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Radich, P.

The membership of statutory
bodies administered by
the Dept. of Justice.

LEGAL WRITING

THE MEMBERSHIP OF STATUTORY BODIES ADMINISTERED BY THE DEPARTMENT OF JUSTICE

- With Reference to the Viability of a Uniform Set of Rules

Paul Radich - 1 September 1984



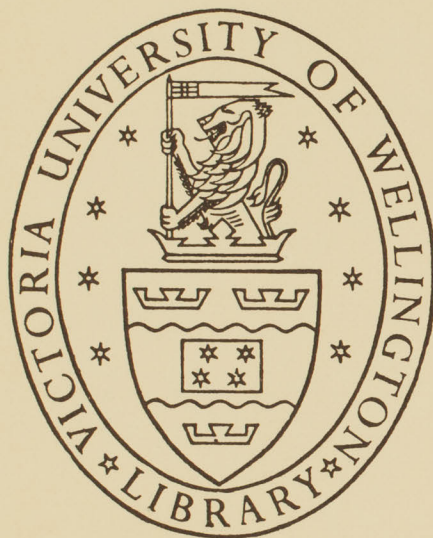


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- With Reference to the Viability of a Uniform Set of Rules

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Alphabetical List of Statutory Bodies with which this Paper is concerned with Statute and Section References

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Extract from the Report of the Commission of Inquiry into the Marginal Lands Board Loan Affair

FOURTH SCHEDULE

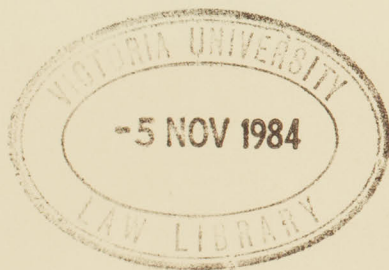
Leadership Code from the Constitution of the Independent State of Papua New Guinea

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FIFTH SCHEDULE

I INTRODUCTION

This paper examines statutory provisions regulating the membership of statutory bodies administered by the Department of Justice¹. These provisions concern -

- (a) The qualifications of members.
- (b) The process for their appointment.
- (c) Their tenure; the term of office and grounds for removal.
- (d) Their remuneration.

It will consider, as well, written material relating to these provisions and make some comments, in part by reference to legislation in other countries. On the basis of these provisions and materials, the question will be addressed whether it would be possible and desirable to have a uniform structure on this matter.

Before these matters are perused, it is necessary to give an outline of the functions and powers of the statutory bodies with which this paper is concerned and to provide a contextual analysis with those other bodies or institutions in our administrative system which assume similar functions and powers.

The Franks Committee² said :

"We consider that tribunals should be properly regarded as machinery provided by parliament for adjudication rather than as part of the machinery of administration."

Adjudication can be seen as one of the functions of modern day statutory bodies, but there are many more that may not involve the hearing and settlement of disputes. It is possible to isolate three main types of power statutory bodies may assume.

- (i) The power of decision. In pursuing an adjudicative function, a statutory body may have the power to come to a definite conclusion which, subject to any right of appeal, is binding upon all relevant parties.³
- (ii) Advisory or recommendatory powers. With regard to the fact that

such advice is usually tendered to the government, it may aid the formation of government policy or decisions.⁴

(iii) Power to grant a consent, licence or registration. While amounting to an ultimate power of decision, bodies having this function are not concerned with adjudication or the settlement of disputes. It is more akin to a governmental power than a judicial one.⁵

As an alternative to classifying statutory bodies in accordance with the powers they assume, they can be, perhaps more profitably, classified according to their functions.

In December 1954, the Council on Tribunals⁶ (U.K.) saw the tribunals coming under their jurisdiction numbering over 2,000. The Council classified them, according to their functions, into 35 types. In 1962, Professor O. Hood Phillips⁷ classified these 2,000 tribunals into no less than 100 different types.

The Justice Department administers over 50 statutory bodies. In the mid 1960's, the Justice Department divided all statutory bodies in New Zealand into 10 categories.⁸ Using these as a basis, the statutory bodies with which this paper is concerned can be similarly categorised:

Tribunals Dealing With Certain Trades or Professions.

Licensing Control Commission.
 Licensing Committees.
 Pharmacy Authority.
 Fire Service Appeal Board.
 Hotel Association of New Zealand Disciplinary Committee.
 Hotel Investment Account Advisory Committee.
 Motor Vehicle Dealers Licensing Board.
 Motor Vehicle Dealers Disciplinary Committee.
 Motor Vehicle Salesmen Registration Authority.
 New Zealand Law Practitioners Disciplinary Committee.
 District Disciplinary Committees.
 Real Estate Agents Licensing Board.
 Registrar of Private Investigators and Security Guards.
 Commerce Commission.

Tribunals Dealing with Land and Property.

Copyright Tribunal.
 Land Valuation Tribunal.
 Planning Tribunal.
 Securities Commission.
 Plant Varieties Appeal Authority

Tribunals Dealing With Censorship.

Indecent Publications Tribunal.

Tribunals Dealing with Income Tax, Prices, etc.

Co-operative Dairy Companies Tribunal.
Taxation Review Authority.

Tribunals Relating to Salaries and Conditions of Public Servants.

Public Service Appeal Board.
Public Service Special Appeal Board.
Education Authorities Appeal Authority.

Tribunals Concerned with Race and Equality.

Equal Opportunities Tribunal.
Human Rights Commission.
Race Relations Conciliator.
Waitangi Tribunal.

Tribunals Concerned With Penal Matters.

Prisons Parole Board.
Release to Work Committee.
Visiting Justices.

Tribunals Concerned With Legal Matters.

Rules Committee.
Legal Aid Board.
Legal Aid Appeal Authority.
District Legal Aid Committees.
Lay Observers.
Statutory Advisory Committee.

Tribunals Dealing With Social Security Benefits.

Social Security Appeal Authority.
Social Security Special Appeal Authority.
Tertiary Assistance Grants Appeal Authority.

Tribunals Dealing With Personal Claims or Disputes.

Accident Compensation Appeal Authority.
Motor Vehicle Disputes Tribunal.
Small Claims Tribunals.

Miscellaneous.

Abortion Supervisory Committee.
Alcoholic Liquor Advisory Council.
Broadcasting Complaints Committee.
Deportation Review Tribunal.
Milk Appeal Authority.
Representation Commission.
Wanganui Computer Centre Policy Committee.
Wanganui Computer Centre Management Committee.

To this extent, statutory bodies can be seen as assuming roles previously pursued by other bodies or institutions or taking on new functions. As this paper is concerned with the membership of and appointments to statutory bodies, a contextual analysis will be provided by viewing the membership and appointment to these other institutions.

1) The Courts.

The High Court consists of one Judge as the Chief Justice and 26 other judges⁹. Section 4(2) of the Judicature Act 1908 provides only that the Judges of the High Court shall be appointed by the Governor-General. However, the appointment process may be more complex in practice: The Chief Justice is appointed by the Governor-General upon the recommendation of the Prime Minister. The remaining Judges of the High Court and of the Court of Appeal¹⁰ are appointed upon the recommendation of the Attorney-General. It has become established practice to engage in a certain amount of consultation prior to making such recommendations. This consultation is normally sought with all or any of the following: Cabinet - prospective appointees are customarily mentioned in Cabinet to provide an opportunity for Cabinet discussion, the Chief Justice, the Solicitor-General, the Secretary for Justice, the President of the New Zealand Law Society. No person can be appointed to the High Court bench unless he has held a practicing certificate as a barrister or solicitor for at least 7 years¹¹. Further qualifications or, perhaps more appropriately, attributes that are taken into consideration in respect of the appointment of High Court Judges are canvassed in the Beattie Commission Report¹². These include personal character and reputation as a lawyer.

As to tenure, s8 of the Judicature Act provides that High Court Judges may only be removed or suspended on an address to the House of Representatives.¹³

Although not providing any grounds for removal, s7 of the Act states that the commission of High Court Judges is to continue during good behaviour. If behaviour is otherwise, the House of Representatives

will decide whether it is of such a nature to warrant removal from office.

The compulsory retiring age for a High Court Judge is 68 years¹⁴. It is a convention in New Zealand that there is no hope of advancement for Judges appointed to the High Court. Although it has been the practice since 1957, to appoint Judges of the Court of Appeal from the High Court bench, Judges of the Court of Appeal receive the same salary as those of the High Court and they are still Judges of that Court.

In addition, it has recently been accepted that the Chief Justice may be appointed from the bench. Until the time of the Right Honourable Sir Ronald Davison's appointment as Chief Justice it was standard practice that the Chief Justice only be appointed from the bar.

The appointment of District Court Judges is made by the Governor-General on the recommendation of the Minister of Justice. However, practice has it that consultation may be sought by the Secretary for Justice on behalf of the Minister from such people as: the Chief District Court Judge, the President of the New Zealand Law Society and the appropriate District Law Society.

Persons appointed as District Court Judges must have been barristers or solicitors of the High Court of not less than 7 years standing¹⁵.

District Court Judges may be removed from office by the Governor-General for inability or misbehaviour. The Beattie Commission points out that this, in theory, sees District Court Judges not having the same security of tenure as High Court Judges. The Report goes on to observe that, in practice, it would be unlikely for a government to advise the removal of a High Court Judge in circumstances that would be insufficient to justify a resolution of parliament.

It is often held, as a cornerstone of our constitution, that the judiciary is independent and free of political interference. However, as will be discussed in Part IV of this paper, certain politicians were publicly criticised earlier this year for condemning the decisions of members of the New Zealand judiciary so as to impair the dividing line between political and judicial actions.

2) The Government.

As well as taking on judicial functions, statutory bodies may assume a function previously attributed to part of the government machinery. That is to say, a recommendatory or advisory function pursued by a government department or a function more in line with a decision made by the executive wing of government.

The two major political parties in New Zealand at the present time select and appoint members of their executive wings in slightly different ways. The leader and deputy leader of both parties (and hence the Prime Minister and Deputy Prime Minister if the particular party holds power) are selected by caucus (by ballot or unanimous choice). The process of selection of Cabinet Ministers, however, differs in the case of each party. In the Labour Party, the Prime Minister will advise caucus of the number of Cabinet positions he thinks to be appropriate. With the exceptions of the leader and deputy leader, who are automatically members of Cabinet if the party holds power, the Labour Caucus will select or ballot for that required number.

In the case of the National Party, the Prime Minister will choose how many portfolios there are to be, as well as who is to hold such portfolios. These executive parliamentarians are appointed to hold office collectively, at the pleasure of the people of New Zealand, by the leader of the particular party.

Government officials are selected and appointed to hold office by way of promotion within the Public Service or from applicants having sufficient experience from outside the Government Service. As with a Minister, a decision or recommendation made by a government official may not be attributable to him or her alone, but may be achieved as a result of the combined efforts of the wealth of manpower and expertise existing within the Government Department.

It is with these factors in mind that we view the membership of statutory bodies.

In writing of statutory bodies, membership is an aspect that, as a rule, is glossed over or dismissed by commentators with little evaluation. eg. of a 90 page report viewing every aspect of administrative tribunals, the Franks Committee¹⁶ devoted just over 3

pages to membership. In view of the large role statutory bodies play in today's society, this paper attempts to fill this void and to provide some insight into the effect of New Zealand's statutory provisions on the membership of statutory bodies.

The paper will begin by viewing qualifications required by statute. As this aspect has the most diverse range of statutory requirements, an attempt will be made to categorise these requirements and evaluate the results in relation to each category. Secondly, the appointment process will be viewed. Several distinct processes required by statute will be singled out in order to ascertain the reasons for a particular body having its members appointed by one process in preference of another. Thirdly, provisions relating to tenure will be evaluated. This topic involves two parts. Provisions specifying the term for which a member is to hold office and provisions specifying grounds for removal. A brief description of methods and amounts of remuneration will follow. Discussion will be pursued as to the question of the independence of statutory bodies and, in this light, certain proposed provisions in New Zealand and provisions operating overseas to prevent statutory bodies becoming answerable to political pressure will be expounded.

In relation to each of these topics, the possibility of unifying or standardising the provisions will be viewed. This speaks to three possibilities :

1. Consolidating provisions relating to membership in a single statute.
2. Standardising provisions and embodying them, in this form, in each statute constituting a statutory body.
3. More informally, by unifying procedure or standard practice that should be followed by those involved in the appointment process.

These possibilities are not exhaustive, nor are they definitive in themselves. It may be possible to have combinations of any or all of them: Overriding rules and objectives could be set out in a single statute, leaving the matter of how these rules are to be achieved in any given case, to an individual statute or to practice.

Alternately, matters incidental to appointment (such as resignation, removal, quorums etc) could be provided in a single statute while matters unique to a particular body (such as the number of members, their qualifications, and who is to appoint them) could be contained in individual statutes or achieved by practice.

To aid this discussion, the final part of this paper will view attempts made in the United Kingdom and in Mauritius to unify provisions and procedures relating to membership and will go on to provide a possible draft of provisions that could be embodied in a single statute without detracting from the diversities inherent in individual bodies.

This section provides an overview of the aspects of membership provided by the multitude of governing statutes, to pave the way for the detailed examination of these sections that will follow.

Provisions establishing statutory bodies begin with the particular body's constitution. Such a section, or sections, will state the number of members to be appointed to the body, the qualifications each member is required to have (if any) and who is to appoint the members. The appointment process may include one or many people. These initial provisions isolate the body's chairman, often requiring him to hold specific qualifications or to be appointed by way of a different process. Included in these initial provisions is the term for which chairman and members will hold office. These provisions are evaluated in Part III of this paper, but, suffice to say at this stage that variation in their substance is quite immense.

Following these specific provisions are sections of a more general nature, dealing with matters incidental to appointment. These sections are close to being identical in respect of each body - the only real differences being in their order or wording¹⁷. They encompass the areas of removal from office, resignation, the filling of vacancies, the ability of a member to remain in office in certain circumstances, the effect of vacancies in membership, the circumstances in which a deputy member and chairman may be appointed and the method of such appointments and the remuneration of members.

There is more likely to be a justifiable cause or reason for variation in the first set of specific statutory provisions than in the second, which are confined to incidental matters. What follows is an analytical view of these provisions in order to account for such variation and to suggest alternatives.

III. SPECIFIC PROVISIONS RELATING TO MEMBERSHIP

II. THE GOVERNING STATUTE.

A. QUALIFICATIONS.

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III SPECIFIC PROVISIONS RELATING TO MEMBERSHIP.

A. Qualifications.

This section will make some general comments and observations on New Zealand's statutory provisions relating to the qualifications of members of statutory bodies and their operation in practice, will view what others have said of these provisions and will provide examples of the attempts, in other jurisdictions, to unify these provisions.

1. General Comments and Observations.

This discussion is based on the material presented in Table One of the First Schedule to this paper. As is there explained, a distinction is made between governing statutes which expressly require members of given bodies to have particular qualifications and those statutes which leave the choice of qualifications of all or the majority of members of the body to the discretion of those responsible for their appointment.

The immediate result of specifying, by way of statute, the necessary qualifications, is a higher proportion of legally qualified members. Of 41 statutory bodies examined in detail, 23 come into the first category (of Table One of the First Schedule); requiring specific qualifications. Of that 23, 21 have at least one barrister or solicitor as a member. These figures may be broken down. Of the 23 bodies, 19 have members who are required to be legally qualified, another 2 have legally qualified members, although not specifically required to,¹⁸ and 2 do not have any legally qualified members¹⁹.

18 statutory bodies come into the second category; not requiring specific qualifications. Of that 23, 6 have at least one barrister or solicitor as a member. The figure of 6 excludes cases where a chairman is required, by statute, to be legally qualified so as to concentrate on the instances where qualifications are discretionary upon the appointing officer. Where there is such a choice then, the inclusion of legally qualified members is rare. Qualifications,

other than those that are legal, required by statute, vary as do the functions of statutory bodies. The statutory provisions may be explicit to the extent of requiring a particular qualification, such as a registered medical practitioner, a registered salesman or a licensed real estate agent, or may be more general so as to require a member or members to have knowledge in the arts and literature, to have knowledge in the town milk industry, to be a member of a District Law Society or to be a Maori. While these varying qualifications are confined to particular bodies, legal qualifications are included in a much wider range of bodies.

In pursuance of these general figures and observations, qualifications may be more specifically categorised.

(a) Appeal Bodies. The Department of Justice administers six appeal bodies. Five of these bodies require legal qualifications to be present in at least the chairman. The Accident Compensation Appeal Authority and the Legal Aid Appeal Authority require all members to be legally qualified. The Education Authorities Appeal Authority²⁰ specifies only what the chairman is not to be. This can be specific in itself. It achieves two things: Firstly, it precludes the interests of a particular profession or part of the community from being represented and, secondly, allows an amount of discretion upon the appointing officer as to what qualifications the chairman should hold. The application of such a provision in practice can be seen in relation to the Education Authorities Appeal Authority: All members are specifically required to represent Education Authorities. In the interests of impartiality and independence, the Chairman is not to be a member of any such authority. If legal skills in chairmanship are not thought necessary, it may be better to leave the matter in such a partly discretionary state.

Other qualifications required in appeal bodies directly reflect the nature of the body i.e. Officers of the Public Service Association, representatives of the five service organisations.

(b) Chairmen

"Proceedings of Tribunals rightly tend to be less formal than those of courts of law. We consider that this accentuates the importance of the chairman's position, since he must see to it that all the proceedings are conducted with scrupulous fairness to all parties and that the proper balance is struck between formality and informality. In particular, he must

make sure at the outset that the parties fully understand the issue, especially when they are not legally represented, and he must make sure that they have an opportunity to present their cases adequately. This demands much knowledge and tact, as well as patience and courtesy, particularly because many of those who appear before tribunals may be over-awed or flustered by their surroundings."²¹

It is often assumed that legal qualifications will most appropriately fill these criteria; being a different set of criteria than is required in respect of members. While members can provide the specialist skill by way of qualifications, the chairman is seen as the mediator.

Of the Statutory bodies administered by the Justice Department, 41 are multi-member and 6 are single member bodies. Of the 41 multi-member bodies, 25 have chairmen who are required, by statute, to be legally qualified. Of the 6 single member bodies, 3 are required to be legally qualified. This points to the fact that, although in a higher proportion of bodies it is thought necessary to have a chairman of legal expertise to preserve the judicial nature of the body, such is not an overriding criteria. In some cases, statute or case law need not be rigorously applied and the procedure of the hearing may be of a more informal nature. In these cases, a chairman with skills relevant to the particular body's jurisdiction may be regarded as more important than legal qualifications.

Provisions requiring a chairman to be legally qualified differ in themselves. The most common requirement is for such a chairman to be a barrister or solicitor of the High Court of not less than seven years standing. However, this varies. The Deportation Review Tribunal and the Registrar of Private Investigators and Security Guards require a barrister or solicitor of the High Court of not less than 5 years practice, the Small Claims Tribunals require such a barrister or solicitor or not less than 3 years practice, while the Hotel Association of New Zealand Disciplinary Committee, the Legal Aid Board, the Motor Vehicle Dealers Licensing Board, the Real Estate Agents Licensing Board, and the Rules Committee require only a barrister or solicitor of the High Court. Furthermore, it may be noted that in 12 cases the word 'practice' is used, while in 5 cases,

qualifications may be relevant to The Abortion Supervisory Committee, the Motor Vehicle Disputes Tribunal and the Human Rights Commission.

the word 'standing' is used. Although the difference may only be superficial, the implications of the words vary. 'Practice' suggests that, to be qualified to fill the post, a lawyer must have been actively in practice for a given number of years. While 'standing' is a more passive requirement. To fill the post, a candidate need only have been qualified for a given number of years. To ensure the legal skill is coupled with experience, the recent tendency has been to use the word 'practice'.

(b) The representation of public interests.

In some cases, a higher degree of legal skill is thought necessary. Six bodies require their chairman to be a District Court Judge²², three bodies require their chairman to be a High Court Judge²³ and the Waitangi Tribunal requires its chairman to be Chief Judge of the Maori Land Court.

(c) Situations where legal qualifications are not required.

In the majority of cases, it is thought necessary to have at least a legally qualified chairman. However, eleven bodies administered by the Justice Department do not require legal qualifications of any kind.

If the area of a body's adjudication is not primarily concerned with the settlement of disputes, but is limited to servicing the needs of certain businesses or areas of society, legal qualifications may be subservient to qualifications more relevant to that particular area of society or industry. The following bodies fall into this category:

The Members of the Motor Vehicle Salesmen Registration Board all have experience in the motor trade, its chairman being a motor company manager. The members of the Co-Operative Dairy Companies Tribunal all hold positions in dairy or agricultural industries, its chairman being Director of the Dairy Division of the Department of Agriculture and Fisheries. The members of the Hotel Investment Account Advisory Committee are either qualified in accounting (as is the Chairman), or hold a position in the Hotel Association.

There are some cases, in respect of these eleven bodies, where legal qualifications may be relevant ie The Abortion Supervisory Committee, the Motor Vehicle Disputes Tribunal and the Human Rights Commission.

In these cases, the public are more directly involved and the proceedings are more institutionalised. A decision must then be made whether benefit would flow from legal qualifications, or whether qualifications more directly related to the particular area of jurisdiction would make a greater contribution to achieving the body's goals. It may be that in such cases, at least a member of the body should be possessed of some legal skill.

(d) The representation of public interests.

The average member of the public is unlikely to have the need for recourse to many of the statutory bodies dealt with in this paper - which often cater for defined areas of society, businesses and organisations. There are, however, some statutory bodies created for the benefit of a more general public. These bodies will be viewed to ascertain what qualifications (if any) are present to represent the interests of the general public:

Abortion Supervisory Committee - registered medical practitioners only.

Equal Opportunities Tribunal - representatives from every walk of life.

Human Rights Commission - a range of qualifications but of a high calibre.

Lay Observers - a range of qualifications but of a high calibre.

Motor Vehicle Disputes Tribunal - one member is specifically required to represent the interests of the consumer²⁴

Small Claims Tribunals - representatives from every walk of life.

Members serving on these bodies will either be a specialist in a particular area of society, an unqualified member of the public, or a lawyer. Of 286 members of all bodies administered by the Department of Justice, 77 can be termed 'lay' - not being directly qualified in matters likely to come before them. They may be housewives, farmers, nurses, hairdressers, etc. Their presence is felt primarily on bodies such as those just described; where the interests of the

general public are involved. The reason for this is that bodies calling for specialist skills will normally only represent a specific area of society, such as the fire services, the hotel or real estate industries, the public service, or law societies. However, those bodies which are, to a large part, concerned with the interests of a more general public are seen to be justified in having a number of 'lay' members eg. Referees of Small Claims Tribunals hear minor disputes from a wide range of public. Besides a small knowledge of basic legal principles (such as contract law-detailed outlines of which are given to each Small Claims Tribunal referee), an accountant would be no better qualified to fill this adjudicatory role than would a housewife.

(e) Ex-officio members.

Ex-officio members are obliged to be present on the Hotel Association of New Zealand Disciplinary Committee²⁵, the Human Rights Commission²⁶, the Legal Aid Board²⁷, the Prisons Parole Board²⁸, the Release to Work Committee²⁹, the Representation Commission³⁰ and the Rules Committee³¹. Their inclusion raises the questions: do they negate the independence of the statutory body and should they be there at all? Only in the case of the Representation Commission does the number of ex-officio members outweigh the number of independent members³².

The inclusion of ex-officio members may be necessary when the statutory body plays an advisory role to the government. Such a role will see the statutory body advising the government on matters in which the government official will already play a part. eg the Representation Commission advises on matters of direct concern to such people as the Government Statistician and the Chief Electoral Officer. Matters coming before the Rules Committee will be of concern to those holding governmental positions in the field of justice.

Alternately, if the body rules on matters of direct concern to a particular trade or industry, it may be of benefit to have a member of that trade or industry present eg the President of the Hotel Association of New Zealand will be directly concerned with matters of discipline within the Association.

However, if the function of a statutory body does not deal with a particular or defined area of government or industry but is established for the purpose of hearing a more general range of disputes, the presence of ex-officio members should be minimal if not totally absent.

(f) Women.

Of the 386 members presently serving on bodies administered by the Justice Department, 37 are women ie approximately 1/10. Statutory bodies of a highly specialised nature are normally wholly comprised of men. At the time of writing, female members are generally only present on statutory bodies of a more general jurisdiction - such as those mentioned in (d) above.

Having viewed the range of qualifications that presently exist, it remains to be seen how they are achieved by way of the statutory provisions.

The first category of statutory bodies (of Table One of the First Schedule to this paper) can be divided into four parts :

- Statutes expressly requiring certain qualifications. eg. a lawyer, a medical practitioner, a registered valuer;
- Statutes requiring qualifications from within a specific field or pertaining to a specific subject matter eg. Must have special qualifications in the fields of literature or education or, in matters likely to come before the tribunal;
- Statutes ensuring qualifications are secured by selecting members to represent certain areas of society or certain institutions. eg Education Authorities Appeal Authority: Eight members to represent employer organisations and three members to represent employee organisations; the Representation Commission: one member to represent the Government and one member to represent the Opposition. These provisions run in opposition to arguments to the effect that members of statutory bodies should be disinterested. Lack of involvement with areas of society or industry the tribunal's decisions are likely to effect preserves it's independence and impartiality. If a member is required to

represent a particular area of society or industry, he should not be chosen from that area or industry. However, the fourth type of statutory provision, below, stands in direct opposition to such a principle :

- Statutory bodies where members are chosen from organisations established to deal with the particular area of jurisdiction. eg Motor Vehicle Salesmen Registration Authority: three members are to be members of the Motor Vehicle Dealers Institute; Licensing Committees: four members are to be elected by local authorities.

In addressing the second category of statutory bodies (of Table One of the First Schedule to this paper), it has been said that the necessary qualifications, in the absence of express provisions, are secured through the nomination/consultation process upon appointment. Such a proposition can be seen as operative in the cases of such bodies as the Planning Tribunal and the Fire Service Appeal Board but cannot, by any means, be said to be a general rule: of the 19 bodies where qualifications are not expressly stipulated, only 6 require members to be appointed by way of a more complex process. The remaining 13 bodies are appointed in the normal way - by the Governor-General on the recommendation of the Minister of Justice, or directly by the Minister of Justice. Although this simple process will require some outside enquiries in the selection of members, such is not mandatory and not necessarily followed in every case.

It should be noted though that the lack of specified qualifications does not, in any way, impair the calibre of members of the bodies to which they apply. Coupled with the examples provided by category 2 of Table 1 of the Schedule, perhaps the most striking example is the Administrative Division of the High Court³³ - Clean Air, where members qualifications can be seen as nothing short of outstanding - See the Fifth Schedule.

2. The Commentators.

In addressing the matter of qualifications in respect of statutory bodies, many commentators will merely assume the existence of the specialist knowledge incorporated in each body and regard it as one

of the attributes of this quasi-judicial role. This proposition is stressed in the case of Central Taxi Depot (Rotorua) Ltd v New Zealand Retail Motor Trade Association.³⁴:

"Any question ... which comes before the Authority ... comes, therefore, before a tribunal having an instructed mind qualified in consequence, by special knowledge to reach a wise and just conclusion on all questions of administrative discretion or policy. None of the regular courts of the country can have that specialist knowledge and must always feel under some disability in determining questions in which policy and discretion are involved".

Several commentators do, however, provide brief critical appraisals of this aspect of membership. The Franks Report³⁵, in spending two paragraphs on the matter of qualifications, argue that the majority of chairmen of tribunals should have legal qualifications. This, it is suggested, will ensure objectivity in the treatment of cases and in the proper sifting of facts. The Justice Department sees just over half of its statutory bodies having legally qualified chairmen. Of members, the Franks Committee said :

"It may be seen as impossible to lay down any general desideratum in the case of members because of the wide variety of experience that has to be drawn on for the different tribunals."

In the first report of the Public and Administrative Law Reform Committee of New Zealand³⁶ it was recommended that the chairmen of all appellate tribunals should be legally qualified. (The only appellate body administered by the Justice Department where this is not the case is the Education Authorities Appeal Authority).

Secondly, it was thought desirable that the chairman of a tribunal of the first instance should be legally qualified. The Committee added that this may not always be possible or appropriate and, in that event, the chairman should be disinterested yet possessed of qualifications relevant to the matters likely to come before the body.

This requirement of disinterest was also advocated in respect of members of all statutory bodies. This would outlaw those statutory provisions requiring members to be chosen from particular organisations already established to deal with the area of jurisdiction in question.

A study by Wraith and Hutchesson³⁷ revealed that, in England, it is only in a minority of cases that the requirement of legal qualifications is absolute. Arguments for mandatory legal qualifications are, therefore, more frequently advocated in England. From their study, a general list of criteria is drawn for the selection of prospective members. Such factors can also be seen to be operative in New Zealand:

"A person of standing with administrative expertise in central or local government, in the running of important voluntary organisations or substantial business or in the professions or with experience as a Justice of the Peace."³⁸

G.S. Orr³⁹ submits that the prior approval of the Attorney-General should be required for the appointment of those members not required to have specific qualifications. It has already been seen that, in relation to such members, that their appointment process is no more complicated than those who are required to have specific qualifications.

It is submitted that fairer and more democratic appointment procedures for such members could be achieved by a more detailed process of statutory consultation, rather than the prior approval of the Attorney-General. Such prior approval would be inappropriate, considering that the portfolio of the Minister of Justice and of the Attorney-General are usually held by the same person and the Minister of Justice is, at present, responsible for recommending the appointments with which this paper is concerned and many others.

A more detailed consultation process, which will be suggested in the following section of this paper, would serve to dispel Robson's⁴⁰ fears that the appointment of people having no particular qualifications can provide an open field for government patronage. Such people, properly appointed, will eventually become expert by continually dealing with questions within their jurisdiction.

3. Uniform Provisions in Other Jurisdictions.

The U.K. Tribunals and Inquiries Act 1971 consolidates the Tribunals and Inquiries Act 1958, which earlier Act propounded to be, by way of its long title :

"An Act ... to make further provisions as to the appointment, qualifications and removal of Chairmen and members ..."

The only uniform provision as to qualifications is s9 of the 1971 Act, where Umpires or Deputy Umpires for the purpose of hearing appeals from Reinstatement Committees and Chairmen or Deputy Chairmen of the Conscientious Objectors Tribunal must be a barrister or solicitor of not less than ten years standing. Section 7⁴¹ of the 1971 Act is stated to operate: "without prejudice to any statutory provisions as to qualifications" - suggesting that requirements for qualifications of members of statutory bodies would be ill-adapted to a provision of universal application.

The Mauritius Interpretation and General Clauses Act 1974, which provides uniform rules for many aspects of statutory body membership, similarly refrains from making any overriding criteria as to qualifications. The only mention is in s31(1)(a), which provides:

"a person who is empowered to appoint as member may appoint a qualified person..."

- a full interpretation of 'qualified' cannot be contained in a single statute.

4. Conclusions.

It is difficult to make generalisations about the qualifications of members of statutory bodies. The multitude of provisions and variation of selection processes ensure, in some cases, a narrow field of specialists and, in others, a more general selection of independent arbitrators.

Certain criteria though, should apply equally to all statutory bodies. This should include a requirement that chairmen of Appeal Authorities, at least, should be legally qualified - these authorities are assuming a function that would alternately be carried out by the High Court, an Administrative Division of the High Court or an Administrative Appeal Court that all statutory bodies could have recourse to. In this way, Appeal Authorities are of an important legal nature, deserving of legal skills.

With regard to single member bodies, none of those administered by the Department of Justice are of an appeal nature. In that they are first instance bodies only, it would do disservice to the body to stipulate the necessity of a legally qualified office holder, considering the often highly specialised role played by a single person. eg. the Pharmacy Authority.

Similarly, legal qualifications may not always be relevant with regard to the nature of many multi-member bodies of the first instance, but the inclusion of such qualifications, wherever possible and appropriate, cannot be emphasised enough when considering the advantages of such experience:

- it is often necessary to apply statute or case law to complex situations;
- proceedings must often be conducted in a court-like manner; even if not according to court rules;
- it should be assured, as far as possible, that unrepresented applicants are not at a disadvantage and that they are aware of their rights of appeal on questions of law.

In addition, where legal qualifications are required, a standardised position, that could be embodied in a single statute would be desirable. This would eliminate the inconsistencies and confusion arising out of the differing requirements as to length of experience and out of the interchange of the words 'standing' and 'practice'. Such a provision could be in the following terms :

"When a chairman or member of any statutory body is required to be legally qualified, he shall be a barrister or solicitor of the High Court of not less than seven years practice".

and could be deviated from in an individual statute if thought necessary. Some provision should be made so as to preclude interested parties from becoming a member of a statutory body whose jurisdiction may conflict with that interest. Only in those cases where the government or an outside organisation is frequently affected by the decisions of a statutory body or where that statutory

body is responsible only for advising the Government or outside organisation should such interested people be included in the body's membership. eg. the functions of the Motor Vehicle Salesmen Registration Authority are to hear and determine applications for registration of salesmen, to hear and determine complaints against any registered salesmen and to advise the Motor Vehicle Dealers Institute on any matters referred to it by the Institute.⁴² In this way, it is connected to and can be seen as an extension of the Motor Vehicle Dealers Institute and can be justified in having three members of the Institute as members of the Registration Authority.

This situation of some real and substantial connection with an organisation should be regarded as an exception to the general rule that statutory body members should not be chosen from organisations they are established to represent.

Finally, some comment should be made of those provisions requiring members to have qualifications within a particular 'area' eg Special qualifications in the fields of literature and education,⁴³ knowledge or experience in the town milk industry,⁴⁴ special knowledge or experience in performing the functions of a referee.⁴⁵ As these provisions allow an amount of flexibility amid the specificity, they may be preferable to allow a wider range of membership and to allow for the changing needs of society. Flexibility, as well as the possible range of nominees, is substantially narrowed if precise qualifications, such as 'a librarian', 'a milk industry official', or 'a lawyer' are sought.

B. The Appointment Process.

1. General Comments and Observations.

The material upon which this discussion turns is provided in Table 2 to the First Schedule of this paper. This table pinpoints 5 major procedures provided by statutes for the appointment of members of statutory bodies:

1. The most frequently used provision is "appointed by the Governor-General on the recommendation of the Minister of Justice".

This requirement will primarily involve the Department of Justice in finding suitable nominees and advising the Minister of the most appropriate. Different divisions of the Department handle the processing and investigating of different appointments. The Courts Division handles the appointment of Referees to Small Claims Tribunals, the Tribunals Division handle many of the appointments coming within their jurisdiction, the Law Reform Section handle appointments to various advisory committees, the Penal Section handle appointments to the Prison Parole Board, while the Administration Section handles the bulk of appointments. In this way, a number of different people are involved in the appointment process, but only from within one department.

No other body with relevant knowledge as to the appropriate nominees need be consulted. However, this may be viewing the situation too superficially. When a Minister is required to recommend an appointment to the Governor-General, various other arms of the Government machinery will become involved. Having prepared a list of suitable nominees, the relevant Department's Officials will give these to their Minister to present to Caucus. As a result of discussion at this and at Cabinet level, the most suitable nominee will be chosen and recommended to the Governor-General for appointment. To this extent, the discretion does not vest wholly with a single Government Department. The point to be made is that, although much discussion is raised through nominees being presented to the various branches of the Government, the initial selection of nominees may be made by a single Government Department. Although the resources open to a department are great, it may be suggested that it could be positively widened by including appropriate outside bodies in the appointment process at the stage of the selection of nominees.

Bodies such as the Accident Compensation Appeal Authority, the Small Claims Tribunals and the Prisons Parole Board, can be seen as justified in having their members appointed in this way - being of a judicial nature and aligning with Justice Department functions. But, amid these bodies are bodies whose functions and jurisdictions are much wider reaching, or are not totally in line with the functions of the Justice Department alone. The Indecent Publications Tribunal, The Deportation Review Tribunal, and the Taxation Appeal Authority provide examples. Appointment of members to such bodies warrants the

extra step of No.2 below.

2. Appointment by the Governor-General on the recommendation of the Minister of Justice after consultation with an outside person or body.

This provision is probably most ideal in its practical results. Members of bodies whose function is specialised or is sufficiently wide-reaching to take them out of alignment from the resources available to the Justice Department are chosen in conjunction with a body or person who is in a position to know of suitable nominees. This provides a wider range of resources and options in choosing members of statutory bodies.

It could be said, however, that statutory bodies have been subjected to this appointment process more at random than by reason: only five bodies are appointed in this way. The Planning and Land Valuation Tribunals are not the only more specialised bodies that could benefit from this appointment process. Bodies dealing with the discipline of law practitioners are included in this category, yet disciplinary bodies for other professions are appointed by way of different processes, while having few functional differences.

3. Appointment by the Minister of Justice alone.

Appointments handled in this way would be expected to be of only minor importance - requiring the discretion of a single department, yet, specialist bodies such as the Real Estate Agents Licensing Board and the Motor Vehicle Disputes Tribunal come into this category, without any official veto or consultation with bodies or organisations their decisions may affect. Consultation may be carried out independently by Department employees responsible for locating potential nominees, but it would be preferable if such consultation was made obligatory by way of statute in order to achieve a wider range of possible members in all cases.

4. Appointment by the Minister of Justice after consultation with an outside person or body.

As in No.2 above, this process is of a balanced nature, not restricting the decision to Government alone.

Painstaking analysis fails to reveal any significant reason as to why this is so or, more generally, why particular bodies are appointed in this way to the exclusion of others. A wide variety of bodies fall under this process, dealing with matters from dairy to licensing and legal aid, being bodies of both general and specific natures of similar descriptions to others appointed by way of different processes.

5. The 'hybrids' to the aforementioned appointment processes are justified in being singled out due to the intense speciality and uniqueness of the functions they perform.

eg. As has been mentioned previously, the Representation Commission is responsible for dividing New Zealand into General Electoral Districts. Any alteration of boundaries will be of concern, not only to the general public, but to all Members of Parliament. Consequently, nominees are not merely evaluated by Caucus, but are identified and chosen by the entire House of Representatives

Such a process of appointment would not be desirable in every case due to the time it would consume in the House, but it does add to the general principle this paper advocates : If a particular body or area of society are directly interested in or affected by the adjudication of a particular statutory body, include that particular body or area of society in the appointment process.

What this evaluation has attempted to reveal is the apparent lack of reason, in many cases, for the adoption of a particular appointment process, especially in view of the fact that bodies of a like nature undergo an often entirely different process: the Real Estate Agents Licensing Board and the Motor Vehicle Dealers Licensing Board have very similar functions and objectives; the former is appointed by way of the third process and the latter by way of the fourth. Bodies representing the interests of the public at large fall into entirely different appointment processes ie. The Accident Compensation Appeal Authority and the Human Rights Commission fall into category one, Lay Observers under the Law Practitioners Act fall into category two, members of the Equal Opportunities Tribunal and the Motor Vehicle Disputes Tribunal fall into category three and the Abortion Supervisory Committee can be termed a 'hybrid'. Although their functions differ, their interests are the same, yet there is no consistency in procedure for their appointment.

Would it not be desirable for members of the Equal Opportunities Tribunal to be subject to some scrutiny from specialist social or academic organisations before appointment? Their jurisdiction directly affects the behaviour of our society as a whole, yet nominees are chosen only from resources available to a single Government Department. Would it not be desirable for members of the Small Claims Tribunals and of the Accident Compensation Appeal Authority to be subject to some scrutiny from those with judicial expertise before appointment? Their functions replace the bringing of an action in a normal New Zealand court, yet nominees are chosen only from resources available to a single Government Department. Is it not logical to have some ethnic input into the appointment of members of the Waitangi Tribunal? Its purpose is to represent the interests of the Maori people, yet no representative from that race plays a part in the appointment of its members.

This exercise could consume the rest of the Paper, but these few ideas reflect the need for a more logical consistency in the appointment process. If a body is created to represent a specific need in society, its membership should be subject to some input reflective of that interest.

2. The Commentators.

The Franks Committee⁴⁶ saw it as undesirable that many Chairmen and members of statutory bodies should be appointed at the discretion of one Minister. They suggested :

"The inclusion of other bodies in the appointment process points more towards the independence of statutory bodies."⁴⁷

The Committee went on to suggest that the Lord Chancellor should be exclusively responsible for the removal from office of any Chairman or member. In those cases where the appointment of chairmen and members is executed by the Crown, it was suggested that the formal submission of these suggestions to the Crown be made by the Lord Chancellor.

Similarly, G.S.Orr⁴⁸ advocates that all appointments be made after consultation with the Attorney-General. This is suggested in the

light of the adjudicative functions of most tribunals and the desirability of ensuring that people of a judicial temperament are appointed.

As has been suggested, prior approval of the Attorney-General would be far from a change or improvement in the system as the Minister of Justice and the Attorney-General are often the same person. Such a move would see all appointments being similar to that of Category three (of the Second Table to the First Schedule) and therefore, limited to the resources of a single department in identifying prospective nominees.

This would be true also, to some extent, if the recommendations of the Public and Administrative Law Reform Committee⁴⁹ were adopted. They suggested appointments should be made by the Governor-General on the advice of the Minister concerned and that that Minister should be required to consult the Minister of Justice before tendering his advice. This would see the involvement of two government departments in the cases of those appointments made by departments other than that of Justice. To this extent, a wider range of resources would be available in identifying prospective nominees. However, in the cases of those appointments made by the Minister of Justice and those the Minister of Justice recommends to the Governor-General, the situation would not change so as to involve an additional Department in the process.

An alternative is provided in paragraphs 45-58 of the Franks Committee Report. The Committee saw appointments by the Lord Chancellor as a transparent formality, but were equally concerned that the final decision should not rest with the Minister concerned with the subject matter of the adjudications. In order to enhance the independence of tribunals, both in appearance and in fact, the Committee recommended that members be appointed by the Council on Tribunals. (For discussion on the Council on Tribunals, see part V A.1 of this paper). Although this may seem as an improved procedure, in view of the Council's specialisation and familiarity with statutory bodies, it does not allow the inclusion, in the appointment process, of specialist organisations directly concerned with the statutory body's particular area of jurisdiction: Their specialist knowledge of suitable nominees is likely to be more complete than a body with knowledge of statutory bodies in general.

3. Uniform Provisions in Other Jurisdictions.

Short of having an absolute set of rules for all appointments, England, in its Tribunals and Enquiries Act 1971, has attempted to consolidate certain procedures relating to appointment. Section 5 permits the Council on Tribunals to make recommendations to the appropriate Minister as to possible appointees and the Minister is obliged to have regard to such recommendations.

Arrangements for identifying a prospective Chairman are more formalised by way of s7 of the 1971 Act. The Lord Chancellor's office maintains a list of people suitable and available for appointment to Tribunals and there is a Lord Chancellor's panel for particular Tribunals from which a Chairman may be selected by a Minister. The compilation of lists recommended to the Lord Chancellor is the subject of careful prior investigation by Government departments. eg. the names of potentially suitable Chairmen of local national insurance tribunals, normally barristers or solicitors, are obtained from Registrars of County Courts, Town Clerks and clerks of local Magistrates. Without being a formalised requirement, outside consultation is an integral part of the appointment process, at least as far as Chairmen are concerned.

Mauritius, by way of its Interpretation and General Clauses Act 1974 s28, does not provide an all-embracing appointment process but, in one provision, provides a series of overriding rules relating to appointment processes specified in other statutes. Section 28 provides that, when an enactment confers a power to make an appointment, the person having that power may revoke that appointment, revoke the constitution of or dissolve any board or tribunal and can specify the term for which a person so appointed may hold office. Without going as far as the U.K. statute, it attempts to unite provisions relating to appointment that would otherwise be scattered, in varying forms, throughout those statutes creating statutory bodies.

It can be seen that no jurisdiction will provide an absolute appointment procedure in one statute, but will go so far as to outline certain rules and obligations relating to all appointments.

4. Conclusions.

It is submitted that, in the case of every statutory body, consultation with appropriate outside bodies and organisations should be an integral part of the appointment process. Such a statement is in need of qualification.

This 'consultation' would not involve the final right of decision. This should still remain with the Minister (as a result of cabinet and caucus discussion and evaluation) but, as in category two of Table Two to the First Schedule to this paper, prospective nominees should be identified in conjunction with an outside person or body. 'Outside person or body' should primarily include those having extensive experience in the area of the body's jurisdiction, those being directly affected by the adjudication of the statutory body and those having extensive involvement in or knowledge of the affairs of the particular statutory body.

Embodiment of this requirement could take one of three forms: provision in a single statute, in individual statutes, or by a code of practice. As this paper looks to the possibility of a single, unifying statute, this requirement could be embodied in the following manner. The overriding statutory provision would express the necessity of consultation with outside bodies, to identify suitable nominees, in respect of all statutory bodies and individual statutes, in pursuance of this requirement would set out who the government department is to consult with. As long as the necessity of consultation is enshrined in statute, the method of carrying it out could be left to practice: It may be instigated by written correspondence or, more completely, by way of a meeting between members of department staff and members of the interested outside body where nominees known to each party could be discussed and evaluated. The most suitable could then be forwarded to caucus for discussion with the final decision to be made by the Minister in his recommendation to the Governor-General.

This requirement would not only see a wider range of nominees considered for appointment, but would make for consistency from the point of view of those department officials responsible for administering appointments: All appointments would be handled in the same way.

C. Term of Office

1. General Comments and Observations.

The material upon which this discussion turns is provided in Table 3 of the Schedule to this paper. Provisions as to the term of office for members of statutory bodies fall into five different categories. The most common term is three years - encompassing twenty-eight statutory bodies. If this term is taken as a measuring stick, the other terms must be viewed in order to see why bodies holding such terms differ.

1. Five Year Terms. Included in this category is the Administrative Division of the High Court - Clean Air. It is understandable that members working closely with the judiciary would benefit from a term allowing more time to become acquainted with the formalised procedure. In a similar way, members of the Equal Opportunities Tribunal form a panel from which only two members are selected for a particular appeal. A shorter term may see the skills of these members not being fully utilised. The Licensing Control Commission can be included for the same reasons: It has only three or four members to be appointed "from time to time".⁵⁰
2. Appointed at Pleasure. This category includes bodies of a more minor function and those who only meet infrequently ie. Hotel Investment Account Advisory Committee, Public Service Special Appeal Board.⁵¹ Yet, included in this category, are bodies of a greater importance or having wider reaching and more regular functions, such as Land Valuation Tribunals (Chairmen) and the Co-Operative Dairy Companies Tribunal. Although some of the members of these bodies have been recently turned over, some Land Valuation Tribunal Chairmen have held office for nearly ten years; far out of alignment with the three-year norm.
3. Term of Office not specified. With the exception of the office of Visiting Justice - which is voluntary and unpaid, there can

be no reason for neglecting to give members of a statutory body some indication of their prospective tenure.

4. The Hybrids. The most common variation to the above stated terms of office is a maximum term, that is not to be exceeded - set at the discretion of the appointing Authority. The prime advantage of such provisions is that terms of office can be structured to overlap. This way, the terms of office of a large number of members will not expire at the same time, with the consequence of leaving few experienced members. eg. Present members of the Securities Commission have been appointed for terms varying from three to five years. The result is that their expiry dates arise over a period of two to three years. In many ways, such a provision may be preferable; its only disadvantage being a lack of certainty which may sometimes lead to confusion on the part of the departmental officers responsible for securing new or re-appointments.

Unlike the judiciary, who have unlimited tenure, coupled with highly formalised grounds for removal⁵² the norm with respect to statutory bodies is a predetermined and fixed term of office. The benefits of this are many. Every appointment is reviewable at the end of the period. This allows those responsible for the appointment to assess a member's performance and, if unsuited, to replace him. The ability to remove a member, if considered unsuitable, raises questions as to the independence of statutory bodies. It has been seen that judges are only removable upon a successful resolution to the House of Representatives. Otherwise, it is thought to be an integral part of our constitution that there be no political interference with the judiciary, and vice versa. As will be discussed in part IV of the paper, a statutory body might pursue a function of a governmental nature rather than being primarily concerned with the settlement of disputes. Conflict will then arise between the independence of the statutory body and the Government's interest in seeing its policies properly applied.

A reviewable appointment will always mean that a check can be maintained on the way a statutory body member is using his powers. If the Government is dissatisfied with such use, it has two alternatives. Firstly, it can remove the member at any time under

such circumstances as are provided in the body's removal clause. Such a provision may not catch the situation where a member is not interpreting Government policy to the satisfaction of the executive. In such a case, the member simply may not be put up for re-appointment when his term lapses and a member more sympathetic to a Government's goals may be put up for appointment in his place.

However, members of statutory bodies are removable for reasons other than those canvassed above. It may be that a member is biased, prejudiced, lazy or does not have the time to give his position full attention. Unlike the judiciary, a position on a statutory body is not a full-time job. There are many other pressures that can fall on a member of a statutory body arising out of his normal occupation, which will render his position on the statutory body subservient. For these reasons, it is necessary for membership of quasi-judicial bodies to be reviewable.

Terms held at pleasure, or terms not specified by statute, lose this backstop. A member's term may still be reviewable at any time, but such a review is not mandatory and, consequently, exercised far less frequently. It could be said that statutory bodies whose powers do not extend beyond advice and recommendation could be appointed at pleasure. They will normally not be settling disputes between individuals and making a decision. Their nature is that of aid to the Government, and while members are useful to the Government, they should be able to remain in office. However, a set term will guarantee in the majority of cases, that all members are well suited to the positions they assume, being able to handle, with sufficient skill and expertise, matters that are likely to come before them.

In all, a term should be sought that allows enough time for a member to come to grips with his office and gain sufficient experience and accustomability to be able to fully utilise his position. Such a term, for reasons of certainty, lack of confusion and efficient administration, would ideally be uniform and apply to all statutory bodies. Although some bodies who meet infrequently may be disadvantaged by such a provision, the overall certainty may outweigh the relatively small number of disadvantages. The second point to be noted about statutory provisions as to the term of office of members of statutory bodies is standardised disqualification provisions.

Such a provision takes the following form:

"Any member of the (statutory body) may, at any time, be removed from office, by the (appointing person), for disability, bankruptcy, neglect of duty or misconduct, proved to the satisfaction of the (appointing person)".

Only minor changes are made to wording arrangements due to drafting styles.⁵³ Two points should be noted about this provision. Firstly, removal is left to the discretion of the person responsible for the appointment ie. either the Governor-General or the Minister of Justice. Any consultation that is included in appointing a member is absent in his removal from office. Secondly, the provision applies 'at any time', meaning that a member may be removed before he actually takes up his position and after appointment, whether he is active in proceedings or not.

It is notable that, in relation to a few statutory bodies, this disqualification provision is not present eg. Motor Vehicle Disputes Tribunals and Land Valuation Tribunals. In such cases, s25(f) of the Acts Interpretation Act 1924 can be seen to apply. This subsection provides that words authorising the appointment of any public officer include the power to remove or suspend him. In this case, no grounds for removal are included.

Again, questions are raised as to the independence of statutory bodies. A standard disqualification will allow disqualification for certain stated reasons which, if not strained, would not include dismissal for failing to give effect to Government policy. If this standardised provision is omitted and s25(f) of the Acts Interpretation Act 1924 applies, dismissal could be for any reason.

Finally, with respect to term of office, a safeguard is usually provided by way of a savings clause. Such a provision reads :

"Unless he sooner vacates office or is removed from office under this section, every member shall continue in office until his successor is appointed."

This anticipates the case where a member's term of office has ceased and no new appointment has been made; being especially relevant if a hearing is, or is about to be, in progress. The problem is that

thirteen bodies administered by the Justice Department do not have the benefit of such a section (see Table Three of the First Schedule to this paper), which may lead to wholly unacceptable situations arising. eg. The terms of office of eight members of the panel of the Equal Opportunities Tribunal expired on 29.10.83. A hearing scheduled for December 1983 could not proceed, due to the fact that no savings clause was provided for Tribunal members and the appointment of new members or re-appointments had not been finalised.⁵⁴

Continual and uninterrupted membership is essential for the efficient functioning of any statutory body.

2. The Commentators.

Little comment has been made about current provisions as to term of office. The Franks Committee⁵⁵ rejected any suggestion that tribunal service should become whole-time. In suggesting appointments should not be made 'at pleasure', they submitted no proposals as to an acceptable duration of appointment.

Similarly, Robson⁵⁶ provides only that terms at pleasure could see improper government pressure being applied, while fixed terms, with standardised grounds of removal, provide for certainty.

G.S.Orr⁵⁷ argues for a fixed and perhaps extended term:

"If members are removeable at pleasure, or appointed for a very limited term, they have both less incentive opportunity to obtain the experience and knowledge necessary to ensure sound decisions. Nor, lacking any real tenure, will they have full independence, which is desirable to anyone exercising functions of a judicial character."

Professor Orr suggests, in regarding a fixed term of reasonable length, that three years is more appropriate as a minimum, rather than a maximum, term. An elongated term, he suggests, would ensure greater care is taken in selecting personnel.

Similarly, the Public and Administrative Law Reform Committee⁵⁸ recommended members of administrative tribunals be appointed for a term of not less than three years and that there be standardised grounds for removal.

3. Uniform Provisions in Other Jurisdictions.

No jurisdiction goes so far as to include, in a parent statute, a complete set of rules covering all the contingencies discussed as they relate to tenure.

Section 3(1) of the U.K. Tribunals and Inquiries Act 1971 provides a uniform procedure for resignation from office:

"Persons appointed under s2 of this Act shall hold and vacate office under the terms of the instruments under which they were appointed but may resign by notice in writing to the Lord Chancellor and any such person who ceases to hold office shall be eligible for reappointment."

Section 8(1) of the 1971 Act requires specific concurrence for the removal of members of certain Tribunals :

"No power of a Minister to terminate a person's membership of any Tribunal (specified in the First Schedule of the 1971 Act) shall be exercisable without the consent of -

(a) The Lord Chancellor, the Local President of the Court of Session, and the Lord Chief Justice of Northern Ireland, if the Tribunal sits in all parts of the United Kingdom."

- or different combinations of these offices depending on which part of the United Kingdom the Tribunal sits.

Section 31(3) of the Mauritius Interpretation and General Clauses Act 1974 provides a uniform savings clause :

"Where the chairman or member of a body ... is to be appointed at a specified time or at specified intervals and at the expiry of the specified time or interval, the chairman or member has not been appointed, any chairman or member then in office shall, until a chairman or sufficient number of members to form a quorum have been appointed, be declared to be the duly appointed chairman or member as the case may be."

The advantages of such provisions have already been emphasised. Being quite distinct from the necessity of differing provisions as they relate to qualifications, it is entirely within the limits of

efficiency and expediency to unify provisions relating to tenure of office. Such provisions would ideally include: a standardised term of office (unless otherwise stated in relation to a statutory body that should, for any given reason differ), a disqualification clause, a resignation clause and a savings clause.

4. Conclusions.

It may be suggested that three years is an adequate term of office. In practice, it has been seen that some members, of a considerable age, who are appointed for a longer term of office, are unwilling to give up.⁵⁹ A three year term allows current membership to be more frequently reviewed. This in no way detracts from the time required for a suitable member to gain sufficient experience and familiarity with his office - such a member is likely to be re-appointed for a further three year term. The three year term then, allows for changes in membership when a practising member is found to be 'unsuitable', while allowing successive terms for well-suited members.

Factors making a member 'unsuitable' are provided in the section relating to resignation from office. Any factor, however, may be taken into consideration when evaluating whether or not a member should be re-appointed for a successive term. With a fixed term of office, avenues remain open for government officials to refrain from re-appointing a member who fails to give proper effect to government policy. The question of whether this is a valid ground for removal remains open, raising issues as to the degree of independence that should be attributed to statutory bodies.

D. Remuneration.

The standard statutory provision for remuneration as it relates to the majority of statutory bodies is :

"There shall be paid out of money appropriated by Parliament to the members and deputy members of the (statutory body) remuneration by way of fees, salary or allowances and travelling expenses and allowances in accordance with the Fees and Travelling Allowances Act 1951."

The Fees and Travelling Allowances Act 1951, by way of s3, provides that where, under any enactment, any member of a statutory body is entitled to receive any remuneration by way of salary, fees or otherwise, he shall, subject to any determination of the Higher Salaries Commission, be paid at such a rate as the Minister from time to time approves on that behalf.

Section 4 allows the Minister to approve allowances for members or chairmen when they must be absent from their place of residence to attend a meeting or transact business of the board. This includes reimbursement for travel on public conveyance or by private means.

The rate of expenses set under s45 are provided by way of Regulations made by the Governor-General under s4 of the 1951 Act.

On isolated occasions, remuneration may come from a different source.⁶⁰ and, on equally isolated occasions, members are not entitled to travelling allowances or expenses, or are entitled only to travelling allowances and expenses.⁶¹

The most common form of remuneration to members of statutory bodies is a daily fee. On average, this is approximately \$120 per day for members and \$140 per day for chairmen. There are, however, variations to this:

1. Where the fees are substantially higher or there is a significant difference between the fee paid to members and that paid to chairmen. eg. Motor Vehicle Dealers Licensing Board: members receive \$130 per day while the chairman receives \$244 per day. Referees of Small Claims Tribunals receive \$160 per day.
2. Chairmen, or members, or both, are paid a salary. eg:
 - Abortion Supervisory Committee - Chairman receives a salary of \$8750;
 - Human Rights Commissioners receive a salary of \$48,965.
 - Lay Observers receive retainers varying from \$2,000 to \$3,000.

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IV. THE INDEPENDENCE OF STATUTORY BODIES.

If members of all statutory bodies administered by the Department of Justice sat on one given day, the total amount payable would be \$22,362.

If Chairmen of all statutory bodies administered by the Department of Justice sat on one given day, the total amount payable would be \$2,579.

The combined yearly salaries for bodies required to be paid in this manner is \$639,332.⁶²

Several examples can be seen of government influence upon or subsequent to appointment: In 1946, the then Minister of Lands wrote to the chairman of the Hamilton Land Sales Committee expressing dissatisfaction with the fact that the chairman did not have a true appreciation of the principles the relevant Act sought to apply. To justify such interference, the Minister indicated that legislation must be carried out in the spirit in which it was passed and that he had a duty to ensure the proper application of the legislation. It was thought, by the government of the time, to be acceptable to make this input into the affairs of those statutory bodies that did not affect individual rights or personal freedoms.

In 1967, the then Minister of Justice observed that the Indecent Publications Tribunal was not seeing the will of parliament. He made it clear that, in future appointments to that body, he would appoint people who would give effect to parliament's wishes. There is, then, a conflict between the independence of statutory bodies and the responsibility of the government to see its policy carried through.

Professor Keith⁶³ makes valid comment to this effect. In observing that the powers of many tribunals are only to give advice to the government or to make a decision as well as investigating the case and making recommendations to the Government, he notes the following arguments in favour of this development:

IV. THE INDEPENDENCE OF STATUTORY BODIES.

Reference has been made, in this paper, to the desirability of members of statutory bodies being disinterested with respect to the particular body's area of jurisdiction and to the desirability of statutory bodies being independent of government influence. To this extent, it becomes necessary to briefly address the question of independence.

This discussion focuses on any undue influence that could and has been exerted over statutory bodies by government officials and will view attempts that have been made in New Zealand and overseas to combat such influence.

Several examples can be seen of government influence upon or subsequent to appointment: In 1946, the then Minister of Lands wrote to the chairman of the Hamilton Land Sales Committee expressing dissatisfaction with the fact that the chairman did not have a true appreciation of the principles the relevant Act sought to apply. To justify such interference, the Minister indicated that legislation must be carried out in the spirit in which it was passed and that he had a duty to ensure the proper application of the legislation. It was thought, by the government of the time, to be acceptable to make this input into the affairs of those statutory bodies that did not affect individual rights or personal freedoms.

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"In some areas in which this advisory function operates, the Government previously had completely unfettered executive power. It was not obliged to establish an enquiry, to allow those affected to participate in a hearing, or to receive a public report on its proposed actions."⁶⁴

Government intervention in the affairs of a body with an advisory power may, then, be regarded as inevitable and at least an improvement on the absence of any outside interests in reaching a decision.

With regard to political interference in the appointment of members of statutory bodies, the most obvious inroad through which government patronage could succeed is by way of appointment processes leaving the nomination of members to the discretion of a single government department. (as in categories one and three of Table Two to the First Schedule to this paper).

While arguments have been made in respect of statutory bodies having regard to government policy so as to secure the implementation of government schemes and the smooth functioning of government, there could be no support for allowing political interference upon appointment. Members of statutory bodies are chosen due to personal qualifications and attributes which make them best suited to fill any vacancy; not because of sympathy with government policy.

In New Zealand, provisions have been suggested and overseas, provisions are in force, to prevent any political or personal influence from a government official upon or subsequent to appointment.

The Marginal Lands Board Loan Affair⁶⁵ was a recent New Zealand case where political input into the decision of a statutory body was imputed. There, a member of the marginal Lands Board, Mr C.R. White, resigned his position, publically stating his reasons to be that the Board had granted a loan as a result of political pressure from the then Minister of Lands as a subsequent result of indirect pressure from the then Minister of Agriculture; whose daughter was one of the applicants. The Chairman of the Commission of Inquiry into this case, Mr B.D. Inglis, made clear the extent of political association that would be necessary for political pressure to take effect :

"A final decision had to depend not only on the actions of the Marginal Lands Board, which consisted of high ranking officers of two government departments, but also on the actions of the Board's administrative officers. So, if there was corruption in this case, it would have to be corruption involving a large number of people, nearly all of whom would have much to lose if it were ever disclosed."⁶⁶

Such downplays the event of political pressure, but does not negate the seriousness of such pressure existing. To this extent, the Commission has drawn up a suggested procedure for the handling of representations by relatives or personal friends of a Minister.⁶⁷ The principles reflect two angles :

1. A Minister has an absolute duty to ensure his department treats all members of the public in a completely even-handed way.
2. Relatives and friends of a Minister have an equal right to just and equitable treatment by any department under a Minister's control and should not be disadvantaged as a consequence of such relationship.

A full procedure is then outlined whereby a Minister can have no involvement in decisions relating to such matters. (This suggested procedure is reproduced in the *Third* Schedule to this paper.)

Although these principles and procedures relate to the behaviour of high ranking government officials, they can, or could be adapted to have direct relevance in respect of political pressure in the appointment of members to statutory bodies. If there was a code of ethics and procedure for any political behaviour that was not impartial, whether it be upon appointment or subsequent pressure to members, any danger provided by appointments at the discretion of a single government department would be eliminated.

A more complete set of provisions providing such penalties can be found in the Leadership Code provided by the Constitution of the Independent State of Papua New Guinea. (The relevant parts of the Code are reproduced in *Schedule IV* to this paper). Division Two of Part III of the Constitution applies to :

"All heads or members of boards or other controlling bodies of statutory authorities."

If such a person places himself in a position in which he has or could have a conflict of interests or demeans his office or position so as to allow his public or personal integrity to be called into question, or to diminish respect or confidence in the government of Papua New Guinea⁶⁸ certain procedures are called into play: An Ombudsman Commission views the matter and, if satisfied that misconduct is present, refers the matter to the Public Prosecutor for prosecution before a Tribunal. This independent tribunal has the authority to dismiss a guilty party from any office or position, or to make a recommendation to penalise that person.

The application of these proposals may only be of limited effect. While they would ensure no pressure was brought to bear on statutory bodies of a kind in pursuance of a government official's personal interests or preferences, they may not preclude the ability of a government to interfere with the workings of a statutory body, in certain cases, so as to give proper effect to government policy.

Conclusion.

With respect to the functions they assume, statutory bodies can be likened to the courts. Of the judiciary, it is often said that its independence is one of the cornerstones of our constitution; providing a safeguard against the exercise of arbitrary government power. The question arises, in what ways should this independence equally apply to statutory bodies? A prerequisite to an answer is a note of the fact that statutory bodies can often play a role that no court, in New Zealand, assumes. In tendering advice only, some statutory bodies can be seen as forming part of the government machinery. In such cases, some political input may be tolerable in order for the government to properly facilitate its goals. With regard to those bodies whose functions align with those of a court, this cannot be seen to apply. Individuals have the right to a free and independent hearing.

V. THE VIABILITY OF A UNIFORM SET OF RULES.

With regard to all statutory bodies, any interference with the appointment of members so as to detract from an impartial process of nominations and recommendation cannot be condoned.

To this effect, much benefit could be gained from the adoption of a code of ethics as suggested by the Commission of Inquiry into the Marginal Lands Board Loan Affair and as operated in Papua New Guinea through its Leadership Code.

established in 1971⁶⁹. The 1971 Act initially establishes the Council on Tribunals. The Council is comprised of not less than 10 nor more than 17 members, appointed by the Lord Chancellor and the Secretary of State.⁷⁰ By way of s1, its functions are to keep under review the functions and workings of tribunals and to report from time to time on such matters, to report on any matters referred to the Council regarding Tribunals and to report on administrative procedures as they relate to the holding, by a Minister, of a statutory inquiry.

Aside from the general nature of its functions, its relevance to the membership of statutory bodies is provided by s5: The Council may make general recommendations to the appropriate Minister as to the making of appointments to a wide variety of tribunals and the appropriate Minister is obliged to have regard to such recommendations.

Instead of requiring compulsory consultation with outside organisations for the appointment of members, consultation has been achieved in a more indirect way. The Council, an independent body, very much in touch with the tribunal system, will make the necessary inquiries as to prospective nominees and refer them to the Minister who is responsible for appointment. However, this section is only arbitrary as the Council is not obliged to make recommendations in every case and where recommendations are made, there is only an obligation on the Minister to have regard to them. They are suggestions; not concurrence.

Section 7(1) provides a uniform procedure for the appointment of chairmen to Tribunals: Chairmen are selected by the appropriate

V. THE VIABILITY OF A UNIFORM SET OF RULES.

A. Examples from Other Jurisdictions.

1. U.K. Tribunals and Inquiries Act 1971.

The Tribunals and Inquiries Act was first enacted in 1958, was extended in 1966 and consolidated in 1971⁶⁹ The 1971 Act initially establishes the Council on Tribunals. The Council is comprised of not less than 10 nor more than 17 members, appointed by the Lord Chancellor and the Secretary of State.⁷⁰ By way of s1, it's functions are to keep under review the functions and workings of the tribunals and to report from time to time on such matters, to report on any matters referred to the Council regarding Tribunals and to report on administrative procedures as they relate to the holding, by a Minister, of a statutory inquiry.

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Section 7(1) provides a uniform procedure for the appointment of chairmen to Tribunals: Chairmen are selected by the appropriate

authority⁷¹ from a panel of persons appointed by the Lord Chancellor. (The procedure involved to meet this requirement is set out in Part III B3 of this paper). The initial consultation necessary at the stage of compiling the Lord Chancellor's panel is a more mandatory practice. This initial step of identifying prospective chairmen ensures that, when the term of office of an existing chairman expires, a new appointee can be placed in office without hesitation or delay.⁷²

Section 8 (as outlined in Part III C 3 of this paper) provides for consultation in the removal from office of a member of a tribunal. Section 9 (as outlined in Part III A3 of this paper), requires mandatory legal qualifications in certain cases.

The Tribunals and Inquiries Act's attempt to make provision as to the appointment, qualifications and removal of chairmen and members of certain tribunals can be seen as rather limited. It provides uniformity in the area just outlined, but goes no further. Provision stipulating qualifications, the appointment process in respect of members, tenure, remuneration, deputy members and their related provisions, are contained in separate statutes. Uniformity has not been achieved 'across the board', but some standardised procedure and safeguards have been achieved in relation to selected areas.

2. The Mauritius Interpretation and General Clauses Act 1974.

The Interpretation and General Clauses Act does not attempt, exclusively, to consolidate provisions as they relate to membership of statutory bodies; its application is much wider. It serves a similar purpose to New Zealand's Acts Interpretation Act 1924, in that it consolidates the law relating to the interpretation of legislation, but it extends provisions relating to the exercise of powers and, in doing so, includes powers of appointment and the exercise of powers by the holder of an office. Section 28 outlines powers included in the power to appoint:

"Where an enactment confers a power or imposes a duty to make an appointment, or to constitute or establish any board, tribunal, commission or similar body, the person having the power or duty may also:

- (a) remove, suspend, dismiss or revoke the appointment and re-appoint or re-instate any person appointed in the exercise of the power or duty.
- (b) Similarly revoke, dismiss or amend the constitution of any board, tribunal, commission committee or similar body.
- (c) Specify the period for which a person appointed in the exercise of the power or duty shall hold the appointment."

Although not providing a method through which such dismissals or re-appointments are achieved, these provisions invoke a uniform set of powers which would otherwise be scattered throughout the statutory enactments in varying forms.

Section 29 provides that any office holder, if unable, on any occasion, to exercise his power or perform his duty, may appoint a deputy to exercise his power or perform his duty on his behalf.

Section 31, in providing for the appointment of alternate or deputy members, brings together many provisions dealing with powers of a statutory body, as affected by its membership; provisions which, in New Zealand, are repeated throughout statutes constituting statutory bodies. This section warrants being set out in some detail :

- (1)(a). A person empowered to appoint a member of any tribunal may appoint a qualified member to be an alternate member to attend any meeting where the substantive member is prevented by illness, absence or other cause from exercising his functions. Such alternate or temporary member has the full powers of a substantive member.
- (b). The powers of the body shall not be affected by any vacancy in its membership or any defect afterwards discovered in the appointment or qualification of a person purporting to be a member.
- (c). The body shall be deemed to be properly constituted, notwithstanding that when it is first established, all the required appointments had not been finalised.
- (d). The Chairman shall preside at all meetings of the body and, in his absence, the members shall elect a member from among themselves; such member being able to exercise the functions and have all the powers of the Chairman.

- (2) Alternate or temporary members shall be selected according to the same criteria as were applied in the selection for appointment of the original member.
- (3) Is a savings clause allowing chairmen and members to remain in office until a successor is appointed, notwithstanding their specified period of appointment may have lapsed.

Section 37 provides similar provisions as they relate to Statutory Corporations. In continuation of uniformity throughout statutory bodies, the Mauritius Statutory Bodies (Accounts and Audit) Act 1972, consolidates financial provisions as they apply to statutory bodies. Section 3 allows the Minister to give a board directions as to the performance of it's functions and duties under the Act. This includes the keeping of books of account of all it's financial undertakings, the appointment of an auditor to examine these books, and annually reporting to the Minister on the financial position of the body.

Although fully incorporating many of the general provisions relating to the membership of statutory bodies, these provisions do not unify many of the more specialised provisions detailing method of appointment, qualifications or tenure. In unifying the power, they speak not of method. What they do achieve is the unification of provisions incidental to appointment that provide safeguards if any part of a body's membership is questionable. In being of universal application, these safeguards will not give rise to any problems of varying interpretation or inconsistency, as is often the case when repeated to varying degrees and in different terms throughout every statute conveying a power to appoint.

B. The Adoption of a Uniform Set of Rules in New Zealand.

It has been seen in many areas of membership of statutory bodies, that distinct functions and compositions debar any form of unity of statutory provision: In the case of qualifications, the need for diversity outweighs the need for consistency. However, it is possible to adopt certain uniform and standardised provisions which will not impinge on those needs that are diverse.

What follows is a possible solution to the dilemmas and inconsistencies this paper has raised: A single statute applicable

to the membership of all statutory bodies. The suggested provisions which may be included in such a statute come under two headings. Firstly, those provisions that currently differ in substance throughout statutes constituting statutory bodies and secondly, those provisions that have been standardised to some extent, but are repeated in each statute concerning membership of a statutory body. Such provisions would provide consistency in those areas where consistency outweighs the need for diversity.

1. Areas Presently Covered by Varying Statutory Provisions.

- Qualifications

- (1) Unless otherwise provided, where any chairman or member of a statutory body is required to be legally qualified, he shall be a barrister or solicitor of the High Court of not less than (7) years practice.
- (2) Every Chairman of every appellate body shall be a barrister or solicitor of the High Court of not less than 7 years practice.
- (3) Every member of every statutory body shall have no interest in matters that are likely to come before the body.

- It is the duty of every member of every statutory body to inform the Chairman of the statutory body, prior to the commencement of any hearing, of any interest, personal or public, he may have in that hearing.

- In such a case, the chairman shall appoint a deputy member to take the place of the interested member for the duration of the hearing in question.

- Appointments

- (1) The appointments of every member of every statutory body shall be made by the Governor-General on the

recommendation of the Minister in whose department the Act in question is administered or, if the circumstances permit, on the recommendation of the Minister of any other department more directly concerned with the jurisdiction of the statutory body in question.

(2) Every such appointment shall only be made after consultation with an outside and associated person, body or organisation who:

- has extensive experience in the area of the body's jurisdiction;
- will be directly affected by the adjudication of statutory body;
- has extensive involvement or knowledge of the affairs of the community in which the statutory body will operate.

- Term of Office

(1) Unless otherwise provided, every chairman and member of every statutory body shall hold office for (3) years and shall be eligible for re-appointment.

(2) Every chairman and member of every statutory body may, at any time, be removed from office by the Minister responsible for their appointment with the concurrence of the person, body or organisation having the power to appoint that member, for disability, bankruptcy, neglect of duty, use of office for personal advantage, or other form of misconduct proved to the satisfaction of those responsible for that member's appointment.

(3) Notwithstanding his term of office has expired, every member shall continue in office until his successor is appointed; unless he sooner vacates office or is removed from office.

2. Areas Presently Standardised, But Repeated in Individual Statutes.

These provisions are, for the most part, close to being identical in respect of each body - the only real differences being a difference in their order or minimal variations in wording. These provisions, as set out below, could efficiently be included in a single uniform statute.

- Resignation - Any member of the body may resign his office at any time by notice in writing to the person or persons responsible for his appointment.⁷³
- Filling vacancies. If any member of a statutory body dies, is removed from office or resigns, the vacancy created is to be filled in the manner in which the appointment to the vacant office was originally made. Any person appointed to fill a vacancy in this way shall hold office for the remainder of his predecessor's term of office.⁷⁴
- Vacancies in membership. The powers of the body are not to be affected by any vacancies in its membership.⁷⁵
- Deputies. Where the person responsible for appointing members is satisfied that any member of the body is incapacitated by illness, absence or other sufficient cause from performing their duties, a deputy may be appointed in the same manner as the original member.⁷⁶

Unifying these provisions does not require a change in the present law as it relates to statutory bodies. Its purpose is to unify already standardised provisions so as to eliminate any discrepancies or omissions that may arise in their repeated embodiment in individual statutes.

In following the examples provided by the United Kingdom and Mauritius and expanding on them to cover every possible contingency without impairing those provisions requiring diversity, a more understandable, compact and logical statute would emerge, providing efficiency from both an operational and administrative point of view.

VI. CONCLUSION.

Statutory provisions regulating the membership of statutory bodies differ in a way that is as vast as the functions statutory bodies assume. Each body is a separate entity, pursuing separate functions and, therefore, deserving of provisions ensuring the appointment of members who are best suited to carry out these functions.

Amid the need for diversity, however, can be seen a need for uniformity. In view of the fact that the Department of Justice administers over fifty statutory bodies, there is a need to ensure manageability. In all cases, it should be known the method by which members are appointed, the circumstances under which they are removeable, the duration of their office and which members are required to have specific qualifications.

At present, statutory provisions regulating these matters differ widely in themselves. This may often be attributable to the unique functions for which a statutory body is established to carry out, but there are instances where the nature of the statutory body does not justify an entirely unique set of statutory provisions.

Qualifications of members is an area which must, of necessity, be diverse, yet there should be a set of underlying rules and principles applicable to every statutory body. These would include the desirability of all members to be disinterested with matters that are likely to come before them and the need for legal qualifications on appellate bodies.

An individual statute should provide a particular person, organisation or part of society that need be consulted, upon appointment, but the need for this consultation and the government officials who will actually make the appointment should be clearly outlined in an overriding statute. Little justifiability can be found in stipulating that one body should be appointed by the Governor-General on the recommendation of the Minister of Justice after consultation with a relevant organisation, while another should be appointed by the Minister of Justice alone.

The term for which a member is to hold office should be for a fixed period, so that membership is reviewable. Given the fact that there are over 300 members serving on statutory bodies administered by the Department of Justice, this is one way of keeping tabs on the membership. The activities of a less significant tribunal may otherwise go unnoticed for some years.

An area of statutory body membership that would benefit greatly from uniformity are those matters incidental to appointment ie grounds for removal, appointment of deputies, resignation, the ability of a member to stay in office until a successor is appointed and resignation. Presently, provisions catering for these matters are repeated, sometimes omitted, in varying forms in each statute constituting a statutory body.

As seen in the final section of this Paper, there are provisions which can profitably be subject to uniformity without detracting from those aspects of membership which should remain unique to particular bodies. It has been stated that this uniformity could be achieved by any one or a combination of three possibilities :-

1. By standardising those provisions discussed above and repeating them in individual Statutes.
2. By unifying procedure or standard practice that should be followed by those involved in the appointment process.
3. By promulgating a single statute consolidating provisions as to membership.

It is suggested that the third possibility is the better alternative. The provisions in question would then be more accessible and would apply, regardless of any difference in drafting style or omission that can result from repetitive reinstatement of a provision. It would provide a mandatory set of rules so as to ensure their observance. This is not to say that all discretion would be barred. The purpose of an overriding statute would be to specify the need for such things as the necessity of legal qualifications in certain cases, particular people who should be involved in the appointment process and their inherent powers: the grounds for removal from office and matters incidental to appointment. In relation to this framework, individual statutes would fill the gaps so as to provide such things as particular qualifications and those bodies that should be consulted upon the appointment of given members.

FOOTNOTES

Specificity can be achieved through a set of general and overriding rules.

Instead of transporting members of statutory bodies by road, rail, sea and air, journeys conducted by different drivers on different lines, place them all in a single bus in order that each member knows where he sits in relation to his fellow passengers and where he must get off. The terms of arrangement with the bus company would be such that groups of passengers could leave the bus and pursue their own specific journeys by way of private transport - so long as they can return to the bus if they get lost along the way, or if there be any question as to their proper direction. A bus can only be driven in one way, although by many different people. It's journey is handled by one company which, if concerned about any of its passengers, knows where they all are at any given time.

9. Judicature Act 1968 s4(1) as amended by s3(1) of the Judicature Amendment Act 1974.

10. Comprising of the Chief Justice - by virtue of his office as head of the Judiciary, * * * * * of them being the President. Judicature Act 1968 s4(1).

11. s5 of the Judicature Act 1968 as repealed and substituted by the Judicature Amendment Act 1974.

12. The Report of the Royal Commission on the Courts, 1978. p33.

13. If Parliament is not sitting, the Governor-General in Council may suspend a judge until the end of the next ensuing session.

14. s13 of the Judicature Act as repealed and substituted by s3(1) of the Judicature Amendment Act 1974.

15. If they were employees of the Justice Department for at least ten years, they must also have been employed for not less than 7 years as the clerk or registrar of a District Court and have qualified for admission as barristers and solicitors, or have been admitted as such for not less than 7 years.

16. *Supra*, No.2.

17. However, the consequences of even a small variation in wording or an omission can be significant. See the example in relation to the Equal Opportunities Tribunal in Part III C.1 of this paper.

FOOTNOTES

1. ie - Bodies constituted by an Act administered in the Department or bodies constituted by an Act not administered in the Justice Department where the Justice Department plays a role in the appointment of that body's members or is responsible for servicing that statutory body.
2. Report of the Committee on Administrative Tribunals and Enquiries 1957 Para.40.
3. eg Small Claims Tribunals, Motor Vehicle Disputes Tribunal.
4. eg Abortion Supervisory Committee, Alcoholic Liquor Advisory Council.
5. eg Planning Tribunal, Real Estate Agents Licensing Board, Motor Vehicle Dealer Registration Authority.
6. In their First Report.
7. Constitutional and Administrative Law 3 ed. 1962 at 585.
8. As set out in - Robson. The British Commonwealth. The Development of it's Laws and Constitutions. Vol.4. New Zealand. Stevens and Sons. London (1967) at 161.
9. Judicature Act 1908 s4(1) as ammended by s3(1) of the Judicature Amendment Act 1979.
10. Comprising of the Chief Justice - by virtue of his office as head of the Judiciary, and 5 other Judges - one of them being the President. Judicature Act 1908 s57.
11. s6 of the Judicature Act 1908 as repealed and substituted by the Judicature Amendment Act 1974.
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16. Supra. No.2.
17. However, the consequences of even a small variation in wording or an ommission can be significant. See the example in relation to the Equal Opportunities Tribunal in Part III C.1 of this paper.

18. Motor Vehicle Disputes Tribunal and Representation Commission.
19. Abortion Supervisory Committee and Motor Vehicle Salesmen Registration Authority.
20. The Education Authorities Appeal Authority may be seen as an appeal body in a class of its own. Recourse to it is not the result of an appeal from a decision of a tribunal of the first instance, rather, it provides for appeals from a governmental decision. ie. If a person was an applicant for a vacancy or if a position was not advertised, such an applicant or prospective applicant has a right of appeal to the Appeal Authority in the case of someone else being granted the position - Education Authorities Employment Regulations 1987. Clause 37.
21. The First Report of the Council on Tribunals - for the year ended 31 December 1959. Para.27.
22. Release to Work Committee, Licensing Committees, Land Valuation Tribunals, Planning Tribunals, Visiting Justices, Public Service Appeal Board (whose chairman can also be "an officer, a retired officer, or other person").
23. Prisons Parole Board, Wanganui Computer Centre Policy Committee and the Rules Committee (where the High Court Judge need not necessarily be the chairman: Its members are to comprise, in part, of - the Chief Justice and two other judges of the High Court.)
24. Motor Vehicle Dealers Act 1975. s97(3)(b).
25. The President of the Hotel Association of New Zealand.
26. The Chief Ombudsman and the Race Relations Conciliator are ex-officio Human Rights Commissioners.
27. Secretary to the Treasury, Secretary for Justice, Chairman of the Social Security Commission.
28. Secretary for Justice.
29. Officer of the Department of Justice.
30. Surveyor-General, Government Statistician, Chief Electoral Officer, Director-General of the Post Office, Chairman of the Local Government Commission.
31. Attorney-General, Solicitor-General, Secretary for Justice.
32. However, there is an equal balance between ex-officio and disinterested members: the Chairman of the Local Government Commission is not entitled to vote on any matter before the Commission and is not regarded as a 'member' of the Commission - Proviso to s15(2)(a) Electoral Act. This leaves 3 members and 3 ex-officio members.

33. Administrative Division of the High Court - Clean Air: Clean Air Act 1972. s35. The Secretary for Justice holds a list of people (not being judges of the High Court), two of which are appointed by a judge of the High Court for the purposes of a particular appeal. The names are approved by the Minister of Justice.
34. [1959] NZLR 1167.
35. Report of the Committee on Administrative Tribunals and Enquiries. 1957. (U.K.).
36. Public and Administrative Law Reform Committee of New Zealand. First Report (1968) Appeals from Administrative Tribunals.
37. Wraith and Hutchesson. Administrative Tribunals. Alder and Viking Ltd. London (1973).
38. Ibid. p103.
39. Report on Administrative Justice in New Zealand. Government Printer, Wellington, New Zealand (1964).
40. The British Commonwealth.- The Development of it's Laws and Constitutions. Vol. 4 New Zealand. Stevens and Sons. London. (1967).
41. Which provides provisions as to appointment for certain tribunals.
42. Motor Vehicle Dealers Act 1975 s64.
43. Indecent Publications Tribunal.
44. Milk Appeal Authority.
45. Small Claims Tribunals.
46. Supra. No.35.
47. Supra. No.35. at p12.
48. Supra. No.39.
49. Supra. No.36.
50. Sale of Liquor Act 1962 s4(1).
51. The Public Service Special Appeal Board is constituted under the State Services ACT 1962 - s62, which provides :

"Any appeals by officers under this Act or any other enactments shall be heard either by the Appeal Board established under s61 of this Act, or by any Special Appeal Board constituted in the same manner, except that the chairman and members of any Special Appeal Board shall hold office during the pleasure of the Minister".

The Special Appeal Board is, then, an extension of the Public Service Appeal Board; although assuring the same functions as the Appeal Board, it is required to exercise them less frequently.

52. A High Court Judge can only be removed by address to Parliament, District Court Judges are removeable by the Governor-General.
53. eg. Equal Opportunities Tribunal. The Human Rights Commission Act 1977 splits disqualification into two parts: s49(2) provides that the Chairman or Deputy Chairman of the Tribunal shall be deemed to have vacated office if adjudged bankrupt. s49(3) provides the standard disqualification section.
54. Although s25A of the Acts Interpretation Act is a savings clause of sorts, it only allows a judicial officer to remain in the office after his expiry date for the purpose of giving judgment in any proceedings heard by him before the expiry of his term of office.
55. supra. No.2.
56. Supra. No.40.
57. Supra No.34.
58. Supra No.36.
59. There is no statutory retiring age for members of statutory bodies. Plans are now being instigated for a retiring age for Justices of the Peace. It can only be hoped that similar steps be taken for members of statutory bodies.
60. Real Estate Agents Licensing Board - members paid by the Real Estate Institute. Motor Vehicle Salesmen Registration Board - members paid by the Motor Vehicle Dealers Institute.
61. eg. Licensing Committees, Hotel Association of New Zealand Disciplinary Committee, Real Estate Agents Licensing Board.
62. These figures do not include members who are already salaried and assume their position on a statutory body as part of the functions of their office. eg. District Court Judges, ex-officio members.
63. A Judicial Commission? Come Comments on the Independence of the Judiciary. NZLJ. Aug.1983. p238.
64. Ibid. p241.
65. The Marginal Lands Board Loan Affair. Report of the Commission of Enquiry. Part 1. November 1980.
66. Ibid. p108.
67. In Appendix 4 to Part One of the Report of the Commission.
68. Constitution of the Independent State of Papua New Guinea. s27.
69. It's long title, from the 1958 Act, being (so far as is relevant to this paper):

"An Act to constitute the Council on Tribunals, to make further provisions as to the appointment, qualifications, and removal of chairmen and members... and to make further provision with respect to the appointment and qualifications of General Commissioners of Income Tax ... and for purposes connected with the matters aforesaid".

70. U.K. Tribunals and Inquiries Act 1971. s2(1).
71. 'The appropriate authority' means the Minister who is empowered to select or appoint the chairman or members of the tribunal in question. - ibid s7(5).
72. This section operates in Scotland in the same way, with the panel of prospective chairmen being appointed by the Lord President of the Court of Session.
73. eg. Indecent Publications Act 1976. s3(6), Motor Vehicle Dealers Act 1975 s6A(6). Securities Act 1978 s13(3).
74. eg. Co-operative Dairy Companies Act 1944 s17(4). Indecent Publications Act 1963 s3(7), Motor Vehicle Dealers Act 1975 s6A(8).
75. eg. Indecent Publications Act 1963 s3(10), Motor Vehicle Dealers Act 1975 s6A(1). Securities Act 1978 s13(5).
76. For the best example of this, see s3 of the Real Estate Agents Amendment Act 1982 as it relates to the Real Estate Agents Licensing Board.

Abortion Supervisory Committee	2 members to be registered medical practitioners	
Accident Compensation Appeal Authority	All members to be barrister or solicitor of the High Court of not less than 7 years practice	
Equal Opportunities Tribunal	Chairman - barrister or solicitor of High Court of not less than 7 years practice. Panel of 12 chosen due to personal attributes and relevant knowledge and experience.	Members - Sales Clerk, Trade Union Secretary, Managing Director
Indecent Publications Tribunal	Chairman - barrister or solicitor of High Court of not less than 7 years practice. Two members having special qualifications in literature and education fields.	Chairman - District Court Judge. Members - Barrister and Solicitor, City Librarian, Magazine editor.
Land Valuation Tribunals	Chairman - District Court Judge. One registered valuer.	Other members: 3 barristers and solicitors, architect, managing director, company manager, public servant, 3 cattle farmers.

FIRST SCHEDULETable 1Qualifications of Members - required by Statute

This table sets out, in relation to each statutory body administered by the Justice Department, the individual statutory provisions stipulating the qualifications necessary in respect of each appointment. Where it is relevant, this information is supplemented by an outline of the qualifications of the present members of the statutory body.

Notwithstanding the immense variation in these statutory provisions, it is efficient to divide the table into two parts. The first outlines statutory provisions requiring the members of the statutory body in question to have specific qualifications. The exact qualifications required for each member may be specified or the provision may only require qualifications from within a particular field. The second part of the table outlines the vaguer statutory provisions: Those remaining silent as to qualifications and those requiring the chairman only of the body in question to have specific qualifications.

1. Bodies required to have Specific Qualifications(a) MULTI MEMBER BODIES

STATUTORY BODY	QUALIFICATIONS REQUIRED BY STATUTE	ACTUAL QUALIFICATIONS OF PRESENT MEMBERS
Abortion Supervisory Committee	2 members to be registered medical practitioners	
Accident Compensation Appeal Authority	All members to be barrister or solicitor of the High Court of not less than 7 years practice	
Equal Opportunities Tribunal	Chairman - barrister or solicitor of High Court of not less than 7 years practice. Panel of 12 chosen due to personal attributes and relevant knowledge and experience.	Members - Sales Clerk, Trade Union Secretary, Managing Director
Indecent Publications Tribunal	Chairman - barrister or solicitor of High Court of not less than 7 years practice. Two members having special qualifications in literature and education fields.	Chairman - District Court Judge. Members - Barrister and Solicitor, City Librarian, Magazine editor.
Land Valuation Tribunals	Chairman - District Court Judge. One registered valuer.	Other members: 3 barristers and solicitors, architect, managing director, company manager, public servant, 3 cattle farmers.

STATUTORY BODY	QUALIFICATIONS REQUIRED BY STATUTE	ACTUAL QUALIFICATIONS OF PRESENT MEMBERS
Legal Aid Board	Chairman - barrister and solicitor on his own account. 2 barristers and solicitors. Secretary to Treasury, Secretary for Justice. Chairman Social Security Commission.	
Legal Aid Appeal Authority	7 barristers and solicitors of not less than 7 years standing.	
Milk Appeal Authority	Chairman - barrister and solicitor of High Court of not less than 7 years practice. 2 members with knowledge or experience in the town milk industry.	
Motor Vehicle Dealers Licensing Board	Chairman - barrister and solicitor of High Court. One licensee under s15 Motor Vehicle Dealers Act.	Other members: Company owner, marketing manager President MVDI.
Motor Vehicle Disputes Tribunals.	One member to represent licensees, one to represent the consumer.	Chairmen - all barristers and solicitors. 2AA officials, company director, past motor company chairman, past dealership owner.
Motor Vehicle Salesmen Registration Authority	Chairman - not to be a member of the MVDI. One registered salesman.	Chairman - Motor Company Manager. 1 accountant, 1 mechanic.
New Zealand Law Disciplinary Tribunal	Not less than 5 nor more 12 members of NZ Law Society.	
Public Service Appeal Board and Special Appeal Board	Chairman - District Court Judge. Service members - officers, past or present of the Public Service Association.	Chairman - District Court Judge. Members - all retired public servants.
Real Estate Agents Licensing Board	Chairman - barrister and solicitor of High Court. 1 licensed real estate agent.	Members - 2 real estate agent licensees, 1 member of Real Estate Institute.

STATUTORY BODY	QUALIFICATIONS REQUIRED BY STATUTE	ACTUAL QUALIFICATIONS OF PRESENT MEMBERS
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Release to Work Committee	Chairman - District Court Judge. Officer of the Justice Department.	Other member: Trade Union Secretary.
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Representation Commission	6 ex-officio members. 2 persons, not concerned with administration of the Act or members of the General Assembly; 1 to represent the Government and 1 to represent the opposition. 1 person, as above, to be Chairman.	Chairman - District Court Judge. Director-General of the National Party, barrister and solicitor
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Rules Committee	4 ex-officio members, 2 barristers and solicitors of the High Court.	
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Small Claims Tribunals	Barrister or solicitor of the High Court of not less than 3 years practice or, someone with special knowledge or experience in performing the functions of a Referee.	1 barrister and solicitor, 7 JPs, 1 legal executive, 1 accountant, 2 civil engineers, 1 bank manager, 1 army and 1 navy officer, 1 Pharmacist, 1 hair-dresser, 1 farmer, 1 secretary, 2 housewives, 5 retired.
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Visiting Justices	District Court Judge or a Justice of the Peace	9 District Court 11 Justices of the Peace.
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Waitangi Tribunal	Chief Judge of the Maori Land Court. One Maori.	
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(b) SINGLE MEMBER BODIES

Pharmacy Authority	Barrister or solicitor of High Court of not less than 7 years practice.	
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Registrar of Private Investigators and Security Guards	Barrister or solicitor of High Court of not less than 5 years standing.	
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Taxation Review Authority	Barrister or solicitor of High Court of not less than 7 years practice.	
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2. Bodies Not Requiring Specific Qualifications(a) MULTI MEMBER BODIES

STATUTORY BODY	QUALIFICATIONS REQUIRED BY STATUTE	ACTUAL QUALIFICATIONS OF PRESENT MEMBERS
Alcoholic Liquor Advisory Council	Chairman and 5 members - qualifications not specified. 3 ex-officio members.	
Broadcasting Tribunal	Chairman - barrister or solicitor of High Court of not less than 7 years practice - 3 other members	Members - barrister and solicitor, 2 experienced broadcasters.
Co-Operative Dairy Board	Chairman and 4 members - qualifications not specified	Chairman - Department of Agriculture director, Financial Manager - Department of Agriculture Chairman, New Zealand Dairy Board General Manager, New Zealand Dairy Board, Commercial Affairs officer.
Copyright Tribunal	Chairman - barrister and solicitor of High Court of not less than 7 years practice. 2 other members.	Chairman - Chief Judge Arbitration Court. 1 barrister and solicitor, 1 chartered accountant (the latter 2 are deputy members).
Deportation Review Tribunal	Chairman - barrister and solicitor of the High Court of not less than 5 years standing - 2 other members	Members - Former Assistant Secretary of Labour, Company Manager, real estate agent, 2 retired public servants.
District Law Practitioners Disciplinary Tribunals	2 lay members - not to be law practitioners	Lay members - (throughout country) 5 accountants, 1 teacher, 1 administrator, 1 retired managing director, 1 company chairman, Director-Social Welfare Department, 1 nurse, 4 with extensive community interests.

STATUTORY BODY	QUALIFICATIONS REQUIRED BY STATUTE	ACTUAL QUALIFICATIONS OF PRESENT MEMBERS
Education Authorities Appeal Authority	Chairman - Not to be an employee of the Education Authority or Education Department 6 other members.	Chairman - Past Director General Lands & Survey Dept. 4 Education Board officials, 2 Secondary School Board Association officials, 2 Technical Institute Officials, retired quantity surveyor, Agricultural Training Council Chairman, District Education Board member.
Fire Services Appeal Board	Chairman - barrister or solicitor of the High Court of New Zealand of not less than 7 years standing. 13 other members.	All are members of the Fire Service organisations, on whose nomination they were appointed to office.
Hotel Association of New Zealand Disciplinary Committee	Chairman - barrister or solicitor of the High Court. President H.A.N.Z. 4 members of the H.A.N.Z.	4 H.A.N.Z. officials.
Hotel Investment Account Advisory Committee	Up to 5 members	Chairman - chartered accountant, Members - chartered accountant, Chief Executive H.A.N.Z.
Human Rights Commission	Chief Human Rights Commissioner and 3 Human Rights Commissioners - not specified. Chief Ombudsman and Race Relations Conciliator - ex officio Human Rights Commissioners.	Chief Human Rights Commissioner: High Court Judge. Human Rights Commissioners: Professor of Political Science, barrister and solicitor, Girls' High School Principal.
Lay Observers - for District Law Societies	One or more for each District Law Society.	Former Cabinet Minister, four M.P.s, Public Servant official, Former Town Clerk, retired College Principal.
Licensing Control Commission	Either 3 or 4 members 1 to be chairman	Chairman. District Court Judge. Insurance Company Branch Manager.

STATUTORY BODY	QUALIFICATIONS REQUIRED BY STATUTE	ACTUAL QUALIFICATIONS OF PRESENT MEMBERS
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Licensing Committees	Chairman. District Court Judge. 4 other members (elected by local authorities)	
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Planning Tribunals	Chairman District Court Judge. 3 other members	3 civil engineers, 2 former town clerks, 1 former county clerk, 1 Rear Admiral, 2 Board Members, 1 former city valuer, 1 surveyor.
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Prison Parole Board	Chairman - High Court Judge, Not less than 1 or more than 5 other members.	Chairman: High Court Judge. Members: District Court Judge, 1 Doctor, 2 Maori Affairs Department Officials, 1 former Teachers' College Lecturer.
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(b) SINGLE MEMBER BODIES

Broadcasting Complaints Committee	Not specified	District Court Judge
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Race Relations Conciliator	Not specified	Former College Principal.
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Table 2.The Appointment Process.

Of the statutes specifying appointment processes for statutory bodies administered by the Department of Justice, 5 different processes come into play, with 5 exceptions that cannot fit any of the 5 over-riding categories. (This does not include those bodies for which the Department provides services only; not playing a part in the appointment process). To present this material, the process of appointment will be described and followed by a list of all statutory bodies to which that process is applied.

1. Statutory Requirement - Appointed by the Governor-General on the recommendation of the Minister of Justice.

Statutory Bodies Following this Procedure.

- Accident Compensation Appeal Authority.
- Administrative Division of the High Court - Land Valuation Work.
- Deportation Review Tribunal.
- Equal Opportunities Tribunal (appointment of Chairman only).
- Indecent Publications Tribunal.
- Human Rights Commission.
- Legal Aid Appeal Authority.
- Licensing Control Commission.
- Licensing Committees.
- Prisons Parole Board.
- Race Relations Conciliator.
- Securities Commission
- Small Claims Tribunals.
- Taxation Review Authority.
- Waitangi Tribunal.

2. Statutory Requirement - Appointed by the Governor-General on the recommendation of the Minister of Justice after consultation with a person or body outside the Department of Justice.

Statutory Bodies Following this Procedure

- District Law Practitioners Disciplinary Tribunal - Consultation with the appropriate District Law Society.
- New Zealand Law Practitioners Disciplinary Tribunal - Consultation with the New Zealand Law Society.
- Planning Tribunals - The Chairman and one member to be appointed after consultation of the Minister of Works, one member is to be appointed after consultation with the Minister of Works and the New Zealand Counties Association Incorporated and the third member is to be appointed after consultation with the Minister of Works and the Executive of the Municipal Association of New Zealand.
- Lay Observers - consultation with the appropriate District Law Society.
- Land Valuation Tribunals - consultation with the District Court Judge who is Chairman of the particular Land Valuation Tribunal and with the Registrar of the District Court from the area in which the Tribunal exercises jurisdiction.

3. Statutory Requirement. - Appointed by the Minister of Justice.

Statutory Bodies Following this Procedure.

- Equal Opportunities Tribunal. (appointment of members of the panel only: For the purposes of a particular Appeal, two members of the panel of twelve are appointed by the Chairman of the Tribunal).
- Hotel Investment Account Advisory Committee.
- Motor Vehicle Disputes Tribunal.
- Real Estate Agents Licensing Board.
- Registrar of Private Investigators and Security Guards.
- Release to Work Committee.

4. Statutory Requirement - Appointed by the Minister of Justice after consultation with a person or body outside the Department of Justice.

Statutory Bodies Following this Procedure.

- Co-Operative Dairy Companies Tribunal - The Chairman and one member to be appointed after consultation with the Minister of Agriculture. Two members are to be appointed after consultation with the New Zealand Dairy Board.
- Motor Vehicle Dealers Licensing Board - consultation with the Council of the Motor Vehicle Dealers Institute.
- Real Estate Agents Licensing Board - consultation with the Council of the Real Estate Institute.
- Visiting Justices - consultation with the Registrar of the District Court of the area in which the Visiting Justice has jurisdiction.
- Hotel Association of New Zealand Disciplinary Committee - consultation with the Chief Executive of the Hotel Association of New Zealand.
- Legal Aid Board - consultation with the Council of the New Zealand Law Society.

5. Statutory Requirement - Minister of Justice to provide consultation when the appointment is handled by another Government Department.

Statutory Bodies Following this Procedure.

- Milk Appeal Authority - Department of Agriculture are responsible for appointments.
- Social Security Appeal Authority and Social Security Special Appeal Authority - Department of Social Welfare responsible for appointments.

Table 3.

Statutory Bodies Not Fitting any of the above Procedures.

1. Abortion Supervisory Committee - Appointed by the Governor-General on the recommendation of the House of Representatives.
2. Administrative Division of the High Court - Clean Air - The Secretary for Justice, after consultation with the Minister of Health, compiles and holds a list of people suitable for the position. The names are approved by the Minister of Justice. For the purposes of a particular appeal, two members from the list are appointed by a Judge of the High Court.
3. Copyright Tribunal - appointed by the Governor-General in Council on the recommendation of the Minister of Justice.
4. Representation Commission.
 - Appointment of members: Appointed by the Governor-General on the nomination of the House of Representatives. In practice, nominations for one member are sought from the Prime Minister and for the other, from the Leader of the Opposition. These nominees are then submitted to the House.
 - Appointment of Chairman: Appointed by the Governor-General, by Order in Council, on the nomination of the official and unofficial members of the Commission. The Surveyor-General represents these members.
5. Rules Committee - Nominated by the Council of the New Zealand Law Society and approved by the Chief Justice.

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Legal Aid Board.*

Motor Vehicle Dealers Licensing Board.

Motor Vehicle Salesmen Registration Board.*

Overtime and Shiftwork Recognition Authority.

Milk Appeal Authority.

Planning Tribunals.

Prisons Parole Board.

Race Relations Conciliator.

Public Service Appeal Board.

Real Estate Agents Licensing Board.

Registrar of Private Investigators and Security Guards.*

Release to Work Committee.*

Legal Aid Board.*

Motor Vehicle Disputes Tribunal.

Pharmacy Authority - pleasure of the Minister of Health.

Public Service Special Appeal Board, - pleasure of Minister of State Services

NOT SPECIFIED (therefore also at pleasure)

Licensing Committees.

Motor Vehicle Disputes Tribunals.

Visiting Justices.

Table 3.

Term of Office

<u>THREE YEARS</u>	<u>FIVE YEARS</u>
Abortion Supervisory Committee*	Administrative Division of the High Court - Clean Air*
Accident Compensation Appeal Authority*	Administrative Division of the High Court - Land Valuation*
Alcoholic Liquor Advisory Council	Copyright Tribunal.
Broadcasting Tribunal	Equal Opportunities Tribunal.*
Broadcasting Complaints Committee.	Indecent Publications Tribunal
Deportation Review Tribunal.	Legal Aid Appeal Authority.*
District Law Practitioners Disciplinary Tribunal.	Licensing Control Commission.
New Zealand Law Practitioners Disciplinary Tribunal	
	<u>AT PLEASURE</u>
Education Authorities Appeal Authority.	Co-Operative Dairy Companies Tribunal - pleasure of Minister of Justice.
Fire Services Appeal Board.	Hotel Investment Account Advisory Committee - pleasure of Minister of Justice.
Lay Observers.	Hotel Association of NZ Disciplinary Committee - pleasure of Minister of Justice.
Legal Aid Board.*	Pharmacy Authority - pleasure of the Minister of Health.
Motor Vehicle Dealers Licensing Board.	Public Service Special Appeal Board. - pleasure of Minister of State Services
Motor Vehicle Salesmen Registration Board.*	
Overtime and Shiftwork Recognition Authority.	<u>NOT SPECIFIED</u> (therefore also at pleasure)
Milk Appeal Authority.	Licensing Committees.
Planning Tribunals.	Motor Vehicle Disputes Tribunals.
Prisons Parole Board.	Visiting Justices.
Race Relations Conciliator.	
Public Service Appeal Board.	
Real Estate Agents Licensing Board.	
Registrar of Private Investigators and Security Guards.*	
Release to Work Committee.*	

THREE YEARS

Rules Committee.*

Small Claims Tribunals.*

Social Security Appeal Authority.

Tertiary Assistance Grants Appeal Authority.

Waitangi Tribunal.

HYBRIDS

- Human Rights Commission - Such a term as the Governor-General on the recommendation of the Minister of Justice shall specify - not exceeding five years.
- Land Valuation Tribunals - (Members Only) 6 years.
- Representation Commission - to cease membership on the date of the first census of population after the date of their appointment.
- Securities Commission - Such a term as the Governor-General shall specify - not exceeding 5 years.
- Taxation Review Authority - Not exceeding 7 years - as the Governor-General thinks fit.

* No savings clause provided - Members may not continue in office after the date of the expiration of their term of office until such a time as a successor is appointed.

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SECOND SCHEDULE

Alphabetical list of statutory bodies administered by the Justice Department with statute and section references.

Abortion Supervisory Committee - Contraception, Sterilisation and Abortion Act 1977 s.10.

Accident Compensation Appeal Authority - Accident Compensation Act 1982 s.103.

Alcoholic Liquor Advisory Council - Alcoholic Liquor Advisory Council Act 1976 s.3.

Broadcasting Complaints Committee - Broadcasting Amendment Act 1982 - establishing a s.95F to principal act.

Co-operative Dairy Companies Tribunal - Co-operative Dairy Companies Act 1949 s.17.

Commerce Commission - Commerce Act 1975 s.3.

Copyright Tribunal - Copyright Act 1962 s.30.

Deportation Review Tribunal - Immigration Act 1954 s.22B.

District Disciplinary Tribunals - Law Practitioners Act 1982 s.103.

District Legal Aid Committees - Legal Aid Act 1969.

Education Authorities Appeal Authority - Education Authorities Employment Regulations 1982 Clause 32.

Equal Opportunities Tribunal - Human Rights Commission Act 1977 s.47.

Fire Service Appeal Board - Fire Service Act 1975 s.80.

Hotel Association of New Zealand Disciplinary Committee - Hotel Association of New Zealand Act 1964 s.4.

Hotel Investment Account Advisory Committee - Sale of Liquor Act 1962 s.20(3).

Human Rights Commission - Human Rights Commission Act 1977 s.4.

Indecent Publications Tribunal - Indecent Publications Act 1963 s.3.

Land Valuation Tribunal - Land Valuation Proceedings Act 1945 s.19.

Lay Observers - Law Practitioners Act 1982 s.96.

Legal Aid Board - Legal Aid Act 1964 s.4.

Legal Aid Appeal Authority - Legal Aid Act 1969 s.6.

Licensing Control Commission - Sale of Liquor Act 1962 s.4.

Licensing Committees - Sale of Liquor Act 1962 s.32.

Motor Vehicle Dealers Licensing Board - Motor Vehicle Dealers Act 1975 s.6A.

Motor Vehicle Disputes Tribunal - Motor Vehicle Dealers Act 1975 s.97.

Motor Vehicle Dealers Disciplinary Committee - Motor Vehicle Dealers Act 1975 s.119.

Motor Vehicle Salesmen Registration Authority - Motor Vehicle Dealers Act 1975 s.63.

Milk Appeal Authority - Milk Amendment Act 1978 - establishing s.57A of principal Act.

New Zealand Law Practitioners Disciplinary Tribunal - Law Practitioners Act 1982 s.108.

Pharmacy Authority - Pharmacy Act 1970 s.33.

Planning Tribunal - Town and Country Planning Act 1977 s.129

Plant Varieties Appeal Authority - Plant Varieties Act 1973 s.25

Prisons Parole Board - Criminal Justice Act 1954 s.31.

Public Service Appeal Board - State Services Act 1962 s.61.

Public Service Special Appeal Board - State Services Act 1962 s.62.

Race Relations Conciliator - Race Relations Act 1971 s.10.

Real Estate Agents Licensing Board - Real Estate Agents Act 1976 s.4.

Referees of Small Claims Tribunals - Small Claims Tribunals Act 1976 s.7.

Registrar of Private Investigators and Security Guards - Private Investigators and Security Guards Act 1974 s.5.

Release to Work Committee - Penal Institutes Act 1954 s.21B.

Representatives Commission - Electoral Act 1956 s.15.

Rules Committee - Judiciary Amendment Act 1930 s.2.

Securities Commission - Securities Act 1978 s.9.

Social Security Appeal Authority - Social Security Act 1964 s.12A.

Social security Special Appeal Authority - Social Security Act 1964 s.12D.

Statutory Advisory Committee - Public Service Investment Society Management (No. 2) Act 1979 s.21.

Taxation Review Authority - Inland Revenue Department Act 1974 s.23.

Tertiary Assistance Grants Appeal Authority - Education Act 1964 s.193AA.

Visiting Justices - Penal Institutions Act 1954 s.10.

Waitangi Tribunal - Treaty of Waitangi Act 1975 s.4.

Wanganui Computer Centre Policy Committee - Wanganui Computer Centre Act 1976 s.19.

Wanganui Computer Centre Management Committee - Wanganui Computer Centre Act 1976 s.23.

THIRD SCHEDULE

Extract from the Report of the Commission of Inquiry into the Marginal Lands Board Loan Affair.

Appendix 4

SUGGESTED PROCEDURE FOR THE HANDLING OF REPRESENTATIONS BY RELATIVES OR PERSONAL FRIENDS OF A MINISTER

Principles

This suggested procedure recognises the following fundamental principles:

- (a) That a Minister has an absolute duty to ensure that the department for which he is responsible is efficient and treats all members of the public in a completely evenhanded way.
- (b) That a Minister has a responsibility to accept complaints of bias or unfair departmental treatment from any member of the public and to see that injustices are righted.
- (c) That a Minister has an obvious duty to ensure that no person by virtue of a personal relationship with him enjoys any special advantage of any kind in dealings with a department under his control.
- (d) That relatives and friends of a Minister, as members of the public, have an equal right to just and equitable treatment by any department under a Minister's control, and that such persons should not be disadvantaged in any way as a consequence of such relationships.

The procedure is set out below in outline only; it is extended simply as indicative of the kind of additional guideline which may be capable of meeting the foregoing principles without risking loss of public confidence. Clearly the field is one of sensitivity which will always call for sound ethical judgments, but the Commission is of the view that no Minister should be debarred from receiving complaints or representations from a relative or friend involving a department under his control, in the same manner as he would accept such approaches from any other member of the public. In other words, he should not be debarred through personal relationships from discharging his absolute duty.

The Procedure

On receiving a complaint or personal representation (from a relative or friend) and having decided that it requires follow-up action, the Minister brings together the permanent head concerned (or such other departmental officer as may be appropriate), his private secretary, and a shorthand reporter.

The Minister then informs those present of the terms of the complaint or representation, and the nature of his relationship with the individual(s) concerned. He directs the permanent head to investigate the matter thoroughly and fairly and to take such action as he decides is appropriate and proper in terms of legislation, policy, and normal procedures, entirely on the merits of the case. The Minister specifically informs the permanent head that as Minister, he himself will have no further personal involvement of any kind in decisions relating to the matter. Should these directions to the permanent head call for any specific ministerial delegation, financial or otherwise, the Minister makes such delegation to cover the case at this time.

The shorthand reporter records the meeting verbatim. The record is signed by the Minister, private secretary, and the permanent head as a true record. The Minister retains the original, provides one copy for retention by the permanent head and sends another copy, without delay, to the Speaker of the House.

The Speaker brings each case as it arises, to the attention of leaders of the parties in the House, and makes appropriate arrangements to ensure the accessibility of the record of such cases to all members of the House.

On completion of departmental action, the permanent head finally reports to the Minister on the action taken and the outcome.

FOURTH SCHEDULE

Extract from Part III of the Constitution of the Independent State of Papua New Guinea - Leadership Code.

Division 2.—Leadership Code.

26. Application of Division 2.

- (1) The provisions of this Division apply to and in relation to—
- (a) the Prime Minister, the Deputy Prime Minister and the other Ministers; and
 - (b) the Leader and Deputy Leader of the Opposition; and
 - (c) all other members of the Parliament; and
 - (d) heads of provincial government bodies; and
 - (e) all constitutional office-holders within the meaning of Section 221 (*definitions*); and
 - (f) all heads of Departments of the National Public Service; and
 - (g) all heads of or members of the boards or other controlling bodies of statutory authorities; and
 - (h) the Commissioner of Police; and
 - (i) the Commander of the Defence Force; and
 - (j) all ambassadors and other senior diplomatic and consular officials prescribed by an Organic Law or an Act of the Parliament; and
 - (k) the public trustee; and
 - (l) the personal staff of the Governor-General, the Ministers and the Leader and Deputy Leader of the Opposition; and
 - (m) executive officers of registered political parties as defined by Section 128 ("*registered political party*"); and
 - (n) persons holding such public offices as are declared under Subsection (3) to be offices to and in relation to which this Division applies.

(2) This Division applies to and in relation to a person referred to in Subsection (1) not only in the office referred to in that subsection but also in any other office or position that he holds under any law by virtue of that office.

(3) An Organic Law or an Act of the Parliament may declare any public office (including an office in a provincial government body or a local government body) to be an office to and in relation to which this Division applies.

(4) In the event of doubt as to whether a person is a person to whom this Division applies, the decision of the Ombudsman Commission is final.

27. Responsibilities of office.

(1) A person to whom this Division applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not—

- (a) to place himself in a position in which he has or could have a conflict of interests or might be compromised when discharging his public or official duties; or
- (b) to demean his office or position; or
- (c) to allow his public or official integrity, or his personal integrity, to be called into question; or
- (d) to endanger or diminish respect for and confidence in the integrity of government in Papua New Guinea.

(2) In particular, a person to whom this Division applies shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by Subsection (1).

(3) It is the further duty of a person to whom this Division applies—

- (a) to ensure, as far as is within his lawful power, that his spouse and children and any other persons for whom he is responsible (whether morally, legally or by usage), including nominees, trustees and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to his complying with his duties under this section; and

Constitution.

- (b) if necessary, to publicly disassociate himself from any activity or enterprise of any of his associates, or of a person referred to in paragraph (a), that might be expected to give rise to such a doubt.

(4) The Ombudsman Commission or other authority prescribed for the purpose under Section 28 (*further provisions*) may, subject to this Division and to any Organic Law made for the purposes of this Division, give directions, either generally or in a particular case, to ensure the attainment of the objects of this section.

(5) A person to whom this Division applies who—

- (a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or
- (b) fails to comply with a direction under Subsection (4) or otherwise fails to carry out the obligations imposed by Subsections (1), (2) and (3),

is guilty of misconduct in office.

28. Further provisions.

(1) For the purposes of this Division, an Organic Law—

- (a) may give to the Ombudsman Commission or some other authority any powers that are necessary or convenient for attaining the objects of this Division and of the Organic Law; and
- (b) shall make provision for the disclosure to the Ombudsman Commission or some other authority of the personal and business incomes and financial affairs of persons to whom this Division applies, and of their families and associates, and in particular of interests in contracts with governmental bodies and of directorships and similar offices held by them (including powers to nominate directors, trustees or agents, or similar officers); and
- (c) shall empower the Ombudsman Commission or some other authority to require a person to whom this Division applies to dispose of, or place under the control of the public trustee, any assets or income where this seems to be desirable for attaining the objects of this Division; and
- (d) may prescribe specific acts that constitute misconduct in office; and
- (e) may create offences (including offences by persons to whom this Division applies and offences by other persons); and
- (f) shall provide for the investigation by the Ombudsman Commission or some other authority of cases of alleged or suspected misconduct in office, and confer on the Commission or authority any powers that are necessary or convenient for that purpose; and
- (g) shall establish independent tribunals that—
 - (i) shall investigate and determine any cases of alleged or suspected misconduct in office referred to them in accordance with the Organic Law; and
 - (ii) are required to recommend to the appropriate authority to dismiss from any office or position or, within limits fixed by law, otherwise make a recommendation to penalize a person found guilty of misconduct in office, unless they find both a lack of serious culpability and that public policy and the public good does not require dismissal; and
- (h) may make any other provision that is necessary or convenient for attaining the objects of this Division.

29. Prosecution of misconduct in office.

(1) Where the Ombudsman Commission or other authority referred to in Section 28(1)(f) (*further provisions*) is satisfied that there is a prima facie case that a person has been guilty of misconduct in office, it shall refer the matter to the Public Prosecutor for prosecution before a tribunal established under Section 28(1)(g) (*further provisions*).

(2) If the Public Prosecutor fails to prosecute the matter within a reasonable period, the Commission may prosecute it in his stead.

FIFTH SCHEDULE

Administrative Division of the High Court - Clean Air - Additional Members' qualifications

Mr G W Dyer	-	Technical Manager B P Oil Co. Ltd
Professor R L Earle	-	B E (Chem) B.Sc., Ph.D. - Biochology Department - Massey University
Dr F de Hamel	-	M.D., M.R.C.S., L.R.C.P. C.P.H., D.I.H.
Professor S Hickling	-	M.D., D.P.H.
Mr L M Larson	-	B.Sc., A.R.E.I.N.Z., F.R.A.E.S., M.I.D., Legion of Merit (U.S.)
Mr I R C McDonald	-	M.Sc, F.N.Z.I.C., A.R.I.C.
Mr C A Marlin	-	H.Sc., M.N.Z.I.C., I. Chem. E, N.Z.I.E., M.Inst.F
Mr P N Outwaite	-	Mine Surveyors Cert (First Class), Mine Managers Cert.
Mr W E Russell	-	Chemical Engineer; Group Technical Manager - NZ Farmers Fertiliser Co. Ltd.
Mr B W Spooner	-	B.E., F.N.Z.I.E., F.I.C.E.
Mr D M Waller	-	M.Sc.

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