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Mr David De Silva
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Dear Mr De Silva *David,*

Thank you for the Board's response to my correspondence of 20 January 2017 requesting consideration and advice on whether issuing a direction to adopt and comply with the Corporate Governance and Reporting Framework for Government Owned Corporations (GOC) under section 8(4)(c) of the *Government Owned Corporations Act* would not be in the best interests of Territory Generation (T-Gen).

I understand that it is the Board's view that complying with the Framework as currently drafted would not be in the best interests of T-Gen. I have reviewed T-Gen's list of observations on the Framework and have decided not to make any changes.

In response to additional feedback received from the GOCs, minor amendments have been made to section 2.5 of the Framework to more accurately reflect the wording in the Act in terms of indemnifying a person against civil liability (section 21(3) of the Act); and indemnifying a person against liability for costs and expenses (section 21(4) of the Act).

As shareholding Minister, to increase the regulatory oversight of T-Gen as a GOC, and ensure sound management and investment decisions on behalf of Territorians, I formally direct, under section 8(4)(c) of the Act, that T-Gen comply with the Corporate Governance and Reporting Framework for GOCs (Attachment A), noting that the requirements of sections 8(5)(a) and 8(5)(b) of the Act have been met.

Yours sincerely

NICOLE MANISON

10 APR 2017



Corporate Governance and Reporting Framework

Government Owned Corporations

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1 Overview

1.1 Government owned corporations

Government owned corporations (GOCs) are commercial entities established by the Government to deliver services in markets where government participation is deemed necessary to address a market failure. GOCs may be seen in circumstances of natural monopolies, infrastructure, and strategic goods and services.

The key objectives of the GOCs are to operate a Government business at least as efficiently as any comparable business and provide sustainable returns to the Northern Territory on its investment in Government businesses.

1.2 Purpose of the framework

The purpose of the Corporate Governance and Reporting Framework is to define the governance, reporting, investment and corporate planning obligations of GOCs in the Territory.

The framework provides direction and advice as to the processes, timeframes, content and controls associated with the governance relationships between GOCs, ministers and the Department of Treasury and Finance (DTF).

The framework, together with the *Government Owned Corporations Act* (GOC Act), the enabling legislation for each GOC, and the Territory's Policy Statement on Competitive Neutrality, establish the operating and accountability framework for GOCs in the Territory.

GOCs are expected to fulfil the obligations outlined in this framework together with all other relevant legislative requirements.

The framework has been issued by the Treasurer, as shareholding Minister, under Section 8 of the GOC Act.

2 Governance

2.1 Legal framework

Legislation

The GOC Act came into operation on 21 December 2001 and adopts a shareholder model of corporate governance. The GOC framework replicates, as far as possible, governance principles that apply to private sector businesses.

Key elements of the shareholder model of corporate governance as adopted by the GOC framework include:

- a GOC established under its own legislation but governed by the overarching GOC Act;
- a board of directors fully accountable for the GOC's performance;
- a shareholding Minister who monitors the financial performance of the GOC;

- a portfolio Minister who monitors the service performance of the GOC and who has broad industry policy responsibilities; and
- an annual performance agreement (Statement of Corporate Intent (SCI)) between the shareholding Minister and the GOC.

A GOC is not an agency under the Administrative Arrangements Order. Government businesses are established as GOCs by their enabling legislation and are primarily governed by the GOC Act.

The *Corporations Act 2001* also applies to various aspects of the governance of a GOC including director's duties, financial reporting and the requirements for a constitution.

Although the *Financial Management Act* (FMA) does not apply to a GOC, a GOC is included in the Government's non-financial public sector accounts for the purposes of government reporting. A GOC will have interactions with the Budget in terms of community service obligation (CSO) funding, capital or recurrent grants from government, dividends paid to government, payments under the Tax Equivalents Regime (TER), borrowings from Northern Territory Treasury Corporation and interest and principal repayments on those borrowings.

While a GOC is not an agency for the purposes of the *Public Sector Employment and Management Act* (PSEMA) under the Administrative Arrangements Order, the GOC's enabling legislation may prescribe the GOC as an agency for the purposes of PSEMA and any conditions or variations on the application of PSEMA to the GOC.

Constitution

Under section 11 of the GOC Act, a GOC is to have a constitution approved by the shareholding Minister. Any amendment to a GOC's constitution must also be approved by the shareholding Minister.

The constitution of a GOC is intended to have the same operation and effect in relation to the GOC as a private company's constitution would have in relation to that company, in setting out the rights, powers and duties of: the company, the board, each director and the shareholder.

The shareholding Minister may issue guidelines as to what should be included in a GOC's constitution. A constitution of a GOC may also contain matters that for a company would be found in the *Corporations Act 2001*. Other matters may be included in a GOC's constitution unless the matters are inconsistent with the GOC Act or any other Act.

Under the GOC Act, the shareholding Minister must table a copy of the constitution or any amendment to a GOC's constitution in the Legislative Assembly within six sitting days after the date on which the constitution or amendment came into effect.

Subsidiaries

Under section 37(4) of the GOC Act, a GOC must not form or acquire a subsidiary unless approved by the shareholding Minister. Approval by the shareholding Minister may be on such terms as the shareholding Minister thinks fit and will normally include approval of the subsidiary's constitution. A subsidiary's constitution must include express restriction on the power of the subsidiary, so its powers do not exceed the powers of the parent body.

Where two or more GOCs propose together to establish a public sector subsidiary, they must separately seek the approval of their shareholding Minister.

Unlike a GOC that is governed by the GOC Act, section 3 of the GOC Act states that a GOC's subsidiaries will be incorporated under and governed by the *Corporations Act 2001*.

A GOC must not dispose of an interest in a company that would result in the company ceasing to be a public sector subsidiary without the prior written approval of the shareholding Minister.

Crown immunity

Under section 5 of the GOC Act, a GOC or its subsidiaries are not within the shield of the Crown and do not represent the Territory except by express agreement, in writing, of the shareholding Minister.

A GOC cannot render the Territory liable for the debts, liabilities or obligations of those of its subsidiaries.

Section 55 of the GOC Act includes transitional provisions to preserve Crown immunity in relation to existing contracts of a government business when it becomes a GOC, to the same extent had it not become a GOC.

Powers

Under section 50 of the GOC Act, a GOC has, for the performance of its functions, all the powers of a natural person including the power to:

- enter into contracts;
- acquire, hold, dispose of and deal with property;
- sue and be sued;
- appoint agents and attorneys;
- charge and fix terms for goods, services and information supplied by it;
- engage consultants; and
- do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.

The GOC Act provides that a GOC may exercise its powers within or outside the Territory and outside Australia.

The legislative power for a GOC to employ staff is not included in the GOC Act, but rather is addressed in the GOC's enabling legislation and may vary from GOC to GOC.

Restrictions

Under section 51 of the GOC Act, the powers of a GOC are subject to restrictions if expressly imposed by:

- the GOC Act or other relevant legislation;
- the GOC's constitution;
- the GOC's SCI;
- a relevant direction, notification or approval given to the GOC by its shareholding Minister or portfolio Minister; or
- other legislation.

If a GOC, or an officer of a GOC, exercises a power contrary to a restriction, that action is not invalid merely because of the contravention.

Essentially, a person entering into a contract or transaction with a GOC is entitled in normal circumstances to assume the GOC has the power to enter into the transaction. It is not a valid defence that the transaction was inconsistent with the GOC's powers.

However, contravention of the GOC Act or other restrictions may be relied on in proceedings against the GOC's officer(s) by the shareholding Minister or the Territory.

2.2 Public information provision

Information provided to the public by a GOC must not promote the interests of a particular political party or provide statements that are misleading or factually inaccurate, and must clearly distinguish a statement of facts from a statement of comments.

GOCs must not participate in any political actions or comment on the views, policies or actions of a political party or political person. This includes both supportive and unsupportive behaviours.

A GOC's shareholding Minister may not direct the GOC to participate in any political actions or promotions.

This policy applies to all GOCs, including those not considered to be public authorities for the purpose of the *Public Information Act*.

2.3 Role of ministers

Shareholding Minister

In accordance with section 7 of the GOC Act, a GOC will only have one shareholder, the shareholding Minister. The shareholding Minister holds shares in the GOC on behalf of the Territory.

The GOC Act also requires a GOC to maintain a register that identifies the current shareholding Minister.

The Treasurer is the shareholding Minister, unless the Chief Minister nominates another minister as the shareholding Minister under section 7A(2) of the GOC Act. The portfolio Minister cannot be the shareholding Minister if either the portfolio Minister or the shareholding Minister has been nominated by the Chief Minister (but could be if the Treasurer is also the Minister responsible for the administration of a GOC's constituting Act).

Responsibilities of the shareholding Minister

Under the GOC Act, the shareholding Minister has separate and distinct powers and responsibilities from the portfolio Minister. The shareholding Minister is not responsible for the day-to-day performance of the GOC but rather for setting its annual performance targets and monitoring against them.

A list of these responsibilities with reference to the GOC Act has been provided in Appendix A. This is not a comprehensive list but rather the required minimum under the GOC Act.

Portfolio Minister

Under section 10 of the GOC Act, the portfolio Minister is the minister administering the GOC's constituting Act. The portfolio Minister is also responsible for industry-wide policy matters relating to the GOC.

The GOC Act lists the responsibilities of the portfolio Minister. A list of these responsibilities with reference to the GOC Act has been provided in Appendix B. Again, it is not a comprehensive list but rather the required minimum under the GOC Act.

2.4 Department of Treasury and Finance

DTF's role is to develop and apply prudent commercial principles and practices to influence and deliver Government policies. This promotes transparent and accountable commercial principles and practices throughout the public sector and ensures government owned assets and resources are managed and used efficiently.

DTF provides oversight of the financial and governance performance of Territory GOCs to facilitate the effective and efficient delivery of services in line with whole of government public policy objectives.

DTF provides independent analysis and advice to the shareholding Minister as to the performance of the Territory's GOCs to support informed and transparent decision-making processes.

DTF is also available to assist GOCs with the development of GOC policies and provide regulatory and compliance advice.

2.5 Board of directors

Composition of the board

Section 13(1) of the GOC Act requires a board of directors for each GOC.

The board must include at least two non-executive directors, and the constitution of the GOC is to specify the number of directors and whether the chief executive officer is a director of the GOC. Consistent with the Australian Stock Exchange (ASX) governance principles¹, the majority of directors on the board should be independent. This is to ensure there is a clear distinction between the board and management to maintain the integrity and impartiality of management and directors.

Directors are appointed to a GOC, having regard to the expertise necessary for the corporation to achieve its objectives. The board should maintain an appropriate level of expertise, knowledge and discipline through appropriate planning. Directors should be appointed on the basis of their capacity to contribute to the board, having an appropriate balance of relevant expertise, experience and local knowledge.

Board appointment and termination

A formal and transparent procedure for the selection and appointment of new directors to the board helps promote the shareholding Minister's understanding and confidence in that process.

In accordance with section 13 of the GOC Act, the Administrator may appoint or terminate a non-executive director of a GOC. Appointments and terminations by the Administrator may only be made on the recommendation of the shareholding Minister.

The shareholding Minister may appoint or terminate a person to be an acting director of the GOC under section 14.

An appointment of a director remains in force for a period of less than four years, as determined by the Administrator. Reappointment of a director is not automatic.

It is recommended that the expiry of director appointments be staggered to avoid all director appointments expiring at the same time and to assist in the board's succession planning.

¹Corporate Governance Principles and Recommendations with 2010 Amendments, 2nd Edition, ASX Corporate Governance Council.

Role of the board

In accordance with section 15 of the GOC Act, the board of directors is responsible for the operation of the GOC and is accountable to the shareholding Minister for the GOC's financial performance.

The responsibilities of a board of directors include:

- setting strategic directions, objectives and targets for the GOC;
- identifying the major risks for the GOC;
- establishing procedures, systems and controls to manage such risks;
- establishing an audit committee and any other committee it sees fit;
- monitoring the GOC's performance and the performance of management in implementing strategic directions and achieving objectives and targets;
- reporting to the shareholding Minister and portfolio Minister;
- ensuring the GOC's compliance in legal matters;
- reviewing the board's overall performance;
- appointing the chief executive officer;
- reviewing the performance of the chief executive officer;
- monitoring the progress of major capital expenditure and cash management;
- monitoring the financial performance of the GOC;
- reviewing and approving the annual financial statements of the GOC and its subsidiaries; and
- implementing and reviewing compliance with codes of conduct.

In addition, under section 20 of the GOC Act directors are also subject to the duties and liabilities as specified in Part 2D.1 of the *Corporations Act 2001*. This is discussed further in this section.

Consistent with ASX governance principles, a GOC board should adopt a formal board charter. The charter should detail the functions and responsibilities of the board and a copy of the charter should be provided to the shareholding Minister.

The board charter should also include a formalised Code of Conduct. The Code of Conduct should detail what is expected in terms of director conduct (individually and collectively as the board).

The board should implement policies that apply the ASX governance principles and any other appropriate best practice initiatives developed over time.

Chairperson

In accordance with section 18 of the GOC Act, there is to be a chairperson for each GOC. The shareholding Minister may appoint a non-executive director to be chairperson of the board of a GOC. The shareholding Minister may at any time terminate an appointment of a chairperson.

The chairperson is responsible for:

- leadership of the board;
- being the spokesperson for the board in relation to its responsibilities and accountabilities;

- organising and facilitating board meetings; and
- briefing the shareholding Minister in relation to issues arising at board meetings.

Deputy chairperson

Under section 19 of the GOC Act, the shareholding Minister may appoint a non-executive director to be the deputy chairperson of a GOC. The shareholding Minister may at any time terminate an appointment of a deputy chairperson.

The deputy chairperson is to act as the chairperson of the GOC during the absence or inability of the chairperson to act in the position of chairperson.

Chief executive officer

Section 16 of the GOC Act requires a chief executive officer for each GOC. The chief executive officer of a GOC may be a director of the corporation under section 13.

The board may appoint or terminate a person as the chief executive officer of a GOC following consultation between the shareholding Minister and the board of the GOC.

The chief executive officer of a GOC is subject to the directions of the board and is responsible for the day-to-day management and the operation of the GOC.

Under section 17, the board of a GOC may appoint a person to be the acting chief executive officer of a GOC when:

- the chief executive officer is, or is expected to be, absent from office or unable to exercise their powers or perform the functions under the GOC Act or any other Act; or
- there is a vacancy in the office of chief executive officer.

The chief executive officer of a GOC cannot be a member of the GOC's audit committee under section 12 of the Act.

Induction program

It is good practice for an induction program to be made available to newly appointed directors. An induction program should provide newly appointed directors an understanding of:

- the GOC's strategic direction, objectives, and targets;
- the key risks facing the GOC;
- the financial position of the GOC;
- their rights, duties and responsibilities as a director;
- the role of the board; and
- the role of committees.

Committees

The board of a GOC may, by resolution, delegate any of its powers and functions to a committee of the board under section 27(1)(b) of the GOC Act.

Section 12 of the GOC Act requires that a board of a GOC establish an audit committee and any other committee it sees fit.

A committee must provide the board of a GOC with advice on any matter referred to it by the board and must exercise the powers and perform the functions delegated to it by the board.

Each committee should have a formalised committee charter that clearly sets out its role and responsibilities, structure and membership requirements. At least one member should possess professional technical expertise relevant to the committee's functions.

Audit committee

The audit committee should comprise at least three members with the majority of members (and the chairperson) being independent, non-executive directors. All members should be financially literate (be able to read and understand financial statements) and at least one member should possess relevant professional technical expertise.

The chairperson of the audit committee must be a non-executive director of the corporation. To maintain independence, the chairperson of the audit committee should not be the chairperson of the board.

To maintain independence and transparency, the chief executive officer of a GOC cannot be a member of the GOC's audit committee. However, the chief executive officer should be available to assist the audit committee in its activities.

The audit committee should apply best practice principles set out in the ASX governance principles.

Board remuneration

Under section 24 of the GOC Act, the shareholding Minister determines the remuneration (including travelling and other allowances) of non-executive directors (including acting directors) of a GOC or a GOC's subsidiary.

In determining appropriate remuneration for directors, the shareholding Minister may look at remuneration levels paid to non-executive directors of similar commercial entities in other jurisdictions and may also request advice from the Remuneration Tribunal.

While the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act* does not apply, the annual rate of increase in the General NTPS Enterprise Agreement should be used to determine remuneration increases for GOC directors.

A review of director remuneration, including the methodology, should occur at least every five years in addition to annual increases.

Duties and liabilities of directors

Section 20 of the GOC Act provides that Chapter 2D of the *Corporations Act 2001* governs the duties of directors and other officers. Directors should be aware of their responsibilities in relation to the *Corporations Act 2001* and the civil and criminal offence penalties.

The duties of directors and other officers include:

- exercising due care and diligence;
- acting in good faith in the best interests of the corporation;
- not using their position improperly to gain an advantage for themselves or anyone else;
- avoiding situations where their duty to the corporation conflicts with an external or personal interest; and
- fully and honestly informing the shareholding Minister of all material matters affecting the corporation's business on a timely and regular basis.

The GOC should implement best practice initiatives for governance and the duties and responsibilities of the directors.

Disclosure of interests

The appropriate disclosure of director interests aims to ensure proper disclosure of circumstances that may involve a director in a conflict of interest, and appropriate handling of the conflict if required.

Section 26 of the GOC Act requires that, if a director has a direct or indirect interest in a matter being considered or about to be considered by the board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge. Contravention incurs a civil penalty.

A director who has disclosed an interest should take no further part in the board's deliberations or decision on the matter, unless the board resolves otherwise and the director himself or herself chooses not to withdraw.

A disclosure at a board meeting must be recorded in the board's minutes and the board must maintain a register of the declared interests of the directors.

Director indemnities

Section 21 of the GOC Act requires that a GOC must not indemnify a person who is or has been an officer (including director) of the GOC against a liability incurred as an officer, or exempt a person who is or has been an officer of the GOC from a liability incurred as an officer.

However, a GOC is not prevented from indemnifying a person against civil liability (other than a liability to the GOC or a subsidiary of the GOC) unless the liability arises out of conduct involving a lack of good faith.

A GOC is also not prevented from indemnifying a person against liability for costs and expenses incurred by the person in defending a proceeding, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted; or in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

Directors may take out director and officer insurance in respect of potential liability to the GOC for breach of duty.

Territory Government indemnities continue in respect of the acts or omissions of directors before the business became a GOC.

Where the shareholding Minister requires the GOC to undertake an activity on behalf of the Government, rather than in the GOC's own interests, the Treasurer may provide a Territory indemnity to directors of the GOC.

Board performance

A key responsibility of the board of a GOC is to review the performance of the board itself, individual board members (executive and non-executive directors alike) and the chief executive officer.

The board should regularly review its performance and that of key executives, annually at a minimum. Appropriate, formal self-evaluation processes should be developed and implemented for the board and any committees. The evaluation process should include an assessment of the board's performance against its governance policies and processes and the GOC's SCI.

The board should ensure best practice is applied to the review, and meaningful analysis and evaluation is undertaken.

An outcome of a performance review should be to focus the board's attention on areas that require improvement or change, with outcomes and strategies formally recognised through resolution of the board.

The chairperson of the board should also review the performance of the board on an annual basis with a copy of the report provided to the shareholding Minister.

3 Corporate planning

3.1 Statement of corporate intent

The SCI is the main instrument to outline a GOC's strategic direction and is a mechanism for monitoring financial and non-financial performance targets.

The SCI is the formal agreement between the GOC Board and the shareholding Minister that holds the Board accountable for performance to the shareholder and the Government.

Statement of corporate intent

Section 40 of the GOC Act requires the SCI to specify the following information:

- objectives of the GOC and its subsidiaries;
- the nature and scope of activities to be undertaken by the GOC and any subsidiaries along with future developments and their financial impacts;
- the nature and scale of material risks faced by the GOC and the strategies to minimise those risks and their potential financial impact;
- strategies to improve the financial performance of the corporation and how to measure that performance and determine whether strategies have been successful;
- capital investment plans of the GOC;
- financial targets, milestones and other non-financial performance measures by which the performance of the GOC and any subsidiaries may be judged;
- accounting policies to be applied in the accounts of the GOC; and
- any other matters that may be agreed on by the shareholding Minister and the board.

The SCI should also include:

- assumptions about the business environment in which the GOC operates;
- other business strategies including price control, dividend payments and human resources;
- details of the GOC's financing of investments and borrowings; and
- social programs and non-commercial activities, including those funded through community service obligation payments.

Information is to be provided by line of business.

Any financial model developed to support the SCI should be readily auditable and meet modelling best practice with clearly defined and integrated assumptions and inputs based on industry benchmarking where possible. The GOC's capital structure (debt to equity) should be set at a target band based on known and planned capital expenditure over the period which the SCI is to cover.

The shareholding Minister may also provide a Statement of Expectation to the GOC, which enunciates the Minister's expectations of the GOC, the current objectives of the Government for the GOC and any expectations the Government may have on how the GOC should conduct its operations. This can be used as guidance in preparation of the SCI.

In preparing its SCI, the GOC should have consideration of general government policies and strategic directions.

A GOC's SCI should outline how it proposes to meet its obligations as a GOC through the articulation of measurable and verifiable key performance indicators (KPIs). This ensures the shareholding Minister can clearly hold the GOC accountable for its performance. These KPIs, to be developed in consultation with DTF, should be limited in number to those crucial to the success of the GOC and include both financial and non-financial measures.

3.2 Development of financial targets

Setting appropriate financial targets aims to ensure goods and services are priced appropriately and operations are undertaken efficiently, and provides an environment that adheres to the principles of competitive neutrality.

All GOCs are required to add to shareholder value in their operations. The SCI needs to set out the financial targets, which should include, where appropriate, but not be limited to:

- return on assets;
- return of equity;
- earnings before interest, tax, depreciation and amortisation;
- earnings before interest and tax; and
- debt to equity, or other gearing ratio.

The shareholding Minister will nominate the required return on equity. The GOC's board will nominate all other financial targets for the shareholding Minister's consideration.

This requires the GOC to earn returns sufficient to cover the cost of debt and the required return on equity.

The shareholding Minister will agree with the GOC the methodology it will use to measure performance against its principal financial targets and any other financial targets. These measures will be based on shareholder value added and the change in shareholder value added year-on-year.

Financial targets should not be adjusted for any unfunded components of CSOs. Any adjustments considered necessary should be made, notionally, to the GOC's actual revenues.

3.3 Capital and other investments

All planned investment projects should be included in the SCI to illustrate the GOC's complete investment plan.

Investment projects within the scope of the Investment Decision Process (IDP) (as detailed in Section 5 of this document) planned for the current financial year of the SCI must have been approved by the shareholding Minister.

Estimates for expenditure on capital projects yet to be approved through the IDP may be included for the outer years as a guide. Consultation with DTF and the shareholding Minister should be undertaken

during preliminary stages of significant investments to facilitate transparent investment planning and assist with the assessment process. It should be noted that the shareholding Minister's approval of the SCI does not infer final approval of expenditure on capital projects in the outer years.

3.4 Disclosure of material variation to the SCI

In addition to regular reporting requirements, a GOC should adhere to continuous disclosure requirements. Continuous disclosure is the timely advising of information to keep stakeholders informed of events and developments when they occur. The disclosure may be made through regular reporting requirements. However, section 15 of the GOC Act must be applied for more significant matters.

Section 15 states that if the board forms the opinion that matters have arisen:

- that may prevent, or significantly affect, achievement of the objectives of the GOC (or its subsidiaries) as contained the GOC's SCI; or
- that may prevent, or significantly affect, achievement of the targets contained in the GOC's SCI,

the board must immediately notify the shareholding Minister of its opinion and the reasons for the opinion.

When determining what would constitute a significant affect, it may be appropriate to establish materiality levels for the different business objectives (operational or financial) within the SCI.

3.5 Timing and procedures

Table 1 provides an indicative timeframe for the SCI process. The timing of the SCI is impacted by the timing of the Territory Budget. Each year DTF will write to GOCs to outline its requirements by date (as soon as the Budget date is set).

Section 39 of the GOC Act requires that the board of a GOC must prepare and submit a written draft SCI to the shareholding Minister. The board of a GOC must submit a first draft of the SCI to the shareholding Minister for consideration consistent with the dates provided by DTF.

The board is required to consult in good faith with the shareholding Minister and make changes as agreed prior to delivering the final document. Where the board does not agree with a change to the SCI proposed by the shareholding Minister, the shareholding Minister may direct the corporation to include or remove specific elements contained within the SCI. The board, with the shareholding Minister's agreement, may modify the SCI.

The completed SCI is to be delivered to the shareholding Minister not later than one month before the commencement of the financial year (1 June) to which it relates, or as otherwise agreed with the shareholding Minister.

The shareholding Minister must table in the Legislative Assembly a copy of the completed SCI or a modification of the SCI within six sitting days after the commencement of the financial year to which the statement or modification relates.

While a GOC's SCI is a public document, it is acknowledged that it may contain commercial-in-confidence information in relation to its operation in a competitive market. The shareholding Minister may remove any information from the SCI considered to be of a commercially sensitive nature prior to tabling it in the Legislative Assembly.

It is the responsibility of the GOC to justify why any information should be removed before the SCI is tabled. This decision is at the discretion of the shareholding Minister.

Table 1: Indicative timetable for the SCI cycle, providing Budget Day is in mid-May

Date	Action
January	GOC provides DTF with first draft of the assumptions used as basis for SCI projections (statements of financial performance, financial position and cash flows).
Late January	Officer level meetings to discuss the assumptions.
Late February	GOC provides DTF with first draft SCI financials.
Early March	DTF and GOC officer-level meetings to consider the draft projections and SCI content.
Mid-March	GOC provides DTF with the first draft of the complete SCI as noted by the board.
End March	Shareholding Minister briefed by DTF on the SCI and the financial projections proposed.
Early April	Proposed final SCI submitted formally to shareholding Minister (after informal agreement with DTF) and agreed by shareholding Minister.
Mid-April	Treasurer reviews and signs off SCI.
End April	SCI printed and public version ready for tabling.
2nd week of May	SCI tabled in Legislative Assembly by shareholding Minister.
End September	SCI reporting presented to shareholding Minister ready for tabling.

3.6 Reporting against statement of corporate intent

Section 41 of the GOC Act requires a report on the corporation's performance in relation to its SCI be provided to the shareholding Minister within three months after the end of each financial year to be tabled in the Legislative Assembly.

Reporting must compare actual performance against the budgets and forecasts contained in the latest SCI with commentary on the underlying causes of variations.

Qualitative and quantitative commentary is needed for all financial performance and non-financial performance indicators included in the SCI.

This reporting requirement can be met through the inclusion of the information in the annual report, however a separate report is also acceptable.

4 Financial management

While GOCs operate outside of the FMA, the financial performance of GOCs can have a significant influence on the Territory Government's fiscal and financial outcomes. Therefore, Government has developed separate financial management requirements to ensure GOCs apply best practice principles and operate transparently.

Parts of a GOC's business will also be captured in the Territory Budget through separate payments to the GOC, such as community service obligations and grants or payments from a GOC to Government including dividends, interest and tax equivalent payments.

Further, a GOC's financial results are reported as part of the public non-financial sector in whole of government reports.

4.1 Capital structure

A GOC should target an optimal capital structure (that is, the combination of debt and equity used to fund the assets of the GOC) as agreed by the board and shareholding Minister.

Section 32 of the GOC Act allows the shareholding Minister to determine or alter the capital structure of a GOC, following consultation with the board and the Treasurer.

The board of a GOC may make a recommendation to the shareholding Minister as to the capital structure, including by converting debt to equity or equity to debt, repaying equity, transferring assets and altering the equity base.

When determining the capital structure for a GOC, a cash flow-based risk analysis should be undertaken in order to determine the debt capacity of the business and may include:

- developing a business profile;
- reviewing business plans and forecasts;
- undertaking business risk analysis;
- constructing a model to analyse cash flows; and
- undertaking sensitivity analysis of the impact of key variables on the cash flows.

GOCs should set a capital structure range to provide flexibility to meet changing market conditions that may require unforeseen expenditure and to establish that a GOC's value is relatively unaffected if its capital structure varies within these parameters. The width of the range will vary for each GOC, depending on the volatility of its cash flows and the competitiveness of the market in which the business operates.

When reviewing a GOC's capital structure and range, the following issues will be considered:

- the target debt ratios that should be no larger than can be prudently serviced and consistent with businesses of comparable size and operations;
- the forecasted level of capital expenditure in the SCI, including options for funding that expenditure and long-term objectives to ensure the assessment takes into account the future direction of the GOC and not just a current snapshot; and
- the requirements of competitive neutrality should be met, that is, the GOC should receive no net advantage either from differences in the debt to equity ratio compared with private sector counterparts or from other factors.

In addition, a GOC should ensure individual capital investment proposals apply an appropriate hurdle rate that has considered the relevant factors such as the level of competition, market volatility and project risks.

In line with specific legislative provisions, the shareholding Minister, after consultation with the board and, where applicable, the relevant portfolio Minister, can direct a GOC to repay capital to the Territory.

A GOC's agreed capital structure and range should be reviewed annually through the SCI. The purpose of the review is to confirm whether or not the GOC's capital structure and range continue to be appropriate and, if not, to negotiate revised arrangements between the board and shareholding Minister.

4.2 Dividends

The Territory Government, as owner, is entitled to an appropriate dividend from its GOCs. Dividends from GOCs are an important source of ongoing funding for social services through the Territory Budget.

The key elements underlying dividend payments are:

- net profit after tax in accordance with the National Tax Equivalent Regime;
- liquidity and capital requirements of the GOC;
- the appropriate capital structure of the GOC;
- the views of the portfolio Minister; and
- the Territory's budgetary requirements.

Dividends are classified into two categories, ordinary dividends and special dividends.

Ordinary dividends

Government's equity investment in GOCs has accumulated over time through direct investment in capital and through indirect investment in the form of retained earnings. These investments carry an associated opportunity cost, which is the benefit that the Government foregoes from an alternative use of that equity. It is therefore reasonable to expect GOCs to achieve returns that are comparable to alternative commercial investments of similar risk.

Ordinary dividends are paid on an annual basis from after tax profits, and GOCs make provision for payment of an ordinary dividend in the annual financial accounts. A preliminary estimate of the dividend is identified as part of the budget process to facilitate whole of government fiscal planning.

The Government's policy is a dividend of 50 per cent of net profit after tax, however the shareholding Minister may, before the annual financial statements are finalised, discuss the dividend to be declared by the board with the board of the GOC. Under section 31 of the GOC Act, the board of the GOC must make a recommendation to the shareholding Minister as to the appropriate amount to be paid as a dividend. The dividend must be determined in advance of 30 June each year to be accrued in that year's financial statement.

The recommendation should set out the process used to determine the annual dividend payment ratio and must consider the following:

- current and forecasted profit and margin;
- not knowingly placing the GOC at financial risk;
- retaining an optimal capital structure (retained earnings, gearing and interest cover);

- current and future capital requirements and associated funding;
- current and forecasted operational cash flow requirements;
- returns of comparable commercial investments of similar risks; and
- any other relevant circumstance.

The shareholding Minister may accept the recommendation of the board or issue a direction specifying that a different amount to that recommended by the board is to be declared as a dividend.

The Minister's direction is based on a case-by-case consideration of the underlying capital structure and future cash flow requirements including contingency for financial flexibility. GOCs with financial capacity to pay dividends based on payout ratios above 50 per cent are expected to do so.

The retention of cash or financial investments should be at an appropriate level to provide financial flexibility for contingencies. Surplus funds should be returned to the Government as financial asset management is outside the core operations of a GOC.

A GOC's dividend may be set lower than the standard reference point of 50 per cent where such a commitment would:

- constrain the business from undertaking approved value-adding investment opportunities; or
- threaten business financial sustainability as measured by key financial ratios such as gearing levels and debt servicing capacity.

Dividend targets should not be adjusted for the provision of any agreed CSO activity.

Payment of the dividend is due within 60 days after the audited financial statements are completed in each year or by 1 December in each year, whichever is earlier.

Special dividends

Special dividends refer to dividends paid out of accumulated profits or capital reserves. They are declared infrequently and separately from ordinary dividends. The shareholding Minister may direct the board of a GOC to declare a special dividend on the shares of the corporation.

4.3 Borrowings and banking

The Northern Territory Treasury Corporation (NTTC) performs the role of banker for all GOCs and all borrowing should be sourced through NTTC. As NTTC can supply funds at a cheaper rate than could be obtained by comparable private sector firms, GOCs could experience advantages by virtue of their public sector ownership through the availability of cheaper finance. To mitigate this advantage, NTTC charges a lending margin that results in interest rates comparable to those offered commercially.

Under section 35 of the GOC Act, a GOC may only borrow money other than from NTTC with the approval of the shareholding Minister. Before seeking approval to proceed with the borrowing, a GOC should develop a comprehensive business case. If approved, the GOC would be required to pay a competitive neutrality fee if the shareholding Minister determines that the GOC would experience a competitive advantage. Forecasted borrowing drawdown and repayments must be included in the final SCI agreed between the GOC and the shareholding Minister.

GOCs with an approved borrowing program must hold quarterly meetings between the Chief Financial Officer of the GOC or an appropriate delegate and representatives of NTTC to ensure they are updated on any required changes arising to borrowing requirements identified out of the quarterly reforecast process.

A GOC will operate its bank accounts within the existing whole of government banking contract. This arrangement facilitates effective cash management and is a key fiscal strategy for the Territory.

The banking contract establishes performance criteria, describes the fee structure and specifies the products and services available under the Banking Contract.

Fees and charges relating to the operation of a GOC's bank accounts and banking products and services provided under the Banking Contract will be charged at the rates designated in the central Banking Contract.

A GOC will develop financial management policies and procedures, as approved by the board, and apply appropriate controls with respect to the operation of any bank account established for a GOC.

4.4 Community service obligation

Section 28 of the GOC Act defines a community service obligation as an activity with an identifiable community or social benefit that would not be undertaken if only commercial considerations applied.

As CSO activities detract from the GOCs goal to operate as efficiently as a private sector business, CSOs can only be undertaken with the agreement of the shareholding Minister.

CSO activities must be undertaken efficiently and transparently to ensure Government funding is applied prudently and each activity must be costed and identified separately.

As CSO activities are directly funded by the Government, CSO funding forms part of the annual budget process and is subject to Cabinet approval.

4.5 Procurement and tendering

A GOC may require a degree of flexibility in its procurement arrangements to ensure these best meet its commercial needs.

Section 36 of the GOC Act allows a GOC to develop its own procurement policy for approval by the shareholding Minister. The shareholding Minister must consult with the portfolio Minister before approving a GOC's procurement policy.

A GOC's procurement policy should be consistent with the principles of the Government's procurement policy. In the absence of an approved GOC procurement policy, the *Procurement Act* and policy issued under the *Procurement Act* continue to apply.

As GOCs operate on a competitive basis, they do not have to comply with the Northern Territory Government Competitive Tendering Guidelines and may tender in competition with the private sector for Government projects without the need for external approval.

4.6 Government guarantee

The Government (Crown) does not guarantee the obligations of a GOC, including any associated subsidiaries or special project vehicles. However, section 34 of the GOC Act states that if the GOC is required to undertake an activity outside its normal commercial functions, the Treasurer may agree that a Government guarantee be provided.

Where the Government agrees to provide a guarantee, a formal guarantee will be prepared by DTF or relevant Government agency. The guarantee will establish the services undertaken by the GOC to be covered, limitations of the guarantee and the length of the agreement.

Section 55 of the GOC Act provides for the continuation of Crown immunity in relation to a contract, variation of that contract and acts under the contract once it has been transitioned to a GOC to the same extent as if it had not become a GOC.

GOC officers are also prohibited from:

- providing any written note or oral representation that could imply government assistance would be forthcoming in support of difficulties associated with a financial arrangement in which the GOC has a stake; and
- entering into contractual arrangements or undertakings that would produce the effect of an actual or contingent obligation on Government to support a GOC.

4.7 Risk management

A GOC's board is responsible for the management of risks. Boards should therefore establish processes and practices within the normal operations of the GOC to assess and manage the risks associated with the GOC's operations.

The GOC's board should keep the shareholding Minister informed of risk management strategies by outlining them in the SCI, progress reports and other reports where necessary. In addition, the SCI and progress reports should contain a statement from the board that the GOC has appropriate risk management policies and practices in place, and adequate systems and expertise are applied to achieve compliance with them.

A risk management program should identify common areas of concern for the GOC including, but not limited to:

- physical risks such as disaster and emergency planning and environmental;
- market risks such as changes in technology and competition;
- product risks such as interruptions to service supply; and
- financial risks such as liquidity and asset management.

The program should be incorporated into the SCI and the nature, scale and financial impact of these risks should be communicated in the document.

A GOC should also identify how the GOC's risk management program will be integrated with the GOC's decision-making and operational strategies including clear strategies for mitigating material risks.

5 Investment development

5.1 Investment Decision Process

Under section 37 of the GOC Act, a GOC must not undertake a capital investment or acquire a financial investment above the prescribed threshold unless approved by the shareholding Minister. The IDP sets out the obligations on a GOC before it undertakes a relevant investment.

Projects that qualify under the IDP include any investment that:

- has a gross project value in excess of the relevant prescribed threshold established by agreement between the shareholding Minister and the GOC;
- does not meet the standard rate of return threshold used by the GOC;

- is located outside of the Territory; or
- involves forming or acquiring a subsidiary, trust, joint venture or other similar arrangement involving a third party.

An investment that meets one or more of the above criteria must only proceed with the written approval of the shareholding Minister.

Qualifying investments planned to commence within the next financial year cannot be included in the SCI unless they have first been approved by the shareholding Minister through the IDP.

5.2 Prescribed thresholds

The relevant prescribed threshold is agreed between the board and the shareholding Minister, or will be determined by the shareholding Minister should agreement not be reached. The relevant prescribed threshold should be reviewed annually by the GOC board and the shareholding Minister.

Multi-staged investment proposals that require board approval at each stage of the process are to be treated as a single investment in terms of the threshold.

5.3 Regulated investments

Investments in monopoly environments may be subject to economic regulation by a regulatory authority. Depending on the regulatory framework applicable and the pricing regime, the regulatory authority may set the GOC's asset base in the determination of a regulated rate of return. This allows the GOC to propose a level of efficient capital investment necessary to ensure service standards can continue to be met.

Investment proposals above the prescribed threshold must be approved by the shareholding Minister as part of the IDP prior to being submitted to the regulatory authority.

An investment approved by the shareholding Minister should only be progressed if it falls within the level of investment determined efficient by the regulatory authority. If the shareholding Minister determines an investment should be undertaken that falls outside a determination, alternative financial arrangements should be negotiated with the shareholding Minister.

To minimise duplication, business cases to be provided to the regulatory authority should be used to fulfil the business case requirements for the IDP.

5.4 Shareholding Minister approval

The shareholding Minister must be provided with a business case and any other relevant supporting documentation as part of the approval process.

The preparation of a business case will inform the shareholding Minister of a proposal's expected benefits, risks and costs, including the opportunity cost. The business case will also demonstrate the capacity of the GOC to effectively deliver the proposal.

Project timeframes should include sufficient time for the shareholding Minister to consider the business case and provide a decision.

The approval of a business case does not infer that the project must proceed despite market conditions changing, the project becoming unviable or GOC priorities shifting over time. GOCs are expected to adapt to changing market conditions and only undertake investments that produce an appropriate rate of return. The shareholding Minister should be informed of any changes to the delivery of projects that have received approval.

5.5 Business case requirements

A business case should examine total lifecycle costs, benefits, risks and implementation requirements of the investment. Business cases should state the basis for estimating the set-up costs and ongoing operating costs, including stating the degree of accuracy of the estimates.

At a minimum, the business case should:

- consider a range of options;
- reference the procurement and implementation strategy;
- identify the rationale for the project, including the unmet need or demand that cannot be addressed through existing assets;
- include a robust assessment of capital and operational costs, development timeframes and financing;
- demonstrate that the preferred option will sufficiently improve financial performance to warrant undertaking the investment;
- include measurable targets and goals for the investment;
- describe the scope and timing of the service succinctly and coherently so readers can easily understand the proposed service and expected service levels; and
- be written with the level of detail appropriate to the scale, complexity and risk of the proposal. Technical terminology and jargon should be kept to a minimum.

The extent of evidence required for a business case should be proportionate to the value and risk of the project or program. A high-value or high-risk project may require a greater level of supportive evidence.

DTF may assist GOCs in the preparation of business cases.

5.6 Business case assessment

Once a business case is received, the shareholding Minister will assess the business case in consultation with DTF.

The assessment of a business case will consider:

- whether a project is commercially sound;
- if the project enhances shareholder value;
- whether the project gives rise to any broader public policy issues for government;
- the proposed governance arrangements; and
- the risk management strategies and undertake a gap analysis for any unidentified risks.

Assessments should be completed within two weeks of receiving a final business case, however, assessments of complex proposals may take longer. GOCs are encouraged to provide draft business cases and consult with DTF early in project development.

6 Reporting

6.1 Quarterly performance reporting

The quarterly performance reporting process consists of two parts:

- data and supporting information required to undertake whole of government financial reporting; and
- a report that details operational and financial performance.

Treasurer's quarterly financial statements

Section 8 of the FMA requires the Treasurer to prepare financial statements for each quarter and publish in the Gazette. This reporting is compiled for the non-financial public sector, which includes GOCs.

The following information is to be provided to DTF quarterly:

- financial statements including a Comprehensive Operating Statement, Balance Sheet, and Cash flow Statement with year-to-date figures;
- asset reconciliation spreadsheets identifying asset classes with opening balances, transactions such as transfers, additions, sales, depreciation, accumulated depreciation, impairments and revaluations, and closing year-to-date position; and
- trial balance with accounts mapped to the APEX ledger with both opening balances and year-to-date figures.

Accounts must specify source destination codes to identify the entities that GOCs are transacting with and allow for the elimination of intra-government transactions from the consolidated statement.

Timing of Treasurer's quarterly financial statements

Information must be provided by the fifteenth day following the end of the quarter to allow sufficient time for quality assurance and resolution of any consolidation differences.

Quarterly performance report

Each quarter, a report must be provided to the shareholding Minister, the portfolio Minister and DTF containing the following information against targets contained in the SCI:

- an operating statement comparing year-to-date actuals against year-to-date budgets and year-end forecasts against the full-year budget;
- a capital expenditure program comparing year-to-date performance against year-to-date budgets and year-end forecasts against the full-year budget;
- commentary on material variations that are plus or minus 15 per cent or more from budget, or where significant risks have been identified for each line item and capital project. The commentary provided should reflect the underlying factors driving the variance and canvas corrective actions;
- results for KPIs (financial and non-financial) for the quarter and year-to-date (actual against budget) and commentary for material variances; and
- the financial statements should be in a format comparable with that provided in the SCI.

Meeting with Department of Treasury and Finance

Representatives from DTF and the GOCs are to meet each quarter to discuss the performance report.

Shareholder meeting

Upon consideration of the performance report, the shareholding Minister may request to meet with the board or representatives of the board, the Chief Executive Officer and Chief Financial Officer. The shareholding Minister may invite representatives from DTF to the meeting.

Timing of Management Performance Report

Quarterly performance reporting will be conducted for the September, December and March quarters. Full-year financial monitoring will be conducted through the audit and Annual Report processes. Table 2 outlines the quarterly reporting timeframe.

Table 2. Quarterly reporting timeframe

Quarter report	Information provided	DTF meeting
Q1 Report (July-Sept)	On or before the last business day of October	Prior to end the second week of November
Q2 Report (Oct-Dec)	On or before the last business day of January	Prior to end the second week of February
Q3 Report (Jan-Mar)	On or before the last business day of April	Prior to end the second week of May

6.2 Audits

Financial statements

In accordance with section 42(1) of the GOC Act, a GOC must forward to the Auditor-General the financial statements to be included in an annual report prepared under section 44(1) of the Act.

A GOC must forward the financial statements to the Auditor-General within two months after the end of each financial year or of another period specified by the shareholding Minister.

In preparing the financial statements, a GOC must comply with the *Corporations Act 2001*. In particular, the financial statements and notes must give a true and fair view of the financial position and performance of the GOC, any subsidiaries and the consolidated entity.

Audit of financial statements

The Auditor-General must audit the financial statements submitted by a GOC within one month after receiving them or within another period determined by the Administrator.

The Auditor-General reports on the financial statements to the board of the GOC for inclusion in the GOC's annual report.

The GOC pays a fee for the audit of its financial statements, with the Auditor-General determining the fee after consultation with the GOC.

Other audits

The Auditor-General may conduct an audit of a GOC under the *Audit Act*. Sections 16 and 21 of the *Audit Act* apply in relation to a GOC as if a reference in those sections to 'Accountable Officer' and 'Agency' were a reference to 'the board of a Government owned corporation' and 'Government owned corporation', respectively.

In addition to financial audits, the *Audit Act* provides the Auditor-General with the power to undertake audits of performance management systems. While comparable private companies would not be subject to any similar arrangement, this is an appropriate accountability requirement for a publicly owned corporation.

The Auditor-General may also be requested to undertake special audits by the shareholding Minister. These may relate to any aspect of performance, systems or accounts. The shareholding Minister may also request an outside auditor to undertake special audits.

6.3 Annual report

Section 44 of the GOC Act requires that a report on the GOC's performance is prepared following each financial year.

A GOC must prepare and give to the shareholding Minister an annual report of the operations of the corporation and of its subsidiaries during each financial year that conforms to the requirements of similar reports under the *Corporations Act 2001*.

The annual report is to include:

- financial statements for that financial year, including financial statements by business lines, that comply with the requirements of the *Corporations Act 2001* and, if the corporation has subsidiaries, the requirements of that Act relating to consolidated financial statements;
- the Auditor-General's report on the financial statements; and
- all information that is required by the shareholding Minister to enable an informed assessment of the operations of the corporation and its subsidiaries.

The reports will include commentary on specific factors affecting performance, risks, strategic issues and other relevant matters.

Statement of corporate intent reporting

Consistent with section 3.6 of this document, reporting requirements on a GOC's performance in relation to its SCI can also be included in the annual report.

Appendix A: Shareholder Minister responsibilities

Shareholding Minister responsibility/duties	Relevant section(s) of <i>Government Owned Corporation Act 2001</i>
Holds the GOC shares on behalf of the Territory.	Section 7: Share capital, shares and shareholder
Can request information about the GOC's performance and activities.	Section 8: Shareholding Minister may give directions Section 47: Other information to be provided
Can direct the board of the GOC (after consultation with the board and the portfolio Minister) to take specific actions with such directions to be tabled in the Legislative Assembly (LA), including determining which public sector policies apply to the GOC and direct the GOC to act in a certain manner or undertake a certain task if it is in the public interest.	Section 8: Shareholding Minister may give directions Section 29: Shareholding Minister may notify board of public sector policies Section 30: Shareholding Minister may give directions in public interest
May delegate their powers or functions (but not to the portfolio Minister).	Section 9: Delegation by shareholding Minister
May approve a proposed or amended constitution and issue guidelines for the constitution and table to LA.	Section 11: Constitution of Government owned corporations
Must recommend a director for the person to be considered for appointment or for termination. May also appoint or terminate acting directors, chairperson and deputy chairperson.	Section 13: Directors of Government owned corporations Section 14: Acting directors Section 18: Chairperson Section 19: Deputy chairperson
Monitors the corporation's performance through the receipt and analysis of regular reports from the GOC (that is, the board is accountable to its shareholding Minister and must notify the Minister of any matters affecting performance related issues).	Section 15: Accountability of directors of Government owned corporations
The appointment or termination of a chief executive officer or an acting chief executive officer may be made only after consultation with the shareholding Minister.	Section 16: Chief executive officer Section 17: Acting chief executive officer

Shareholding Minister responsibility/duties	Relevant section(s) of <i>Government Owned Corporation Act 2001</i>
May determine, alter or revoke remuneration paid to a non-executive director or an acting director.	Section 24: Remuneration
May determine (in consultation and agreement with the GOC) community service obligations, and may direct the GOC to undertake, or not undertake, a community service obligation and table in the LA. Must ensure appropriate financial arrangements are made, and consult with the portfolio Minister and Treasurer before undertaking any of the above actions.	Section 28: Community service obligations
May agree on or direct a dividend payment to the Territory from the GOC and table the direction with the LA.	Section 31: Dividends
Can determine or alter the GOC's capital structure (after consulting with the board and Treasurer).	Section 32: Capital structure
Must approve borrowings not sourced from the Northern Territory Treasury Corporation.	Section 35: Borrowings
Approve the GOC's procurement policy following consultation with the portfolio Minister.	Section 36: Procurement
Must approve the formation or acquisition of a trust, joint venture or other similar activity involving a third party.	Section 37: Investments by Government owned corporations
Must approve, after consulting with the Treasurer, capital investments, and acquisition of financial interests and disposals of investments above the relevant prescribed threshold. May agree with the board on the relevant prescribed threshold or, if no agreement is reached, determine threshold without board.	Section 37: Investments by Government owned corporations Section 38: Disposal of investments

Shareholding Minister responsibility/duties	Relevant section(s) of <i>Government Owned Corporation Act 2001</i>
<p>Must receive a draft statement of corporate intent and may consult with and direct the board to modify it.</p> <p>Must table the statement of corporate intent, in the LA within the relevant timeframes and determine what information is available for public release.</p>	<p>Section 39: Statement of corporate intent – timetable and procedure</p> <p>Section 41: Statement of corporate intent – reporting</p>
<p>Must receive Annual Report (after an Auditor-General review) and table it in the LA.</p> <p>May require information regarding the operations of the GOC and its subsidiaries to be included in the Annual Report and specify a time period in which the GOC must provide financial statements to the Auditor-General.</p>	<p>Section 42: Corporation to provide financial statements to Auditor-General</p> <p>Section 44: Annual reports and accounts</p>
<p>May request Auditor-General or other auditor to conduct an audit, including a special audit.</p>	<p>Section 46: Special audits</p>
<p>May approve a business or trading name in writing to be used by the GOC.</p>	<p>Section 51A: Business or trading names</p>
<p>Must take all practical steps to ensure the effect sought to be achieved by transfer regulations is achieved in a case where an impediment arises (for example, a law from another jurisdiction).</p>	<p>Section 53H: Completion of necessary transactions</p>
<p>May (by Gazette Notice) make a correction order to rectify an error in regulations within six months of transfer date if the error can't be rectified by further regulations.</p>	<p>Section 53Q: Minister may make correction order</p>
<p>May give and table in the LA (within six months of transfer date) a direction to the GOC that facilitates making transfer regulations, prepares the transfer of business affected by transfer regulation or gives effect to the transfer of business.</p>	<p>Section 53T: Ministerial directions</p>

Appendix B: Portfolio Minister responsibilities

Portfolio Minister responsibility/duties	Relevant section(s) of <i>Government Owned Corporation Act 2001</i>
Must be consulted before the shareholding Minister and the GOC undertake community service obligations and provide finance.	Section 28: Community service obligations
Must be consulted before the shareholding Minister directs the board in respect to which public sector policies apply to the GOC or gives directions requiring the GOC to act or undertake tasks in the public interest.	Section 29: Shareholding Minister may notify board of public sector policies Section 30: Shareholding Minister may give directions in public interest
Must be consulted regarding a GOC's procurement policy prior to the shareholding Minister providing approval.	Section 36: Procurement
Must receive a copy of the Statement of Corporate Intent report.	Section 41: Statement of corporate intent – reporting
Can request information about the GOC's performance and activities.	Section 47: Other information to be provided
Must take all practical steps to ensure the effect sought to be achieved by transfer regulations is achieved in a case where an impediment arises (for example, a law from another jurisdiction).	Section 53H: Completion of necessary transactions

PROPOSED DIRECTION FOR TERRITORY GENERATION TO COMPLY WITH CORPORATE GOVERNANCE AND REPORTING FRAMEWORK FOR GOVERNMENT OWNED CORPORATIONS

Territory Generation Observation	Department of Treasury and Finance Analysis
<p>General: Complying with the Framework, as currently drafted, is not considered to be fully in the best interests of Territory Generation (T-Gen). Consultation between T-Gen and DTF has been limited and it appears that many of the suggested amendments have not been picked up and/or not included.</p>	<p>DTF provided a copy of the draft Framework for consideration and comment in August 2016. T-Gen's feedback was received in October 2016. The Framework was amended to accommodate feedback where appropriate, noting that a number of suggested amendments did not warrant changes due to T-Gen's fundamental disagreement with increased governance.</p>
<p>General: The <i>GOC Act</i> is currently sufficiently prescriptive in relation to governance and reporting. Any increase in formal input by the shareholding Minister into the corporation's business, risks the public perception of shadow management by the shareholding Minister.</p>	<p>The <i>GOC Act</i> is currently the only source of information for the governance of GOCs and only provides high level direction. There is no guidance as to how legislative requirements should be achieved or how GOCs and key stakeholders should interact and share information.</p> <p>GOCs have consistently not met legislative timeframes and provided incomplete financial and performance data. This has often limited the time available for the analysis of GOC performance and proposed investments.</p> <p>The Framework appears necessary to improve the application of and adherence to legislative requirements; and ensures appropriate levels of scrutiny until such time as the GOCs are achieving benchmark levels of financial performance and service standards.</p>
<p>General: The Framework appears to introduce new mechanisms which are not aligned with the objectives and requirements of the Government Owned Corporations Act (GOC Act) and the <i>Corporations Act 2001 (Cth)</i>. This presents a significant risk to the Territory, both in regard to the overall objectives of T-Gen's operations under the <i>GOC Act</i>; and to the ongoing Strategy for NT Electricity Market Reforms.</p>	<p>The Framework supports the Act by formalising existing processes and introducing new mechanisms to assist all stakeholders to meet legislative requirements, enhancing the regulatory oversight of GOCs and ensuring sound management and investment decisions.</p> <p>The Framework ensures appropriate levels of scrutiny until such time as the GOCs are achieving benchmark levels of financial performance and service standards. The Framework is not intended to stifle GOC operations and/or ongoing NT Electricity Market Reforms.</p>

PROPOSED DIRECTION FOR TERRITORY GENERATION TO COMPLY WITH CORPORATE GOVERNANCE AND REPORTING FRAMEWORK FOR GOVERNMENT OWNED CORPORATIONS

Territory Generation Observation	Department of Treasury and Finance Analysis
<p>Autonomy - 2.5 Board of Directors, Board Performance The Framework expresses the following: <i>“The chairperson of the board should also review the performance of the board on an annual basis with a copy of the report provided to the shareholding Minister.”</i></p> <p>This potentially undermines the independence of the board.</p>	<p>The shareholding Minister is responsible for recommending the appointment and termination of Board members and, as such, should have information relating to the performance of the Board. This is suggested best practice using the word ‘should’.</p>
<p>Autonomy - 2.5 Board of Directors, Role of the Board The Framework is generally prescriptive on adherence with the shareholding Minister’s approvals, reporting to the Shareholding Minister and reporting to DTF. It has been custom that the shareholding Minister seldom issues directions to GOCs so as to allow GOCs greater autonomy to improve the performance of the organisation and be accountable for the decisions made.</p> <p>Section 181 of the <i>Corporations Act</i> expresses that the Directors must <i>“exercise their powers and discharge their duties in good faith in the best interests of the Corporation”</i>. This will simply be over-ridden by a direction of the shareholding Minister which may not be in the best interests of the Corporation.</p>	<p>A review of the governance and oversight arrangements for GOCs in other jurisdictions has shown that the Territory has the most light-handed approach to the oversight of the performance of GOCs.</p> <p>The direction to the Board of GOCs to adopt and comply with the Framework is to ensure appropriate levels of scrutiny until such time as GOCs are achieving benchmark levels of financial performance and service standards.</p> <p>A post implementation review may lead to transitioning to a more flexible Framework when GOC governance and reporting compliance improves.</p>
<p>Reporting requirements – 6 Reporting, Quarterly performance report The Framework demands extra reporting obligations on GOCs, over and above the current reporting obligations under the <i>GOC Act</i>. This could potentially undermine the Board’s independence, and lead to inefficiencies within GOCs.</p>	<p>The data that is required in the Framework are standard financial performance indicators and should already be produced by each GOC. The regular provision of this information to the shareholding Minister will facilitate the effective regulatory oversight of GOCs. While whole of government reporting is not covered in the <i>GOC Act</i>, the Treasurer is required under the <i>Financial Management Act</i> to prepare whole of government reports for the non-financial sector each quarter, which includes GOCs.</p>
<p>Shareholding Minister approvals - 5 Investment Development, Investment decision process Investment projects within the scope of the Investment Decision Process must be approved by the shareholding Minister before incorporating the same into the current financial year of the SCI.</p> <p>Given that GOCs prepare their SCIs in February each year, there remains the</p>	<p>This requirement is in line with Section 40(f) of the <i>GOC Act</i>: <i>“...the capital investment plans of the corporation that have been approved by the Government owned corporation’s shareholding Minister;”</i></p> <p>GOCs are therefore required to plan in advance and not to submit investment projects into the SCI without the shareholder Minister’s approval.</p>

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<p>unclear treatment of investment projects intended for the current financial year of the SCI, that are over the threshold and yet to be approved by the Board. These investment projects therefore have yet to be presented to the shareholding Minister for approval whilst the shareholding Minister considers the SCI.</p>	
<p>Shareholding Minister approvals - 5 Investment Development, Investment decision process There is the requirement to obtain approval for any investment that does not meet the standard rate of return threshold. Although reasonable, there should be a de minimis limit on this provision, such that a lower threshold could apply to 'sub-weighted average cost of capital' projects.</p> <p>As part of business as usual, T-Gen would often invest in projects that would not meet the standard rate of return threshold, but provide a return in different ways, such as work health and safety initiatives.</p>	<p>It is reasonable that the shareholding Minister/Treasurer knows about and considers projects that would not meet the standard rate of return threshold, but would provide a return in different ways.</p>
<p>Financial targets - 3.2 Development of financial targets The statement in clause 3.2 that states '<i>All GOCs are required to add to shareholder value in their operations</i>' is unclear as 'shareholder value' is not defined.</p>	<p>This is a common business term and does not need to be defined. The list that follows after this sentence implies that performance against the key financial targets would increase shareholder value.</p>
<p>Financial targets - 3.2 Development of financial targets Although the proposed financial target's intent is commendable, it may not be practical given the lack of an objective value of a GOCs equity (that is, in the absence of a share price), and market constraints, such as remote community servicing requirements.</p> <p>The methodology proposed to measure achievement is not clear. There should be sufficient flexibility to develop other measures and KPIs that are more appropriate to the NT market, and which lend themselves to more objective assessment.</p>	<p>The financial targets that are required under the Framework are standard financial indicators and are generally already being provided by GOCs. The Framework does not limit the financial targets that can be nominated by a GOC.</p> <p>The methodology used to measure performance should be agreed between the shareholding Minister and the GOC.</p> <p>DTF considers that there is already sufficient flexibility for GOCs to develop appropriate financial targets and methodologies for assessment.</p>
<p>Financial targets - 4.2 Dividends, Ordinary dividends The Framework requires that '<i>the dividend must be determined in advance of 30 June each year to be accrued in that year's financial statements</i>'.</p>	<p>GOCs should be in a position to forecast reasonably accurately their end of year positions and as such be able to declare a dividend much the same as determining their tax liabilities. DTF sees no compelling reason to change the</p>

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<p>In accounting terms, for a dividend to be accrued into the financial statements, it must be declared prior to the recording of all transactions and determination of the net profit for the year. This requirement does not accord with T-Gen's current practice and would create issues if T-Gen's results were to change materially between declaration and the final audited numbers. To remedy this, the board would be forced to declare a dividend significantly lower than the expected dividend rate, and update once the accounts are finalised.</p>	<p>governance framework. Please note dividends are forecast in GOC SCIs which is also subject to change. There is no issue in adjusting the dividends post the reporting date.</p>
<p>Indemnities - 2.5 Board of Directors, Director indemnities <i>"Where the shareholding Minister requires the GOC to undertake an activity on behalf of the Government, rather than in the GOCs own interests, the Treasurer <u>may</u> provide a Territory indemnity to directors of the GOC"</i></p> <p>The word 'may' should be changed to 'shall'.</p>	<p>Recommend no change as indemnities should be determined on a case-by-case basis.</p>