



Australian Government

NATIONAL CAPITAL AUTHORITY

AUTHORITY CHARTER

June 2023

A handwritten signature in blue ink, appearing to read 'Terry Weber', written in a cursive style.

Terry Weber
Chair

20 June 2023

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AUTHORITY CHARTER

1 Overview

- 1.1 The National Capital Authority (that is, the Authority itself, also referred to as the board) provides the strategic leadership, oversight and direction of the National Capital Authority (NCA) in the execution of the NCA's statutory functions.
- 1.2 To identify actions, responsibilities and decisions of the Members of the Authority, acting as a board, the term 'Authority' is used. Other actions and responsibilities of the agency are identified by the acronym 'NCA'.
- 1.3 The Authority Charter (the Charter) is designed to provide further detail and guidance on the Authority's governing legislation, especially the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act), the *Public Governance, Performance and Accountability Rule 2014* (the PGPA Rule), and the *Australian Capital Territory (Planning and Land Management) Act 1988* (the PALM Act).
- 1.4 The Authority Charter is to be reviewed annually and may be amended or updated as required, by resolution of the Authority.
- 1.5 The Chair and Members of the Authority must comply with the Charter.
- 1.6 The Charter sets out the Authority's roles and responsibilities in executing its statutory functions under the PGPA Act and Rule, the PALM Act, other applicable legislation, and relevant government and good practice guidelines.

2 Establishment, membership and features of the Authority

- 2.1 The Authority is established by Section 5 of the PALM Act with membership details set out at Section 33 of that Act – see below for further details.
- 2.2 Under Section 5 of the PALM Act, the Authority is the accountable authority for the NCA for the purposes of finance law (as defined by the PGPA Act) and is therefore responsible for the management and expenditure of relevant money and assets held by the NCA. Under the PGPA Act, the NCA is a listed non-corporate Commonwealth entity. As such, the NCA is part of the Commonwealth, including in a legal sense. Section 5 of the PALM Act also prescribes that Authority members are 'officials' of the Authority for the purposes of the PGPA Act (as are NCA staff).
- 2.3 Under Section 46 of the PALM Act, the Chief Executive has the responsibility of managing the affairs of the Authority; although the Authority may give written directions to the Chief Executive about the management of the Authority's affairs, which the Chief Executive must comply with (with the exception of directions that relate to the Chief Executive's performance of functions or exercise of powers under the *Public Service Act 1999* [the Public Service Act]).
- 2.4 Under Section 47 of the PALM Act, the Chief Executive and the APS employees assisting the Chief Executive constitute a Statutory Agency, for the purposes of the Public Service Act. The Chief Executive is the designated Agency Head of the NCA for the purposes of the Public Service Act and all NCA employees are engaged under that Act. The NCA Chief Executive has sole responsibility for matters related to the Public Service Act.
- 2.5 The above arrangements apply from 1 July 2018, as enacted by the *Australian Capital Territory (Planning and Land Management) Amendment Act 2018*. This Act also provides for saving and transitional arrangements.

3 Duties and powers under the PGPA Act and Rule

3.1 As noted above, the Authority is the accountable authority of the NCA for the purposes of the PGPA Act. The PGPA Act confers duties and powers on an accountable authority, including that they:

Duty to govern (Section 15)

- (a) govern the entity in a way that promotes the proper use and management of Commonwealth resources (proper use is specified as the efficient, effective, economical and ethical use of public resources);
- (b) promote the achievement of the purposes of the entity;
- (c) promote the financial sustainability of the entity;
- (d) take into account the effect of decisions on public resources generally;

Duty to establish and maintain systems relating to risk and control (Section 16)

- (e) establish and maintain an appropriate system of risk oversight and management for the entity;
- (f) establish and maintain an appropriate system of internal control of the entity, including implementing measures to ensure officials of the entity comply with finance law;

Duty to encourage co-operation with others (Section 17)

- (g) encourage officials of the entity to co-operate with others to achieve common objectives, where practicable;

Duty in relation to requirements imposed on others (Section 18)

- (h) when imposing conditions on others to the use or management of public resources, take into account the risks associated with that use or management and the effects of imposing those requirements;

Duty to keep responsible Minister and Finance Minister informed (Section 19)

- (i) keep the responsible Minister informed of the activities of the entity;
- (j) give the responsible Minister or the Finance Minister any reports, documents and information in relation to those activities as that Minister requires;
- (k) notify the Minister as soon as practicable after the accountable authority makes a significant decision;
- (l) give the responsible Minister reasonable notice if the accountable authority becomes aware of any significant issue that may affect the entity;
- (m) notify the responsible Minister as soon as practicable after the accountable authority becomes aware of any significant issue;

Accountable authority instructions (Section 20A)

- (n) may, by written instrument, give instructions to an official of the entity about any matter relating to finance law;

Application of government policy (Section 21)

- (o) must govern the entity in a way that is not inconsistent with the policies of the Australian Government – relevant policies include:
 - Commonwealth Risk Management Policy;

- Commonwealth Governance Structures Policy
- Australian Government Charging Framework
- procurement-connected policies
- on-time payment policy for small business
- whole-of-government procurement arrangements
- whole-of-government ICT policy

Power in relation to arrangements and commitments (Section 23)

- (p) may, on behalf of the Commonwealth, enter into, vary and administer arrangements (ie contracts, agreements, deeds, etc), and approve a commitment of relevant money for which the accountable authority is responsible; and

Power to establish advisory boards (Section 24)

- (q) may establish an advisory board to assist the authority in governing the entity.

3.2 The PGPA Act also sets out other specific obligations of accountable authorities. The core aspects of these requirements are set out below. For further detail see the PGPA Act, the PGPA Rule and specific directions issued by the Finance Minister or Finance Secretary.

Corporate Plan (Section 35)

- (a) The accountable authority must prepare and publish an annual corporate plan in accordance with the relevant rule (PGA Rule, Section 16E), and provide a copy to the responsible Minister and the Finance Minister.

Budget Estimates (Section 36)

- (b) The accountable authority must prepare budget estimates in accordance with any directions provided by the Finance Secretary.

Performance (Sections 37 to 39)

- (c) The accountable authority must keep records that measure, assess and explain the entity's performance in achieving its purpose, and prepare and publish an annual performance statement in the annual report (see below).

Financial Statements (Sections 41 to 42)

- (d) The accountable authority must cause compliant and accessible financial accounts and records to be kept, and prepare compliant annual financial statements.

Audit Committee (Section 45)

- (e) The accountable authority must ensure that the entity has an audit committee which must be constituted and perform functions as prescribed by the rules.

Annual Report (Section 46)

- (f) The accountable authority must prepare and present an annual report on the entity's activities to the responsible Minister, for presentation to the Parliament, in accordance with the relevant rules.

Accountable Authority – Delegations (Section 110)

- (g) The PGPA Act provides that the accountable authority may, by written instrument, delegate to an official of the entity any power, function or duty under the PGPA Act

or Rule, including this power (ie sub-delegation) and with respect to powers, functions or duties conferred by the Finance Minister.

- (h) However, an accountable authority may not delegate its powers, functions or duties in relation to general duties and application of government policy, corporate plans, and performance, accounts and financial statement requirements.
- (i) For any power, function or duty so delegated, the accountable authority may give written direction as to the exercise of that power, the performance of that function or the discharge of that duty, with which a delegate must comply (including sub-delegates).

4 Responsibilities of 'officials' under the PGPA Act and Rule

- 4.1 In addition to the collective duties of an accountable authority outlined above, the PGPA Act requires individual 'officials' to act in accordance with the following (as defined in the PGPA Act – all Authority members are 'officials' under section 5(i) of the PALM Act). Officials who breach their general duties under the PGPA Act may be subject to sanctions including termination of employment or appointment.

Duty of care and diligence (Section 25)

- (a) An official is required to exercise their powers, perform their functions and discharge their duties with the same degree of care and diligence that a reasonable person would do in the same circumstance.

Duty to act honestly, in good faith and for a proper purpose (Section 26)

- (b) An official must act honestly, sincerely, and in a proper manner – meaning to make decisions, and manage or use public resources in an efficient, effective, economical and ethical way.

Duty in relation to use of position (Section 27)

- (c) An official must not improperly use their position to gain or seek to gain an advantage for themselves or any other person or to cause or seek to cause detriment to the entity, the Commonwealth or any other person.

Duty in relation to use of information (Section 28)

- (d) An official must not improperly use information accessed, gained or made available by virtue of their employment or position with a Commonwealth entity to gain or seek to gain an advantage for themselves or any other person or to cause or seek to cause detriment to the entity, the Commonwealth or any other person.

Duty to disclose interests (Section 29, and Sections 14 and 15 of the PGPA Rule)

- (e) An official who has a material personal interest that relates to the affairs of the entity must disclose details of the interest (the specific arrangements to meet this duty are set out below).

5 Functions and powers of the Authority under the PALM Act

- 5.1 The PALM Act provides for the following functions and powers of the Authority.

Functions of the Authority (Section 6)

(1) *The functions of the Authority are:*

- (a) *to prepare and administer a National Capital Plan;*

- (b) *to keep the Plan under constant review and to propose amendments to it when necessary;*
- (c) *on behalf of the Commonwealth, to commission works to be carried out in Designated Areas in accordance with the Plan where neither a Department of State of the Commonwealth nor any Commonwealth authority has the responsibility to commission those works;*
- (d) *to recommend to the Minister the carrying out of works that it considers desirable to maintain or enhance the character of the National Capital;*
- (e) *to foster an awareness of Canberra as the National Capital;*
- (f) *with the approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas; and*
- (g) *subject to subsection (2) and with the Minister's approval, on behalf of the Commonwealth, to manage National Land designated in writing by the Minister as land required for the special purposes of Canberra as the National Capital.*
- (2) *The functions of the Authority under paragraph (1)(g) do not include*
 - (a) *the management of the taking of water on National Land; or*
 - (b) *the regulation of the taking of water on National Land*

Ministerial directions (Section 7)

- (1) *The Minister may, by legislative instrument, give the Authority general directions in writing about the performance of the Authority's functions.*
- (2) *The Authority must comply with a direction under subsection (1).*
- (3) *Subsection (2) does not apply to the extent that the direction relates to the Authority's performance of functions or exercise of powers under the Public Governance, Performance and Accountability Act 2013.*
- (4) *Particulars of any directions given in a financial year must be included in the annual report of the Authority for that year.*

Powers of Authority (Section 8)

Subject to this Act, the Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Works in Designated Areas to be subject to Plan and approval by the Authority (Section 12)

- (1) *No works shall be performed in a Designated Area unless:*
 - (a) *the proposal to perform the works has been submitted to the Authority together with such plans and specifications as are required by the Authority;*
 - (b) *the Authority has approved the works in writing; and*
 - (c) *the works are in accordance with the Plan.*
- (2) *Subsection (1) does not affect section 5 of the Parliament Act 1974 [relating to works in the Parliamentary zone].*

6 Authority governance arrangements under the PALM Act

6.1 The governance arrangements of the Authority under the PALM Act are set out below. Some elements include the policy direction of the Authority in implementing the legislative provisions.

Members' appointment and acting arrangements (sections 33, 36, 37)

6.2 Members are appointed by the Governor-General.

6.3 The Chair may be appointed on a full-time or part-time basis. If the Chair is appointed on a full-time basis, the Chair is also the Chief Executive and there are four non-executive Members. If the Chair is appointed on a part-time basis, there is a separate Chief Executive and three other non-executive Members. Non-executive Members are appointed on a part-time basis.

6.4 No Member may be appointed for a period exceeding five years, as specified in the instrument of appointment. Members are eligible for re-appointment.

6.5 Section 37 details the arrangements for acting Authority members.

6.6 At this time, the Authority comprises a full-time Chief Executive and part-time Chair and other members.

Authority Members' remuneration and allowances (section 35)

6.7 Members are paid such remuneration as is determined by the Remuneration Tribunal, subject to the *Remuneration Tribunal Act 1973* (the Remuneration Act). The Remuneration Act specifies that the Remuneration Tribunal determines relevant remuneration at intervals of not more than one year.

6.8 The Tribunal determines the Chief Executive's remuneration as a full-time Office Holder and as 'total remuneration' – an amount that covers cash salary and other benefits. The determination specifies the total value an office holder is to receive by way of salary and other benefits in respect of carrying out the functions and exercising the powers of their office.

6.9 The remuneration of part-time Authority Members is determined by the Tribunal, also on an annual 'total remuneration' basis – ie an amount that covers cash salary and other benefits.

6.10 The annual amounts, as determined by the Tribunal, are payable on a fortnightly basis throughout each year. Part years are paid on a pro rata basis. The annual fee covers all activities undertaken by the Chair and other Members in performing their Authority duties.

Leave of absence (section 38)

6.11 The PALM Act provides that:

- (a) a full-time Member (ie the Chief Executive) has such recreation leave entitlements as are determined by the Remuneration Tribunal;
- (b) the Minister may grant a full-time Member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

6.12 The PALM Act provides that the Minister may grant a part-time Member leave to be absent from a meeting or meetings of the Authority.

Outside employment (section 39)

6.13 The PALM Act provides that a full-time Member (Chief Executive) shall not engage in paid employment outside his or her duties except with the approval of the Minister.

- 6.14 The PALM Act provides that if a part-time Member engages in paid employment that, in the opinion of the Minister, conflicts with the proper performance of his or her duties, the Minister may, in writing, direct the Member to cease that employment.

Resignation of Members (section 40)

- 6.15 A Member may resign by written instrument delivered to the Governor-General.

Termination of appointments (sections 41 and 42)

- 6.16 The Governor-General may terminate the appointment of a Member for misbehaviour or physical or mental incapacity.

- 6.17 The Governor-General may also terminate the appointment of a Member if:

- (a) a Member becomes bankrupt, applies to take the benefit of any law for relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (b) a full-time Member is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months;
- (c) a part-time Member is absent, except on leave of absence granted under section 38, from 3 consecutive meetings of the Authority;
- (d) a Member fails, without reasonable excuse, to comply with subsections 42(1), (2) or (3) [which deal with disclosure of interests – see below]; or
- (e) in the case of the Chairperson – the Chairperson fails, without reasonable excuse, to comply with section 29 of the Public Governance, Performance and Accountability Act 2013 (which deals with the duty to disclose interests) or rules made for the purpose of that section

Disclosure of interests (section 42)

- 6.18 A Member who has a direct or indirect pecuniary interest, or a perceived or actual conflict of interest, in a matter being considered or about to be considered by the Authority shall, as soon as possible after the relevant facts have come to the Member's knowledge, disclose the nature of the interest at a meeting of the Authority.
- 6.19 To assist Members fulfil their obligation, a forward agenda covering at least two meetings ahead is prepared and included in the papers for each regular meeting.
- 6.20 A disclosure shall be recorded in the minutes of the meeting and the Member shall not, unless the Minister or the Authority otherwise determines (see Section 16 of the PGPA Rule):
- (a) be present during any deliberation of the Authority with respect to that matter; or
 - (b) take part in any decision of the Authority with respect to that matter.
- 6.21 For the purpose of making such a determination by the Authority in relation to a Member who has made a disclosure, a Member who has a direct or indirect financial interest in the matter to which the disclosure relates shall not:
- (a) be present during any deliberation of the Authority for the purpose of making the determination; or
 - (b) take part in making the determination.
- 6.22 The above provisions are in addition to the duty of all members to disclose interests as required under Section 29 of the PGPA Act and Sections 14 and 15 of the PGPA Rule.
- 6.23 Against this background, the Authority has agreed that the following disclosure of interest arrangements will apply to all Members.

- (a) Each Member is required to complete a Declaration of Material Interests Form within 14 calendar days of appointment.
- (b) The Declaration is to be presented at the next available Authority meeting (so as to inform each other member of the Authority), recorded in the meeting minutes and retained as part of the Authority's records.
- (c) Members are only required to declare Material Interests if they are of such a nature that they may be seen to give rise to a conflict of interest or the perception of a conflict of interest in his or her capacity as a Member of the Authority.
- (d) The Declaration should include the interests of the Member and, where known to the Member, any material interests of a dependent and/or spouse (including de facto spouse) of the Member.
- (e) Members are to notify any change or addition to their Declaration, within 14 calendar days of such a change or addition occurring.
- (f) An annual probity briefing will be provided in June each year, including re-issue of this Charter.
- (g) Declaration of Material Interests Forms are to be updated and submitted by 28 February each year.

Meetings (section 43)

6.24 Section 43 of the PALM Act states:

- 1) *The Authority shall hold such meetings as are necessary for the efficient performance of its functions.*
- 2) *The Chairperson:*
 - a. *may convene a meeting at any time; and*
 - b. *shall convene a meeting on receipt of a written request signed by not less than 2 other Members.*
- 3) *The Minister may convene a meeting at any time.*
- 4) *The Chairperson shall preside at all meetings at which he or she is present.*
- 5) *Where the Chairperson is not present at a meeting, the Members present shall appoint one of their number to preside.*
- 6) *At a meeting, 3 Members constitute a quorum, but, subject to subsection (6A), one of them must be the full-time Member.*
- 6A) *If the full-time Member is precluded from being present by section 42 of the Act [which deals with disclosure of interests], then:*
 - a. *if the full-time Member is the Chairperson—any 3 Members constitute a quorum; or*
 - b. *if the full-time Member is not the Chairperson—the Chairperson and any other two Members constitute a quorum.*
- 7) *Questions arising at a meeting shall be decided by a majority of the votes of the Members present and voting.*
- 8) *The person presiding at a meeting has a deliberative vote and, if necessary, also has a casting vote.*
- 9) *The Authority shall keep minutes of its meetings.*

6.25 The Authority has determined it will hold six general meetings per year, spread evenly throughout the year, usually at NCA premises. The Authority may also hold additional

meetings (minuted) as required, and out-of-session or informal meetings or briefings (not minuted).

- 6.26 Members unable to attend in person may participate in all or part of an Authority meeting using video/telephone conference facilities, with the Chair's agreement.
- 6.27 The draft minutes and public record will be circulated to Members no later than two weeks after the relevant meeting to enable their finalisation and the publication of the public record following endorsement at the subsequent Authority meeting.
- 6.28 The Chair will endorse by signature the final minutes and public record of each Authority meeting. The minutes of the Authority are taken to be a record of a decision or authorisation by the Authority.
- 6.29 The NCA will publish the public record on the NCA website within five working days of receipt of the signed document by the Chair.

Advisory committees (section 44)

- 6.30 The Minister, on recommendation from the Authority, may appoint committees to give advice to the Authority or to assist it in the performance of its functions.

7 Other governance arrangements of the Authority

- 7.1 The Authority has the following governance arrangements in place to support the legislative requirements set out above.

Accountable Authority Instructions, Delegations and Policies

- 7.2 To facilitate the effective and efficient operation of the Authority and the NCA, the Authority has an appropriate internal governance framework which includes Accountable Authority Instructions, PGPA and PALM Act delegations, and applicable policies.
- 7.3 These arrangements and specific requirements apply to the Authority, its Members and all NCA staff. Please see the relevant elements for further information.

Duties and behaviours as an Authority Member

- 7.4 All Members are expected to keep themselves up to date with the affairs of the NCA and the Authority.
- 7.5 A Member must discharge their duties honestly, in good faith, in the best interests of the Authority, and for a proper purpose. It is also expected that Members will adhere to the following conduct standards in connection with the discharge of their duties as a Member.
- 7.6 A Member will:
 - (a) behave honestly and with integrity;
 - (b) act with care and diligence;
 - (c) treat everyone with respect and courtesy, and without harassment;
 - (d) comply with all applicable Australian laws;
 - (e) maintain appropriate confidentiality about Authority business;
 - (f) take reasonable steps to
 - a. avoid any conflict of interest (real or apparent); and
 - b. disclose any material personal interest [also see Section 42 of the PALM Act and Section 29 of the PGPA Act – further detailed below];
 - (g) use Commonwealth resources in a proper manner and for a proper purpose;
 - (h) not improperly use inside information or their duties, status, power or authority:

- a. to gain or seek to gain a benefit or an advantage for the Member or any other person; or
- b. to cause or seek to cause, detriment to the NCA, the Commonwealth or any other person;
- (i) at all times behave in a way that upholds the integrity and good reputation of the Authority; and
- (j) not disclose information that could be prejudicial to the effective working of government, or that was or is to be communicated in confidence within government.

7.7 The above standards replicate those of the *Public Service Act 1999*. This approach ensures Authority Members hold themselves to the same standards that apply to the Chief Executive and staff of the NCA.

Duties of the Authority Chair

- 7.8 The Chair presides over Authority meetings and provides overall leadership and direction for the Authority. Between meetings, the Chair is taken to represent the Authority, to the extent possible.
- 7.9 The signature of the Chair will be taken to be the formal authorisation of the Authority (such as for Annual Reports, annual Financial Statements, delegations and for similar requirements and documents). In these circumstances, it is the Chair's role to ensure appropriate consultation with other Authority members has occurred and appropriate agreement reached, where possible.
- 7.10 The Chair will undertake an annual assessment of the Chief Executive's performance, reporting results to Members, and facilitate an annual self-assessment of the Authority's performance.
- 7.11 It is the responsibility of the Chair to counsel individual Members regarding any aspect of their performance of Authority duties.

Confidentiality

- 7.12 Members and staff attending Authority meetings will maintain the confidentiality of discussions and papers and not make comment on any outcomes or decisions of the Authority, including matters that require Government consideration, which are not public knowledge. This includes the outcomes of meetings until the minutes and public record have been approved by the Chair.

Public statements by Members

- 7.13 The Members recognise their responsibility to the Authority and agree that outside of Authority meetings they will support the letter and the spirit of Authority decisions and the implementation of those decisions when in contact with other persons or organisations.
- 7.14 The Authority agrees that the dissemination of Authority decisions should not be released to the public except as decided by the Authority as a whole.
- 7.15 Unless agreed to by the Authority, members shall not make comment with the media and/or Members of Parliament that are at variance with an Authority decision or policy.

Official travel

- 7.16 Travel provisions for Members and the Chief Executive are determined by the Remuneration Tribunal. These are set out in the relevant Determination and reviewed at least annually.
- 7.17 Under the current Determination, Members are entitled to the travel arrangements set out in this section when travelling within Australia for 'official business' away from their office locality, or principal place of residence.

- 7.18 With respect to air travel, the following entitlements apply:
- Part time Members (including Chair): The highest class available
 - Chief Executive: Business class
- 7.19 Notwithstanding the above entitlements, Members may travel at a lower class where it would be more convenient or appropriate to do so, or may upgrade to a higher class of travel where it is demonstrably in the interest of the Commonwealth to do so.
- 7.20 Travel allowance in relation to accommodation, meals and incidentals will be paid, in accordance with Schedule A of the Determination, where an overnight absence is required. Where travel on official business does not require an overnight absence, no travelling allowance is payable.
- 7.21 An office holder may choose to hire a vehicle or use their own vehicle to travel on official business where it is demonstrably in the interest of the NCA to do so. In such circumstances the NCA will:
- (a) meet the cost of a rental vehicle; or
 - (b) pay a motor vehicle allowance per kilometre travelled in accordance with rates and requirements set by the Tribunal where a private vehicle is used for the journey.
- 7.22 The Determination defines 'official business' as business pertaining to or required by the duties of the office holder's office. Official business is deemed to include meetings of the Authority and major events which require the presence of Members, such as public or staff forums.
- 7.23 The Chair will determine other requests for travel associated with discretionary 'official business'.
- 7.24 All travel to Authority meetings or events is to be co-ordinated through the NCA.
- 7.25 The NCA will arrange travel for interstate members in accordance with the Tribunal's 'Official Travel by Office Holders' Determination and whole-of-government requirements.

