



OC200309

1 May 2020

[REDACTED]

Withheld under section 9(2)(a) of the Official Information Act 1982

Dear [REDACTED]

Thank you for your email of 13 April 2020, where you asked the following question under the Official Information Act 1982 (the Act): *“Is there any clear requirements for the Minister to appoint a board member for transportation agencies (NZTA, MNZ, CAA and KiwiRail)?”*

Please note the answer to your question is a collation of publicly available information and therefore meets the criteria for refusing your request under section 18(d) of the Act as *“the information requested is or will soon be publicly available”*. Despite this, in the interests of ease of reference and explanation, the answer to your question is set out below.

The Minister of Transport's (the Minister's) portfolio responsibilities include appointments to the boards of four Crown entities: Waka Kotahi NZ Transport Agency (Waka Kotahi), Civil Aviation Authority (CAA), Maritime New Zealand (MNZ) and the Transport Accident Investigation Commission (TAIC). The Minister holds direct responsibility for appointing members to the Waka Kotahi, CAA and MNZ boards; and recommends the appointees for the TAIC board to the Governor-General. The Minister holds no responsibility for appointments to KiwiRail as these appointments are made by the shareholding Ministers, the Minister of State Owned Enterprises and the Minister of Finance in accordance with the State-Owned Enterprises Act 1986.

Appointments to all Crown entities are governed by the Crown Entities Act 2004. Section 27 of this act specifies that Ministers make appointments to the entities they are responsible for, section 28 outlines how members are appointed across Crown entities (including which types of entities have appointments made by Ministers and which entities have appointments made by the Governor General), and section 29 outlines the criteria that Ministers must consider in making or recommending that appointments are made. Clause 1 of Schedule 5 of the Crown Entities Act also specifies that Chairs and Deputy Chairs for boards are appointed by Ministers. These specific sections of the Crown Entities Act are copied for your reference in **Appendix One**.

There are also specific requirements relating to each of the four transport crown entities listed in the legislation that establish each entity. These requirements include; the number of members each board must have, any additional requirements for individuals being considered for boards, and any specific steps or considerations Ministers must give as part of making appointments. I have copied each of these sections in full for you in **Appendix One**.

In making appointments, Ministers also follow a number of established guidelines, which are in place to ensure consistency of appointments across the state sector. These include the State Services Commission's Board Appointments and Inductions Guidelines, the Cabinet Manual, and any guidance listed through Cabinet Office circulars. These guidelines are available through the below links:

- **SSC Board Appointments and Induction Guidelines:**
<https://ssc.govt.nz/assets/Legacy/resources/board-appt-guidelines-oct15.pdf>
- **Cabinet Manual:** <https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual>
- **Cabinet Office Circulars:**
https://dpmc.govt.nz/publications/archive?field_issue_date_value%5Bvalue%5D%5Byear%5D=&field_metadata_pubtypespubsdb_tid=805&field_publisher_tid=All&field_metadata_dpmctopics_tid=All.

Please note, not all of the Cabinet Office circulars will relate to board appointments. Examples of Cabinet Office circulars related to appointments are: *CO (19) 1 – Fees Framework for members appointed to boards in which the Crown has an interest*, and *CO (2) 6 – Government Appointments: Increasing the Diversity of Board Memberships*.

This completes your request for official information. You have the right to request a review of this decision from the Office of the Ombudsman. Their details are available at: <https://www.ombudsman.parliament.nz/get-help-public>.

Please note, the Ministry of Transport publishes our Official Information Act responses, and the information contained in our reply to you will be published on our website. We will remove any personal or identifiable information before publishing.

Yours sincerely



Ngaire Best
Manager, Governance and Commercial

Appendix One: Sections of Legislation that govern appointments

Note: Full copies of each Act is available at <http://www.legislation.govt.nz/>.

Crown Entities Act 2004:

Section 27: Responsible Minister's role

(1) The role of the responsible Minister is to oversee and manage the Crown's interests in, and relationship with, a statutory entity and to exercise any statutory responsibilities given to the Minister, including functions and powers—

- (a) in relation to the appointment and removal of members under this subpart:
- (b) to determine the remuneration of some members under this Part:
- (c) in relation to the giving of directions to the entity under subpart 1 of Part 3:
- (d) to review the operations and performance of the entity under subpart 3 of Part 3:
- (e) to request information from the entity under subpart 3 of Part 3, whether for a review or otherwise:
- (f) to participate in the process of setting the entity's strategic direction and performance expectations and monitoring the entity's performance under Part 4:
- (g) in relation to other matters in this Act or another Act.

Section 28: Method of appointment of members

(1) A member of a statutory entity is appointed by—

- (a) the responsible Minister, in the case of a member of a Crown agent or autonomous Crown entity; or
- (b) the Governor-General, on the recommendation of the responsible Minister, in the case of a member of an independent Crown entity.

(2) The appointment must be made by written notice to the member (with a copy to the entity).

(3) The notice must—

(a) state the date on which the appointment takes effect which must not be earlier than the date on which the notice is received; and

(b) state the term of the appointment.

(4) The responsible Minister must ensure that the following are notified in the *Gazette* as soon as is reasonably practicable after an appointment is made:

(a) the name of the appointee and the statutory entity; and

(b) the date on which the appointment takes effect; and

(c) the term of the appointment.

Section 29: Criteria for appointments or recommendations by responsible Minister

(1) A responsible Minister of a statutory entity must appoint, or recommend the appointment of, members under section 28 in accordance with any criteria for members and any process for appointment under this or another Act.

(2) A responsible Minister—

(a) may only appoint or recommend a person who, in the responsible Minister's opinion, has the appropriate knowledge, skills, and experience to assist the statutory entity to achieve its objectives and perform its functions; and

(b) subject to subsection (1), in appointing or recommending an appointment, must take into account the desirability of promoting diversity in the membership of Crown entities.

Schedule 5, Clause 1:

(1) The responsible Minister may appoint one of the members as the chairperson, and another member as the deputy chairperson, of the board of a Crown agent or an autonomous Crown entity by written notice to the member (with a copy to the board).

(2) The Governor-General may, on the recommendation of the responsible Minister, appoint one of the members as the chairperson, and another member as the deputy chairperson, of the board of an independent Crown entity by written notice to the member (with a copy to the board).

(3) The notice of appointment must state the date on which the appointment takes effect.

Land Transport Management Act 2003:

Section 98 Agency's board

- (1) The Agency's board must have at least 6, but no more than 8, board members appointed in accordance with section 28(1)(a) of the Crown Entities Act 2004.
- (2) The responsible Minister must not appoint a board member unless he or she has consulted with the persons, representative groups within the land transport sector or elsewhere, government departments, and Crown entities that he or she considers appropriate.
- (3) The Agency's board must not delegate any functions or powers delegated to the board by the Minister without the written consent of the Minister.

Civil Aviation Act 1990:

Section 72A Civil Aviation Authority of New Zealand established

- (1) There is hereby established an authority to be known as the Civil Aviation Authority of New Zealand.
 - (1A) The Authority is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
 - (1B) The Crown Entities Act 2004 applies to the Authority except to the extent that this Act expressly provides otherwise.
- (2) The Authority shall consist of 5 members appointed in accordance with section 28(1)(a) of the Crown Entities Act 2004.
 - (2A) Members of the Authority are the board for the purposes of the Crown Entities Act 2004.
- (3) [Repealed]
- (4) The Minister shall appoint as members persons who the Minister considers will represent the public interest in civil aviation.
 - (4A) Subsection (4) does not limit section 29 of the Crown Entities Act 2004.
- (5) Before appointing 2 of the members, the Minister shall request, from such organisation or organisations as the Minister considers represent those who have a substantial interest in the civil aviation industry in New Zealand, the names of persons such organisation or organisations consider proper candidates for appointment to the Authority.

(6) [Repealed]

(7) A person may hold office as a member concurrently with any other office, except any office or appointment under the Transport Accident Investigation Commission Act 1990.

(8) Neither the Director nor any other employee of the Authority may be a member of the Authority.

(9) The Authority is owned by the Crown.

(10) The Authority is hereby deemed to be a Crown entity for the purposes of the Public Finance Act 1989.

Maritime Transport Act 1994:

Section 429A Membership of Authority

(1) The Authority must have 5 members appointed under section 28(1)(a) of the Crown Entities Act 2004.

(2) Members of the Authority are the board for the purposes of the Crown Entities Act 2004.

(3) The Minister may only appoint as members persons who—

(a) are New Zealand citizens or permanent residents of New Zealand; and

(b) the Minister considers will represent the public interest in maritime matters.

(4) Before appointing 2 of the members, the Minister must request, from such organisation or organisations as the Minister considers represent those who have a substantial interest in the maritime industry in New Zealand, the names of persons such organisation considers or organisations consider proper candidates for appointment to the Authority.

(5) A person may not hold office as a member concurrently with any office or appointment under the Transport Accident Investigation Commission Act 1990.

(6) Neither the Director nor any other employee of the Authority may be a member of the Authority.

(7) This section does not limit sections 29 and 30 of the Crown Entities Act 2004.

Transport Accident Investigation Commission Act 1990:

Section 5 Membership of Commission

(1) The Commission consists of not less than 3 and not more than 5 members appointed in accordance with section 28(1)(b) of the Crown Entities Act 2004.

(2) Members of the Commission are the board for the purposes of the Crown Entities Act 2004.

(3) One of the members of the Commission shall be a barrister or solicitor of the High Court who has held a practising certificate as such for not less than 7 years, or a District Court Judge.

(4) Subsection (3) does not limit section 29 of the Crown Entities Act 2004.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT