



## Ministerial Advisory Committees

### What are they?

Ministers can set up committees to provide them with advice on particular issues. These are generally made up of suitably qualified people from the private sector (although officials may be involved as well). Ministers do not need legislative authority to set up such a committee, although some legislation does provide for them.

Ministers may seek Cabinet agreement before establishing such a committee, particularly if a Minister is seeking extra resources or if the committee's work may have implications for other portfolios. Such committees often are established to examine a particular issue, or for a particular time frame. But they may exist for long periods of time, and even serve several successive Governments (e.g. the National Council on the Employment of Women, which has existed for over 30 years).

Ministerial advisory committees are part of the Crown in terms of the Public Finance Act 1989, and usually are funded via a departmental output class, i.e. the expenses of the committee are met by the Minister's department. As a result departments are usually involved in the establishment of Ministerial advisory committees, subject to the instruction of the Minister responsible.

### Providing Independent Advice to Ministers

Terms of reference should be drafted for any Ministerial advisory committee. These would be expected to cover the role and purpose of the group, its membership, any appointment process including fees and term of appointment, how the Ministerial advisory committee will engage with other agencies and its reporting arrangements. The Official Information Act 1982 applies to Ministerial advisory committees – including any independent advice it provides.

The quality and independence of the advice from Ministerial advisory committees is protected by:

- the quality of the people appointed
- the terms of reference
- the fact that such groups are usually not responsible to the chief executive of the department, and report directly to the Minister.

Ministerial advisory committees have a number of qualities which make them attractive (and frequently used):

- they are easily established and disestablished, with little requirement for formal process - no legislation or regulation is necessary
- they are a relatively easy way of involving outside experts in the supply of advice direct to the Minister
- they provide a measure of independence, but ultimately they clearly exist to provide advice to the Government
- they are usually relatively inexpensive.

The disadvantages of such committees are that:

- their lack of legal personality and strong formal accountability makes them unsuited to service delivery, purchase roles, or ownership roles
- the lack of a statutory basis makes them unsuited to regulatory roles

- their informality may give them a relatively lower profile than, say, a statutory body such as the Law Commission
- their informality may not provide a strong sense of permanence (even though there are examples of committees which have existed for long periods of time).

This suggests that Ministerial advisory committees should be considered as a serious possibility for the provision of independent advice to the Government. If it is to exercise public powers directly or needs to have the powers of a legal person, then a Ministerial advisory committee would not be appropriate.

It is important to note that a Ministerial advisory committee is an advisory body. It is not designed to undertake activities which cut across the responsibilities of the Minister or the departmental chief executive, or for which it does not have the legal authority. It is important, for example, that there is proper authority for the expenditure of public money. However, there is scope for a Ministerial advisory committee to act under delegation from a departmental chief executive with the written approval of the Minister within the legal authority provided by the State Sector Act. This may be appropriate for a time limited period but is not the primary purpose of a Ministerial advisory committee.

## Establishing a Ministerial advisory committee

The responsible Minister should work with the relevant portfolio agency to develop and consult with other affected agencies and Ministers on any Terms of Reference for the Ministerial advisory committee. Typically the responsible Minister will take a short paper with attached Terms of Reference to a related Cabinet Committee (or direct to Cabinet depending on timing and level of confidentiality) for discussion with Ministerial colleagues.

Although a Ministerial advisory committee is less formal than a Crown entity, the same principles apply to the appointment process as to that of a Crown entity board member. Guidance is available at <http://www.ssc.govt.nz/board-appointment-guidelines>.

The Terms of Reference for the Ministerial advisory committee will identify the skills and qualifications required of members. The selection process is generally managed by the agency on behalf of the Minister. Ministers must be able to certify that an appropriate appointment process has been followed.

Members of a Ministerial advisory committee are subject to the Cabinet Fees Framework for any remuneration and allowances. The fees are set by the appointing authority – in this case the Minister responsible. A Cabinet Office Circular [CO (19) 1] covers the Fees Framework and how to apply it. Ministerial advisory committees are considered within “*Group 4: all Other Committees and other Bodies*” for the purposes of determining the right level of fees.

Appointments will generally be considered by the Cabinet Appointment and Honours Committee. Even although an appointment is the responsibility of a particular Minister, it is important that it is raised with colleagues to ensure wide input into the appointment process. This will also allow consideration of any exception to the fees proposed by the Cabinet Fees Framework.

Along with establishing a Terms of Reference and appointing members, determining the secretariat and reporting arrangements for a Ministerial advisory committee is important. It would be expected that Ministerial advisory committee members would report directly to the responsible Minister. Depending on the role and purpose set out in the Terms of Reference, the Ministerial advisory committee may have access to agreed information from an agency, meet regularly with officials and work closely with an agency chief executive. This may include utilising officials seconded to the Ministerial advisory committee to develop advice that is independent from the agency perspective. Where this occurs, the Terms of Reference should specifically provide for it.