# DELEGATIONS STANDARD OPERATING PROCEDURE

## Standard Operating Procedure Purpose

A delegation instrument is subordinate legislation which delegates a person’s or a positions’ powers under an act to another person. A delegation is required to be in writing.

This SOP details procedures for making delegations within the EPSDD portfolio, to ensure that:

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

## Scope

* This SOP applies to all staff within the EPSDD portfolio who are preparing delegations, exercising delegations or are appointers under legislation administered by the EPSDD.
* The delegations database maintained by Legal Services and Integrity does not include the full range of delegated position numbers in the human resources delegations and financial instructions, due to the amount of delegations. Contact the human resources or finance divisions for enquiries about particular delegations.

| Business Area | Responsibility  |
| --- | --- |
| **Policy Areas** | * Identify the need for new delegations and revocations (if necessary).
* Undertake analysis on any conditions of delegations provided in the legislation – eg is the power able to be delegated, does the delegate need to demonstrate any particular skills, knowledge or experience, does the delegate need to be a public servant, a resident of the ACT or an Australian citizen?
* Prepare the draft brief and instrument.
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| **Legal Services and Integrity** | * Provide assistance to policy areas in drafting the instrument and brief
* Review the draft brief and instrument prior to the Policy Area seeking clearance/execution by the executive.
* Manage delegations register.
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| **Government Services** | * Manage the DDG/COO/DG/CEO/Ministerial approval process for the brief and instrument.
* Liaise with PCO for notification of the delegation instrument.
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| **Communications** | * Prepare any required communications material.
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| **Delegate** | * Be satisfied that they understand the responsibilities, limitations and conditions of the delegation.
* Ensure has all the necessary skills and knowledge to exercise delegation appropriately.
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| **Appointer** | * Be satisfied that they have the power to delegate the relevant function, and that any relevant conditions are met.
* Be satisfied that the delegate has the necessary skills and knowledge to execute the function.
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## Procedure – Description of activities

### *PRELIMINARY STEPS*

* 1. **Identify source of power**
* Locate in the Act the power to make the delegation, who is the relevant appointer (Minister/DG/CEO/other) and any conditions on the delegation power;
* If the Act does not specify that the instrument is an NI, it is treated like an NI and is notified on the Legislation Register to promote accountability and transparency. In this case, note in the brief that the instrument is not strictly an NI.
* Check whether there is currently an instrument in place addressing the proposed delegation. If so, provide for revocation in the new instrument, if necessary.
	1. **Contact Legal Services and Integrity early**
* Legal Services and Integrity can assist in identifying any issues early in the process and can provide assistance with drafting the instrument and brief and guidance on the appointment process.
	1. **Contact Communications early**
* Contact Communications to request if any media material is required for the new instrument.

### *DRAFT INSTRUMENT OF DELEGATION*

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

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

1. **Ministerial signature**
* Prepare brief. Template can be found [here](https://objective.act.gov.au/id%3AfA6154383#layout=compact-view).
* Ensure that the brief details the power under which the delegation is made and why the delegation instrument is required (e.g. new staff have joined the division and position numbers need to be updated, the current instrument is expiring).
1. **DG/DDG/COO/CEO/other appointer signature**
* Prepare approval of instruments form. Template can be found [here](https://actgovernment.sharepoint.com/%3Aw%3A/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).
* Ensure that the form details the power under which the delegation is made and why the delegation instrument is required.

### *SEND TO LEGAL SERVICES AND INTEGRITY*

* Once cleared by the head of the policy area, send Objective folder reference containing instrument and brief/approval of instruments form to Legal Services and Integrity for clearance prior to seeking executive approval.

### *PROGRESS FOR SIGNATURE*

Once cleared by Legal Services and Integrity:

* Where the appointer is not the Minister, DG, DDG or CEO, the policy area arranges for the appointer to sign instrument.
* Where the appointer is the Minister, DG, DDG or CEO, the policy area sends the Objective folder to Government Services. Government Services will arrange signature.

### *NOTIFICATION*

* Once the brief and instrument are signed, Government Services will coordinate with PCO for notification of the signed instrument on the Legislation Register.
* Government Services require both a Word version and a signed version of the instrument via provision of relevant OBJ links.

### *UPDATE OF DATABASE*

* Once the policy area has received confirmation from Government Services that the instrument has commenced, send an e-mail to Legal Services and Integrity requesting update of the EPSDD delegations register.
* Legal Services and Integrity updates the register.

### *REVIEW*

* Legal Services and Integrity conducts a regular review of the database and of the validity of delegations within the EPSDD portfolio, at least every 12 months.

## 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.

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

The Directorate notifies delegation instrument 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 delegation instrument, prior to any decision-making of delegate | Early engagement with Legal Services and Integrity, Communications and Government Services | Policy areas, Legal Services and Integrity and Government Services |
| Records management  | Updating delegations register within 5 days of notification | Legal Services and Integrity, Policy areas |

## Related Documents

* [PCO website](http://www.pco.act.gov.au)
* NI template
* Notifiable and Disallowable Instrument Standard Operating Procedure

* [Objective Ministerial templates](https://objective.act.gov.au/id%3AfA6154383%22%20%5Cl%20%22layout%3Dcompact-view)

* Approval of Instruments template
* [ACT Legislation Register](http://legislation.act.gov.au)

* EPSDD Legal Services and Integrity e-mail address
* [EPSDD Delegations database](https://objective.act.gov.au:8443/#/documents/zA691714/details)

## Definition of Terms

*“CEO”* means the Chief Executive Officer of the City Renewal Authority or the Suburban Land Agency

*“delegate”* means the person who is the subject of a delegation by the appointer

 *“appointer”* means the person making (ie signing) the instrument of delegation

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

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

*“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 policy |