



Department of Infrastructure and Planning:

Governance Framework for Infrastructure Delivery Special Purpose Vehicles



Governance Framework for Special Purpose Vehicles

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Executive Summary

In 2006, the Queensland Government established five special purpose vehicles (SPVs) to help deliver the largest infrastructure program in the State's history. The SPVs were established and are overseen by the Department of Infrastructure and Planning (DIP). Infrastructure projects being delivered by SPVs under the responsibility of the DIP equate to an investment in excess of \$11.5 billion.

The SPVs are small *Corporations Act 2001* proprietary limited companies and include:

- Queensland Water Infrastructure Pty Ltd;
- South East Queensland Desalination Company Pty Ltd (trading as SureSmart Water);
- Western Corridor Recycled Water Pty Ltd;
- Southern Regional Water Pipeline Company Pty Ltd (trading as LinkWater); and
- City North Infrastructure Pty Ltd.

Corporations legislation provides a foundation legislative and governance framework, including regulatory powers (via the Australian Securities and Investments Commission) and the possibility of criminal/civil convictions. However, a requirement under the Queensland Treasury *Guidelines for the Formation, Acquisition and Post Approval Monitoring of Companies* is that the agency responsible for the company is to use best endeavours to ensure the company exercises good corporate governance and accountability, including high standards of internal control, ethical practices and external reporting. The most efficient way of achieving this is to have a Governance Framework in place that clearly articulates the public's expectations and ensures consistency across SPVs. This is particularly important due to the public nature and subsequent accountability and transparency expectations of SPVs.

Consequently, the SPV Governance Unit has developed this Governance Framework for the SPVs overseen by the DIP. A Toolkit, consisting of guiding principles and templates, supports the Governance Framework. Although developed to assist the establishment of new SPVs, the Toolkit is also available to existing SPVs.

There are various benefits associated with establishing a Governance Framework for these SPVs. These include:

- improved governance and risk management for all stages of the project life-cycle
- assistance in timely and accurate project reporting for all stakeholders
- improved adherence by SPVs to government standards and policy
- the adoption of a consistent approach across government in the establishment of SPVs
- ensuring governance expectations from the establishment of the SPV, as a company, are maintained
- time and cost savings in establishing new SPVs as information, templates and governance structures will be readily available
- Queensland will have a reputation as a leader in innovative infrastructure delivery on a large scale with the use of SPVs.

These benefits provide the government and the community with confidence that establishing SPVs for delivering infrastructure is a viable infrastructure procurement approach that delivers the government value for money and accountability.



Chapter 1

Corporate Governance Framework

While SPVs are unlisted private companies, their corporate governance framework is based on the Australian Securities Exchange (ASX) Corporate Governance Council *Principles of Corporate Governance and Recommendations* (referred hereafter as the ASX Principles).

The ASX Principles provides greater corporate accountability and transparency, with emphasis on public disclosures of market sensitive information, and accounts for directors acting in the best interests of the company/shareholder.

In addition to complying with the ASX Principles, SPVs are expected to comply with the Australian Standards for Corporate Governance, AS 8000:2003. This Standard provides a blueprint for the development and implementation of a generic system of governance that is robust, establishes and maintains an ethical culture through a committed self-regulatory approach, and provides stakeholders and shareholders with benchmarks against which to gauge the entity's performance.

All SPVs are expected to:

- implement comprehensive, high quality corporate governance arrangements which are appropriate for, and adapted to, their particular circumstance
- properly disclose and report upon those arrangements to shareholders and the public
- adopt the “if not why not” approach in line with the ASX Principles.

Principles

SPVs are expected to incorporate the following principles:

1. ***Lay solid foundations for management and oversight***

SPVs should establish and disclose the respective roles and responsibilities of board and management through a formal statement or board charter.

2. ***Structure the board to add value***

SPVs should have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties, with a majority of the board being independent directors.

3. ***Promote ethical and responsible decision-making***

SPVs should actively promote ethical and responsible decision making and are expected to observe the highest standards of ethical behaviour.

4. ***Safeguard integrity in financial reporting***

SPVs should have a structure to independently verify and safeguard the integrity of their financial reporting.



5. *Make timely and balanced disclosure*

SPVs should promote timely and balanced disclosure of all material matters concerning the company.

6. *Respect the rights of shareholders*

SPVs should respect the rights of shareholders and facilitate the effective exercise of those rights.

7. *Recognise and manage risk*

SPVs should establish a robust system of risk oversight and management and internal control.

8. *Remunerate fairly and responsibly*

SPVs are expected to ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear.

Chapter 2

Corporate Governance Requirements

There are a number of minimum *Corporations Act 2001 (Cth)* (the Act) and Queensland Government requirements for establishing SPVs that shareholders and Boards must ensure occur.

Constitution

Every SPV must have a constitution. A company's internal management is governed by either the provisions of the Act that apply to the company (known as Replaceable Rules), a constitution, or a combination of both.

In accordance with the Queensland Treasury *Guidelines for the Formation, Acquisition and Post Approval Monitoring of Companies*, the constitution for companies should be prepared as part of the approval process for the formation of the company prior to its registration and has the effect of a contract between:

- the company and each member
- the company and each director
- the company and the company secretary
- a member and each other member.

SPVs that are small proprietary limited companies are not generally required to lodge a copy of their constitutions with the Australian Securities and Investment Commission. However, if a special resolution is passed affecting the company's name, share capital or type, then the appropriate document for that change should be lodged within the required lodgement period as set out in the Act.

Amendments to the constitution must have the approval of the Treasurer. The SPV Governance Unit can assist SPVs with this task.



Funding Deed

SPVs will often be State Government funded; therefore, when an SPV is established a funding deed will be entered into. The funding deed should reflect that the company is established by the State Government to undertake a specific project and that the State will provide the financial support to the company to carry out the project. The funding deed should set out the terms and conditions of the funding and the company's obligations to the State.

Shareholder Agreement

Shareholder agreements are contracts between some or all of the shareholders of a company relating to the ownership and management of the company. In some instances, such as where the State Government is not the only shareholder, it will be beneficial for a shareholder agreement to be entered into.

The shareholder agreement will set out the terms upon which the company will be funded, regulated and managed. It may also contain details on what will require shareholder approval and reporting requirements.

Board Handbook for Directors

The Board handbook is an essential corporate governance document that sets out the statutory and corporate roles and responsibilities of Directors.

All SPVs are expected to have a Board handbook for Directors which is endorsed by the Board. All Directors should be provided a copy of the handbook on appointment and its contents should be covered in the induction process.

The SPV Governance Unit has developed a Board handbook for Directors guide for SPV Boards should they require a template. It is accepted that in some instances, the Board may wish to use their own handbook.

Board Charter

The Board charter is the high level terms of reference that sets out the functions and responsibilities of the Board, along with certain matters relevant to the operation of the Board.

All SPVs should have a Board charter as part of the establishment process for the company. This is in accordance with the Queensland Treasury *Guidelines for the Formation, Acquisition and Post Approval Monitoring of Companies* and a copy should be made available to all shareholders, Directors and staff of the company.

The SPV Governance Unit has developed a template Board charter as a guide for SPV Boards.

Vision/Culture

A company's vision is central to defining and developing the organisation. The company's business strategies should be strongly driven by its vision and mission.

All SPVs should have a vision/culture statement and make copies available to all Directors and staff. This document should be developed in the early stages of an SPV's establishment.



The SPV Governance Unit has developed Guiding Principles for vision/culture statements to assist SPVs meet shareholder expectations.

Appointment of Chief and Senior Executives

The overarching principle of chief and senior executive recruitment is that it is transparent and based on merit.

Chief and senior executive appointment processes for SPVs are expected to be conducted in accordance with the underpinning principles of the Act, and include:

- clarity and transparency of government shareholder expectations
- board autonomy and authority in selection, remuneration and conditions of employment
- accountability for board performance.

The SPV Governance Unit has developed guiding principles for chief and senior executive appointments to assist SPVs meet shareholder expectations.

Appointment of Directors

Directorial membership of a company is defined in the Act. The shareholder, as owner of the company, elects Directors to run the company on their behalf and hold them accountable for its progress.

For the purposes of SPVs, the shareholder/s will have significant input into director appointments through the approval process during formation of the company. However, the overarching principle for director appointments are that the Board should be structured to 'add value' and promote ethical and responsible decision making.

As is with the case for director appointments for government owned corporations, the underpinning principles of SPV director appointments should be consistent with the Act and include:

- clarity and transparency of government shareholder expectations
- accountability for board performance.

The SPV Governance Unit has developed guiding principles for Director appointments to assist SPVs meet shareholder expectations.

Remuneration for Board and Senior Executives

The overarching principle for SPV remuneration is compliance with the ASX Principles. The company should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear.

In accordance with AS 8000/2003, the Board should take into account the interests of shareholders when considering remuneration.

Larger SPV Boards are expected to appoint a dedicated remuneration committee with its own charter, to deal with remuneration matters.

SPVs are expected to use a remuneration industrial and services sector index as a guide for setting Director, chief and senior executive remuneration.



Directors who are public officials are to be precluded from receiving remuneration, other than out of pocket expenses, where the role of the Director is integral to their duties as an officer of the public sector.

Annual bonus payments are not the preferred position of the shareholder given the likelihood of higher remuneration in some instances and the relatively short lifecycle of the SPVs.

However, the Board may consider it necessary to offer a chief or senior executive a bonus for committing to the SPV until the completion of the SPV's lifecycle to attract high quality personnel. This should be done via a policy and in consultation with the shareholder. Bonus payments should also be linked to agreed key performance indicators.

The SPV Governance Unit has developed guiding principles and a remuneration committee charter template to assist SPVs meet shareholder expectations.

Delegations

SPVs are expected to implement a delegations structure that clearly articulates the delegations at all levels of the company. This policy or procedure should have the effect of a directive to all personnel engaged with the SPV.

It is expected that the SPV's delegations policies specify the delegated limits of financial and general authorities, including the protocols for reviewing and changing those delegated limits.

The SPV Governance Unit has developed guiding principles and a template delegations structure to assist SPVs.

Organisational Design

SPVs are expected to have an organisational design that clearly articulates the structure of the company. This will enable the SPV to identify roles and responsibilities throughout the company from the Board level to employees.

The SPV Governance Unit has developed a template organisational design to assist SPVs meet shareholder expectations.

Risk Management

SPVs are expected to comply with the ASX Principle for managing risk. SPVs are expected to implement a robust system of oversight and management and internal control.

SPVs are to comply with, at a minimum, risk policies, guidelines and registers that align with 'better practice' standards such as the AS/NZS 4360:2004, HB 436:2004, HB 221:2004. SPVs may also wish to adopt other standards, for example HB 254:2005 (Governance, Risk Management and Control Assurance) to assist in the implementation of a Control Assurance Plan.

SPV Boards are also expected to appoint a dedicated audit and risk committee with its own charter. This committee should be responsible for providing advice to the Board on internal controls and standards which are in place for the management of the company.



The SPV Governance Unit has developed a template audit and risk committee charter and risk management plan to assist SPVs meet shareholder expectations.

Conflicts of Interest/Disclosure

SPVs are expected to have in place strict conflict of interest and disclosure processes ensuring the government's expectation that all Directors, executives and SPV employees act impartially and with integrity during the course of their employment is maintained.

The SPV should have a strict probity process to ensure conflicts of interest are captured and managed.

The SPV Governance Unit has developed guiding principles for conflict of interest procedures to assist SPVs meet shareholder expectations.

Code of Conduct

SPVs are expected to have in place a code of conduct which sets out the standards of behaviour that is expected by all Directors, senior executives and employees. Directors' codes of conduct should be covered in the Board handbook for Directors.

SPVs should align the development of their code of conduct with the Australian Standard AS 8002/2003.

The SPV Governance Unit has developed guiding principles for codes of conduct to assist SPVs meet shareholder expectations.

Accommodation Strategy

SPVs are expected to have in place an accommodation strategy that clearly outlines the company's accommodation roles and responsibilities. This should be done by way of a plan that can be reviewed and updated.

The SPV Governance Unit has developed a template accommodation strategic plan to assist SPVs.

Leadership and Management Structure

There may be instances during an SPV's lifecycle when it enters into an alliance or joint venture type arrangement for the project. Leadership and management structures give an overview of how the SPV project partnerships are structured.

In the event that SPVs enter into these arrangements, SPVs are expected to have in place a clearly articulated leadership and management structure.

The SPV Governance Unit has developed a template leadership and management Structure to assist SPVs meet shareholder expectations.

Media and Publications

SPVs are expected to comply with the protocols of the DIP's Communications Unit when dealing with the media or releasing publications. To ensure all media protocols are clear, SPVs should liaise regularly with the Communications Unit.

SPVs are to contact the Minister's Office prior to dealing with any media regarding critical infrastructure issues.



Stakeholder Analysis

SPVs are expected to implement a stakeholder analysis plan to identify and assess the importance of key people, or groups that may significantly influence the success of a project.

The SPV Governance Unit has developed a template stakeholder analysis plan to assist SPVs meet shareholder expectations.

Information Management

An SPV is expected to have an information management policy that clearly articulates how it manages all information with which it comes in contact. An information management policy should also provide guidance to all personnel on their obligations with regard to access and security of that information.

SPVs should align the development of their information management policy with AS ISO 15489.1 and AS ISO 15489.2.

The SPV Governance Unit has developed guiding principles and a template information management plan to assist SPVs meet shareholder expectations.

Communication Plan

SPVs are expected to implement a communication plan where a program or project has the potential to have public interest.

The SPV Governance Unit has developed a template Communication Plan to assist SPVs meet shareholder expectations.

Chapter 3

Financial Policy and Procedures

Procurement

SPVs are expected to comply within the spirit and principles of the Queensland government's policies and practices for procurement.

SPVs are expected to have a corporate procurement plan prepared with the objective of achieving value for money and the improved management of procurement functions. It is also expected that the plan incorporates practical tools and advice for analysing, planning and managing procurement activities.

The SPV Governance Unit has developed guiding principles and a template corporate procurement plan to assist SPVs meet shareholder expectations.

Travel and Accommodation

SPVs are expected to have a travel and accommodation policy that is approved by the Board. The purpose of the policy should be to clearly articulate the company's travel and accommodation processes in line with shareholder's expectations.



A travel and accommodation policy should cover domestic and overseas travel and should encourage 'best value' fair purchases. It should also include accompanying persons and membership to airport lounges.

The SPV Governance Unit has developed guiding principles for travel and accommodation policies to assist SPVs meet shareholder expectations.

Engaging a Consultant

It is expected that SPVs have in place a policy which ensures that there is an accountable and transparent process in place for consultant engagement appointments and decisions whilst ensuring value for money.

The SPV Governance Unit has developed guiding principles to assist SPVs meet shareholder expectations when engaging consultants.

Fraud Mitigation

SPVs must ensure vigilance to minimise the risk of fraud, corruption and misconduct. This requires commitment by all employees to a culture that promotes high standards of ethical conduct and probity and strong and effective systems of internal control and risk management.

The chief executive, senior executives and management are expected to be responsible for promoting high standards of ethical conduct, particularly in relation to fraud, corruption and official misconduct mitigation.

The SPV Governance Unit has developed guiding principles for fraud mitigation to assist SPVs meet shareholder expectations.

Reporting

SPVs are required to comply with all reporting requirements of the shareholding department, Water Infrastructure Project Board, corporations and taxation legislation and funding deed.

SPVs are required to provide a copy of the annual financial report and Director's report when requested by shareholders of the SPV. It is expected that a true and fair view of the financial position and performance of the company is provided in a timely manner.

The SPV Governance Unit has developed guiding principles for reporting to assist SPVs meet shareholder expectations.

Asset Disposal

All SPVs are expected to have in place an accountable and transparent asset disposal policy which should apply to all general non-current assets.

Approval for the disposal of general non-current assets based on the asset's written-down value should rest with the Chief Financial Officer.

The SPV Governance Unit has developed guiding principles for asset disposal to assist SPVs meet shareholder expectations.



Chapter 4

Operations Policy and Procedures

Roles and Responsibilities

SPVs are expected to have a statement which clearly articulates all relevant information for each position within the company. This is a roles and responsibilities statement.

Guiding principles for roles and responsibilities statements have been developed by the SPV Governance Unit.

Information Technology

It is expected that SPVs establish a policy which details appropriate use of the internet and email, and that all use of the internet will be monitored to ensure that it is being used appropriately and only by authorised staff.

The SPV Governance Unit has developed guiding principles to assist SPVs meet shareholder expectations with regard to information technology.

Occupational Health and Safety (OH&S)

It is a minimum expectation that all SPVs ensure that there is a safe and healthy work environment for all employees, contractors, clients and visitors.

SPVs are expected to have an OH&S policy that ensures there is compliance with all relevant workplace health and safety legislation, and codes of practice, including Australian standards and site safety plans.

It is expected that the main objectives regarding OH&S include:

- providing information, instruction, training and supervision to employees and contractors to ensure safety
- ensuring that as a minimum, all operations comply with current OH&S legislation
- ensuring that only safe equipment is used in all operations
- planning for continuous improvement in the safety management system
- the provision of support and assistance to injured employees.

The SPV Governance Unit has developed guiding principles and a template OH&S plan to assist SPVs to meet shareholder expectations.

Self Assessment

The SPV's governance system should be regularly monitored and its performance evaluated. A strategy for continual performance monitoring should be established that outlines key performance indicators, internal and external monitoring processes, resources required and time schedules. A review of the system of governance is necessary on a regular basis to ensure that it remains effective in meeting shareholder requirements. Boards should periodically evaluate themselves and their individual members against established performance criteria.



It is a minimum expectation that SPVs conduct corporate-wide self evaluations. This evaluation should be in addition to the Board's self evaluation and key evaluation of senior executives.

The SPV Governance Unit has developed guiding principles and a methodology for self assessment to assist SPVs meet shareholder expectations.

People Management

All SPVs are expected to develop a strategy that embraces an organisation-wide approach to people management and covers all aspects of the employment lifecycle from recruitment to separation.

The SPV Governance Unit has developed guiding principles to assist SPVs meet shareholder expectations regarding people management.

Privacy

During the operation of an SPV, it is likely that staff will have access to information of a private nature.

SPVs are expected to have a policy to protect the privacy of personal information and the conduct of government business. This includes ensuring that information is collected and stored responsibly and managed with integrity.

The SPV Governance Unit has developed guiding principles to assist SPVs meet shareholder expectations regarding privacy.

Employee and Industrial Relations (E&IR)

An SPV is expected to have strategies in place that articulate E&IR positioning, including what E&IR risk management it will adopt as a consequence.

This could become part of the SPV's mission and values by allowing it to articulate its performance indicators and targets for E&IR matters such as workplace health and safety or industrial disputation mitigation.

The SPV Governance Unit has developed guiding principles and a template E&IR plan to assist SPVs meet shareholder expectations.

Chapter 5

Project Management

Project management is the discipline of planning, organising, and managing resources to bring about the successful completion of specific project goals and objectives. The primary challenge of project management is to achieve all of the project goals and objectives while adhering to classic project constraints, usually scope, quality, time and budget.



Infrastructure Delivery Plan

SPVs are expected to appropriately manage the delivery of their projects. The SPV Governance Unit has prepared a high level infrastructure delivery planning template to reference the plans, policies and procedures upon which project delivery is expected rely upon, including:

- scope management
- milestone management
- deliverables management
- project risk management
- issues management
- cost management
- project reporting.

Chapter 6

SPV Exit

The transition to the operational phase and the exit strategy for the SPV should ideally be addressed prior to the establishment of the SPV, for example in the business case. This should outline a process for asset handover and SPV shareholding transfer.

SPVs should work closely with the DIP and Queensland Treasury in the transition to operational phase and any exit strategy for the SPV. It is anticipated that issues around transition and exit strategies will arise early in the project lifecycle and SPVs should engage early with the relevant agencies.



Guiding References

The following are a number of references that SPVs are encouraged to consider when developing a Governance Framework.

Legislation

Corporations Act 2001 (Cth)

Financial Administration and Audit Act 1977

Australian Standards

AS 8000:2003 – Good Governance Principles

AS 8001:2003 – Fraud and Corruption Control

AS 8002:2003 – Organizational Codes of Conduct

AS 8003:2003 – Corporate Social Responsibility

AS 8004:2003 – Whistleblower Protection Programs for Entities

AS/NZS 4360:2004 – Risk Management

HB 436:2004 – Risk Management Guidelines Companion to AS/NZS 4360:2004

HB 221:2004 – Business Continuity Management

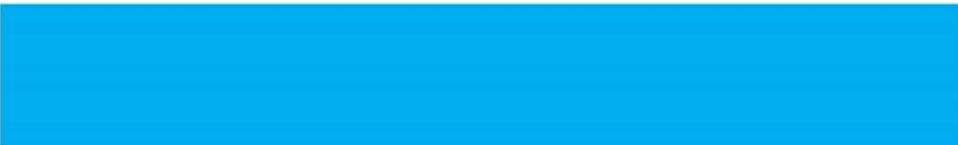
Principles

Australian Securities Exchange Corporate Governance Council *Principles of Corporate Governance and Recommendations* (2nd Edition).

OECD Corporate Governance of State-Owned Enterprises – *A Survey of OECD Countries* (2005).

Guidelines

Queensland Treasury *Guidelines for Formation, Acquisition and Post Approval Monitoring of Companies 2005*.



Department of **Infrastructure and Planning**
PO Box 15009 City East Qld 4002 Australia
tel +61 7 3227 8548
fax +61 7 3224 4683
info@dip.qld.gov.au

www.dip.qld.gov.au