



Cabinet Office Circular

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Enquiries:

*Beith Atkinson, State Services Commission,
Ph: 495 6722*

*Fleur Gaston, Cabinet Office,
Ph: 471 9637*

All Ministers
All Chief Executives

Copies to:

Chief of Staff, Prime Minister's Office
Chief of Staff, Deputy Prime Minister's Office
All Senior Private Secretaries
All Private Secretaries

Appointment of Public Servants to Statutory Boards

Key Points

This circular provides advice on the appointment of public servants to statutory boards. The circular notes that:

- **Cabinet has agreed that, as a general rule, Ministers should not appoint public servants to statutory boards.**
- **There may, however, be special circumstances which justify appointing a public servant to a board.**
- **These special circumstances may include the need to: improve board performance, build the capacity of boards through the appointment of suitably qualified women, Maori and Pacific people, and capitalise on the experience of retiring senior public servants.**
- **Cabinet has also agreed that, as a general rule, Ministers should not appoint public servants to the boards of state owned enterprises and Crown owned companies.**
- **Senior public servants should not be appointed to statutory boards if the same Minister is both the Responsible Minister for the public servant's department and the Responsible Minister for the board.**

- **Chief Executives should draw this circular to the attention of those involved in making recommendations about appointments to statutory boards and to senior staff in their departments.**

Introduction

- 1 Cabinet has approved a policy on the appointment of public servants to statutory boards and other public bodies in which the Crown has an interest. This circular sets out the policy and should be read in conjunction with the State Services Commission's *Board Appointment and Induction Guidelines* and the relevant part of the Cabinet Office Circular *Fees Framework for Members of Statutory and Other Bodies Appointed by the Crown* [CO (01) 8].
- 2 Ministers and chief executives are asked to ensure that all staff involved in appointments to statutory boards are familiar with the requirements of this circular. The circular should also be drawn to the attention of all public servants who have been appointed to statutory boards and to any public servant who informs their department that they are being considered for appointment to a statutory board.
- 3 Current practice in departments with respect to statutory board appointments ranges from prohibiting staff from accepting board member positions through to standard conflict of interest policies. The policy outlined in this circular does not preclude departments from continuing to prohibit acceptance of board positions by their staff if the department so chooses. (See paragraph 18).

Scope of the Policy

- 4 The policy in this circular applies to the employees of all Public Service departments (i.e. public servants) and to all proposed appointments of public servants, by Ministers or by the Governor-General on the recommendation of Ministers, to statutory boards and other public bodies in which the Crown has an interest.
- 5 The policy does not apply to employees of the wider State sector. The wider State sector includes organisations outside the State Sector Act, such as the New Zealand Police, the New Zealand Defence Force, Crown entities, state owned enterprises and other statutory boards which have employees. Employees of these organisations should be treated like any other potential candidate for appointment. It should be noted, however, that the conflict of interest policy outlined in the State Services Commission's *Board Appointment and Induction Guidelines* will make it inappropriate to appoint many employees of the wider State sector.
- 6 The policy is intended to cover public servants who may be considered for appointment or who have already been appointed to statutory boards as individuals in their own right. The policy is not intended to cover the appointment of public servants as representatives of departments (*ex officio*) or as Crown representatives. (See paragraph 17 for more information on *ex officio* appointments).

- 7 Public servants, like any other member of the public, are able to stand for elected boards, such as school boards of trustees. Public servants should not put themselves forward for election if there is an unmanageable conflict of interest between their Public Service job and the elected board. The New Zealand Public Service Code of Conduct requires that public servants should inform their chief executive of their intention to stand for an elected board, to ensure that no conflict exists.

General Policy

- 8 A public servant's first duty as an employee is to their Minister and to the government of the day through their departmental chief executive. The first duty of a board member of a statutory body is to work to achieve the statutory interests of the entity. There is potential for these two duties to be at odds with each other when a public servant serves as a board member. Cabinet has, therefore, agreed that, because of the potential conflict of interest between the role of a public servant and the role of a board member, as a general rule, Ministers should not appoint public servants to statutory boards.

Special Circumstances

- 9 Cabinet has, however, noted that there may be special circumstances which justify appointing a particular public servant to a statutory board.

Improving Board Performance

- 10 There are circumstances where appointing a particular public servant to a board may be critical for board performance. These circumstances could be described as ones where there is a high risk to achieving the board's goals or properly carrying out the board's basic functions without direct input from a particular public servant. This might be where there is a confluence of person and role: Ministers need a specific task completed and a particular public servant has experience in completing these tasks in a public sector environment.

Capacity Building

- 11 Cabinet has noted that the available pool of women, Maori and Pacific Island candidates will be reduced if the policy that Ministers should not appoint public servants to boards is applied without exceptions. Cabinet has, therefore, noted that the special circumstances envisaged in paragraph 9 may include the need to build the capacity of boards through the participation of suitably qualified women, Maori and Pacific Island people.

Capitalising on Experience

- 12 As senior public servants head toward the end of their Public Service careers they may be considered for appointment to statutory boards. Boards may lack strong central government knowledge and understanding or they may need specialist skills. Retiring public servants are an excellent source of such experience that Ministers have called on in the past and should continue to consider. While there may be an overlap between the end of a Public Service career and a board appointment, the potential conflict of interest arising from the overlap may be acceptable for a few months. This is because the greater part of the board appointment will be after the public servant has retired.

Advice to Ministers: APH Paper

- 13 Where special circumstances exist and a Minister is proposing the appointment of a public servant to a board, the Minister should outline these circumstances in the submission to the Cabinet Appointments and Honours Committee (APH). The public servant's skills and experience and the benefits and risks of making such an appointment should be outlined by the Minister in the APH paper. (The general requirements for APH papers are set out in the Cabinet Office *Step-by-Step Guide*, available at www.dPMC.govt.nz/cabinet).

Appointments to Boards of Crown-Owned Companies and State Owned Enterprises

- 14 State owned enterprises and Crown owned companies are constituted under the Companies Act 1993 which requires directors to act in the best interests of the company. Cabinet has agreed that, as a general rule, Ministers should not appoint public servants to the boards of state owned enterprises and Crown owned companies because of the potential conflict of interest between the role of a public servant and the role of a company director under the Companies Act.

Guidance for Public Servants as Board Members**Appointments as Individuals or as Ex Officio**

- 15 Public servants may be appointed to statutory boards as individuals in their own right, where there are special circumstances, or as representatives of departments (*ex officio*).
- 16 A public servant who is appointed to a board as an individual has all the responsibilities and duties of any other board member. They are not representing the views of their department or of the government of the day. The public servant is on the board for their skills and experience and is contributing as an individual.
- 17 On the other hand, a public servant appointed in an *ex officio* capacity, or as a Crown representative, is appointed to represent the views of their department or of the government of the day. It should be noted, however, that in relation to boards of Crown entities Cabinet has agreed that, as general policy, public servants will not serve *ex officio* as members of such boards. In particular, public servants from the monitoring department should not serve on a Crown entity board.

Managing a Statutory Board Appointment

- 18 If a public servant is being considered for appointment to a statutory board as an individual, they should treat the board appointment as a form of secondary employment. The process for managing secondary employment is outlined under Principle One of the New Zealand Public Service Code of Conduct. A public servant must obtain the agreement of their chief executive before accepting appointment to a board.
- 19 If the public servant being considered for appointment to a board is a chief executive, then they must seek the advice of the State Services Commissioner and notify their Responsible Minister.

- 20 Public servants are subject to the same rules as any other person nominated for membership of a statutory board. The appointment process should be appropriate to the appointment and should follow either the State Services Commission's *Board Appointment and Induction Guidelines* or the Crown Company Monitoring Advisory Unit's Cabinet-approved appointment process.

Fees

- 21 The framework for the payment of fees to public servants appointed to statutory boards is set out in the Cabinet Office Circular *Fees Framework for Members of Statutory and Other Bodies Appointed by the Crown* [CO (01) 8].
- 22 An underlying principle of the fees framework for public servants is that they are able to do their primary job unhindered and without detriment to the public interest. They should also not be double-paid for their job and their appointment to a board.
- 23 If agreement is given by a chief executive for a public servant to be appointed to a board, they must decide whether the public servant will undertake board activities in their own time (for example, by taking annual leave or leave without pay) or in the employer's time. A public servant should not retain both the board fee and their ordinary pay where the duties of the board are undertaken during ordinary working hours. Public servants taking annual leave or leave without pay for board activities may receive a fee.

Portfolio Reallocations and Changes of Job

- 24 Senior public servants have regular contact with Ministers in their role as departmental employees. Depending on the relationship between a Minister and a board, Ministers may meet regularly with board members, particularly chairs.
- 25 To avoid confusion and the potential for conflict of interest Cabinet has agreed that, as a general rule, senior public servants should not be appointed to statutory boards as individuals if the same Minister is both the Responsible Minister for the public servant's department and the Responsible Minister for the board. Cabinet has also agreed that senior public servants appointed to boards as individuals should resign their board membership if the same Minister becomes both the departmental Responsible Minister and the board's Responsible Minister. Similarly, if the public servant accepts a job with a different department and the departmental Responsible Minister is the board's Responsible Minister, they should also resign from the board.
- 26 However, it is not the intention that senior public servants currently on boards as individuals should resign if the same Minister is currently both the departmental Responsible Minister and the board's Responsible Minister. This part of the policy is not intended to be retrospective. However, senior public servants currently on boards as individuals should resign their board membership if the public servant accepts a job with a different department and the departmental Responsible Minister is the board's Responsible Minister. They should also resign their board membership if the same Minister becomes both the departmental Responsible Minister and the board's Responsible Minister.

Further information

- 27 For further information please contact:
- 27.1 Beith Atkinson in the State Services Commission (ph: 495 6722);
 - 27.2 Fleur Gaston in the Cabinet Office (ph: 471 9637);
- 28 This circular is also available on the Cabinet Office website: www.dpms.govt.nz/cabinet.

Secretary of the Cabinet