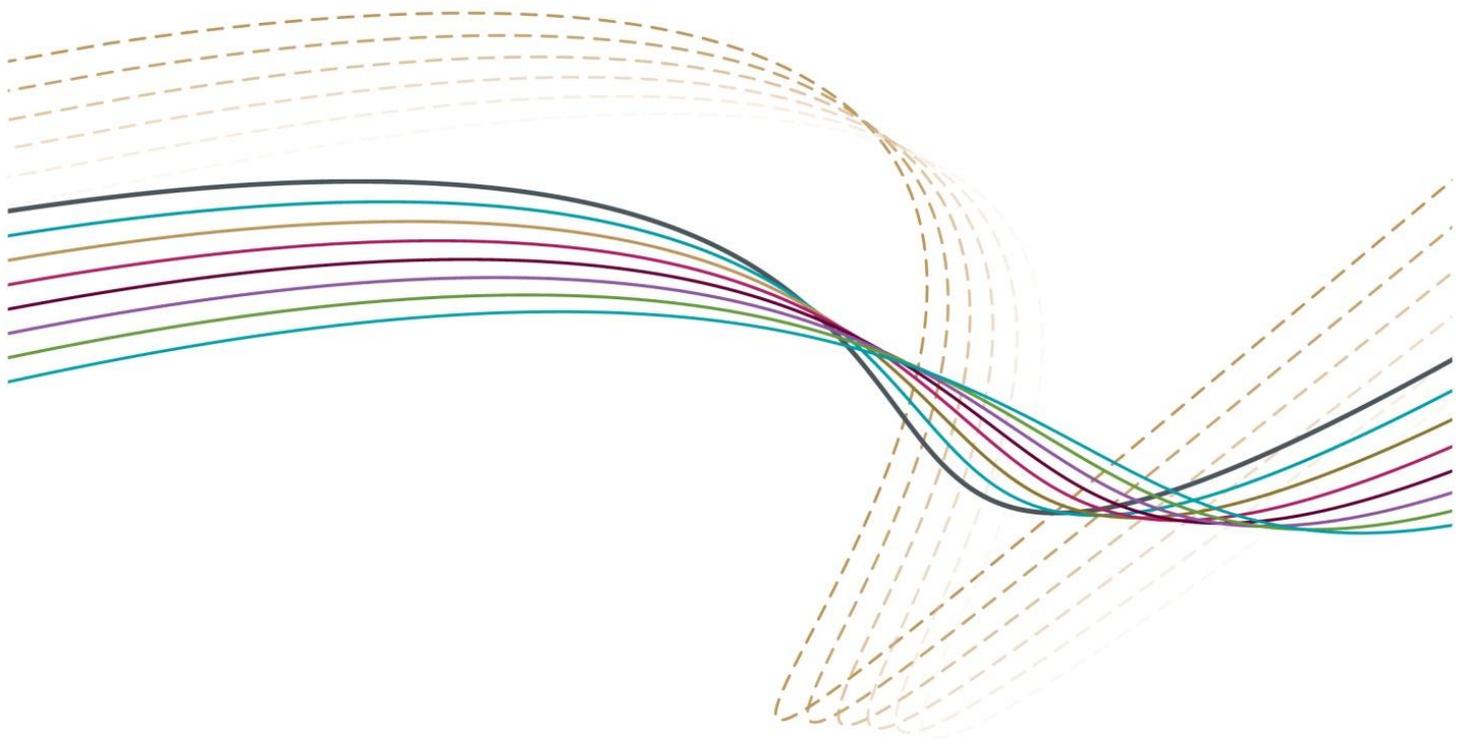


QUEENSLAND TREASURY

# Establishment of Statutory Bodies: Considerations and Contacts

Includes an enabling legislation checklist

April 2016



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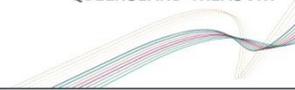
Content from the Establishment of Statutory Bodies: Considerations and Contacts should be attributed to:

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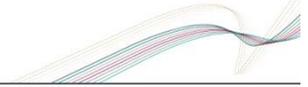
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## 1.0 Introduction

Statutory bodies are usually established to carry out specific functions which a Government considers may be more effectively performed outside a traditional departmental structure. The statutory body form is generally used when there is a need for:

- some operational independence from the State Government
- funding arrangements that are not reliant on the annual appropriations processes
- specific expertise on a governing board, or
- a separate legal entity.

There is a significant process which must be followed and considerations which exist when it is determined that a new statutory body is to be formed.

The purpose of this document is to assist departmental officers who have been tasked with establishing a statutory body. It outlines a number of the required steps involved, as well providing some useful contacts.

Officers involved with establishing a new statutory body are strongly encouraged to consult early with their Portfolio Contact Officer in the Department of the Premier and Cabinet and their Treasury Analyst in Queensland Treasury.

## 2.0 Public Interest Map policy

“An independent review of Queensland Government boards, committees and statutory authorities” took place between July 2008 and March 2009. The reviewers released two reports. The Part A report considered the framework of government bodies which existed at the time. It recommended a governance decision-making model for improving the relevance, efficiency and effectiveness of the roles and functions that government bodies performed. The Part B report finalised the governance decision-making framework and recommended a process for establishing any future government bodies.

The two reports provide useful information about different types and features of entity structures used in the Queensland public sector. Any officer involved in recommending the establishment of a new public sector entity should refer to these reports for guidance on the most appropriate structure for the intended purpose.

The majority of recommendations contained in the reports were adopted, culminating in the Public Interest Map (PIM) policy being developed by the Department of the Premier and Cabinet.

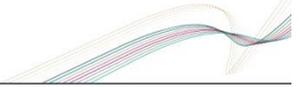
The PIM is the public sector governance model for improving the relevance, economy, efficiency, effectiveness and accountability for non-departmental government bodies in Queensland (excluding companies and government owned corporations).

In order to establish any new government body outside a department, a Minister and/or department must prove there is a public interest case. The public interest case must address seven questions related to the following key themes:

- Why have a non-departmental government body? (Threshold Test)
- If justified, what form should it take? (Organisational Form Guide)
- How should it govern and be governed? (Good Governance Framework)

Ministers must seek the Premier's approval of the public interest case prior to proceeding with the new body's establishment.

Information about the PIM policy and development of a public interest case can be obtained from the Appointments and Constitutional Services area in the Department of the Premier and Cabinet or from <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/public-interest-map-policy.aspx>.



## 3.0 Board Appointments

If a board is to be appointed to the statutory body, then it is important that the right people are identified. The board should consist of members who have an appropriate mix of skills and experience which will enable the committee to perform all of its functions effectively. The required skill set of the board should be reviewed periodically in light of the prevailing circumstances of the agency. Ideally, as well as having experts in the field/s relevant to the functions of the statutory body, there should also be member/s with financial management experience.

To assist departments with identifying people suitable to be appointed to a board, the Department of the Premier and Cabinet maintains the Queensland Register of Nominees to Government Bodies – a confidential listing of people who are interested in being appointed to government boards and committees.

The register is used by Queensland Government agencies to search for members for new boards or when a position on a board or committee becomes available, and all Queenslanders can register to be considered for a position.

More information about the Register is available from the Appointments and Constitutional Services area in the Department of the Premier and Cabinet or <http://www.premiers.qld.gov.au/about-us/what-we-do/qld-nominees-register.aspx>.

Appointments to all government bodies, including those which are considered by Cabinet as a Significant Appointment submission (discussed below) and those made by a Minister rather than Cabinet, are subject to strict intra-government consultation requirements.

Ministers are required to raise all proposed appointments with the Premier in writing before the appointments are made. The Premier's approval is required if a Minister is proposing a total membership of an advisory body to exceed 12.

Members of the boards of statutory bodies are normally made by the Governor in Council. To obtain Governor in Council approval, an Executive Council Minute must be submitted and include information such as the curriculum vitae and remuneration of the proposed board member.

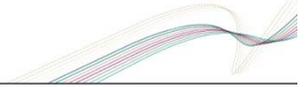
For information about the process for seeking approval for board appointments, including consultation requirements, refer to the Cabinet Handbook (in particular sections 5.1.7 and 6.2) and the Executive Council Handbook (in particular section 5.2.2), both of which can be accessed from <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks.aspx>.

## 4.0 Significant Appointments

Ministers are required to bring all 'significant' full-time and part-time appointment proposals to a government body to Cabinet for consideration. Appointments to a government body are significant if:

- the members, in connection with their role on a body, receive remuneration of any type from government funds, or
- members of the body are responsible for allocating government funds or resources, or
- they are appointments to regulatory and licensing bodies, commissions, industry tribunals and boards, consumer and other tribunals of appeal or redress, major research bodies, significant regional coordination or service delivery bodies, or bodies principally responsible for the natural and cultural heritage of the State, or
- the Premier, in consultation with the relevant Minister, considers they should be brought to the attention of Cabinet because of the pre-eminence of the body in question, its scope and/or influence or function, budgetary impact or other factor of whole of government interest.

For information about the process for seeking approval for significant appointments, as well as the consultation required, refer to the Cabinet Handbook (in particular sections 5.1.7 and 6.2) available from <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks.aspx>.



## 5.0 Board Remuneration

The Government has approved a standardised system for the remuneration of members of boards.

The document *Remuneration Procedures for Part-time Chairs and Members of Queensland Government Bodies* is designed to ensure that the Queensland Government provides appropriate payment for part-time chairs and members of government boards and committees.

A copy of the procedures can be found at <http://www.qld.gov.au/about/how-government-works/other-government-bodies/authorities-commissions/>

## 6.0 Industrial Relations

If the statutory body will be a 'corporation' for the purposes of section 51(xx) of the Commonwealth Constitution, it will be subject to the overriding jurisdiction of the *Fair Work Act 2009*. It is recommended that legal advice be sought regarding the industrial relations regime that will apply to the statutory body.

Advice may be sought from the Public Service Commission or the Office of Fair and Safe Work Queensland within Queensland Treasury.

## 7.0 Enabling Legislation

All statutory bodies are established via legislation, known as enabling legislation. Generally departmental officers will be responsible for developing the drafting instructions, and the legislation is then drafted by the Office of the Queensland Parliamentary Counsel.

When preparing drafting instructions or legislation to establish a new statutory body, there are a number of issues that must be considered to ensure the smooth operation of the agency, such as the role of the statutory body, the governing body, staff, committees, relationships with other agencies and application of other legislation.

To assist departmental officers in developing drafting instructions or legislation, Appendix 1 contains checklists of the common issues which should be considered.

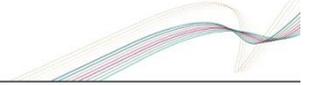
## 8.0 Financial Arrangements potentially requiring consequential amendments to the SBFA Regulation

The *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act) provides general borrowing and investment powers to statutory bodies where these are not contained in the statutory body's enabling legislation. The SBFA Act also provides for the Treasurer granting guarantees over statutory bodies' financial arrangements, general banking powers, and when statutory bodies may enter into derivative transactions and other financial arrangements.

In a number of instances, before a statutory body can enter into a particular financial arrangement under the SBFA Act, the statutory body must be listed in the *Statutory Bodies Financial Arrangements Regulation 2007* (SBFA Reg). For expediency, amendments to the SBFA Reg should progress in tandem with the enabling legislation so financial arrangement authorities are in place for when the statutory body commences operation.

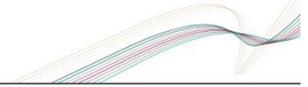
There are three types of financial arrangements which should be considered:

- borrowings – pursuant to the SBFA Act, statutory bodies may borrow under Part 5 or Part 7 of the Act. However, to be able to borrow under Part 5, the statutory body must be listed in Schedule 2 of the SBFA Reg.



If a statutory body borrows under Part 5 and from the Queensland Treasury Corporation, its borrowings are automatically guaranteed by the State.

- investment powers – the SBFA Act allows a statutory body to be allocated one of three categories of investment powers. The statutory body is then able to undertake investments permitted under the category without requiring further approval from the Treasurer. The statutory body must be listed in the SBFA Reg with its allocated investment powers. The approved investments are listed in the SBFA Reg under each category of investment power. However, if no category of investment power is allocated, statutory bodies can still invest, but only with the Treasurer’s approval.
- derivative transactions – a statutory body may enter into derivative transactions only if it is listed in Schedule 8 of the SBFA Reg and the Treasurer’s approval has been given to enter into the derivative transaction. The statutory body must be listed in the SBFA Reg before it can seek the Treasurer’s approval. Few statutory bodies have been allocated this power.



# Appendices

## Appendix A: Enabling Legislation Guide

### Introduction

All statutory bodies are established via legislation, known as enabling legislation. Generally departmental officers will be responsible for developing the drafting instructions for enabling legislation. The legislation is then drafted by the Office of the Queensland Parliamentary Counsel.

The purpose of this document is to assist departmental officers in the drafting process. It will also assist officers tasked with reviewing draft legislation.

Notes:

- Despite its very broad meaning under general law, for the purposes of this Guide, the term 'statutory body' is not intended to refer to an entity established under the Corporations Act 2001 or the Associations Incorporation Act 1981.
- This Guide has been prepared to assist in the drafting of legislation for a statutory body, and not other types of entities such as a public service office or a statutory authority. For further information about the differences between a statutory body and the other types of entities, refer to the Financial Accountability Handbook, Information Sheet 1.4 – Entity Types.

This Guide has been prepared to highlight some common issues which should be considered when officers are preparing drafting instructions (DI) or enabling legislation. There are some issues which should be considered as minimum contents, and these are designated by the bolded questions. Other issues should be considered in light of the circumstances of the particular statutory body and, where appropriate, addressed in the DI or legislation. Where issues raised are not relevant to the statutory body, no further action is necessary, though, for completeness, consideration could be given to documenting why the issues are not considered relevant.

**This Guide is NOT designed to be an exhaustive list of issues, and the particular needs of each body will need to be assessed on an individual basis.**

When preparing DI or legislation to establish a new statutory body (or where new legislation is being drafted for an established statutory body), there are a number of issues that must be considered to ensure the smooth operation of the agency. This section outlines a number of financial management and governance issues, grouped into the following broad areas:

- role of the statutory body
- for-profit or not-for-profit objective of the statutory body
- governing body
- chief executive officer (or equivalent)
- staff of the statutory body
- committees
- relationships (with the Minister, Commonwealth, accountable officers and other agencies)
- representing the Crown
- application of other legislation, and
- miscellaneous provisions.

Note: when preparing DI or legislation, the *Acts Interpretation Act 1954* should be considered. In particular, Part 7 of this Act governs the interpretation of functions and powers conferred by Acts, including the delegation of powers, the exercise of incidental powers, and powers of removal and suspension of office-holders.



## Role of the statutory body

The role of the statutory body reflects the reason for its creation. The legislation should clearly specify the function(s) of the statutory body, thus providing the governing body (generally a board) with a framework within which it can operate. The legislation must clearly specify what the body is able to do and, where appropriate, limit the role of the statutory body so the governing body is aware of the parameters within which it is designed to operate. A statutory body should be subject to a regular review to assess whether it is operating in accordance with its original role and functions and whether it remains relevant and appropriate.

The legislation should clearly specify the powers needed by the statutory body to operate effectively. For example, a statutory body may require powers to enter into contracts and acquire land. Consideration may also be given to whether certain powers/functions should only be undertaken with the approval of the Treasurer or Minister. Application of other public sector legislation (for example, the *Statutory Bodies Financial Arrangements Act 1982*) will also need to be considered, particularly with respect to the statutory body's ability to enter into financial arrangements.

Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>• Does the DI/legislation state the primary function(s) of the statutory body?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Should the DI/legislation state any secondary function(s) of the statutory body?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Does the DI/legislation state the powers of the statutory body? Powers that may be considered include:                             <ul style="list-style-type: none"> <li>○ power to enter into contracts</li> <li>○ power to employ staff</li> <li>○ power to engage consultants</li> <li>○ power to acquire and deal with property</li> <li>○ power to charge fees (where a statutory body is to charge fees, consideration should be given to the <i>National Competition Policy</i>, <i>Commercialisation of Government Service Functions in Queensland - Policy Framework</i>, and <i>Principles for Fees and Charges</i> (documents all available on the Queensland Treasury website <a href="http://www.treasury.qld.gov.au">www.treasury.qld.gov.au</a>))</li> <li>○ regulatory / enforcement / disciplinary powers</li> <li>○ power to impose penalties (where it is intended that the statutory body may impose penalties, compliance with the <i>Fundamental Legislative Principles</i> will need to be considered)</li> <li>○ power to undertake all activities to perform its functions</li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Should the DI/legislation specify any restrictions to powers provided? (e.g. may only act with a Treasurer/Minister approval)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Should the DI/legislation state where the statutory body can exercise its powers? (e.g. only operates in Queensland or can operate outside Queensland)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			



## For-Profit or Not-For-Profit objective of the statutory body

Whether an entity is ‘for-profit’ or ‘not-for-profit’ is significant as it has implications for the accounting treatments which apply to that entity and the policies it can adopt. *Accounting Policy Guideline 14 Determination of Not-For-Profit or For-Profit Entities* provides guidance to Queensland public sector entities when deciding whether they are a not-for-profit or a for-profit entity.

It is generally accepted that statutory bodies are constituted to provide a particular service for the community and therefore operate on a break even basis, with any surpluses going back into the statutory body to provide further services. Generally, a statutory body is not principally established to generate a profit (that is, it may be desired that the statutory body operates effectively and efficiently and does generate a profit, but it is not the principal objective), and therefore, by default, they are designated as not-for-profit. If the statutory body has a not-for-profit objective this should be reflected in the substance of its enabling legislation. For example, its objective would be to provide education and educational services for Queenslanders rather than provide a financial return to government.

Where it is intended that a statutory body has a commercial objective, it may be classified as a for-profit entity, and the substance of the enabling legislation would need to reflect the for-profit objective of the body. For example, the legislation should reflect its primary objective of the generation of profits and that profits are to be distributed to owners as opposed to being re-invested to improve services or to provide additional services. There may be taxation and dividend implications for an entity determined to be for-profit.

Once a determination has been made whether the statutory body is to be for-profit or not-for-profit, corporate documents, such as the strategic plan, annual report and financial statements should be prepared on a basis consistent with this determination.

Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>Does the DI/legislation clearly specify whether or not the principal objective of the statutory body is the generation of profit/surplus?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the DI/legislation specify various factors and indicators which would assist in determining the for-profit or not-for-profit status of the statutory body?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>If intended to be a for-profit statutory body, should the DI/legislation consider taxation and dividend implications? (refer to the National Tax Equivalent Regime)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			

## Governing body

The governing body of the statutory body is accountable for the management and performance of the statutory body in accordance with its enabling legislation, as well as any other applicable legislation (for example, the obligations under the *Financial Accountability Act 2009*).

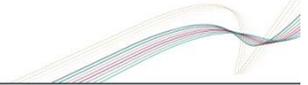
In rare instances, a single person will be the governing body. However, it is more common for a board to be appointed. Where this is the case, legislation should provide for issues such as how the board is to be appointed, remuneration, and board meetings. The enabling legislation should ensure that appropriate best practice governance arrangements are adopted in determining the operations, performance and procedures of the board.

The enabling legislation must be consistent with the requirements of the *Queensland Cabinet Handbook* concerning the appointment of members to a board, including the number of members appointed, the remuneration of members and the member appointment approval process.



Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>• <b>Does the DI/legislation outline conditions regarding the appointment of board members? Factors that may be considered include:</b></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should a chair and a deputy chair be appointed or elected? (e.g. chair is to be elected by a majority of board members or appointed by the Minister)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should board members require specific expertise, or must they meet specific criteria? (e.g. must have industry-specific experience)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should Governor-in-Council or Ministerial approval be required for board member appointments? (refer to the <i>Queensland Cabinet Handbook</i> to identify approval procedure of board members)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should the DI/legislation state the process and procedure for the appointment of board members?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should the DI/legislation specify the number of board members required (or a range)?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should a specified number of board members be independent of Government or be experts in their field?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should the DI/legislation require a State Government representative on the board?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should the DI/legislation specify the length of the term of appointment, and whether a board member can be appointed for multiple terms (i.e. reappointment)?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should the DI/legislation state who can remove a board member?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should the DI/legislation state the process and procedure to remove a board member?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should the DI/legislation specify the process and procedure for a member to resign from the board?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should criteria for disqualification from membership be outlined in the DI/legislation?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should the DI/legislation specify action to be taken if there is a board member vacancy?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should the DI/legislation deal with conflicts of interest?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>○ Should the DI/legislation state that board members should act honestly, ethically, in the interest of the statutory body and exercise reasonable care, skill and diligence?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Notes:</p>			





Question	Yes	No	N/A
Notes:			

## Chief Executive Officer (or equivalent)

The purpose, complexity and functions of the statutory body should be considered in determining whether a chief executive officer is required. In less complex statutory bodies the role could be amalgamated with other roles within the body. In other multifaceted statutory bodies a chief executive officer (or equivalent) would be appointed to undertake the day to day operations of the statutory body. This officer will also provide regular reports to the board.

Note: the Chief Executive Officer of a statutory body is not equivalent to the accountable officer of a department. As outlined in the Governing Body section of this Guide, it is the governing body that is accountable to the Minister and Parliament for the statutory body’s actions and performance. The Chief Executive Officer may be delegated responsibilities by the governing body, but is not ultimately responsible for the decisions of the statutory body.

Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>Is appointment of a chief executive officer necessary?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If so:			
<ul style="list-style-type: none"> <li>Should the DI/legislation set out the powers/functions of the chief executive officer?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the DI/legislation specify the employment conditions or arrangements for the chief executive officer? (e.g. is the chief executive officer appointed under the <i>Public Service Act 2008</i>, or the enabling legislation of the statutory body?)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the DI/legislation specify the appointment conditions of the chief executive officer? (e.g. qualifications, term of appointment, membership requirement of professional body)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the chief executive officer be able to delegate powers/functions to another officer of the statutory body? (may also consider whether there should be limits attached to the delegations or whether sub-delegations are permitted)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the DI/legislation specify arrangements if transferring from another public sector agency? (e.g. can benefits/entitlements be transferred and at the end of the chief executive officer’s term, can the officer transfer back to their original agency?)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			



## Staff of the statutory body

Staff will generally be appointed to the statutory body to assist the chief executive officer with delivering the services of the agency.

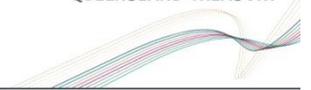
Note: if the statutory body is a 'corporation' for the purposes of section 51(xx) of the Commonwealth Constitution, it will be subject to the overriding jurisdiction of the *Fair Work Act 2009*. It is recommended that legal advice be sought regarding the industrial relations regime that will apply to the statutory body.

Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>Will the statutory body require the employment of staff?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If so:			
<ul style="list-style-type: none"> <li>Should the DI/legislation specify the employment conditions or arrangements for the staff of the statutory body? (e.g. are staff appointed under the <i>Public Service Act 2008</i>, or the enabling legislation of the statutory body?)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the DI/legislation specify arrangements if transferring from another public sector agency? (e.g. can benefits/entitlements be transferred?)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should legal advice be sought regarding the industrial relations regime that will apply to the statutory body?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			

## Committees

Due to the size and complexity of a statutory body, it may be beneficial for the governing body/board to establish committees (or similar, such as expert panels) to provide assistance to the board on specific topics. For example, if an industry registration body is established, a separate disciplinary committee may be formed, consisting of industry experts, to hear complaints from the public.

Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>Should the board be able to establish committees?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If so:			
<ul style="list-style-type: none"> <li>Should the DI/legislation specify the purpose of the committee?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should committee membership requirements be specified? (e.g. required skills or expertise, independence from board)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the powers/functions of the committee be specified? (e.g. can the board delegate to the committee?)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should reporting requirements to the board be outlined?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the board be bound by the recommendations of committees?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>Should the committee members be remunerated? (refer to <i>the Queensland Cabinet Handbook</i> for guidance about when committee members may be remunerated)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			

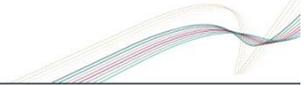
## Relationships

Statutory bodies will often have relationships with other State government officers or agencies. The primary relationship will generally be with the appropriate Minister, though there may also be a relationship with another agency (such as a service provider), the Commonwealth or in rare circumstances, a department, or the accountable officer of a department.

In terms of relationships with other agencies, it may be sufficient for these to be governed by non-legislative arrangements (for example, memorandum of understanding or funding agreements). This will enable the parties to change the arrangements without requiring a legislative amendment. It may be sufficient if the enabling legislation confers upon the statutory body the power to enter into such arrangements, subject to such approvals or controls as are considered necessary and appropriate.

Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>Should the DI/legislation specify the relationship that the statutory body has with the appropriate Minister? For example:                             <ul style="list-style-type: none"> <li>Should the Minister have the power to provide directions to the statutory body? (e.g. give directions if in the public interest)</li> <li>Should the Minister be able to demand information from the statutory body? (e.g. to monitor performance)</li> <li>Should the Minister be required to approve the plans of the statutory body? (e.g. the statutory body's strategic or operational plan may need to be approved, rather than submitted for information only)</li> <li>Should the Minister be required to approve the budget of the statutory body?</li> <li>Should the Minister be able to appoint an administrator if the statutory body is not performing, or becomes insolvent?</li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			
<ul style="list-style-type: none"> <li>Should the DI/legislation specify any relationships with the Commonwealth? (e.g. provision of performance information, particularly if dependent upon Commonwealth funding)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>





Question	Yes	No	N/A
Notes:			

## Application of other legislation

By convention, enabling legislation will explicitly state that the entity is a statutory body for the purposes of the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*. However, there is also a significant amount of other public sector legislation that must be considered to determine their application to individual statutory bodies. For example:

- *Right to Information Act 2009*
- *Public Interest Disclosure Act 2010*
- *Ombudsman Act 2001*
- *Integrity Act 2009*
- *Public Records Act 2002*
- *Information Privacy Act 2009*
- *Public Trustee Act 1978*, and
- *Crime and Misconduct Act 2001*.

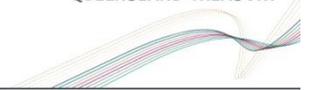
Generally other legislation will apply automatically due to the agency being a statutory body, though they may need to be explicitly referenced or, in rare circumstances, their application limited, in the enabling legislation.

Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>• Does the DI/legislation specify that the entity is a statutory body for the purpose of the <i>Financial Accountability Act 2009</i> and the <i>Statutory Bodies Financial Arrangements Act 1982</i>?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Does the DI/legislation specify application of other legislation to the statutory body?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			

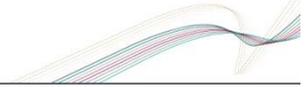
## Miscellaneous provisions

There may be other miscellaneous provisions contained within legislation which are critical for the smooth operation of the statutory body. Some of these are outlined below.

Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>• Should the DI/legislation allow for the making of subordinate legislation? (e.g. fee setting regulation)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Question	Yes	No	N/A
<ul style="list-style-type: none"> <li>Should any specific financial statement or annual report provisions be required? (statutory bodies will be required to comply with the <i>Financial Accountability Act 2009</i> regarding the preparation of financial statements and annual reports, however, requirements specific to the statutory body may be prescribed)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the DI/legislation contain provisions about any indemnities or guarantees provided to the statutory body?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the DI/legislation contain provisions which indemnify board members for acts done, or omissions made, while performing their duties diligently and conscientiously? (refer to the <i>Guideline for the Grant of Indemnities and Legal Assistance to State Employees</i>)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Is a sunset clause required (i.e. a provision for the expiry of the statutory body)? (refer to the <i>Public Interest Map policy</i>)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Are provisions required regarding how residual assets and liabilities will be dealt with on the winding up of the statutory body? (generally such provisions will not be necessary as statutory bodies are established as enduring bodies, however, if being set up for a specified period, then such provisions may be necessary)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li><b>Are any transitional provisions required?</b> (e.g. if new legislation is being drafted for an existing statutory body, or if several existing statutory bodies are being amalgamated)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li><b>Are consequential amendments required to other legislation?</b> (e.g. a specific exemption under the <i>Right to Information Act 2009</i> or inclusion in the <i>Statutory Bodies Financial Arrangements Regulation 2007</i>)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li><b>Are terms to be used in the DI/legislation defined?</b> (some terms are defined in the <i>Acts Interpretation Act 1954</i> and apply to all legislation, but terms specific to the legislation will need to be defined)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Should the DI/legislation require a regular review of the statutory body to ensure it is meeting its objectives, the objectives remain relevant and it continues to be 'fit for purpose'? (refer to the <i>Public Interest Map policy</i>)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Notes:</p>			



## Appendix B: Additional information

There are many resources available to assist officers who are responsible for drafting or reviewing statutory body enabling legislation. These resources include:

- the enabling legislation of other statutory bodies
- Cabinet Legislation and Liaison Officers  
(officers within each department who assist in the effective functioning and operations of Cabinet, Executive Council, legislative and parliamentary systems)
- Queensland Cabinet Handbook  
(part of the Governing Queensland suite of documents, available from [www.premiers.qld.gov.au](http://www.premiers.qld.gov.au))
- Queensland Legislation Handbook  
(part of the Governing Queensland suite of documents, available from [www.premiers.qld.gov.au](http://www.premiers.qld.gov.au))
- Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities  
(part of the Governing Queensland suite of documents, available from [www.premiers.qld.gov.au](http://www.premiers.qld.gov.au))
- Fundamental Legislative Principles: The OQPC Notebook  
(available from [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au))
- Internal legal units  
(many departments have internal legal units available to provide advice)
- Crown Law  
(provides legal services to Ministers, departments, statutory bodies and local authorities in a range of areas, refer to <http://www.justice.qld.gov.au/corporate/justice-agencies/crown-law>)
- Financial Accountability Handbook  
(provides practical guidance in the development, maintenance and review of financial management systems, available from <https://www.treasury.qld.gov.au/publications-resources/financial-accountability-handbook/index.php>)
- Accounting Policy Guideline 14 Determination of Not-For-Profit or For-Profit Entities  
(provides guidance to Queensland public sector entities when deciding whether they are a not-for-profit or a for-profit entity, available from <https://www.treasury.qld.gov.au/publications-resources/fin-reporting-req/part-c.php>)
- Information for Statutory Bodies – Overview of applicable legislation, policies and guidance documents  
(designed to assist members of a statutory body's board, management and administrative teams in assessing their obligations under the *Financial Accountability Act 2009* and subordinate legislation, available from [www.treasury.qld.gov.au](http://www.treasury.qld.gov.au))
- Public Interest Map policy  
(available from <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/public-interest-map-policy.aspx>)
- National Tax Equivalent Regime Manual  
(outlines the administrative and technical operating features of the National Tax Equivalent Regime, available from [www.ato.gov.au](http://www.ato.gov.au))
- Guideline for the Grant of Indemnities and Legal Assistance to State Employees  
(available from [www.psc.qld.gov.au](http://www.psc.qld.gov.au))

