NSW GOVERNMENT | **Treasury**

Board Appointments for State Owned Corporations and Other Commercial Government Businesses

Preface

The guidelines for the *Board Appointments for State Owned Corporations (SOC) and Other Commercial Government Businesses* provides a framework for the Board Appointment process.

The policy and guidelines document the process for Board Appointments managed by NSW Treasury as part of the Commercial Policy Framework. The guidelines include practice guides to assist practitioners and stakeholders throughout the process.

The guidelines provide greater clarity for stakeholders and for board candidates, with a focus on candidate care throughout the process. The approach reflects contemporary board governance practices for SOCs and other Commercial Government Businesses and, where appropriate given the context of Government ownership, is consistent with private sector practice.

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Secretary
NSW Treasury

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Note
General inquiries concerning this document should be initially directed to:
Commercial Assets, NSW Treasury; commercialpolicy@treasury.nsw.gov.au

This publication can be accessed from the Treasury's website www.treasury.nsw.gov.au/.

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Purpose

The purpose of the Board Appointments Governance Framework is to improve transparency, consistency and candidate care in the merit-based selection of board directors and to support a process that reflects Government policy and current practice in board governance.

The Board Appointments Governance Framework has been developed as part of the Commercial Policy Framework.

Application

The policy and guidelines apply to SOCs and other commercial businesses with governing Boards where the Treasurer is an appointing Minister.

1. Policy Statement

The Board Appointment process is set out in the Governance Framework for Board Appointments for SOCs and other Commercial Government Businesses (Appendix 1 – Governance Framework).

2. Governance Framework for Board Appointments

The Governance Framework has been developed to provide improvements in the following areas:

- Candidate care throughout the process;
- Clarity of responsibility;
- Communication with stakeholders;
- Timeliness and consistency of the process; and
- Background checks on candidates.

The Governance Framework for Board Appointments is structured around three phases:

Planning → **Selection** → **Approval**

2.1 Planning

The outcome of the planning phase is the Shareholding Ministers approved short list of candidates for assessment, who have been matched against the skillset required by the respective board.

2.2 Selection

The outcome of the selection phase is a Board Candidate Assessment Committee (BCAC) report, summarising the suitability of candidates for the respective board and identifying candidates as one of: preferred, suitable or not suitable.

2.3 Approval

The outcome of the approval phase is for the Shareholding Ministers and Government to approve and appoint a candidate to the respective board (or in some circumstances the Governor).

3. Changes to the process

3.1 Candidate care

Treasury's aim is coordinated and clear ongoing engagement with candidates from the point at which candidates are initially approached, through to the offer and acceptance of a Board appointment by the preferred candidate. This approach is reflected in the proposed Board Appointment Governance Framework.

A key component in facilitating this approach is Treasury's recruitment partner, who acts as the primary conduit between the businesses and candidates throughout the board appointment process.

Government is leveraging the recruitment partner's expertise and broader exposure to the marketplace in sourcing and assessing potential director candidates for Boards of commercial government businesses and applying a consistent level of candidate care. We are supporting the recruitment partner by providing clear guidance on what can be communicated to candidates at various stages of the process.

3.2 Process Clarity

The Board Appointment Governance Framework establishes greater clarity of the process at a high level. In support, two Practice Guides have been developed with detailed documentation of the process to assist practitioners and ensure a consistent and timely approach to board appointments (Appendices 2 and 3).

3.3 Stakeholder Communications

Improvements to stakeholder communications throughout the process will support greater clarity and hopefully lead to earlier decision making around board appointments. Stakeholder communications include early engagement with Shareholding Ministers, Business Chairs and the recruitment partner to facilitate timely board appointments.

Where appropriate, we will provide templates and communication guides to improve consistency and efficiency.

3.4 Timeliness of Process

In addition to the stakeholder communications strategies the following initiatives have been implemented to improve timeliness of the board appointment process:

- Appointment of a recruitment partner to broaden the candidate selection pool;
- Changes to the Board Candidate Assessment Committee (BCAC) panel composition;
- Increased use of standard documentation; and
- Potential use of talent-pooled candidates to fill unforeseen vacancies.

Notwithstanding the changes highlighted above, we anticipated that there will still be occasions in which director appointments or reappointments miss the deadline; to help ameliorate the impact of this situation, we are proposing the introduction of a temporary extension to director appointments.

3.4.1 Board Candidate Assessment Committee Composition

The new process differentiates between the panels for a Chair vacancy compared with that of a Director vacancy. The panel composition is now as follows:

Panel Composition	
Chair Vacancy	**Director Vacancy**
Deputy Secretary Treasury (to Chair interview) Deputy Secretary, DPC Recruitment Partner, Independent Member *Also consider:* Chair of another SOC (or similar) or senior representative from Portfolio Minister's department	Chair of Business (to Chair interview) Deputy Secretary or Executive Director, Treasury Recruitment Partner, Independent Member
Treasury provide secretariat support	

3.4.2 Unforeseen vacancies

From time to time, an unforeseen board vacancy may arise. With the agreement of the Chair and Shareholding Ministers, we may decide to not undertake a full recruitment process. In this situation, the Chair may interview previously assessed candidates who had been deemed suitable by the BCAC within the prior two years ("talent pooled candidates") and, if deemed appropriate by the Chair, may seek Shareholder approval to appoint the candidate to the Board.

3.4.3 Short-term extension of director's re-appointment

In the advent of delays in the re-appointment process, a sitting director may have their current appointment term extended by up to 12 months with the approval of the Shareholding Ministers, without seeking Cabinet approval.

This flexibility is consistent with Section 5.1 of DPC's NSW Government Boards and Committees Guidelines (September 2015) which deals with acting positions, as well as M2015-04-Appointments to NSW Government Boards and Committees.

This change may require appropriate amendments to the respective Constitutions and/or Board Charters of each business.

Treasury would initiate this approval process following consultation with the Chair and Shareholding Ministers.

3.5 Candidate Background Checks

As part of Board Governance best practice, the range of probity checks for potential board directors is being extended. The business should contact their NSW Treasury representative to obtain the details for the pre-approved service providers to undertake these checks.

These checks must be completed after the BCAC interview process has identified a preferred candidate for appointment.

The agreed set of checks are set out in Appendix 4 of the policy. These requirements will be updated by Treasury to reflect current best practice.

Appendix 1 - Governance Framework

	Assessment of Vacancy/Skills Gap	Recruitment (RP)	Shareholder Approval
Planning	Chair/Company Secretary initiates contact with Treasury and Recruitment Partner (RP) seeking reappointment or recruitment action, including skillset required for role, **(minimum six months prior to expiry of term unless resulting from resignation of Director)**. Treasury provides early visibility to Treasurer's Office of upcoming vacancies and timing.	RP provides long list to Chair and Treasury ahead of shortlisting meeting. Chair, Treasury and RP agree preferred candidates to shortlist for Shareholder consideration. Proposed shortlisted candidates are notified and asked for their interest in the Board.	Treasury submits briefing to Treasurer for approval of candidates to interview. Treasurer's Office facilitates consultation with other Shareholder and Portfolio Ministers. Treasurer confirms approved candidates to interview.

	Recruitment Selection Process		
Selection	Treasury confirms BCAC timing and interview structure in consultation with Chair.	Interviews conducted and BCAC determines the **preferred** candidate, **suitable but not preferred** and **not suitable** candidates. Full BCAC conducted for all vacancies with the exception of unforeseen resignations in critical Director roles (e.g. ARC role) or if vacancy creates risk of not having a quorum. Candidates deemed suitable will be talent pooled for two years from date of assessment, with pool available to fill vacancies arising from unforeseen resignations. Option available for Shareholding Ministers to approve short-term (up to 12 months) extension of current Director(s) where delays experienced in reappointment/recruitment process. <table><tr><td colspan=2 align=center>**Panel Composition**</td></tr><tr><td align=center>**Chair Vacancy**</td><td align=center>**Director Vacancy**</td></tr><tr><td>Deputy Secretary Treasury (to Chair interview) Deputy Secretary, DPC RP, Independent Member *Also consider:* Chair of another SOC (or similar) or senior representative from Portfolio Minister's department</td><td>Chair of Business (to Chair interview) Deputy Secretary or Executive Director, Treasury RP, Independent Member</td></tr><tr><td colspan=2 align=center>**Treasury provide secretariat services**</td></tr></table>	RP contacts not-suitable candidates and suitable-but-not-preferred candidates to advise them of the outcome of the selection process. Treasury requests probity checks to be completed by Company Secretary for the preferred candidate. Business engage the approved service provider to undertake the probity checks. Chair offers preferred candidate the opportunity for further due diligence post BCAC. Candidate confirms (or otherwise) that they will accept the role if approved by Shareholders.

	Appointment Submitted	Ministerial/Cabinet Approval	Candidate Care
Approval	Appointment paperwork submitted by Treasury reflecting appointment commencement dates to be future dated several weeks after the approval date. OR the earliest date of appointment being 'on and from the Instrument of Appointment, if later' (or 'from the date of Governor approval, for Board Appointments requiring Governor approval). Treasurer provided with the opportunity to meet with the preferred candidate for Chair vacancies prior to the submission of appointment paperwork.	Voting Shareholders timeframes of approval (suggested): • 10 working days for Voting Shareholders (five for each Shareholder). • Following Thursday - Lodged with Cabinet Secretariat. • 10 working days from lodgement to Cabinet Consideration. • Following Wednesday – For Executive Council approval (if required).	Once approved by Cabinet, Treasury notifies Treasurer's Office to proceed with signing of Instrument of Appointment documents to be signed (Or Executive Council Minute, if relevant). Chair advises successful candidate. Treasury EMS issues formal appointment letters to successful candidate, Chair and Company Secretary. Treasury provides induction pack to successful candidate and seeks feedback on recruitment process for ongoing process improvement.

Appendix 2 - Practice Guide for New Board Appointments

Stage 1 – Planning		
	Action	**Responsibility**
1	Treasury ensures Chair/Company Secretary has up-to-date guidelines on process/timeframes for new board appointments.	Treasury
2	Chair/Company Secretary of business initiates contact with RP and Treasury seeking recruitment action`	Business
3	Treasury consults with the Chair to brief RP on skills requirements. (Note: the business is responsible for paying for the RP services).	Treasury/Business
4	Treasury provides early visibility to Treasurer's Office and Treasury Cabinet Unit of recruitment process and timing at fortnightly meeting.	Treasury
5	Treasury requests potential candidate names from Shareholding and Portfolio Ministers to include in RP long list process.	Treasury
6	RP prepares a longlist of suitable candidates based on identified skills gap and provides to the Chair and Treasury	Recruitment Partner
7	Chair, RP and Treasury hold a meeting to discuss longlist, and shortlist candidates for consideration by Shareholding Ministers	Business
8	Treasury provides RP with an overview to be provided to the shortlisted candidates regarding the vacancy, outlining Board composition, remuneration, annual meeting schedule, vacancy skillset, etc. (Note: This document could be provided earlier in the process).	Treasury
9	RP contacts candidates to determine their interest in the vacancy and shortlist updated.	Recruitment Partner
10	Treasury submits a brief to the Treasurer noting shortlist of candidates, and requesting Shareholder approval to invite candidates (and any additional nominees) for interview. The Treasurer's Office will continue to consult with the other Shareholder and Portfolio Ministers as appropriate. Note: briefing to include future indicative approval dates for appointment briefing. Treasury advise Chair and RP of briefing.	Treasury/Treasurer's Office

Stage 2 – Recruitment		
	Action	**Responsibility**
11	Placeholder for Board Candidate Assessment Committee (BCAC) panel set in five weeks' time from when the initial briefing is submitted to the Shareholder. BCAC panel representatives: <table><tr><td colspan="2" align="center">**Panel Composition**</td></tr><tr><td>**Chair Vacancy**</td><td>**Director Vacancy**</td></tr><tr><td>Deputy Secretary Treasury (to Chair interview) Deputy Secretary, DPC RP, Independent Member *Also consider:* Chair of another SOC (or similar) or senior representative from Portfolio Minister's department</td><td>Chair of Business (to Chair interview) Deputy Secretary or Executive Director, Treasury RP, Independent Member</td></tr><tr><td colspan="2" align="center">**Treasury provide secretariat support**</td></tr></table>	Treasury
12	Treasury provides Chair and RP with fortnightly status update. (Note: current matters discussed at fortnightly Treasurer's Office meeting).	Treasury
13	Treasurer approves candidates for interview. Treasury advises Chair and RP of the approved shortlisted candidates.	Treasurer/Treasury
14	RP contacts candidates to advise they have been shortlisted and provide details of the up-coming interview process.	Recruitment Partner
15	Treasury confirms BCAC panel, timing, interview structure and questions in consultation with the Chair.	Treasury
16	Treasury organises interviews for approved candidates and circulates agenda/CVs to the BCAC panel.	Treasury
17	Interviews are conducted for the BCAC panel to determine suitability of candidates (Note: see below for classification of assessment categories).[1] Treasury secretariat prepares BCAC report identifying the preferred candidate and those deemed otherwise suitable but not preferred and not suitable.	Treasury
18	RP notifies suitable but not preferred and not suitable candidates of the panel's recommendations pending 'Voting Shareholder approval'. The Chair contacts the preferred candidate to advise of the panel's recommendation pending 'Voting Shareholder approval'.	Recruitment Partner/Business
19	Treasury requests probity checks for preferred candidate to be undertaken (Note: Business to engage with pre-approved service provider to complete probity checks).	Business or Recruitment Partner
20	The preferred candidate may be invited by the Chair to complete further due diligence (e.g. meeting with the Chair and/or other Directors/Business Senior Executives). Due diligence to be completed prior to the Cabinet date to avoid Cabinet approving candidate who may subsequently decline.	Business

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[1] ***NB: Step 17 BCAC suitability candidate classifications***

For further clarification of assessment of candidates, the interview panel will use the following five categories to assess each candidate. Noting that only the first three categories may be talent pooled.
1) Suitable and preferred candidate for the role;
2) Suitable and alternative candidate for the role;
3) Suitable for another Board role but not the present vacancy the interviewed for;
4) Limited experience, may be suitable if Chair has capacity to mentor them; and
5) Not suitable.

Stage 3 - Approval		
	Action	**Responsibility**
21	Note: Treasury to facilitate legal review via workflow for appointments that require Executive Council approval.	Treasury
22	Treasury submits appointment paperwork to the Shareholding Ministers. Appointment paperwork submitted by Treasury reflecting the commencement dates to be future dated several weeks after the approval date OR the earliest date being 'on and from the Instrument of Appointment, if later'. See the below proposed timeframes for approval of appointments: ▪ 10 working days for Voting Shareholders (five for each Shareholding Minister). ▪ Following Thursday - Lodged with Cabinet Secretariat. ▪ 10 working days from lodgement to Cabinet consideration. ▪ Following Wednesday - to Executive Council for approval (if required).	Treasury and Voting Shareholders
23	Treasury notifies Treasurer's Office the outcome of probity checks.	Treasury
24	Treasury notifies Chair and RP when appointment paperwork has been submitted and indicative approval dates.	Treasury
25	Treasury liaises with Treasury Cabinet Unit on progress of submission of appointment and provides weekly status of briefing approval to Chair and RP. Note: The Treasurer may request to meet with the preferred candidate for Chair vacancies. Chair provides updates to the preferred candidate.	Treasury/Business
26	Treasury provides notification to Chair/Company Secretary and RP when appointment is approved by Cabinet and formal DPC notification is received. (Note: this may be up to one week after the approved Cabinet date).	Treasury
27	Chair contacts the successful candidate to advise them of approved appointment and formally offer position. Chair confirms candidate accepts offer of Directorship. (Note: if candidate declines, Chair and Treasury discuss alternative arrangements).	Business
28	Treasury advises DLO and Treasury Cabinet Unit of candidate accepting position and the Treasurer's Office proceed to have the Instrument of Appointment and letters signed. (Note: for Board Appointments requiring Cabinet approval, the earliest date for commencement is from signing of the Instrument of Appointment and this will not occur until notified the candidate has accepted the position. For Board Appointments requiring Governor approval, the earliest date for commencement is from the signing of the Executive Council minute).	Treasury
29	Treasury advises Chair that approvals have been obtained including commencement date, and Chair advises incoming Director.	Treasury/Business
30	Treasury EMS issues formal written notification to the successful candidate, Chair and Company Secretary.	Treasury EMS
31	Chair/Company Secretary facilitates induction of incoming director.	Business
32	Treasury updates Board Appointment statistics and other relevant documents for the new appointment.	Treasury

Appendix 3 - Practice Guide for Board Re-appointments

Stage 1 – Planning		
	Action	**Responsibility**
1	Treasury ensures Chair/Company Secretary has guidelines on process/timeframes for new board appointments.	Treasury
2	Chair/Company Secretary of business advises, in writing to the Shareholding Ministers, that they are seeking endorsement to re-appoint. (Note: this should be a minimum of six months prior to term expiry).	Business
3	Treasury provides early visibility to Treasurer's Office and Treasury Cabinet Unit of timing of upcoming re-appointment at fortnightly meetings.	Treasury

Stage 2 - Approval		
	Action	**Responsibility**
4	Treasury submits appointment paperwork. (Note: If the term's expiry occur before approval is received, the re-appointment commencement dates are to be the earliest from the date of signing the Instrument of Appointment. For Board Appointments requiring Governor approval, the earliest date is from signing of the Executive Council minute. Treasury to facilitate legal review via workflow for re-appointments that require Executive Council approval. Following timeframes proposed for approval of appointments: ▪ 10 working days for Voting Shareholders (five for each Shareholder). ▪ Following Thursday - Lodged with Cabinet Secretariat. ▪ 10 working days from lodgement to Cabinet Consideration. ▪ Following Wednesday – For Executive Council approval (if required).	Treasury and Voting Shareholders
5	Treasury notifies Chair when re-appointment has been submitted and indicative approval dates.	Treasury
6	Treasury liaises with Treasury Cabinet Unit on progress of submission of re-appointment and provide weekly status of briefing approval to Chair.	Treasury
7	Treasury provides email notification to Chair/Company Secretary and RP when re-appointment is approved and formal DPC notification is received.	Treasury
8	Chair contacts the successful candidate directly to advise them of their successful re-appointment.	Business Chair
9	Treasury EMS issues formal written notification of the formal letter to the successful candidate, Chair and Company Secretary.	Treasury EMS
10	Treasury updates Board Appointment statistics and other relevant documents for re-appointment.	Treasury

Appendix 4 - Probity Checks

The following mandatory probity checks are to be carried out by the business for the recommended candidate prior to appointment.

- National Police checks
- ASIC Banned & Disqualified
- ASIC Enforceable Undertakings register search
- Australian Financial Security Authority National Personal Insolvency Index
- Media check

The outcome of the checks should be provided to NSW Treasury. Should you need assistance, contact Commercial Assets for further details.

4. Further information and contacts

For further Information or clarification on issues raised in the discussion paper, please contact:

Email: commercialpolicy@treasury.nsw.gov.au