

# Policy and Guidelines: Board Appointments for State Owned Corporations and Other Commercial Government Businesses

TPG23-06

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# Acknowledgement of Country

The NSW Treasury acknowledges that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history.

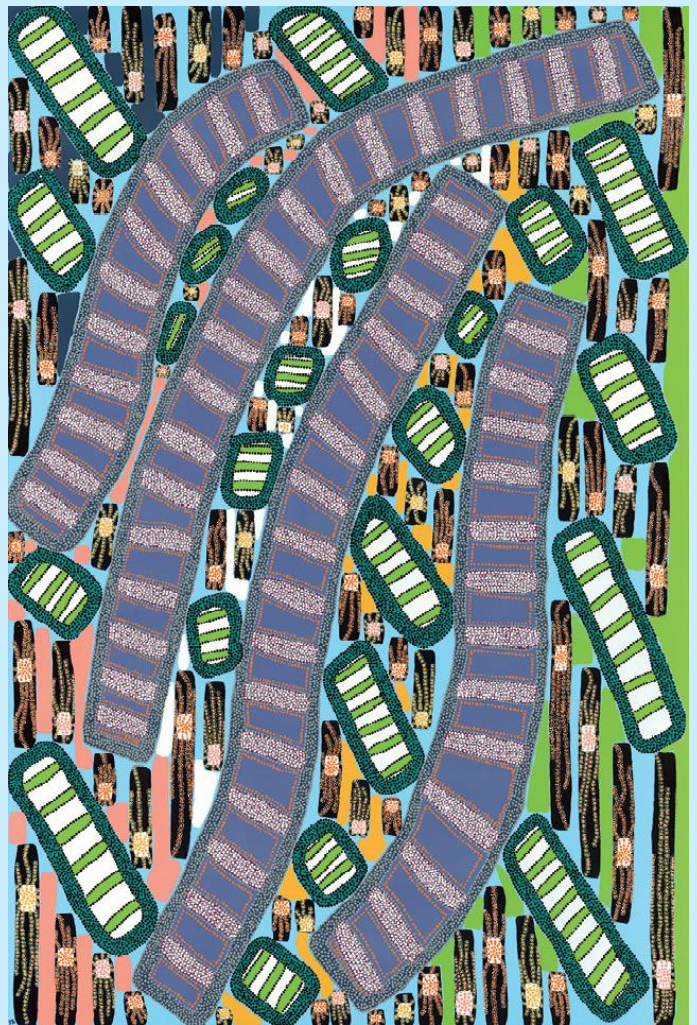
We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to Country and acknowledge their continuing custodianship of the land, seas, and sky.

We acknowledge the ongoing stewardship of Aboriginal and Torres Strait Islander peoples, and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families, and communities, towards improved economic, social and cultural outcomes.

Artwork: 'Regeneration' by Josie Rose



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Version 1.0	February 2023	Commercial Assets	Secretary	The updated policy reflects current practices, clarifies roles and responsibilities, and introduces process improvements.
Version 1.1	September 2023	Commercial Assets	Executive Director	Practice Guide 2 amended to simplify the re-appointment process.
Version 1.2	July 2024	Commercial Assets	Executive Director	Practice Guide 1,2 and 3 amended to clarify the board skill matrix process and documentation of the shortlisting process.

# Board Appointment Policy for State Owned Corporations and Other Commercial Government Businesses

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## Purpose

This policy outlines the board appointment process for State Owned Corporations (SOCs) and other commercial government businesses including Public Financial Corporations (PFCs).

The policy seeks to:

- reflect NSW Government policy and current practice in board governance
  - provide transparency, consistency and candidate care in the merit-based selection of board chairs and directors.
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## Overview

SOC and commercial governing boards perform important governance and advisory functions for government businesses. Government should exercise diligence in appointing chairs and directors with the right skills, experience and knowledge for the functions they will perform.

The policy accords with the *Public Service Commissioner's Appointment Standards for Boards and Committees in the NSW Public Sector* (Appointment Standards). The Appointment Standards are largely principles-based. They provide the appointing Minister<sup>1</sup> with guidance on determining the characteristics of appointees and outline the essential elements of the assessment process, which is fair, transparent and documented.

The board appointment process outlined in this policy follows the *NSW Government Boards and Committees Guidelines*<sup>2</sup> (Guidelines) process for appointment of directors and the Cabinet consideration of appointments.

This policy supplements the Appointment Standards and the Guidelines, providing additional guidance to ensure an effective and consistent board appointment process in the context of SOC and commercial governing boards.

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<sup>1</sup> Reference to 'appointing Minister' is also taken to mean 'appointing Ministers' where more than one Minister is responsible for director appointment.

<sup>2</sup> M2013-06 NSW Government Boards and Committees Guidelines (updated September 2015).

## Application

This policy applies to SOCs and other commercial businesses with governing boards where the Treasurer is an appointing Minister and/or where a Minister has asked Treasury to manage their appointments (i.e. Minister for Finance). The applicable businesses, at the time of publication, are included in **Appendix 1** (Applicable Businesses).

This policy does not apply to:

- an ex-officio position on a board (such as the chief executive officer or departmental Secretary) where the legislative provisions state that officer is to be a director of the board, or
- appointments made by the appointing Minister on recommendation of an independent body or organisation as required under legislation (i.e. employee representatives).

This policy applies to new board appointment and re-appointment processes commencing from the date the policy is published.

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## Related legal obligations

The power of Ministers to appoint directors to the board of a SOC or other commercial government business is specified in its enabling legislation.

The business' enabling legislation typically establishes the board and will specify how a director is to be appointed to the board.

For SOCs, section 20J of the State Owned Corporations Act 1989 (SOC Act) provides that there is to be a board of directors. Further requirements for the constitution and procedure of boards are set out in Schedule 8 of the SOC Act. An individual SOC's process for appointment may vary from the SOC Act where its enabling legislation provides otherwise.

See **Appendix 2** for director appointment legislative provisions across Applicable Businesses.

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## Summary of Requirements

### Mandatory

Board appointments for Applicable Businesses must comply with the following requirements:

1. Tenure for board directors will be two terms of three years each, unless otherwise recommended.
2. A board skills matrix covering all directors must be provided to Treasury at the planning phase of the recruitment process.
3. The appointment process must have regard to any gender or other diversity targets established by the Government.
4. The appointing Minister must approve the strategy and approach for candidate identification.
5. The appointing Minister must approve the Board Candidate Assessment Committee before the panel is convened.
6. Probity checks must be completed by the business before Cabinet consideration of the Minister's proposed appointee, with written confirmation to Treasury of the outcome.

# 1. Board appointments process

This policy outlines both policy expectations and governance aspects of the board appointment process managed by Treasury for the appointing Minister.

Details of the specific process steps and the responsibilities of the parties involved is outlined in:

- **Practice Guide 1: New director appointments**
- **Practice Guide 2: Chair/Director re-appointments**
- **Practice Guide 3: Chair appointments.**

The practice guides provide step-by-step guidance to ensure a consistent and timely approach to board appointments. The process is structured around the three phases of the board appointment process:



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## 2. Policy expectations

These policy expectations give clarity on best practice corporate governance that contributes to high performing boards and provides assurance to the appointing Minister that the board is best placed to govern the business.

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### 2.1 Board tenure

#### Mandatory

1. Tenure for board directors will be two terms of three years each, unless otherwise recommended.

#### Guidance

A director's tenure will generally be for two terms of three years each. This allows for periodic refresh to bring in new directors with different ideas and perspective, contributes to improved outcomes in the board's oversight of the business and limits 'group thinking' which could constrain the effective decision making of the board.

There may be circumstances where one or more additional terms or a longer appointment term is appropriate. For any re-appointments beyond two terms, the advice to the appointing Minister should include justification as to why this is recommended.

Situations where a third term or a longer appointment term may be considered include where:

- a director transitions into the role of Chair
- it would provide stability or maintain continuity during a period of board refresh, or
- the director's expertise is specifically required to support the business.

The Chair and/or board nomination committee should provide Treasury with advice to such support consideration.



### Short term extension

A sitting director may have their appointment term extended by a period of under 12 months on a onetime basis where there is an identified need, such as a recruitment delay or transition plan. A re-appointment extension of under 12 months may be approved by the appointing Minister, without seeking Cabinet endorsement in certain circumstances<sup>3</sup>.

Where applicable, Treasury will initiate this approval process following consultation with the Chair and appointing Minister.

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## 2.2 Board skills matrix

### Mandatory

2. A board skills matrix covering all directors must be provided to Treasury at the planning phase of the recruitment process.

### Guidance

To ensure the board's composition has the right skills, experience and knowledge mix, the Chair should develop and maintain a board skills matrix. The board skills matrix is used to:

- identify the desired skills and experience of the board as a whole
- ensure the board composition takes account of the board strategy or key issues facing the organisation
- show under relevant headings how these maps against each sitting director
- provide the basis for the Chair's and/or the board's Nomination Committee's recommendations of skills required for any upcoming appointments
- support Treasury advice to the appointing Minister.

Disclosure of an individualised skills matrix for all board directors provides the appointing Minister with confidence that the board has the required skills mix.

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## 2.3 Board diversity

### Mandatory

3. The appointment process must have regard to any gender or other diversity targets established by Government.

### Guidance

Appointments to NSW Government boards must reflect the diversity of the NSW community as a whole to the extent reasonable. Particular attention should be given to the representation of women. Opportunities to appoint people from diverse backgrounds should also be actively explored.

The gender diversity targets set by the Treasurer for SOC and PFC boards are:

- no less than 40 per cent of board director positions filled by women on each SOC and PFC board
- overall, 50 per cent of all SOC and PFC board director positions combined, filled by women.

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<sup>3</sup> NSW Government Boards and Committees Guidelines, section 5.1.

These targets must be considered and addressed during the planning, selection and approval phases of the board appointment process. A gender diversity strategy is to be included in brief to the appointing Minister seeking approval for action to be taken to fill the board vacancy or re-appointment.

There may be a period on any board where targets are not met for a short period of time. The gender diversity strategy provided to the appointing Minister must address how and when the targets will be met.

Treasury publishes gender diversity statistics for SOC and PFC boards on its website.

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## 3. Key governance elements

The following provides guidance on how Treasury manages important governance elements that support merit-based selection, transparency and documentation of the board appointment process.

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### 3.1 Candidate identification and advertising

#### Mandatory

4. The appointing Minister must approve the strategy and approach for candidate identification.

#### Guidance

Treasury will seek the appointing Minister's approval for the strategy and approach to filling upcoming board vacancies before recruitment commences.

The process to identify potential candidates for board vacancies should be fit-for-purpose and targeted to reach suitability qualified candidates, particularly where specialised expertise or knowledge is required. This includes using a recruitment partner, advertising and seeking nominations from involved parties (e.g. Business Nominations Sub-Committee or appointing Ministers).

The recruitment partner's expertise and broader exposure to the marketplace is critical in sourcing and assessing potential director candidates for boards of Applicable Businesses.

Board vacancies will be advertised through one or more channels, with consideration given to the effectiveness, appropriateness and reach of the selected channel.

Treasury will advise the appointing Minister of the proposed approaches when seeking approval for action to be taken to fill the board vacancy.

#### Recruitment alternative when an unforeseen vacancy occurs

From time to time an unforeseen board vacancy may arise with limited ability to undertake a full recruitment process in accordance with the practice guides due to urgency or other exigent circumstances (for example, due to the resignation of a director).

Treasury, in consultation with the Chair, may recommend to the appointing Minister that a selection of candidates to interview be identified from suitable candidates assessed by recent Board Candidate Assessment Committees (BCACs) (see section 3.2).

In this situation, Treasury with the Chair, may interview candidates who were previously assessed by a BCAC for a recent board vacancy where the candidate was identified as:

- suitable for the position but not the preferred, or
- suitable for another board role but not the present vacancy interviewed for.

Treasury will then convene a BCAC to interview the candidates in accordance with section 3.2.

## 3.2 Board Candidate Assessment Committee

### Mandatory

5. The appointing Minister must approve the Board Candidate Assessment Committee before the panel is convened.

### Guidance

As part of the brief approving the strategy for candidate identification (see section 3.1 above and Practice Guides 1 and 3), for all new appointments the appointing Minister will be asked to approve convening a Board Candidate Assessment Committee (BCAC). The BCAC is responsible for the merit-based assessment of potential candidates.

In accordance with the Appointment Standards, this assessment panel must include at least one person with relevant subject matter knowledge, comprise both men and women, and be approved by the appointing Ministers before the BCAC is convened. The subject matter expert will typically be the Treasury Deputy Secretary with responsibility for SOCs and PFCs (in the case of a Chair appointment) and the Chair of the business (in the case of a director) but may also include an external subject matter expert.

### Composition of the BCAC

The BCAC composition for business Chair vacancies consists of:

- Deputy Secretary (or delegate), Treasury [chairs the BCAC]
- Deputy Secretary (or delegate), Premier's Department OR The Cabinet Office [member]
- Treasury or Premier's Department OR The Cabinet Office senior executive level officer [member]
- Outgoing Chair of Business, or nominated director of the Business [optional, subject to appointing Minister approval] [member]
- Recruitment Partner [observer].

The BCAC composition for business director vacancies consists of:

- Executive Director (or delegate), Treasury [chairs the BCAC]
- Chair of Business, or in the absence of, a nominated director of the Business [member]
- Treasury or Premier's Department OR The Cabinet Office senior executive level officer [member]
- Recruitment Partner [observer].

Treasury provides secretariat support to the BCAC.

Where individual members of the BCAC have not yet been identified at the time of submission of the brief to the appointing Minister, it will identify the position of the proposed panel member (e.g. a senior executive level officer from Treasury).

### Role of the BCAC

The BCAC conducts interviews of shortlisted candidates.

The BCAC's written report summarises the suitability of candidates for the respective board, considering the skills and experience sought for a particular role. The BCAC will identify candidates as either:

- the preferred candidate(s)
- suitable for the position but not the preferred candidate(s)
- suitable for another board role but not the present vacancy interviewed for, or
- not suitable.

The BCAC report is prepared by Treasury for BCAC endorsement and provided to the appointing Minister for their consideration.

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### 3.3 Candidate background checks

#### Mandatory

6. Probity checks must be completed by the business before Cabinet consideration of the Minister's proposed appointee, with written confirmation to Treasury of the outcome.

#### Guidance

It is imperative that directors appointed to the board of government businesses are of good character. Ensuring probity checks are undertaken prior to the appointment of the candidate reduces this reputational risk.

Probity checks must be completed for:

- new appointments, after the appointing Minister approves the proposed candidate(s) to be considered by Cabinet and before Cabinet consideration of the preferred candidate
- re-appointments, before Cabinet consideration to re-appoint the candidate.

Probity checks are undertaken and paid for by the business in consultation with Treasury. The business must provide written confirmation to Treasury of the outcome of the probity checks.

If probity checks identify issues requiring management or further consideration, those issues will be raised with Treasury in the first instance to determine the appropriate response, including any advice that should be provided to the appointing Minister.

If the issues cannot be resolved Treasury will, in consultation with the Chair, provide advice to the appointing Minister on the recommended next steps, including, if necessary not proceeding with a proposed appointment.

The agreed set of probity checks for potential board directors are set out in **Practice Guide 4**. Treasury may update these requirements from time to time to reflect current best practice.

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### 3.4 Candidate care

#### Guidance

Treasury's aim is to ensure a high-quality experience for all board candidates to provide a positive experience with Treasury and the NSW Government more broadly. This is important for both attracting the best candidates and for the reputation of the NSW Government. This requires coordinated and clear engagement with candidates from the point of initial approach, through to appointment.

Treasury's recruitment partner is critical to candidate care as they act as the primary conduit between Treasury, the business and candidates throughout the board appointment process.

Treasury supports the recruitment partner by providing clear guidance on what can be communicated to candidates at various stages of the process.

Where there is an intention to seek re-appointment of a director, Treasury acts as the primary conduit with the business on behalf of the director throughout the re-appointment process.

### 3.5 Board director information disclosure

#### Guidance

Director appointments to NSW Government boards are matter of public interest. Applicable Businesses should ensure that they include information about their board and directors on their website. This provides transparency to the public on the skills and expertise that directors bring to the board and the term of their appointment.

The following information should be made public:

- name and position on board (i.e. chair or non-executive director)
- qualifications and experience (summary)
- current appointment term: start and expiry date
- initial appointment: start date.

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### 3.6 Recruitment partner appointment

#### Guidance

As noted above, external, expert support to the board appointment process provides significant value to the NSW Government. Engagement of a recruitment partner is consistent with public and private sector best practice and ensures access to the widest range of high-quality director candidates.

The recruitment partner is engaged by Treasury through a competitive tender process, consistent with NSW Government Procurement Policy Framework.

The recruitment partner's services are paid for by the Applicable Business for each new appointment.

## Definitions

Term	Definition
Applicable Businesses	The SOCs and other commercial businesses to which this policy applies, which are SOCs and commercial businesses with governing boards where the Treasurer is an appointing Minister and where a Minister has asked Treasury to manage their appointments (i.e. Minister for Finance).  Applicable Businesses at the time of publication are set out in Appendix 1
Appointing Minister	Minister(s) responsible for board appointments as specified in the relevant legislation for that board
Appointment Standards	Public Service Commissioner's Appointment Standards for Boards and Committees in the NSW Public Sector
BCAC	Board Candidate Assessment Committee
Business Chair/ Chair	The Chairperson of the SOC or other commercial business with a governing board
Guidelines	NSW Government Boards and Committees Guidelines (issued by TCO)
PFC	Public Financial Corporation
RP	Recruitment partner
SOC	State Owned Corporation
TCO	The Cabinet Office
Voting Shareholders	For SOCs these are the Treasurer and Minister for Finance

## Appendix 1: Applicable Businesses

As at the date of publication, this policy is applicable to the following SOCs and commercial businesses with governing boards where the Treasurer is an appointing Minister and where a Minister has asked Treasury to manage their appointments (i.e. the Minister for Finance).

State Owned Corporations:

- Essential Energy
- Forestry Corporation of NSW
- Hunter Water Corporation
- Landcom
- Port Authority of NSW
- Sydney Water Corporation
- Transport Asset Holding Entity of NSW
- WaterNSW

Public Financial Corporations:

- Insurance and Care NSW (icare)<sup>4</sup>
- NSW Treasury Corporation (TCorp)
- SAS Trustee Corporation (STC)<sup>5</sup>

Other government businesses:

- Electricity Retained Interest Corporation – Ausgrid
- Electricity Retained Interest Corporation – Endeavour Energy
- Generator Property Management Pty Ltd

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<sup>4</sup>Treasury manages appointments for the Minister for Work Health and Safety to the icare board.

<sup>5</sup>The STC board is comprised of nine board directors, five of which are appointed on nomination of the Treasurer as employer representatives and four of which are appointed by the Treasurer on nomination of Unions NSW. This policy applies in relation to board positions which are appointed on nomination of the Treasurer only.

## Appendix 2: Legislative provisions for Ministerial director appointments

SOC Board	Legislation	Directors <sup>6</sup>	Chair
Statutory SOCs	<i>State Owned Corporations Act 1989</i>	Governor appoints on the recommendation of Voting Shareholders <sup>7</sup> , not fewer than 3 and not more than 7 directors. The CEO may be appointed as a director.	Voting Shareholders appoint one of the directors as Chairperson.
Statutory SOC director appointments are as per the SOC Act (s20J) and Schedule 8 unless an individual SOC's enabling legislation provides otherwise, as detailed below.			
Essential Energy	<i>Energy Services Corporations Act 1995</i>	Voting Shareholders appoint directors, not more than 6.	Voting Shareholders appoint one of the directors as Chairperson.
Forestry Corporation of NSW	<i>Forestry Act 2012</i>	Voting Shareholders appoint no fewer than 3 and not more than 7 directors. The CEO may be appointed as a director.	Voting Shareholders appoint one of the directors as Chairperson.
Hunter Water Corporation	<i>Hunter Water Act 1991</i>	Voting Shareholders appoint 7 directors (not including the Chair).	Voting Shareholders appoint a Chairperson.
Landcom	<i>Landcom Corporation Act 2001</i>	Governor appoints on recommendation of the Voting Shareholders 7 directors. The CEO may be appointed as a director. Voting Shareholders are to consult with the portfolio Minister.	Voting Shareholders appoint one of the director as Chairperson.
Port Authority of NSW	<i>Ports and Maritime Administration Act 1995</i>	Voting Shareholders are to consult portfolio Minister on proposed recommendation to Governor to appoint directors under S20J SOC Act.	No specific provision so SOC Act applies.
Sydney Water Corporation	<i>Sydney Water Act 1994</i>	Voting Shareholders appoint 9 directors, who are to have expertise, to the intent includes directors with separate expertise in at least the following areas (i) business management, (ii) protection of the environment, (iii) public health. The portfolio Minister is to advertise publicly for nominations.	Voting Shareholders appoint a Chairperson.

<sup>6</sup> This table does not include ex-officio appointments as director on the board where this is specified in the enabling legislation.

<sup>7</sup> Voting Shareholders under the SOC Act are the Treasurer and Minister for Finance.



<b>SOC Board</b>	<b>Legislation</b>	<b>Directors</b>	<b>Chairperson</b>
Transport Asset Holding Entity	<i>Transport Administration Act 1988 Part 2 Transport Asset Holding Entity</i>	Voting Shareholders appoint no fewer than 3 and not more than 7 directors.	Voting Shareholders appoint one of the directors as Chairperson.
WaterNSW	<i>WaterNSW Act 2014</i>	Voting Shareholders appoint not fewer than 3, and not more than 8 directors. Voting Shareholders are to consult with the portfolio Minister.	No specific provision so SOC Act applies.
<b>Other Boards</b>	<b>Legislation</b>	<b>Directors</b>	<b>Chairperson</b>
TCorp	<i>Treasury Corporation Act 1983</i>	Treasurer appoints no fewer than 3 and not more than 7 directors.	Secretary of Treasury appoints Chairperson, after consulting the Treasurer.
icare	<i>State Insurance and Care Governance Act 2015 Part 2 Insurance and Care NSW</i>	Minister for Work Health and Safety appoints up to 8 directors, including one as an employee representative and one as employer representative.	Minister for Work Health and Safety appoints two of the directors as Chair and Deputy Chair, respectively.
SAS Trustee Corporation	<i>Superannuation Administration Act 1996</i>	Treasurer (as responsible Minister) appoints 4 employer representatives, one is to be appointed on the recommendation of the Treasurer.	Treasurer appoints Chairperson, having consulted with Unions NSW.
Electricity Retained Interest Corporations	<i>Electricity Retained Interest Corporations Act 2015</i>	Treasurer appoints board of governors (3).	The board is to appoint a Chairperson from among members to fill a vacancy in the office.
Generator Management Property Pty Ltd	<i>Corporations Act 2001 and Electricity Generator Assets (Authorised Transaction) Act 2012</i>	The Members (i.e. Treasurer) appoint directors via a special resolution in accordance with GPM's constitution.	The Members (i.e. Treasurer) appoint the Chairperson via a special resolution in accordance with GPM's constitution.

# Practice Guide 1: New Director Appointments

Stage 1 – Planning: New Director Appointment		
Action		Responsibility
1	Treasury reviews all upcoming vacancies within the next eight to twelve months on an ongoing basis.	Treasury
2	Treasury consults with the Chair to inform consideration of the proposed recruitment approach, and skill and experience requirements to fill upcoming vacancies with reference to the board skills matrix.	Treasury / Business
3	Treasury submits a brief to the appointing Minister seeking approval for the proposed strategy and approach to be taken to fill the board vacancy attaching the board skills matrix and agreement on the composition of the BCAC and candidate assessment criteria.	Treasury / appointing Minister
4	Treasury advises the Chair of the appointing Minister's approval for the recruitment strategy and approach, including composition of the BCAC.	Treasury
5	Treasury requests the Company Secretary to commence recruitment processes with the recruitment partner (RP).	Treasury / RP
6	Treasury, in consultation with the Chair, briefs the RP on skills and experience requirements and expected timelines for recruitment.	Treasury / Business / RP
7	Board vacancy is advertised.	Treasury / RP
8	RP prepares a longlist of suitable candidates based on the identified skills and experience necessary for the board. Longlist provided to Treasury, who then shares with BCAC members	Recruitment Partner
9	RP, Treasury and other BCAC members hold a meeting to discuss longlist of candidates and determine a shortlist of candidates to be interviewed by the BCAC. Meeting minutes are to be documented. Company Secretary may attend as observer.	Treasury / Business

Stage 2 – Recruitment: New Director Appointment		
Action		Responsibility
10	Treasury confirms timing, interview structure and questions in consultation with BCAC members.	Treasury
11	RP, with assistance from Treasury, organises interviews for shortlisted candidates, and circulates to the BCAC the agenda and candidate CVs.	Recruitment Partner
12	BCAC conducts interviews to determine suitability of candidates.	Treasury
13	Treasury secretariat prepares BCAC report and seeks endorsement from all BCAC members.	Treasury
14	Treasury submits the BCAC report to the appointing Minister. The appointing Minister provides approval for their proposed appointee(s) to be put forward for Cabinet consideration.	Treasury / appointing Minister

Stage 3 – Approval: New Director Appointment		
Action		Responsibility
15	For appointments requiring the Governor’s approval, Treasury requests TCO undertake legal review of Executive Council documents.	Treasury
16	Treasury submits to the appointing Minister Cabinet forms and appointment paperwork of the Ministers proposed appointee(s) approved for Cabinet consideration. Appointing Minister consults with the portfolio Minister as required by legislation or where desirable.	Treasury / appointing Minister
17	Treasury notifies the RP and the Chair when appointment paperwork has been submitted and indicative Cabinet meeting timing.	Treasury
18	Treasury requests probity checks for proposed appointee(s) be undertaken by the Business prior to Cabinet consideration. RP notifies the proposed appointee that probity checks will be undertaken by the Business. The Business undertakes and reports outcome of probity checks to Treasury.	Treasury / Business / RP
19	Treasury updates appointment paperwork including Cabinet forms to reflect the outcome of probity checks (if required) prior to Cabinet consideration of the proposed appointee.	Treasury
20	Appointment endorsed by Cabinet and written TCO notification is received. Treasury notifies the Chair/Company Secretary and RP.	Treasury
21	The Chair contacts the successful appointee to advise them of approved appointment and formally offer position. If requested by the candidate, there may be an opportunity to meet with a member of the board to aid their consideration of the offer to join the board. The Chair confirms to Treasury when candidate accepts offer of Directorship.  <i>Note: if the candidate declines, Treasury, in consultation with the outgoing Chair will discuss alternative arrangements.</i>	Business
22	Treasury issues written advice to the successful appointee(s), Chair and Company Secretary, along with a copy of the Instrument of Appointment.	Treasury
23	Chair/Company Secretary facilitates induction of incoming Director.	Business
24	Treasury updates board appointment statistics and other relevant documents to reflect the new appointment.	Treasury

Action: New Director Appointment <sup>8</sup> -indicative timings		Weeks 1-4	Weeks 5-8	Weeks 9-12	Weeks 13-16	Weeks 17-20	Weeks 21-24
Planning	1 Treasury reviews upcoming vacancies	■					
	2 Treasury consults with Chair to inform consideration of the proposed recruitment approach and skill and experience requirements with reference to the board skills matrix	■					
	3 Approval from appointing Minister to commence recruitment and BCAC composition		■				
	6 Treasury, in consultation with the Chair, brief the RP on skills requirements and expected timelines for recruitment			■			
	6 RP undertake search for candidates			■	■		
	7 Board vacancy is advertised			■	■		
	8 RP provides long list of candidates to Treasury(timing indicative)			■	■		
	9 BCAC agree a shortlist of candidates to interview			■	■		
					■		
Recruitment	10 Timing, interview structure and questions confirmed by BCAC			■			
	11 BCAC interviews scheduled			■			
	12 BCAC conducts interviews				■		
	13 BCAC decision and report prepared				■		
	14 BCAC report provided to appointing Minister who approves proposed appointee(s) for Cabinet consideration				■	■	
Approval	16 Cabinet forms and appointment paperwork sent to appointing Minister					■	
	18 Probity checks for proposed appointee undertaken by the Business and outcome reported to Treasury					■	■
	19 Paperwork lodged with Cabinet Secretariat						■
	- Target Cabinet meeting date						■
	20 Appointment endorsed by Cabinet and written TCO notification received						■
	22 Treasury provides written notification to appointee(s), Chair and Company Secretary						■

<sup>8</sup> The steps correspond to the relevant step in the detailed process flows preceding

## Practice Guide 2: Chair/Director Re-appointments

Stage 1 – Planning: Chair/Director Re-appointment		
Action		Responsibility
1	Treasury reviews all upcoming vacancies within the next eight to twelve months on an ongoing basis.	Treasury
2	Treasury consults with the Chair as to whether the Director will be nominated to the appointing Minister for re-appointment, or where the Chair is seeking re-appointment.  Where re-appointment is for an additional or longer term refer to section 2.1 of the policy.	Treasury / Business
3	Probity checks to be undertaken by the Business.	Business
4	Chair/Company Secretary/relevant board nomination committee advises, in writing to the appointing Minister, that the board is seeking endorsement for re-appointment and the outcome of probity checks undertaken by the business. The recommendation by the Chair/Company Secretary/relevant board nomination committee should consider and reference the candidate's skills and experience in the context of the board skills matrix.  Where the Chair is seeking re-appointment, Treasury may request an external evaluation report of the Chair's performance be provided to the appointing Minister.  <i>Note: this should be a minimum of six months prior to term expiry.</i>	Business
5	Treasury submits a brief to the appointing Minister seeking approval for the strategy to be taken which may include: <ul style="list-style-type: none"> <li>i. re-appointing the Chair/Director without a further process; or</li> <li>ii. requiring instead that Director participate in a competitive appointment process along with other candidates (in accordance with the procedures set out in Practice Guide 1 above).</li> </ul> Where a re-appointment is being recommended, Treasury will attach Cabinet forms and appointment paperwork to the strategy brief.	Treasury / appointing Minister

Stage 2 – Approval: Chair/Director Re-appointment		
Action		Responsibility
6	Appointing Minister endorses the re-appointment to be put forward for Cabinet consideration. Appointing Minister consults with the portfolio Minister as required by legislation or where desirable.  If the appointing Minister does not endorse the re-appointment, refer to the procedures set out in Practice Guide 1.	Appointing Minister
7	Treasury notifies the Chair/Company Secretary when re-appointment paperwork has been submitted and indicative Cabinet meeting timing.	Treasury

<b>Stage 2 – Approval: Chair/Director Re-appointment</b>		
<b>Action</b>		<b>Responsibility</b>
8	Re-appointment endorsed by Cabinet and written TCO notification is received. Treasury notifies the Chair/Company Secretary.	Treasury
9	In the case of Chair re-appointment, Treasury contacts the Chair to advise them of their re-appointment.  For Director re-appointments, the Chair contacts the Director to advise them of their re-appointment.	Treasury / Business
10	Treasury issues written advice to the re-appointed Chair/Director and Company Secretary, including the Instrument of Appointment signed by the appointing Minister.	Treasury
11	Treasury updates board appointment statistics and other relevant documents to reflect the re-appointment.	Treasury

Action: Chair/Director Re-appointment - indicative timings		Weeks 1-4	Weeks 5-8	Weeks 9-12	Weeks 13-16	Weeks 17-20	Weeks 21-24
Planning	1 Treasury reviews upcoming vacancies	■					Contingency period if the re-appointment is not approved by the appointing Minister
	2 Treasury consults with the Chair to inform its recommendation for the appointing Minister	■					
	3 Probity checks undertaken by the Business and outcome reported to Treasury		■				
	4 Letter from Chair/Company Secretary seeking re-appointment		■				
	6 Appointing Minister endorses re-appointment of Chair/Director for Cabinet consideration. If the appointing Minister does not endorse a re-appointment, please refer to Practice Guide 1.		■	■			
Approval	7 Paperwork lodged with Cabinet Secretariat			■	■		
	- Target Cabinet meeting date				■		
	8 Re-appointment endorsed by Cabinet and written TCO notification received				■	■	
	9 Treasury issues written notification to appointee(s), Chair and Company Secretary					■	

## Practice Guide 3: Chair Appointments

Stage 1 – Planning: Chair Appointment		
Action		Responsibility
1	Treasury reviews all upcoming Chair vacancies within the next twelve months on an ongoing basis.	Treasury
2	Treasury consults with the Business and/or the outgoing Chair to inform consideration of the proposed recruitment approach, and the skill and experience requirements with reference to the board skills matrix.	Treasury / Business
3	Treasury submits a brief to the appointing Minister seeking approval for the proposed strategy and approach to be taken to fill the Chair vacancy attaching the board skills matrix and agreement on the composition of the BCAC and candidate assessment criteria. The brief should note the roles and responsibilities of parties involved in the Chair recruitment process.  <i>Note: the level of involvement from the outgoing Chair is determined by the appointing Minister.</i>	Treasury / appointing Minister
4	Treasury advises Company Secretary and/or outgoing Chair of appointing Minister's approval for the recruitment strategy and approach, including composition of the BCAC.	Treasury
5	Treasury requests the Company Secretary to commence recruitment processes with the RP.	Treasury
6	Treasury briefs the RP on skills and experience requirements, and expected timelines for recruitment, consulting the outgoing Chair or another director.	Treasury / Business
7	Chair vacancy is advertised.	Treasury / RP
8	RP prepares a longlist of suitable candidates based on the identified skills and experience necessary for the board. Longlist provided to Treasury.	RP
9	RP, Treasury and other BCAC members hold a meeting to discuss longlist of candidates and determine a shortlist of candidates to be interviewed by the BCAC. This may include the outgoing Chair, where approved by the appointing Minister, or another director. Meeting minutes are to be documented.	Treasury / RP

Stage 2 – Recruitment: Chair Appointment		
Action		Responsibility
10	Treasury confirms timing, interview structure and questions in consultation with BCAC members.	Treasury
11	RP, with assistance from Treasury, organises interviews for shortlisted candidates, and circulates to the BCAC agenda and CVs.	RP



Stage 2– Recruitment: Chair Appointment		
Action		Responsibility
12	BCAC conducts interviews to determine suitability of candidates.	Treasury
13	Treasury secretariat prepares BCAC report and seeks endorsement from all BCAC members.	Treasury
14	The candidate identified by the BCAC as the preferred candidate may be invited to complete further due diligence (e.g. meeting with other Directors/Business Senior Executives).	Business
15	Treasury submits the BCAC report to the appointing Minister. The appointing Minister provides approval for their proposed appointee(s) to be put forward for Cabinet consideration	Treasury / appointing Minister

Stage 3 – Approval: Chair Appointment		
Action		Responsibility
16	For appointments requiring the Governor’s approval, Treasury requests TCO undertake legal review of Executive Council documents.	Treasury
17	Treasury submits to the appointing Minister Cabinet forms and appointment paperwork. Appointing Minister consults with the portfolio Minister as required by legislation or where desirable.	Treasury / appointing Minister
18	Treasury notifies RP, and/or outgoing Chair, when appointment paperwork has been submitted and indicative Cabinet meeting timing.	Treasury
19	Treasury requests probity checks for proposed appointee be undertaken by the Business prior to Cabinet consideration. RP notifies the proposed appointee that probity checks will be undertaken. The Outcome of probity checks reported to Treasury.	Treasury / Business / RP
20	Treasury updates appointment paperwork including Cabinet forms to reflect the outcome of probity checks (if required) prior to Cabinet consideration of the proposed appointee.	Treasury
21	Chair appointment is endorsed by Cabinet and written TCO notification is received. Treasury notifies the RP, Company Secretary, and/or outgoing Chair.	Treasury
22	Treasury contacts the appointee to advise them of approved appointment and formally offer the position.  <i>Note: if candidate declines, Treasury, with the outgoing Chair where necessary, will discuss alternative arrangements.</i>	Treasury
23	Treasury issues written advice to the appointed Chair, Company Secretary and/or outgoing Chair, along with a copy of the Instrument of Appointment.	Treasury
24	Company Secretary, and/or outgoing Chair, facilitates induction of incoming Chair.	Business

<b>Stage 3 – Approval: Chair Appointment</b>		
<b>Action</b>		<b>Responsibility</b>
25	Treasury updates board appointment statistics and other relevant documents to reflect the new Chair appointment.	Treasury

Action: Chair Appointment <sup>9</sup> - indicative timings		Weeks 1-4	Weeks 5-8	Weeks 9-12	Weeks 13-16	Weeks 17-20	Weeks 21-24
Planning	1	Treasury reviews upcoming Chair vacancies					
	2	Treasury, consults with Business and/or outgoing Chair to inform its consideration on the proposed recruitment approach and skills requirements with reference to the board skills matrix					
	3	Approval from appointing Minister to commence recruitment and BCAC composition					
	6	Treasury briefs the RP on skills requirements and expected timelines for recruitment					
	6	RP undertake search for candidates					
	7	Chair vacancy is advertised					
	8	RP provides long list of candidates to Treasury (timing may vary)					
	9	BCAC agrees a shortlist of candidates to interview					
	Recruitment	10	Timing, interview structure and questions confirmed by BCAC				
11		BCAC interviews scheduled					
12		BCAC conducts interviews					
13		BCAC decision and report prepared					
15		BCAC report provided to appointing Minister. Minister approves proposed appointee for Cabinet consideration					
Approval <sup>10</sup>	17	Cabinet forms and appointment paperwork sent to appointing Minister					
	19	Probity checks for proposed appointee undertaken by the Business and outcome reported to Treasury					
	20	Paperwork lodged with Cabinet Secretariat					
	-	Target Cabinet meeting date					
	21	Appointment endorsed by Cabinet and written TCO notification received					
	23	Treasury issues written notification to appointed Chair, Company Secretary and outgoing Chair					

<sup>9</sup> The steps correspond to the relevant step in the detailed process flows preceding

<sup>10</sup> Where the appointment requires Governor approval, an additional two weeks is required for TCO to undertake legal review of Executive Council documents prior to seeking approval from the appointing Minister for appointment

## Practice Guide 4: Probity Checks

### Probity checks during planning phase for new director appointments

General probity checks assess whether a potential candidate's credentials are true and accurate and whether the candidate is of good character, and should be undertaken prior to nomination.

These checks are conducted by the recruitment partner.

### Informing candidates

Short listed candidates for interview are to be informed that the proposed appointee will be subject to probity checks. The proposed appointee may be requested to provide relevant personal information, often at short notice, to enable their probity checks to be undertaken.

### Probity checks during approval phase

More robust probity procedures must be undertaken for the Minister's proposed appointee before they are recommended to Cabinet for consideration of appointment. Robust probity procedures give the NSW Government and the public sufficient confidence that an appointee has a history of personal integrity and a demonstrated capacity to manage their financial and business affairs.

These checks are the responsibility of the business.

The following mandatory probity checks are to be carried out for the Minister's proposed appointee prior to recommendation for appointment and re-appointment:

- national police checks
- ASIC Banned and Disqualified register search
- ASIC Enforceable Undertakings register search
- Australian Financial Security Authority National Personal Insolvency Index search
- media check including social media
- international criminal record checks if a candidate has lived in an overseas country for more than 12 months, or has resided in Australia for less than 12 months
- a check of the Australian Prudential Regulation Authority's (APRA's) list of individuals disqualified from holding prudentially significant roles within APRA-regulated entities under the provisions of the Superannuation Industry (Supervision) Act 1993 and the Insurance Act 1973
- a check of APRA's list of Enforceable Undertakings accepted from people or corporations under the provisions of the Superannuation Industry (Supervision) Act 1993 and the Insurance Act 1973

The business, in consultation with Treasury, determines who it engages to undertake these probity checks. Businesses may arrange for probity checks to be undertaken by the Recruitment Partner on behalf of the business.

The Practice Guides include an indicative timing for probity checks. There may be situations where obtaining the results take longer due to certain complexities.

### Probity check information provided for approval phase

The outcome of the probity checks by the business must be provided to Treasury.

Information that should be made available to Treasury to provide to the appointing Ministers, if requested is shown in following table.

Probity checks		
	New appointment	Re-appointment
Biographical details, including their relevant qualifications and experience and the skills they bring to the board	✓	✓
Details of any other material directorships currently held by the candidate	✓	✓
Details of the candidates other NSW public sector roles, if any, including directorships and positions on advisory boards	✓	✓
Details of whether the candidate is a registered lobbyist.	✓	✓
Any material adverse information revealed by the checks the entity has performed about the director	✓	✓
Details of any interest, position, association or relationship that might influence, or reasonably be perceived to influence, in a material respect his or her capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the Government Business and its shareholders generally	✓	✓
The term of office currently served by the director	x	✓

Directors and chairs of government business are encouraged to apply for a director identification number (director ID) through the Australian Business Registry Services and provide their director ID to the Company Secretary.

## Further information and contacts

For further information or clarification on this policy of managing the board appointment process for your business in the first instance please contact your Treasury Relationship Lead.

For general policy information email: [commercialpolicy@treasury.nsw.gov.au](mailto:commercialpolicy@treasury.nsw.gov.au)

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