



# Board Appointment and Induction Guidelines

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# Chapter 1: Introduction

## ***Who the guidelines are for***

These guidelines are for everyone undertaking a government board appointment process. They are designed to assist departments, other State Services agencies, Ministers and their offices with making effective appointments to the boards of a wide range of agencies and bodies.

While the guidelines apply to *all* government board appointments and inductions, judgement and common sense should be used when deciding the sophistication of the process to use in each circumstance.

As Crown entities deliver many of the public services important to New Zealand and account for over 50% of the Government's operating expenditure, much of the guidance is based on the requirement for Crown entity appointments. **Anyone undertaking a Crown entity appointment should also read the Annex before commencing the process.**

The agencies and bodies the guidelines covers include:

- Statutory Crown Entities: Crown Agents, Autonomous Crown Entities (ACEs) and Independent Crown Entities (ICEs). A schedule of statutory Crown entities is published on page 47.
- Statutory tribunals, Tertiary Education Institutions, Royal Commissions, advisory committees, professional regulatory bodies.
- A range of other bodies and agencies in the State Services which have boards, such as the Reserve Bank and a variety of Trusts and other statutory bodies named in the 4<sup>th</sup> Schedule of the Public Finance Act 1989.

Many ministerial portfolios also are associated with bodies whose members constitute a board or its equivalent without employees (e.g. War Pensions Appeal Board; Queen Elizabeth II National Trust), or that serve as the governing body (e.g., Māori Television Service; New Zealand Racing Board). Some are set up for a finite period and not under specific legislation. In many cases, the Minister is responsible for appointing some or all of the members, and sometimes has the power to remove them.

## ***Who the guidelines do not apply to***

These guidelines are not intended for appointments to the boards of State-owned Enterprises or Crown entity companies, such as Crown Research Institutes (CRIs). The Crown Ownership Monitoring Unit, within the Treasury (COMU) provides guidance for appointments to companies owned by the Crown refer [www.comu.govt.nz](http://www.comu.govt.nz).

## ***Governance principles and practices***

Statutory Crown entities undertake a broad range of executive government functions (such as regulatory, advisory and purchasing). Some entities exercise coercive powers, including powers to inspect, approve licences, and impose charges; others deliver public services in health, education, housing or transport. Their boards carry out many functions and powers on behalf of the government.

Governance in the State sector is about achieving desired results and achieving them in the right way. It is not a static situation, but includes the processes by which organisations are directed, controlled and held to account; their stewardship, openness, programme delivery and leadership. It includes such 'generic' corporate governance imperatives as ethical conduct, integrity in reporting and disclosure, and risk management. But there are additional elements that reflect the ethos of public service and the impact that State services have on individuals, business and communities in New Zealand.

Good governance in the Crown environment includes:

- clarifying and understanding the respective powers and responsibilities of Ministers, boards, management and employees
- having, and following effective and well-understood accountability processes
- the modelling of acceptable behaviours
- probity in the management of public funds and disclosing and managing conflicts of interest.

Performance failure or the abuse of powers arising from inadequate governance structures and arrangements can have serious consequences, such as:

- loss of credibility and trust from communities, business and Parliament
- a lessened ability to carry out policies or deliver services, because the focus of management is diverted from positive achievement onto the need to 'fight fires'.

The distinction between the governance and management roles of boards and chief executives needs to be clearly understood by all parties. Unless the chief executive or other office holders have specific statutory functions or powers (e.g., the Director of Maritime New Zealand), all decisions about the agency's operation are made by the board, or under its authority. Some legislation provides a partial exception, where a Minister is authorised to direct a board to do or to take account of certain things.

### ***Framework for appointments***

Officials need to be familiar with any 'documents' relating to an agency or body that provide guidance to the appointment process required. These can include legislation, trust deeds, terms of reference, and Cabinet papers. These documents may:

- clarify the responsibility for recommending and/or making appointments
- specify if the vacancies must be advertised or if nominations must be sought from occupational or industry bodies
- identify particular skills, qualifications or experience required by appointees
- establish terms of appointment and the process for setting remuneration
- specify who may dismiss a member and on what grounds.

## Chapter 2: Recruitment of Members for Boards and Bodies

### *Planning ahead*

Boards need a good combination of background experience, skills, qualifications and personal qualities to provide the foundation for a high-performing board and any employees. The recruitment and appointment process is a critical first step to ensuring effective members are appointed to boards.

Departments must ensure they have full and accessible information on the terms and conditions of appointment of current members of all boards for which their Minister is responsible, to ensure their administrative systems will provide reminders about pending vacancies in good time. The first step is to draw up a project timeline for the appointment process taking into account the factors discussed below and the appointment / reappointment flowchart.

Throughout the whole recruitment and appointment process, everyone involved needs to understand clearly their respective roles, both in terms of formal authority and decisions based on delegated responsibilities. Boards need to be maintained at ‘full strength’, i.e. with the required mix of skills, sufficient numbers for a quorum to be available consistently, and avoiding a workload that becomes unmanageable.

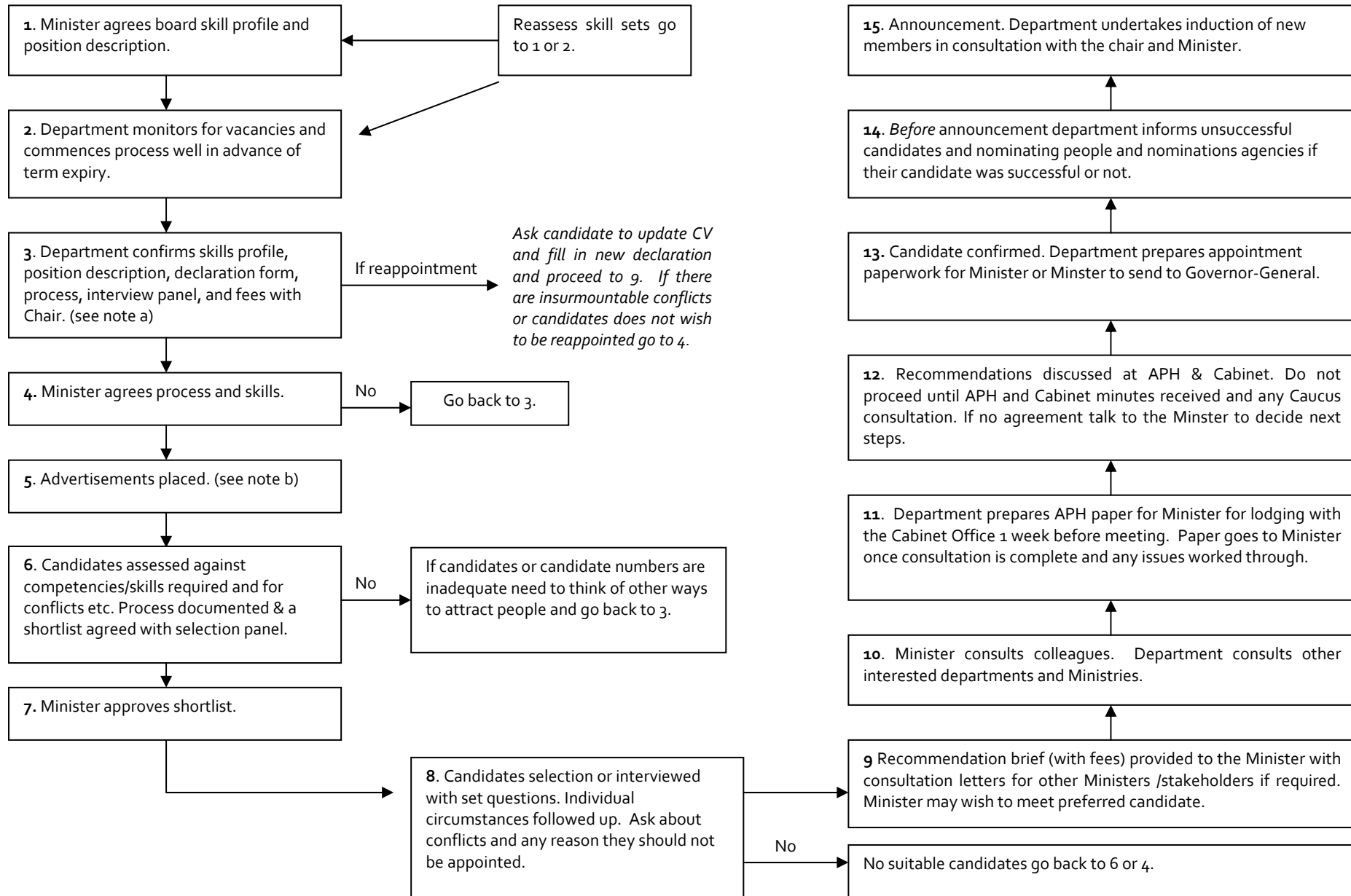
### **Getting the Minister’s agreement to the process**

On identifying an impending vacancy and which Minister(s) is responsible for the appointment, the department should – in consultation with the board chair - notify the Responsible Minister in writing, to:

- suggest a recommended appointment process
- provide a tailored position description, to supplement any general information that is already available
- offer preliminary advice on the skills and experience of the person required to fill the vacancy
- explain the basic legislative and Cabinet requirements associated with the appointment
- advise the process the department intends to run, unless the Minister directs otherwise
- advise if a fees review will be undertaken concurrently with the appointment process
- ask the Minister for an indication of the likely extent of his or her direct involvement in the process.

The appointment processes are deemed to be delegated to the department concerned, unless the Minister wants them handled differently. Ministers always retain the ultimate responsibility. However, officials need to be familiar with all applicable legislation or other documents. For example, in addition to the Crown Entities Act 2004 enabling legislation for a particular entity may contain additional or overriding requirements that are crucial to the appointment process.

## Appointment / reappointment flowchart



Notes: (a) If a fee review is required you need to commence an aligned process and may need to adjust timelines. (b) Advertisements in this diagram cover any type of recruitment, for example, use of nominating agencies, head hunting, use of publications, websites, email trees, your own database if you have one.

Departments should give their Ministers a periodic briefing on the overall picture of upcoming board vacancies for all the entities within the Minister's portfolio/s. This should include the objectives and functions of each entity, current board membership, fees and allowances, which members' terms are expiring, whether they are eligible for reappointment, suggestions for revised skill sets and/or succession planning for the chairs.

### **Particular issues concerning new boards**

When a new board is being established, early engagement with the Minister and with stakeholders will be particularly important, to ensure the board is effective and credible in fulfilling its role. This provides a good opportunity to clarify expectations and relationships from the start of the board's life. Considering the full complement of members at the same time also enables consideration of the diversity/balance of the board membership as a whole. Departments should pay particular attention to providing information on interests and the duties of members when a new board is being appointed. Departments also need to identity how the fee will be set for the board and ensure that this process runs concurrently with the appointment process (see *Remuneration for members of boards and other bodies*, pages 22-24).

### **Timeframes and timelines**

Many factors impact on the time taken to complete the process, including the fact that appointments require reference to Cabinet.

Where possible, departments should start the process for appointing board members at least 6 months before the expiry of a current term, and at least 9 months ahead if the vacancy is for a chair. At the earliest possible stage, the Minister's view should be sought on whether reappointment of an incumbent is likely to be considered (see *Terms of office*, pages 33-34).

The Cabinet Office coordinates and issues to Ministers a Schedule of Upcoming Appointments at the beginning of each year, using information gathered from departments. Ministers who want to know more about a board vacancy within another portfolio should contact the office of the Responsible Minister as early as possible in the appointment 'cycle'.

Time must be allowed for the process to proceed in a thorough manner, although some vacancies arise unexpectedly in which case it may not be possible to follow the full process. If important aspects of the process are done under pressure, there is a risk of an inadequate search for candidates with the desired skills, incomplete reference checks, insufficiently well-informed candidates or rushed interviewing.

Boards should have an ongoing process for identifying, developing or seeking the skills they will need to meet the challenges they face in the foreseeable future. Feedback from the chair should be factored into the board appointment process. A key element is to achieve a balance between the ideas and approaches that new members can bring and the value that comes from retaining the experience of existing members. Staggering the terms of office of board members helps to ensure a core of experience is always available.

Succession planning for board chairs is likely to attract greater attention from Ministers; for instance, whether a future prospective candidate for the chair should first serve a term as board member. Timing is important; for instance, announcing a new board chair too 'soon' may hinder the current board's ability to take decisions.

## **Timetable for filling a vacancy**

The timetable for filling a vacancy needs to take account of factors such as:

- when the incumbent's terms ends
- reviewing the position description, in light of the board's current skills mix and its future focus
- advertising and closing date for applications (if relevant)
- whether search consultants are to be used
- the need for consultation with stakeholders
- whether the Minister wishes to seek nominations from other Ministers, caucus colleagues or stakeholders
- advising nominating agencies of the skill requirements for the vacancy, so they can suggest suitable candidates
- whether legislation requires a board to include members with specified qualifications or from particular sectors or interest groups
- the time needed for interviewing and undertaking referee checks
- the requirements of the Cabinet process (e.g., submissions to the Cabinet Appointments and Honours Committee, and whether the appointment has to be made by the Governor-General (refer *Governor-General: Three Types of Appointment*, page 32).

## **Appointment of Crown entity chairs and deputy chairs**

Only a member of a Crown entity board can be appointed as a chair or deputy chair. Different Crown Entity Act provisions, however, apply at the end of a member's term compared to that of a chair or deputy:

- Under schedule 5 of the Crown Entities Act, a chair's term will cease on the last day of the appointment.
- Under section 32 of the Crown Entities Act a chair whose term has ceased can continue on as a member.

It is therefore important that the process to appoint/reappoint a chair or deputy is completed before the term of the incumbent expires.

## **Appointments immediately before a general election**

Wherever possible, departments should avoid proposing appointees whose terms would conclude immediately before or after a general election. In election years the Cabinet Office issues guidance on decision making during the 3 months before a general election (the "period of restraint"). Successive governments have chosen to restrict their actions to some extent at this time, including the making of significant appointments. Further advice can be sought at the appropriate time from the Cabinet Office, or from the website: [www.dpmc.govt.nz](http://www.dpmc.govt.nz).

### **Abbreviated appointment process**

It may not always be possible to follow a full appointment process, for instance in the event of the sudden resignation or death of a member may require an urgent appointment, particularly if there are quorum issues. It also may not be possible or appropriate to contact the proposed appointee before the Minister considers an appointment. In these cases, the Minister's 'certification' of the process followed, that is required in the Cabinet paper, must explain the reasons and note that the appointment will be contingent upon the resolution of any outstanding issues.

### **Getting the right candidates**

Every vacancy creates an opportunity to reassess the needs of a board or body, and the skills and experience that will best complement the talents of the other board members. A skills analysis of the members of the board or body alongside future skills requirements should be completed.

Board chairs will be able to reflect their knowledge of the workings of the board, its less formal interactions and relationships, and the technical and personal skills that could make the best contribution to the board's performance. Where possible, board chairs should be consulted for their perspective on:

- the functioning and skills of the board or body
- where the board or body might be strengthened
- on resulting position descriptions and competencies required.

Industry groups, voluntary organisations and other stakeholders also may have relevant views to offer. (Refer to *Information for candidates*.)

### **Position descriptions and competencies**

Writing position descriptions and board profiles can be used to tailor information and person specifications for each vacancy and reappointment, and to review the need to bring in certain skill sets or to adopt new approaches for the work of a board. This will:

- give candidates a greater understanding of what is required, before they decide whether to apply for/accept a board appointment
- provide decision-makers with benchmarks against which to measure the attributes of candidates allowing for skills profiling against competencies required
- help stakeholders to nominate candidates with relevant skills and experience; and reinforce the principle of appointment on merit.

### **Identifying possible candidates**

Potential candidates to boards can be identified in various ways, including advertising, the use of search consultants, nominations by interest groups or MPs, seeking suggestions from current chairs and board members, self-nomination (e.g., people interested in District Health Board membership can place their names on the Ministry of Health's database), or from community and professional networks.

Departments that maintain their own schedules of people who are interested in board appointments need to check regularly that the information is accurate and that those on the database remain interested and available.

Where nomination of a representative of a particular organisation or community is involved, rather than an application process, officials should obtain the Minister's agreement before exploring a candidate's availability.

Departments must manage nominees' expectations carefully, so there is no implication that they will be appointed. Candidates also should be made aware that a range of factors may have an impact on decision timelines and the final outcome.

There may be no single 'best approach', but Ministers need the assurance that recommendations for appointment are based on the widest possible canvassing of high quality candidates.

### **Diversity of membership**

Cabinet Office circular *Government Appointments: Increasing Diversity of Board membership* ([www.dPMC.govt.nz/cabinet/circulars/co02/16.html](http://www.dPMC.govt.nz/cabinet/circulars/co02/16.html)) emphasises that the government wishes to see a more diverse range of individuals appointed to government bodies. Cabinet has directed those involved in appointment processes to explore alternative means of finding candidates if existing methods do not produce a suitable balance of individuals for consideration.

The Crown Entities Act specifies that, subject to requirements concerning merit, Ministers making or recommending appointments to boards must take into account the desirability of promoting diversity of membership, to ensure that the work of boards benefits from representation that reflects New Zealand society.

### **Nomination agencies**

Nominating agencies need to be involved in the candidate identification process as they are able to assist by increasing the size and diversity of the pool of individuals to be considered.

When engaging with nominating agencies, officials should:

- ask nominating agencies as early as possible to review their databases and put forward suitable candidates. Officials should ideally contact nominating agencies at least three weeks before the candidate identification deadline
- provide nominating agencies with material that sets out the skills and competencies sought, to maximise the chances of achieving a good 'match'
- help nominating agencies to keep their database material current by advising if their nominees have been successful or, with the permission of new appointees, providing diversity information back to the nominating agency with an interest in that data.

When professional bodies or other organisations are entitled to nominate a member to for a board, the department concerned should encourage them to take account of the benefits of diversity when providing nominations.

Nominating agencies maintain significant databases of potential directors. The table below has information on each nominating agency.

<b>Nominating Agencies</b>	<b>Services</b>
<p><b>Ministry of Women's Affairs - Nominations Service</b></p> <p>(<a href="http://www.mwa.govt.nz/women-on-boards">www.mwa.govt.nz/women-on-boards</a>)</p>	<ul style="list-style-type: none"> <li>• a professional search service which identifies women who best meet the criteria specified by the agency responsible for appointments</li> <li>• an up-to-date database of over 2,700 women from all sectors and professions</li> <li>• short biographies with up-to-date curriculum vitae and contact details</li> <li>• confirms the availability of nominees. Nominees' expectations are carefully managed</li> <li>• gathers and publishes statistics on whole-of-government and individual agency board gender participation.</li> </ul>
<p><b>Te Puni Kōkiri (Ministry of Māori Development) - Governance and Appointments Unit</b></p> <p>(<a href="http://www.tpk.govt.nz/en/services/governance/">www.tpk.govt.nz/en/services/governance/</a> )</p>	<ul style="list-style-type: none"> <li>• aims to promote Māori participation on statutory boards, committees and advisory groups, particularly those playing a role in New Zealand's social and economic development</li> <li>• a database and nominations service</li> <li>• a link with the E-government Strategy which may enable agencies to share candidate information</li> <li>• aims to develop and maintain relationships with key Māori, community and industry/sector organisations</li> <li>• has identified candidates through a wide range of networks and organisations, Ministers' offices, websites and existing directors.</li> </ul>
<p><b>Ministry of Pacific Island Affairs</b></p> <p>(<a href="http://www.mpia.govt.nz/board-nominations">www.mpia.govt.nz/board-nominations</a> )</p>	<ul style="list-style-type: none"> <li>• to promote Pacific representation on statutory boards, committees and advisory groups; and grow Pacific leadership capacity for nominations to those entities whose decisions have an impact on Pacific people</li> <li>• a database and nominations service</li> <li>• identifies candidates through key networks, community reference groups, the Minister of Pacific Island Affairs' Advisory Council, and through relationships with other government departments</li> <li>• promotes the nominations service through newsletters, websites and Pacific media.</li> </ul>
<p><b>Office of Ethnic Affairs, Department of Internal Affairs</b></p> <p>(<a href="http://www.ethnicaffairs.govt.nz/oeawebsite.nsf/wpg_URL/Policy-and-Guidelines-Nominations-Database-Index?OpenDocument">www.ethnicaffairs.govt.nz/oeawebsite.nsf/wpg_URL/Policy-and-Guidelines-Nominations-Database-Index?OpenDocument</a>)</p>	<ul style="list-style-type: none"> <li>• seeks to have New Zealand's ethnic composition reflected in appointments to public bodies</li> <li>• a database and nominations service</li> <li>• forwards curricula vitae to agencies involved in appointment processes to determine candidate suitability</li> <li>• encourages ethnic people to put their names forward</li> <li>• informs ethnic communities of the requirements for board appointments.</li> </ul>

Nominating Agencies	Services
<b>Ministry of Consumer Affairs</b>  <a href="http://www.consumeraffairs.govt.nz/aboutus/consumer-rep/CRindex.html">www.consumeraffairs.govt.nz/aboutus/consumer-rep/CRindex.html</a>	<ul style="list-style-type: none"> <li>• <i>Guidelines for Consumer Representation for Officials and Chairpersons</i> to identify the purpose and value of consumer representation, and ways to deal with difficulties which consumer representatives may encounter</li> <li>• a nominations group to identify people who meet the requirements for board positions and proposes nominations.</li> </ul>
<b>Office of Disabilities Issues, Ministry of Social Development</b>  <a href="http://www.odi.govt.nz/leaders-achievers/nominations-service/index.html">www.odi.govt.nz/leaders-achievers/nominations-service/index.html</a> )	<ul style="list-style-type: none"> <li>• extensive links with people with disabilities</li> <li>• downloadable application forms</li> <li>• a database of people with disabilities who might be appropriate for nomination to boards.</li> </ul>

### **Crown Ownership Monitoring Unit, the Treasury**

Crown Ownership Monitoring Unit (COMU) is responsible for coordinating appointments to boards of State-owned Enterprises, Crown entity companies and some statutory Crown entities. COMU maintains a substantial database of names, and will consider requests for access to that information from departments that are responsible for managing Crown entity board appointments. COMU encourages anyone who believes they have the skills and experience to become a board member to express an interest on line at [www.boardappointments.co.nz](http://www.boardappointments.co.nz). Other information about COMU is available at [www.comu.govt.nz](http://www.comu.govt.nz).

### **Overseas candidates**

Sometimes the particular expertise a board needs justifies consideration of overseas-based candidates. In such a case, care should be taken to: check information on their qualifications and interests; ensure they understand the wider New Zealand ‘cultural’ landscape within which the board operates; clarify such matters as reimbursement of expenses; and find the most cost-effective way of conducting checks and interviews.

Departments and Ministers will want to balance the possible criticism of additional costs that could result from an overseas board appointment, against making sure the board has the best possible range of skills to meet its objectives and vision.

If trans-Tasman bodies become more common this will raise particular issues; for instance, some appointments will be made by consensus or only by one country’s Minister. This will increase the complexity of the appointment process. More specific procedures are likely to be developed over time.

Fees and allowances for trans-Tasman bodies should be discussed on a case-by-case basis with the State Services Commission (see *Remuneration for members of boards and other bodies*, pages 22-24).

## Who is not eligible for appointment

A public servant's first duty is to their Minister and the government of the day, through their chief executive. A board member's first duty is to work to achieve the outcomes, impacts and objectives of the body or agency. This creates the potential for tension.

Cabinet has agreed, as a general rule, that Ministers should not appoint public servants to statutory boards, nor to boards of SOEs or Crown entity companies. Further details can be found in the Cabinet Office circular (CO (02) 5. *Appointment of Public Servants to Statutory Board* [www.dPMC.govt.nz/cabinet/circulars/co02/5.html](http://www.dPMC.govt.nz/cabinet/circulars/co02/5.html).

Section 30 of the Crown Entities Act sets out other elements that disqualify people from appointment to Crown entities boards. For some entities, the enabling legislation defines additional circumstances that could make a person ineligible for consideration. Officials responsible for appointments need to be familiar with these provisions. With the exception of the Secretary of Justice's participation in the Electoral Commission, the Crown Entities Act has removed all ex officio members from Crown entities. Other legislation or establishing documents may do this as well for other appointments.

## Information for candidates

Appointing departments must provide all candidates and nominees with information about the board in which a vacancy has arisen. A useful model of the information that should be provided would be:

Person specific information	Generic information
<ul style="list-style-type: none"><li>• Role definition.</li><li>• Accountabilities.</li><li>• Key internal and external relationships.</li><li>• Required skills, e.g.<ul style="list-style-type: none"><li>○ organisational leadership</li><li>○ understanding of effective governance</li><li>○ understanding of effective strategy.</li></ul></li><li>• Essential or desirable qualifications (academic, professional, etc).</li><li>• Prior experience to be demonstrated.</li><li>• Minimum meeting attendance required.</li><li>• Involvement outside of formal meetings.</li><li>• Personal integrity, e.g. avoidance/management of conflicts of interest.</li><li>• Approach needed to contribute effectively to the entity's performance.</li><li>• Likely level of fees.</li></ul> <p>A board chair specification would have a separate and more comprehensive description, to reflect the nature of the position.</p>	<ul style="list-style-type: none"><li>• General and specific legislative frameworks under which the board operates.</li><li>• Role and functions of the board.</li><li>• Operating and sector context.</li><li>• Key external relationships, e.g., Minister, monitoring department, representative bodies, board Chief Executive Officer and other staff.</li><li>• Unique nature of being part of the State Services; the obligations and responsibilities it entails.</li></ul>

Without this information, it will be difficult for candidates to make an informed judgement about the skills and commitment required of an effective board member, as well as of the potential areas of concern such as possible conflict of interest.

For a successful candidate, this initial contact will act as the start of their induction programme; its quality and style will set the tone for the ongoing relationship.

### **Information from candidates**

Departments should make it clear to the candidate/nominee what information he or she needs to provide, and why it is important for the information to be accurate, up to date and complete.

Relevant information should be sought from all candidates/nominees, including proof of their academic qualifications and current employment. The candidate should supply supporting information about their skills, qualifications, relevant background experience, and availability. Information that will enable a judgement to be made about potential conflicts of interest must also be sought.

Those acting in the State sector must be willing to be open. To avoid the possibility of future embarrassment, candidates must be asked whether there is anything in their personal histories that may make their appointment inappropriate or that would create the perception of being inappropriate.

Candidates also should be asked for information on any existing directorships and other major work commitments. If a candidate reaches the short-list, they could be asked if they are currently being considered for other State sector board appointments.

Holding another appointment certainly does not disqualify someone from consideration, as real value can result from ‘cross fertilisation’ of ideas and experience, and the particular skills required may be in short supply. However, a balance needs to be struck between demonstrated capability, having sufficient time to do justice to the work of the board concerned, and managing any conflicts of interest.

### **Formal consent to being appointed**

Before an appointment can be made to a Crown entity board, the person concerned must consent in writing to being a member, certifying that he/she is not disqualified under any provisions of the Crown Entities Act or any other relevant provisions, and disclosing to the Responsible Minister the nature and extent of all interests he/she has or is likely to have in matters relating to the entity. This confirmation should be obtained in time to be noted in the APH submission regarding the appointment.

Formal consent should also be obtained for other types of appointments. At what stage this occurs during the appointment process can be dependent on the requirements of legislation or other appointment “documents” or “rules”.

### ***Collection, storage, release and disposal of personal information***

Departments should have specific protocols on handling personal information collected for board appointment procedures, which must reflect legislation on privacy and official information.

## **Privacy Act 1993**

Relevant principles of the Privacy Act include:

- Principle 2: personal information must be collected from the individual concerned.
- Principle 5: an agency holding personal information is required to protect it against loss, unauthorised access or misuse.
- Principle 9: an agency that holds personal information shall not keep it any longer than is required for the purposes for which the information may lawfully be used (for instance, the possibility of Judicial Review).
- Principle 10: an agency that holds personal information obtained in connection with one purpose shall not use it for any other purpose, unless it has reasonable grounds to do so.
- Principle 11: limits the disclosure of personal information to other persons or agencies.

People are entitled to have access to their own personal information held by a department, and to request correction of that personal information.

## **Official Information Act 1982**

Official Information Act requests may be made for information on nominations, appointees, remuneration, etc. If this happens, the department concerned needs to carefully balance the public interest, the privacy of the individuals concerned, and the need to maintain the credibility of statutory appointment processes.

### ***Interests, conflicts and other due diligence checks***

Public and political trust in the soundness of a board's decision-making or advice will be severely compromised if appointments are found not to have been made on appropriate grounds or if the necessary checks have not been made.

Further guidance on the management of interests and conflicts can be found on the Office of the Auditor-General web site: Managing conflicts of interest: Guidance for public entities [www.oag.govt.nz/2007/conflicts-public-entities/](http://www.oag.govt.nz/2007/conflicts-public-entities/).

### **The importance of declaring interests**

An interest arises where a person has a financial, familial or other personal interest in a matter that could give rise to bias or the appearance of bias in the work of an agency. There are many aspects to be considered, including:

- what comprises an 'interest'
- the obligation under legislation e.g. the Crown Entities Act requires appointees to register details of interests in respect of the individual and of family members
- reviewing/checking on disclosure statements
- how a conflict of interest can impact on the quality of a board's decision-making, and on its integrity and reputation
- providing assurance to Ministers that conflicts can be managed if an appointment proceeds
- the need to protect personal information provided.

New Zealand's comparatively small population and the limited number of people who possess particular combinations of skills and experience, mean it is always possible that the question of interests will arise. This will tend to put a focus on identifying and managing interests, rather than disqualifying all those who have interests.

### **Keeping interests under review**

It is important for those undertaking appointments to remind candidates, that interests are not a matter to be dealt with once at appointment and then forgotten. At the time of consideration for appointment, and throughout a member's term of office, actual and perceived conflicts of interest must be borne in mind as interest, conflicts, and context change. Interests held by a member's family as well as the member personally may change over time. The issues with which a board or body deals will also change. All boards are expected to have a register where interests are recorded. All board members need to review their interests regularly and add or remove them from the register as soon as the circumstances require it.

Crown entity board members have a collective obligation to be aware of their colleagues' interests. A board must notify the Responsible Minister if it becomes aware that a member has not disclosed an interest, or has taken part in board discussions or decisions despite having an interest in a matter. A board member who fails to disclose a known interest is likely to breach the duties of acting in good faith and honestly, which is a basis for removing a member.

### **Declaring interests**

To maintain the confidence of the Government and the public, boards and other bodies must conduct their affairs impartially and be seen to be doing so. It is essential that any interests are made known, so that the potential for a conflict of interest can be assessed in advance of an appointment being made.

Candidates for all positions must be asked to declare relevant interests. Candidates for Crown entity boards are required to identify whether they (or a partner, child or other close family member or friend) have or are likely to have any financial, personal or professional interests that might create a conflict if they were to be appointed. Departments need to realise that potential appointees:

- may be reluctant to disclose details of personal finances
- may be reluctant to disclose interests that might be commercially sensitive
- could have difficulty in or be unwilling to seek personal information on the financial situation or dealings of family members
- may not know enough about a Crown entity's business and operations to realise what could constitute an interest
- may not appreciate the significance of making a full disclosure.

These enquiries need to be handled in a diplomatic way, but not avoided.

Departments need to put requests for disclosure of interests into a practical context, and try to ensure that all prospective appointees appreciate the significance of the request. Recent examples have indicated the importance of appointees being fully aware of the implications and perceptions surrounding interests and the need for active management of conflicts if

appointed. Departments should advise candidates that the information they disclose will be forwarded to that board and / or body if the candidate is appointed.

### **Considering interests**

Before any appointment or reappointment is made to a board, Ministers need to be confident that, where interests can be identified:

- their value is assessed and a disclosure made
- the candidate will be able to make an effective contribution, even if their interests mean they cannot participate in an activity of the entity that relates to a particular matter and/or
- measures can be put in place to manage conflicts, so that a reasonable person would not perceive any unacceptable influence on the entity's business.

When considering potential appointees to a board, interests fall under one of two categories:

- a manageable interest, which can be avoided or managed through an appropriate mechanism. This could be an agreement by the member to divest the interest (e.g., selling shares or putting them into a trust arrangement – see the paragraphs on Direct Financial Benefit on the next page), to sever the connection that causes the interest (e.g., relinquishing membership of an organisation), or a mutual decision that the interest affects only a narrow part of the board's operations; or
- an unmanageable interest, which arises if the interest is unavoidable and cannot be managed through an appropriate mechanism; for instance where the member cannot or will not divest him/herself of the interest, or the interest affects so many of the board's activities that management mechanisms would not be practicable. Where this situation arises prior to appointment, it would not be possible to give the Minister the necessary assurances about avoidance of conflicts and it is unlikely that an appointment should proceed.

The department should critically consider the information provided and seek additional information where questions or concerns arise, such as:

- is the declared interest likely to limit the candidate's contribution to the work of the board so much that the appointment should not proceed?
- is the department confident that the board has robust mechanisms for managing and recording declared interests, and for precluding access to information on and participation in matters relating to those interests?

Board members must ensure they perform all aspects of their work impartially, by:

- avoiding any situation where actions they take in an official capacity could be seen to influence or be influenced by their private interests (e.g., company directorships, shareholdings, financial rewards)
- avoiding situations that could impair objectivity or create personal bias that would influence their judgements
- ensuring they are free from any obligation to another party.

## **Making judgement about an interest: Illustrations**

The following illustrations, from an appointed Crown entity member perspective, may help determine whether a person is interested. In the case of any doubt the presumption should be that the person has an interest.

### ***Direct Financial Benefit***

Subject to the statutory exceptions, any direct financial benefit is a conflict of interest that must be disclosed and managed. Generally, members must not seek to provide paid services to an entity other than through their role as a board member. They must not be involved in developing, supporting or advising on any matter considered by the entity.

A shareholding or other financial investment in a company engaged with the agency is a direct financial benefit and is therefore an interest, unless it meets the ‘insignificance’ exception. Many entities make decisions that can affect the value of a financial investment, so the potential for any increase in a member’s interest must be considered when assessing insignificance.

Placing an interest in a blind trust is not of itself sufficient to avoid that interest. Where a member has recently placed an interest into a blind trust there is unlikely to be sufficient remoteness established to avoid what would otherwise be an interest. The perception will remain that the member has an interest which could influence decision-making unless a professional trustee, otherwise unconnected with the member, is appointed with the power to trade trust assets.

### ***Family Members’ Financial Interest***

A distinction is drawn in the Crown Entities Act between immediate family members and other wider family connections. Section 62(2)(b) provides that an interest will arise through a spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter. The Act requires that these interests be regarded in the same way as financial benefits of a member. Where the member, acting diligently and in good faith, is not aware of any financial involvement of a wider family member then the board member is unlikely to be interested, as the involvement would not be reasonably regarded as likely to influence the member’s responsibilities with the entity.

### ***Financial Interest in other Persons***

The Crown Entities Act provides that a financial interest in another person may give rise to an interest, because of an apprehension of influence. This might include an employment relationship or engagement in a professional capacity with a party dealing with the entity or with someone else who may be materially affected by a decision.

For instance, a family member might be involved in acting for someone dealing with an entity, as a partner or employee of a law firm representing the party. In that situation the involvement may be regarded as too remote or insignificant to be reasonably regarded as likely to influence the carrying out of entity activities. The position may be different if the family member prepares material for consideration by the entity itself, or appears before the board member. In those cases, the latter may be reasonably regarded or perceived as likely to be influenced.

Section 62(2)(d) of the Crown Entities Act provides that an interest arises when a member is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates. Whether it comprises an interest depends on

whether matters are so remote or insignificant as not to be reasonably regarded as likely to influence decision-making.

Exercising judgement on issues of perceived remoteness and insignificance is essential. For example, a member may be a trustee or director of an investment business. One of its investments may be with a party dealing with the entity. As the investment business will have a financial interest in the participant, the member as an officer of the investment business is probably interested.

### **Other interests**

Interests are not limited to financial matters (Section 62(2)(f)). A personal, non-financial interest in a matter before the agency may include:

#### **Personal connections or relationships**

Personal connections or relationships, as illustrated in the following circumstances:

*Family Members* - Any family connection could give rise to an interest where there is a reasonable apprehension of bias, e.g. a member could have a close relative who is personally interested other than by way of a financial interest.

*Friendship* - Members may have an interest in matters affecting the interests of close friends. Close and reasonably long-standing relationships with demonstrable intimacy are likely to create strong perceptions of interest.

*Acquaintance* – General acquaintances are not likely to give rise to an interest. Involvement in professional or sporting associations with people interested in a party dealing with the entity would rarely create an interest. Overlapping directorships or similar interests could, however, mean a member is interested, especially where relationships are long term or close collegiality has developed. Where a member has acted as an advocate, adviser or material witness in a matter, or a member's business partner has done so, and the matter is being considered by the entity or relates to a matter it is considering, the member is likely to be seen as having an interest.

*Prior Business Relationships* - Where someone had a close association with a business for a significant period before becoming a board member, there may well be a strong perception of an interest for at least six months after ending all associations. There is no set time period which establishes remoteness, but ending a long business relationship is unlikely to immediately make that interest so remote as to be irrelevant.

*Pre-judgement* - Pre-judgement of issues would exclude a member from participation in a matter before the entity. Having a definite point of view about a question of law or legislative interpretation of a policy is not sufficient to give rise to an interest, nor is prior knowledge of circumstances which are in issue. However, a publicly-stated opinion on those facts could raise issues of apparent pre-judgement.

### **Other due diligence checks**

Departments should undertake other due diligence checks appropriate to the requirements of the vacancy being filled and any risks. The broader the check being undertaken and particularly if overseas information is required, the more likely the need will be for departments to engage a specialist firm to undertake the checks.

To assess whether checks in addition to interest and conflicts are required, some key questions are:

- What qualification or experience must any candidate have, without which they would be ineligible for appointment?
- What questions does the department have based on interactions with the applicant?
- What is the sphere of influence the role has on the board or body?
- Does the role involve responsibility for substantial public assets or funds?
- What is the experience required of candidates?
- What is the reach or impact of the entity's decisions on groups of people or sectors/s of society?

Some possible due diligence checks:

- Referee checks: referee checks can verify dates, duties, and experience. Confirm honesty and integrity. Substantiate or explore strengths and weaknesses. Give insights into attitudes, personality style and working style.
- Educational qualification checks: if the role requires the person to have a particular level of qualification or hold a particular certificate (i.e. a practising certificate) these should be checked with the appropriate institution.
- Other qualifications: one avenue is to search the Companies Office website to check directorship, including banned directors [www.companies.govt.nz/cms/online-services/search-the-register/banner\\_template/AGENT](http://www.companies.govt.nz/cms/online-services/search-the-register/banner_template/AGENT).
- Criminal checks: some boards and bodies will have criteria that make people with certain criminal convictions ineligible for appointment. The Ministry of Justice Criminal Records Unit can undertake a check on any criminal records in the New Zealand Courts System (it does not deal with overseas offences). The timeframe is within 20 days, though genuinely urgent requests can be handled more quickly. It may be appropriate to make an appointment subject to the criminal check being completed. Further information, including forms, are available from <http://www.justice.govt.nz/services/get-a-copy-of-your-criminal-record/obtaining-a-copy-of-your-criminal-record>.
- Financial checks: one avenue is to use the publicly available Insolvency Register [www.insolvency.govt.nz/cms](http://www.insolvency.govt.nz/cms).

Departments must secure the agreement of the nominee/applicant before undertaking referee, educational and criminal checks where the information is not already publicly available. If consent is not given any recommendation to appoint may need to be reconsidered.

## **Remuneration for members of boards and other bodies**

Members do not set their own fees, remuneration and allowances. Fees for boards and other bodies are set using the following mechanisms:

<b>Mechanism</b>	<b>Type of board of body covered</b>
Fees Framework  (discussed below)	<ul style="list-style-type: none"> <li>• Crown agents and Autonomous Crown entities excluding corporations sole (District Health Boards are Crown Agents)</li> <li>• Subsidiary bodies of Crown agents, Autonomous Crown entities and Independent Crown entities</li> <li>• Bodies and committees set up to advise Crown entities (this includes sub-committees of Independent Crown entities)</li> <li>• Tertiary Education Institutions</li> <li>• Trust Boards</li> <li>• Bodies and committees set up to advise departments</li> <li>• Bodies and committees set up to advise Ministers, including Ministerial inquiries and taskforces</li> <li>• Royal Commissions</li> <li>• Commissions of Inquiry</li> <li>• Statutory Tribunals and authorities</li> <li>• Statutory bodies not covered by the Remuneration Authority</li> <li>• Lay members of Courts</li> <li>• Self funded bodies where a Minister appoints some of all the members</li> </ul>
Remuneration Authority  (discussed below)	<ul style="list-style-type: none"> <li>• Independent Crown entities</li> <li>• Corporations Sole who are a Crown Agent or an Autonomous Crown entity</li> <li>• the Judiciary</li> <li>• Local authorities (note: these appointments are not covered by these guidelines)</li> </ul>
Other mechanisms  (not covered in this advice)	<ul style="list-style-type: none"> <li>• School Boards of Trustees (Set by the Minister of Education, refer to the Ministry of Education)</li> <li>• Crown entity companies (including Crown Research Institutes and their subsidiaries and State-owned Enterprises and their subsidiaries (These are governed by a separate methodology approved by Cabinet. Refer to the Crown Ownership Monitoring Unit)</li> <li>• Boards and bodies whose legislation sets fees and allowances using other mechanisms</li> <li>• Trans-Tasman bodies (consultation with the Minister of State Services is required to agree on the best mechanism)</li> </ul>

None of these mechanisms cover individual consultancies. Such consultancies involve contractors appointed by a body in which the Crown has an interest under a contract for services for a specific project. A consultant has no ownership or governance role on a board or body.

### **Fees Framework**

Ministers set the fees for boards and bodies under the Fees Framework (the Framework) [www.dPMC.govt.nz/cabinet/circulars/co09/5.html](http://www.dPMC.govt.nz/cabinet/circulars/co09/5.html). Provided here is a *brief overview* and some key points from the Framework The Framework is reviewed periodically. Users should

check they are operating under the most up-to-date version. For advice on the interpretation and application of the Framework, please contact the State Services Commission (State Sector Remuneration and Fees Team) at phone (04) 495 6607, fax (04) 495 6699 or email to: [fees@ssc.govt.nz](mailto:fees@ssc.govt.nz).

The applicable fee range and proposed level of fees for a particular appointment needs to be established before the submission is prepared for the Cabinet Appointments and Honours Committee (APH).

Each board or body should be classified under the Framework, according to its roles and responsibilities. The actual fee level is then set from within the appropriate fee range taking into account such factors as the complexity of the role, expertise required, recruitment and retention issues, identified risks, the degree to which the role is in the public eye, and affordability. Proposed fees should be set out in the recommendations included in the Cabinet paper on the appointment, particularly if an exception to the Framework is proposed (see below).

The fee for members should be reviewed at regular intervals (for example, when the Framework itself is reviewed, or when appointments or reappointments are being made). Remuneration will not necessarily increase as a result of any review.

### **Exceptions**

The Framework sets out the process that must be followed if it is proposed to pay fees outside the parameters of the Framework (exceptions to the Framework).

Exceptions include, but are not limited to, situations where it is proposed to:

- pay fees above the applicable Framework range
- increase existing fees
- use alternative methods for paying or setting fees
- making additional payments for additional work.

Proposed exceptions require the Responsible Minister to consult with the Minister of State Services, and in most cases, consideration by APH and Cabinet. Fees outside the Framework apply only in specific circumstances and are usually time-bound. A strong case must be made each time an exception is sought. Possible justification could include demonstrated difficulty in recruitment or retention; the particular skills and expertise required for a specific task; or an immediate need or a period of intense workload. The State Services Commission should be consulted at an early stage in all such cases.

An exceptional fee agreed for one member of a board does not automatically apply to subsequent appointments. Each case should be treated as a new exception.

When a trans-Tasman body is being established, the SSC should be consulted on the level of fees, on a case-by-case basis.

### **Travelling and other expenses**

Board members travelling to meetings or on other board business that requires them to be away from their normal places of residence are entitled to reimbursement of actual and reasonable travelling, meal and accommodation expenses.

The rate is to be paid to board members on the same basis as to employees of the monitoring department, or in accordance with information issued by a reputable organisation, e.g. Automobile Association for vehicle mileage rates. If this is not applicable, the rates to be followed are set out in the Fees Framework.

### **The Remuneration Authority**

Under the Remuneration Authority Act 1977, the Remuneration Authority is responsible, among other things, for determining and reviewing the fees for appointees to Independent Crown entity boards, Corporations Sole and Judges. The Authority is made up of a part-time chair and two members, supported by an executive officer.

When a replacement person is being recruited for a chair, deputy chair or other unique board position (i.e. not a generic board member or body position as these do not require reviewing when a replacement member is being recruited) or when a new or other unique role is being established, a senior manager in the relevant department needs to contact the Authority with the position description and timeframe for the proposed appointment. The Authority will provide the department with an indicative fee range that can be used in the market place to discuss the position with interested people.

When the person has been appointed to the position, the department needs to send a copy of the signed notice of appointment and appointment letter to the Authority. The Authority will then issue the final fee determination to the entity or other body.

The Authority reviews fees each financial year. Any fee increases resulting from the review may be backdated to the beginning of the relevant financial year. A chair can make submissions to the Authority for a review of any of the board fees. The Authority will determine the priority of any such request.

#### **To contact the Authority:**

Executive Officer,  
Remuneration Authority,  
PO Box 10 084, The Terrace,  
Wellington 6143,  
Phone: 04-499 3068, Fax: 04-499 3065  
Email: [info@remauthority.govt.nz](mailto:info@remauthority.govt.nz).

#### **Disclosure of total value of remuneration**

The Crown Entities Act requires the total value of the remuneration of individual board members to be disclosed in the entity's annual report. Other legislation may contain similar provisions.

## ***Deciding on Who is to be Appointed***

### **Short-listing candidates**

When candidates are short-listed, there is a further opportunity for checking curriculum vitae and disclosures of interest, to seek any additional information, e.g. referee, probity or security checks, and to ensure that an eventual appointment cannot be criticised on procedural grounds. The potential for conflicts of interest should be analysed at this stage.

Attention also should be paid to relevant skills that have been gained through non-traditional career streams, e.g. communication and negotiation skills, political sensitivity, demonstrated ability to think strategically.

### **Interviews**

Interviews should be handled in a consistent way and against clear criteria, so that fair comparisons can be made of all short-listed candidates. Where possible, the chair should be involved. Departments should assemble an interview panel that matches the requirements of the board or body and the particular board vacancy. The membership of the panel for an appointment should remain the same, unless exceptional circumstances arise. An objective record needs to be kept of all interviews.

Interviews also are a good way to share information on the complexities of working in the State sector and to gauge the depth of the candidate's understanding of the duties of a board member, including the importance of good governance of the Crown's interests. The panel also must give a candidate the chance to respond to any concerns raised by their declaration of interests or by any external checks.

Departments may reimburse the actual and reasonable costs met by applicants attending interviews, on a case by case basis.

## **Chapter 3: Appointment of Members for Boards and Bodies**

### ***The role of the Minister, Prime Minister and Governor-General***

Formal appointments to boards are made by the Responsible Minister or by the Governor-General on the recommendation of the Responsible Minister (for most Independent Crown Entities). Responsibility for appointments to bodies other than Crown entities will depend on legislation or other governance mechanism.

For Crown entities, Ministers may appoint or recommend only those who, in their opinion, have the appropriate knowledge, skills and experience to assist the entity achieve its objectives and perform its functions. Once a Minister has selected the candidate who he or she considers best meets the full range of requirements to be an effective board member, all but the most minor appointments should be discussed by the Cabinet Appointments and Honours Committee (APH). The Committee does not meet every week, so departments need to be aware of the Cabinet Committee timetable when preparing appointment submissions.

The Prime Minister should be consulted in the case of major appointments before they are submitted to APH: the definition of ‘major appointment’ is a matter of judgement by Responsible Ministers.

### ***Consultation with political parties***

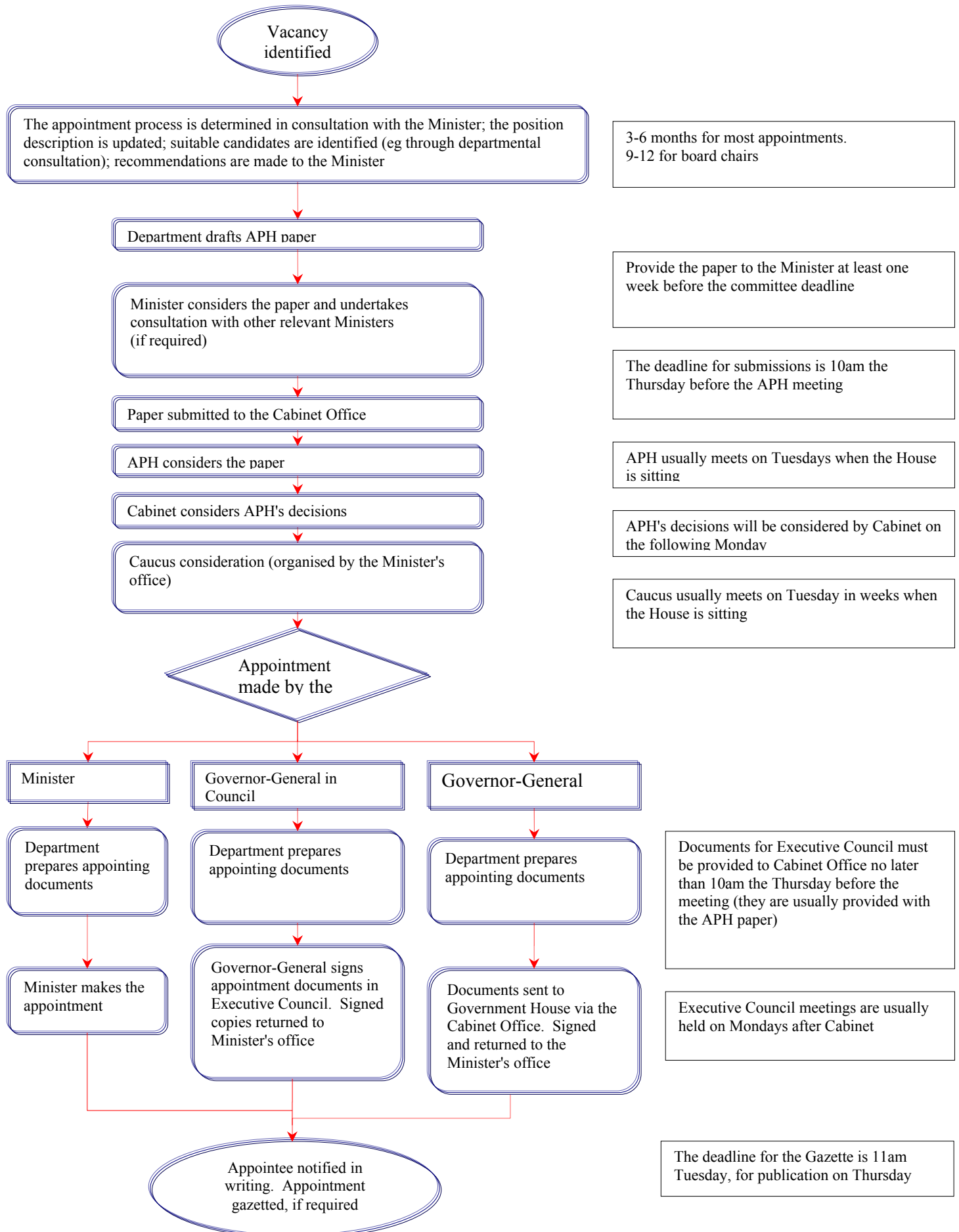
Departments should check the relevant Cabinet Office advice for current protocols on consultation with other political parties before an APH submission is finalised, and seek advice from their Minister’s office or Cabinet Office if they are not sure.

### ***Cabinet submission***

Papers for the Cabinet Appointments and Honours Committee should receive the same level of scrutiny from departmental senior managers as other papers for Cabinet Committees. Refer to the next page for a flowchart on the Cabinet process for appointments.

## Cabinet process for appointments

## Timeframes



This diagram is prepared by the Cabinet Office and is available on the CabGuide website: [www.cabguide.cabinetoffice.govt.nz](http://www.cabguide.cabinetoffice.govt.nz)

## **Content of Cabinet Submissions**

Submissions must meet the requirements set out in CabGuide [www.cabguide.cabinetoffice.govt.nz/context/writing-papers/appointment-papers](http://www.cabguide.cabinetoffice.govt.nz/context/writing-papers/appointment-papers) .

In summary:

- background information – e.g., the legislative provisions for appointments to the organisation
- the reasons for the proposal – e.g., replacing a member whose term has expired
- description of the position - what the position involves and the qualifications required for the position (particularly those required by statute)
- Minister's certification that an appropriate appointment process has been followed
- the proposed appointee's qualifications for the position – e.g., professional qualifications, personal attributes, previous experience on boards
- how the proposed appointment would enhance the balance of skills and experience on the particular board
- Minister's certification concerning conflicts of interest
- any other matters affecting the suitability of the proposed appointee, for instance whether it is a 2<sup>nd</sup> or subsequent term, and the reasons why reappointment is considered to be justified
- fees payable – what fee ‘category’ the board fits into and whether the proposed fee is within the parameters of the fees framework
- an account of the consultation undertaken
- confirmation that full consideration has been given to diversity, i.e. an appropriate balance on the board in gender, age, ethnic and geographical terms, and that the contribution of disabled people is reflected
- if there will be any publicity about the appointment.

All papers for APH must be accompanied by:

- a completed copy of the curricula vitae form (CAB 50) for each individual, and a form listing *current* membership details (that is, before the appointments proposed in the paper take effect)
- a brief outline of the functions and responsibilities of the organisation (CAB 51)
- a form, indicating what consultation has taken place in respect of the appointment (CAB 100).

Current versions of the forms can be found on the CabGuide website – [www.cabguide.cabinetoffice.govt.nz/procedures/appointments](http://www.cabguide.cabinetoffice.govt.nz/procedures/appointments).

## **Declaration about interests**

Ministers must confirm, in the APH submission:

- that appropriate enquiries concerning conflicts of interest have been carried out, to identify any conflict of interest that could reasonably be identified (see *Interests, conflicts and other due diligence checks*, page 16-20).
- either that no conflicts of interest have been identified, or how it is proposed to deal with an identified conflict.

If full information concerning conflicts of interest has not been received from the proposed appointee, the APH paper must note that the appointment is subject to the satisfactory completion of conflict of interest checks. A report back to APH may be required if significant issues arise in the course of those checks that raise questions about the suitability of the appointment.

## **Recommendation**

The wording of the recommendation must reflect the relevant statutory provision, i.e.:

"The Minister of [aa] recommends that the committee note his/her intention to appoint (**or** to recommend that the Governor-General, or the Governor-General in Council, appoints) [name] to the [bb] board for a term commencing on [xx] and expiring on [yy] (or for a term of [xx] years commencing on the date of appointment), to replace [zz], whose term has expired [or other reason]."

In some cases, as a result of consultation with his or her ministerial colleagues, a Responsible Minister may suggest a 'new' candidate at the end of the process, or ask for alternatives to the name/s put forward.

## ***Discussion with the government caucus***

The government caucus discusses most appointments, after they have been considered by APH and Cabinet.

## ***Unsuccessful candidates***

Advising unsuccessful applicants or nominees is best left until after a final decision has been taken, in case the initial recommendation is not approved. Those whose nomination or application is unsuccessful should be informed promptly and in a sensitive manner. If possible, the reasoning behind the decision could be given at the time, or the decision-making process recorded in such a way that further information can be given to an unsuccessful candidate on request. It is the role of the agency responsible for managing the appointments process to advise unsuccessful candidates of the outcome of their nomination.

Where candidates have been unaware of their nomination, no contact needs to be made with them. Where candidates have been put forward by a nomination agency, the agency responsible for managing the appointments process should advise the nomination agency of the outcome.

## **Avenues for review**

Board appointments can be subject to judicial review proceedings, civil actions and scrutiny by Parliament or an Ombudsman. Minor irregularities in the appointment process may not invalidate the actions of a member while in office, but an appointment may be challenged in the courts. The appointment processes followed must minimise the possibility of questions about the validity of board members' appointments or actions being raised later. The Crown Entities Act states that appointments and acts stand as valid, notwithstanding any defects in appointments.

## **Making the Appointment**

### **Confirmation of the appointment**

Once the Minister's intention to make an appointment has been noted by APH and Cabinet and has been discussed by the government caucus the Minister makes the appointment, or recommends the appointment to the Governor-General.

### **Notice of Appointment or Other Appointment Document**

Under the Crown Entities Act, the action that gives effect to a Crown entity appointment is the receipt of the appointment notice by the appointee. The Minister signs the notice for Crown agents and autonomous Crown entity appointees. The Governor-General signs the notice for independent Crown entity appointments. The notice is sent to the appointee along with other appointment information required e.g. an appointment letter.

Some other appointments will also require an appointment document, while for others a detailed appointment letter will suffice. This will depend on what the documents relating to the specific appointment require.

### **Letters of appointment**

The contents of the draft letter of appointment must comply with the requirements set out in Cabinet Office circular CO (99)12 *Guidance for Members of Statutory and Other Bodies Appointed by the Crown* ([www.dpmc.govt.nz/cabinet/circulars/co99/12.html](http://www.dpmc.govt.nz/cabinet/circulars/co99/12.html)). The letter of appointment is signed by the Responsible Minister.

The letter of appointment must include enough information on the role of the board and the duties of members for appointees to be clear about the expectations on them. There is no 'standard' appointment letter, as information needs to be tailored to the situation of the board concerned. However, the letter should include:

- the designation of the position and a position description
- if not already gained, agreement that the person will accept the appointment
- the proper name of the board or office
- the authority under which the appointment is made
- the term of appointment
- legislation relevant to the board or office
- any specific ministerial expectations of the board as they affect individual appointees

- any specific agreement on handling of the interests disclosed during the appointment process
- training and development opportunities or obligations
- the frequency and expected location of meetings and of other board activities
- the fees and allowances relating to the appointment, and other board activities (in addition to actual meeting attendance) which will attract remuneration
- a clear indication that there is no guarantee of appointment for a further term
- termination reasons and procedures
- the name of a contact person within the monitoring department who can provide further information.

Existing members being reappointed should be sent a similar letter though the level of detail required would be less.

Letters sent on the appointment of a new chair would be expected to contain additional detail and information about that particular role.

A copy of the letter and the notice of appointment should be sent to the board or agency or body to which the person has been appointed to.

New board members should be given additional material through the induction process (see *Chapter 6: In Support of Board Performance*, page 40).

### **Announcing appointments**

The board, Minister or department may want to use a new board appointment to raise the profile of that board or body e.g. to inform stakeholders about its role and the contribution it can make to the community or the economy. The appointee/s and unsuccessful applicant/s must be advised personally before any public announcements are made.

### **Publication of appointments in the New Zealand Gazette**

The New Zealand Gazette is the official newspaper of the New Zealand Government.

Appointments to Crown entity boards must be published in the *New Zealand Gazette*, as soon as practicable after they have been confirmed. The Crown Entities Act requires:

- each notice of appointment to be published in the *New Zealand Gazette* individually
- the wording in the appointment notice to be the same as the gazette notice.

Therefore, amalgamating appointment notices into one item for gazetting, while practical and reducing publication costs, does not meet the requirements of the Crown Entities Act. The action that gives effect to a Crown entity appointment is the receipt of the appointment notice by the appointee and not the publication of the appointment in the *New Zealand Gazette*.

For information about submitting material for the Gazette, see:

[www.dia.govt.nz/diawebsite.nsf/wpg\\_URL/Services-New-Zealand-Gazette-Index?OpenDocument](http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-New-Zealand-Gazette-Index?OpenDocument)

## Governor-General: Three types of appointment

There are three ways in which the Governor-General makes appointments:

- Appointment papers sent to the Governor-General: All independent Crown entity appointments are made in this way. The Minister needs to provide to the Governor-General an advice sheet; an appointment document and a covering note which provides information about the position and the proposed appointee; a brief description of the role or function of the board; and any other relevant background information.
- Executive Council appointments: In a few cases legislation requires board appointments to be made by the Governor-General in Council e.g. The Representation Commission is appointed by the Governor-General under the Electoral Act 1993. The documentation required for this is an Executive Council advice sheet; sometimes a separate instrument of appointment (for example, a warrant); and a CAB 50 (CV form). The above documentation is to be submitted to the Cabinet Office at the same time as the committee paper proposing the appointments. The Responsible Minister should attend the relevant Executive Council meeting, or brief a colleague to do so.

Further advice on these first two types of Governor-General appointment is available from the Cabinet Office at:

<http://cabguide.cabinetoffice.govt.nz/procedures/appointments/making-appointments>

- Appointments made after consultation with the House: There are a number of appointments that are made by the Governor-General on the recommendation of the House of Representatives. These include Officers of Parliament (e.g. the Ombudsmen) and a small number of other appointments (e.g. the Independent Police Conduct Authority). The rationale for having these appointments made on the recommendation of the House is so that they may be seen as far as possible to be bi-partisan. This is desirable given the particular relationship the appointees have with Parliament or because of the sensitive nature of their role.

Some of these appointments are considered at APH, Cabinet and Caucus in the usual way. The Speaker of the House takes a lead role in running the process for the appointment of Officers of Parliament. Appointment processes for the other House appointments are the responsibility of the Minister under whose legislation the appointment is made. The difference from other statutory appointment processes is that the Speaker or the lead Minister also needs to consult the Opposition parties represented in the House in order to gauge support for the proposed appointment. This is preparatory to putting a formal Notice of Motion to the House for the proposed appointment. The timing and nature of the consultation is at the discretion of the Speaker or lead Minister but generally it will be by way of letters to the leaders of all other parties represented in the House after the proposed appointment has been cleared through the Cabinet appointment process.

Once the Speaker or lead Minister is satisfied that the Notice of Motion will gain a satisfactory level of support from the Parliament, a Notice is lodged with the Office of the Clerk of the House. The Clerk's office will prepare the appointment documentation for the Governor-General. When signed documentation comes back from the Governor-General the Speaker or the Responsible Minister will undertake to advise and induct the person in the normal way.

### **Appointment of a temporary deputy chair of a Crown entity by the board**

In accordance with Schedule 5 of the Crown Entities Act, the board of a Crown entity may, by passing a resolution, appoint a temporary deputy chair from the current membership, when the following circumstances have occurred:

- the chair is unavailable or interested in a matter
- there is no deputy chair, or the deputy chair is unavailable or is interested in the matter.

When making the appointment, the board should satisfy itself that the person has the skills necessary to lead the board. The suggested candidate's conflicts should also be reassessed prior to appointment.

Based on the no surprises relationship between the board and the Minister and the Minister's ownership role in the entity, the board should apprise the Minister of the situation.

Where there is no chair and no deputy chair to lead the board for a significant period of time (i.e. due to the appointments process required) monitoring departments should encourage the board to consult with the Minister on the proposed candidate and to determine a timeframe that the temporary deputy chair is to be required in the role. The monitoring department can facilitate this process.

The monitoring department should provide a briefing to the Minister on the temporary deputy chair and facilitate with the Board any inductions and meetings as required. Where the appointment is of interest to other Ministers a brief noting paper may be provided to the Cabinet Appointments and Honours Committee.

If the circumstances require the commencement of a new appointment process, the monitoring department is expected to discuss the appointment process with the Minister as soon as practical.

### **Terms of Office**

Terms of office are dependant on the legislation or other governance instrument.

Under the Crown Entities Act, the term of office for Crown Agents and Autonomous Crown Entities is up to three years, and up to five years in the case of Independent Crown Entities. In some cases, the specified term is a maximum, which provides for appointment for a shorter period.

Some entity boards include members who are elected as representatives of a particular 'constituency'. Their term of office is set by the terms of the relevant statute.

### **Appointment for subsequent terms in office**

Board members should not be given any expectation that they will be offered a subsequent term of office.

The Minister's view should be sought as soon as possible on whether reappointment of an incumbent is to be considered. In some cases, enabling legislation sets out the position on reappointment, maximum number of terms, etc. Where legislation is silent, reappointment

can be considered. As a general guide, a second term can be considered appropriate. A member can be reappointed for further terms if the Minister agrees there are sound reasons for doing so.

There is a balance between the benefits derived from continuity of service on a board, the value of the board gaining new ideas and perspectives, and the need to avoid the board losing a number of experienced members over a short space of time. The board's goals, its overall skills needs, relevant government policy settings and/or a member's performance may have changed since their term began.

If a further term is being recommended, departments do not need to follow the full process as for an initial appointment, but they need to be able to assure their Minister that appointment for a further term is the most appropriate option. The APH submission should clearly state the process that has been followed and the reasons for reappointment being proposed.

Where a further term is being considered, the following points should be reflected in the submission:

- legislative considerations e.g., is there a formal limit on the number of terms?
- are the current position description and the contribution made by the incumbent still relevant to the work of the entity and the mix of skills now on the board?
- how well does the current composition of the board match the current and future work programme, governance requirements and general needs of the entity?
- have the member's interests and possible conflicts been re-considered in light of the current situation?

### **Continuation in office**

The ability for an incumbent to continue in office past the expiry of their term depends on the legislation or other instruments that provide for the conditions of the appointment.

Section 32 of the Crown Entities Act provides for a member to continue in office beyond the expiry of his or her term of office until reappointed, or:

- a successor is appointed, or
- the person who has authority to appoint members to that board informs the member in writing that the member is not to be reappointed and no successor is to be appointed at this time.

This provision is a short-term measure only; for instance to enable the process for appointing a successor to be completed, or until after a general election. It must not be used to bypass the term of office as prescribed in the relevant legislation.

A member who resigns before the conclusion of a term of office, or is not reappointed, should be sent a formal acknowledgement and appreciation of his or her services, worded according to the circumstances.

## Chapter 4: Removal from Office

Removal from office before the end of a member’s term is one of the sanctions available to Ministers. Generally, the person with authority to appoint a board member also has the power of removal, which includes:

- removal or suspension of a person from office
- reappointing or reinstating a person to the office, or
- appointing another person in place of a member who has vacated office, has died, is absent, or is incapacitated in a way that affects the performance of their duty.

In the case of Crown entities, an application may be made to the court for injunctive relief to stop a member or a board breaching duties (s 60 of the Crown Entities Act). The Act also contains a power to remove the whole board of a statutory entity, if the members have breached the collective duties (s 58). Depending on the circumstances of a breach, and any immunities from proceedings that may apply, the entity itself could take proceedings against a member who has not acted in accordance with the duties of an individual board member.

### Responsibility for removal

Generally, the person with authority to appoint a board member also has the power to remove or suspend a person from office. Unless there are specific statutory or governance provisions to the contrary each board member holds office at the pleasure of the person (Minister or Governor-General as the case may be) who appointed them.

For Crown entities, *any* decision to remove a board member must be consistent with the principles of natural justice (e.g. s. 5 and s. 27 of the Bill of Rights Act 1990) and a proper consideration of the matter irrespective of the type of entity (s. 41).

### Powers to removal for Crown entities

	Crown agent	Autonomous Crown Entity	Independent Crown Entity
<b>Power to remove appointed members of boards</b>	At Minister’s discretion, unless the board member is elected	Minister, for justifiable reason in Minister’s opinion, unless the board member is elected	Governor-General, for “just cause” on Minister’s advice after consultation with the Attorney-General
<b>Power to remove elected board members</b>	By Minister, only for “just cause”	By Minister, only for “just cause”	Not applicable

“Just cause” is defined in the Crown Entities Act, e.g., misconduct, breach of board member duties. It is a demanding and objective requirement; officials should be well aware of relevant case law if such a step is mooted.

Legislation covering specific Crown entities may impose different thresholds before removal can occur e.g. as section 36 of the New Zealand Public Health and Disability Act does with

elected members of District Health Boards. Depending on the relevant legislative powers, the threshold before such an action can be taken by a Minister may be very high.

The Minister (or the monitoring department, on a Minister's behalf) should seek the view of the Cabinet Office if the removal of a board member is contemplated. The Responsible Minister also should consider informing Cabinet colleagues of any such intention and obtaining legal advice.

The Crown Entities Act also requires the Minister to:

- give notice of the removal in writing to the member and stating the reasons for the removal, with a copy sent to the entity, before the removal takes effect
- notify the decision via the New Zealand Gazette, as soon as practicable after giving the notice or after the notice has been given by the Governor-General.

## Chapter 5: Induction for Appointees

### ***What induction should aim to achieve***

Induction should start as soon as a board member's appointment takes effect. A well-designed induction programme is essential to helping new members contribute confidently to their work on the board. But all board members should receive ongoing support and information so they can develop their understanding of the total environment within which they work.

Operating within the 'Crown environment' has distinct differences from a commercial or community setting (for instance, all Crown entities, except the Independent Police Conduct Authority, are subject to the provisions of the Official Information Act 1982).

As well as understanding the specific objectives of the board, members should have a proper appreciation of the particular elements and demands of public sector governance, and of the key relationships that will impact on the successful performance of their role.

### ***Induction resources***

The State Services Commission has developed a comprehensive and authoritative package of induction material. The primary audience for the induction material is new board members of statutory Crown entities, but it may also be helpful for existing board members and/or for other types of entities. Entities and monitoring departments are encouraged to make free use of the material in full or in part to supplement their current induction programmes: [www.ssc.govt.nz/crown-entity-induction-material](http://www.ssc.govt.nz/crown-entity-induction-material).

### ***Responsibility for induction and training***

#### **Ministers**

Ministers are responsible for ensuring that new board members have adequate induction and training, to understand their role and any expectations the Crown might have of them. In practice, Ministers usually delegate this role to their departments, many of whom have, or are developing induction programmes.

Ministers are likely to want to take a more active role in working with newly-appointed board chairs, to ensure they are aware of the Crown's expectations for the board and that the key responsibilities and relationships are well understood.

#### **Board chairs**

Chairs should brief new board members on the particular environment within which the board operates. Depending on what already has been covered, the chair's briefing could include the nature of the entity's business (site visits may be useful), the composition of the board and its various procedures (sub-committees, expected workload, governance and management issues, etc), the member's responsibilities to the chair and other board members, and relationships with the Minister.

In some cases, responsibility for training new members is specified in legislation, e.g. the New Zealand Public Health and Disability Act 2000 requires District Health Boards to ensure new board members have appropriate training.

## **Departments**

Any induction of board members by the monitoring department should be undertaken in consultation with the chair of the Board.

At the earliest opportunity, departments should provide new board members with an introductory briefing on the Crown entity environment and the expectations of Ministers. They also should consider covering:

- the role of boards in the State sector context; ensuring compliance with the law, and with accountability documents and relevant Crown expectations
- the strategic direction for the sector and the entity itself, and any areas of particular sensitivity or high risk
- the various planning and public accountability processes
- the ongoing management of any perceived, actual or potential conflicts, and the board's policies towards receiving and offering gifts and hospitality
- the individual roles and duties of board members
- the collective duties of board members
- the roles of and relationships between the key offices and agencies
- maintaining appropriate relationships with Ministers, Parliament, the monitoring department and the public
- liability for and protection from legal proceedings.

## ***Creating an effective induction programme***

An effective induction programme will include:

- a meeting with the Minister at his/her discretion
- meetings with the board chair to discuss board protocols and the board governance manual
- meetings with the chief executive and staff for operational familiarisation
- comprehensive information on the activities of the board or body and the organisation concerned, an outline of the sector, the wider implications of operating within the State Services, and the nature and key points of the key documents such as the Crown Entities Act, any specific enabling legislation, the Output Agreement and/or Memorandum of Understanding and/or the Statement of Intent, or Deeds of Trust
- current budget, recent annual reports and board minutes, all relevant legislation, planning documents (e.g. Statement of Intent), key challenges and issues, the role of central agencies, delegated authorities, policies on disclosing interests and declaring gifts, meeting timetable and venues, staff structure
- the key relationships affecting the successful performance of the board

- the impact on the operations of the board and the entity of provisions such as the Official Information Act 1982, and the obligations and protections relating to appearance by staff or board members before a Parliamentary Select Committee ([www.ssc.govt.nz/officals-and-select-committees-2007](http://www.ssc.govt.nz/officals-and-select-committees-2007))
- a tour of relevant facilities, if appropriate.

Some departments take a combined approach with workshops or seminars for new appointees from a range of boards for which their Ministers are responsible; this can help to underline the importance of a sector-wide approach. Existing board members also could be invited. Development workshops offered by the board, monitoring department, central agencies or an external body, may be other useful steps to assist new members, together with the use of formal or informal mentors.

See also the Cabinet Office circular CO(99)12 *Guidance for Members of Statutory, Commercial and other Bodies Appointed by the Crown* ([www.dpms.govt.nz/cabinet/circulars/co99/12.html](http://www.dpms.govt.nz/cabinet/circulars/co99/12.html)) .

## Chapter 6: In Support of Board Performance

### ***Governance advice for Crown entity boards***

Every statutory Crown entity is expected to have a board governance manual that reflects good practice standards. The State Services Commission has developed a resource that supports the preparation of such manuals, recognising that the fundamentals of good governance are common to all entities, despite their widely-differing roles and relationships: [www.ssc.govt.nz/crown-entity-governance](http://www.ssc.govt.nz/crown-entity-governance).

That guidance is intended for those who are charged with developing, implementing and maintaining a board's governance manual. It should be used to ensure that all boards have governance material that meets good practice requirements across the range of topics. It may also assist departments in answering queries from entities on governance issues.

Many entities' manuals will need to include additional material to suit their legal circumstances and particular activities.

The Ministry for Culture and Heritage has developed an electronically-based sector-specific e-manual to promote good governance. The e-manual is designed to highlight key principles and to illustrate how these apply to the 'Culture and Heritage' boards. Each topic is augmented by appropriate website links and appendices.

([www.mch.govt.nz/agency/boards/governance-manual.html#intro](http://www.mch.govt.nz/agency/boards/governance-manual.html#intro) )

### ***Other Information sources***

- The CabGuide (<http://cabguide.cabinetoffice.govt.nz/> )
- Cabinet Office circulars ([www.dpmc.govt.nz/cabinet/circulars/](http://www.dpmc.govt.nz/cabinet/circulars/) )
- The State Services Commission's website ([www.ssc.govt.nz/crown-entities](http://www.ssc.govt.nz/crown-entities) ).

Departments should refer regularly to the relevant websites, to ensure that they are using the latest available version of any reference or supporting material.

### ***Interdepartmental forum***

An inter-departmental forum (Monitoring, Appointments & Governance Group Network – MAGNet) has been established and is open to officials whose work involves monitoring the performance of Crown entities; providing nominations services for membership of government boards; advising on appointments to government boards, and/or providing governance advice.

MAGNet facilitates networking, sharing experience and material, encouraging good practice and consistency of approach, and helping the professional development of officials who have governance and monitoring roles. It is supported by sub-groups which address appointments, governance and monitoring issues, and by a shared workspace which has a range of information, guidance, discussion boards and other tools. For further information and/or access to the workspace, contact: [governance@ssc.govt.nz](mailto:governance@ssc.govt.nz).

# Annex: Background for all statutory Crown entity appointments

## *Legislative framework relating to Crown entity appointments*

Officials who are supporting Crown entity appointments need to be familiar with all the legislation that relates to Crown entities, as the legislation provides information relevant to the appointment and induction processes as governance information.

Crown entities are legal entities in their own right, separate from the Crown. Where functions or activities are assigned to a Crown entity, that decision reflects a view that they should be carried out at arm's length from government.

### **The Crown Entities Act 2004**

The Crown Entities Act provides a consistent framework for the establishment, governance and operation of Crown entities. The Act specifically covers board appointments in Part Two and Schedule Five. The Act also clarifies accountability relationships between Crown entities, board members, the Crown, and Parliament. It sits alongside individual entities' establishing legislation. In the event of conflict, the Crown Entities Act prevails, unless an entity's own Act expressly modifies or negates the provisions of the Crown Entities Act.

Crown entities are classified into one of five categories:

- statutory entities (comprising three types - Crown Agents, Autonomous Crown Entities [ACEs] and Independent Crown Entities [ICEs])
- Crown entity companies
- Crown entity subsidiaries
- School Boards of Trustees
- Tertiary education institutions.

Statutory entities are further classified under the Crown Entities Act into one of three types:

- Crown Agents, which are required to give effect to government policy relating to their functions and objectives if so directed (s 103 and Part 1 of Schedule 1 Crown Entities Act). Appointments to their boards are made by the Responsible Minister.
- Autonomous Crown Entities (ACEs), which are required to have regard to government policies relating to their functions and objectives if so directed (s 104 and Part 2 of Schedule 1). Appointments to their boards are made by the Responsible Minister.
- Independent Crown Entities (ICEs), which generally are independent of government policy (s 105 and Part 3 of Schedule 1). Appointments to their boards are made by the Governor-General, on the recommendation of the Responsible Minister.

### **An entity's establishing legislation**

Statutory Crown entities and many other agencies have their own establishing legislation. Departments need to be familiar with legislation covering the individual Crown entities, for which they have appointment and monitoring responsibilities. For example, establishing legislation may provide for the appointment of a chairperson and/or deputy chair. This is a separate status from being a board member, and an enabling Act may require a different person to be responsible for their appointment.

## **The New Zealand Public Health and Disability Act 2000**

This Act affects District Health Boards only, which are all Crown Agents. It contains specific appointment and induction provisions for DHB boards, in particular differing provisions for elected and ministerially appointed board members. As with other entities establishing legislation this Act works in tandem with the Crown Entities Act.

## ***Other legislation that impacts on Crown entities***

### **The State Sector Act 1988 (as amended in 2004)**

Under the State Sector Act, the State Services Commissioner's mandate applies to Crown entities in a number of ways, including:

- to review the machinery of government, including creating, amalgamating, or abolishing agencies, and coordinating the activities of agencies
- to advise on management systems, structures, and organisations
- to provide advice and guidance on matters related to the integrity and conduct of employees, including the setting of minimum standards of integrity and conduct. For further information refer to [www.ssc.govt.nz/code-guidance-stateservants](http://www.ssc.govt.nz/code-guidance-stateservants).

However, the State Sector Act does not contain any board appointment provisions.

### **The Public Finance Act 1989**

This Act does not contain any board appointment provisions, but it has some provisions that affect the running of Crown entities. The Public Finance Act 1989 aims to improve the basis for the effective and efficient use of public financial resources and for clear accountability and reporting.

## ***The role of Ministers, boards and departments***

The role of Ministers in relation to Crown entities is set out in a Cabinet Office circular, currently CO(06)5 ([www.dPMC.govt.nz/cabinet/circulars/co06/5.html](http://www.dPMC.govt.nz/cabinet/circulars/co06/5.html)). The roles and relationships of the key players are summarised below.

### **Ministers**

Ministers are responsible to Parliament for overseeing and managing the Crown's interests in, and relationships with, all Crown entities within their portfolios. They carry out the statutory responsibilities conferred on them by section 27 of the Crown Entities Act 2004 for statutory entities (i.e., Crown Agents, ACEs and ICEs). Responsible Ministers have a strong interest in 'their' Crown entity boards clearly setting the direction of the entity, achieving desired results and managing any risks to the Crown. Overall, the roles and responsibilities of Ministers are to:

- make sure (through appointment, consideration of subsequent terms, and/or removal of members and induction procedures) that an effective board is in place to govern the Crown entity
- participate in setting the direction of Crown entities, consistent with the Minister's powers of direction, including for a number of entities across a sector where relevant

- monitor and review Crown entity performance and results
- manage risks on behalf of the Crown.

These guidelines focus on the first of the above points. Advice on the other elements is accessible via [www.ssc.govt.nz/crown-entities](http://www.ssc.govt.nz/crown-entities).

### **Crown entity boards**

The board governs the Crown entity, exercises its powers and carries out its functions, makes decisions about its operations, and appoints its chief executive (where applicable). The board's actions always must be consistent with an entity's objectives, functions, Statement of Intent and Output Agreement.

Subject to any specific legislative provisions to the contrary, a board is an entity's governing body, carrying out functions and powers on its behalf, and responsible for its operations and performance.

There are distinctions, however, between these generic provisions and the particular responsibilities of governing an entity within the State sector (or the 'Crown environment'). So, a Crown entity board also must ensure that it:

- has a clear understanding of its own role, and of the role of the Minister and the monitoring department/s concerned
- is well informed about the entity it governs, and about the relevant legislation
- does not act outside its powers and functions, and only delegates activities responsibly and as permitted by law
- arranges for appropriate induction and training of members, to complement that provided by Ministers, the Minister's advisers and/or departmental officials
- takes appropriate advice
- reviews its own performance.

Boards and prospective members should be aware of the following key elements:

### ***Board members collective and individual duties***

The collective duties of Crown entity boards are specified by the Crown Entities Act. The collective duties of a Crown entity are the board's public duties, which reflect that the board and the entity are part of the State Services. The collective duties are owed to the Responsible Minister. The duties are to:

- act consistently with their objectives, functions, Statement of Intent, and Output Agreement
- perform their functions efficiently and effectively, and consistently with the spirit of service to the public
- operate in a financially responsible manner
- ensure that the entity complies with the Crown Entities Act requirements relating to its subsidiaries and other interests.

The individual duties of statutory entity board members are specified by the Crown Entities Act. Board members' individual duties are to:

- comply with the Crown Entities Act and the entity's enabling legislation
- act with honesty and integrity, in good faith and not at the expense of the entity's interests
- act with reasonable care, diligence, and skill
- avoid disclosing information, except in accordance with the entity's functions as permitted or required by law
- exercise the same care, diligence and skill that a reasonable person would in the same circumstances, taking into account the nature of the entity and of the action, the position of the member and the nature of his or her responsibilities.

### ***Strategic direction and policy***

Setting an entity's strategic direction and development of policy must be done consistently with the statutory and policy frameworks within which the entity operates; and must take account of the broader interests of the Crown as owner or steward.

### ***Appointing a chief executive***

The establishing Acts of most Crown entities do not specifically state whether a chief executive should be appointed, because such boards have the power under ss 116 and 117 of the Crown Entities Act 2004 to employ staff, including a chief executive. An agency's enabling legislation may prescribe the appointment process for its chief executive, or the process for setting remuneration or other terms and conditions Crown entity boards have the final responsibility for setting their chief executives' terms and conditions, subject to consultation as specified in the Crown Entities Act.

### ***Monitoring the performance of the entity and its chief executive***

The board is a key monitor of the agency's performance, and is accountable to the Minister, and ultimately to Parliament. At a minimum, the boards of Crown entities are required to present an annual report to the Minister, for tabling in the House. Unless the legislation provides specifically for removal by a Minister or someone other than the board, an agency's chief executive is answerable to the board.

With very limited exceptions, the Minister responsible for a Crown entity has a statutory power to review its operations and performance and to require information from it. Monitoring departments have a role as agents of their Ministers, e.g. to seek and analyse information on the Minister's behalf.

### ***Accountability documents and Crown expectations***

Boards have a leadership role to play in ensuring compliance with the law and with accountability documents applying to an agency, and in reinforcing expectations of the behaviour of the chief executive and agency that are appropriate to a public body. In the case of Crown entities and some other agencies, the board or individual members may have express duties requiring compliance with the law, and documents such as the Statement of Intent and Output Agreement between the entity and the Minister ([www.ssc.govt.nz/performanceandaccountability](http://www.ssc.govt.nz/performanceandaccountability)).

### ***Maintaining relationships with the Minister, Parliament and the public***

The Minister's role, subject to any legislation to the contrary, is to oversee and manage the Crown's interest in the agency's operations. He or she may be called on to answer questions in the House and is seen as answerable to the public for any problems or controversies arising in connection with the agency. This does not absolve the agency itself from accountability to Parliament for its actions.

### ***Good employer***

Crown entities are required to operate and comply with a good employer policy, which includes a requirement on the board as employer to impartially select suitably qualified people, and to recognise the need for involvement of Māori people as employees (s 118 of the Crown Entities Act). The Equal Employment Commissioner of the Human Rights Commission has responsibility for issuing good employer and equal employment opportunities guidance to Crown entities ([www.neon.org.nz/crownentitiesadvice/](http://www.neon.org.nz/crownentitiesadvice/)).

### ***Political neutrality and public trust***

Effective board membership may involve robust debate about current or planned government policies or their implementation. Members always must have regard to their responsibility as part of Executive Government, but it is recognised that some Crown entities are charged with promoting wider debate on issues. Others have a statutory responsibility to make independent judgements or to adopt an advocacy role.

The power of Ministers to direct Crown entities varies according to the categorisation of the entity. It is more limited than is the case with departments. However, board members, statutory entities and employees should conduct themselves so that:

- they maintain the confidence of the current and future governments
- they do not jeopardise or erode public trust in the entity itself or in the wider institutions of government.

The Crown Entities Act provides a framework which should ensure that board chairs and members:

- fulfil their legal obligations to the Government with professionalism and integrity
- perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and of their colleagues.

### ***Monitoring departments***

The monitoring department works with the Crown entity on the Minister's behalf to:

- make sure the Crown entity has identified the intended results for New Zealanders along with the Crown's output and fiscal results
- monitor performance against expected results and outputs
- improve coordination of Crown entities within the Minister's portfolio
- advise the Minister on the Crown entity's capability to achieve its results (e.g. by giving advice on major business cases)
- advise the Minister on the merit of Crown entity budget initiatives

- monitor risks, and keep the Minister informed of these risks
- keep the Crown entity informed of relevant timetables, guidance and information.

The monitoring department also gives advice and support to Ministers and Crown entities about board member appointments and induction, and Crown entities' strategic direction, planning processes and output agreements ([www.ssc.govt.nz/guidance-depts-crown-entities-may06](http://www.ssc.govt.nz/guidance-depts-crown-entities-may06)).

## List of statutory Crown entities as at October 2009

### 47 Crown Agents (CAs)

Accident Compensation Corporation  
Career Services  
Civil Aviation Authority of New Zealand  
Crown Health Financing Agency  
District Health Boards (21 Boards)  
Earthquake Commission  
Electricity Commission  
Energy Efficiency and Conservation Authority  
Foundation for Research, Science, and Technology  
Health Research Council of New Zealand  
Health Sponsorship Council  
Housing New Zealand Corporation  
Legal Services Agency  
Maritime New Zealand  
New Zealand Antarctic Institute  
New Zealand Blood Service  
New Zealand Fire Service Commission  
New Zealand Qualifications Authority  
New Zealand Tourism Board  
New Zealand Trade and Enterprise  
New Zealand Walking Access Commission  
New Zealand Transport Agency  
Pharmaceutical Management Agency  
Real Estate Agents Authority  
Social Workers Registration Board  
Sport and Recreation New Zealand  
Tertiary Education Commission

### 22 Autonomous Crown Entities (ACEs)

Alcohol Advisory Council of New Zealand  
Arts Council of New Zealand Toi Aotearoa  
Broadcasting Commission  
Charities Commission  
Environmental Risk Management Authority  
Families Commission

Government Superannuation Fund Authority  
Guardians of New Zealand Superannuation  
Mental Health Commission  
Museum of New Zealand Te Papa Tongarewa Board  
New Zealand Artificial Limb Board  
New Zealand Film Commission  
New Zealand Historic Places Trust (Pouhere Taonga)  
New Zealand Lotteries Commission  
New Zealand Symphony Orchestra  
New Zealand Teachers Council  
Public Trust  
Retirement Commissioner  
Standards Council  
Te Reo Whakapuaki Iirangi (Māori Broadcasting Funding Agency)  
Te Taura Whiri I Te Reo Māori (Māori Language Commission)  
Testing Laboratory Registration Council

### 15 Independent Crown Entities (ICEs)

Accounting Standards Review Board  
Broadcasting Standards Authority  
Children's Commissioner  
Commerce Commission  
Electoral Commission  
Health and Disability Commissioner  
Human Rights Commission  
Law Commission  
New Zealand Sports Drug Agency  
Office of Film and Literature Classification  
Independent Police Conduct Authority  
Privacy Commissioner  
Securities Commission  
Takeovers Panel  
Transport Accident Investigation Commission