

# Non-statutory appointments

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This advice applies to non-statutory ministerial appointments that are not considered significant. To ensure the appointee is onboarded correctly, follow the process and guidance on this page. For statutory and significant non-statutory appointments refer to [Cabinet appointments](#) and the [Cabinet Handbook](#). Do not follow the process on this page.

## Definition of a non-statutory appointment

A non-statutory appointment is an appointment by the Prime Minister or relevant Minister. It involves the appointment of an individual to a position that is not established by legislation. Usually this applies to the appointment of board members, panel members, or advisory group members.

### Key Considerations:

- Cabinet Division must be consulted prior to undertaking any non-statutory appointment by emailing s 47E(d) [@pmc.gov.au](mailto:s47E(d)@pmc.gov.au). They can assist you to determine:
  - whether a Ministerial appointment is the appropriate mechanism for engagement
  - whether the appointment is deemed significant or non-significant.
- A non-statutory appointee is not an employee of the Commonwealth under the Public Service Act 1999.
- Under the Public Governance, Performance and Accountability (PGPA) Act 2013 non statutory appointments are considered 'other financial arrangements'.
- The Commonwealth Procurement Rules do not apply to appointments.
- Non statutory appointments are not published on AusTender.
- Non statutory appointments must be reported to [Parliamentary Division](#).

- Business areas and Taskforces are responsible for reporting their own non-statutory appointments. This is through the Senate Order 15 – Department and agency appointments and vacancies process and the Organisation and Appointments Register (AGOR) quarterly reporting process managed by [Ministerial and Parliamentary Support Branch](#).

## Processing the appointment of a non-significant non-statutory appointee

The steps for processing and onboarding a non-significant non statutory appointments are as follows.

### Confirm appointment

Ensure the Prime Minister or relevant Minister have issued the letter of appointment to the appointee. Contact Government Division for confirmation: [s 47E\(d\)@pmc.gov.au](mailto:s47E(d)@pmc.gov.au)

### Confirm payment status

Determine, in consultation with the appointee, if they are being engaged/paid as an individual/sole trader or through a business/corporate entity.

Individual/sole trader:

- Appointees who identify as an individual, regardless of whether they have an ABN, in most cases **should**<sup>[1]</sup> receive payment through payroll.
- The agency has a superannuation obligation to individuals whose appointment is wholly or principally for labour and/or skills. Being a member of an advisory board or similar qualifies as for labour/skills<sup>[2]</sup>.
- Legislation enforces that superannuation payments are made using superstream. The only way the agency can do this is via payroll. Superannuation funds do not accept adhoc payments unless the organisation/business is exempt. Government agencies do not fall within the exemption group.

Through a business/corporate entity:

- If an appointee is operating under a business/corporate entity, payment will occur on receipt of invoice.
- The obligation to pay superannuation is the responsibility of the business/corporate entity.

<sup>[1]</sup> If the appointee is a high income earner with multiple employers, they may wish to opt out of superannuation contributions. This would be to ensure that they do not to exceed the contributions cap. These individuals should access [Super guarantee opt out for high income earners with multiple employers form | Australian Taxation Office \(ato.gov.au\)](#), for further information.

<sup>[2]</sup> There is an option to reframe the engagement deed for individuals/sole traders for delivery of product rather than labour. This will negate the need to need to pay superannuation. Before embarking on this path you should seek advice from the Australian Government Solicitor (AGS). The advice is that re-worked deeds are reviewed by the AGS before issue.

We have developed two checklists to assist with the onboarding process. Once you have confirmed the payment status, access the relevant checklist.

- [Non statutory appointment onboarding checklist – individuals/sole traders being paid via payroll](#)
- [Non-statutory appointment onboarding checklist – business/corporate entity/sole trader being paid on receipt of invoice](#)

### Determine remuneration

Remuneration is determined by the relevant PGPA Act Section 23 delegate/s.

The [Remuneration Tribunal Determination for Holders of Part-Time Public Office](#) should be used as a guide to determine fees and allowances and assist in determining value for money.

- Approval of fees and allowances outside the current determination can be made at the discretion of the delegate. Payments that exceed the determinations of the remuneration tribunal should be flagged with the [Chief Financial Officer](#) (CFO) before delegate approval.

- The [Remuneration Tribunal Determination for Holders of Part-Time Public Office](#) is reviewed each year (usually in July or August). It is important that you ensure you are using the most current version.
- The rate of travel allowance depends on your meeting location/s. Travel allowance can be determined as a capped or *up to* amount based on an estimate of the amount of travel expected.
- Where the appointee is likely to be working part-days, an hourly rate may present better value for money than a daily rate.

Note:

- The S23(3) delegate is required to approve the commitment of relevant money. The delegate is responsible for ensuring the financial commitment represents an efficient, effective, economic and ethical use of public money.
- The S23(1) delegate is required to enter, vary or administer the arrangement. This is the delegate who signs the engagement deed.
- Depending on the value of the arrangement, these delegates may be different. To determine the most appropriate delegate/s refer to the [Financial delegations - PM&C Intranet \(pmc.gov.au\)](#).

## Draft the non-statutory engagement deed

The [Non-Statutory Engagement Deed](#) is a legally binding arrangement. The deed is used for non-significant non-statutory appointments.

When drafting the engagement deed follow the template and do not enter text or details outside of the advice provided in the drafter's notes.

If you DO alter the deed it is your responsibility to seek legal advice from the AGS.

The engagement deed includes:

- Conflict of interest declaration
- Private interest declaration
- Confidentiality undertaking

As the engagement deed is a commitment of relevant money it **must not** be issued without the PGPA S23 (3) delegate's approval. This approval must be in written form.

Written form for an individual/sole trader can be an email. Attach the letter of appointment and the draft engagement deed to your request so the delegate is able to make an informed decision.

Written form for a business/corporate entity is obtained via entry of the details into FinanceOne (P2P) which then workflows to the delegate for approval.

## Enter the non-statutory engagement deed into P2P

**Note: This step is only relevant if the appointee is being paid via a business/corporate entity**

- The details of the engagement deed must be entered into the detailed contracts module of P2P. This ensures the appointment is captured in the financial management information system to assist with commitment tracking and audit requirements.
- Attach the draft engagement deed and ministerial letter of appointment to the contract.
- If you require guidance with the P2P process please refer to the [P2P procurement field guide](#) or contact [S47E\(4\)@pmc.gov.au](#) for assistance.

Note:

- The engagement deed must not be provided to the appointee until after the ministerial letter of appointment has been issued and S23(3) delegate approval has been obtained.
- It is recommended that the engagement deed is accompanied by the on-boarding pack when forwarded to the appointee.

## Complete the onboarding pack

- Complete the relevant onboarding pack, dependent on the remuneration method:
  - [Onboarding pack – individuals](#)
  - [Onboarding pack – business – corporate](#)

Note:

- The drafter's notes within the onboarding pack provides guidance on how to complete the details
- It is recommended that the onboarding pack is accompanied by the non-statutory engagement deed when forwarded to the appointee.

## Issue the non-statutory engagement deed and on-boarding pack

Things to remember:

- The engagement deed **must not** be provided to the appointee until after the ministerial letter of appointment has been issued and S23(3) delegate approval has been obtained.
- The engagement deed and the onboarding pack should be provided to the appointee at the same time.

## Request an Australian Government Staffing (AGS) number

- An AGS number is necessary for individuals to be paid through payroll.
- If an appointee is contracted via a business/corporate entity, **this step does not apply**.
- An AGS number is requested by emailing [s47E\(d\)@pmc.gov.au](mailto:s47E(d)@pmc.gov.au).

## Request a new position number/s

- A position number is required for individuals as part of the payroll process.
- If an appointee is contracted via a business/corporate entity, this step **only applies** if they are required to have access to PM&C systems.
- If your section does not have an available position number, one can be requested via [PMC New Position Request - Service Portal](#)
- Do not place more than one person against a position number. Best practice is one position number per person.

## Finalisation steps

Once the appointee has returned the required documents there are several tasks for you to complete:

- Check the completed declarations for potential issues. Responsibility for management and resolution of any issues arising sits with the S23 (3) delegate.
- Have the S23 (1) delegate sign the engagement deed.
- For those appointees being paid as individuals/sole-traders, forward the personal details form to payroll via [HRHelp](#)
- For those appointees being paid through a business/corporate entity:
  - forward the completed Vendor Information Request form to [Accounts Payable](#), if applicable
- File the signed engagement deed and completed declarations in ShareHub.
- Report the appointment to Parliamentary division: [s47E\(d\)@pmc.gov.au](mailto:s47E(d)@pmc.gov.au)

Note: Some appointees wishing to be paid through a business/corporate entity may already have a vendor identity with PM&C. In these instances, the vendor form is not required.

## Additional information

### Insurance

Non-statutory appointments are not considered employees under the *Public Service Act 1999*. As such, they are not covered by the *Safety, Rehabilitation and Compensation Act 1988*. However, PM&C's Comcover indemnity will extend to any incidents that involve injury or death whilst on PM&C premises or whilst carrying out work on PM&C's behalf.

For more information access the [Comcover Statement of Cover, Personal Accident clause](#).

Intellectual Property



Reporting



## Ongoing management of a non-statutory appointee's entitlements

Eligible travel expenses



Payment Methods



Travel processes



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### Links

Prime Minister of Australia

Department of the Prime Minister and Cabinet

National Indigenous Australians Agency

[indigenous.gov.au](http://indigenous.gov.au)

[federation.gov.au](http://federation.gov.au)

Australian Parliament House

PM Transcripts

ABC News

BOM

GOLD

APSjobs

### Help me find

Crisis and emergency

First Aid Officers

Health and Safety Representatives

Privacy at PM&C

Security

Workplace Respect Officers



**From:** s 22(1)(a)(ii) @pmc.gov.au>  
**Sent:** Monday, 5 June 2023 12:41 PM  
**To:** s 22(1)(a)(ii) @pmc.gov.au>; s 22(1)(a)(ii) @pmc.gov.au>;  
s 22(1)(a)(ii) @pmc.gov.au>; Radford, Melissa <Melissa.Radford@pmc.gov.au>;  
s 22(1)(a)(ii) @pmc.gov.au>; s 22(1)(a)(ii) @pmc.gov.au>  
**Cc:** s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>;  
s 47E(d) @pmc.gov.au>; s 22(1)(a)(ii) @pmc.gov.au>; s 22(1)(a)(ii) @pmc.gov.au>;  
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s 22(1)(a)(ii) @pmc.gov.au>; Priest, Marcus <Marcus.Priest@pmc.gov.au>; s 22(1)(a)(ii) @pmc.gov.au>;  
s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>;  
s 22(1)(a)(ii) @pmc.gov.au>; s 47E(d) @pmc.gov.au>  
**Subject:** For review - Process for appointment of Head and Advisory Board for NZEA  
[SEC=PROTECTED, CAVEAT=SH:CABINET]

## PROTECTED//CABINET

Hi all

Thank you to you and your teams for your assistance so far with the appointment process for the Chair and Advisory Board of the new Net Zero Economy Agency. As there are several teams involved in providing support we wanted to confirm with you all together that we have appropriately covered the next steps. I would appreciate it if you could confirm by **3pm tomorrow (6 June)** that you are comfortable that the process below meets all requirements from your angle. Note we have included additional comments for clarification in italics.

s 34(3)

s 47C

For the **Head** of the Executive Agency we are proposing to:

s 22(1)(a)(ii)

s 22(1)(a)(ii)

For the non-statutory **Advisory Board members** we are proposing to:

1. s 34(3)

*Our understanding is this would be an appointment made by the Minister using the executive power, and therefore not a procurement (CPR 2.9h).*

2. s 47C

3. Provide Letters of Appointment to the PM to sign. Then send Letters to each appointed member for their records.
4. Send Engagement Deeds to each appointed member for signature (template attached).
5. Upon receipt of Deeds, Net Zero Economy Taskforce-SES to counter-sign.
6. Appointees to undergo police check and security clearance.
7. Send signed Deed to Procurement to input to Payroll or P2P.

Please contact me or s 22(1)(a)(ii) if you wish to discuss or have any questions.

Cheers

s 22(1)(a)(ii)

s 22(1)(a)(ii) (she/her)

Senior Adviser

Net Zero Economy Taskforce

p. (02) s 22(1)

Ngunnawal Country, One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600


e. s 22(1)(a)(ii) [@pmc.gov.au](mailto:s 22(1)(a)(ii)@pmc.gov.au) w. [pmc.gov.au](http://pmc.gov.au)



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

## **Implementation Plan - Establishment of Net Zero Economy Agency and Net Zero Authority**

s 22(1)(a)(ii)



### **PROJECT SCOPE**

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- Establishment and abolishment of Executive Agency through executive Order
- Appointments of Agency Head and Advisory Board members
- Establishment of Authority through Act of Parliament
- Appointments of Authority Head and Advisory Board members.

s 22(1)(a)(ii)





### 3. Executive Agency appointments -IN PROGRESS

#### *Key Documents:*

Brief 2 Appointment process: MS23-000500

Brief 3 Remuneration Tribunal: MS23-000550

Brief 4 Appointment documentation: MS23-000520

Brief 5 Appointment instruments and letters: MS23-000572

[Letter to Remuneration Tribunal President from PM](#)

Letter to APSC about appointment of Head

All documents found here - <https://share.internal.pmc.gov.au/recordid/23-14904>

s 22(1)(a)(ii)



#### Advisory Board Members:

CVs

Appointment details

Private Interests declarations


Appointment instruments

[Appointments Membership List](#)

[Board Member criteria](#)

#### *Background:*

s 22(1)(a)(ii)



s 22(1)(a)(ii)



s 22(1)(a)(ii)

*Contacts:*

Government team (for establishing Exec Agency):

- EL1 s 22(1)(a)(ii) (my primary contact)
- EL2 s 22(1)(a)(ii)

Appointments team:

- s 47E(d)
- EL2 s 22(1)(a)(ii), s 22(1)(a)(ii)

Remuneration Tribunal Secretariat:

- 02 6202 3930 - s 22(1)(a)(ii)
  - [enquiry@remtribunal.gov.au](mailto:enquiry@remtribunal.gov.au)
- ➔ For the submission, same email: [enquiry@remtribunal.gov.au](mailto:enquiry@remtribunal.gov.au)

s 22(1)(a)(ii)

SES Unit & Recruitment Section in PM&C

- EL1 s 22(1)(a)(ii) (I talked to s 22(1)(a)(ii) on 22 May)

Procurement Business Partner team

- s 22(1)(a)(ii) (main contact), s 22(1)(a), s 22(1)(a)

Shared Services – general support with non-statutory appointments

- s 22(1)(a)(ii) – s 22(1)(a) reached out to us, after discussions we had with other people in s 22(1)(a) Branch

Security for security clearances/police checks etc:

- s 22(1)(a)(ii) – s 22(1)(a)(ii) has previously been in touch with s 22(1)(a)(ii)

*Process:*

ACTIVITY	DETAILS	TIMING
s 22(1)(a)(ii)		

s 22(1)(a)(ii)

Advisory board offices should probably go to Rem Trib if significant appointments.)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

[Advisory board might be a different process: PM&C Secretary should make submission to the Tribunal and include the PM's supporting comments. Submission can be made prior to formally establishing the office.]

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

v. Engage with potential appointees	<p>To avoid pre-empting any decisions, potential appointees are to be approached initially only to ascertain:</p> <ul style="list-style-type: none"><li>(a) a willingness for their name to be put forward for consideration along with other candidates</li><li>(b) whether, if selected, there would be any conflict of interest, in accordance with the Government's requirements.</li></ul> <p>Info in: <a href="#">Cabinet Handbook 15th Edition updated 2 March 2023 (pmc.gov.au)</a>.</p>	DONE
vi. Decide if Advisory Board appointments are significant	<p>It's up to the PM whether or not he wants to refer the appointments to Cabinet.</p> <p><a href="#">Non-Statutory Appointments - PM&amp;C Intranet (pmc.gov.au)</a> (non-significant)</p> <p>Note: the <a href="#">Merit and Transparency policy</a> applies only to <i>current and future APS agency head roles, full-time APS statutory offices and APS statutory offices where there are both full time and part time offices with the same title</i>. Therefore if all advisory board offices are part-time we do not need to apply the Merit and Transparency policy.</p>	DONE s 34(3)
vii. Decide on potential appointees and write Appointment Proposal for clearance through Cab Div (Appointments Team s 22(1)(a)(ii))	<p>Proposal needs to outline the selection process undertaken as well as:</p> <ul style="list-style-type: none"><li>• Name and function of the body to which the proposed appointment would be made</li><li>• The position to which the nominee is proposed to be appointed</li><li>• The date of commencement of the proposed appointment</li><li>• rationale for recommending the nominee for the appointments, and any selection process which has been undertaken.</li><li>• Acknowledgement of the government's policy on gender and geographical balance.</li></ul> <p>Proposal needs to include the following attachments:</p> <ul style="list-style-type: none"><li>- Appointment for Cabinet Form</li><li>- Private Interests Declaration</li><li>-CV</li></ul> <p>See Annex 1 of: <a href="#">Cabinet Handbook 15th Edition updated 2 March 2023 (pmc.gov.au)</a>. And: <a href="#">Section 5: Conflict of Interest   Australian Public Service Commission (apsc.gov.au)</a></p>	DONE  Remuneration Tribunal should have already made its determination prior to submitting the appointment proposal.  s 47C

	<a href="#">Declaration of interests   Australian Public Service Commission (apsc.gov.au)</a>	
viii. Brief the PM on the appointment proposal and submit to Cabinet Secretary for Cabinet consideration	<p>Brief the PM on the proposal. He will then need to write to the Cabinet Secretary, with the supporting appointment documentation, requesting to refer it to Cabinet for approval.</p> <p>Cab Div will then brief the Cabinet Secretary on the proposal.</p> <p>Proposals should be submitted before the position is to be filled, but by no more than three months.</p>	<p>S 47C</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
ix. Notify Cabinet Division	Email Appointments team in Cab Div a copy of the signed brief and appointment documents to give them a heads up.	DONE

xi. Draft appointment instruments and letters and get PM sign off to finalise appointments	Once appointments are agreed to by Cabinet, the Prime Minister needs to sign Instruments of Appointment to formally complete the appointments. He also needs to sign letters to notify appointees of their appointment. <a href="#">Drafting templates   Office of Parliamentary Counsel (opc.gov.au)</a>	DONE
xii. Draft Media release for announcement of appointments	Public announcement	DONE
xiii. Send Appointment letters to Head of Agency and Advisory Board members	Send the letters with the instruments of appointment attached to notify members/Head they have been formally appointed.	
xiv. Organise on-boarding process for Agency Head and Advisory Board members	<p>s 22(1)(a)(ii)</p> <p>Security clearance requirements will be a big deal.</p> <p>Ask each member if they require income statements. This dictates whether we put them through Payroll or P2P.</p>	
xv. Draft and send Advisory Board member Deeds/ contracts	In consultation with Corporate	