



NATIONAL CAPITAL AUTHORITY

AUTHORITY PROTOCOLS

Adopted by the Authority 22 February 2007

This page has been left blank intentionally

Contents

1	Protocols	1
2	Establishment of the Authority	1
3	Functions and powers of the Authority	2
4	Members Appointment (section 33 of the Act)	4
5	Members Remuneration and Allowances (section 35 of the Act)	4
6	Official Travel (Remuneration Tribunal)	5
7	Leave of absence (section 38 of the Act)	6
8	Outside employment (section 39 of the Act)	6
9	Resignation of members (section 40 of the Act)	6
10	Termination of appointment (section 41 of the Act)	6
11	Disclosure of interests (section 42 of the Act)	7
12	Duties as a Member	7
13	Duties of Chairman	8
14	Confidentiality	8
15	Public statements by Members	8
16	Liaison with NCA staff	9
17	Access to Outside specialist advice	9
18	Use of Internal Resources	9
19	Meetings	9
20	Induction Training for New Members	10
21	Member's Right and Duty to Raise Matters of Concern	10
22	Chief Executive	10

This page has been left blank intentionally

1 Protocols

- 1.1 These protocols are designed to complement the Australian Capital Territory (Planning and Land Management) Act 1988 (the Act) and to provide a clear and unequivocal means of dealing with common situations and questions that may arise from time to time during the operation and function of the Authority.
- 1.2 The protocols may be amended or updated as required by resolution of the Authority.
- 1.3 All present members of the Authority (“members”) have accepted these protocols and persons joining the Authority in the future will be requested to do the same.
- 1.4 The protocols cover the following topics:
- Establishment of the Authority
 - Functions and powers of the Authority
 - Members Appointment
 - Members Remuneration and Allowances
 - Official Travel
 - Leave of absence
 - Outside employment
 - Resignation of members
 - Termination of appointment
 - Disclosure of interests
 - Duties as a Member
 - Duties of Chairman
 - Confidentiality
 - Public statements by Members
 - Liaison with NCA staff
 - Access to Outside specialist advice
 - Use of Internal Resources
 - Meetings
 - Induction Training for New Member’s
 - Member’s Right and Duty to Raise Matters of Concern
 - Chief Executive

2 Establishment of the Authority

- 2.1 The National Capital Authority (NCA) is established under the Australian Capital Territory (Planning and Land Management) Act 1988 (the Act). The NCA is not a separate legal entity from the Commonwealth.
- 2.2 Part II of the Act establishes the NCA, prescribes its powers and functions and makes it subject to general ministerial direction.
- 2.3 Section 33 of the Act establishes the membership of the Authority. The members are appointed by the Governor-General, and hold office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Governor-General.

- 2.4 The Chief Executive has the responsibility of managing the affairs of the Authority under the general directions of the Authority.
- 2.5 The Chief Executive and the APS employees assisting the Chief Executive constitute a Statutory Agency, for the purposes of the Public Service Act 1999 (section 47 of the Act refers). All NCA employees are engaged under the Public Service Act.
- 2.6 The NCA is a prescribed Agency under regulation 5 of the Financial Management and Accountability Regulations 1997. The Chief Executive is the designated Agency Head of the NCA for the purposes of the Financial Management and Accountability Act 1997 (FMA Act). The Chief Executive is accountable and responsible under the FMA Act for the management and expenditure of public money held by the NCA.
- 2.7 Other than the Chief Executive, the Chairman and other Authority Members do not have any responsibilities under the PS Act or the FMA Act.

3 Functions and powers of the Authority

- 3.1 The Act provides the following functions and powers to the Authority.

Section 6 Functions of the Authority

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) 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.

Subsection 7(1) Ministerial directions

The Minister may give the Authority general directions in writing as to the performance of its functions.

Section 8 Powers of Authority

Subject to the 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.

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

- (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*.

Section 14 Draft Plan to be prepared

The Authority shall prepare a draft Plan in accordance with this Division.

Section 15 Public consultation

- (1) After preparing the draft Plan, the Authority shall:
 - (a) submit a copy to the Territory planning authority;
 - (b) by notice published in the *Commonwealth Gazette* and in the principal daily newspaper published and circulated in the Territory:
 - (i) state that the draft Plan has been prepared, and that copies will be available for public inspection at the places and times, and during the period, specified in the notice; and
 - (ii) invite interested persons to make written representations about the draft Plan within a reasonable period specified in the notice and specify the address to which the representations may be forwarded; and
 - (c) make the draft Plan available for inspection accordingly.
- (2) The Authority shall:
 - (a) consult with the Territory planning authority about the draft Plan and have regard to any views expressed by it; and
 - (b) have regard to any representations made by the public; and, if it thinks fit, may alter the draft Plan.

Note: In addition to these statutory requirements under the Act the Authority could also consider other forms of media distribution.

Section 16 Certification of draft Plan

- (1) After the Authority has:
 - (a) made the draft Plan available for public inspection;
 - (b) consulted with the Territory planning authority; and
 - (c) reported in writing to the Minister on the consultation and the views expressed by that authority;the Authority may apply to the Minister to certify the draft Plan under this section while it is being further considered.

- (2) After considering the report by the Authority, the Minister may, subject to subsection (3), declare, by written instrument, that the draft Plan is certified.
- (3) If the Authority reports under subsection (1) that the Territory planning authority objects to the certification of the draft Plan, the Minister shall not act under subsection (2) except after consultation with the Executive.
- (4) The certification remains in force for 6 months unless sooner revoked, but the Minister may, by written instrument, extend that period for one or more further periods of 6 months.
- (5) The Minister shall cause a copy of each instrument to be laid before each House of the Parliament within 15 sitting days of that House after the instrument is made.

Subsection 20A(2) Objections to re-submitted draft Plan (by Territory planning authority)

This subsection deals with provisions where if objections to the draft amendment by the Territory planning authority are unresolved, it allows for the Minister to give a written direction to the Authority to either disregard the objection or to alter the draft amendment to accommodate the objection wholly or partly.

4 Members Appointment (section 33 of the Act)

- 4.1 Members are appointed by the Governor-General.
- 4.2 The Chairperson may be appointed on a full-time or part-time basis.
- 4.3 If the Chairperson is appointed on a full-time basis, the Chairperson shall also be the Chief Executive and there shall be 4 non-executive members. If the Chairperson is appointed on a part-time basis, there shall be a separate Chief Executive and 3 other non-executive members.
- 4.4 Non-executive members shall be appointed on a part-time basis.
- 4.5 No member may be appointed for a period exceeding five years, as specified in the instrument of appointment. A member is eligible for re-appointment.

5 Members Remuneration and Allowances (section 35 of the Act)

- 5.1 A member shall be paid such remuneration as is determined by the Remuneration Tribunal subject to the Remuneration Tribunal Act 1973.

Chief Executive

- 5.2 The office of Chief Executive is a Principal Executive Officer (PEO) Band C under the Remuneration Tribunal Act 1973. The Chief Executive's terms and conditions of employment are governed by Remuneration Tribunal Determination 2005/19: PEO Classification Structure and Terms and Conditions and the Remuneration Tribunal's Performance Remuneration Guidelines.

- 5.3 The Minister for Local Government, Territories and Roads, is the 'employing body' for the Chief Executive under the PEO structure and is responsible for determining any increase in total remuneration and the Chief Executive's eligibility to receive performance pay.

Part-time Members Remuneration and Allowances

- 5.4 Part-time Members are paid remuneration and allowances determined by the Remuneration Tribunal in accordance with the following Determinations:
- o *Determination 2006/12: Remuneration and Allowances for Holders of Part-time Public Office*
 - o *Determination 2004/03: Official Travel by Office Holders.*
- 5.5 The Remuneration Tribunal reviews the Determinations annually.
- 5.6 Part-time members are eligible to join the Australian Government Employees Superannuation Trust (AGEST). Contributions are voluntary and may be varied at any time. The NCA makes an employer contribution to the relevant superannuation scheme.

6 Official Travel (Remuneration Tribunal)

- 6.1 Effective from 27 August 2006 Members are entitled to the following travel arrangements when travelling within Australia for official business away from their office locality, or principal place of residence.
- o The highest class of air travel available
 - o A travel allowance is paid where an overnight absence is required to cover accommodation, meals and incidentals.

Notes: Where the cost of a meal or meal is supplied by the NCA, the amount of travelling allowance is reduced by the relevant meal amount(s) as outlined in the Determination 2004/03.

Where travel on official business does not require an overnight absence, no travelling allowance is payable.

- 6.2 An office holder may choose to hire a vehicle or use his or her 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 set by the Remuneration Tribunal where a private vehicle is used for the journey.
- 6.3 All travel to Authority meetings should be co-ordinated through the Authority Secretariat, on telephone (02) 6272 2956.

7 Leave of absence (section 38 of the Act)

7.1 The Act provides that:

- (a) a full-time member (the Chief Executive) has such recreation leave entitlements as are determined by the Remuneration Tribunal; and
- (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.

7.2 Remuneration Tribunal Determination 2005/19 provides that the Chief Executive is entitled to the following types and amounts of leave of absence:

- (a) absent without loss of pay on public holidays that are observed by the Australian Public Service in Canberra;
- (b) paid annual leave of 4 weeks per year of full-time service;
- (c) paid long service leave as prescribed under the *Long Service Leave (Commonwealth Employees) Act 1976*; and
- (d) other paid and unpaid leave, including sick and carers leave, at the discretion of the Employing Body (the Minister).

Part-time Members

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

8 Outside employment (section 39 of the Act)

Chief Executive

8.1 The 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.

Part-time Members

8.2 The 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.

9 Resignation of members (section 40 of the Act)

9.1 The Act provides that a member may resign by written instrument delivered to the Governor-General.

10 Termination of appointment (section 41 of the Act)

10.1 The Act provides that the Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity 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; or
- (d) a member fails, without reasonable excuse, to comply with section 42 (Disclosure of Interests).

11 Disclosure of interests (section 42 of the Act)

11.1 A member who has a direct or indirect pecuniary 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.

11.2 A disclosure shall be recorded in the minutes of the meeting and the member shall not, unless the Minister or the Authority otherwise determines:

- (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

11.3 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 pecuniary 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.

11.4 Against this background the Authority has agreed that the following additional disclosure of interest protocols will apply to all Members.

- o Each Member is required to complete a Declaration of Material Interests Form within two weeks of appointment;
- o 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 National Capital Authority;
- o 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;
- o Members are to notify any change or addition to their Declaration coming to his or her knowledge, within 28 days of such a change or addition occurring; and
- o Declaration Material Interests Forms are to be updated by 31 July each year.

12 Duties as a Member

12.1 A member must discharge his or her duties in good faith in the best interests of the Authority. It is also expected that Members will adhere to the following conduct standards in connection with the discharge of their duties as a Member.

- 12.2 All Members are expected to keep themselves up to date with the affairs of the NCA and the Authority.
- 12.3 A Member must discharge his duties in good faith in the best interests of the Authority, and for a proper purpose. in other words, he or she 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) disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their appointment a Member of the Authority; (*refer section 42 of the Act Disclosure of interests*).
 - (g) not make improper use of:
 - (i) inside information, or
 - (ii) the Member's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the Member or for any other person; and
 - (h) at all times behave in a way that upholds the integrity and good reputation of the Authority.

13 Duties of Chairman

- 13.1 The Chairman will undertake annually a review of the Authority board's performance.
- 13.2 It is the responsibility of the Chairman to counsel individual members regarding any aspect of their performance of Authority duties.

14 Confidentiality

- 14.1 Authority papers, minutes and discussions at meetings are Authority-in-Confidence.
- 14.2 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 have been circulated and approved by the Chairman.

15 Public statements by Members

- 15.1 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.
- 15.2 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.

- 15.3 Unless agreed to by the Authority, members shall not make comment with the media and/or representatives of Parliament that are at variance with an Authority decision or policy.

16 Liaison with NCA staff

- 16.1 In order to discharge their duties properly, Members must have a right to identify the information that they will need and to receive it a timely way.
- 16.2 Part-time members agree that all requests for information from staff will be directed through the Chief Executive or the relevant Managing Director or Director.

17 Access to Outside specialist advice

- 17.1 Outside specialist advice by one or more Members at the NCA's expense can only be arranged through the Chief Executive. If such advice is obtained it will be made available to the Authority as a whole.

18 Use of Internal Resources

- 18.1 Members may utilise Authority resources including secretarial, photocopying, printing and office space for matters directly related with Authority business. Where it is not clear that the proposed use is directly related with Authority business, the matter should be referred to the Chief Executive.

19 Meetings

- 19.1 Meetings of the Authority shall be held at such times and places as the Authority or the Chairman determines. Members unable to attend in person may participate in all or part of an Authority meeting using conference telephone call facilities, with the Chairman's agreement.
- (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, 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 2 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.
- (10) Authority members shall provide comments on draft Authority Minutes within 5 working days of the delivery of the draft minutes

20 Induction Training for New Members

- 20.1 Members appointed for the first time to the Authority will familiarise themselves with the workings of the NCA. This familiarisation process will include but will not be limited to site visits and perusal of historical financial reports, past minutes of meetings, and all policy documents, including this Authority Protocol.
- 20.2 Each member should receive a formal letter from the Minister setting out the key terms and conditions of his or her appointment.

21 Member's Right and Duty to Raise Matters of Concern

- 21.1 It is the individual Member's right and duty to raise any matters of concern relating to the performance and conduct of the members of the Authority.

22 Chief Executive

- 22.1 The performance of the Chief Executive is determined in accordance with the provisions of the Remuneration Tribunal Determination 2005/19: Principal Executive Office – Classification Structure and Terms and Conditions, made under sub-section 5(2A) of the Remuneration Tribunal Act 1973.-
- 22.2 The Chief Executive's employing body is the Minister for Local Government, Territories and Roads. The Minister may consult the views of the Chairman in his/her consideration of the Chief Executive's performance.