Board essentials

Good governance guide for public sector boards and committees
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Congratulations on your role as a public sector board or committee member. Public sector boards and committees contribute greatly to the public sector, providing strategic leadership, direction and accountability across government. They provide a voice for the community and enable the varied interests of Western Australians to be considered in government decision making processes.

There are many different types of public sector boards and committees, including boards of public trading enterprises, boards of statutory authorities, policy coordination committees, research committees, commissions, tribunals, registration boards, appeal boards, public trusts and advisory committees.

Many Western Australians, like yourself, serve on public sector boards and committees, some in a voluntary capacity. Membership can be a highly rewarding and satisfying experience, but it also carries a range of obligations. As a board or committee member you are entrusted with the stewardship of major public assets and services. Therefore, it is vital that you fully understand your role and responsibilities so that you may contribute judiciously and positively to the Western Australian community.

This guide is designed to assist you in understanding your obligations and the scope of the task ahead. I thank those public sector Chief Executive Officers and board members, both retired and current, who provided feedback on and input to the development of this guide.

As Public Sector Commissioner I look forward to building a productive working relationship with you and supporting you in your role.

M C Wauchope  
PUBLIC SECTOR COMMISSIONER
A respected and trusted public sector is vital to effective government. As a member of a public sector board or committee (collectively referred to as ‘boards’ in this guide) you contribute to community confidence in the public sector by providing relevant skills and experience to support public sector decision making, and ensuring the views of interest groups and stakeholders are considered in public sector service delivery.

In general, boards are responsible for ensuring good governance of a public sector body—that is, the board must ensure effective systems and processes are in place to shape, enable and oversee the body’s management. Boards are not generally responsible for the day-to-day operations of the public sector bodies they oversee. That responsibility falls to the Chief Executive Officer (CEO) of each body.

Boards must ensure their own processes conform to good governance principles. As a board member, you operate in a legislative and public policy environment that provides frameworks for accountability, governance, management, policy development and service delivery. Understanding and effectively applying these frameworks is critical to maintaining the trust placed in your board and in you as a member.

Role of the Public Sector Commission

The Public Sector Commissioner has key statutory responsibilities for the overall administration and management of the public sector, promoting efficiency and effectiveness and ensuring safeguards are in place to plan for the future.

Accordingly, the Public Sector Commission (the Commission) has developed this guide to support the work of board members in overseeing public sector bodies. More information is available on the Commission’s website, and board members are encouraged to contact the Commission for guidance about complex matters.

The structures of boards, roles, responsibilities, accountability and governance matters, including the legislative and policy frameworks that may be relevant to board members, are identified and summarised in this guide. However, this guide—and advice provided by the Commission on contact—does not constitute legal advice. As a board member, you are responsible for familiarising yourself with the requirements affecting your position, taking into consideration the specific nature of your board and its stakeholders, and for seeking further advice or legal counsel as appropriate.
Types of boards

Boards vary in size, scope and purpose. Board functions may include:

- directing State-owned corporations and discharging complex commercial, legal or policy responsibilities
- acting as a consultative forum connecting government and the community
- making legal decisions or performing review functions
- informing government policy by providing independent advice.

In Western Australia there are more than 300 public sector boards. The Department of the Premier and Cabinet maintains a list of boards on the State Government Boards and Committees Register on its website at [www.dpc.wa.gov.au](http://www.dpc.wa.gov.au).

Most boards can be placed into the following categories, though some may properly belong in more than one category.

**Trading boards**
These boards are engaged in commercial activities and, in a broad sense, are all government owned. They include the Water Corporation, Gold Corporation, Electricity Networks Corporation (Western Power) and the Busselton Water Board.

**Governing boards**
These boards govern the operation of the public sector body, which includes the Insurance Commission of Western Australia, Art Gallery of Western Australia and the Botanic Gardens and Parks Authority. Governing bodies are statutory bodies and, as with most statutory bodies, their particular functions and powers are usually set out in their enabling legislation.

**Policy, review or specialist boards**
These boards have a policy or coordination role, such as the Industry Management Committee and the State Emergency Management Committee.
Regulatory, registration, appeal or quasi-judicial boards
These boards are charged with making independent decisions affecting large groups and determining matters of importance with a regulatory or registration role, such as the Legal Practice Board of Western Australia and the Local Government Standards Panel.

Stewardship boards
These boards are entrusted with the stewardship of assets and resources. They include the Aboriginal Land Trust, Public Education Endowment Trust and the Western Australian Local Government Grants Commission.

Advisory or consultative boards
These boards provide independent or expert advice to the Government on strategic matters or matters of broad significance. They can be either statutory or non-statutory, such as the Geographic Names Committee, Regional Development Council and the Pest Animal Control Ethics Advisory Committee.

A respected and trusted public sector is vital to effective government. Public sector board members contribute to community confidence in the public sector by ... ensuring the views of interest groups and stakeholders are considered in public sector service delivery.
Governance arrangements for boards can be complex. It is essential that you understand the roles, responsibilities and reporting arrangements between stakeholders, which include:

- the minister responsible for the portfolio in which the board operates
- chair of the board
- board members
- the CEO of each public sector body affected by the board’s operations
- the board secretary or executive officer
- the role of the Commission, where relevant, as the employing authority of the CEO.

**Responsible minister**

The responsible minister is accountable to the Parliament of Western Australia for the operation of public sector bodies and boards within their portfolio(s). Depending on the legislation relating to the board’s establishment, board members may be appointed at the direction of the minister, by Cabinet or the Governor on the recommendation of the minister or, in some instances, by representatives.

The relationship between the minister and board will vary depending on the nature of the board and how the relationship is defined in the board’s enabling legislation. The minister’s specific powers of direction, for example, are often defined in legislation for governing boards, but are usually not clearly defined for other types of boards.

To enhance clarity, it is recommended that there be a formal statement of expectation from the minister and that the board formally responds with a statement of intent. These statements are not mandatory, nor do they replace any aspect of the relationship defined within legislation, but they provide clarity to both parties and support an effective relationship.
Once the statements are established, regularly brief the minister on progress and discuss any relevant matters of concern at appropriate opportunities. Within the limits of your enabling statute, keep your minister informed—your relationship should be one where there are no surprises, good or bad.

**Statement of expectation**

A statement of expectation articulates the responsible minister’s expectations of a statutory board or committee with regard to performance, objectives, values and broader government policies.

The process of developing the statement of expectation presents a valuable opportunity for effective dialogue between the minister and a board about the government’s expectations. It enables a minister to provide clarity about Government policies and priorities that are relevant to the board, and the expectations about how the board should observe these policies and priorities in conducting its operations. However, it is important that the statement of expectation recognises the responsibilities and independence of the board in accordance with its enabling legislation.

**Note:** The statement of expectation is different from (but complementary to) the arrangements made in writing by a minister under section 74 of the *Public Sector Management Act 1994* (PSM Act) for dealings and communications between a minister, ministerial officers and public sector bodies. In essence, the statement of expectation covers the expectations of the minister with respect to strategic direction of the board, while the arrangements cover the expectations of the minister with respect to the operational manner in which the minister, ministerial officers and board chair and members should communicate.

A sample statement of expectation is provided at Appendix A.

**Statement of intent**

Once the board has considered the minister’s statement of expectation the board should respond with a statement of intent, which should demonstrate the board’s understanding of, and commitment to, the minister’s expectations. The response should articulate how the board intends to undertake its operations consistently with those expectations and provide detail on any matters of particular concern to the minister.

A sample statement of intent is provided at Appendix B.

**Reviewing the statement of expectation and statement of intent**

From time to time the minister responsible for the board may change. An incoming minister will bring their own experiences and expectations of the board, which may not align with those of the previous minister. It is important that you welcome the incoming minister and understand their competing priorities as they adjust to a new portfolio.
Within this context it is suggested you meet with the incoming minister at the earliest opportunity to discuss the operations of the board, ascertain expectations and agree on the board’s direction. Following the initial meeting it may be prudent, from the perspective of the minister and the board, to formalise the matters discussed with a new statement of expectation and statement of intent.

It is recommended that the statement of expectation and statement of intent be reviewed and reissued biennially, even if the minister responsible for the board has not changed or there has been no change in the minister’s expectations of the board.

**Board chair**

A chair of the board is required to lead the board, ensure the board operates effectively, maintain a strategic focus, monitor overall performance and manage its principal relationships. As chair you must ensure board members, the minister, stakeholders and the community have confidence in your leadership and in the functions of your board.

To do this you should be familiar with the business of the public sector body and its CEO, the nature of the minister’s portfolio and the interests of stakeholders.

The role of chair includes:

- providing leadership and developing board members as a cohesive and effective team
- building an effective board with the necessary skills, knowledge and experience
- establishing the board charter
- ensuring relevant information and policies are brought to the attention of board members to support the board’s performance, objectives and governance framework
- leading board meetings efficiently, encouraging members rather than directing them and seeking consensus when making decisions
- leading by example in demonstrating behaviours desired from board members, including professionalism, punctuality, respect and integrity
- shaping the meeting agenda in relation to goals, strategy, budget and executive performance
- motivating board members and, where appropriate, dealing with underperformance
- managing risk and reporting concerns to the responsible minister
- working with the CEO to deliver the public sector body’s corporate plan and annual report.

As chair you must ensure board members, the minister, stakeholders and the community have confidence in your leadership and in the functions of your board.
Importantly, as chair, you are the board’s primary liaison with the minister and CEO. In addition, the chair will need to develop working relationships with ministerial officers, other members of senior management within the public sector body and the board’s secretary or executive officer. As each of these key stakeholders has competing priorities and pressures, you need to be personable, patient and pragmatic in your dealings to ensure the board’s objectives are achieved.

Other beneficial traits include polite assertive confidence, political nous, an understanding of the history and culture of the public sector body and its stakeholders, and strong presentation, negotiation and facilitation skills.

Finally, you should feel comfortable contacting the Commission for advice and support, particularly in navigating complex issues related to board performance.

**Board members**

A board member must understand the purpose, function and responsibilities of the board. You should familiarise yourself with the public sector body and with members’ legal and statutory obligations, and be mindful that you can only act within your authority. Importantly, you should understand that the board’s strategic role of oversight, direction and advice is distinct from the role of the CEO, who is responsible for managing the day-to-day operations of the public sector body. It may be worthwhile consulting the *Statutory Corporations (Liability of Directors) Act 1996* (Corporations Act), which provides a codified statement of duties for board members. The Corporations Act also provides information regarding ministerial direction, conflicts of interest, legal liability and insurance.

It is important that as a board member, you inform the board chair if there are any changes in private interests, which includes changes in personal circumstances that may affect your role on the board, such as bankruptcy or a criminal conviction.

It is vital you stay informed about the business of the board and are able to make conscientious and informed decisions. Follow the lead of the board chair and be aware of their expectations of your conduct regarding board matters. You will need to work constructively and cooperatively with other board members as well as senior management of the public sector body. You will also need to maintain a working relationship with the board’s secretary or executive officer.

You may be appointed to a board as an independent member or representing another public sector body. However, it is essential you understand that by law each board member is obliged to act in the interest of the board to which they have been appointed. Your primary obligation is to support the agreed strategic direction, priorities and the ‘company line’ of the board. There is some room for advocacy and contested viewpoints within the boardroom when establishing strategic policy and direction, but once set, it is not appropriate for a board member to publicly petition against or act contrary to that position. A board member who continues to dissent against a strategic direction endorsed by the majority of the board should consider resignation.
Board skills, knowledge and experience

A board operates most effectively when its members have different skills, knowledge and experience. It is good governance for a board to regularly evaluate the mix of skills, knowledge and experience that will best complement board effectiveness with a view to ensuring it has a proper understanding of, and the competence to deal with, the current and emerging issues of the public sector body it oversees.

Common to all boards is the need for a broad level of understanding and some generic skills, knowledge and experience. Boards may also have some specific skills, knowledge and experience relevant to their role, such as contracting, marketing and promotions skills, and economic, scientific or legal knowledge.

In addition to board-specific skills, knowledge and experience, all board members will need the following:

**Understanding of the public sector environment**
Demonstrates an understanding of the different roles and responsibilities of a minister, the board and the CEO. Understands the influences and accountabilities of the public sector and makes decisions in the public interest.

**Integrity and ethical behaviour**
Demonstrates a high sense of integrity and ethical behaviour. Understands the tensions that occasionally arise in relation to representation at the board level and always seeks to consider the role of the public sector body and broader public interest in any matter.

**Ability to think strategically**
Has a clear vision, anticipates trends and considers the risks associated with strategic decisions. Analyses situations in a broader public sector perspective and has a good sense for planning and anticipating long-term impacts.

**Sound judgement**
Knows how to put things in perspective and sets priorities after assessing the facts objectively. Remains objective in analysing complex and ambiguous situations. Adopts a constructive approach, ensuring an appropriate balance of different views.

**Commitment**
Demonstrates availability and diligence and prepares rigorously for each meeting.

**Communication skills**
Able to communicate views with clarity and is respectful of the opinions of others. Understands the culture of the public sector body and demonstrates a spirit of support and cooperation.
Team intelligence
Recognises the importance of complementarities, focuses on common goals, priorities and problems, listens actively and seeks to establish trusting relationships.

Identifying skill gaps
The skills matrix is used to determine the skills, knowledge and experience a board should ideally hold, those it holds currently and the gaps thereby identified. Any identified gaps should ideally be linked, where possible, to professional development for board members.

In a strategic sense, boards can use a board skills matrix as a tool to identify potential members with the necessary skills, knowledge and experience that can be recommended to the minister for appointment, thereby addressing identified skill gaps and board succession planning. A skills matrix can also help to identify when experts may need to be invited to give input or perspective to the board's considerations and decisions.

In particular, a board skills matrix assists a board to:
- identify the skills, knowledge and experience the board should hold collectively
- identify what gender, racial, cultural and other forms of diversity are relevant to the role and functions of the board
- identify the skills, knowledge and experience the board collectively holds
- identify 'board gaps', with respect to skills, knowledge and experience
- develop and implement a plan to address identified skill gaps.

It is good governance to review the skills matrix annually to ensure current needs are being met, as well as enabling the identification of any future skills that may be required as the plan to address identified skill gaps is implemented and the operating environment of the public sector body changes.

Chief Executive Officer
The Public Sector Commissioner is the employing authority of all department and Senior Executive Service (SES) organisation CEOs who are appointed under section 45 of the PSM Act. Broadly, CEOs are responsible for the efficient and effective management of the public sector body, which includes:
- providing leadership and strategic direction
- providing advice to government and delivering government desired outcomes
- establishing and maintaining productive relationships with stakeholders
- planning, undertaking and monitoring the body’s financial administration
- ensuring the appropriate structure and use of resources within the body
- ensuring proper records are maintained
• managing and directing employees, including their recruitment and remuneration
• ensuring employees have equal opportunities, as well as access to appropriate training and development and grievance processes, and have a safe workplace.

The functions of CEOs are further outlined in section 29 of the PSM Act, the Financial Management Act 2006 (FM Act) and, where applicable, a body’s enabling legislation.

The CEO is the primary link between the board and the body, and manages the body’s day-to-day operations in keeping with the board’s strategic directions and decisions. CEOs are directly accountable to either a minister or, where legislation provides, to the board.

Chief employees

Non-SES organisations are entities not listed under either Schedule 1 or Schedule 2 of the PSM Act. They are entities established for public purposes, often under statute or as a result of a Cabinet or ministerial direction. Non-SES organisations are part of the public sector as defined in the PSM Act and are subject to the PSM Act.

Chief employees of non-SES organisations are provided for under s. 44 of the PSM Act. Similarly to CEOs, chief employees are responsible for leading the body and managing its day-to-day operations. However, unlike CEOs—for whom the employing authority is the Public Sector Commissioner under section 45 of the PSM Act—chief employees may be appointed by the board of management or by the body itself.

Executive officer or board secretary

The board executive officer or secretary is usually an employee of the public sector body that provides direct support to the board. The public sector body may decide the executive officer should operate in the same way as a private sector company secretary. If that is the case, the executive officer is the chief administrative officer of the public sector body.

The executive officer should have a detailed knowledge of the enabling legislation of the public sector body, the PSM Act, the FM Act and other legislation and government policies that affect the public sector body and the board.

Under the direction of the chair, the executive officer’s duties may be to:

• provide administrative support, such as preparing meeting agendas, taking meeting minutes, circulating papers, following-up on actions arising from meetings and liaising between the board and the CEO
• facilitate the induction of newly appointed board members
• coordinate professional development programs for the board
• ensure effective information flows within the board, between the board and its committees, and between the board and the public sector body’s management
• advise board members on corporate governance principles and plans, and the implementation of corporate governance programs, such as risk management and performance assessment

• carry out the instructions of the board, assist in implementing board and corporate strategies and give practical effect to decisions of the board.

Like board members, the executive officer may face conflicts of interest that need to be managed. The duties of an executive officer are to comply with the principles of sections 7, 8 and 9 of the PSM Act, the public sector Code of Ethics and, more broadly, to exercise care and diligence, act in good faith and use powers for a proper purpose. The executive officer may not use inside information gained in the course of their role for their own benefit or to the detriment of the public sector body. However, unlike board members, the executive officer as an employee also owes a duty of fidelity and good faith to their employer.
Responsibilities of board members

A board member may often be in a similar position to a company director, where at common law and under statute, public sector board members have a fiduciary duty to act in the best interests of the body as a whole. Company directors and public sector board members acting in a fiduciary capacity have an obligation to:

- act honestly and to exercise powers for their proper purposes
- manage conflicts of interest
- act in good faith
- exercise diligence, care and skill.

Act honestly and to exercise powers for their proper purposes

As a board member you should act openly and honestly at all times in the performance of your duties. You should ensure you do not use information acquired by virtue of your position to gain an advantage, either directly or indirectly, for yourself or any other person.

Conflicts of interest

A conflict of interest arises where there is conflict between the performance of a public duty and private, or personal, interests. Confidence in the board’s functions is dependent upon the accountable and ethical decision making of board members in applying the best interests of the community before their own private interests. As such, all potential, perceived or actual conflicts of interest should be identified and appropriately managed.

It is not always possible for board members to avoid a situation where a conflict of interest could be perceived to exist. In small communities and some specialist industries a conflict of interest can be almost inevitable—it is how you manage the conflict that is most important.

A board member may often be in a similar position to a company director … having a fiduciary duty to act in the best interests of the body as a whole.
Identifying conflicts of interest

The ‘six Ps’, developed by the WA Integrity Coordinating Group (ICG), can be used to assist board members to identify a conflict of interest. In the first instance board members could consider the ‘six Ps’ and ask themselves the following questions.

- **Public duty versus private interest**
  
  Do I have personal or private interests that may conflict or be perceived to conflict with my public duty?

- **Potential**
  
  Could there be benefits for me now or in the future that could cast doubt on my objectivity?

- **Perception**
  
  Remembering that perception is important, how will my involvement in the decision or action be viewed by others? Are there risks associated for me or my organisation?

- **Proportion**
  
  Does my involvement in the decision appear fair and reasonable in all the circumstances?

- **Presence of mind**
  
  What are the consequences if I ignore a conflict of interest? What if my involvement was questioned publicly?

- **Promises**
  
  Have I made any promises or commitments in relation to the matter? Do I stand to gain or lose from the proposed action or decision?

Managing conflicts of interest

There are many ways a board can effectively manage conflicts of interest. The choice of strategies will be dependent upon the operating environment, legislative requirements and practical solutions. Often a combination of strategies will be required. The ‘six Rs’, also developed by the ICG, can assist board members to manage a conflict of interest.

- **Record or Register**
  
  Recording the disclosure of a conflict of interest in a register is an important first step. However, this does not necessarily resolve the conflict. It may be necessary to assess the situation and determine whether one or more of the following strategies is also required.

- **Restrict**
  
  It may be appropriate to restrict your involvement in the matter. For example, refrain from taking part in debate about a specific issue, abstain from voting on decisions and/or restrict access to information relating to the conflict of interest. If this situation occurs frequently and ongoing conflict of interest is likely, further steps may be required.
• **Recruit**

If it is not practical for a board member to restrict their involvement, an independent third party may need to be engaged to participate in, oversee or review the integrity of the decision making process.

• **Remove**

Removal from involvement in the matter altogether is the best option when ‘ad hoc’ or recruitment strategies are not feasible or appropriate.

• **Relinquish**

Relinquishing the personal or private interests may be a valid strategy for ensuring there is no conflict with a board member’s public duty. This may mean relinquishing shares or membership of a club or an association.

• **Resignation**

Resignation may be an option if the conflict of interest cannot be resolved in any other way, particularly where conflicting private interests cannot be relinquished.

**Framework for managing conflicts of interest**

Conflicts of interest need to be considered within an ethical framework that requires you to act with integrity, impartiality, in good faith and in the best interests of the board you serve. In some cases boards are required by law to manage conflicts of interest in a particular way. The key legislation applicable to managing conflicts of interest includes the PSM Act (particularly the public sector principles set out in Part 2), the FM Act and State Supply Commission Act 1991 as well as *Commissioner’s Instruction No. 7 – Code of Ethics* (outlined in the ‘Accountability and governance’ section of this guide).

**Risk areas**

Almost all functions performed by a board can potentially lead to conflict of interest situations. Some common risk areas for you as a board member may include procurement processes, tenders and contracts, sponsorship from the private sector, allocation of grants for community-based services, dual roles or gifts, benefits and hospitality.

**Gifts, benefits and hospitality**

While offering and accepting gifts, benefits and hospitality is common in everyday life, there can be good reasons for public sector board members to decline to accept such offers.

The Western Australian community trusts public officers, including board members, to perform their duties impartially and with integrity. Occasionally board members may be offered gifts, benefits or hospitality as a consequence of undertaking official duties. Usually these will be a token of appreciation and carry no expectation. In some cases accepting a gift, benefit or hospitality could give the impression an officer will favour a particular person or organisation when making decisions. This may not be the intention, but perceptions do matter.
Perceptions are also important when a board provides a gift, benefit or hospitality. Board members need to be mindful and use public resources responsibly, ensuring decisions to provide gifts, benefits or hospitality are defensible and further the conduct of official business of the body or government.

Dealing with gifts, benefits and hospitality is not straightforward given the different operating contexts for each public sector body. It is, however, important that they are dealt with in a practical way to minimise integrity risks. For these reasons, board members need a good understanding of when the acceptance of a gift, benefit or hospitality is appropriate and when it is not.

All board members are encouraged to read Gifts, benefits and hospitality – A guide to good practice, available on the ICG website. This guide assists public authorities to identify the risks associated with gifts, benefits and hospitality and consider how they can minimise those risks through sound policies, transparent record keeping, communication and review activities.

**Take the GIFT test**

The GIFT test, adapted by the ICG with permission of the State Services Authority, State Government of Victoria, as outlined below, is a good reminder about matters to be considered when deciding whether to accept or decline a gift, benefit or hospitality.
G - Giver

Who is providing the gift, benefit or hospitality and what is their relationship to me?

Does my role require me to select contractors, award grants, regulate industries or determine government policies? Could the person or organisation [public sector body] benefit from a decision I make?

I - Influence

Is the provider seeking to influence my decisions or actions?

Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy, a token of appreciation or highly valuable? Does its timing coincide with a decision I am about to make?

F - Favour

Is the provider seeking a favour in return for the gift, benefit or hospitality?

Has the gift, benefit or hospitality been offered honestly? Has the person or organisation [public sector body] made several offers over the last 12 months? Would accepting it create an obligation to return a favour?

T - Trust

Will public trust be enhanced or diminished?

Could you publicly explain the rationale for providing the gift, benefit or hospitality? Will a hospitality event be conducted in a manner that upholds the reputation of the public sector? Have records in relation to the gift, benefit or hospitality been kept in accordance with reporting and recording procedures?

Take the HOST test

The HOST test, also adapted by the ICG with permission of the State Services Authority, State Government of Victoria, as outlined below, is a good reminder when deciding whether to provide gifts, benefits or hospitality to employees or stakeholders. Take the HOST test, but when in doubt ask for advice.
**H – Hospitality**

**To whom is the gift, benefit or hospitality being provided?**

Will recipients be external business partners or employees of the host organisation?

**O – Objectives**

**For what purpose will a gift, benefit or hospitality be provided? Is the gift, benefit or hospitality being provided to further the conduct of official business?**

Will it promote and support government policy objectives and priorities?

**S - Spend**

**Will public funds be spent?**

What type of gift, benefit or hospitality will be provided? If hospitality has been offered, will it be modest or expensive and will alcohol be provided? Will the costs incurred be proportionate to and less than the benefits obtained?

**T - Trust**

**Will public trust be enhanced or diminished?**

Could you publicly explain the rationale for providing the gift, benefit or hospitality? Will the event be conducted in a manner that upholds the reputation of the public sector? Have records in relation to the gift, benefit or hospitality been kept in accordance with reporting and recording procedures?

**Act in good faith**

You are in a position of trust and, as such, your actions and standards of behaviour are required to be exemplary. You should always act in the interests of the public sector body and the minister you serve and not in your own interest or to pursue your own personal agenda.

**Exercise diligence, care and skill**

You must exercise diligence, care and skill in the performance of your duties. You should take reasonable steps to inform yourself about the functions of the board, its business and activities and the circumstances in which it operates.

You should also give close attention to matters of the board by obtaining sufficient information and advice, and exercising discretion to enable yourself to make conscientious and informed decisions, while maintaining confidentiality.
Other legislative requirements

In addition to the applicable enabling legislation of the board there is a range of legislation that may apply to a board or its members, depending on the nature of the board. Although the following list may not be exhaustive of all legislation, and encompass all obligations, that may apply to boards and their members, it is comprised of legislation that should be considered by boards—available on the State Law Publisher's website.

- Auditor General Act 2006
- Corruption, Crime and Misconduct Act 2003
- Equal Opportunity Act 1984
- Fair Trading Act 1987
- Financial Management Act 2006
- Freedom of Information Act 1992
- Occupational Safety and Health Act 1984
- Parliamentary Commissioner Act 1971
- Public Interest Disclosure Act 2003
- Public Sector Management Act 1994
- State Records Act 2000
- State Superannuation Act 2000
- State Supply Commission Act 1991
- Statutory Corporations (Liability of Directors) Act 1996

A conflict of interest arises where there is conflict between the performance of a public duty and private or personal interests...

... all potential, perceived or actual conflicts of interest should be identified and appropriately managed ... board members are required to act with integrity, impartiality, in good faith and in the best interests of the board.
While the Western Australian public sector accountability framework is complex, it is based fundamentally on principles of personal and collective accountability. The public sector accountability framework is made up of various accountability requirements and includes, but is not limited to, legislation, ethical codes, instructions, circulars, whole of government policies, accountability agencies and parliamentary processes.

A diagram of the Public sector accountability, integrity and ethics framework is provided at Appendix C.

**Accountability**

Public sector accountability exists on two levels. Firstly, it refers to individuals being responsible for decisions they make, actions they take and being able to justify those decisions. Secondly, it refers to the framework of accountability in which the public sector operates, including legislation, subsidiary instruments, instructions, codes and policies.

When problems arise it is usually a case of poor judgement or a lack of understanding of public sector accountability requirements. As a board member it is essential that you understand your ethical and accountability obligations and are adept at navigating the accountability framework.

**Integrity**

**Code of Ethics**

The Public Sector Commissioner establishes the Code of Ethics for the public sector within Commissioner’s Instruction No. 7 – Code of Ethics. The Code of Ethics applies to all public sector boards and consists of three principles that set minimum standards of conduct and integrity.

**Personal integrity**

We act with diligence and care and make decisions that are honest, fair, impartial and timely—and consider all relevant information.
Relationships with others
We treat people with respect, courtesy and sensitivity and recognise their interests, rights, safety and welfare.

Accountability
We use the resources of the State in a responsible and accountable manner that ensures the efficient, effective and appropriate use of human, natural, financial and physical resources, property and information.

Code of conduct
Codes of conduct are an important instrument for articulating the behaviour expected of board members. Commissioner’s Instruction No. 8 – Codes of conduct and integrity training requires all public sector bodies, including boards, to have a code of conduct, which must be consistent with the Code of Ethics referred to above. Board members should become familiar with the code of conduct as soon as possible, ideally during the induction process, and should subsequently sign a master copy of the code of conduct to acknowledge that it has been read and understood. The signed master copy should be kept on record.

More information, including a conduct guide for public sector boards and committees that will help to develop, implement and promote an effective code of conduct, is available on the Commission’s website.

A decision making tool
The Commission encourages board members to consider and reflect on four questions when making decisions. These questions are known as ‘First Steps’, a checklist to assist board members to decide on what would be the most appropriate course of action in particular circumstances. The ‘First Steps’ questions are based on the guiding principles of honesty, transparency, diligence and consistency—which are central to ethical and accountable public sector decision making.

1. Am I doing the right thing?
2. How would others judge my actions?
3. How could my actions impact on others?
4. Should I discuss this with someone else?

Misconduct
The Corruption, Crime and Misconduct Act 2003 (CCM Act) requires public sector boards to notify either the Corruption and Crime Commission or the Public Sector Commission, as applicable, of any matter that is suspected on reasonable grounds to concern, or may concern, misconduct. In the case of boards with no employees (for example, advisory boards), notification is usually the responsibility of the board chair. Where the
board has employees (for example, the board of management of a public authority), the notification is normally the responsibility of the CEO on behalf of the relevant public body. In circumstances where the concerns are in relation to the CEO or a board member, the reporting would be the responsibility of the board chair.

The CCM Act defines misconduct and describes two types of misconduct—serious misconduct (Corruption and Crime Commission) and minor misconduct (Public Sector Commission).

**Serious misconduct**

Serious misconduct means misconduct of a kind described in sections 4(a), (b) or (c) of the CCM Act by a public officer, which occurs when a public officer:

- corruptly acts or corruptly fails to act in the course of their duties
- corruptly takes advantage of their position for the benefit or detriment of any person
- while acting or purporting to act in an official capacity commits an offence that carries a penalty of two or more years’ imprisonment.

Serious misconduct is reliant, to some extent, on the application of the term ‘corruptly’. Corrupt conduct tends to show a deliberate intent or improper purpose and motivation and may involve conduct, such as:

- the deliberate failure to perform the functions of office properly
- the exercise of a power or duty for an improper purpose
- dishonesty.

There are specific categories of serious misconduct and all allegations of serious misconduct are to be notified to the Corruption and Crime Commission.

Further information about serious misconduct and notification responsibilities is available on the Corruption and Crime Commission’s website.

**Minor misconduct**

Minor misconduct for the purposes of the CCM Act is behaviour by a public officer which:

- adversely affects the honest or impartial performance of the functions of a public authority or public officer; or
- involves the performance of functions in a manner that is not honest or impartial
- involves a breach of the trust placed in the public officer
- involves the misuse of information or material that the public officer has acquired in connection with their functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person

and constitutes or could constitute

- [this subsection was deleted from the Act, effective 1 July 2015]
vi. a disciplinary offence providing reasonable grounds for the termination of employment, including termination of board membership.

Allegations of minor misconduct are to be notified to the Public Sector Commission.

Further information about minor misconduct and reporting obligations is available on the Commission’s website.

**Reporting misconduct**

There are a number of pathways for reporting misconduct, as depicted by the diagram below.
Governance principles

In the public sector context governance is defined as encompassing the systems and structures by which a public sector body is directed, controlled and operated, and the mechanisms by which the public sector body and its people are held to account.

In general, good governance for boards is based on **seven principles** as detailed below, which, while not mandatory, have been established through consultation with public sector bodies and boards.¹

1. **Roles and responsibilities are clear and understood**
   There is clarity regarding the roles and responsibilities of the board, individual members, the CEO and the minister. Appropriate instruments are established that describe the responsibilities of the board collectively and of individual members, conforming to the public sector principles set out in Part 2 of the PSM Act, and processes exist to ensure these are known and understood.²

2. **Structure and composition ensure relevant expertise and diversity**
   Board members collectively have the necessary skills, knowledge and experience to enable the board to fulfil its role. Consideration is given to optimising gender, racial, cultural and other forms of diversity relevant to the role and function of the board.

3. **Board has a strategic focus**
   The board sets the overall strategic direction of the public sector body and monitors performance against the intended outcomes.

4. **Relevant risks are identified and managed**
   The board ensures an appropriate system of risk oversight and internal controls are in place to enable effective identification and management of risk.

5. **Control systems have integrity and support accountability**
   The board has a system in place to ensure there is a flow of information to the board (and to the public sector body) that supports effective policy development and implementation and coordinated decision making. Control systems are in place to ensure accountability to relevant oversight bodies and to external stakeholders, and that the integrity of financial statements and other key documents is safeguarded.

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1 A tool has been developed to help boards to consider the application of good governance in relation to the seven principles (refer Appendix D). More information about good governance for boards, including resources to support boards in establishing good governance systems, is available on the Commission’s website.

2 The public sector principles set out in Part 2 of the PSM Act relate to public administration and management, human resource management and conduct.
6. A culture of responsible and ethical decision making is promoted

The board, together with the CEO, sets the tone for responsible and ethical decision making throughout the public sector body, and decision making is informed, consistent and balances the requirements of multiple stakeholders. The public interest and the public sector Code of Ethics are actively applied as the benchmark for individual conduct and open and accountable governance.

7. Board operates effectively

The board ensures it manages its business efficiently and effectively, within the limits of the statutory functions and powers of the public sector body, to enable it to fulfil its role. The board undertakes both informal and formal reviews of performance on a regular basis and has appropriate board succession planning in place.

Governance framework

The laws, government policies and priorities and other obligations that bind a public sector body are known as its governance framework. The foundations of good governance in the public sector are built upon:

- legislative, legal and government frameworks
- effective risk management
- delegations in decision making
- accountability, transparency, integrity, stewardship, efficiency and leadership
- values and codes of conduct
- oversight, monitoring and continual improvement (oversight agencies).

It is important for all boards to employ good corporate governance practices to ensure they effectively perform their function and comply with their obligations. In order to do this, it is vital you understand your overarching responsibilities and your public sector body’s:

- governance framework
- stakeholder relationships
- strategic and business planning obligations
- monitoring and reporting obligations (for example, annual reporting)
- policies and key documents (for example, board charter).

The systems and practices that support good governance for boards may evolve over time as their individual circumstances change. There is an ongoing obligation on boards to monitor and review their systems, practices and governance framework to ensure they remain relevant and current.
A board will be required to perform a range of corporate governance activities over a year. An annual planning calendar can assist the board to structure the meeting agenda over the course of the year to ensure all required corporate governance activities are completed.

The attention of a board should be directed to establishing an effective balance between conformance and performance, taking into consideration the ‘hard’ and ‘soft’ elements of governance.

- Conformance, that is, compliance with legislative and legal requirements, as well as corporate governance, industry standards and accountability to relevant stakeholders (for example, ministers, business/industry representatives, non-government organisations, the community, public sector bodies, private contractors and academics).
- Performance, that is, monitoring the performance of the public sector body and CEO, which includes setting organisational goals and developing strategies to achieve those goals, and being responsive to changing environmental demands (including the prediction and management of risk).

The diagram on the next page provides an overview of the board governance framework. Governance arrangements must be flexible and are expected to vary between different types of boards due to their differing roles, functions and operational context. Accordingly, some elements of the governance framework will apply to all categories of boards and some will not. For example, a member of a governing board will have greater fiscal and oversight responsibilities, such as approving budgets and setting corporate strategy, while advisory boards may place more focus on monitoring performance and stakeholder feedback.
### Overview of governance framework

<table>
<thead>
<tr>
<th><strong>Conformance</strong></th>
<th><strong>Performance</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Comply with legislative and legal requirements, as well as corporate governance, industry standards and accountability to relevant stakeholders.</td>
<td>Monitor the performance of the public sector body and CEO, including processes, outcomes and measures.</td>
</tr>
</tbody>
</table>

#### Accountability:
- report to the minister, government bodies and the Parliament
- ensure statutory or regulatory compliance
- review audit reports
- financial and legal risk management.

#### Strategic thinking:
- review and initiate strategic analysis
- formulate strategy
- set corporate direction
- predict and manage risk
- manage stakeholders
- delegate day-to-day management to CEO.

#### Essential elements:
- understand the public sector operating environment
- recognise the difference between strategy and operations
- build effective relationships with external and internal stakeholders
- form an appropriate board structure and performance framework.

#### Oversight:
- display honesty, integrity, public sector values and ethics
- review CEO performance
- monitor and review business results and key performance indicators
- monitor budgetary control and corrective actions
- monitor delegations
- manage board committees.

#### Stewardship:
- form and approve policy
- approve budgets and resources
- set financial and non-financial key performance indicators
- create corporate culture
- confirm delegations.

<table>
<thead>
<tr>
<th><strong>Past and present</strong></th>
<th><strong>Future oriented</strong></th>
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</table>
**Induction**

It is good governance to provide a structured and well-designed board induction process to ensure new board members are aware of their roles and responsibilities, and understand the objectives and operations of the public sector body overseen by the board.

A good induction process should include face-to-face meetings with the chair, CEO and key employees, as well as provision of an orientation pack. The orientation pack should be provided prior to the face-to-face meetings to enable the board member to read the documents contained therein and to prepare any questions for discussion during the face-to-face meetings.

As part of the induction process board members need to be made aware of their responsibilities in three key areas:

- corporate governance
- the structure and culture of the organisation
- the personal qualities they are expected to bring as a board member.

A comprehensive induction process for new board members will provide them with a clear understanding of the public sector operating environment, roles and responsibilities, the code of conduct, core operations, reporting requirements, compliance obligations, governance systems, performance expectations, the need for commitment and all other matters necessary to enable them to perform their role. It will also help them to contribute more quickly and appropriately.

The chair is responsible for the induction of new board members. However, the chair may seek assistance from other key board members or employees.

More information on board induction is available on the Commission’s website.

**Recordkeeping**

Recordkeeping obligations are an important function that must be performed to ensure a board is fulfilling its legal duties with care. Good recordkeeping helps a board function efficiently, effectively and ensures accountability.

Recordkeeping of all important matters should include documents, such as:

- board agendas and minutes
- ministerial decisions and Cabinet endorsement of board members and remuneration
- gifts and hospitality register
- a summary of conflicts declared by members recorded in the board agenda
- a central register of declared conflicts
- a master copy of the code of conduct signed by all board members.

More information on recordkeeping is available on the State Records Office website.
Board charter

The board charter documents the role, composition and processes relating to the key governance activities of the board. A board charter should outline the:

- roles and responsibilities of the board, minister, chair, board members and the CEO
- structure of the board, including the minimum and maximum size, collective skills, knowledge and experience of board members, level of independence, tenure and committees of the board, if required
- process for board meetings, including the frequency of meetings, quorums and resolutions, code of conduct and access to advice
- obligations and mechanisms to ensure stewardship, accountability and transparency, including the process for supporting the minister in the nomination, appointment and retirement of board members, setting remuneration for board members, performance evaluation, and a timeframe for assessment of whether the board has fulfilled its purpose and whether there is a continuing need for the functions of the board.

Many of the above requirements are contained within legislation—with which the charter should be consistent. It may be beneficial to seek legal advice in relation to this matter. The charter will not specify all the workings of the board, rather it should be a high-level document that will typically be supported by other internal documents, such as:

- a schedule of delegations to the CEO
- gifts and benefits register
- controlled assets register
- CEO authority limitations
- code of conduct
- strategic and operational policy documents.

Delegations

Legislation, such as the enabling legislation for a public sector body, may create a statutory power that vests in a particular individual or body the authority to exercise that power.

A delegation is where a party with authority to exercise a power to do something authorises another party to act on the first party’s behalf. It is normal for boards to delegate certain powers to other parties.

Subject to any restrictions in legislation on the board’s power to delegate, the board may delegate powers or functions to any of its members, a board committee, the CEO or an employee. Delegating powers or functions does not absolve the board or its members from accountability for those powers or functions.
Delegation decisions should be made formally by the board. A decision to delegate must be recorded in the minutes of the relevant board meeting and the chair must sign an instrument of delegation on behalf of the board.

A person who holds a delegation must take care to comply with the limits of the delegation and any conditions placed on the delegation. The board should ensure it receives a regular report on the use of delegations so it knows how frequently delegations are being used and that they are being applied in the way that was intended.

It is good governance to keep a register of delegations.

**Board committees**

It is common for boards to delegate aspects of their work to committees of the board. This allows the board to distribute its workload and enables the board committee to perform a detailed analysis of important or sensitive matters before making recommendations for the board to consider. The board, not the board committee, is accountable for all decisions.

When assessing its strategic priorities the board should consider what types of committees it requires. It may have several ‘standing’ or permanent committees, such as a finance or an audit and risk committee, with other board committees established as required. Board committees need to be established with:

- a specific charter, with clear terms of reference
- delegations that do not undermine the board’s delegations to the CEO
- an appropriate number of directors including a majority of non-executive directors, if allowed by the enabling legislation
- procedures for making and keeping agendas and minutes, and reporting to the board
- a clear expectation that the decision making responsibilities of the full board are not to be compromised by the activities of any board committee, and that significant issues will be reported to the board for the board to discuss and decide upon.

The board must continually monitor the activities of each committee as part of their duties of care, diligence and good faith. A committee’s charter should be evaluated annually to ensure it is appropriately focused and that the committee is fulfilling its functions. If not, amendments should be made.

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3 It should be noted that a board can only delegate the right to exercise a power to engage in an activity if the board has the power to engage in that activity itself. As such, a board should check the relevant legislation before making any delegations to determine if there are restrictions on its powers.
Risk management

Treasurer’s Instructions issued under the FM Act require all public sector bodies to institute suitable risk management policies and practices. As such, the board needs to be satisfied that the public sector body’s approach to risk is appropriate.

The board’s audit committee, where one exists, can play a role in the oversight of the public sector body’s financial and non-financial risks. The risk management system should use risk reporting, internal audits, codes of ethics and succession plans.

When it comes to managing risks there are some key questions that should be considered in relation to governance and compliance.

**Governance perspective**
- What are your key risks?
- Are you doing all that is reasonable to manage them?
- Can you demonstrate transparency in your decisions?

**Compliance perspective**
- Can you demonstrate compliance with relevant legislation, Public Sector Commissioner’s Circulars and Treasurer’s Instructions?

In order for the board to answer the important questions above, it is essential the board:
- sets the right tone—leading by example
- has an agreed view on risk tolerance
- aligns the public sector body’s culture with the agreed tolerance
- has effective risk management systems and reporting
- is comfortable that effective internal controls are in place.

**Key risks**

There are a number of key risks facing the board which are primary contributors towards board under performance and include, but are not limited to, those outlined below.
Complex structures

The existence of the Parliament, ministers, boards and CEOs creates an elaborate set of relationships in the public sector. The respective powers, roles and responsibilities of each party tend to result in greater management complexity in terms of stewardship and accountability.

Clarity of objectives

Meeting the minister's expectations is key to a board's purpose and success, even in periods of change, such as during a caretaker period before an election. The minister's statement of expectation becomes an essential tool to assist in clarifying objectives and giving the board confidence to continue its functions until informed otherwise.

Skill gaps

Boards may lack the necessary skills, knowledge or experience to make sound decisions. Skill audits, and the development of a skills matrix, help to mitigate risks, particularly in relation to the selection of new members. Ideally the composition of the board should be reviewed by the corporate governance committee (if established), or the board as a whole, on an annual basis. (Refer ‘Roles and relationships’ section of this guide.)

Conflicts of interest

Board members appointed to represent different interests may prioritise representing an interest over being a board member. This risk needs to be managed by the chair, as it may compromise board unity and effectiveness. (Refer ‘Manage conflicts of interest’ section of this guide.)

Dealing with key risks

The board chair must take responsibility for managing the key risks identified above and keep members informed of their obligations and responsibilities. It is important to develop and implement a risk reporting framework that identifies and tracks governance, strategic and operational risks.

The first step is to study and understand the legal and policy framework within which the particular board operates. Secondly, the key stakeholders will need to be clear about who is responsible for what, who is accountable to whom and in what ways, and what systems of supervision and reporting are in place.

To avoid any confusion about objectives the board should develop a charter expressing its understanding of its role, authority and responsibility, and the way in which it intends to work with the public sector body. It is important that this be ratified by the minister.

If any board member has concerns about potential personal liability when carrying out their role, it is recommended they refer to the Statutory Corporations (Liability of Directors) Act 1996 and seek advice from the Insurance Commission of Western Australia or the State Solicitor’s Office.
Where relevant, board members must understand and comply with government financial requirements, including requirements set by the Department of Treasury, the Department of Finance and the FM Act.

As a board member, you have a responsibility to read, understand and interpret the financial information contained in financial statements. If uncertain about matters contained in financial statements, you should seek advice and clarification (for example, from the chair).

Financial statements can be over-complicated and easily misinterpreted. A board member’s role is to examine and assess the financial statements. You need to understand how the financial statements have been compiled, know what the terms mean and understand the implications of what has been presented in financial statements.

In short, financial statements are about ‘how much comes in, how much goes out, where it goes and what is achieved’. A board member should:

- ask for explanations of any significant variance from the budget
- ask for explanations of any significant variance from projected outcomes
- follow up any issues where the explanation isn’t satisfactory
- require remedial measures to be taken where the budget isn’t on track.

It would be helpful to understand the aspects of public sector financial management in relation to revenue, the budget and financial statements as outlined below.

**Revenue**

The Western Australian State Government raises revenue from State taxation, royalties, the sale of goods and services, public corporations and other revenue sources, such as investment income, fees and fines.
In addition, the State Government receives revenue in the form of grants from the Commonwealth Government, that is:

- tied grants, or specific purpose payments, which are provided under certain agreed conditions
- untied grants, which are mostly funded from the Goods and Services Tax collected by the Commonwealth Government and then distributed to the states based on a formula determined by the Commonwealth Grants Commission.

The State Government’s primary account is the consolidated account that receives all revenue raised by and granted to the State, and from which amounts are appropriated by the Parliament for specific purposes. The consolidated account, together with the trust fund, forms the public account—all payments from the public account must be authorised by the Parliament.

**Budget**

In accord with section 46 of the *Constitution Acts Amendment Act 1899* all money Bills (Bills that appropriate revenue or moneys, or impose taxation—require expenditure of taxpayer’s money) must commence in the Lower House. Therefore, the Budget must be initiated in the Legislative Assembly of the Parliament and is reflected in the annual *Appropriation (Consolidated Account) Recurrent Bill* and the *Appropriation (Consolidated Account) Capital Bill*.

These Bills are passed annually with the Budget Papers, which:

- outline the current financial position of the State
- detail projections of government income and expenditure for the coming financial year
- provide the key mechanisms through which the Parliament authorises the expenditure of public money.

The Bills provide the appropriation authority to the Treasurer, who applies the appropriations based on agreed outputs and targets specified in the Budget Papers.

Some boards do not receive an appropriation from the State Government and generate revenue from the fees imposed on the people or boards they regulate. It is important to remember that even if a board is fully or partially self-funding from their own source of revenue it does not alter their accountabilities to public sector oversight bodies, to their responsible minister or through their minister to the Parliament.
Financial statements

Financial statements provide information on how the public sector body is operating financially and are usually accompanied by explanatory notes. This information allows board members, senior management and other stakeholders to identify the body’s financial strengths and weaknesses for the period, which in turn support planning and prioritisation of financial controls.

In public sector boards, financial statements are usually generated on a monthly basis, which enables board members to review and analyse results, in addition to the review and analysis of the annual report—tabled in the Parliament.

As a board member you should expect to see:

• a balance sheet or the statement of financial position, which provides a picture of the financial health of the public sector body at a specific moment in time, by outlining the various assets the body owns, its liabilities to stakeholders and the value of its equity or net worth

• an income and expenditure statement, profit and loss statement or statement of financial performance, which is a summary of the public sector body’s income and expenses over a specific period of time, and shows how received funds have been allocated against operating expenses

• a statement of cash flow or statement of receipts and payments, which is a summary of money coming into and going out of the public sector body overseen by the board over a specific period of time.

As a board member, you have a responsibility to read, understand and interpret the financial information contained in financial statements. Financial statements can be over-complicated and easily misinterpreted.

A board member’s role is to examine and assess the financial statements. You need to understand how the financial statements have been compiled, know what the terms mean and understand the implications of what has been presented in financial statements.
Regular evaluation of a board’s performance is considered an integral part of effective corporate governance in order to ensure it has the necessary skills, experience and abilities to fulfil its responsibilities and determine the extent to which it is delivering on its purpose, as well as the minister’s statement of expectation. This includes the:

- performance of the board and established board committees
- workload of the board and required positions
- contribution of individual members against predetermined criteria.

Although boards may differ in relation to their governance regimen and the range of issues they face, there are still a number of key decisions that are relevant to all boards implementing an evaluation process. A board evaluation process should include all aspects of governance and be designed to:

- solicit honest, genuine and constructive feedback
- identify and address opportunities for improving the performance of the board
- prepare manageable recommendations with a clear process for implementation
- enhance the performance of the board.

The implementation of an effective evaluation process relies on the support and commitment of all board members, whereby the board reaches agreement on the following:

1. purpose and objective of the evaluation
2. who and what will be evaluated
3. process for undertaking the evaluation
4. who will be asked to provide input
5. the method to be used
6. frequency of ongoing evaluations.
The board should identify the appropriate scope for evaluation and the preferred method, taking into consideration the stage of development of the public sector body, tenure of board members and the elapsed time since previous evaluations.

The board chair has a vital role in helping to ensure the evaluation process is ‘fit for purpose’, as well as dealing with matters raised during the process.

One of the most important and valuable stages of an evaluation, no matter which method is used, is the presentation of results to the board, followed by an open and frank discussion about the results and determination of areas on which the board should focus to help strengthen its effectiveness.

Any board evaluation should be focused on the improvement of board performance, through the development and implementation of an action plan.

*Regular evaluation of a board’s performance is considered an integral part of effective corporate governance …*

*A board evaluation process should include all aspects of governance and be designed to:*

• *solicit honest, genuine and constructive feedback …*
• *enhance the performance of the board …*
Further information

- Public Sector Commission
  Good governance for WA boards and committees
- Department of the Premier and Cabinet
  Government Boards and Committees Register
- Department of Local Government and Communities
  Being Board Ready: A Guide for Women
- Department of Treasury
  Financial Administration Bookcase
- Victorian Public Sector Commission
  Board members
- Australian Institute of Company Directors
  Board governance
- Governance Institute of Australia
  Public sector governance

In general, boards are responsible for ensuring good governance of a public sector body—that is, the board must ensure effective systems and processes are in place to shape, enable and oversee the body’s management ...

As a board member, you operate in a legislative and public policy environment that provides frameworks for accountability, governance, management, policy development and service delivery. Understanding and effectively applying these frameworks is critical to maintaining the trust placed in your board and in you as a member.
Appendix A: Sample statement of expectation by a minister

As your minister I am pleased to provide you with my statement of expectation, which should be read in context with the functions outlined in your board’s establishing legislation and related Acts of the Parliament administered under my portfolio.

This statement of expectation is important to the discharge of my ministerial portfolio responsibilities and sets out my priorities for the board. In issuing it I am able to provide greater clarity about government policies and priorities relevant to the work of the board, including those you are expected to observe.

This statement of expectation recognises that the board has its own legal responsibilities. It is not a direction to the board to act in a particular way. It shares with you my expectations, which include:

- clarifying the category of role of the board
- identifying regulatory independence, where applicable
- describing compliance requirements, for example legislative frameworks
- highlighting government policies and priorities, both short-term and long-term
- articulating stakeholder engagement and management

As your stakeholder I recognise the high level of corporate governance that is in place, including a robust, transparent and accountable system of annual reporting to the Parliament. Accordingly, I expect that this statement of expectation will be incorporated into your planning process and key outcome performance indicators will be published in your annual report.

This statement of expectation applies from the date of receipt until the end of this parliamentary term or until otherwise amended. I look forward to receiving your response confirming your understanding of this statement of expectation. It is anticipated that, for transparency purposes, both this statement of expectation and your response (statement of intent) will be placed on the [insert name of public sector body] website.

I look forward to working with you and continuing our cooperative working relationship. [insert name and title of responsible minister] [insert date].
I am pleased to provide this statement of intent, which is in response to, and outlines how the board will implement, your statement of expectation dated [insert date].

I formally commit the board to meeting your statement of expectation and to ensuring that Government policies and priorities relevant to the work of the board for the [insert name of public sector body] are realised. I will work to ensure the community’s confidence in the board is preserved and strengthened and that, in all our activities, we operate in a way that promotes collaboration and demonstrates accountability and transparency in support of Government policies and priorities.

Our plan includes the following strategic priorities:

- Priority 1
  [insert detail]
- Priority 2
  [insert detail]
- Priority 3
  [insert detail]
- Priority 4
  [insert detail]

Our board will continue to manage its financial affairs diligently and in accordance with legislative requirements and we will continue to comply with all relevant corporate governance requirements. All new members of the board will participate in an induction process and receive a comprehensive orientation pack, containing information pertaining to their role and responsibilities. All board members are to abide by the Code of Conduct and will be offered ongoing support by the chair.

The board has a formal risk management strategy, which will be revised annually. The board will also be subject to regular performance reviews, which I will oversee as chair.

The board looks forward to working with you and delivering the above mentioned strategic priorities.

[insert name and title of board chair]

[insert date]
Diagram illustrates the range of requirements and the complexity of the public sector accountability framework. Information is for illustrative purposes and may be incomplete.
Appendix D: Quick review into the current practice of your board

This tool is intended to help your board consider its application of good governance. It is not intended to be used as a comprehensive checklist, but rather an initial exploration to stimulate further discussion on the application of the good governance principles.

Good governance principles for Western Australian boards

<table>
<thead>
<tr>
<th>1. Roles and responsibilities</th>
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<tbody>
<tr>
<td>Roles and responsibilities are clear and understood.</td>
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<table>
<thead>
<tr>
<th>Quick probe</th>
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<tbody>
<tr>
<td>☐ Does the board have a documented board charter that clearly sets out the roles and responsibilities of the board, CEO and individual members?</td>
</tr>
<tr>
<td>☐ Has the minister issued a statement of expectation to the board and has the board responded with a statement of intent?</td>
</tr>
<tr>
<td>☐ Is there a formal induction process in place for new board members?</td>
</tr>
<tr>
<td>☐ Are delegations of authority from the board to the CEO or chief employee formally documented?</td>
</tr>
</tbody>
</table>
2. Structure and composition

The board structure and composition ensures relevant expertise and diversity.

Board members have the necessary skills, knowledge and experience to enable the board to fulfil its role collectively. Consideration is given to optimising gender, racial, cultural and other forms of diversity relevant to the role and function of the board.

Quick probe

- Is the board aware of the process or requirements for board appointments, including the role of the minister?
- Does the board use a ‘skills matrix’ to ensure members have the necessary skills, knowledge and experience to enable the board to fulfil its purpose?
- Is there sufficient diversity on the board?
- Has the board developed a succession plan to address the skills, knowledge and experience needed by the board?
- Are board members able to commit the time required to effectively undertake their role?

3. Strategic focus

The board has a strategic focus.

The board sets the overall strategic direction of the public sector body and monitors performance against the intended outcomes.

Quick probe

- Does the board understand the strategic environment it operates within, including the key risks?
- Is the board clear on its role and scope of engagement in relation to the development of strategy?
- Has the board set aside time in its yearly calendar for focused strategy development?
- Is alignment with strategy considered a key factor in all board decision making?
- Does the CEO or chief employee regularly report to the board on the progress of implementing the strategic plan?
4. Risk management

**Relevant risks are identified and managed.**

The board ensures that an appropriate system of risk oversight and internal controls are in place to enable the effective identification and management of risk.

**Quick probe**

- Is there an effective procedure in place for the board to identify, assess and manage risk?
- Does the board devote time in its agendas for meetings to consider risk?
- Does the board ensure that management has designed and implemented systems to give effect to policies and procedures endorsed by the board, and to periodically report to the board as to the extent those risks are being effectively managed?
- Does the board conduct a comprehensive risk governance review on a regular basis?

5. Control systems

**Control systems have integrity and support accountability.**

The board has a system in place to ensure there is a flow of information to the board (and to the public sector body) that supports effective policy and coordinated decision making. Control systems are in place to ensure accountability to relevant oversight bodies and to external stakeholders. The integrity of financial statements and other key documents is safeguarded.

**Quick probe**

- Has the board established an audit committee?
- Does the board have an effective procedure in place for ensuring compliance with legal, financial and record keeping requirements?
- Is the board provided with sufficient information to assess the financial and non-financial position and performance of the public sector body?
- Are there rigorous processes in place to effectively oversee the body’s resources?
- Is there a clear performance reporting link to the objectives set out in the strategic and business plans, and where relevant, to the performance agreement with the CEO?
- Do reports to the board include appropriate information to facilitate meaningful review?
- Do all existing board committees have clear terms of reference?
- Is there a process by which the chair of each committee of the board reports back to the full board regarding the activities of each committee of the board?
### 6. Decision making

**A culture of responsible and ethical decision making is promoted.**

The board, together with the CEO, sets the tone for ethical and responsible decision making throughout the public sector body. Decision making is informed, consistent, balances the requirements of multiple stakeholders and is responsible and ethical.

The public interest and the public sector Code of Ethics are actively applied as the benchmark for individual conduct and open and accountable governance.

<table>
<thead>
<tr>
<th><strong>Quick probe</strong></th>
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</thead>
<tbody>
<tr>
<td>☐</td>
<td>Is there a current and comprehensive code of conduct for board members and a master copy signed by each member?</td>
</tr>
<tr>
<td>☐</td>
<td>Are members familiar with the code of conduct and is adherence reviewed regularly?</td>
</tr>
<tr>
<td>☐</td>
<td>Are members familiar with the gifts, benefits and hospitality policy and register?</td>
</tr>
<tr>
<td>☐</td>
<td>Are mechanisms in place for engaging and communicating with stakeholders and appropriately considering their positions in decision making?</td>
</tr>
<tr>
<td>☐</td>
<td>Is strategy alignment considered as a factor in every board decision?</td>
</tr>
<tr>
<td>☐</td>
<td>Is the board clear on its role in setting the strategic direction?</td>
</tr>
<tr>
<td>☐</td>
<td>Does management regularly report progress to the board on resource planning and management for the public sector body?</td>
</tr>
</tbody>
</table>

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*Public sector bodies should have as their goal a continued improvement in the efficiency and effectiveness of their performance and should be administered with that goal always in view.*

*Public sector bodies are to be so structured and administered as to enable decisions to be made, and action taken, without excessive formality and with a minimum of delay.*

*(Part 2 of the PSM Act)*
7. Board effectiveness

**The board operates effectively.**

The board ensures that it manages its business efficiently and effectively, within the limits of the statutory functions and powers of the public sector body, to enable it to fulfil its role. The board undertakes both informal and formal reviews of performance on a regular basis and has appropriate board succession planning in place.

| Quick probe                                                                                      |
|---------------------------------------------------------------------------------|--------------------------------------------------|
| □ Are meeting agendas sufficiently focused?                                                |                                                  |
| □ Does the board have an annual planning calendar to enable it to structure the     | Does the board have an annual planning calendar to enable it to structure the meeting agendas over the course of the year to ensure that all required corporate governance activities are completed? |
| □ Do board meetings involve a frank and open discussion, advanced circulation of    | Do board meetings involve a frank and open discussion, advanced circulation of board meeting agendas and papers, a record of decisions made and a record of the actions or progress against those reported to the board? |
| □ Is a summary of declared conflicts of interest included in the board minutes and in | Is a summary of declared conflicts of interest included in the board minutes and in a central register? |
| □ Is respect, collegiality and confidentiality maintained throughout and between all | Is respect, collegiality and confidentiality maintained throughout and between all board meetings? |
| □ Does the board evaluate and review the performance of its board members and the board itself at least once annually? | Does the board evaluate and review the performance of its board members and the board itself at least once annually? |