# APPOINTMENTS STANDARD OPERATING PROCEDURE

## Standard Operating Procedure Purpose

An appointment is a formal action whereby a person appoints a specified person, a person occupying a position number, a person exercising the functions of a position, or a class of people to a particular position or role. Once appointed, the appointee may then exercise certain functions as part of that appointment.

This Standard Operating Procedure details the procedures for making appointments within the EPSDD portfolio, to ensure that:

* Appointment instruments are drafted correctly; and
* The appointment is in accordance with relevant legislation; and
* The formal appointment instrument is in in effect prior to any decision-making being exercised by the appointee.

Part 19.3 of the *Legislation Act 2001* sets out the rules for appointments in the ACT.

Statutory appointments by Ministers are generally made by disallowable instrument and must be endorsed by Cabinet, notified on the Legislation Register and tabled in the Legislative Assembly.

An appointment instrument may be a notifiable instrument (NI) or a disallowable instrument (DI). For more information on NIs and DIs, please refer to the notifiable and disallowable instruments standing operating procedure.

## Scope

This procedure covers appointments as authorised by legislation within the responsibility of the EPSDD portfolio.

Note that there are special steps that apply to Ministerial and Executive appointments. Refer to the [Appointments, Boards and Committee’s handbook](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0004/1045984/Governance-Principles-2017-FINAL.pdf) in conjunction with the [Cabinet handbook](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0006/1189383/Cabinet_Handbook.pdf) for further information on these steps.

Non-statutory appointments are not covered by any legislative source of power. This SOP contains some steps applicable to non-statutory appointments, however the relevant policy area will have more information on the applicable procedure. The [Appointments, Boards and Committee’s handbook](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0004/1045984/Governance-Principles-2017-FINAL.pdf) contains further guidance on non-statutory appointments.

| Business Area | Responsibility |
| --- | --- |
| **Policy Areas** | * Identify new appointments and revocations. * Advise Legal Services and Integrity, Government Services and Communications at the earliest opportunity. * Undertake recruitment processes including consultation with the Diversity Register at https://www.diversityregister.act.gov.au/s/consultation. * Prepare (when required) the brief, Cabinet Appointment Paper, appointment instrument, explanatory statement, letter of appointment/declaration of private interests form and consultation letter to the relevant Standing Committee (appointment material). * Prepare response to Scrutiny of Bills Committee recommendations (when required) |
| **Legal Services and Integrity** | * Provide assistance to policy areas in drafting the appointment materials. * Review the appointment materials prior to the Policy Area seeking Executive clearance. * Assist in the preparation of response to Scrutiny of Bills Committee recommendations (when required) * Manage Appointments register. |
| **Government Services** | * On advice from the Policy Area, oversee the scheduling of the Appointment Paper for an appropriate Cabinet date. * Provide administrative support and timeframes to the Policy Area. * Manage the DDG/DG/Ministerial approval process for the appointment material. * Lodge the Cabinet Appointment Paper with the Cabinet Office. * Advise Policy Area of outcome of Cabinet consideration when formal decision becomes available. * Liaise with Parliamentary Counsel for notification of the appointment instrument. |
| **Communications** | * Prepare any required Communications material. |
| **Appointer** | * Be satisfied that they have the power to appoint the appointee, and meet any conditions; and * Be satisfied that the appointee has the necessary skills and knowledge to execute the functions of the appointment. |
| **Appointee** | * Be satisfied that they understand the responsibilities, limitations and conditions of the appointment; * Ensure they have the necessary skills and knowledge to exercise the appointment. |

## Procedure – Description of activities

### *PRELIMINARY STEPS*

* 1. ***Identify source of power- statutory appointments only***
* Locate in the Act the power to make the appointment, any limitations or conditions on this power, and who is the responsible appointer (Minister/DG/DDG/other).
* Check whether Act provides that the instrument is a DI or NI.
* If the Act does not specify that the instrument is an NI or DI, it is treated similar to a NI and is notified on the register for accountability and transparency. Note in the brief that it is not strictly an NI.
* Check whether there is currently an instrument in place addressing the proposed appointment. If so, provide for revocation in the new instrument, if necessary.
  1. ***Contact Legal Services and Integrity early***
* [Legal Services and Integrity](mailto:EPSDLegalServices@act.gov.au) can assist in identifying issues early in the process and can provide assistance with drafting the appointment material and guidance on the appointment process.
  1. ***Contact Government Services early***
* [Government Services](mailto:EPSDGovernmentServices@act.gov.au) can assist with scheduling of the Appointment Paper for Cabinet consideration, provide timelines and administrative support.
  1. ***Contact Communications early***
* Contact [Communications](mailto:EPSDDComms@act.gov.au) to enquire if any media material is required.

### *SEEK APPROVAL TO CONDUCT PROCESS- Ministerial appointments only*

* Prepare a brief to the responsible Minister seeking approval to conduct the appointment process. Once cleared by the head of the policy area, send the brief to Legal Services and Integrity for clearance prior to seeking Executive (EGM/EBM) approval. Once EGM/EBM approval obtained, send the brief to EPSD Government Services, who will seek DDG/COO/DG clearance and then facilitate provision to Minister’s Office. Template briefs can be found [here](https://objective.act.gov.au/id:fA6154383).

### *SELECTION PROCESS*

* Comply with all recruitment processes to identify suitable candidates.
* Make contact with potential appointees to confirm their capacity and willingness to accept the appointment.
* Refer to the [Appointments, Boards and Committee’s handbook](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0004/1045984/Governance-Principles-2017-FINAL.pdf) for further detail on the selection process.

### *DRAFT INSTRUMENT- Statutory appointments only*

* Refer to [Parliamentary Counsel checklist](http://www.pco.act.gov.au/library/Samples.pdf) for drafting of instruments.
* View other example instruments on [Legislation register](https://legislation.act.gov.au/).

### *DRAFT APPROVAL OF INSTRUMENTS FORM/MINISTERIAL BRIEF*

1. **DDG/DG/other appointer**

Prepare an approval of instruments form. The form should clearly address the power under which the appointment is made, and any limitations on the power. The approval of instrument form should also clearly identify how any conditions have been met, if any. A template form can be found [here](https://actgovernment.sharepoint.com/:w:/r/sites/Intranet-EPSDD/_layouts/15/Doc.aspx?sourcedoc=%7BE55590CE-E52A-4522-A2B4-F7C58CD5A261%7D&file=Approval%20of%20instruments%20form.docx&action=default&mobileredirect=true&DefaultItemOpen=1).

1. **Minister/Executive appointer**

Prepare a Ministerial brief and Cabinet Appointment Paper, seeking Cabinet endorsement of the appointment. Government Services will assist with this step. Refer to the [Appointments, Boards and Committee’s handbook](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0004/1045984/Governance-Principles-2017-FINAL.pdf) and [Cabinet handbook](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0006/1189383/Cabinet_Handbook.pdf). If the proposed appointment is subject to Standing Committee consultation, include in the Ministerial brief a letter to the relevant Standing Committee.

### *SEND TO LEGAL SERVICES AND INTEGRITY*

### Once cleared by the head of the policy area, send Objective folder reference appointment material and all relevant attachments to [Legal Services and Integrity](mailto:EPSDLegalServices@act.gov.au) for clearance prior to seeking executive approval.

### *PROGRESS FOR SIGNATURE*

For appointments made by Minister/Executive, following Cabinet endorsement and consultation with the relevant Standing Committee, prepare appointment instrument of signature, explanatory statement and letters of offer/declaration of private interests forms, and send to [Legal Services and Integrity](mailto:EPSDLegalServices@act.gov.au)  for clearanceprior to the policy area seeking executive approval and then, via Government Services, to the Minister/Executive to execute the appointment instrument.

For DG/DDG/other appointer instrument, once Legal Services and Integrity has cleared the appointment material (see section 6 above), the policy area sends the Objective folder to Government Services.

Government Services will arrange signature of the relevant appointer, whether that be the DG/DDG/Minister.

### *NOTIFICATION AND FURTHER STEPS*

Once the brief and instrument are signed, and following any response from the Standing Committee (for Ministerial/Executive statutory appointments), Government Services will arrange notification of the signed instrument on the Legislation Register. Government Services will also arrange for letters of appointment to be sent.

Policy areas are to ensure that all signed letters and declaration of private interests forms have been received, prior to the appointer exercising any functions of the appointment.

### *UPDATE OF DATABASE*

Once the policy area has received confirmation from Government Services that instrument has commenced, send e-mail to Legal Services and Integrity requesting update of the EPSDD appointments database.

### *REVIEW*

Legal Services and Integrity conducts a regular review of the appointments database and the validity of appointments within the EPSDD portfolio.

## Records Management

All records must be managed in accordance with the *Territory Records Act 2002* and Directorate policies and procedures.

Policy area must maintain an Objective folder in appropriate location with all relevant material, including the signed instrument, approved brief/instruments form, evidence of consultation, feedback received throughout the consultation process and other relevant material.

All documents for the Cabinet Appointment Paper must be filed in a Cabinet file, with access granted to staff who need to undertake work in the folder. Staff in the policy area need to clearly mark Cabinet documents as ‘Sensitive: Cabinet.’

Legal Services and Integrity maintain the Sharepoint appointments database, and Objective folders with records of instruments reviewed and cleared.

The Directorate notifies appointment instruments that are not strictly notifiable instruments on the ACT Legislation Register to promote transparency and accountability.

## Evaluation

| Outcome MeasuresWhat will be measured to determine achievement – has the procedure purpose occurred? | MethodHow will this be done? | ResponsibilityWho is responsible for evaluation? |
| --- | --- | --- |
| Accuracy of instruments | Feedback from Legal Services and Integrity, Government Services and PCO | Policy areas, Legal Services and Integrity and Government Services |
| Timely notification of appointment instrument, prior to any decision-making of appointee | Early engagement with Legal Services and Integrity, Communications and Government Services | Policy areas, Legal Services and Integrity and Government Services, |
| Records management | Updating appointments register within 5 days of notification | Legal Services and Integrity, Policy areas |

## Related Documents

* [PCO website](http://www.pco.act.gov.au)
* [NI and DI templates](mailto:http://www.pco.act.gov.au/pages/notifications/notifications.htm)
* Notifiable Instrument and Disallowable Instrument Standard Operating Procedure
* [Objective Ministerial templates](https://objective.act.gov.au/id:fA6154383#layout=compact-view)
* [ACT Legislation Register](http://legislation.act.gov.au)
* [Governance Principles Appointments, Boards and Committee’s handbook](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0004/1045984/Governance-Principles-2017-FINAL.pdf) (Ministerial/Executive appointments)
* [Cabinet handbook](mailto:https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0006/1189383/Cabinet_Handbook.pdf) (Ministerial/Executive appointments)

* [EPSDD Legal Services and Integrity and Integrity e-mail address](mailto:EPSDLegalServices@act.gov.au)

## Definitions

*“Appointee”* means the person who is appointed to a relevant statutory position.

*“Appointer”* means the person making (ie signing) the instrument of appointment.

*“DG”* means the Director-General of the Directorate

*“DDG”* means the Deputy Director-General of the Directorate

*“DI”* means a disallowable instrument which must be tabled in the Legislative Assembly. Refer to Legal Services and Integrity standard operating procedure on disallowable and notifiable instruments.

*“EBM” means Executive Branch Manager*

*“EGM” means Executive Group Manager*

*“NI”* means a notifiable instrument which must be notified on the Legislation Register. Refer to Legal Services and Integrity standard operating procedure on disallowable and notifiable instruments.

## Version history

The following table details the published date and amendment details for this document

| Version | Date | Amendment details |
| --- | --- | --- |
| 1.0 | 24/07/2019 | First publication of this SOP |