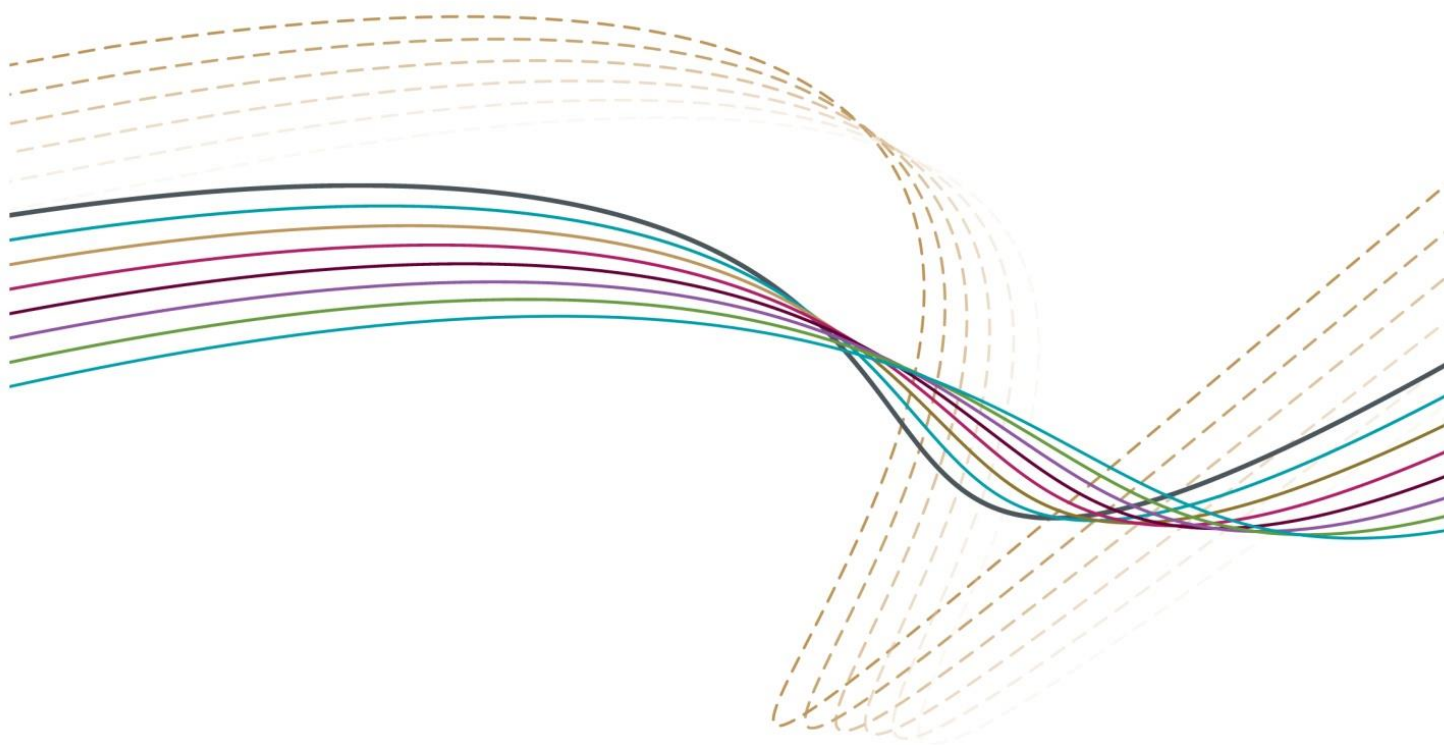


QUEENSLAND TREASURY

Statutory Body Handbook

A practical guide to establishment and management of
Statutory Bodies

February 2021





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Table of Updates

Date of Release	Version	Comments
Late February 2021	V1.0	First version after combining all the guidelines related to statutory bodies. No change to the policy framework; however, amended for duplication and redundancies.



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Table of acronyms

AASB	Accounting standards released by the Australian Accounting Standards Board
ACG	Audit Committee Guidelines – Improving Accountability and Performance
A-G	Auditor-General
APR	Agency Planning Requirements
ARR	Annual Report Requirements for Queensland Government Agencies
CFO	Chief Finance Officer
FA Act	<i>Financial Accountability Act 2009</i>
FAH	Financial Accountability Handbook
FPMS	<i>Financial and Performance Management Standard 2019</i>
FMPM	Financial Management Practice Manual
FMT	Financial Management Tools
FRRs	Financial Reporting Requirements for Queensland Government Agencies
GOC	Government owned corporation
PIM	Public Interest Map
QT	Queensland Treasury
QTC	Queensland Treasury Corporation
GRM	A Guide to Risk Management
GS	Guide Sheet
HIA	Head of Internal Audit
IS	Information Sheet (in the Financial Accountability Handbook)
NCAPS	Non-Current Asset Policies for the Queensland Public Sector

PFC	Principles for Fees and Charges (restricted document)
PMF	Queensland Government Performance Management Framework Policy
QAO	Queensland Audit Office
SBFA Act	<i>Statutory Bodies Financial Arrangements Act 1982</i>
SBFA Regulation	<i>Statutory Bodies Financial Arrangements Regulation 2019</i>
TA	Treasury Analyst

Introduction

This Handbook represents the compilation of all the relevant Queensland Treasury guidelines applicable to statutory bodies. It does not alter the prevailing supervisory framework. To assist users, the Handbook will clearly outline whether compliance with a certain policy aspect is mandatory or optional. For example, the checklist for enabling legislation is not exhaustive and must be used as a guide only.

The primary objectives of this Handbook are to assist:

- portfolio departments that are considering the possibility of establishing a statutory body and/or supervising their existing statutory bodies (where applicable), and
- statutory bodies in managing their financial arrangements and complying with legislative and policy requirements

whilst removing duplications and redundancies among various guidelines.

This Handbook will establish a single source of information (for Treasury administered policies and guidelines) for all statutory bodies and their portfolio departments.

Statutory bodies are usually established to carry out specific functions which Government considers may be more effectively performed outside a traditional departmental structure. A statutory body 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, and/or
- a separate legal entity.

While it is recognised that statutory bodies may be established to allow a certain level of independence from Government, the Government is still responsible for ensuring that taxpayers' funds are expended in the most efficient, effective, economical and ethical manner.

Statutory bodies are subject to varying degrees of Ministerial control which are specified in the statutory body's enabling legislation. Ministers are responsible to Parliament for the operation of all Government Boards and agencies within their portfolios and are required to table their annual reports in Parliament.

Chapter 1 – What is a ‘statutory body’?

There is no uniform definition of a statutory body. Notwithstanding, there is significant overlap between the definitions. The relevant definitions of a statutory body for the purposes of this Handbook are provided in the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act) and the *Financial Accountability Act 2009* (FA Act). In most cases, the enabling legislation will provide whether the entity is a ‘statutory body’ for the purposes of either the SBFA Act or the FA Act, or both. Where the enabling legislation is silent on the entity’s status in relation to being a ‘statutory body’, the legal definitions must be applied to determine the status.

Section 5(2) of the SBFA Act defines a ‘statutory body’ as an entity established under an Act that:

- has control of funds and consists of:
 - one person appointed under an Act, or
 - a Board with a member or members appointed under an Act
- is a corporation sole
- is a local government, or
- is declared under the Act to be a statutory body.

Section 9 of the FA Act defines a ‘statutory body’ as an entity that:

- is established under an Act
- has control of funds, and
- includes at least 1 member appointed under an Act or approved by the Governor in Council or a Minister.

Both the SBFA Act (see section 6) and the FA Act (see section 9(2)) explicitly provide that certain entities are not statutory bodies for relevant purposes.

It should be noted that there is a minor difference between the definition of a ‘statutory body’ under the SBFA Act and the FA Act. For example, local governments are statutory bodies for the purposes of the SBFA Act; however, they are not statutory bodies for the purposes of the FA Act.

Statutory bodies do not have an ‘accountable officer’, rather a governing body (usually a board) is responsible for carrying out the functions prescribed in the authorising Act. The powers, roles and responsibilities of the board are also detailed in the authorising Act. As such, when a legislative instrument, policy or guideline refers to a statutory body, it usually refers to the board of that statutory body. However, where permitted by the enabling Act, the board may delegate its functions as it considers appropriate, noting that ultimately the board remains responsible for carrying out the prescribed functions.

Where appropriate, the Handbook will highlight what sections apply to which statutory bodies, noting that most of the statutory bodies meet the definition under both the SBFA Act and FA Act.

Chapter 2 – Formation of Statutory Bodies

The creation of a new statutory body requires careful consideration to ensure, firstly, that is the most appropriate vehicle for the proposed functions and, secondly, all key legislative and policy factors are considered up front.

The purpose of this chapter is to assist departmental officers who have been tasked with establishing a statutory body. It outlines some of the required steps and provides some useful reference materials.

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

Public Interest Map

Between July 2008 and March 2009, an independent review was undertaken of Queensland Government boards, committees and statutory authorities. The reviewers (Webbe and Weller) released two reports. The Part A report considered the government bodies which existed at the time. The Part B report proposed a 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 recommendations contained in the reports culminated in the development and adoption of the Public Interest Map (PIM) policy.

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 (except 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 and development of a public interest case can be obtained from the Department of the Premier and Cabinet or from www.premiers.qld.gov.au/publications/categories/policies-and-codes/public-interest-map-policy.aspx.

Enabling legislation

All statutory bodies are established via legislation, known as enabling legislation (also referred to as authorising legislation or authorising Act). Generally departmental officers will be responsible for developing the drafting instructions, and the legislation (i.e. the Bill) is then drafted by the Office of the Queensland Parliamentary Counsel.

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

To assist departmental officers in developing drafting instructions or legislation, this Handbook contains a checklist.

Appendix A: Enabling Legislation Guide contains checklists of the common issues which should be considered.

Amendment to SBFA Regulation

Generally statutory bodies derive their financial powers from the SBFA Act (unless explicit financial powers are provided in their enabling legislation). The financial powers provided to statutory bodies and the application of the SBFA Act are outlined in Chapter 6 (SBFA Act Operational Guidelines) of this Handbook. However, certain powers are subject to the body being listed in the SBFA Regulation.

There are three types of financial arrangements which should be considered when determining whether the SBFA Regulation should be amended to include a new statutory body:

- borrowings – pursuant to the SBFA Act and subject to the Treasurer's approval, statutory bodies may borrow under either Part 5 or Part 7A of the SBFA Act. However, to be able to borrow under Part 5, the statutory body must be listed in Schedule 2 of the SBFA Regulation. If a statutory body borrows under Part 5 and from the Queensland Treasury Corporation, its borrowings are automatically guaranteed by the State. Consideration should be given to whether a statutory body should be listed in Schedule 2 of the SBFA Regulation, noting that a statutory body may still borrow under Part 7A (as a Type 2 financial arrangement) of the SBFA Act if not listed in the SBFA Regulation.
- 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 that category of investment power (as listed in the SBFA Regulation) without requiring further approval from the Treasurer. The statutory body must be listed in the SBFA Regulation with its allocated investment powers. However, if no category of investment power is allocated or the statutory body wants to invest in an investment arrangement or an investment product not allowed under their allocated category of investment power, statutory bodies can still invest, but only with the Treasurer's approval. Consideration should be given to whether a statutory body should be allocated a category of investment power, and if yes, which category. There is no formal policy or guideline that outlines how to determine which category of investment power should be allocated to a statutory body. The assessment is done on a case by case basis subject to the investment need of the statutory body.
- derivative transactions – a statutory body may enter into derivative transactions only if it is listed in Schedule 8 of the SBFA Regulation (as a statutory body that may enter into derivative transactions) and the Treasurer's approval has been given to enter into the derivative transaction. The statutory body must be listed in the SBFA Regulation before it can seek the Treasurer's approval. Few statutory bodies have been allocated this power. Consideration should be given to whether a statutory body should be listed in the SBFA Regulation as a

statutory body that can enter into derivative transactions, noting that if not listed in the SBFA Regulation the statutory body cannot even seek the Treasurer's approval to enter into derivative transactions.

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 its functions effectively. The required skill set of the board should be reviewed periodically in light of the prevailing circumstances of the agency. 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 find members for new boards, as well as fill vacancies on existing boards and committees becomes available. All Queenslanders can register to be considered for a position. More information about the Register is available from the Department of the Premier and Cabinet or from www.qld.gov.au/about/how-government-works/other-government-bodies/qron.

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

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

Board members of statutory bodies are normally appointed 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 www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks.aspx.

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 www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks.aspx.

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.

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 also be sought from the Office of Industrial Relations in Queensland.

Chapter 3 – Management of Statutory Bodies

There are various legislation, policies and guidance documents that may apply to the operation and management of Queensland statutory bodies. Please note that this is **not an exhaustive list** and agencies will need to consider the requirements of all applicable legislation and policies.

The term ‘agency’, when used in this chapter, refers to a statutory body.

Relevant Legislation

Legislation applicable to statutory bodies varies between agencies. Each statutory body is governed by its own enabling legislation, as well as the provisions of other legislative requirements which are common to all statutory bodies. The discussion below is designed to provide an overview of the State legislation that most commonly applies to statutory bodies. **No Commonwealth legislation is considered** in this chapter.

Agencies should have an effective legislative compliance framework in place to ensure the requirements of all legislation applicable to the agency are complied with.

When interpreting the legislative provisions, agencies should be aware of the following:

- The definition of a ‘statutory body’ is different between the FA Act and the SBFA Act.
- Where two pieces of legislation are contradictory, generally the legislation which takes precedence will state that fact. Alternatively, a rule of thumb that may be applied is that specific legislation will override general legislation.

In both instances discussed above, or where an agency is unsure of the applicability of legislative provisions, legal advice should be sought to ensure all mandated obligations are met. All Queensland legislation is available from the website www.legislation.qld.gov.au.

Enabling legislation

All statutory bodies are established and operate under the provisions of their own enabling legislation, which sets out the purpose and specific powers of the agency. The enabling legislation may also include provisions regarding:

- the applicability of other legislation to the statutory body (e.g. FA Act, SBFA Act, *Crime and Corruption Act 2001*, etc)
- the levels of fees to be charged for services/products provided by the statutory body (usually in subordinate legislation approved by Governor-in-Council)
- whether the board can delegate powers to officers of the statutory body, and
- whether the body represents the State (this will determine whether the body has the ‘shield of the Crown’), as discussed in Chapter 8 (Solvency) of this Handbook.

Financial Accountability Act and subordinate legislation

The FA Act and the FPMS establish the high-level financial management and accountability obligations for statutory bodies. They are principles-based, focusing on accountability and outcomes. They provide a level of discretion to agency executives to optimise resource allocation and tailor systems for the administration of their agency, whilst also ensuring a high-level of accountability.

The functions for which the statutory bodies' governing body are accountable include:

- the implementation and maintenance of systems to manage the body's financial resources
- undertaking regular strategic and operational planning
- monitoring the performance of the agency
- preparing annual financial statements for audit by the Auditor-General, and
- preparing an annual report which is tabled in Parliament by the appropriate Minister.

The FA Act and the FPMS are supported by several policy documents, such as the [Financial Accountability Handbook](#), as discussed later in this Chapter.

Chapter 4 (Compliance Checklist) of this Handbook contains compliance checklists that have been developed to assist the Boards and management of statutory bodies meet their obligations under the FA Act and the FPMS.

Statutory Bodies Financial Arrangements Act and subordinate legislation

The primary purpose of the SBFA Act and its subordinate legislation, the SBFA Regulation, is to establish the borrowing and investment powers of agencies. The SBFA Act will apply where an agency's enabling legislation does not provide for these powers. Issues covered by the SBFA Act also include guarantees, derivative transactions, leasing, appointment of a funds manager and the formation of companies.

More information about the SBFA Act is provided in Chapter 6 (SBFA Act Operational Guidelines) and Chapter 8 (Investment Guidelines) of this Handbook.

Auditor-General Act

The *Auditor-General Act 2009* establishes the position of the Queensland Auditor-General and the Queensland Audit Office. The Act also confers on the Auditor-General and the Queensland Audit Office the functions and powers necessary to carry out independent audits of all Queensland public sector agencies.

Right to Information Act and Information Privacy Act

The *Right to Information Act 2009* and the *Information Privacy Act 2009* provide safeguards for the way the public sector handles an individual's personal information.

The Right to Information Act:

- gives the public a right to apply for access to documents held by government agencies and Ministers
- requires each agency to publish a publication scheme on its website which may include an online disclosure log of documents that have been released in response to Right to Information applications, and

- establishes the Information Commissioner and Right to Information Commissioner to oversee Right to Information in Queensland.

The Information Privacy Act:

- gives the public a right to apply to access and amend their own personal information
- details the privacy principles public sector agencies must comply with, and
- establishes the Privacy Commissioner as a deputy to the Information Commissioner with particular responsibility for Information Privacy in Queensland.

Public Records Act

The *Public Records Act 2002* provides for the management of public records in Queensland. A public record is any form of recorded information, both received and created, that provides evidence of the decisions and actions of a public authority while undertaking its business activities. The Public Records Act covers all public records irrespective of the technology or medium used to generate, capture, manage, preserve and access those records. All public authority employees have responsibilities for making, keeping and managing the public records that they receive or create.

Public Service Act

The main purposes of the *Public Service Act 2008* are to:

- establish a high performing, apolitical, public service that is responsive to Government priorities, focused on the delivery of services in a professional and non-partisan way
- promote the effectiveness and efficiency of government entities
- provide for the administration of the public service and the employment and management of public service employees
- provide for the rights and obligations of public service employees, and
- promote equality of employment opportunity in the public service and in other particular agencies in the public sector.

To help achieve the main purposes, this Act fixes principles to guide public service management, public service employment and the work performance and personal conduct of public service employees. It establishes the Public Service Commission to enhance the public service's human resource management and capability, and review and improve the overall effectiveness and efficiency of government entities.

Public Sector Ethics Act

The *Public Sector Ethics Act 1994* declares the ethical principles that are fundamental to good public administration. It covers the ethics obligations for public officials, code of conduct for public officials, additional responsibilities of chief executive officers, and disciplinary action for contravention of approved codes of conduct. All public officials must adhere to the ethics obligations as set out in this Act.

Integrity Act

The purpose of the *Integrity Act 2009* is to encourage confidence in public institutions by helping Ministers, members of the Legislative Assembly and others to deal appropriately with ethics or integrity issues and regulating contact between lobbyists and State or local government representatives so that lobbying is conducted in accordance with public expectations of transparency and integrity.

The Act covers the role and functions of the Integrity Commissioner, advice on ethics or integrity issues, as well as advice for designated persons on integrity issues.

Whole-of-Government Policies

Agencies are expected to understand and apply all policies that are applicable to their agency, whether the policies are contained in legislation or are specific policies issued by lead agencies. Guidance material is also available to assist agencies in identifying best practice principles, for example, in the management of an agency's financial resources. Some examples are provided below, together with the 'owner' agency, noting that this is not an exhaustive list.

Agencies should have an effective policy compliance framework in place to ensure the requirements of all policies applicable to the agency are complied with.

The FA Act and the FPMS contain references to documents that agencies must 'have regard to'. The term 'have regard to' means that agencies must comply with the contents of the document when they apply to agency circumstances.

Queensland Treasury

The Treasury website (www.treasury.qld.gov.au) contains many useful documents. The following are the primary documents applicable to statutory bodies.

The [Financial Accountability Handbook](#) (the FAH) is designed to assist agencies with meeting their obligations under the FA Act and the FPMS. It also provides information for agencies on better practice management and internal control structures. All agencies must have regard to the Handbook. The Handbook also contains the relevant contents of the former *Derivative Transactions Policy Guidelines* (see Information Sheet 3.18 – Derivative Transactions).

The [Financial Management Tools](#) (the FMT) contain several examples and consideration points to assist agencies in meeting their obligations under the financial management legislation and the FAH. The FMT have been prepared to provide guidance only, and the contents may be modified to meet agency needs and requirements.

The [Financial Reporting Requirements](#) (FRRs) include the Minimum Reporting Requirements and assist agencies in the preparation of their financial statements. The requirements provide updates on new and revised accounting policies and standards and additional guidance and advice on the application of such policies and standards. The FRRs also contain model financial statements.

Under the provisions of the FPMS, agencies must prepare their financial statements in accordance with the minimum reporting requirements. Statutory bodies should refer to FRR 2A.5 to determine their eligibility to adopt the Tier 2 reduced disclosure reporting requirements.

The [Non-Current Asset Policies for the Queensland Public Sector](#) (NCAP) are designed to assist agencies in developing a framework for identifying, acquiring, maintaining, disposing of, valuing or revaluing, recording and writing-off assets. The NCAP are mandatory for agencies, and it is expected that processes which reflect each agency's circumstances and operational characteristics will be adopted.

The [Queensland Leasing Approval Policy for Public Sector Entities](#) is a mandatory policy that applies to the lease of all assets. The policy addresses issues regarding asset leasing, including: the lease vs buy decision and the power to enter into a lease arrangement.

[A Guide to Risk Management](#) has been prepared as an information reference and contains the minimum principles and procedures of a basic risk management process. This document is a guide only, not a comprehensive reference for risk management. The guidelines provide guidance about both whole-of-Government and agency-level risks and risk management.

The [Audit Committee Guidelines: Improving Accountability and Performance](#) have been prepared to assist agencies with the establishment and maintenance of audit committees. The guidelines incorporate example reporting, checklists to assist audit committee members in carrying out their duties and other practical tools. The appendices have also been issued in Word format so that the example checklists and reporting tools can be tailored to meet the requirements within each agency. Where a statutory body has established an audit committee, it must have regard to these guidelines.

The [Principles for Fees and Charges](#) provide agencies with broad guidelines on the setting of fees and charges. It includes discussions about general principles, principles for fees primarily in the nature of a tax, principles for user charging, cost identification, competitive neutrality and indexation policy. Note that this is a restricted document, and access can be sought through the agency's Treasury Analyst.

The FA Act requires the Treasurer to approve the formation or acquisition of a company by departments, and the [Guidelines for the Formation, Acquisition and Post Approval Monitoring of Companies](#) outline the various issues that must be addressed by departments in seeking that approval. A statutory body may also be required to seek the approval of the Treasurer to form or acquire a company under either its own enabling legislation or the SBFA Act. Where that is the case, these guidelines may assist a statutory body in obtaining any necessary approvals.

The [Company Financial Reporting in the Queensland Public Sector policy](#) prescribes the requirements applicable to Queensland public sector companies for the preparation and audit of financial statements and making the financial statements publicly available. This policy aims to ensure transparency of public sector companies and to discharge public accountability to the community. This policy applies to companies controlled by statutory bodies.

The Treasury [Financial Management Centre](#) contains information on issues such as the use of Tridata (the whole-of-Government consolidation system), timeframes for submitting financial information for State budget and consolidation purposes and the State Borrowing Program. Access to the Financial Management Centre is through govnet and is accessible by all Queensland Government employees.

Department of the Premier and Cabinet

The following publications are available from the Department of the Premier and Cabinet's website – www.premiers.qld.gov.au.

[Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities](#) is part of the Governing Queensland suite of Handbooks. It provides information about the role of government

Boards, committees and statutory bodies/authorities, and the responsibilities of those who serve the community as members. It also gives details about how Boards are established.

The [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 bodies.

The [Agency Planning Requirements](#) provide agencies with a detailed overview of the provisions and processes for preparing strategic, operational and specific purpose plans. Agencies must comply with this document when undertaking their planning processes.

Annual reports are key accountability documents and the principal way in which agencies report on their activities and performance to Parliament and the wider community. Agencies must comply with the [Annual Report Requirements for Queensland Government Agencies](#) when preparing their annual report each year. The document aims to provide agencies with information relating to relevant legislation and other mandatory reporting requirements for annual reports.

Department of Energy and Public Works

The following publication is available on the forgov website – www.forgov.qld.gov.au.

The [Queensland Procurement Policy](#) sets a high level outcomes-based framework for procurement undertaken by the Queensland Government. It delivers benefits for government, suppliers and the community through six principles of Government procurement. A range of guides and resources are also available on the department's website to help agencies undertake procurement in line with the Queensland Procurement Policy.

Queensland Government Customer and Digital Group¹

The following publication is available from the Queensland Government Customer and Digital Group's website – www.qgcio.qld.gov.au.

The [Queensland Government Enterprise Architecture](#) (QGEA) is the collection of information and communication technology (ICT) policies and associated documents that guides agency ICT initiatives and investments to improve the compatibility and cost-effectiveness of ICT across the government. The FPMS provides that agencies must have regard to the QGEA in:

- establishing and maintaining the internal control structure
- establishing, maintaining or reviewing the financial information management system, and
- managing the strategic and operational risks of the agency relating to digital, information or communication technology.

Crime and Corruption Commission

The following publications are available from the Crime and Corruption Commission's website – www.ccc.qld.gov.au.

¹ The Queensland Government Customer and Digital Group continues to deliver the functions of the former Queensland Government Chief Information Office.

[Corruption Prevention Advisory - Disposal of assets](#) has been prepared to assist agencies become more aware of the risks and offences attached to the disposal of assets including obsolete assets and scrap, waste and surplus materials of varying value, and to improve the understanding of all staff on how to deal appropriately with the disposal of such assets.

[Fraud and Corruption Control: Best Practice Guide](#) includes prevention measures and activities for reporting, detecting and investigating fraud and corruption.

Public Service Commission

The following publications are available from the Public Service Commission's website – www.psc.qld.gov.au.

[Directive 22/09 Gifts and Benefits](#) provides guidance on the ethical considerations and procedures involved in the giving and receiving of gifts and benefits. There is also a Gifts and Benefits guidelines to provide additional support to agencies. While these documents have been prepared to apply primarily to departments, the general principles may be of benefit to statutory bodies.

[Declaration of Interests - Senior Executives and Equivalent Employees \(including Statutory Office Holders\)](#) provides that all Senior Executive Service (SES) officers and persons paid remuneration equivalent to a senior executive service level or above employed in a government entity shall provide on an annual basis a declaration of interests to the relevant chief executive or in the case of a statutory head, to the appropriate Minister and/or Parliamentary Committee.

Chapter 4 – Compliance Checklists

The following compliance checklists have been developed to assist the Boards and management of statutory bodies meet their obligations under the FA Act, the FPMS, and the [Financial Accountability Handbook](#) (the FAH). While the provisions of the *Financial Accountability Regulation 2019* (the FA Regulation) are applicable to departments only, reference to the Regulation may assist statutory bodies if they elect to appoint a chief finance officer or head of internal audit to their agency, with the specific responsibilities assigned as outlined in sections 77 and 78 of the FA Act.

An affirmative answer in the checklists indicates compliance with an appropriate legislative obligation. Where there is a negative answer, agencies may consider using a format similar to the 'Corrective Actions Record' (example provided at the end of this chapter), to record where corrective action is necessary, and the actions taken.

The checklists also provide related or additional references to further assist agencies in meeting their obligations under the current financial legislative framework. The term 'agency', when used in the checklists, refers to a 'statutory body'.

Agencies using these checklists should note:

- The matters discussed in the checklists are **not exhaustive**.
- The checklists must be used in conjunction with the relevant legislation and not treated as a substitute for the legislation.
- Use of the checklists is **optional**.

Abbreviations

Abbreviations used in the checklists are explained in the table of acronyms located at the beginning of this Handbook.

Financial Accountability Act

Section 61 – Function of statutory bodies

This section of the FA Act details those functions for which an agency has responsibility.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Have the operations of the agency been performed efficiently, effectively and economically to achieve reasonable value for money? (efficiently – are all controls and processes necessary? effectively – are the controls operating as intended? economically – could the same level of control be obtained for a lesser cost? value for money – consideration of whole of life and non-cost factors) 	IS 1.5	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have appropriate systems of internal control and risk management been developed and maintained throughout the year? 	IS 2.3 IS 3.1	<input type="checkbox"/>	<input type="checkbox"/>

Question	Related resources	Yes	No
(do agency financial, operational and risk management systems reflect the size and complexity of the agency's operations and objectives?)	IS 3.2		
<ul style="list-style-type: none"> Are all agency funds and accounts kept in compliance with prescribed requirements? (are bank accounts appropriately maintained, do they comply with the SBFA Act?) 	IS 3.9	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have annual financial statements been prepared, certified and tabled in Parliament in accordance with prescribed requirements? (detailed requirements contained in the FPMS) 	IS 5.2	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Do planning and budgeting processes recognise the size of the agency? (has sufficient planning been undertaken to support the operations of the agency (for example, for agencies with a large asset base, has asset planning been undertaken), and has sufficiently detailed budgeting been undertaken to allow for appropriate monitoring of financial performance?) 	IS 2.10	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have other functions conferred on the agency under the FA Act, other Acts and the FPMS been performed? (e.g. has the agency complied with the provisions of its enabling legislation, and other applicable legislation such as the FPMS or the Right to Information Act?) 		<input type="checkbox"/>	<input type="checkbox"/>

Section 62 – Annual Financial Statements

This section relates to the preparation of an agency's financial statements, which comprise of statements of financial position, comprehensive income, changes in equity, cash flows and notes to accounts, which are audited and included in the annual report of the agency.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Have annual financial statements been prepared in accordance with prescribed requirements? (e.g. the FPMS, applicable Australian accounting standards, FRRs, NCAPS?) 	AASB FRRs IS 5.2	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the agency certified whether the statements comply in all material respects with prescribed requirements in relation to the establishment and keeping of accounts? (refer to the examples quoted above) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have the financial statements been audited and certified as required under the Auditor-General Act? 	IS 2.8 IS 5.4 FPMS s.46	<input type="checkbox"/>	<input type="checkbox"/>

Question	Related resources	Yes	No
(have the financial statements been given to your external auditor for completion within required timeframes?)			
<ul style="list-style-type: none"> Are agency financial statements included in the annual report? (does the annual report include the (unaltered) audited statements of financial position, comprehensive income, changes in equity, cash flows, notes to accounts, management certificate and audit report, as required by the FPMS, s.46?) 	ARR IS 5.5	<input type="checkbox"/>	<input type="checkbox"/>

Section 63 – Annual Reports

This section describes the requirements for the way in which the annual report is to be prepared, the time by which it is to be given to the appropriate Minister, and the reporting requirements contained in the FPMS.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has an annual report been prepared? (the annual report must include the annual financial statements, management and audit certificates, and the information required by the ARR) 	ARR IS 5.5	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the annual report been given to the appropriate Minister? (as the Minister is required to table an agency's annual report in Parliament within 3 months of the end of the financial year, are processes in place to ensure this can occur, e.g. adequate time for the Minister to review the annual report prior to tabling?) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the Minister tabled the annual report in the Legislative Assembly by the time stipulated in the FPMS? (in exceptional circumstances, the Minister may extend the tabling timeframe, refer FPMS, s.47) 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Section 64 – Investments Gifted or Bequeathed to Statutory Body

This section describes the requirements for when a statutory body elects to divest itself of an investment that has been either gifted or bequeathed to it.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has the Treasurer exempted the agency from requiring the Treasurer's approval to divest itself of any investments it has received by way of gift or bequest? 	IS 3.9	<input type="checkbox"/>	<input type="checkbox"/>

Question	Related resources	Yes	No
(if the Treasurer is satisfied that the agency has appropriate processes in place to make decisions about the disposal of a gift or bequest (e.g. specific management committees with a mandate of managing gifts or investments), the Treasurer may exempt the agency from seeking approval to divest itself of gifts or bequests)			
<ul style="list-style-type: none"> If the agency does not have the Treasurer's prior approval, has approval been sought from the Treasurer to dispose of such investments? 		<input type="checkbox"/>	<input type="checkbox"/>

Financial and Performance Management Standard

Section 5 – Relationship with Other Documents

This section details an agency's obligation to consider the application of the requirements of various documents which are referred to in the FPMS, and to which the agency must have regard.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has the agency identified and considered the contents of all relevant documents to which agencies must 'have regard' under the FPMS? (e.g. when preparing annual financial statements, an agency must have regard to the minimum reporting requirements as contained in the FRRs) 	IS 1.1	<input type="checkbox"/>	<input type="checkbox"/>

Section 6 – Governance

Governance encompasses management's behaviour and accountability for the way it directs an agency's operations, and also relates to the agency's structures, responsibilities, competencies, reporting and risk management processes.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has a governance framework been established by the agency that reflects the purpose for which the agency was established? (e.g. has management recognised the size and complexity of the agency's operations when designing and implementing internal financial controls, processes, performance measurement indicators and reporting requirements?) 	IS 2.1	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the framework recognise the impact of management on the cultural and operational aspects of the agency? (e.g. is there management commitment to establish and maintain appropriate culture and operational systems for the agency?) 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Have the concepts of openness, integrity, accountability, due care and public defensibility been considered and incorporated in the agency's governance framework? (does the framework ensure that the agency's culture is based on ethical business practices and allow for transparency in all agency processes?) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the framework incorporated the ethics principles under the Public Sector Ethics Act? (the Public Sector Ethics Act is based on the fundamental principles of respect for the law and government, respect for people, integrity, diligence and economy and efficiency) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have the following been established: <ul style="list-style-type: none"> a performance management system? (has a set of financial and non-financial performance indicators been established that will allow management to effectively measure the performance of the agency in the delivery of its services and objectives?) a risk management system? (has a system been established to ensure that agency risks are identified and managed?) an internal control structure? (have internal controls been established to ensure agency objectives are met?) 	As above IS 3.1 IS 3.2 IS 3.13 FMT	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Section 7 – Internal Control Structure

This section details an agency's obligations to establish and maintain a cost-effective internal control structure, and for its inclusion in the agency's financial management practice manual (FMPM).

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has a cost-effective internal control structure been established? (has the agency tailored policies and procedures to address agency risks and potential impacts on the achievement of agency goals and objectives economically, while still achieving an appropriate level of accountability?) 	IS 2.3 IS 2.4 IS 3.2 FMT	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the internal control structure have a strong emphasis on accountability, and consider best practice in the management of resources and internal controls? 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Does the agency's internal control structure: <ul style="list-style-type: none"> include appropriate organisational structures and delegations? ensure that competent and qualified officers are employed and trained and their performance is assessed? allow for monitoring the performance of, and accounting for its investment in, a controlled entity? 	As above IS 3.4	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Where an internal audit function, audit committee or risk management committee have been established, are their operations run efficiently, effectively and economically? (has the agency ensured that operations of agency committees are conducted in such a way to maximise their contribution to agency governance processes?) 	IS 2.7 IS 2.9 ACG	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the agency have regard to the Financial Accountability Handbook? (when establishing its internal controls and processes, has the agency complied with those Information Sheets in the Handbook which are applicable to the agency's financial and operational circumstances?) 	IS 1.1	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the agency have regard to the Queensland Government Enterprise Architecture (QGEA)? (the QGEA is a collection of digital and ICT strategies, policies and associated publications, as maintained by the Queensland Government Chief Information Office) 	IS 3.3	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the agency documented its internal control structure in its FMPM and are there processes for ensuring the FMPM remains current? (an FMPM documents all agency controls and processes, and provides the basis for day-to-day operations of the agency) 	IS 3.14	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has appropriate separation of duties been established? (where possible, no individual should have control over two or more phases of a transaction or operation, though this may be difficult in very small offices) 	IS 2.3 IS 2.4	<input type="checkbox"/>	<input type="checkbox"/>

Section 8 – Planning

Planning is an integral part of the Queensland Government's financial management framework. This section details agencies' obligations to develop a strategic plan that aligns service delivery objectives with Government initiatives, and establish an operational plan to ensure the objectives are met.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has the agency prepared a strategic plan covering a 4 year period? (has the agency aligned service delivery objectives with its legislated purpose and Government initiatives, and communicated the strategy to staff and other stakeholders?) 	IS 2.10 APR	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the agency prepared an operational plan covering a period of not more than 1 year? (has the agency translated the strategic plan into operational terms, agency goals and service delivery objectives?) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> In developing strategic and operational plans, has the agency complied with the 'Agency Planning Requirements'? (the APRs discuss agency planning requirements, contents of strategic and operational plans, the establishment of monitoring and reporting procedures, and the preparation of other mandatory and discretionary plans) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have the plans been communicated and implemented within the agency? (agencies should establish a regular monitoring and reporting process to assess its progress against its strategic plan, operational plan and other mandatory and discretionary plans) 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Sections 9 to 10 – Performance Management

Performance management is the process that allows an agency to assess its performance in the achievement of its strategic objectives and delivery of its services. These sections deal with agencies' obligations in this regard.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> In the development of a performance management framework, has the agency complied with 'Queensland Government Performance Management Framework Policy'? (the document discusses planning, resource management, performance management and monitoring, and performance reporting) 	PMF IS 3.13 FMT	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have systems been established for obtaining information to enable the agency to decide whether it is: <ul style="list-style-type: none"> achieving the objectives stated in its strategic plan and are they being achieved efficiently, effectively and economically? delivering services to the standards stated in its operational plan? 	As above IS 5.1	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have systems been implemented which will allow reporting about performance to be provided to the agency at least every 3 months, and to 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Question	Related resources	Yes	No
the Minister at least annually or when the Minister requests the information?			
<ul style="list-style-type: none"> Do the performance management systems allow the agency to assess: <ul style="list-style-type: none"> the appropriateness of its objectives, and the services that it delivers to achieve its objectives? whether the performance information is suitable to assess the extent to which the objectives have been achieved? options to improve the efficiency, effectiveness and economy of the operations of the agency? 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Sections 11 to 23 – Resource Management

These sections deal with the agency's obligations to establish internal financial systems and processes that will allow for the efficient, effective and economical management of the agency's resources.

Question	Related resources	Yes	No
<p>Has the agency considered the following when establishing processes, systems and controls for managing its financial resources:</p> <ul style="list-style-type: none"> the Financial Accountability Handbook? (has the agency had regard to the Handbook and applied Information Sheets relevant to agency circumstances?) the need to regularly review systems for managing resources? (the regularity of the review may depend upon the risks attached to the controls or processes) the establishment and maintenance of an FMPM, and made it available to all appropriate staff? (the FMPM is generally an agency-specific document, but several similar statutory bodies may have a standard FMPM where directed by the Minister) 	<p>IS 3.1 to IS 3.12</p> <p>As above IS 4.1 FMT</p> <p>IS 3.14</p>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the agency established a revenue management and user charging system? (a system to ensure all revenue is promptly managed and that customers are charged an appropriate amount for goods or services provided by the agency) 	IS 3.5 FMT PFC	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the agency established an expense management system that achieves reasonable value for money and complies with the following, where appropriate: 	IS 3.6 FMT	<input type="checkbox"/>	<input type="checkbox"/>

Question	Related resources	Yes	No
<ul style="list-style-type: none"> ○ <i>Queensland Procurement Policy?</i> ○ <i>Queensland Ministerial Handbook?</i> 			
<ul style="list-style-type: none"> • Has the agency established an expense management system that ensures special payments over \$5,000 are recorded? 	IS 3.6	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Has the agency established an expense management system that ensures losses are promptly identified and recorded, and appropriate authorities notified? (i.e. the Minister, Auditor-General, police and/or Crime and Corruption Commission) 	IS 3.6	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Has the agency established an asset management system that ensures that evaluations (similar to business cases) are prepared before acquiring, maintaining or improving a significant physical asset, with completion reviews undertaken to ensure that objectives contained in the evaluations were met? (the term 'significant' is defined in section 18) 	IS 3.8 FMT	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Has the agency established an asset management system that ensures that assets are regularly maintained and complies with or has regard to: <ul style="list-style-type: none"> ○ <i>Non-Current Asset Policies for the Qld Public Sector?</i> ○ <i>Queensland's Project Assessment Framework?</i> 	IS 3.8 IS 3.9 QGCI0 FMT	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Has the agency established a cash management system? (have effective systems been established to control and record cash transactions?) 	IS 3.9 FMT	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Has the agency established a liability management system? (a system for the prompt and accurate recording of liabilities, e.g. for operational costs and capital expenditure, and has it complied with 'Queensland Leasing Approval Policy for Public Sector Entities'?) 	IS 3.10 FMT	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Has the agency established a contingency management system? (a contingent asset or liability crystallises as the result of a future event that is outside the control of the agency) 	IS 3.12 FMT	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Has the agency established financial information management systems? (when establishing financial information management systems, has the agency had regard to the Queensland Government Enterprise Architecture and the <i>Public Records Act 2002</i>?) 	IS 3.3 IS 5.3 FMT		

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has the agency established a risk management system? (when establishing a risk management system, has the agency identified, managed and mitigated risks to agency operations and the State, and if established, has the risk management committee had regard to 'Audit Committee Guidelines – Improving Accountability and Performance?') 	IS 3.1 FMT GRM		
<ul style="list-style-type: none"> Has the agency consulted with the head of internal audit, the authorised auditor, the person responsible for keeping and managing records and the officer responsible for financial administration prior to introducing or significantly changing a financial management system? 	IS 5.3		

Sections 24 to 30 – Internal Audit and Audit Committees

A statutory body must establish an internal audit function if directed to do so by its Minister, or where the agency determines that it is appropriate to do so. All agencies, particularly the larger and more complex ones, should consider and regularly review the need to establish an internal audit function and audit committee. These sections detail the requirements to be met in the operation of an internal audit function and audit committee.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has the agency established an internal audit function? (if an internal audit function has not been established, the reasons for this must be disclosed in the agency's annual report) 	IS 2.9 ARR	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have systems been established to ensure the internal audit function operates efficiently, effectively and economically? (has the agency ensured that the internal audit function provides maximum benefit at an appropriate cost, e.g. by ensuring plans are prepared and audits are undertaken in a timely fashion in accordance with the plans?) 	IS 2.9	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the agency established an internal audit charter which is: consistent with auditing and ethical standards set by professional bodies; approved by the agency; and, is readily available? (does the charter describe the internal audit function's scope and purpose, organisational relationships, expected competence and standards, and requirements for access to the audit committee?) 	IS 2.9	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has a strategic audit plan and an annual audit plan, commensurate to the size and complexity of the agency, been prepared? (for relatively small agencies with limited risk exposures, the internal audit process may be less complex than that adopted for larger agencies with higher risk exposures) 	IS 2.9	<input type="checkbox"/>	<input type="checkbox"/>

Question	Related resources	Yes	No
<ul style="list-style-type: none"> If the agency has shared or outsourced internal audit functions, is there a signed Memorandum of Understanding outlining the expectations of all parties and the adequacy of resourcing of all internal audit units? 	IS 2.9	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Are proposed internal audit reports provided to the person in charge of the audited area, and have any comments provided by that person been incorporated into the final report? (do processes ensure that a person/area that has been audited receives a copy of the report and has the opportunity to respond to any matters that have been raised?) 	IS 2.9 IS 4.5 IS 5.4 FMT	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the final internal audit report been given to the agency and, where established, the audit committee? (as the audit committee has a responsibility to oversee the internal audit process, does it receive a copy of the internal audit report at the completion of the audit?) 	IS 2.7 IS 2.9	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the agency considered the report and taken necessary actions? (where deficiencies in internal controls and financial processes have been noted, has the agency implemented appropriate steps to rectify the deficiencies?) 	As above IS 4.5	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the agency's internal audit team consulted with the external auditor in the preparation of strategic and annual audit plans? (as external audit may rely on work completed by internal audit, have both internal and external audit teams met and defined roles and responsibilities?) 	IS 2.8 IS 2.9	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> If the agency has established an audit committee, has it: <ul style="list-style-type: none"> developed terms of reference? had regard to 'Audit Committee Guidelines – Improving Accountability and Performance'? included members of the agency on the committee or, if the agency has a governing body, members of the governing body? given a report on the its operations to the agency as soon as practicable after the end of the financial year? (has agency management referred to the ACG for examples of reporting, checklists and other practical tools which may assist the committee in carrying out its duties?) 	IS 2.7 ACG	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

Sections 31 to 35 – Contract Performance Guarantees

Contract performance guarantees are securities provided by a contractor, or on a contractor's behalf, to ensure a contractor completes all obligations under a contract negotiated between an agency and contractor. These sections detail the obligations and responsibilities attaching to contract performance guarantees.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has a system been implemented for deciding which contracts will require a contractor to give security for the performance of the contract? (when engaging an external contractor has the agency negotiated a performance guarantee from the contractor as a means of protecting the agency from loss if the contract obligations are not fulfilled?) 	IS 3.16	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the system provide for the effective management of the contract performance guarantees? (e.g. does the agency maintain a register of contract guarantees that is regularly reviewed and actioned as required?) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the system enable the agency to identify in a timely manner when a guarantee provider who has given a guarantee stops being an approved security provider? (is the system able to advise agency management immediately there is any change to a security provider's status?) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the system ensure that the contract performance guarantee is: <ul style="list-style-type: none"> irrevocable and unconditional? payable on demand without reference to another person? available until all obligations have been met? given by an approved security provider? sufficient and suitable security for the performance of a contractor's obligations? 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the system ensure a cash performance guarantee is received from a contractor? (e.g. where the agency requires a 10% cash performance guarantee from a contractor on a contract worth \$1M, the contractor is expected to pay \$100K in cash to the agency to be refunded on effective completion of the contract) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the system ensure that a performance guarantee given by an approved security provider is in the form of a written performance bond, written performance undertaking, or a monetary security deposit? (is the documentation received from an approved security provider appropriate to the contractual obligations required for the particular circumstances?) 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Does the system ensure that if a guarantee provider ceases being approved, the contractor will replace the security with a monetary security deposit or a security provided by another approved security provider within specified timeframes prescribed by the FPMS? (to ensure that the agency's interests are protected, does the system ensure that the contractor meets its obligations in this instance?) 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Section 39 – Preparation of annual financial statements, and Section 42 Release of annual financial statements

This section details the obligations that agencies have in the preparation of annual financial statements.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> In preparing annual financial statements for each financial year, has agency complied with the minimum reporting requirements within the FRRs? (the FRRs provide updates on new and revised accounting standards, guidance on the application of policies and standards, and model financial statements) 	IS 5.2 FMT	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have the chairperson and the person responsible for the financial administration of the agency certified that, in their opinion: <ul style="list-style-type: none"> the prescribed requirements for keeping the accounts have been complied with? the general purpose financial statements present a true and fair view on the agency's transactions and financial position (or other financial statements present a true and fair view)? (in limited circumstances, the Treasurer may approve an agency preparing special purpose financial statements) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the agency ensured that, until audited, the financial statements will not be given to any person other than those authorised? (these authorised persons include the A-G or authorised auditor, the Minister or person representing the Minister, a member of the agency or a person engaged by the agency to assist in the preparation of the financial statements) 		<input type="checkbox"/>	<input type="checkbox"/>

Section 40 – Preparation of Financial Statements (newly formed statutory bodies)

This section details the obligations that agencies have in the preparation of annual financial statements for newly formed agencies (that is, for the period from the agency's formation day until the end of its first financial year).

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Where newly formed, has there been consideration of the option available (with the Treasurer's approval) to extend the first financial year for reporting purposes? (if an agency is established within 4 months of the end of the financial year, the agency may seek the Treasurer's (or nominated officer's) approval to prepare financial statements from the formation date to the end of the following financial year, though this will generally only be granted when there are a small number of immaterial transactions) 	IS 5.2	<input type="checkbox"/>	<input type="checkbox"/>

Section 41 – Timing for giving Annual Financial Statements to the authorised auditor

This section details the obligations that agencies have in meeting the timing requirements for giving annual financial statements to the authorised auditor for audit.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Have the financial statements been given to the authorised auditor within the required time period? (the date agreed between the agency and the authorised auditor must allow the financial statements to be certified by the auditor within 2 months after the end of the financial year) 	IS 5.2	<input type="checkbox"/>	<input type="checkbox"/>

Section 43 – Consideration of Authorised Auditor's Report

This section details the obligations that agencies have in considering the authorised auditor's report on the audited financial statements, and any matters arising from the authorised auditor's report.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has the agency considered the comments, observations and suggestions contained within the authorised auditor's report? (this must occur at the first ordinary meeting after the agency receives the authorised auditor's report) 	IS 2.8 IS 4.5	<input type="checkbox"/>	<input type="checkbox"/>

Section 45 – Final Financial Statements for abolished Statutory Bodies

When an existing statutory body is wound up, their reporting obligations are dealt with in this section.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Have final financial statements been prepared to abolition date in accordance with the minimum reporting requirements contained within the FRRs? (the final period for an abolished agency will depend upon whether the annual financial statements for the previous period have been certified by external audit) 	IS 5.2	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Have the former chairperson and person responsible for the preparation of the final financial statements certified in their opinion whether: <ul style="list-style-type: none"> the prescribed requirements for establishing and keeping accounts have been complied with, and the final financial statements show a true and fair view of the transactions and the financial position at the end of the period? (refer to the comments relating to sections 39 – 43 above) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the agency ensured that the former appropriate Minister has given the statements to the authorised auditor by the date agreed between the former appropriate Minister and the authorised auditor? 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Sections 46 to 50 – Annual Reports and Final Reports

Annual reports are key accountability documents that provide information to users about the achievement, performance and financial results for the financial year. This section details agency obligations in this regard.

Question	Related resources	Yes	No
<ul style="list-style-type: none"> Has the annual report been given to the Minister by the date agreed between the agency and the Minister, to allow it to be tabled in the Legislative Assembly within 3 months after the end of the financial year? (in limited circumstances, the Minister may extend the 3 month tabling period) 	IS 5.5 ARR FMT	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the annual report contain: <ul style="list-style-type: none"> the audited annual financial statements? management certification of the financial statements? the independent auditor's report? other information as required by the 'Annual Report Requirements for Queensland Government Agencies'? (the financial statements must be unchanged and unabridged; the ARR include information about minimum content requirements, production and publication of annual reports) 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Question	Related resources	Yes	No
<ul style="list-style-type: none"> If the Minister tables a consolidated report in Parliament (i.e. comprising the annual reports for a number of agencies), has the agency's annual report been provided for incorporation in the department's annual report or another agency's annual report? (consolidated annual reports are rare, and will be directed by the Minister) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Where newly formed, has consideration been given to the option available (with the Treasurer's approval) to extend the first annual report period? (if an agency is established within 4 months of the end of the financial year, Treasurer's approval may be sought to prepare an annual report from the formation date to the end of the following financial year, though this will generally only be granted when there has been a small number of immaterial transactions) 	As above	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Where an agency has been abolished, has a final annual report been prepared and given to the Minister within 1 month after certification by the authorised auditor of the final financial statements? 	As above	<input type="checkbox"/>	<input type="checkbox"/>

Statutory Body Implementation of Chief Finance Officer and Head of Internal Auditor Roles

The FA Act outlines the functions and duties of the accountable officer in each department. The accountable officer is ultimately responsible to the Minister and Parliament for the performance and actions of the department.

The FA Act allows the accountable officer to delegate their functions to an appropriately qualified public service employee or other employee of the State. The FA Act contains two mandatory delegations for departments – sections 77 and 78 require the accountable officer to delegate certain responsibilities to a Chief Finance Officer (CFO) and a Head of Internal Audit (HIA). The Financial Accountability Regulation (the FA Regulation) specifies the minimum qualifications of the officers nominated to the CFO and HIA roles.

The legislative arrangements and requirements for statutory bodies are different:

1. statutory bodies do not have an accountable officer
2. it is the statutory body itself, as created by the enabling legislation, that is accountable to the Minister and Parliament (this is generally undertaken by a board that is also established by legislation)
3. the FA Act does not provide a statutory body with a power to delegate functions to an officer, with any such power only available from the statutory body's enabling legislation.

Due to the size and complexity of the agency and where an agency's enabling legislation allows for the delegation of functions, the statutory body may elect to nominate officers to be responsible for the finance and internal audit functions. Where these roles are introduced, an agency may elect to follow the minimum responsibilities as set out in the FA Act, or other responsibilities specifically developed for the agency.

Irrespective of whether the responsibilities under the FA Act are adopted or separate responsibilities developed, the relevant sections of the FAH (*Information Sheet 2.5 - Chief Finance Officer* and *Information Sheet 2.6 - Head of Internal Audit*) should be considered as 'best practice' and will assist the agency with developing the roles to be undertaken by the officers responsible for finance and internal audit.

Statutory bodies may also consider the voluntary adoption of the minimum qualifications (as set out in the FA Regulation) as 'best practice'.

However, to reiterate, there is no imperative in the legislation for a statutory body to implement the roles of CFO and HIA, and the ultimate decision will rest with the statutory body.

Financial Accountability Handbook (FAH)

The FPMS prescribes that statutory bodies must 'have regard to' the FAH when establishing and maintaining their internal control structure. Each agency must review its financial controls and processes, and determine the application of the FAH to each agency's circumstances. The FAH underpins the legislative framework and is the initial reference point in relation to matters concerning the application of the FA Act and the FPMS.

Question	Yes	No
<ul style="list-style-type: none"> In establishing the internal control structure, has the statutory body had regard to the Financial Accountability Handbook? 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Has the statutory body had regard to the information provided in: <ul style="list-style-type: none"> Volume 2 – Governance (discusses fundamental governance requirements, e.g. the implementation and review of systems of internal controls, internal and external audit, and risk management) Volume 3 - Designing Internal Controls (discusses the fundamental elements supporting the design and implementation of internal control systems) Volume 4 – Monitoring and Assessment (discusses the range of monitoring and assessment processes, tools and reports that should be employed in assessing the delivery of services, the effectiveness of outsourcing arrangements, and when considering of internal and external audit findings) Volume 5 – Reporting Systems (details reporting obligations under the FA Act and FPMS, the roles of internal and external audit in the reporting process, and information for the development and production of effective management reports for use by agency management) Volume 6 – Grant Management (aims to achieve a whole-of-Government approach to grant program development and administration while maintaining some flexibility to suit an individual agency's specific grant program requirements) 	<input type="checkbox"/>	<input type="checkbox"/>

Corrective Actions Record

The Corrective Actions Record documents recommendations for improvements or deficiencies that may have been noted by agency management and officers when undertaking a review of the agency's compliance with the legislative and policy obligations contained in the FA Act and its subordinate legislation. The Record may be signed off by the Board or an appropriately delegated officer after consideration and approval of the matters noted.

Agencies are encouraged to include the Corrective Actions Record with agency internal audit/risk management committee minutes for future reference and evidence that appropriate corrective actions have been taken. The following is an **example only**.

Date	Section	Matter noted	Action to rectify (including timeframe)	Officer responsible

Authorised Officer

Date

Chapter 5 – Board Reporting

Part 2 Division 3 of the FPMS requires a statutory body to have systems in place for obtaining information that will allow the Board to determine whether the agency is:

- achieving the objectives stated in its strategic plan in an efficient, effective and economical manner, and
- delivering its services to the standard stated in its operational plan.

The Board must regularly (at least once every three months) assess the following:

- the appropriateness of the objectives, and the services the agency delivers to achieve its objectives
- whether the performance information the agency collects is suitable to assess the extent to which the objectives have been achieved, and
- options to improve the efficiency, effectiveness and economy of the operations of the agency.

This Chapter is intended to assist statutory bodies on effective Board reporting to aid in decision making.

For the purposes of this Chapter, the term 'agency' refers to a statutory body, and the term 'Board' is taken to mean the governing body of the agency.

Board reporting versus management reporting

The level of detail in Board and management reports will vary due to the underlying purpose of the reports. Management reports are detailed and contain the information necessary to conduct the day-to-day operations of the agency. Board reports enable the members to obtain a ready snap-shot of the performance of the agency.

To enable the Board members to focus on the strategic issues, management should analyse the detailed day-to-day operations and provide a summary to the Board which highlights key issues. For example, following analysis of the financial and non-financial information of the agency, as well as studying the general environment, management could provide the Board with reports such as:

- a summary of the key movements and balances in the financial statements, for example in narrative form, tables or graphs
- an outline of where assumptions made in formulating the budget differed from actual results (this will assist in formulating the next year's budget)
- suggestions for future revenue streams (for example, grant funding opportunities)
- a summary of whether the agency is on track to meet its key performance indicators for the year
- options available to remedy risks or to take advantage of opportunities (including pros and cons of options), or
- an analysis of key legislation or Government policy changes that will affect the agency.

The frequency of Board reporting will vary depending on the reporting schedule established by the Board. When determining the frequency of reporting, the Board may consider factors such as the size of the agency, the complexity of its operation, the availability of resources in producing such reports without interrupting normal operation and the level of confidence the Board has in the management.

As an example of the potential difference between Board and management reports:

- management may require a weekly detailed creditors report listing all outstanding creditors with their due dates, to enable effective cash flow management, and
- the Board may only require a quarterly summary report with details of high-value expenditure.

Where sub-committees of Boards exist, regular reports should be prepared for the Board's information and consideration.

Types of Board reports

The aim of Board reporting is to provide a mechanism for the Board to monitor the performance of the agency and to ensure it is achieving the objectives stated in its strategic plan and delivering the services outlined in its operational plan. Board reporting should also focus on the risks of the agency. For example:

- a professional registration agency that relies on member fees may focus on outstanding debtors, for example, by category of memberships, number of members compared to the previous years, or an ageing analysis
- an agency that relies on grant funding may monitor grant revenue versus expenditure against the funding, and
- an agency that manages events or event venues may concentrate on event negotiation opportunities, participant numbers, or compare performance to comparable competitors' data.

The types of Board reports that can be produced are endless, but there are some generic types of reports that a Board may consider, and these fall into the broad categories of operational/performance, financial and risk.

Operational/performance reports

Operational/performance reports focus on the overall objectives and services of the agency. Examples may include:

- management's assessment of the major strategic issues confronting the agency, such as:
 - threats, and
 - opportunities
- grant funding versus expense (to assess performance against the funding), for example:
 - trends, such as a comparison to the same period last year, year to date revenues and expenses, or commitments compared to available funding
 - dissection by major source of revenue and analysis of changes
- progress against specified performance targets, including, for example:
 - analysis against past performance
 - possible actions to remedy deficiencies
- cost centre/branch reports detailing operational or service delivery issues that may include:
 - various human resource statistics (absence levels, staff turnover, etc.), or
 - information technology and communication.

The [Queensland Government Performance Management Framework Policy](#), issued by the Department of the Premier and Cabinet, provides useful insights into designing and implementing a performance management and reporting system in an agency.

Financial reports

Financial reports concentrate on the financial performance and sustainability of the agency. While they are not required to adhere to Australian Accounting Standards, the generally accepted recognition and measurement principles and any accounting policies approved by the Board should be consistently applied across the Board reports, where appropriate. As discussed above, management should provide concise analyses of financial information to the Board. If the Board requests detailed reports, these could be included as attachments to the analyses, thus still allowing Board members to focus more on the strategic issues of the agency, but with additional detail if it is needed to make decisions. Alternatively, interactive dashboards could be used to allow the Board to drill down on balances of interest. Types of financial information which may be of interest to Board members may include:

- forecasting and budgeting information
- cash flow projections
- high-value unbudgeted expenditure
- high-value liabilities
- analysis of collectability and ageing of high-value receivables, and
- sensitivity analysis (impact on the financial results if assumptions are not achieved/incorrect).

Full financial reports must be presented to the Board at least annually but may be prepared on a more regular basis if considered necessary.

Risk reports

Risk reports focus on the key risks of the agency, and how these are being monitored and managed. Examples may include:

- description of significant risk factors and threats, with mitigation strategies and current status, and
- audit register, with issues raised by external audit and internal audit (where established) and their current status.

Additional information about risk is available in the [Financial Accountability Handbook](#) (*Information Sheet 3.1 – Risk Identification and Management*) and [A Guide to Risk Management](#).

Characteristics of effective Board reporting

An effective Board reporting system should enable the Board to make well-informed decisions that are in the best interests of all stakeholders. As the ability of a Board to perform its role effectively depends on the information it receives, it is important to ensure that the information provided to the Board is:

- reliable – the information reported is accurate and of high quality

- relevant and timely – the information is appropriate for demonstrating whether the agency is meeting strategic and operational objectives and provided shortly after the reporting date
- clear – easy to read and understand, without jargon that may be misinterpreted by the Board, and with additional explanation where necessary
- sufficient – contain enough information to provide for an informed decision but without so much information that the critical elements are obscure
- comparable – comparison to budgets, forecasts and/or prior period results are included as part of the reporting process, and
- integrated/balanced – integrate financial results with non-financial performance measures to ensure a balanced coverage of agency performance.

In addition, reports should be given to Board members with sufficient time before the meeting to allow for perusal of the papers.

Ultimately, responsibility lies with the Board to find out as much as they can if they are concerned about the direction of the agency and the quality or quantity of information they are receiving. Boards need to be clear about what they expect from Board papers. However, management should canvas the needs/expectations of Board members to ensure the papers presented are meeting their needs for decision making. This should ensure that information captured, analysed, prepared and presented to the Board is both 'hitting the right spot' and providing value for the cost involved.

Key questions/considerations

When reviewing Board reports and discussing the reports with management, Board members may consider the following:

- any significant variance from the budget, forecast, benchmark, key performance criteria or other predetermined performance measures
- the occurrence of any unusual or unexpected events
- any issues where management cannot provide satisfactory explanation, and
- any significant reduction in funding and its impact on future operations.

Newspaper articles and media releases may also provide valuable information for Board members to assess the performance of their agency and question the reliability and accuracy of management reports.

Chapter 6 – SBFA Act Operational Guidelines

The purpose of this Chapter is to provide a general overview of the operation of the SBFA Act. It is not intended to be a substitute for reading and understanding the SBFA Act. It remains the responsibility of each statutory body and each department responsible for administering statutory bodies to familiarise themselves with the SBFA Act.

Relationship between SBFA Act and enabling Acts

Each statutory body is established under an enabling Act, which describes the functions and powers of the statutory body. In some instances, the enabling Act explicitly provides that the statutory body may enter into certain financial transactions. However, such explicit powers are exceptions rather than the norm. In general, statutory bodies derive their power to enter into financial arrangements from the SBFA Act.

Part 2B of the SBFA Act sets out the way in which the powers under the SBFA Act relate to the powers of a statutory body under its enabling Act. Part 2B should be referred to when reading other parts of the SBFA Act. The powers provided under the SBFA Act are in addition to any power provided under the enabling Act or any other Act.

The power of a statutory body to enter into a financial arrangement will fall into one of three categories.

1. **Explicit power under enabling Act:** If a statutory body's enabling Act explicitly prescribes that it has the power to enter into a particular type of transaction, then it may do so without reference to the SBFA Act.
2. **Reliance on 'general competence power':** Usually a statutory body is established as a 'body corporate' and bestowed the 'power of a natural person'. Often a statutory body will have the power to enter into contracts or the power to do all things 'necessary or convenient' for the performance of its functions. This means that a statutory body will have inherent power (known as 'general competence power') to enter into certain transactions which are '*necessary or convenient*' depending on how it is established and what powers it is given.

In certain instances, a statutory body will be able to rely on its general competence power to enter into financial transactions (except for the ones prohibited by the SBFA Act for which the Treasurer's approval will be required, outlined in point 3).

Statutory bodies must consult with Treasury (through their administering department) prior to relying on their 'general competence power' for a type of financial arrangement regulated under the SBFA Act in the first instance.

3. **Treasurer's approval must be sought:** Irrespective of any general competence power, Part 2B of the SBFA Act prescribes that the Treasurer's approval must be obtained before entering certain types of financial arrangements (unless an explicit power exists under an enabling Act). Unless expressly provided under the enabling Act or another Act, the following financial arrangements can only be entered into under the SBFA Act with the Treasurer's approval:
 - borrowings (section 9(1))
 - investment (section 10(1))
 - derivative transactions (section 11(2))
 - appointment of a funds manager (section 11(3))

- type 1 financial arrangements (section 11(4)).

If there is any ambiguity between the powers provided under the authorising Act and the SBFA Act, provisions of the authorising Act will prevail.

Guarantees

Guarantees are dealt with in part 3 of the SBFA Act. This part provides the Treasurer, on behalf of the State, with exclusive power to guarantee the obligations of a statutory body under a financial arrangement entered into under the SBFA Act or another Act.

It will be necessary for a statutory body seeking a State Government guarantee to approach its administering department in the first instance. The department will then make a recommendation to Treasury as to whether a guarantee should be provided. An actual guarantee document must be given by the Treasurer either in writing or by gazette notice.

Note that Part 3, section 21 provides an automatic State Government guarantee of statutory bodies' borrowings from QTC, but only where the statutory body is borrowing under Part 5 of the SBFA Act.

General banking powers

Most statutory bodies derive the power to operate a bank account for their day to day operations under their authorising Acts. For those statutory bodies that do not derive such power, Part 4 of the SBFA Act provides power for a body to operate a bank account subject to:

- the account being operated in Australian dollars, and
- the Treasurer's approval being obtained for the account to operate with an overdraft facility.

Borrowing powers

As noted above, statutory bodies are not allowed to rely on their general competence power to borrow. Pursuant to the SBFA Act, statutory bodies may borrow with the Treasurer's approval either under Part 5 or Part 7A of the SBFA Act. Schedule 2 of the *Statutory Bodies Financial Arrangements Regulation 2019* (SBFA Regulation) lists the statutory bodies that may borrow under Part 5. However, these statutory bodies also have the option to borrow under Part 7A if they chose to do so. The advantage of borrowing under Part 5 is that if they borrow from QTC, their borrowings are automatically guaranteed by the State. Whereas borrowing under Part 7A is not automatically guaranteed by the State. Where necessary, statutory bodies will separately seek the State guarantee from the Treasurer under Part 3 when borrowing under Part 7A in addition to seeking approval to borrow.

For the purposes of the SBFA Act the definition of borrow "*includes raise and obtain, in any way, money, credit and other financial accommodation*". "Other financial accommodation" includes:

- a) finance leases;
- b) guarantees, letters of credit and any other form of undertaking; and

c) operating leases (except for universities and grammar schools)².

Section 32(2) of Part 5 further provides that a statutory body does not borrow merely because, in the ordinary course of performing its functions, it enters into a hire-purchase agreement or a credit card facility.

Part 5 also provides that the creation of an encumbrance (i.e. creating a charge over property or income such as executing a bill of mortgage) also requires the Treasurer's approval.

It should be noted that additional approvals may be required under the State Borrowing Program. Statutory bodies should contact their administering department to check if State Borrowing Program approvals apply in their circumstances.

Statutory bodies must also consider whether a general approval for borrowing is in place and if so whether the general approval applies to them. General approvals are published in the Queensland Government Gazette (available at www.publications.qld.gov.au).

Lease transactions

For the purposes of the SBFA Act, leasing falls under the definition of borrowing (see definition of borrow above). Statutory bodies should have regard to the [*Queensland Leasing Approval Policy for Public Sector Entities*](#) prior to entering into lease transactions.

Statutory bodies must also consider whether a general approval for entering leases (borrowing) is in place and if so whether the general approval applies to them. General approvals are published in the Queensland Government Gazette (available at www.publications.qld.gov.au).

Investment powers

Part 6 of the SBFA Act deals with investments by statutory bodies. This Part enables one of three categories of investment power to be allocated to a statutory body, in which case the body may undertake the investments permitted under the category, without requiring further approvals.

Schedules 3, 4 and 5 of the SBFA Regulation set out those statutory bodies allocated categories 1, 2 or 3 investment powers, respectively.

Category 1 investment power allows investment in a range of highly secure investments either at call,³ or for a fixed term of no more than one year. Category 2 investment powers allows investment in a range of highly secure investments either at call, or for a fixed term of no more than three years. Category 3 investment power includes Category 2 investment powers and the power to undertake a range of other investments, regardless of the period of investment, including:

- purchase of land in fee simple in any State
- leasehold land in the State held under a lease that is for a term of 40 years or more and that is unexpired at the time of the purchase, and

² *Statutory Bodies Financial Arrangements Regulation 2019*, s.4.

³ The term 'at call' refers to simple investments where the investment can be redeemed, and the moneys invested can be retrieved by the investor from the financial institution within 30 days without penalty. It does not contemplate the trade of investments such as floating rate notes and bonds in the secondary securities market.

- debentures or other securities charged on the funds or property of a local government.

Details of the investments are contained in sections 44, 45 and 46 of the SBFA Act. In each case, the permitted range of investments may be added to by regulation.

The range of investments includes investments with a financial institution (i.e. a bank, building society or credit union), investments in several QTC and QIC investment products and investments in products with a rating prescribed by regulation. Schedules 6 and 7 of the SBFA Regulation outline the QTC and QIC investment products permitted for the investment power categories and section 8 and 10 of the SBFA Regulation contain the ratings which are prescribed for sections 44(1)(e) and 45(c) of the SBFA Act. Section 52 of the SBFA Act outlines a statutory body's obligations if an investment arrangement's rating changes.

It should be noted that investments not permitted for a statutory body under its category of investment power (for example, investments in certain managed funds) may be considered on a case by case basis. Treasurer's approval will be required and may be sought under part 7A of the SBFA Act.

It also should be noted that under Part 2B, general competence powers (for example, the power generally to enter into contracts, or the powers of a body corporate) are not sufficient to enable a statutory body to enter into an investment under its authorising Act.

Part 6 of the SBFA Act requires a statutory body to use its best efforts to invest in a prudent and appropriate manner and to keep records to show that it has done so.

Derivative transactions

Section 53 provides that certain statutory bodies may, in limited circumstances, enter into derivative transactions. The term 'derivative transactions' is defined in the schedule to the SBFA Act.

A statutory body may enter into derivatives only if it is prescribed by regulation to be a body that may enter into derivative transactions and the Treasurer's approval has been given to enter the derivative transaction. The majority of statutory bodies have not been allocated this power (see Sch.8 of the SBFA Regulation).

Statutory bodies must also consider whether a general approval for derivative transactions is in place and if so whether the general approval applies to them. General approvals are published in the Queensland Government Gazette (available at www.publications.qld.gov.au).

Appointment of funds managers

For a statutory body which has been allocated a category of investment power under the SBFA Regulation, section 59 allows that body, with the Treasurer's approval, to appoint a funds manager to manage the investment of all, or part of, its investment funds. However, the funds manager cannot invest in products which the statutory body is not authorised to invest in. Where the Treasurer's approval is given subject to conditions, the body must ensure the appointment is made subject to those conditions.

Type 1 and type 2 financial arrangements

Type 1 financial arrangements

Section 60A requires a statutory body to obtain the Treasurer's approval to enter into 'type 1 financial arrangements'. Type 1 financial arrangements are defined in the SBFA Act as follows (Sch. Dictionary):

- entering into or performing a deferred payment arrangement if the payment period is more than 3 years
- entering into a joint venture, partnership or trust
- forming, or participating in forming, a corporation
- acquiring, consolidating, dealing with, disposing of, holding or issuing bonds, debentures, inscribed stock, shares, stock or other securities of any statutory body or corporation
- entering into an arrangement, covenant, guarantee, promise or undertaking to meet liabilities or obligations incurred by or to a person, whether or not the person is a party to the arrangement, covenant, guarantee, promise or undertaking, and
- underwriting an issue of debentures, shares or other securities.

It should be noted that under Part 2B, general competence powers are not sufficient to enable a statutory body to enter into a type 1 financial arrangement. The only exception is where the authorising Act provides express powers for the particular type 1 financial arrangement.

The formation of a company is a type 1 financial arrangement. Subject to the Treasurer's approval, a statutory body may form, or participate in forming, a company pursuant to section 60A of the SBFA Act. The statutory body should consider the document '*Guidelines for the formation, acquisition and post approval monitoring of companies*'⁴ in applying for the Treasurer's approval.

Type 2 financial arrangements

Part 7A enables a statutory body to seek the Treasurer's approval to enter a 'type 2 financial arrangement', as defined in the SBFA Act (Sch. Dictionary).

Under Part 2B, an agency is able to rely on its general competence power to enter into a type 2 financial arrangement (excluding lease arrangements that constitute a borrowing – see above 'Borrowing powers'). If, however, the agency has no (or insufficient) general competence powers, the agency must obtain the Treasurer's approval before entering into a type 2 financial arrangement.

Accordingly, if it is determined that a statutory body has sufficient power to enter into the arrangement under its authorising Act, it will not be necessary to seek approval under the SBFA Act.

Type 2 financial arrangements tend to cover most of the financial arrangements that a statutory body would undertake as part of its general business functions, such as taking an interest in land, holding property as trustee or agent, granting or taking a lease, or hiring building/equipment.

Statutory bodies should contact their administering department for further advice if they are unsure as to whether a particular arrangement requires Treasurer's approval under part 7A.

⁴ Issued by Queensland Treasury.

Seeking the Treasurer's approval

A statutory body proposing to enter into a financial arrangement which requires approval under the SBFA Act should first check whether it has been allocated appropriate power under the SBFA Regulation or its Authorising Act, and then approach its administering department with complete details of the proposal and a request that the department seek any necessary approvals on behalf of the body.

The administering department is responsible for considering and assessing the proposal and for determining (having regard to the requirements of prudent financial management) whether it is appropriate for the approval to be sought. This determination will then form the basis of a suitable application for approval under the SBFA Act and a suitable recommendation by the department to Treasury regarding the application.

Treasury will liaise and correspond with the relevant department regarding the application and any approval given. The relevant department will generally be responsible for any direct liaison with the statutory body.

In most cases, the approval sought would be the Treasurer's specific approval to enter into a particular financial arrangement. However, in appropriate circumstances, the SBFA Act allows the Treasurer to grant general approvals by gazette notice (e.g. the general approval for statutory bodies to which Part 5 applies, to borrow from QTC).

The SBFA Act allows the Treasurer to either approve an application entirely, or partly, or refuse the application. Further, the Treasurer may grant an approval subject to certain conditions and may amend or repeal an approval.

The SBFA Act requires a statutory body keep a register of the Treasurer's approvals. There is no prescribed form for the register and it is considered that a binder with a copy of the Treasurer's approvals would be sufficient.

Finally, it should be noted that the SBFA Act allows the Treasurer, in considering a statutory body's application, to require the body to provide further relevant documents or information and that it is an offence for a person to provide documents or information which the person knows to be false or misleading.

Refer to **Appendix B** for an example of an approval instrument.

Treasurer's delegations

Section 76 of the SBFA Act provides that the Treasurer may delegate the Treasurer's powers to another Minister, or the chief executive of a department (other than the Treasurer's power to give a guarantee under section 16). On 23 March 2006, the Treasurer delegated certain powers under the SBFA Act to the Under Treasurer. The description of powers delegated is as follows:

- section 31(2) – operating a deposit and withdrawal account with an overdraft facility
- section 34 – undertaking borrowings (must be in Australian money and undertaken in Australia)
- section 53 – entering into derivative transactions
- section 59 – appointing a funds manager
- sections 60A and 61A(1) – undertaking type 1 and type 2 financial arrangements
- Part 9, divisions 1 to 3:
 - power to grant either specific or general approvals
 - power to attach to approvals conditions that are considered necessary or desirable

- power to amend or repeal approvals.

General Approval

The SBFA Act allows the Treasurer, by gazette notice, to provide approval that may apply to all statutory bodies, powers or matters; or be limited to particular bodies, powers or matters. To achieve administrative efficiency, from time to time the Treasurer has executed various general approvals. General approvals are published in the Queensland Government Gazette (available at www.publications.qld.gov.au).

In some cases, the General Approvals are also detailed in relevant explanatory guides. For example, the [*Queensland Leasing Approval Policy for Public Sector Entities*](#) details the General Approval granted under the SBFA Act for statutory bodies to enter into certain leases constituting borrowings.⁵ Likewise, the [*Financial Accountability Handbook*](#) details the General Approval granted under the SBFA Act for statutory bodies (who may enter into derivative transactions per the SBFA Regulation) to enter into certain derivative transactions, subject to conditions.⁶

⁵ Queensland Treasury, 'Queensland Leasing Approval Policy for Public Sector Entities', Part 3.4.

⁶ Queensland Treasury, 'Financial Accountability Handbook', Information Sheet 3.18.

Chapter 7 – Investment Guidelines

The accountability and governance arrangements regulating a statutory body's investment policy and practice will depend to a significant extent on the particular arrangements contained in its enabling legislation, and in internal policy documents of the statutory body (e.g. code of conduct).

This Chapter has been drafted on the basis that most statutory bodies seeking to develop an investment policy framework will have a governing board, responsible either for decision-making or for the provision of advice and recommendations on the body's investments. However, it is acknowledged that this will not always be the case.

Section 47 of the SBFA Act requires a statutory body to invest in a prudent and appropriate manner. This Chapter is designed to assist statutory bodies in understanding their obligations under the SBFA Act, and to provide direction on some of the key considerations which should form the development of a prudent and appropriate investment policy framework. The Chapter also seeks to assist statutory bodies with the preparation of a formal investment policy, which should outline principles and practices for a statutory body to invest in the required manner and be able to demonstrate it has done so.

Appendix C contains a model investment policy which may be adapted according to statutory bodies' specific requirements. The model policy is intended as a guide only. If utilised, it will require amendments to reflect the relevant category of investment power allocated under Part 6 of the Act, as well as the expectations, objectives, risk appetite and governance arrangements of the individual statutory body.

Note: a glossary of terms is contained at the end of this chapter.

Overview of powers under SBFA Act

Most Queensland statutory bodies derive their investment powers from the SBFA Act and may enter into investment arrangements subject to Parts 6 and 7A of the Act.

Sections 44 to 46 of the SBFA Act describe three categories of investment powers. Statutory bodies can be allocated one of the three categories, after which the statutory body may undertake investments permitted under that category without further approval from the Treasurer.

Once a statutory body has been allocated an investment power, they will be listed as such in the SBFA Regulation.

If a statutory body is not allocated an investment power, it may still seek approval from the Treasurer to invest, but instead under Part 7A of the SBFA Act. Requests will be considered on a case-by-case basis. Further information is provided in Chapter 6 of this Handbook on investment power provided under the SBFA Act.

Investment policy

What is an investment policy?

An investment policy provides guidance for officers charged with undertaking statutory body investments. Without an approved investment policy, the investment officers may make investment decisions that are not in accordance with the objectives, practices or risk appetite of the statutory body.

An investment policy is a governing document that articulates a statutory body's:

- investment strategy
- risk appetite
- investment objectives and expectations
- identified roles for those involved in the investment process, and
- requirement for compliance with the policy's goals and procedures.

In creating an investment portfolio, a statutory body's primary objective is to preserve capital⁷ and appropriate liquidity. The investment policy will set the framework to achieve these objectives. A statutory body's investment objectives should be included in the written investment policy.

Requirements of an investment policy

At a minimum, an investment policy should:

- define the risk profile of the statutory body
- preserve capital, liquidity and return expectations for the investment portfolio
- prohibit the purchase of derivative securities for non-hedging purposes, either directly or indirectly (refer section 54 of the SBFA Act)
- prohibit the use of leveraging of an investment portfolio (i.e. borrowing to invest in securities)
- prohibit the use of the investment portfolio for speculation
- prohibit investment in securities that are complex in nature (i.e. securitised or structured product)
- prohibit investment in non-Australian dollar denominated securities (unless Treasurer's approval is obtained (s.61A SBFA Act))
- require investments of the statutory body to be regularly revalued to reflect prevailing market prices
- require investments that are downgraded below a minimum rating acceptable under the Act to be liquidated or the Treasurer's approval obtained within a 28 day period to continue with the investment arrangement (pursuant to section 52 of the SBFA Act)
- require the status and performance of the statutory body's investments to be reported regularly to the Board, and
- where applicable, document the process to choose an external investment manager (see s.59 SBFA Act for appointment requirements).

⁷ Preservation of capital refers to an investment strategy with the primary goal of preventing losses in an investment portfolio's total value. In modern portfolio theory terms, capital preservation refers to a guaranteed investment of principal that would provide a return of at least inflation.

Approach of an investment policy

An investment policy should reflect the investment management approach adopted by the Board.

The decision to employ a particular investment approach or style will depend on the specific circumstances of each statutory body. This would include an assessment of the scale of funds under management, level of risk aversion, confidence in management capability, systems capacity, and internal procedures to control financial and operational risks.

When administering investments under Part 6 of the Act, each statutory body will generally adopt one of two different investment approaches – active or passive management.

Passive investment management

Passive management allows very little discretion with regard to portfolio management. An example of passive management is to buy and hold investments to maturity or replicate a specific index/benchmark of investments.

Passive investment management is generally the approach recommended to statutory bodies, as investment management is not their core business. The objective is to ensure the return of capital and at the same time generate a return commensurate with the risk taken.

Active investment management

Active management allows a greater level of discretion and scope to change investments in expectation of future market developments. An example of active management is to identify and exploit short-term market anomalies in investments that may deliver a comparative advantage in light of longer-term economic developments.

A more rigorous risk management framework would be required when a statutory body adopts a more active investment style. It is only appropriate for large, mature, well-resourced statutory bodies to consider adopting this approach.

Approval of the investment policy

The initial approval of a statutory body's investment policy should be by its Board and occur prior to the year that it covers. The Board should thoroughly discuss the investment policy and approve it by way of vote.

A vote for adoption of an investment policy increases its authority and legitimacy and provides a transparent investment process for those responsible for implementation.

While it is unlikely that the investment policy will change substantially from year to year, the document should be reviewed annually, or at a minimum every two years, and re-approved by vote of the Board. The purpose of regularly reviewing an investment policy is to reassess the risk associated with changes in the market and the statutory body (e.g. improved internal controls or change of management).

To enhance the decision-making process and increase transparency and accountability, any subsequent changes to the investment policy should be reviewed and approved by the Board.

Responsibilities of statutory body officers

An investment policy will articulate the fiduciary duties and responsibilities of a statutory body's investment officers. These are outlined in more detail below.

Fiduciary duties and the prudent person standard

A fiduciary relationship is a relationship between a person in a position of special power and responsibility (the fiduciary) and the person or entity for whose benefit the fiduciary acts.

An investment policy must obligate the officers who are responsible for investing the statutory body's funds to be aware of their duties, and to act with a duty of care, skill, prudence and diligence that a prudent person would exercise when investing and managing their own funds.

The prudent person standard has evolved from fiduciary investment standards. The purpose of this standard is to protect beneficiaries (in this case, statutory bodies) from mismanagement and misuse of funds.

Separation of duties

Separation of duties forms a critical component of an investment policy. A clearly defined investment policy will separate the function of reporting, approval authority and execution of transactions.

The purpose of 'separation of duties' is to reduce the risk of fraud and misuse of public moneys.

Ethical standards and conflicts of interest

Conflicts of interest are to be appropriately recorded and disclosed to the Chief Executive Officer.

An investment policy must obligate the officers and employees involved with the investment process to refrain from personal business activity that could interfere with the investment process or impair their ability to make impartial investment decisions.

Compliance with legislation

Officers involved in a statutory body's investment activities should be aware of the body's duties under the SBFA Act, as well as responsibilities arising under its enabling Act and any other relevant legislation. A statutory body's duties under the SBFA Act include:

- using its best endeavours to invest at the most advantageous rate available at the time for an investment of the proposed type (section 47(1)(a))
- maintaining records to verify that it has invested in an appropriate manner (section 47(2)), and
- where the rating of an investment arrangement is downgraded below the minimum rating prescribed under the SBFA Act, obtaining the Treasurer's approval to continue with the arrangement, or liquidate the investment (section 52).

An investment policy should be amended to reflect any changes to the SBFA Act.

Explanation of Credit Ratings

A credit rating is the current opinion of the credit worthiness of an individual counterparty or its obligors generally expressed in terms of default risk. It is not a recommendation to buy or sell a security and independent analysis should be undertaken with regard to the return or suitability for a statutory body's investment portfolio.

Long Term and Short Term Credit Ratings

A credit rating can be either long-term or short-term. The difference between short and long term depends on the relevant market. In Australia, a short-term rating is assigned to investments with an original maturity of no more than 365 days. Conversely, a long-term rating is greater than 365 days. Medium-term notes are assigned long-term ratings.

The table below details three ratings agencies' credit rating for short and long term investments. It includes a grade explanation for each credit rating.

Grade	Moody's	S&P	Fitch
Short term debt / commercial paper ratings			
Superior/Extremely strong	P-1	A-1	F1+, F1
Strong/Satisfactory	P-2	A2	F2
Acceptable	P-3	A3	F3
Vulnerable/Uncertain		B,C	B,C
Default		D	RD, D
Not Prime	NP		
Long term debt and individual security ratings			
Highest quality/Extremely strong	Aaa	AAA	AAA
High quality/Very strong	Aa1, Aa2, Aa3	AA+, AA, AA-	AA+, AA, AA-
Upper-medium grade/Strong	A1, A2, A3	A+, A, A-	A+, A, A-
Medium grade/Adequate	Baa1, Baa2, Baa3	BBB+, BBB, BBB-	BBB+, BBB, BBB-
Speculative	Ba1, Ba2, Ba3, B1, B2, B3	BB+, BB, BB-, B+, B, B-	BB+, BB, BB-
Highly Speculative/Vulnerable or Substantial Risk	Caa, Ca,	CCC+, CCC, CCC-, CC, C	B, CCC, CC
Typically in default or near default	C	D	C,,RD, D

Investment grade

Investment portfolio composition, characteristics and limitations

An investment policy must be explicit about the investment expectations of the statutory body. It defines how the investments would achieve these expectations and establishes applicable limits. The policy should thoroughly consider the following issues.

Investible funds

An investment policy should include a list of all funds of the statutory body covered by the policy.

Rate of return expectations

A statutory body's 'rate of return expectation' is a function of its risk appetite (including liquidity, market and default risks) and should also consider, more specifically, its tolerance for volatility of returns.

An investment policy will document guidance on return expectations and/or tolerable variation in performance of the statutory body's investment portfolio.

A statutory body that has an objective to achieve a return in excess of a benchmark should also clearly state its tolerance for underperformance or volatility of performance in the investment policy.

Approved investments

Acceptable counterparties

Reflecting the risk level authorised by the SBFA Act and the risk appetite of the Board, an investment policy should outline approved categories of counterparty (e.g. by rating) and delegate approval to the Chief Executive Officer or Chief Finance Officer for individual credit counterparty limits or for specific instruments within the general category limits.

The SBFA Act states the acceptable categories of counterparty for a statutory body. For example, Category 1 investment power allows the following categories:

- financial institutions
- Australian Federal Government
- Australian State Government
- investment arrangements, managed or offered by Queensland Investment Corporation (QIC) or Queensland Treasury Corporation (QTC), prescribed by regulation, and
- investment arrangements with a prescribed rating of:
 - F1+ or F1 by Fitch
 - P-1 by Moody's, or

- A-1+, A-1, AAm or AAAM by Standard and Poor's.⁸

It is important that counterparty parameters (e.g. 'financial institutions') are clearly defined to avoid different interpretations relative to the original intention of the investment policy and the Act.

For example, simply stating "rated investment arrangements" is not a clearly defined category for inclusion in an investment policy. A more robust investment policy will provide further detail on different categories of rated counterparty. This will avoid investment in rated securities which may compromise a statutory body's liquidity or return objectives. For instance, corporate issuers, mortgage-backed issuers and a first to default basket of securities may all be rated securities. However, the first to default basket of securities would compromise a statutory body's objective of preservation of capital in the event of default of a reference entity.

Acceptable security types

An investment policy should detail a list of acceptable securities for investment. The list should reflect the risk appetite of the Board as well as the unique requirements of each investment category provided under Part 6 of the SBFA Act. Such modification would include additional restrictions to reflect different risk tolerances for each security type.

For example, a list of acceptable securities (at all or for a fixed time of not more than 1 year) for a statutory body with Category 1 investment power may include:

- Deposits with financial institutions
- QIC Cash Fund
- QTC Capital Guaranteed Cash Fund
- QTC Fixed Rate Deposit
- QTC Working Capital Facility

Prohibited security types

An investment policy should detail the types of securities that have been reviewed and assessed as being outside the parameters for acceptable investments and therefore expressly prohibited. Inclusion of this list in the investment policy strengthens the framework within which investment officers make decisions about suitable investments.

For example, a list of prohibited security types for a statutory body with Category 1 investment power may include:

- derivative based instruments
- principal only investments or securities that provide potentially nil or negative cash flow
- stand alone securities issued that have underlying futures, options, forward contracts and swaps of any kind
- securities issued in non-Australian dollars

⁸ The rating referred to in the Act as AAAM and AAm refers to the principal stability of a Fund, also known as a money market or cash fund rating. This is not a specific credit rating/default rating but rather an assessment by Standard and Poor's of the ability of a fund to maintain stable principal or a stable net asset value. It is a reflection of the creditworthiness of the investments held, liquidity, market price exposure and management capability (including policies adopted by the manager).

- securitised debt instruments, and
- structured products.

An investment policy should also consider limiting or prohibiting securities exposed to certain geographies, such as emerging markets or peripheral Europe.

Minimum and maximum limits

An investment policy should establish minimum and/or maximum limits in relation to total amounts invested with various counterparties or categories. It may include the following:

- counterparty and security limits
- market risk limits
- credit quality limits
- sector limits, and
- maximum volatility relative to selected benchmark limits.

General counterparty limits are not provided in the SBFA Act and should be considered to reflect the individual risk appetite of the statutory body.

Care should be taken when expressing the counterparty limits in both dollar values and percentages of the portfolio as this can lead to uncertainty as to which applies.

Maturity ranges

The purpose of maturity ranges is to ensure that investments meet the known cash flow requirements (or liquidity needs) of each statutory body. Cash flow forecasting is an important tool used to determine the appropriate maturity profile of each statutory body's investment portfolio. In addition, the longer the term to maturity, the greater the risk that the counterparty will default. Statistically, a highly rated counterparty (rated AA or better) is highly unlikely to default over a three-year term and will exhibit lower volatility of returns compared with lower rated counterparties.

The SBFA Act provides investment maturity limits for Category 1, 2 and 3 investment powers:

- Category 1: for a fixed time of not more than one year
- Category 2: for a fixed time of not more than three years, and
- Category 3: for a fixed time of not more than three years (includes Category 2 investment power), but also allows a range of other investments options, regardless of the period (refer section 46 of the SBFA Act).

An investment policy will ideally establish two points of maturity limitation:

- weighted average maturity of the portfolio, and
- length of maturity of any one security.

It should be noted that for an investment portfolio with a time horizon greater than one year, the use of only one of these limits might lead to concentration of maturities. This may conflict with the cash flow needs of a statutory body if it is not carefully worded.

The use of a one-year maturity limit is acceptable for a statutory body with Category 1 investment power as long as the investment policy requires the investment officers to consider the statutory body's budgeted and known cash flow needs.

Portfolio diversification

The purpose of diversification of counterparties is to ensure that no single deteriorating counterparty would undermine the capital preservation objective of the portfolio. An investment policy would outline diversification requirements and avoid high concentrations to any one issue, issuer, industry, security type or geographic area.

To achieve portfolio diversification, an investment policy should consider the following:

- issuer type
- security type
- maturity buckets (e.g. 0-1 year) considering cash flow requirements
- industry standards
- geographic consideration
- quality of investment securities to be held
- liquidity requirements
- regulatory requirements
- income levels or return expectations, and
- credit requirements.

Credit risk, market risk and liquidity risk

Credit risk

The key objective of each statutory body is to preserve its capital. Therefore, it should have a strong preference for high credit quality investments which are also generally more liquid (i.e. easier to sell). An investment policy should identify a minimum standard of credit quality⁹ in accordance with the SBFA Act.

The following issues should be considered in the management of credit risk.

- Restrict the investment portfolio to investment grade BBB- or above.¹⁰ Generally, it would be prudent to maintain investments with counterparties that have a rating of A- or better.
- Where the SBFA Act allows for unrated investments, these are to be limited to a percentage of the portfolio that is consistent with the overall investment philosophy and risk return profile of the statutory body. It is recommended that statutory bodies should not invest with unrated or sub-investment grade counterparties (i.e. below BBB-).

⁹ Credit quality refers to credit risk, which is the risk of loss due to the failure of the issuer or insurer of a security/investment to meet its financial obligations in a timely manner.

¹⁰ To facilitate ease of reading, the ratings utilised in this section use the Standard & Poor's conventions.

- Maintain, at a minimum, an average credit rating of AA- (Category 2 and Category 3) and A-1 (Category 1) for the investment portfolio.
- List all permissible securities in the investment policy and modify to meet the needs of each statutory body. For example, list the type of security and amount to be invested by percentage relative to a benchmark or total assets (not both).
- List all prohibited securities in the investment policy and modify to meet the needs of each statutory body.
- It is noted that individual security limits should reflect the loss appetite of the statutory body. To assist with this decision-making process, the default probability for each ratings category over a period can be obtained from the ratings agencies.
- Establish limits for credit risk (a single entity or group of associated entities) and market risks (interest rates and price) in the investment policy.
- Where there is a split rating¹¹ for an individual security or counterparty, the lower rating should be adopted.
- Individual counterparty limits should expose no more than 10% of the portfolio to an individual counterparty. A higher exposure would expose the statutory body to risk that could be diversified away with a broader portfolio. This counterparty limit should not preclude more significant investment levels in funds such as those offered by QTC and QIC, where diversity of exposure is achieved through a portfolio of financial instruments from many counterparties (i.e. counterparty exposure is achieved by the investment manager). It would be appropriate to allow the percentage allocation for a counterparty to increase as risk reduces. However, it should be noted that more sophisticated investment managers (i.e. investors with a high level of understanding of investment practices and theories) would achieve risk reduction that better recognises the risk of transition¹² and default.

Market risk

Market risk, or systematic risk, refers to variability of returns or the likelihood that the value of an investment/investment portfolio will move with the overall market.

For fixed interest investments particularly, there is a risk that a change in interest rates will lower the value of an investment if it is sold before maturity. This risk arises because the market value (price) of a fixed interest instrument moves inversely to interest rates (yield).

For example, if a statutory body sells a fixed interest security that was bought with a 5% yield (return) in a seven per cent yield environment, it will incur a loss of principal. The magnitude of the loss will depend on the remaining term to maturity of that security, all other things being equal.

Where a statutory body is required to sell a security before it matures, it will be selling the security into a commercial secondary market and receive a market rate of return. This may compromise its preservation of capital objective.

Liquidity risk

Liquidity risk refers to the ability to sell securities in a timely manner without loss or penalty. The purpose of ensuring that a portfolio retains liquidity is to maintain the stability of cash flows for the Board and preserve the

¹¹ "Split rating" refers to the difference in rating by two or more ratings agencies for the same security or counterparty.

¹² "Transition" refers to the migration of a credit rating to strong or weaker rating.

capital of the investment portfolio. Investments that are not publicly traded in sufficient volume to facilitate - under normal market conditions - prompt sale without material adverse market price effect are regarded as illiquid.

An investment policy must provide a clear definition of illiquid investments and must be written with caution to ensure that liquidity needs are clearly understood within the policy document.

Examples of illiquid investments include:

- securities with unique features, structured elements, or those issued by counterparties that are not well known or thinly traded
- securities with issuance volume of less than \$150 million
- sub-investment grade securities and potentially also securities with a BBB rating
- private placements, and
- securities that are not priced or priced by less than two brokers/dealers.

For statutory bodies with Category 3 investment power, an investment in land would be considered an illiquid investment.

The level of liquid investments required largely depends on the cash flow needs of a statutory body. Generally, an investment policy would articulate an illiquid securities limit of no more than 20 per cent for a conservative portfolio. In the case of statutory bodies, it is recommended that investments held are highly liquid.

Appointment of funds manager

The appointment of a fund manager by a statutory body requires specific approval from the Treasurer.

Section 59 of the SBFA Act provides that the Treasurer may approve the appointment of a fund manager for a statutory body that has been allocated a category of investment power under the SBFA Regulation.

Prior to approval, the Board should be satisfied, on reasonable grounds, that the person is suitable to manage the investment of its funds. Accordingly, the submission for approval should be based on a robust and defensible assessment process performed by the Board or an independent third party on the Board's behalf.

Bond mutual (or cash plus) funds

Bond mutual funds are structured investment unit trusts which intermediate between investors and the capital market providers of cash and fixed interest securities. Bond mutual funds are often named "cash plus" funds.

Statutory bodies are not authorised to invest in bond mutual or cash plus funds using the investment powers conferred under Part 6 of the SBFA Act. The Treasurer's specific approval to invest in such products is required under section 60A of the Act.

Previous approvals granted for statutory bodies to invest in bond mutual funds have included several terms and conditions, such as limits on the modified duration of the fund concerned, the maintenance of a minimum credit rating (Standard & Poor's rating of AAF¹³), as well as regular reporting by the statutory body.

¹³ Standard and Poor's adds an "f" subscript to differentiate bond mutual or cash plus fund ratings from conventional debt ratings and other types of fund ratings. A bond mutual or cash plus fund's credit quality rating is based on an assessment of the protection its portfolio provides against default risk, which is derived from Standard & Poor's historical default and ratings transition rates.

Statutory bodies seeking approval under section 60A of the SBFA Act to invest in bond mutual or cash plus funds (or any other investment arrangements beyond the scope of their powers under Part 6) should contact their administering department in the first instance.

Voting

Voting may apply to statutory bodies with Category 2 or Category 3 investment powers.

Voting rights attached to investments may be considered in an investment policy. The premise for this is that any instance of poor governance may result in an erosion of capital value for particular investments. The following guiding principles may be applied:

- voting to be undertaken by a statutory body's investment manager or officers
- a vote either 'for' or 'against' can be made, except where there is a conflict of interest
- the statutory body may recommend the standard of governance to be applied to votes
- voting activity should be carefully monitored and overridden by management if necessary, and
- the statutory body retains the ultimate responsibility for voting decisions.

Keeping of investment records

Section 48 of the SBFA Act requires a security, safe custody acknowledgement or other document evidencing the investment arrangement to be held by the statutory body. Where evidence of title is to be in another form, the Treasurer's approval is required.

An investment policy would provide a description of the expectation of statutory body's officers and management to account for securities and provide a list of safekeeping locations. It is recommended that the number of acceptable record keeping institutions/safekeeping locations be limited to provide ready accessibility of documents.

Glossary

At call	Where the investment can be redeemed and the moneys invested can be retrieved by the investor from the financial institution within 30 days without penalty.
Benchmark	A predetermined set of securities, which is based on published indices or customised for an investment strategy, for performance comparisons.
Broker	The financial intermediary between a buyer and seller.
Conflicts of interest	A situation where an official's private interests may benefit from decisions or actions that they are entrusted to take.
Counterparty	Counterparty is both a legal and financial term that refers to the other individual or institution to an agreement or contract
Credit quality/risk	The risk of loss due to the failure of the issuer or insurer of a security/investment to meet its financial obligations in a timely manner.
Dealer	An entity acting as a principal in a securities transaction that trades for its own account and risk.
Direct issuer	A company that sells commercial paper or other debt directly to investors rather than through brokers.
Duration	The weighted-average life of the present value of all future cash flows (including principal and interest) of a security.
Investment portfolio	A collection of investments.
Market risk	The risk that the value of an investment will decrease due to movements in market factors such as interest rates, foreign exchange rates, equity prices and commodity prices.
Mortgage-backed security	A structured instrument where the cashflows are supported by the principal and interest repayments of mortgaged loans.
Preservation of capital	An investment strategy with the primary goal of preventing losses in an investment's total value. In modern portfolio theory terms, it refers to a guaranteed investment of principal, which would provide a return of at least inflation.
Private placement	The sale of a debt investment to one buyer or a few buyers, as opposed to offering the security to the public through a group of dealers. This also refers to direct placement.

Prudent person standard	A legal standard restricting the investing and managing of a client's account to what a prudent person seeking reasonable income and preservation of capital might exercise for his or her own investment.
Secondary market	A market in which securities transactions are carried out between investors without involving the issuing corporation.
Securitised product	A financial instrument referencing an underlying pool of financial assets. The pool of assets is tiered and the respective tiers are marketed to investors. For example, residential-mortgage-backed-securities are a securitised product that combine a pool of mortgages which the issuer divided into smaller investment offerings for investors.
Structured product	A type of investment specifically designed to meet an investor's financial needs by customising the product mix to adhere to the investor's risk tolerance. Structured products are generally created by varying the amount of exposure to risky investments and often include the use of various derivatives.
Split rating	A difference in rating by two or more ratings agencies for the same security.
Yield	The annual rate of return on an investment.

Chapter 8 – Solvency

A statutory body should adopt a proactive approach in monitoring the appropriateness of its systems, operations and overall financial position and performance. In practical terms, the responsibility for monitoring the efficient, effective and economical financial and performance management of a statutory body will rest with a Board (or equivalent governing body).

Solvency is the ability of the statutory body to pay all financial commitments as and when they become due and payable. The issue of solvency of a statutory body needs to be considered in terms of the Board members allowing the statutory body to continue to operate and incur debts when the Board suspects the statutory body does not currently have the income or financial support to meet those obligations. If the Board suspects that the statutory body is insolvent or may become insolvent there are a number of courses of action that the Board should consider.

This Chapter is designed to provide:

- guidance to Board members on how to assess and monitor the solvency of a statutory body
- details of the legal responsibility of Board members to prevent insolvent trading
- an overview of the indemnity of Board members
- details of the options that may be available to a statutory body to improve its financial position
- details of the level of support that may be available to a statutory body under the *Crown Proceedings Act 1980*
- details of the alternative forms of financial support that may be issued to a statutory body, such as a State guarantee or a letter of comfort, and
- sample accounting disclosures.

In this Chapter, the term 'Board' refers to the governing body of the statutory body.

Application

This Chapter applies to entities that are statutory bodies under the FA Act and entities which are declared under their enabling Act to be statutory bodies under the SBFA Act.

Whilst the Chapter specifically targets the need of statutory bodies, some of the matters considered would equally apply to other types of government structures.

Factors to consider when assessing and monitoring solvency

The role of the Board is set out in the statutory body's enabling legislation. Generally, the priority of the Board would be to ensure the statutory body performs its functions in an appropriate and efficient way. This would include the Board keeping itself informed about the financial affairs of the statutory body and monitoring the financial strength and performance of the statutory body. Monitoring the financial strength of a statutory body is necessary to ensure that it can deliver its services to the public and meet its performance criteria on an ongoing basis. Therefore, the Board should be aware of the factors which influence the solvency of the statutory body.

What is Solvency and Liquidity?

Under the Australian accounting standards, solvency refers to the availability of cash over the longer term to meet financial commitments as they fall due.¹⁴

Solvency is often confused with liquidity, but it is not the same thing. Liquidity refers to how quickly and cheaply an asset can be converted into cash. Money (in the form of cash) is the most liquid asset. Assets that generally can only be sold after a long exhaustive search for a buyer are known as illiquid.

Key Criteria for Monitoring Solvency

Assessing solvency can be a complex task requiring consideration of the circumstances affecting the statutory body and the financial strength of the statutory body including the level of government grant funding, the level of own sourced income (for example, user charges, revenue from delivering service), liquidity and projected losses in strategic plans.

The following outlines some of the factors which Board members may consider on an ongoing basis when assessing the solvency of a statutory body:

- A lack of availability of working capital¹⁵ to meet short term commitments is an indicator of potential solvency problems. Working capital can be used to determine what money is likely to be available within a reasonably short time in order to discharge the statutory body's obligations as and when they become due.
- Information about liquidity is useful in assessing the ability of the statutory body to meet its financial commitments. The statutory body's cash flows should be monitored on a regular basis.
- The inability to produce financial information such as monthly reporting, cash flow information, forecast and budget analysis in a timely manner may be an indicator of financial problems.
- The level of government grant funding to be received by the statutory body may be affected by the ability of the statutory body to achieve its non-financial objectives, such as meeting performance criteria when delivering core community based services. Therefore, information about the statutory body's performance in meeting its objectives is important in assessing the capacity of the statutory body to produce cash flows. If the level of government grant funding is inadequate and the statutory body is unable to secure further government grant funding, this may influence the long term financial stability of the statutory body.

Legal responsibility of the Board

The duties and responsibilities of the Board of a statutory body are set out in [*Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities Governing Queensland*](#) ('Welcome Aboard') issued by the Department of the Premier and Cabinet. The sources of legal responsibility for Board members include:¹⁶

- the enabling legislation constituting the Board

¹⁴ AASB, 'Framework for the Preparation and Presentation of Financial Statements' (Framework), para 16.

¹⁵ 'Working capital' is the excess of current assets over current liabilities.

¹⁶ Summary from 'Welcome Aboard' section 7.0 to 7.4.

- the common law, which includes a duty to act honestly, to exercise their powers for proper purposes, to act in good faith and to exercise diligence, care and skill, and
- general legislation, such as the *Judicial Review Act 1991* where members of the public may have the right to request reasons for a decision of a Government Board.

Board members should keep themselves informed of the financial affairs of the statutory body and seek advice from the statutory body's finance staff. The Board should act in a timely manner on information provided to them which may impact on the financial position of the statutory body.

If the Board identifies any solvency issues, the Board must ascertain the options and strategies available to improve the statutory body's financial position and sustainability in the long term.

The statutory body's ability to repay a debt should be assessed prior to incurring the debt. If potential solvency problems are suspected, Board members should prevent further debts being incurred.

A statutory body's enabling legislation may include a provision which, if the Board borrows an amount that the statutory body is not authorised to borrow, may result in the Board members who consented to the borrowing being jointly and severally liable to repay the amount.¹⁷ This situation may arise where a statutory body's ability to pay its debts as they fall due is becoming increasingly difficult and the Board takes out an unauthorised overdraft or other credit facility.

It is the responsibility of the Board to ensure the statutory body has the appropriate policies, procedures, objectives, resourcing and governance in order to maintain the ongoing financial viability of the statutory body.

Indemnity of the Board

The liability and indemnity of Board members of a statutory body are set out in *Welcome Aboard*. There is no single general indemnity for all Government Boards. The issue of indemnities must be addressed on a case by case basis. Legal opinion may be required to determine whether a Board member is entitled to be indemnified by the Crown or to be provided with legal representation at the expense of the Crown.¹⁸

If a Board member has personally guaranteed the debts of the statutory body, their liability would be dictated by the terms of that guarantee. It is highly unusual for a Board member to give such a guarantee.

Improve financial position

If the Board has concerns over the solvency of a statutory body the Board should seek advice from their finance staff on the options available to improve its financial position. Options considered by the Board may include:

- review the budget, revenues and spending which are solely within the power of the Board to maximise revenues and identify possible reductions in spending
- consult with the State Government to secure grant funding for the longer term, or where appropriate, the statutory body should seek alternative sources of grant funding

¹⁷ For example, *Queensland Art Gallery Act 1987*, s.56.

¹⁸ Summary from 'Welcome Aboard', section 9.0 to 9.3.

- consult with the State Government to reduce or cease the provision of certain commercially unviable services
- negotiate with the State Government to obtain agreement to raise fees for service charges
- explore options to utilise spare capacity to provide additional services for fees, and
- evaluate the structure of the organisation to achieve efficiencies and to streamline functions (in consultation with the State Government, if required).

It is the responsibility of the Board to manage within its fiscal capacity. Consequently, it is the Board's responsibility to be informed about the financial affairs of the statutory body and to monitor its financial strength and performance.

Level of support available to the Board

After considering and implementing all viable options to improve its financial position, as discussed above, the Board may still be concerned about the solvency of the statutory body. Where this occurs, the Board may seek assurances or support from the State. The provision of this support would depend on the specific circumstances affecting the statutory body and the requirements of the statutory body's enabling legislation.

The support provided by the State may include:

- reliance on the 'shield of the Crown' doctrine and the provisions of the *Crown Proceedings Act 1980*
- State guarantee, or
- a letter of comfort.

Crown Proceedings Act and 'shield of the Crown'

Background

Where there is no formal guarantee or letter of comfort provided by the State to the statutory body, the debts of a statutory body might, in certain circumstances, be considered to be judged against the Crown under the Crown Proceedings Act ('CP Act').

For the purposes of the CP Act, the Crown includes both the legal entity of the Crown and other entities which have the 'shield of the Crown'. In the context of Queensland, the term 'the Crown' refers to the State of Queensland as a legal entity. Government departments (including commercialised business units) comprise the legal entity of the Crown and are not legal entities in their own right. The Crown also includes entities which represent the Crown, and these entities have the same immunities and privileges as the Crown. These entities are said to have the 'shield of the Crown'.

A statutory body's enabling legislation has to be examined to determine whether it has the 'shield of the Crown'. The enabling legislation may expressly state that the statutory body represents the State. For example, the *Residential Tenancies and Rooming Accommodation Act 2008* expressly states that "the authority represents the State...the authority has all the privileges and immunities of the State".¹⁹ Some legislation may expressly state that

¹⁹ Residential Tenancies and Rooming Accommodation Act, section 467

the statutory body does not represent the State. For example, the *South East Queensland Water (Restructuring) Act 2007* expressly states that ‘the Authority does not represent the State.’²⁰

The intention that a statutory body has the ‘shield of the Crown’ may also be implied from the terms of its enabling legislation and other factors such as the nature of the activities of the statutory body and the degree of control that the State government has over the statutory body. Where the statutory body’s enabling legislation does not expressly state that the statutory body represents the State or has the ‘shield of the Crown’, legal advice should be obtained as it is usually a question for the courts to answer. Generally, where the enabling legislation is silent the courts have been reluctant to presume that the statutory body has the ‘shield of the Crown’.

Impact of the ‘shield of the Crown’ and the Crown Proceedings Act (‘CP Act’)

Under the CP Act, where a court makes a judgment concerning debts outstanding against an entity that represents the State and as such has the ‘shield of the Crown’, the judgement is considered to be made against the State. If the entity is unable to pay the amount outstanding, the Treasurer would be obliged to pay from State funds. In practice, it is likely that if the entity was insolvent, a decision would be made for the State to pay the debts or provide for other appropriate arrangements before the matter reached the Courts.

State guarantee

A guarantee is a promise by the guarantor to answer for the debts, default or mistake of another, and often involves an undertaking to perform the other party’s obligations in the event of default. A guarantee is usually in the form of a contractual agreement between the two parties. Whether a State guarantee is appropriate will depend on the circumstances and the relationship between the State and the statutory body.

Under the SBFA Act the Treasurer may guarantee the performance of obligations of a statutory body under a financial arrangement entered into by the body. The Treasurer may delegate this power to another Minister.²¹

The Treasurer may impose a fee on the statutory body for providing a guarantee.²²

The terms and conditions of a State guarantee would vary depending on the particular circumstances. A guarantee may apply generally or be limited in its application.²³ A guarantee may require renewal or review depending on the terms and conditions of the guarantee. If security is required under a guarantee and the security is released without the Treasurer’s prior approval, the guarantee will be considered to be void from the beginning i.e. from commencement of the guarantee.²⁴

The terms and conditions of a guarantee and whether it should be issued should be carefully considered by both parties before entering into the agreement. It may be appropriate to obtain legal advice prior to entering into a guarantee.

If a statutory body borrows under Part 5 of the SBFA Act from the Queensland Treasury Corporation (QTC) the Treasurer is taken to have guaranteed the statutory body’s obligations under the borrowing. However, for a

²⁰ *South East Queensland Water (Restructuring) Act*, s.6(3).

²¹ Summary from SBFA Act, ss.16 and 76.

²² SBFA Act, s.16A.

²³ Summary from SBFA Act, s.16(2)(b).

²⁴ Summary from SBFA Act, s.18(2).

particular borrowing, the Treasurer may direct that the borrowing not be guaranteed or change the conditions of the guarantee.²⁵ Generally, where the statutory body is borrowing under Part 5 of the SBFA Act, borrowings from QTC are guaranteed by the State.

If a statutory body is seeking to obtain a State guarantee it is to approach its administering department or Treasury Analyst in the first instance. The administering department will make a recommendation to Treasury as to whether, in its opinion, a guarantee should be provided. Sufficient detail such as circumstances surrounding the financial situation, the duration of the guarantee and the amount or service to be guaranteed should be provided to support a submission for a State guarantee.

The following factors will need to be considered by the Board if a State guarantee is to be sought:

- A statutory body granted a guarantee must record the guarantee in its register of Treasurer approvals.²⁶
- A State guarantee may be required to be recognised in the statutory body's financial statements as an asset or disclosed as a contingent asset depending upon the probability that payments under the guarantee will be received.²⁷ The statutory body must disclose in the notes to the financial statements whether loans are guaranteed by the State Government.
- A State guarantee may be required to be recognised in the whole-of-Government financial statements as a provision or disclosed as a contingent liability depending upon the probability of the guarantee being called on and a payment being required.²⁸

Letter of comfort

In financial and legal terms, a letter of comfort is not equivalent to a guarantee. A letter of comfort is generally a document indicating financial support as and when needed from one entity to another, often issued by a parent entity on behalf of a subsidiary. A letter of comfort also is referred to as a letter of support. In this guide, both a letter of comfort and a letter of support are taken to have the same meaning.

A letter of comfort is sometimes issued as support for management preparing financial statements on a going concern basis when the entity from its own resources would or could be insolvent. The parent entity agrees to ensure that the subsidiary entity meets its financial commitments as they fall due. In most cases a letter of comfort will not legally bind the parent entity to perform the subsidiary's obligations if the subsidiary cannot meet them.

A statutory body seeking a letter of comfort from the State Government should approach its administering department or Treasury Analyst in the first instance. The administering department will make a recommendation to Treasury as to whether, in its opinion, a letter of comfort should be provided.

A letter of comfort should be for a specified period of time or until a specified event occurs. At its expiry it would need to be renewed if continued support is required. Further, the letter should state that in the event that there is a significant change in the structure or activities of the statutory body, the letter of comfort will become void.

²⁵ SBFA Act, s.21.

²⁶ SBFA Act, s.74.

²⁷ Australian Accounting Standards Board, 137 Provisions, 'Contingent Liabilities and Contingent Assets', Appendix A 'Contingent Assets'.

²⁸ Australian Accounting Standards Board, 137 Provisions, 'Contingent Liabilities and Contingent Assets', Appendix A 'Provisions and Contingent Liabilities'.

Sample accounting disclosures

Under AASB 101 Presentation of Financial Statements (AASB 101) when preparing financial statements, management shall make an assessment of an entity's ability to continue as a going concern. An entity shall prepare financial statements on a going concern basis unless management either intends to liquidate the entity or to cease trading or has no realistic alternative but to do so. When an entity does not prepare financial statements on a going concern basis, it shall disclose that fact, together with the basis on which it prepared the financial statements and the reason why the entity is not regarded as a going concern.²⁹

In making this assessment, if management is aware of material uncertainties related to events or conditions that may cast significant doubt upon the entity's ability to continue as a going concern, the entity shall disclose those uncertainties. For instance, a statutory body may have negative total equity, however, they have certain assurances and/or support from the State (as outlined above), enabling them to continue as a going concern. See below for example disclosures where a statutory body has negative total equity but is still regarded as a going concern.

Going Concern Note Disclosures - Examples

Note: The following are examples only and should be reviewed to ensure statements made are consistent with the individual situation of the discloser.

Example 1: If the statutory body has legal advice confirming it has the 'shield of the Crown' and the Crown Proceedings Act (CP Act) applies.

Whilst the statutory body has negative total equity, the financial statements have been prepared on a going concern basis, because:

- There is no intention to liquidate the statutory body or to cease operations.
- Section xx of the statutory body's enabling legislation states that the statutory body represents the State and that the statutory body has all the privileges and immunities of the State.
- Legal advice has been obtained which confirms that the statutory body represents the State. Under the *Crown Proceedings Act 1980* (CP Act) if a court makes a judgment concerning debts outstanding against the statutory body, the judgment is considered to be against the State. If the statutory body is unable to pay the amount outstanding, the Treasurer would be obliged to pay. The ability of the statutory body to repay debt or provide services without recourse to the support of the State is dependent on the ability of the statutory body to {e.g. continue to deliver xxx% of its services to the community and therefore continue to be entitled to \$xxxx funding from the State government or increase fee revenue or obtain additional sources of funding from the State or Commonwealth government or renew the contracts for services with xyz entity}.

Example 2: If the statutory body has a State guarantee.

Whilst the statutory body has negative total equity, the financial statements have been prepared on a going concern basis, because:

- There is no intention to liquidate the statutory body or to cease operations.

²⁹ Australian Accounting Standards Board, 101 Provisions, paragraph 25.

- The State of Queensland has guaranteed the payment of liabilities incurred by the statutory body {e.g. in carrying out its operations or in relation to contracts entered into between the statutory body and xxxxxxxx}.
- The ability of the statutory body to repay debt or provide services without recourse to the State guarantee is dependent on the ability of the statutory body to {e.g. continue to deliver xxx% of its services to the community and therefore continue to be entitled to \$xxxx funding from the State government or increase fee revenue and obtain additional sources of funding from the State or Commonwealth government or renew the contracts for services with xyz entity}.

Example 3: If the statutory body has a letter of comfort.

Whilst the statutory body has negative total equity, the financial statements have been prepared on a going concern basis, because:

- There is no intention to liquidate the statutory body or to cease operations.
- The State of Queensland has issued a letter of comfort stating it will make every effort to ensure that the statutory body is able to meet its obligations in relation to {e.g. contracts entered into between the statutory body and xxxxxx or in relation to its obligation to provide e.g. services to the community}.
- The letter of comfort is for the period 1 July 20XX to 30 June 20YY by which time the statutory body expects its own revenues to be sufficient to meet all its obligations.
- The ability of the statutory body to repay debt or provide services without recourse to the letter of comfort received from the State of Queensland is dependent on the ability of the statutory body to {e.g. continue to deliver xxx% of its services to the community and to increase revenue based on the price path set out by the Government}.

Appendices

Appendix A: Enabling Legislation Guide

The purpose of this appendix 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 appendix, 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 appendix 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 appendix 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 appendix is NOT designed to be an exhaustive list of issues, and the needs of each body will need to be assessed on an individual basis.

The financial management and governance issues highlighted in this appendix are 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* (AI Act) should be considered. In particular, Part 7 of the AI 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 permitted 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 SBFA Act) 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
• Does the DI/legislation state the primary function(s) of the statutory body?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Should the DI/legislation state any secondary function(s) of the statutory body?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Does the DI/legislation state the powers of the statutory body? Powers that may be considered include:			
○ power to enter into contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ power to employ staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ power to engage consultants	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ power to acquire and deal with property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ power to charge fees (where a statutory body is to charge fees, consideration should be given to the National Competition Policy, Commercialisation of Government Service Functions in Queensland - Policy Framework, and Principles for Fees and Charges (documents all available on the Queensland Treasury website)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ regulatory / enforcement / disciplinary powers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ power to impose penalties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Yes	No	N/A
(where it is intended that the statutory body may impose penalties, the Fundamental Legislative Principles will need to be considered)			
<ul style="list-style-type: none"> ○ power to undertake all activities to perform its functions 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Should the DI/legislation specify any restrictions to powers provided? (e.g. may only act with a Treasurer/Minister approval) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Should the DI/legislation state where the statutory body can exercise its powers? (e.g. only operates in Queensland or can operate outside Queensland) 	<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. [FRR 2A Basis of Financial Statement Preparation](#) provides guidance to Queensland public sector entities when deciding whether they are a for-profit or a not-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"> Does the DI/legislation clearly specify whether or not the principal objective of the statutory body is the generation of profit/surplus? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> 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? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> If intended to be a for-profit statutory body, should the DI/legislation consider taxation and dividend implications? (refer to the National Tax Equivalents Regime) 	<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 FA Act).

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"> Does the DI/legislation outline conditions regarding the appointment of board members? Factors that may be considered include: <ul style="list-style-type: none"> 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) Should board members require specific expertise, or must they meet specific criteria? (e.g. must have industry-specific experience) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Yes	No	N/A
<ul style="list-style-type: none"> Should Governor-in-Council or Ministerial approval be required for board member appointments? (refer to the Queensland Cabinet Handbook) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation state the process and procedure for the appointment of board members? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation specify the number of board members required (or a range)? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should a specified number of board members be independent of Government or be experts in their field? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation require a State Government representative on the board? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> 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)? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation state who can remove a board member? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation state the process and procedure to remove a board member? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation specify the process and procedure for a member to resign from the board? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should criteria for disqualification from membership be outlined in the DI/legislation? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation specify action to be taken if there is a board member vacancy? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation deal with conflicts of interest? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> 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? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			

Question	Yes	No	N/A
<ul style="list-style-type: none"> Should arrangements/procedures for board meetings be outlined? For example: <ul style="list-style-type: none"> Should the DI/legislation specify the frequency of meetings? Should a quorum for meetings be specified? (if there are specific types of members (e.g. experts), then the legislation may specify who must be at the meeting for it to commence (e.g. must be a majority of independent members present)) Should proxies be allowed to attend meetings? (if so, are they able to vote or do they only attend meetings as observers?) Should there be different voting rights for members? (e.g. should the chair have power to cast the deciding vote?) Should the DI/legislation specify who can call a meeting? (e.g. consider whether the Chair can call a meeting if requested formally by two members, or whether the Minister can call a meeting) Should 'flying minutes' be allowed? Should virtual meetings be allowed? (e.g. can members attend through tele-conference or video conferencing?) Should the DI/legislation detail appropriate governance procedures for meetings? (e.g. details could cover conduct of meetings, need for an annual work plan, minutes, agenda, who presides if chair is away, etc) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			
<ul style="list-style-type: none"> Should the DI/legislation outline the remuneration arrangements for board members (including allowances)? (refer to the Queensland Cabinet Handbook for guidance about when board members may be remunerated) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation outline the powers/functions of the board, for example: <ul style="list-style-type: none"> Should the board have the power to spend funds? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Yes	No	N/A
<ul style="list-style-type: none"> Should the board have the power to set fees to be charged for the statutory body's goods or services? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the board be able to delegate powers/functions to an officer of the statutory body? (may also consider whether there should be limits attached to the delegations or whether sub-delegations are permitted. The FA Act does not provide a delegation power for statutory bodies. The power of delegation can only come from the statutory body's enabling legislation) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation contain specific investing or borrowing powers? (generally, reliance will be placed on the provisions of the SBFA Act, but the statutory body will need to be added to the schedules in the SBFA Regulation) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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 they are not ultimately responsible for the decisions of the body.

Question	Yes	No	N/A
<ul style="list-style-type: none"> Is appointment of a chief executive officer necessary? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If so:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation set out the powers/functions of the chief executive officer? 			
<ul style="list-style-type: none"> 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?) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Yes	No	N/A
<ul style="list-style-type: none"> Should the DI/legislation specify the appointment conditions of the chief executive officer? (e.g. qualifications, term of appointment, membership requirement of professional body) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> 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 and/or whether subdelegations are permitted) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> 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?) 	<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"> Will the statutory body require the employment of staff? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If so:			
<ul style="list-style-type: none"> 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?) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation specify arrangements if transferring from another public sector agency? (e.g. can benefits/entitlements be transferred?) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Yes	No	N/A
<ul style="list-style-type: none"> Should legal advice be sought regarding the industrial relations regime that will apply to the statutory body? 	<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 assist 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"> Should the board be able to establish committees? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If so:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation specify the purpose of the committee? 			
<ul style="list-style-type: none"> Should committee membership requirements be specified? (e.g. required skills or expertise, independence from board) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the powers/functions of the committee be specified? (e.g. can the board delegate to the committee?) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should reporting requirements to the board be outlined? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the board be bound by the recommendations of committees? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the committee members be remunerated? (refer to the <i>Queensland Cabinet Handbook</i> for guidance about when committee members may be remunerated) 	<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, 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.

(Note: if the department has a significant role in the operations of the statutory body (e.g. departmental officers on the board, or it can provide directions as to how the statutory body is to operate), this may indicate that the department ‘controls’ the statutory body for accounting purposes, resulting in the statutory body’s financial statements being consolidated into the financial statements of the department.)

Question	Yes	No	N/A
• Should the DI/legislation specify the relationship that the statutory body has with the appropriate Minister? For example:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ Should the Minister have the power to provide directions to the statutory body? (e.g. give directions if in the public interest)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ Should the Minister be able to demand information from the statutory body? (e.g. to monitor performance)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ 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)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ Should the Minister be required to approve the budget of the statutory body?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
○ Should the Minister be able to appoint an administrator if the statutory body is not performing, or becomes insolvent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			

Question	Yes	No	N/A
<ul style="list-style-type: none"> Should the DI/legislation specify any relationships with the Commonwealth? (e.g. provision of performance information, particularly if dependent upon Commonwealth funding) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation specify the relationship that the statutory body has with a department, or a department's accountable officer? For example: <ul style="list-style-type: none"> Should there be a memorandum of understanding (or similar) to formalise the relationship? (e.g. if entering into arrangements to provide administrative support) Should the department/accountable officer have the power to provide directions to the statutory body? Should the department/accountable officer be able to demand information from the statutory body? (e.g. to assist the Minister in monitoring performance) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation specify the relationship that the statutory body has with any other agencies? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes:			

Representing the Crown

The DI/legislation should specify whether the statutory body represents the State. This will establish whether the statutory body has the 'shield of the Crown'. Under the *Crown Proceedings Act 1980* (CP Act), the 'Crown' is defined to mean "the Crown in right of the State of Queensland and includes a corporation representing the Crown, constituted by or under any Act or incorporated or registered under the Corporations Act". Therefore, under the CP Act, judgement against any statutory body that represents the Crown may be satisfied against the State of Queensland.

If the enabling legislation does not expressly state that a statutory body does or does not represent the State, the intention will need to be determined through an examination of the body's enabling legislation. In some cases, the enabling legislation may evidence an intention that the statutory body is to have the 'shield of the Crown', even if it is not expressly stated that the body represents the Crown (for example, having regard to the nature of the activities of the body, and the degree of control that the government has over the statutory body).

Refer also to Chapter 8 - Solvency.

Note: whether a statutory body represents the State may have an impact on the application of other legislation. For example, section 2B of the *Competition and Consumer Act 2010* (Cth) provides that Part IV of the Act binds the

Crown in right of each of the States so far as the Crown carries on a business, either directly or by an authority of the State.

Question	Yes	No	N/A
<ul style="list-style-type: none"> Does the DI/legislation specify whether the statutory body represents the State? <p>Notes:</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Application of other legislation

By convention, enabling legislation should explicitly state whether the entity is a statutory body for the purposes of the FA Act and the SBFA Act. 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:

- Crime and Corruption Act 2001*
- Human Rights Act 2019*
- Information Privacy Act 2009*
- Integrity Act 2009*
- Ombudsman Act 2001*
- Public Interest Disclosure Act 2010*
- Public Records Act 2002*
- Public Trustee Act 1978*, and
- Right to Information Act 2009*.

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"> Does the DI/legislation specify that the entity is a statutory body for the purpose of the FA Act and the SBFA Act? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does the DI/legislation specify application of other legislation to the statutory body? <p>Notes:</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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"> Should the DI/legislation allow for the making of subordinate legislation? (e.g. fee setting regulation) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should any specific financial statement or annual report provisions be required? (statutory bodies will be required to comply with the FA Act regarding the preparation of financial statements and annual reports, however, requirements specific to the statutory body may be prescribed) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Should the DI/legislation contain provisions about any indemnities or guarantees provided to the statutory body? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> 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 Queensland Government Indemnity Guideline) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Is a sunset clause required (i.e. a provision for the expiry of the statutory body)? (refer to the Public Interest Map policy) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> 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) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Are any transitional provisions required? (e.g. if new legislation is being drafted for an existing statutory body, or if several existing statutory bodies are being amalgamated) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Are consequential amendments required to other legislation? (e.g. a specific exemption under the <i>Right to Information Act 2009</i> or inclusion in the SBFA Regulation) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Are terms to be used in the DI/legislation defined? (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) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Yes	No	N/A
<ul style="list-style-type: none"> 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 Public Interest Map policy) <p>Notes:</p>			

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)
- [Queensland Legislation Handbook](#) (part of the Governing Queensland suite of documents)
- [Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities](#) (part of the Governing Queensland suite of documents)
- [Fundamental legislative principles](#) (available from 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)
- [Financial Accountability Handbook](#) (provides practical guidance in the development, maintenance and review of financial management systems, available from Queensland Treasury)
- [Financial Reporting Requirements](#) (provides guidance to Queensland public sector entities on financial statement preparation – FRR 2A provides guidance on whether an entity is for-profit or not-for-profit entity, available from Queensland Treasury)
- [Public Interest Map policy](#) (available from the Department of the Premier and Cabinet)
- [National Tax Equivalent Regime](#) (outlines the administrative and technical operating features of the National Tax Equivalent Regime, available from the Australian Taxation Office)
- [Queensland Government indemnity guideline](#) (available from the Public Service Commission)

Appendix B: Example Approval Instrument

Statutory Bodies Financial Arrangements Act 1982

SPECIFIC APPROVAL UNDER DIVISION [relevant division number]

Approval

1. Under sections [relevant sections] of the Act, I grant a specific approval for [abbreviated name of statutory body] to [enter into the financial arrangement].

Conditions [not all approvals have conditions imposed, use as appropriate]

2. This approval is granted on the following conditions:

- (a) [describe any conditions imposed]; and

Delegation

3. I have exercised the operative Treasurer's power under the Act in accordance with a delegation executed by the Premier, Treasurer and Minister for State Development, Trade and Innovation under section 76 of the Act on 23 March 2006.

Interpretation

4. In this document, these terms have the following meanings:

Act	<i>Statutory Bodies Financial Arrangements Act 1982</i>
[XXX]	[full statutory body's name in alphabetical order]
[LLL]	[other defined terms, for example, if the statutory body is being given approval to enter into a document, that document could be defined, such as "the Letter of Comfort", "the Guarantee", "the Loan"]

[INSERT NAME]
UNDER TREASURER
..... //20xx

Appendix C: Model Investment Policy

XYZ STATUTORY BODY

GENERAL POLICY

INVESTMENT POLICY

Overview

Preamble

[XYZ statutory body] has been granted authority to exercise Category 1 investment power under Part 6 of the *Statutory Bodies Financial Arrangement Act 1982* (the SBFA Act).

The Treasurer may from time to time constrain the investing activities of statutory bodies by limitation, caveat, restriction and/or other relevant regulation. Where this occurs, this Investment Policy (the Policy) will be reviewed and reissued to reflect such changes.

Intent

The intent of this document is to outline [XYZ statutory body's] investment policy and guidelines regarding the investment of surplus funds, with the objective to maximise earnings within approved risk guidelines and to ensure the security of funds.

The activities of the investment officers or fund managers responsible for stewardship of [XYZ statutory body's] funds will be measured against the standards and objectives in the Policy.

Activities that defy the spirit and intent of the Policy will be deemed contrary to the Policy.

Scope

For the purpose of the Policy, investments are defined as arrangements that are undertaken or acquired with the expectation of achieving a financial return through interest, profit or capital growth. The Policy applies to the investment of all surplus funds held by [XYZ statutory body] and undertaken in accordance with the SBFA Act.

Amounts less than \$5 million are to be invested in a capital guaranteed cash fund or an approved cash management product. Category 1 investment power allows for investment in the Queensland Treasury Corporation (QTC) Capital Guaranteed Cash Fund or the Queensland Investment Corporation (QIC) Cash Fund without further approval.

For the purposes of the appointment of an external fund manager pursuant to section 59 of the SBFA Act, to operate in a manner consistent with the Policy will constitute compliance.

Policy statement

Authority

All investments are to be made in accordance with:

- [XYZ statutory body's authorising legislation]
- *Statutory Bodies Financial Arrangements Act 1982*
- *Statutory Bodies Financial Arrangements Regulation 2019.*

Ethics and conflicts of interest

Prudent person standard

The standard of prudence is to be used by investment officers when managing the overall portfolio. Investments will be managed with the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons. This includes having in place appropriate reporting requirements that ensure the investments are being reviewed and overseen regularly.

Investment officers are to manage the investment portfolios not for speculation, but for investment in accordance with the spirit of the Policy. Investment officers are to avoid any transaction that might harm confidence in [XYZ statutory body]. They will consider the safety of capital and income objectives when making an investment decision.

Ethics and conflicts of interest

Investment officers/employees shall refrain from personal activities that would conflict with the proper execution and management of [XYZ statutory body's] investment portfolio. This includes activities that would impair the investment officer's ability to make impartial decisions.

The Policy requires that employees and investment officials disclose to the Chief Executive Officer any conflict of interest or any investment positions that could be related to the investment portfolio.

Delegation of authority

Authority for implementation of the Policy is delegated by the Board to the Chief Executive Officer in accordance with the [relevant Statutory Body Act, section number – name of section].

Authority for the day-to-day management of the Board's investment portfolio is to be delegated by the Chief Executive Officer to the Chief Financial Officer and subject to regular reviews with the General Manager, Corporate Services and Chief Executive Officer.

Investment objectives

[XYZ statutory body's] overall objective is to invest its funds at the most advantageous rate of interest available to it at the time, for that investment type, and in a way that it considers most appropriate given the circumstances.

In priority, the order of investment activities shall be preservation of capital, liquidity, and return.

Preservation of capital

Preservation of capital shall be the principal objective of the investment portfolio. Investments are to be performed in a manner that seeks to ensure security of principal of the overall portfolio. This includes managing credit and

interest rate risk within given risk management parameters and avoiding any transactions that would prejudice confidence in [XYZ statutory body] or its associated entities.

- Credit risk – [XYZ statutory body] will evaluate and assess credit risk prior to investment. Credit risk is the risk of loss due to the failure of an investment issuer or guarantor. The investment officer will minimise credit risk in the investment portfolio by pre-qualifying all transactions including the brokers/securities dealers with which they do business, diversify the portfolio and limit transactions to secure investments.
- Interest rate risk – The investment officers shall seek to minimise the risk of a change in the market value of the portfolio because of a change in interest rates. This would be achieved by considering the cash flow requirements of [XYZ statutory body] and structuring the portfolio accordingly. This will avoid having to sell securities prior to maturity in the open market. Secondly, interest rate risk can be limited by investing in shorter term securities.

Maintenance of liquidity

Pursuant to section 31 of the SBFA Act, [XYZ statutory body] maintains a deposit and withdrawal account with [XYZ Bank] for its day-to-day operating transactions.

In addition to the balances held in its bank account for routine operating requirements, the investment portfolio will maintain sufficient liquidity to meet all reasonably anticipated operating cash flow requirements of [XYZ statutory body], as and when they fall due, without incurring significant transaction costs due to being required to sell an investment.

For these purposes, illiquid investments are defined as investments that are not publicly traded in sufficient volume to facilitate, under most market conditions, prompt sale without severe market price effect.

Examples include:

- investment in private placements
- a security that is not supported or priced by at least two approved brokers/securities dealers
- sub investment grade (i.e. a lower than rating BBB- (Standard and Poor's) or equivalent), and in most cases, BBB rated investments, and
- unrated securities.

Return on investments

The portfolio is expected to achieve a market average rate of return and take into account [XYZ statutory body's] risk tolerance and current interest rates, budget considerations, and the economic cycle. Any additional return target set by the Board will also consider the risk limitations, prudent investment principles and cash flow characteristics identified within the Policy.

Comparison of performance

[A statutory body would choose either A or B below]

A:

[XYZ statutory body] should ensure it achieves value-for-money or a competitive price after considering the costs of the investment.

B:

For performance purposes, the portfolio will be compared to the Bloomberg AusBond Bank Bill Index over a rolling one-year period. The Bloomberg AusBond Bank Bill Index has a modified duration of 45 days and comprises thirteen 90 Day Bank Bills. The benchmark target is to be set equal to or above the benchmark yield and consider the expected types of securities held in each portfolio.

In comparing performance, the portfolio will be market valued and take into account all coupons, deposits and withdrawals to/from the portfolio.

Portfolio implementation

Authorised personnel

The Chief Financial Officer is authorised to invest [XYZ statutory body's] operating funds at their discretion in investments consistent with the Policy and legislation. The Chief Financial Officer will report to [XYZ statutory body's] Finance Committee for investment guidelines, approved lists and oversight of investment activities for the purposes of the Policy.

Investment oversight committee

To ensure separation of duties, the Chief Executive Officer will establish an Investment Oversight Committee, which includes the Chief Financial Officer and will generally be included under the responsibilities of the Finance Committee. The Investment Oversight Committee shall function as an advisory committee to the Board. Its purpose is to:

- oversee the development and update of the Policy and its guidelines
- recommend to the Board annual modifications to the Policy
- monitor compliance with the Act, and
- review the quarterly investment reports to the [XYZ statutory body].

An officer independent to the execution of investment transactions will provide compliance and investment analysis to the Investment Oversight Committee (for example, the Accountant).

The Investment Oversight Committee is not allowed to direct daily investment decisions, select fund managers, or become involved in the daily operations of the portfolio. Its role is to review, maintain lists and processes and refer investment decisions to the Board if required.

Internal controls

The Chief Financial Officer of [XYZ statutory body] shall establish internal controls and processes that will ensure investment objectives are met and that the investment portfolios are protected from loss, theft or inappropriate use. To this end, the Chief Executive Officer shall establish an executive management group or review group.

The Investment Oversight Committee is responsible for maintaining the approved lists and investment guidelines, which are updated regularly. The guidelines set by the Committee may, if required, be more conservative than the Policy. However, in no instance will they override this Policy or its objectives.

The established processes will include monthly and quarterly reporting (including compliance reporting), as well as an annual review of the Policy. The internal controls will address the following:

- control of collusion

- separate the transaction authority from accounting and record keeping
- safekeeping
- avoid physical delivery of securities
- clearly delegate authority to investment officers
- confirmation requirements for settlement of securities
- compliance and oversight of investment parameters, and
- reporting of breaches.

The Investment Oversight Committee shall conduct an annual audit of the activities of the portfolio to verify compliance with the Policy and legislation. An independent party to those making the investment decisions will perform the audit and the Board shall receive a copy of the audit report.

Investment parameters

Investible funds

For the purposes of the Policy, investible funds are the investment moneys available for investment at any one time and include the [XYZ statutory body's] bank account balance. Included in this balance is any moneys held by the [XYZ statutory body] on behalf of external parties (for example, developer contributions). However, the Policy does not apply to moneys held on trust for third parties where those funds are subject to specific conditions.

The investible funds should match the cash flow needs of [XYZ statutory body] deemed by the Chief Financial Officer after preparing [XYZ statutory body's] budget. Once the Chief Financial Officer has determined that the cash flow requirements can be met, funds may be invested for the required term. In this regard, it is appropriate for the Chief Financial Officer to be conservative (i.e. where possible, investments should not be broken to meet cash flow obligations).

It is the responsibility of the Chief Financial Officer to assess the cost of direct investment management by [XYZ statutory body] relative to the return generated. This should be compared with the cost of investing funds with a capital guaranteed cash fund (for example, the QTC Capital Guaranteed Cash Fund).

Authorised investments

Without specific approval from the Board or the Treasurer, investments are limited to those prescribed by Part 6 of the Act for statutory bodies with Category 1 investment power, which include:

- interest bearing deposits
- commercial paper
- bank accepted/endorsed bank bills
- bank negotiable certificates of deposit
- short term bonds
- floating rate notes
- QIC Cash Fund, and
- QTC Capital Guaranteed Cash Fund, fixed rate deposit (up to 12 months) and QTC Working Capital Facility.

Prohibited investments

The Policy prohibits any investment carried out for speculative purposes. The Chief Financial Officer may include a prohibited investments list within the investment guidelines and approved lists (established pursuant to section.

The following investments are prohibited by this investment policy:

- derivative based instruments (excluding floating rate notes)
- securitised debt instruments
- structured product;
- principal only investments or securities that provide potentially nil or negative cash flow
- stand alone securities issued that have underlying futures, options, forward contracts and swaps of any kind, and
- securities issued in non-Australian dollars.

Portfolio investment parameters and credit requirements

The following table shows the credit ratings and counterparty limits for [XYZ statutory body]:

<i>Short Term Rating (Standard & Poor's) or equivalent</i>	<i>Individual Counterparty Limit</i>	<i>Total Limit</i>
A-1+ ³⁰	30%	100%
A-1	15%	50%
A2 (Financial Institutions only)	10%	30%
A3 (Financial Institutions only)	5%	10%
Unrated	Nil	Nil
QIC/QTC Pooled Cash Management Fund	100%	100%

A financial institution is defined as an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cwlth)*, section 5.³¹

It is noted that for the purposes of this investment portfolio, the percentage limits apply effective from the date of purchase as a percentage of the market value of the portfolio.

No more than 20 per cent of the portfolio is to be invested in Floating Rate Notes.

³⁰ Some ratings agencies may not have an equivalent to Standard & Poor's A-1+ rating (i.e. no equivalent modifiers). The table is an example and guide only, with counterparty limit percentages to be adapted to suit agency needs/investment powers and reflect the adopted ratings agency's risk ratings scale.

³¹ For a list of authorised deposit-taking institutions, refer to the website of the Australian Prudential Regulation Authority: www.apra.gov.au/register-of-authorised-deposit-taking-institutions.

Maturity

The maturity structure of the portfolio will reflect a maximum term to maturity of one year and includes an interest rate reset of no longer than six months (185 days).

Liquidity requirement

Given the nature of the funds invested, no more than 20 per cent of the investment portfolio will be held in illiquid securities and at least 10 per cent of the portfolio can be called at no cost or will mature within 0-7 days.

Approved lists

The Investment Oversight Committee shall prepare and maintain the following approved counterparty lists for the investment of funds:

- approved banks
- approved commercial paper and medium term note issuers
- approved brokers/dealer and direct issuers for purchase or sale of security with a minimum Standard and Poor's long-term credit rating of A+ (or equivalent), and
- approved credit unions.

New investment products

A new investment product requires a full risk assessment by management (including compliance with the SBFA Act) and requires approval by the Board.

Breaches

Any breach of this Investment Policy is to be reported to the General Manager, Corporate Services and Chief Financial Officer and rectified within 24 hours of the breach occurring. The Investment Oversight Committee will report the breach to the Board at the next meeting.

Where [XYZ statutory body] holds an investment that is downgraded below the minimum acceptable rating level, as prescribed under regulation for the investment arrangement, [XYZ statutory body] shall within 28 days after the change becomes known, either obtain Treasurer's approval for continuing with the investment arrangement or sell the investment arrangement (including, for example, withdrawing a deposit).

Safekeeping and custody

Each transaction will require written confirmation by the broker/dealer/bank. [XYZ statutory body] will hold security documents, or alternatively a third party custodian authorised by the Chief Financial Officer and evidenced by safekeeping receipts may hold security documents.

Criteria of authorised dealers and broker

[XYZ statutory body] will maintain a list of authorised financial institutions and securities brokers that the investment officers may deal with. These financial intermediaries must have a minimum long term rating of at least either A+/A1/A+ from Standard and Poor's, Moody's or Fitch.

All transactions undertaken on behalf of the investment portfolio of [XYZ statutory body] will be executed either by [XYZ statutory body] directly, or through securities brokers registered as Australian Financial Service Licensees (regulated by Australian Securities & Investments Commission) with an established sales presence in Australia, or

direct issuers that directly issue their own securities which are registered on [XYZ statutory body's] approved list of brokers/dealers and direct issuers.

Investment guidelines

The Investment Oversight Committee may reduce the maturity limits in this Policy to a shorter period, or prescribe higher ratings through their own internal investment guidelines and approved lists.

The Investment Oversight Committee may approve limits for unrated securities after being satisfied that adequate analysis has been performed to demonstrate above average credit quality.

Board approval is required for investments with a period of greater than 12 months. This means approval is required from the Board prior to submission to the Treasurer for approval.

The following table provides rating equivalents for Fitch, Moody's and Standard and Poor's.

Short term debt ratings (Short term refers to investments with an initial maturity of less than 1 year)			
<i>Grade</i>	<i>S&P</i>	<i>Moody's</i>	<i>Fitch</i>
Superior/Extremely Strong	A-1+, A-1	P-1	F1+, F1
Strong/Satisfactory	A-2	P-2	F2
Acceptable	A-3	P-3	F3
Vulnerable/Uncertain	B, C		B, C
Default	D		RD, D
Not Prime		NP	
Long term debt ratings (Long term refers to investments with an initial maturity of greater than 1 year). Investment grade ratings are BBB- or above.			
<i>Grade</i>	<i>S&P</i>	<i>Moody's</i>	<i>Fitch</i>
Highest quality/Extremely Strong	AAA	Aaa	AAA
High quality/Very Strong	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Above average quality	A+, A, A-	A1, A2, A3	A+, A, A-
Medium Grade/Adequate	BBB+, BBB, BBB-, B+, B, B-	Baa1, Baa2, Baa3	BBB+, BBB, BB-
Speculative	BB+, BB, BB-	Ba1, Ba2, Ba3, B1, B2, B3	BB+, BB, BB-
Highly Speculative/Vulnerable or Substantial Risk	CCC+, CCC, CCC-, CC, C	Caa, Ca	B, CCC, CC
Typically in Default or Near Default	D	C-	C, RD, D

Reporting

Reporting

The Chief Financial Officer will prepare a monthly report and evaluation of the transactions, concentrations, performance and compliance of the investment portfolio. The report is to be provided to the Investment Oversight Committee within 10 days of the period end. The report will include:

- list of securities held at the end of the reporting period by maturity date/call date
- weighted average yield to maturity of the portfolio
- percentage of the portfolio held by investment type, and
- performance of the portfolio (relative to Bloomberg AusBond Bank Bill benchmark).

On a quarterly basis, the Chief Financial Officer will provide the Investment Oversight Committee and the Board with a detailed report on the investment portfolio, including its statement of compliance with the Act. The report is to list securities by issue name, maturity date, par and dollar amount invested.

On an annual basis, the Investment Policy will be reviewed and amended where required. Any amendments are to be approved by the Board prior to the implementation of the revised investment policy.

Performance measurement

The investment return for the portfolio shall be measured using the market value of the portfolio, including withdrawals and deposits, and total performance of the portfolio compared to the Bloomberg AusBond Bank Bill Index. This is to include changes in the capital value of assets held (where applicable), income from managed investment portfolio assets, proceeds of sales of assets sold and cost of assets acquired.

The market value of the portfolio is to be calculated at least monthly to coincide with monthly reporting. In defining market value, at least two pricing sources should be included in the valuation of the securities.

