



# **Boards and Committees Handbook**

2009



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## **CHAPTER 1: TYPES OF BOARDS AND COMMITTEES**

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### **1.1 INTRODUCTION**

1.1.1 ACT Government boards and committees play an essential role in providing advice, assistance and guidance to both the Government and the public. All boards and committees have a role in ensuring public confidence in the policies and decisions of Government. This handbook provides policy and practical guidance to those involved in ACT Government boards and committees, particularly ACTPS officers, executives, ministers and heads of boards. It should be read in conjunction with ACT Government's *Cabinet Handbook* and *Cabinet Paper Drafting Guide*.

1.1.2 Boards and committees vary in size, scope and status, and perform a range of advisory and quasi-governmental functions. Some boards and committees direct Territory- owned Corporations and must discharge complex commercial, legal or policy responsibilities; others act as consultative forums, linking government and the community. Some make legal decisions or perform judicial review functions; others inform government policy by providing independent advice. Some boards and committees are statutory while others are non-statutory.

1.1.3 ACT Government boards and committees fall within five broad categories:

- Governing bodies;
- Quasi-judicial tribunals, boards of inquiry;
- Management boards;
- Key advisory bodies; and
- Other consultative and advisory bodies.

1.1.4 Some appointments to single positions such as the Victims of Crime Coordinator, Magistrates and Judges, or the Commissioner for Public Administration are not covered by all of the guidance in this Handbook. However, it is the general rule that Cabinet is consulted on all proposed Ministerial appointments to ACT Government Boards and Committees and statutory appointments to be notified or tabled in the Assembly. Where appointments are made by ACT Public Servants, Cabinet consultation may not be required. If in doubt, check with the Cabinet Secretariat, Cabinet and Intergovernmental Relations Branch.

### **1.2 GOVERNING BODIES**

1.2.1 Governing bodies provide strategic guidance to, and have responsibility for, the stewardship of statutory entities or Territory Owned Corporations. They oversee and participate in commercial or management decision-making, and have responsibility for the stewardship of the organisation. Governing bodies are statutory bodies, and their particular functions and powers are usually set out in their enabling legislation.

### 1.3 QUASI-JUDICIAL BODIES AND BOARDS OF INQUIRY

1.3.1 These bodies are charged with making independent decisions affecting large groups and/or determining matters of importance to individuals.

1.3.2 Examples include the ACT Civil and Administrative Tribunal, and the Sentence Administration Board.

### 1.4 MANAGEMENT BOARDS

1.4.1 This group includes scientific, professional and legal bodies requiring members to be experts in their field, disciplinary boards or boards of appeal, bodies responsible for reviewing qualifications, regulatory or licensing matters, and professional, technical, trade or non-professional groups. These groups are usually statutory. Some of these bodies do not convene as a whole, but convene as panels to consider individual cases, for example, the Housing Review Committee.

### 1.5 KEY ADVISORY BODIES

1.5.1 Key advisory bodies provide independent or expert advice to Government on key strategic matters or matters of Territory-wide significance, or operate government programs. They can be either statutory or non-statutory.

1.5.2 Examples of advisory bodies include the Government Schools Education Council and Children and Youth Services Council.

### 1.6 OTHER CONSULTATIVE AND ADVISORY BODIES

1.6.1 Consultative and advisory bodies provide an avenue for consultation with the community on particular issues or local matters. These are generally non-statutory.

1.6.2 Examples of consultative and advisory bodies include the ACT Ministerial Advisory Council on Women and the Heritage Council.

## CHAPTER 2: SELECTION AND RECRUITMENT

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### 2.1 GENERAL

2.1.1 Selection and recruitment of the right members for a particular board or committee is vital if the board or committee is to carry out its tasks effectively. The issues discussed below should be considered when identifying potential candidates.

### 2.2 GOVERNMENT POLICY

2.2.1 Officers should take care to clarify how the Government's policy objectives might impact on the selection, recruitment and responsibilities of board members. Policy considerations should take into account the Government's commitment to:

- a) achieving 50% representation of women on its boards and committees;
- b) encouraging greater participation of Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds and people with a disability; and
- c) promoting representation from a broad cross section of the community, including community organisations.

### 2.3 MEMBER SKILLS AND ATTRIBUTES

2.3.1 Ideally a board or committee should consist of members with varied skills, attributes and expertise. The list below is offered as a guide on the range of skills that is generally useful in carrying out a member's duties. These skills should not be used as selection criteria. Many boards and committees require specific skills or knowledge and efforts should be made to ensure the new member is able to contribute in these areas.

**Advising** - Provide information and advice. Make workable suggestions and recommendations.

**Accountability** - Understand accountability requirements and uphold ethical standards.

**Leadership** - Provide leadership with integrity. Communicate effectively with stakeholders.

**Strategic thinking** - Contribute to strategic planning and goal setting.

**Policy development** - Establish and review policy objectives, corporate standards and resource priorities.

**Decision-making** - Adopt ethical decision-making processes.

**Networking** - Access networks including community groups to enhance public confidence and promote the board or committee, agency or relevant enterprise.

**Teamwork** - Work cooperatively with members and staff to achieve agreed goals.

**Monitoring** - Analyse, assess and review performance and progress.

## 2.4 STATUTORY AND OTHER REQUIREMENTS

2.4.1 Officers need to establish whether an appointment to an existing board or committee is subject to statutory (legislative) or other requirements. For example, the enabling legislation of a statutory board or committee might specify mandatory qualifications for appointees, or specify whether or not a public servant may be appointed. It may also specify a maximum or minimum period of the appointment (for example “2 years”, or “until age 65”). See Appendix B for further information.

2.4.2 Some appointments are selected by non-government bodies through independent processes. For example, the Veterinary Surgeons Board of the ACT nominates and elects candidates through a ballot system conducted in accordance with the *Health Professions Boards (Elections) Act 1980*.

## 2.5 CONNECTION AND COMMITMENT TO THE ACT

2.5.1 For most appointments to ACT boards and committees, people appointed will have a connection and commitment to the ACT through their choice to live and/or work in the ACT. The appointment of people who do not have this community connection may be made where specific expertise or experience is sought, and is not available within the ACT.

2.5.2 Agencies must be clear about whether people need to have an understanding of and connection with the ACT community and state this in any recruitment process. Selection criteria could include:

- a) involvement in ACT community life;
- b) demonstrated networks in the ACT; or
- c) experience or expertise in particular areas.

## 2.6 HOW TO MAKE AN APPOINTMENT

2.6.1 There are four stages in making an appointment to an ACT Government board or committee:

- a) Initiation;
- b) Candidates;
- c) Approval to appoint; and
- d) Finalising the appointment.

2.6.2 Issues to consider at each stage are detailed below and a flowchart of the whole appointment process is at 2.10. (See also the *Cabinet Paper Drafting Guide*.)

## Step 1. Initiation

2.6.3 If a place (or places) on a government board or committee become vacant, or a new body is established, the officer charged with managing the appointment process must first identify whether it is statutory or not.

2.6.4 The officer should then identify the level of discretion the responsible minister or responsible officer (for departmental committees) has when making the appointment. Some committees have certain members selected by people other than Government members or departmental staff. In these cases it is deemed that the minister does not have “discretion” over who is selected, however the minister still retains the official role in appointing the member to the committee, and the appointment must still be considered by Cabinet.

2.6.5 For statutory boards or committees, officers will need to examine the relevant provisions of the legislation to determine:

- a) who is responsible for making the appointment;
- b) whether it is subject to any statutory conditions; and
- c) whether the position requires or prohibits the appointment of a public servant.

2.6.6 The minister, or responsible officer, should be briefed on the impending appointment. The brief should include:

- a) terms of reference for the board or committee;
- b) details of the vacancy/ies;
- c) whether the appointment is subject to legal or other requirements and, if so, what these are;
- d) whether external bodies determine or have input into the selection or appointment of candidates;
- e) details of proposed remuneration;
- f) proposed selection criteria; and
- g) the process proposed to identify and contact potential appointees.

## Step 2. Candidates

2.6.7 Where the minister or officer is responsible for nominating appointees, he or she should be consulted to determine how suitable candidates will be identified (for example, through public advertisement, ministerial nomination, administrative processes). For ministerial appointments the officer should consult initially with the Departmental Liaison Officer or Ministerial Adviser to seek advice from the minister.

2.6.8 Government policy on boards and committees seeks to achieve and maintain 50% representation of women on all government boards and committees, and also increase the representation of Aboriginal and Torres Strait Islanders, people with a disability, persons from culturally and linguistically diverse backgrounds and community organisations.

2.6.9 Officers must contact the Office for Women, and should contact the Office of Multicultural, Aboriginal and Torres Strait Islander Affairs to determine whether suitable women, Aboriginal or Torres Strait Islander people, or persons from a culturally and linguistically diverse background are available for consideration.

2.6.10 Consideration should also be given to levels of consumer and stakeholder representation in appointments, particularly when the business of the group will have an impact on services for community members such as parents, people with disabilities, youth, older people, small business owners, or community sector organisations.

2.6.11 Candidates should be contacted informally in the first instance to:

- a) gauge their interest and availability (where applicable);
- b) explain the terms and conditions of the appointment (i.e. role, expected participation, legal obligations, any remuneration and potential liabilities); and
- c) obtain preliminary assurances that there are no apparent impediments to their appointment (conflict of interest issues, etc.).

2.6.12 Officers should consider whether they will send out an information pack including Annual Reports and legislative responsibilities of the board or committee so the potential member is fully aware of their responsibilities should they agree to participate or be considered.

### **Step 3. Approval to Appoint**

2.6.13 The minister or responsible officer considers the pool of candidates and selects preferred appointee(s).

2.6.14 The Cabinet Appointment template must be used to consult Cabinet on proposed ministerial appointments to cabinet (Appendix A.1). Every section on the Template is mandatory. This includes questions relating to the status of the Board or Committee (i.e. statutory or non-statutory), remuneration, gender balance, the representation of minority groups, other consultation, and a standard recommendation.

2.6.15 Brief statements of relevant experience must be attached to all proposed Cabinet Appointments.

2.6.16 See the *Cabinet Handbook* and *Cabinet Paper Drafting Guide* or your Cabinet Liaison Officer for further detail on the Cabinet process, including timing. In some instances, temporary and very short term appointments may not require consultation with Cabinet and the relevant Minister may consider just consulting with the Chief Minister. Contact the Cabinet Secretariat for further guidance.

2.6.17 Division 19.3.3 of the *Legislation Act 2001* (Section 227 and 228) requires that all statutory appointments be referred to the appropriate Legislative Assembly Standing Committee for a period of 30 days prior to the appointment being finalised by the minister. Section 227 (2) as amended, of the Legislation Act provides exceptions - Division 19.3.3 does not apply to an appointment of:

- a) a public servant to a statutory position (whether or not the Act under which the appointment is made requires that the appointee be a public servant); or
- b) a person to, or to act in a statutory position for not longer than 6 months, unless the appointment is of the person to act in the position for a 2nd or subsequent consecutive period; or
- c) a person to a statutory position if the only function of the position is to advise the minister

2.6.18 Note that all re-appointments to statutory positions must be referred to the relevant standing committee, as per Section 227(2)(b) of the Legislation Act above.

2.6.19 Depending on the appointment, the minister is required to write to either the Speaker or the chair of the appropriate Assembly Standing Committee, attaching all relevant information. The letter should note the Act under which the appointment is to be made, the name of the appointee, any additional details regarding the individual or the committee, and include a copy of their Curriculum Vitae. A sample brief to the minister and letter to a Standing Committee are at Appendices A.2 and A.3 respectively.

2.6.20 The Standing Committee has 30 days to respond directly to the minister. If there is no objection, or if the Committee fails to respond within the 30-day period, the minister may proceed to appoint the member(s) as outlined in Step 4 below.

2.6.21 If the committee responds by requesting additional information, sufficient time should be given for a response from the committee, which may extend beyond the 30 days. The minister, however, is empowered to make the appointment after the 30 days have passed, regardless of the response from the committee.

2.6.22 If the Standing Committee disagrees, the minister can either:

- a) Reconsider the decision to appoint that particular person (any changes must go through Cabinet and the Committee processes again);
- b) Consult Cabinet on the comments of the Committee and implement the decision of Cabinet; or
- c) Decide that the person is the best qualified and appoint them despite the comments of the Committee.

#### **Step 4. Finalising the Appointment**

2.6.23 *For statutory appointments only:* Having received agreement or no comment from the Standing Committee, the minister should write to the appointee offering appointment subject to satisfactory completion of prescribed declarations (conflict of interest, confidentiality if required).

2.6.24 On satisfactory completion of pre-appointment checks (see 2.7 below), the officer draws up an instrument of appointment and an explanatory statement (if instrument is disallowable), which, together with a covering brief, are forwarded to the minister for approval (see Appendix B regarding the

making of instruments). This should also state whether the appointee is an ACT public servant. A sample brief, Instrument of Appointment and Explanatory Statement are at Appendices A.7, A.8 and A.9 respectively.

2.6.25 If the appointment is disallowable or notifiable, it must be notified on the Legislation Register and, if required, tabled in the Assembly for a period of disallowance.<sup>1</sup>

2.6.26 *For all other appointments:* Following Cabinet's endorsement, the responsible minister writes to offer the agreed nominee an appointment, subject to the satisfactory outcome of the checking process (conflict of interest, confidentiality, if required) and other pre-appointment checks (see 2.7 below). A sample Letter of Appointment is at Appendix A.4.

2.6.27 Officers should include with this letter an Induction Package containing information on any organisation that the board or committee oversees, how the board or committee conducts its business, detail of ethical requirements for members of ACT Government Boards and Committees, as well as all relevant legal obligations (see Chapter 3).

2.6.28 Unless completed previously, the letters should also invite the appointee to identify him or herself as an Aboriginal or Torres Strait Islander, person from a culturally or linguistically diverse background or person with a Disability. A sample declaration form is provided at Appendix A.6.

2.6.29 The consideration of appointments by the Cabinet is a consultative rather than determinative process. The power to make appointments that are, as a matter of information or government coordination, considered by Cabinet is in many cases determined in legislation, and rests with the ACT Executive constituted formally, or individual ministers.

Before Appointments Papers are lodged with the Cabinet Secretariat, it should be confirmed with the proposed appointee that they are willing to accept the position and likely terms of appointment.

## **2.7 PRE-APPOINTMENT CHECKS**

2.7.1 The level of pre-appointment checks required varies across boards and committees depending on the role and responsibilities of board and committee members. It is the responsibility of agencies to determine the level and nature of pre-appointment checks relevant to the particular board of committee and to manage these checks.

2.7.2 Where it is determined by the agency that a Criminal History Record Check is an appropriate means of pre-employment checking, this can be facilitated through Recruitment Services, Shared Services Centre (SSC). A template Consent for Criminal History Record Check and proforma minute to Recruitment Services are provided as part of the Board and Committee Member Commencement Package through the SSC website at [www.sharedservices.act.gov.au](http://www.sharedservices.act.gov.au)

2.7.3 If a board or committee member will have financial responsibilities or will be a member of a management board or committee, more detailed financial background checking may also be required – an example of a

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<sup>1</sup> A Period of disallowance is six sitting days following notification on the register.

registration of interests form can be found in the Queensland Government's publication "Welcome Aboard" at [http://www.premiers.qld.gov.au/About\\_the\\_department/publications/policies/Governing\\_Queensland/Welcome\\_Aboard/](http://www.premiers.qld.gov.au/About_the_department/publications/policies/Governing_Queensland/Welcome_Aboard/).

2.7.4 At a minimum, new or reappointed board or committee members should sign the Code of Conduct, Conflict of Interest and background declaration forms as detailed in Chapter 3.

## **2.8 PUBLIC ANNOUNCEMENTS**

2.8.1 Public announcements should only occur after candidates have formally accepted their appointment. Care should be taken in publically announcing appointments, particularly when there has been a delay between candidates being informally contacted to gauge their interest, explain the terms and conditions and obtain preliminary conflict of interest assurances (see 2.6.11).

## **2.9 REPORTING ON BOARD AND COMMITTEE MEMBERSHIP**

2.9.1 The Cabinet and Intergovernmental Relations Branch conducts an annual review of the membership of ACT Government boards and committees to track trends in membership of women, people from a culturally and linguistically diverse or Aboriginal and Torres Strait Islander background and people with a disability.

2.9.2 Following the completion of the appointment process, the officer should place on file documentation of the appointment process, record the new information on his or her agency's government boards and committees database and inform the agency Cabinet Liaison Officer (including appointment dates, expiry dates and any resignations).

## 2.10 THE APPOINTMENT PROCESS

### 1. Initiation

- ❑ Identify a vacant position on a board or committee.
- ❑ Before proceeding with the appointment, check the following:
  - Is the board or committee statutory or non-statutory? (i.e. created under legislation or not – this has implications for Steps 3 and 4 below)
  - Are there any legislative or policy requirements for this board or committee? If so, how do I address these?
- ❑ Prepare a brief to the relevant minister/ departmental officer including this information, and seeking approval to proceed with the appointment process.

### 2. Candidates

- ❑ For appointments where the selection process is not specified by legislation, identify suitable candidates for the position/s:
  - contact the Office for Women (this is mandatory for all appointments);
  - contact the Office for Multicultural Affairs, Aboriginal and Torres Strait Islander Affairs, which keep lists of people interested in board and committee membership;
  - seek nominations from the board or committee itself;
  - seek nominations from the minister or relevant Departmental officer; and/or
  - conduct a formal recruitment process.
- ❑ Make informal contact (usually by telephone) with potential appointees to confirm that they are willing and able to accept the appointment if offered.

### 3. Approval to Appoint

- ❑ Talk to your Cabinet Liaison Officer (CLO) about Cabinet timeframes; prepare a Cabinet Appointment Paper, including statements of relevant experience for all appointees.
- ❑ Prepare a brief to the minister seeking agreement to appoint a nominee and to lodge the Cabinet Appointment Paper
- ❑ For statutory boards and committees, prepare a letter from the minister to the relevant Assembly Standing Committee. This does not apply to an appointment of:
  - a public servant to a statutory position;
  - a person to, or to act in, a statutory position for not longer than six months (unless it is a re-appointment); or
  - a person to act in a statutory position if the only function of the position is to advise the minister.

NOTE: if the Standing Committee disagrees with the proposed appointment/s, the minister may:

- Reconsider the appointment;
- Refer the matter to Cabinet; or
- Decide to appoint despite the committee's disagreement.

### 4. Finalising the appointment

- ❑ After Cabinet endorsement (or in the case of statutory bodies, if there is no objection by the Standing Committee within 30 days) prepare letters from the minister notifying appointees of their appointment.
- ❑ Public announcements should only occur after candidates have accepted their appointment
- ❑ For statutory boards and committees only, prepare the necessary instrument of appointment and explanatory statement, and make arrangements for the appointment to be notified on the Legislation Register and/or tabled in the Assembly (contact your Assembly Liaison Officer or Cabinet Office for assistance).

## **CHAPTER 3: LEGAL AND ETHICAL REQUIREMENTS**

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### **3.1 GENERAL**

3.1.1 As public sector organisations, government boards and committees have significant responsibilities and are invested with a considerable measure of public trust. Decisions made in these groups often have a direct effect on the ACT community and Government. Members of these bodies are deemed to hold public offices and therefore are expected to meet certain ethical requirements in order to satisfy standards of probity and accountability that apply to the public sector. While the nature of these requirements will depend on the function and role of the board or committee, it is essential that board or committee members sustain public confidence by upholding high standards of conduct.

3.1.2 The relationship that exists between some board members and the beneficiaries, owners or end users on whose behalf they are acting is 'fiduciary' in nature. This arises due to the degree of trust, confidence and reliance that is placed in the board member by the parties whose interests they look after and manage. Accordingly the board member (as fiduciary) has a duty to act with loyalty and honesty and in a manner consistent with the best interests of the beneficiary.

3.1.3 Board members must be familiar with the operations of their board, service or organisation, review in sufficient detail matters put before them and contribute in a meaningful way to the deliberations of the board. In addition board members are expected to carry out any necessary enquiry on management and bring their external experience and expertise to matters that are being considered or ought to be considered by the board.

### **3.2 CODE OF ETHICS: PUBLIC SECTOR MANAGEMENT ACT 1994**

3.2.1 Section 9 of the *Public Sector Management Act 1994* details the requirements of a public employee in the ACT in performing his or her duties, and is known as the Code of Ethics. Under the Definitions for the Act a public employee means a person—

- a) employed in the service; or
- b) employed by a territory instrumentality or a statutory office-holder [i.e. including members of an ACT Government board or committee].

3.2.2 A copy of the Code of Ethics should be provided to all remunerated and non remunerated members of each board or committee on commencement and prior to signing a code of conduct declaration.

3.2.3 The Public Sector Management area of the Chief Minister's Department have published guidelines on the Code of Ethics entitled *Ethics in the ACT Public Service*, which are available from the Governance website at <http://www.cmd.act.gov.au/governance/public/ethics>.

### 3.3 CODE OF CONDUCT AND CONFLICTS OF INTEREST

3.3.1 A code of conduct provides an organisation with an ethical framework for the decisions, actions and behaviour of its members. A good code of conduct does not simply proscribe certain behaviour but also reinforces the shared values and goals that arise from an organisation's charter. In this sense a code of conduct is an important governance tool that supports accountable and effective decision-making and provides organisational clarity of purpose.

3.3.2 The ACT Government Boards and Committees Code of Conduct (Appendix A.5) outlines the standards of behaviour and ethical conduct expected of all people serving on ACT boards and committees. All members are required to declare (in writing) that they will abide by this code before they are appointed.

#### **Board-specific code of conduct**

3.3.3 ACT Government Boards and Committees perform various roles ranging from giving independent and expert advice to ministers to directing and overseeing the operations of government owned corporations. This means that individual boards and committees differ significantly when it comes to legal status, function, governance responsibilities and risk profile. These differences make it unlikely that one set of rules will be effective or appropriate for each board or committee. Individual codes of conduct therefore need to act as a bridge linking core public sector standards to the needs and issues of particular boards or committees.

3.3.4 It is recommended that a board-specific code of conduct be developed in addition to the ACT Government Code.

3.3.5 In order to develop a code of conduct a board or committee should identify the core activities it has undertaken and frame an appropriate statement of values and rules of behaviour. The board-specific code of conduct should address areas of concern or risk to the board or committee and include specific examples where possible.

3.3.6 Each new board or committee member should be asked to sign the Code of Conduct/ Conflict of Interest Declaration form after their appointment has been finalised. A sample of this form is at Appendix A.6.

#### **Recognising and Managing Conflicts of Interest<sup>2</sup>**

3.3.7 A conflict of interest may arise from:

- a) Other directorships or employment;
- b) Professional and business interests and associations;
- c) Investment interests; and/or
- d) Family relationships.

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<sup>2</sup> Adapted from *Premier's Department NSW, Conduct Guidelines for Members of NSW Government Boards and Committees*, 2001,  
<http://www.premiers.nsw.gov.au/TrainingAndResources/Publications/default.htm>

3.3.8 A member has a duty to declare any private interest that may impinge upon a board or committee decision. When an issue arises, the board or committee member must as soon as practicable disclose full and accurate details of the interest or issue to the board or committee.

3.3.9 The board or committee should make a decision as to how to manage the conflict of interest and record reasons for that decision.

3.3.10 There are a number of ways of managing conflicts of interest. One method may be for the member not to take part in any discussion of the board or committee relating to the interest or issue, and not vote on the matter. This would include a requirement for the member to be absent from the meeting room when any discussion or vote is taking place and to not receive any relevant board or committee papers. This should also be recorded in the board or committee Minutes.

3.3.11 Other means may be more appropriate to the management of the conflict of interest issue:

- a) In an extreme case, the member may be required to resign;
- b) Divestment of the interest/issue that is creating the conflict, for example the sale of shares;
- c) Severing the connection, for example resignation from a position in another organization giving rise to the conflict.

3.3.12 Individual boards or committees may need stricter conflict of interest declarations; for example, the managing board of a Government Business Enterprise may require its members to fully disclose the financial dealings of themselves and their immediate families.

### **3.4 PUBLIC SERVANTS AS BOARD MEMBERS**

3.4.1 Public servants can be appointed to non-statutory bodies in an *ex officio* capacity or in a personal capacity, appointed on individual merit. This can be done provided that the presence of public servants does not constrict the independence of the advice provided by the body. Issues such as whether the duties of the public servant extend to reporting back to the minister (or conversely communicating with the body on behalf of the minister) should be made explicit from the outset, preferably in writing.

3.4.2 The appointment of public servants may create the potential for conflicts of interest between duties to the board and duties to the agency and the portfolio minister. The individual should refer to the *Public Sector Management Act 1994* for guidance.

### **3.5 THE PRE-ELECTION PERIOD**

3.5.1 Caretaker arrangements have been developed to ensure that actions and decisions that would bind an incoming government are generally not taken during a pre-election period, that the use of resources and the provision of information does not advantage a particular party and that the requirements for impartiality are strictly observed. These arrangements can apply equally to boards and committees.

3.5.2 Pre-election political activity by a board member may create a conflict of interest. Should such a conflict arise, it may be resolved by the member standing down for the duration of the election campaign.

### **Contesting Assembly Elections**

3.5.3 When a person nominates for election to the Assembly, the ACT Electoral Commission provides candidates with the Candidates' Handbook. This includes information on the need to resign from the public service to take a seat in the Assembly.

3.5.4 Section 103 2 (b) (i) of *Electoral Act 1992* may equally apply to public servants and remunerated members of Government Boards and Committees. Therefore, a remunerated member, if elected, would be obliged to resign before the declaration of the poll. Each member must seek their own advice about whether their appointment falls within this provision.

3.5.5 Even if resignation under section 103 were not necessary for the board member to take a seat in the Assembly, it would be expected that they would consider the future of their appointment to the board or committee if elected.

### 3.6 CHECKLIST: DUTIES AND RESPONSIBILITIES OF BOARD MEMBERS

1. Is the board confident that each member acts in good faith and with care, skill and diligence?
2. Do members understand that they must act in the interests of the board or committee as a whole and not in the interests of:
  - the group that nominated them, if relevant?
  - any other group that they may represent, if relevant?
3. Are board members aware of their statutory obligations that they must not use inside information or their position improperly to:
  - gain an advantage, either directly or indirectly, for themselves or another person?
  - cause detriment to the organisation or another person?
4. Are board members aware they must not disclose, without lawful authority-
  - any information acquired as a consequence of their appointment?
  - any information acquired from a document to which they have access as a consequence of their appointment
5. Are there policies and procedures for identifying and recording a member's disclosure of:
  - an actual or perceived conflict of interest?
  - a pecuniary (financial) interest?
  - a non-pecuniary interest?
  - related party transactions?
  - conviction or charge with a criminal offence?
6. Do these policies and procedures provide for:
  - disclosure when the members are appointed?
  - disclosure at meetings?
  - disclosure between meetings?
7. Is there a register of:
  - pecuniary interests that may give rise to an actual or perceived conflict of interest?
  - non-pecuniary interests that may give rise to an actual or perceived conflict of interest?
8. When there is an actual or perceived conflict of interest, is there a procedure for a board member:
  - not to receive board papers?

- to be excluded from discussion?
- to be excluded from voting?

### 3.7 CHECKLIST: CODE OF CONDUCT

1. Were members provided with the ACT Government Boards and Committees Code of Conduct before their appointment?
2. Have members signed a copy of the Code of Conduct, which is kept on file?
3. Has the board/committee recently:
  - Undertaken a realistic appraisal of its own risk profile, and developed a board-specific code of conduct accordingly?
  - Reviewed the code's efficacy and practical value, or undertaken to conduct such a review from time to time?
4. Does the board-specific code clearly articulate:
  - The purpose and charter of the board/committee?
  - Its statutory obligations (where applicable)?
  - The specific duties of members?
  - The standards/principles of conduct expected of members?
  - What is official misconduct/neglect of duty/breach of public trust?
  - Members' care, skill and diligence obligations?
  - Mechanisms for declaring/alerting/dealing with pecuniary (financial) interests?
  - Mechanisms for declaring/alerting/dealing with conflicts of interest?
  - Rules for accepting gifts or benefits?
  - Rules concerning privacy and confidentiality of information?
  - Mechanisms for reporting unethical or corrupt practices?

## **CHAPTER 4: REMUNERATION**

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### **4.1 GENERAL**

4.1.1 Members of ACT Government Boards and Committees perform an important function in contributing to the administration of the Territory. Members are appointed to a board or committee because they will bring personal, professional or industry knowledge to that board or committee.

4.1.2 Where it is appropriate for members of a board or committee to receive payment, the level of remuneration is set through a determination of the ACT Remuneration Tribunal, or in rare cases by ministerial decision or by an agency Chief Executive.

### **4.2 CRITERIA FOR PAYMENT**

4.2.1 Members of ACTPS statutory and non-statutory boards and committees may only receive payment in connection with their appointments where:

- a) a board or committee is established to provide a *specific service* which assists the Government and where additional public sector staffing arrangements would be necessary to carry out that service if not for the existence of that board or committee (for example, boards or committees with an independent review function such as the ACT Civil and Administrative Tribunal); or
- b) payment of fees is required by an external authority or organisation (for example, an agreement with the Commonwealth may require that members of an advisory committee be paid).

### **4.3 REMUNERATION TRIBUNAL**

4.3.1 The Remuneration Tribunal is established under the *Remuneration Tribunal Act 1995* to inquire into and determine the remuneration, allowances paid and other entitlements to be granted to a wide range of full-time and part-time public offices, including part-time members of statutory and non-statutory boards and committees.

4.3.2 Some positions are automatically referred to the Remuneration Tribunal by Schedule 1 of the Remuneration Tribunal Act 1995. However before the Remuneration Tribunal is able to make a determination for most board and committee members, the Chief Minister must write to the Tribunal, formally requesting a determination for that position.

4.3.3 The Remuneration Tribunal is the preferred method for setting the level of remuneration for boards or committees, as it is accountable, transparent, and can ensure that remuneration levels are determined equitably across boards and committees.

4.3.4 Further information on the Remuneration Tribunal including Chief Minister referrals is available at <http://www.cmd.act.gov.au/remtrib/>

### **4.4 SEEKING A DETERMINATION /DECISION**

4.4.1 When preparing advice to the Tribunal, or seeking the relevant minister's agreement to apply a subsisting determination, or preparing a submission to

the minister for decision on the appropriate rate of payment, the following information should be included:

- a) the role of the board or committee (e.g. decision-making, advisory; or review/appeal function);
- b) the legislation that establishes or regulates the board or committee;
- c) the work the board is required to undertake – is it of Territory-wide significance, does the board or committee manage a budget, is the board or committee responsible for making a profit;
- d) number of times per year the board or committee is expected to meet;
- e) number of members on the board or committee;
- f) whether annual or *per diem* (daily/ per meeting) rates are warranted and the reasons for such payments;
- g) existing rates for comparable offices; and
- h) if seeking ministerial decision, the reasons why this matter is not being referred to the Remuneration Tribunal.

A pro-forma questionnaire is available from the Tribunal's Secretariat on 62077844 or 620 75995.

## 4.5 PUBLIC SERVANTS

4.5.1 Where an ACT public servant serves on a board or committee as an extension of their government employment, sitting fees would not be payable. Where they serve as a community member on a board or committee it may be possible, depending on all the circumstances, for fees to be paid to the person.

## 4.6 GST AND PAYMENTS OTHER THAN AS AN APPOINTED MEMBER

4.6.1 With few exceptions, board and committee members are appointed as individuals. They are not carrying on an 'enterprise' for the purpose of their appointment (although they may be a business entity in their own right). In most cases, fees paid to part-time members of boards and committees are treated as personal income. Generally, members of statutory and non-statutory boards and committees must be paid on a personal basis with tax instalments deducted.

4.6.2 Exceptions occur where a board or committee member is a partner of a legal or accounting partnership, and they are **required** by the terms of the partnership to pay any fees received into a partnership account. In the case of a partnership, agencies would need to be satisfied that the partner is properly required by the terms of the partnership agreement to pay sitting fees into the partnership account.

4.6.3 In some rare instances, the member may be undertaking the role on behalf of an organisation (possibly a community or charitable body) rather than as an individual, where the organisation has been appointed to the board or committee.

## **4.7 SUPERANNUATION**

4.7.1 For remunerated boards and committees, agencies are obliged to pay members' productivity superannuation contributions, at the prescribed rates determined from time to time, to an approved superannuation fund.

4.7.2 The superannuation productivity benefit contribution payable is calculated as a percentage of the remuneration, and is additional to the remuneration. Contact Payroll and Personnel Services of the Shared Services Centre for further detail (contact details at Appendix D).

## **4.8 INITIATING REMUNERATION OF SITTING FEES**

4.8.1 In order to initiate remuneration of sitting fees, new members must complete all elements of the Board and Committee Member Commencement Package located on the SSC website at [www.sharedservices.act.gov.au](http://www.sharedservices.act.gov.au)

4.8.2 The agency Delegate is responsible for completing the Board/Committee Member Payment Instruction Form on completion of all Commencement documents by the member. Completed Commencement Packages should be forwarded to Recruitment Services, SSC (contact details at Appendix D).

## CHAPTER 5: INDUCTION

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### 5.1 GENERAL

5.1.1 To assist the new member in their role on the board or committee they may be given an induction session or package. Induction of new members could focus on the following areas:

- a) Information;
- b) Familiarisation;
- c) Training; and
- d) Relationship Building.

### 5.2 INFORMATION

5.2.1 New members should be provided with a range of information to enable them to understand the role of the board or committee and their role on the group. At a minimum, a key officer from the organisation and the chair or nominated representative from the board or committee should meet with the new member to introduce themselves and the existing members. Some new members may have individual support needs that should be addressed prior to the first meeting the new member is to attend.

5.2.2 An information pack should be provided to new members before their first meeting outlining:

- a) **The organisation** – legislation, corporate plan, annual report, policies, structure, minutes of previous meetings, other strategic documents;
- b) **Functions of the board or committee** – terms of reference, member details, meeting arrangements, structures, standing orders, administration;
- c) **Glossary of terms** – a glossary of commonly used terms and their meanings, including organisations, management systems, programs and services, acronyms and industry jargon; and
- d) **Roles and responsibilities of members** – includes duties and liabilities, expectations, the ACT Public Sector Code of Ethics, and the ACT Board and Committee Code of Conduct or the board or committee's own code of conduct (see Chapter 3).

### 5.3 FAMILIARISATION

5.3.1 New members need to quickly obtain a feel for the 'business' of the board and grasp current issues. Strategies to assist with this familiarisation include:

- a) Providing the new member with background material such as annual reports, corporate plans and other strategic documents;
- b) Arranging briefings by the minister, chair, chief executive or industry experts;

- c) Taking the new member on site visits to experience the organisation's operations first hand and meet key staff and consumers; and
- d) Encouraging the new member to attend special induction sessions or industry or organisational meetings.

## 5.4 TRAINING

5.4.1 New members may require additional information and skills to perform effectively as part of the board or committee. This training may include issue specific activities and/or training in participating effectively as a board or committee member.

5.4.2 Training in developing practical directorship and contemporary corporate governance knowledge and skills for directors and officers on government boards is available through the Australian Institute of Company Directors ([www.companydirectors.com.au](http://www.companydirectors.com.au)).

## 5.5 RELATIONSHIP BUILDING

5.5.1 Members need to develop collaborative relationships with other board members and senior staff. Personal introductions are encouraged, as are opportunities to interact informally with key people to develop positive working relationships. The chair plays a key role in inducting new members and may take on a coaching or mentoring role for the first few months.

## 5.6 CHECKLIST: INDUCTION

1. Is an information package provided?
2. If yes, does the information package include:
  - The ACT Code of Ethics and the ACT Government Boards and Committees Code of Conduct?
  - relevant legislation (including members' responsibilities)?
  - the roles of key stakeholders?
  - the role, responsibilities and accountability of the board?
  - the duty of care, skill and diligence expected of Board members?
  - board structure and committees?
  - board procedures?
  - the board's code of conduct?
  - fraud control measures?
  - procedures for dealing with conflicts of interest?
  - procedures for dealing with related part transactions?
  - management's responsibilities?

3. Is a training program provided to:

- improve members' competencies?
- meet the needs of the board?
- update members on changes to relevant legislation or policy?

## **CHAPTER 6: BOARD AND COMMITTEE MEETINGS**

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### **6.1 GENERAL**

6.1.1 Board and committee meetings are the primary vehicle through which decisions are made and direction given to the minister and/or organisation. The range of activities over which the board or committee can make decisions is often restricted by their terms of reference or the enabling legislation establishing the board. Monthly board meetings are common.

6.1.2 It is essential that the board or committee members and their decision-making process be above reproach. To ensure the decision-making process is effective, accountable and transparent, there are a number of processes that can be put in place:

- The agenda should be carefully prepared;
- The need for conflict of interest declarations should be well understood;
- Papers should be circulated well in advance of meetings;
- Meetings should be conducted in a manner that allows frank and open discussion;
- All decisions and dissent should be recorded;
- Minutes should be accurate; and
- Rules concerning access to information should be provided.

6.1.3 Sufficient focus needs to be placed on the planning and preparation of the meeting to ensure the efficiency of board meetings. The secretary or secretariat of the board or committee should produce a proposed agenda at least 10 days before a scheduled meeting. Once the chair authorises the agenda, the secretary prepares and distributes agenda papers one week before the meeting. Each agenda item should be supported by a summary of the item that states the purpose, issue, options and recommendations. The inclusion of a summary with each item will enable each member to adequately prepare for the meeting, create informed and focused discussion, and will help shorten meetings. Further considerations for best practice operation of Board and Committee meetings are set out in the attached checklist.

## 6.2 CHECKLIST: BOARD AND COMMITTEE MEETINGS

1. Does the board or committee:
  - have a policy and procedures for conducting meetings?
  - follow the policy and procedures?
2. Are board or committee meetings:
  - scheduled well in advance?
  - held regularly?
  - attended regularly by members?
3. Is attendance recorded?
4. Does the chair oversee the organisation of:
  - board or committee meetings?
  - additional meetings as necessary?

### Agendas

5. Are meeting agendas set and distributed well in advance of meetings?
6. Is there a timetable for consideration of key issues and activities (e.g. budgeting and planning)?
7. Is there an opportunity for members to contribute to the agenda?
8. Is the agenda:
  - focused to allow for discussion of critical, complex and/or strategic issues?
  - distributed to members in sufficient time to foster meaningful discussion at the board meeting?
9. Are agenda and papers:
  - manageable and easy to read (papers properly indexed etc.)?
  - available in alternative formats?
10. Does the chair oversee the preparation and distribution of agenda and papers to members?
11. Is there a procedure to monitor:
  - progress made on agenda items that are carried over?
  - implementation of decisions?

### Access to information and staff

12. Do board or committee members have sufficient and appropriate information to fulfil their care, skill and diligence obligations?
13. Has the board or committee reached agreement as to what information it requires to make decisions?
14. Does the board or committee have access to appropriate support and advice (e.g. the services of an agency secretariat or equivalent)?
15. Has the board or committee adopted policies covering:
  - rights of access to information and staff (either generally or specifically)?
  - the purposes for which members can seek access?
  - the procedures to be followed in obtaining access?

### Recording decisions

16. Does the board or committee vote formally on all significant issues?
17. Do the minutes:
  - accurately summarise the meeting?
  - accurately reflect changes to previous minutes?
  - record decisions?
  - record changes in decisions?
  - record dissent?
18. Are minutes:
  - distributed to all members and appropriate staff in the organisation?
  - distributed as soon as practicable?
  - stored in a secure place (consistent with ACT Government record management standards)?
  - placed in a publicly accessible location (e.g. website) to ensure transparency of decision-making?

## **CHAPTER 7: BOARD AND COMMITTEE PERFORMANCE**

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### **7.1 GENERAL**

7.1.1 A board or committee should monitor and evaluate its performance in order to determine the extent to which it is working in line with its original purpose. The degree to which each member is contributing to the output of the board or committee should also be monitored by the chair.

7.1.2 Performance criteria, for both the board or committee and individual members, should be clearly articulated and circulated.

7.1.3 Suggestions for the monitoring of board and committee performance are available in the Australian National Audit Office publication *Better Practice Guide: Accountability and Governance - Public Sector Governance*. See in particular Guidance Paper No. 5, Monitoring Board Performance. The Guide is available from <http://www.anao.gov.au>.

7.1.4 Guidance Paper No. 5 suggests that all boards or committees should have a charter or some other form of documentation that specifies such matters as:

- a) the functions, powers and membership of the board or committee;
- b) the role and responsibilities of members—for example, due diligence and good faith, commitment to acting in the best interests of the organisation as a whole, attendance, participation in discussions, to read and understand papers, to raise concerns, to deal with other members and staff with courtesy and respect, access to information, outside advice, confidentiality;
- c) the role of the chair, including: promoting full participation by all members; constructive questioning; strategic thinking; risk management; consideration of the right issues; decision-making and follow-up; adequate reporting; and relations with the organisation head, minister and key stakeholders;
- d) processes for identifying and measuring conflict of interest;
- e) basic meeting procedures—for example, agenda, papers, minutes, declarations of interests and how these are to be handled, powers of the chair, voting procedures;
- f) policies on member remuneration (where relevant); and
- g) policies on board and committee performance review.

## 7.2 CHECKLIST: BOARD OR COMMITTEE PERFORMANCE

1. Does the board or committee:
  - regularly evaluate its performance and the number of positions it needs?
  - review its progress in meeting goals?
  - have a regular and independent external review of its performance?
2. Does the relevant minister:
  - regularly evaluate the performance of the board or committee?
  - have a documented agreement with the board or committee about its performance (Performance Agreement)?
3. Is there a procedure for evaluating the performance of members?
4. Is this evaluation made against predetermined standards concerning:
  - attendance?
  - ability to understand the financial statements?
  - research and preparation for meetings?
  - timely completion of activities?
  - participation in meetings?
  - task acceptance and completion?
  - knowledge of issues affecting the organisation?
  - contribution to the board or committee?
5. Are there guidelines outlining steps to be taken in dealing with poor performance of individual board or committee members? (Note: the types of measures used will vary according to the responsibilities and roles of the board or committee).
6. Are there avenues for discussing issues or addressing disagreements?

## **CHAPTER 8: TERMINATION OF APPOINTMENTS**

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### **8.1 GENERAL**

8.1.1 The termination of an appointment can occur in one of four ways:

- a) the term of appointment may expire;
- b) the member can resign;
- c) the member is unable to meet performance standards; or
- d) any other method as prescribed in governing or enabling legislation.

8.1.2 Where a member's position is terminated due to an inability to meet performance standards, a breach of the Code of Ethics, or any other reason linked to the member's behaviour or activities, the member must be informed and provided with a reasonable opportunity to respond to the issues.

8.1.3 Unless the breach or activity is deemed to be significant, adequate time must be provided for the member to rectify the issue or change the behaviour.

8.1.4 Section 208(2) of the Legislation Act 2001 states that the power to terminate an appointment is exercisable in the same way and subject to the same conditions as the power to make the appointment:

***208 Power of appointment includes power to suspend etc***

*(1) The appointer's power to make the appointment includes the power—*

- (a) to suspend the appointee, and end the suspension; or*
- (b) to end the appointment, and appoint someone else or reappoint the appointee if the appointee is eligible to be appointed to the position; or*
- (c) to reappoint the appointee if the appointee is eligible to be appointed to the position.*

*(2) The power to suspend the appointee, end the appointment or reappoint the appointee is exercisable in the same way, and subject to the same conditions, as the power to make the appointment.*

8.1.5 Enabling legislation may also prescribe limitations on how or why a member's term may be terminated.

8.1.6 To assist in the smooth transition between outgoing and incoming members it is suggested that where it is known a member's appointment is not going to be renewed, the selection and recruitment process be commenced at least three months prior to the term of the incumbent member finishing. This is particularly important where the appointment requires consideration by Cabinet and referral to a Standing Committee.

### **8.2 CHECKLIST: TERMINATION OF APPOINTMENTS**

1. If the termination involves the member of a statutory board or committee, has Parliamentary Counsel's Office been notified?
2. Have all legislative requirements been complied with (if any)?
3. Where a member steps down voluntarily, was the resignation received in writing?

4. If the member's appointment is terminated due to a breach of the code of conduct, inability to meet performance standards or a breach of any other regulations, was the basis for the termination clearly identified in the written notification given to the member?
5. Has the member been given due warning of their potential termination, including:
  - an adequate briefing on the Code of Conduct?
  - adequate warnings and the opportunity to amend their behaviour?
  - access to natural justice?
  - an understanding of their right of appeal?
  - consideration of any special needs (e.g. intellectual disability or mental health)?
6. Is it clear:
  - who is responsible for dismissing members?
  - under what circumstances a member can be dismissed?
  - that members are aware of the procedures to be followed for dismissal?

## **APPENDIX A: DOCUMENTATION FOR THE APPOINTMENT PROCESS**

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- A.1 Cabinet Appointment Paper Template**
- A.2 Brief to Minister Re: Letter to Standing Committee**
- A.3 Letter to Assembly Standing Committee (Statutory Appointments only)**
- A.4 Letter to Appointees**
- A.5 ACT Government Boards and Committees Code of Conduct**
- A.6 Background, Code of Conduct and Conflict of Interest Declaration**
- A.7 Brief to Minister Re: Instruments Of Appointment (Statutory Appointments only)**
- A.8 Sample Disallowable Instrument (Statutory Appointments only)**
- A.9 Sample Explanatory Statement (Statutory Appointments only)**
- A.10 Sample Notifiable Instrument**

<b>A.1: Cabinet Appointment Template</b>
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**For Cabinet**

[Paper  
Number]

**[Body/Position Name]**

*ALWAYS ENSURE YOU USE THE MOST CURRENT TEMPLATE  
AVAILABLE ON AGENCY PORTALS OR FROM AGENCY CABINET  
LIAISON OFFICERS*

**[Ministerial title]**

<b>Position</b>	<b>Name</b>	<b>Start Date</b>	<b>Term</b>
<b>Timing</b>	<i>Critical date if any and why</i>		
<b>Legislation</b>	<i>Yes/No and Act name</i>		
<b>Ministerial Discretion</b>	<i>Does minister have discretion to make appointment (i.e. are candidates set by statute or nominees from particular groups under legislation)?</i>		
<b>Consultation</b>			
• Assembly Committee	<i>Yes/No and name the Committee</i>		
• Office for Women	<i>The Office for Women must be consulted on all appointments and its comments summarised here</i>		
• Multicultural	<i>State if consultation has occurred with the Office of Multicultural Affairs and the outcome, and if not, why not</i>		
• ATSI	<i>State if consultation has occurred with Aboriginal and Torres Strait Islander Unit and the outcome, and if not, why not</i>		
• Other	<i>Yes/No and details</i>		
<b>Gender Balance</b>	Current:		
	Proposed:		
<b>Cultural &amp; Linguistically diverse / ATSI / people with a disability</b>	Current:		
	Proposed:		
<b>Conflicts of Interest</b>	Provided/Sought		
<b>Remuneration</b>	<i>Yes/No and amount</i>		
<b>Media/ Announcement</b>	<i>Yes/No and when</i>		

**Recommendations**  
**[Body/Position Name]**  
**[Ministerial title]**

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**[Paper Number]**

- 1) I recommend Cabinet agree to endorse the proposed:
  - a) [appointment/re-appointment] of Mr PPPP QQQQQQQQ as the [full time/part time] [position] [from dd/mm/yyyy until dd/mm/yyyy / from the date of notification] for a period of [number] years; and
  - b) [appointment/re-appointment] of the following people as [full time/part time] [position] [from dd/mm/yyyy until dd/mm/yyyy / from the date of notification] for a period of [number] years:
    - i) Mr XXXX YYYYYY; and
    - ii) Ms AAAA BBBBBBBB.
  
- 2) I recommend Cabinet agree the Minister for [Portfolio] refer [this/these] [appointments/reappointments] the to Standing Committee on [ name ].

Minister's signature \_\_\_\_\_ Date \_\_\_/\_\_\_/\_\_\_

*[on a new page – brief statements of experience for each appointee – see Cabinet Paper Drafters Guide]*

**A.2: Brief to Minister re: Assembly Standing Committee**

*(Use your standard agency minute form)*

Date	<i>{insert date}</i>
To	<i>{Insert Ministerial title}</i>
From	<i>{insert name of Executive}</i>
Subject	Appointments to the <i>{insert name of Board/Committee}</i> - Consultation with Assembly Standing Committee

### **Purpose**

To seek your signature on a letter to the Chair of the *{insert name of Committee and chairperson}* seeking the Committee's views on the proposed appointment/s of *{insert name of appointee}* to the *{insert name of Board or Committee}*.

### **Background**

At its meeting of *{insert date and decision number}*, Cabinet endorsed the appointment of *{insert name of appointee}* to fill the vacancy on the *{insert name of Board/Committee}*.

### **Issues**

The Appointments are statutory and therefore covered by the provisions of the *Legislation Act 2001* (the Act). Under the Act, ministers are required to consult with the relevant Assembly Committee on proposed statutory appointments. The appointments cannot be made until a response has been received from the Committee, or 30 days have elapsed since the consultation took place.

*{Agency/Unit}* has been in contact with *{insert name of appointee}* seeking confirmation of his/her availability to serve as a member of the *{insert name of Board/Committee}* and to draw their attention to certain requirements and responsibilities under the *{insert name of Act}*. Following the Standing Committee's consideration of the proposed appointment, you will be provided with a further brief, an instrument of appointment, a letter of advice to the *{insert name of Board/Committee}* and a letter of confirmation addressed to *{insert name of appointee}*. I will then arrange for notification of the instrument on the Legislation Register in accordance with the Act.

### **Consultation**

*{Outline any consultation taken to identify candidates – Office for Women must be consulted for all appointments. Indicate if consultation has also occurred with the Office of Multicultural, Aboriginal and Torres Strait Islander Affairs.}*

### **Financial**

There are/are not financial implications for the ACT Government in making these appointments. *{Clarify if sitting fees are to be paid}*

**Media**

Appointments to *{insert name of Board/Committee}* do not usually attract media attention.

OR

Appointments may attract media attention. A media release will be forwarded with the final appointment documentation.

**Recommendation**

That you sign the attached letter to the Chair of the Standing Committee on *{insert name of Board/Committee}*.

*{insert name of Executive}*

**Action Officer:**

**Phone:**

***{Minister} MLA ..... //***  
***AGREED/NOT AGREED/NOTED/PLEASE DISCUSS***

**A.3: Letter to Assembly Standing Committee**

*{insert name of chairperson}*  
 Chair  
*{insert name of Committee}*  
 ACT Legislative Assembly  
 London Circuit  
 CANBERRA ACT 2601

Dear *{insert name of Chairperson}*

I am writing to the Committee in relation to the proposed appointment of a *{part-time/full-time}* member to the *{insert name of Board/Committee}*.

The *{insert name of Board/Committee}* was established under the *{insert name of Act}* and is responsible for *{insert area}*. I am forwarding a proposed appointment to be made by me as Minister for *{portfolio}* to consult the Committee as required by Section 228 of the *Legislation Act 2001*.

I am proposing the appointment of the following *{person/people}*:

(i) *{insert name of appointee}*

*{Provide relevant background information on any of the appointees}*  
 Biographical data on the candidate/s is attached.

The proposed term of appointment is *{insert length of appointment}*. This is consistent with *{insert name and section of relevant Act for statutory appointments, delete for non-statutory appointments}*

I would appreciate receiving the Committee's views on the proposed appointments.

Yours sincerely

*{Name of Minister}* MLA  
 Minister for *{Name of portfolio}*

*{insert address of appointee}*

Dear *{insert name of appointee}*

I refer to recent discussions with my Department regarding your appointment as a Member of *{insert name of Board/Committee}*.

I am pleased to officially advise that I have appointed you as a part-time/full-time Member of the *{insert name of Board/Committee}*, subject to your completion of the enclosed pre-appointment checking documents *{if required}*. The appointment is for a term of *{insert length of appointment}*, commencing *{on the date of the instrument or specify date if non-statutory appointment}*. A copy of the instrument of appointment is attached.

I have written to the Chair, *{insert name of Chairperson}*, to inform them of your appointment.

If you have any questions, please contact *{name and details of Departmental contact officer}*. *{Name}* will also be in touch with you regarding meeting arrangements and induction processes.

I look forward to your contribution to the work of the *{insert name of Board/Committee}*.

Yours sincerely

*{Name of Minister}* MLA  
Minister for *{Name of portfolio}*

**ACT GOVERNMENT BOARDS AND COMMITTEES CODE OF CONDUCT**

Under the system of government that operates in the ACT, Ministers, Members of the Legislative Assembly, public servants and statutory officeholders carry out the main legislative and executive functions of government. At times, non-statutory office holders also provide assistance. Members of ACT Boards and Committees have a duty to discharge responsibilities entrusted by the ACT Government and the laws made under the Australian Constitution according to the highest standards of conduct. Board members may be required by the nature of public office to accept restriction on certain areas of their private conduct beyond those imposed on ordinary citizens.

The following Code of Conduct outlines principles that should be observed by all members of ACT Government Boards and Committees, and should be read in conjunction with the ACT Code of Ethics for public employees (Section 9 of the *Public Sector Management Act 1994*).

1. A board member should perform the duties of the office impartially, uninfluenced by fear or favour.
2. A board member should be frank and honest in official dealings with colleagues.
3. Conflicts of Interest:
  - a) A board member should avoid situations in which any private interest, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with their public duty.
  - b) When a board member directly or indirectly possesses an interest which conflicts or might reasonably be thought to conflict with their public duty or improperly influence conduct in the discharge of responsibilities, the board member should disclose that interest according to the prescribed procedures. Should new or additional facts become material after an initial disclosure has been made, the board member should disclose the further information.
  - c) When the interests of members of the board member's immediate family are involved, the interests should be disclosed to the extent that they are known. Members of the immediate family will ordinarily comprise only the spouse and dependent children, but may include other members of the household or family when their interests are closely connected with those of the board member.

- d) When a board member possesses an interest which conflicts or might reasonably be thought to conflict with the duties of their office and such interest is not prescribed as a qualification for that office, the member should forthwith divest themselves of that interest, secure their removal from the duties in question, or obtain the authorisation of a superior or other board members to continue to discharge the duties. Transfer to a trustee or to a member of the board member's family is not a sufficient divestment for the purpose. If immediate divestment would cause significant hardship to the board member, possession of the interest should be disclosed to board members or the minister and authorisation obtained for temporary retention pending divestment.
4. A board member should not:
- a) use information obtained in the course of their official duties to directly or indirectly gain a pecuniary advantage for themselves or for any other person. In particular, a board member should scrupulously avoid investments or other transactions about which they have, or might reasonably be thought to have, early or confidential information which might confer on the member an unfair or improper advantage over other persons; and
  - b) discuss or publicly disclose information gained in the course of their official duties without prior approval of the board or relevant minister.
5. A board member should not:
- a) solicit or accept from any person any remuneration or benefit for the discharge of their duties over and above the official remuneration;
  - b) solicit or accept any benefit, advantage or promise of future advantage for themselves, their immediate family or any business concern or trust with which they are associated, from persons who are in, or seek to be in, any contractual or special relationship with government;
  - c) except as may be permitted under the rules applicable to their position on the board, accept any gift, hospitality or concessional travel offered in connection with the discharge of their duties.
6. A board member should be scrupulous in their use of private property and services, and should not permit misuse of these by other persons.

**A.6: Background, Code of Conduct & Conflict of Interest Declaration****Code of Conduct/ Conflict of Interest Declaration**

I, *{insert full name}*, declare that, to the best of my knowledge, I do not have any conflict of interest that could arise from my appointment to the *{insert name of Board/Committee}*. Should an actual or potential conflict of interest arise, I agree to disclose this immediately to *{Minister/Chair of the Board/Committee/Other person as determined by Board/Committee}*. I have read and agree to abide by the guidelines set out in the ACT Government Boards and Committees Code of Conduct and the ACT Code of Ethics (Section 9 of the *Public Sector Management Act 1994*).

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Background**

I *{insert full name}* wish to declare that I identify as (tick those that apply):

- Aboriginal and/or Torres Strait Islander Background
- Culturally and Linguistically Diverse Background (multicultural)
- Person with a Disability

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**A.7: Brief to Minister Re: Instruments of Appointment**

*(Use your standard departmental minute form)*

Date: *{insert date}*  
 To: Minister for xxxx  
 From: *{insert name}*  
 Subject: Statutory Appointments to the *{include Name of Board/Committee}*

**Purpose**

To seek your signature on the attached instrument appointing *{insert name of member/s}* to the *{insert name of Board/Committee}*.

**Issues/Background**

The proposed appointment to the *{insert name of Board/Committee}* was considered by Cabinet on *{insert date and decision number}*.

The appointment was subject to consultation with the Legislative Assembly Standing Committee for *{insert name of Standing Committee}*. The Standing Committee *{did not object to the proposed appointment/s / provided the following comments on the proposed appointments/ did not respond within the 30 day time limit/ disagrees with the proposed appointment/s<sup>3</sup> .}*

Under section 229 of the *Legislation Act 2001*, the instrument making an appointment is a disallowable instrument and must be notified on the Legislation Register and presented to the Legislative Assembly. The instrument and the Explanatory Statement are attached for your consideration.

Letters to the successful nominees are attached for your signature.

**Recommendations**

That you:

- Sign the attached instrument/s of appointment; and
- Sign the attached letters to the successful nominees.

*{insert Executive Director Signature Block}*

**Action Officer:**

**Phone:**

***{insert Minister's name} MLA ..... //***  
**AGREED/NOT AGREED/NOTED/PLEASE DISCUSS**

<sup>3</sup> If the Standing Committee disagrees with the proposed appointment/s, the minister may:

- Reconsider the appointment;
- Refer the matter to Cabinet; or
- Decide to appoint despite the committee's disagreement.

Australian Capital Territory

## **Sport School Appointment 2007 (No. 1)**

**Disallowable instrument DI2007–**

made under the

***School Sport Act 1999, Section 10 (Appointments and Terms of Office of Non-Executive Members)***

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I appoint Mr Fred Smith as a member of the board of management of the Australian Sport School beginning on 1 December 2007 and ending on 31 December 2008 {or from the date of notification}.

Joe Public MLA  
Minister for Sport and Recreation  
10 January 2007

Australian Capital Territory

## **Sport School Appointment 2007 (No. 1)**

**Disallowable instrument DI2007–**

made under the

*School Sport Act 1999*

### **EXPLANATORY STATEMENT**

The *Sport School Act 1999* established a Board to manage the affairs of the School, decide the strategies and policies to be followed by the School and ensure the efficient and cost effective functioning of the School.

Section 55 of the Act enables the minister to appoint non-executive members to the Board. The minister has appointed Mr Fred Smith as a Member of the Board of Management of the Australian Sport School from 1 December 2003 until 31 December 2005.

The appointee is/is not a public servant and this instrument makes an appointment to which the *Legislation Act 2001*, Division 19.3.3 applies. Accordingly, under the *Legislation Act 2001*, s.229 the instrument is a disallowable instrument.

This appointment has been approved by the Minister for *{insert name of Minister}*, and the Standing Committee on Public Accounts has been consulted in accordance with section 228 (consultation with appropriate Assembly committee) of the *Legislation Act 2001*.

*{if the date of appointment is, or is likely to be, prior to the notification on the Legislation Register, additional words need to be included in the Explanatory Statement such as “With reference to Section 76 of the Legislation Act 2001, no person’s rights have been prejudicially affected, nor any liabilities imposed on any person (other than the Territory or a Territory Authority) during this period of retrospectivity.”}*

## APPENDIX B: INSTRUMENTS OF APPOINTMENT

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### B.1 INTRODUCTION

Making and notifying instruments of appointment on the Legislation Register involves a number of administrative procedures. Further detailed advice can be obtained from the Parliamentary Counsel's Office, [www.pco.act.gov.au](http://www.pco.act.gov.au).

This Appendix:

- Provides a brief overview of the *Legislation Act 2001*;
- Defines common terms associated with making Appointments;
- Describes when each type of instrument should be used; and
- Outlines the procedures for drawing up and notifying instruments.

### B.2 THE LEGISLATION ACT 2001

The *Legislation Act 2001* governs statutory appointments in the ACT in addition to any enabling legislation. Division 19.3.3. relates to appointments to statutory positions, and applies to all appointments. An electronic copy of the Act is available on the ACT Legislation Register, [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

### B.3 TERMINOLOGY

#### ACT Legislation Register

The Legislation Register, created by the *Legislation Act*, is an electronic register of Territory Acts and statutory instruments maintained by the Parliamentary Counsel's Office. Its main purpose is to facilitate public access to ACT law. It also includes other material to assist legislation users, including information about legislation, subordinate laws, disallowable and notifiable instruments, and explanatory statements.

#### Instruments of Appointment

An instrument of appointment is the legal means (the documents and procedures) used to authorise and publicly communicate an appointment. It is a generic term covering both disallowable and notifiable instruments.

#### Disallowable Instruments

A disallowable instrument is also deemed a subordinate law, i.e. made under existing legislation by an authority other than the Assembly such as a minister or Cabinet. Disallowable instruments usually involve the application of laws or rules as provided by existing legislation – in this case, the making of an appointment to a statutory board or committee as provided by the *Legislation Act 2001* or the body's enabling statute. (A sample Disallowable Instrument is provided at Appendix A.8 of this Handbook).

The Legislative Assembly reviews the Government's authority to make subordinate law by requiring that all disallowable instruments be tabled in the

Assembly. Once tabled, a disallowable instrument is subject to a period of 'disallowance'; that is, the Assembly may move to amend or disallow the subordinate law/appointment carried by the instrument.

#### Notifiable Instruments

A notifiable instrument is a category of instrument created under the *Legislation Act 2001*. It is a convenient means of notifying statutory and other instruments (other than subordinate laws, disallowable instruments and commencement notices) that must be notified by law, but are not subject to disallowance by the Assembly.

#### Non-Notifiable Instruments

A non-notifiable instrument applies for appointments that a minister or Agency may wish to refer to the Legislative Assembly for transparency purposes, but such instruments do not require notification on the Legislation Register, and are not subject to disallowance by the Assembly.

#### Explanatory Statements

An explanatory statement for appointments summarises information concerning subordinate law, statutory instruments or other actions undertaken by the Government. For statutory appointments, an explanatory statement will state the Act under which the board or committee is created, the provision of the Act under which the appointment is made, whether the appointment has been approved by the minister or the Executive, whether the person is a public servant and, when necessary, whether the appropriate Assembly standing committee has been consulted. For other appointments, the explanatory statement should state the name of the board or committee and the appointee. (A sample Explanatory Statement is provided at Appendix A.9 to this Handbook).

## **B.4 CHECKLIST: INSTRUMENTS OF APPOINTMENT**

Most appointments to statutory boards or committees require an instrument of appointment. The following checklist will help you determine whether you need an instrument of appointment, and if so, which instrument you need. Note that templates for disallowable and notifiable instruments can be downloaded from PCO's website at [www.pco.act.gov.au/pages/notifications.htm](http://www.pco.act.gov.au/pages/notifications.htm).

1. Is the appointment statutory (i.e. made under legislation)?
  - Yes – go to 3
  - No – go to 2
2. Does the Minister/Agency Chief Executive require that the appointment be notified (for reasons of transparency or otherwise)?
  - Yes – the instrument of appointment is a notifiable instrument. Follow procedure for notification outlined at B.5 below.
  - No – you do not need an instrument of appointment. Proceed with the appointment as per section 2.6 of the ACT Boards and Committees Handbook.
3. Check the enabling legislation (i.e. the Act under which the appointment will be made) – does the authorising provision in the Act state whether notification is required?
  - Yes – go to 4
  - No – go to 5
4. Does the authorising provision in the Act state whether the instrument of appointment is notifiable or disallowable?
  - Yes – use template for instrument (notifiable or disallowable) as specified by the Act, and follow procedure for notification outlined at B.5 below.
  - No – go to 5
5. Is the appointment of a public servant to a statutory position, a person to, or to act in, a statutory position for not longer than six months (unless it is a re-appointment), or a person to act in a statutory position if the only function of the position is to advise the minister?
  - Yes – the instrument of appointment is a notifiable instrument. Follow procedure for notification outlined at B.5 below.
  - No – the instrument of appointment is a disallowable instrument. Follow procedure for notification outlined at B.5 below.

## B.5 PROCEDURE FOR NOTIFYING AN APPOINTMENT

Under the *Legislation Act 2001*, all requests for notification must be made either by the maker of the instrument (usually a minister) or an authorised person. An authorised person is the Chief Executive responsible for the relevant portfolio area or their delegate. In most agencies, delegates will include the Cabinet Liaison Officer and the Assembly Liaison Officer.

The following steps should be taken to notify instruments of appointment:

### Step 1

Contact the appropriate delegate within your agency to discuss the process and requirements for notification

### Step 2

Create the appropriate instrument of appointment (using template from PCO website) and accompanying explanatory statement if it is a disallowable instrument (see Appendix A.9 for a sample). Please note that:

- a) All explanatory statements for statutory appointments will need to indicate whether or not the person being appointed is a public servant; and
- b) Whenever multiple statutory appointments are made, each appointment should have a separate instrument of appointment, and therefore separate notification to the Legislation Register. This will ensure that the disallowance of one appointment will not negate the other appointments.

### Step 3

Provide a covering brief and the instrument and explanatory statement to the minister for signature, or to any other person making the appointment as specified in enabling legislation.

### Step 4

Once the instrument has been signed, provide the original (hard) copy of the signed instrument, an Explanatory Statement (where relevant), and a copy of the approving brief to the authorised delegate, together with:

- a) an email setting out the name of the instrument, the Act under which it is made, and the authorising section of the Act; and
- b) separate electronic copies of the instrument and the Explanatory Statement (if instrument is disallowable).

### Step 5

The delegate will then:

- a) Contact PCO for a notification number for the instrument.
- b) Complete and send to PCO the appropriate electronic notification form (in the case of a disallowable instrument, the 'Registrable instrument not by PCO' form). An information copy is also sent to the agency/unit responsible for progressing the appointment.
- c) As part of this process, the authorised delegate:

- certifies that the registrable instrument meets the requirements set out in the Legislation Regulations;
- attaches electronic copies of the instrument and, where appropriate, an Explanatory Statement, with the relevant notification number received from PCO electronically added; and
- places on file the hard copies of the instrument and other accompanying papers for record-keeping purposes.

#### Step 6

On receipt of the electronic notification, and having checked that it is the authorised version, PCO will upload the notification onto the Legislation Register. (Note: unless a specific date of notification is requested, uploads by PCO take place only on Mondays and Thursdays).

Unless otherwise specified, the appointment will commence from the day after notification. Note that a disallowable instrument is subject to a period of six sitting days disallowance in the Legislative Assembly.

## APPENDIX C: USEFUL RESOURCES

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ACT Legislation Register  
[www.legislation.act.gov.au](http://www.legislation.act.gov.au)

ACT Parliamentary Counsel's Office to access templates for  
Disallowable Instruments and Explanatory Statements,  
<http://www.pco.act.gov.au>

Chief Minister's Department: ACT Public Service Code of Ethics  
<http://www.cmd.act.gov.au/governance/public/ethics>

ACT Government Cabinet Handbook  
<http://www.cmd.act.gov.au/publications#policies>

State Government publications on Boards and Committees  
<http://www.premiers.nsw.gov.au/default.htm>  
<http://www.premiers.qld.gov.au/Government/>  
<http://www.premcab.sa.gov.au/>  
[www.dpc.wa.gov.au/psmd/pubs/exec/boards/contents.html](http://www.dpc.wa.gov.au/psmd/pubs/exec/boards/contents.html)

## APPENDIX D: KEY GOVERNMENT CONTACTS

ISSUE	AGENCY/UNIT	CONTACT
Aboriginal and Torres Strait Islander Affairs	Office of Multicultural, Aboriginal and Torres Strait Islander Affairs, Department of Disability, Housing and Community Services	6207 0555
Children and Young People	Office for Children, Youth and Family Support, Department of Disability, Housing and Community Services	6205 1938
General	Cabinet Secretariat, Cabinet and Intergovernmental Relations Branch, Chief Minister's Department	6205 0232
Multicultural Affairs	Office of Multicultural, Aboriginal and Torres Strait Islander Affairs, Department of Disability, Housing and Community Services	6207 0555
Remuneration - General Pre-appointment Check - Initiation of Remuneration - Other HR Issues	- Executive Employment and Policy CMD Recruitment Services, Shared Services Centre  Payroll & Personnel Services, Shared Services Centre	<a href="mailto:remtrib@act.gov.au">remtrib@act.gov.au</a> 6207 5995 <a href="mailto:SharedServicesRecruitment@act.gov.au">SharedServicesRecruitment@act.gov.au</a> 6205 5444  <a href="mailto:SharedServicesPayroll@act.gov.au">SharedServicesPayroll@act.gov.au</a> 6205 5444
Women	ACT Office for Women – Department of Disability, Housing and Community Services	6207 8165