

# Northern Territory Government Boards Handbook

A Guide for board members

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Version	Date	Changes made
15	June 2022	Removed COVID-19 vaccination information. Updated sections on Related Party Disclosures, ICAC, and Indemnities and Insurance. Updated hyperlinks and URLs.
14	January 2022	Added advice on COVID-19 vaccination requirements, resignations, AGS numbers, and payment method for members with no term of appointment.
13	September 2020	Two Handbooks now exist – one guide for board members and one for NTG agency officials, which includes procedural flowcharts. Updates include reference to a new payroll code for members required to remit payments to their principal employer, and information on board members contesting elections.
12	October 2019	Updated to reflect Treasurer's Direction on insurance arrangements dated 1/7/2019.
9, 10, 11	February, March, August 2019	Updated payment information.
8	December 2018	Added a Direction to Pay Form for members required to remit payments to their employing organisation. Added mandatory reporting obligations under <i>Independent Commissioner against Corruption Act 2017</i> .
7	October 2018	Updated remuneration payment methods.
6	May 2018	Updated Superannuation Guarantee rates.
5	February 2018	Updated to include advice on Related Party Disclosures Policy and the NTG EOI Board Register.
4	August 2017	Updated to include advice on indemnity required prior to use of private vehicle for board business.
3	February 2017	Updated to reflect current government priorities.
2	May 2016	Updated guidelines.
1	2005	Initial version.

#### Disclaimer:

This publication has been prepared by the Cabinet Office as a general guide for members of Northern Territory Government statutory and non-statutory boards, and for Government officials administering such bodies. The advice contained herein is not intended to be exhaustive in nature and should not be relied upon in substitution of specific advice. While all care has been taken in the compilation of this publication, no responsibility is accepted for any errors, omissions or inaccuracies.

Acronyms	Full form
AASB	Australian Accounting Standards Board
AGS number	Australian Government Service number
AMSORE Act	<i>Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006</i>
ATO	Australian Taxation Office
Board	Government boards are collectively referred to as <b>NTG boards</b> throughout this Handbook. It relates to bodies otherwise known as an NTG statutory body, non-statutory body, advisory group, committee, council, tribunal, corporation, panel, etc.
CEO	Chief Executive Officer
CM&C	Department of the Chief Minister and Cabinet
DCDD	Department of Corporate and Digital Development
Determination	<i>Statutory Bodies Classification Structure Determination</i> dated 31 January 2012, with effect from 1 March 2012 - outlines remuneration and entitlements for members of statutory bodies.
DTF	Department of Treasury and Finance
KMP	Key Management Personnel
NGO	Non-government Organisation
NT	Northern Territory
NTG	Northern Territory Government
NTPS	Northern Territory Public Sector
PIPS	Personnel Information and Payroll System
Section	Section in this Handbook
s.12	Section of an Act
TFN	Tax File Number
TOR	Terms of Reference

## Foreword

Effective boards and committees are critical to the successful functioning of Government.

A broad range of boards and committees have been established to support the activities and priorities of the Northern Territory Government (NTG). Some are created by statute and others were established by an administrative decision of Government. They carry out functions as diverse as governance and management, advice and review, policy development, appeals, community engagement and regulation of professions.

Board members are encouraged to read this Handbook to assist in understanding their responsibilities. The Handbook is available on the [NTG Board Remuneration website](#)<sup>1</sup>.

A separate Handbook has been created for NTG agency officials that includes procedural flowcharts.

The Handbook is **not a legal document** nor is it intended to be exhaustive. Specific advice should always be sought where legal or other concerns arise.

Feedback in relation to this Handbook is welcome, and can be directed to:

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<sup>1</sup> <https://cmc.nt.gov.au/supporting-government/boards-and-committees/remuneration-of-government-boards>

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# 1. Introduction

This Handbook aims to assist in the good governance of NTG boards and committees. It attempts to consolidate into one document, key information relating to government boards, including legislative and administrative requirements, roles and responsibilities of key stakeholders, member remuneration, and member selection and appointment.

Government boards are collectively referred to as **NTG boards** throughout this Handbook.

## 2. Authority to establish boards

- ✓ **Statutory boards** - the authority to establish is contained in Northern Territory legislation. Boards are established for a range of purposes, some of which include:
  - acquiring land
  - managing assets
  - hearing appeals
  - registering or licensing professions
  - reviewing decisions
  - providing advice
  
- ✓ **Non-statutory boards** - the authority to establish is a decision by a Minister or Cabinet. A CEO can establish a non-statutory board where the board reports to the CEO.

The table below is a snapshot on who can establish a board, appoint members, and approve remuneration.

NTG entity	Authority to establish a board	Who appoints members and how?	Who approves member remuneration?	Where are board responsibilities, member qualifications and appointment term
<b>STATUTORY BOARD</b>	Legislation	Administrator by settled Instrument of appointment <b>OR</b> Minister by Instrument of appointment	Minister if remuneration is consistent with the Determination (s.10 AMSORE Act) <b>OR</b> Administrator if remuneration is <b>not</b> consistent with the Determination (s.11 AMSORE Act)	Legislation  Terms of Reference (where required)
<b>NON-STATUTORY BOARD</b> with at least one member external to NTG	Cabinet or Minister	Cabinet or Minister by Letter of Appointment or Consultancy.	Cabinet or Minister	Terms of Reference

## 3. Remuneration and other entitlements

This Chapter provides advice on remuneration and other entitlements of board members. The process to remunerate members is managed by the NTG agency responsible for administering the board.

### 3.1. Authority to remunerate board members

Under the [Assembly Members and Statutory Officers \(Remuneration and Other Entitlements\) Act 2006](#)<sup>2</sup> (AMSORE Act) the Administrator of the Northern Territory has the power to set remuneration and other entitlements for statutory bodies that fall under the definition of “a body, whether incorporated or not, established by a law of the Northern Territory for a public purpose”. Remuneration rates are listed in the [Statutory Bodies Classification Structure Determination](#)<sup>3</sup>, a legal document setting the entitlements for members of statutory board.

Select NT legislation sets remuneration for its own board members, and in these instances the AMSORE Act does not apply.

### 3.2. Statutory Bodies Classification Structure Determination

In the Determination, statutory bodies/boards are sorted into three classes as summarised below. Those statutory boards already classified are listed in a document entitled ‘NTG Statutory Bodies by Classification’ available on the [NTG Board Remuneration website](#)<sup>4</sup>.

#### Class A - Governing and Management Boards

- Level A1 Senior Commercial and Assets Management
- Level A2 Major Facilities / Assets Management and Commercialisation
- Level A3 Local Facilities and Land Management

Governing and Management Bodies provide guidance, direction and control of the organisation for which they are responsible and/or manage specific facilities or assets. They may be required to set performance goals, ensure corporate compliance and management accountability, and/or endorse strategic plans and approve operating budgets. An example of a **governing body** is the **Nitmiluk (Katherine Gorge) National Park Board** established under the [Nitmiluk \(Katherine Gorge\) National Park Act 1989](#)<sup>5</sup>.

#### Class B - Quasi-Judicial Boards

- Level B1 Senior Appeals / Important Government Process
- Level B2 Appeals and Review / Determination of Important Rights
- Level B3 Senior Registration and Assessment
- Level B4 Registration and Practice

Quasi-judicial bodies determine standards, monitor and regulate practices, grant licences, investigate complaints, review decisions and/or make judgements. An example of a **quasi-judicial body** is the **Mental Health Review Tribunal** established under s.118 of the [Mental Health and Related Services Act 1998](#)<sup>6</sup>.

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<sup>2</sup> <https://legislation.nt.gov.au/Legislation/ASSEMBLY-MEMBERS-AND-STATUTORY-OFFICERS-REMUNERATION-AND-OTHER-ENTITLEMENTS-ACT-2006>

<sup>3</sup> [https://dcm.nt.gov.au/\\_data/assets/pdf\\_file/0007/252187/determination-2012.pdf](https://dcm.nt.gov.au/_data/assets/pdf_file/0007/252187/determination-2012.pdf)

<sup>4</sup> <https://cmc.nt.gov.au/supporting-government/boards-and-committees/remuneration-of-government-boards>

<sup>5</sup> <https://legislation.nt.gov.au/Legislation/NITMILUK-KATHERINE-GORGE-NATIONAL-PARK-ACT-1989>

<sup>6</sup> <https://legislation.nt.gov.au/Legislation/MENTAL-HEALTH-AND-RELATED-SERVICES-ACT-1998>

## Class C - Advisory and Review Boards

Level C1	Critical Issues
Level C2	Expert High Impact
Level C3	Ministerial Assistance

Advisory and Review Bodies generally provide an advisory, coordination, policy development, or project management role. They may make recommendations to Government on policies, plans and practices or issues referred to the board for comment. An example of an **advisory body** is the **Crime Victims Advisory Committee** established under s.16 [Victims of Crime Rights and Services Act 2006](#)<sup>7</sup>.

The Determination is separated into four sections:

- PART 1** (Definitions) includes definitions of 'business of a body' and 'travelling time', amongst others.
- PART 2** (Remuneration) outlines how to calculate entitlements for time spent attending and travelling to meetings, and for conducting business of the body. Outlines who is **not** entitled to sitting fees, but are still entitled to travelling allowance and other expenses under Part 3.
- PART 3** (Travelling Allowance and Expenses) includes an allowance for accommodation and travel equivalent to that of a public sector employee. Expenses 'reasonably' incurred above this rate require approval of the Chair and production of receipts. When the Chair is claiming expenses, CEO approval is required.

**SCHEDULE** outlines amounts of the sitting fees by classification.

### 3.3. Travel entitlements

Travel must be consistent with the NTG Travel Policy Framework, which requires final travel details to be acquitted within 10 working days of travel. Travelling **time** must be calculated and approved in accordance with the Determination.

The Australian Taxation Office requires a travel diary to be kept for travel of six or more consecutive nights outside Australia, regardless of the purpose of travel and irrespective if it is only official travel, or official and private travel combined. A board member is considered an employee for Fringe Benefits Tax (FBT) purposes. As such, the NTG agency should be mindful of FBT implications if a board member is allowed to combine official and private travel.

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<sup>7</sup> <https://legislation.nt.gov.au/Legislation/VICTIMS-OF-CRIME-RIGHTS-AND-SERVICES-ACT-2006>

## 4. Payment methods

This Chapter provides advice on methods to pay board members. Sections 4.1 to 4.3 were compiled in 2019 in consultation with the Department of Corporate and Digital Development who consulted with the Australian Taxation Office on this matter.

### 4.1. Arranging payment to statutory board members

Board members are generally appointed as ‘individuals’ who provide a service to the board as individuals, rather than as a representative of the body that nominated them, or of their own business, where applicable. When determining the service relationship, reference to the instrument of appointment and/or terms of engagement is required.

The [Taxation Administration Act 1953 \(Cth\)](#)<sup>8</sup> (sections 12-35 and 12-45 of Schedule 1) imposes an obligation on the paying entity (the NTG) to withhold an amount from salary, wages, commission, bonuses or allowances it pays to an individual as an employee or office holder (i.e. PAYG withholding).

Consequently, remuneration of statutory board members (i.e. office holders) **must** be paid through the NTG PIPS payroll system irrespective of the period they are appointed. The board member will be issued with a PAYG Payment Summary in respect of payments received.

Payment through PIPS also ensures the obligation (if applicable) to pay superannuation guarantee is met. Information on how the superannuation guarantee component is calculated, is outlined in section 4.4.

### 4.2. Arranging payment to non-statutory board members

The payment method for a non-statutory board member will depend on whether the member is regarded as an employee or independent contractor for the purposes of the *Taxation Administration Act 1953 (Cth)*. When making this determination, reference should be made to [Taxation Ruling TR2005/16 Income tax: Pay As You Go – withholding from payments to employees](#)<sup>9</sup>, which contains detailed discussion on the various indicators the Courts have considered in establishing whether a person engaged for services, provides such services in their capacity as an employee or independent contractor. A member who holds an Australian Business Number (ABN) may, depending on the circumstances, still be an employee for tax purposes.

If after due consideration, a non-statutory board member is regarded as a common law employee as defined in Taxation Ruling TR2005/16, the member must be paid through PIPS for the reasons outlined in section 4.1 above.

In the event the member is regarded as an independent contractor for tax purposes, the member is to be set up as an Accounts Payable vendor, and will be required to submit a tax invoice to facilitate payment through NTG’s Accounts Payable system. A member who is registered for GST is entitled to charge GST on the supply of their services. If the member fails to quote a valid ABN or provide a valid Statement by a Supplier, PAYG withholding at the highest marginal tax rate will occur in accordance with tax legislation.

### 4.3. Remitting payments to a member’s principal employer

A member may be required to pay all or part of the sitting fees to their principal employer to reimburse the employer for time taken off from normal duties in order to attend board meetings.

To facilitate this, the board member must provide a completed ‘Direction to Pay’ form (Appendix 1 of this Handbook) confirming and directing the remuneration to be paid to their employer (i.e. paid into the

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<sup>8</sup> <https://www.legislation.gov.au/Details/C2022C00123>

<sup>9</sup> [TR 2005/16 | Legal database \(ato.gov.au\)](#)

employer's bank account). In this situation, the payment made directly to the employer will not be subject to PAYG withholding. If all remuneration is paid to their employer, no PAYG payment summary will be issued to the board member. The principal employer should not submit an invoice under these circumstances.

Payment is made through the NTG PIPS payroll system by way of electronic funds transfer into their employer's nominated bank account, irrespective of the period they are appointed.

The Superannuation Guarantee, if eligible, will still be paid to the member's nominated superannuation account. Section 4.4 below explains how to calculate the superannuation component.

## 4.4. Superannuation

The [Superannuation Guarantee Ruling SGR2005/1](#)<sup>10</sup> sets out superannuation guarantee requirements pursuant to the [Superannuation Guarantee \(Administration\) Act 1992 \(Cth\)](#)<sup>11</sup>. Where applicable, superannuation is paid over and above the daily rate of remuneration.

Individuals engaged wholly or principally for their labour, whether an employee or an independent contractor, are entitled to the superannuation guarantee where the payment in a calendar month is \$450 or more. The Superannuation Guarantee (SG) is calculated on a monthly basis, and is paid into an employee's complying superannuation fund or retirement savings account on a quarterly basis. The PIPS payroll system automatically calculates the superannuation component.

To calculate how much SG is payable, the member's earnings each month are multiplied by the SG rate listed in the table below. For example, board member XYZ is paid sitting fees over a three month period as follows:

- January \$500, February \$700, March \$600 = \$1800.
- As earnings in each month are \$450 or more, SG payable is  $\$1800 \times 9.5\% = \$171$ .
- However, if earnings for board member XYZ in one of the three months (e.g. March) was less than \$450, the earnings for March would not be included in the calculation of the SG, in which case the amount of SG would be  $\$1200 \times 9.5\% = \$114.00$ .

SG rates listed below, are published on the [Department of Treasury and Finance Superannuation Taxation Information website](#)<sup>12</sup>:

Year	Rate
2021-22	10.0 %
2022-23	10.5 %
2023-24	11.0 %
2024-25	11.5 %
From 1/7/2025	12.0 %

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<sup>10</sup> [SGR 2005/1 | Legal database \(ato.gov.au\)](#)

<sup>11</sup> [http://www5.austlii.edu.au/au/legis/cth/consol\\_act/sga1992430/s19.html](http://www5.austlii.edu.au/au/legis/cth/consol_act/sga1992430/s19.html)

<sup>12</sup> <https://treasury.nt.gov.au/df/superannuation/other-superannuation-arrangements>

## 5. Selecting nominees

This Chapter provides advice on methods to selecting individuals eligible for nomination, and issues to consider to determine their eligibility to become a member of a board.

For statutory boards, member composition appears in relevant legislation, or in a Terms of Reference. For non-statutory boards, member composition appears in a Terms of Reference.

### 5.1. Individuals eligible for nomination

Individuals eligible for appointment to NTG boards include the following:

- Australian citizens
- Individuals granted permanent resident status
- Individuals granted a Regional Sponsored Migration Scheme Visa
- New Zealand citizens with a Special Category visa that allows them to remain and work in Australia indefinitely.
- NTPS employees can be appointed as a 'community' member but will be subject to CEO approval. Further information is outlined in section 6.3.2 below.

Visa holders can be nominated if their visa is current for the term of appointment.

### 5.2. NTG EOI Board Register

The NTG Expressions of Interest (EOI) Board Register is tool used by NTG agencies to search for individuals suitable for nomination to vacancies on boards. The Register holds the Curriculum Vitae (CVs) and Registration Forms from individuals interested in becoming a board member.

Anyone can register through the [NTG Careers in Government website](#)<sup>13</sup>. Completion of the registration form indicates agreement for CVs to be accessible by NTG agencies for this purpose only. Registration does not guarantee appointment to a board.

Agencies cannot use CVs for any other purpose unless the registrant has given written permission to do so.

### 5.3. Considerations when selecting nominees

In general, if the Government is to rely on the decisions made, or advice provided by boards, it is critical people with the appropriate skills are appointed to ensure the board can discharge its obligations. Board composition should reflect the Territory's diverse population demographic as far as possible.

Members are not appointed to solely represent the views of a particular stakeholder or interest group, even though they may have been nominated by a specific group. Members are still required to be loyal to the Crown, and recognise government policies and practices.

When determining suitable nominees, the responsibilities of the board and any of the following should be considered:

- individual holds required skills, knowledge or experience to actively participate in deliberations
- ability to commit the time required (consider individual's other commitments)
- understanding of the objectives, roles and obligations of the board

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<sup>13</sup> <https://jobs.nt.gov.au/Home/Search>

- awareness of any real, perceived or potential conflicts of interest
- experience in relevant commercial and business sectors
- understanding of accountability relationships
- ability to think and act strategically
- has a good reputation, integrity and credibility
- Chairs should hold a thorough understanding of good governance and knowledge of general management principles
- for high level boards, members hold superior knowledge of the industry but are sufficiently distant to avoid conflicts of interest.

### 5.3.1. Criminal history checks

**Governing, Management and Quasi-judicial statutory boards:** These members should be above reproach, therefore criminal history checks are mandatory for members of boards managing a budget, or whose decisions impact an individual or their work rights. Applications are available through on the [SAFE NT website](#)<sup>14</sup>. Consideration will be given to the need for intermittent updates of criminal histories for members on a board for more than four years, or another suitable period of time. Legal practitioners and serving police officers are already required to have a criminal history check, so this process is not required to be duplicated for their appointment to boards.

**All other boards:** Criminal history checks are optional, however agencies should consider the nature of the board and the need for either a full criminal history check, or a signed Statutory Declaration stating the individual does not have a criminal history relevant to the activities of the board that may render them unsuitable as a member, or that would influence the Minister's decision to appoint them.

### 5.3.2. Working with Children Clearance (Ochre card)

A Working with Children Clearance is mandatory when a board is involved in children or youth-related matters. It is required to be sighted prior to nomination. Applications available on the SAFE NT website.

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<sup>14</sup> <https://forms.pfes.nt.gov.au/safent/>

## 6. Appointment of members

This Chapter provides information relating to the appointment and resignation of members. It also includes information relating to NTPS employees appointed to boards.

### 6.1. Authority to appoint

**Statutory boards** – Northern Territory legislation indicates whether the Administrator or a Minister holds the authority to appoint statutory board members.

**Non-statutory boards** – Ministers or Cabinet have the authority to appoint members to a non-statutory board where the composition of the board includes external members.

### 6.2. Forms requiring completion upon appointment

New members will receive a letter of appointment from the Minister. To establish a payment record, forms requiring completion by new members are listed below. The NTG agency official administering the board submits these forms and proof of identification to DCDD:

- ✓ **Commencement checklist for new board/tribunal member** – mandatory.
- ✓ **Board/Tribunal member payment details form** – mandatory for members receiving remuneration upon appointment and re-appointment.
- ✓ **Proof of identity** – mandatory – driver's licence, birth certificate or extract, passport.
- ✓ **Emergency contacts form** - mandatory.
- ✓ **ATO tax file number declaration form** – optional.
- ✓ **ATO superannuation choice of fund form** – optional. Members are entitled to the superannuation guarantee where payment in a calendar month is over \$450.

Other forms requiring completion in certain circumstances include:

- ✓ **Claim for payment forms** – for lodgement when members are entitled to a daily rate of remuneration.
- ✓ **Direction to pay form** – mandatory for members required to remit payments to their principal employer – form at Appendix 1 of this Handbook. Further advice is outlined in section 4.3.
- ✓ **Declaration of personal interests form** – mandatory for management boards, and as-required for other boards – example form at Appendix 2 of this Handbook. Further advice is outlined in section 8.4.1.

#### 6.2.1. AGS numbers

Board members receive an AGS number for each board they are appointed to. The primary driver to have an AGS is to maintain a record of payment and to provide legislative compliance; that is, to produce payment summaries, and to pay tax, etc. Upon re-appointment, board members will be asked to update the *Board/Tribunal member payment details form*, in order for AGS numbers to remain the same, and to check bank details or superannuation funds have not changed.

#### 6.2.2. Resignation

Members should submit a letter of resignation to the Minister who appointed them. Payment summaries are sent out after the end of the financial year, regardless to the actual separation date.

## 6.3. Government employees appointed to NTG boards

The role of a public sector employee on a board may involve acting as a conduit to the Minister concerning the board and its affairs, or representing Government's position on matters under consideration by the board. The employee should be aware of Government's policy imperatives and should not present a personal opinion or position contrary to the Minister's directives or the Government's policy agenda.

The Determination states that public sector employees are appointed to a government board as a nominee of the Minister or the NTG agency CEO, either:

- by virtue of the Act,
- at the Minister's discretion,
- by virtue of their office (*ex-officio*), or
- as a member of the Northern Territory community.

The Determination includes advice on those public sector employees not entitled to remuneration "unless the member does not receive any salary in that capacity for the relevant period".

### 6.3.1. NTPS employees appointed in an *ex-officio* capacity

An *ex-officio* member is a member by virtue of holding another office or position. For statutory boards, legislation will state if a government position is required to be a member. For non-statutory boards, the Terms of Reference states member composition, including *ex-officios*.

Where a public sector employee is a member of a government board as a nominee of the Minister or CEO in an *ex-officio* capacity, it is necessary for them to be clear about the nature of their role on the board as a Government representative, and of the reporting relationship (if any) with the Minister and/or CEO. The role might include acting as a conduit to the Minister on board-related matters, or representing government's position on matters under consideration by the board. The employee should be aware of government's policies and should not present a personal opinion or position contrary to the Minister's directives or government's policy agenda.

Public sector employee members are not remunerated for their role on a board; rather their role on a board is remunerated through their existing office or position in government.

### 6.3.2. NTPS employees appointed as a community member

Where an NTPS employee is appointed to a board as a 'member of the community', their relationship with the responsible CEO and Minister should be no different to other board members. With CEO approval, NTPS employees may be employed in the NTPS under two or more separate contracts of employment at the same time; refer to clause 38A (multiple employment arrangements) of the [Public Sector Employment and Management Act 1993](https://legislation.nt.gov.au/en/Legislation/PUBLIC-SECTOR-EMPLOYMENT-AND-MANAGEMENT-ACT-1993)<sup>15</sup>. Clause 19 of the [NTPS Code of Conduct](#)<sup>16</sup> requires CEO approval in writing before engaging in 'paid' employment outside the employee's normal duties. Consideration is given to the time commitment required, and the potential to impact the employee's normal duties.

Public sector employees are not generally required to seek CEO approval to undertake unpaid or voluntary activities. However, where there is potential for a conflict of interest to arise (whether real, perceived or potential), the employee must discuss the issue with the CEO and accept the CEO's decision as to whether the employee can continue with the activity.

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<sup>15</sup> <https://legislation.nt.gov.au/en/Legislation/PUBLIC-SECTOR-EMPLOYMENT-AND-MANAGEMENT-ACT-1993>

<sup>16</sup> [OCPE Employment Instruction 12 - Code of Conduct](#)

## 7. Induction

New board members should receive an induction on the board's role and responsibilities, statutory obligations imposed on members, standards of accountability expected of them, and administrative arrangements. The induction may be in the form of a mix of written briefings, verbal briefings, web links and training in relation to any of the following matters:

### Statutory framework

- Legislation establishing the board
- AMSORE Act 2006
- Statutory Bodies Classification Structure Determination
- Settled instrument of appointment
- Other relevant legislation, some of which are listed in section 10 below.
- General law obligations

### Policy guidelines or statements

- Government policy frameworks
- Current ministerial directives
- Terms of Reference
- Annual Reports and/or Financial Statements
- Code of conduct specific to the board, or NTPS Code of Conduct where relevant
- Conflict of interest policy (reporting and management)

### Board information

- Minutes of meeting for past four meetings
- How to submit a formal notice of absence
- History and forward plans of the board
- Issues briefing
- Calendar of planned public meetings
- Board's reporting framework and any applicable accounting framework
- Details on members' tenure and circumstances that may lead to removal from office
- Press clippings and media releases relating to the board
- Government and/or industry reports
- Performance audits
- This Boards Handbook for Members

## 8. Stakeholder responsibilities

Boards are accountable to the Minister responsible for the legislation establishing the board. Depending on the nature of the board, consideration should be given to the need to set the board's direction and goals, develop action plans to help achieve goals, review progress at regular intervals, or report to Government.

Responsibilities common to many government boards include:

- **To be strategic** – adopt a long term perspective, anticipate and respond to changes in the external environment, and integrate various corporate functions such as staffing matters and other matters to do with the smooth functioning of the board.
- **To be stakeholder focused** – be aware of community and stakeholder views and needs, balance the demands of different stakeholders.
- **To ensure the highest standards** of accountability and ethical behaviour.

The nature and extent of some of these obligations is set out below, and is of a general nature only. Should particular issues arise in relation to the duties and responsibilities of board members, specific advice should be sought.

### 8.1. Minister

Ministers are ultimately responsible to Parliament and the community for the operation of all NTG boards and agencies within their portfolios. The relationship between a Minister and a statutory board will be set out in the enabling legislation, or in the Terms of Reference for non-statutory bodies.

Ministers have the authority to do numerous things relating to boards, some of which appear below:

- establish the board
- approve a Terms of Reference
- appoint and terminate members
- set remuneration
- refer matters to a board for consideration
- approve tabling of annual reports or financial statements
- review the performance of the board

#### 8.1.1. Statutory approvals of certain financial arrangements

Where NTG boards are constituted by legislation and have a commercial focus, there may be a legislative requirement for the board to obtain 'external' approval in the case of certain investment activities, borrowings, leases and other financial arrangements (for example, prior approval by the responsible Minister). Specific advice needs to be sought by the board where this is the case.

## 8.2. Chief Executive Officer

The Chief Executive Officer (CEO) responsible for the NTG agency administering legislation that establishes a board, is the primary link between the board and the agency that supports the board. The CEO should work closely with the Chair at all times.

Some NTG boards will be subject to a legal requirement for financial audits, whether by the NT Auditor-General or an external auditor. Even where there is no specific legal requirement for audits, the Chair and CEO are responsible for ensuring proper accounting for all board expenses and expenditure.

Responsibilities of the CEO include the following:

- observe enabling legislation
- maintain proper internal controls and management information systems
- employ and manage staff to assist the board
- implement board decisions
- prepare annual strategic plan, including organisational performance targets and budgets
- determine boards defined as Key Management Personnel
- prepare reports to the board or Minister
- present organisational reports, submissions and budgets to the board
- operational, administrative and marketing functions, including approving Chair's expenses
- monitor board activities to ensure meeting hours and paid work are consistent with the objectives and functions of the board
- communicate board policies and priorities to staff
- communications to the board from the NTG agency

### 8.2.1. Key Management Personnel and Related Party Disclosures Policy

The following information regarding related party disclosures was provided by the Department of Treasury and Finance (DTF).

Where a board is designated as Key Management Personnel (KMP), all members with voting rights are required to complete a *Related Party Disclosure Declaration form*. This Declaration Form will be provided by the administering agency.

NTG Agency Financial Statements are prepared in accordance with the Australian Accounting Standards. From 1 July 2016, the Australian Accounting Standards Board (AASB) extended the scope of AASB 124 Related Party Disclosures to include *not-for-profit* government entities. DTF has released [Related Party Disclosures Policy and Guidance](#)<sup>17</sup> documents to assist stakeholders to understand the requirements of AASB 124.

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<sup>17</sup> [https://treasury.nt.gov.au/dtf/financial-management-group/treasurers-directions?queries\\_tdsearch\\_query=related+party+disclosure&search\\_page\\_464673\\_submit\\_button=Submit&current\\_result\\_page=1&results\\_per\\_page=0&submitted\\_search\\_category=&mode=](https://treasury.nt.gov.au/dtf/financial-management-group/treasurers-directions?queries_tdsearch_query=related+party+disclosure&search_page_464673_submit_button=Submit&current_result_page=1&results_per_page=0&submitted_search_category=&mode=)

The functions and responsibilities of a statutory body as set out in enabling legislation will assist agencies to determine whether a statutory board is given strategic decision-making responsibility, or has influence on the financial performance of the board or agency, and as such, be designated as Key Management Personnel (KMP).

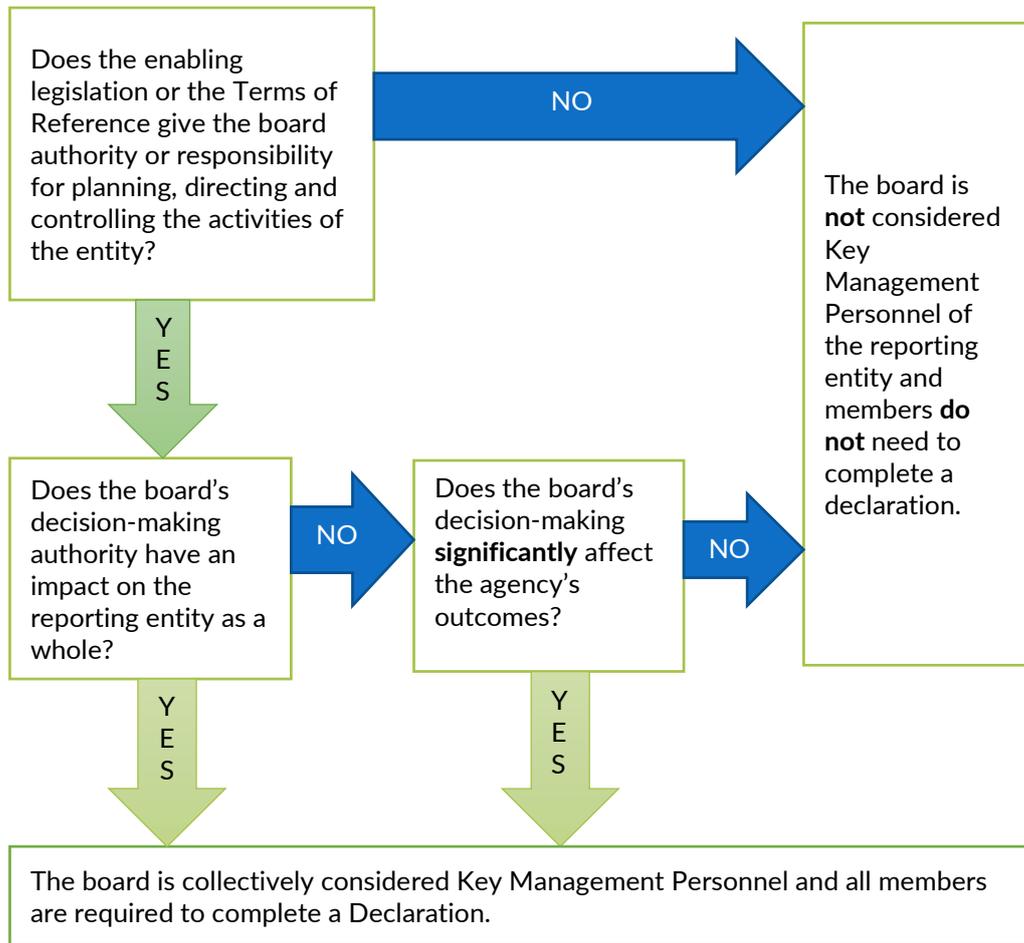
Generally, if a statutory board prepares separate general purpose financial statements, then the board may be deemed as KMP for that reporting entity and as such will not be recorded in the administering agency's annual financial reports. A key test is whether the board or individual members have authority to influence strategic decision making and financial performance of the reporting entity as a whole.

Generally, when a board has been assessed as meeting the KMP criteria, all members with voting rights will be captured as a KMP, and will be required to fill out a declaration form. Silent members are unlikely to be designated as KMP.

- **Governing and Management Boards** guide and direct the organisation for which they are responsible and/or manage specific facilities or assets. They may be required to set performance goals, ensure corporate compliance and management accountability, and/or endorse strategic plans and approve operating budgets. Examples of these include [Aboriginal Areas Protection Authority](#), [Superannuation Trustee Board](#), and [Darwin Waterfront Corporation Board](#). Governing and management boards may be assessed as KMP where they are charged with authority for strategic decision-making and have the ability to influence the financial performance of the reporting entity.
- **Quasi-judicial Boards** determine standards, monitor and regulate practice, grant licences, investigate complaints, review decisions and/or make judgements. Examples of these include [Building Appeals Board](#), [Development Consent Authority](#), and [the Mental Health Review Tribunal](#). These boards will generally not have authority for strategic decision-making and influencing the financial performance of the reporting entity, and as such they may not be classified as KMP. However, agencies are required to assess this on a case-by-case basis to determine whether they will be designated as KMP.
- **Advisory and Review Boards** generally advise and make recommendations on policies, plans, practices or issues referred to the board for comment. Examples include [Planning Commission](#), [Procurement Review Board](#), [Water Resources Review Panel](#) and [Youth Justice Advisory Committee](#). These boards will generally not have authority for strategic decision-making and influencing the financial performance of the reporting entity, and as such they may not be classified as KMP. However, agencies are required to assess this on a case-by-case basis to determine whether they will be designated as KMP.

**Non-statutory Boards** will generally not have authority for strategic decision-making or influencing the financial performance of the reporting entity. The functions, responsibilities or powers of a non-statutory board set out in a terms of reference (TOR) set by Government will assist agencies in determining whether a non-statutory board is given strategic decision-making responsibility, or has influence on the financial performance of the reporting entity as a whole, and as such be designated as KMP.

Agencies are to assess whether these boards meet the criteria to be designated as KMP as per flowchart below.



### 8.3. Chair

The Chair must be conversant with the business of any government agency relevant to the board’s activities. The Chair may be invited to have input into the member selection process, however final selection rests with the relevant Minister or Administrator of the NT.

Some NTG boards will be subject to a legal requirement for financial audits, whether by the NT Auditor-General or an external auditor. Even where there is no specific legal requirement for audits, the Chair and CEO are responsible for ensuring proper accounting for all board expenses and expenditure.

Responsibilities of the Chair include the following:

- lead and direct the activities of the board
- set the board agenda
- conduct board meetings; facilitate the flow of information and discussion
- determine necessary approach for members with real, perceived or potential conflicts of interest
- ensure the board operates effectively and complies with all legal and statutory obligations
- liaise with, and report to the Minister when required
- ensure proper financial accountability
- give approval prior to the conduct of business outside of meetings by members – Determination clause 1
- approve travel or other expenses reasonably incurred – Determination clauses 7(c) and 10(b)
- approve time spent by member preparing for a meeting in excess of normal preparation time – Determination clauses 7(d) and 10(c)
- review board and organisational performance.

## 8.4. Board Member

The primary legal responsibilities of board members are set out in the board's enabling legislation. Subordinate legislation such as regulations, by-laws and rules may also include board responsibilities, or govern the actions of the board. [NTG legislation](#)<sup>18</sup> is available on the internet.

Board members perform a wide range of critical roles for Government. Collectively, their decisions may determine personal, business or property rights, manage government assets or facilities, or be an important source of new ideas and advice to Government.

Board members assume a position of public trust and confidence by virtue of their role in public administration. They must act ethically so as to support the continuance of public trust in the Government and to observe the highest standards of behaviour and accountability, particularly in the context of financial responsibilities and custody, and control of public assets. It is vital members understand the scope of the task required in order to discharge their responsibilities and contribute in a meaningful and constructive way to the functioning of the board.

Aside from the public expectations and confidence placed in board members as trustees of public monies and assets, other responsibilities placed on board members include:

- requirements of the enabling legislation;
- general law obligations, such as the duty to take reasonable care; and
- policy statements, whether specific to the body, or more generally.

Board members have fundamental responsibilities to:

- act within enabling and other relevant legislation, applicable common law (that is, the law as established by the Courts), and accepted principles of good governance,
- be loyal to the Crown and recognise government policy and practices,
- be well briefed about the business of the board in order to make informed decisions and/or provide relevant advice,
- be collectively responsible for board decisions, and support and adhere to those decisions,
- ensure minutes are a true and accurate record of the meetings,
- act in accordance with ethical principles applying to the public sector,
- exercise prudence and be economical with public resources, and
- exercise a dissenting view on decisions inappropriately minuted, however once a board decision is taken, all members are expected to respect and abide by the decision.

### 8.4.1. General law obligations

As government board members will often be in a similar position to a company director, they may be subject to fiduciary obligations. Fiduciary duties are obligations of trust and confidence owed by a fiduciary to another person. The law usually recognises certain relationships to be fiduciary relationships, including those of director and company, and employer and employee.

The Courts may also find other relationships to be fiduciary in nature, particularly where one party stands in a position of trust and confidence in relation to the other, and is bound to place the interests of the other before their own personal interests.

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<sup>18</sup> <https://legislation.nt.gov.au/en/LegislationPortal/Acts/By-Title>

Board members acting in a fiduciary capacity have an obligation to:

➤ **Act honestly and to exercise powers for their proper purposes**

Members must act openly and honestly at all times in the performance of their duties. They must ensure they do not use information acquired by virtue of their position to gain, directly or indirectly, an advantage for themselves or any other person.

➤ **Avoid conflicts of interest**

Members **must** avoid conflicts of interest, whether real, potential or perceived, between their duties to the board and their personal interests, or to their duties to others. Those members who have, or acquire, a direct or indirect personal or pecuniary interest in a matter under consideration by the board **must** disclose full details of the interest, to the board as soon as reasonably practical.

Board Administrators should consider the need for members to make prior declarations of interests through completion of a Declaration of Personal Interests Form (Appendix 2 or similar).

The member must not seek, either directly or indirectly, to influence the outcome of any deliberations by the government board, or any of its officers, in relation to any matter to which he or she may have a conflict. If there is any doubt as to whether a conflict of interest exists, the member should err on the side of caution and declare the interest.

The Chair decides if it is necessary for the member to excuse themselves from the meeting when any discussion or voting on the particular issue is taking place. The board makes a decision on how to manage the conflict of interest, and records the reasons for that decision.

Ways to manage conflicts of interest include:

- ✓ determining if the member will:
  - not take part in any discussion of the board relating to the interest,
  - not receive any relevant board papers,
  - be absent from the meeting room when any discussion or vote is taking place, and/or
  - not vote on the matter.
- ✓ divesting the interest creating the conflict - for example, the sale of shares,
- ✓ severing the connection - for example, resigning from a position in another organisation giving rise to a conflict, or
- ✓ resigning from the government board.

➤ **Act in good faith**

As a result of their position of trust, members' actions and standards of behaviour are required to be exemplary. Members should act *bona fide* in the interests of the government board and not in their own interest, or to pursue personal agendas. Members are expected to act in the best interests of the board, the Northern Territory, and the community.

➤ **Exercise diligence, care and skill**

Members must ensure they exercise due diligence, care and skill in the performance of their duties. They must also take reasonable steps to inform themselves about the functions of the board, its business and activities, and the circumstances in which it operates. A member must give close attention to board affairs.

A member should obtain sufficient information and advice, and exercise an active discretion at all times, to enable them to make conscientious and informed decisions. A member **must** also maintain confidentiality of board discussions, and of materials and information provided, including government board papers.

## 8.4.2. Delegations

Where a government board is established by legislation, members can only delegate powers or duties of the body if the enabling legislation contains a specific provision to that effect.

Any such delegation cannot apply to a matter that goes beyond the legal powers conferred upon the board, that is, a board cannot delegate to another party, including a subsidiary company of the board, the right to engage in an activity on behalf of the board, which the board cannot itself engage in.

Where a government board has made a delegation under its enabling legislation, details of the delegation should be set out in the board's annual report or other accountable document.

## 8.4.3. Proxies and Observers

Enabling legislation or TOR of an NTG board should state if appointment of a proxy is permitted to participate in a meeting of the board in lieu of an absent member. Persons who attend a board meeting as an observer (for example, NTG agency officials, specialists, financial advisers, and invited attendees) are not able to vote at board meetings.

Since board members are appointed by Ministers for their individual skills, sending a proxy should be an exception to the rule, rather than regular practice. The TOR should outline whether proxies may attend, and whether they are entitled to remuneration.

## 8.4.4. Board members contesting elections

### 8.4.4.1. Pre-selected candidates

Statutory and non-statutory board members pre-selected as candidates in an NTG election are required to declare to the Chair any real, perceived or potential conflicts of interest with the business of the board. The member is to accept the decision of the Chair as to whether they can attend all or part of a board meeting in which the conflicted issue is considered. Where the Chair is the pre-selected candidate, the declaration is made to the CEO of the agency administering the board.

Once a pre-selected candidate has been announced as a candidate, the member must resign where s.21(1) applies.

### 8.4.4.2. Declared candidates

S.21(1) of the [Northern Territory \(Self-Government\) Act 1978 \(Cth\)](https://www.legislation.gov.au/Details/C2014C00573)<sup>19</sup> states that a person is not qualified to be a candidate for election as a member of the Legislative Assembly if, at the date of nomination, the person holds an office or appointment (other than a prescribed office or appointment) under a law of the Commonwealth or state or territory; OR is employed by the Commonwealth, State or Territory, or by a body corporate, AND the person is entitled to remuneration in respect of that office, appointment or employment. Refer to the Act for full details. Should the member not be successful in gaining a seat in the Legislative Assembly, they are entitled to re-apply through the normal selection process.

S.21 does not apply to members of non-statutory bodies, however it is recommended these members step aside from their board position and if required, seek their own legal advice in this instance.

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<sup>19</sup> <https://www.legislation.gov.au/Details/C2014C00573>

### 8.4.5. Ownership of I.T. and other equipment

Any equipment such as i-Pads, laptops, tablets, phones, etc. issued to board members for the purpose of undertaking board duties will remain the property of the NT Government, and need to be returned at the completion of the member's term of appointment.

### 8.4.6. Protection of Intellectual Property

Any information or documents acquired during the course of a board member's appointment to an NT Government board **must not** be used for any purpose other than the legitimate purposes of the board. Any Intellectual Property that results from the work or activity of a government board is the property of the NT Government. The Code of Conduct provides practical guidelines on the use of information by public sector officers, and may also be a useful guide for board members.

### 8.4.7. Branding and use of NTG logos

The [Flag and Emblem Act 1985](#)<sup>20</sup> controls the use of the Northern Territory Coat of Arms, flag and emblems. Before using the NT Coat of Arms, flag and other emblems, including the Desert Rose and the NT Government logo, NT Agencies should seek advice from the Protocol Unit in CM&C.

## 8.5. Board Administrator

Board Administrators provide administrative support to the board, including some or all of the following responsibilities:

- provide advice on accountability standards and legislative requirements
- prepare documentation relating to member appointments and member remuneration
- provide induction material to new members
- schedule meetings
- organise member travel
- ensure a quorum is met
- take minutes of the meetings, which are usually retained as permanent Government records, and provide an important historical reference collection for future boards and for Government generally
- process sitting fees, travel allowance and other entitlements
- assisting the Chair in ensuring proper financial accountability
- register or record in meeting minutes, declarations of real, potential or perceived conflicts of interests
- organise approvals to use NT Coat of Arms, NT Flag, Desert Rose, NTG logo or other emblems.

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<sup>20</sup> <https://legislation.nt.gov.au/Legislation/FLAG-AND-EMBLEM-ACT-1985>

## 9. Indemnities and insurance

All NTG board members must exercise reasonable care, skill and diligence in carrying out their responsibilities. It is best practice for boards to:

- implement a risk management framework, including appropriate internal controls that align with the purpose and strategy of the organisation
- periodically review how the organisation is managing its risk, and
- ensure reporting obligations are met.

In some circumstances, the Territory may issue indemnities to board members or extend the Territory's self-insurance arrangements.

Below is general information on indemnities and insurance applicable to boards. Further details can be found in the Treasurer's Directions<sup>21</sup> on Guarantees and Indemnities, and Insurance Arrangements on the Department of Treasury and Finance website.

### 9.1. Indemnities

An indemnity is an undertaking to compensate, protect or insure another person or entity against future financial loss, damage or liability.

Members of individual boards may, through the board's enabling legislation, have the benefit of a statutory protection from civil and criminal action for things that they do in good faith as a board member.

In certain circumstances, specific indemnities may be given to board members to provide protection from personal liability, subject to the endorsement of the relevant portfolio Minister where he or she forms the view that the Territory would benefit from the giving of an indemnity and agreement by the Treasurer (s.34 [Financial Management Act 1995](#))<sup>22</sup>.

### 9.2. Insurance

There are two types of insurance arrangement agencies may enter into to manage insurable risks: self-insurance and commercial insurance.

Government Owned Corporations are not included under the NTG self-insurance arrangements.

Northern Territory-appointed board members may be covered for the insurable risks related to workers compensation and professional liability.

#### 9.2.1. Workers compensation

If a board is established under NT Government legislation, NT appointed board members are covered in relation to workers compensation under the NTG's self-insurance arrangements as if they were NTPS employees while undertaking their statutory functions.

Where a board is not established under NT Government legislation, NT appointed board members may be insured for workers compensation either through NTG self-insurance arrangements or commercial insurance arrangements, where a net benefit to the Territory can be demonstrated, and agreement is provided by the Treasurer.

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<sup>21</sup> [Treasurer's Directions | Department of Treasury and Finance](#)

<sup>22</sup> <https://legislation.nt.gov.au/Legislation/FINANCIAL-MANAGEMENT-ACT-1995>

## 9.2.2. Professional liability

Professional liability relates to claims for financial loss, bodily or personal injury or property damage arising from an act, error or omission in the performance of professional services.

Where an agency deems appropriate, and a net benefit can be demonstrated to provide professional indemnity cover to NT appointed members of councils, boards and committees, application may be made to the Treasurer for inclusion under the NTG's self-insurance arrangements and or to purchase commercial insurance.

## 9.2.3. Directors' indemnity insurance (commercial boards)

For government boards operating in a commercial environment (for example, utility boards), directors' and officers' indemnity insurance goes some way to indemnifying directors and officers in relation to claims for loss or damage made against them in their capacity as directors or board members.

Commercial insurance provides a mechanism for transferring financial risk to a third-party private insurer, in exchange for the payment of a premium. The commercial entity remains liable for the loss incurred, but the insurer pays the financial losses associated with the liability. Directors and officers should seek and rely on private legal advice as to its efficacy.

## 10. Relevant legislation

Aside from specific legislation applying to the board, members may also have responsibilities and obligations placed on them by other legislation. Each Act should be consulted individually regarding applicable responsibilities and obligations. Board Administrators should arrange briefing materials for members on any legislation relevant to the responsibilities of the Board, however some relevant information is provided below.

### 10.1. Independent Commissioner against Corruption Act 2017

Under the [Independent Commissioner against Corruption Act 2017](#)<sup>23</sup>, the role of the Independent Commissioner against Corruption (ICAC) is to address wrongdoing in, or connected with public administration. The Office of the ICAC is responsible for receiving, identifying and investigating reports of corruption and misconduct by government/public bodies, public officers and those who receive government money, including contractors and grant recipients.

Public officers and public bodies have **mandatory reporting obligations**; they **must** report suspected improper conduct.

The definition of a **public officer** includes amongst others, the holder of an office established under an Act who is appointed by the Administrator or a minister, and a member, officer or employee of a public body.

The definition of a **public body** includes, amongst others:

- board, commission, tribunal, or other body established under an Act with judicial or quasi-judicial functions in the performance of its deliberative functions,
- body, whether incorporated or not, established under an Act,
- body whose members, or a majority of whose members, are appointed by the Administrator or a minister, and a
- government owned corporation

Agency CEOs, board chairs, board members and board administrators should familiarise themselves with the following publications available on the [ICAC website](#)<sup>24</sup>:

- [Public officers and mandatory reporting](#)<sup>25</sup> includes relevant definitions and the types of conduct reportable to ICAC, which also appear in the ICAC Act.
- [Mandatory Reporting Directions and Guidelines for Public Officers](#)<sup>26</sup> sets out the requirements for a public body or public officer to report suspected improper conduct, even if it has already been reported to another public body or public officer such as the Ombudsman or NT Police.
- Whistleblower protections<sup>27</sup>

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<sup>23</sup> [Independent Commissioner against Corruption Act 2017](#)

<sup>24</sup> [ICAC website](#)

<sup>25</sup> [ICAC-Fact-Sheet Public-officers-and-mandatory-reporting V4.pdf \(nt.gov.au\)](#)

<sup>26</sup> [https://icac.nt.gov.au/data/assets/pdf\\_file/0004/1084369/Mandatory\\_Reporting-Directions\\_Guidelines\\_FA.pdf](https://icac.nt.gov.au/data/assets/pdf_file/0004/1084369/Mandatory_Reporting-Directions_Guidelines_FA.pdf)

<sup>27</sup> [https://icac.nt.gov.au/data/assets/pdf\\_file/0009/797769/ICAC-Fact-Sheet\\_Whistleblower-Protections\\_V3.pdf](https://icac.nt.gov.au/data/assets/pdf_file/0009/797769/ICAC-Fact-Sheet_Whistleblower-Protections_V3.pdf)

## 10.2. Public Sector Employment and Management Act 1993 – Code of Conduct

The NT Public Sector Principles and Code of Conduct provide guidance on a range of ethical and moral issues that may affect public sector employees from time to time. The [NTPS Code of Conduct](#)<sup>28</sup> may also be useful guidance for NTG board members.

Members of NTG boards assume a position of public trust and confidence. As such, the public expect board members to follow certain ethical principles, including respect for the law and the system of government, respect for persons, integrity, diligence and economy and efficiency.

## 10.3. Information Act 2002

The [Information Act 2002](#)<sup>29</sup> gives a statutory right of access by any person to government information, including personal documents held by the public sector organisations including statutory bodies, except where an exemption applies. Public sector organisations defined under the Act include, amongst others:

- Government Business Division or Government Owned Corporation (personal information only),
- Statutory Corporation,
- Person appointed, or a body established by or under an Act, or by the Administrator or a Minister,
- Person holding an office or position under an Act,
- Court and tribunals of the Territory (subject to limitations), and
- Person or body declared by the Regulations to be a public sector organisation.

The *Information Act* aims to protect personal information in the public sector by applying Information Privacy Principles (IPPs) that deal with the collection and handling of personal information by public sector organisations. Personal information means government information from which a person's identity is apparent, or is reasonably able to be ascertained. The purpose of the IPPs is to allow access to the right information to the right people for the right reason in the right way at the right time.

The IPPs do not apply to personal information that is:

- published in a publication generally available to members of the public,
- on a public register,
- in an archive available to the public,
- recorded information of permanent value that forms part of NT Archives, or
- is in a collection of a library, art gallery or museum.

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<sup>28</sup> [Employment instruction number 12 - Code of conduct](#)

<sup>29</sup> <https://legislation.nt.gov.au/Legislation/INFORMATION-ACT-2002>

## 10.4. Ombudsman Act 2009

The Office of the Ombudsman is established by the [Ombudsman Act 2009](#)<sup>30</sup>. The Ombudsman has jurisdiction with respect to an 'administrative action' taken by an authority defined in the Act, including statutory boards established for a public purpose.

An 'administrative action' is any action relating to a matter of administration, including:

- a decision or an act,
- the failure or refusal to take a decision or do an act (including a failure to provide a written statement of reasons for a decision),
- the formulation of a proposal or intention, and
- the making of a recommendation including one made to the Administrator or a Minister.

The Ombudsman may investigate informally, or exercise formal powers such as the power to require persons to give statements, documents and information. At the conclusion of the investigation, the Ombudsman will form an opinion as to whether the administrative action to which the investigation related:

- appears to have been taken contrary to law,
- was unreasonable, unjust, oppressive or improperly discriminatory,
- was in accordance with a rule of law or a provision of any law in force in the Northern Territory, or a practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory,
- was taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations,
- was a decision made in the exercise of a power or discretion, and the reasons for the decision were not, but should have, been given,
- was based wholly or partly on a mistake of law or fact, or
- was simply wrong.

The Ombudsman may then give a report to the administering NTG agency and the responsible Minister recommending that particular action be taken. If the recommended action is not taken, a report can be provided to the Chief Minister and Parliament.

Exclusions in the Act include:

- ✓ any action by a person while discharging a responsibility of a judicial nature, and
- ✓ a decision made by the Development Consent Authority under the [Planning Act 1999](#)<sup>31</sup> where there is an existing right of review or appeal under that Act.

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<sup>30</sup> <https://legislation.nt.gov.au/Legislation/OMBUDSMAN-ACT-2009>

<sup>31</sup> <https://legislation.nt.gov.au/Legislation/PLANNING-ACT-1999>

## 10.5. Work Health and Safety (National Uniform Legislation) Act 2011

The [Work Health and Safety \(National Uniform Legislation\) Act 2011](#)<sup>32</sup> implements national workplace health and safety laws in the NT. The Act provides that the primary duty of care for the health and safety of workers lies with a 'Person Conducting a Business or Undertaking' (a PCBU). The NT Government is considered a PCBU undertaking its business through various agencies and statutory authorities.

NTG board members defined as '**workers**' under the Act (whether employees or in some other capacity) are required to take reasonable care of their own health and safety, and to take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons.

They should understand work health and safety risks for which they are responsible; and have an awareness of any future health and safety implications that might arise for other officers or workers within the organisation, as a result of decisions made by the board.

Depending on the nature and functions of the board, members defined as '**officers**' under the Act are required under s.27 to exercise due diligence to ensure the NTG complies with its workplace health and safety duties or obligations under the Act. Advice should be sought in this regard where the board members make, or participate in making, decisions that affect the whole, or a substantial part of the business of the entity for which it is responsible (if any), or have the capacity to significantly affect the entity's financial standing.

Board members who are also employees of the NTG, are entitled to be indemnified by the NTG for any liability arising out of a tort (for example, negligence) committed by them in their role on that board, for which the NTG would be vicariously liable, unless the member's actions constitute serious and wilful or gross misconduct pursuant to s.22A of the [Law Reform \(Miscellaneous Provisions\) Act 1956](#)<sup>33</sup>.

## 10.6. Competition and Consumer Act 2010 (CTH) – restrictive trade practices

This section only applies to government boards with trading activities.

The [Competition and Consumer Act \(Cth\) 2010](#)<sup>34</sup> (Part VI - Restrictive trade practices) prohibits restrictive trade practices. Restrictive trade practices include price fixing, boycotts, misuse of market power, exclusive dealing, re-sale price maintenance, and contracts arrangements or understandings that lead to a substantial lessening of competition in a particular market. These practices generate anti-competitive outcomes.

The Crown, in right of the Northern Territory, is bound by Part IV of the Act to the extent that it carries on a business. Therefore, NTG boards that are part of the Crown are also bound by Part IV. Government boards not part of the Crown continue to be bound by Part IV as before.

Members of NTG boards to which the Act applies, need to ensure that:

- they are familiar with the provisions of Part IV, so as to avoid engaging in unlawful behaviour in that capacity,
- the board complies with its obligations under Part IV and the Competition Code, and
- the board implements an adequate trade practices compliance program to minimise the risk of contravening Part IV. This should be developed in consultation with the board's legal advisers.

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<sup>32</sup> <https://legislation.nt.gov.au/Legislation/WORK-HEALTH-AND-SAFETY-NATIONAL-UNIFORM-LEGISLATION-ACT-2011>

<sup>33</sup> <https://legislation.nt.gov.au/Legislation/LAW-REFORM-MISCELLANEOUS-PROVISIONS-ACT-1956>

<sup>34</sup> <https://www.legislation.gov.au/Details/C2021C00528>

**PART 1: EMPLOYER STATEMENT**

(for completion by the employer of a board member or office holder)

I, ..... (full name), .....  
 ..... (position title) being an authorised representative of  
 ..... (Company/Organisation name) state that  
 ..... (Board member’s full name) is required to remit to this organisation all  
 monies received as sitting fees associated with membership of  
 ..... (board name).

Signed by company representative .....

Date .....

Name of company representative .....

Signed by witness .....

Date .....

Witness name .....

**PART 2: DIRECTION TO PAY – BOARD MEMBER PAYMENTS**

I, .....(full name), being a board member of  
 .....(title of Board), hereby authorise payment of all sitting fees in  
 respect of my role as a board member to be made to .....  
 (Employing company or organisation) at .....  
 (Address and ABN of company or organisation), unless varied by me in writing.

Amounts are to be remitted to the organisation’s bank account, as follows:

Bank Account Name: .....

Bank Account BSB: .....

Bank Account Number:.....

Signed by board member ..... Date: .....

Witness ..... Date: .....

Witness name.....

**NB: Board member will not be liable for income tax for amounts remitted above.**

**Strictly Confidential**

## Declaration of Personal Interests Form

**Note: Some of the categories of interest entered in this form may not be relevant for all boards.**

To <insert name of statutory body>

Particulars of my personal pecuniary and other relevant interests and those of my immediate family of which I am aware are set out in the attached form.

I undertake to advise you should a situation arise where an interest of mine or an interest of a member of my immediate family of which I am aware, whether that interest is pecuniary or otherwise, conflicts, or may reasonably be thought to conflict, with my public duty.

.....  
Name (block letters)

.....  
Signature

.....  
Position

.....  
Date

**Strictly Confidential**

**Declaration of personal interests of board member and immediate family members  
(including spouse and dependent children)**

**Real Estate**

Real estate in which a beneficial interest is held (other than principal place of residence). Include location, owner, purpose for which held:

.....

**Shareholdings (where total value exceeds \$5000)**

Registered shares, options and current applications (other than nominal shareholdings by way of qualification for membership of a credit union, building society or other co-operative society). Include owner of shares, company name, including holding companies and subsidiary companies if applicable.

.....

**Directorships in Companies**

List any directorships, whether remunerated or not. Include Director's name, company name, activities of company – whether public or private.

.....

**Partnerships, etc.**

Include name of person holding interest, nature of operations, nature of business interest:

.....

**Investments**

Investments in bonds, debentures, savings or investment accounts with banks or other financial institutions (exceeding a cumulative value of \$5000). Include name of person holding investment, type of investment, body in which investment is held:

.....

**Other Assets**

List each asset valued at over \$5000 including collections. Household or personal effects and motor vehicles for personal use are to be excluded. Include Owner of asset and nature of asset:

.....

**Employment by a public or private company**

Exclude salary from principal public sector employment. (Person receiving income, nature and annualised amount of income):

.....

**Gifts, substantial sponsored travel or hospitality exceeding \$100 - Person receiving gift, nature of gift, etc.**

.....

**Liabilities**

Liabilities exceeding \$5000 other than mortgage over principal place of residence. Include name of person concerned, nature of liability, creditor.

.....

**Other Interests**

Include membership or office holding of an organisation other than an industrial or professional organisation, or a political party:

.....

## 11. Glossary of terms

**Administering Government agency** – a unit of government administration, also known as a department, that is responsible for providing an administrative service for Government boards and committees.

**Administrator** – The Administrator of the Northern Territory is an official appointed by the Governor-General of Australia to exercise powers and undertake responsibilities similar to that of a State Governor. The Administrator has a broad range of statutory powers under Northern Territory legislation, such as making regulations and appointments, in addition to having powers under the *Northern Territory (Self-Government) Act 1978*.

**Board Administrator** – is the officer responsible for administering a board or committee. Other titles used by agencies include Executive Officer, Business Officer, or Manager.

**Cabinet** – is the principal decision-making body of the Government and consists of all Government Ministers. Cabinet's role includes making high level Government policy decisions, approving the drafting and introduction of legislation in the Northern Territory Parliament, allocating financial resources, approving key appointments to Government boards, and setting the strategic directions of Government.

**Chair** – the presiding officer of the body, also known as the Chairperson or Chairman.

**Statutory Bodies Classification Structure Determination** – Legal Instrument signed by the Administrator that sets categories of boards for members' remuneration and other entitlements.

**Enabling legislation** – is the Act of Parliament that establishes a board.

**Non-statutory body** – a body established by Government decision and not by way of legislation. Responsibilities are often set out in a Terms of Reference document.

**Remuneration Tribunal** – an independent statutory body that undertakes inquiries into the remuneration and entitlements of key Office Holders, Local Court Judges and Members of the Legislative Assembly.

**Statutory body** – is defined in the AMSORE Act as a body (whether incorporated or not) established by a law of the Territory for a public purpose.