

# Guidelines for Tasmanian Government Businesses

Board Appointments

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## Guidelines for Board Appointments

### 1. Introduction

Effective Boards of Directors enhance the performance of Government businesses. Government businesses are strengthened through the recruitment of individuals with the necessary knowledge and skills to oversee the operations of the businesses. An active approach to Board composition and renewal is required to ensure a balance of skills and experience that match the needs and direction of each Government business.

While ultimately the Government is responsible for Board appointments, the appointment process can be viewed as a partnership that requires open communication and cooperation among the key stakeholders. Throughout this process, both formal and informal consultation and communication will take place as and when required.

The purpose of these guidelines is to outline the director and chair selection and appointment processes, and to detail both the expectations of the Treasurer and Portfolio Minister (as the Shareholding Ministers) for Board appointments. Differences in the approach taken for director and chair appointment are highlighted. The role of the Board and the Government business, the Department of Treasury and Finance, the responsible Portfolio Department, the Director Selection Advisory Panel, and the executive search agent in the process are outlined in section 8.

Appendix I provides an outline of the steps for the appointment of chairs and directors.

### 2. Principles

It is important that the selection and appointment process is competency based, professional and transparent. The director selection and appointment process for Tasmanian Government businesses is to be undertaken in a manner consistent with the following principles:

- **Competency** – selection is based on skill sets that meet the needs of the Government business to enable the business to function efficiently and effectively in accordance with its objectives.
- **Stakeholder engagement** – the Government business is involved in the process to ensure that new appointees add value to the business.
- **Transparency** – the process is clear and understandable.
- **Consistency** – the selection and appointment process is applied consistently for all Board appointments.
- **Timeliness** – appointments are made and announced in a timely manner.
- **Diversity** – the process recognises the importance of diversity in Board membership and the need to maintain a constant and on-going pool of qualified candidates.

### 3. Importance of Board Renewal

Regular renewal of Board membership is important to ensure the ongoing independence of the directors and to provide fresh perspectives through the introduction of new directors. The *ASX Corporate Governance Principles and Recommendations* highlight that lengthy tenures may compromise the independence of directors, and that Boards should regularly assess whether directors remain independent. Section 9 addresses the issue of terms of appointment for directors, and provides clear guidance on the Government's expectation for limits on tenure for directors and chairs.

#### **4. Government Policy on Gender Equity**

The Government has made a commitment to addressing gender equity by releasing a five year plan to reach a target of 50 per cent representation by women on Government Boards and committees by July 2020. The Government's *Women on Boards Strategy 2015-20* also introduces a range of more proactive measures to promote use of the Tasmanian Women's Register and online promotion of Board vacancies.

All appointments (including reappointments) to Government Boards are to comply with the Government's *Women on Boards Strategy*. Any proposed appointments that create or continue a significant gender imbalance will need to include a Tasmanian Women's Register Certification Form with the Cabinet documentation.

#### **5. Application**

These guidelines apply to all Government Business Enterprises and State Owned Companies and are intended to assist the relevant parties in understanding their respective roles in the Board selection and appointment process. It is the Government's expectation that all Government business Board appointments will be made in accordance with these guidelines.

The case for appointing the chief executive officer (CEO) as a member of the Board is covered in the *Guidelines for Tasmanian Government Businesses - Appointing the CEO as a Member of the Board*.

#### **6. Selection and Appointment Process**

##### **6.1 Consideration of upcoming vacancies**

Prior to the commencement of the calendar year, the Secretary of the Department of Treasury and Finance together with the Secretary of the relevant Department representing the Portfolio Minister, will consider Board vacancies arising in the next twelve months and provide advice to the Shareholding Ministers on the recommended process to be followed for each appointment.

This may include reappointment of the incumbent (subject to a performance review) or implementation of a Director Selection Advisory Panel process.

The upcoming schedule of appointments each year, together with the recommended approach will be submitted to Cabinet for approval. Following Cabinet approval, Treasury will advise each business of the approved approach for each upcoming appointment.

##### **6.2 Responsibility for process**

Overseeing the selection and appointment process for directors is the responsibility of the Board, with executive support provided by the relevant Government business, including responsibility for the provision of support to the Director Selection Advisory Panels (from establishing the Panel through to the making of recommendations to the Shareholding Ministers). Each business should designate a primary point of contact in relation to director appointments.

The selection and appointment process for a chair is the responsibility of the Portfolio Department. The Department should designate a primary point of contact in relation to chairperson appointments.

##### **6.3 Establishing a Director Selection Advisory Panel**

Director Selection Advisory Panels are to be established by the Government business (in the case of director appointments) or the Portfolio Department (in the case of chair appointments) to identify potential candidates for upcoming vacancies and make recommendations to the Shareholding Ministers on suitable candidates.

Unless particular legislative provisions specify otherwise<sup>1</sup>, it is expected that each Panel will comprise:

- In the case of the appointment of a chair<sup>2</sup>:
  - the Secretary of the Portfolio Department (or delegate);
  - the Secretary of Treasury (or delegate); and
  - an independent member with either corporate governance/Board appointment expertise or industry experience relevant to the business.
- In the case of the appointment of a non-executive director:
  - the chair of the business;
  - at least one other director;
  - an independent member with either corporate governance/Board appointment expertise or industry experience relevant to the business; and
  - at the request of either Shareholding Minister, a Treasury or Portfolio Department representative.

The independent member is to be chosen from a list of approved persons nominated by the Shareholding Ministers. This list is available from the Shareholder Policy and Markets Branch of the Department of Treasury and Finance.

The Panel should seek input from incumbent Board members as appropriate throughout the process. This may include an opportunity for Board members to meet with candidates being considered.

## 7. Skills and Experience

The Government expects that the Board of each Government business will be comprised of directors who have a range of skills, experience, qualifications, expertise and vision appropriate to the business. Each business should develop a skills matrix. As a collective, the Board should have expertise in the following areas, as a minimum:

- relevant industry knowledge;
- corporate governance;
- finance and accounting;
- strategic planning; and
- an understanding of the Government context including the Government's objectives and risk appetite.

## 8. Roles and Responsibilities

The roles and responsibilities of relevant parties are outlined below. Specific steps and the responsible party for each step in relation to the selection and appointment of chairs and directors are outlined in Appendix I.

### 8.1 Role of the Board

Involvement of the Board helps to ensure that the selection and appointment process is transparent and that the Board is structured to add value.

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<sup>1</sup> The *Tasmanian Ports Corporation Act 2005* and the *Racing (Tasracing Pty Ltd) Act 2009* contain provisions relating to the appointment of Directors, including the composition of the selection panel.

<sup>2</sup> Unlike Government Business Enterprises, where the Chairperson is appointed for the same term of his/her appointment as a Director, the Chair of a SOC is reappointed at each Annual General Meeting. Generally, a Director Selection Advisory Panel will only be established to consider the role of Chair of a SOC at the end of his/her term as a Director.

The Board plays an important role in the process, helping to ensure that the recommended candidate is the right fit for both the Board and the Government business. This role includes:

- regularly reviewing how many director positions are required;
- regularly reviewing the performance of the Board and individual directors (refer to *Guidelines for Tasmanian Government Businesses - Assessing Board Performance*);
- specifying the role of directors, including the general attributes required of all directors by way of a role statement;
- regularly reviewing the environment in which the business operates and maintaining a skills assessment matrix to identify the skill set required and any skill gaps;
- establishing a Director Selection Advisory Panel for director vacancies, to identify preferred candidates and make recommendations to the Shareholding Ministers;
- identifying specific attributes required for an upcoming director vacancy for inclusion in the draft role statement to be considered by the Panel; and
- in the case of an upcoming chair position, identifying potential candidates which may include the incumbent and other current directors, for consideration by the Panel and providing feedback to the Panel on preferred candidates prior to it making a recommendation to the Shareholding Ministers.

The Board should consider establishing a nominations committee or similar to assist it in undertaking the responsibilities outlined in these Guidelines.

### **8.2 Role of the Director Selection Advisory Panel**

The role of the Panel is to identify the best candidate for the position, having regard for the needs of both the Board and the Government business. The Panel is to use one of the approved executive search agents.

Issues for the Panel to consider as part of the selection process include:

- an understanding of operating a business in the Government context, including the Government's objectives and risk appetite;
- commercial background and local knowledge;
- general governance experience and industry specific expertise;
- operating environment – the current and future challenges facing the business;
- specific knowledge and skills required of the director – as identified by the Board through its skills assessment matrix and role statement;
- independence – generally all directors should be independent;
- diversity – recognising that individuals from a broad range of differing backgrounds will provide a balance perspective;
- succession planning – in order to manage future and unanticipated retirements of directors from office and balance continuity with Board renewal;
- potential conflicts of interest – both real and perceived; and
- the right 'fit' – both for the business and the Board.

The Panel should consider candidates who have expressed an interest to be appointed, including the incumbent director if eligible for reappointment under the Guidelines and assessed by the Board as a suitable candidate for appointment for a further term.

The Panel will consider all identified potential candidates, interviewing where appropriate, and provide a shortlist of suitable candidates and a recommended candidate to the Shareholding Ministers for their consideration.

### **8.3 Role of the Government business**

Each Government business is to provide administrative support throughout the selection and appointment process for director positions, including establishing and providing executive support to the Board established Director Selection Advisory Panels. This includes preparation of relevant documentation, including Panel papers, Ministerial correspondence, and preparing written confirmation of director appointments to relevant parties. The Government business will liaise with the relevant contact at the Portfolio Department in regard to each appointment, including forwarding the final Panel Report and any supporting material to facilitate preparation of associated Ministerial and Cabinet documents by the Department.

### **8.4 Role of the Portfolio Department**

Each Portfolio Department will provide administrative support throughout the selection and appointment process for chair positions, including communicating with Government businesses regarding upcoming appointments, and establishing and providing executive support to Director Selection Advisory Panels for chair positions. This will include preparation of relevant documentation, including Panel papers, Ministerial correspondence, and preparing written confirmation of chair appointments to relevant parties. The Department will review and action documents prepared by Government businesses in relation to director appointments. The Department is responsible for submitting recommendations to Cabinet for both director and chair appointments.

### **8.5 Role of Treasury**

Treasury will submit to Cabinet for approval a schedule of upcoming appointments for each calendar year along with the recommended approach for each appointment. Subsequent Cabinet approval would be required for any deviations from the approved approach. Treasury will advise businesses and the Portfolio Departments of the approach approved by Cabinet for each appointment. It will also maintain associated guidelines, procedures, and templates; maintain a list of independent Panel members; and monitor Board appointments.

Treasury will administer the contracts with the executive search agents. Treasury will also arrange for payments to independent panel members and the executive search agent. Treasury will be invoiced for all costs and will subsequently seek reimbursement of costs from each business at the conclusion of each executive search process.

Treasury will maintain a centralised database of potential Board members. The database records expressions of interest from individuals who have responded to advertising calling for registrations of interest from individuals who wish to be considered for Government business Board vacancies. The database is available to the executive search agents to assist with any recruitment processes.

### **8.6 Role of the Executive Search Agents**

A list of approved suppliers has been appointed by Treasury to provide executive search advisory services. An executive search agent should be used for all appointment processes, other than where the reappointment of a first term director or chairperson is proposed. Government businesses can choose their preferred supplier from the approved list of suppliers.

The executive search agent will provide support to the Director Selection Advisory Panel, including presentation of a list of suitably qualified candidates for consideration, gathering of background information on potential candidates, and carrying out due diligence on any candidates that the Panel intends to recommend to the Shareholding Ministers.

Each supplier has set out a schedule of fixed fees for director and chair appointments. Any additional costs, such as advertising, travel and accommodation, must only be incurred with prior written agreement of the Director Selection Advisory Panel.

## **9. Appointment**

### **9.1 Appointment terms**

Directors are generally appointed for a term of three years, and may be reappointed at the expiry of that term, subject to their contribution having been satisfactory and their skills continuing to be relevant to the Board. The tenure of a non-executive director should not exceed two terms (six years) and for a chair, should not exceed three terms (nine years). Executive directors, (managing directors) are typically appointed to the Board for a term aligned to their tenure as Chief Executive Officer of the business. These timeframes are included to ensure an appropriate balance between continuity of experience and an injection of fresh perspectives to all boards.

In some circumstances directors may serve more than two terms and chairpersons may serve more than three terms, but only where a critical business need has been clearly demonstrated to the Shareholding Ministers and Cabinet has approved the approach.

Board appointments should be staggered where possible to achieve a balance between continuity of experience and renewal.

### **9.2 Reappointment**

While reappointment is not guaranteed, a director may be considered for reappointment if they are eligible and available at the expiry of their term. In this respect, directors should be made aware that their contribution and performance will be key factors taken into account when reappointment recommendations are made. In the case of non-executive directors, the chair must formally review the most recent performance evaluation for the individual. In the case of a chair, the most recent performance evaluation will be reviewed by the Portfolio Department. Any recommendation for reappointment should only be made on the basis of satisfactory performance by the individual Board member, including a critical assessment of the ongoing needs of the Board in relation to knowledge, skills and experience.

## **10. Due Diligence**

Candidates will be subject to the following steps as part of a due diligence process:

- completion of a Declaration of Interests statement, to confirm a candidate's interest in the position;
- consideration as to whether they have a real or perceived conflict of interest with the position they are being invited to fill. Any conflicts of interest should be recorded in the Declaration of Interests statement; and
- probity checks:
  - Australian Securities and Investment Commission (ASIC); and
  - Insolvency Trustee Services Australia (ISTA) checks.

## **11. Other Matters**

### **11.1 Size of Board**

The number of members on a Board should be the minimum number that can effectively carry out the mandate of the Government business, subject to any legal requirements in relation to the size of the Board.

### ***11.2 Remuneration***

Remuneration is to be in accordance with the *Government Board and Committee Remuneration Framework*.

### ***11.3 Legislation***

If there is a conflict between governing legislation of the business and these guidelines, the governing legislation prevails.

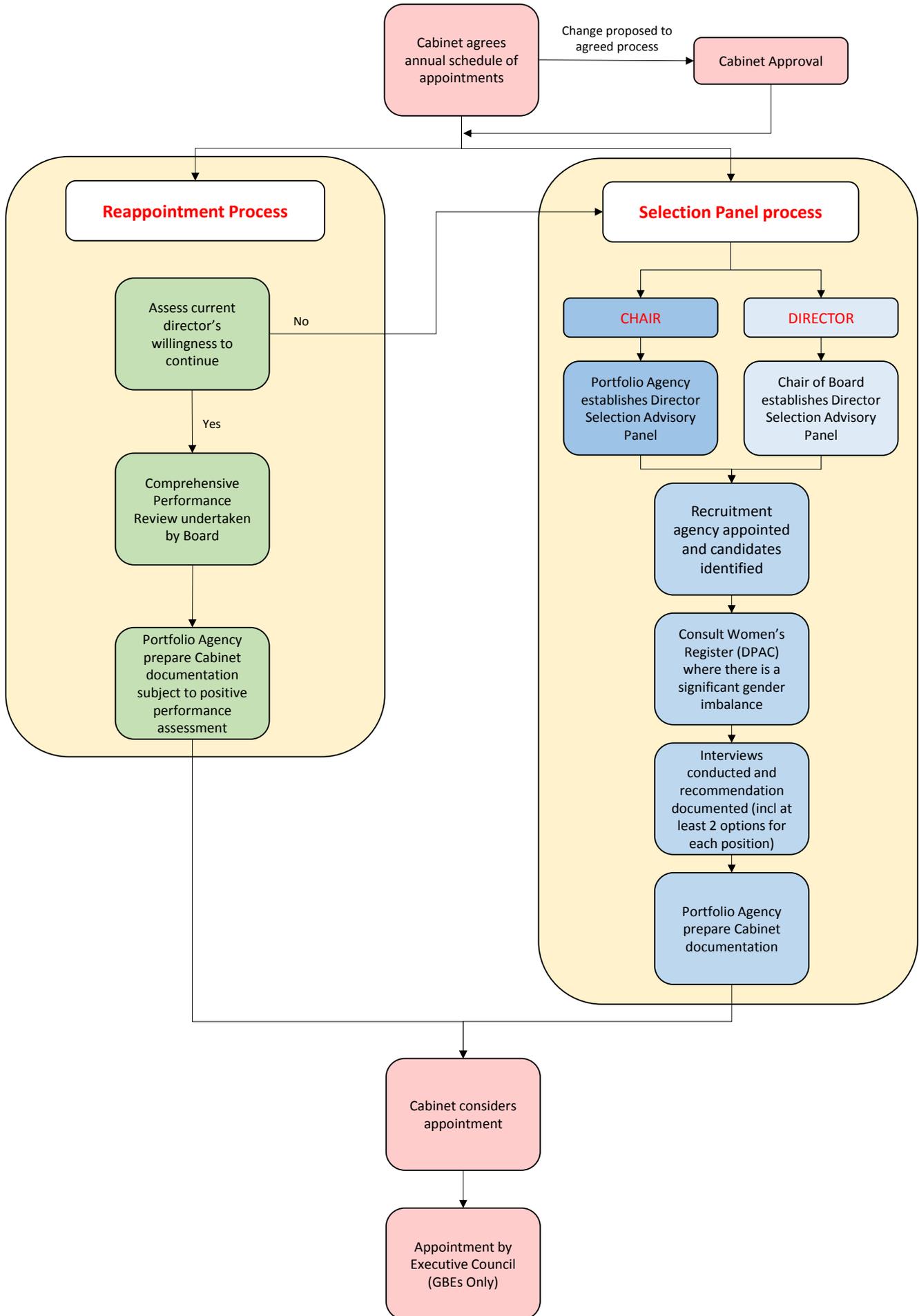
### ***11.4 Boards Database***

Portfolio Departments are responsible for updating the Department of Premier and Cabinet's Boards database. In addition, Departments are to advise Treasury of any changes to Board information (e.g. changes to Board membership, remuneration).

### ***11.5 Time Line***

It is expected that appointments will be completed no later than 30 days prior to the effective appointment date.

Appendix I – Outline of Board Appointment Process





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