



## **PUBLIC TRUSTEE AND GUARDIAN**

### **Charter**

<b>DOCUMENT PROPERTIES</b>	
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# Charter

## LEGISLATION

*Governance Principles - Appointments, Boards and Committees (2017)*

*Legislation Act 2001*

Dealing with appointments to Boards and Committees.

*Public Trustee and Guardian Act 1985 (PTG Act)*

Division 6.1 of the Act establishes the Board and the statutory provisions relating to its operation and governance. S.47 also provides -

Note: A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act 2001, s.196 and dict, pt 1, def of entity).

*Trustee Act 1925*

Division 2.2 (see Appendix A).

## DEFINITIONS

Public Trustee and Guardian (PTG) Internal Audit Committee (IAC) - This committee forms part of PTG's governance arrangements and the objective is to provide independent advice to the Public Trustee and Guardian (the Trustee) by overseeing and monitoring the entity's governance, risk and control frameworks, and its external accountability requirements.

Charter - This document including Appendices A & B.

Client investable assets - All financial assets owned by the client/trust that are held for investment purposes only, such as investment products/funds, direct property (NB excludes principal residence), listed securities, cash equivalent investments and fixed interest investments.

Common Funds - The Common Funds established by PTG in accordance with s.47 & 55 of the Act in which the monies of trust and financially managed clients are invested. Under s.55 of the Act, the Public Trustee and Guardian is responsible for the establishment, management and operation of these Common Funds.

The following Common Funds have been established by PTG –

- Cash Common Fund
- Conservative Common Fund
- Balanced Common Fund
- Growth Common Fund.

## Introduction

This Charter has been developed and approved by PTG to guide the operations of the PTG Investment Board (the Board) under the terms of the PTG Act.

S.47 of the Act provides –

## Function of board

The function of the Board is to advise the Public Trustee and Guardian on the investment of money that is from time to time in a common fund or otherwise in the hands of the Public Trustee and Guardian and available for investment.

### **Vision, Mission and Values Statement:**

#### ***Vision***

Protection and support of rights, choices, security and justice for all persons in the ACT Community.

#### ***Mission***

Safeguard, manage and uphold the personal, legal and financial interests of our clients by -

- Building and fostering trust in the delivery of our services
- Connecting with clients, the community and stakeholders in service delivery
- Promoting our products/services and those of the ACT Civil and Administrative Tribunal
- Providing a respectful and professional service within a human rights framework

#### ***Values***

- Excellence: we foster a culture of excellence in the delivery of our services
- Openness: we demonstrate honesty, integrity, compassion and inclusion when delivering our services
- Innovation: we challenge ourselves to seek new and improved work practices
- Collaboration: we work through interaction and support in partnerships
- Teamwork: we work together with respect, valuing staff expertise, professionalism and commitment.

## **1. Purpose**

- 1.1 PTG is required to fulfil certain legal requirements, specifically including those set out in the *Trustee Act 1925*, Division 2.2 (see **Appendix A**).
- 1.2 The role of the Board is to advise PTG on the investment of money that is from time to time in a common fund or otherwise in the hands of the PTG and available for investment.
- 1.3 The purpose of the Board is to foster and contribute to outcomes in the overall funds management and investment dealings of PTG, by promoting best practice in financial management, risk management, producing good financial returns and improved corporate governance.

## **2. Specific Functions and Responsibilities**

- 2.1 Without limitation, the Board's primary responsibilities encompass the following:
  - a) Oversee the actions of PTG in relation to the supervision of policies and frameworks governing client's investable assets;
  - b) Recommend the investment objectives and strategic asset allocations for the Common Funds;
  - c) Oversee the actions of PTG in relation to the Common Funds, other than performing oversight of financial accounting and reporting for the Common Funds which is the responsibility of the IAC;
  - d) Oversee PTG's supervision (including competitive tendering) of the Common Fund's external investment advisors including asset/markets consultants as appointed from time to time;
  - e) Oversee investment compliance, performance monitoring, benchmarking and competitiveness of returns of the Common Funds from time to time;
  - f) Consider and recommend to PTG the suitability of appointed external service providers to continue to provide investment services for the Common Funds and oversee competitive

- tendering;
- g) Consider recommendations for new investment products from time to time and their suitability for the investment of client monies;
  - h) Consider recommendations from time to time to make structural changes to products consistent with the objectives of the Investment Strategy and determine appropriate performance benchmarks.
  - i) Undertake any other activities that the Trustee requests which are consistent with the purpose of the Board;
  - j) Undertake annual and five-yearly reviews of the performance and appropriateness of the Investment Strategy, including the Cash Common Fund; and
  - k) Ensure that all events listed on the Calendar of Events (**Appendix B**) are complied with.
- 2.2 For the avoidance of doubt, the Minister has statutory authority to appoint members of the Board. The Trustee retains authority to appointing key external investment advisors/consultants subject to relevant legislation.
- 2.3 It is not a function of the Board to provide financial product advice within the meaning of that term in Ch 7 of the (Clth) *Corporations Act 2001* or the Regulatory Guide 36 "Licensing: Financial product advice and dealing". Advice provided to PTG will be general advice about assets allocation among the general types of assets listed in reg 7.1.33A of the *Corporations Regulations 2001*.
- 2.4 In performing its responsibilities the Board acts at all times:
- (a) in a manner designed to create and build sustainable value for PTG clients;
  - (b) sensitive to the needs of PTG clients which will include society's most vulnerable people and their representatives;
  - (c) in accordance with the duties and obligations imposed by law; and
  - (d) in a manner that is consistent with this Charter and with PTG's Vision, Mission and Values.

### **3. Composition**

- 3.1 The appointment of members must take place in accordance with the provisions of Division 6.1 of the *Trustee Act 1925* and also in accordance with the provisions of the *Legislation Act 2001* dealing with appointments to Boards and Committees.
- 3.2 S.48 of the Act establishes that the Board be comprised as follows -

#### ***48 Membership of board***

- (1) *The board consists of—*
- (a) the Public Trustee and Guardian; and
  - (b) at least 2 *other members appointed by the Minister.*

All appointments to Board and Committees must be made in accordance with the 2017 - Governance Principles - Appointments, Boards and Committees.

- 3.3 Administrative representatives of PTG may also attend Board meetings.
- 3.4 Members of the Board are appointed for a term as per S.48(3) of the Act -

*S.48(2) A member mentioned in subsection (1) (b) must be appointed for a term of not longer than 3 years.*

The Governance Principles establish a Presumption towards refresh. Appointments must not be made or re-made for a period of more than two full-terms or a maximum of six years unless:

- the statutory term is greater than six years

- Cabinet agrees there is compelling justification.

Under s.14B(1)(d) of the PTG Act, the PTG, as trustee under the Trustee Act, is obliged to take advice.

- 3.5 Membership of the Board is honorary and no remuneration is paid apart from expenses e.g. parking, which is paid at the rate as per the applicable Justice and Community Enterprise Agreement rate.
- 3.6 PTG's Senior Director - Finance and Investment Officer may attend all meetings. The Independent Chair IAC may also attend as requested.
- 3.7 S.49 of the Act provides in respect to Board meetings -

**49 Senior Member of board**

*The Public Trustee and Guardian shall be the Senior Member of the Board.*

- 3.8 In respect to the Presiding Member -

- (e) S.54A provides -

**54A Presiding Member at meetings**

- (1) *The Senior Member presides at all meetings at which the senior member is present.*
- (2) *If the Senior Member is absent, the member chosen by the members present presides.*

- 3.9 In respect to Quorum -

- (f) S.54B provides -

**54B Quorum at meetings**

- (1) *Business may be carried on at a meeting of the board only if at least 2 members are present.*

- 3.10 In respect to Voting -

- (g) S.54C provides -

**54C Voting at meetings**

- (1) *At a meeting of the board each member has a vote on each question to be decided.*
- (2) *A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.*
- (3) *However, if only 2 members are present at the meeting, and they differ on a question arising at the meeting, the question must be deferred until the next meeting at which more than 2 members are present.*

- 3.11 In respect to the Conduct of Meetings -

- (h) S.54D provides -

**54D Conduct of meetings**

- (1) *The board may conduct its proceedings (including its meetings) as it considers appropriate.*
- (2) *A meeting may be held using a method of communication, or a combination of methods of communication, that allows a board member taking part to hear what each other member taking part says without the members being in each other's presence eg a phone link, a satellite link, an internet or intranet link.*
- (3) *A board member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.*
- (4) *A resolution is a valid resolution of the board, even if it is not passed at a meeting of the board, if all members agree to the proposed resolution in writing or by electronic communication eg email.*

(5) *The board must keep minutes of its meetings.*

3.12 In respect to Ending Board Appointments -

(i) S.53 establishes the grounds for which the Minister may end the appointment of a Board Member.

#### **4. Reporting**

4.1 The Board will receive reports from management on the matters set out in paragraph 2 and in the Calendar of Events (**Appendix B**) and papers from management either recommending changes to matters in paragraph 2 or for discussion and feedback.

4.2 Key matters discussed at each Board meeting may be reported by the Senior Member to the IAC.

#### **5. Meetings**

5.1 The Board holds at least four regular meetings per year, and such additional meetings as the Senior Member decides.

5.2 Attendance at meetings may be by teleconference arranged by the Senior Member.

5.3 Circular resolutions in which Board members are requested to vote on issues without a meeting are permissible however such resolutions should be used sparingly and for procedural matters or recurring non-contentious matters where a decision may be made out-of-session. These may include decisions which were discussed and foreshadowed at a previous meeting, and which required advice of a certain matter before proceeding e.g. a Cash Common Fund rate change. Where a circular resolution is passed by members out of session, the decision will be ratified by members at the next Board meeting and noted in the Minutes.

5.4 PTG will provide Secretariat support for the Board on an on-going basis.

5.5 The Secretariat is responsible for -

- recording Board meeting attendance,
- taking minutes,
- recording all Board votes and vote outcomes,
- documenting minutes and
- circulating –
  - proposed agenda for the upcoming meeting
  - draft minutes for the immediately prior meeting, and
  - meeting folders consisting of reports for the upcoming meeting to all members no later than 5 working days prior to the following upcoming meeting.

#### **6. Governance principles**

6.1 In respect to Honesty, Care and Diligence of Board members -

(j) S.53A of the Act provides -  
***53A Honesty, Care and Diligence of Board Members***  
*In exercising the functions of a board member, a member must exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.*

6.2 In respect to Conflict of Interest -

(k) S.53B provides -  
***53B Conflict of Interest***  
*A board member must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions.*

6.3 In respect to Disclosure by Board Member of Interest item -

(1) S.53C & D provide -

**53C Agenda to require Disclosure of Interest item**

*The agenda for each meeting of the board must include an item requiring any material interest in an issue to be considered at the meeting to be disclosed to the meeting.*

**53D Disclosure of Interests by Board member**

(1) *If a board member has a material interest in an issue being considered, or about to be considered, by the board, the member must disclose the nature of the interest at a board meeting as soon as practicable after the relevant facts come to the member's knowledge.*

(2) *The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—*

*(a) be present when the board considers the issue; or*

*(b) take part in a decision of the board on the issue.*

(3) *Any other board member who also has a material interest in the issue must not be present when the board is considering its decision under subsection (2).*

S.53D provides specific definitions for "associate", "executive officer", "indirect interest", "material interest",

**53E Reporting of disclosed interests to Minister**

This section establishes a time within which a disclosure must be reported to the Minister and the procedure associated with that.

6.4 In respect to Liability of Board members and Indemnification and Exemption of Board members refer S.54F and 54G of the Act.

## **7. Board Charter**

7.1 The Board must review this Charter at least annually and, if appropriate, recommend revisions which require approval by PTG. Once updated, the revised Charter is to be submitted to the next meeting of the IAC.

7.2 The Board's Charter is to be made available upon request, to the IAC, management and, as appropriate, other interested parties.



**TRUSTEE ACT 1925 - SECT 14A**

***14A Duties of trustee in relation to powers of investment***

- (1) *This section has effect subject to the trust instrument.*
- (2) *A trustee shall, in exercising a power of investment—*
  - (a) *if the trustee's profession, business or employment is or includes acting as a trustee or investing money on behalf of other persons—exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons; or*
  - (b) *if the trustee is not engaged in such a profession, business or employment—exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.*
- (3) *A trustee shall exercise a power of investment in accordance with any provision of the trust instrument that is binding on the trustee and requires the trustee to obtain a consent or approval in relation to trust investments.*
- (4) *A trustee shall, at least once a year, review the performance (individually and as a whole) of trust investments.*

**TRUSTEE ACT 1925 - SECT 14B**

***14B Law and equity preserved***

- (1) *Any rule or principle of law or equity that imposes a duty on a trustee exercising a power of investment continues to apply except to the extent that it is inconsistent with this or any other Act or with the trust instrument.*
- (2) *A duty mentioned in subsection (1) includes the following:*
  - (a) *a duty to exercise the powers of a trustee in the best interests of all present and future beneficiaries of the trust;*
  - (b) *a duty to invest trust funds in investments that are not speculative or hazardous;*
  - (c) *a duty to act impartially towards beneficiaries and different classes of beneficiaries;*
  - (d) *a duty to take advice.*
- (3) *If a provision in a trust instrument purports to exempt, indemnify or limit the liability of a trustee in relation to a breach of trust, any rule or principle of law or equity that relates to the provision continues to apply.*
- (4) *If a trustee is under a duty to take advice, the reasonable costs of obtaining the advice are payable out of trust funds.*

**TRUSTEE ACT 1925 - SECT 14C**

***14C Matters to which trustee is to have regard when exercising power of investment***

- (1) *Without limiting the matters that a trustee may take into account when exercising a power of investment, a trustee shall, so far as they are appropriate to the circumstances of the trust (if any), have regard to the following matters:*
  - (a) *the purposes of the trust and the needs and circumstances of the beneficiaries;*
  - (b) *the desirability of diversifying trust investments;*
  - (c) *the nature of, and the risk associated with, existing trust investments and other trust property;*
  - (d) *the need to maintain the real value of the capital or income of the trust;*
  - (e) *the risk of capital or income loss or depreciation;*
  - (f) *the potential for capital appreciation;*
  - (g) *the likely income return and the timing of income return;*
  - (h) *the length of the term of the proposed investment;*
  - (i) *the probable duration of the trust;*
  - (j) *the liquidity and marketability of the proposed investment during, and at the end of, the term of the proposed investment;*
  - (k) *the aggregate value of the trust estate;*

- (l) *the effect of the proposed investment in relation to the tax liability of the trust;*
- (m) *the likelihood of inflation affecting the value of the proposed investment or other trust property;*
- (n) *the costs (including commissions, fees, charges and duties payable) of making the proposed investment;*
- (o) *the results of a review of existing trust investments.*
- (2) *A trustee may, having regard to the size and nature of the trust—*
  - (a) *obtain and consider independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice; and*
  - (b) *pay out of trust funds the reasonable costs of obtaining the advice.*
- (3) *A trustee shall comply with this section unless expressly forbidden by the trust instrument.*

**PUBLIC TRUSTEE AND INVESTMENT BOARD  
CALENDAR OF EVENTS**

	Event	Description of Event	Board Meeting	Charter Reference
<b>ITEMS FOR EACH QUARTERLY MEETING</b>				
<i>NB: Dates for Board Meetings are set shortly after the end of each quarter.</i>				
i.	Minutes	Prepare draft Minutes from previous meeting for consideration by Trustee	Senior Director, PTG Finance Unit	
ii.	Minutes	Circulate Minutes from previous meeting to Board members and address any changes	All	
iii.	Agenda	Prepare Agenda for next meeting updating action items from previous meeting	Senior Director, PTG Finance Unit	
iv.	Action items	Check all action items from Minutes of last meeting or carried over from previous meetings are addressed	Senior Director, PTG Finance Unit	
v.	Report of Invested Funds	Prepare report of invested funds in respect to the Cash Common Fund recommending any rate adjustments	Senior Director, PTG Finance Unit	
vi.	Common Funds and Risk Model performance	Prepare report on Common Funds and Risk Model performance	PTG Investment Officer	

	<b>Event</b>	<b>Description of Event</b>	<b>Board Meeting</b>	<b>Charter Reference</b>
vii.	Declaration of Interests and Potential Conflicts	Members and attendees at the commencement of a meeting must declare if they have been convicted of an indictable taxation offence and any potential or perceived conflict of interest with topics on the meeting agenda.	All	
viii.	Fund Manager/s' Report	Ensure Fund Manager/s reports available for next meeting.	Investment Officer	
<b>ITEMS FOR ANNUAL MEETING</b>				
ix.	Annual Report by Asset/Markets Consultant	Liaise with Asset/Markets consultant in respect to annual report to be presented to first Board meeting each year.	Investment Officer	
x.	IIAC Charter review	Review of Board Charter to ensure scope and responsibilities remain appropriate.	Senior Director, PTG Finance Unit	7.1
<b>ITEMS FOR FIVE-YEARLY MEETING</b>				
xi.	Five yearly Review of Investment Strategy	Prepare Scoping Paper in preparation of investment strategy review by asset/markets consultant, including the Cash Common Fund.	Senior Director, PTG Finance Unit	2.1 (j)
<b>ITEMS FOR PERIODIC REVIEW</b>				
xii.	Review appointment of external asset/markets consultant	Management review performance of external advisor to verify that they continue to deliver performance to required level.		
xiii.	Review Fund Manager	Management review performance of external fund manager in consultation with asset/markets consultant.		