incorporation Director must complete and submit a Pre-incorporation Director Nomination Form to the Interim Nominations Committee. A copy of the Form is available to download from the FDIO website at <http://fdio.com.au/page/south-west-settlement-agreement-groups-pre-incorporation-director-nominations>.

Confirmation of Eligibility: After the closing date, the Interim Nominations Committee will assess the eligibility of all candidates. Further information about the process is set out under section 5 below - **Assessment of Eligibility**.

Secret Ballot: Eligible candidates may run for election in the secret ballot held at the Pre-incorporation meeting. Further information is set out in sections 6 and 7 below - **Next Steps for Candidates** and **The Election Process**.

Confirmation of Appointment: At the Pre-incorporation meetings, the Agreement Groups will each elect 4 Pre-incorporation Directors.

Section 4. Eligibility Information

Eligibility of Pre-incorporation Directors

The eligibility criteria is based on the requirements in the Regional Corporation Rule Book, because the Pre-incorporation Directors will become the first directors of the Regional Corporations following incorporation.

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

- is a member of a South West Native Title Settlement ILUA Native Title Agreement Group as a descendant of one or more of the listed ancestors for the Group, or otherwise eligible in accordance with the Schedule 2 Native Title Agreement Group Description;
- is at least 18 years of age;
- is an Australian resident;
- has never been disqualified from managing corporations;
- substantially satisfies the following qualifications and requirements:
 - financial literacy;
 - leadership experience;
 - experience with directorships and boards, or can demonstrate a preparedness to question, challenge and critique, and a willingness to understand and commit to the highest standards of governance;
 - commitment to uphold all the legal duties, responsibilities and obligations of a Director;
 - absence of other commitments which would restrict the ability of the person to act effectively as a Director;
 - is of high repute and recognised integrity and has not been 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
 - standing and respect within the Noongar Community; and
- is able to produce a National Police Certificate which is acceptable to the Interim Nominations Committee and which is no more than 12 months old.

An individual is not eligible for appointment as a Director if the individual is:

- an employee of SWALSC; or
- a Pre-incorporation Director of another Agreement Group Pre-incorporation Board; or
- a committee member of any committee, or a director of any company, established in accordance with the Noongar Boodja Trust Deed unless that person holds that office by virtue of being a Pre-incorporation Director.

Membership of Multiple Agreement Groups

A person may be a member of more than one Agreement Group, and may become a member of more than one Regional Corporation. However, a person is permitted to be a Pre-incorporation Director for only one Agreement Group.

A person is permitted to **nominate for election** for more than one Agreement Group.

If a person is elected as a Pre-incorporation Director, the person must promptly **withdraw from election** for other Agreement Groups that have not yet held their Pre-incorporation meeting.

If a person is elected as a Pre-incorporation Director, they must not resign from that position in order to seek election for another Agreement Group.

Having regard to the above, a person who is a member of multiple Agreement Groups may opt not to nominate for election across multiple Agreement Groups, and instead focus on a particular Agreement Group.

State Government Employees and Officers

State government employees and officers (**State Personnel**) are not prohibited from being appointed as Pre-incorporation Directors.

However, State Personnel should be aware of the requirements in the *Public Sector Management Act 1994* (WA) (**PSMA**).

Section 102(1)(e) of the PSMA provides:

“102 Employees not be employed outside Government etc. without permission

(1) *Except with the written permission of his or her employing authority, which permission may at any time be withdrawn, an employee shall not —*

...

(e) *accept or engage in any employment for reward other than in connection with the functions of his or her office, post or position under the State.”*

The employing authority is defined in section 5 of the PSMA and is generally the CEO or chief employee of a department or organisation.

The restriction in section 102(1)(e) of the PSMA technically does not apply as the Pre-incorporation Directors are not remunerated, and are therefore not engaging in “employment for reward”.

However, it is recommended that State Personnel obtain permission from their employing authority to avoid any conflict with their official roles, prior to accepting a position as a Pre-incorporation Director.

Candidates must also ensure that they have regard to any applicable policies of the relevant government department or agency.

It is anticipated that candidates will be asked to confirm in writing that they have obtained the relevant permission referred to in this section.

Disqualification of Candidates

A candidate is not eligible to be a Pre-incorporation Director if they have ever been disqualified from managing corporations.

A candidate may be disqualified under a number of laws or regulatory regimes in Australia:

1. **ACNC** (Australian Charities and Not-for-Profits Commission)
2. **ORIC** (Office of the Registrar of Indigenous Corporations) CATSI Act (Cth) or;
3. **ASIC** (Australian Securities and Investments Commission) Corporations Act 2001 (Cth).

More detailed information is set out in **Disqualification of Candidates**.

It is important that candidates check each of these requirements to determine whether a disqualification applies. If a candidate is not sure how the requirements apply to their personal circumstances, they should have a confidential conversation with FDIO.

Many of the disqualifications are AUTOMATIC under the law. A candidate will not have received a letter or other notice telling them they are disqualified.

National Police Certificate

Candidates are required to produce a National Police Certificate (NPC) which is acceptable to the Interim Nominations Committee and which is no more than 12 months old. If a candidate has minor offences such as traffic violations or other minor offences listed on their National Police Certificate this alone will not automatically exclude a candidate from the Pre-incorporation Director Nomination process.

An acceptable National Police Certificate will be issued by the WA Police (or other applicable State police). Application forms for a National Police Certificate (NPC) can be obtained online from these websites:

- www.police.wa.gov.au/Police-Direct/National-Police-Certificates or
- <http://auspost.com.au/national-police-certificates-wa.html>

or from a participating Australia Post outlet.

Frequently Asked Questions

From time to time, the Interim Nominations Committee may release further guidance for candidates in the form of "Frequently Asked Questions". These will be released in the same manner as this information pack.

Section 5. Assessment of Eligibility

Role of Interim Nominations Committee

The INC was established by SWALSC and the State to assess Agreement Group candidates as eligible for appointment as Pre-incorporation Directors. This will assist the Regional Corporations to comply with the Regional Corporation Principles. The INC does not have any role in relation to the appointment of Pre-incorporation Directors other than confirming a candidate's eligibility for appointment.

An independent organisation, the Forum for Directors of Indigenous Organisations (FDIO) provides secretariat support to the INC.

The INC will provide a list of eligible candidates for each Agreement Group to SWALSC in preparation for the elections at the Pre-incorporation meetings.

Assessment Process

The INC will assess the eligibility of the candidates in four stages, as follows:

The **first stage** is to ensure that the National Police Certificate provided by the candidate conforms to the requirements outlined in Part C of the Nomination Form. Any candidate who fails to provide a compliant National Police Certificate will be deemed ineligible.

The **second stage** is to review the National Police Certificate and determine if any part of a candidate's criminal record renders the candidate ineligible to be a Pre-incorporation Director.

The **third stage** is to ensure that the information provided by the candidate in relation to their professional qualifications and experience meets the essential requirements for a Pre-incorporation Director as described in section 4 above - Eligibility Requirements. Any candidate who fails to substantially satisfy the essential requirements for a Pre-incorporation Director will be deemed ineligible.

The **fourth stage** is to contact all remaining candidates' referees to verify the information provided by the candidate. Any candidate who provides inappropriate referees (including immediate family members) or provides referees who cannot verify the relevant information provided by the candidate will be deemed ineligible.

A candidate who satisfies all four stages of the eligibility assessment will be deemed eligible.

Section 6. Next Steps for Candidates

Eligible Candidates

INC will notify eligible candidates in writing that they have progressed through to the next stage of the process. This is likely to occur in late December 2016.

Eligible candidates are permitted to provide a written profile about themselves, and a photo, which will be included in the Notice of Meeting that is distributed to Agreement Group members. The candidate profile must be:

- submitted by the relevant deadline (in January 2017) to SWALSC by email; and
- no more than 150 words.

Hard copies of candidates profiles will be available at the Pre-incorporation meeting for voters to consider during the secret ballot process.

The Notice of Meeting will be distributed to Agreement Group members in January or February 2017 (depending on the date of the Pre-incorporation Meeting). The Notice of Meeting must be distributed at least 21 days before the Pre-incorporation Meeting.

The notification process for the Pre-incorporation Meetings will include:

- mail out to the SWALSC membership;
- mail out to Focus Group and Town Information Session participants;
- advertising on Facebook and the SWALSC website;
- advertising in local newspapers and notice boards in each region.

Ineligible Candidates

Once the eligibility of each candidate has been determined, any ineligible candidates will be notified in writing with a short explanation regarding the reason for their ineligibility.

The decision by INC on the eligibility of a candidate is final and there is no right of review or appeal of that decision. Once a decision has been made and the candidate notified, the INC will not consider any additional materials or information. Each candidate should therefore ensure that their responses and attachments to the Nomination Form comply with the stated requirements and provide all the information requested.

Section 7. The Election Process

Pre-incorporation Meetings

The Pre-incorporation meetings will be facilitated by SWALSC.

Candidates are permitted to attend and vote at the Pre-incorporation meeting. A candidate will not be disqualified if they are unable to attend the Pre-incorporation meeting.

Secret Ballot Voting Process for Pre-incorporation Directors

1. Candidates Elected Unopposed

Where, on the expiry of the period for lodging nominations, the number of eligible candidates does not exceed the number of offices to be filled, the Returning Officer shall, on the day of the Pre-incorporation meeting, declare those candidates to be elected unopposed to that office.

2. Insufficient Candidates

Where, on the expiry of the period for lodging the nominations of candidates for election for an office, insufficient nominations for the number of offices to be filled have been received, the Interim Nominations Committee shall as soon as practicable after the expiry of that period, advise SWALSC and DPC.

3. Death of a Candidate

If a candidate dies during the Director Nomination Process and prior to the secret ballot that candidate is removed from consideration.

4. Ballot

If the number of valid nominations received exceeds the number of positions to be filled, the Returning Officer shall conduct a secret ballot at the Pre-incorporation meeting of Agreement Group Members entitled to vote.

5. Information on the Ballot Paper

The candidate's name provided on the Director nomination form will be the same name to be used on the ballot paper and on any candidate profile.

6. Form of Ballot Paper

6.1 The order of names of candidates for election by secret ballot shall appear on the ballot paper at the Pre-incorporation meeting, as drawn by lot by the Returning Officer.

6.2 The Returning Officer shall include on the ballot paper information and instructions to the voter with respect to the following matters and substantially in accordance with the following form:

- (a) the title of the office to which the election relates;
- (b) the fact that there are 4 Director positions available to vote on;
- (c) the names of the candidates as determined in accordance with rule 6.1 (above) of these election rules;

- (d) the voting method in accordance with rule 7 (below) of these election rules; and
- (e) the date of the secret ballot.

7. Voting method

The voting system shall be the first-past-the post system.

As 4 Director positions are required, voters should mark their ballot papers as follows:

- (a) The voter must place a mark (eg tick, cross or circle) in the box opposite the name of the four (4) candidates whom the voter wishes to elect as a Director.
- (b) The voter must vote for four candidates to be elected as Directors.
- (c) Each mark will have equal value in the counting of votes.
- (d) When a voter marks the ballot paper in a manner, other than the prescribed manner, but the ballot paper clearly indicates the voter's intention, the Returning Officer may include the ballot paper in the count.
- (e) Voting by proxy shall not be permitted.

8. Ballot Boxes

The Returning Officer is to provide such ballot boxes as are necessary for the election.

9. Counting of votes

At the Pre-incorporation meeting votes must be counted according to the number of marks against each candidate's name. Successful candidates are those who receive the highest number of votes.

The Returning Officer will count and record votes for all candidates at the Pre-incorporation meeting.

The 4 candidates with the most number of votes will be appointed as Pre-incorporation Directors at the Pre-incorporation meeting.

The Returning Officer will formally record the result of the election and votes for each candidate, ranked in accordance with the number of votes received.

The record of votes received by each candidate may be referred to in future in the event a casual vacancy arises.

10. Candidates with same number of votes

In the event that two or more candidates receive the same number of votes that impact on the capacity to appoint 4 directors.

If two or more candidates each receive the same number of votes the Returning Officer shall decide by lot which candidate is to be elected.

11. After the Election

Once elected, the four Pre-incorporation Directors must sign the Terms of Reference which are set out in **Terms of Reference for Pre-incorporation Directors..**

SWALSC will liaise with the Pre-incorporation Directors regarding their meeting schedule, and will provide secretariat support.