

Hon Carmel Sepuloni

MP for Kelston

Deputy Prime Minister

Minister for Arts, Culture and Heritage

Minister for Social Development and Employment

Associate Minister of Foreign Affairs (Pacific Region)



27 MAR 2023

Jenny Hamilton

fyi-request-21672-f6cfb03f@requests.fyi.org.nz

Tēnā koe Jenny Hamilton

On 30 January 2023, you emailed my office requesting, under the Official Information Act 1982 (the Act), the following information:

- *All reports and/or advice in relation to the appointment selection process of the Children & Young People's Commission Board from MSD to you during 2022 and up until now.*

On 24 February 2023, my office advised that more time was needed to respond to this request. You were advised a decision would be with you no later than 30 March 2023. The reason for the extension was that the consultations necessary to make a decision on the request were such that a proper response to the request could not reasonably be made within the original time limit.

Please find attached the following document identified as being in scope of your request:

- REP/22/10/1030 – Report - *Children and Young People's Commission – Appointment Process* - dated 24 November 2022.

You will note that some information has been withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

A handwritten signature in blue ink, appearing to read 'Carmel Sepuloni'.

Hon Carmel Sepuloni

Minister for Social Development and Employment



Report

Date: 24 November 2022

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development and Employment

Children and Young People's Commission - Appointment Process

Purpose of the report

- 1 This report provides you with advice on the recommended considerations and process for new appointments to the Children and Young People's Commission.

Recommended actions

It is recommended that you:

- a) **note** the proposed considerations and process for managing new appointments for the Children and Young People's Commission (the Commission)
- b) **agree** that the proposed appointment process is initiated now

Agree / Disagree

- c) **note** that we understand you are receiving advice on the options for the commencement date of the Children and Young People's Commission Act 2022 (MSD REP/22/11/1130 refers)
- d) s9(2)(a) [REDACTED]
- e) **note** the attached draft position descriptions for the Commission Chair/Deputy Chair and members

- f) **note** a draft Letter of Expectations for the Commission will be with you to consider in December 2022.



Claire Janes


Manager Budget and Crown Entities
Organisation Planning, Performance, and
Governance



Date



Hon Carmel Sepuloni
Minister for Social Development and
Employment



Date

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Background

- 2 The Children and Young People's Commission (the Commission) is a new independent Crown entity, established under the Children and Young People's Commission Act 2022 (the Act). The Commission's role is to promote and advance the rights, interests, and participation of children and young people and to improve their well-being within the context of their families, whānau, hapū, iwi, and communities.
- 3 The statutory functions of the Commission are set out in sections 20-24 of the Act, which are:
 - promoting interests and well-being of children and young people
 - promoting and advancing rights of children and young people
 - encouraging children's and young people's participation and voices
 - additional functions, duties, or powers.
- 4 Section 12 of the Act states that the Commission comprises the Chairperson, to be known as the Chief Children's Commissioner; and at least two, but not more than five, other board members.
- 5 We have followed Schedule 1 – Transitional, savings, and related provisions of the Act for the appointment of first permanent board members. That is, the Commission members are appointed by the Governor-General on the recommendation of the responsible Minister.
- 6 Subsequent appointments are required to go through a nomination panel, and with candidates being endorsed by a relevant agency. The Ministry of Social Development (MSD) will be commencing work in the coming months to establish this process for subsequent appointments/re-appointments.

The current Children's Commissioner will continue in office as the first board member of the Commission

- 7 Clause 3 of Schedule 1 of the Act states that the person holding office as Children's Commissioner under the former Act immediately before commencement continues in office as a first board member of the Commission.
- 8 s9(2)(a)

A tight timeline to work to the appointments process

- 9 We are seeking your approval to commence the appointments process now. Board appointment processes typically take six months for member appointments and up to nine months for Chair appointments.
- 10 The length of the process follows procedural steps and decision points including:
 - engaging with the Minister for Social Development and Employment
 - engaging with the Children's Commissioner
 - advertising the roles
 - the Christmas and New Year period being largely ruled out by people being unavailable
 - convening an interview panel
 - carrying out the interviewing process
 - decisions from the Cabinet Appointment and Honours Committee and Cabinet
 - Governor-General approval, and
 - preferred candidates accepting appointments.

- 11 The commencement date of the new Act is 1 July 2023. We understand you are receiving advice on the options for the commencement date of the Children and Young People's Commission Act 2022 (MSD report REP/22/11/1130 refers). We will provide the timeline for appointments once you have decided on the commencement date to propose to Cabinet.

s9(2)(a)

- 12 s9(2)(a)

Appointment Considerations

- 13 We recommend you note the following considerations for appointment.

Appointing minimum three, and up to five members, including the Chair

- 14 You have indicated your preference to appoint five members, including the Chair. However, in the current market and with the tight timeframe, there is a risk that we may not be able to identify five appointees in the first recruitment round.
- 15 If challenges persist in sourcing all five, we will prioritise our efforts in meeting the statutory minimum of three board members. We may then need to initiate another round of appointments for the two extra members through the 'nomination panel' process as set out in the Act. This process would occur after the General election.

Experience and knowledge required for the Board

- 16 Section 13 of the Act states that on a collective basis, the Commission's board members must have:
- experience and knowledge of children's and young people's rights and issues; and
 - knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - the required skills and leadership expertise to reflect the needs of children and young people of interest to the Commission.
- 17 In addition, at least half of the board members must have Māori knowledge; and have experience in, and knowledge of, tikanga Māori.
- 18 Section 17(1)(a) provides that the duties of the board include building and maintaining relationships with hapū, iwi, and Māori organisations, including by—
- having a strong focus on the rights, interests, and well-being of Māori children and young people within the context of their whānau, hapū, and iwi
 - setting strategic priorities and work programmes that support improved outcomes for Māori children and young people within the context of their whānau, hapū, and iwi
 - promoting Māori participation and leadership and te ao Māori approaches in the performance of its functions, as appropriate.
- 19 Section 29 of the Crown Entities Act 2004 further sets out that an appointee is required to have the appropriate knowledge, skills, and experience to assist the statutory entity to achieve its objectives and perform its functions, including public sector governance, leadership, communication, influence, and understanding the machinery of Government. Further, diversity in the membership of Crown entities must be promoted.
- 20 The Chief Children's Commissioner/Chair is a high-profile position and is expected to be able to comment credibly on a wide range of issues impacting upon New Zealand children.
- 21 Given the changes the Commission will respond to in the next two to three years, we believe that it is also important that the Chair (or the Deputy Chair if appointed) has

strong capabilities in overseeing organisational change, including setting new strategic direction and establishing core functions.

22 We have attached in Appendix 1 the draft job descriptions for the Chair and members, for your information. We intend to finalise the job descriptions with your office, which will be used to develop skills profile/criteria that includes experience and understanding of:

- public sector governance and management
- the issues children face
- Māori knowledge
- organisational change.

Term of appointment

23 The appointments to an independent Crown entity are usually for a term of up to five years. We recommend staggering the terms of the appointments to manage succession planning and avoid terms expiring around the same time. We will advise you in more detail after the interview stage of what the proposed terms may look like.

Time commitment

24 For a comparative board of the same nature and size, the rule of thumb of the expected time commitment is likely to be up to one day per week for members. This time commitment may be more for the first six to twelve months for the new entity. In addition, the Chief Children's Commissioner and board members with committee responsibilities may provision additional time for those purposes.

Potentially a deputy Chair

25 We consider there is need to be open to appointing a deputy Chair, to support the Chair in the establishing period (two years), and overseeing the organisational change.

Remuneration

26 The precise costs of the board will depend on factors such as time commitment for the role, and the composition and remuneration of individual board members. We will work with the Remuneration Authority to confirm the final determinations for the roles once appointment work is complete, and terms and conditions have been agreed.

Letter of expectations

27 As responsible Minister, you have the option of providing the Commission with a Letter of Expectations (LoE) that outlines the Government's priorities and expectations that are specific to the Commission, such as the delivery of major work programmes.

28 This letter will be particularly important as it is your first formal opportunity to set out your expectations of what the board must focus on and deliver for the coming year and to help the new board as it develops its strategic plan and activities.

29 We recommend that you issue an LoE to the incoming board. As the new board is yet to be appointed, you may address the letter to Judge Eivers as representative of the incoming board. We will prepare a separate report and draft LoE for you to consider in the coming month.

Recommended appointment process

30 The Act does not have specific provisions about how to source potential candidates. We expect these are high profile appointments and are likely to attract significant public, media and political interest and scrutiny. We advocate following a robust appointments process and the Public Service Commission guidance to uphold public and political trust in the soundness of the appointments process and our advice.

31 We recommend advertising the vacancies based on the widest possible canvassing and an open, public search process. This will provide a transparent and fair opportunity for

potential candidates to apply and provide you assurance that our search process is robust. We recommend the following channels to promote the vacancies:

- nominations from you and your Caucus and Cabinet colleagues
- website advertising – including MSD, Seek, jobs.govt.nz, LinkedIn, Institute of Directors NZ, and Appoint Better Boards – links to these notices could also be placed on the Children's Commissioner website
- notifying candidates on the Treasury board appointments database of the roles
- using MSD's knowledge of potential suitable candidates
- requesting nominations from the Ministry for Women, Whaikaha, Office of Ethnic Communities, Te Puni Kōkiri and the Ministry for Pacific Peoples.

- 32 Once expressions of interest and nominations are received, we will assess them against the key criteria required for the positions to develop a shortlist of candidates for you to consider.
- 33 We will then convene an interview panel to interview the shortlisted candidates and recommend proposed appointments for your consideration, before seeking decisions from the Cabinet Appointments and Honours Committee.

Next Steps

- 34 Subject to your agreement, we will commence a search process to identify potential candidates in the week beginning 5 December 2022, if not earlier.
- 35 We will provide you with letters seeking nominations from your Caucus and Cabinet colleagues (and other parliamentary parties, if agreed).
- 36 Following the open search, we will provide you with a briefing on the shortlisted candidates.
- 37 A draft Letter of Expectations for the Commission will sent to you for consideration in December 2022.

Attachments

Appendix 1 – Draft Children and Young People's Commission - Chair/Deputy Chair/member position description

Ref: REP/22/10/1030

Author: Grace Xu, Principal Advisor, Crown Entities

Responsible manager: Claire Janes, Manager Budget and Crown Entities, Organisation Planning, Performance, and Governance

Appendix 1 - Chief Children's Commissioner/Chair and board member

Draft Position Description

Overview

On behalf of the Minister for Social Development and Employment, the Ministry of Social Development is seeking candidates who wish to be considered for appointment to the Board of the Children and Young People's Commission (the Commission). The vacancies available are the Chair, Deputy Chair or as a board member.

About the new Children and Young People's Commission (the Commission)

The Children and Young People's Commission is being established under the Children and Young People's Commission Act 2022 (the Act) to promote and advance the rights, interests, and participation of children and young people and to improve their well-being within the context of their families, whānau, hapū, iwi, and communities.

The Commission will focus on functions related to system advocacy, monitoring the progressive implementation of the United Nations Convention on the Rights of the Child (UNCROC), and gathering and sharing the voices of children and young people.

The Commission as a Crown Entity

The Commission will be an independent Crown entity under The Crown Entities Act 2004. The Crown Entities Act provides a framework for Crown entity governance and accountability, including responsibilities of board members, disclosure of interests, and the roles of responsible Ministers.

Duties of the Commission's Board

The Act establishes a board to provide governance of the Commission and set the strategic priorities and work programme for the Commission. As part of its duties, it will:

- build and maintain relationships with hapū, iwi, Māori organisations, organisations representing children's and young people's issues, youth-led organisations, community organisations, departments, and other agencies, including by—
 - having a strong focus on the rights, interests, and well-being of Māori children and young people within the context of their whānau, hapū, and iwi:
 - promoting Māori participation and leadership, and te ao Māori approaches, in the performance of its functions, as appropriate:
- set strategic priorities and work programmes that support improved outcomes for Māori children and young people within the context of their whānau, hapū, and iwi:
- have regard to the Children's Convention as required by section 5(a) of the Act.

Board members are also subject to the collective and individual duties of members set out in sections 49 to 59 of the Crown Entities Act. The collective duties under the Crown Entities Act are to ensure the Board's functions are performed efficiently, effectively and consistently in the spirit of the public service, and in a financially responsible manner. The individual duties of Board members under the Crown Entities Act are:

- to act with honesty and integrity
- to act in good faith and not at the expense of the entity's interests

- to act with reasonable care, due diligence and skill
- not to disclose or make use of information that would otherwise not be available to them.

Further information on how the relationships between Crown entities, Ministers, and departments work in practice can be found on the Public Service Commission's website ([It Takes Three: Operating Expectations Framework for Statutory Crown Entities - Te Kawa Mataaho Public Service Commission](#))

Board skill requirements

The inaugural Board will be responsible for delivering the Commission's statutory functions, and overseeing significant organisational change (from the previous Office of the Children's Commissioner to the new Board governed independent Crown entity). We are interested in individuals who can bring a range of expertise and diversity that matches the strategic direction and needs of the entity.

Section 13 of the Act states that on a collective basis, the Commission's board members must have:

- experience and knowledge of children's and young people's rights and issues; and
- knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi; and
- the required skills and leadership expertise to reflect the needs of children and young people of interest to the Commission.
- In addition, at least half of the board members must have Māori knowledge; and have experience in, and knowledge of, tikanga Māori.

Role of the Chair/Chief Children's Commissioner

The chairperson is to be known as the Chief Children's Commissioner (s 12(1)(a) of the CYPC Act).

Based on Te Kawa Mataaho Public Services (PSC) Commission guidance¹, a Crown entity chairperson's role includes the following:

- Providing effective leadership and direction to the board and entity, consistent with the Minister's expectations.
- Ensuring effective accountability and governance of the entity, consistent with the requirements of relevant legislation including the Crown Entities Act 2004.
- Acting as the leader of the entity including presenting the entity's objectives and strategies to the public. Representing the entity to government and stakeholders, including attending any select committee appearance by the entity.
- Ensuring appropriate policies and structures are in place to support the board, including processes in accordance with Schedule 5 of the Crown Entities Act.
- Providing motivation, guidance and support to other board members to ensure they contribute effectively to the governance of the entity.
- Taking the lead, often in conjunction with the monitoring department, in providing comprehensive tailored induction for new board members.
- Ensuring that the development needs of individual board members are identified and addressed and, where necessary, dealing with underperformance by board members.

¹ <https://www.publicservice.govt.nz/guidance/guidance-for-statutory-crown-entities/role-of-the-board-chair/>

- Ensuring that an annual performance evaluation is conducted of the board as a whole, and of the chairperson and members individually.
- Participating in the recruitment process for new board members. This is likely to include:
 - maintaining a view on the desired composition of the board
 - considering succession planning for members and chairperson
 - supporting Ministers and monitoring departments in appointing and reappointing board members.
- Providing guidance and support to the chief executive to ensure the entity is managed effectively. This includes establishing and maintaining an effective working relationship with the chief executive while also taking an independent view to challenge and test management thinking.
- Overseeing the employment of the chief executive, including considering succession planning, and organising induction for a new chief executive.
- Representing the board in formal assessments of the chief executive's performance and in the required discussions with the PSC with respect to chief executive terms and conditions at time of appointment and performance reviews.
- Ensuring that appropriate interest registers are in place, in accordance with the Crown Entities Act, and that members' conflicts of interest (including those of the chairperson) are dealt with appropriately.

Developing and maintaining sound relationships with Ministers and their advisors including:

- leading any formal entity discussions with Ministers, particularly on budget and planning cycles, including the Statement of Intent and Letter of Expectations
- signing off on formal governance documents (Statement of Intent, Annual Report, others), generally in conjunction with the deputy chairperson if appointed
- acting as spokesperson for the board in ensuring the Minister and other key stakeholders are aware of the board's views and activities, and that Ministers' views are communicated to the board
- ensuring that the Minister is kept informed under the 'no surprises' obligations.

Chairing board meetings including:

- setting the annual board agenda
- ensuring there is sufficient time to cover issues
- ensuring the board receives the information it needs - before the meeting in board papers and in presentations at the meeting
- ensuring that contributions are made by all board members
- assisting discussions towards the emergence of a consensus view
- summing up so that everyone understands what has been agreed.

Note: where the Chairperson is unavailable, absent or conflicted, the Deputy Chairperson (if appointed) will fulfil these roles. A Chairperson may also delegate various roles at times, for example to another board member.

Skills, experience, and knowledge for the Chair (or Deputy Chair)

For the Chair role, MSD, on behalf of the Minister of Social Development and Employment, is looking for candidates with the following skills and experience:

- extensive governance experience at board level ideally in public sector, including experience as a chairperson
- a strong knowledge of the Commission's mandate, and ability in leading the Commission through change to success to move towards a new vision or goal

- an ability to build trust and engage effectively with tamariki, family and whanau, hapū, iwi and Māori organisations
- strong relationship management skills and a drive to partner with other organisations
- An ability to communicate effectively in public and with a wide range of audience and media, advocating for children
- an understanding of public sector accountability and the role of statutory Crown entities

Membership of the Board

The Board will have between three to six members, including the Chair - also known as the Chief Children's Commissioner. The Board members are appointed by the Governor-General on the recommendation of Minister of Social Development and Employment.

Term of appointment

The Crown Entities Act 2004 provides for appointments of board members for a term of up to five years.

Time commitment to the role

Full board meetings are likely to be monthly. The expected time commitment is likely to be up to one day per week for members. This time commitment may be more for the first six to twelve months for the new entity. In addition, the Chief Children's Commissioner and board members with committee responsibilities may provision additional time for those purposes. [we've reached out to ascertain time commitments for similar roles in the 'Chief Commissioner' capacity and will refine this section further]

Remuneration

Remuneration is set by the Remuneration Authority on individual appointment. For more information on the setting of remuneration for independent statutory officers and boards by the Remuneration Authority, see:

- [Remuneration Independent Officers and Boards](#)
- [Role of Remuneration Authority in Setting Remuneration for Individuals Appointed to Statutory Bodies and Other Positions](#)

Actual and reasonable travel and other expenses incurred carrying out the role of the Board member will be paid in accordance with the Cabinet Fees Framework.

Apply now

To find out more, please contact xxx on xxx for a confidential chat. To apply for the Chair, Deputy chair or board member position, email: [xxx] with your CV and cover letter. Background checks will be undertaken for shortlisted candidates. Your personal information will be handled in accordance with the Privacy Act 2020.