

GOVERNANCE PRINCIPLES

APPOINTMENTS,
BOARDS AND
COMMITTEES
IN THE ACT



MARCH 2017

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PART A – GOVERNANCE PRINCIPLES – APPOINTMENTS, BOARDS, AND COMMITTEES IN THE ACT

ACT MACHINERY OF GOVERNMENT SERIES

[Website](#)

The *ACT Machinery of Government* series is a compilation of guidance material outlining key governance conventions, procedures and standards. The series comprises the:

- Ministerial Code of Conduct;
- Cabinet Handbook;
- Cabinet Paper Drafting Guide;
- Triple Bottom Line Assessment Framework;
- Governance Principles – Appointments, Boards and Committees 2017 (this document);
- Legislation Development Handbook; and
- Guidance on ACT Caretaker Conventions.

GOVERNANCE PRINCIPLES – APPOINTMENTS, BOARDS AND COMMITTEES

These Governance Principles outline procedures for Ministerial and Executive appointments including for boards and committees.

The principles in this document constitute a default approach to appointments. Ministerial and Executive appointments will be either statutory (created through legislation) or non-statutory (created through agreement). Similarly, the appointment process may be subject to specific legislation, or government policies and processes. Action officers should carefully review legislation, internal policies, files and previous appointments for each appointment to identify variances and additions to the policies in this document. An overview of different types of appointments and guidance on method of appointment is detailed in Table 1.

BOARDS AND COMMITTEES FUNCTIONS

Boards and committees may also be statutory or non-statutory and will vary in size, scope and status and perform a range of advisory and quasi-governmental functions such as:

- direct Territory owned corporations discharging complex commercial, legal or policy responsibilities;
- Territory authorities undertaking a range of functions including regulatory, integrity, and service delivery;
- consultative forums, linking government and the community; or
- informing government policy by providing independent advice.

THE ROLE OF CABINET

All Executive and Ministerial appointments should be considered by Cabinet before they are completed. The *Cabinet Handbook* provides further details about Cabinet requirements for appointments. *The Cabinet Paper Drafting Guide* contains instructions for completing the required Cabinet documentation.

BETTER PRACTICE TOOLKIT

The Better Practice Toolkit is an online resource developed to assist Directorates with preparing appointments and managing the operation of ACT Government Boards and Committees. The Toolkit provides guidance on drafting Terms of Reference, identifying skills and knowledge gaps and developing selection and recruitment processes.

APPLICATION OF THESE GUIDELINES TO NOMINATIONS BY REPRESENTATIVE BODIES

Some boards and committees have governing legislation that requires nominations by specific stakeholder groups. Where representative bodies for these stakeholder groups are well established, convention allows for these bodies to make a nomination to the responsible Minister. The consultation and merit selection requirements in these guidelines do not extend to these nominations by representative bodies, however, representative bodies should be made aware of the Government's [diversity, representation and renewal objectives](#).

PART B – THE APPOINTMENT PROCESS

1. INITIATION

- ❑ Identify the upcoming position.
- ❑ Before proceeding with the appointment, check the following:
 - Is the appointment 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 appointment? If so, how do I address these?
- ❑ Prepare a brief to the relevant minister including this information and seeking approval to proceed with the appointment process.
- ❑ A merit selection process should be outlined for all positions, including for re-appointments. Wherever possible, existing appointments should not be automatically renewed.

2. SELECTION

- ❑ Unless inconsistent with legislation action officers should undertake the following steps to identify suitable candidates for the position/s:
 - Contact the Office for Women (this is mandatory for all appointments), the Office of Multicultural Affairs and Aboriginal and Torres Strait Islander Affairs, the Office for Disability, and the Office for LGBTIQ – the Offices keep information of people interested in board and committee membership.
 - Seek nominations from the board or committee itself.
 - Seek nominations from the relevant minister's office.
 - Conduct a formal recruitment process.
 - Contact the Cabinet Office to determine whether the candidate(s) are existing ACT appointees.
 - The Strategic Board should be provided notice of the vacancy and have an opportunity to make suggestions about possible suitable candidates.
- ❑ Make contact with potential appointees to confirm their capacity and willingness to accept the potential appointment.
- ❑ Action officers should assess whether the role requires the appointee to be 'fit and proper' and make enquiries or request information from the potential nominee to determine whether they meet any necessary standards.

3. APPROVAL TO APPOINT

- ❑ Prepare a brief to the minister seeking agreement to appoint.
- ❑ Talk to your Cabinet Liaison Officer (CLO) about Cabinet timeframes; prepare a Cabinet Appointment Paper (CAP), including statements of relevant experience for all appointees.
- ❑ Seek minister's agreement to lodge the CAP.
- ❑ For statutory ministerial appointments, 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. FINALISATION AND NOTIFICATION

- ❑ After Cabinet endorsement (or in cases where Standing Committee consultation is required, if there is no objection within 30 days) prepare letters from the minister notifying appointee(s) of their appointment.
- ❑ Public announcements should only occur after appointment(s) have been accepted.
- ❑ For statutory appointments 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 for assistance).

DIVERSITY, REPRESENTATION AND RENEWAL

Appointees, boards and committees play an essential role in providing advice, assistance and guidance to both government and the public. All appointees have a role in ensuring public confidence in the policies and decisions of government.

Appointments should be made with the view to representing and serving the community. Towards that end, key principles to be considered when recommending appointments are:

- **conducting merit based decisions** – appointments should be based on a transparent, fair process designed to select the best candidate for each position;
- maintaining **50 per cent representation of women** on boards and committees overall in addition to encouraging gender balance across individual boards and committees that may historically be dominated by a particular gender wherever possible;
- encouraging greater participation of Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, people who identify as Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ), and people with disability;
- promoting representation from a **broad cross section of the community**, including community organisations; and
- **refreshing membership on a periodic basis** – efforts should be made to regularly refresh board and committee appointments.

IDENTIFYING VACANCIES AND NEEDS

There are two circumstances where a ministerial or executive appointment may be required:

- where an existing appointment is expiring; or
- where a new appointment must be made, either to fill a new position on an existing body or as a result of the establishment of a new body.

Planning for a new appointment should begin well in advance of an upcoming expiry of term or planned commencement of a new position. Merit selection based on public advertising and interviews, ministerial briefing and Cabinet endorsement may all be required. Sufficient time should be allowed for all necessary steps to be completed to avoid unexpected vacancies.

There is a presumption towards refreshing stand alone appointments and the membership of boards and committees on a regular basis. Appointments should not automatically be renewed without giving consideration to opportunities to achieve the Government's diversity, representation and renewal objectives.

Presumption towards
periodic refresh of
appointments

Appointments must not be made or re-made for a period of more than two full-terms or a maximum of six years unless:

- the statutory term is greater than six years; or
- Cabinet agrees there is compelling justification.

Term and time period limits

Where an appointment is proposed for a period of more than the term and time period limits, this must be explicitly referred to in the briefing to the minister and in the subsequent Cabinet submission. Examples of a compelling justification include that the legislation specifies a longer term (for example, the Director of Public Prosecutions is appointed for a seven year term), there is a business critical need for continuity, or a full merit selection process showed that re-appointment is clearly the best alternative.

STEP 1. INITIATION

The first step is to prepare a detailed briefing to the responsible minister on the impending need for an appointment. The brief should include:

- for an appointment to a board or committee the terms of reference, the board or committee type – is it a governing body, quasi-judicial tribunal, board of inquiry, management board etc) for a stand-alone appointment the position description;
- whether the appointment is a statutory or non-statutory appointment;
- whether the appointment is subject to legal or other mandatory requirements and, if so, what these requirements are;
- the skills required for the position;
- whether external bodies determine, or have input into, the selection or appointment of candidates;
- a proposed selection process, including whether advertising will occur and selection criteria;
- details of proposed remuneration (if any); and
- the process for identifying and contacting potential appointees.

It is important to carefully identify any legislation that governs the appointment, and all of its requirements. Examples of requirements that might apply in legislation include:

- a requirement to consult with particular bodies (e.g. before appointing Legal Aid Review Committee members, consultation with the Law Society may be required – see Legal Aid Act 1977);
- eligibility criteria, such as a qualification or experience in a field (e.g. a proposed appointee as Director of Public Prosecutions must be a legal practitioner, and have been a legal practitioner for five years, under the Director of Public Prosecutions Act 1990); and
- rules around requiring or prohibiting a public servant being appointed to the role (e.g. a public servant may not be appointed as an Official Visitor under the Official Visitors Act 2012).

The level of discretion the responsible minister or responsible officer (for directorate committees) has when making the appointment should be identified. Some committees have certain members selected by people other than government members. For example, some appointments made under national professional standards legislation are only formal ACT appointments of people selected in other jurisdictions. In these cases, an exemption to the requirement that appointments be endorsed by Cabinet may be sought.

Time sensitive and/or critical appointments

In some time sensitive or critical circumstances it may not be practicable to follow all prescribed appointment procedures. This may include situations where the Government must establish an office, inquiry, taskforce or expert panel to complete a specific task within constrained timelines or in critical circumstances or where an incumbent appointee resigns or is removed at short notice. A critical circumstance may include those situations where a priority community need has been identified or in response to a critical incident. In these cases the relevant Directorate should brief the minister on:

- the background to the appointment decision;
- the justification for the appointment;
- options considered and rationale provided for the preferred course of action;
- the expected benefits of the appointment;
- a position description for the appointment;
- expected costs and risk; and
- funding arrangements.

STEP 2. SELECTION

The brief prepared in Step one should clearly, and in detail, obtain ministerial agreement to undertake a selection process. As noted above, there is a presumption that all appointments will be made following a full merit selection process.

This means public advertising for applications and convening a selection panel with at least one independent member from outside the directorate or sponsoring entity unless there is a compelling reason to engage differently. For example, where there is legislation that governs the selection process or the appointment is for a very short term, a panel might not be convened this way.

In situations where an open and competitive recruitment process is not possible or appropriate, an explanation by the responsible minister must be provided through Cabinet or in writing to the Chief Minister before the appointment is finalised.

Attributes to consider when assessing candidates

It is important to assess the desirable attributes of an appointee as part of the selection process - this will vary based on the appointment's role. For example, appointments to advisory bodies dealing with community issues would be expected to have a connection and commitment to the ACT. For other appointments connection with the ACT may be a subsidiary attribute, such as where appointees require specialist skills or expert standing, or not desirable, such as where independence from ACT stakeholders is advantageous.

The desirable attributes should also guide decisions around the type and extent of advertising as part of the selection process.

Action officers should take the necessary steps to reduce the risk that an appointee will bring the government into disrepute. The level of probity required and corresponding risk profile will be dependent on the nature

of the appointment including any decision making powers. The action officer should consider any potential risks and assess whether the role requires the appointee to be a 'fit and proper' person and the standards that would be applied. For example, a declared bankrupt may not be considered 'fit and proper' for appointment to a role charged with overseeing commercial operations, however, the same individual may be considered suitable for appointment to a position not dealing in financial matters such as a ministerial advisory committee on social issues. Similarly, some roles may be more sensitive to conflicts of interest. The action officer should request any information from the potential nominee and make any enquiries to determine whether they meet any necessary standards, and identify any potential conflicts of interest.

Diversity consultation before the selection process commences

Action officers should also assess a potential appointee's existing representation on ACT Government Boards or Committees. Where practicable, it is recommended that an individual not be a member to multiple boards or committees to ensure a diversity of viewpoints is represented.

Appointments should seek to represent a broad cross section of the community. For boards and committees with female representation below 50 per cent, the selection process should take into account the need to improve the gender representation.

Selection processes should be structured in a way that seeks to identify appropriate candidates in line with the Government's diversity and representation objectives.

Except where nominations are being sought from representative bodies, before the commencement of the selection process officers must contact the Office for Women, the Office for Disability, the Office of LGBTIQ Affairs and the Office of Multicultural and Aboriginal and Torres Strait Islander Affairs. This provides an opportunity to identify suitable candidates in line with the diversity and representation objectives. The Offices circulate advertised positions to their stakeholders and provide nominations for open positions.

Requirement to consult with Strategic Board

Consultation with Strategic Board on shortlisted nominees is a requirement for remunerated positions where current gender representation on a board or committee is below 40 per cent for either male or female members.

Consulting with external stakeholders

It is important to note that legislation sometimes requires that ministers obtain nominations from specific bodies. Where no strict requirements exist action officers should give consideration as to whether nominations should be sought from stakeholder groups.

Selection process

For new appointments there is a presumption that directorates will run a merit selection process. For re-appointments, directorates must (at minimum) advertise a position after an appointee has served two full

terms or six years, even where the current occupant wishes to continue in the role.

The Chief Minister may waive any requirement, for example, if the appointment is deemed to be time-sensitive or related to a critical situation.

During the selection process, nominees and applicants should be contacted to:

- gauge their level of interest and availability (where applicable);
- explain the terms and conditions of the appointment (that is, the role, expected participation, legal obligations, any remuneration and potential liabilities);
- obtain assurances there are no apparent impediments to their appointment (such as 'fit and proper' or conflict of interest issues, etc.) noting they will be required to complete a declaration of private interests form upon appointment; and
- ascertain whether the candidate is currently a member of any other board or committee, in any capacity, remunerated or otherwise.

It is good practice for an information pack to be sent to proposed appointees. The pack might include Annual Reports, and details of the 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. A Declaration of Private Interests form should be included in the package.

STEP 3: APPROVAL TO APPOINT

Once the selection process is complete and the selection panel has made a recommendation about the appointment, a brief should be prepared to seek approval of the recommendation.

Ministerial approval to an appointment is the first requirement. The minister considers the pool of candidates and the outcomes of the selection process and selects a preferred appointee to recommend to Cabinet.

Cabinet approval is required for all appointments by a minister or the executive. Cabinet will consider a proposed appointee's attributes, capacity to connect with the ACT community (if applicable), qualifications and any other employment or existing appointments. Cabinet will also take account of the overall makeup of each board and committee when deciding on appointments.

The Cabinet Appointment template must be used to seek Cabinet endorsement on proposed appointments. **Every section of the template is mandatory.** This includes questions relating to the basis of appointment, remuneration, public announcement, consultation, current and proposed representation, candidate profiles and a standard recommendation.

The terms of reference (or similar document) for the board or committee must form an attachment to the Cabinet Appointment template.

Brief statements of experience (for all appointees) must also be attached. The statement of experience should include the following information:

- a short description of the role including individual responsibilities;
- key skills and experience of the individual in line with what was used as part of the selection process;
- details of specific qualifications required (if applicable); and
- details of all other appointments or employment held by the person. In particular, action officers must outline all other ACT appointments held by the proposed appointee (for example, if the person is appointed to multiple boards or a director or office holder of a corporation or association, those offices should be listed).

Link to the [Cabinet Handbook and Cabinet Paper Drafting Guide](#)

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 [Cabinet & Coordination Office](#) for further guidance.

Ministerial statutory appointments require Standing Committee consultation before they can be made. This consultation is undertaken after Cabinet has endorsed a nominee (further details are outlined in [Table 1](#)).

Following Cabinet's endorsement (and, if required, the [Standing Committee consultation process](#)), the responsible minister informs the nominee through a formal letter of offer. The letter should include a requirement for the nominee to complete a Declaration of Private Interests form.

Directorates may include 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.

Unless completed previously, the appointee should be invited to identify themselves as an Aboriginal or Torres Strait Islander, person from a culturally or linguistically diverse background, person identifying as LGBTIQ, or person with disability.

STEP 4: NOTIFICATION

[Appendix 1](#) provides more details on the process for drafting and notifying instruments

Once all pre-employment steps are complete, the relevant instrument of appointment is provided to the minister for signature. [Table 1](#) outlines how to select the right instrument to validly make an appointment. For further guidance on how to draft notifiable, disallowable and other instruments, visit the Parliamentary Counsel’s Office website at www.pco.act.gov.au. Once the appropriate instrument has been prepared, contact should be made with the directorates Assembly Liaison Officer to arrange notification on the ACT Legislation Register.

Table 1: Determining a Method of Appointment

Type of appointment	Examples	Methods of appointment (Statutory)	Methods of appointment (Non-statutory)
Executive Appointment (Signed by two ministers on behalf of all)	General President of the ACT Civil and Administrative Tribunal Commissioner for International Engagement Local Industry Advocate	<p>Varies subject to enabling legislation.</p> <p>Instrument (in writing, signed by two ministers – effective from day after signature).</p> <p>Notifiable Instrument (as above, but only effective from day after notification on the legislation register).</p> <p>Disallowable Instrument (as an NI, except must be tabled in the Legislative Assembly, and the Assembly may reverse the appointment within six sitting days).</p>	<p>Non-statutory appointments, because they have no status under legislation, are a matter of agreement between the appointing entity and the appointee and as such are specific to the appointment.</p>
Ministerial Appointment (Signed by a single minister)	Teacher Quality Institute Board Liquor Advisory Board Office of LGBTIQ	<p>Varies subject to enabling legislation.</p> <p>This is the only appointment type that potentially requires consultation with the relevant Standing Committee (see the <i>Legislation Act 2001</i>, Part 19.3.3).</p> <p>A ministerial appointment under a statute is always a disallowable instrument, and requires standing committee consultation, unless:</p> <ul style="list-style-type: none"> • it is for less than six months; or • the appointee is a public servant; or • the role to be appointed has no function other than advising the minister. 	<p>Advice should be sought from the ACT Government Solicitor on the appropriate method of appointment where there is uncertainty or no precedent.</p>

STANDING COMMITTEE CONSULTATION

Standing Committee consultation is required for statutory appointments made by a minister. If standing committee consultation is required, the relevant ministerial instrument must not be made until after the consultation process is complete.

Division 19.3.3 of the *Legislation Act 2001* (Section 227 and 228) requires that all statutory appointments by a minister 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) of the *Legislation Act* provides exceptions – Division 19.3.3 does not apply to an appointment of:

- 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
- a person to a statutory position (or to act in a statutory position) for not longer than six months, including reappointments of that same person (for example, two separate four month appointments amount to more than six months, making consultation necessary on the second appointment); or
- a person to a statutory position if the only function of the position is to advise the minister.

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.

A letter to the Standing Committee should include the following information:

- the Act under which the appointment is to be made;
- the name of the appointee(s);
- any additional details regarding the individual or the committee, including a statement of relevant experience and identification of any other appointments or offices held by the individual; and
- a copy of the appointee(s) curriculum vitae (as an attachment).

The Standing Committee has 30 days to respond directly to the minister.

Having received agreement or no comment from the Standing Committee, the minister may proceed as normal to complete the appointment (selecting the relevant instrument, as described in [Table 1](#)).

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 committee's response.

If the Standing Committee disagrees, the minister can either:

- reconsider the decision to appoint that particular person (any changes must go through Cabinet and the committee processes again);
- consult Cabinet on the comments of the committee and implement the decision of Cabinet; or
- decide that the person is the best qualified and appoint them despite the committee's comments.

PUBLIC SERVANTS AS BOARD MEMBERS

Public servants can be appointed in their capacity as officials or in a personal capacity, appointed on individual merit. Appointments of public servants in a personal capacity can be done provided 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.

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. A public servant considering applying for an appointment should first refer to the *Public Sector Management Act 1994* and discuss with their direct supervisor whether a potential conflict of interest could arise. Similarly, action officers managing a merit selection process should seek the views of a public servant's Director-General or Agency Head. The Workforce Capability and Governance Division in Chief Minister, Treasury and Economic Development Directorate (CMTEDD) can provide further guidance.

JUDICIAL OFFICERS AS APPOINTEES TO OTHER BOARDS

Judicial appointments are managed within the Justice and Community Safety Directorate (JACS). The JACS Director-General must be consulted during the merit selection process before a judicial officer or tribunal member is nominated to any other office.

PRE-ELECTION AND ELECTION PERIODS

Link to [Guidance on caretaker conventions](#)

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 do not advantage a particular party and that requirements for impartiality are strictly observed. These arrangements can apply equally to boards and committees.

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

When a person nominates for election to the Legislative 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 Legislative Assembly.

Section 103(2)(b)(i) of the *Electoral Act 1992* may equally apply to public servants and remunerated members of government boards and committees. A remunerated member, if elected, is obliged to resign before declaration of the poll. Each member must seek their own advice about whether their appointment falls within this provision.

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

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

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

ENDING AN APPOINTMENT

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 (unless the breach or activity is deemed to be significant).

Section 208(2) of the *Legislation Act 2001* states 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. This means, for example, that if a person was appointed by disallowable instrument then the appointment can only be ended by disallowable instrument. Enabling legislation may also prescribe limitations on how or why a member's term may be terminated.

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.

REQUIREMENT TO MAINTAIN INFORMATION ON APPOINTMENTS

Each directorate is responsible for maintaining accurate, up-to-date information about appointments within their portfolios. CMTEDD maintains a central register of appointments to inform the Strategic Board and ministers about upcoming vacancies. Directorates may use the central register to maintain these records or use an alternate system as long as it can reliably provide information on current and upcoming appointments and update the central register (as needed).

The purpose of the central register is to provide information about implementation of government policy on appointments, specifically representation by a diverse cross-section of the community. The

database is also used to:

- ensure timely Cabinet consideration of proposed appointments;
- provide opportunities for input on candidate selection; and
- confirm that no single individual holds an excessive number of ACT appointments;

Each directorate must ensure that information about appointments is provided to CMTEDD.

Following completion of the appointment process, the responsible officer should place on file documentation of the appointment process, record the new information on their own directorate's record keeping repository and inform their Cabinet Liaison Officer or other relevant contact officer of any relevant details (including appointment dates, expiry dates and any resignations).

PART C – REMUNERATION

GENERAL

Appointments are made for a variety of reasons, some of which are considered appropriate to receive payment or reimbursement for costs.

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 a Director-General.

When determining remuneration levels, the responsible minister or executive officer should consider:

- the nature of the work;
- the degree of accountability and responsibility;
- the skills and experience of the appointee;
- the value or benefits the position will bring to the ACT; and
- comparable remuneration levels in other jurisdictions.

CRITERIA FOR REMUNERATION

Statutory and non-statutory appointees may only receive payment in connection with their appointments where:

- the appointment and/or body is established to provide a specific service that 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; or
- 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).

Table 2: Determining appropriate pay arrangements (if remunerated)

Type of appointment	Typical pay arrangement options
Executive Appointment	Remuneration tribunal determination. Terms and conditions instrument (agreement between appointee and Executive or Minister).*
Ministerial Appointment	Remuneration tribunal determination. Terms and conditions instrument (agreement between appointee and minister).* Public service engagement where a minister appoints an existing public servant to a position – a public service position cannot be created directly by ministerial appointment.
Non-statutory Appointment	Payment for remunerated non statutory appointments can vary subject to specific circumstances. Engagement of people is normally through an employment contract or procurement of professional services.

*Terms and conditions instruments specify conditions and entitlements of appointment.

REMUNERATION TRIBUNAL

Further information on the Remuneration Tribunal, including Chief Minister referrals, is available from the [Remuneration Tribunal Website](#)

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.

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.

The Remuneration Tribunal is the preferred method for setting the level of remuneration for appointments as it is accountable, transparent and can ensure that remuneration levels are determined equitably across all positions.

SEEKING A DETERMINATION OR DECISION

When preparing advice to the Tribunal, 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:

- the role of the appointee or where the appointee sits on a board or committee the role of that entity (for example, decision-making, advisory or review/appeal function);
- the legislation that establishes or regulates the appointment, board or committee;
- the work the appointee or board/committee is required to undertake – is it of Territory-wide significance, does the appointee, board or committee manage a budget, is the appointee, board or committee responsible for making a profit;
- number of times per year the appointee will be undertaking official business, or in the cases of an appointment to a board or committee how often the entity is expected to meet;
- for appointments to a board or committee, the number of members;
- whether annual or per diem (daily/per meeting) rates are warranted and the reasons for such payments;
- existing rates for comparable offices; and
- 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 Remuneration Tribunal's Secretariat.

PAYMENT OF PUBLIC SERVANTS

Where an ACT public servant serves on a board or committee as part of their government employment, sitting fees are not payable.

Where they serve as a community member on a board or committee, it may be possible, in exceptional circumstances, for fees or reimbursement of costs to be paid to the person.

GST AND PAYMENTS OTHER THAN AS AN APPOINTED MEMBER

With few exceptions, appointees 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, appointees must be paid on a personal basis with tax instalments deducted.

Exceptions occur where an appointee 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 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.

In some rare instances, the appointee 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.

SUPERANNUATION

For remunerated positions, agencies are obliged to pay appointees productivity superannuation contributions, at the prescribed rates determined from time to time, to an approved superannuation fund.

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 Shared Services for further detail.

INITIATING REMUNERATION OF SITTING FEES

For new appointments to a board or committee, 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 Shared Services [website](#).

The directorate 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, Shared Services.

PART D – GOVERNANCE AND ACCOUNTABILITY

LEGAL AND ETHICAL REQUIREMENTS

Government appointees have significant responsibilities and are invested with a considerable measure of public trust. Decisions made by appointees, boards and committees often have a direct effect on the ACT community and government.

Appointees 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 appointment, board or committee, it is essential that appointees sustain public confidence by upholding high standards of conduct.

Appointees to boards and committees 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, these appointees 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.

TERMS OF REFERENCE

All boards and committees should have an up to date Terms of Reference. Terms of Reference should clearly outline for appointees and key stakeholders a common understanding of the scope, objectives and operational processes of the board/committee and any legislative requirements (e.g. under a governing act or the Financial Management Act 1996).

A quick guide on creating a Terms of Reference is provided on the Better Practice Toolkit website.

Similarly, appointments to official positions should have clear position descriptions or terms of reference for their office.

CODE OF ETHICS

Link to [Ethics in the ACT Public Service](#)

Section 9 of the [Public Sector Management Act 1994](#) details the requirements of a public employee (which includes all appointees and members of an ACT Government board or committee) in performing his or her duties, and is known as the Code of Ethics. A copy of the Code of Ethics should be provided to all remunerated and non-remunerated appointments on commencement and prior to signing a declaration of private interests.

CODE OF CONDUCT AND CONFLICTS OF INTEREST

The [ACT Government Code of Conduct](#) for Appointees outlines the standards of behaviour and ethical conduct expected of all people serving official appointments. All appointees are required to declare (in writing) that they will abide by this code before they are appointed.

Creating a board-specific code of conduct

Because boards and committees perform such a variety of roles, individual entities 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.

It is recommended that a board-specific code of conduct be developed in addition to the ACT Government Code. In order to develop a code of conduct, a board or committee should identify the core activities it undertakes 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.

Recognising and managing conflicts of interest

A conflict of interest may arise from:

- other directorships or employment, including other appointments or memberships of other ACT boards or committees;
- professional and business interests and associations;
- investment interests; and/or
- family relationships.

Declaration of Private Interests

An appointee has a duty to declare any private interest that may impinge upon a decision. When an issue arises, the appointee must, as soon as practicable, disclose full and accurate details of the interest or issue to the board or committee or for individual offices the relevant Director-General.

The board or committee (or Director-General) should make a decision as to how to manage the conflict of interest and record reasons for that decision.

There are different ways of managing conflicts of interest. For boards and committees, one method may be for the member not to take part in 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.

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

- the appointee may be required to resign (in an extreme case);
- divestment of the interest/issue that is creating the conflict (for example, the sale of shares); and
- ending the connection (for example, resignation from a position in another organisation giving rise to the conflict).

Some offices, 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.

MEETINGS OF BOARDS AND COMMITTEES

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.

It is essential the board or committee members and their decision-making process is above reproach. To ensure effective, accountable and transparent decision making, the following processes 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.

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 ten 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 help shorten meetings.

MONITORING PERFORMANCE OF BOARDS AND COMMITTEES

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.

Performance criteria, for both the board or committee and individual members, should be clearly articulated and circulated. Examples might include:

- the functions, powers and membership of the board or committee;
- 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; reading and understanding papers; raising concerns; dealing with other members and staff with courtesy and respect; and access to information, outside advice and confidentiality;
- 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;
- processes for identifying and measuring conflict of interest;
- basic meeting procedures – for example, agenda, papers, minutes, declarations of interests and how these are to be handled, powers of the chair and voting procedures;
- policies on member remuneration (where relevant); and
- policies on board and committee performance review.

MONITORING PERFORMANCE OF APPOINTEES TO STAND ALONE POSITIONS

Directorates should consider an appropriate performance management framework for individual office holders that are not members of a board or committee. These will differ depending on the requirements of the role. The Workforce Capability and Governance Division of CMTEDD can provide advice on appropriate performance criteria and the applicable performance management frameworks.

APPENDIX 1 - INSTRUMENTS OF APPOINTMENT

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.

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.

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 statutory appointments by a minister with the following exceptions:

- a public servant being appointed to a statutory position;
- a short-term appointment less than 6 months (so long as the appointee has not already served a consecutive term of appointment to the position); and
- a person to a statutory position if the only function of the position is to advise the Minister.

An electronic copy of the Act is available on the ACT Legislation Register, www.legislation.act.gov.au.

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 the executive. 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.

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' for six sitting days; that is, the Assembly may move to amend or disallow the subordinate law/appointment carried by the instrument. (If the Assembly disallows an appointment, the instrument of appointment will be invalidated. Contact the Parliamentary Counsel's Office for guidance should this occur).

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. An explanatory statement is not normally required for a notifiable instrument.

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. (All appointments made by disallowable instruments require an explanatory statement.) 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.

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. Please note that:

- a) All explanatory statements for disallowable instruments 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 on the day after notification. (A specific day for commencement can be specified in an instrument.) Note that a disallowable instrument is subject to a period of six sitting days disallowance in the Legislative Assembly.

APPENDIX 2 - KEY GOVERNMENT CONTACTS

ISSUE	AGENCY/UNIT	CONTACT
Aboriginal and Torres Strait Islander Affairs	Office of Aboriginal and Torres Strait Islander Affairs, Community Services Directorate	6207 0431
Cabinet processes	Cabinet Office, Chief Minister, Treasury, and Economic Development Directorate	CabinetOffice@act.gov.au 6205 9889
Children and Young People	Child and Youth Protection Services	6205 1938
General Appointments process	Cabinet Office, Chief Minister, Treasury, and Economic Development Directorate	6205 0543
Multicultural Affairs	Office of Multicultural Affairs, Community Services Directorate	6207 0555
Remuneration	Secretary, Remuneration Tribunal, Chief Minister, Treasury, and Economic Development Directorate	remtrib@act.gov.au 6205 0884
Gender balance	ACT Office for Women – Community Services Directorate	6207 0555
LGBTIQ	The Office for LGBTIQ Affairs	LGBTIQCouncil@act.gov.au
Disability	The Office for Disability	communityparticipation@act.gov.au