



TRANSPORT HERITAGE NSW BOARD CHARTER

ADOPTED 30 AUGUST 2022



1 INTRODUCTION

The Board and management of Transport Heritage NSW (THNSW) aim to achieve the same vision and objectives through a team approach based on trust and respect.

Central to this relationship is a clear mutual understanding of roles, delegations and boundaries which allows each party to respect the other's responsibilities, contributions and expectations.

The relationship depends on the open flow of relevant and timely information in both directions.

The formalities of the nature of the relationship and the responsibilities and expectations of both the board and management are set out in this THNSW Board Charter.

The Board of THNSW supports the Australian Institute of Company Directors Not-for-Profit Governance Principles (*the Principles*).

The four basic duties of a Director are:

- **Care and diligence** – This duty requires a director to act with the degree of care and diligence that a reasonable person might be expected to show in the role.
- **Good faith** – This duty requires a director to act in good faith in the best interests of the company and for a proper purpose, including to avoid conflicts of interest, and to reveal and manage conflicts if they arise. This is a duty of fidelity and trust, known as a 'fiduciary duty' imposed by common law and a duty required in the *Corporations Act 2001*.

- **Not to improperly use position** – This duty requires directors to not improperly use their position to gain an advantage for themselves or someone else, or to the detriment to the company.
- **Not to improperly use information** – This duty requires directors to not improperly use the information they gain in the course of their director duties to gain an advantage for themselves or someone else, or to the detriment to the company.

The Board has the responsibilities set out in this Charter and will carry out those responsibilities honestly, fairly and diligently, in accordance with the law, THNSW's Constitution, *the Principles*, THNSW's Code of Conduct (Our Code) and Values; and for the benefit of members as well as volunteers, employees, customers, and the NSW community. The Board is to be expected, both collectively and individually, to develop and lead the culture of the Company to best position it for future growth.

The Board has developed policies and practices consistent with *the Principles* with appropriate amendments that the Board believes are applicable for the size and nature of THNSW's operations.

THNSW's corporate governance culture – our way of doing business – including leadership by the Board and senior management, is critical to THNSW's continuing success and is intended to set an example to all those dealing with THNSW of the effective operation of good corporate governance.

2

BOARD AND MANAGEMENT, COLLABORATION AND RESPONSIBILITIES

2.1

The Board is responsible for:

- a. overseeing the management of THNSW;
- b. providing strategic direction through approving and periodically reviewing the strategic plan;
- c. approving the Board's policies, strategy and performance objectives;
- d. approving the annual budget including targets for revenue, surplus or deficit, capital expenditure, and cash flows;
- e. approving and monitoring the operating budget, progress of major capital expenditure, capital management, acquisitions and disposals (subject to the THNSW Constitution);
- f. appointing and removing the Chief Executive Officer (CEO), and determining the terms and conditions of appointment, including the remuneration package;
- g. agreeing performance targets with, and monitoring the performance of the CEO;
- h. appointing and removing the Company Secretary;
- i. monitoring management's performance, implementation of strategy, and allocation of resources to achieve the business policies, strategies, objectives and budgets;
- j. determining and approving the levels of authority to be given to the Chief Executive Officer in relation to operational expenditures, capital expenditures, contracts and the operation of banking, and authorising any further delegations of those authorities by the Chief Executive Officer to other senior employees of the company (the THNSW Schedule of Delegations);
- k. maintaining succession plans for the Chief Executive Officer;
- l. approving (subject to member endorsement) the appointment of the external auditor;
- m. approving Terms of Reference of Board committees;
- n. approving and monitoring financial and other reporting;
- o. approving the candidates for THNSW Life Members, and the appointment of Patrons, Transport Heritage Champions, Honorary and Associate Members;
- p. reporting to members;
- q. monitoring the identification of safety risks, business risks, reviewing and ratifying systems of risk management, internal compliance and control, legal compliance, and compliance with THNSW's ethical values and standards and policies, to ensure appropriate compliance frameworks and controls and an appropriate culture of risk management are in place; and
- r. monitoring compliance with best practice corporate governance requirements.

2.2

The following responsibilities are delegated by the Board to management:

- a. day-to-day management of THNSW in accordance with the strategy approved by the Board, including but not limited to the following areas:
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- (i) operational rail safety;

 - (ii) occupational health and safety;

 - (iii) financial and capital management and reporting;

 - (iv) operations;

 - (v) information technology;

 - (vi) marketing;

 - (vii) customer service;

 - (viii) developing relationships with members and volunteers, stakeholders, donors and sponsors, media, and other sector participants; and

 - (ix) human resources;
- b. the above are further covered in the THNSW Schedule of Delegations;
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- c. consulting with the Board regarding the appointment, and where appropriate, the removal of roles with strong interfaces with regulatory bodies i.e. Head of Finance and Corporate Resources, the Rail Operations Manager and the Safety, Environment & Quality Manager;
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- d. consulting with the Board regarding other senior executive appointments, organisational changes and senior executive remuneration policies and practices (subject to the terms of reference of the Remuneration Committee of the Board);
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- e. such other duties as are from time-to-time delegated by the Board.

2.3

It is intended that the CEO can take all decisions and actions which further the strategic objectives of THNSW, and which in the CEO's judgement are reasonable having regard to the matters reserved by the Board, and the potential effect on the reputation of THNSW.

2.4

The CEO will report systematically in a spirit of openness and trust of the progress being made toward achievement of the strategic objectives of THNSW as determined by the Board.

2.5

The Board will, on a regular basis, undertake a review of its responsibilities and the responsibilities of management to ensure that they remain appropriate for the business conducted by THNSW.

3

COMPOSITION OF THE BOARD

3.1

In line with the THNSW Constitution, the Board consists of a total of eight (8) directors.:

- a. Three (3) directors who are non-elected appointed directors, each having a single vote;
- b. Four (4) directors elected by the voting members as elected directors, each having a single vote;
- c. The eighth director is the Chair, as appointed by the Minister, subject to the ongoing Funding Deed (THNSW Constitution clause 17). The Chair has no deliberative vote on the Board, subject to the THNSW Constitution, clause 23.

3.2

Any Director elected or appointed to the Board accepts Board decisions made prior to their joining.

3.3

Upon leaving the Board, either through resignation, non re-election or non-reappointment, individual Directors have a legal responsibility to maintain confidentiality regarding matters of the Board and must destroy (or return) all documents of the Board.

3.4

Directors are entitled to seek independent professional advice related to the discharge of their responsibilities as directors, at THNSW expense, subject to the prior approval of the Board.

3.5

Individual Directors have no inherent authority or executive power. Enquiries by Directors of management and by management of individual Directors should primarily be channelled via the Chair and Chief Executive Officer.

3.6

Individual Board Directors have no delegation. Board Directors may claim a limited range of out-of-pocket expense items as per the THNSW Expenses Policy.

3.7

Directors are expected to undertake regular Director training as agreed by the Board, and funded by the Company, to maintain their concurrency of governance knowledge.

4

BOARD MEETINGS

4.1

The Board will meet as often as the directors consider necessary to fulfil their duties and responsibilities and to meet the demands of the business. In normal circumstances the Board is expected to meet at least 6 times in a year. Directors are expected to have read all the Board papers and be prepared to proactively participate in the Board meeting.

4.2

A Board meeting may be held by the Board communicating by any technological means consented to by all the Directors. The consent may be a standing one and the Board need not all be physically present in the same place for a Board meeting to be held.

4.3

From time to time the directors will meet without management being present.

4.4

A quorum for a meeting of directors is defined in the THNSW Constitution, clause 16.5.

5

CONFLICT OF INTEREST

5.1

Directors must keep the Board advised, on an ongoing basis, of any interests that could potentially conflict, or could be perceived to conflict, with those of THNSW. See Appendix 1 THNSW Board Conflict of Interest Procedure.

5.2

If a potential conflict of interest arises, the director concerned shall advise the Chair prior to any Board meeting at which the issue is to be discussed. The Chair will resolve the issue in accordance with the THNSW Conflict of Interest Policy and Appendix 1. THNSW Board Conflict of Interest Procedure.

5.3

A register of potential conflicts of interest will be maintained by the Company Secretary - as per the THNSW Conflict of Interest Policy.

6

BOARD COMMITTEES AND WORKING GROUPS

6.1

The Board may establish Board committees to which it may delegate any of its powers, duties and responsibilities. The Board will appoint the members of each committee, and the Chair of each committee.

6.2

The Board has established the following Board Committees:

- a. Safety & Environment Committee;
- b. Finance, Audit, & Risk Committee;
- c. Remuneration Committee;
- d. Collections & Curatorial Committee; and
- e. Rail Operations Support Committee.

6.3

A separate Terms of Reference has been adopted for each of these Committees, setting out the composition, duties and responsibilities of the committee, which is reviewed every two years.

6.4

The Board may establish advisory working groups from time-to-time with no delegated powers. The Board will appoint the members and the Chair of each working group. A separate Terms of Reference will be adopted for each advisory working group committee which is reviewed every two years.

6.5

The Board has established the following working group:

- a. Fundraising Strategy Development working group;
- b. Life Member Nomination Review working group.

7

THE COMPANY SECRETARY

7.1

The Company Secretary is accountable to the Board, through the Chair, on all governance matters, with all directors having access to the Company Secretary for advice or assistance on governance matters.

7.2

The Company Secretary supports the effectiveness of the Board by:

- a. monitoring that Board policy and procedures are followed; and
- b. providing guidance to the Chair and Board on governance issues.
- c. coordinating the completion and dispatch of board minutes.

7.3

The Company Secretary is responsible for driving and advising on best practice in governance; championing the compliance framework to safeguard the integrity of the organisation; promoting, and is the sounding board on, high standards of ethical and corporate behaviour; and bridging the interests of the Board, management and stakeholders.

8

REVIEW OF BOARD EFFECTIVENESS

8.1

The Directors will participate in the review of the Board's effectiveness in carrying out its responsibilities from time to time. The Chair will implement a review system which, subject to consultation with the Board, may include:

- a. a collective review of effectiveness undertaken by the Board;
- b. opportunities for directors to give private feedback to the Chair on Board effectiveness; or
- c. such other review mechanisms as the Board decides.

8.2

The Chair, in consultation with the Board, will consider whether or not to engage an external facilitator to assist with the above.

9

CHARTER REVIEW

9.1

The Board shall review this Charter every three years or as required, after the periodic Board performance assessment.

9.2

Any modifications to or replacements of this Charter must be approved by the Board.

THNSW BOARD CONFLICT OF INTEREST (COI) PROCEDURE

Introduction

The THNSW Board is responsible for ensuring that all actual, potential and perceived conflicts of interest that pertain to the Board, Chair, Board Directors, Company Secretary, the Board’s operation and all other Board-related activities are identified, disclosed, recorded and managed.

The Board is also responsible for monitoring its compliance with this Procedure.

Purpose

This Procedure applies to all Board Members, the THNSW Company Secretary, Employees and other individuals who attend Board Meetings and/or support the THNSW Board from time to time in relation to a specific matter.

This Procedure should be read in conjunction with THNSW’s Conflict of Interest Policy and covers the identification, disclosure and management of any actual, potential or perceived conflict of interest (CoI) in a proactive, transparent and effective manner that protects the integrity of the THNSW Board and its activities, and at the same time protects the integrity and reputation of THNSW.

Objective

The objective of this Procedure is to support the THNSW Board to proactively, transparently and effectively identify, disclose and manage any actual, potential or perceived conflict of interest (CoI), including up-to-date, accurate, and auditable documentation and record-keeping, aligned to THNSW Board’s own practices as well as recommended Board Governance best practice generally.

Expectations

All Board Members, Volunteers and Employees of THNSW are representatives of THNSW and are expected to act responsibly, honestly and professionally.

The Board has a specific responsibility to act such that ethical, legal, financial or other conflicts of interest be avoided and that any such conflicts (where they do arise) do not conflict with the Board’s obligations to THNSW or the obligations of THNSW.

In particular, the THNSW Board will manage conflicts of interest at the Board by requiring all Board Members, the THNSW Company Secretary, Employees and other individuals who attend Board Meetings and/or support the THNSW Board from time to time in relation to a specific matter to:

- take all reasonable actions to avoid conflicts of interest where possible
- identify and disclose any conflicts of interest
- carefully manage any conflicts of interest, and
- follow this procedure and respond to any breaches.

MANAGING CONFLICTS OF INTEREST

Identification and disclosure of conflicts of interest

Any Board Member, the THNSW Company Secretary, Employees and other individuals who attend Board Meetings and/or support the THNSW Board from time to time in relation to a specific matter, or any other person can raise any actual, potential or perceived conflict of interest that pertains to the THNSW Board.

This includes **any** person who has reason to believe that an individual has failed to declare an actual, potential or perceived conflict of interest.

Any actual, potential or perceived conflict of interest must be raised as soon as identified with the Chair and Company Secretary in the first instance. The Company Secretary (or delegate) will have responsibility for entering the disclosure into and maintaining the THNSW Board's register of interests. Subject to the criticality or urgency of the disclosure, the Board and the CEO will then be notified immediately or simply updated at the next Board Meeting.

The THNSW Board's register of interests must be maintained by the Company Secretary. The register must record information related to a conflict of interest (including the nature and extent of the conflict of interest and any steps taken to address it).

IMPORTANT

If any current Board Director or the Company Secretary is standing for (re)election as a THNSW Board Director, then the corresponding required declarations must be made and recorded in all relevant Board discussion relating to the upcoming AGM and election of Elected Director(s) matters.

Board Director Conflicts of Interest

Once the conflict of interest has been appropriately disclosed, the Chair will make a determination as to how the conflict is managed. The Chair may take advice from the Company Secretary, other Board members, the CEO or other persons as the Chair deems required. The Chair may refer the matter to the Board (excluding the Board Director who is the subject of the disclosure, as well as any other actual, potential or perceived as being conflicted Board Director) to decide whether or not those conflicted Board Directors should:

- vote on the matter (this is a minimum),
- participate in any debate, or
- be present in the room during the debate and the voting.

Determining Required Actions

In deciding what approach to take, the Chair will consider:

- whether the conflict needs to be avoided or simply documented
- whether the conflict will realistically impair the disclosing person's capacity to impartially participate in decision-making
- alternative options to avoid the conflict
- THNSW's objects and resources, and
- the possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, THNSW.

If the Conflict of Interest involves the Chair of the Board.

Important to note under the THNSW Constitution, the THNSW Board Chair does not have a deliberative vote at a Board meeting.

If the conflict involves the Board Chair then the Chair will step aside and the Deputy Chair jointly with the Company Secretary will consider the conflict and may refer the matter to the, Board, the CEO or other persons as the Deputy Chair and Company Secretary deems required.

Non-compliance with or breach of this procedure

It is important to note that if this Procedure is not complied with disciplinary action may be taken. Persistent or deliberate non-compliance will result in disciplinary action in accordance with the THNSW Code of Conduct and/or the THNSW Constitution.

Contacts

For questions or matters pertaining to this THNSW Board Conflict of Interest Procedure, contact the Chair or Company Secretary.