

# Are your officers properly commissioned?

To properly function, a regulatory agency must act through its officers. Depending on the applicable legislation, these officers can wield significant powers, even some that can override Common Law rights.

But how are these powers given to these officers: A secret handshake? A special blessing? An ancient initiation ceremony?

## Pathway 1 - Delegation

Enabling legislation of regulatory authorities often gives powers to the “agency”. In practice, this power sits with the head of the agency – the CEO or similar. However, this is obviously not practical. The CEO of a regulatory agency will not realistically have the time to exercise all the powers, issue notices, initiate regulatory action, etc. in every single case. If this were the case, the activities of the agency would quickly grind to a hold at the massive bottleneck at the CEO.

The answer: These tasks are delegated from the CEO to a specific officer or a group of officers. This is documented in the agency’s Instrument of Delegation. For transparency, this document should also be available to the public.

An Instrument of Delegation will list the regulatory functions the agency / CEO has under the enabling legislation, one by one. It is then clearly identified those to whom this function is delegated. This delegation of functions can be done on an individual basis, by position name, by functional group, and/or by employment level.

## Pathway 2 - Appointment / Authorisation

Some enabling legislation allows for the direct appointment or authorisation of officers to exercise powers. “Inspector”, “Investigator”, and “Authorised Officer” are just some of the names typically associated with someone who has been directly assigned to exercise legislative powers.

This appointment / authorisation is typically undertaken by the CEO (unless this function has been delegated). Like delegating functions, this appointment / authorisation must also be documented, kept up to date, and securely stored in the regulatory agency’s records. Unlike

delegations, the instrument of appointment / authorisation is not usually made publicly available. However, appointed / authorised officers typically must carry an identity card that has to be produced in certain situations.

## Can an officer be delegated and authorised?

Yes! However, one does not automatically follow the other. To be both delegated and appointed / authorised, BOTH processes must be undertaken.

## Why is this important?

This may seem to most as being a boring, administrative governance task. But it is critical to the correct and lawful exercise of a regulatory agency’s functions. For example:

- Only a delegated officer of a Local Government can issue a notice to provide information and records under s.192 of the *Protection of the Environment Operations Act 1997*.
- Only an inspector of the Greyhound Welfare and Integrity Commission can issue a notice to provide information and records under s.70 of the *Greyhound Racing Act 2017*.
- Unless delegated, only the Minister can issue a notice to nominate a corporate representative to answer questions under s.10.23 (2) of the *Crown Land Management Act 2016*.

If a function is exercised by an officer without the appropriate delegation / authorisation, can be determined to be unlawful by a Court and dismissed.

## Who can I talk to about my agency’s officers?

Get in touch with JS Regulatory Services. We love making regulation work best, for everyone.



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