

Corporate Governance Guidelines  
for  
Government Owned Corporations



**Queensland  
Government**

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## 1.0 INTRODUCTION

These Guidelines summarise the expectations of shareholding Ministers in relation to the corporate governance of all Queensland government owned corporations (GOCs) established under the *Government Owned Corporations Act 1993* (GOC Act). They are intended to provide a framework for GOCs to develop, implement, review and report upon their corporate governance arrangements.

The high levels of public accountability which apply to GOCs as a result of their public ownership make the corporate governance of GOCs very important. GOCs must be properly managed on behalf of their ultimate owners, the people of Queensland.

The Guidelines have been drafted having regard to the following:

- *ASX Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations* (ASX Principles)
- *Auditor-General's Report No. 2 2002-2003 – Review of Corporate Governance and Risk Management at Government Owned Corporations*
- *Auditor-General's Report No. 10 2002-2003 – Review of Management's Assessment of Fraud Control Risks and Associated Plans and Procedures*
- *OECD Principles of Corporate Governance*

The Guidelines take effect from and apply to the 2005-06 financial year and subsequent financial years.

## 2.0 APPLICATION OF GUIDELINES

There is no single model of corporate governance which is appropriate for all GOCs. As GOCs vary in the size and scope of their business activities and their internal and external environment, it is not possible or desirable to create such a model. The corporate governance arrangements for a GOC may also need to change over time as circumstances change.

All GOCs are required to:

- implement comprehensive, high quality corporate governance arrangements which are appropriate for and adapted to their particular circumstances; and
- properly disclose and report upon those arrangements to the shareholding Ministers and the public.

GOCs should have regard to the Guidelines in designing their corporate governance arrangements, and in monitoring those arrangements for ongoing relevance.

The approach taken by the ASX Principles has been adopted, so that the same 10 general principles of corporate governance apply. In the same way as the ASX Principles, each principle contains some recommendations and commentary giving guidance regarding implementation of the principle. The recommendations of the Auditor-General's reports have been included as further recommendations for the relevant principles. The recommendations are intended as a more specific guide as to how the principle may be applied. GOCs should refer to the ASX Principles (and the Auditor-General's report where relevant) for more detailed commentary upon the principles and recommendations. In general commentary is only provided where some modification or explanation is required for application to GOCs.

The recommendations are not intended to be prescriptive. GOCs have the flexibility to implement the relevant principle in the best manner they see fit, as long as this can be justified. In determining the extent to which to apply a principle, GOCs may consider the costs and benefits, taking into account matters such as the nature of their activities and the risks they face, as well as resources available.

GOCs should first consider what constitutes better practice in their own particular circumstances. To the extent that the recommendations in these Guidelines represent better practice recommendations, GOCs should adopt an "if not, why not" approach, in the same way as set out in the ASX Principles. That is, if a GOC considers that a recommendation is not appropriate to its circumstances, it has the option of not following the recommendation but will be required to explain why.

In designing their corporate governance practices and frameworks GOCs also must have regard to governance requirements in legislation such as the GOC Act, *Financial Administration and Audit Act 1977* and, for company GOCs, the *Corporations Act 2001*.

### 3.0 SUMMARY OF REPORTING REQUIREMENTS

Reporting and disclosure are the most important elements of these Guidelines. GOCs must disclose and report on their corporate governance arrangements and how they have considered the principles to a sufficient level to give the shareholding Ministers confidence that corporate governance issues are being adequately addressed.

GOCs must include a separate section on corporate governance in their annual report which deals with the following:

- A general discussion of all aspects of the GOC's corporate governance arrangements.
- The specific information recommended to be disclosed in the annual report in the "Reporting" section of the principles set out below.<sup>1</sup>
- Detailed explanations of any departures from the recommendations in these guidelines. Such explanations should address:
  - how the GOC's approach differs from the relevant recommendation;
  - the reasons why the GOC's approach has been adopted and how its approach accords with the intent or spirit of the relevant principle; and
  - that the GOC understands the relevant issues and has considered the impact of its alternative practices.

The detailed explanations of departures from the recommendations must also be included in GOCs' statement of corporate intent.

GOCs must also keep shareholding Ministers informed in relation to any significant issues relating to corporate governance, including any significant changes to their corporate governance practices, as and when they occur. This disclosure may be made through the regular quarterly reporting process, although for more important or urgent issues specific reporting may be appropriate at the relevant time.

GOCs have the flexibility to adopt the corporate governance practices and arrangements which they consider to be the most appropriate for their particular circumstances, but must report in detail upon why the practices have been adopted and demonstrate how those practices give effect to the principles.

It is each GOC's responsibility to ensure that it provides sufficient information to enable the shareholding Ministers to assess whether its corporate governance practices and structures meet the underlying concerns of the principles and are generally adequate and appropriate.

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<sup>1</sup> Where information is already disclosed in other parts of the annual report, that information may be incorporated in the corporate governance section by cross reference.

## 4.0 CORPORATE GOVERNANCE PRINCIPLES

### Principle 1 Foundations of management and oversight

#### *Recommendations*

- The board should have a formal statement or board charter which clearly defines the roles and responsibilities of the board and individual directors and the matters which are delegated to management. This also applies to any committees established by the board.
- A board handbook should be available to facilitate board operations and induction and self-evaluation processes.
- Appropriate induction processes should be developed for new members in relation to their board and committee functions.
- Establish and maintain a register of committees and their functions.

#### *Commentary*

Clear definition of the roles and responsibilities of the board and management will assist the board to effectively perform the role required by section 92 and 95 of the GOC Act for statutory and company GOCs respectively. It will enable the board to provide strategic guidance for the GOC and effective oversight of management, and enhance the accountability of the board and management to the GOC and the shareholding Ministers.

The members of the board and any committees established by the board should also be clearly aware of their roles and responsibilities and fully understand the GOC business and corporate expectations.

#### *Reporting*

A summary of the formal statement or board charter should be made publicly available, preferably on the GOC website in a clearly marked corporate governance section.

## **Principle 2 Structure the board to add value**

### *Recommendations*

- A majority of the board should be independent directors.
- The board should develop and implement a plan for identifying, assessing and enhancing director competencies.

### *Commentary*

GOC directors are appointed by the Governor in Council under the GOC Act. In this regard the board does not play a formal role in setting the composition or size of the board. All GOC directors appointed by the Governor in Council are non-executive directors.

The board should continue to regularly assess the ongoing independence of each director and the board generally to ensure that they continue to exercise unfettered and independent judgement. The board must ensure that the interests of the shareholding Ministers and the public are properly protected and that individual vested interests do not have the opportunity to influence decision making against the interests of the GOC as a whole.

For GOCs the issue of independence is most relevant in situations where directors are a material supplier or customer of the GOC or its subsidiaries, or have a material contractual relationship with the GOC or its subsidiaries other than as a director. However assessment of the independence of a director, including materiality thresholds, is ultimately a matter for the board to determine. The key issue is whether the director's independent judgement is impaired by the material relationship. The board should be able to explain to shareholding Ministers its reasoning in relation to the determination of independence, including disclosure of specific relationships and detailed discussion of how materiality (or immateriality) is determined.

GOC boards should have arrangements in place for determining materiality thresholds and for assessing director independence in light of interests disclosed by them.

Given the appointment of new directors of GOCs is undertaken by the Governor in Council, a nomination committee (Recommendation 2.4 of the ASX Principles) is not considered necessary as most of the functions of such a committee are not vested in the board. However the board should still continually assess the skills of the board and develop strategies to enhance them where appropriate having regard to the nature of the GOC business.

### *Reporting*

The corporate governance section of the annual report should disclose:

- the skills, experience and expertise relevant to the position of director held by each director in office at the date of the report;

- the names of the directors considered by the board to be independent and the GOC's materiality thresholds;
- a statement as to whether there is a procedure agreed by the board to take independent professional advice at the expense of the GOC; and
- the term of office held by each director in office at the date of the report, including the date the director was first appointed.

### **Principle 3 Promote ethical and responsible decision making**

#### *Recommendation*

- Establish a code of conduct for directors, the chief executive officer and senior executives.
- Disclose the policy for trading in securities by directors, officers and employees.

#### *Commentary*

GOC boards and senior executives must observe the highest standards of ethical behaviour. The GOC should clarify the standards of ethical behaviour required and monitor and enforce the observance of those standards.

Such a code of conduct should provide guidance as to the practices necessary to maintain confidence in the GOC's integrity, and the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.

The code of conduct could be a separate code for directors and executives or included as part of the corporate code of conduct (see Principle 10).

In drafting the code GOCs should have regard to the suggestions in the ASX Principles and the recommendations of the Auditor-General. In this regard the Auditor-General recommends that:

- codes of conduct are enhanced by the incorporation of examples and scenarios to assist in ethical decision-making; and
- the operations of boards are enhanced by the development of specific codes of conduct for directors addressing matters such as potential conflicts of interest and confidentiality.

Although the *Public Sector Ethics Act 1995* does not apply to GOCs the principles set out in that Act may also be relevant.

A trading policy should be established where directors, officers or employees of the GOC may in the course of their duties have access to inside information about any securities or where trading in securities may create a conflict of interest. This policy would supplement any legal duties which apply to directors, officers and employees in relation to use of information.

#### *Reporting*

The code of conduct and trading policy, or a summary of their provisions, should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

## **Principle 4   Safeguard integrity in financial reporting**

### *Recommendations*

- The chief executive officer and chief financial officer (or equivalent) state in writing that the financial reports present a true and fair view and are in accordance with accounting standards.
- The board should establish an audit committee.

### *Commentary*

GOCs should have structures in place to ensure the faithful and factual representation of its financial position. Making the statement referred to above encourages management accountability and provides a basis for the statements required by the directors of company GOCs under the *Corporations Act 2001* and the chair and person responsible for financial administration of statutory GOCs under the *Financial Administration and Audit Act 1977*.

An independent audit committee is a key element of good corporate governance. It should have members with relevant expertise and experience who are financially literate. As referred to in Principle 1, the committee should have a clearly defined charter setting out the roles and responsibilities of the committee and its members.

### *Reporting*

The corporate governance section of the annual report should disclose:

- details of the names and qualifications of those appointed to the audit committee, or those who perform the functions of an audit committee;
- the number of meetings held by the audit committee and the names of the attendees.

The audit committee charter should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

**Principle 5 Make timely and balanced disclosures***Recommendation*

- Establish written policies and procedures to ensure compliance with disclosure requirements (including those in the GOC Act) and generally ensure the accountability of senior management for that compliance.

*Commentary*

Section 133 of the GOC Act requires GOCs to keep shareholding Ministers reasonably informed about the operations, financial performance and financial position of the GOC and its subsidiaries. This requirement has a similar rationale to the continuous disclosure obligations which apply to listed companies under the ASX Listing Rules. GOCs also have a number of specific disclosure obligations imposed on them by the GOC Act, relevant policies and other legislation.

As well as their legal obligations, GOCs are generally accountable to their shareholding Ministers who are in turn accountable to parliament. It is important that shareholding Ministers have sufficient information about GOCs to fulfil this obligation. GOCs should therefore ensure that the shareholding Ministers have access to material information concerning the GOC, including the operations, financial performance, financial position and governance of the GOC and its subsidiaries. GOCs should adopt a broad approach to disclosure, which may go beyond the disclosures strictly required by law.

GOCs should also adequately disclose material risk factors and any material changes in the GOC's risk profile. This requires the establishment of sound internal risk management systems as referred to in relation to Principle 7.

*Reporting*

A summary of the policies and procedures to ensure compliance with disclosure requirements should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

**Principle 6 Respect the rights of shareholders***Recommendations*

- Design and disclose a communication strategy to promote effective communication with shareholding Ministers.

*Commentary*

Shareholding Ministers have a general right to obtain information from GOCs about their operations by virtue of the accountability of the GOC to the government, Parliament and the public via the Ministers.<sup>2</sup> GOCs should respect the rights of shareholding Ministers and their representatives, having regard to the requirements of responsible government, and facilitate the effective exercise of those rights. They should communicate effectively and actively consult with the shareholding Ministers and give them ready access to balanced and understandable information about the GOC and corporate proposals. GOCs should not only comply with existing legal and regulatory requirements but also go beyond them where relevant in order to build credibility and confidence.

In general it is expected that the shareholding Ministers will communicate with the chair of the GOC, both on a formal and informal basis. The chief executive officer and other officers and employees should communicate with the Office of Government Owned Corporations or representatives of shareholder departments. The GOC should work cooperatively with the Office of Government Owned Corporations and shareholder departments to ensure that the shareholding Ministers can be briefed in a timely manner.

*Reporting*

A description of the arrangements the GOC has to promote communication with shareholding Ministers should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

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<sup>2</sup> *Hughes Aircraft Systems International v Airservices Australia* (1997) 146 ALR 1 at 88-89 per Finn J.

## **Principle 7 Recognise and manage risk**

### *Recommendations*

- The board or an appropriate committee should establish policies on risk management and oversight.
- Ensure the integration and alignment of the risk management system with corporate and operational objectives.
- Ensure clear communication throughout the GOC of the board and senior management's position on risk.
- Ensure a common risk management terminology across the GOC.
- Ensure risk management is undertaken as part of normal business practice and not as a separate task at set times.
- Ensure information systems for reporting on risk are integrated to enable aggregation and reporting at a corporate level.
- Undertake a risk assessment to identify any high-risk fraud areas and develop strategies to mitigate any significant fraud risks.
- Implement policies and procedures which include:
  - staff responsibilities in relation to fraud prevention and identification;
  - responsibility for fraud investigation once a fraud has been identified;
  - processes for reporting on fraud related matters to management;
  - reporting and recording processes to be followed to record allegations of fraud;
  - requirements for staff training to be conducted on fraud prevention and identification; and
  - a reference to the GOC's code of conduct for ethical behaviour.
- Implement a fraud control plan for ongoing monitoring and coordination of fraud control activities, which identifies fraud risk, incorporates control strategies, action plans and a timetable for implementation, and sets out responsibilities and accountabilities for fraud control at all levels of the GOC.
- The chief executive officer and the chief financial officer (or equivalent) state to the board that the statement given under the recommendations applying to Principle 4 is founded on a sound system of risk management and internal compliance and control which implements board policies; and the risk management and control system is operating efficiently and effectively in all material respects.

### *Commentary*

It is important that GOCs should have a sound system of risk oversight and management and internal control.<sup>3</sup> The system should be designed to identify, assess, monitor and manage risk, and inform shareholding Ministers of material changes to the GOC's risk profile.

The policies should clearly set out the roles and responsibilities of the board, committees, management and, if applicable, internal audit in relation to risk management.

Risk management systems should incorporate planning for business continuity and disaster recovery. The systems should deal with significant risks which are relevant to the GOC, which may include risks such as trading, financial (as addressed in the Code of Practice for GOCs' Financial Arrangements), security, public liability and workplace health and safety risks.

GOCs should also give consideration to the establishment of an internal audit function which will bring a systematic and disciplined approach to improve risk management, financial control and governance procedures. The establishment of a risk management committee may also be appropriate.

Internal auditors should ensure that procedures are adequately implemented and be able to guarantee the quality of information disclosed by the GOC. Consultation between internal auditors and the Auditor-General as external auditor should be encouraged.

In relation to systems for fraud and corruption control, the Crime and Misconduct Commission has produced *Fraud and Corruption Control: Guidelines for best practice*. Although company GOCs are not subject to the jurisdiction of the CMC, this provides a useful guide as to the elements of such a system.

### *Reporting*

A description of the GOC's risk management policy and internal compliance and control system should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

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<sup>3</sup> Statutory GOCs (all Transport GOCs, Queensland Investment Corporation, SunWater and Enertrade) are specifically required by part 5 division 5 of the *Financial Management Standard* to establish risk management systems.

## **Principle 8 Encourage enhanced performance**

### *Recommendations*

- Disclose the process for performance evaluation of the board, committees, individual directors, the chief executive officer and senior executives.
- Develop and implement appropriate, formal self-evaluation processes for the board and committees.
- The board and committees regularly review their information needs (quality, quantity and timeliness) to ensure the information they receive is appropriate for the effective discharge of their duties.

### *Commentary*

GOC directors and senior executives should be equipped with the knowledge and information they need to discharge their responsibilities effectively. Individual and collective performance should be reviewed at regular periods not exceeding two years. Board evaluation should be carried out under the responsibility of the chair and according to best practice. The evaluation should address whether the objectives of the board or committee are being met in a cost effective manner. The board should have access to continuing education and training to maintain, update and enhance their skills, knowledge and experience.

In general, the chair should continuously monitor the performance of individual directors, the Board and committees.

Internal reporting frameworks should be sufficiently comprehensive to support the monitoring and review functions of the board and committees.

### *Reporting*

The corporate governance section of the annual report should disclose whether a performance evaluation for the board and its members has taken place in the reporting period and how it was conducted.

A description of the process for performance evaluation of the board, committees, individual directors, the chief executive officer and senior executives should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

Whenever a performance evaluation of the board is conducted, the GOC should provide a report to shareholding Ministers of the results of the evaluation.

## **Principle 9 Remunerate fairly and responsibly**

### *Recommendations*

- GOCs should disclose their remuneration policies to show the broad structure and objectives of the policies and the link between remuneration of the chief executive officer and senior executives and corporate performance.
- The board should establish a remuneration committee.

Remuneration is an important issue for GOCs. As a result of the public ownership of GOCs, public accountability and transparency is required in relation to remuneration policies.

The *Remuneration Guidelines for Chief and Senior Executives in Government Owned Corporations* aim to ensure a balance between public accountability and transparency and the GOCs' need to attract and retain high calibre staff from competitive labour markets. The remuneration arrangements for chief and senior executives are subject to approval or endorsement by shareholding Ministers in conjunction with the Premier, having regard to specific key criteria or standards.

GOCs are also required to have a remuneration policy endorsed by shareholding Ministers which should include:

- the principles used to determine the nature and amount of remuneration including the broad structure and objectives of the GOC's remuneration policy; and
- details of how the principles establish a link or relationship between remuneration paid and the performance of the GOC.

In accordance with Principle 1, the remuneration committee should have a formal charter which sets out the roles and responsibilities of committee members.

### *Reporting*

The corporate governance section of the annual report<sup>4</sup> should include the following information:

- disclosure of the GOC's remuneration policies;
- the names of the members of the remuneration committee and their attendance at meetings of the committee.

The charter of the remuneration committee should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

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<sup>4</sup> To the extent that this information is already disclosed in the financial statements in accordance with AASB 1046, that information can be incorporated in the corporate governance section by cross reference.

## **Principle 10 Recognise legitimate interests of stakeholders**

### *Recommendation*

- Establish and disclose a code of conduct to guide compliance with legal and other obligations to stakeholders.
- Regularly assess the information needs of stakeholders to ensure that their needs continue to be met by the GOC's public disclosures.

GOCs have a number of stakeholders in addition to their shareholders to which they owe legal and other obligations. These include employees, clients and customers and the community as a whole. It is important for GOCs to demonstrate their commitment to appropriate corporate practices which recognise these interests and to corporate social responsibility in general.

This may be implemented through a code of conduct or appropriate alternative means such as policy and procedures documents. The code of conduct should deal with ethical matters as well as legal compliance. The code should reflect the significant public responsibility and high standards of conduct that GOCs should have as publicly owned enterprises.

The code should give clear guidance as to the expected conduct of all employees. It is also considered to be good practice for the code to be developed with the participation of employees and stakeholders. It should be fully supported and implemented by the board and senior executives.

As noted in relation to Principle 3, the Auditor-General recommends the incorporation of examples and scenarios to assist in ethical decision making. The ASX Principles also contain guidance for the content of a code of conduct.

The code should also include or make reference to guidance on procurement processes and contain a system for ensuring compliance and for enabling employees to alert management of misconduct. This should be consistent with, but not necessarily limited to, the requirements of the *Whistleblowers Protection Act 1994* and the *Corporations Act 2001 (Cth)* for statutory and company GOCs respectively.

These matters might also be dealt with in other documents such as policies or compliance programs. In that case it may be appropriate for the code of conduct to make reference to those documents.

### *Reporting*

The code of conduct (or equivalent document) or a summary of its main provisions should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.