



Government of **Western Australia**
Department of **Training**
and **Workforce Development**

Information

for

TAFE Colleges

Governing Council selection

November 2017



GOVERNING COUNCIL SELECTION PROCESS: INCLUDING THE ROLE OF NOMINATION COMMITTEES

1. INTRODUCTION

Governing Councils are responsible for providing good governance to ensure effective systems and processes are in place to shape, enable and oversee TAFE Colleges (Colleges).

Governing Council members operate in a legislative and public policy environment of frameworks for accountability, governance, management, policy development and service delivery.

Generally, appointees to Governing Councils will have held board or senior management appointments in large public companies or key public sector agencies, possess a proven record in exercising commensurate levels of judgement and accountability, and reflect the diversity of the Western Australian community.

As a guide, an individual should not receive sitting fees from more than two (2) State Government boards or committees (Premier's Circular 2010/02 – State Government Boards and Committees).

2. FUNCTIONS OF THE GOVERNING COUNCIL

The functions of a Governing Council include:

- setting strategic directions;
- liaising with stakeholders;
- ensuring compliance with statutory requirements;
- managing risk; and
- monitoring organisational performance.

Under section 42 of the Vocational Education and Training Act (VET Act) Governing Council functions are as follows:

- 1) The Governing Council is the governing body of a college with authority in the name of the college to perform the functions of the college and govern its operations and affairs;
- 2) A Governing Council of a college may do all things necessary or convenient to be done for or in connection with the performance of its functions;
- 3) A Governing Council may perform its functions in another State or a Territory if that is necessary or convenient for the performance of the functions of the college; and
- 4) In performing its functions the Governing Council of a college must ensure the college's courses, programmes and services are responsive to, and meet, the needs of students, industry and the community.

3. GOVERNING COUNCIL MEMBERSHIP AND TERM OF OFFICE

It should be noted that section 39 of the VET Act stipulates that each College must have a Governing Council. Governing Councils are to consist of:

- a chairperson;
- a deputy chairperson; and
- not fewer than six or more than 10 other members.

Members of a Governing Council are subject to endorsement by Government and are appointed by the Minister for Training and Workforce Development (the Minister). Appointment to a Governing Council is for a term not exceeding three years. At the end of the term, members are eligible to be considered for a further term.

Under section 14.5 of the [Western Australian Cabinet Handbook](#), if a Governing Council member resigns before the expiry of his/her term then their replacement can only be appointed for the remainder of the original term.

4. APPOINTMENT PRINCIPLES

As well as meeting any specific requirements in the enabling legislation, appointments to the Governing Council should demonstrate compliance with the general principles of:

- Merit - Due process and the principles of merit selection are to be observed in the appointment process;
- Fairness - The process used to assess potential appointees must be transparent and without bias;
- Diversity - To the extent reasonable, appointments to the Governing Council must reflect the diversity of the Western Australian community as a whole and be mindful of the entity's purpose and focus; and
- Integrity - Only persons of sound reputation, who are prepared to discharge their responsibilities diligently and with public interest being paramount, should be appointed.

Persons appointed as chairs/deputy chairs should have demonstrated the capacity to lead others, summarise complex information and arguments, and where appropriate, make decisions in a professional and effective manner.

PROCESS AND TIMELINE

OCTOBER

DTWD advises the Governing Council Chairs of the proposed timelines for the appointment process and the number of positions that will be open for appointment. This includes positions currently occupied that have terms expiring.

DTWD provides support in the form of a "frequently asked questions" fact sheet, general advice and assistance to Colleges as required.

If the Governing Council does not already have a nomination committee, skills matrix and up to date Code of Conduct it is recommended that action be taken to instigate these at this point.

EARLY NOVEMBER

The Minister informs Governing Council members in writing that their term is due to expire and advises that their position will be advertised. Letters are prepared on behalf of the Minister by DTWD.

JANUARY

Existing members are invited to submit an application for appointment for a further term. Their applications are considered at the same time as new applications received through an open, advertised expression of interest (EOI) process.

On behalf of the Minister, DTWD coordinates an annual appointment process for Governing Council membership. Under this process, all terms due to expire in that year are declared open for appointment.

On behalf of the Minister, DTWD issues an advertised call for EOIs for vacant positions. Colleges may simultaneously seek nominations at this time either by directly approaching candidates deemed suitable for appointment or by publishing the advertised EOI on their website.

EARLY FEBRUARY

DTWD provides all applications received by DTWD to the Governing Council Chair. In the case of the chairperson and deputy chairperson, all applications are considered by the Minister.

FEBRUARY

The nomination committee evaluates all applications against the skills matrix (Appendix 1) and conducts interviews, referee checks or other checks if this is what has been determined by the nomination committee. As some applicants may be applying to join more than one Governing Council the nomination committee should rank applicants in order of preference. This competitive process may result in Governing Councils not receiving their first choice of applicant where applicants apply to more than one Governing Council.

The nomination committee ranks applicants as: recommended (in order of preference), not recommended or unsuitable (Appendix 2).

The Governing Council Chair can recommend to the Minister appointment of one, two or three years for candidates in order to stagger appointments.

The Governing Council/College will be responsible for:

- ensuring the fit and proper person declaration is completed;
- ensuring a National Police Clearance is completed;
- confirming that applicants are not currently bankrupt; and
- confirming that applicants have not been convicted of an indictable offence.

The skills matrix, the ranking of all applicants, a brief explanation of decisions, and the completed fit and proper person declaration (Appendix 3) are forwarded by the Governing Council Chair to DTWD.

MARCH - APRIL

On behalf of the Minister DTWD prepares a summary of outcomes of the selection process as submitted by the Governing Council nomination committees.

The Minister considers recommended applicants and will discuss with the Governing Council Chair any difference in point of view regarding the recommended applicant or appointment period.

The Minister may appoint the recommended applicant or appoint other members to the Governing Council at his or her discretion.

APRIL - MAY

The Minister advises the Governing Council Chair and DTWD of endorsed applicants.

MAY

In May a submission identifying the endorsed applicants is forwarded by DTWD to the Minister's Office.

JUNE

The outcome of the application process is provided in writing to the Governing Council Chair by the Minister. Letters are prepared by DTWD on behalf of the Minister.

Correspondence from the Minister to all applicants advising of the outcome of the appointment process is finalised by late June. Letters are prepared by DTWD on behalf of the Minister.

Refer to Appendix 4 for an overview of the process.

5. Composition of Nomination Committee

When determining membership of a nomination committee, consideration should be given to the knowledge or skill sets required and to accommodate workload obligations. A minimum of three members is recommended, with the Governing Council Chair convening and leading meetings. The actual number and composition should be decided by the Governing Council membership. It is suggested that appointment to the committee be for one year.

It is good governance practice to separate Managing Directors from the nomination process of potential Council members as Governing Councils are responsible for evaluating Managing Director performance. This practice precludes any direct or perceived conflict of interest whereby a Managing Director may exert influence or authority in the selection of nominees.

6. Responsibilities of Nomination Committee

The nomination committee is responsible to the Governing Council and to the Minister to ensure that:

- Governing Councils have members with a mix of expertise, experience and a range of backgrounds. Consideration should also be given to the gender balance and cultural diversity of the Governing Council and committees;
- the process for assessing candidates is fair, transparent and consistent for all applicants;
- the skill sets required by candidates are identified in a skills matrix;
- regular evaluation of the Governing Council is conducted to identify required skill sets and to inform the skills matrix; and
- there is appropriate and timely succession planning.

7. IDENTIFYING POTENTIAL CANDIDATES

When potential candidates are approached or seek further information they should be provided with information on:

- the Governing Council Handbook (which includes remuneration advice);
- “Frequently asked questions” fact sheet;
- the role of the Council;
- the duties and responsibilities associated with the position;
- the amount of time likely to be required;
- the requirement that they undergo police and probity checks; and
- an explanation of the selection process.

A register of persons interested in serving on government boards and committees (which includes Councils) is maintained by the Department of the Premier and Cabinet. Members of the public who wish to be considered for government boards and committees may submit their names for inclusion on the [Interested Persons Register \(IPR\)](#). The register may be consulted by the Minister during the appointment process.

8. Governance

It is anticipated that each Governing Council will develop a robust Code of Conduct that deals with perceived/actual conflicts of interest. The Code of Conduct will guide the work of the nomination committee and ideally should be reviewed before each selection process.

It is good governance for the Governing Council to evaluate their performance and conduct a skills audit to identify areas of development for current members. This process will inform the skills matrix used in the selection of new Governing Council members.

The Nominating Committee should also refer to the Public Sector Management Commission’s [Good Governance Guide for WA boards and committees](#) available from the Public Sector Commission website.

9. Vacation of Office

Under Schedule 1 (1) of the VET Act a position on the Governing Council will be vacant if:

- (a) the term of the member expires;
- (b) the member resigns by written notice addressed to the Minister;
- (c) the member is an undischarged bankrupt or a person whose property is subject to an arrangement under the laws relating to bankruptcy;
- (d) the member is convicted of an indictable offence; or
- (e) the appointment of the member is terminated under subclause (2).

The Minister reserves the right to terminate the appointment of a member at any time at his or her discretion as stipulated in Schedule 1, clause 1(2) of the VET Act.

The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.

Under Schedule 1(1)(1) if a member or applicant is bankrupt, or has at any time been convicted of an indictable offence, that person should not be appointed, and should cease their appointment, as a Governing Council member.

A vacancy may be filled on an interim basis with Government endorsement and the Minister's approval. This position will be declared open to all applicants during the next call for expressions of interest.

10. Reappointment

Members whose terms are about to expire should not be encouraged to regard their appointment as a right, especially where members have already served two terms. The skills matrix should be used to balance the requirements of the Governing Council in determining the most suitable applicant. Additionally, attendance of the member at Governing Council meetings and level of effective contribution should be considered.

The need to ensure the regular turnover of members and injection of fresh ideas and enthusiasm should be balanced against the need to retain a proportion of members with the necessary skills and experience, and the need for succession planning or management of an organisation through a period of transition or considerable change.

GOVERNING COUNCIL SKILLS MATRIX TEMPLATE

NOMINATION COMMITTEE APPLICANT ASSESSMENT – FOR THE MINISTER

Governing Council Chairperson: TAFE College:
 Contact number:

Recommended Applicant(s)	Position	Term of apt.	Brief comment against skills matrix criteria and rationale for term of appointment
Suitable Applicant(s)	Position	Term of apt.	Brief comment against skills matrix criteria and rationale for term of appointment

GOVERNING COUNCIL SKILLS MATRIX TEMPLATE

Unsuitable Applicant(s)	Position	Term of apt.	Brief comment against skills matrix criteria and rationale for term of appointment

Each TAFE College is required to comply with the *Standards for Registered Training Organisations (RTOs) 2015* in accordance with the Act and the *Vocational Education and Training (General) Regulations 2009*.

In particular, clause 7.1 stipulates that, to be compliant with Standard 7, a training organisation must "ensure that its executive officers or high managerial agent ...meet each of the relevant criteria specified in the Fit and Proper Person Requirements in Schedule 3."

A training organisation found to be non-compliant may be registered subject to conditions and risks losing registration altogether.

FIT AND PROPER PERSON CRITERIA FOR SUITABILITY

Indicate whether you have ever:

- a) been convicted of an offence against a law of the Commonwealth or a State or Territory of Australia, or of another country, and if so, the seriousness of the offence and the time elapsed since the conviction was recorded; Yes No
- b) been an executive officer or high managerial agent of an RTO at a time that the RTO had its registration on the National Register cancelled or suspended by its VET Regulator for having breached a condition imposed on its Registration; Yes No
- c) been an executive officer or high managerial agent of an RTO at a time that the RTO was determined to have breached a condition of its registration under the Education Services for Overseas Students Act 2000 or the Tertiary Education Quality and Standards Agency Act 2011; Yes No
- d) become bankrupt, applied to take the benefit of a law for the benefit of bankrupt or insolvent debtors, compounded with his or her creditors or assigned his or her remuneration for the benefit of creditors, and if so, the time elapsed since this event occurred; Yes No
- e) been disqualified from managing corporations under Part 20.6 of the Corporations Act 2001, and if so, whether the disqualification remains in place; Yes No
- f) been involved in the business of delivering courses or other services on behalf of a person that was the subject of regulatory action described in points b) or c) above, and if so, the relevance of the person's involvement; Yes No
- g) provided a VET Regulator with false or misleading information or made a false or misleading statement to a VET Regulator, and if so, whether it is reasonable to assume that the person knew that the statement made or information provided to the VET Regulator was false or misleading; Yes No
- h) been determined not to be a fit and proper person as prescribed under any law of the Commonwealth or of a State or Territory of Australia, and if so, whether that determination remains in place; and Yes No
- i) been an executive officer or high managerial agent of an RTO at a time that the RTO was determined to have breached a government training contract. Yes No

I certify that all of the details stated on this form, as provided by me, are true and correct.

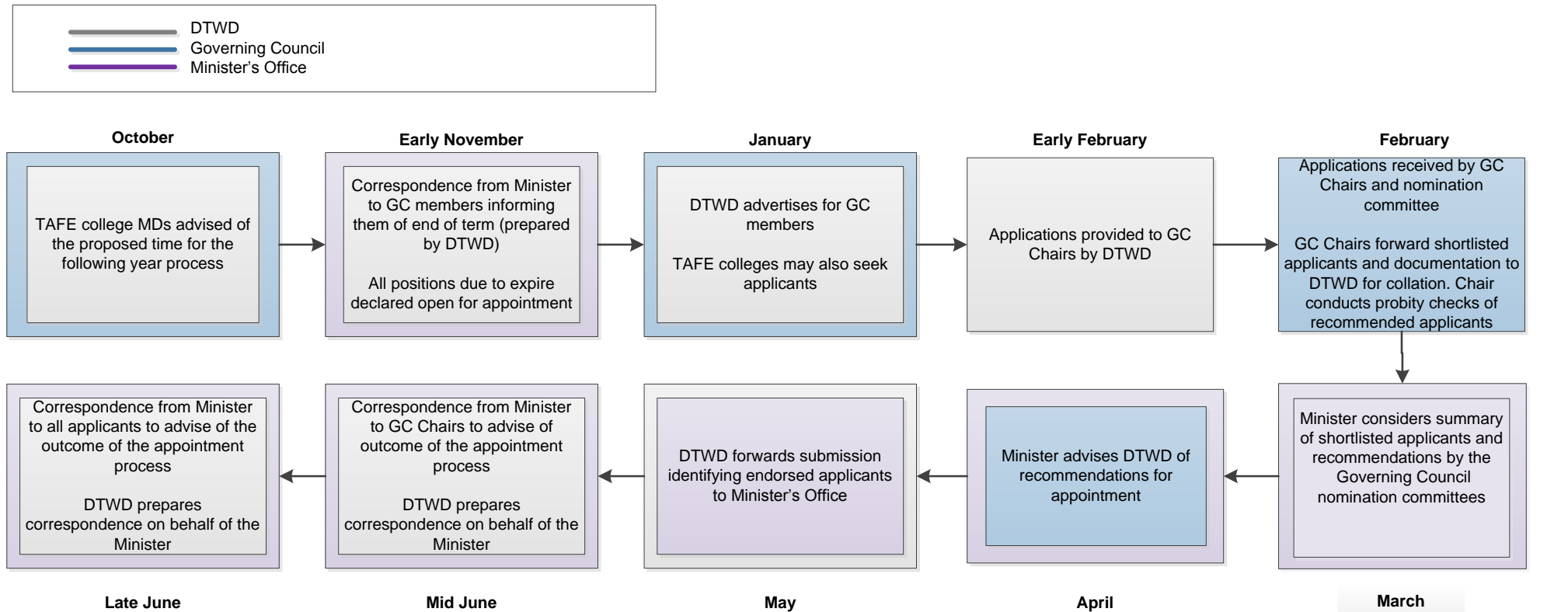
Name: _____ Date: _____

Signature: _____

Witness (person over 18 years of age): _____

NOMINATION PROCESS FOR GOVERNING COUNCILS*

* as at November 2016



ACRONYMS

DTWD – Department of Training and Workforce Development
 GC – Governing Council
 MD – Managing Director