

# Guidance

## Appointment of Human Rights Commissioners

Ministry of Justice

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# Introduction

These guidelines set out the process for the appointment of Human Rights Commissioners. The guidelines seek to complement Te Kawa Mataaho Public Service Commission *Board Appointment and Induction Guidelines* and are designed to be read in conjunction with provisions of the Human Rights Act 1993 and the Crown Entities Act 2004.

These guidelines are for use by officials at the Ministry of Justice when providing administrative support to the Minister of Justice during the appointments process.

The guidelines also seek to provide clear information to Commissioners, members of the public, and prospective candidates about the appointments process.

# Overview of the Human Rights Commission

1. The Human Rights Commission (the Commission) is an independent Crown entity established under the Human Rights Act 1993 and the Crown Entities Act 2004. The Commission works with the Government and civil society to advocate and promote respect for human rights and to promote harmonious relations in New Zealand. As set out in section 19 of the Human Rights Act, the Commission has a duty to carry out its functions independently of the Government.
  2. The Commission is made up of the Chief Human Rights Commissioner, and at least three (but no more than four) other Commissioners. The following three priority areas must be led by a Commissioner other than the Chief Commissioner – disability rights, equal employment opportunities, and race relations.
  3. Section 5 of the Human Rights Act provides that the Commission’s primary functions are to:
    - advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society
    - encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society
    - to promote racial equality and cultural diversity
    - to promote equal employment opportunities including pay equity
    - to promote and protect the full and equal enjoyment of human rights by persons with disabilities.
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## Role of Commissioners

4. Together, the Commissioners make up the Board of the Commission, with the Chief Commissioner as the Chair of the Board. As the Board, the Commissioners act together to determine the strategic direction and the general nature of activities undertaken in the performance of the Commission’s functions as set out in section 5 of the Human Rights Act. As an independent Crown entity, the Commission is also required to carry out the functions listed in section 14 of the Crown Entities Act.

5. The functions of the Chief Commissioner are set out in section 15 of the Human Rights Act and include:
  - chairing the Commission, and leading discussions of the Commission except when it is the function of a Commissioner to do so
  - ensuring that the activities undertaken in the performance of the Commission's functions are consistent with the strategic direction and other determinations of the Commission
  - ensuring that the Commission is effective and efficient in carrying out its functions.
6. As set out in section 16 of the Human Rights Act, Commissioners that are appointed to lead the work of the Commission in a priority area have the following functions:
  - to lead discussions of the Commission in relation to that priority area of work
  - to provide advice and leadership on matters in that priority area of work that arise in the course of activities undertaken in the performance of the Commission's functions, both when engaging in those activities and when consulted
  - to contribute to the public debate on matters in that priority area of work
  - any other functions or duties conferred or imposed upon him or her by or under the Human Rights Act or any other enactment.

**For more information about the Human Rights Commission and the role of Commissioners, visit [www.hrc.co.nz](http://www.hrc.co.nz)**

# The Paris Principles and the Global Alliance of National Human Rights Institutions

7. The appointments process for Human Rights Commissioners must not only be made in accordance with the requirements of relevant legislative provisions (see below) but also needs to comply with international conventions to which New Zealand is a signatory.
8. New Zealand is a signatory to the 1993 United Nations General Assembly Resolution 48/134 known as the Paris Principles.

The Paris Principles set the minimum international standards that National Human Rights Institutions (NHRIs), such as the Human Rights Commission, must meet in order to operate efficiently and be considered credible by its peers and within the United Nations system.

9. The Paris Principles set standards relating to the status, structure, mandate, composition, power and methods of operation of NHRIs.
10. The Global Alliance of National Human Rights Institutions (GANHRI) assesses whether countries comply with the Paris Principles and provides an accreditation status. GANHRI has the mandate to review and analyse the accreditation of national human rights institutions every five years. Following the initial accreditation process, and any subsequent reaccreditation review, a status is granted alongside a list of recommendations that outline what improvements could be made to increase compliance with the Paris Principles.
11. The Paris Principles and GANHRI accreditation process set the Human Rights Commission apart from other independent Crown entities. It is therefore important that the Minister and all other people involved in the appointments process, are fully informed of the Paris Principles and the accreditation process.

Visit [www.ganhri.org](http://www.ganhri.org) to find out more about the Paris Principles

GANHRI accreditation reports are published online. A copy of New Zealand's 2016 report can be found at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/SCA-Reports.aspx>

# Formal requirements for the appointment of Human Rights Commissioners

## Legislative requirements

12. Officials should be familiar with all the legislative requirements regarding the appointment of Commissioners, set out in both the Human Rights Act and the Crown Entities Act.
  13. Human Rights Commissioners are appointed by the Governor-General on the recommendation of the Minister of Justice, as set out in section 28 of the Crown Entities Act. As board members of an independent Crown entity, Commissioners hold office for a maximum term of five years and may from time to time, be reappointed.
  14. The criteria for appointment of the Chief Commissioner and other Commissioners are set out in sections 11, 12, and 13 of the Human Rights Act. Provisions relating to the appointment and removal of members of a statutory entity, such as the Human Rights Commission, are set out in Part 2 of the Crown Entities Act.
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## Cabinet requirements

15. Cabinet is the central decision-making body of executive government. It is a collective forum for Ministers to decide significant government issues and keep informed of matters of public interest. Cabinet is central to New Zealand's system of government and is established by convention, not law.
16. Cabinet committees provide the forum for detailed consideration and discussion of issues before their reference to Cabinet, with officials available to assist Ministers if the committee wishes. Under conventions set out in the Cabinet Manual, the Minister is required to submit the proposed appointment of a Human Rights Commissioner to Cabinet through the Appointments and Honours Committee. Once the Minister has selected the candidate who he or she considers best meets the full range of requirements, a paper is prepared for the Minister to take to the Appointments and Honours Committee for consideration.



17. Following Cabinet consideration of the appointment, the Minister makes the formal recommendation for an appointment to the Governor-General.
18. The CabGuide provides practical information and advice to officials and Ministers' offices on Cabinet consideration of appointments. Before beginning the appointments process, officials should familiarise themselves with the requirements set out in the CabGuide and all relevant Cabinet circulars.

**The Cabinet Manual, CabGuide and Cabinet Office Circulars can be found at [www.dpmc.govt.nz](http://www.dpmc.govt.nz)**

# The Role of Ministers and the Governor-General

19. The Governor-General exercises a range of statutory powers, including making statutory appointments. The Crown Entities Act provides statutory authority for the Governor-General to appoint Human Rights Commissioners on the recommendation of the Minister of Justice.

The appointments process for a Human Rights Commissioner is run at the direction of the Minister of Justice, in accordance with the relevant legal framework and guidance.

20. Section 29 of the Crown Entities Act provides that the Minister may only recommend to the Governor-General, a person for appointment who, in the Minister's opinion, has the appropriate knowledge, skills and experience to assist the Commission to achieve its objectives and perform its functions. In recommending an appointment, the Minister must also take into account the desirability of promoting diversity in the membership of Crown entities.

# The Role of the Ministry of Justice

21. The Ministry of Justice provides the Minister with the administrative support for appointing Commissioners. This includes:

- notifying the Minister in writing, before the expiry of a Commissioner's current term
- briefing the Minister on the legislative requirements, relevant guidance, and any other relevant process considerations
- seeking the Minister's decision on whether an incumbent is to be recommended for reappointment, or the position is to be advertised
- advising the Minister as to the position description for the vacancy, considering the nature of the Board and the skills and experience that would best complement the other Commissioners
- seeking the Minister's direction on the position description for the vacancy
- developing appropriate options for the advertising and the selection process to be used
- developing a robust engagement plan to ensure that the appointments process can identify a broad range of candidates
- providing advice to the Minister on the establishment of an assessment panel
- consulting the Chief Commissioner and relevant Government agencies throughout the appointments process
- preparing documents for the Minister to take to Cabinet for consideration
- preparing appointment documentation.

# Selection process

## Planning ahead

22. Many factors impact on the time taken to complete the selection process, including the fact that appointments need to be considered by Cabinet. Enough time should be allowed for the selection process to proceed in a thorough manner.
23. Planning for the selection process should take into consideration factors such as:
  - when the incumbent's term ends
  - reviewing and refreshing the position description
  - advertising and closing date for applications
  - advising population agencies of the skills requirements for the vacancy as early as possible so that they can nominate suitable candidates
  - the time needed for interviewing and undertaking reference checks
  - the requirements of the Cabinet process.

Officials should brief the Minister in writing at least **nine months** before the expiry of the Chief Commissioner's term, and at least **six months** before the expiry of other Commissioners' terms.

24. Officials should seek the Minister's direction as to whether the incumbent Commissioner is to be recommended for reappointment, or whether the position is to be advertised.

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## Reappointments

25. The Crown Entities Act provides that, as a member of a statutory entity, a Human Rights Commissioner may be reappointed. However, neither the Human Rights Act nor the Crown Entities Act set a maximum number of terms that a Commissioner can serve. This means that the Minister may consider recommending that a Commissioner be reappointed for a second, or further, term of office if the Minister considers there are good reasons for doing so.

26. There is no general expectation that a Commissioner will be reappointed for a second term. In cases where an initial term is ending, and the incumbent has indicated a willingness to be considered for reappointment, the Minister's view should be sought as soon as possible as to whether reappointment of the incumbent is to be recommended or whether a contestable process should be carried out. If an incumbent Commissioner has served two full terms of office, the position should be advertised.
27. When considering whether to recommend an incumbent for reappointment, the Minister should consider the individual's suitability for the role and ability to continue to carry out the functions of a Human Rights Commissioner. This may involve consulting relevant stakeholders, civil society representatives, Māori, and other Human Rights Commissioners. The Minister should also have regard to the Paris Principles and the importance of plurality within the Commission. The Minister should consider consulting other parliamentary parties on the reappointment.

Pluralism is the idea that a wide range of views and perspectives enhances the effectiveness of NHRIs and can be supported through the appointment of Commissioners from diverse cultural, ethnic, gender, sexual orientation, ability, and religious backgrounds.

28. Under conventions set out in the Cabinet Manual, recommendations for reappointment must be considered by the Cabinet Appointments and Honours Committee (APH). If the Minister decides to recommend the incumbent Commissioner for reappointment, a paper is prepared for the Minister to take to APH for consideration. The paper should clearly state the process that has been followed and the reasons for reappointment being proposed.

**More information about reappointments can be found on Te Kawa Mataaho Public Service Commission's website at [www.publicservice.govt.nz/our-work/crown-entities/](http://www.publicservice.govt.nz/our-work/crown-entities/)**

## Appointments in pre-election period

29. It has been the practice for governments to exercise restraint in making significant appointments in the pre-election period (the period immediately before a General Election, usually about three months). This practice recognises the fact that an election, and therefore potentially a change of government, is imminent. The impact of this practice is that an appointments process may be delayed if it falls within the pre-election period.
  30. In each election year, Cabinet Office releases a circular providing guidance on how the Government will approach making statutory appointments in the pre-election period. Officials need to be aware of those guidelines and consider them when advising the Minister.
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## Advising the Minister

31. In cases where reappointment is not to be recommended, and the vacancy will be advertised, the appointments process followed must be transparent and merit-based. The Ministry of Justice should provide written advice to the Minister that includes:
  - information on the expiring appointment
  - the legislative and Cabinet requirements associated with the appointment
  - information regarding the Paris Principles and the GANHRI accreditation process
  - a recommended appointments process that reflects good practice guidance
  - a tailored position description of the role
  - any issues relevant to the vacancy considering the Commission's current make-up, operation or future work programme.
32. The Minister's directions must be sought for the position description, the way the role is to be advertised, and the appointments process to be used.
33. Section 32 of the Crown Entities Act provides that an incumbent Commissioner's term can be extended until their successor is appointed. This provision is often referred to as the 'roll-over provision' and seeks to ensure that there is adequate time to select and appoint a new Commissioner. The provision is designed to be used as a temporary and transitional measure and it is not appropriate to use it for extended periods of time. The provision may be used for a longer period if an incumbent's term expires near an election, but this should also not be for a longer period than is necessary in the circumstances.

## Position descriptions and competencies

34. Position descriptions are largely based on the criteria for appointment that are set out in the Human Rights Act and the Crown Entities Act. Each vacancy provides an opportunity to reassess the needs of the Commission, as an organisation, and the skills and experience that would best complement the other Commissioners, enable the Board to govern, and the Commission to carry out its statutory functions effectively. Position descriptions should be reviewed before a vacancy is advertised and may also be reviewed outside the appointment cycle.
35. Position descriptions also:
- give candidates a greater understanding of what is required, before they decide whether to apply for the role
  - provide a benchmark against which candidates can be assessed during the shortlisting process
  - help stakeholders identify candidates with relevant skills and experience
  - reinforce the principle of appointment on merit.
36. Officials should consult the Chief Commissioner when reviewing position descriptions. As the Chair of the Board, the Chief Commissioner will have valuable knowledge of the workings of the Commission and insights into the technical and personal skills that could make the best contribution to the Commission's performance.
37. Industry groups, voluntary organisations, Māori, and other stakeholders may also have relevant views to offer as to the position description and any necessary competencies that should be incorporated.

**Position descriptions should be published on the Ministry of Justice website periodically for transparency and to provide the public with an opportunity to provide feedback. Where appropriate, feedback should be incorporated into position descriptions.**

38. When position descriptions are published on the Ministry of Justice website, officials should notify civil society stakeholders, Māori organisations, and population agencies and encourage them to use their networks to increase public participation.

## Advertising the vacancy

39. Candidates can be identified in several ways, including advertising, nominations by interest groups or MPs, self-nomination, or from community and professional networks. The Minister's agreement should be sought as to the scope of advertising.
40. At a minimum, vacancies should be advertised:
  - on the Ministry of Justice website
  - in major daily newspapers
  - on social media platforms
  - through civil society stakeholder channels
  - through mainstream as well as targeted online recruitment platforms, as appropriate to the nature of the position.
41. The Minister should consider notifying other parliamentary parties of the vacancy and inviting them to nominate candidates to be considered for the position.
42. The Cabinet Office Circular *CO(02) 16: Government Appointments: Increasing Diversity of Board membership* notes that the Government wishes to see a more diverse range of individuals appointed to boards to ensure that boards have a balanced membership that is reflective of New Zealand. Officials should familiarise themselves with this circular, as it provides an overview of what officials should consider during the appointments process to ensure that a diverse range of candidates are identified.
43. Civil society stakeholders, Māori organisations, and population agencies should be notified of the vacancy as early as possible and encouraged to nominate people to apply for the position.

**Engaging with civil society stakeholders, Māori, and population agencies can maximise the number of potential candidates, increase the diversity of the pool of candidates, and ensure that the role is advertised widely.**

44. Vacancies should be advertised alongside a copy of the position description and an overview of the appointments process. Vacancies should also be made available in te reo Māori. The New Zealand Web Accessibility Standard should also be taken into account to support the disability community.
45. Vacancies should be advertised for a minimum of three weeks to ensure sufficient time to reach a variety of interested people from different backgrounds and a range of societal groups.



## Appointing an assessment panel

46. The Minister of Justice is generally expected to appoint a panel to provide recommendations for a shortlist and conduct an assessment of the candidates selected for interview. Where an assessment panel is established, the Ministry of Justice provides administrative support to the Minister during this process.

Care should be taken to ensure that the overall panel composition is sufficiently diverse and properly representative of civil society.

47. The panel should include representation of civil society such as NGOs concerned with human rights issues, trade unions, university experts, Māori organisations or professional representatives. The panel should also reflect a diverse range of views and have knowledge of human rights issues, tikanga Māori and te ao Māori.

It is important that the panel is independent from government. Where potential panel members are also public servants, they must serve in their individual capacity and not participate as representatives of government.

48. The panel should be informed of the Paris Principles requirements, the importance of the process for accreditation purposes, and the significance of plurality within the Commission. Plurality ensures a wide range of views and perspectives and enhances the effectiveness of NHRIs. Plurality can be supported through appointment of Commissioners from diverse cultural, ethnic, gender, sexual orientation, ability, religious and philosophical backgrounds.

## Method of assessment

49. The short-listing process must be merit-based. It is therefore important that candidates are assessed against the key skills and competencies, as set out in the position description. Additional criteria may also be used to short-list applicants, for example, in situations where a vacancy requires that a candidate be able to demonstrate more job-specific skills or competencies.
50. The short-listing process may also involve pre-appointment checks, such as the disclosure and consideration of conflicts of interest. Due diligence processes are used to ensure the integrity and probity of the candidates. The processes used should remain consistent across all Commissioner appointments.

51. Officials should also be aware of section 31 of the Crown Entities Act, which provides that before a person is appointed as a member of a statutory entity, the person must:
- consent in writing to being a member
  - certify that he or she is not disqualified from being a member
  - disclose to the responsible Minister the nature and extent of all interests that the person has at that time, or is likely to have, in matters relating to the statutory entity.

## **Interviewing candidates**

52. Interviews should be conducted by the panel in a consistent way and against clear criteria, so that fair comparisons can be made of all short-listed candidates. The membership of the interview panel should remain the same, unless exceptional circumstances arise. An objective record must be kept of all interviews.

## **Advising the Minister**

53. Following the interviews, a final report is prepared for the Minister's consideration that includes an assessment of the suitability of candidates and the panel's recommendation(s) for appointment.

# Appointment

54. In selecting a candidate for an appointment, the Minister must have regard to the statutory requirements of the Human Rights Act, the Crown Entities Act and the Paris Principles. The Minister must also have regard to the apolitical nature of the role and should consider consulting other parliamentary parties on the appointment. Once the Minister has selected the preferred candidate a recommendation is considered by the Cabinet Appointment and Honours Committee.
55. The Cabinet Office Circular *CO (02) 5: Appointment of Public Servants to Statutory Boards* provides advice on the appointment of public servants to statutory boards. Cabinet has agreed that, as a general rule, Ministers should not appoint public servants to statutory boards. The circular sets out special circumstances which may justify appointing a public servant to a board. Special circumstances include improving board performance, capacity building and capitalising on the experience of senior public servants. Where special circumstances exist, and the Minister is proposing the appointment of a public servant to a board, the Minister should outline these circumstances alongside the recommendation to the Cabinet Appointments and Honours Committee.

After Cabinet consideration of the appointment, the Minister must recommend the appointment to the Governor-General in accordance with section 28 of the Crown Entities Act.

## Duration of appointment

56. As provided by the Crown Entities Act, board members of an independent Crown entity may be appointed for terms of up to five years. Appointments should generally be made for a period of five years, to ensure independence and stability of mandate. In some circumstances, the Minister may recommend an appointment for a shorter period if there is good reason to do so and the Minister is satisfied that the proposed period of appointment will not interfere with the Commissioner's ability to carry out their functions independently and appropriately. For example, if appointees advise that a shorter period is sought, or any other special circumstances arise that justify a shorter term.

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This guidance may be revised periodically.  
Make sure you are working with the most current version.

