

Reference: 20220417

20 October 2022

Dear [REDACTED]

Thank you for your Official Information Act request, received on 27 September 2022.
You requested:

I note that on Friday, 16 September 2022 Treasury advertised for candidates who wished to be appointed to the Board of EPL to submit an application.

The notice stated that EPL ,”are seeking candidates with

- *Business acumen and commercial skills*
- *Public sector stakeholder communication*
- *Strong governance including knowledge of legal and financial responsibilities*
- *Te Ao Maori knowledge and iwi connections*
- *Strong education sector knowledge*

I also note that on the Website under the heading, DIVERSITY OF BOARD MEMBERS it states, “The government expects crown boards to represent the diversity and demographic make up of New Zealand, including gender, ethnicity, age and geographic location.”

Section 19 of the NZ Bill of Rights Act 1990 provides that everyone has a right to freedom from discrimination on the grounds set out in Human Rights Act 1993.

Sections 22 and 23 of the Human Rights Act 1993 prohibit discrimination in employments matters generally and in advertising for employment specifically.

My request is what advice has been sought and provided regarding:

- 1. How stipulating that candidates must have knowledge of Te Ao Maori and have Maori ancestry complies with providing diversity of board members?, and*
- 2. How the invitation seeking candidates complies with the provisions of the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993?*

No advice has been “sought or provided” about the matters set out at point 1 and 2 of your request.

Accordingly, I have refused the request for this information under section 18(g) of the Official Information Act – the information requested is not held by The Treasury, and I am satisfied that the information would not be held by another agency or connected more closely with the functions of another agency. However, I hope the following paragraphs will provide you with some useful context about the Treasury’s Governance and Appointment practices.

Firstly, the Treasury is confident its notice seeking candidates for EPL is consistent with the Bill of Rights Act 1990 and the Human Rights Act 1993.

For completeness, I note the notice did not require candidates to have Māori ancestry.

Secondly, the Governance and Appointment practices followed by the Treasury are approved by Cabinet.

The Cabinet-endorsed process provides that the 'best qualified' person is sought for each board vacancy.¹ "Best qualified" is defined as:

The candidate whose skills and experience best meet the responsible Minister's assessment of the skills profile, which has been developed on the basis of the Government's strategic overview of the entity, The Treasury's view of the entity, and in consultation with the chair of the entity.

Ministers retain ultimate responsibility for each appointment and decide who will be appointed. The process to be followed to address any board position under consideration must always be approved by Ministers. That approval precedes the announcement of any public advertisement for candidates who wish to be appointed to the boards of Crown entities.

The relevant legislation and other establishing documents are always referred to at the beginning of each process, as they provide the overarching information on the board and entity and either general or specific parameters for board appointments. Based on an assessment of the current EPL members, and in line with achieving Ministers' expectations and EPL's strategic priorities and objectives, the recommended capabilities were stated in the EPL notice:

- Business acumen and commercial skills
- Public sector stakeholder communication
- Strong governance including knowledge of legal and financial responsibilities
- Te Ao Māori knowledge and iwi connections
- Strong education sector knowledge

The Cabinet Manual states the Treaty of Waitangi is regarded as a founding document of government in New Zealand and that it:

"may indicate limits in our polity on majority decision-making. The law may sometimes accord a special recognition to Māori rights and interests such as those covered by Article 2 of the Treaty. And in many other cases the law and its processes should be determined by the general recognition in Article 3 of the Treaty that Māori belong, as citizens to the whole community."²

¹ <https://www.treasury.govt.nz/sites/default/files/2015-09/ag-combined.pdf>

² CO (19)5: Te Tiriti o Waitangi/Treaty of Waitangi Guidance

A key requirement of a director's role is to act with the highest levels of integrity and professional and personal standards. Director responsibilities include acting lawfully to meet statutory and administrative requirements. Non-Māori as well as Māori directors currently serving on Crown boards are increasingly familiar with the importance of the Crown-Māori relationship and directors with strong iwi connections are making valuable contributions and adding significant value to Crown entities.

In 2000 and 2001 Cabinet agreed that more effort needed to be directed to ensuring balanced representation on Government bodies to reflect wider New Zealand society.³ All Cabinet and Cabinet committee papers are required to include a section headed "Representativeness of Appointment(s)" to confirm that full consideration has been given to the need for the membership of the body concerned to have an appropriate gender, age, ethnic and geographical balance. These developments have recognised the significance of an organisation's connection with its stakeholders for its commercial success.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Stella Kotrotsos
Manager, Governance & Appointments

³ <https://dpmc.govt.nz/publications/co-02-16-government-appointments-increasing-diversity-board-membership>