



Te Kawa Mataaho
Public Service Commission

Te Aratohu mō te Kopou me te Whakauru Mema Poari

Board Appointment and Induction Guidelines

Te Kāwanatanga o Aotearoa
New Zealand Government

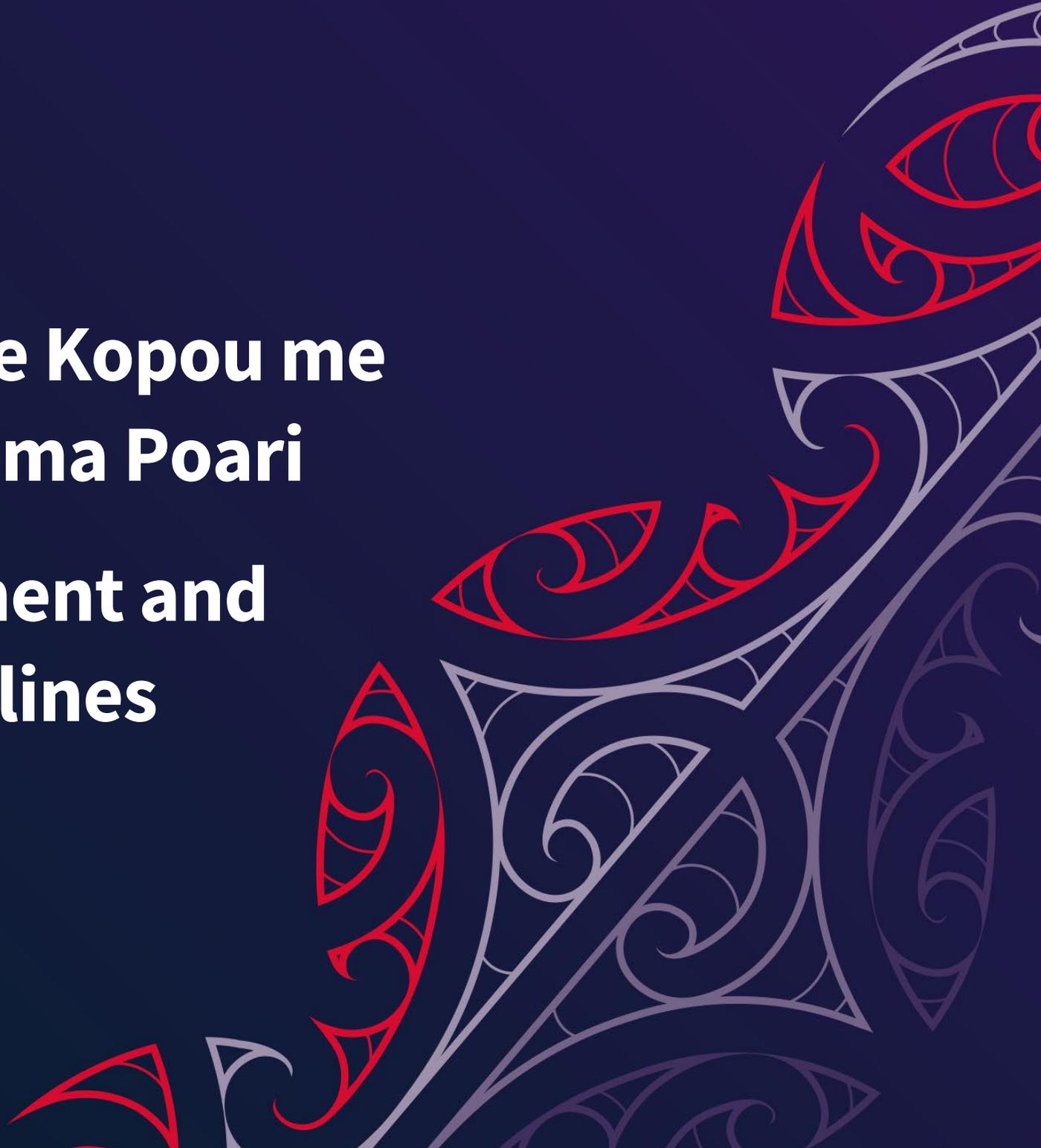


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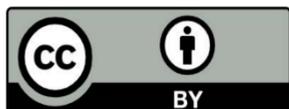
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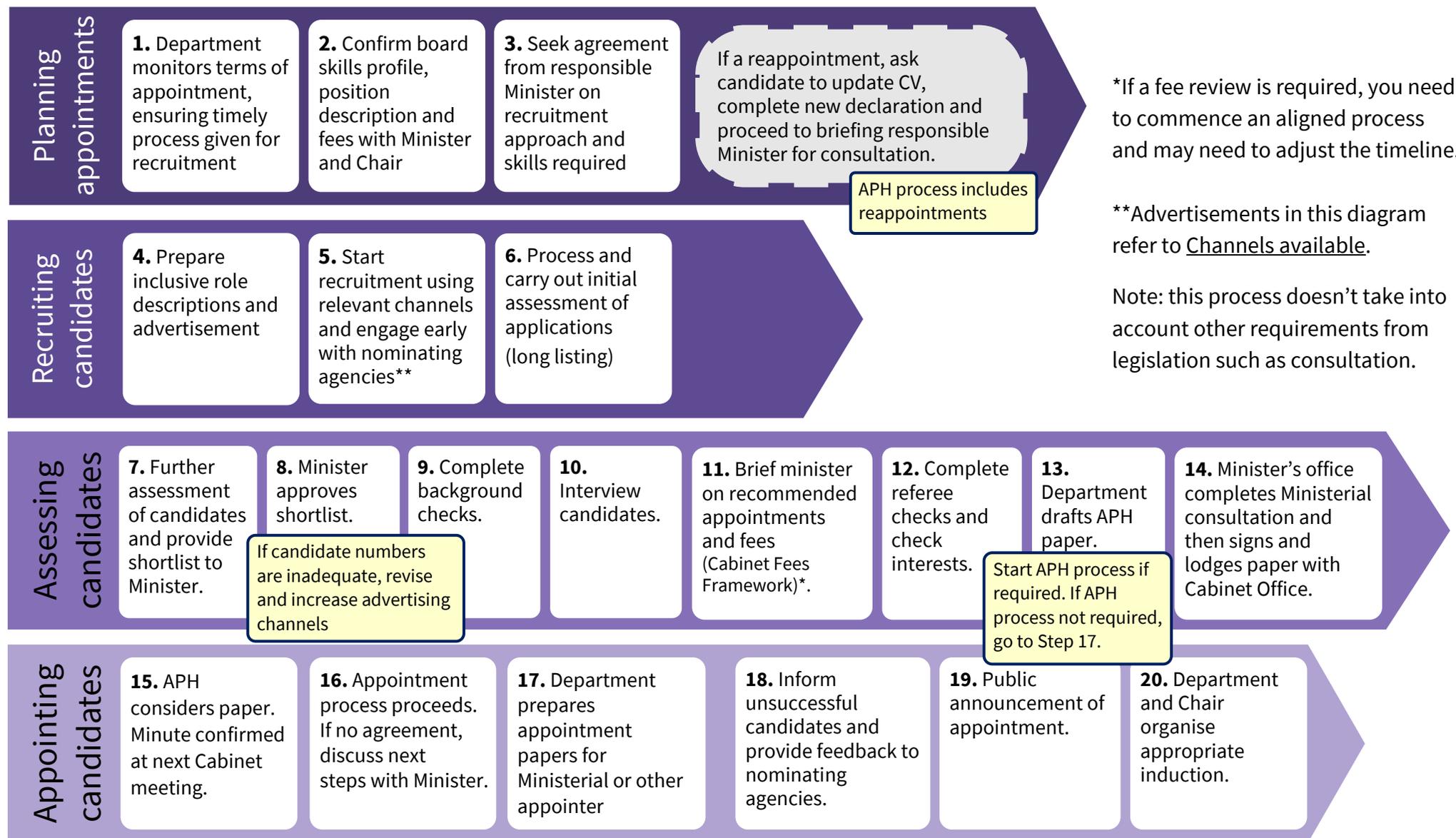
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Te mahere ripo | Appointment flowchart

Figure 1: The high-level process steps for making appointments and reappointments to Crown entity and government boards.



Te kupu whakataki | Introduction

These guidelines provide information on how to recruit, appoint and induct board members on to Crown entity boards and government boards. Step-by-step guidance is included to cover the different stages and aspects of the appointment process.

Who the guidelines are for

These guidelines are issued under section 44(b) of the Public Service Act and apply to the Public Service including Crown agents, autonomous Crown entities (ACEs) and independent Crown entities (ICEs) when advising on appointment of relevant board members, but may also be helpful for those involved in other public sector board appointments, including statutory tribunals, tertiary education institutions, royal commissions, and advisory committees.

The guidelines are for anyone involved in government board appointments, unless there are provisions in individual agencies' legislation that state otherwise. The guidelines should be followed in conjunction with using judgement when deciding the best approach to use in each circumstance. The guidelines have a strong focus on statutory Crown entity appointments and inductions.

Other government bodies and agencies include many that are linked to ministerial portfolios and whose members constitute a board or its equivalent without employees (e.g. Queen Elizabeth II National Trust) or that serve as the governing body (e.g. Māori Television Service).

Who the guidelines don't apply to

These guidelines are not intended for public service officials giving advice about appointments to the boards of State-owned Enterprises or Crown entity companies. The Treasury provides guidance for appointments to companies owned by the Crown. More information is available at www.treasury.govt.nz/commercial.

Roles and responsibilities

Ministers have ultimate responsibility for the appointment. The appointment processes are deemed to be delegated to the department concerned unless the minister requests they are handled differently. Step 3 in the flow chart is the point where the recruitment process would normally be discussed and agreed with the responsible minister.

Departments should give their ministers periodic briefings of the overall upcoming board vacancies, covering all the entities within the minister's portfolios. This should include the objectives and functions of each entity, current board membership, fees, and allowances, which members' terms are expiring, whether they're eligible for reappointment, and suggestions for revised skill sets or succession planning for the board in general and the chair in particular.

Planning appointments

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Succession planning

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Timeframes

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Te whakarite kopounga | Planning appointments

Good planning is a hallmark of a transparent appointment process. Plans should factor in the needs of the appointer and the need to ensure a diverse field of candidates. Appointment plans should include consideration of clarifying the role requirements, recruitment, the shortlisting, selection and appointment processes.

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, including consultation requirements
- specify if the vacancies must be advertised or if nominations must be sought from occupational or industry bodies
- identify 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.

The make-up of an effective board

It's important that the board contains a balance of skills, knowledge, attributes, and experience that matches the strategic direction and needs of the entity and of New Zealand. The emphasis is on appointing the

person with the best knowledge skills and experience whilst also taking in to account the overall composition of the board in terms of diversity and inclusion needs. The recruitment approach undertaken will directly impact on the success of responses from potential candidates and help to ensure that effective members are appointed to boards.

Departments should 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, ensuring their administrative systems will provide reminders about upcoming vacancies in good time. At the beginning of the appointment process, a helpful first step is to draw up a project timeline for the appointment process, considering the factors outlined in the flowchart on page 3. This also includes who should be consulted and engaged in the process and when.

Throughout the recruitment and appointment process, everyone involved needs to clearly understand their respective roles, both in terms of formal authority and decisions based on delegated responsibilities. As a rule, boards need to be maintained at 'full strength' (i.e. with the required mix of knowledge, skills and experience, enough numbers for a quorum to be available consistently, and avoiding a workload that becomes unmanageable). In some circumstances, a minister may choose to not to fill a vacancy immediately for specific reasons such as the development of new strategic direction or an expansion of the entity's functions. In these circumstances, the chair may need time to plan how to address skill gaps.

Diversity of membership

Government has a commitment to see a more diverse range of people appointed to government bodies to reflect the makeup of Aotearoa New Zealand. 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 people for consideration. Figure 2 on page 10 provides the key channels for promoting and seeking candidates. If these channels fail to produce the desired results, having further targeted discussions with the nominating agencies may lead to a more thorough and informed search before looking to other methods such as commercial search organisations.

The Crown Entities Act 2004 section 29(2)(b) provides that, subject to requirements concerning merit, ministers making or recommending appointments to boards must consider the desirability of promoting diversity of membership, to ensure that the work of boards benefits from participation that reflects New Zealand society. Cabinet circular CO (02) 16 provides information on diversity requirements for public sector boards.

The Public Service Act 2020, section 14 lays out the role of the Public Service in supporting the Crown in its relationship with Māori under Te Tiriti o Waitangi. The responsibilities include developing and maintaining the capability of the Public Service to engage with Māori and to understand Māori perspectives.

To seek skills, knowledge, and experience, such as cultural capability and insight, gender diversity and diversity of thought, consider reviewing the requirements in role descriptions to ensure that these attributes are appropriately considered. These attributes exist alongside governance capabilities ordinarily required and while these are sometimes overlooked, they are critical to ensure the system is being responsive to the needs of all people in New Zealand.

Te Kawa Mataaho Public Service Commission (the Commission) has been working to eliminate the gender pay gap and provide advice on recruitment strategies and processes to ensure they're free from bias.

Implementing the Gender Pay Principles and removing gender bias in recruitment processes includes a suggested framework for developing the goals, strategy and actions that underpin a bias-free recruitment process. Many of these principles are also helpful for the board appointments process.

Succession planning

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 those 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. Equally important is timing, as announcing a new board chair too 'soon' may hinder the current board's ability to make decisions, however there may be circumstances where announcements may be appropriate.

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 has the appropriate leadership and attributes to be effective and credible in fulfilling its role. When a new Crown entity is established, ministers may wish to appoint an establishment or interim chair and/or board until the entity's establishment legislation is given effect.

Establishing a new board 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 and balance of the board membership. Departments should pay attention to providing information on interests and the duties of members when a new board is being appointed. Departments also need to identify how fees will be set for the board and ensure that this process runs concurrently with the appointment process (see Setting remuneration).

Timeframes

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 six months before the expiry of a current term, and at least nine 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). In some instances, a board chair may anticipate retirement or the end of their term of appointment and engage with the minister on future governance needs. These conversations may provide useful insights to a board's capability, attributes, and skill gaps.

A minister may wish to know more about the board vacancy in the context of other portfolios or across sectors. The Cabinet Office issues a Schedule of Upcoming Appointments to ministers at the beginning of each calendar year. Ministers are advised to contact the office of the responsible minister as early as possible in the appointment 'cycle' if targeted conversations are required about specific appointments.

Time must be allowed for the process to proceed in a thorough manner, although some vacancies arise unexpectedly (e.g. in the event of the sudden resignation or death of a member) in which case it may not be possible to follow the full process. If important aspects of the process are done under pressure, there's a risk of an inadequate search for candidates with the desired skills, incomplete reference checks, poorly informed candidates, or rushed interviewing.

Timetable for filling a vacancy

The timetable for filling a board member vacancy should take the following into account:

- when the incumbent's term ends
- whether the minister has nomination proposals, or wishes to seek nominations from other ministers or stakeholders
- review of the position description, considering the board's current mix of knowledge, skills and experience alongside the diversity mix
- advertising through appropriate channels, and the closing date
- whether search consultants are to be used (usually for specialist or critical appointments only)
- the need for consultation with stakeholders including provisions in relevant legislation
- advising nominating agencies of the skill and diversity requirements for the vacancy, so they can suggest suitable candidates (see [Nomination services](#))
- whether legislation requires a board to include members with specific qualifications or consult sector/interest group representatives

- the time needed for interviewing and undertaking referee checks, plus availability of chairs and other directors for the interview panel
- the requirements of the Cabinet process (see [Governor-General: three types of appointment](#)).

When seeking an appointment for a chair or deputy chair, the considerations may differ.

Getting the minister's agreement to the process

On identifying an impending vacancy, the department should – in consultation with the board chair – notify the responsible minister in writing, to (see step 3 in appointment flowchart):

- seek the minister's advice on any preferences for filling the vacancy, including any consultation with colleagues if desired
- recommend an appointment process, channels, and approach to recruitment
- provide a tailored and inclusive position description, including the skills and experience required to fill the vacancy to supplement any general information that is already available
- the board's current make-up, the entity's future work programme and where appropriate, the minister's expectations letter
- explain the basic legislative and Cabinet requirements associated with the appointment, including the applicable timelines
- advise if a fees review will be undertaken concurrently with the appointment process.

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Te kimi kaitono | Recruiting candidates

Identifying possible candidates

As shown in Figure 2 on the next page, potential candidates can be identified in several ways, including advertising publicly, nominations from interested groups or MPs, seeking suggestions from current chairs and board members, or from community and professional networks. Nominating agencies have direct links to their community and regional networks. To make the most of these networks, ask the nominating agencies to promote vacancies through their communication platforms and through any regional networks they may have in place.

Ministers may want assurance that recommendations for appointment are based on the widest possible canvassing of high-quality candidates. Seeking candidates using as many of the opportunities as possible in Figure 2 will broaden the reach to potential candidates.

Departments that maintain their own database of people who are interested in being appointed to boards need to check regularly that stored information is accurate, current and that those on the database remain interested and available for nomination.

Where nomination of a representative of a particular organisation, community or sector 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, to avoid raising expectations that they'll be appointed or reappointed. Candidates also should be made aware that a range of factors may impact on decision timelines and the outcome.

Channels available to find candidates

Figure 2 shows the channels available to promote and fill vacancies. The four red ringed channels are the standard approach for each appointment search with the other options such as social media, providing opportunities for a broader reach.

Commercial search organisations are optional as there is a cost involved. This approach is mostly used when recruiting a chair or potentially a member for a high-profile board with specialist skills, or in a situation where other searches have not produced suitable candidates.

Responsible ministers are cognisant that appointments to government bodies need to reflect the make-up of Aotearoa New Zealand society and they will generally require the recruitment process to be as inclusive as possible when seeking a new candidate for a board role.

Figure 2: Channels used for filling board vacancies.



*Will generally be required to consult with coalition or support parties if applicable.

Advertising public sector board positions

If the vacancy is advertised, it may include advice that to assist with assessing the suitability of candidates, shortlisted applicants may be subject to background checks. Candidates should be asked to authorise such inquiries. To assist their candidacy, nominees should ensure their CVs are up-to-date and accurate.

Privacy principles are a legal requirement. Advertisements should include or provide a link to your agency's Privacy Statement. Effective appointment practices will address the privacy considerations detailed in [Privacy principles](#).

Diverse candidates

To find the best candidates and attract diverse applications for public sector board appointments, first consider where to advertise the vacancy to achieve a broad reach. [Implementing the Gender Pay Principles and removing gender bias in recruitment processes](#) provides advice on developing job descriptions and advertisements that are bias-free, which can usefully inform the consideration of different biases.

Responsible minister and current chair

In the first instance, all board vacancies should be consulted on with the responsible minister and the board chair to agree the skills and competencies required for the role, representation needs, and confirm the recruitment approach before going to market with an advertisement.

Through this consultation, the responsible minister may express their desire to consult with their caucus and coalition colleagues, where relevant. Ministers and chairs will have sector and portfolio knowledge that may lead to suggested candidates. Early consultation with ministerial colleagues is useful for high profile or chair roles.

Board chairs will be able to reflect their knowledge of the workings of the board, and using a skills matrix approach, the technical and personal skills that could best contribute to the board's performance. Where possible, board chairs should be consulted for their perspective on:

- the functioning and skills of the current board
- the extent to which diversity of membership needs to be addressed
- the findings of recent board evaluations
- any board capability gaps or future needs
- resulting position descriptions and competencies required.

Job search platforms

When it's time to seek a candidate, the advertisement and position description should be made available publicly on your agency's website (if the platform allows for that) and on an independent public job search platform such as [Jobs.govt.nz](#). This will provide a transparent and fair opportunity for potential candidates to apply. The advertisement link can be easily promoted further by using the department's social media channels and by tapping into the nomination agencies networks through their social media platforms, to reach a wider audience.

A list of government-approved [external recruitment services providers](#) is available.

Nomination services

Nominating agencies maintain databases of suitably qualified people from within their specific populations. A list of the nominating services available is provided below. The nominating agencies can assist by reviewing their databases to provide a list of matched potential candidates. It's important to note that ample time must be allowed for the nominating agencies to search within their databases and networks

to provide a considered list of potential candidates. It's advised to allow approximately two to three weeks for this step.

Nominating agencies can also assist by promoting vacancies across their networks via communication platforms and through their regional offices and networks. Send a copy of the advertisement to the nominating agencies asking them to post on their social media accounts and promote within their regional networks. By reaching out to nominating agencies' networks in this way, the opportunity will reach a broader audience.

The following nominating agencies can assist with your recruitment and have access to diverse networks across New Zealand.

Manatū Wāhine | Ministry for Women: Nomination Service

The Ministry for Women's Nominations Service focuses on providing high quality women candidates for public sector board roles.

The Service:

- maintains a database of women from different sectors and professions
- notifies women of suitable vacancies and where to apply for them
- provides short biographies and contact details of nominees in confidence when required
- collates a yearly stocktake of gender, Māori and ethnic diversity, and reports on women's participation on public sector boards and committees
- provides women candidates with governance advice through online resources, newsletters and governance training.

Te Puni Kōkiri: Te Pae Ārahi – Nominations Service

The Service:

- promotes Māori participation on statutory boards, committees and advisory groups, particularly those playing a role in New Zealand's social and economic development
- maintains a database and nominations service
- aims to develop and maintain relationships with key Māori, community, and industry and sector organisations.

Ministry for Pacific Peoples: Nominations Service

The Service:

- promotes Pacific representation on statutory boards, committees and advisory groups, and grows Pacific leadership capacity for nominations to those entities whose decisions have an impact on Pacific people
- maintains a database of Pacific candidates and a small nominations service
- promotes the nominations service through the MPP Fetu Pasifika e-newsletter, MPP website/Facebook and Pacific media networks.

Ministry for Ethnic Communities: Nominations Service

The Ministry for Ethnic Communities' Nominations Service maintains a database of suitably qualified candidates from their mandated ethnic communities who want to be considered for participation in advisory groups and for appointment to public sector boards and committees.

The Service:

- maintains extensive links with ethnic communities and their representative organisations throughout Aotearoa New Zealand, through their regionally based community engagement teams

- provides advice to the public sector on engagement with ethnic communities
- encourages increased civic participation within ethnic communities
- promotes its nominations service through its communications channels and community engagement events
- advocates for greater connections between appointing agencies and its service
- advises potential candidates of vacancies from appointing agencies for self-nomination, or nomination through its service
- provides short biographies and contact details of nominees in confidence when required
- provides candidates from its service with governance advice and governance training and networking opportunities where possible.

Office for Disability Issues: Nominations Service

The Service:

- has extensive links with disabled people and their representative organisations throughout Aotearoa
- promotes participation of disabled people on statutory boards, committees, and advisory groups
- provides a nominations service and manages a database of disabled people and some carers and whānau of disabled people as candidates for nomination to boards, committees, and advisory groups
- advises potential candidates of vacancies from appointing agencies for self-nomination to positions that interest them and align with skills and experience
- advocates for participation of disabled people in all aspects of decision making that will impact on them.

Position description and advertisements

Writing position descriptions, board profiles, and advertisements can be used to tailor information and person specifications for each vacancy and reappointment. It's important to make clear in advertisements for board vacancies that background checks (see [Checking background](#)) will be carried out.

To seek skills, knowledge, and experience, such as cultural capability and insight, gender diversity and relationships with under-represented communities, consider reviewing the requirements and criteria in role descriptions to ensure that these attributes are appropriately considered and acknowledged.

Clear position descriptions:

- give candidates a greater understanding of what's required before they decide whether to apply for a board appointment
- provide decision makers with benchmarks against which to measure the attributes of candidates allowing for skills profiling against competencies required
- help nominating agencies identify candidates with the required relevant skills and experience
- reinforce the principle of appointment on merit.

Overseas candidates

Sometimes the expertise needed by a board justifies consideration of overseas-based candidates (see [Checking background](#)). Care should be taken to ensure they understand the wider New Zealand cultural landscape within which the board operates, clarify such matters as reimbursement of expenses, the right to work in New Zealand, 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.

Public servants on boards

Suitably qualified and experienced public servants or Crown entity employees may be appointed by ministers to public bodies. The current Cabinet Office circular CO(02) 5 [Appointment of Public Servants to Statutory Boards](#) provides for the appointment of public servants to support improved board performance, build capacity especially in respect to increasing diversity, and to capitalise on government experience that a public servant can bring. Public servants can add value to public bodies offering professional or technical skills in addition to their understanding of government.

Like all board appointments, these appointments may raise conflict of interest issues and matters relating to balancing board and substantive public servant workloads, and secondary employment.

¹ The term 'significant' is not defined; it's a matter of judgement. A case-by-case assessment is required, considering such factors as: the public profile of the entity, whether the entity has a strategic or decision-making role, whether the entity controls

Appointing immediately before a general election

Based on an estimate of when a general election will take place (every three years and usually in October), departments should (where possible) avoid proposing appointees whose terms would conclude immediately before or after a general election. It's been the practice for recent governments to exercise restraint in making significant appointments in the pre-election period – appointments not considered to be significant proceed in the usual way.¹

Departments should also consider including information on upcoming appointments in briefing their responsible minister after a general election. Further advice can be sought at the appropriate time from the Cabinet Office.

significant assets or funds, and whether the entity is an executive agency (as opposed to an advisory or technical body).

Information for candidates

Appointing departments must provide all candidates and nominees with information about the board in which a vacancy has arisen. This checklist can help you think about the different kinds of information that should be provided.

Person specific information	General information
<ul style="list-style-type: none"> <input type="checkbox"/> Role definition. <input type="checkbox"/> Accountabilities. <input type="checkbox"/> Key internal and external relationships. <input type="checkbox"/> Required skills, for example: <ul style="list-style-type: none"> <input type="checkbox"/> organisational leadership <input type="checkbox"/> understanding of effective governance <input type="checkbox"/> understanding of effective strategy. <input type="checkbox"/> Essential or desirable qualifications (academic, professional, etc). <input type="checkbox"/> Prior experience to be demonstrated. <input type="checkbox"/> Minimum meeting attendance required, including preparation for meetings <input type="checkbox"/> Involvement outside of formal meetings. <input type="checkbox"/> Personal integrity (e.g. avoidance or management of <u>conflicts of interest</u>). <input type="checkbox"/> Approach needed to contribute effectively to the entity's performance. <input type="checkbox"/> Likely level of fees. <p>Note: 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"> <input type="checkbox"/> General and specific legislative frameworks under which the board operates. Role and functions of the board. <input type="checkbox"/> Operating and sector context. <input type="checkbox"/> Key external relationships (e.g. minister, monitoring department, representative bodies, board chief executive and other staff). <input type="checkbox"/> Unique nature of being part of the Public Service; the obligations and responsibilities it entails. <input type="checkbox"/> Information on the board, including any sub-committee structures.

This information is important 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.

Assessing candidates

Information from candidates

Short-listing candidates

Interviews

Interests and conflicts

Te aromatawai kaitono | Assessing candidates

Information from candidates

Departments should make it clear to the candidate or nominee what information they need to provide, and why it's important for the information to be accurate, up to date, and complete.

Relevant information should be sought from all candidates and 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. This is covered in more detail in the [Interests and conflicts](#) section.

Short-listing candidates

When candidates are short-listed, there's 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 (see [Conflict of Interest](#) Model Standards).

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 board vacancy, ensuring a mix of gender. 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 public 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.

Interests and conflicts

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's 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. Public and political trust in the soundness of a board's decision making or advice may 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: A guide for the public sector](#). The Commission website provides Model Standards for [Conflicts of Interest](#) which outlines minimum expectations to support effective reporting and management of conflicts of interest.

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 or where privileged information gained through membership of the board could be used for personal gain. There are many aspects to be considered, including:

- what is 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 and checking of 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 those 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 combinations of skills and experience mean it's always possible that the question of interests will arise. This will tend to put a focus on identifying and managing interests, rather than necessarily disqualifying all those who have interests.

Declaring interests

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 those potential appointees:

- may be reluctant to disclose details of personal finances, or 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 (or not 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. There are examples which 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
- 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 or opportunity for personal gain.

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 [Direct financial benefit](#))
 - to sever the connection that causes the interest (e.g. relinquishing membership of an organisation)
 - to come to a mutual decision that the interest affects only a narrow part of the board's operations
 - to recuse themselves from information, conversations, and decisions that may be advantageous to their interest.

- 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 themselves of the interest, or the interest affects so many of the board’s activities that management mechanisms wouldn’t be practicable. Where this situation arises prior to appointment, it wouldn’t be possible to give the minister the necessary assurances about avoidance of conflicts, and it’s unlikely that an appointment would 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 or information they receive could be seen to benefit 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.

Keeping interests under review

It’s important for those undertaking appointments to remind candidates that interests are not a matter to be dealt with only at appointment. 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 interests, conflicts, and context can change. Interests held by a member’s family as well as the member personally may change over time, as will the issues with which a board or body deals with. 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 received information or 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.

Making judgements about an interest

The following situations, 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 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 likely to influence 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, nonfinancial interest in a matter before the agency may include:

- **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. However, overlapping directorships or similar interests could 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's 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's no set time period that 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.
- **The Office of the Auditor-General's Guidance** on managing conflicts of interest (3.21) notes that "Some cultures, including Māori culture, have a broad concept of family. In our view, a conflict of interest will not often arise where the connection is a common ancestor, such as another iwi or hapū member. Sometimes an iwi connection could create a conflict of interest in and of itself. For example, if the person is working for a public organisation on a Treaty settlement where they are likely to end up as a beneficiary, this might create a conflict of interest. In this situation, the interest is personal."

Checking background

Curriculum vitae

International perspective

Timeliness

Using private providers

Using the
background checking table

Application of the guidance

Te mātai i te takenga | Checking background

Board members are responsible for an entity's strategy and organisational performance. Their reputation is often on public display and, through their appointment, they are directly linked to the appointing minister.

Due diligence background checks (background checks) represent an investment in good appointment outcomes. They provide an opportunity to build a clearer picture of the candidate that informs the shortlisting and final appointment processes. Background checks also aim to ensure the integrity of appointments to public sector boards. They help ensure the suitability of appointment and to maintain high standards of integrity and honesty.

Comprehensive background checks on potential board appointees take time and effort, but are essential for all preferred candidates who haven't been previously vetted and may be needed for a reappointment. Checks may also be necessary to assist in the development of a shortlist or identifying a preferred candidate.

Timely completion of appointments is important, and planning an appointments process should commence early enough to build in robust background checks. Timing pressures such as a minister's need to appoint by a set date or at short notice can make completion of appropriate vetting difficult. When exceptional circumstances preclude a full and timely process, the department should document its approach including reasons for the expedited process.

Some ministers prefer to be involved in agreeing a shortlist, and this may further compress the time available to complete checks. Ideally, checks should be completed before interviewing shortlisted and preferred candidates so the interview panel can explore relevant issues that emerge from the checking process.

Note: completing checks before the interview stage may incur time and possibly monetary costs on checking candidates who may not proceed to interview or appointment. Departments will also need to consider which checks can be done at an administrative level, which could be contracted out (if any), and which need time investment by senior staff.

Curriculum vitae

Curriculum vitae documents should accurately represent a candidate's background. Teams supporting the appointments process will need to have systems in place to determine the likely number and extent of background checks.

Ministers wish to appoint and maintain high performing boards, and many well-known candidates make themselves available for appointment. These include directors of public companies or high-profile organisations, former or current chief executives and former Members of Parliament. Interviews and reference checks should explore their previous contribution to organisational success.

Where candidates are less experienced or relatively new to governance of public bodies, their record in previous roles should form part of assessing their suitability for appointment. This could include contribution to addressing challenges on non-profit boards. If candidates do not have significant governance experience their previous record in executive roles should be considered.

When checking former Members of Parliament and experienced public sector chairs or directors, take a 'trust but verify' approach.

Former Members of Parliament, and experienced or successful directors are often invited by ministers to chair or join boards, committees, panels etc. There's a risk that as 'known' candidates, they may not be fully checked or may be surprised at being asked to verify their experience.

In the corporate sector, more is now expected of directors in terms of disclosing past litigation and other adverse information. However, New Zealand law doesn't yet require company directors to disclose their involvement in relevant historical legal proceedings. At the same time, candidate data trails can now cross borders and languages, and have a social media presence.

Experienced directors should be familiar with scrutiny of their record. As a standard process, all candidates or nominees should be asked to sign a consent form granting access to important and relevant information.

International perspective

From time to time, candidates for significant positions may have an international dimension to their background. For these significant positions, most countries have their own sets of public records. It may be necessary to check records in every country in which the candidate has lived and worked. In such cases it will be important to ensure such appointments factor in the time required until these checks have been completed or an appointment is made subject to satisfactory completion of these background checks (see [Overseas candidates](#)).

Timeliness

In addition to the expectation of having a background check, candidates should have a reasonable expectation of a timely process. This can be assisted by the level of disclosure the candidate provides. For some candidates, however, checking may involve a high level of investigation.

Using private providers

Some departments may use private providers of background checking services to manage a high volume of appointments. Ensure the provider has clear instructions about what information it collects, and how it will store and process personal information in accordance with privacy principles. Overseas-based providers must also confirm that the service provided is subject to New Zealand law and to ensure that wording on their online forms can be adapted for candidates in this jurisdiction.

When advertising the vacancy, disclose the use of a private provider for background checks and its data protection arrangements. With the candidate's permission, some providers retain information on their own systems for future use. If candidates agree, this provides an opportunity for candidates to be considered for other government board positions.

Referee checks are usually undertaken by the department supporting or making the appointment.

Using the background checking table

The [background checking table](#) can be found as an annex at the end of this document. The table contains a range of criteria you can use to ensure the background checks are robust and thorough.

Departments have flexibility in the number of background check items they adopt for any given appointment. That decision is a matter of judgement depending on the public body's risk profile, the extent and currency of previously verified information, and the time and resources available to undertake background checks. However, an investment in robust checking is an investment in achieving a good appointment outcome.

Ensuring individuals move through a robust background checking process mitigates the risk of unexpected outcomes that could undermine the integrity of an appointment process. It provides assurance to the appointer and other stakeholders, and maintains public trust in your organisation and the public sector.

Application of the guidance

Departments must judge for themselves how much additional checking is needed on candidates.

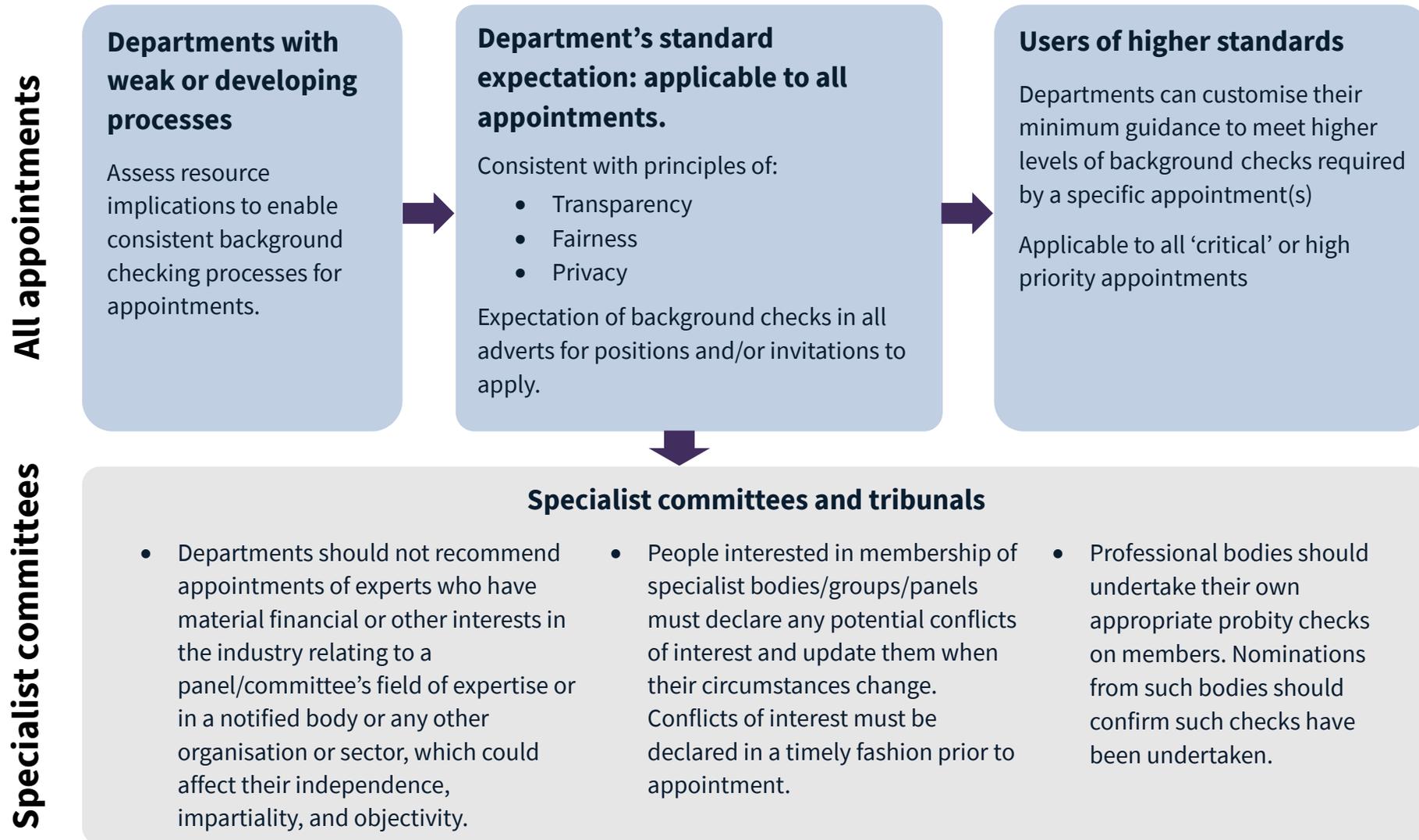
The **standard guidance** (see [the background checking table](#)) lays out a menu of items on what could be covered when undertaking comprehensive background checks on appointees to government boards, and other public bodies in which the Crown has an interest. This means all departments will need systems that ensure checks are accurate, timely and proportional to the nature and role of the board.

A **higher standard** of checking may be required by some departments for appointments to boards that deal with sensitive information or make significant strategic decisions of importance to New Zealand. In these cases, the department may customise background checking to a higher standard. This may include security clearance, closer scrutiny of financial interests or Police vetting.

A **specialist category** of appointment is applicable to specialist committees and tribunals such as those in the health and justice sectors.

These appointments are often made on recommendation from specialist bodies, members of which comprise the majority of appointees.

Figure 3: Specialist categories of appointment – guidance for the appointment of specialist expert bodies



Setting remuneration

Cabinet Fees Framework

Crown company
fees methodology

The Remuneration Authority

Disclosure of total value
of remuneration

Te whakatau i te utu | Setting remuneration

Fees for boards and other bodies are set using the Cabinet Fees Framework (the Framework), the Crown company fees methodology administered by the Treasury, the Remuneration Authority and other mechanisms (a table listing these is provided in the Summary section of [Cabinet Office circular CO \(19\) 1](#)).

Cabinet Fees Framework

The Commission provides advice and guidance to agencies on the interpretation and implementation of the Framework, on behalf of Cabinet.

Introduced in 1997, the Framework is issued as a Cabinet Office circular. For more information and the latest version of the Framework, see [Cabinet Fees Framework](#).

The Remuneration Authority

The role of the Remuneration Authority in setting remuneration is set out in the [Cabinet Office circular CO\(11\)7](#). Refer to the [Remuneration Authority](#) website for further information.

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. See [section 152\(1\)\(a\)](#) of the Crown Entities Act. Other legislation may contain similar provisions.

Privacy principles

Highlights from the Privacy Act 2020 Collect
information for a purpose

Collect information from the applicant

Transparency on collecting information Fair,
lawful and reasonable collection Storage and
security

Access and correction

Accuracy before use

Delete when no longer needed

Limits on use of personal information

Limits on disclosure of personal information

Disclosing personal information overseas

Unique identifiers

Te matatapu me ngā paerewa | Privacy principles

Candidate rights to privacy are important, and good privacy practice empowers board appointment considerations and research.

The Government Chief Privacy Officer function² advice can be used by agencies to help align their processes with the requirements of the Privacy Act 2020. This advice is not legal advice and agencies should consult their own solicitors or the Office of the Privacy Commissioner for legal advice.

Note that the Ministry of Justice maintains the [Criminal Record Check](#) service which is used by most government agencies and many private employers.

Good privacy practice empowers board appointment considerations and research. The following advice can be used by agencies to help align their processes with the requirements of the Privacy Act 2020.

This advice is from the Government Chief Privacy Officer function based in the Digital Public Service branch of the Department of Internal Affairs. This section also includes further advice and resources from the Government Chief Digital Officer and the Government Chief Information and Security Officer function leaders.

² The Government Chief Privacy Officer function is an all-of-government functional leader based in the Digital Public Service branch of the Department of Internal Affairs.

Highlights from the Privacy Act 2020

Collect only what you need, for a purpose, and directly from the applicant. If any personal information is collected not from the applicant or not from a publicly available source (e.g. reference checks) document this. Be transparent about what's being collected and what it's being used for. Consider proactively releasing personal information to applicants once the process has finished.

Information needs to be checked for accuracy and deleted according to agencies' document destruction schedules and the Public Records Act 2005.

Information should not be reused or shared with another agency without good reasons, and these should be thoroughly documented. These good reasons are listed in detail in Information [Privacy Principles](#) 10 and 11 ([section 22](#) of the Privacy Act 2020).

You should have authorisation from the applicant if you're going to share their personal information with a foreign person or entities if that foreign privacy environment does not have privacy similar safeguards as New Zealand does.

Collect information for a purpose

Personal information received from applicants should only be used for considering their appointment to a board. Personal information received during this process should not be reused without the applicant's permission. If the purpose is to consider the applicant for multiple boards, this should be made clear when collecting the applicant's information.

Collect, store and use only what you need. At the end of the appointment process, delete any information provided to you proactively by the applicant that is not required at the beginning of the process.

Collect information from the applicant

Information needed for appointment consideration should be collected from the applicant directly.

If further information about the applicant is needed, a clear decision should be recorded in agency notes attached to the appointment process about why more personal information needs to be collected about the individual from a third party or another source.

You can obtain and record information in the public domain without informing the applicant, such as copies of their social media profiles or news articles, within good reason related to the appointment process.

The Department of Internal Affairs has published the [Identification Management Standards](#) that provides assurance that an organisation has the right information about the right entities, helping minimise the risk of identity fraud and loss of privacy.

Transparency on collecting information

When collecting personal information, agencies should be transparent why personal information is being collected and who will be receiving it. An example can be why an agency needs to collect education qualifications to consider the applicant for a board position.

Information Privacy Principle 3 contains a list of requirements agencies must do when collecting personal information. This includes being transparent about the intended recipients who will receive the information collected, the purpose for collection, and if the information collection is authorised or required by or under law.

Fair, lawful and reasonable collection

When collecting personal information agencies should do so by lawful means, and in a way that's fair and doesn't unreasonably intrude on the applicant's personal affairs.

All Public Service and non-Public Service agencies must meet the New Zealand [Government Web Accessibility Standard 1.1](#) and the [Government Web Usability Standard 1.3](#), which can help those with accessibility issues to have a fair method of providing personal information to agencies.

Storage and security

Reasonable security safeguards should be in place to prevent loss, unauthorised access, use, modification or disclosure, and other potential misuse of the personal information collected.

Appropriate security safeguards should be applied to both physical paper files and files saved digitally in an electronic content management system with appropriate classifications and security restrictions so that only relevant staff can view the information.

Further guidance on information security and classification can be found at [Protective Security Requirements](#).

Access and correction

An individual may at any time request confirmation if the agency holds personal information about them, and request access to their personal information. An individual can also request an agency to correct their personal information.

Agencies should be clear how applicants can access both the personal information they provided for the appointment process and information the agency received following required checks and cross-referencing. Demand for these requests may occur from unsuccessful applicants who will want to know more about why they were not successfully appointed. You may wish to provide a direct link to your agency's privacy statement available on your agency's website, which will include contact details for the agency's privacy officer.

Agencies should consider proactively releasing information to applicants when the appointment process has finished; see the note about [Delete when no longer needed](#) below.

Accuracy before use

While most personal information received by an agency will be accurate, agencies will need to decide how valid certain personal information is for appointing an applicant to a board. For example, agencies should record their decision on why a reference letter that's several years old may be accepted or not accepted.

Consideration should be given for open-source material collected during the appointment process. Social media posts that are several years old may not accurately reflect the individual as they are today. Reporting in overseas media about the individual, especially in countries where press freedom is strictly limited, may be unfairly biased and inaccurate.

Delete when no longer needed

Information collected should be deleted when no longer required. This includes personal information of unsuccessful applicants. The Public Records Act 2005 has requirements on how long information should be kept by Public Service agencies.

Agencies should consult their document destruction schedule for guidance on how long to keep personal information. Archives New Zealand can provide further information and guidance.

It's an offence under the new Privacy Act 2020 ([section 212](#)) to destroy information when an agency knows that a request for that information has been made. Agencies may consider proactively providing personal information to successful and unsuccessful applicants to minimise the risk of deleting information that may be requested by an applicant.

Limits on use of personal information

Personal information submitted by applicants for a position should only be used for that purpose. There are several exceptions listed in Information Privacy [Principle 10](#). Officials in agencies should consult their privacy officer for advice on appropriate reuse of personal information.

Limits on disclosure of personal information

Agencies should not disclose personal information to another person or agency unless the agency believes on reasonable grounds that one of the reasons in Information Privacy [Principle 11](#) applies. As above, officials should consult with the privacy officer for advice about sharing information with another person or agency.

It's important that applicants are aware that their information may be shared with another agency for a set purpose so that they're informed and aware when they provide authorisation; an agency can share information with another person or agency if the applicant authorises it.

If an agency receives information from an applicant that is demonstrably false, and that agency knows that the individual has supplied the same false information to another agency, the first agency can consider sharing the evidence that the information supplied is false. The agency must consider this with their privacy officer before sharing.

Disclosing personal information overseas

This affects *Limits on disclosure of personal information* above only.

If an agency needs to share information with a foreign person or entity such as a previous employer, education institute, or government function, the agency must be confident that the applicant's personal information will be treated in a way that is similar to New Zealand's privacy safeguards in the Privacy Act 2020.

When an agency begins to check with a foreign person or entity about an applicant's personal details, and the agency doesn't believe that foreign country has comparable privacy safeguards to New Zealand, the applicant should be informed by the agency that they'll be checking with those specific foreign people or entities, and that those foreign people or entities may not be required to hold their personal information with privacy safeguards comparable to New Zealand.

The above is not required if the foreign person or entity:

- does business in New Zealand
- is subject to privacy laws in that country in which, similar to the Privacy Act 2020, the foreign person or entity is required to protect the information (for instance an agency may set up appropriate clauses in a contract)
- is in a prescribed binding scheme or country.

Information Privacy [Principle 12](#) covers this in more detail.

Officials should consult with their privacy officer if they're not confident a foreign person or entity is not subject to privacy laws comparable to the Privacy Act 2020, and should record their decision making. Further guidance on sharing information with foreign people and entities, including a decision-tree, is available from the [Office of the Privacy Commissioner](#).

Unique identifiers

Unique identifiers are only to be used if it's necessary to do one or more functions efficiently. Agencies should strongly consider if it's necessary to assign unique identifiers to individuals for the purpose of board appointments. Information Privacy [Principle 13](#) covers more information about unique identifiers and their use.

Appointing candidates

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Appointment of Crown entity chairs and deputy chairs

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

Terms of office

Appointment for subsequent terms

Continuation in office

Removal from office

Responsibility for removal

Powers and notification of removal

Te kopou kaitono | Appointing candidates

The role of ministers, 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 to achieve its objectives and perform its functions. Once a minister has selected the candidate they consider 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). Departments need to take account of the APH timetable when preparing appointment submissions. The Cabinet committee timetable is available to government agencies from [CabNet](#).

The Prime Minister should be consulted in the case of major appointments before they're 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're not sure.

Discussion with the government caucus

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

Cabinet submissions

Papers for APH should receive the same level of scrutiny from departmental senior managers as other papers for Cabinet committees. Information on the Cabinet process for appointments can be found in the [Appointments Process Workflow](#) from the Cabinet Office at the Department of the Prime Minister and Cabinet.

Content of Cabinet submissions

Submissions must meet the requirements set out in the [CabGuide](#).

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 it 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 board
- minister's certification concerning conflicts of interest
- any other matters affecting the suitability of the proposed appointee, for instance whether it's a second or subsequent term, and the reasons why reappointment is justified
- fees payable – what fee 'category' the board fits into and whether the proposed fee is within the Cabinet Fees Framework parameters
- an account of the consultation undertaken
- confirmation that full consideration has been given to 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 (see [Candidate CV form](#)) for each proposed appointee, and a form listing current membership details (i.e. before the appointments proposed in the paper take effect)
- the [Organisation form](#).

Current versions of the forms can be found on the CabGuide website. See also [Cabinet appointment paper template](#).

Formal consent to being appointed

Section 31 of the Crown Entities Act provides that, “before a person is appointed as a member of a statutory entity, the person must—

- (a) consent in writing to being a member; and
- (b) certify that they are not disqualified from being a member; and
- (c) disclose to the responsible minister the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the statutory entity.”

The board of the entity must notify the responsible minister of a failure to comply with © above as soon as practicable after becoming aware of the failure.

Formal consent should also be obtained for other types of appointments (e.g. tribunals, committees, and advisory groups). At what stage this occurs during the appointment process will depend on factors such as legislative requirements or other approved appointment procedures.

Declaration of 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 and conflicts](#))
- either that no conflicts of interest have been identified, or how it’s proposed to deal with an identified conflict.

If full information concerning conflicts of interest hasn’t been received from the proposed appointee in time, 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 during those checks that raise questions about the suitability of the appointment.

Making recommendations

The recommendation must reflect the relevant statutory provision:

“The Minister of [aa] recommends that the committee note their 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 their ministerial colleagues, a responsible minister may suggest a ‘new’ candidate at the end of the process or ask for alternatives to any names put forward.

Unsuccessful candidates

It’s the role of the agency responsible for managing the appointments process to advise unsuccessful candidates of the outcome of their nomination. 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. The provision of feedback, if any, to unsuccessful shortlisted and interviewed candidates should be discussed with the minister’s office. The minister is the final decision maker in other words, the appointment is the minister’s preference.

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

Avenues for review

Board appointments can be subject to judicial review proceedings, civil actions and scrutiny by Parliament or the 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. [Section 34](#) and [section 35](#) of the Crown Entities Act states that appointments and acts stand as valid, even if there have been defects in appointments, unless there is a defect in the quali.

Confirmation of the appointment

Once the minister's intention to make an appointment has been noted by APH and Cabinet and (where appropriate) 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 [section 28](#) 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. 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 some others only need a detailed appointment letter. This will depend on what the documents relating to the appointment require.

Letters of appointment

The contents of the draft letter of appointment must comply with the requirements set out in the CabGuide (see [The appointments process](#)). 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's 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's 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 body to which the person has been appointed.

New board members should be given additional material through the induction process (see [Inducting appointees](#)). In the case of officers listed on [Schedule 4](#) of the Remuneration Authority Act 1977, whose remuneration is determined by the Remuneration Authority, see [Independent officers and boards](#).

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). Any appointees and unsuccessful applicants should be advised personally before any public announcements are made.

Publishing 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've been confirmed. The Crown Entities Act doesn't require each notice of appointment to be published individually; when a number of appointments are made to a board at the same time, they may be grouped together in one notice.

Generally, the wording in the appointment notice is to be the same as the Gazette notice, but the Gazette Office can apply its own editorial standards to a notice where they consider it appropriate to do so. The responsible department will be advised of any resulting amendments to the notice.

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*. See [How to submit](#) for information about submitting material for the Gazette.

Governor-General: Three types of appointment

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

1. **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
- a covering note with information about the position and the proposed appointee
- a brief description of the role or function of the board
- any other relevant background information.

2. **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 (e.g. a warrant), and a Candidate 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.

3. **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 so that they may be seen as far as possible to be bipartisan. These include Officers of Parliament (e.g. the Ombudsman) and a small number of other appointments (e.g. the Independent Police Conduct Authority). This is desirable given the 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 Crown entity chairs and deputy chairs

Appointments are made by the responsible minister or, in the case of independent Crown entities, the Governor-General. Only a member of a Crown entity board can be appointed as a chair or deputy chair. New chairs and new deputy chairs appointed from outside the current board are also appointed as board members.

Under of the Crown Entities Act, the chair and deputy chair each hold office until:

- they resign from being chair or deputy chair, or
- they're removed from that office by the responsible minister or Governor-General, or
- they cease to be a member of the board, or
- the term of office that may have been specified on appointment expires, unless the member continues to hold office as provided for under [section 32](#) of the Crown Entities Act (see section on [Continuation in office](#)) or is reappointed for a further term.

Although section 32 of the Crown Entities Act provides that the chair can stay on as chair even though their term has expired, it remains desirable to appoint or reappoint a chair or deputy before the term of the incumbent expires.

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 (who can exercise all the functions and powers of the chair) from the current membership, when the following circumstances have occurred:

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

The board should satisfy itself that the person has the skills necessary to lead the board.

Based on the 'no surprises relationship' between the board and the minister's ownership role in the entity, the board should apprise the minister of the situation if the conflict is ongoing, not just for an agenda item. The suggested candidate's conflicts should also be reassessed prior to appointment.

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) the monitoring department 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 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 APH.

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 dependent on the legislation or other governance instrument.

Under the Crown Entities Act, the term of office for board members of 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

Board members should not be given any expectation that they'll 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's 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

need, relevant government policy settings and a member's performance may have changed since their term began.

If a further term is being recommended, departments don't 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 their term of office until:

- the member is 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, often referred to as the ‘roll-over provision’ should generally be a short-term measure and not used to bypass the term of office as prescribed in legislation. However, a range of reasons can extend the time taken to make an appointment. For example, an appointment may expire within the ‘period of restraint’ leading up to a general election. In this situation, there may be further delay to making an appointment – the time taken to establish a Government, followed by a new minister taking a portfolio and wishing to take time to establish priorities.

Should a significant delay be expected, the minister should ensure the member is willing to remain in the role until such time as the minister makes a decision.

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 their services, worded according to the circumstances.

Removal from office

Generally, the person with authority to appoint a board member also has the power of removal, which includes the ability to:

- remove or suspend a person from office
- reappoint or reinstate a person to the office
- appoint 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 (see section 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 (see section 58 of the Crown Entities Act). 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 hasn’t acted in accordance with the duties of an individual board member.

Responsibility for removal

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. section 5 and section 27 of the New Zealand Bill of Rights Act 1990) and a proper consideration of the matter irrespective of the type of entity (section 41 of the Crown Entities Act).

Powers and notification of removal

The table below summarises the differences in Ministerial powers for the three types of statutory Crown entities.³

	Crown agent	Autonomous Crown entity	Independent Crown entity
Power to remove appointed members of boards	At minister's discretion	Minister, for justifiable reason	Governor-General, for "just cause" on minister's advice after consultation with the Attorney-General
Power to remove elected board members	By minister, for "just cause"	By minister, for "just cause"	Not applicable
Notification of removal to appointed members	Written notice stating the date of the removal (with a copy sent to the entity)	Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)	Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)
Notification of removal to elected members	Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)	Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)	Not applicable

"Just cause" is defined in [section 40](#) of the Crown Entities Act. The definition includes (but is not limited to) misconduct and breach of board members duties. It's a demanding and objective requirement; officials should be 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 [schedule 3 clause 8](#) of the New Zealand Public Health and Disability Act 2000 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, 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.

³ The table is based on sections 103, 104, 105 and 107 of the Crown Entities Act. The table expresses the most general provisions of the Act; variations may be provided for expressly in a particular entity's establishment legislation.

Inducting appointees

What induction should aim to achieve

Responsibility for induction and training

Induction of chairs

Creating an effective
induction programme

Induction resources

Supporting board performance

Governance manuals for
Crown entity boards

Other information resources

Te whakauru kaitono | Inducting 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.

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 elements and demands of public sector governance, and of the key relationships that will impact on the successful performance of their role.

Responsibility for induction and training

Ministers

Ministers are responsible for ensuring that new board members have an 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, in consultation with the board.

Ministers are likely to want to take a more active role in working with newly appointed board chairs, to ensure they're 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 board's operating environment. Depending on what's already 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. [schedule 3 section 5](#) of 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.

Induction of chairs

Board chairs have more responsibilities than members and special attention should be paid to these in a chair's induction process.

The chair should be introduced to:

- key ministerial office staff
- key monitoring department staff
- chairs of other relevant sector agencies.

The chair's induction should also cover the key expectations for engagement and relationship management with the minister and the monitoring department.

Creating an effective induction programme

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 government context, and 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 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 need for board members to recognise that they shouldn't let advocacy of particular interests override or undermine their governance responsibilities or duties as 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.

An effective induction programme will include:

- a meeting with the minister at their 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 served, the wider implications of operating within the government sector, and the nature and key points of the key documents such as the Crown Entities Act, Public Service Act, any specific enabling legislation, and other documents (if any) such as an Output Agreement, Memorandum of Understanding, the Statement of Intent, or Deed 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 (see [Officials and Select Committees – Guidelines](#)).
- 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 appointments process](#).

Induction resources

The Commission has developed a package of induction material. The primary audience for the material is new board members of statutory Crown entities, but it may also be helpful for existing board members and other types of public bodies. Entities and monitoring departments are encouraged to make free use of the material in full or in part to supplement their current induction programmes: [Induction Material for Crown Entity Board Members](#).

Supporting board performance

All board members should receive ongoing support and information so they can develop their understanding of the total environment within which they work.

Departments should use opportunities that arise through their engagement (and their minister's engagement) with entities to identify areas where assistance can be provided to support boards. An effective board will usually have a diverse membership with a relevant mix of experience and skills, so there will always be some areas where support is sought to lift performance. A common request is for support with

understanding the financial information that the board receives (or should receive). Often, boards will take action themselves, but there may be economies of scale in addressing some issues collectively and a department can help to facilitate this.

Governance manuals for Crown entity boards

Every statutory Crown entity is expected to have a board governance manual tailored for the entity and that reflects good practice standards. The Commission has developed a resource (link provided below) to guide the preparation of such manuals, recognising that the fundamentals of good governance are common to all entities, despite their widely differing roles and relationships.

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.

See the [Resource for Preparation of Governance Manuals – Guidance for Statutory Crown Entities \(excluding DHBs and Corporations Sole\)](#).

Other information resources

- The [CabGuide](#)
- [Cabinet Office Circulars](#)
- The [Te Kawa Mataaho Public Service Commission's](#) website
 - Statutory Crown entities – Guide for Ministers
 - Statutory Crown entities – Guide for departments
 - Guidance for Crown entities
 - Code of Conduct for Crown Entity Board Members
 - Model Standards for Conflicts of Interest
- The Treasury publishes an Owner's Expectations Manual which sets out expectations for the Crown companies and entities for which the Treasury provides performance advice to ministers. It includes expectations on governance, performance, and reporting and accountability. [Owner's Expectations: Expectations for Crown companies and entities monitored by the Treasury – July 2020](#)
- The Ministry for Culture and Heritage's online sector-specific e-manual promotes good governance. The e-manual highlights key governance principles and illustrates how these apply to agencies monitored by Ministry. Each topic is augmented by appropriate website links and appendices. See the [Governance e-manual](#) from the Ministry for Culture and Heritage.
- The Tertiary Education Commission provides a number of resources to support Tertiary Education Institution Councils including governance support [Resources for TEI councils](#) from the Tertiary Education Commission.

Departments should regularly check the relevant websites to ensure they're using the latest versions of any reference or supporting material.

Legislative background

Legislative framework relating to
Crown entity appointments

The Crown Entities Act 2004

Board members' collective
and individual duties

Appointing a chief executive

An entity's establishing legislation

New Zealand Public Health
and Disability Act 2000

The Public Service Act 2020

Interdepartmental forum (MAGNet)

Te horopaki ā-ture | Legislative background

Legislative framework relating to Crown entity appointments

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

Crown entities are legal entities, 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 (the Act) provides a consistent framework for the establishment, governance, and operation of Crown entities. The Act specifically covers board appointments in part 2 and [schedule 5](#). 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 legislation expressly modifies or negates the provisions of the Crown Entities Act.

Crown entities are classified into one of five categories:

- statutory entities
- 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 (see [section 103](#) of the 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 ([section 104](#)). Appointments to their boards are made by the responsible minister.
- Independent Crown entities (ICEs), which generally are independent of government policy ([section 105](#)). Appointments to their boards are made by the Governor-General, on the recommendation of the responsible minister.

Board members' collective and individual duties

The collective duties of statutory Crown entity boards are specified in [sections 49 to 52](#) of the Crown Entities Act. The collective duties of a Crown entity are the board's public duties, which reflect that the board and entity are part of the wider public sector. The collective duties are owed to the responsible minister.

The duties are to ensure that the entity:

- acts in a manner consistent with its objectives, functions, current statement of intent, and current statement of performance expectations
- performs its functions efficiently and effectively, consistently with the spirit of service to the public, and in collaboration with other public entities, where practicable
- operates in a financially responsible manner, ensuring its long-term financial viability, and that it acts as a successful going concern
- complies with the Crown Entities Act requirements relating to its subsidiaries and other interests.

The individual duties of statutory entity board members are also specified by the Crown Entities Act [sections 53 to 57](#). 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
- exercise the 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
- avoid disclosing information, except in accordance with the entity's functions as permitted or required by law.

Appointing a chief executive

The establishing legislation of most Crown entities don't specifically state whether a chief executive should be appointed, because such entities have the power under the Crown Entities Act to employ staff, including a chief executive. An entity'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 the consent of te Tumu Whakarae mō Public Service Commissioner (Commissioner) as specified in [section 117](#). Any Crown entity that employs a chief executive must obtain the Commissioner's consent before agreeing to any terms of employment for the chief executive. District Health Boards must also obtain the consent of the Commissioner to their chief executives' terms and conditions (see [schedule 3 section 44](#) of the New Zealand Public Health and Disability Act 2000).

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 each Crown entity for which they have appointment and monitoring responsibilities. For example, establishing legislation may provide for the appointment of a chair 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 establishes District Health Boards, which are all Crown agents, and a number of other Crown entities. 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.

The Public Service Act 2020

Under the Public Service Act, the Commissioner acts as the Head of Service by providing leadership of the Public Service which includes Crown agents for some purposes. Under the Public Service Act, Crown agents are bound by the same purpose, principles and values as Public Service departments and agencies. Crown agent boards are responsible for ensuring the entities they govern uphold the Public Service principles. The Commissioner's mandate applies to Crown entities in a number of ways, including to:

- review the design and operation of the system of government agencies to advise the minister or the appropriate minister on the following matters:
 - possible improvements to delivery of services and inter-agency cohesion
 - agency establishments, disestablishments, and amalgamations
 - the governance and allocation of functions, and the transfer of functions to and between agencies.

- prepare a draft government workforce policy that, if approved by the Minister for the Public Service, may apply as a Government Workforce Policy Statement to all Crown entities
- promote integrity, accountability and transparency in the public sector including by setting standards and issuing guidance and conducting related inspections and investigations. Standards can apply to all Crown entities, not just Crown agents. For more information, see [Understanding the code of conduct](#).

However, the Public Service 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.

Also see [schedule 1](#) of the Crown Entities Act.

Interdepartmental forum (MAGNet)

An inter-departmental forum (Monitoring, Appointments & Governance Network – MAGNet) is open to officials whose work involves:

- monitoring the performance of Crown entities
- providing nomination services for membership of government boards
- advising on appointments to government boards
- 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's supported by sub-groups that address monitoring, and appointments and governance issues.

The background checking table

This table contains a range of criteria that can help you perform robust background checks when appointing new members to Crown entity and government boards. For more information, see page 24 of the Board Appointments and Induction Guidelines. Note that not all appointments will require all criteria to be checked. The checkboxes are editable, and this form can be used as a checklist both electronically and as a printed product.

Recommended item	Location of information	Comment	Checked
Identity check	Department of Internal Affairs – Evidence of Identity Standard .	For many reasons, as well as their legal name, people may have other names they use (aliases) or were known by previously. It's useful to prompt candidates to include those on their disclosure form.	<input type="checkbox"/>
Criminal record check	File printout of third-party criminal conviction history including nil return available at Criminal record check .		<input type="checkbox"/>
Disqualified or banned directors on the Companies register	Disqualified director search at Banned directors .		<input type="checkbox"/>
Internet search: Google, Bing, Fuseworks etc Review any media issues including social media, Facebook, LinkedIn etc	Relevant networking websites include but are not limited to: <ul style="list-style-type: none">• LinkedIn• Facebook• Twitter Note that information from these sources may not be reliable and may require verification.	Note that different search engines may generate varied results. If an issue emerges from an internet search, it's important any matters of fact are verified with the candidate and any other relevant party. Judgement is needed to assess whether such findings raise genuine concerns about a potential appointee.	<input type="checkbox"/>
Verification of education qualifications	Candidate may supply or is previously verified and on file. University of Otago official academic documents can be checked at Verification of Qualifications .	Candidates may have certified copies of their qualifications.	<input type="checkbox"/>

Recommended item	Location of information	Comment	Checked
	<p>University of Auckland – Graduate database.</p> <p>Victoria University of Wellington – Roll of graduates.</p> <p>Canterbury University – Graduate search.</p> <p>AUT – Check a graduate’s qualification.</p> <p>Massey University graduate database search.</p> <p>Lincoln University – contact the Graduation Office graduation@lincoln.ac.nz.</p> <p>University of Waikato – Applying for an academic record or completion letter.</p>	<p>Verification of post-secondary enrolment and graduation for most public and private United States institutions – Online Student Verification Services.</p> <p>Degree verification from UK universities can be obtained via a centralised system to connect employers, agencies, universities, embassies, and councils – Higher Education Degree Datacheck.</p> <p>Note that verification often attracts a charge.</p>	
Verification of governance history	<p>Search the Companies Office’s Business Registries data services.</p>		<input type="checkbox"/>
Referee check	<p>Candidates are asked to confirm referees and supply permission to undertake necessary checks outside what is in the public domain.</p> <p>If the candidate has been or is a member of public sector board, the views of either chairs of those boards and/or the monitoring department should be sought.</p> <p>Referee checks should ask about the candidate’s contribution to organisational success.</p>	<p>Focus on performance in governance roles including the views of former or current chairs. Important areas to investigate include ethics integrity and conduct.</p>	<input type="checkbox"/>
Conflicts of interest	<p>See the Public Service Commission’s Conflict of Interest model standards.</p> <p>Checking and declaration of conflicts is a specific requirement of the Crown Entities Act s.31.</p> <p>The Office of the Auditor-General provides further Conflicts of interest guidance.</p>		<input type="checkbox"/>

Recommended item	Location of information	Comment	Checked
Credit checks	Candidate self-check credit information available at Check your own credit record .	May be necessary where the appointee or has significant direct influence over financial decision making.	<input type="checkbox"/>
Professional qualifications / memberships	Candidate may supply or is previously verified and on file.	This will be applicable to specialist panels, committees and bodies whose members are nominated by professional bodies.	<input type="checkbox"/>
Driving records		May be limited to appointments that may require driving or the board function relates to road safety, transport or similar.	<input type="checkbox"/>
Current or past legal proceedings		Note that no action should be taken regarding current proceedings until these are over.	<input type="checkbox"/>
Military service records if claimed	Search Military history, records and medals . Enquiries about living service people require authorisation here .	Necessary only if material to the role or credibility of the candidate.	<input type="checkbox"/>
Verification of prior employment	Where relevant to the role, candidate supplies certificate of service or is previously verified and on file.	Where relevant to the role.	<input type="checkbox"/>
Disclosure of changes in personal circumstances	At least annually, board chairs should ask board members to attest that nothing has changed in their personal circumstances which might affect their membership of a board. Identifying, assessing and managing conflicts of interest is an ongoing responsibility of the chair and board members.	Essential for all appointees. This process should also be applied when members are reappointed.	<input type="checkbox"/>