



Board Governance

Guidelines for Nomination of Directors

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1. INTRODUCTION

The Board of Directors (“Board”) of Coal Mining Industry (Long Service Leave Funding) Corporation (Coal LSL) has determined that a set of guidelines, to be provided to nominating bodies, be prepared to assist them in the process of nominating Directors to sit on Coal LSL’s board.

The role of a Director of Coal LSL is a demanding one, calling on a commitment to independence, integrity, continuing education, adequate preparation and time availability.

These guidelines are intended to support nominating bodies in understanding what is required of persons nominated to sit on Coal LSL’s Board, and to exercise due consideration in their nominations process.

With legislative changes in 2013, Coal LSL is now a quasi-regulatory authority, and as such its powers, rights and responsibilities have increased in complexity. Accordingly, with this new legislative regime, the Board believes it is important to set out the qualities, skills and expectations for those nominated to sit on the Board, so that it may fulfil the obligations which exist under the Coal Mining Industry (Long Service Leave) Administration Act 1992 (“the Act”) and accompanying legislation.

2. LEGISLATIVE OBLIGATIONS

The general conduct of Directors is subject to the provisions of the Public Governance, Performance and Accountability Act 2013 (PGPA Act) and the common law and equity. The PGPA Act provisions are based on the Corporations Act, and both provide for civil and criminal penalties for breaches.

The Board has ultimate responsibility for Coal LSL’s performance, and are fully accountable for this to the Minister for Employment. Boards should implement effective governance frameworks to support their role and responsibilities, and report on their implementation in the Annual Report.

Board members have fiduciary and other duties drawn to their attention by the Minister in, or with, correspondence offering appointment, and are to fully accept the individual responsibility this places on them.

The Coal Mining Industry (Long Service Leave) Administration Act 1992 sets out the functions and powers of Coal LSL under Part 2, sections 7 & 8 and the functions of the Board of Coal LSL (Part 3) and specifically the provisions relating to Directors (Part 3, Division 3).

Nominating bodies should make themselves familiar with these provisions so as to understand the legal obligations pertaining to Coal LSL and the consequent obligations that will be placed on those they nominate to sit on Coal LSL’s Board.

As Directors, certain statutory duties will be placed upon nominees. These include:

- The statutory duties imposed on Directors under the Act;
- To exercise care and diligence in the exercise of their powers and discharge of their duties;
- To exercise their powers and discharge their duties in good faith in the best interests of and for a proper purpose;
- Not improperly use their position to gain an advantage for themselves or someone else or cause detriment to Coal LSL;
- Not improperly use the information obtained because they are a Director to gain an advantage for themselves or someone else or cause detriment to Coal LSL;

- Not to act recklessly or intentionally dishonestly; or fail to act in good faith, or for a proper purpose, in the best interests of Coal LSL while discharging their powers and duties;
- Not to act dishonestly with the intention to gain an advantage for themselves or someone else or cause detriment to Coal LSL; and
- Not to obtain information dishonestly with the intention to gain an advantage for themselves or someone else or cause detriment to Coal LSL.

These duties set the framework for Directors in the performance of their respective roles.

More generally, Directors are responsible for:

- overseeing the purposes, objectives, policies and plans of Coal LSL;
- for authorising the Chief Executive Officer (CEO) and other Employees to act for or on behalf of Coal LSL in performing delegated responsibilities, and for oversight of the management and control of Coal LSL's business, its finances and its property;
- for determining whether to recommend changes in legislation; and
- approve annual income and expenditure budgets.

In discharging these obligations, Directors are entitled to rely on the honesty and integrity of Coal LSL's CEO and Employees, and its' outside advisors and auditors. The Directors shall also be entitled to:

- have reasonable Directors' and Officers' liability insurance on their behalf; and
- have the benefits of indemnification to the fullest extent permitted by law and any indemnification agreements.

2.1 Confidentiality

The proceedings and deliberations of the Board and its committees are confidential. Each Director will maintain the confidentiality of information received in connection with his or her service as a Director, except when disclosure is authorised by the Board or legally required.

3. QUALITIES OF NOMINEES

Like any business, Coal LSL is required to manage the affairs for which it was created having regard to good corporate governance, financial acumen, risk management and independence. To this end, the Board is looking to nominee bodies to put forward persons who demonstrate the following qualities:

3.1 Capacity to take an organisation-wide perspective

Directors have to see situations from the organisation-wide perspective. Each Director has to step into Coal LSL shoes and contribute constructively to the overall management of the organisation. This will mean shaping the development of the organisation's policies, helping to establish organisation-wide priorities or improving processes such as strategic planning, management information, budget setting and performance review. It may involve chairing a committee. Whatever the activity, Directors need a clear overview of the organisation and its work.

3.2 Think strategically

Directors have to think at a strategic level. It requires the ability to stand back from practical details and take a longer-term and more conceptual view of the organisation and its environment. This necessitates allocating significant time to reflecting and building the capacity to contribute constructively to the strategic thinking of the Board.

3.3 Understand the external environment

Directors have to be much more aware of the changing social, political and technical environment around their organisation. Changes in social policy, government policy and of industry policy are important issues for Directors. Directors therefore need to read widely to keep abreast of important external trends.

3.4 Hold management accountable

Directors need to have the capacity to hold management accountable for their work, to review outcomes closely and to use them to hold management accountable for performance in a regular and systematic way. Directors discharge their responsibilities most effectively when they keep their eye on the overall performance and avoid being pulled into the detail.

3.5 Judge when to intervene

Directors have to judge when to intervene in a situation and when to stand back. It can be complex for Directors to judge when to intervene in management work. Effective Directors can use their experience to make a substantial difference but they only have the time to get involved in those few decisions to which they can make a significant contribution.

3.6 Act with integrity

As a nominee representing the interests of the nominating body a Director first needs to act in the best interests of Coal LSL, putting aside any political views of the body they represent.

Coal LSL request that nominating bodies consider the above criteria for nominating Directors to the Board of Coal LSL, and to put forward nominees who can demonstrate some, or all, of the following:

- complimentary qualifications or experience (see 4 below);
- exhibited behaviour that indicates he or she is committed to the highest ethical standards;
- experience at the policy-making level;
- ability to work constructively with the Chief Executive Officer and other members of the Board;
- capacity to evaluate strategy and reach sound conclusions;
- availability of time to do justice to duties as a Director and willingness to devote the time required; and
- ability to take into account and balance the legitimate interests of all our stakeholders in reaching decisions.

4. SKILL SET OF NOMINEES

In keeping with the desired qualities for nominees, Coal LSL also requires that nominating bodies have regard to the skill sets of nominees so that they are complimentary to the other members of the board and Coal LSL's responsibilities and needs.

The following experience and skills sets are required to meet the legislative objectives of Coal LSL:

- Black coal mining expertise;
- Financial;
- Investment;
- Legal;
- Commercial/Contractual;
- Human resources; and/or
- Workplace health and safety

5. TIME COMMITMENT

One of the qualities of nominees as stated in section 3 above is the availability of time to do justice to the duties of a Director and willingness to devote the time required.

5.1 Attendance at Board meetings

Board meetings are held six (6) times per year usually in Sydney. Directors are expected to attend in person and meetings have an average duration of 4 hours. Board papers are sent to Directors in advance and Directors are expected to have read and come prepared to the board meetings. This will require at least two (2) hours of preparation reading.

5.2 Membership of Committees

There are four (4) sub-committees of the Board, the Audit, Risk Management and Compliance Committee; the Investment Committee; Technical Compliance Committee and the Remuneration Committee. Directors will from time to time be nominated to sit on these committees for a minimum of two (2) years. Each committee meets prior to scheduled Board meetings (minimum four (4) meetings) or more regularly if circumstances require. Average duration of committee meetings is two (2) hours plus equivalent preparation time. Committee meetings should be attended in person if possible but may be attended virtually via phone or video link.

5.3 Special Committees

From time to time special committees may be formed to address issues Coal LSL requires be given attention. Directors will be nominated to sit on these committees for a duration determined by the Board. Attendance and adequate preparation time is required to fulfil the responsibilities with such committees.

5.4 Annual Strategy Day

Coal LSL holds an annual strategy day where it looks at strategic issues facing Coal LSL. This requires a full day commitment, and any preparation/pre-reading required.

Coal LSL therefore asks nominating bodies to be cognisant of the time investment required of those nominated to the Board and to put forward candidates who are able to meet these expectations.

6. DIRECTOR EDUCATION AND TRAINING

Coal LSL recognises that all the qualities and skill sets set out in this document may not be possessed by persons nominated to the Board. Accordingly, Coal LSL invests in Director education and training to support Directors in fulfilling their statutory obligations.

On initial appointment, Directors are encouraged to complete the Australian Institute of Company Directors program. The cost and expenses of attending this program will be paid for by Coal LSL.

On request, a training and development plan may be created for a Director to assist them in meeting their statutory responsibilities.

As a general matter, all new Directors will receive an “Induction pack” to acquaint new Directors with Coal LSL’s business, and may include presentations or background materials on Coal LSL’s strategic plans, its financial matters, its compliance programs, and other key policies and practices.

Coal LSL recognises the importance of continuing education for its Directors and is committed to provide such education in order to improve both Board and committee performance. The Board acknowledges that Director continuing education may be provided in a variety of different forms including: internal or external education programs, presentations or briefings on particular topics and educational materials. To that end, Coal LSL will periodically make available to its Directors continuing educational opportunities designed to assist them in performing their Board and committee functions. Attendance at external events that involve expenditure of Coal LSL funds will be subject to prior approval by the Board.

7. NOMINATION PROCESS

Section 13 of the Act provides for the Minister to appoint Directors nominated by companies and organisations also provided for in the Act.

Prior to the appointment of a Director by the Minister, the Department of Employment has an adopted practice of informing nominating companies or organisation of the pending expiry of a term of appointment and seeking a further nomination (including re-nomination).

Coal LSL requests that nominating bodies keep the following principles in mind when considering nominations:

- Conflicts of interest with the appointing body should be disclosed to Coal LSL on whose board the nominee will serve;
- Directors appointed by sponsoring bodies are obliged to bring to bear on their decision making all knowledge they possess, including confidential information they might hold by reason of being an Officer or Employee of their appointer;
- Directors appointed by a sponsoring body need to consider if information brought to their attention by virtue of their appointment to the board is confidential, whether it can be disclosed to their appointer and what approval needs to be obtained before disclosing any information to their appointer;
- There must be full and proper disclosure of any conflict of interest, including any actual, perceived or potential conflict of interest with the interests of the sponsoring body, prior to any participation in decision making;

- The interest of the sponsoring body may be taken into account, but only to the extent this is compatible with the duties as a Director. Where there is a conflict of interest between the best interests of Coal LSL and the sponsoring body that appointed the Director, the Director must prefer the interests of Coal LSL;
- The Director appointed by a sponsoring body may not be able to participate in decision making in which they have a conflict of interest, or they may be able to participate in such decision making following discussion by the board of the implications of their participation and a board resolution permitting them to participate; and
- The challenge for the Director appointed by a sponsoring body in participating in decisions and voting on issues in which they have a conflict of interest is that they must act in the best interests of Coal LSL, and not in the interests of the appointing body.

8. COMPLIANCE WITH BOARD CHARTER

Directors will be required to comply with the Coal LSL's Board Charter as detailed in Appendix A.

9. REFERENCES AND RELATED DOCUMENTS

- Public Governance, Performance and Accountability Act 2013 (PGPA Act) and the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule)
- *ANAO Public Sector Audit Committees – Better Practice Guide, 2015*
- Coal LSL Board Charter

Next Review Date: June 2018