What is a governance assessment?
A governance assessment is a tool which helps determine a fit-for-purpose governance structure for a new or existing government activity.

There are different types of governance structures which the Australian Government uses to achieve its purposes. These include primary bodies (e.g. a Commonwealth entity or a Commonwealth company), secondary statutory and non-statutory structures (e.g. a statutory office holder or a non-statutory advisory structure), and other governance relationships (e.g. an inter-jurisdictional body). More information about governance structures is available on the Types of Australian Government Bodies webpage.

A governance assessment must be included when seeking policy approval from Government (Cabinet or Prime Minister) for proposals to create a new primary or secondary statutory body or change governance structure of an existing primary or secondary statutory body. The Department of Finance (Finance) provides sign-off on governance assessments for these proposals. Entities are encouraged to engage with Finance at an early stage of completing a governance assessment to assure consistency with the requirements of the Commonwealth Governance Structures Policy (Governance Policy).

A governance assessment can be completed in the template provided, or in a free-form document as long as it addresses the requirements of the Governance Policy. This template can be used to guide the completion of a free-form governance assessment.

A full governance assessment for a new or existing government activity includes three parts:

1. Preliminary three-stage test
2. Consideration of governance factors
3. Analysis of the risks, costs and benefits of at least 3 alternative governance structure options that could support the activity.

Depending on the type of government body considered, you may not need to complete the analysis of options or the governance factors parts of the governance assessment. For example, the analysis of options is only required where it is proposed to create a new (or change an existing) primary body or a secondary statutory body. However, the preliminary three-stage test is mandatory for any new or existing activity.

Keep in mind that decision-makers reading a governance assessment need a concise, to the point discussion of the reasons to support (or reject) a particular governance structure for an activity. They need the essential information to reach a good decision, taking into account the four guiding principles of the Governance Policy:

1. Clarity of purpose
2. Minimise the role of government
3. Maximise efficiency by leveraging existing capabilities
4. Accountability to the Parliament and public

# How to use the template?

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| **Drafting Instructions** |
| **Instructions to assist you to complete this assessment are in black text on a grey background.** Yellow highlighted text is to be used for entering information. Delete all drafting instructions and yellow highlighting before submitting the draft assessment to Finance for review.  |

Officers completing a governance assessment will need to have an understanding of the principles and requirements of the Governance Policy. Some policy information has also been included in black text on a grey background under each question to help you understand what is required.

You can consult with Finance by emailing PGPA@finance.gov.au, which is also the submission point for completed governance assessments.

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| **Contact Details for Governance Assessment** |
| **Proposed body name:** |
| [Insert details] |
| **Portfolio of proposed body:** |
| [Insert details]  |
| **Contact officer:** |
| [Insert details]  |
| **Email:** |
| [Insert details]  |
| **Phone No:** |
| [Insert details] |

# SECTION 1 - Brief description of the activity

**This section should address the ‘who’ and ‘what’ of the proposed government activity. It is important to be clear about the scope of the activity that is proposed or already undertaken, because that informs how the body might or does carry out the activity. Put simply form follows function.**

**Key considerations:**

* **What is the intended outcome of the activity?**
* **Who are the relevant stakeholders, both internal and external to the Australian Government?**
* **What skillsets are required to undertake the activity?**
* **What level of funding is available?**

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# SECTION 2 – Preliminary three-stage test

Is a new body required to undertake this activity?

Stage 1: Does the Government have the constitutional power to undertake this activity?

**Under the Legal Services Directions, advice within government on the constitutional status of a Commonwealth government activity may only be obtained from the Australian Government Solicitor or the Office of Constitutional Law, both of which are part of the Attorney General’s Department (AGD). The Secretary of AGD may also refer matters to the Solicitor-General.**

**Your legal area will be able to assist if a new opinion is needed.**

**If YES to Stage 1 question, substantiate position and proceed to Stage 2.**

**If NO to Stage 1 question, the Government cannot undertake or fund the activity. An alternative mechanism outside of the Government may need to be considered. Substantiate position and proceed to Section 4.**

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Stage 2: Is the Government best placed to undertake the activity, in whole or in part, compared to an external provider?

**Once it has been determined that the Government has constitutional authority to carry out an activity, the need for the Government to undertake this activity should be assessed.**

**Key considerations:**

* **Does the activity need to be coordinated at the national level? Explain why.**
* **Is there a high level of direct involvement required of the Government? Explain why.**
* **Is the Government obliged to perform the activity? Consider whether the Government is bound by a treaty, legislative provision or public comment.**
* **Is the Government in a better position to deliver the activity compared to a competitive external provider? Consider whether there are mature markets for the activity.**
* **Would provision of funding (such as through grants) to State or Territory governments, the private sector or the not-for-profit sector be ineffective or inadequate to undertake the activity? Consider whether an arm’s-length arrangement would be more suitable to achieve the outcome.**

**If YES to Stage 2 question, substantiate position and proceed to Stage 3.**

**If NO to Stage 2 question, the Government may retain a regulatory or standard setting role, however the activity might be best undertaken outside of the Government. Substantiate position and proceed to Section 4.**

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Stage 3: If the answers to Stages 1 and 2 are yes, then can the activity be undertaken by an existing government body?

**Operational efficiencies and synergies can be optimised by using existing bodies, which are often better able to respond to emerging pressures or policy priorities of the Government.

Key considerations:**

* **Are similar activities being undertaken already by an existing body operating in a similar area? Statutory and non-statutory activities can often operate from within an existing body.**
* **Can the activity be rolled into an existing governance structure? Consider whether changes to an existing governance structure may be needed (e.g. whether the activity could be supported by a separate organisational unit with distinct branding). Consider whether incorporating a new activity into an existing governance structure would require changes to enabling legislation or company constitution.**
* **Are the activities appropriate for an existing body to perform?**
* **If NO to Stage 3 question, the preliminary three-stage test is passed and the creation of a new governance structure may be appropriate. Substantiate position and proceed to Section 3.**
* **If YES to Stage 3 question, the activity could be merged, consolidated or subsumed within an existing government body, in whole or in part (e.g. back office merger or transfer of activities). Substantiate position and proceed to Section 3.**

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| [Insert details] |

# SECTION 3 - Consideration of governance factors

Describe how a body would undertake this activity.

**Key considerations:**

* **Will the activity require enabling legislation?**

**Activities can be performed with or without enabling legislation, depending on what the intended outcome is and the risk factors involved in delivering that outcome. Enabling legislation sets out the roles and responsibilities of a body in undertaking the activity, which cannot be altered without parliamentary authorisation.

A statutory office holder can operate within a Commonwealth entity and even be supported by staff of the entity, while exercising their statutory role independently as described in the enabling legislation.**

* **Will the activity involve exercising coercive or regulatory powers?**

**Consideration should be given to any potential need for coercive or regulatory powers. Regulatory powers are generally applied to activities that involve monitoring a specific field or industry, often combined with the ability to charge regulatory fees or impose penalties.**

**Coercive (also referred to as enforcement) powers can be applied in conjunction with regulatory powers, and are relevant to activities that entail investigating matters or compelling another party to provide information.**

**The nature and scope of both regulatory and coercive powers will be determined by the purpose of the activity and the interactions the body will have with stakeholders.**

* **Will the activity be a core policy (and/or non-commercial) government function?**

**If the body is to perform primarily non-commercial and/or core policy functions of the Australian Government, this would normally mean a non-corporate Commonwealth entity or a secondary statutory or non-statutory structure within an existing non-corporate Commonwealth entity. This type of structure may also be appropriate for a body that will be fully or primarily budget funded.**

* **Will the activity have a commercial focus?**

**If the body is to conduct primarily commercial activities, this would normally mean a corporate Commonwealth entity or, in limited circumstances, a Commonwealth company, or a governance relationship (e.g. a subsidiary of a corporate Commonwealth entity or a Commonwealth company) may be more appropriate.**

* **Will the activity need to hold money outside the Commonwealth?**

**A level of financial autonomy from the government may be appropriate for a body that needs to operate commercially and does not receive a substantial proportion of its funding through appropriations from the Australian Government. A commercial focus may include the need to hold money on its own account, to borrow or invest money, or to have the power to engage staff outside the *Public Service Act 1999*. In these circumstances, it may be appropriate that the activity is undertaken by a body corporate which is legally separate from the Commonwealth.**

* **Is a governing board or multi-member accountable authority necessary?**

**A governing board or multi-member accountable authority is usually established for a Commonwealth entity or company when collective decision-making and diverse expertise (beyond what can be expected from one individual) are required to govern the body. Boards are usually given autonomy to determine an entity’s corporate strategy and direction (subject to statutory constraints) and therefore can operate with a managerial freedom.**

* **What level of independence is required?**

**It is enabling legislation that provides the level of independence of Commonwealth entities, not the type of entity. Some of the most independent entities are non-corporate entities (e.g. the Australian National Audit Office). Corporate Commonwealth entities may be subject to more extensive ministerial direction in their enabling legislation than non-corporate entities (e.g. the Australian Nuclear Science and Technology Organisation). Ultimately, it is the level of risk in undertaking the activity that will dictate the level of independence for the body.**

**Commonwealth companies are formed under the *Corporations Act 2001.* There are additional requirements in the *Public Governance, Performance and Accountability Act 2013* for Commonwealth companies, particularly when they are wholly-owned.**

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| [Insert details] |

# SECTION 4 - Options for undertaking the activity

**This section should contain analysis of the risks, costs and benefits of at least 3 alternative, viable governance structure options that could support undertaking the activity.**

**There will always be viable options, although their cost, practicality or effectiveness will be distinguishing factors in reaching the preferred option in Section 5.**

**The level of analysis should be proportionate to the materiality and risk profile of the activity. Since governance assessments are meant to be concise, a full cost-benefit examination is not required. However, the Budget Process Operational Rules (BPORs) may apply to costing the proposal if it is to be considered by Government. Assistance with financial information and BPORs requirements can be sought from your budget area or your Agency Advice Unit in Finance.**

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# SECTION 5 - Preferred governance structure option

**This section should discuss the merits of the preferred option in contrast with the other two competing options.**

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| **Date of completion of governance assessment:** | [Insert details] |
| **Date of Finance sign-off:** | [Insert details] |