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Appointment Standards

Boards and Committees
in the NSW Public Sector

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Appointment Standards – NSW Boards and Committees in the NSW Public Sector

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1.2	26/10/2015	Updated content consistent with changes to appointment processes announced by the Department of Premier and Cabinet via Premier's Memorandum 2015-04

These Standards may be varied, withdrawn or replaced at any time without notice

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1. Introduction

Boards and committees perform vital governance, management and advisory functions for many NSW Government entities. Their responsibilities cover fields as diverse as infrastructure, fisheries, health care, sentencing policy, cultural institutions, and public transport. Some boards and committees oversee entities with billions of dollars of revenue and/or assets. Others provide Ministers with expert advice on initiatives affecting millions of NSW citizens or an entire industry sector. Whatever their responsibilities, persons appointed to boards and committees must be suitably qualified, and reflect the diversity of the NSW community.

The Public Service Commissioner has a function, under section 11(1)(g) of the *Government Sector Employment Act 2013*:

- to set standards, subject to any legislative requirements, for the selection of persons for appointment as members of boards or committees of public authorities (including Government Business Enterprises).

The Commissioner's *Appointment Standards* are largely principles-based, in order to take account of the great diversity in the composition and functions of boards and committees, and the entities to which they relate.

The *Appointment Standards* provide Ministers with guidance on determining the characteristics required of appointees, having regard to the nature of the board or committee to which the appointment is made. Above all, appointees must have the capacity to think critically, be objective, and to understand and manage conflicts of interest.

The *Appointment Standards* also outline the essential elements of an assessment process which is fair, transparent and documented.

All boards and committees, where appointments require Ministerial or Cabinet approval, are covered by the *Appointment Standards*. They should be read in conjunction with *Premier's Memorandum 2015-04 - Appointments to NSW Government boards and committees* and the Department of Premier and Cabinet's guidelines on submitting proposed appointments to Ministers or Cabinet for approval, which are available on the Department's website.

2. General principles

As well as meeting any specific requirements in the enabling legislation, appointments to NSW Government boards and committees must demonstrate compliance with four general principles.

Merit

Appointments are to be made on demonstrated merit. In all cases, potential appointees should be considered against assessment criteria based on the skills, experience and knowledge required for the role.

Fairness

The process used to assess potential appointees must be transparent, without bias, and open to qualified persons interested in seeking appointment. The same criteria must be used to assess all persons being considered for appointment at that time.

Diversity

To the extent reasonable, appointments to Government boards and committees must reflect the diversity of the NSW community as a whole and be mindful of the entity's purpose and focus. Particular attention must be given to the representation of women. Opportunities to appoint Aboriginal persons, persons with a disability, young people, and persons from culturally and linguistically diverse backgrounds should also be actively explored.

Integrity

Only persons of sound reputation, who are prepared to discharge their responsibilities diligently and with the public interest only in mind, may be appointed. Service on a Government board or committee is, in itself, a significant honour and attracts the respect of the NSW community.

3. Lobbyists

Lobbyists and their employees (as defined in the *Lobbyist Code of Conduct*) are ineligible for appointment to any NSW Government board or committee that has functions which relate to any matter, on which the lobbyist has represented the interests of third parties in the last twelve months. For more information, see Premier's Memorandum 2013-11-NSW *Lobbyist Code of Conduct*.

4. Public sector employees

Most boards and committees are established to provide independent governance, management or advice to Government entities. Boards and committees are an important vehicle for members of the community to make a contribution to the good government of New South Wales. It is for this reason that public servants usually sit on boards in an ex-officio capacity only. That said, a public servant may seek appointment to a board or committee as a private citizen, subject to the processes which apply to any applicant.

In line with policy decisions against “double-dipping”, public sector employees appointed to NSW government boards or committees do not receive fees. In limited circumstances, Ministers may seek an exemption from this policy. For more information on exemptions, see the Department of Premier and Cabinet boards and committees website.

5. Skills, experience and knowledge

The work of boards and committees is essential to good government in NSW. Diligence should be exercised to appoint chairs and members with the right skills, experience and knowledge for the functions they will perform. Critical thinking, proven judgment and objectivity are paramount. Appointing members with specialised skills - financial, legal, strategic, commercial or technical - is useful. However, these skills can always be sourced externally, if specialised advice is required for a specific matter.

Where there is enabling legislation, it may specify the expertise required of board/committee members. If the legislation is silent, or a board/committee is established administratively, it is important that the assessment criteria take account of the range of expertise required.

All appointees should be expected to have the ability to contribute to the effectiveness of the board/committee and listen attentively to others' opinions, analyse information, and make a constructive contribution to discussion.

Persons appointed as chairs must have demonstrated the capacity to lead others, summarise complex information and arguments, and, where appropriate, formulate advice and/or make decisions in a professional and effective manner.

Boards of Governance

Boards of governance bring independent judgment to decisions affecting an organisation. In the NSW public sector, they perform this role for State Owned Corporations, Public Trading Entities, health care institutions, educational institutions, and environmental, cultural and heritage bodies.

The functions of boards of governance include:

- setting strategic directions
- liaising with stakeholders
- ensuring compliance with statutory requirements
- managing risk
- monitoring organisational performance.

Persons appointed to boards of governance must have skills, experience and knowledge which can contribute to the board's collective performance of these functions.

Generally, appointees to boards of governance will have held board or senior management appointments in large public companies or key public sector agencies, and possess a proven record in the exercise of commensurate levels of judgment and accountability.

Advisory Boards

Advisory boards (and like entities) perform a great variety of functions, including advising Ministers on policies or programs, sometimes of the highest importance to the State; overseeing the management of various entities; reviewing regulatory arrangements and critical incidents; and providing a channel for industry and community consultation. The skills, experience and knowledge required of advisory board members will vary widely, depending upon the entity's responsibilities. Appointees to boards with the highest level of responsibility in this group will be expected to have significant professional expertise and judgment, sometimes comparable to that required of members of certain boards of governance.

Tribunals, Quasi-Judicial, Regulatory, Registration, Licensing and Accreditation Entities

In many cases, the qualifications, professional membership, experience and knowledge required for appointment to these entities will be specified in legislation. Additionally, potential appointees should be able to demonstrate judgment, objectivity, impartiality, and the capacity to understand and manage conflicts of interest.

6. Filling a vacancy – the process

Appointments to NSW Government boards and committees are often a matter of considerable public interest. For this reason, it is important that the process used to fill vacancies is transparent, without bias and fully documented. The community expects that appointees will not only be well qualified, but that the process used will be fair and appropriate.

The relevant decision-maker – usually a Minister – must give formal approval, before action to fill a board or committee vacancy can commence. The agency managing the process should provide the decision-maker with the following information, for their consideration:

- a brief description of the role and entity
- the requirements of any enabling legislation, in relation to appointments
- the proposed, or required, method for identifying potential candidates or nominees
- the proposed method for assessing the merit of potential candidates, including criteria
- any mandatory requirements which apply to potential candidates or nominees
- the proposed, or required, composition of any assessment panel.

7. Identifying potential candidates

The process used to identify potential candidates for appointment must be transparent, without bias, and open to qualified persons interested in seeking appointment. Generally, it is preferable that vacancies are advertised. However, there are exceptions to this principle where:

- the enabling legislation provides that the appointee must hold a specified office, or represent a specified group or organisation, or
- advertising the vacancy would be contrary to the public interest, due to urgency or other exigent circumstances.

Where a decision is taken not to advertise, a reason should be given.

Advertising

Advertising a vacancy in the general press may not be necessary where more direct channels exist. For example, the website of an agency, industry group or community organisation may be a better targeted way to reach suitably qualified candidates, where specialised expertise or knowledge is required. Similarly, professional or specialist journals and newsletters should be considered as an alternative to advertising in more general publications.

Any advertising must comply with guidelines for recruitment advertising in the NSW public sector.

Networks

Potential candidates for appointment may also be identified informally by current board or committee members, professional associations, industry groups or community organisations. In some cases, the enabling legislation will require that the vacancy be filled by the nominee of a specified group or organisation.

Executive Search

Sometimes it will be necessary to augment advertising and referrals with executive search. In rare cases – where the role is very specialised, demanding or sensitive – it may be appropriate to rely exclusively on executive search to produce a list of potential candidates. Executive search companies must be carefully chosen and briefed to ensure that the search is cost-effective.

NSW public sector procurement guidelines apply to the engagement of executive search companies.

Department of Premier and Cabinet Register

Persons with a diversity of backgrounds and experiences should have the opportunity to be considered for appointment to boards and committees. A diverse membership is more likely to produce better advice and decision making, and avoid the risk of “group think”.

The Department of Premier and Cabinet maintains a register of persons interested in being appointed as members. The register may be helpful in attracting a more diverse field of potential candidates. It should be noted that persons on the register have not been interviewed or formally assessed to determine their suitability for appointment.

Department of Premier and Cabinet Boards and Committees Website

The Department of Premier and Cabinet boards and committees website is available to agencies and Ministers' offices to advertise vacancies. Persons on the Department of Premier and Cabinet register are notified of all vacancies advertised on the Department's website.

Please email boards@dpc.nsw.gov.au for further information on searching the register and advertising on the boards and committees website.

8. Assessment criteria

Persons being considered for appointment, at the same time, should be assessed against the same criteria. These criteria should be developed prior to any action being taken to identify potential candidates.

In addition to the skills, knowledge and experience discussed in Section 4, the following questions should be considered when developing assessment criteria.

1. Does the board/committee have decision making powers?

A board/committee which makes decisions, especially where they are not reviewable, requires members with the ability to exercise sound judgment, remain objective, and to understand and manage conflicts of interest.

2. Does the board/committee advise a Minister directly?

A board/committee which advises a Minister directly may require of its members a greater level of expertise and judgment than a body which provides advice through, or to, an agency.

3. Does the board/committee exercise management direction of any kind?

Some boards/committees have management authority over significant expenditure, revenue, fixed assets and/or financial assets. Persons appointed to such bodies should have board or executive management experience in an organisation of the same or larger size.

4. Does the board/committee provide a channel for industry and/or community consultation?

Where a board/committee has the function of engaging with stakeholders, it will be important that appointees have well developed communication, liaison and negotiation skills.

9. Assessment panels

For most appointments, decision-makers will expect to receive the assessment of a properly constituted panel in a written report.

The composition of an assessment panel will depend on the nature of the board/committee. Sometimes the entity's enabling legislation will specify the process which must be followed, including the composition of the panel. Where an appointment is to a board/committee with significant responsibilities, it may be appropriate for the panel to be convened by a Minister, a Director General, or board chairman. In many cases, it will be sufficient for the panel to be convened by an appropriately qualified executive level officer.

It is important that the assessment panel include at least one person with relevant subject matter knowledge. Current board/committee members, community representatives and business representatives may also be invited to sit on the panel, as appropriate. The panel must comprise both men and women.

Whatever the proposed composition of the assessment panel, it must be approved by the decision-maker before the panel is convened.

An assessment panel can decide to conduct interviews or, where it is confident that it has sufficient information, make its assessment "on the papers" alone. In both cases, the panel must prepare a written report which sets out:

1. the assessment criteria
2. persons considered as potential appointees
3. persons shortlisted
4. the panel's assessment of each shortlisted candidate, framed with regard to the criteria and noting any referee comments
5. the panel's recommendations.

The assessment panel's report should then submitted to the decision-maker for his/her consideration.

10. Direct advice from agencies

In some cases, a decision-maker may ask the relevant agency to provide direct advice on potential appointees, without convening an assessment panel. Where such advice is provided, it must be signed by the agency head.

11. Membership tenure

There are significant benefits in an entity's membership being refreshed, from time to time. "Group think" is a real risk where a board/committee has seen little change in its membership over a number of years. To avoid this risk, members' tenure should not exceed ten years in total, unless otherwise provided in legislation, or where such limitation would be contrary to the public interest. When establishing a new board/committee, consideration should be given to varying terms of appointment for members, so they do not all expire on the same date. This arrangement provides an opportunity for renewal, but ensures there are always experienced members on the board/committee.

12. General advice to candidates for appointment

Many boards and committees have significant advisory or regulatory functions, manage large financial or fixed assets, or oversee projects which are vital for the State. At the earliest opportunity, candidates for appointment should be informed of the expectations regarding responsibilities, accountability and conduct.

Where available and appropriate, relevant codes of conduct should be provided to interested persons, perhaps as part of a general information package. Advice regarding remuneration and other terms and conditions should also be made available.

13. Further information

Further information on the Appointment Standards is available from the Boards and Committees Team in the Public Service Commission by emailing boardremuneration@psc.nsw.gov.au.