

**NSW Treasury,**

**PREQUALIFICATION SCHEME: AUDIT AND RISK COMMITTEE INDEPENDENT CHAIRS AND MEMBERS**

**GUIDELINES FOR AGENCIES AND MEMBERS**

**September 2019CONTENTS**

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**SCHEDULE OF DOCUMENT AMENDMENTS**

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| --- | --- | --- |
| **Revision Number** | **Date** | **Update Description** |
|  | 4 May 2009 | Document Original - first publication |
|  | Jan 2013 | A number of revisions have been made to the Scheme Guidelines. Some key changes are listed below.  Terms such as Agency Head/CEO/Board replaced by “department head or governing board of a statutory body” to align with TPP 09-05  Department of Services Technology & Administration’s name updated to Department of Finance and Services (DFS)  Contact Details updated  Introduction: amended to reflect the change in policy ownership  Capability Area: amended to reflect the new department name  Independent Chair 3 (b) inserted to align with Scheme Conditions.  Independent Member 2, “enterprise” deleted from “enterprise risk management”  Frequently Asked Questions  Question 1 amended to replace CEO with department head or governing board of statutory body  Question 2 amended to clarify the timing for undertaking checks  Question 3 amended to insert a new paragraph to refer to TPP 09-05, and the Code of Conduct: Audit & Risk Committee Independent Chairs and Members. The word “recently” is also defined.  Question 4 amended to include engagement of panel member/s for sub committees  Question 5 amended to emphasise the requirement for members to be prequalified  Question 7 amended  Question 8 amended to identify applicants that are ineligible to serve as a Chair or member of an Audit and Risk Committee  Question 9 amended to reflect the new remuneration rates as stated in the Scheme Conditions  Question 10 “appointment” replaced with  “engagement”  Question 11 department name updated. Clarified that DFS and Treasury will provide information sessions while induction will be responsibility of agencies  Question 13 amended to include requirement to record details of any other significant appointments within and outside the public sector  Question 14 amended to refer to the requirements in TPP 09-05 for the performance assessment of Audit and Risk Committees  Question 15 deleted  Attachments deleted |
|  | Jan 2015 | Amended question 9 to remove references to the Statutory and Other Offices Remuneration Tribunal  Replaced references to the NSW Department of Finance and Services with NSW Office of Finance and Services  Amended NSW Treasury contact person  Amended OFS contact person |
|  | July 2015 | Update of Department name change, contact name and Treasury Policy TPP 15-03. |
|  | July 2019 | Department Change, email change |
|  | Sept 2019 | Contact updates, Department changes |

**CONTACT DETAILS**

Financial Management and Accounting Policy Branch, NSW Treasury, is responsible for all matters relating to Treasury Policy Paper 15-03, *Internal Audit and Risk Management for the NSW Public Sector*.

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<https://www.procurepoint.nsw.gov.au/before-you-buy/prequalification-schemes-0/audit-and-risk-committee-independent-chairs-and-members>

# *INTRODUCTION*

The advice of highly skilled Audit and Risk Committee independent Chairs and Members is an important element of ensuring strong governance of NSW public sector agencies.

The NSW Department of Premier and Cabinet, established the *Prequalification Scheme – Audit and Risk Committee Independent Chairs and Members* (the “Scheme”)*.* The Scheme assists NSW public sector agencies in complying with the requirements of the NSW Treasury Policy Paper 15-03 *Internal Audit and Risk Management Policy for the NSW Public Sector*, (the “Policy”) as it relates to the engagement of Audit and Risk Committee Independent Chairs and Members. Policy responsibility for the Scheme was transferred to NSW Treasury with effect from June 2012.

These guidelines are to assist agencies (and, where appropriate, State Owned Corporations) seeking to utilise the Scheme and should be read in conjunction with the Scheme Conditions.

# *SCHEME AIMS*

The Scheme aims to:

* improve probity standards and quality assurance by allowing for third party assessment of independent persons available for engagement to public sector Audit and Risk Committee positions; and
* streamline the engagement of suitable persons to public sector Audit and Risk Committee positions by pre-qualifying independent individuals with demonstrated skills and experience in the area.

# *CAPABILITY AREAS*

NSW Procurement will maintain a list of individuals with relevant skills and who satisfy the criteria relating to the capability areas for “Member” and “Chair” (the prequalified panel). A Chair must fulfil the requirements for both Member and Chair even if they only seek engagement as a “Chair”.

# *Independent Chair*

1. Leadership qualities and the ability to promote effective working relationships in complex organisations.
2. An ability to communicate complex and sensitive assessments in a tactful manner to chief audit executives, senior management, board members and Ministers.
3. A sound understanding of:
   1. the principles of good organisational governance and capacity to understand public sector accountability, including financial reporting;
   2. the business of the department or statutory body or the environment in which it operates;
   3. internal audit operations, including selection and review of chief audit executives; and
   4. risk management principles.

# *Independent Member*

1. Extensive senior level experience in governance and management of complex organisations, an ability to read and understand financial statements and a capacity to understand the ethical requirements of government (including potential conflicts of interest).
2. Functional knowledge in areas such as: risk management; performance management; human resources management; internal and external auditing; financial reporting; accounting; management control frameworks; financial internal controls; governance (including planning, reporting and oversight); or business operations.
3. A capacity to form independent judgements and willingness to constructively challenge/question management practices and information.
4. A professional, ethical approach to the exercise of their duties and the capacity to devote the necessary time and effort to the responsibilities of a Member of an Audit and Risk Committee.
5. Desirable to possess a relevant professional qualification or membership [e.g. Certified Internal Auditor, Certified Practising Accountant, Certified Practising Risk Manager, Chartered Accountant, Graduate Member of the Australian Institute of Company Directors].

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# *FREQUENTLY ASKED QUESTIONS*

# *How does the Scheme operate?*

The Scheme creates a framework for the prequalification of independent individuals with relevant experience and qualifications who are available to be engaged to positions of Audit and Risk Committee Independent Chair and Members, serving NSW Government departments and statutory bodies.

Each relevant department head or governing board of a statutory body selects and engages the independent Chair and Members of their respective Audit and Risk Committee from the prequalified panel to meet the Policy’s requirements, the needs of their organisation and the skill set of the available pre-qualified panel members.

# *Are any checks required to be undertaken?*

Criminal record and financial status (bankruptcy) checks may need to be undertaken as appropriate, at any time. Additionally, the prequalified panel member must declare any potential conflict of interest relating to an individual engagement and an offer must not be made or accepted if a conflict of interest becomes apparent. It is the responsibility of the department head or governing board of a statutory body and panel members to ensure that any conflicts of interest are declared and managed prior to and throughout any engagement under this Scheme.

# *How is “independent” defined?*

Guidelines for assessing independence and conflicts of interest are set out in the NSW Treasury *Internal Audit and Risk Management Policy for the NSW Public Sector (TPP 15- 03).* Clause 3.1.5 of TPP 15-03 outlines a non-exhaustive list of threats to independence as well as relationships that must be avoided. Independent Members must notify the department head or governing board of a statutory body immediately if a real or perceived threat to independence arises.

An independent Chair or Member should not have a recent close association with the agency or its Chief Executive Officer (CEO). A recently (less than 3 years) retired senior executive of an agency or a close associate of the CEO would not be defined as “independent”.

Similarly, a current or recent external provider of internal audit services to an agency would not be considered independent.

Requirements for the continuous disclosure of conflict of interest are contained in the *Code of Conduct: Audit and Risk Committee Independent Chairs and Members.* (Refer to Attachment 1 to the sample letter of engagement in the Scheme conditions).

# *Do independent Chairs and Members have to be sourced from the prequalified panel?*

Yes. From 30 April 2009, all new engagements as independent Chairs and Members must be made from the prequalified panel for NSW public sector agencies. Non-executive directors of the governing board of a statutory body that are pre-qualified are eligible for appointment as chairs and members of the Audit and Risk Committee. Agencies are also encouraged to engage independent members from the panel to serve on any sub committees established by the Audit and Risk Committee with the approval of the department head or governing board of a statutory body.

# *What happens to a currently serving independent Chair or Member who does not apply for pre-qualification?*

The Policy mandates the selection of independent Chairs or Members from the Scheme which provides a pool of individuals who have been subject to an impartial selection and qualification process.

Where an independent Chair or Member who is not pre-qualified continues to serve on an Audit and Risk Committee, then the department head or governing board of a statutory body will need to apply to the Portfolio Minister for an exception to this requirement.

# *Can prequalified panel members be engaged to any NSW public sector agency’s Audit and Risk Committee?*

Once prequalified Chairs and Members meet the independence and conflict of interest criteria set out in NSW Treasury TPP 15-03 *Internal Audit and Risk Management Policy* *for the NSW Public Sector*, they can be engaged by agencies under the Scheme. It is the responsibility of the department head or governing board of a statutory body to ensure that these criteria are applied before any such engagement is made. The NSW Treasury *Internal Audit and Risk Management Policy for the NSW Public Sector* also requires the department head or governing board of a statutory body annually to attest to compliance with the core requirements of TPP 15-03. Core Requirement 3.1.4 requires that each independent Member of the Audit and Risk Committee meet the mandated independence and conflict of interest criteria.

# *Does the Scheme allow for prequalified panel members to be engaged to more than one Audit and Risk Committee?*

Yes. Prequalified independent Chairs or Members may be engaged to up to five NSW Audit and Risk Committees at any one time (each shared Committee oversighting more than one agency counts as one as does each individual Committee within a ‘cluster’).

It is the responsibility of both prequalified panel members and the department head or governing board of a statutory body to ensure that this limit is not exceeded and that NSW Procurement is advised of all engagements. NSW Procurement will record this information in the Audit and Risk Committee panel database. A schedule is attached to the standard engagement letter to ensure the database is kept up to date.

# *Can public servants be engaged as independent Chairs or Members of an Audit and Risk Committee?*

No. Current employees of all NSW public sector agencies cannot serve as independent Members or Chairs of an Audit and Risk Committee, including within their own agency. This includes all agencies and employees in the Government service (Public Service Departments, Non-Public Service Divisions and Special Employment Divisions), the Teaching Service, NSW Police and the NSW Health Service. For the purposes of this Scheme it will also include statutory and special appointments other than non-executive directors of the governing board of a statutory body. For the avoidance of doubt it is clarified that non-executive directors of the governing board of a statutory body are eligible to be appointed as independent chairs and members of Audit and Risk Committees subject to satisfying the conflict of interest criteria and requirements set out in Sections 3.1.5 of TPP 15-03. This is to ensure that independence, real and perceived, is maintained.

Public servants from other jurisdictions may be prequalified as independent Chairs or Members. However, the rules relating to secondary employment in their organisation will need to be satisfied, including the management of any conflict of interest, and written confirmation will need to be provided by an authorised person in their jurisdiction.

# *On what terms are prequalified persons engaged?*

The terms of engagement are set out in the Scheme Conditions document, as updated from time to time, and the letter of engagement. The engaging agency and the panel member will need to enter into a separate written agreement for each engagement.

The standard form of agreement is set out at Schedule 2 of the Scheme Conditions. Agencies should not modify the terms of the agreement unless there are exceptional circumstances which warrant modification. Advice can be sought from NSW Procurement.

Note that the Scheme Conditions include provisions to remove members from the Scheme and outlines the processes to be followed in the case of unsatisfactory performance.

Independent Chairs and Members engaged under the Scheme will be remunerated in accordance with the rates below. These rates are reviewed every two years.

## The rates applicable from 1 February 2011 are:

|  |  |  |  |
| --- | --- | --- | --- |
| **Agency size** | **Indicator** | **Chairperson fee (ex GST)** | **Member fee (ex GST)** |
| Large | Organisations with expenditure greater than $400m | $20,920 per annum | $2,092 per meeting day including preparation time |
| Medium | Organisations with expenditure less than $400m but greater than $50m | $16,213 per annum | $1,621 per meeting day including preparation time |
| Small | Organisations with expenditure less than $50m | $12,552 per annum | $1,255 per meeting day including preparation time |

## The following fee structure is applicable to multi-Agency (‘shared’) arrangements:

|  |  |
| --- | --- |
| **Multi Agency Audit and Risk Committees** | **Fee category** |
| Up to and including three small agencies | Medium |
| Two or more medium agencies | Large |
| Any combination of small and medium agencies | Large |

## The rates are exclusive of GST.

## The method of payment shall be at the discretion of the agency. Payment may be made either through the agency payroll or against an invoice.

The rates include all costs of independent Chairs and independent Members engaged under the Scheme *excluding* subsistence and travel costs outside the Sydney Metropolitan Area and/or from Interstate.

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## Subsistence and travel expenses outside the Sydney metropolitan area and/or where the panel member is from Interstate are to be charged at actual cost, or at the rates specified under the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*, whichever is the lesser.

# *Does the NSW Cabinet need to approve the engagement of panel members before they become effective?*

## No. Generally all external members of boards and committees need to be approved by Cabinet under the NSW Government Boards and Committees Policy. However, Cabinet does not need to approve engagements to Audit and Risk Committees as Audit and Risk Committees provide advice to agencies rather than Ministers.

# *What information will be provided to panel members?*

Panel members will be able to attend information sessions provided by NSW Treasury. Information sessions may be arranged from time to time or as a result of a significant change to the Internal Audit & Risk Management Policy. It is anticipated that each agency also will provide an induction to their committee members.

# *Are independent Audit and Risk Committee members covered for Professional Indemnity and other insurance?*

Each department head or governing board of a statutory body is responsible for ensuring that the Audit and Risk Committee has the appropriate mix of skills and expertise to successfully implement its charter and that the agency holds insurance coverage for these activities. Each agency should consider whether its existing insurance arrangements provide sufficient coverage for Audit and Risk Committee members in relation to claims for loss or damage made against them in their capacity as members. Panel members should satisfy themselves that the agency has sufficient insurance coverage relating to their role on the Audit and Risk Committee prior to accepting an engagement and, if necessary, seek independent legal advice as to its efficacy.

# *What are the record-keeping requirements of the Scheme?*

Independent Chairs and Members engaged to an Audit and Risk Committee are required to provide the following details to the agency and NSW Procurement prior to the engagement taking effect:

* the name of the panel member;
* the role of the panel member;
* payment and duration for each engagement;
* the nature of the engagement and any subsequent changes to an engagement;
* details of any other engagements to NSW Government Audit and Risk Committees, including any sub committees of Audit and Risk Committees, and
* details of any other significant appointments within and outside of the public sector.

This information will be centrally maintained by NSW Procurement.

# *How is the performance of Audit and Risk Committee panel members monitored and reported on?*

Clauses 3.3.21 – 3.3.26 of TPP 15-03 set out the requirements for the performance assessment of Audit and Risk Committees. It is the responsibility of the department head or governing board of a statutory body, in consultation with the Chair of the Audit and Risk Committee, to establish a mechanism to review and report on the performance of Audit and Risk Committees as a whole, and the performance of the Chair and each Member, at least annually. The department head or governing board of a statutory body may delegate the performance review function to the Audit and Risk Committee Chair. The review could take the form of a self-assessment with input from key stakeholders.

Detailed information on performance issues can be found in sections 14 to 18 of the Scheme Conditions. Agencies should follow the steps outlined in the Scheme Conditions to ensure that they observe procedural fairness in the course of performance reporting.