



# GOVERNANCE MANUAL

for the

Southern District Health Board

Adopted by the Commissioner on 29 April 2019

Southern DHB Values			
Kind <i>Manaakitanga</i>	Open <i>Pono</i>	Positive <i>Whaiwhakaaro</i>	Community <i>Whanaungatanga</i>

## Introduction

All statutory Crown entities, including District Health Boards (DHBs), are expected to have a board governance manual that reflects good practice standards and the range of legislation that applies to them.

This manual has been compiled to provide the Southern District Health Board Commissioner's Team and future Board members with the guidance and information they may require to assist them to meet their governance responsibilities. Governance includes the generic processes by which organisations are directed, controlled and held to account. DHB governance has added obligations and complexities derived from the ethos of public service, the ministerial role and relationships, health legislation and the impact DHBs have on individuals, businesses and communities in New Zealand.

This manual is based on the State Services Commission guidelines, *Resource for Preparation of District Health Board Governance Manuals*, which were prepared in conjunction with the Ministry of Health in 2010 and updated in September 2011 to reflect amendments to the New Zealand Public Health and Disability Act 2000, and in September 2014 to reflect changes to State sector legislation.

Whilst this document contains links to relevant websites and other documents, Southern DHB does not necessarily endorse any of the material in these links, nor does it guarantee that such links and documents will remain current.

This manual will be reviewed at the commencement of each Board's term<sup>1</sup> and updates and/or new editions will be produced as necessary to reflect legislative changes.

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<sup>1</sup> Next review due February 2020

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## Chapter 1: Relevant legislation

Effective governance of Crown entities requires all board members to have a good understanding of the legislative environment in which they must operate.

Every District Health Board (DHB) is a Crown Agent for the purposes of the Crown Entities Act 2004 (CE Act).

DHBs are established under the New Zealand Public Health and Disability Act 2000 (NZPHD Act). Other key legislation that applies to DHBs includes:

- State Sector Act 1988
- Public Finance Act 1989
- Commerce Act 1986
- Official Information Act 1982
- Privacy Act 1993
- Protected Disclosures Act 2000
- Public Records Act 2005
- Health and Safety at Work Act 2015
- Various pieces of employment legislation, e.g. Employment Relations Act 2000

### ***New Zealand Public Health and Disability Act 2000***

The NZPHD Act is the legislation under which DHBs were created. Board members need to be familiar with all relevant sections of that Act.

A full copy of the Act can be found at [www.legislation.govt.nz](http://www.legislation.govt.nz)

In summary, the NZPHD Act establishes the structure underlying public sector funding and the organisation of health and disability services. It establishes District Health Boards, and sets out the duties and roles of key participants, including the Minister of Health, Ministerial committees, and health sector provider organisations.

The NZPHD Act also sets the strategic direction and goals for health and disability services in New Zealand. These include:

- To improve health and disability outcomes for all New Zealanders;
- To reduce disparities by improving the health of Māori and other population groups;
- To provide a community voice in personal health, public health, and disability support services and to facilitate access to, and the dissemination of information for, the delivery of health and disability services in New Zealand.

The NZPHD Act facilitates the achievement of the Government's aims by:

- Establishing DHBs to take a 'population health' focus for their geographically defined populations;
- Requiring the development of the [New Zealand Health Strategy](#) and the [New Zealand Disability Strategy](#) and an annual report to Parliament on the progress in implementing these strategies;
- Encouraging co-operation and collaboration between the agencies in the sector with the aim of delivering better care and support;

- Strengthening local community input to decision-making about health and disability support services through electing members to DHBs.

The NZPHD Act also adopts measures that recognise and respect the principles of the Treaty of Waitangi in the health and disability support sector.

The measures are a response to the Crown's desire to have greater Māori participation in the health and disability support sector with a view to improving Māori health outcomes, and reducing health disparities between Māori and other population groups. The measures also reflect the Crown's overall partnership with Māori under the Treaty of Waitangi and its commitment to protecting Māori health.

The measures include:

- Minimum Māori membership on Boards of DHBs;
- Provision for Māori membership of DHB committees;
- Training for Board members to ensure they are familiar with Treaty issues, Māori health issues, and Māori groups or organisations in the DHB;
- A requirement for DHBs to establish and maintain processes to enable Māori to participate in and contribute to strategies for Māori health improvement;
- A requirement that DHBs continue to foster the development of Māori health capacity for participating in the health and disability sector and for providing for their own needs;
- An expectation that DHBs provide relevant information to Māori to enable effective participation.

### **Crown Entities Act 2004**

The CE Act provides a consistent framework for the establishment, governance and operation of Crown entities, as included in the various chapters of this guidance material. It clarifies the accountability relationships between Crown entities, their board members, responsible Ministers and the House of Representatives. The application of the CE Act to DHBs includes board members' individual and collective duties, the role of the responsible Minister, accountability relationships, strategic planning and performance-related planning and reporting requirements, and must be read in conjunction with the provisions of the NZPHD Act.

Some key pieces of the CE Act and its application to DHBs are listed below, and are noted in the relevant chapters of this manual.

<b>Key parts of the CE Act as it applies to DHBs</b>	
Government policy directions	DHBs <i>must give effect to</i> government policy when directed by the responsible Minister (i.e. the Minister of Health) (s. 103)
Directions to support a whole of government approach	DHBs must comply with a whole of government direction from the Minister of State Services and the Minister of Finance (s. 107)
Planning and reporting	DHBs must prepare a Statement of Intent once every three years (to include statements of strategic intentions) and an annual Statement of Performance Expectations. A DHB's Annual Report must report progress in relation to its strategic intentions, and a full report in relation to its performance expectations (s. 139 to 153).
Appointed board members	Appointed by the Minister of Health (s. 28)

<b>Key parts of the CE Act as it applies to DHBs</b>	
Term of board members	Appointed members hold office for 3 years or less (s. 32)
Removal of appointed board members	May be removed by the Minister of Health at his or her discretion (s. 36)
Remuneration of board members	Determined by the Minister of Health in accordance with the <a href="#">Cabinet Fees Framework</a> <sup>2</sup> (s. 47)

S. 21 of the NZPHD Act sets out a number of provisions where the CE Act does not apply to DHBs, or to their boards, board members, committee members or employees.

DHBs also differ from other statutory Crown entities in that the majority of their board members are elected by the public, rather than appointed by a Minister.

### **State Sector Act 1988**

Under the State Sector Act (s. 6), the State Services Commissioner's mandate applies to DHBs in a number of ways, including:

- To review the State sector system in order to advise on possible improvements to agency, sector and system-wide performance;
- To review governance and structures across all areas of government in order to advise on:
  - The allocation and transfer of functions and powers, and
  - The cohesive delivery of services
  - The establishment, amalgamation and disestablishment of agencies;
- To promote leadership capability in departments and other agencies;
- Promote strategies and practices concerning government workforce capacity and capability;
- Promote transparent accountability in the State services;
- Promote and reinforce standards of integrity and conduct in the State services; and
- To set minimum standards of integrity and conduct. The State Services Commissioner has issued a code of conduct that applies to the staff of DHBs (also, see chapter on *District Health Boards as Employers*).

### **Public Finance Act 1989**

The CE Act specifies most of the provisions relating to a Crown entity's financial powers, accountability and reporting obligations.

However, the following sections of the Public Finance Act apply to Crown entities, including DHBs:

- s. 19, s. 26Z, s. 29A provide for the Secretary of the Treasury to request information necessary to prepare government statements and reporting;
- s. 35 sets out the responsibilities of departmental chief executives for financial management of non-departmental matters. These responsibilities include reporting on non-departmental appropriations administered by the department (including those used by Crown entities) and advising the appropriation Minister on the efficiency and effectiveness of expenditure under these appropriations. These departmental chief executive

<sup>2</sup> <http://www.dpmc.govt.nz/cabinet/circulars/co12/6>

responsibilities are distinct from Crown entities' financial management and reporting responsibilities;

- s. 49 provides that the Crown is not liable to contribute towards payments of the debts and liabilities of Crown entities;
- s. 74 provides that money that has remained unclaimed in a Crown entity's account for six years shall be paid to the Treasury;
- s. 80A allows for the Minister of Finance to issue instructions. Crown entities are required to comply with those instructions, which must be consistent with generally accepted accounting principles; and
- s. 81 provides for the Governor-General to make regulations for a variety of purposes.

### **Commerce Act 1986**

DHBs and their subsidiaries are interconnected bodies corporate for the purposes of the exemption from Part II of the Commerce Act under s. 44(1) (b) of that Act.

The exemption facilitates co-operative and collaborative arrangements between these public health and disability organisations, by ensuring the organisations can talk to each other without fear of breaching the Commerce Act.

The exemption does not apply to unilateral dominant behaviour of the kind regulated by s. 36 of the Commerce Act (DHBs are not exempt from action if they use their market power to seek to stop a provider entering a market, or to prevent competitive conduct, or to drive a provider out of a market).

### **Other legislation with general application to DHBs**

A considerable body of legislation applies to **DHBs as employers**, in respect of matters such as holiday entitlements, employment relations and health and safety. Employment matters are generally handled by chief executives rather than board members but, in ensuring compliance with them, the chief executive invariably acts under delegation from the board.

The **Official Information Act 1982** (the OIA) applies to DHBs. Board minutes are among the documents that can be requested under the OIA, though provisions exist for material to be withheld under certain circumstances. The general expectation, as expressed by the Chief Ombudsman for instance, is for official information to be released (either pro-actively or in response to a request), unless there are clear grounds to withhold it under the OIA.

For further guidance, see: [www.ombudsmen.parliament.nz/index.php?CID=100109](http://www.ombudsmen.parliament.nz/index.php?CID=100109)

The principles contained in the **Privacy Act 1993** include:

- How an organisation collects and stores personal information and what procedures are required to protect the security of that information;
- How long an organisation can keep personal information; and
- What personal information can be used for, and when it can be disclosed.

For further guidance, see: [www.privacy.org.nz/how-to-comply-with-the-privacy-act/](http://www.privacy.org.nz/how-to-comply-with-the-privacy-act/)

Of particular relevance to DHBs is the **Health Information Privacy Code**, which is a code of practice established under the Privacy Act 1993 and relates specifically to the collection, use and disclosure of health information.



For further guidance, see: <http://privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/health-information-privacy-code/>

The **Protected Disclosures Act 2000** provides for the reporting of wrong-doing in workplaces (sometimes called 'whistle-blowing') to an appropriate authority, such as the Office of the Ombudsman. All DHBs must have a protected disclosures policy. Under the Act, current or former employees of an entity, contractors and board members can make a disclosure that will be 'protected' if the information they are disclosing is about serious wrongdoing in or by the organisation, and they reasonably believe that the information is true or likely to be true.

The **Public Records Act 2005** applies to information held by DHBs that is of a kind specified by regulations made under the Act. Regulation 4 of the New Zealand Public Health and Disability (Archives) Regulations 2001 also provides that the Public Records Act applies to information that has officially been made or received by a DHB in the conduct of its affairs. Accordingly, all DHBs must comply with the requirements of the Public Records Act 2005 in relation to its record keeping.

The **Code of Rights** is a regulation under the Health and Disability Commissioner Act. It grants a number of rights to all consumers of health and disability services in New Zealand, and places corresponding obligations on providers of those services. The Code extends to any person or organisation providing, or holding themselves out as providing, a health service to the public or to a section of the public - whether that service is paid for or not.

For further guidance, see: [Code of Health and Disability Services Consumers' Rights - Health and Disability Commissioner](#)

## Chapter 2: Objectives, functions and powers of District Health Boards

Board members must know what they and the DHB are charged with doing, and how they are empowered to carry out their functions and powers.

The role of a District Health Board (DHB) is set out in s. 25 of the Crown Entities Act (CE Act) and s. 26 of New Zealand Public Health and Disability Act 2000 (NZPHD Act).

S. 25 of the CE Act states that the board is the governing body of a statutory entity with the authority to exercise the powers and perform the functions of the entity. All decisions relating to the operation of the entity must be made by or under the authority of the board, in accordance with the CE Act or the NZPHD Act, as appropriate.

### ***The objectives of a DHB***

S. 14(2) of the CE Act states that, in performing its functions, an entity must act consistently with its objectives. "Objectives" are not defined in the CE Act but include the objectives set out by s. 22 of the NZPHD Act, which are to:

- a) Improve, promote, and protect the health of people and communities;
- b) Promote the integration of health services, especially primary and secondary health services;
- ba) Seek the optimum arrangement for the most effective and efficient delivery of health services in order to meet local, regional, and national needs;
- c) Promote effective care or support for those in need of personal health services or disability support services;
- d) Promote the inclusion and participation in society and independence of people with disabilities;
- e) Reduce health disparities by improving health outcomes for Māori and other population groups;
- f) Reduce, with a view to eliminating, health outcome disparities between various population groups within New Zealand by developing and implementing, in consultation with the groups concerned, services and programmes designed to raise their health outcomes to those of other New Zealanders;
- g) Exhibit a sense of social responsibility by having regard to the interests of the people to whom it provides, or for whom it arranges, the provision of, services;
- h) Foster community participation in health improvement, and in planning for the provision of services and for significant changes to the provision of services;
- i) Uphold the ethical and quality standards commonly expected of providers of services and of public sector organisations;
- j) Exhibit a sense of environmental responsibility by having regard to the environmental implications of its operations;
- k) Be a good employer in accordance with s 118 of the Crown Entities Act 2004.

The DHB must consider the specific actions to be taken to meet these objectives, while being mindful of:

- a) s. 3(2) of the NZPHD Act, which provides for objectives to be pursued to the extent that they are reasonably achievable within the funding provided;
- b) s. 3(4) which promotes the integration of services; and
- c) s. 3(5) that requires consideration of local, regional or national service configuration.

While the NZPHD Act gives the community a voice in achieving these objectives, DHBs also need to consider the overall health structure to ensure that individual items of health expenditure fit comfortably with the “big picture” of health funding.

The DHB will need to consider competing options and may, in certain circumstances, attach greater weight to certain objectives than others to attempt to achieve the purposes of the Act. In doing so, as good practice, each DHB Board should carefully record the decision-making process.

### ***Functions of a DHB***

Under s. 14 of the CE Act the functions of a statutory entity are:

- The functions set out in the entity’s establishing legislation (in the case of DHBs, the NZPHD Act);
- Any functions that the Minister has added in accordance with the establishing legislation; and
- Any functions that are incidental or related to, or consequential on, the entity’s functions.

S. 23 of the NZPHD Act sets out a further list of DHB-specific functions which are to:

- a) Ensure the provision of services for its resident population and for other people as specified in its Crown funding agreement;
- b) Actively investigate, facilitate, sponsor, and develop co-operative and collaborative arrangements with persons in the health and disability sector or in any other sector to improve, promote, and protect the health of people, and to promote the inclusion and participation in society and independence of people with disabilities;
- ba) To collaborate with relevant organisations to plan and co-ordinate at local, regional and national levels for the most effective and efficient delivery of health services;
- c) Issue relevant information to the resident population, persons in the health and disability sector, and persons in any other sector working to improve, promote, and protect the health of people for the purposes of paragraphs (a) and (b) above;
- d) Establish and maintain processes to enable Māori to participate in, and contribute to, strategies for Māori health improvement;
- e) Continue to foster the development of Māori capacity for participating in the health and disability sector and for providing for the needs of Māori;
- f) Provide relevant information to Māori for the purposes of paragraphs (d) and (e) above;
- g) Regularly investigate, assess, and monitor the health status of its resident population, any factors that the DHB believes may adversely affect the health status of that population, and the needs of that population for services;
- h) Promote the reduction of adverse social and environmental effects on the health of people and communities;
- i) Monitor the delivery and performance of services by it and by persons engaged by it to provide or arrange for the provision of services;
- j) Participate, where appropriate, in the training of health practitioners and other workers in the health and disability sector;
- k) Provide information to the Minister for the purposes of policy development, planning, and monitoring in relation to the performance of the DHB and to the health and disability support needs of New Zealanders;
- l) Provide, or arrange for the provision of, services on behalf of the Crown or any Crown entity within the meaning of the Crown Entities Act 2004;
- m) Collaborate with pre-schools and schools within its geographical area on the fostering of health promotion and on disease prevention programmes;

- n) Perform any other functions it is for the time being given by or under any enactment, or authorised to perform by the Minister by written notice to the board of the DHB after consultation with it.

The CE Act contains several safeguards for the independence of entities in carrying out their functions and other business:

S. 113 provides that a Minister may not:

- Direct a Crown entity or member, employee or office holder of a Crown entity in relation to a statutorily independent function; or
- Require the performance or non-performance of a particular act or the bringing about of a particular result in respect of a particular person or persons.

Without limiting sub part 1 of Part 3 of the CE Act, the Minister of Health may give a DHB any directions [s. 32 of the CE Act] —

- a) That specify the persons who are eligible to receive services funded under the NZPHD Act; and
- b) That the Minister considers necessary or expedient in relation to any matter relating to the DHB; and
- c) That are consistent with the objectives and functions of the DHB.

No such direction may require the supply to any person of any information relating to an individual that would enable the identification of the individual.

### ***Powers of the Board***

As noted at the start of this chapter, an entity's powers are exercised by, or under the authority of, the board.

The CE Act divides powers of entities into:

- Statutory powers: s. 16 provides that a statutory entity may do anything authorised by the CE Act or the entity's establishing Act. Powers may include, for example, the power to make decisions or issue a licence;
- Natural powers: s. 17 provides that entities have all the powers of a natural person of full age and capacity. Boards may only act for the purpose of performing the statutory functions of the entity. The CE Act contains some specific constraints on the exercise of natural powers, for example: the requirement to consult the State Services Commissioner before agreeing to the terms and conditions of employment of a DHB's chief executive, constraints on bank accounts and limits on powers to indemnify and insure. Ministers' powers of direction, where applicable, can also act as a restraint on a board's powers.

### ***Ministerial Directions***

Certain provisions of the CE Act relating to government policy and government directions, apply to the giving of ministerial directions to DHBs. Under s. 103(1) of the CE Act, the Minister of Health may direct a DHB to give effect to a government policy. S.103 is subject to s. 113 of the CE Act, under which the independence of Crown entities is safeguarded.

Under ss. 32 and 33 of the NZPHD Act, the Minister of Health may give written directions to a DHB on any matter of government policy that the Minister considers necessary, and can specify the persons who are eligible to receive services funded under the NZPHD Act. In giving any such directions, the Minister must have regard to the objectives and functions of DHBs, the New Zealand Health Strategy, the New Zealand Disability Strategy, the DHB's

annual plan and any other plan the DHB is a party to. The Minister must also consult the DHB before issuing a direction notice.

Ministerial directions cannot require the supply of identifiable information about an individual.

If a direction concerns the provision of services, then it must be given in accordance with s. 33. Such a direction may not:

- Specify the price of any services;
- Require the supply of services to named individuals or organisations, or require supply of services by named individuals or organisations (however, DHBs can be specified as the provider).

The Minister may also give directions to DHBs on matters relating to administrative, support and procurement services for the purposes of creating greater effectiveness and efficiency (ss 33A and 33B).

Notice of directions given under s. 32 or 33 must be published in the *Gazette* and presented to the House of Representatives.

Where the Minister appoints a Crown monitor in relation to a DHB, the functions of the Crown monitor include assisting the board “in understanding the policies and wishes of the Government so that they can be appropriately reflected in board decisions” (s. 30(3)(b) NZPHD Act).

### ***The Treaty of Waitangi***

The NZPHD Act includes provisions to recognise and respect the principles of the Treaty of Waitangi in the health and disability sector.

These provisions reflect the Crown’s desire to have greater participation by Māori in the health and disability sector, with a view to improving Māori health outcomes and reducing health disparities between Māori and other population groups. The measures also reflect the Crown’s overall partnership with Māori under the Treaty of Waitangi.

Specific provisions include:

- Minimum Māori membership on boards of DHBs (s.29(4));
- Provision for Māori membership of DHB committees (ss. 34, 35, 36);
- Familiarity with Treaty issues, for Māori health issues, and for Māori groups or organisations in the DHB (Schedule 3, clause 5);
- A requirement for DHBs to establish and maintain processes to enable Māori to participate in and contribute to strategies for Māori health improvement (s23(1)(d));
- Continuing to foster the development of Māori capacity to participate in the health and disability sector and for providing for their own needs (s23(1)(e)); and
- Provision of relevant information to Māori to enable effective participation (s23(1)(f)).

S. 3(3) of the NZPHD Act provides that nothing in the Act “entitles a person to preferential access to services on the basis of race or limits section 73 of the Human Rights Act 1993” (which relates to measures to ensure equality). This recognises the need for service delivery that positively reduces disparities and is targeted at population related initiatives, rather than any preferential treatment sought by an individual person.

### ***Exceptions to board implementing functions and powers under legislation***

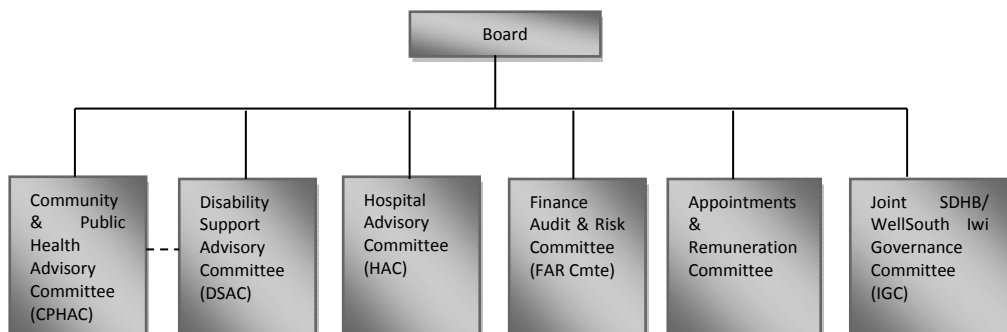
Occasionally the chief executive or other office holder in a DHB has specific statutory functions or powers under the entity's establishing legislation. For example under s 26(3) of the NZPHD Act, the board of a DHB is required to delegate to the chief executive the power to make decisions on management matters relating to that DHB.

In these cases, the board is not responsible for the exercise of those powers and functions but the chief executive is accountable to the Board in relation to the powers delegated.

### ***Structure***

The structure of the DHB, including the board and committees, should support the implementation of the functions and powers of the board and should be reviewed from time to time.

The usual governance structure of Southern DHB is as follows:



The current executive management and governance support structure of Southern DHB is set out in Appendix 9.

## Chapter 3: Key Relationships

One of the primary purposes of the Crown Entities Act 2004 (CE Act) is “to clarify accountability relationships between Crown entities, their board members, their responsible Ministers on behalf of the Crown, and the House of Representatives” (s. 3 CE Act) in order to assist good governance of the entity.

In simple terms this can be summarised as:

- The responsible Minister is accountable to the House of Representatives;
- The governing board of the entity (i.e. the District Health Board ) is responsible to the Minister, usually through the Chair);
- The entity’s chief executive is responsible to the board; and
- The staff of the entity are responsible to the chief executive.

District Health Board (DHB) members need to clearly understand the different roles, responsibilities and accountabilities of each party. This will facilitate the establishment and maintenance of mutually constructive and positive working relationships.

### ***Relationship with the Minister of Health (the Minister)***

The role of the Minister is to oversee and manage the Crown’s interest in, and relationship with, the DHB, and to exercise any statutory responsibilities.

Under s. 27 of the CE Act, the Minister has functions and powers with regard to all DHBs on the appointment and removal of members, matters of strategic direction and targets, operations and performance, reporting and reviews. The Minister needs to exercise these powers in a way that recognises any statutorily independent functions of DHBs.

The Minister has the power to request the following information:

- The DHB must supply to the Minister of Health any information relating to the operations and performance of the DHB that the Minister requests, under s. 133 of the CE Act;
- The DHB must supply to the Minister of Finance any information requested by the Minister in connection with the exercise of his or her powers under Part 4 of the CE Act. S. 133 is subject to s. 134 of the CE Act, which provides for where there is a good reason to refuse to supply information requested by the Minister, for example the privacy of a person. However, the reason must outweigh the Minister’s need to have the information, for the discharge of Ministerial duties;
- The DHB must supply to the Minister of State Services any information requested by the Minister, where that information is requested for the purpose of assessing the capability and performance of the State services, and the request is made to a group of at least three entities that have in common at least one significant characteristic that relates to the information requested.
- Section 133 is subject to s. 134 of the CE Act. Section 134 provides certain grounds for refusing to supply information requested by a Minister, for example, to protect the privacy of a person. However the reason must outweigh the Minister’s need to have the information in order for the Minister to discharge ministerial duties.

The Minister of Health is responsible to the House of Representatives for overseeing and managing the Crown’s interests in, and relationships with, the DHBs, and is politically

answerable on a day-to-day basis in connection with them. This can include answering to the public for problems or controversies relating to DHBs. The Minister also tables in the House each DHB's statement of intent, statement of performance expectations, and annual report and appears before select committees where the Minister may be asked to comment on a DHB's activities. However, the DHB itself is also accountable to the House of Representatives (s. 3 CE Act) for its own actions (see chapter *Planning and reporting*).

### **Parliamentary select committees**

One mechanism for scrutiny of DHB operations is through select committees. The most regular contact DHBs are likely to have with select committees is for financial reviews, inquiries, and occasionally when making submissions on bills. Board members should be particularly aware of the following:

- Examination of the Estimates: The estimates are the government's request for appropriations/authorisation for the allocation of resources, tabled on Budget day. DHBs do not attend the select committee when it examines the estimates, but the Minister and Ministry of Health may be questioned about the intended activities and expenditure of a DHB.
- Financial Review: The financial review is of the DHB's performance in the previous financial year and of its current operations. The select committee will provide written questions for answer, but if the DHB is asked to appear, further questions may be asked on the day.

DHB board members and staff who appear before a select committee do so in support of ministerial accountability. Generally the chair and the chief executive will represent a DHB at select committee hearings, although this is a matter for the board to decide.

DHB representatives appearing before select committees have an obligation to manage risks and avoid springing surprises on the Minister. This applies even when they appear on matters which do not involve ministerial accountability, such as when exercising an independent statutory responsibility or appearing in a personal capacity. Board members and employees who wish (or are invited) to make a submission to a select committee on a Bill on behalf of their DHB are expected to discuss the matter with the Minister.

Guidance on appearing before select committees needs to reflect the material contained in *Officials and Select Committee Guidelines*: [www.ssc.govt.nz/officials-and-select-committees-2007](http://www.ssc.govt.nz/officials-and-select-committees-2007). Within that guidance, the term 'official' includes board members and employees of DHBs.

### **“No surprises” approach**

Boards are expected to engage constructively and professionally with the Minister. This is enhanced when there is a free flow of information both ways, by regular formal and informal reporting and discussion, and through an open and trusting relationship.

The enduring letter of expectations from Ministers to Crown entity boards ([www.ssc.govt.nz/expectations-letter-crown-entities-july12](http://www.ssc.govt.nz/expectations-letter-crown-entities-july12)), expects boards to adopt a “no surprises” approach with their Minister. Any protocols adopted in this respect need to recognise that what a board considers to be “business as usual” may be seen by the Minister to come within the requirement of “no surprises”.

“No surprises” means that the government expects a DHB to:



- Be aware of any possible implications of its decisions and actions for wider government policy issues;
- Advise the Minister of Health of issues that may be discussed in the public arena or that may require a ministerial response, preferably ahead of time or otherwise as soon as possible; and
- Inform the Minister in advance of any major strategic initiative.

### ***Relationship with the monitoring department***

The CE Act provides for Ministers to monitor Crown entity performance against the entity's strategic direction, as agreed with the Minister and set out in the Statement of Intent (Sol) and any other relevant documents; for example, a Crown Funding Agreement.

Ministers are usually supported in this engagement with Crown entities by departmental officials who in this role are known as the 'monitoring department'. The monitoring department (in this case, the Ministry of Health) provides the Minister with information about a DHB's performance, ensures its approach is consistent with government goals, and supports the appointment process for board members. This role is provided for in section 27A of the CE Act.

Guidance for departments on how to monitor an entity is available at: [www.ssc.govt.nz/guidance-depts-crown-entities](http://www.ssc.govt.nz/guidance-depts-crown-entities).

### ***Relationship with the chief executive and DHB staff***

All decisions relating to the operation of a DHB must be made by, or under the authority of, the board in accordance with s. 25 of the CE Act and the New Zealand Public Health and Disability Act 2000 (NZPHD Act).

The day-to-day management responsibilities within a DHB are delegated to the chief executive (s. 26(3), NZPHD Act). The board and the chief executive must be clear about the boundaries between governance and management and what duties have been delegated to the chief executive. Some guidance on this is provided in the *Code of Conduct for Board and Committee Members* in Appendix 1.

While the relationship between the Minister and the board is usually through the chair, this is not always practical. Board members and the chief executive must be clear about who has contact with the Minister and the Minister's office. Where a chief executive is meeting regularly with the Minister, protocols should be put in place, including feedback to the board on all such meetings.

Other issues concerning relationships and communications between board members and staff are addressed in the board's the *Code of Conduct* (Appendix 1).

### ***Cooperative agreements with persons in the health and disability sector***

For a DHB to fulfil its obligations, it must "actively investigate, facilitate, sponsor and develop" co-operative agreements and arrangements with persons in the health and disability sector, in order to promote the inclusion of individuals and encourage independence (s. 23(1)(b), NZPHD Act).

DHBs can enter into co-operative agreements and arrangements under s. 24 of the NZPHD Act, for the purpose of:

- Assisting the DHB to meet its objectives set out in s. 22 of the Act; or
- Enhancing health or disability outcomes for people; or
- Enhancing efficiencies in the health sector.

A DHB may not enter into such a co-operative agreement or arrangement, unless it is given consent by the Minister (s. 24(2), NZPHD Act). Any authority given by the Minister is subject to any conditions the Minister specifies.

Further approval is also needed for DHBs to hold interests in trusts and companies (s.28, NZPHD Act).

### **South Island Alliance**

Southern DHB is part of the *South Island District Health Board Alliance*, which was formed by the DHBs to enable them to work effectively together, utilising their combined resources to jointly solve problems, develop innovative solutions to health sector challenges and achieve outcomes for the people of the South Island region. The alliance aims to provide increasingly integrated and co-ordinated health services through clinically-led service development and its implementation with a 'best for patient, best for system' framework.

### **Iwi Partnership**

On 31 May 2011 Murihiku and Araiteuru Rūnaka and Southern DHB signed a collective Principles of Relationship agreement<sup>3</sup> (see Appendix 3). The agreement's purpose is for all parties to work together in good faith to safeguard and improve health outcomes for Māori in the Southern region.

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<sup>3</sup> Currently under review (April 2019).

## Chapter 4: Collective duties of the board and individual duties of board members

One of the goals of the Crown Entities Act 2004 (CE Act) is to clarify the roles of board members and responsible Ministers by setting out the accountabilities of each party; in particular, board members' duties and to whom those duties are owed.

S. 25 of the CE Act states that the board is the governing body of a statutory entity, with the authority, in the entity's name, to exercise the powers and perform the functions of the entity.

Collective and individual responsibility and accountability are fundamental to the integrity of the board. It is important that board members are clear about, and understand, the collective and individual duties that come with appointment to a DHB board.

Board duties are often referred to as directors' 'fiduciary duties'. The board's collective duties and members' individual duties are set out in ss. 49-57 of the CE Act. The two types of duties vary with regard to:

- Whether the duties are owed by the board as a whole, or by each member individually;
- Who they are owed to; and
- What the sanction is if the duty is breached.

All DHB board members are bound by collective and individual duties, whether they are appointed or elected members.

Board members' duties are constant and relevant to all actions undertaken by the board or individual members; a board and its members must always act in a manner consistent with these duties.

### **Collective Duties**

The collective duties of a DHB are the board's public duties which reflect that the board and the entity are part of the State Services. The collective duties are owed to the responsible Minister (s. 58(1), CE Act).

The collective duties of DHB boards are to:

- Act consistently with their objectives, functions, statements of intent and current statement of performance expectations (s. 49, CE Act);
- Perform their functions efficiently and effectively, and consistently with the spirit of service to the public, and in collaboration with other public entities where practicable (s. 50, CE Act);
- Operate in a financially responsible manner (s. 51, CE Act and s.41 NZPHD Act); and
- Ensure that the DHB complies with ss. 96 to 101 of the CE Act<sup>4</sup>.

The board of a DHB must also ensure that the DHB acts in a manner consistent with its annual plan and any national and regional plans (to which it is a party), and with any directions the Minister of Health may have issued requiring the DHB to provide or arrange for the provision of any services that are specified in the notice (ss. 27(1) and 33 of the NZPHD Act). The board of a DHB must also act in a manner consistent with s. 103 or s. 107 of the CE Act.

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<sup>4</sup> s.28 of the NZPHD Act discusses shares in bodies corporate or interests in associations.

### **Individual duties of board members**

Individual board member duties are a mix of common law duties and duties similar to the ones in the Companies Act 1993 (common law is law that is derived from judges' decisions). The individual duties in the CE Act are owed to the entity and the Responsible Minister (s. 59). Board members' individual duties under the CE Act are to:

- Comply with the CE Act and the NZPHD Act (s. 53)
- Act with honesty and integrity (s. 54)
- Act in good faith and not at the expense of the entity's interests (s. 55)
- Act with reasonable care, diligence and skill (s. 56)
- Not disclose information, except in specified circumstances (s. 57).

### **Breach of duty**

If a DHB member does not act with good faith, or with reasonable care, the DHB may bring action against that member for breach of an individual duty (s. 59(3) of the CE Act).

Every member of the DHB board or of any committee of the board is indemnified by the DHB for<sup>5</sup>:

- Costs and damages for any civil liability arising from any action brought by a third party in respect of any act or omission done or omitted in his or her capacity as a member, if he or she acted in good faith and with reasonable care, in pursuance of the functions of the organisation; and
- Costs arising from any successfully defended criminal proceeding in relation to any such act or omission.

A member of a DHB board committee established or appointed under Part 3 of the NZPHD Act is not liable for any act or omission done or omitted in his or her capacity as a member, if he or she acted in good faith, and with reasonable care, in pursuance of the functions of the committee.

The Minister of Health may take action if the collective or individual duties of a DHB board have been breached. If the board does not comply with any one of its collective duties, all or any of the board members may be removed from the board. However, a board member cannot be removed if the member did not know, and could not reasonably be expected to know that the duty was being or was to be breached, or if the board member took all reasonable steps in the circumstances to prevent the duty being breached.

A board member is not liable for breach of a collective duty, other than to be removed from office (s. 58, CE Act).

The chapter *Board Appointments and Reappointments* addresses the different processes for removal from office of appointed and elected DHB board members. In addition, the Minister of Health can remove the whole board and replace it with a Commissioner.

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<sup>5</sup> Section 90 of the NZPHD Act. Ss. 120 to 126 of the CE Act, on protections from liability, do not apply to a 'publicly-owned health and disability organisation,' members of the board or a committee of the board of a DHB

## Chapter 5: Role of the Chair

An effective chair is vital to the good governance and performance of an entity. DHB chairs are appointed from various backgrounds and they need to understand the requirements of the role. The role has many similarities to that of a private sector board chair, but with some different elements which come from legislation or practice.

A DHB chair's role includes:

- Providing effective leadership and direction to the board and the DHB, consistent with the Minister's expectations.
- Ensuring effective accountability and governance of the DHB, consistent with the requirements of relevant legislation including the Crown Entities Act 2004 (CE Act), (see also, the chapter *Relevant legislation*).
- Developing and maintaining sound relationships with Ministers and their advisors, including:
  - leading any formal discussions with Ministers, particularly on budget and planning cycles, including the Statement of Intent and letter of expectations (see chapter *Planning and reporting*);
  - signing-off formal governance documents (Statement of Intent, Statement of Performance Expectations, Annual Report), generally in conjunction with the deputy chair;
  - 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; and
  - ensuring that the Minister is kept informed under the 'no surprises' obligations (see chapter *Key relationships*).
- Acting as the leader of the DHB, including presenting its objectives and strategies externally, and representing the DHB to Government and stakeholders, including attending select committees.
- Chairing board meetings including: setting the annual board agenda (see chapter *Board meeting procedures*); setting meeting agendas; 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; considering which matters should be dealt with in the 'public included' and 'public excluded' portions of DHB board meetings, encouraging contributions from all board members; assisting discussions towards the emergence of a consensus view; and summing up so that everyone understands what has been agreed.
- Providing guidance and support to the chief executive to ensure the DHB is managed effectively. This includes establishing and maintaining an effective working relationship, while also taking an independent view to challenge and test management thinking (see chapter *Key relationships*).
- Leading the employment of the chief executive, including 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 State Services Commission in respect to chief executive terms and conditions at time of appointment and performance reviews (see chapter *District Health Boards as employers*).
- Providing motivation, guidance and support to other board members to ensure they contribute effectively to the governance of the DHB.

- Taking the lead, often in conjunction with the Ministry of Health, in providing comprehensive tailored induction for new board members (see chapter *Board appointments and reappointments*).
- Ensuring that the development needs of individual board members are identified and addressed.
- Where necessary, dealing with underperformance by board members.
- Ensuring that an annual performance evaluation is conducted of the board, as well as of the chair (see chapter *Board and member performance evaluation*).
- Participating in the recruitment process for appointed board members. This is likely to include: maintaining a view on the desired composition of the board; considering member and chair succession planning; supporting the Minister and Ministry of Health in appointing and reappointing board members (see chapter *Board Appointments and Reappointments*).
- Ensuring that conflict of interest policies, including disclosure provisions, are in place, that members' conflicts of interest (including those of the chair) are dealt with properly, and that, where appropriate, dispensation is given to act despite being interested.
- If the chair of a DHB board is not present or is unwilling to preside at a meeting of the board, the deputy chair of the board presides, if he or she is present and willing to do so. If neither of them is present and willing to preside at a meeting of the board, the members present must elect a member who is present to preside at the meeting.

## Chapter 6: General behaviours of board members

Best practice corporate governance boards exhibit certain behaviours in order to undertake their board role effectively and in accordance with the highest ethical and professional standards, notwithstanding any legal requirements that are placed upon the board.

The list below is not exhaustive nor in order of importance, but it should assist the board to ensure appropriate behaviours are maintained.

- **Responsibility to the entity.** Members need to recognise and always act consistently with their responsibilities to the DHB and to Ministers. Members owe a duty to the organisation as a whole and are not to act purely in the interest of a specific group. They should attend induction training and board members' professional education to familiarise and update themselves with their governance responsibilities.
- **Strategic perspective.** Members need to be able to think conceptually and see the 'big picture'. They should focus as much as possible on the strategic goals and overall progress in achieving those rather than on operational detail.
- **Integrity.** Members must demonstrate the highest ethical standards and integrity in their personal and professional dealings. They should also challenge and report unethical behaviour by other board members.
- **Intellectual capacity.** Members require the intellectual capacity to understand the issues put before them and make sound decisions on the entity's plans, priorities and performance.
- **Independent judgement.** Members need to bring to the board objectivity and independent judgement based on sound thought and knowledge. They need to make up their own mind rather than follow the consensus.
- **Courage.** Members must be prepared to ask the tough questions and be willing to risk rapport with fellow board members in order to take a reasoned, independent position.
- **Respect.** Members should engage constructively with fellow board members, entity management and others, in a way that respects and gives a fair hearing to their opinions. In order to foster teamwork and engender trust, members should be willing to reconsider or change their positions after hearing the reasoned viewpoints of others.
- **Collective responsibility.** Members must be willing to act on, and remain collectively accountable for, all decisions even if individual members disagree with them. Board members must be committed to speaking with one voice once decisions are taken on a DHB's strategy and direction.
- **Participation.** Members are expected to be fully prepared, punctual and regularly attend for the full extent of board meetings. Members are expected to enhance the quality of deliberations by actively asking questions and offering comments that add value to the discussion.
- **Informed views.** Members are expected to be informed and knowledgeable about the DHB's business and the matters before the board. They should have read the board papers before meetings and keep themselves informed about the environment in which the DHB operates.
- **Understanding.** Members are expected to recognise the need for service delivery to positively reduce disparities between various population groups. Members are expected to understand Māori health and Treaty of Waitangi issues (Schedule 3, clause 5 to the New Zealand Public Health and Disability Act 2000). This includes establishing and maintaining processes to enable Māori to participate in and contribute to strategies for Māori health improvement and to foster Māori capability.
- **Financial literacy.** Boards monitor financial performance and thus all members must be financially literate. They should not rely on other members who have financial

qualifications, but should undertake training to improve their own financial skills where necessary.

- **Sector knowledge.** Members need to make themselves familiar with the activities of the entity and sector. This is likely to include attending induction sessions and ongoing background study.
- **Compliance with organisational policies.** The Southern District Health Board has a number of organisation-wide policies that are approved by the Board. Members must ensure they comply with the policies approved, including the Sensitive Expenditure Policy and Fraud Policy (see Appendices 4 and 6).

### ***Code of Conduct for Board and Committee Members***

The *Code of Conduct* agreed to by Board members is set out in Appendix 1.



## Chapter 7: Members' interests and conflicts: identification, disclosure and management

The New Zealand health and disability sector is an inherently close community where relevant knowledge is in high demand from public and private entities. Conflicts of interest are an inevitable result.

To address conflicts of interest in the health and disability sector, the Ministry of Health has published *Conflicts of Interests Guidelines for District Health Boards*. These guidelines are aimed specifically at District Health Board (DHB) members. They are a resource to help board members maintain public confidence and integrity in the health sector, in those circumstances where conflicts of interest may exist and need to be managed appropriately. The guidelines discuss members' interests and conflicts and how to manage these under the provisions set out in the New Zealand Public Health and Disability Act 2000. A copy of these guidelines can be found on the Ministry of Health's website at: [www.health.govt.nz/publications/conflict%20of%20interest](http://www.health.govt.nz/publications/conflict%20of%20interest).

Guidance on the management of interests is also set out in the board's *Code of Conduct* in Appendix 1.

To assist with the guideline requirements for documentation, disclosure, regular review and management of members' interests, a register of interests is maintained by the board secretary and included in all board and committee agendas as a standing item.

In preparing the agenda for board or committee meetings, the chief executive will discuss with the chair any papers that may give rise to a conflict of interest. Where a conflict or potential conflict is identified the following will apply:

- If the item giving rise to the conflict of interest is to be discussed in the public part of the meeting, the member with the conflict of interest will receive the paper but will normally be excluded from the discussion and decision-making process. The chair may ask the member to sit in the public gallery during the relevant agenda item.
- If the item giving rise to the conflict of interest is to be discussed in the public excluded part of the meeting, the member with the conflict of interest will normally not receive the paper and will be asked to leave the meeting during the relevant agenda item.
- Any member who has concerns can raise these directly with the chair, or if the conflict of interest pertains to the chair, then the deputy chair.
- In the event that the board or committee note the conflict of interest but wish to allow the member to participate, the minutes will record why the permission was granted and what the conflicted member said during the deliberation on the matter concerned.

S.42(4) of the NZPHD Act requires the board's annual report to record all permissions to participate when interested.

## Chapter 8: Disclosure of information

In the course of their work, board members will often have access to information that is commercially sensitive or valuable, or that could be personally sensitive for others. For District Health Boards (DHBs) to be trusted, this information needs to be handled with the highest standards of care and integrity and in a manner consistent with the relevant legislation.

### *Principles*

Under s. 57 of the Crown Entities Act 2004 (CE Act), board members must not disclose to any person, or make use of or act on information they receive as a member, and to which they would not otherwise have had access, unless:

- It is in the performance of the DHB's functions;
- It is required or permitted by law; for instance, where disclosure is made in accordance with the Official Information Act 1982 (OIA);
- It is complying with the requirement for the member to disclose his or her interests;
- The member has been authorised by the board or by the Minister of Health to disclose the information; or
- The disclosure, use or act in question will not prejudice the DHB or will be unlikely to do so.

However, under s. 57(2) of the CE Act, a member may disclose, make use of, or act on such information, provided that:

- the member is first authorised to do so by the board; and
- the disclosure, use, or act in question will not, or will be unlikely to, prejudice the DHB.

Clause 32 to Schedule 3 of the New Zealand Public Health and Disability Act 2000 (NZPHD Act) contains a specific provision regarding the right of a DHB board, by resolution, to exclude the public from the whole or any part of any meeting of the board if the public conduct of the whole or the relevant part of the meeting would be likely to result in:

- the disclosure of information for which good reason for withholding would exist under ss. 6, 7, or 9 (except s. 9(2)(g)(i)) of the OIA; and/or
- disclosure of information, the public disclosure of which would:
  - i) be contrary to the provisions of a specified enactment; or
  - ii) constitute contempt of court or of the House of Representatives.

When considering obligations to provide information to parties, the privacy of individuals must be respected and the Privacy Act 1993 and the Health Information Privacy Code 1994 complied with. (Refer [www.privacy.org.nz/health-information-privacy-code/](http://www.privacy.org.nz/health-information-privacy-code/).)

## Chapter 9: Gifts and hospitality

The way in which a board handles gifts and hospitality offered to its members has serious implications for the trust placed in the governance of the entity concerned. When a board member is offered gifts or hospitality, careful judgement is needed in light of the roles and responsibilities of District Health Boards (DHBs). The perception of influence being sought can be as important as the reality.

The best way of avoiding any perception of influence is to refuse all offers of gifts and hospitality, however there may be occasions when this may be unworkable, eg as part of a ceremonial occasion. There are a set of principles to inform members' decisions about gifts and hospitality, and to promote transparency and consistency of approach.

### Principles

- Board members should not compromise their integrity by placing themselves under any obligation to a third party. They must always be aware of the public perception that can result from their accepting gifts or hospitality.
- Members must never solicit favours for themselves or others.
- Gifts should be declined unless they are of nominal value, so their acceptance can be judged against internal or other relevant policies.
- Timing and frequency are relevant. Offers of gifts or hospitality, even if of limited monetary value, may be of concern if offered repeatedly and/or at times when they could be seen to influence or reinforce a particular decision or action.
- The commercial influence, actual or perceived, that a gift or benefit may represent is important.
- Hospitality offered may provide opportunities for members to develop productive relationships but their presence at such occasions is potentially open to criticism.

### Practice

The exercise of common sense will usually determine whether an offer of hospitality or a gift should be accepted. Useful tests could be to consider how Parliament, the media, competing suppliers and the wider public might interpret its acceptance; the reasons that may be behind the offer, and how the member would justify accepting what has been offered.

Board members should carefully consider timing and frequency. For instance, extra vigilance is needed in considering a gift offered at a time when an entity is negotiating for purchases or services. Board members should satisfy themselves that any hospitality offered is not too frequent or elaborate given the nature of the relationship, nor is it part of a pattern of invitations which could be considered excessive.

The Southern DHB has Sensitive Expenditure and Managing Gifts and Sponsorship Policies that outline the limits surrounding expenditure of a sensitive nature and the boundaries and principles of accepting or making gifts, donations and sponsorships without unnecessarily hindering or restricting any source of such funding (attached at Appendix 4 and 5). The policies are consistent with State Services Commission (SSC) guidance that:

- Board members must not solicit gifts and benefits from, or on behalf of, anyone under any circumstances;
- Board members not accept gifts and benefits from anyone, or on behalf of anyone, who could benefit from influencing them or the DHB;
- Open and transparent practices in relation to gifts and benefits are in place, to enhance trust in the State services, and reduce any misplaced speculation;

- A principles based approach to each situation rather than the dollar value of gifts or hospitality will determine what is appropriate for board members to accept, and the practice to be followed regarding the use of benefits in kind (e.g. air points);
- Unless they are 'consumable' at the time (e.g. meals, invitation to events), gifts should be regarded as the property of the DHB;
- Context be taken into account when considering hospitality offered by stakeholders, to balance the opportunities that may be provided against the potential for criticism. For instance, does the timing coincide with a particular board decision that affects the donor; how relevant is the event or function to the DHB's role; will the board's interests genuinely be advanced by having a member present; should the DHB itself meet the costs of attendance, to avoid any perceptions of influence?
- Close scrutiny be made of offers such as invitations to attend conferences in New Zealand or overseas that may include travel, accommodation, meals, a speaking fee, and/or inclusion of a member's partner. It is essential to consider whether there would be real value to the DHB from attendance and, if so, who is best placed to represent it;
- All boards which are considering offering gifts or hospitality should think very carefully about both the cost and the public and political perception of doing so. Policies need to specify the purposes for which, and occasions on which, it is acceptable to offer gifts, and the nature and value of gifts that are appropriate to particular occasions.

## Koha

DHBs should be clear about their approach to the question of koha, to avoid misunderstandings. Koha is a gift, token or contribution given on appropriate occasions, such as a visit by board members in conjunction with a consultation hui. It is not a transaction in the usual sense: for example, there often is no written acknowledgement of receipt.

The OAG's good practice guide on sensitive expenditure ([www.oag.govt.nz/2007/sensitive-expenditure/](http://www.oag.govt.nz/2007/sensitive-expenditure/)) includes an expectation that entities will ensure that:

- their policy on koha includes the means of determining the amount of any koha;
- a koha reflects the occasion;
- koha is not confused with any other payments that a DHB makes to an organisation; and
- koha is approved in advance, at an appropriate level of authority.

Southern DHB's current *Koha Policy* is attached as Appendix 7.

## Disclosure

As per the Board's Code of Conduct and Sensitive Expenditure Policy, members must obtain the approval of the Board chair before accepting any offer of gift or benefit. Members should seek advice from the chair (or deputy chair if the gift or benefit is being offered to the chair) or other appropriate source if they are at all uncertain about the appropriate action to take. Expenditure of the board chair must be approved by the chair of the Finance, Audit and Risk Committee.

Disclosing gifts and hospitality as soon as practicable after they are accepted, and maintaining a register of them, represents an effective and transparent way for boards to demonstrate integrity in practice, both as a model of accepted behaviour within the DHB and in respect of their stakeholders. All gifts accepted by board members should be disclosed to the board secretary as soon as practical after receipt. Details disclosed should include:

- The nature of the gift or benefit
- The approximate value of the gift or benefit
- The party providing the gift or benefit
- The rationale for accepting the gift or benefit

These details will be recorded in a register which will be available for any board member to review. The Finance, Audit and Risk Committee will review the register at least annually. Any gifts or benefits  $\geq$ \$500 will normally be disclosed to the board at the following meeting.

## Chapter 10: Board meeting procedures and arrangements

The procedures for District Health Board (DHB) meetings are contained in Schedule 3 to the New Zealand Public Health and Disability Act 2000 (NZPHD Act). Key provisions include:

- All meetings of DHBs must be publicly notified during a specified time period (clause 16), but no meeting of a board is invalid because it was not publicly notified (clause 17);
- Meeting agendas and papers must be available for inspection by any member of the public at least two working days before every meeting (clause 19), and board minutes must be available for public inspection except for those meetings or parts of meetings from which members of the public were excluded (clause 21);
- No business of a DHB board can be transacted, nor any power or discretion exercised at any board meeting unless the quorum of members is present (clause 25 (1)). The quorum is defined in clause 25(2), and the consideration of declared interests and board vacancies in establishing a quorum are contained in clause 26; and
- DHB board meetings are open to the public (clauses 31 and 34), though the board has the right to exclude the public in certain circumstances (clauses 32 and 33).

Schedule 4 to the NZPHD Act contains the equivalent provisions that apply to meetings of DHBs' community and public health advisory committees, disability support advisory committees, and hospital advisory committees.

### ***Standing Orders***

The Southern DHB has adopted "Standing Orders" to provide more detailed guidance on procedures and processes associated with meetings. These Standing Orders apply to the proceedings of all Southern DHB board and committee meetings, including public excluded sessions, and all members of the board and committees are required to abide by them.

A copy of these Standing Orders are attached as Appendix 2.

### ***Crown monitors***

Under s. 30 of the NZPHD Act, the Minister of Health may appoint one or more Crown monitors to any DHB board, to assist in improving the performance of that DHB. If such a Crown monitor has been appointed, the board must:

- Permit each Crown monitor appointed by the Minister in relation to the DHB to attend any meeting of the board; and
- Provide the Crown monitor with copies of all notices, documents, and other information that is provided to board members.

The functions of a Crown monitor are to:

- Observe the decision-making processes, and the decisions of the board;
- Assist the board in understanding the policies and wishes of the Government so that they can be appropriately reflected in board decisions; and
- Advise the Minister on any matters relating to the DHB, the board, or its performance.

A Crown monitor may provide to the Minister any information that the Crown monitor obtains in the course of carrying out their functions as noted above.

### ***Annual Board Work Plan***

In addition to meeting all legal provisions, boards should establish a planning process and timetable to ensure they address in a timely way such regular activities as completing strategic planning documents, undertaking chief executive remuneration reviews, meeting with Ministers, addressing risks and providing sufficient notice of board committee meetings.

A sample Ministry for Culture and Heritage board planner is available as an example of good practice: [www.mch.govt.nz/files/Sample-Board-Meeting-and-Reporting-Workplan.pdf](http://www.mch.govt.nz/files/Sample-Board-Meeting-and-Reporting-Workplan.pdf)

## Chapter 11: Board committees

Board committees can enhance the effectiveness and efficiency of boards, by allowing closer scrutiny and more efficient decision-making in different areas of board responsibility. When boards establish committees, careful consideration is required of the powers, duties, reporting procedures, membership and duration that apply to the committees.

### ***Legislative basis***

Every District Health Board (DHB) must establish three advisory committees under ss 34-36 of the NZPHD Act. These are the Community and Public Health Advisory Committee (CPHAC), Disability Support Advisory Committee (DSAC), and Hospital Advisory Committee (HAC). Schedule 4 to the NZPHD Act contains provisions concerning the functions, membership, meeting procedures, voting, public access and disclosure of members interests relating to these committees, with ss 34-36 containing specific provision for Māori membership of these committees.

Under clause 38 of Schedule 3 to the NZPHD Act, the board of a DHB may also establish one or more committees for particular purposes, and appoint to such committees members of the board and/or other persons. The DHB board must obtain the Minister's approval before establishing a committee under this section.

The board has the power to dismiss any committee member and to dissolve any committee. If a member is dismissed, the board must provide that person with a written statement of the reasons for their dismissal, as soon as reasonably practicable.

If a person who is not a member of the DHB board is appointed to a board committee, that person must disclose to the board any conflict of interest he or she has with the DHB at that time, or that is likely to arise in the future (Schedule 4, clause 6(3)(a)(b), NZPHD Act). However, if a DHB board member is appointed to a board committee, they do not have to disclose their already known conflicts.

### ***Key considerations***

The DHB's board remains accountable for decisions that are made by its committees. Good practice for DHB board committees includes provisions such as:

- Committees should only exist where there is clear reason for them, and they assist the governance of the DHB;
- Discretionary committees should be subject to regular review as to whether they should continue;
- There should be explicit reporting requirements back to the Board, which will allow other members to question committee members and assess the effectiveness of the committee;
- An audit committee, providing oversight of the Board's financial and risk management, is widely recommended in the public sector and should include members with financial expertise, and a committee chair who is not the board chair;
- One operational matter that is often delegated to a remuneration committee is the review of the Chief Executive's performance.

### ***Southern DHB Committees***

The Southern DHB previously had six board committees:

- Community and Public Health Advisory Committee (CPHAC) and Disability Support Advisory Committee (DSAC), which meet jointly



- Hospital Advisory Committee (HAC)
- Finance, Audit and Risk Committee (FARC)
- Iwi Governance Committee (IGC)
- Appointments and Remuneration Advisory Committee (ARAC)

Terms of reference (TOR) for each of the above committees are attached in Appendix 8.

See Chapter 2 for a diagram of the Southern DHB's committee structure.

### **Guidance on audit committees**

For guidance on DHB audit committees see the *Audit Risk and Finance Handbook for District Health Boards*, issued by the Ministry of Health:

[www.health.govt.nz/publication/audit-risk-and-finance-committee-handbook-district-health-boards](http://www.health.govt.nz/publication/audit-risk-and-finance-committee-handbook-district-health-boards).

In addition, for guidance on audit committees in the New Zealand public sector, see the good practice guide issued by the Office of the Auditor-General:

[www.oag.govt.nz/2008/audit-committees/](http://www.oag.govt.nz/2008/audit-committees/).

## Chapter 12: Delegations

All decisions about the operation of a District Health Board (DHB) must be made by, or under the authority of, the board in accordance with the New Zealand Public Health and Disability Act 2000 (NZPHD Act). Where a board's powers and functions have been delegated, good governance and statute mean that the board remains legally responsible for the exercise of those functions and powers exercised under the delegation.

Each DHB is required to have a policy for the exercise of its powers of delegation: the formulation, amendment or replacement of such policies must be approved by the Minister of Health (the Minister), who can specify any conditions. The board's delegations policy must be made publicly available, (Schedule 3, clauses 39 and 40, NZPHD Act). The policy is a statement of how the board intends to exercise its powers of delegation (including financial matters, statutory and regulatory powers) and the reasons for doing so. The actual delegation will be made by letter from the board to the person concerned.

The policy document should only contain reference to classes of persons to whom delegations might be made on particular matters. Particular people should not be referred to as this would result in the Minister needing to approve the policy document each time there is a change in personnel.

### Effect of Delegation

The board remains responsible for the actions of its delegates in exercising the board's powers. Boards, therefore, need to be satisfied that delegates will use powers appropriately and not expose the board to risk. All requirements applying to a board in relation to a power will apply equally to the delegate.

### To whom can the board delegate?

DHB Boards may (by written notice) delegate any of the functions, duties or powers of the board or of the DHB to:

- Any committee of the board;
- Any member of the board or employee of the DHB (either to a named person or to any member of a specified class of persons); or
- Any person or class of persons approved by the Minister for the purpose (either a named person or any member of a specified class of persons). This applies where a power is delegated to a person outside the DHB (i.e. that are not members of the board or employees).

If a delegate is to be able to further delegate a function, duty or power it should be expressly stated in the delegation authority.

### Conditions attached to delegations

There are a number of procedural checks and balances on delegating. These are designed to ensure the board always remains in control of and responsible for the exercise of functions and powers by delegates. Ss. 73 to 76 of the Crown Entity Act 2004 (CE Act), which set out the provisions relating to delegations, do not apply to DHBs (see s. 21 of the NZPHD Act). However, clauses 39 and 40 of Schedule 3 to the NZPHD Act contain the relevant provisions relating to delegations in respect of DHBs. These include:

- The delegation of a DHB board's function, duty or power is revocable at will;
- A delegate may not delegate the function, duty or power without the written consent of the board, unless it is done in accordance with the provisions of the delegation;

- The board cannot delegate a function or power unless it has authorised the delegation by resolution and written notice to the delegate;
- Delegation of a function, duty or power does not prevent the board or the DHB concerned from performing that function or duty, or exercising that power;
- Clause 39(8) of Schedule 3 to the NZPHD Act contains provisions concerning the exercise of delegated functions, powers or duties when the delegate may have conflicts of interest with the DHB. A delegate who is interested in a transaction of the DHB concerned may not perform any function, power or duty under the delegation if it relates to the transaction concerned, unless the board of the DHB has given its prior written consent (clause 40); and
- A person acting under a delegation should be able to produce evidence of their authority to exercise functions and powers when asked to do so.

### **Chief Executive and other staff**

Boards may give their chief executive broad delegations, which reinforces accountability and control of the DHB. Boards also have the flexibility to delegate directly to specialist staff without first delegating to the chief executive. When this approach is taken, the accountability relationship between the staff member, the chief executive and board needs to be made clear.

Under s. 26 of the NZPHD Act, the board of a DHB must delegate to the chief executive of the DHB the power to make decisions on management matters relating to the DHB. Any such delegation may be made on such terms and conditions as the board thinks fit.

### **Making delegations**

Boards should take professional advice when developing their delegations policy and in making delegations.

Boards should also note the effect of delegations in clause 40 of Schedule 3, the requirements relating to delegates with conflicts in clause 39(8) of Schedule 3, and the requirement under s.26(3) for the board to delegate to its chief executive the power to make decisions on management matters relating to a DHB.

### **Southern DHB Delegation Policy**

The current Southern DHB “Delegation of Board Authority Policy” is posted on the Southern DHB website: [www.southerndhb.govt.nz/padocs](http://www.southerndhb.govt.nz/padocs)

## Chapter 13: District Health Boards as employers

District Health Boards (DHBs) have obligations as employers; these are set out in the Crown Entities Act 2004 (CE Act) and other legislation, and in government statements.

### ***Chief executive employment***

The employment of a DHB's chief executive is a key responsibility of a board.

Under s. 26 of the New Zealand Public Health & Disability Act 2000 (NZPHD Act), the board of a DHB must delegate to their chief executive the power to make decisions on management matters relating to the DHB. Any such delegation may be made on such terms and conditions as the board thinks fit.

Chief Executives of DHBs have independent responsibility for all matters relating to individual employees (such as appointment, promotion and cessation of employment) without any interference from the board, its committees or from board members (Schedule 3, clause 44(4), NZPHD Act).

The board should ensure that a robust process is followed in preparing the position description, seeking suitable candidates and selecting the chief executive. The terms and conditions for chief executives of DHBs are determined by agreement between the board and the appointee. In accordance with clause 44(1) of Schedule 3 to the NZPHD Act, these terms and conditions and any amendments to them (which includes remuneration reviews), must not be finalised without first obtaining the consent of the fees and remuneration team at the State Services Commission (contact: 04 495-6600).

The State Services Commission has model agreements which contain the standard terms and conditions for chief executives of Crown entities, including DHBs. Use of these model agreements is not mandatory but it is recommended, at least as a starting point, because they incorporate good legal practice, manage risk, and are likely to make the consultation process smoother. The model agreements can be tailored to the requirements of the particular DHB. They are available at <http://www.ssc.govt.nz/crown-entity-chief-executives-terms-conditions>.

Southern DHB's chair leads the CEO employment process, supported by the Appointments & Remuneration Advisory Committee.

### ***Chief executive performance management***

Good practice in relation to chief executive performance management includes:

- The board defining the performance expectations of the chief executive, and the criteria against which performance will be measured;
- Ongoing and constructive discussions between chair and chief executive;
- Addressing problems early, for instance by the chair communicating and discussing non-performance concerns; and
- A formal performance evaluation process, managed by the board chair.

The Appointments & Remuneration Advisory Committee oversees and provides advice to the chair and board on this process.

### ***Employer responsibilities***

#### **Good employer**

Under s. 118 of the CE Act, a DHB is required to operate a personnel policy that complies with the principles of being a good employer. These principles include provisions requiring:

- Good and safe working conditions;
- An equal opportunities programme;
- Impartial selection of suitably qualified people for appointment; and
- Recognition of the aims and aspirations and employment requirements of Māori and ethnic or minority groups and the employment requirements of women and people with disabilities.

The Equal Employment Opportunities Commissioner at the Human Rights Commission has responsibility for issuing good employer and EEO guidance to Crown entities. That advice can be found at: [www.neon.org.nz/crownentitiesadvice/](http://www.neon.org.nz/crownentitiesadvice/).

### **Standards of integrity and conduct**

*Standards of Integrity and Conduct* is the code of conduct issued by the State Services Commissioner under s. 57 of the State Sector Act 1988. The code applies to all staff (but not board members) of statutory Crown entities including DHBs, and to board members and staff of some subsidiaries of Crown entities. It must be reflected in each DHB's internal policies. The Code can be found at: [www.ssc.govt.nz/code](http://www.ssc.govt.nz/code), together with additional guidance on its interpretation and application.

### **Pay and employment conditions – government expectations**

The government's expectations for pay and employment conditions in the State sector extend to all public service employees (not just those covered by collective agreements) and to all Crown entities, including DHBs. DHBs are required to take a number of factors into account in setting pay and employment conditions, including:

- fiscal sustainability and value for money;
- contributing to the achievement of the DHB's strategic business outcomes;
- avoiding risk of flow-on implications to other parts of the State sector;
- fairness to employees and taxpayers; and
- enhancing productivity and fostering continuous improvement.

The expectations are set out in: [www.ssc.govt.nz/govt-expectations-pay-employment](http://www.ssc.govt.nz/govt-expectations-pay-employment).

The Minister of Health will require DHB boards to have regard to these expectations when establishing pay and employment conditions.

Chief executives of DHBs may enter into collective agreements on behalf of the board with any or all of the board's employees, provided the Director-General of Health has first been consulted about the terms and conditions of such an agreement (Schedule 4, clause 44(4), NZPHD Act).

### ***Employment code of good faith***

The Employment Relations Act 2000 contains a code of good faith for the public health sector (s. 100D(1) and Schedule 1B), which applies to DHBs. The code applies subject to other provisions of that Act and any other enactment that does not limit the duty of good faith in relation to the health sector. Further, the code of good faith for collective bargaining and the code of employment practice also applies in relation to the health sector (s. 100D(5), Employment Relations Act 2000).

## Chapter 14: Subsidiaries and ownership interests

A DHB may establish one or more subsidiaries, either partly or fully owned, to carry out its functions and contribute towards the achievement of its objectives. The parent entity remains accountable for activities and performance of a subsidiary, which are reported in the parent entity's results. Accordingly the board should ensure that it follows governance good practice in establishing any subsidiary, and in monitoring and reporting on its activities.

### **Legislative basis**

#### **Types of subsidiaries**

"Crown entity subsidiaries" are companies that are controlled by one or more Crown entities (ss. 7 and 8, Crown Entities Act 2004 (CE Act)). Each such subsidiary is a Crown entity in itself. The Companies Act 1993 applies to such subsidiaries, and their board members are directors under that Act.

The test for control is that expressed in ss. 5 to 8 of the Companies Act 1993. Essentially this is control of the composition of the board, or greater than 50% of either the shareholding, right to dividends, or voting rights. The definition of a Crown entity subsidiary in s. 7 of the CE Act also includes multi-parent subsidiaries i.e. where several DHBs, each with less than a controlling interest, have come together to establish a company.

Some bodies established by Crown entities do not come within the definition of "Crown entity subsidiary" in s. 8 of the CE Act. These are bodies that are not companies (e.g. trusts, incorporated societies or other non-company bodies), or that are associate companies (i.e. where the test for control is not met).

#### **Which Crown entities may establish subsidiaries?**

All Crown entities (other than corporations sole) are authorised to acquire and establish Crown entity subsidiaries.

Under s. 28 of the New Zealand Public Health and Disability Act 2000 (NZPHD Act) no DHB may, except with the consent of the Minister of Health (the Minister) or in accordance with regulations made under this Act:

- a) Hold any shares or interests in a body corporate or in a partnership, joint venture, or other association of persons; or
- b) Settle, be or appoint a trustee of, a trust.

The Minister's consent may be given subject to any conditions the Minister specifies. Any such conditions must be consistent with s. 97 of the CE Act.

#### **Rules that apply to subsidiaries**

The provisions of the Companies Act 1993 apply to Crown entity subsidiaries (except as provided in s. 102 of the CE Act). As subsidiaries are Crown entities themselves, the following applies to them:

- The provisions of the CE Act;
- Other legislation that is applicable to Crown entities generally or DHBs in particular; or
- The other relevant chapters of this guidance.

The Minister's relationship is with the parent entity rather than directly with a subsidiary. Responsible Ministers generally have no power to give policy, whole of government or other directions to Crown entity subsidiaries. Accordingly, ss. 97 and 98 of the CE Act set out the obligations the parent has to ensure that the subsidiary acts in accordance with the parent's functions and objectives, and observes the same statutory limitations as are applied to the parent. Ss. 52 and 93 of the CE Act specify that one of the collective duties of the board of a DHB is to ensure that it complies with ss. 96 to 101 (relating to the formation and shareholding of subsidiaries).

For multi-parent subsidiaries, the responsible Minister of the parent DHB must agree how the restrictions and obligations on subsidiaries in the CE Act apply to the subsidiary (s. 99).

### **Key considerations**

The parent DHB is accountable for a subsidiary's activities, including ensuring it complies with legislative restrictions. Among other things, the board will want to put in place procedures for ensuring:

- Best practice in the identification and appointment of directors for the subsidiary, including setting appointment terms and fees (see also the chapter *Remuneration and expenses for board members*, in regard to fees for directors of subsidiaries);
- Appropriate business planning and monitoring procedures, including that public accountability documents such as statements of intent and annual reports for the DHB adequately include information on the activities of the subsidiary;
- An internal control environment is in place so that the subsidiary complies with statutory obligations and is well managed; and
- Reporting to the board of the DHB/s concerned on the activities and the performance of the subsidiary, including any exceptions that are highlighted by the internal control environment.

## Chapter 15: Planning and reporting

Key board responsibilities include strategic planning, monitoring and reporting publicly on the expected and actual performance of their District Health Board (DHB); this enables Parliament and the public to hold Crown entities accountable.

The Crown Entities Act 2004 (CE Act) sets out planning and reporting obligations of Crown entities, including the requirements for key accountability documents - the Statement of Intent, Statement of Performance Expectations and Annual Report. The expectation that boards are fully engaged in these areas is reflected by the requirement that these accountability documents are signed by members of the board.

S. 42 of the New Zealand Public Health and Disability Act 2000 (NZPHD Act) confirms the requirement for all DHBs to prepare statements of intent, annual financial statements and annual reports in accordance with Part 4 of the CE Act and any regulations made under s. 92(1) of the NZPHD Act.

The DHB's Operational Policy Framework further specifies the financial requirements for DHBs. An annually updated version of the DHB's Operational Policy Framework can be found through the following website: [www.nsf.health.govt.nz/](http://www.nsf.health.govt.nz/).

### **Annual and Strategic Planning**

The Minister of Health (the Minister) and each DHB must agree on an annual plan for the DHB. The Minister may also direct any DHB to prepare or contribute to one or more additional plans, e.g. a regional service plan (s. 38, NZPHD Act).

All such plans must address, local, regional and national needs for health services; how health services can be properly co-ordinated to meet those needs; and the optimum arrangement for the most effective and efficient delivery of health services. They must also demonstrate how a DHB that is a party to the plan is to operate in a financially responsible manner and give effect to the purposes of the NZPHD Act; and must reflect the overall direction of, and be consistent with, the New Zealand Health Strategy and the New Zealand Disability Strategy (s. 38, NZPHD Act).

The Minister's consent must be obtained for all such plans, or amendments to them. Where there is a dispute over the contents of any plan between one or more DHBs, the Minister may issue a directive and a DHB that is a party to the dispute must give effect to the Minister's decision (s. 39 of the NZPHD Act).

### **South Island Health Services Plan**

Regional Health Services Plans (HSP) are the medium term (3-5 years) accountability documents for DHBs. The South Island HSP is prepared by the five South Island DHBs and sets out the strategic context and plans for an integrated and collaborative approach to sustainable health and disability services.

Each year the South Island DHBs prepare a supplementary implementation plan to the South Island HSP which details the DHBs' regional work plans for the coming year.

Copies of the latest plans can be found on the Southern DHB website: [www.southerndhb.govt.nz/padocs](http://www.southerndhb.govt.nz/padocs)

### **Annual Plan and Statements of Intent**

Each District Health Board (DHB) has a statutory responsibility to prepare:



- an Annual Plan for approval by the Minister of Health ([Section 38 of the NZPHD Act 2000](#)) - providing accountability to the Minister of Health
- a Statement of Intent ([Section 139 of the CE Act 2004](#), as amended by the [Section 49 of the CE Amendment Act 2013](#)) - providing accountability to Parliament and the public at least triennially
- a Statement of Performance Expectations ([CE Act s149C](#)) – providing financial accountability to Parliament and the public annually.

The Annual Plan (AP) aligns the DHB's direction to national (Minister's Letter of Expectations, national policy), regional (South Island HSP) and local priorities. It provides clear actions on how the DHB intends to deliver on its objectives and how it will measure its success.

The purpose of the Statement of Intent (SOI) is to promote the public accountability of a Crown entity (s. 138, CE Act) by:

- enabling the Crown to participate in the process of setting the entity's strategic intentions and medium-term undertakings;
- Setting out for the House of Representatives those intentions and undertakings; and
- Providing a base against which the actual performance can later be assessed.

The Crown Entities [Amendment Act 2013 made key changes](#) to the [CE Act 2004](#) that has altered the SOI requirements for DHBs.

- An SOI is produced at least once in every three-year period (New CE Act s139 (3))
- The reporting timeframe for an SOI is a minimum of four years (forthcoming year and at least the following three financial years) (New CE Act s139 (2) as amended/inserted by S49 CE Amendment Act 2013).
- A Crown Entity's responsible Minister may require the crown entity to provide a new SOI at any time (New CE Act s139A (1)).
- SOIs contain high-level strategic information as relates to four year reporting timeframe. The annual reporting requirements are provided separately in a Statement of Performance Expectations (SPE) (New CE Act s141 & s149E). The SPE includes the Financial Performance.

Section 141 of the CE Act specifies what a SOI must contain. An SOI must set out the strategic objectives that the Crown entity intends to achieve or contribute to (strategic intentions) and explain how the entity proposes to assess its performance.

The Minister may participate in determining the content of the SOI, by agreeing with the DHB on any additional information to be incorporated; specifying the form in which any information must be presented; commenting on a draft SOI; and directing amendment in relation to some of its content (s. 145, CE Act).

An SOI flows out of a DHB's strategic planning process, and through it the board expresses its strategic thinking and future intentions. The SOI is prepared under the leadership of the board, signed off by the board, and tabled by the Minister in Parliament.

The SOI will reflect engagement with the Minister and Ministry of Health through the planning process, and should incorporate Government's health sector and all-of-government priorities. Advice on preparing a meaningful SOI can be found at:

- Performance Expectations – "What's Intended to Be Achieved": <http://www.treasury.govt.nz/publications/guidance/planning/performanceexpectations-achieved>

- Performance Expectations – "How Performance Will Be Assessed": <http://www.treasury.govt.nz/publications/guidance/planning/performanceexpectations-assessed>

### **Statement of Performance Expectations (SPE)**

The 2013 amendments to the CE Act provide for a Crown entity's statement of intent (SOI) to last up to three years. To give effect to this change, the information a Crown entity needs to provide to Parliament on an annual basis was removed from the SOI. This annual information is now in a document called a "statement of performance expectations" or an SPE. The information is:

- the statement of performance expectations (previously known as the statement of forecast service performance), and
- the annual forecast financial statements.

The purpose of an SPE is to (s. 149B, CE Act):

- enable the responsible Minister to participate in the process of setting annual performance expectations;
- enable the House of Representatives to be informed of those expectations; and
- provide a base against which actual performance can be assessed.

Section 149E of the CE Act specifies the contents of an SPE. An SPE must include a concise explanation of what each reportable class of outputs is intended to achieve and explain how the performance of each reportable class of outputs will be assessed.

The Minister may participate in determining the content of the SPE, by agreeing with the DHB on any additional information to be incorporated; specifying the form in which any information must be presented; commenting on a draft SPE; and directing amendment in relation to some of its content (s. 149H, CE Act).

SPEs are required to be published annually, and set out financial and non-financial performance measures against which the DHB's performance can be assessed.

### **Crown Funding Agreements**

The Minister may require a DHB to have a Crown Funding Agreement (CFA) for goods or services the DHB intends to supply that are paid for by the Crown (s 10, NZPHD Act). The CFA may be agreed annually between the DHB and the Minister.

The purpose of a CFA is to assist the Minister and the DHB to clarify, align and manage their respective expectations and responsibilities for the funding and production of services specified in the agreement, including the standards, terms and conditions under which the DHB will deliver and be paid for the services.

## Annual Report

DHBs report on their performance to the Minister and Parliament through their annual reports (ss. 150 – 157, CE Act). The annual report must provide information that enables an informed assessment to be made of the DHB's progress against its strategic intentions and statement of performance expectations. Through this document, the board informs stakeholders on how it is leading the performance of the DHB, and how it is using public resources. Other information that must be included in an annual report is the annual financial statements for the DHB, a statement of service performance, any direction given to the DHB by a Minister in writing, and the total value of the remuneration paid to each board member during the financial year (ss. 151 and 152, CE Act).

Every annual report of a DHB must also contain:

- A report on the extent to which it has met its other objectives under s. 22, NZPHD Act;
- A report on the performance of the hospital and related services the DHB owns;
- The names of any bodies corporate, partnerships, joint ventures or other associations, or trusts with which the DHB is involved, and a list of all shares and interests the DHB holds in such bodies; and
- A statement of how the DHB has given and intends to give effect to its functions specified in s. 23(1)(b) – (e) of the NZPHD Act.

The board will lead development of the annual report, including engagement as necessary with the Minister.

The Auditor-General is the DHBs' auditor, but will generally appoint another auditor to act on his or her behalf. The auditor is required to audit the annual financial statements, statement of service performance, the annual report, and any other required or agreed information.

The annual report must be in writing, be dated, and be signed on behalf of the DHB board by two board members, or by the Commissioner. A DHB must provide its annual report to the Minister of Health within 15 working days of receipt of the audit report: it is recommended that a near final draft also be provided to the Ministry of Health, to enable the Minister to be briefed on key issues.

For assistance in developing an annual report, please refer to *Preparing the Annual Report 2011: Guidance and Requirements for Crown Entities* [www.ssc.govt.nz/annual-report-guidance-crown-entities](http://www.ssc.govt.nz/annual-report-guidance-crown-entities). The Minister presents the annual report to Parliament according to the timetable set out in this guidance.

The Southern DHB's latest Annual Report can be found on the Southern DHB website: [www.southerndhb.govt.nz/padocs](http://www.southerndhb.govt.nz/padocs)

## Enduring letter of expectations

An enduring letter of expectations to Crown entities is issued periodically, with the most recent on 26 July 2012: see [www.ssc.govt.nz/expectations-letter-crown-entities-july12](http://www.ssc.govt.nz/expectations-letter-crown-entities-july12). It sets out the ongoing expectations that the Minister of Finance and the Minister of State Services have of all statutory Crown entities, including DHBs. These expectations include effective self-monitoring by boards, increased transparency, and delivery of Better Public Services. An enduring letter remains 'in force' until it is replaced.

## Annual letter of expectations

Ministers "participate in the process of setting the entity's strategic direction and performance expectations and monitoring the entity's performance ..." (s. 27(1)(f), CE Act). Ministerial expectations for DHBs' strategic direction and their specific priorities for the planning period

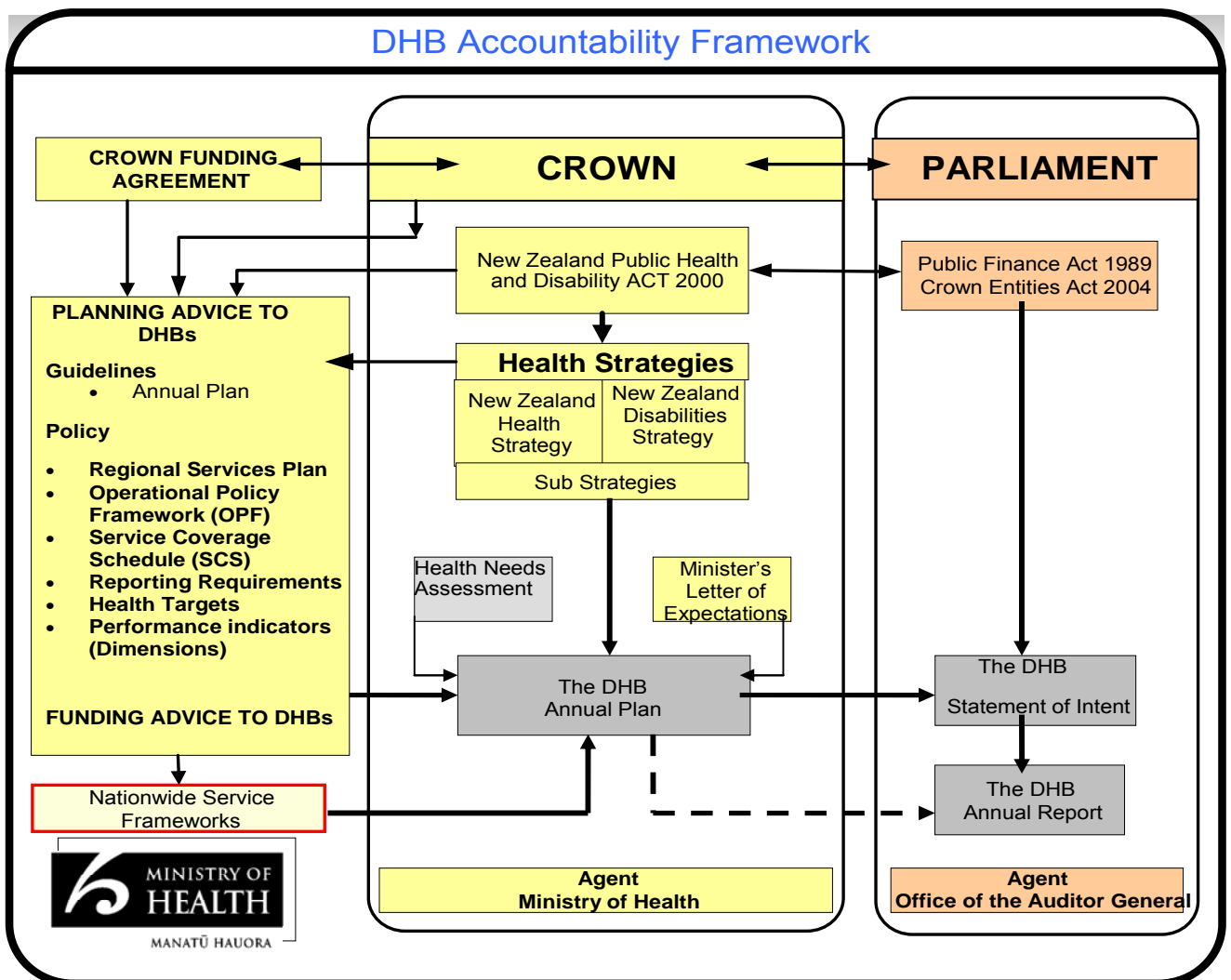
may be provided through meetings with the chair or board, and /or in an annual letter of expectation from the Minister to the DHB. Ideally the letter will be sent to the chair before the board starts its strategic review and planning.

**Directions to support a whole of government approach**

Under section 107 of the Crown Entities Act, the Minister of State Services and the Minister of Finance may jointly direct Crown entities to support a whole of government approach by complying with specified requirements. Information on the directions that are currently in force, including the entities to which they apply, is at <http://www.ssc.govt.nz/whole-of-govt-directions-2014>.

**DHB accountability framework**

Collectively all the above planning and reporting documents and process make up a 'health sector framework'. The following is a diagrammatic view of the DHB accountability framework.



## Chapter 16: Board and member performance evaluation

Evaluating the performance of the board and of board members allows a board, led by the chair, to take stock and reflect on both these aspects of performance. The knowledge gained from the review is a means to continually improve the effectiveness of the leadership and governance of the entity.

The board should assess its own performance in relation to the board's key responsibilities, which include:

- Managing the relationship with the Minister and meeting the Minister's expectations;
- Strategic planning;
- Discharging the board's legal and ethical obligations;
- Monitoring entity performance;
- Monitoring and reviewing the performance of the chief executive; and
- Managing relationships with stakeholders.

The benefits of evaluating individual board member performance include:

- Providing feedback to individual board members, so their contribution to the board's work can be maximised;
- The ability to put in place mentoring, development or training for individual board members or the board as a whole;
- Reinforcing the accountability of the chair for the effective performance of the board; and
- Assisting the Minister of Health with succession planning, appointment and reappointment processes.

Principles of good practice in evaluating board performance are that:

- It should be undertaken regularly, preferably each year;
- A formal method provides an objective framework for evaluation;
- Board member peer review is consistent with the self-appraisal principle whereby professionals monitor their own performance;
- Confidentiality should be observed to allow for the free expression of views.

The actual process to be used each year may vary, e.g. evaluations may be managed internally or the board may be assisted by an external facilitator.

The chair is expected to offer appropriate feedback to the board and to individual members, and to provide assurance to the Ministry of Health that a process for performance evaluation is in place and that it is undertaken. A detailed outline of requirements is set out in the Operational Policy Framework for DHBs: [www.nsfh.health.govt.nz](http://www.nsfh.health.govt.nz).

## Chapter 17: Board appointments and reappointments

Board appointment and reappointment decisions have considerable impact on performance. Every vacancy for an appointed member on a District Health Board (DHB) creates an opportunity to reassess the future needs of the DHB, and the skills and experience that will best complement the talents of the other board members. Where possible boards, through the chair, should be involved in these processes: this could be through the Ministry of Health or direct to the Minister of Health (the Minister).

### ***DHB board membership***

The board of each DHB consists of:

- Seven members elected in accordance with Schedule 2 of the New Zealand Public Health and Disability Act 2000 (NZPHD Act); and
- Up to four members appointed by the Minister under s. 28(1)(a) of the Crown Entities Act 2004 (CE Act) which states that a responsible Minister may only appoint a person who, in the Minister's opinion, has the appropriate knowledge, skills, and experience to assist the DHB to achieve its objectives and perform its functions.

Southern DHB's area is divided into two electoral constituencies, with four elected Board members from the Otago constituency and three from the Southland constituency.

If, at an election of members of a board of a DHB, fewer than seven members are elected, the Minister may, in accordance with the procedure in s. 28 of the CE Act, appoint persons who were eligible to stand in that election to fill the vacant elected member positions. Those who are so appointed hold office in all respects as if they had been elected under the NZPHD Act.

Where a vacancy occurs in an elective position on a board, the Minister may, in accordance with the procedure in s. 28 of the CE Act, appoint a person for the remainder of the term of office of the person who vacated office.

In making appointments to a DHB board, the Minister must endeavour to ensure that:

- Māori membership of the board is proportional to the number of Māori in the DHB's resident population; and
- in any event, there are at least two Māori members of the board.

### ***Chair and deputy chair appointments***

The Minister must, by notice in the *Gazette*, appoint one member of the DHB board as chair of the board, and another as deputy chair. This notice may be the same as the notice appointing the member. It must state the period for which the member is appointed chair or deputy chair, and the date on which he or she comes into that office.

A member appointed chair or deputy chair, and whose appointment as such has expired:

- Continues in that office until his or her successor is appointed; and
- Is eligible for reappointment to that office so long as he or she continues to be a member of the board.

Chairs and deputy chairs retain all their responsibilities as a board member as well as any additional responsibilities deriving from their chair or deputy chair role.

### **Role of Chair in appointment processes**

The Minister or Ministry of Health should generally engage with the Board chair throughout the process of appointing a DHB board member. The chair should be able to:

- Reflect his/her knowledge of the workings of the board and its less formal interactions and relationships, as part of identifying the skills needed of an appointee;
- Provide feedback on the board's annual evaluation as to the future needs of the entity (refer chapter *Board and member performance evaluation*);
- Assist with updating position descriptions; and
- Suggest nominees for consideration.

Where possible, board chairs should also be part of the selection and interview panel for appointed board members. This would not be appropriate where the chair is being assessed for reappointment or replacement.

### **Desirable Attributes in Appointed Board Members**

The skills and attributes most relevant to a specific vacancy that is filled by ministerial appointment rather than election are determined by analysing the current composition of the board in question. This analysis also involves the board's chair, and considers the board's needs and the particular challenges faced by the DHB in terms of performance, health outcomes and collaboration. Other factors may also be considered (e.g. if the board is planning a major capital development).

Board appointees must have backgrounds that demonstrate strong personal integrity to enable them to meet their obligations in terms of personal behaviour and ensuring the propriety of the DHB's actions (set out in ss. 53-57 and 59 of the CE Act).

Generic skills for a board member will usually include:

- A wide perspective on, and awareness of, social, health and strategic issues;
- Integrity and a strong sense of ethics;
- Financial literacy and critical appraisal skills;
- Strong reasoning skills and an ability to actively engage with others in making decisions;
- Knowledge of a board member's responsibilities, including an ability to distinguish governance from management, understanding of collective responsibility and an appreciation of the Crown as owner;
- Good written and oral communication skills;
- An ability to contribute constructively and knowledgeably to board discussions and debates.

These qualities will usually be demonstrated through some or all of the following:

- Governance experience in significant organisations with either a commercial, public service or community focus;
- Experience at chief executive or senior management level in organisations that have commercial or public service attributes;
- Holding senior positions in relevant professional areas including, but not limited to, health, social services, finance, law, and social policy;
- Relevant governance or management experience in community or professional organisations.

In addition to the above qualities, members are often appointed for their unique abilities, such as expertise in an area of specialisation or representation.

## **Conflicts of interest**

Before a chair, deputy chair or member is appointed or elected, they must declare their conflicts of interest. Members to be appointed declare their interests to the Minister of Health before their appointment (s. 31(1)(c), CE Act). Candidates for elected member positions give a statement to the electoral officer, who then discloses any conflicts of interest to the public (Schedule 2, clause 6, NZPHD Act). Further information on conflicts of interest can be found in Chapter 7: *Members' interests and conflicts: identification, disclosure and management*, and in the separate publication *Conflicts of Interest Guidelines for District Health Boards*.

## **Terms of office for DHB board members**

### **Appointed members**

Under s. 32 of the CE Act, the term of office for appointed members of DHB boards is up to three years. Appointed members of the board of a DHB are eligible for reappointment unless they have held office for six consecutive years, in which case they must not be reappointed immediately unless the Minister consents in writing to them being re-appointed immediately and holding office consecutively for longer than six years but not exceeding nine years (Schedule 3, clause 2(1)(b), NZPHD Act refers). A person may hold office as an appointed member of the board of one or more DHBs.

Appointed members come into office on the date specified for that purpose in the notice appointing the member or, if no date is specified in the notice, from the date on which the notice is published in the *Gazette*.

### **Elected members**

Elected members of DHB boards come into office on the 58th day after polling day. An elected member of the board of a DHB who has not ceased to hold that office earlier and is not re-elected in the next triennial board election, ceases to hold that office when the members elected in that election come into office. An elected member of a DHB board is not to hold office as an elected or appointed member of the board of any other DHB.

## **Board members on more than one State sector board**

Generally, a DHB board member may be a member on more than one State sector board at any one time, as long as there is no legislation or other rule preventing this, there are no unmanageable conflicts arising from the situation and the board member has the time available to properly undertake the positions.

### **Reappointment principles**

The Minister decides, in light of a DHB's strategic direction and other considerations, whether an appointed member should be reappointed when his or her term expires. Incumbent board members have no automatic right of reappointment and need to be aware that the requirements for appointment under the CE Act will apply. For example:

- s. 29: Criteria for appointment or recommendations by the responsible Minister;
- s. 30: Qualifications of members; and
- s. 31: Requirements before appointment, which includes disclosure of interests.

Incumbent board members will be required to provide updated curriculum vitae to the Minister or Ministry of Health and may be required to attend an interview. Incumbent board members



who are reappointed will receive a notice of appointment and an appointment letter, which may convey the Minister's expectations of that board member.

### ***Board member induction and training***

Ministers, boards and monitoring departments all have responsibilities in relation to induction of new board members. The NZPHD Act (Schedule 3, clause 5) requires a board with elected or appointed members to fund and ensure the undertaking of training approved by the Minister. Training may include subjects such as board membership duties and obligations, Treaty of Waitangi issues, or Māori groups or organisations in the district of the DHB concerned.

The board must keep an up-to-date record of the following matters:

- The name of each member of the board and the date on which they most recently came into office as a member of the board;
- Any familiarity each member of the board has at that date with the obligations and duties of a member of a board, Māori health issues, Treaty of Waitangi issues, and Māori groups or organisations in the district of the DHB concerned;
- The nature of the training (if any) the board is required to fund and, to the extent practicable, have any of its members undertake and complete; and
- The date that training was completed or, if it is still in progress, the date on which it started and the date by which it is expected to have been completed or, if it has not yet started, the date on which it is expected to start.

The board secretary maintains a register of such induction and training activities. Boards are required to provide a copy of this record to the Minister if requested to do so.

### ***Removal from office***

The Minister may remove an appointed member of a DHB board from that office in accordance with s. 36 of the CE Act (i.e. at the Minister's discretion).

Under the NZPHD Act (Schedule 3, clause 8(1)) the Minister may remove an elected member of a board from that office by notice in the *Gazette* stating the date on which the removal takes effect, but only:

- If the Minister has first consulted the member, and the board, about the removal; and
- For a reason stated in clause 9 to Schedule 3 of the NZPHD Act. These include:
  - the Minister is satisfied that the member failed to declare an interest in circumstances where clause 6 of Schedule 2, or clause 36, required the member to do so; or
  - the Minister is satisfied that the integrity of the board, or of the DHB to which the board relates, has been seriously compromised because the member has neglected his or her duties as a member of the board, or has failed to perform his or her duties under the Act; or
  - the member has been absent from four consecutive board meetings without permission from the board or the Minister; or
  - the member has breached any of the obligations and duties of a board member, and s. 58(2) or s. 59(2) of the CE Act applies.

A chair or deputy chair may be removed from that office by the Minister by notice in the *Gazette* stating the date on which the removal takes effect, but only if the Minister has first consulted the person concerned and the board, about the removal. A chair or deputy chair removed from that office continues to be a member of the board unless removed from that office as well, under s. 36 of the CE Act or clause 8(1) to Schedule 3 of the NZPHD Act, as the case may be.

The Minister has the power to replace a whole board with a Commissioner under s. 31 of the NZPHD Act.

Board members are not employees, and no compensation is made in the event of their removal from a board.

### **Cessation of office**

Board members may resign their position at any time (s. 44, CE Act). Resignations must be made by written notice to the Minister with a copy given to the DHB. The notice must state the date on which the resignation takes effect.

The chair or deputy chair of a DHB board may resign from that office by written notice to the Minister and board stating the date on which the resignation takes effect. A chair or deputy chair who resigns from that office continues to be a member of the board unless he or she also resigns from that office (Schedule 3, clause 11, NZPHD Act).

A chair or deputy chair of a DHB board ceases to hold that office if he or she ceases to be a member of the board. A deputy chair ceases to hold that office if he or she is appointed chair of the board.

Board members are not employees, and no compensation is made in the event of their resignation from a board or non-reappointment.

## Chapter 18: Remuneration and expenses for board members

Setting fee levels that are sufficient to attract and retain talented board members is an important element of effective governance. Members do not set their own fees, remuneration and allowances but it is important for boards to understand how they are set and how to engage with the relevant fee-setting authority when fees are reviewed.

Ss. 47 and 48 of the Crown Entities Act 2004 (CE Act) provide the mechanism for setting the remuneration and expenses for board members of District Health Boards (DHBs), i.e. by the Minister of Health (the Minister) under the Cabinet Fees Framework (the Fees Framework), which applies to DHB board members, and is administered by the State Services Commission.

The Fees Framework is set out in a Cabinet Office circular. Boards using it need to be sure they are working from the latest version, as it is reviewed periodically. The current version is located at: <https://dpmc.govt.nz/publications/co-12-6-fees-framework-members-appointed-bodies-which-crown-has-interest>.

When a DHB board establishes a committee or a subsidiary, the board itself becomes the fee-setting authority and should then follow the provisions in the Framework.

In general:

- Board chairs are paid more than other members due to their larger role;
- Deputy chairs are paid an additional amount on top of their member fee;
- Members who receive an annual fee for board membership do not generally receive additional payment under the CE Act if they are a member of a board's committee. However, the Fees Framework does provide additional payments for DHB board members who sit on one of the DHB's three statutory committees (see Appendix 10); and
- Members of DHB committees who are not already on the DHB board may be paid a fee. The Auditor-General suggests the fee should be at a level that reflects the time it takes to properly carry out their duties. For example, this may be based on a percentage of the fee paid to a board member.

Fees under the Fees Framework are set on a fair but conservative basis to reflect a discount for the element of public service involved. The Fees Framework includes provision for fees to be reviewed periodically, which does not necessarily lead to an increase. This review is normally undertaken by the Ministry of Health on behalf of the Minister.

Under the Fees Framework, members should not receive payment as consultants from a DHB to which they are appointed. If, however, the Minister agrees that there are overriding reasons for board members to carry out consulting assignments, any proposal to do so needs to be submitted to Cabinet for consideration.

### Southern DHB fees

The fees set by the Minister of Health for the Southern DHB are set out in Appendix 10.

### Administrative matters

Board members who travel to meetings or on other board business that requires them to be away from their normal places of residence are entitled to reimbursement of actual and reasonable travelling, meal and accommodation expenses.

Expense claims should be submitted through the board secretary for approval by the chair, or in the case of the chair, by the chair of the Finance, Audit and Risk Committee. The DHB has a sensitive expenditure policy which will assist members in recognising appropriate expenditure (see Appendix 4).

Claim forms are available from the board secretary and must be accompanied by receipts (except for mileage). Mileage expense claims must include the date and location of the meeting and the distance travelled.

The total value of remuneration paid to each board member is disclosed in the annual report of the DHB concerned (s. 152, CE Act).

Taxation matters and their impact on the way the DHB pays fees and allowances depend on the personal circumstances of the member concerned. Board members and entity management can clarify their taxation status by reference to professional advice or the Inland Revenue Department.

Board members need to take a personal decision on whether they should take out any kind of insurance protection pertaining to sickness, etc.

Board members are not entitled to any compensation or other payment or benefit relating to loss of office (s. 43, CE Act).

## Chapter 19: Liability and protection from legal claims or proceedings

To assist in attracting the best quality candidates to serve on boards and to ensure that boards act without fear or favour, the New Zealand Public Health and Disability Act 2000 (NZPHD Act) contains a regime for exclusion from liability and indemnities. The Crown Entities Act (CE Act) provisions on liability and protection from legal claims or proceedings do not apply to District Health Board (DHB) members. Instead, s. 90 of the NZPHD Act states that members of DHB boards or committees are not liable:

1. For any liability, act or omission of the organisation;
2. To the organisation for any act or omission done or omitted in their capacity as a member, if they acted in good faith and with reasonable care in pursuance of the functions of the organisation.

All boards are expected to govern well and to the best of their abilities. However, even the most careful and law-abiding board can find itself involved in legal claims and proceedings. All board members need to be aware that failing to comply with their duties may lead to personal liability, civil proceedings or criminal prosecution. Individual board members can also be held liable for actions of the board as a collective.

Although Crown entities are legally separate from the Crown, in some cases a court may decide that the Crown is liable for the actions of the entity. This will depend largely on its statutory functions and the extent of control exercised over the entity by Ministers and other central Government agencies. Every board should spend time discussing these matters as they relate to themselves and their employees, preferably with the assistance of a trained specialist, perhaps the entity's legal advisor.

### Indemnities

An indemnity is an agreement by one person to pay another person any sums owed to a third party. "Indemnification" means that the entity relies on its own resources to pay the legal costs of board members and any other persons for claims that result from board/entity actions, unless the board has decided to take out indemnity insurance.

The CE Act (s. 21) provides that members of an entity are immune from civil liability, unless they have breached an individual duty set out in the Act.

Every member of a DHB board or committee is indemnified by the DHB, in terms of s. 90 of the NZPHD Act:

- For costs and damages for any civil liability arising from any action brought by a third party in respect of any act or omission in his or her capacity as a member, if he or she acted in good faith and with reasonable care, in pursuance of the functions of the organisation; and
- For costs arising from any successfully defended criminal proceeding in relation to any act or omission.

Board members should be aware of the extent of this indemnity.

### Insurance

Insurance provides financial protection for board members and others who are covered, in the event that they are sued in conjunction with the performance of their duties as they relate

to the DHB. The NZPHD Act, however, does not contain powers for DHBs to purchase insurance for board members. To the extent that DHB board members consider it necessary in light of s. 90 of that Act, they should make their own arrangements for professional indemnity insurance to cover their work as a member of the board.

As insurance is not provided, the board must ensure that the individual member is made aware that he or she is not covered, as well as of any relevant statutory protection from liability, so the member can consider whether to make their own provision for such insurance.

### **Health and Safety**

The Commissioner has approved a Health, Safety and Welfare Charter and Policy. These set out expectations on how health and safety should be led and managed by the Southern District Health Board. This includes the structures and processes to be used to plan deliver, monitor and review leadership of health, safety and welfare (see Appendix 10).

Board members cannot contract out of their personal liabilities as officers of the DHB under the Health and Safety at Work Act 2015. Any liability would be for a fine by virtue of a prosecution and it would not be covered by s.90 of the NZPHD Act.

The only indemnity under s.90 that would be available for board members prosecuted under the Health and Safety at Work Act would be for costs arising from a successful defence. No insurance is available against fines board members might incur under the health and safety legislation (or any other legislation).

## Chapter 20: Appendices

<b>Appendix 1</b>	<b>Code of Conduct for Board and Committee Members</b> Approved: September 2014 Review Date: February 2020
<b>Appendix 2</b>	<b>Standing Orders</b> Approved: June 2014 Review Date: February 2020
<b>Appendix 3</b>	<b>Iwi Partnership: Principles of Relationship Agreement</b> Approved: May 2015 Review Date: Under review
<b>Appendix 4</b>	<b>Sensitive Expenditure Policy</b> Approved: November 2017 Review Date: November 2020
<b>Appendix 5</b>	<b>Managing Gifts and Sponsorship Policy</b> Approved: November 2014 Review Date: Under review.
<b>Appendix 6</b>	<b>Fraud Policy</b> Approved: July 2016 Review Date: July 2019
<b>Appendix 7</b>	<b>Koha Policy</b> Approved: August 2018 Review Date: August 2021
<b>Appendix 8</b>	<b>Committee Terms of Reference</b>
	a) Community & Public Health Advisory Committee (CPHAC) Approved: June 2016 Review Date: March 2020
	b) Disability Support Advisory Committee (DSAC) Approved: June 2016 Review Date: March 2020
	c) Hospital Advisory Committee (HAC) Approved: June 2016 Review Date: March 2020
	d) Finance, Audit and Risk Committee (FARC) Approved: July 2016 Review Date: July 2019
	e) Appointments and Remuneration Advisory Committee (ARAC) Approved: April 2014 Review Date: February 2020
<b>Appendix 9</b>	Executive Leadership Team Structure
<b>Appendix 10</b>	Board Members' Remuneration
<b>Appendix 11</b>	a) Health Safety and Welfare Charter b) Health Safety and Welfare Policy