

Guidelines for Tasmanian Government Businesses

Appointing the CEO as a Member of the Board

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Guidelines for Appointing the CEO as a Member of the Board

Introduction

The case for appointing the chief executive officer (CEO) as a member of the board will be considered by the Treasurer and Portfolio Minister (the Shareholder Ministers) as with any other director appointment. Generally it will arise from particular or specific skills, knowledge and expertise that can be brought to the board as an individual and not simply in the capacity of CEO.

Other circumstances that may warrant the appointment of the CEO as a director include instances where there is a high level and frequency of interaction that needs to occur between the CEO and the board, or where increased accountability of the CEO is required.

It should be noted that while the CEO of a State-owned Company (SOC) is appointed by the board, the *Government Business Enterprises Act 1995* (GBE Act) prescribes that the Premier, on the recommendation of the Portfolio Minister, may appoint a person, other than the chair, as CEO of a Government Business Enterprise (GBE) that is not an Agency.¹ The GBE Act further prescribes a person must not be recommended to the Premier for appointment as a CEO of a GBE unless that person has been nominated for recommendation by the Board.²

Before commencing the identification and appointment process for a new CEO, the board should consider if a CEO who will also serve on the board is in the best interest of the business. If so, the board should firstly seek in-principle approval of the Shareholder Ministers prior to instigating the recruitment process. This is critical, as the Shareholder Ministers are responsible for making the final selection/recommendation in relation to director appointments and final recommendation in relation to the appointment of CEOs for a majority of GBEs.

The board should establish selection criteria, taking into consideration the matters discussed above, in particular the specific skills, knowledge and expertise the board will be seeking from potential applicants in their distinct roles of CEO and board member. Accordingly, the selection criteria should separately address the specific requirements of the CEO position and board membership.

The board should inform the Shareholder Ministers of its final selection, with both the CEO appointment and the appointment as a member of the board being progressed in accordance with any legislative requirements. It should be noted that such appointments will not be subject to the Director Selection Advisory Panel process.

If the board considers an existing CEO should be considered for appointment as a director, the board should make a recommendation to the Shareholder Ministers.

The process for appointment of a CEO as a director, for both new CEO appointments and for existing CEOs is illustrated in Attachment 1. Further information on the director appointment process can be found in the *Guidelines for Board Appointments*.

1 The GBE Act provides that the office of CEO of a GBE that is an Agency is taken to be an office created under section 29 of the *State Service Act 2000*. Port Arthur Historic Site Management Authority, Rivers and Water Supply Commission and The Public Trustee are all Agencies for the purpose of the GBE Act.

2 The GBE Act includes a provision to the effect that if the board fails to nominate a person, the Portfolio Minister may recommend a person who the Minister considers suitable but who has not been nominated by the board.

The following is intended as a guide, not a direction, to assist the board of a Government business with the process. However, where the board is of the view that the guideline, or part within, is inappropriate to its particular circumstances, it should, similar to the ASX Corporate Governance Council's "if not, why not" approach, disclose any departure in the businesses' Annual Report.

Guidelines

CEO as a Member of the Board

- (a) A CEO is not automatically eligible for appointment to the board.
- (b) The CEO should not be considered for appointment as a director unless it can be demonstrated that it is in the best interests of the business and the Shareholders, which may include, among other things:
 - the CEO having a range of skills, knowledge and experience considered necessary by the board; or
 - that the board, in order to make informed decisions, is reliant on the information provided by the CEO to the extent it is appropriate that the CEO should have the same level of accountability as directors.
- (c) When a CEO has been appointed to the board, the Shareholder Ministers expect the board to:
 - develop role statements for the positions of chair, director and CEO, which clearly define roles, responsibilities and levels of authority;
 - where conflicts of interest may arise, specify how it will manage such conflicts;
 - consider the benefits of non-executive directors conferring regularly at scheduled sessions without management present; and
 - demonstrate that adequate processes remain in place for the review and appraisal of management, particularly the CEO in this capacity; and
 - have clearly defined procedures for the board, or (with the approval of the chair) an individual director, to seek independent advice at the expense of the Government business.

New CEO as a Director

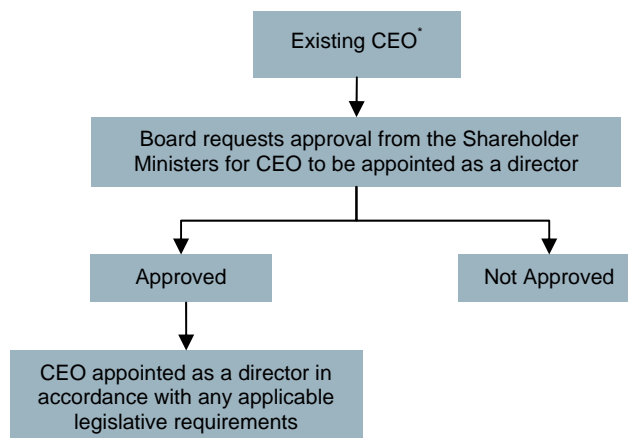
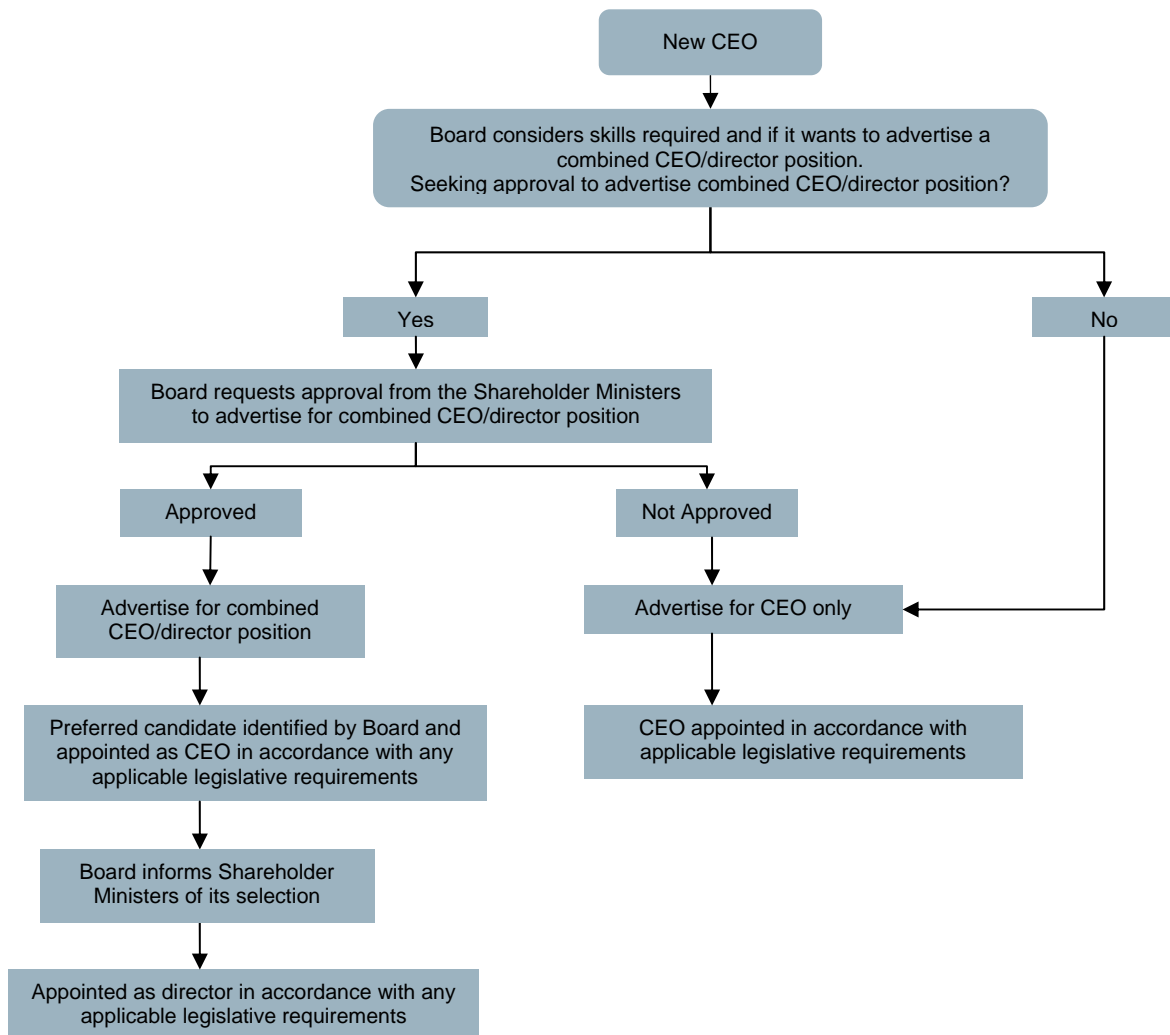
- (d) For new CEO appointments where the board is of the view that it would be in the best interest of the business for a CEO to also serve on the board, the board must obtain the approval of the Shareholder Ministers prior to commencing the identification and appointment process for the combined CEO and director position.
- (e) The selection criteria should separately address the specific requirements of the CEO position and board membership.
- (f) Subject to approval by the Shareholder Ministers, the board may commence the process of identifying a suitable candidate for the combined position of CEO and director.
- (g) The board should inform the Shareholder Ministers of its final selection, with both the CEO appointment and the appointment as a member of the board being progressed in accordance with any legislative requirements.

Existing CEO as a Director

- (h) If the board considers an existing CEO should be considered for appointment as a director, the board should make a recommendation to the Shareholder Ministers.

Attachment 1

GBE and SOC process for appointment of CEO as a Director



* Refers to an existing CEO not concurrently holding the position of director in the Government business.



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