



Occasional Paper No. 19

Crown Entities: Review of Board Appointment and Induction Processes



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Crown Entities: Review of Board Appointment and Induction Processes

Summary

This paper forms part of the background work undertaken by the State Services Commission (SSC) on Crown entities during the 1998/99 financial year. It reports the findings of a review of the appointment and induction process used for Crown entity board members. Major conclusions were:

- the basic legal requirements (such as they are) for Crown entity appointments seem to be complied with, although there are still questions around timing;
- there is significant variation in the formality and quality of the processes used for appointments (with the exception of Crown companies);
- there is frequently a lack of clarity around the precise nature of the role the Minister, the Minister's office and the Minister's department is to play, if any;
- conflicts of interest are not consistently well dealt with; and
- induction does not consistently comply with Cabinet's expectations.

The paper goes on to discuss the various options for addressing the above conclusions, that range from retention of the status quo (as at the time when written) to employing a more centralised appointment process.

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Introduction

This paper reports on the findings of a review of the present board appointment processes employed by the Crown, undertaken as part of a joint State Services Commission (SSC) and Treasury project on the governance and accountability of Crown entities. The review was based on a series of structured interviews with 12 departments (including Crown Company Monitoring Advisory Unit (CCMAU)) which have Ministers who are responsible for appointments to Crown entities. This encompassed 20 portfolios, and most major Crown entities. The findings are largely generalisable to other Crown appointments. It was undertaken because the board, and hence board appointments, are central to the governance and accountability arrangements of Crown entities. In addition there have been some concerns expressed over the effectiveness of the current arrangements, notably by the Audit Office which found that, in general, the Crown did not manage appointment processes effectively.¹

Typically, the Crown appoints the governing body of a Crown entity. The governing body is usually a board (or board like structure). Crown appointments are made by Ministers or by the Governor-General on the advice of Ministers. These appointments are very important both because the quality of the board is of crucial importance to the performance of the entity, and because they provide Ministers with considerable influence over Crown entities. Both these considerations indicate that it is in the Crown's interest that high quality appointments are made to boards, and that the board members are clear about the nature of their role.

The paper falls into three major sections:

- an introduction to Crown entity board appointment and induction;
- the findings from the study; and
- options for addressing the issues raised by the findings.

Crown entity board member appointment and induction

Crown entities are established outside the legal Crown, generally by statute. They are legal persons in their own right. The governing body for most Crown entities is a board appointed by the Responsible Minister, or by the Governor-General on the advice of Ministers. The board appoints the chief executive where there is one.²

¹ See: *Report of the Controller and Auditor-General on Governance Issues*, November 1996.

² Some boards are not appointed by the Crown (e.g. schools). There are a small number of corporations sole, headed by an individual. Some boards mix governance and operational functions, including the role of chief executive (e.g. Human Rights Commission).

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Many Crown entity boards are broadly modelled on those of large private sector firms. A typical description of the role of a private sector board would include the following sorts of elements:

- setting strategic direction and developing policy;
- appointing the chief executive;
- monitoring performance; and
- ensuring compliance with the law, and the firm's constitution and policies.

This role definition would be broadly applicable to many Crown entity boards, particularly medium to large entities where the board concerns itself with governing the entity in accordance with the framework of its legislation and accountability documents [e.g. ACC or Housing NZ Ltd (HNZ Ltd)], although there are a number of significant differences between the private and public sectors, notably:

- the role of the Responsible Minister is not the same as that of an ordinary shareholder, even for Crown entities which are companies. Depending on the nature of the institutional and legislative arrangements, the Minister has the potential to exercise considerably more influence than a shareholder would over a company (other, perhaps, than a parent over a subsidiary). The Minister is responsible for matters which in the private sector would tend to fall to the board, such as the process for appointing board members and the chair, succession planning, and the induction of board members. The power of dismissal may also provide Ministers with significant influence;
- smaller Crown entities, particularly regulatory bodies like the Human Rights Commission, the board will also be involved in directly conducting the business of the organisation;
- Crown entities usually have purposes and powers imposed by specific legislation;
- it is unusual for public boards to have executive directors;
- Crown entities often have multiple objectives; financial objectives, while important, are often secondary to policy objectives; and
- Crown entities also operate under different forms of accountability to private sector companies. Crown entities are accountable to the Minister, to Parliament, and more broadly to the public. Almost all Crown entities are covered by the Official Information Act 1982.

The role of the board is crucial to the overall performance of an organisation in both the public and the private sectors. Concern over this issue in the private sector has led to the establishment of a number of review committees and the promulgation of various codes of practice.³ The literature on private sector firms strongly emphasises the importance of a high quality board and a high quality chair, and the care that must be taken in the selection of board members. This literature emphasises the need for a carefully planned, transparent process for selecting directors, and selection criteria based on the skills needed by a director, and designed to achieve a balanced board in terms of executive and non executive directors, different skills and expertise, and different perspectives. For example:

- “Companies operating in the current competitive environment require boards with highly qualified and focused directors. Therefore the selection of directors should be a carefully planned process. A directorship is no longer a figurehead position in a company, rather it is an active and dynamic role. Directors should be selected on the skills and experience that they can bring to the board”.⁴

Formal requirements for Crown entity appointments

Legislative

Almost all Crown entities are established by statute which covers the appointment of the board.⁵ The legislation often simply names the person who makes the appointments (typically the Governor-General or a Minister), but may include some limited requirements as to the type of person to be appointed or the process to be employed.

The Commerce Commission illustrates both. No person is to be recommended for appointment unless “in the opinion of the Minister, that person is qualified for appointment, having regard to the functions and powers of the Commission, by virtue of that person’s knowledge of or experience in industry, commerce, economics, law, accountancy, public administration or consumer affairs” (Commerce Act 1986, s9[4]). At least one member must be a lawyer. These are person requirements. The Attorney-General must be consulted before a lawyer is appointed - a process requirement. Any such requirement is usually very limited - it does not amount to a person specification or an appointment process.

³ For example: - New Zealand Institute of Directors, *Code of Proper Practice for Directors*, 1997. Cadbury Committee, *Report of the Committee on the Financial Aspects of Corporate Governance*, 1992. Cadbury Committee, *Report of the Committee on the Financial Aspects of Corporate Governance: The Code of Best Practice*, 1992. Fredrick G. Hilmer (Chair), *Strictly Boardroom: Improving Governance to Enhance Company Performance*, 1993.

⁴ Deloitte Touche Tohmatsu, *Directors’ Duties and Corporate Governance*, [nd], p9.

⁵ There are a handful of exceptions to this.

Cabinet requirements

Cabinet has established some expectations as to how Crown appointments will be dealt with, in addition to any statutory requirements. These are in three Cabinet Office Circulars:

- Appointments to State Agencies: Guidelines for the Preparation of Papers for the Cabinet Appointments and Honours Committee and Cabinet, CO (97) 9⁶. This is the main circular dealing with appointments. As the title suggests this circular is actually about the requirements for a paper to APH, rather than about running an appointment process per se, although it includes much that is implicit about how a process should be run;
- *Guidance for Members of Statutory, Commercial and Other Bodies Appointed by the Crown*, CO (97) 10⁷. This deals with important matters in addition to guidance material, such as the information departments are required to keep about organisations and appointments; and
- *Classification and Remuneration of Statutory, Commercial and Other Bodies Appointed by the Crown*, CO (97) 8⁸, which covers fees and allowances.

The Cabinet Office circulars impose collective requirements on Ministers - the requirement to consult their colleagues on appointments [by taking them to the Cabinet Strategy Subcommittee on Appointments and Honours (APH)], to provide their colleagues with certain information on appointments, to ensure that members of governing bodies are provided with certain basic information when they are appointed, and to set their fees in relation to a process agreed by Cabinet. There are certain other themes running through these circulars as well, notably dealing with conflicts of interest appropriately. The circulars are consolidated in a folder issued by the SSC entitled *Administration of Statutory Bodies and Other Committees*⁹, which also includes papers on conflicts of interest and the place of statutory boards in the wider system of government.

Ministers are responsible for the appointments. The legislation relating to Crown entities rarely gives any role to departments, although there are examples of public servants being ex officio members of boards (e.g. the Secretary of Foreign Affairs and Trade is ex officio a member of the board of Trade NZ).

The Cabinet Office circulars, on the other hand, operate on the assumption that departments or another ministerial adviser (like CCMAU) will have a major role in assisting with appointments. The circulars do not, however, contain a clear statement of a role for a department and only ascribe a limited number of explicit responsibilities to departments.

⁶ Superseded by CO (99) 10, *Government Appointments: Guidance for preparing papers for the Cabinet Strategy Subcommittee on Appointments and Honours and Cabinet, and Consultation Requirements*, from 24 August 1999.

⁷ Superseded by CO (99) 12, *Guidance for Members of Statutory, Commercial and Other Bodies Appointed by the Crown*, from 24 August 1999.

⁸ Superseded by CO (99) 11, *Classification and Remuneration of Statutory and Other Bodies Appointed by the Crown*, from August 24 1999.

⁹ Superseded by *Board Appointment and Induction Guidelines*, issued by the State Services Commission, August 30 1999.

Induction

Induction is an important corollary to the appointment process. It involves providing new board members with key information which will allow them to do their job effectively - the nature of their roles and duties, the organisation they have been appointed to, and its place in the wider system of government. It also provides an opportunity for the Minister to convey any expectations that he or she has, where this is appropriate. Induction is particularly important as individuals appointed by the Crown range from experienced directors (who may nonetheless be unfamiliar with working in the public sector) to first-time board members with little experience of boards or the public sector.

Induction is not simply a matter of Ministers or departments providing new board members with information. The board itself, and the chair in particular, have an important role to play in the induction. Any material provided to newly appointed board members also needs to respect the role of the board and chair.

Findings

General comments

Perhaps the most obvious point to emerge is the considerable variation in the processes employed in different sectors (and sometimes within the same portfolio or department) for the appointment of the members of the governing bodies of Crown entities (and indeed other appointments Ministers are responsible for). This was variation in terms of:

- the degree of formality of the process;
- the roles played by the Minister (and the Minister's Office) and the Minister's department or other adviser;
- how the requirements of the position were defined;
- how candidates were located and selected;
- the provision of induction material; and
- how possible conflicts of interest were addressed.

This variation seemed due less to differences in the nature or significance of the entities themselves than to:

- history (i.e. what processes had been used in the past);
- Ministerial preference; and
- (to lesser extent) the preferences of departmental chief executives.

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The major exception to this was legal form, where the nature of the entities was important in terms of explaining variation. There was generally a consistent, relatively formal process for companies - a reflection of the fact that one agency (CCMAU) was responsible for managing the process on behalf of the shareholding Ministers. New Zealand Symphony Orchestra (NZSO) and HNZ Ltd were exceptions to this.¹⁰ There was, by contrast a great degree of variation in terms of Crown appointments to statutory corporations and other non-company Crown entities.

There are a number of other general points that emerged:

- other than some problems around making sure appointments were made in a timely fashion (which could be a serious practical issue), departments and Ministers did seem to take the need to comply with any legislative requirements seriously;
- while not all of Cabinet's requirements were being consistently met, Ministers did take almost all Crown entity appointments to APH as required; and
- most departments seemed to be taking the appointment and induction processes seriously, and seemed concerned to improve the quality of the processes employed. A number were actively engaged in reviewing the processes they employed.

General context

While ultimate responsibility for Crown appointments rests with Ministers, actual responsibility for running the appointment process varied considerably in practice, with the Minister (and the Minister's Office) having the dominant role in some sectors, but the Minister's department or other adviser (e.g. CCMAU) having the major role in others. In most cases the Minister's department had some role, although the nature of that role varied significantly - it might involve little more than drafting the APH papers and letters of appointment. There were some examples where the department had virtually no role, and no other adviser was employed to assist with the process.

In some cases it was not entirely clear who was responsible for what in the appointment process. This is an issue of role clarity in terms of:

- the extent of department's responsibilities, and
- the role played by the Minister and the Minister's office.

Where the appointment process does not involve a department or other adviser this places the responsibility on the Minister or the Minister's office to ensure that high calibre people are appointed, and the legal and Cabinet requirements are adhered to. A number of departments indicated concerns about the level of understanding of these matters in the Ministers' offices.

There are examples where the entities themselves seemed to run the appointment process for the governing body.

¹⁰ Housing New Zealand is now monitored by CCMAU.

There was also an example of a Crown entity being overseen by an interdepartmental committee, rather than the portfolio Minister's department or a dedicated advisor. This extended beyond appointments to general monitoring of the entity.

There was also considerable variation in terms of whether departments or Ministers:

- used dedicated resources to run an appointment process, or a more ad hoc allocation of responsibility for managing appointments. In some cases the task may simply be allocated to whatever (often junior) person was available; and
- attempted to take advantage of specialisation (whether on appointments or around subject / sectoral specialisation); and
- dealt with appointments at a senior or a junior level [one departmental chief executive was frequently involved in interviewing candidates].

In terms of the first two, for example, where a department had responsibilities for a large number of appointments, this would be dealt with by some departments by centralising responsibility for appointments in one place; in others this would involve the appointments being managed in different parts of the organisation (usually the policy or planning unit that dealt with the entity).

Some appointments involved the use of a quite formal process, with CCMAU and Transport being perhaps the best examples of this. Some appointment processes were also well documented. A formalised process usually implied the use of dedicated, senior, specialised staff.

A different process was usually employed for reappointments, which often involved consultation with the chair. There was usually some assessment of the suitability of a board member for reappointment, but this was not necessarily formal or particularly robust. It often seemed to involve a negative assessment - was there an obviously bad report about someone (e.g. had they failed to attend board meetings consistently)? There may, in general, be a likelihood of reappointment, in the absence of such reports.

There was no central oversight of appointment processes, other than in terms of Cabinet Office checking to see that the Cabinet requirements for APH papers were complied with. There is no central database of information on appointments, although the Cabinet Office do maintain records based on papers that go to APH.

Initiating an appointment process – database / timeline

Asking the question of how an appointment process actually starts may seem somewhat simple minded. In fact it is an important issue, and one that has been a significant practical problem because there are examples of appointments that have not been made in a timely fashion. This has occurred either because of poor record keeping (no one has realised there was about to be a vacancy), or a lack of clarity around the respective roles of Ministers (and their offices) and their departments.

The obvious consequence of poor planning is that the board has fewer members than would be desirable for its effective performance. A more pressing problem arises where failure to initiate an appointment process in a timely way means that a board fails to have a quorum or other legal authority to act. There have been several examples in recent years where

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validating legislation has been required to provide retrospective legal authority for an organisation's actions where it has fallen short of a quorum.

It is possible in some cases to deal with this temporarily by having a board member continue in office beyond their term, although this is not entirely satisfactory. There are, however, some entities where this is impossible - where the legislation does not provide for members to continue in office (e.g. NZSO - although its quorum provisions are quite flexible).

Poor planning around an appointment also makes it difficult for Ministers to carry out succession planning. This is a significant issue given Cabinet's expectation that board members will normally serve only two terms, and particularly important in terms of chairs. If, for example, it is intended to identify the likely replacement chair of a major board, and have them sit on the board for 6 months before the incumbent chair retires, this means that an appointment process would need to be in train at least 9-12 months before the incumbent retires.

In response to this problem Cabinet has now established a requirement that departments maintain a database which includes certain common key information:

- the name of the Board or office;
- Legislative authority and date established;
- role and main functions;
- accountability (to whom; by what means);
- source(s) of funding;
- Constitution of the board or office;
- current membership, including appointment dates and terms of office;
- classification under the framework that applies to statutory bodies and other committees in which the Crown has an interest; and
- fees and allowances paid [CO (97) 10].

This does not amount to a requirement to have good planning around appointments, but it does require much of the basic information necessary to do so. Most departments now have, or are developing such a database, although this did not amount to a bring up system (i.e. a process for automatically triggering the start of an appointment process). Several are just being developed or are fairly rudimentary. Interestingly, the requirement is not in the main Circular on appointments, but in the circular on guidance material provided to board members, which may mean it is more likely to be overlooked.

There is no consistent pattern of the Minister being given advice on the nature of the position before any appointment process starts. How an appointment process actually gets under way varies a great deal:

- in some cases departments just go ahead without consulting their Minister, and present their Minister with results (which may not be accepted, particularly since the Minister may have initiated a separate process);
- some departments notify their Minister, and expect to run the process;
- some notify Minister, and leave it to the Ministers to take action;
- one previously left it to the Minister to initiate, but is now more active.

Sometimes departments still do not allow enough time for the front end of the process - i.e. the process is initiated too late. The evidence suggests that the beginning of the appointment process is in general not as effective as it could be. It is important that departments maintain effective records, and take the initiative in ensuring that their Minister is aware that an appointment is due, well in advance of there being a vacancy, and aware of the legislative and Cabinet requirements around the position.

The APH/Caucus process under the previous coalition government seemed to take more time than had formerly been the case. This reinforced the importance of initiating the process in good time, and not relying on getting through APH/Caucus in the minimum time period.

Establishing the requirements for a position

The way that the requirements of a position are developed varies considerably as well. There may be no distinction drawn between the requirements of a position and the choice of a particular person to fill that position. In some cases something like a formal person or job specification is developed. Often there is no person specification, and no general sense of placing an appointment in the context of the entity's and Crown's interests, or of making a clear assessment of the composition of the board, and the needs of the organisation and using this as the basis for drawing up a job specification. This largely depended on the sophistication of the process used.

The Minister was not usually asked to sign off on a job or person specification, although the Minister might have a significant influence on any person/job specification produced without being asked to sign off on it. The extent of Ministerial involvement in this part of the process varied enormously, from dominance to limited involvement. Again, the balance of responsibilities between Minister and department was not always clear.

In general, in terms of deciding upon the requirements of a position, or the type of person required, reliance was placed on:

- the legislation;
- the department's institutional/sectoral knowledge;
- sectoral nominees (nominations are commonly sought from sector groups - in some cases there is a legal requirement to do so); and

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- awareness of the need for balance in terms of:
 - gender,
 - ethnicity,
 - demographic or geographic considerations (in some cases),
 - general business/governance and specialist skills, and
 - community representativeness (in some cases).

The actual emphasis given to some of these things (e.g. ethnicity and gender) varied a great deal.

The chair and (less frequently) the board were sometimes consulted over the skills desirable in a new board member. The formality of this consultation varied.

Some legislation contained limited specific requirements as to the qualifications of board members, or process. There was a general awareness of and compliance with the law, although evidence of some problem areas (e.g. timing). In some cases departments seemed to regard the presence of some requirements in the legislation as obviating the need for any person specification. Such requirements usually do not, however, amount to either a job description or an appointment process (e.g. the fact that one member of the Commerce Commission must be a lawyer is a necessary condition, but is not the same as a job description).

The way nominees from the sector were dealt with varied - in some sectors the tendency was simply to accept whoever was nominated by a sectoral group without any judgement being made as to the suitability of the candidate, in others nominees were scrutinised (sometimes against a person specification) with no guarantee that they would be accepted.

Finding candidates and choosing between them

As was noted above there was often not a distinction drawn at all between determining position requirements and the choice of particular candidates - this might be done together. The role played by the Minister in locating and selecting candidates again varied enormously, from dominant to more limited (agreeing to names at the end of the process). Interestingly, there was not a strong correlation between the significance of the entity and the level of Ministerial involvement.

Candidates were located from a number of sources, with the most common being:

- the industry or sector (whether or not there was a legal requirement to consult);
- the Minister (and Minister's colleagues);
- the department's own information:
 - informal, and
 - relatively formal/structured (e.g. database);

- from other agencies, notably:
 - CCMAU,
 - Te Puni Kokiri (TPK),
 - Ministry of Women’s Affairs (perhaps the most frequently used),
 - other (e.g. Institute of Directors);
- self nomination; and
- drawing on candidates for other positions.

Advertising is rarely used, and generally for relatively small regulatory bodies. Search consultants were used even less frequently.

A number of departments maintained one or more databases of potential candidates names. There were a number of potential issues associated with maintaining these databases, particularly for smaller organisations:

- practicality - problems of upkeep etc;
- cost (it is costly to maintain and update an effective database); and
- legal issues (particularly compliance with the Privacy Act).

A number of agencies maintained databases of candidates' names and details which they were willing to share with other departments - notably CCMAU, TPK and Women’s Affairs.¹¹ The latter two were maintained in order to facilitate the appointment of Maori and women respectively to government positions. CCMAU’s database of names is a central part of its own business of managing Crown company appointments. CCMAU are willing to share the names of candidates with departments, but limit the information provided to names and contact details.

There was a high level of variation in terms of the use of other agencies’ information, even within the same department or portfolio. The Women’s Affairs database seemed to be the most widely known and used. Less use seemed to be made of TPK’s information. There were some surprising omissions in terms of departments that did not ask CCMAU, Women’s Affairs or TPK for help with possible names.

There was a significant difference between CCMAU’s database, and those of Women’s Affairs and TPK. Every person on CCMAU’s database had been interviewed and assessed in terms of their potential suitability as a board member. They had also been specifically asked a “no problems” question which was designed to assess whether there were any issues that would potentially compromise their suitability as a Crown board member (e.g. a major conflict of interest or a serious criminal conviction). This was not the case with the Women’s Affairs or TPK databases, where there was no such screening, and it was left to departments to make those judgements. It was unclear that departments were aware of this.

¹¹ CCMAU's database contains approximately 1,500 names, TPK's 100 and Women's Affairs 3,100.

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Departments which used CCMAU's, Women's Affairs' or TPK's information did not always relay back to them what had happened with particular candidates. This is not only a question of courtesy, but also the effective maintenance of databases.

Once potential candidates were located, there were three basic ways of approaching them:

- direct contact (normally by the department). This was the standard approach; or
- potential candidates were not contacted, at least not until after selection by the Minister; or
- indirect contact (relying on the nominating agency to inform them).

Direct contact can mean simply advising a person they are being considered; or seeking their agreement; or seeking their agreement and also providing material on nature of the position and the process to be followed in making an appointment. Candidates who are approached usually supply a CV if one is not already held.

It is not standard practice for candidates to be interviewed, outside a few sectors. Nor were referees generally used, again with exceptions. The implication of this is that selection is made on the basis of the CV and any other knowledge the department or Minister happens to have.

As was noted above, where there was a nomination from the sector there was, in some areas, a tendency to rely on the nominator's judgement and not to actively question the candidate's suitability, again with significant exceptions.

Conflicts of interest

The relevant Cabinet Office Circulars emphasise the importance of dealing properly with conflicts of interest. The SSC folder *Administration of Statutory Bodies and Other Committees* includes a paper on conflicts of interest¹². One of the matters new board members are supposed to receive information on when they are appointed is on conflicts of interest and how they should be managed (this does not consistently happen, in fact). Potential conflicts of interest becomes an issue in two quite different ways:

- a conflict may be such that it precludes a person being appointed; or
- a conflict will not prevent a person being appointed, but will need to be appropriately managed, by the board member:
 - declaring the conflict; and
 - excluding themselves from a particular discussion; and/or
 - not voting on a particular issue.

¹² The *Board Appointment and Induction Guidelines* contain a substantive section entitled Identifying and Managing Conflicts of Interest.

The statutory provisions on conflict of interest vary. Some Crown entities (e.g. schools, tertiary education institutions, and the Fire Service Commission) are governed by the Local Authorities (Members' Interests) Act 1968. Crown companies are covered by ss139-149 of the Companies Act 1993, which set out how conflicts should be dealt with. Some Crown entities have specific legislative provisions (e.g. NZ Tourism Board Act 1991, s13). Legislative provisions generally only cover pecuniary conflicts. Some Crown entities are not subject to specific statutory provisions on conflicts of interest.

Almost all departments interviewed were very aware of the issue of conflicts of interest, and took them into account when considering candidates. There were a number of problems with the way conflicts were dealt with, however:

- candidates were not generally asked about conflicts of interest (with some exceptions). Instead departments relied on the CV and their knowledge of the sector to assess potential conflicts. This is clearly a problem in terms of pecuniary interests, for example;
- sometimes the issue of conflicts of interest was not considered until the appointment stage (i.e. not at selection);
- some departments felt it would be desirable to have a clearer statement of what constituted a conflict of interest - a view that the existing material was not as useful as it might be; and
- there was a lack of available advice on how to manage conflicts.

There was virtually no use of credit checks or security vetting, and most departments were surprised at the suggestion that they might be relevant. The closest example was the "no problems question" used by CCMAU. By way of contrast, in the Public Service, the State Services Commissioner carries out both credit checks and security vetting as part of the chief executive appointment process, and the standard approach to criminal convictions is to rely on a process of self-declaration in appointment processes.

Cabinet Strategy Subcommittee on Appointments and Honours - approval and appointment

Cabinet's expectation is that Crown appointments will go to APH. This seems to take place, with one significant exception. They usually also go to caucus, after APH, although a Minister may consult caucus earlier as well, and then go to caucus again after APH. The APH papers are usually prepared by the Minister's department or adviser, although in some cases the papers are produced by the Minister's office. Departments reported time delays and proposed appointments being rejected as more of a problem under the coalition - a reflection of the greater level of consultation required, as well as the political dynamics.

Ministers sometimes also consult colleagues informally around the selection of candidates. At the time of the interviews, Ministers also consulted the coalition partner. In some cases another Minister is formally involved in the process through:

- a legislative requirement to consult a particular Minister; or
- there being more than one responsible Minister (e.g. companies).

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Once an appointment has been considered by APH and caucus the next step is either for the papers to go to the Governor-General to have warrant/instrument of appointment signed (and then to the Minister to inform candidate) or to the Minister for a letter of appointment, depending on who actually makes the appointment. Letters of appointment are drafted in the department, and signed by the Minister (after going to Governor-General where this is required).

Induction

Induction refers to providing new board members with key information which will allow them to do their job effectively - the nature of their roles and duties, the organisation they have been appointed to, and its place in the wider system of government. Cabinet has established minimum requirements for the information new board members should be provided with, whether by the Minister's office or the department. This includes information on:

- the proper designation of the position;
- the proper name of the board or office;
- the organisation the appointee is to represent (if appropriate);
- a brief description of the functions of the board or office;
- the authority under which the appointment is made;
- the term of appointment;
- the composition of the board and its procedures;
- an explanation of the appointee's duties including any expectations the represented organisation may have of the appointee;
- legislation relevant to the board or office;
- a brief description of conflicts of interest and how these should be handled;
- fees and allowances relating to the appointment;
- development and training;
- the board or office as part of the machinery of government;
- the name of a contact person for further information; and
- a request to formally signify acknowledgement of the appointment, confirming that no actual or potential conflict of interest exists.

Interestingly, the list of induction material does not include a description of the role of the board in terms that would be familiar in the private sector, viz:

- setting strategy;
- appointing a chief executive; and
- monitoring performance.

Induction cannot be provided or undertaken simply on the basis of central guidelines (although they may be useful on some types of issues), for two obvious reasons:

- there are significance differences between agencies; and
- the board and chair have a role in inducting a new member.

Actual practice varied from sector to sector (and sometimes within) but this was clearly a problem area. Often little information is provided to new board members, who were not consistently given a good understanding of the implications of being on a Crown board, the role and duties of a director (an issue that is problematic in terms of non-company directors), conflicts of interest or the Crown's expectations. New board members may receive just a simple appointment letter, although sometimes a limited amount of additional material was provided (e.g. a copy of the legislation the entity operated under). There was a disjunction between Cabinet's expectations and what is actually done. Any written material provided was usually all board members got although again there were exceptions to this. Some departments encouraged board members to go on courses held by the New Zealand Institute of Directors.

The tendency is to assume the board will induct the new board member (although departments were not always clear that the board did provide much induction).

There were some obvious exceptions to this (e.g. Transport, Commerce and CCMAU), with Transport providing both extensive material and briefings to new board members. There was a general acceptance that this was a major issue by most departments. Most were actively looking at ways to improve induction.

While it is usual to think of induction as something that takes place after appointment, the period before an appointment decision is made can also be used to transmit information of value to a prospective candidate. There was relatively limited conscious use of the front end of the process for induction purposes. Transport and CCMAU were exceptions, in that both agencies seemed to regard the initial process of contacting and interviewing candidates as a way of providing information about being a board member, or working in the public sector, the entity in question.

Summary

Our study of the appointment and induction of Crown entity board members has indicated the following conclusions:

- appointments that should go to APH generally do go there;
- the basic legal requirements (such as they are) seem to be complied with, although there are still questions around timing;
- most departments are taking Crown appointments seriously, and are interested in improving the way they are dealt with;
- the Crown employs a consistent, formal process for most Crown companies;
- for other Crown entities, however, there is significant variation in the formality and quality of the processes used for Crown appointments;
- there is frequently a lack of clarity around the precise nature of the role the Minister, the Minister's office and the Minister's department is to play, if any;
- there are still problems around the start of an appointment process (although this seems to have improved in recent years);
- conflicts of interest are not consistently dealt with well; and
- induction does not consistently comply with Cabinet's expectations.
- It is difficult to avoid the conclusion that the Crown does not consistently:
- employ good processes for the appointment of board members,
- address conflicts of interests and related issues, and
- inform new board members about the nature of the job they are undertaking, and the implications of governing a Crown organisation.

Possible ways these issues could be addressed

There are a range of possible responses to these conclusions:

- retain the status quo; or
- minimal change; or
- encouraging the use of better processes by establishing certain basic expectations about the support departments (or other advisers) should be supplying to Ministers, and providing more support in the form of guidance to those responsible for managing appointment processes; or
- establishing more prescriptive Cabinet requirements; or
- employing a more centralised appointment process.

Any approach to the appointment processes employed by the Crown needs to take into account the following factors:

- *ministerial responsibility* - Parliament has allocated responsibility for making a large number of important appointments to Ministers. Any approach to appointments needs to be consistent with this allocation of responsibility, and needs to be one that Ministers themselves will have confidence in;
- *quality appointments* - an appointment process should facilitate the appointment of the high quality candidates who provide boards with an appropriate mix of skills;
- consistency with governance arrangements;
- *proportionality* - while we can describe the elements of a good appointment process in general terms, appointment processes need to suit the nature a particular entity, including compliance with any legislative requirements. Variation to reflect the size or significance of an entity may also be appropriate. All Crown appointments are important, but a more elaborate process might be appropriate for the Health Funding Authority, for example, than for a small organisation with a budget of under \$1million;
- *legal compliance* - an appointment process should comply with the law;
- *collective responsibility* - an appointment process should comply with Cabinet's general expectations.

Formality and consistency are not, of course, absolute values in themselves. For a variety of reasons there has to be scope for flexibility in any system of appointments. One is that these organisations vary enormously. Another is that some high calibre candidates may only agree to be considered if approached by Ministers.

Retain the status quo

This would involve leaving things as they are.

A minimalist approach

A limited approach to these issues would be to simply reiterate the importance of making sound appointments, and the need to comply with the law and Cabinet's expectations, on the basis that appointments decisions are for Ministers to make, and that the evidence suggests that departments are taking these issues more seriously. Such an approach might still involve addressing certain issues, such as dealing with conflicts of interest, induction, and the use of databases of candidates names. The difficulty with such an approach is that is probably unlikely to address all the problems identified in this report.

Encouraging the use of better processes

This approach would leave individual Ministers free to choose how they ran an appointment process, within the limits of the current legislation and Cabinet requirements, but there would be some basic obligations on departments, and a presumption that departments would offer to provide a good appointment process. Such an approach would involve:

- some basic obligations on departments (and by implication on their Ministers) in terms of:
 - maintaining adequate records, and a bring up system;
 - advising their Minister in good time, of a vacancy, any relevant legal and Cabinet requirements, the makeup of the board and possible position requirements (this could include succession planning); and
 - advising their Minister of the support the department can provide in managing an appointment process;
- ensuring Ministers' Offices are aware of the requirements associated with the appointment and induction of board members;
- redrafting the main Cabinet Office Circular so that it was couched in terms of running an appointment process, as well as in terms of writing a paper to APH (e.g. so that it included information on establishing position requirements and interviewing candidates), and included material that is currently located in other places (e.g. on the records that departments are required to keep);
- making more guidance material available on running appointment processes;
- addressing a number of specific issues, such as conflicts of interest, induction material, and the management of databases of candidates' names; and
- (potentially) requiring departments or Ministers to certify the process used in making an appointment when preparing an APH paper.

The Minister, being advised by the department (or another adviser) that an appointment would need to be made could then decide whether to use the department to manage the appointment process or some other arrangement. Existing arrangements that went beyond this would continue in force.

Placing more prescriptive requirements on Ministers and departments

Cabinet could adopt a more prescriptive approach to appointments. This could include expectations about key elements of an appointment process, such as:

- requiring departments or any other Ministerial adviser to have a process in place for recording key information and triggering an appointment process in a timely manner (as per the less prescriptive approach above);
- requiring the selection of candidates against a person or position specification;
- requiring formal evaluation of incumbents when reappointment is considered;
- a presumption that the chair will be consulted over the requirements of the position;
- a presumption that advertising will be used for certain positions;
- requiring shortlisted candidates to be interviewed;
- requiring conflicts of interests and induction to be properly dealt with; and
- requiring Ministers to certify that the Cabinet mandated process had been complied with.

A centralised appointment agency

A still more prescriptive approach would be to centralise responsibility for managing appointment processes with one agency, which would gain the benefits of specialisation. This would mean an agency like CCMAU running the appointment process for significant Crown appointments, and advising Ministers on possible candidates. The agency would be expected to use formal appointment processes. This could either be to different Responsible Ministers, depending on the body or, conceivably, directly to APH. A variation on this would be to give a centralised appointment agency responsibility for dealing with particular types of appointments.

Specific issues which need to be addressed

Irrespective of the approach adopted there are a range of issues which our study indicates do need to be addressed. These include:

- the way conflicts of interest are dealt with, particularly in relation to the process of selecting candidates, and the information supplied to candidates when they are appointed;

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- the provision of induction material (this could include revisiting the suitability of existing central material on conflicts of interest, the duties of directors, and the place of statutory bodies in the wider system of government). Any work on induction must take into account the fact that much of this material must be generated for the specific entity or sector, and that the board has a role to play in inducting new members; and
- the use of databases of candidate information. We need to make better use of the information sources that we have available. It was surprising that some departments were not aware of the use they could make of the resources of CCMAU, TPK and Women's Affairs to locate possible candidates. There seem to be a large number of databases of potential candidates in operation, with considerable scope for duplication of effort.

Comment

The first two of the possible responses set out above (retain status quo, or a minimalist response) would not, to our mind address the issues raised by our findings. This suggests to us that we should consider at least a series of measures to encourage the use of better appointment processes (option 3).

Postscript

On August 23, 1999 Cabinet approved the *Board Appointment and Induction Guidelines*, written for departments and Ministers' offices involved in making appointments to Crown entities and other statutory bodies. The *Guidelines* describe a comprehensive process that can be tailored to individual circumstances and Ministerial preferences. Departments are now expected to run all appointment processes on behalf of Ministers, if Ministers have not directed otherwise. The *Board Appointment and Induction Guidelines* are an important part of the *Crown Entities Initiative* package, which sought to define the roles and responsibilities of all parties involved with Crown entities.

The *Guidelines* are available on the State Services Commission's website http://www.ssc.govt.nz/documents/Board_Appointment_Guidelines.htm or in hard copy by contacting Tanya Howlett fax 0064 4 495 6699 or email tanya.howlett@ssc.govt.nz.