



Part A – Conducting a Review of Appointment Procedure

1. Requirement to have a review of appointment procedure

Appointment to the Public Service is based on a foundation of open, merit-based selection that upholds the public's trust¹. Appointments are provisional for a period before being confirmed² to ensure, if challenged, assurance can be provided that the appointment meets the required standards and has been fairly made.

Schedule 8, Clause 5 of the Public Service Act 2020 (the Act) requires the chief executive of each department and the board of each interdepartmental venture to put in place a review of appointment procedure (the procedure) for reviewing appointments within their agency that are the subject of a request for a review of appointment (review request) by an employee. The procedure must be approved by the Public Service Commissioner (the Commissioner) and must comply with the Guidelines prescribed by the Commissioner.

To support agencies to ensure their procedure complies with these Guidelines, they incorporate two parts that must be read in conjunction with each other. Part A provides a general overview and background information while Part B demonstrates the practical application of conducting a review through the Guidelines, reflected in a recommended template for agencies to use. Agencies may wish to:

- i. change parts of the part B template to reflect the agency requirements in line with the Guidelines, or
- ii. update/develop their own procedure in line with parts A and B of the Guidelines.

Beyond the legal requirements, a review request about an appointment is an opportunity for decision-makers and leaders to gain insights on the robustness and effectiveness of their agency's appointment procedure. Review requests provide opportunities for continuous improvement that may otherwise go unnoticed.

The procedure should provide confidence that an agency has integrity in its selection process. It also ensures that the appointment process can be evaluated against the statutory requirements and good decision-making practices, ensuring the absence of shortcomings including discrimination.

2. Chief executive responsibilities

As part of the overall appointment process and associated employment policies, each chief executive needs to ensure they meet the good employer obligations contained in section 73 of the Act as well as section 14 (Crown relationships with Māori) and sections 74 and 75 (promoting diversity and inclusiveness). This includes well maintained appointment records are kept (in line with records management and disposal requirements) and the number, types, and outcomes of review requests. The chief executive must also notify employees within the agency of appointments made by the chief executive or board as per Schedule 8, Clause 4 of the Act.

In addition to this, the procedure should be accessible to all employees and staff responsible for appointments have appropriate training and the tools to manage bias and discrimination in decision-making.

¹ Merit-based appointments are an essential cornerstone of our professional and politically neutral public sector. Merit-based appointments act as a safeguard to political patronage, favouritism and prejudice

² Appointments made under sections 66 to 69 of the Act



Chief executives should also ensure provisional appointees are notified that their appointment is provisional until the provisional period has passed or until the outcome of a review has confirmed the appointment.

Note:

- Additional resources on addressing bias and discrimination in decision-making are available on [Te Kawa Mataaho Public Service Commission's website](#).
- In keeping with the Act, vacancies should normally be advertised.³

3. When reviews occur and the subject of a review request

It is recommended an appointment should be provisional for a period of 5 to 10 working days from the date the provisional appointment is announced to agency employees. The timeframe should provide a balance between giving employees an opportunity to raise a concern and an efficient recruitment process.

The period of working days for a review request may be extended by the chief executive where there are reasonable grounds. For example, where an event interrupts the normal routines and patterns of the agency.

When a review request is received for a provisional appointment, the provisional appointee should be notified and the period the appointment remains provisional is extended until the outcome of the review request is known, and both parties have been notified of the outcome.

A review request may relate to any aspect of an appointment. Review requests can cover matters of both substance (the merit of the provisional appointee) and process (how the selection process was conducted that led to the appointment).

In some situations, a requestor may agree to their review request being addressed outside of a full review process. This may be helpful, for example, where the requestor can be given factual information about the recruitment process followed and the requestor considers this information resolves their concerns.

4. Requesting a review

Any employee of an agency⁴, including any permanent, fixed term, or casual employee, may request a review of appointment for an appointment made in their agency. It is not a requirement that the requestor applied for the vacancy that is the subject of their review request.

The requirement to undertake a review does not apply to acting appointments or appointments of ministerial staff as outlined in Schedule 8, Clause 5(3) of the Act or appointments made under sections 86 and 88 of the Act, or review requests from external applicants. The chief executive has discretion to consider out-of-scope requests.

External applicants may have grounds to raise concerns with other authorities and have rights to information under the Official Information Act 1982 and Privacy Act 2020.

³ Schedule 8 Clause 1 of the Act requires chief executives of departments or the board of interdepartmental ventures to notify a vacancy, if practicable. This doesn't apply to ministerial staff.

⁴ Public service agencies covered under Schedule 2 of the Public Service Act 2020.



5. Conducting the review

The procedure must be, and be seen to be, unbiased and fair. It is the Commission's recommendation that review requests are considered by a review panel instead of a single reviewer. In exceptional situations where a single reviewer can be seen as impartial (such as in a very small agency with multiple potential conflicts of interest limits the number of potential reviewers) it might be more appropriate to have a single reviewer instead of a review panel.

The chief executive is responsible for appointing a review panel but may delegate this responsibility. Agencies will also need to consider any additional delegation responsibilities required for the review panel, to ensure it can give effect to the review outcome.⁵

The chief executive or their delegate must ensure that panel members are independent of the original appointment decision and must consider the composition of the panel and any actual, potential or perceived conflicts of interest of panel members.

As part of ensuring a fair process, the requestor and provisional appointee should be advised in advance who will conduct the review and be given an opportunity to comment on those arrangements. Any representations a requestor or provisional appointee wishes to make about the composition of the review panel should be considered prior to a review commencing.

6. Matters to be considered when conducting a review

As part of the procedure, when a review request is received, a review must be undertaken. A review will allow substantive consideration of the review request and constitute a proper independent inquiry. A review is a second look at what was done and not a mere supervisory check. If the review request is about which applicant is best suited for the position, the review panel should reach its own view independent of the original appointment decision.

When considering a review request, the review panel should ensure there has been substantive consideration of the review request, including whether:

- The provisional appointee was the person best suited to the position.
- Requirements of the Public Service Act 2020, Human Rights Act 1993, Privacy Act 2020, and Employment Relations Act 2000 were followed.
- The appointment was made in accordance with good employer principles, including promoting, developing, and monitoring equal employment opportunities and promoting diversity and inclusiveness.
- Any actual, potential, or perceived conflicts of interests were identified and properly managed.
- The appointment procedure followed the agency's relevant policies and procedures.

The procedure should be clear, simple, accessible, and efficient without employees needing to seek legal representation.

⁵ Review panels are likely to need delegated authority to make any final decisions to conclude the review of appointment process.



All requestors have the right to present their case in writing and have the option to appear in person, setting out the basis for their review request. The written material, along with the agency's documentation relating to the appointment, will form the basis of the review panel's deliberations.

7. Providing information to support the review procedure

Requestors have the right to request information under the Official Information Act 1982 or the Privacy Act 2020 relating to the background of the appointment. Under both Acts, agencies must respond as soon as reasonably practicable and no later than 20 working days after the date of request. To ensure the review process isn't delayed unnecessarily, any requests for information from the requestor should be considered and actioned promptly.

It is important to ensure all applicants for a position are told that any relevant information they provide about themselves may be provided to an employee who seeks, or is considering seeking, a review request. This should be outlined in recruitment documentation/policy.

8. Concluding the review request

The review panel will reach a conclusion on the substance of the review request and take the necessary steps required to give effect to that conclusion without delay as an appointment remains provisional until a final decision on all relevant reviews has been made.

The review panel is responsible for ensuring the requestor and provisional appointee are advised of the final decision in writing, which concludes the review. The appointing manager should confirm with the provisional appointee the review panel's final decision and next steps.

Note: An affected employee may still bring a personal grievance or seek a review via a judicial review.

Depending on insights gained from the review, the findings and recommendations of the review panel, the chief executive may wish to commission changes or improvements to their agency's processes or training. An example may be to review the tools and training for decision-makers regarding discrimination and bias, cultural competency, and communication and conflict resolution (particularly in relation to providing feedback to applicants).



Part B – The Template

[Insert agency name] Review of Appointment Procedure

Contents

1. Purpose	2
2. Scope of review procedure	2
3. Making a review request	3
4. Receiving a review request	4
5. Review process	5
6. Review panel reaching a decision	5
7. Concluding the review request	5



1. Purpose

- 1.1. Appointment to the Public Service is based on a foundation of open, merit-based selection that upholds the public's trust. Appointments are subject to a review period prior to being confirmed to ensure, if challenged, an appointment meets required standards and has been fairly made.
- 1.2. This procedure outlines a set of principles to guide and support the chief executive, their delegate, and the review panel.
- 1.3. Beyond the legal requirements, a review request about an appointment at [insert agency name] is an opportunity for us to gain insight into our agency's practices. Review requests provide opportunities for continuous improvement that may otherwise go unnoticed.
- 1.4. Schedule 8, Clause 5 of the Public Service Act 2020 (the Act) requires the chief executive of [insert agency name] to put in place a procedure for reviewing appointments within our agency that are the subject of a review request by an employee.
- 1.5. The review of appointment procedure (the procedure) will provide confidence that [insert agency name] has integrity in its selection process and the Public Service Act 2020, Human Rights Act 1993, Privacy Act 2020, and Employment Relations Act 2000 were followed.
- 1.6. The procedure will also enable the appointment process to be evaluated against good decision-making practices, including the:
 - a) appropriate advertising of vacancies
 - b) use of objective selection criteria
 - c) general fairness of interview processes
 - d) notification of the provisional appointee to employees (Schedule 8, clause 4 of the Act) along with relevant information published on the [insert name of platform]
 - e) provision of appropriate job descriptions and related information, including that the provisional appointee has been informed that:
 - i. their appointment is provisional until the review period of [insert number of days] working days has passed without any review requests being received or until the outcome of the review (around 4 weeks) has confirmed the appointment
 - ii. the timeframe to confirm the provisional appointment period may be extended where there are reasonable grounds
 - iii. information collected, relating to the appointment, may be disclosed to a [insert name of agency] staff member who is seeking a review.

2. Scope of review procedure

- 2.1 A review request may relate to any aspect of an appointment at [insert agency name]. The review can cover matters of both substance (the merit of the provisional appointee) and process (how the selection process was conducted that led to the appointment).
- 2.2 As part of the procedure, when a review request is received, a review must be undertaken. A review will allow substantive consideration of the review request and constitute a proper independent inquiry. A review is a second look at what was done and not a mere supervisory check.



- 2.3 If the review request is about which applicant is best suited for the position, the review panel will reach its own view independent of the original appointment decision undertaken.
- 2.4 Any permanent, fixed term, or casual employee of [insert agency name] may seek a review of an appointment made at their agency.
- 2.5 The procedure cannot be used to review:
 - a) acting appointments as outlined in Schedule 8, Clause 5(3) of the Act
 - b) appointments of ministerial staff as outlined in Schedule 8, Clause 5(3) of the Act
 - c) transfers made under section 86 of the Act or a person who has received a notice of termination by reason of redundancy as described in 88 of the Act.⁶
- 2.6 The chief executive has discretion to consider an out-of-scope review request of an appointment, such as a review request from an external candidate, and may decide to use the procedure (with or without amendment).
- 2.7 For non-advertised positions, the person approving the provisional appointment may be required to provide written information, such as reasons why the position was not advertised, and why a particular person was appointed.

3. Making a review request

- 3.1 Requestors have the right to present their case in writing. A review request must:
 - a) be made within [insert number of days] working days of the appointment being notified on [insert name of platform]
 - b) be made in writing to the chief executive or their delegate [omit and delete one]
 - c) state the reason for the review request and provide relevant information
 - d) indicate if the requestor wants the opportunity to speak with the review panel.
- 3.2 A review request may be effectively addressed to the requestor's satisfaction, outside a full review. To this end, the chief executive or their delegate [omit and delete one] and the requestor have the option of discussing whether there is a preliminary step that they agree might facilitate a resolution of the review request.
- 3.3 If an alternative resolution cannot be agreed and the request for review is not withdrawn, the review of appointment must continue.
- 3.4 Requestors have the right to request information under the Official Information Act 1982 or the Privacy Act 2020 relating to the background of the appointment. Under both Acts, agencies must respond as soon as reasonably practicable and no later than 20 working days after the date of request. To ensure the procedure isn't delayed unnecessarily, any requests for information from the requestor will be considered and actioned by [insert name of agency] promptly.
- 3.5 The appointing manager will promptly notify the provisional appointee that [insert agency name] has received a review request for the provisional appointment and outline the next steps.

⁶ Public Service Act, s89.



4. Receiving a review request

- 4.1 On receipt of a review request the [insert agency name] chief executive or their delegate [omit and delete one] will appoint a review panel to undertake the review.
- 4.2 The chief executive or their delegate [omit and delete one] will decide the appropriate number of reviewers (minimum of 2) on the review panel. In exceptional situations, the chief executive or their delegate [omit and delete one] may decide it is more appropriate to appoint a single reviewer instead of a review panel. In such circumstances, the chief executive or their delegate [omit and delete one], must be satisfied that a single reviewer can be, and be seen as, impartial.
- 4.3 The chief executive or their delegate should consider whether the review panel needs to be delegated powers to enable the panel to give effect to the outcome of the review.⁷
- 4.4 The chief executive or their delegate [omit and delete one] will consider any actual, potential, or perceived conflicts of interest for the review panel and ensure that the review panel is independent of the original appointment decision.
- 4.5 Other considerations when appointing the review panel could include:
 - a) the composition of the panel to reflect the diversity of society
 - b) using someone with employment relations experience
 - c) using someone external to the agency
 - d) union representation.
- 4.6 The chief executive or their delegate [omit and delete one] will ensure the requestor and provisional appointee have an opportunity to comment on the make-up of the review panel and other arrangements before the review commences.
- 4.7 The review panel will advise the requestor of the process they propose to undertake, including whether they intend to interview the requestor, the provisional appointee, or any other relevant persons and whether this is proposed to be done in person, via phone, or online.
- 4.8 The review panel will consider:
 - a) if a requestor would be disadvantaged by a process that relied solely on written submissions and/or can present an oral submission (i.e. requestor may have a disability, English isn't their predominant language)
 - b) a request by the requestor or any other person being interviewed to be accompanied by a support person, advocate, or union delegate (and should grant the request unless there are exceptional circumstances that justify not doing so)
 - c) whether a support person has speaking rights during the review panel discussions
 - d) in discussion with the requestor, whether a phone or online interview is appropriate
 - e) interviewing the initial recruitment panel and any other relevant person to the recruitment process.

⁷ Review panels are likely to need delegated authority to make any final decisions to conclude the review of appointment process.



5. Review process

- 5.1 The review panel will undertake its assessment in a way that enables it to reach its own view independent of the original appointment decision.
- 5.2 **[insert agency name]** acknowledges that some discretion with timeframes may be required due to the variation in circumstances in each case under review.
- 5.3 The review panel will ensure:
 - a) the review is efficient and provides a timely resolution, ideally within four weeks from the time the requestor requests the review
 - b) the review is not overly formalised, and staff have the means to seek a review without having to seek legal representation
 - c) the provisional appointee is notified on receipt of any review requests and then kept updated as the procedure is undertaken
 - d) the requestor is kept updated regularly on the procedure
 - e) adequate records are kept of the number, types, and outcomes of appointment reviews.

6. Review panel reaching a decision

- 6.1 On completing a review, the review panel can:
 - a) confirm the provisional appointment; or
 - b) cancel the provisional appointment; or
 - c) take any additional steps required to give effect to the outcome of the review (such as referring the matter back to the appointing manager for further action).
- 6.2 The review panel will:
 - a) make any decisions without delay as an appointment remains provisional until a final decision on all relevant reviews has been made; and
 - b) ensure adequate records are kept of its procedure, information relied upon, and decision.

7. Concluding the review

- 7.1 The review panel is responsible for making the final decision and notifying the requestor and provisional appointee in writing of the final decision which concludes the review.
- 7.2 The appointing manager will confirm with the provisional appointee the review panel's final decision and next steps.
- 7.3 **Note:** An affected employee may still bring a personal grievance or challenge the appointment or seek a review via a judicial review.



Appendix 1

Further information and resources

Guidance

Te Kawa Mataaho Public Service Commission - [Public Service attraction, recruitment, induction and deployment](#)

Te Kawa Mataaho Public Service Commission - [Papa Pounamu - Addressing Bias](#)

Te Kawa Mataaho Public Service Commission - [Principles Guidance](#)

New Zealand Ombudsman (October 2012) - [Good decision making](#)

New Zealand Ombudsman (January 2019) - [Effective complaint handling](#)

Legislation

All relevant New Zealand legislation is available online⁸ including the legislation referenced in these guidelines:

- [Employment Relations Act 2000 No 24 \(as at 01 July 2022\), Public Act Contents – New Zealand Legislation](#)
- [Human Rights Act 1993 No 82 \(as at 30 August 2022\), Public Act – New Zealand Legislation](#)
- [Official Information Act 1982 No 156 \(as at 01 September 2022\), Public Act Contents – New Zealand Legislation](#)
- [Privacy Act 2020 No 31 \(as at 01 September 2022\), Public Act Contents – New Zealand Legislation](#)
- [Public Service Act 2020 No 40 \(as at 08 September 2022\), Public Act Contents – New Zealand Legislation](#)

⁸ All legislation, current and past, in New Zealand is online at www.legislation.govt.nz