

TREASURER'S REPRESENTATIVE GUIDELINES

Guidance Note to Treasurer's Instruction 7

Summary

These Guidelines have been prepared by the Department of Treasury and Finance (DTF) to provide supporting information to Government Business Enterprises (GBEs) and other nominated public authorities where *Treasurer's Instruction (TI) 7 'Treasurer's Representatives – Statutory Boards, Commissions and Committees'* applies.

TI 7 allows the Treasurer to authorise a representative to attend Board, Committee and sub-Committee meetings and have access to all communication prepared for the Board. It articulates the role and responsibilities of both the Treasurer's Representative (the "Representative") and the Chair of the Board in relation to the Representative.

TI 7 applies to all GBEs (as per the definition below) which are public authorities subject to the *Public Finance and Audit Act 1987 (PFA Act)*. It also applies to other public authorities having a Board as nominated by the Treasurer (or delegate) or Under Treasurer from time to time. Collectively, GBEs and nominated authorities are known in TI 7 as "Designated Public Corporations".

GBEs are defined as Public Non-Financial Corporations and Public Financial Corporations and are defined in the Budget Papers as:

Public Non-Financial Corporation: Government controlled entity that is mainly engaged in the production of market goods and/or non-financial services, which recovers a significant proportion of its costs through user charges.

Public Financial Corporation: Government controlled entity that is mainly engaged in financial intermediation or the provision of auxiliary financial services.¹

A list of these entities is published in the Budget Papers each year.

TI 7 operates in addition to existing statutory powers for the Treasurer to appoint Representatives to certain Designated Public Corporations and ensures the Treasurer has consistent powers to appoint Representatives to all Designated Public Corporations, regardless of their individual statutory status.

These Guidelines provide further information for both the Representative and the Board to understand their respective roles and responsibilities.

¹ Department of Treasury and Finance Budget Papers

Instruction

Designated Public Corporations are owned by the State Government, are generally subject to the control and direction of their Minister² and are accountable to the Government for their financial performance. As meetings of the Board are forums for discussing matters that almost always have a connection to the financial administration (within the meaning of the *PFA Act*) of the Designated Public Corporation, the purpose of appointing a Representative to attend meetings is to monitor the Designated Public Corporation's financial administration in line with the Treasurer's powers and responsibilities under the *PFA Act*.

TI 7 provides for the Treasurer to authorise a Representative to attend Board meetings for the purposes of representing and conveying the views of the Treasurer to the Board, and for reporting the activities of the Board to the Treasurer and the Treasurer's other advisers and representatives including officers of DTF. The Representative can engage in discussions of the Board as a Representative of the Treasurer, but must not participate in the decision making process and cannot vote on any matter or determine Board procedures.

In the very rare circumstance where a Board agenda item is wholly unconnected to financial administration, TI 7 will not apply to that item only. "Financial Administration" has a very wide definition and for the purposes of TI 7 means "the receipt and expenditure of, and other dealings with, matters of money or finance". See FAQ's below for further information.

Application

TI 7 applies to all Designated Public Corporations - that is all GBEs (as defined by TI 7) that are subject to the *PFA Act* and any other public authority having a Board as directed by the Treasurer (or delegate) or Under Treasurer.

A range of legislation applies to Designated Public Corporations including the *Public Corporations Act 1993* (PC Act), the *PFA Act* and a number of governing Acts that establish Designated Public Corporations. Not all legislation that applies to Designated Public Corporations provides an express power for the Treasurer to authorise a representative to attend Board meetings.

For entities where the PC Act applies, or otherwise where the governing legislation of the public authority provides for a Representative to attend (but not participate in) any meetings of the Board and/or to have access to Board papers, that governing legislation is the source of the authority for the Representative to attend the Meeting and/or access the papers. TI 7 is in addition to those legislative provisions and in the event of any inconsistency, the legislation prevails.

TI 7 also applies to any other public authority that is nominated by the Treasurer (or delegate) or Under Treasurer. This may be an appointment of a Representative in an ongoing capacity or for a specified period of time and is determined on a case by case basis.

² For some GBEs this control and direction is limited to matters of policy or excludes specific matters.

Other Public Authorities

'Public authorities' are defined in the PFA Act as;

- (a) a government department;
- (b) a Minister;
- (c) a statutory authority –
 - a. that is an instrumentality of the Crown, or
 - b. the accounts of which the Auditor-General is required by law to audit;
- (d) such other body or person as is prescribed,

but, subject to any other provision of this Act, does not include a statutory authority where the Act by or under which the authority is appointed or established provides for the auditing of the accounts of the authority by a person other than the Auditor-General.

Meaning of “participate in” and “any meeting”

Section 8 of the PC Act applies to some public authorities. Section 8 provides that:

‘a person authorised in writing by the corporation’s Minister or the Treasurer may attend (but not participate in) any meeting of the Board of the corporation and may have access to papers provided to directors for the purposes of the meeting’.

The term “*participate in*” means to be actively involved in the function of the Board - ie. to participate in the decision making process and to vote or to determine Board procedures. It is appropriate for the Representative to observe the operations of the Board, engage in discussions of the Board as a Representative of the Treasurer, communicate the relevant views of the Treasurer to the Board and to pass on to the Treasurer information and documentation about the Board’s deliberations, decisions and operations.

The term “*any meeting*” (as defined in TI 7) includes ordinary, extraordinary, formal and informal meetings of the Board, in-camera meetings and meetings in and out of session as well as strategic planning sessions, Board and executive performance reviews and any other sessions. It also includes any Committee Meetings of the Board.

The same meaning of “participate in” and “any meeting” applies to all public authorities subject to TI 7, unless the governing legislation of the public authority is inconsistent.

Governing legislation

The governing legislation of public authorities provides variously for the appointment of a Representative to the Board.

Where a TI is inconsistent with a provision in the Designated Public Corporations governing legislation, the latter will prevail to the extent of the inconsistency. However an inconsistency will not arise simply because governing legislation:

- a) makes no provision for a Minister’s or Treasurer’s representative;

- b) provides expressly for a Minister's representative, but not a Treasurer's representative;
- c) provides expressly for a Minister's and/or Treasurer's representative; or
- d) provides expressly for a Treasurer's representative, but not a Minister's representative.

For (c) and (d) above, where a Treasurer's representative is expressly provided for in the governing legislation, this is the source of the authority for a representative to attend meetings of the Board. Therefore this part of TI 7 is not applicable to these Designated Public Corporations. However, anything that TI 7 deals with that is not dealt with nor inconsistent with the governing legislation would be applicable to the Designated Public Corporation.

Role and responsibilities of the Representative

The purpose of a Representative is to fulfil a monitoring role and for the provision of advice to the Treasurer on the activities of the Board to facilitate the Treasurer performing the Treasurer's function and role under the PFA Act.

The Representative:

1. is entitled to attend all Meetings of the Board and receive all Board papers and all other Board communications, materials and information provided to the Board Members;
2. may provide information to the Board on government policies and processes, convey the Treasurer's views and engage in discussions as a representative of the Treasurer;
3. must not participate in the business of the Meeting being decision making, voting or determining Board procedures;
4. is entitled to report about, and pass on, all Board activities, discussions, deliberations and decisions and all Board papers and other Board communications, materials and information to the Treasurer or the Treasurer's other representatives; and
5. will not disclose information obtained from the Board outside of government (which does not restrict the Representative disclosing information within DTF, to the Treasurer's (and other Minister's where relevant) office and elsewhere within Government according to their normal discharge of duties).

As mentioned above, TI 7 provides that the Representative may attend '*all meetings of the Board*' which includes ordinary, extraordinary, formal and informal meetings of the Board, in-camera meetings and meetings in and out of session and also includes strategic planning sessions, board and executive performance evaluations and all other sessions.

The Representative may enter into discussions of the Board at his/her discretion and is not required to be invited to provide comment by the Chair.

While it is the Representative's responsibility to ensure that all information received by the Board is not disclosed outside of government, the Representative can pass on all information and documentation about the Board's deliberations, decisions and operations to officers within their agency, the Treasurer's (and other Minister where relevant) office and elsewhere within Government. This should only occur in line with what is normally required of the Representative in their role within their agency.

Details on at least the following matters should be covered in the Representative's Report after each Board meeting:

- Standing Items/Regular Reports
 - Chief Executive's Report
 - Finance Report (including year to date financial performance)
- Discussion Items
- Decision Items
- Items for Noting/other Matters

Role and responsibilities of the Chair of the Board

The Chair of the Board has the following responsibilities in relation to the Representative:

1. there is full facilitation of the Representative exercising his or her role as described in TI 7;
2. information provided to Members of the Board during the recruitment and induction process sets out that the Designated Public Corporation is an instrumentality of the Crown and the extent to which the entity is a body under the control and direction of the Minister;
3. Board papers and all other Board communications, materials and information are provided to the Representative at the same time as they are provided to Board Members;
4. the Board does not seek to declare that information prepared for the Board cannot be provided to the Representative or conveyed to the Treasurer (or other Minister);
5. all Board Members are aware the Representative is authorised to attend all Board Meetings (including ordinary, extraordinary, formal, informal, in-camera meetings and meetings in and out of session);
6. all Board Members are aware the Representative is not the sole mechanism for advising the Government on the activities of the Designated Public Corporation and does not relieve it of its statutory and other reporting duties. This responsibility lies with the Chair and the Chief Executive, or as otherwise required by its governing legislation;
7. the minutes of Board Meetings record that the Representative attended as a Representative of the Treasurer; and
8. the Board Members are informed of the role of the Representative.

Frequently Asked Questions

1. Under what authority can a person be appointed to a Board as a Treasurer's Representative?

For entities where the PC Act applies, or their governing legislation provides for a Representative to attend Board meetings, these are 'statutory' representatives as they are provided for in legislation.

For entities where no such provision is made in any applicable legislation, but the PFA Act applies, TI 7 provides the authority for the Treasurer to appoint a Representative to attend Board meetings.

2. When would an entity that is not a GBE be likely to be directed to apply TI 7?

The Treasurer (or delegate) or Under Treasurer may consider it appropriate to appoint a Representative to attend Board Meetings on an ongoing basis, or for specific periods of time such as during a period of significant capital expenditure, in the event of a public authority being wound up, or in other circumstances as the Treasurer/Under Treasurer considers appropriate.

3. Can a 'conflict of duty' arise for a Representative to a Board?

Treasurer's Representatives do not participate in the formal business of the Board, and they do not owe duties to the Designated Public Corporation that a member/director would (ie. duties of good faith, to avoid conflict of interest etc.) Therefore no conflict of duty can arise solely by reason of there being a Treasurer's Representative authorised to attend a Designated Public Corporations meeting.

4. What is an example of an agenda item wholly unconnected with financial administration?

Almost all decisions of the Board will have a connection to the financial administration of the Designated Public Corporation therefore requiring the consideration of issues that have some form of financial impact or characteristic. However, it is conceivable that rarely there may be occasions where an agenda item may be entirely unconnected to financial administration, e.g. discussions relating to a vote of thanks to a particular staff member for a lengthy period of service.

The Treasurer's Representative should be advised of the topic of the non-financial agenda item and may be excused from the portion of the Board Meeting where that item is being discussed. The Representative should return to the meeting as soon as the agenda item has concluded and/or discussion has moved to a different topic.

5. What is considered a "Meeting of the Board?"

Meetings of the Board include ordinary, extraordinary, formal and informal, in-camera meetings and meetings in and out of session, as well as strategic planning sessions, Board and executive performance reviews and any other sessions. It also includes any Committee and sub-Committee Meetings of the Board.