Board Appointments, Induction, and Professional Development

December 2011
SELF REGISTRATION ON COMU DATABASE

The COMU Appointments database is located at www.boardappointments.co.nz and is the main point of contact for people who wish to register their interest in being considered for Crown company board roles. While there are a number of other ways in which people may come to COMU's attention (eg, direct approach by phone, nomination by Ministers or boards), all candidates are required to join the database and complete a record if they are to be considered for board roles.

As soon as a candidate registers a complete record on the database, he/she is eligible to be considered for all appointment processes administered by COMU. Searching on the database for particular skills and attributes is the principal method by which COMU identifies candidates for specific board roles. It is therefore important that all candidates ensure that their record is complete and up to date. The database is also the primary tool used by COMU for managing appointment processes and maintaining board records.
ENVIRONMENTAL SCANNING

The body of people who have registered their interest in board roles through the COMU database is not the only source from which COMU identifies potential board candidates. COMU also actively monitors relevant business and governance media to identify possible candidates. COMU scans business news and publications regularly. Subscription to a news monitoring service assists with this process, along with membership of relevant online professional media groups. COMU is particularly interested in recent appointments to important business roles and changes to board membership in both the private and public sectors.

Where news announcements relate to serving Crown company directors or database candidates, that information is recorded for later reference.

COMU is particularly interested to learn of new potential candidates who may not have previously been involved in governance in New Zealand (eg, people who have returned to New Zealand after an absence overseas).
COMU TALKS, PRESENTATIONS AND MARKETING

COMU accepts, and seeks out, invitations to speak to a range of different groups throughout New Zealand, to inform people about the opportunities for Crown company director appointments and how the COMU appointments process works.

Examples of engagements have been at the Institute of Directors (IOD) member functions, IOD Aspiring Director courses, government agencies such as the Ministry of Women’s Affairs, and groups aimed at increasing the range of people involved in directorships, such as Springboard and Global Women.

COMU also makes use of other media to communicate with stakeholders. The first edition of the Annual Portfolio Report (APR) was published in 2010. This provides a summary of the financial performance the 37 Crown enterprises that have full or partial commercial objectives, and are monitored by COMU. The content of the APR will be developed further in successive editions.

The COMU Appointments database provides a further medium for communicating messages to the candidates registered on the database.
CANDIDATE REFERRALS

COMU receives recommendations of potential candidates from a variety of sources, including current board members, MPs and government agencies. If it appears that a referred candidate might match a skill set that COMU is seeking in a particular appointment, they may be approached immediately, with a view to being invited to join a specific appointment process.

All candidates who are referred to COMU, from whatever source, will have the opportunity to join the database.

Current and former board members provide a unique resource for COMU. COMU will be familiar with the skills and experience of each board member and on occasion that knowledge has been used by COMU to source candidates. Many board members are members of professions, or have experience in particular business sectors, which provides COMU with the ability to make use of board members’ networks in identifying candidates with specific skills.
CANDIDATE MANAGEMENT AND COMMUNICATIONS

Candidate management by COMU is undertaken using the COMU Appointments database. Updating of individual candidate records is, however, undertaken by the candidates themselves, through their ability to log in to their records online.

COMU uses the database to maintain up-to-date records of the membership of all of the Crown company/entity boards for which it is responsible. Those records include the commencement date, terms served and expiry date for each board member.

The database is also used when it is necessary to communicate with all candidates. Most often this will involve the posting of board positions for which an appointment process is about to be commenced. Candidates on the database are advised by e-mail when board positions have been posted and expressions of interest are being sought.

COMU undertakes regular audits of its database membership, in order to ensure that the information is as up-to-date as possible and that attention is focused on those candidates who are actively seeking directorship opportunities. Attempts are made to contact candidates whose record has been inactive for some time and, if contact is made, they are encouraged to update or deactivate their record. The records of candidates who cannot be contacted are automatically deactivated until contact is re-established.
FIVE TO SIX MONTHS BEFORE TERM EXPIRY TRIGGERS PROCESS

An appointment process will need to be commenced whenever the board of a company/entity has a member(s) whose term(s) is due to expire. A “process” will relate to an entity, or a group of similar entities (eg, all SOEs), rather than to an individual position on a board.

There is no specific point at which an appointment process should be commenced, but six months before term expiry is ideal. At this stage a timeline needs to be created covering all of the steps in the process. The timeline should be created in reverse, starting with a determination of the final date on which appointment letters should be mailed to the new board appointees or re-appointees.

The process should allow for letters to be signed and sent out six weeks before the terms of the new appointees are due to commence. Appointment processes are influenced by a number of factors (eg, parliamentary recesses) and they very seldom run exactly to the original timeline. It has therefore not always been possible to achieve the “six week” goal. It remains an important aspiration, because the extra time allows appointees time to consider the role and complete appointment formalities, to commence the new board member’s induction process and give appointees a greater opportunity to prepare for first board meetings.

Once the range of board positions to be addressed has been settled, up-to-date information needs to be gathered about the boards and, specifically, the positions under consideration.

The first step in the information-gathering process will be for COMU to form an in-house view about each company/entity’s performance, the strength of its current board and its prospects in the medium term. This process will require consultation with the wider COMU group, particularly the monitoring team.

The second step will involve a meeting with the chairs of each of the boards concerned (telephone discussion should be a second option only if a face-to-face meeting cannot be arranged). It will be important to determine from a chair:

- the dynamic of the current board and how it functions as a group
- whether the members whose terms are due to expire should be considered for reappointment, and
- if members are to retire from the Board, what the Chair’s specification for a replacement member is.

It is important that the Chair is as clear as possible about the skills the Board requires in any replacement members, as this information will form the basis of advice to the responsible Minister and will lead to the drafting of a “Person Specification” for the role to be filled.
DETERMINING THE BOARD
PROFILE AND SKILL SETS

The board profile and skill sets are tools that assist in determining the knowledge, skills and competencies required for a specific appointment. At a later step in the appointment process, parts of these documents form the publicly available position specification.

Other considerations

Generally, Ministers retain ultimate responsibility for each appointment, and decide who will be appointed or who will be recommended to the Governor-General for appointment. The relevant legislation or other establishing documents should always be referred to at the beginning of each process, as they provide the overarching information on the board and entity and either general or specific parameters for board appointments.

The Cabinet-endorsed COMU process provides that the “best qualified” person is sought for each board vacancy. “Best qualified” is defined as:

The candidate whose skills and experience best meet the responsible Minister’s assessment of the skills profile, which has been developed on the basis of the Government’s strategic overview of the entity, COMU’s view of the entity, and in consultation with the chair of the entity.

What does the board profile and skill sets cover?

Prepared in consultation with COMU monitoring advisors and, where possible, the board chair, the board profile and skill sets cover the following areas:

- the entity’s prime business, services provided, structure and magnitude
- the main business drivers in the medium to long term
- overall skills make-up required for the entity includes legislative requirements, basic governance, management and financial skills and then those skills specific to the particular board
- in a table: current board makeup including, term expiry, length of service, current occupation, skill sets
- diversity of board membership
- any skill and diversity gaps in the current board, additional areas of expertise, experience, awareness, and networks required
- any other relevant information that the responsible Minister may wish to take account of, and
- COMU’s recommendation for skill set required for the current position under consideration.

How we support the Minister

The board profile and skill sets are provided as part of a report to the Minister. Owing to the framework that the board profile and skill sets provide, the report:

- is succinct and easy to read
- is current – ie, it is reviewed and updated for each vacancy
- is presented in a standardised way
- enables quick comparisons across entities should Ministers be considering a number of board positions at one time, and
- COMU always includes an offer to meet with the Responsible Minister to discuss board and entity performance, and board composition.
MINISTERIAL AGREEMENT TO COMMENCE PROCESS

The process to be followed to address any board position under consideration must always be approved by the Minister. That approval precedes the commencement of any public consultation.

It will be necessary to provide the Minister with the full range of information about the board and entity itself, its performance and a detailed briefing about the positions to be considered. The information to be provided is set out under the heading: “Determining the Board Profile and Skill Sets”.

The report to a Minister seeking approval to commence an appointment process should outline all of the proposed steps in the process, including a proposed timeline. Once the responsible Minister has indicated approval of the process, the steps under the heading “Candidate Search” can be commenced (adapted as necessary if the Minister has advised of specific requirements).
RETIRING BOARD MEMBERS
IDENTIFIED

The initial report to the Minister, setting out the appointment process [see “Ministerial Agreement to Commence Process”], will have a detailed review of the individual positions under consideration. There should also be an initial assessment of the position of each incumbent board member and an indication of whether that member should be reappointed for a further term.

In a number of cases, it will be clear that an incumbent board member should retire at the end of his/her term. In other cases, it may be less clear, and may depend on the candidates available to replace the incumbent, the entity’s strategic direction and the wishes of the Minister.

The appropriate time to advise retiring candidates that their term is coming to an end will need to be determined on a case-by-case basis. Frequently Ministers will run a full consultation process before making a final decision on whether or not to reappoint the incumbent. As this is an open process, all board members whose boards have positions under consideration should be notified in advance, by the Chair and/or COMU, that an appointment process is being commenced. They should also be reminded about the “blanket” nature of the process, and that decisions on whether to reappoint or replace incumbent members have not yet been made.

It is critical that a process is in place to advise directors of their impending retirement at the earliest possible time. This ensures that they are able to plan for any changes to their activities and are treated with dignity. It also assists the entity to plan for any transition and any farewell functions.
POSITION SPECIFICATION POSTED ON COMU’S WEBSITE AND DATABASE

An assessment will have been made of the “state” of the company’s overall business, financial health and the current composition of its current Board [refer to entry “Five to Six Months before Term Expiry Triggers Process”]. This assessment is arrived at following discussions with the Chair, COMU monitoring teams and any feedback received from the Minister. The assessment will be used to draft a “Position Specification” – a brief (1-2 page) document for any board position under consideration (whether or not that position is to be filled by a new member).

There is no fixed format or content for a Position Specification, but it will generally contain the following sections:

- entity’s business and structure
- business drivers, short to medium term
- board skill requirements
- current board composition (including start and end dates, and with positions under consideration highlighted)
- fees – the current unit rate for a director
- the process by which candidates may make (self)-expressions of interest or third parties may make nominations into the process. In this respect, the Position Specification document will differ depending on the audience.

The Position Specification is:

- drafted after consultation with the Chair (but will ultimately require the approval of the Minister)
- drafted in a manner that will be appropriate to be read by the general public (eg, no confidential company material)
- posted on the COMU Appointments database (to enable candidates to make an expression of interest if they wish). Boards should be notified (via the Chair) before any public notification of Position Specifications takes place
- posted on the COMU web site, for general information, particularly for potential candidates who may not yet be registered on the Appointments database
- sent to the Diversity Agencies [see entry on Diversity Agencies], inviting them to make nominations from their respective databases, and
- made available by the Minister to all members of the Government party’s caucus and sent to the leaders of any party that is in support of, or in coalition with, the Government, seeking nominations.
CANDIDATE SELF-NOMINATION

Candidates wishing to be considered for any appointment process may make a “self-nomination” (also known as an "expression of interest") via the COMU Appointments database. Candidates who do not already have an active record on the database must first go through the process of registration before they are able to make a self-nomination.

The act of making a self-nomination ensures that a candidate will be considered for the relevant board position. It also ensures that the candidate’s name will be put before the Minister at some stage in the process.

Candidates who have an active database record and have a general interest in governance roles, will be eligible to be considered for any positions for which COMU runs an appointment process, whether or not they have made a self-nomination. This is because COMU will undertake searches of the database to determine whether any candidates have the appropriate skills and therefore should be added to the list to be considered.
CHAIR AND BOARD NOMINATIONS

Any board may make a nomination of a candidate for any appointment to a position on that board. Board nominations are generally made via the chair. This can be particularly helpful in situations where a board has specialist sector networks that can be tapped into.

It is important to make clear to boards and chairs that, while such nominations are helpful, they are just one input into the process. Ministers always have the decision-making power (eg, in relation to short-listing of candidates or the final appointment).

If the candidate has not already made a self-nomination, the person’s name is added to the list of people to be considered by COMU.

If a person nominated by a board is already under consideration for a role on a board (eg, via self-nomination), the support of the board and/or chair should be added to the candidate’s record on the database.
COMU DATABASE SEARCH

In addition to all other sources of candidates, COMU will undertake searches of the Appointments database to determine whether any candidates have the appropriate skills and therefore should be added to the list to be considered for any role. A separate search will be undertaken for every position under consideration.

The COMU Appointments database is a sophisticated search engine that allows consideration of multiple variables to come up with a range of options. There is no fixed methodology, as each candidate search will be tailored to the needs of the specific position and the skills being sought.

Any candidates who appear to have some or all of the skills required will be added to the list of self-nominations and will be given equal consideration as with all other candidates.
It is a requirement of every appointment process that consultation be undertaken with a group of government agencies, seeking nominations of potential candidates (those agencies are collectively known as the “Diversity Agencies”).

Once the Minister has approved the appointment process and position specification(s), a request should be sent to each of the listed Diversity Agencies (listed below) in relation to each of the specific positions to be considered. The agencies should be provided with a copy of the position specification(s) for each of those positions under consideration.

A deadline for submission of nominations will need to be established, and is communicated to the agencies. The requests will need to be submitted early enough, and with a corresponding deadline, to permit the results to be incorporated into the broader group of potential candidates for the appointment (i.e., they will need to be received in time to be included in the report that the Minister will consider in relation to shortlists of candidates).

Some Diversity Agencies may seek further direct discussions with COMU, either by phone or in a meeting, to help give them a better understanding of the skill sets required.

There will be occasions in which certain Diversity Agencies may advise that they have no potential candidates who fit the specification supplied to them.

Diversity Agencies

- Ministry of Women’s Affairs  [www.mwa.govt.nz](http://www.mwa.govt.nz)
- Te Puni Kokiri  [www.tpk.govt.nz](http://www.tpk.govt.nz)
- Office of Ethnic Affairs (a division of the Department of Internal Affairs)  [http://www.ethnicaffairs.govt.nz/](http://www.ethnicaffairs.govt.nz/)
OTHER ORGANISATIONS

Depending on circumstances, and the particular skills being sought in a candidate for any appointment process, it may be appropriate to seek nominations from organisations, other than the Diversity Agencies or the Boards themselves.

This is most likely to occur when a specific skillset is required. In that case, it would be appropriate to consult with the relevant professional body (e.g., the Institution of Professional Engineers [IPENZ] or the Institute of Chartered Accountants of New Zealand).
ADVERTISING

Advertising, whether through print, internet or other media, is an option in terms of identifying potential candidates for any appointment process. COMU has used newspaper advertising in its appointment processes, although rarely. It will be necessary to analyse, in each case, the target audience, the likely effectiveness and the cost.

In COMU’s experience, broad advertising does not always produce a focused selection of well-aligned candidates. Advertising should be considered as an option on a case-by-case basis. COMU issues alerts to all active database candidates when positions come under consideration, and this is a form of advertising. For most COMU appointments, candidate identification is more effective via the normal database searches, together with targeted consultation and networks.
CAUCUS/SUPPORT PARTIES

As part of the consultation phase of any appointment process, it will be necessary to provide the responsible Minister with a means of communicating with all members of the government caucus, and the leaders of all support parties, inviting them to provide any nominations that they may have to feed into the appointment process.

The process by which the invitations to submit nominations are distributed to caucus is the responsibility of the relevant Minister’s office. However, COMU will be required to support that process. In most cases, this will involve drafting a generic letter to the government caucus and specific letters to the leaders of any support parties. Copies of the letters, along with copies of the position specifications are delivered to the Minister’s office to enable distribution, if required.

Consultation with caucus is an important step in any appointment process and all Ministers are expected to comply. Ministers will not, however, all follow the same process in undertaking this step. As this part of the process is not entirely driven by COMU, it will be important to establish a strong liaison with the private secretary or other contact person in the Minister’s office. This is in part to ensure that the task is completed, but also to ensure that there is an effective method by which nominations received by the Minister’s office are quickly passed on to COMU and incorporated into the system.
CANDIDATE POOL EVALUATED AGAINST SKILL SETS

It is important that all candidates under consideration for appointment to a board role, whether nominated by themselves or by a third party, have their suitability individually assessed.

Evaluation of the candidate pool can be completed using the COMU Appointments database, which can provide summaries of the records of the complete long-list of candidates. Some of the candidates may have provided supplementary material in support of their application (eg, an application letter). All of that material should be viewed in the course of evaluating the pool of candidates for a specific vacancy.
LONG AND SHORT LISTS TO MINISTER WITH OPTIONS

The principal aim of a report to a Minister at this stage of the process is to set out the results of the consultation, show the range of candidates in the pool, and provide some guidance as to which of the candidates most closely fit the specification for the role. It is also an opportunity to firm up decisions as to which board members will retire and/or be reappointed.

Each Minister will have his/her own requirements as to how this information is presented. In general, however, COMU will include the following:

- summary of decisions previously made, reminder of positions under consideration, high level detail of what the ‘call for nominations’ process has produced, and details of the decisions now required, and the timing of the process going forward

- for each board under consideration, detail of current board membership and skills mix, forthcoming term endings, and the previously agreed requirements for any new candidates. The Chair’s views will be incorporated

- summary details of all the candidates who applied or were nominated and the source of those nominations, and

- summary details of the candidates whom COMU and the Chair consider best meet the specification for the role (ie, COMU’s “top picks”).
MINISTER DECISION OR RECOMMENDATION

Once the full Cabinet process, and review by the government caucus, has been completed, the Minister is able to confirm his/her decision on who is to be appointed. In most cases this will be clear from the fact that the Minister has taken certain names through to the conclusion of the process. However, if any questions have been raised about any of the proposed appointments during the Cabinet process, the Minister may choose to revisit one or more of his/her original proposals.

The Cabinet process regarding appointments is generally not a decision-making process. In nearly all cases, the Minister is empowered to make the decision to appoint, or to recommend that the Governor-General makes an appointment. The Cabinet process is intended as an important consultation that may result in a Minister reviewing intended decisions.
In every appointment process there will be a decision required (by the Minister) as to which board members are to retire, and which are to be reappointed. For some board members, this will be clear from an early stage in the process. For others the decision will be taken later.

As soon as it is clear which board members are to retire, letters should be drafted for the Minister’s signature, notifying the retiring members that their service on a board is coming to an end and acknowledging their service.

Letters should be simple, brief and standard form. In special cases, such as when a long-serving Chair is retiring, the letter may add some remarks about specific achievements of the company/entity during his/her tenure on the Board. In certain circumstances, it may also be appropriate for a retirement letter to be signed by both shareholding Ministers.

If an appointment process covers several positions under consideration, it is preferable that all letters to retiring board members be sent out at the same time. This may entail waiting to determine the “retirement decision” for all of the positions, rather than sending out letters individually.

On occasions, Ministers will wish to call retiring directors before the letter is received. In all cases, COMU will endeavour to have an informal conversation with the director concerned to advise them that a letter is on the way.
CANDIDATE INTEREST
CONFIRMED

Communication with the shortlisted candidates is only undertaken by COMU after the Minister has agreed a shortlist. The initial approach is generally by phone, and is intended to ascertain whether the individual has any interest in the role.

The preliminary discussion will also cover any obvious conflicts of interest or logistical issues, and the proposed timing of the due diligence process.

Candidates may require some time to consider the possibility and may seek further information. Potential candidates should always be fully informed and not forced into making a hurried decision, but that needs to be balanced by the timeline to which COMU is working. (That is, the timeline will be aiming at a scheduled Cabinet Committee meeting. There will be a certain window of time for due diligence and determining the final recommended appointee, and it will be important to remain within that timeframe.)

The short-list should be communicated to the Chair as soon as possible after it has been agreed by the Minister, at which the first discussion can commence around the arrangement of due diligence meetings with the candidates.
GOVERNANCE INFORMATION TO CANDIDATES

Once the candidate has indicated his/her interest in the role, a meeting will need to be arranged to provide the opportunity to undertake some due diligence.

Once the meeting is arranged (see “Due Diligence Meetings Arranged”), a letter should be sent to the candidate clearly setting out the meeting arrangements and providing information about the process and the company/entity.

Letter contents
- Time and place of meeting.
- Attendees at meeting.
- Purpose of meeting and due diligence process.
- Summary of other information enclosed.

Letter enclosures
- Travel arrangements for candidate (if required).
- Article on the role of a director, Crown company governance and factors to consider when contemplating a director appointment (current article is by The Boardroom Practice).
- List of potential questions for the candidate to consider.
- Background Check forms for completion and return by the candidate. These will vary depending on the current provider of background check services.
- Declaration forms to be completed for compliance with the Crown Entities Act 2004 (or other legislative requirement) – if applicable*.
- Latest Annual Report for company/entity.
- Latest Statement of Corporate Intent, or similar document, for the company/entity.
- Any appropriate background information or promotional material that would assist the candidate to gain a better understanding of the entity.

*If the entity is subject to the Crown Entities Act 2004 (CE Act), a candidate must make certain statements and disclosures prior to appointment. If the organisation is a statutory entity, the requirements of section 31 of the CE Act will apply. If it is a Crown Entity Company, the requirements of sections 89 and 90 of the CE Act will apply. However, in both cases, the statements and disclosures should be the same, and comprise:

1. certification by the candidate that he/she is not disqualified from being a member (either under the CE Act or the Companies Act)
2. disclosure of the nature and extent of all interests that the candidate has in matters relating to the entity, and
3. consent in writing to be a member of the entity’s board

Steps 1 and 2 should be completed by all candidates about to undertake a due diligence process. Step 3 is to be completed by the final candidate agreed by the Minister, prior to the submission of the appointment proposal to APH.
ENTITY-SPECIFIC INDUCTION

The entity, and in particular the Board Chair, is responsible for arranging a suitable induction for the new appointee into the company/entity itself.

This will involve, but not be limited to, introductions to key management staff, discussions with management about their roles, access to previous board papers and visits to key operational sites.
DUE DILIGENCE MEETINGS

As noted under the heading “Due Diligence Meetings Arranged”, the meeting will be attended by the Chair of the Board, the candidate and a COMU representative. It is also preferable to have either the Deputy Chair or another board member attend, but that will depend on availability and the logistics of bringing four people together at one time.

The meeting is generally scheduled for one hour, but may often run for longer if needed. Meeting length will generally be driven by the participants’ time availability. It is also important to note the timing of other due diligence meetings that may have been scheduled later the same day. Arrangements should be made to ensure that candidates’ privacy is maintained (eg, by not meeting other candidates coming or going from the same venue).

Due diligence meetings have not traditionally followed a fixed agenda, nor have they had a standard template of questions. The COMU representative normally takes the role of “facilitator” of the meeting, with the line of conversation generally being driven by the Chair of the company/entity concerned. It is helpful to meet with the Chair before the first meeting commences, to agree on roles and likely topics/issues that may arise.

The COMU representative also needs to participate to ensure that the conversation keeps running (eg, when there are pauses, if the thread of conversation is pursuing the one topic for too long, or the candidate is not getting the opportunity to speak). There are also certain topics (listed below) that need to be covered and therefore raised by the COMU representative, if not covered during the course of the general conversation.

Topics to cover in due diligence meetings

❖ Welcome.
❖ What the meeting is intended to achieve/cover, in particular that it is intended to be “two-way” with the candidate having a full opportunity to find out what they need to know about the role and the company/entity.
❖ The fact that some information revealed in the meeting, both from the company/entity and from the candidate, may be confidential. In some cases it may be considered necessary to have a confidentiality agreement signed.
❖ Possible conflicts of interest.
❖ The “no surprises” question (ie, anything from the candidate’s past that might surprise Ministers). It is possible that this may have been covered before the meeting and could be omitted but, in general, candidates expect questions of this nature.
❖ An explanation of the process, including the likely timeframe for completion, and when the candidate will next hear from us.
MINISTER DECISION ON WHO TO APPOINT

Following completion of the due diligence meetings, there will be a discussion with the Chair regarding the relative merits of the candidates. The discussion should endeavour to reach a mutually agreed view as to the preferred candidate.

If there is a divergence of view about the preferred candidate, between COMU/Chair or Chair/Minister, COMU should always note the Chair’s view in advice to the Minister.

The completion and outcome of the due diligence process should be reported promptly to the responsible Minister. That advice should give a factual outline of the process, but also provide recommendations regarding the favoured candidates for each position under consideration.

COMU typically does not contact a candidate’s nominated referee(s) until after the Minister has agreed the preferred candidates for appointment. However, background checks (refer to “Background Checks” section) will generally be commenced at the time of shortlisting and will be applied to all candidates who are shortlisted.

Decision

The Minister’s decision on who to appoint may be conveyed in one of two ways:

- **On the papers.** The outcome of the process, along with recommendations, is reported to the Minister, who notes his/her preference on the Treasury report and returns it to COMU (generally applies to smaller appointment processes, involving one or two boards).

- **In a meeting with officials.** The outcome of the process, along with recommendations, is reported to the Minister, who reads it in preparation for a meeting with COMU officials.

At the meeting, the range of positions and candidates are discussed and the Minister conveys his/her decisions directly to officials (generally applies to larger appointment rounds, such as SOEs).

If decisions are made in open meeting, the outcome should be recorded at the meeting, then written up and circulated for confirmation by the other attendees, especially the private secretary who attended.
FORMAL INTEREST AND CONFLICTS CHECKS

Once the Minister’s decision is confirmed, the preferred appointee should be contacted to confirm that he/she is still interested. The remaining process (specifically the Cabinet requirements) should be explained to the candidate and that information needs to be in a context that manages the candidate’s expectations.

Discussions with the candidate should also address potential conflicts of interest, if that has not been covered in previous discussions. It is also an opportunity to ensure that background check material and any statutory forms (eg, Crown Entity Act declarations) have been fully completed and returned.

The candidate should be asked to provide the name and contact details of two referees.
BACKGROUND AND REFEREE CHECKS

Background checks covering aspects such as credit checks, criminal record, qualifications check and past and current directorships, will be undertaken by an external provider. The nature and extent of those checks will be standard and will have been negotiated with the provider. There are no exceptions to the requirement to undergo background checks (for both new appointees and reappointees).

Information received from background checks must be reviewed thoroughly and matched with other information received from the candidates (eg, the CV). Any discrepancies or items that cause concern need to be dealt with on a case-by-case basis. In most cases, issues arising will be addressed via a phone conversation with the candidate.

The preferred candidates should have supplied the names and contact phone numbers of at least two referees. Contacting the referees should be undertaken by COMU, before the completion and submission to the Minister of the final report to the Cabinet Committee. In some instances it may be appropriate for someone outside of COMU to undertake the referee checks (eg, the Chair) if there is an established relationship with the referee.

Discussion with referees should focus, if possible, on the candidate’s previous roles as an independent director or on any governance roles previously held.
All proposed appointments to Crown company and entity boards must be reported by the responsible Minister to the Cabinet Appointments and Honours Committee (APH).

The requirements of Cabinet, and the format and content of paper to APH, are all set out on the Cabinet Office web site http://www.dpmc.govt.nz/cabinet/

The covering briefing to the Minister should focus on particular matters in the APH paper that need to be drawn to the Minister’s attention, a reminder of the process by which certain decisions have been reached and an update on developments that have arisen since the last meeting or report to the Minister.

The time required for preparation of the documents, and the availability of the Minister for signature, should be factored into plans to provide the paper to the Minister, particularly when there are multiple appointments. Completion of the documentation will require going back to candidates to ensure up-to-date CV information and confirm disclosures of interest (disclosures in writing, if legislation requires).

The report should also clearly set out the arrangements for lodging the APH paper at the Cabinet Office, including the deadline for that lodgement.
Lodgement of an APH paper in Cabinet Office is the responsibility of the Minister’s office. The critical factor to be aware of is the availability of the Minister to sign prior to the deadline for lodgement of the APH paper. Factors affecting a Minister’s availability will include the timing of parliamentary recesses and absences by the Minister, particularly for overseas travel. Those dates should be checked at an early stage.
AIDE MEMOIRE FOR MINISTER

An aide memoire should be drafted for the Minister to take with him/her to the APH Committee. This is particularly important where the APH paper deals with multiple appointments.

The aide memoire should particularly focus on points that the Minister may need to clarify during the course of the APH meeting.

Other aspects to be covered could include:

- the process by which certain decisions were reached
- the names of candidates shortlisted, but not proposed for appointment, and
- statistical information regarding board composition.
The Cabinet Appointments and Honours Committee (APH) is the first formal consideration by Ministers collectively.

Once the paper is lodged in Cabinet Office, COMU has no role until decisions of APH have been formally communicated by the issue of a minute.

However, COMU should keep a close watch on proceedings and should attend outside the Cabinet Committee room while the APH meeting is in progress. This will enable Ministers to come out of the meeting and seek clarification of matters being discussed. It may also give an opportunity to obtain from the Minister, or Cabinet Office staff, an early indication of the outcome of the APH consideration.

If it is not possible to obtain the decisions directly after the meeting, that information will have to be sought from the private secretary, who will need to be briefed by the Minister on the outcome of the meeting.

The only authoritative source recording the outcome of a Cabinet Committee is the formal minute issued by the Committee secretary. Cabinet Office will typically issue a minute within two days of the APH meeting. One original copy of the minute will be provided to the responsible Minister and one copy will come to the Treasury. The Treasury copy will be received by Ministerial Services and saved on the system. Ministerial Services will notify the Appointments and Governance team of the arrival of a Cabinet minute in the same way as for other reports returned from a Minister’s office.
FINAL CONSENT FORMS RECEIVED FROM CANDIDATES

If any of the required forms have not yet been completed by the candidate, they should be followed up with the candidate now.

If the Crown Entities Act 2004 applies to an appointment, it will be necessary to obtain from the candidate the final “consent to serve”.

CABINET

Following consideration at APH, the decisions will need to be confirmed by the next (full) Cabinet meeting. The APH paper will automatically be placed on the Cabinet agenda by the Cabinet Office.

If any further action is required to be taken by COMU, the Minister’s office will advise requirements. Occasionally, action is required at short notice between the APH and Cabinet consideration. Therefore it is important to obtain the outcome of the APH consideration as early as possible.

In most cases, Cabinet will consider all of the decisions of a Cabinet Committee (such as APH) in one omnibus report, known as the “Weekly Report”. A single minute will be issued with a list of all of the APH items, noting that Cabinet confirmed those items.

On some occasions, such as when an item is singled out for further action to be taken between APH and Cabinet, the matter will be addressed by Cabinet as a separate agenda item and, following consideration, a new minute will be issued for that item.
After confirmation by Cabinet, the Minister will need to place the proposed appointments on the agenda for the next government caucus meeting. Caucus meetings are generally held on the day after Cabinet, but are subject to change. It will be important to confirm the date of the likely caucus meeting where the appointments will be considered. If the intended week for consideration by caucus falls during a parliamentary recess, there will be no caucus meeting scheduled and, if that is the case, confirmation of the appointments will be delayed.

The responsibility for arranging to place the appointments on the caucus agenda lies with the private secretary. The private secretary will need to prepare a simple submission for caucus and may ask for information, such as brief biographies of the candidates, to include in that submission.
MINISTER DECISION OR RECOMMENDATION

Once the full Cabinet process, and review by the government caucus, has been completed, the Minister is able to confirm his/her decision on who is to be appointed. In most cases this will be clear from the fact that the Minister has taken certain names through to the conclusion of the process. However, if any questions have been raised about any of the proposed appointments during the Cabinet process, the Minister may choose to revisit one or more of his/her original proposals.

The Cabinet process regarding appointments is generally not a decision-making process. In nearly all cases, the Minister is empowered to make the decision to appoint, or to recommend that the Governor-General makes an appointment. The Cabinet process is intended as an important consultation that may result in a Minister reviewing intended decisions.
ADVISE BOARD MEMBER DESIGNATE

Once the APH, Cabinet and Caucus steps have been completed, the successful candidates (both new appointments and reappointments) should be advised by phone that they can expect to receive a letter of appointment from the Minister. Calls to candidates should only be made once it has been confirmed that the Minister has signed the appointment letters.
ADVISE BOARD CHAIR

The Board Chair should be advised about the outcome of the Cabinet process and of the impending issue of appointment letters by the Minister. It should be made clear to Chairs that no appointment is final until the appointee has received a letter from the Minister and has accepted the appointment.
ADVISE UNSUCCESSFUL CANDIDATES

The candidates who undertook the due diligence interviews, but who are not proposed for appointment, should be advised by phone. This should be done before the appointment letters are sent out by the Minister and certainly before any public announcement is made.

Candidates who joined the appointment process by self-nomination, but who were not shortlisted, should also be advised that their application was unsuccessful – this can be done via e-mail.
LETTER OF APPOINTMENT SENT BY MINISTER

Letters of appointment should be drafted and submitted for the Minister’s signature as soon as possible after confirmation by caucus.

Great care must be taken in the drafting of appointment letters to ensure that:

- there are no spelling or other mistakes
- references to the candidate are the same throughout the letter
- term length is accurate, as are commencement and expiry dates of the appointee’s term
- the letter contains all the correct information relevant to the company/entity
- references to legislation are correct throughout the letter, and
- all of the required documents are attached to each letter.

In all cases, legal advice should be sought in the initial drafting of a template appointment letter for any particular company or entity.

The instructions to the private secretary must be clear. Once letters are signed, they need to be posted to the recipients from the Minister’s office. The copies required for the Board Chair and Company Secretary (or similar role) must also be sent at that time. Copies must be taken first (of the signed and dated versions) and returned to COMU.

There may be occasions in which the signed and dated appointment letters are scanned and e-mailed to the recipients before being posted. That is not best practice and should only occur on the specific instructions of the Minister. If letters are to be e-mailed first, it will be necessary to phone the recipients before sending to warn of their arrival.
BOARD MEMBER RETURNS SIGNED APPOINTMENT LETTER

The appointment letter should always have attached two identical draft letters for signature by the appointee. The letters will be addressed to the Minister from the appointee accepting the appointment on the terms set out in the letter. The appointee is required to sign both copies and return the two signed letters to the Minister’s office. The Minister’s office staff should be instructed to forward both copies of the letter to COMU. One copy is held on file by COMU and the other is sent to the company for its records.
BOARD INFORMATION ON COMU WEBSITE UPDATED

Information on board membership is posted on the COMU web-site as well as on the COMU Appointments database.

Changes to the membership of the boards, resulting from completion of an appointment process, should be noted on the relevant companies’ records on both the web-site and database. Changes should be posted as close as possible to the date of commencement of any new term, rather than when an appointment letter is issued.
ADVISE OTHER COMU STAKEHOLDERS

There is no fixed requirement to advise other stakeholders once an appointment process has been completed.

However, there are likely to be a number of instances in which other stakeholders have had a close involvement in a process, and would benefit from knowing the outcome. This might include government agencies that have an interest in the appointment process, such as the Ministry for Culture and Heritage on broadcasting entities, or an agency that may have provided nominations.
DRAFT MINISTER PRESS RELEASE (IF REQUIRED)

The responsible Minister will decide whether a press release is required following completion of an appointment process.

If a press release is planned, it is highly likely that COMU will be asked to provide material for inclusion in the release. In that regard, COMU should liaise closely with the relevant Minister’s office. Material provided by COMU will essentially be biographical data on appointees and information about the companies/entities.

The Minister’s press secretary will incorporate this material into a suitable form for release. It will be important to check the final draft to ensure that the information provided has been placed in an appropriate context. If a significant amount of biographical material has been included, it may be prudent to check this with the appointee for accuracy.

A press release should not be issued until all of the people referred to in the release have formally accepted their appointments. All of the people referred to in the press release should be advised before it goes out.
Certain appointments will require notification in the New Zealand Gazette. The legislation relating to the specific entity sets out whether a Gazette notice is required. If a notice is required, the legislative provisions will determine the timing of publication and this must be checked in every instance.

Early consultation should be undertaken with the Gazette office to ascertain its requirements for formatting of notices and the deadlines to make certain publication dates.
COMU INDUCTION

Induction is primarily the responsibility of the Chair and the company/entity’s management.

COMU has traditionally organised a one-day induction seminar at the conclusion of every significant process and invited the appointees from that process to attend. The COMU induction seminar is not intended to inform people “how to be a director” nor does it provide information on the specific companies/entities that directors may have been appointed to. It gives an overview of the shareholders’ expectations, the differences involved in governance in a Crown company, the specific reporting requirements and the agencies that are involved.

It is not compulsory for new board members to attend a COMU induction seminar, but they should be strongly encouraged to attend. If the original date does not suit a majority of the appointees, consideration should be given to deferring the event. The cost of the seminar itself, including catering, is borne by COMU. However, COMU does not pay for travel and accommodation (if required) for the individual attendees, and they should discuss those costs with the entity to which they have been appointed.

Typically, the induction seminar has included an address by the responsible Minister who welcomes the new directors and broadly outlines the shareholders’ expectations for Crown companies. It is also an important opportunity for directors to speak to a Minister directly and pose questions.

In terms of logistics, commencement of the organisation for the induction seminar should start with the Minister. If the Minister is to be involved, it is easier to schedule that session at the start of the day and work the rest of the agenda around it. A request for a date in the Minister’s diary should be made well in advance of the end of the appointment process. This will enable appointees to be invited to the induction seminar as part of their appointment letter.

Other possible participants at COMU induction seminar

- Chair or senior director of a Crown company
- Senior management from a Crown company (e.g., CEO or company secretary)
- COMU Monitoring Manager(s)
- Treasury Legal team
- Minister’s private secretary
- Office of the Auditor-General
COMU PROFESSIONAL DEVELOPMENT

COMU's professional development programme for directors and director candidates is under review as at December 2011. A new programme is being developed and is expected to be operational by 30 June 2012.
ENTITY-SPECIFIC INDUCTION

The entity, and in particular the Board Chair, is responsible for arranging a suitable induction for the new appointee into the company/entity itself.

This will involve, but not be limited to, introductions to key management staff, discussions with management about their roles, access to previous board papers and visits to key operational sites.
EXPECTATION OF SELF-INITIATED LEARNING

All directors are expected to keep up-to-date with issues and developments in the industry/sector they are involved in. Directors should also, in consultation with the Chairs of their respective boards, seek to identify areas for personal development. This should particularly arise from the board evaluation process.

If a director attends a course or similar that is directly linked to that director’s contribution to the company’s business, it is reasonable for the company to pay the cost. All costs for directors’ professional development should be approved by the Chair.

Company boards are expected to identify their proposed budget for board professional development each financial year. The budget must be approved by the responsible Minister as part of the board fee approval process for the year.
The Crown requires that each board undertakes periodic evaluation of its performance. The board evaluation is an important contribution to the process by which the responsible Ministers consider the skills make-up of each board when they deliberate on appointments and reappointments. However, its prime function is as a basis for the mentoring of directors by chairs and fellow directors, and it therefore forms a vital element in the seamless process of director induction and development.

There is no longer one prescribed process for evaluation. However, there is a general requirement for Crown company boards to evaluate annually the performance of individual directors, the chair of the board and the board as a whole.

Individual boards are able to develop processes for themselves that best meet their needs – provided that the minimum expectations (as set out below) are met. Boards may find it useful to have access to tools to assist them in this process, and default evaluation templates are available from COMU, if required.

The shareholding Ministers expect that each board will have a process in place that meets the needs of the board and the minimum stated requirements. The key deliverables from this process will be:

- formal high-level board feedback to COMU on overall board performance, key focus areas for continuing development and assurance that the process has been appropriately implemented
- individual director performance assessments and development plans that will be implemented by the organisation (these plans are to be retained by the board and not shared with COMU), and
- a board succession plan which is annually updated and advises the shareholder of gaps in current board composition and risks going forward as director rotation occurs.

Boards are not required to submit individual director or chair evaluation reports to COMU. However, COMU does require written confirmation that an appropriate process has taken place. COMU will confirm its requirements each year, but chairs should anticipate a minimum requirement to report that a suitable evaluation has been undertaken, briefly describing what that process was and what the high-level outcomes were – with particular reference to overall board performance. The advice should include commentary on any significant issues that chairs consider should be brought to the attention of the shareholding Ministers or COMU.
OWNERS’ EXPECTATIONS MANUAL

The Owners’ Expectations Manual outlines the shareholding Ministers’ expectations of the companies fully or partially owned by the Crown. The expectations are targeted towards the State-owned Enterprises (SOEs). Many of these principles and expectations can be applied to the following Crown-owned entities and companies, where appropriate:

- Crown-owned companies
- other Crown companies (eg, Crown entity companies and Schedule 4 companies)
- statutory entities
- regional airports, and
- Crown financial institutions.

Specific functions of the manual

- This manual should be read in conjunction with relevant legislation such as the Companies Act 1993 (Companies Act), Crown Entities Act 2004 (CE Act), Public Finance Act 1989 (PFA), State-Owned Enterprises Act 1986 (SOE Act) and other entity-specific legislation like the New Zealand Railways Corporation Act 1981 for KiwiRail Group, or establishment Acts for each Crown entity.

The Owners’ Expectations Manual can be found on the COMU web site www.comu.govt.nz

- The manual is designed to help boards operate effectively in their roles and to clarify their responsibilities. It also takes account of the particular expectations of Crown company board members, as opposed to directors of private or publicly listed companies.

- The manual is complemented by the expectations letter sent by the shareholding Ministers to the Crown company boards at the outset of the annual business planning round. The expectations letter covers entity/company-specific issues and expectations.