## Tenure of board directors

## Purpose

To provide guidance regarding the length of tenure allowed for directors on Victorian government health boards.

## Scope

For the purposes of this policy, a Victorian government health board is an entity as defined under the following Acts:

* *Health Services Act 1988 (Vic)*
* *Ambulance Services Act 1986 (Vic)*
* *Mental Health and Wellbeing Act 2022 (Vic)*

The scope of this policy includes:

* Current board directors applying for reappointment to the same board.
* New applicants who have previously served on the board and have had a break in their time on the respective board.
* Current board director of two or more amalgamating entities applying for (re)appointment to the board of the amalgamated entity.

## Policy

All recommendations for appointment and reappointment should be based on what serves the best interests of the entity and not the individual. While there is a maximum that can be served, it is not guaranteed that directors will automatically be reappointed to serve the maximum allowable tenure.

As per the Health Services Act and the Ambulance Services Act, a director of a board must not serve more than nine consecutive years as director of that board unless the Minister is satisfied that exceptional circumstances exist that justify a further re-appointment of the director.[[1]](#footnote-2)

Exceptional circumstances which may require an exemption include the need to:

* maintain the stability of the board due to a disruption of leadership, such as turnover of board directors, turnover of the Chief Executive Officer or significant change in executive management group
* manage significant healthcare risk, such as during the COVID-19 pandemic
* manage board or organisational culture
* oversee late stage planning of an amalgamation
* any other significant circumstance deemed appropriate by the Minister

The term of an exemption is usually for one year with exemptions considered on a case by case basis.

When proposing reappointment of a director whose tenure is reaching nine years, the department expects reasonable consideration to be given to the:

* balance of experience and knowledge of the board
* independence and curiosity attributes of the board
* working relationships between board directors and with management[[2]](#footnote-3)

As per the Mental Health Act, directors of Forensicare may only serve on the board for three terms. The maximum total tenure of a board director is nine years as each term cannot be more than three years. The legislation does not express that the terms are consecutive and does not provide for the minister to appoint for a fourth term.[[3]](#footnote-4)

***Break in tenure***

The provision under the Health Services Act and the Ambulance Services Act, do not express an expectation of a former director, following a period not serving on the board, being appointed to the same board.

The department expects reasonable consideration to be given to:

* the length of the time away from serving on the board.
* the length of the previous tenure served and contribution to the board.
* the change in the membership of the board and Chief Executive Officer.
* how different the organisation is and the environment in which the organisation is operating.

A director who has served on a board for nine years should not be considered for reappointment to the same board until at least one full term (that is, three years) has elapsed.

The Mental Health Act does not express that the terms of a board director are consecutive. The legislation provides that a board director may only serve three terms.

***Amalgamations***

There is no provision in the Health Services Act about the tenure served by a director on the board of an entity that subsequently amalgamates to form a new entity. The terms of all directors on the new board may start afresh (at zero).

When proposing a director for appointment or reappointment to the board of an amalgamated entity, the department expects reasonable consideration to be given to:

* the balance of experience and knowledge of the former entity against a new perspective that a new director can bring
* the change in the membership of the board, the Chief Executive Officer and executive management
* how different the entity is and the environment in which the entity is operating (if a Public Health Service has amalgamated with a small public hospital the focus of the new board may not be significantly different from that of the former Public Health Service board, whereas three public hospitals amalgamating may have a significantly different strategic view).
* whether there is sufficient opportunity for renewal of membership of the board
* enabling transition and community trust for the new entity

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1. Sections 34A(1), 65U(2), 115FA(1) and 134E(1A) [Health Services Act 1988 (legislation.vic.gov.au)](https://content.legislation.vic.gov.au/sites/default/files/2020-02/88-49aa167%20authorised.pdf), section 17A(1) [Ambulance Services Act 1986 (legislation.vic.gov.au)](https://content.legislation.vic.gov.au/sites/default/files/2021-09/86-114aa047%20authorised.pdf) [↑](#footnote-ref-2)
2. [dhhs-directors-toolkit-chapter-5---board-structure-and-renewal-1 (1).pdf](file:///C:/Users/jbuc2501/Downloads/dhhs-directors-toolkit-chapter-5---board-structure-and-renewal-1%20(1).pdf) [↑](#footnote-ref-3)
3. Section 620(2)(a) [Mental Health and Wellbeing Act 2022 (legislation.vic.gov.au)](https://content.legislation.vic.gov.au/sites/default/files/2022-09/22-039aa%20authorised.pdf) [↑](#footnote-ref-4)