

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
BUDGET ESTIMATES 2012-2013

Finance and Deregulation Portfolio

Department/Agency: ASC Pty Ltd

Outcome/Program:

Topic: Appointment letters

Senator: Johnston

Question reference number: F73

Type of question: Written

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Number of pages: 4

Question:

GBE Governance and oversight guidelines state that Appointment letters for all directors and Chief Executive Officers (CEOs) should include the following:

- i. director powers and duties (attaching a link to the CAC Act and the GBE Guidelines);*
- ii. a copy of the GBE's constitution or enabling legislation (which would include the circumstances in which an office of director becomes vacant);*
- iii. general public sector performance and accountability obligations, including that the GBE may be subject to Parliamentary scrutiny and audit processes;*
- iv. information on the operations of the GBE, full details of their legislative obligations, their public sector accountability obligations and directors' responsibilities, and outlining the circumstances in which the GBE will the cost of directors obtaining independent professional advice in carrying out their duties;*
- v. the term of appointment and remuneration arrangements (with particular reference to Remuneration Tribunal arrangements); and*
- vi. reference to Directors and Officers insurance arrangements, confidentiality of information and board decisions, conflict of interest matters, and induction arrangements.*

Please provide a copy of the appointment letter for ASC's CEO (Note that in making enquiry as to this letter it is not the desire to impinge upon the privacy of the CEO, and accordingly personal information is not sought and should be redacted).

GBE Governance and oversight guidelines state that '*Required standards of disclosure are satisfied. In particular consistent with directors' responsibilities under the CAC Act, regular and timely disclosure is to be made by GBEs of information:*

- i. which may affect the value of the GBE;*
- ii. which may influence government decisions in relation to the GBE; or*
- iii. in which the government has a legitimate interest.*
- iv. Information is produced for the Shareholder Minister(s) and the community according to the highest standards;*

Answer:

We are unable to provide a copy of the letter of appointment as it involves personal correspondence and information about financial arrangements between the Board and the incoming Chief Executive Officer.

However, a copy of a draft generic letter of appointment is provided at [Attachment A](#) to this response.



Minister for XX

Minister for Finance and Deregulation

Name and Address

Dear Mr/Mrs

As the Shareholder Minister of XXX Pty Ltd (XXX), I congratulate you on your appointment as Chief Executive Officer. Your appointment reflects the Government's desire for strong leadership and management that is strategic, diverse and innovative and capable of tackling the challenges and opportunities facing XXX and its operations.

Your appointment as Chief Executive Officer and Managing Director (CEO and MD) will be for a term of XXX years, commencing XXX, unless terminated earlier by either party giving notice in writing. Notwithstanding any mutual expectation, there is no right to reappointment. You may again be asked to serve ex-officio on one or more committees of the Board, in which case the relevant terms of reference will be provided.

The Board is responsible for the corporate governance arrangements of XXX. In assisting the Board in discharging this responsibility I expect you to demonstrate the highest standards and have regard to relevant legislation, shareholders' expectations, employees and XXX's role in the community. It is our expectation that the XXX CEO/MD will be one of the gatekeepers for the integrity and effectiveness of the Company's governance processes and will clearly identify and manage potential financial and operational risks to the Company.

The powers, duties and responsibilities of Directors are defined at law and you should acquaint yourself with these obligations. In particular, I draw your attention to the requirements set out in the *Commonwealth Authorities and Companies Act 1997*, the *Commonwealth Authorities and Companies Regulations 1997* and the *Corporations Act 2001*, all of which can be viewed online at <http://www.comlaw.gov.au>.

In addition, the *Commonwealth Government Business Enterprise Governance and Oversight Guidelines* (GBE Guidelines) set out the expectations of the Commonwealth in respect of the governance of XXX. The GBE Guidelines may be found at <http://www.finance.gov.au/publications/governance-arrangements/index.html>.

I would ask you to note that, as a Commonwealth Government Business Entity, XXX may be subject to both Parliamentary scrutiny and audit processes. XXX is subject to general public sector performance and accountability obligations, which are largely set out in the GBE Guidelines and legislation, as well as in the Constitution/Articles of Association of the company.

Copies of relevant legislation, the GBE Guidelines, the Constitution/Articles of Association, Annual Reports, Corporate Plans and other governance documents should be obtained from the Chair.

In certain circumstances, Directors may find it necessary to seek independent professional advice to carry out their duties. In such a case, you should discuss your requirements with the Chair who will advise the procedures involved and the basis on which the company will bear the costs, noting that any such advice must be provided to the Board as a whole at its next meeting.

The remuneration payable to you by XXX will be in accordance with discussions between you and the Chair, based on the existing determination of the Remuneration Tribunal for CEOs.

The company provides Directors and Officers insurance for members of the Board: it is important that you obtain details of the cover from the Chair.

Please note that any information provided to you or which you may receive by virtue of your role as CEO/MD is confidential to the company. Such information may not be disclosed to any person except as specifically authorised by the Board or according to legislative requirements, unless that information is already available in the public arena. The obligation to ensure and maintain confidentiality continues subsequent to the termination of your appointment to the Board.

Should you become aware of a potential or actual conflict of interest between yourself and the company, you are required to make the circumstances known immediately to the Chair. Should the conflict not be able to be resolved, then the Chair will raise the matter with me as the Responsible Minister and it may ultimately be necessary to request your resignation.

I would appreciate a response to this letter within 30 days, confirming your acceptance of the role, accepting your obligations and responsibilities as CEO/MD of XXX, and providing an undertaking that you will advise me of any changes in circumstances that might impact your ability to be, or to continue as, a Director of XXX.

I look forward to continuing a successful working relationship with you into the future.

I have copied this letter to XXX.

Yours sincerely

XX

PENNY WONG