



QUEENSLAND  
GOVERNMENT

# Guide for Board Appointments to Government Owned Corporations, Queensland Rail and Seqwater

February 2019



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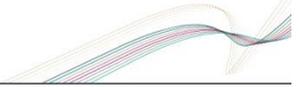


# Table of Contents

<b>1.0</b>	<b>Introduction .....</b>	<b>3</b>
<b>2.0</b>	<b>Statutory Requirements for Appointments .....</b>	<b>3</b>
2.1	Government Owned Corporations (GOCs) .....	3
2.2	Commercial Statutory Authorities .....	4
2.2.1	Queensland Rail .....	4
2.2.2	Seqwater .....	4
2.3	Other Government Owned Businesses .....	5
<b>3.0</b>	<b>Candidate Selection Process .....</b>	<b>5</b>
3.1	Ministerial Nominations .....	5
3.2	Due Diligence Processes .....	5
3.2.1	Candidate Disclosures .....	6
3.2.2	Government Research and Information Library (GRAIL) Searches .....	6
3.2.3	Criminal History Checks .....	6
3.2.4	Other Searches .....	6
3.3	Due Diligence Results .....	7
3.4	Management of Personal Information .....	7
<b>4.0</b>	<b>Board Appointment Process .....</b>	<b>8</b>
4.1	GOCs and Governor in Council .....	8
4.2	Queensland Rail/Seqwater – Responsible Minister Approval .....	9
4.3	Director Remuneration .....	9
4.4	Notification of Appointment .....	9

## Revision History

Version	Date	Changes
1.0	February 2019	Endorsed.



## 1.0 Introduction

Queensland's Government owned corporations (GOCs) and commercial statutory authorities are complex businesses that operate in an increasingly challenging environment. To ensure these businesses continue to operate successfully and efficiently, the boards are comprised of appropriately qualified and experienced individuals.

Board candidates are selected on merit, sourced from a broad pool of talented and well-credentialed individuals. In selecting directors, the Government not only has regard for appropriate board skill requirements, but also recognises the importance and benefits of board diversity, with the Government's gender equity commitments and regional representation being key considerations in board recruitment and appointment processes.

The appointment of directors to Government boards is ultimately a decision for Cabinet in making recommendations to the Governor in Council or responsible Ministers. However, to assist the decision-making process, Queensland Treasury (Treasury), on behalf of Government undertakes certain administrative tasks, including the identification of suitable candidates for shareholding/responsible Ministers' consideration and appropriate due diligence checks. Strict confidentiality is maintained throughout these processes.

Appointments are generally made for three-year terms, ending on 30 September. This enables Government to streamline processes, by undertaking a substantial round of appointments/re-appointments each year. The *Guide for Board Appointments to GOCs, Queensland Rail and Seqwater* (the Guide) provides an outline of the processes undertaken in the appointment of independent, non-executive directors to Government businesses.

## 2.0 Statutory Requirements for Appointments

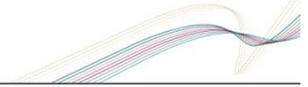
### 2.1 Government Owned Corporations (GOCs)

Non-executive directors of GOCs are appointed by the Governor in Council, following consideration by Cabinet, in accordance with the procedures set out in *The Queensland Cabinet Handbook* (Cabinet Handbook) for significant appointments.

The *Government Owned Corporations Act 1993* (the GOC Act) establishes the governance framework for GOCs. The GOC Act specifically outlines the following requirements regarding board appointments:

- Section 89(1) requires that a GOC's board consist of the number of directors that are appointed by the Governor in Council.
- Section 89(2) requires that in appointing a person as a director, the Governor in Council must have regard to the person's ability to make a contribution to the GOC's commercial performance and, if the GOC has a Statement of Corporate Intent (SCI), the implementation of the SCI.
- Section 90(1) provides that a public service officer is not eligible for appointment as a director of a GOC.

As public companies under the *Corporations Act 2001* (Cth) (Corporations Act), GOCs are also subject to the jurisdiction of the Australian Securities and Investment Commission (ASIC). The board is ultimately accountable for the conduct of the GOC's business and financial arrangements.



The Corporations Act requires that public companies (including GOCs) have at least three directors. Persons disqualified from acting as a director under the Corporations Act cannot be appointed to a GOC board.

## **2.2 Commercial Statutory Authorities**

Non-executive directors of commercial statutory authorities, Queensland Rail and Seqwater, are appointed by responsible Ministers following consideration by Cabinet, in accordance with the procedures set out in the Cabinet Handbook for significant appointments.

### **2.2.1 Queensland Rail**

Queensland Rail's authorising legislation is the *Queensland Rail Transit Authority Act 2013* (QRTA Act). The QRTA Act specifically outlines the following requirements regarding board appointments:

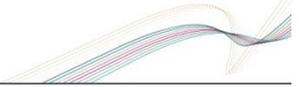
- Section 16(1) requires that the board consists of no fewer than three and not more than seven board members appointed by responsible Ministers.
- Section 16(2) requires that in deciding to appoint a person as a board member, the responsible Ministers must have regard to the person's ability to contribute to the implementation of Queensland Rail's strategic and operational plans.
- Section 16(3) requires that a person may not be appointed as a board member if that person:
  - is an insolvent under administration; or
  - has a conviction, other than a spent conviction, for an indictable offence.
- Section 16(4) requires that a board member's term not exceed three years.

Non-executive directors are appointed to both the statutory authority and the subsidiary company, Queensland Rail Limited.

### **2.2.2 Seqwater**

Seqwater's authorising legislation is the *South East Queensland Water (Restructuring) Act 2007* (Seqwater Act). The Seqwater Act specifically outlines the following requirements regarding board appointments:

- Section 16(1) requires that the board consists of no less than two board members appointed by responsible Ministers.
- Section 16(2) requires that in deciding whether to appoint a person as a board member, the responsible Ministers must have regard to the person's ability to contribute to the implementation of Seqwater's strategic and operational plans.
- Section 16(3) requires a person may not be appointed as a board member if the person:
  - is a public service employee; or
  - is a councillor or employee of a local government; or
  - is an insolvent under administration; or
  - has a conviction, other than a spent conviction, for an indictable offence.
- Section 16(4) requires that the board member's term not exceed three years.



## **2.3 Other Government Owned Businesses**

The Guide can also be applied to other Government owned businesses such as Queensland Treasury Corporation, the Queensland Competition Authority and the Queensland Productivity Commission subject to specific legislative requirements and internal due diligence processes.

## **3.0 Candidate Selection Process**

Given the size and complexity of Government businesses, suitable board candidates are expected to possess strong commercial and analytical skills, particularly in relation to interpreting financial statements, display sound independent judgement and have both strong communication and people management skills.

It is also desirable for candidates to have demonstrated previous leadership experience, ability to work within a team and in conjunction with a broad range of stakeholders to provide strategic direction to large and complex organisations.

Diversity is also an important consideration in candidate selection as it can bring new perspective and enhance decision-making by boards. Board diversity encompasses gender, regional representation and cultural background, as well as most importantly specific expertise and stakeholder knowledge. In assessing a board's skill mix requirements, a broad range of skills are often considered, including industry sector, human resources and industrial relations expertise.

The selection of Chair candidates is of critical importance, with significant focus given to the candidate's previous board chair and leadership experience.

### **3.1 Ministerial Nominations**

To assist shareholding/responsible Ministers in determining board nominees, Government identifies potential suitable candidates through various sources.

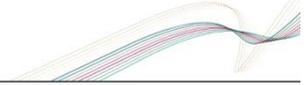
Board candidates will be primarily sourced from the Queensland Register of Nominees (QRON) and may also be identified through:

- recommendations from the Chairs of entities regarding directors (whose terms are expiring) who wish to be reappointed, and from other suitable candidates to fill vacancies. The Chair may utilise external recruitment firms in this process;
- Government may periodically run a general expression of interest process for all GOCs, Seqwater and Queensland Rail director appointments; and
- curriculum vitae (CVs) provided from interested parties to Government Departments or Ministers.

### **3.2 Due Diligence Processes**

For each vacancy, a list of potential nominees (including their CVs or equivalent details) and the relevant board skills matrix is prepared for consideration by shareholding/responsible Ministers. Once a final list of nominees has been agreed to by shareholding/responsible Ministers, due diligence processes are progressed on the proposed candidates.

Each candidate is initially contacted by senior Government officers and given the opportunity to confirm whether they wish to be nominated for appointment to the board of a particular Government business. If the candidate wishes to be considered for the position, they are advised that relevant disclosure forms will need to be completed and returned.



Key messaging in these discussions is that this engagement is part of the administrative process and does not pre-empt their appointment to a board given the decision-making role of Cabinet and the Governor in Council/ responsible Ministers.

### 3.2.1 Candidate Disclosures

Candidates are requested to complete the following disclosure forms:

- Personal Particulars for Government Businesses (Personal Particulars Form);
- Consent to Act (applicable for public companies);
- Criminal History Check Consent; and
- Curriculum Vitae (CV) Standard Template – (this allows candidate details to be provided in a consistent and concise format).

As part of these disclosures, candidates are required to disclose potential, perceived or actual conflicts and outline how they intend to manage these conflicts.

Due diligence searches can be undertaken once key personal details (such as date of birth, place of birth and full name) are obtained from the candidate to ensure accuracy of the searches.

### 3.2.2 Government Research and Information Library (GRAIL) Searches

GRAIL is engaged to undertake searches. These searches include:

- an ASIC personal name extract to provide an overview of the person's corporate directorship history;
- a National Personal Insolvency Index search which contains information on proceedings and administrations under the *Bankruptcy Act 1966* (Cth); and
- an adverse media search.

GRAIL conducts the searches and emails the results. The results are reviewed and cross-checked against the candidate's disclosures provided in the Personal Particulars Form, with the candidates contacted to clarify any inconsistencies (if necessary).

### 3.2.3 Criminal History Checks

Criminal History Checks are undertaken.

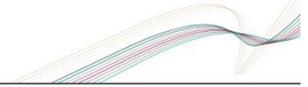
### 3.2.4 Other Searches

Further searches (including through GRAIL), in relation to the proposed nominees may also be undertaken. These include:

- **Lobbyist Register**

It is Government policy that individuals registered as a lobbyist on the Queensland Register of Lobbyists will be prohibited from serving on Queensland government bodies, including GOC Boards.

<http://lobbyists.integrity.qld.gov.au/who-is-on-the-register.aspx>



- **Other Government Body Memberships**

It is important to identify whether the nominee already has a role on any other Government body. They should also provide this information on their Personal Particulars Form, including any remuneration received for the role/s. This information needs to be included for Cabinet's consideration as part of the Significant Appointment submission.

<http://governmentbodies.premiers.qld.gov.au/boardmembersearch.aspx>

- **ASIC Banned and Disqualified Register**

Searches are undertaken on ASIC's website using candidate's name and any former names as provided in the Personal Particulars Form.

<http://asic.gov.au/>

- **Other searches**

A general search is undertaken to identify any adverse media or additional public information which may have a bearing on the candidate suitability for the role.

### **3.3 Due Diligence Results**

The results of the searches are communicated to responsible/shareholding Ministers.

The results are also disclosed to Cabinet as part of the Significant Appointment submission for Cabinet's consideration.

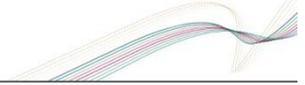
Cabinet deliberations may also identify other nominees or candidates, who will be subject to due diligence processes, prior to recommendation to the Governor in Council or responsible Ministers.

In exceptional circumstances where results may not be available before Cabinet considers the nominations, any pending results are also disclosed to Cabinet, including when searches will be completed (i.e. before any appointment occurs). Due diligence must be completed before a recommendation is made to Governor in Council or responsible Ministers.

### **3.4 Management of Personal Information**

Candidate information is collected as part of the process of appointing directors and board members to Government businesses. This information may be provided to other Government Departments, Ministers, Cabinet, Governor in Council, GRAIL and search registry administrators for the purposes of assessing a candidate's suitability for nomination and appointment. Personal details will be treated as confidential and will not be disclosed to any other parties without the person's consent, unless authorised or required by law.

For GOCs, the signed Consent to Act forms are provided to the company for their records, following the appointment process.



## 4.0 Board Appointment Process

The Board appointment process requires a “Significant Appointment” submission to be considered by Cabinet, in which Cabinet’s endorsement of the nominated candidates is sought. For GOCs, this is followed by an Executive Council Minute (ECM) which is considered by the Governor in Council. For Queensland Rail/Seqwater, responsible Ministers’ approval for the appointments is required.

Cabinet considers the appointments in accordance with the procedures set out in the Cabinet Handbook for significant appointments. Refer to sections 5.1.7 and 6.2 of the Cabinet Handbook and section 5.2.2 of the Executive Council Handbook.

Specifically, the Cabinet Handbook requires Ministers to raise all proposed appointments, with the Premier in writing before the appointments are made. The letter must include details on:

- the Government body membership, including details of new, outgoing and remaining members;
- current CV for all proposed appointees;
- that the Ministers are satisfied with the suitability of the nominees, including that appropriate suitability checks have been carried out;
- that the Ministers have ensured diversity of nominees, including details of the existing and proposed gender distribution on the body, as well as the process used to achieve gender diversity, or reasons why gender diversity could not be achieved; and
- that other Government policies regarding appointment of public servants, Members of Parliament or lobbyists have been considered.

On behalf of shareholding/responsible Ministers, the following Cabinet documentation is prepared:

- Significant Appointment submission. This includes details of the candidates, outcome of due diligence searches and details on the management of any potential conflicts;
- attachments, including board membership tables and CVs;
- Proactive Release;
- Cabinet briefing note; and
- Speaking Points.

Following approval being received by the Premier, Cabinet documentation is lodged for Cabinet’s consideration and recommendation.

### 4.1 GOCs and Governor in Council

Following Cabinet’s consideration, the Cabinet endorsed nominees are recommended to the Governor in Council for approval. On behalf of shareholding Ministers, the following documentation is prepared:

- Executive Council Minute; and
- Attachment – CVs.

GOC directors’ appointments commence from 30 September of the relevant year or such other date approved by the Governor in Council. Appointments will not be made by the Governor in Council if due diligence searches are outstanding.



## **4.2 Queensland Rail/Seqwater – Responsible Minister Approval**

Following Cabinet’s consideration, the proposed appointments are provided to responsible Ministers for approval.

Responsible Ministers’ departments seek responsible Ministers’ approval to appoint proposed directors to the statutory authorities. A letter of appointment is also prepared for responsible Ministers’ approval. Board members’ appointments commence from 30 September of the relevant year or such other date approved by the responsible Ministers.

## **4.3 Director Remuneration**

Remuneration of board candidates is in accordance with the *Remuneration Procedures for Part-time Chairs and Members of Queensland Government Bodies* and are aligned with board remuneration levels as set by Cabinet. In recommending nominees to Cabinet, shareholding/responsible Ministers also propose director remuneration, having regards to these arrangements.

## **4.4 Notification of Appointment**

Shareholding/responsible Minister correspondence is prepared for successful candidates and relevant Chairs advising of the appointments.

Correspondence to new directors includes references to the Government’s Welcome Aboard publication and outlines their statutory requirements as directors of GOCs and public companies.

Signed Consent to Act forms are provided to the relevant Company Secretary, for the company’s records and to ensure that all internal Director Registers are updated.

