

BOARD AND DIRECTOR PERFORMANCE ASSESSMENTS

Guidance for Victorian public entity boards

1. Introduction

This guidance is intended to support public entity Boards to undertake Board and Director performance assessments.

Across the Victorian public sector, more than 3,400 public entity Boards perform a vast range of important public functions, from delivering education, health, transport and emergency services, to managing public land and water, regulating key industries, and providing expert advice to government. Some employ large workforces and experienced executive management teams, while many have no employees at all.

Given this great diversity of form and function, not all parts of this guidance will be applicable to every Board. The Victorian Public Sector Commission has developed this guidance by drawing on the expertise of some of Victoria's most experienced public sector Board Directors. Boards should use this guidance to assist them in undertaking the best possible performance assessments for their circumstances.

This guidance is primarily intended for use by those public entities subject to s.81(1)(d) of the *Public Administration Act 2004* (the PAA). Public entities that are not subject to s.81(1)(d) of the PAA are not the primary audience for this publication, however, they may refer to this document for principles based advice.

All Directors are bound by the *Code of Conduct for Directors of Public Entities (the Code)*, which sets minimum accountabilities in relation to performance assessments, and this guidance can assist Directors to meet these accountabilities.

2. What are Board and Director performance assessments?

The aim of performance assessments is to consider how well the Board and Directors are meeting their responsibilities, and identify opportunities for improvement or reform. Assessments are typically undertaken for:

- **the Board:** to examine how well the Board as a collective has performed over the year;
- **individual Directors:** to examine each Director's contribution to the Board; and
- **the Chair:** (in addition to assessment of their role as a Director) to examine the Chair in their leadership role.

Throughout this document the term 'Board assessments' refers to assessment of the Board as a collective, while the term 'Director assessments' refers to assessment of individual members (including the Chair). The term 'performance assessments' encompasses all categories.

It should be noted that performance assessments as discussed in this guidance document are distinct from any assessment of the public entity's performance (for example, internal and external audits).

3. Requirement for performance assessments

The requirement for performance assessments is contained within s.81(1)(d) of the PAA and is reinforced in s.3.3 of the Code. The PAA and the Code state that Boards are required to comply with the policies and procedures of their public entity in relation to:

- assessing the performance of the Board;
- assessing the performance of individual Directors; and
- dealing with poor performance by Directors.

The Board should also comply with any requirements set out in the public entity's enabling legislation, as well as any instructions or directions issued by the Minister or relevant Department. As a matter of good practice, the Board should review these on an annual basis to ensure any changes are acted on.

4. Why conduct performance assessments?

There are several reasons why performance is assessed, including to:

- identify areas for improvement;
- examine processes, culture and operations;
- provide an opportunity for professional development of Directors;
- identify any need for additional capabilities on the Board;
- meet standards of good practice; and
- meet legislative requirements.

5. Planning performance assessments

Assessments require careful planning to make sure that the Board gets the most out of the process. There are seven main factors which should be considered as part of the planning process for both Board and Director assessments. These are:

- **Timing:** A formal assessment should be conducted on an annual basis, with a more comprehensive review recommended every two to four years. In recognition of the need for a continuous feedback loop to drive high performance, Boards should also consider how parts of the assessment process can be embedded in business processes over the course of the year. In making timing decisions, Boards should take into account the workload of the organisation and expiry dates of Directors' appointments.
- **Responsibility:** To ensure an efficient assessment process, the Board should clearly define responsibilities, including for planning, reporting, and implementing recommendations. Since assessments are an annual process (although performance development and reflection should occur throughout the year), Boards should also consider how responsibility is allocated for any ongoing work implementing recommendations from previous years.
- **Scope:** The Board should agree well in advance what matters will be considered in both Board and Director assessments. In making this decision, the Board should take into consideration previous years' assessments, instructions or guidance from the relevant Department or Minister, current priorities or issues, and any identified areas of risk.
- **Methods:** The Board should agree on the methods of assessment at the planning stage. The methods used should be informed by the agreed scope. Boards should consider employing

consistent methods over time so that meaningful data can be collected and trends in performance analysed. Further information on methods is at section 11.

- **Internal or external assessment:** The Board should consider whether to conduct all or part of the assessment itself, or engage the services of a third party consultant. Further information on making this decision is at section 6.
- **Confidentiality:** During the planning phase, the Board should clearly articulate the level of confidentiality of the performance assessments. This should include:
 - whether or not individual Director's feedback is anonymous;
 - who should have access to feedback;
 - whether information is summarised, or shared in unedited format; and
 - processes for higher levels of confidentiality if required.¹
- **What will be done with the results:** The Board should agree on if, how, and to whom assessment results should be reported, having regard for any legislative requirements, directions or guidance from the Minister or Department. The Board should also consider making a dedicated time to discuss the results and agree on a process for deciding on and implementing any recommendations. This could include referring actions to a subcommittee for further discussion and analysis.

6. Who should conduct performance assessments?

The Board will need to carefully consider the appropriate person or group to conduct performance assessments. The answer to this question may differ between the Board assessment, and individual assessments of the Chair and Directors. The Board should discuss and agree on the approach when planning performance assessments (see section 5).

In general terms, assessments can be conducted internally, externally, or a combination of the two approaches. More than one person or group can be involved in conducting a performance assessment.

- **Internal performance assessments** are conducted without any outside assistance. Internal assessments can be structured in several ways, and may be led by the Chair, the deputy Chair, and/or a designated subcommittee.
- **External performance assessments** are conducted by a third party engaged by the Board to undertake all or part of the assessment. The third party should be independent and impartial, and could be a consultant or a Director from another Board. If a Director from another Board is involved in the assessment process, careful consideration should be given to management of any actual, potential or perceived conflicts of interest or duty.

As the use of a consultant can be costly, in particular for smaller Boards and organisations, Boards should consider conducting assessments internally or approaching a Director from another Board.

Engaging an external consultant may be appropriate in some situations, including when:

- the Board has been very recently created, or the Directors are very new to the Board;
- there has been a substantial change in the responsibilities of the Board, or in the allocation of responsibilities between individual directors;
- the Board is seeking greater transparency and independence of the assessment; and/or
- the Board is responsible for a relatively large or complex entity.

¹ For example, when a potential protected disclosure (protection for people who make genuine disclosures about improper conduct in the public sector) arises from the performance assessment process.

7. Assessment of the Board

The most important focus of a performance assessment is to allow an opportunity for Directors to reflect, both individually and collectively, on the effectiveness of the Board in delivering its functions and identifying potential improvements. To this end Boards should consider structuring assessments around key areas of focus and agree on these prior to assessments being undertaken. The Board should seek advice from its Department to determine whether or not the Department or the relevant Minister have particular requirements for performance assessments.

Suggested key areas of focus include:

- **Legislative requirements:** Ensuring the Board meets the requirements, directions or guidance of its establishing legislation, the PAA and any other applicable legislation or regulation;
- **Strategic leadership:** The Board's contribution to strategic leadership in its area of responsibility, including the oversight and approval of the development of strategic plans and performance against the outcomes contained in those plans;
- **Governance:** Assessing the performance of the Board's governance arrangements, how effective these are and if they need to be reviewed;
- **Board authority and delegation:** Delegations given by the Board to the CEO or subcommittees, including an assessment of the effectiveness of these and how the Board retains oversight of the delegations;
- **Effectiveness of Board meetings and decision making:** The process for running Board meetings, including analysing whether these are productive and if decision making is conducted in a robust and rigorous manner;
- **Culture:** The underlying beliefs, assumptions, values and ways of interacting between Directors, and how the Board interacts with key stakeholders. This should include both actual and perceived culture;
- **Integrity:** The quality of systems, practices and behaviours that support the Board to earn and sustain a high level of public trust. This should include alignment with the public sector values and the Code;
- **Board diversity:** Whether the Board has a diverse range of people and skill sets to function at maximum effectiveness;
- **Oversight of the Chief Executive Officer (CEO):** The relationship between the Board and the CEO, the existence of an appropriate division of responsibilities, the CEO's awareness of their responsibilities under the code of conduct, including operating the entity in line with public sector values and the impacts of oversight on the performance and day-to-day management of the organisation;
- **Stakeholder relationships:** The relationships, real and perceived, between the Board and its key stakeholders, such as the community, clients, industry groups, the CEO, the Minister and the Department. This may include asking key stakeholders for their view on the effectiveness of the relationship of the Board and the organisation; and
- **Financial oversight:** The Board's stewardship of any public funds and assets over which it has responsibility.

8. Assessment of the Chair and Individual Directors

The focus of individual Director and Chair assessments will differ from the assessment of the Board as a collective, as these are individualised. The areas of focus should be agreed on between the relevant parties as part of the assessment process. These assessments should occur annually and represent an opportunity to discuss each Director's contribution to the work of the Board and talk about overall performance. Reviewing the performance of individuals helps to better identify strengths and weaknesses and this information can be used to maximise the participation of and utilise the skillsets of the Directors.

Given the unique leadership role of the Chair, a distinct assessment process is required that addresses relevant dimensions not dealt with in other individual Director assessments, as well as some shared areas of focus. In some circumstances, it may be most appropriate for a Chair assessment with the assistance of an external third party.

Some suggested areas of focus specifically for the Chair include:

- **Interaction and engagement with Directors:** The effectiveness which the Chair leads and inspires Directors to fully engage with the Board and its functions and their ability to promptly deal with any issues which may arise;
- **Running the Board:** The level of efficiency and effectiveness with how the Chair leads meetings, including the setting of agendas, distributing Board papers and facilitating group decision making; and
- **Leading the performance of other Directors:** How the Chair manages the assessment process for individual Directors, including the quality of assessments, assisting the Directors achieve their individual goals and guiding Directors in their progress against performance plans (if applicable).

Suggested areas of focus that are applicable to both the Chair and Individual Directors are:

- **Contribution to Board functions:** The level of participation and contribution the Director makes to the Board and subcommittees, including contributions to building and maintaining stakeholder relationships, strategic and annual planning and participation in projects and subcommittees;
- **Contribution to Board culture:** The way the Director displays public sector values in their work on the Board and how this assists in shaping the culture of the Board;
- **Leadership and stewardship:** The Director's ability to motivate, inspire and display vision within their role on the Board. Whilst the Chair typically plays the most visible leadership role, all Directors should be assessed on these qualities; and
- **Skills and knowledge:** Is the Director able to utilise their skills, knowledge, and networks to their best ability on the Board, and is there any training or upskilling which could further develop their capabilities.

9. Suggested methods for assessing performance

There are a number of ways in which performance can be assessed. The most appropriate method will depend on the preferences and working styles of individual Boards, available capability and resources, the results of previous assessments, and best practice in the relevant sector. Further information on the appropriate parties to conduct assessments is at section 6. These methods may be used for both the Board and Directors, and include:

- **Surveys of Directors:** These will give insight into the Director's views and allows for comparison to see if there is a broad consensus or differing opinions on the work the Board is undertaking. Surveys should generally incorporate both quantitative and qualitative questions.²
- **Group assessment/reflection:** This identifies areas Directors consider to be most important, allows debate and encourages discussion on proposed solutions in an open forum environment. This is a facilitated discussion led by either a Director or a third party who can ask questions, encourage discussion, and assist the Board to identify improvements in targeted areas. This type of assessment should be used to assess the performance of the Board's functions, rather than individual Director performance.
- **Surveys of key stakeholders:** Most Boards will have external stakeholders such as a Department, CEO, Minister, industry or community groups. Gaining input from these groups can often give useful third party insight, particularly into whether or not the work the Board is undertaking is fit for purpose and valued in the wider community. These surveys should be written specifically for the targeted audience and may differ between stakeholders.
- **Confidential question and answer sessions:** This will give direct insight into the Chair and Directors' opinions on aspects of the Board's work by asking targeted questions. These can occur between different parties, such as the facilitator and Chair, Chair and Directors or the Chair and a key stakeholder such as the CEO. There should be a list of agreed questions, so the parties are able to prepare and give these due thought and consideration, however discretion should also be allowed for additional questions based on the discussion.
- **Examining Board papers:** A review of the Board's papers from the previous year may be undertaken as part of the review process. This can be useful both as an opportunity for the Board to consider how well supported it is by the quality of Board papers, as well as allowing the Board to look back on the work undertaken over the year, results achieved, and outstanding items. It can also contribute to monitoring Chair and Director performance, through measures such as attendance and any actions assigned over the year.
- **Previous assessments:** Directors and the Chair should look at their previous performance assessment plans regularly, and review these on a yearly basis. This gives the Board and Directors a clear view of previous results, issues identified, and actions agreed. These are then assessed for completeness, with a view to discuss any outstanding items and how these can be actioned and closed off.
- **Individual meetings between Chair and Directors:** The Chair and Directors should have an annual discussion as part of performance assessments. This will involve reviewing the Director's performance over the year, contribution to projects and subcommittees, and attendance at and active participation in meetings.

The table below shows the suggested methods for assessing performance and whether these are used for the Board, Chair or Directors. Boards should ensure the most appropriate methods are utilised to gain maximum benefits from the assessment process.

Table 1: Suitability of suggested performance assessment methods

Method	Board	Chair	Director
Survey of Directors	Yes	Yes	Yes
Group assessment/reflection	Yes	No	No

² Quantitative questions are ones which can be turned into numerical data and analysed. This can include asking a series of questions using a numerical scale (1-10) or to select from a list of pre-determined outcomes such as multiple choice. Qualitative questions are ones which can be used to gain Director's thoughts on specific topics by allowing written responses. These should be clear, concise and targeted questions.

Survey of key stakeholders	Yes	Yes	No
Examining Board papers	Yes	Yes	Yes
Previous assessments	Yes	Yes	Yes
Individual meetings between Chairs and Directors	No	Yes	Yes
Confidential question and answer sessions	No	Yes	Yes

10. Addressing poor performance by Directors

There may be circumstances where the performance of a Director does not meet the standard required in the Victorian public sector. Poor performance can take a range of forms, including issues with participation, quality of contributions, behaviour or integrity.

Under s.81(1)(d) of the PAA, Boards must have a procedure in place to deal with poor performance of a Director. Some suggested approaches to identifying and managing poor performance include:

- an initial discussion between the Chair and the Director to identify performance issues and to discuss methods for improvement;
- regular ongoing discussions between the Chair and the Director to monitor performance, potentially including the use of a formal performance plan;
- identifying any learning and development opportunities and putting in place a plan and timeframe for these to be met;
- changing the projects or subcommittees which the Director is participating in; and
- contacting the relevant Department for further suggestions and advice.

The goal for dealing with poor performance is to take corrective action which assists and supports a Director to achieve high performance. Issues such as suspected misconduct or failure to declare conflicts of interest should not be considered poor performance and should be dealt with under separate processes.

If Directors have concerns over the performance of the Chair, they should contact their Department in the first instance for further advice.

11. Reporting the results of performance assessments

In order to get the most out of the performance assessment process, the Board should agree on a mechanism and timeframe for reporting on the results. It is important to provide all relevant information, taking into account any confidentiality considerations (where applicable). Boards should strike a balance between encouraging a frank and open assessment of performance, and need to protect individuals from possible reprisal. In the interests of transparency, it may be preferable to share potentially sensitive information in a de-identified or summarised form, rather than avoid sharing the information entirely.

If there is a report generated as part of the assessment it should be tabled and recorded in the minutes of the Board meeting. The results of Board assessments should in general be reported collectively, whilst individual performance outcomes should be discussed between the Chair and the individual Director concerned. Reporting may include:

- presentation of results to the Board;

Unclassified

- opportunity for discussion and analysis of results;
- individual meetings between the Chair and an external consultant (if one was used); and
- individual meetings between the Chair and each Director.

Some Boards may be required by legislation or Ministerial direction to report the results of their performance assessments, to the relevant Department or the Minister. Furthermore, if the assessment process identifies major risks such as suspected fraud or corruption, the Board may be required to report these to the relevant Minister under s.81 of the PAA or s.2.4 of the Code. Where such risks are identified, Boards should seek early advice from their Department prior to reporting to the Minister.

12. Recommendations arising from performance assessments

Once the assessment process has been completed and the results tabled, the Board may wish to discuss and adopt one or more formal recommendations for improvements. If recommendations have been made by a third party, the Board should review the recommendations in detail and decide which should be implemented, seeking advice from their Department if required. When adopting recommendations, it is important to:

- minute the recommendations at the Board meeting;
- assign responsibility for each recommendation (e.g. to a Director, a subcommittee, or the Board as a whole);
- set an agreed timeframe for reporting back to the Board, including milestones and/or progress updates if required;
- decide whether a specialist subcommittee is required to oversee implementation;
- consider resourcing requirements (if any); and
- consider whether the recommendations should be made public, or shared with key stakeholders, to promote transparency and accountability.

While straightforward recommendations should be minuted and assigned for action at the earliest opportunity, if the Board decides to endorse any detailed or complex recommendations, a separate implementation plan may be required. In the case of complex and/or significant recommendations, Boards should consider scheduling a further review for a specified future date to evaluate whether or not the recommendations achieved the intended outcomes. The Board as a collective has responsibility to ensure recommendations are seen through to completion.

If recommendations arise from Director assessments, the Chair and Director should work together to identify any development needs and (if necessary) implement a plan to achieve the desired outcomes. Follow-up should occur periodically through the year to ensure accountability. In general, these plans should only be discussed between the Director and the Chair.

While arrangements may vary, in most cases the Board Chair is accountable to the Minister for their individual performance. The Chair should seek guidance from the department on how to manage this accountability.

13. Further information

This guidance is intended to provide a high-level overview of the performance assessment process. For more comprehensive information, advice and support on performance assessment processes, Boards are encouraged to contact their Department. Under s.13A of the PAA, Departments are responsible for assisting public entities in their portfolio with matters of public administration and governance, including performance assessments.

The Victorian Public Sector Commission (VPSC) provides a range of resources, including *Welcome to the Board: Directors' Guide to Public Entity Governance*. These resources can be found on the VPSC website (www.vpsc.vic.gov.au).