

NOMINATION COMMITTEE TERMS OF REFERENCE

MEETING NAME BSC Panel

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Purpose of paper For Decision

Classification Public

Summary Modification P303 amended Section C4.1.3(c) of the Code to allow more discretion to the Board's Nomination Committee in determining whether non-industry directors are independent from industry. This modification requires a consequential change to the Nomination Committee's Terms of Reference, which is subject to the approval of the Panel.

1. Introduction

1.1 Under Modification P303, which was implemented on 28 November 2014, the criteria for establishing whether a director is independent from industry were revised. The previous criteria was under Section C4.1.3 was for a five year gap from industry involvement. This was removed and replaced with a requirement for the Nomination Committee to use its discretion in determining independence from industry as part of the appointment process.

1.2 Section C4.1.3(c) now requires the Nomination Committee terms of reference to specify that:

"at least two Directors shall be, in the Nomination Committee's reasonable opinion (having regard, among other things, to any present or future business interests disclosed by those individuals), suitably independent from the electricity industry".

1.3 This paper sets out:

1.3.1 the consequential changes to the Nomination Committee's Terms of Reference; and

1.3.2 further changes to update and refine the Terms of Reference,
for the approval of the Panel.

2. P303 changes

2.1 The proposed changes to the Nomination Committee are attached as Appendix 1.

2.2 The amendments to the Terms of Reference that reflect P303 are located at paragraphs 9.2(c) and 9.9. These aim to reflect the views of the P303 Workgroup which commented as follows in the Modification Report:

"The Workgroup therefore recommends to the BSC Panel that the following requirements should be considered when updating the Nomination Committee's Terms of Reference as part of the implementation of P303 (if approved):

- An obligation should be placed on the Nomination Committee to use its discretion to assess independence as part of the appointment process;

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- An explicit criteria of what the Nomination Committee should consider as part of the appointment process including a candidate's current and past employment, any affiliations or interests; and any additional involvement such as consultancy;
- To counteract the removal of a five year industry gap, there should be guidance provided that in normal circumstances, an individual would not be considered for the role of an industry independent Director before a period of time (for example two years) since working in the industry."

2.3 Paragraph 9.9 of the Terms of Reference requires the Committee to exercise its discretion in determining independence from industry. In exercising its discretion, the Committee will be required to consider the individual's "character and judgment" and also have regard for certain criteria which incorporate those recommended by the Workgroup.

3. Other proposed changes

3.1 The rationale for the other changes are as follows:

- 1.1(a) –rationalisation of defined terms;
- 1.1(f) – to reflect changes to the structure of ELEXON's executive team since the Terms of Reference were established in 2012 (this definition is now designed to be flexible);
- 7.2 – whilst the Nomination Committee will continue to report to the Board, and consult with the Panel Advisor as necessary, the requirement to circulate the agenda has been removed for the purpose of efficiency;
- 9.14 – to remove a potential conflict with 9.15 under which the CEO is responsible for appointing executive team members and therefore succession planning;
- 9.18 – ELEXON does not have executive directors - this was intended as a reference to the executive team;
- 10.1 –This paragraph is intended to reflect the requirement in Section C4.1.7 of the Code that the Nomination Committee should seek the approval of the Board and Panel for any non-compliance with the Terms of Reference. The change to this paragraph recognises that some Nomination Committee business falls outside the scope of the Code, for example the appointment and removal of executive team members.

4. Recommendations

4.1 We invite you to **APPROVE** the revised Nomination Committee Terms of Reference

Attachment

Attachment A – Draft Nomination Committee Terms of Reference

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