

PHARMAC Board
Governance Manual
2011



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1. About this Document

1.1 Scope of the Board Manual

The Crown has devolved responsibility for decisions about which pharmaceuticals should be publicly funded to PHARMAC.

PHARMAC was initially set up in 1993 as a joint venture company owned by the (then in existence) four Regional Health Authorities. In 2001 PHARMAC became a stand-alone Crown Entity established under s46 of the New Zealand Public Health and Disability Act 2000 (**NZPHD Act**) with an independent board.

Crown agents like PHARMAC must give effect to Government policy when directed by the responsible Minister (for PHARMAC this is the Minister of Health). This is an 'arm's length' relationship and is an important feature of our system. It means that, while the Minister of Health remains accountable for the public resources allocated, he/she depends on PHARMAC to ensure that it delivers value for money when implementing its statutory objectives.

A key to this arrangement working well is that the PHARMAC Board provides effective governance. Therefore, the purpose of this manual is to provide an overview of the PHARMAC Board's statutory duties and the governance principles for the Board's performance and conduct. This Governance Manual aims to provide Board Members with the relevant knowledge, information and reference material to be part of a skilled and committed Board.

1.2 Revision History

Version	Updated by	Reason for Issue	Date
0.1	Lisa Williams, Legal Counsel	draft for Board consideration	31 August 2009
0.2	Lisa Williams, Legal Counsel	draft for Board consideration	2 November 2009
0.3	Lisa Williams, Legal Counsel	final draft for Board consideration	9 March 2010
1.0	Lisa Williams, Legal Counsel	Final Manual approved by Board	26 March 2010
1.1	Lisa Williams, Legal Counsel	Correction of mistake in membership of Forecast Committee	30 June 2010
1.2	Graham Beever, General Counsel	Amendments by Board to Schedules 9 and 11	26 November 2010
1.3	Graham Beever, General Counsel	Addition of Schedule 12	28 January 2011

2. Introduction to PHARMAC

2.1 PHARMAC's place in the public health system

PHARMAC is part of the overall New Zealand medicines system. It interacts with other parts of the system, such as Medsafe and District Health Boards (DHBs), to provide New Zealanders with affordable access to pharmaceuticals, and to promote the optimal use of pharmaceuticals.

Its central role is to manage the pharmaceutical budget on behalf of DHBs, and to decide which medicines are subsidised in the community by public funding. However, DHBs continue to hold the funding for pharmaceuticals.

PHARMAC works out which pharmaceuticals provide the best health results and the best value, and then works with pharmaceutical companies to make them available to New Zealanders. In this way, PHARMAC is different from other Crown entities in that it has a strong commercial focus (negotiating contracts with pharmaceutical companies) as well as being a key Government agency.

Furthermore, the existence of a fixed budget sets PHARMAC apart from comparable international Government medicine funding agencies.

2.2 The Structure of PHARMAC

With a staff of approximately 60 full and part-time employees, PHARMAC is a relatively small and focused organisation. Work at PHARMAC includes assessing clinical information and recommendations, undertaking economic analysis, developing and implementing public awareness campaigns, and negotiating with pharmaceutical companies. A range of skills and expertise is required to enable this work to be done effectively.

Final decisions on all activities in pursuance of PHARMAC's statutory objective or functions are made by the PHARMAC Board (or the Chief Executive acting under delegated authority).

PHARMAC is organised into six teams and, with the oversight of the Chief Executive, the managers of these teams make up the Senior Management Team. An organisational chart of PHARMAC is available on PHARMAC's website at:

www.pharmac.govt.nz/patients/AboutPHARMAC/people.

2.3 Contact Details

A schedule of Board and Committee Members, PHARMAC Management Team members, the PHARMAC Communications Manager, the PHARMAC Legal Counsel and all of their contact details, is provided separately to Board Members. This is updated regularly, and Board Members are requested to notify any change in their contact details to the Chief Executive's Executive Assistant.

Key contact details for PHARMAC are:

- PHARMAC Reception: 04 460 4990
- PHARMAC Hotline: 0800 660 050
- Facsimile: 04 460 44995
- Website :www.pharmac.govt.nz
- Postal Address: PO Box 10-254, Wellington, 6011, New Zealand

3. Objective and Functions

3.1 PHARMAC's Objective

The objective of PHARMAC is:

“to secure for eligible people in need of pharmaceuticals the best health outcomes that are reasonably achievable from pharmaceutical treatment and from within the amount of funding provided”.

Section 47 NZPHD Act

3.2 Functions of PHARMAC

3.2.1 Pharmaceutical Schedule Management (s48(a) NZPHD Act)

“to maintain and manage a Pharmaceutical Schedule that applies consistently throughout New Zealand, including determining eligibility and criteria for the provision of subsidies”.

Community Pharmaceutical Budget

Medicines are funded from the Community Pharmaceutical Budget. This budget is set by the Minister of Health taking into account recommendations from DHBs and PHARMAC.

PHARMAC manages the community pharmaceutical budget, but the money is held by DHBs. PHARMAC's central role is to get the best health outcomes from the available funding for pharmaceuticals, by ensuring the value of DHB spending on pharmaceuticals.

To achieve this, PHARMAC must consider a range of factors including Government priorities for health funding, the availability and suitability of existing medicines, and the clinical risks and benefits of medicines and their cost effectiveness.

PHARMAC undertakes economic and clinical assessment of new pharmaceuticals, including seeking advice from clinical committees, to determine whether new pharmaceuticals should be subsidised. PHARMAC's assessment also determines the access criteria, if any, that apply for accessing subsidised medicines. In general, PHARMAC's approach is:

- funding pharmaceuticals that are assessed, against PHARMAC's Decision Criteria, as providing benefits to improve health outcomes;
- using competitive processes, such as reference pricing and tendering, to obtain better value from existing medicines so that new investments can be funded;
- monitoring and managing supplier contracts to ensure maximum benefit from supply agreements;
- using targeting mechanisms such as Special Authority or prescribing guidelines to ensure medicines are used by patients who most need them; and
- considering what interventions, if any, would be beneficial to promote the optimal use of medicines.

3.2.2 Manage Exceptional Circumstances (s48(b) NZPHD Act)

“to manage incidental matters arising out of [the Schedule Management process], including in exceptional circumstances providing for subsidies for the supply of pharmaceuticals not on the Pharmaceutical Schedule.”

Exceptional Circumstances (EC) is a mechanism to fund medicines that are not otherwise funded in the community or in hospitals. Typically, about 2000 applications for exceptional circumstances funding are received by PHARMAC each year across three schemes:

- *Community EC*, which is a mechanism for patients with rare or unusual clinical situations. PHARMAC manages panels of clinicians who make recommendations (or decisions, depending on the circumstances) on EC funding. Funding for Community EC is drawn from the Community Pharmaceutical Budget;
- *Hospital EC*, which is a mechanism that enables DHB hospitals to dispense medicines to patients that enable them to be discharged from hospital and return to the community. PHARMAC assesses applications on a case-by-case basis. The sole criterion is cost-effectiveness; and
- *Cancer EC*, which allows DHBs to fund, on application to PHARMAC and where certain criteria are met, medicines that are not funded through the cancer treatments “basket”.

The policies and criteria set out in the EC Schemes arise out of and are designed to help PHARMAC achieve and perform PHARMAC’s objective and functions under the NZPHD Act. However, PHARMAC may, having regard to its public law obligations, depart from the strict application of those policies and criteria in certain exceptional cases where it considers necessary or appropriate in the proper exercise of its statutory discretion and to give effect to its objective and functions, particularly with respect to:

- Determining eligibility and criteria for the provision of subsidies; and
- In exceptional circumstances providing subsidies for the supply of pharmaceuticals not on the Pharmaceutical Schedule.

3.2.3 Research (s48(c) NZPHD Act)

“to engage as it sees fit, but within its operational budget, in research to meet [its] objectives...”

Research is part of PHARMAC’s role in gathering information on pharmaceuticals so as to make informed funding decisions. PHARMAC also conducts research to determine the need for, and results of, its optimal use programmes (such as Wise Use of Antibiotics).

An example of research conducted by PHARMAC was during 2006/07 where PHARMAC announced its decision to provide financial support for an international trial related to the breast cancer drug Herceptin (the “SOLD” trial). The trial is ongoing and will examine whether adding long-duration Herceptin treatment to a short-duration protocol adds benefits to the short-duration treatment alone. This is a research question that is of interest to New Zealand and international health funders. \$3.2 million has been committed to supporting the trial.

3.2.4 Promote the Optimal Use of Medicines (s48(d) NZPHD Act)

“to promote the responsible use of pharmaceuticals.”

Initiatives that promote the optimal use of medicines (reducing under, over and mis-use) are intended to increase health gains and/or ensure more efficient pharmaceutical spending. This involves understanding the factors that drive demand for pharmaceuticals. In developing and implementing campaigns, PHARMAC seeks to ensure its activities are aligned and coordinated with DHBs and PHARMAC works closely with health providers and other stakeholder groups to achieve this.

3.2.5 Other functions as authorised (s48(e) NZPHD Act) – Hospital pharmaceuticals

to perform any “other functions [PHARMAC] is for the time being given by or under any enactment, or authorised to perform by the Minister by written notice to the board of PHARMAC after consultation with it.”

In September 2001, the Minister of Health directed PHARMAC (in accordance with s48(e) of the NZPHD Act) to “manage the purchasing of any or all pharmaceuticals, whether used either in a hospital or outside it, on behalf of DHBs.”

A copy of the direction is attached as **Schedule One**.

Hospital pharmaceuticals

PHARMAC has implemented national contracts for pharmaceuticals used in DHB Hospitals, with significant cost savings. When negotiating national contracts for hospital pharmaceuticals, PHARMAC takes the same approach as described above for community pharmaceuticals.

Pharmaceutical Cancer Treatment (PCT) basket

Since 2001, New Zealanders have had equitable access to a “basket” of pharmaceutical cancer treatments funded by DHB hospitals. PHARMAC currently conducts assessment of new cancer medicines, with decisions on funding made following consultation with DHBs. There is currently no fixed budget for PCTs, but DHBs are moving towards setting a budget for PHARMAC to manage.

3.2.6 Incidental / Consequential functions

Section 14 of the CE Act permits PHARMAC to “perform any functions that are incidental and related to, or consequential on”, the five functions set out above.

The above functions must be performed within the amount of funding provided to PHARMAC and in accordance with its Statement of Intent (including the Statement of Forecast Service Performance) and any directions given under the Crown Entities Act 2004 (**CE Act**).

PHARMAC may do anything authorised by the CE Act or the NZPHD Act and anything that a natural person of full age and capacity may do – but all such things may only be done for the purpose of performing its functions (s16, 17, 18 CE Act).

4. Key Accountability Arrangements, Strategies and Legislative Obligations

The CE Act sets out a framework for the establishment, governance, and operation of Crown entities and clarifies accountability relationships between Crown entities, their Board Members, their responsible Ministers on behalf of the Crown, and the House of Representatives.

The CE Act clarifies the powers and duties of Board Members, including their duty to ensure the financial responsibility of the Crown entity, and sets out the Crown entity's reporting and accountability requirements.

Further background information on the public sector, and PHARMAC's role within it, is set out in **Schedule Two**.

4.1 Ministerial Powers and Role

The Minister of Health is the Minister responsible for overseeing and managing the Crown's interests in, and relationship with, PHARMAC. The Minister of Health's functions and powers in relation to PHARMAC include (but are not limited to):

- the appointment and removal of Board Members
- the determination of the remuneration of Board Members
- the ability to give directions to PHARMAC (subject to s65 NZPHD Act)
- the review of the operations and performance of PHARMAC;
- the ability to request information from PHARMAC, whether for a review or otherwise; and
- the participation in the process of setting and monitoring PHARMAC's strategic direction and targets (s27 CE Act).

The Minister's participation in the process of setting and monitoring PHARMAC's strategic direction and targets is usually formally done by letters of expectation, statements of intent, output agreements and annual reports.

4.2 Strategic Direction and Planning

An essential element in the Board's leadership role is its responsibility to set and annually review PHARMAC's Statement of Intent and strategic direction. Accompanying this is an ongoing responsibility to identify organisation priorities, monitor progress against the strategic goals and objectives and view and approve annual business plans and the annual budget. Accordingly the Board will annually:

- In partnership with the Chief Executive, review PHARMAC's objectives, vision, strategies and priorities.
- Review and establish the Statement of Intent to ensure alignment with the strategic direction, priorities and organisation strategies.
- Schedule a programme of strategic dialogue at Board meetings that reflects the priorities as defined by the Board and that creates opportunities for the Board and management to think strategically about future issues of strategic importance to PHARMAC's wellbeing and success.

4.2.1 Letter of Expectations

The Minister of Health's expectations for PHARMAC's strategic direction and the specific priorities for the following three years are reflected in a letter of expectations.

A letter of expectations can be issued at any time, but normally coincides with the development of the Statement of Intent as it must reflect the content of the letter of expectations.

Generally a letter of expectations is sent when a new Minister takes up the role of responsible Minister for PHARMAC, but a Minister may consider that he or she needs to send a new letter of expectations when circumstances change, such as the appointment of a new Chair or following legislative changes affecting PHARMAC's operating environment. PHARMAC's current letter of expectations is available at:

www.pharmac.govt.nz/suppliers/AccountabilityDocuments/LetterOfExpectations

4.2.2 Statement of Intent

All Crown entities are required to have a Statement of Intent (SOI). The SOI's purpose as set out in s138 of the CE Act is to "promote the public accountability of a Crown entity by:

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

The SOI is a public and key accountability document designed to give Parliament a full and balanced view of PHARMAC's intentions regarding strategy, capability and performance. The information in the SOI should be set out in a way that is clear and accessible to varied audiences.

It provides a high-level description and explanation of PHARMAC's operating intentions and performance expectations over the medium-term - usually a 3-5 year period. It provides the base against which the entity will later report in its Annual Report (s150 and s151 CE Act).

In broad terms the SOI will describe:

- the nature and scope of PHARMAC's functions
- what PHARMAC is trying to achieve and why - and how it will go about doing this
- the main financial and non-financial measures and standards that PHARMAC intends to use to assess progress.

PHARMAC's SOI must also:

- be consistent with any formal directions from Ministers where appropriate
- be consistent with Government policy where appropriate
- contain any particular information agreed with the Minister of Health.

PHARMAC's current SOI is available at:

www.pharmac.govt.nz/suppliers/AccountabilityDocuments/SOI

4.2.3 Annual Output Agreement

Each year, the Minister of Health and PHARMAC enter into an Output Agreement which is effectively a contractual form of the SOI. The purpose of an output agreement is to:

- assist the Minister and PHARMAC to clarify, align and manage their respective expectations and responsibilities for the funding and production of certain outputs; and
- set the particular standards, terms and conditions under which PHARMAC will deliver and be paid for the specified outputs.

Board Members have a statutory duty to ensure that PHARMAC acts consistently with its Output Agreement (s49 and s92 of the CE Act).

PHARMAC's Output Agreement is available at:

www.pharmac.govt.nz/suppliers/AccountabilityDocuments/AnnualOutputAgreement

4.2.4 Annual Report

An Annual Report is one of the most important means by which Crown entities discharge accountability to Parliament and the public. It is the key resource for financial reviews of the performance and current operations of each Crown entity by select committees (see 5.2 below).

The CE Act requires PHARMAC's annual report to disclose its progress against the performance measures and standards as set out in the SOI. The focus of the Annual Report should be on providing a coherent account of what has been done and achieved in the year, and explaining variations between planned and actual achievement.

PHARMAC's Annual Report is available at:

www.pharmac.govt.nz/suppliers/AccountabilityDocuments/AnnualReport

4.3 Other Legislative Obligations

PHARMAC's Legal Counsel reports to the Board every six months on PHARMAC's compliance with legislation. Set out below are some specific statutory obligations that Board Members should be aware of.

4.3.1 Consultation and Notification

Section 49 of the NZPHD Act requires that:

"in carrying out its functions, PHARMAC must, when it considers it appropriate to do so:

(a) consult on matters that relate to the management of pharmaceutical expenditure with any sections of the public, groups, or individuals that, in the view of PHARMAC, may be affected by decisions on those matters; and

(b) take measures to inform the public, groups, and individuals of PHARMAC's decisions concerning the Pharmaceutical Schedule."

4.3.2 Fiscal responsibility (s66, NZPHD Act)

PHARMAC must operate in a financially responsible manner and for this purpose must endeavour to cover all its annual costs (including the cost of capital) from its net annual income.

4.3.3 Provision of Information (s69, NZPHD Act)

In addition to PHARMAC's reporting obligations set out in the CE Act, PHARMAC must, when required by notice from the Minister of Finance, supply that Minister, or any other person or class of persons that the Minister specifies, economic or financial forecasts or other economic or financial information relating to PHARMAC that are notified.

4.3.4 Being a Good Employer (s118 CE Act)

As a Crown entity, PHARMAC must operate a personnel policy that complies with the principle of being a good employer including provisions requiring:

- good and safe working conditions;
- an equal employment opportunities programme;
- the impartial selection of suitably qualified persons for appointment;
- recognition of—
 - the aims and aspirations of Maori; and
 - the employment requirements of Maori; and
 - the need for involvement of Maori as employees of the entity;
- opportunities for the enhancement of the abilities of individual employees;

- recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups;
- recognition of the employment requirements of women; and
- recognition of the employment requirements of persons with disabilities.

A considerable body of legislation applies to PHARMAC as an employer in respect of matters such as holiday entitlements, employment relations and health & safety. Employment matters are handled by the Chief Executive under delegation from the Board (see Part 7).

4.4 Specific Statutory Exemptions and Restrictions

4.4.1 Commerce Act Exemption (s 53 NZPHD Act)

In carrying out its role, PHARMAC has a limited exemption from the trade practices provisions of the Commerce Act 1986, contained in Part II of that Act. The exemption applies to entering into and giving effect to contracts for the purchase of pharmaceuticals. PHARMAC's interests lie in promoting competition, not suppressing it. It is in neither PHARMAC's short term nor long term interest to lessen competition.

s53. Exemption from Part II of the Commerce Act 1986 –

(1) In this section, unless the context otherwise requires,—

“agreement”

- (a) includes any agreement, arrangement, contract, covenant, deed, or understanding, whether oral or written, whether express or implied, and whether or not enforceable at law; and
- (b) without limiting the generality of paragraph (a), includes any contract of service and any agreement, arrangement, contract, covenant, or deed, creating or evidencing a trust

“pharmaceuticals” means substances or things that are medicines, therapeutic medical devices, or products or things related to pharmaceuticals.

(2) It is declared that nothing in Part 2 of the Commerce Act 1986 applies to—

- (a) any agreement to which PHARMAC is a party and that relates to pharmaceuticals for which full or part-payments may be made from money appropriated under the Public Finance Act 1989; or
- (b) any act, matter, or thing, done by any person for the purposes of entering into such an agreement; or
- (c) any act, matter, or thing, done by any person to give effect to such an agreement.

4.4.2 Statutory Directions (s65 NZPHD Act and s103-115 CE Act)

Crown entities must give effect to a direction given to it by its responsible Minister or a whole of Government direction, when such directions are given in accordance with the CE Act (s103-115 CE Act).

No direction may be given by the Minister of Health under s103 of the CE Act that would require PHARMAC to purchase a pharmaceutical from a particular source or at a particular price or provide any pharmaceutical or pharmaceutical subsidy or other benefit to a named individual (s65, NZPHD Act).

4.4.3 Dealings with Land (Schedule 6, clause 28 NZPHD Act)

PHARMAC may not, without the prior written approval of the Minister of Health:

- sell, exchange, mortgage, or charge land; or
- grant a lease or licence for a term of more than 5 years over land

4.5 Other legislation with general application

4.5.1 Official Information Act 1982

PHARMAC Board minutes are among the documents that can be requested under this legislation (the OIA). The general expectation, as expressed by the Chief Ombudsman, is for official information to be released (either proactively or in response to a request), unless there are clear grounds to withhold it under the Act.

For further guidance on the OIA, see: www.ombudsmen.parliament.nz/internal.asp?cat=100109

4.5.2 Privacy Act 1993

The principles in the Privacy Act include:

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

For further guidance, see: www.privacy.org.nz/how-to-comply-with-the-privacy-act/

4.5.3 Protected Disclosures Act 2000 (as amended in 2009)

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

For further guidance, see: www.ombudsmen.parliament.nz

5. Role, Responsibilities and Duties of the Board

5.1 The Board's Role

The Board is the governing body of PHARMAC. Boards have a leadership role to play for the organisation governed and its personnel. The Board ensures compliance with the law and is the ultimate point for accountability for all aspects of the organisation's performance. In addition to enacting its legal responsibility, the Board ensures compliance with internal policies and governance documents, modelling and reinforcing the behaviours that it expects the chief executive and staff to demonstrate in both in-house and public settings.

The Board has the authority, in PHARMAC's name, to exercise the powers and perform the functions of PHARMAC. All decisions relating to the operation of PHARMAC must be made by, or under the authority of, the Board (s25, CE Act).

In carrying out its functions and powers, the Board should ensure that it:

- has a clear understanding of its own role, and of the role of the Minister and the Ministry of Health (the monitoring department);
- is well informed about the entity it governs, and about the relevant legislation;
- does not act outside its powers and functions, and only delegates activities responsibly and as permitted by law;
- arranges for appropriate induction and training of Members, to complement that provided by Ministers, the Minister's advisers and/or departmental officials;
- takes appropriate advice; and
- reviews its own performance.

Apart from the above general responsibilities, the Board's role includes the following key elements:

Setting Strategic direction and policy

Setting strategic direction and development of policy must be done in a manner consistent with the statutory and policy frameworks within which PHARMAC operates, including the Letter of Expectations and Output Agreement (as detailed in 4.2) and must take account of the broader interests of the Crown as communicated to it in whole of Government directions.

Making Decisions that the Board has reserved to itself

The Board is responsible and accountable for making all decisions relating to expenditure from the Pharmaceutical Budget that do not fall within the Chief Executive's delegations.

Appointing a Chief Executive

The Board has the power under s17 of the CE Act to employ staff, including a chief executive. The Board appoints the Chief Executive of PHARMAC and negotiates the terms and conditions of employment with him or her. The Board may not finalise the terms and conditions of employment (or agree to any amendments to such terms and conditions) without first obtaining the consent of the State Services Commissioner (Schedule 6, clause 29, NZPHD Act).

Monitoring the performance of the entity and its CE

The Board is a key monitor of PHARMAC's performance. The Board is required to present an annual report (the Annual Report) to the Minister who, in turn, must present the Annual Report to Parliament. The Chief Executive is answerable to the Board. The Board is accountable to the Minister, and ultimately to Parliament.

The Minister of Health has a statutory power to review PHARMAC's operations and performance, and can require information from it. The Ministry of Health has a role as agent of the Minister, including seeking and analysing information on the Minister's behalf.

An Ombudsman can investigate matters of administration arising in respect of the agencies scheduled to the Ombudsmen Act 1975. The State Services Commissioner's 'performance' powers in respect of Crown entities are mostly confined to investigating code of conduct breaches. The Prime Minister, the Minister of Health or the Chief Executive of PHARMAC can ask the Commissioner to investigate more broadly under s11 of the State Sector Act. The investigative powers of the Auditor-General cover "public entities" as defined in the Public Audit Act 2001.

Maintaining relationships with the Minister, Parliament and the public

The Minister's role, subject to any legislation to the contrary, is to oversee and manage the Crown's interest in PHARMAC's operations. He or she may be called on to answer questions in Parliament and is seen as answerable to the public for any problems or controversies arising in connection with PHARMAC. However, the Minister's responsibilities do not absolve PHARMAC (and the Board) from accountability for its actions.

5.2 Board Accountability

All Board Members are accountable to the Minister of Health for performing their duties as Members of the PHARMAC Board.

Relationship with the Ministry of Health

The CE Act provides for Ministers to monitor PHARMAC's performance against its strategic direction, as agreed with the Minister and set out in the SOI and the Output Agreement. The Minister of Health is supported in this engagement by officials from the Ministry of Health which in this role is known as the 'monitoring department'.

While legislation does specifically not define its role, the Ministry of Health provides the Minister with information about PHARMAC's performance, ensures the PHARMAC's approach is consistent with Government goals, and supports the appointment process for Board Members.

Guidance for departments on how to monitor an entity is available at: www.ssc.govt.nz/guidance-depts-crown-entities-may06.

Parliamentary select committees

PHARMAC is accountable to the House of Representatives (s3 CE Act). One mechanism for scrutiny is through parliamentary select committees. The most regular contact PHARMAC is likely to have with select committees is for financial reviews, inquiries, and occasionally as when making submissions on legislative bills. Board Members should be particularly aware of:

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

Board Members and PHARMAC staff who appear before a select committee do so in support of Ministerial accountability. Generally, the Chair and the Chief Executive will represent PHARMAC at select committee hearings although this is a matter for the Board to decide. The Board is answerable to the Minister of Health, who is in turn accountable to the House of Representatives for the operations of PHARMAC.

Representatives of PHARMAC appearing before select committees have an obligation to manage risks and ensure no surprises for the Minister of Health. This applies even when they appear on matters which do not involve ministerial accountability, such as appearing in a personal capacity. Board Members or employees who wish (or are invited) to make a submission

on a bill on behalf of PHARMAC are expected to first discuss the matter with the Minister of Health.

Guidance on appearing before select committees is contained in Officials and Select Committee Guidelines: www.ssc.govt.nz/officials-and-select-committees-2007.

5.3 Board Membership

A list of current PHARMAC Board Members, their appointment date, duration of appointment and a short profile of each is available at: www.pharmac.govt.nz/patients/AboutPHARMAC/board.

5.3.1 Appointment

Members

The Board comprises up to six Members. The Minister of Health, in accordance with s28 of the CE Act, appoints all Members.

Before a person is appointed as a Board Member, the person must consent in writing, certify that he or she is not disqualified from being a Member, and disclose to the Minister of Health the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the statutory entity (s31 CE Act).

Board Members hold office for up to 3 years and may be reappointed. Despite the expiry of his or her term of appointment, a Member continues in office until reappointed, a successor is appointed, or until notified by the Minister of Health that the Member is not to be reappointed and no successor is to be appointed (s32 CE Act).

Chair and Deputy Chair

The Minister determines who the Chair and Deputy Chair shall be (Schedule 5, clause 1 CE Act).

The Chair and Deputy Chair hold office until removed by the Minister, the term of office specified by the Minister expires, or until he or she ceases to be a Board Member or resigns from the office of Chair or Deputy Chair (Schedule 5, clause 2 CE Act).

The Deputy Chair has, and may exercise all the functions and powers of the Chair, in relation to a matter if the Chair is unavailable or has a conflict of interest in relation to the matter. The Board may, by resolution, appoint a temporary Deputy Chair, who may exercise all the functions and powers of the Chair in relation to a matter if there is no Deputy Chair, the Deputy Chair is unavailable or interested in the matter (Schedule 5, clause 5 CE Act).

5.3.2 Removal

Members

The Minister of Health may, at any time and entirely at his or her discretion, remove a Board Member from office by written notice stating the date on which the removal takes effect (s36 CE Act).

A Board Member is not entitled to any compensation or other payment or benefit relating to his or her ceasing, for any reason, to hold office (s43 CE Act).

Chair and Deputy Chair

The Minister of Health, may, after consultation with the person concerned, remove the Chair or Deputy Chair from that office by written notice to the person (with a copy to PHARMAC) stating the date on which the removal takes effect (Schedule 5, clause 4 CE Act).

5.3.3 Resignation

Members

A Board Member may resign from office by written notice to the Minister of Health (with a copy to PHARMAC) with the resignation effective on receipt by the Minister or at any later time specified in the notice (s44 CE Act).

Chair and Deputy Chair

A Chair or Deputy Chair may, without resigning as a Member of the Board, resign from the office of Chair or Deputy Chair by written notice to the Minister of Health (with a copy to PHARMAC). The notice must specify the date the resignation takes effect (Schedule 5, clause 3 CE Act).

5.4 Board Members' Duties

PHARMAC Board Members must reflect an ethos of public service and an understanding of the accountabilities and sensitivities that apply in the State sector. Consistent with the duties below, the PHARMAC Board also endorses the State Sector Code of Conduct (set out in **Schedule Three**) as being consistent with the expectations of Board Members set out in the CE Act.

PHARMAC's Vision, Missions and Values (attached as **Schedule Four**) define the overall organisational approach and organisational culture that PHARMAC aspires to.

5.4.1 Collective duties

The collective duties of the PHARMAC Board (s49-51 CE Act) are to:

- act consistently with its objective, functions, Statement of Intent, and Output Agreement;
- perform its functions efficiently and effectively, and consistently with the spirit of service to the public;
- operate in a financially responsible manner; and
- ensure that the entity complies with the CE Act requirements relating to its subsidiaries and other interests.

The collective duties of the Board and its Members are duties owed to the Minister of Health. Should the Board not comply with any of the collective duties, all or any of the Members may be removed from office, however, a Member is not liable under the CE Act for a breach of a collective duty.

5.4.2 Individual duties of Members

The individual duties of statutory entity Board Members (s53-57 CE Act), when acting in that role, are to:

- comply with the Crown Entities Act and the entity's enabling legislation;
- act with honesty and integrity, in good faith and not at the expense of the entity's interests;
- act with reasonable care, diligence, and skill;
- avoid disclosing information, except in accordance with the entity's functions as permitted or required by law; and
- exercise the same care, diligence and skill that a reasonable person would in the same circumstances, taking into account the nature of the entity and of the action, the position of the Member and the nature of his or her responsibilities.

The individual duties of Board Members are duties owed to the Minister of Health and to PHARMAC. Should a Member not comply with any of his or her individual duties, he or she may be removed from office and PHARMAC may bring an action against the Member for breach of any individual duty under the CE Act.

5.4.3 Chair's Role

The Chair provides leadership to the Board, ensuring that the Board's processes and actions are consistent with its policies. As appropriate, the Chair represents the Board and the organisation to outside parties. It is expected that the Chair will promote a culture of stewardship, collaboration and co-operation, modelling and promulgating behaviours that define sound directorship. Key aspects of the Chair's role are as follows:

- The Chair has no authority to unilaterally change any aspect of Board policy.
- The Chair will ensure that that Board develops and implements processes and systems that result in Board effectiveness including:
 - The development, review and monitoring of the organisation's strategic plan and risk management.
 - Board Member and Board professional development.
 - Board performance assessment.
 - Serving as a mentor to individual Members.

Nb. Some or all of these tasks may be delegated to a Board committee.

- The Chair will ensure that Board meetings are properly planned including the development and distribution of Board papers in a timely manner and that the minutes accurately reflect the deliberations and decisions of the Board.
- The Chair will ensure that all Board decisions or directions are understood by Members and accurately recorded in writing via the minutes of the Board or within Matters Arising.
- The Chair will chair Board meetings ensuring that:
 - Meeting discussion content is confined to governance matters as defined in the Board's policies.
 - All Members are treated even-handedly and fairly.
 - All Members are encouraged and enabled to make a contribution to the Board's deliberations.
- With the approval of the Board, the Chair may establish a regular communication arrangement with the Chief Executive in which there is an exchange of information. This might also provide an opportunity for the Chief Executive to use such sessions as a sounding board for proposed actions or to check interpretations of Board policy. However:
 - The Chair will recognise that such sessions are not used to 'personally' supervise or direct the Chief Executive.
 - The Chair will maintain an appropriate professional distance from the Chief Executive to ensure objectivity and attention to governance matters and concerns.
 - The Chair will not inhibit the free flow of information to the Board necessary for sound governance. Therefore the Chair will never come between the Board and its formal links with the Chief Executive.

The Chair may delegate aspects of the authority accompanying the position but remains accountable for the overall role.

5.5 Liability & Insurance

Insurance cover is provided to Board Members under Directors and Officers Liability, Personal Accident and Overseas Travel Policies.

The CE Act sets out civil immunity for acts and omissions of Board Members in good faith, in performance or intended performance of PHARMAC's functions, and also indemnifies Board Members for such acts or omissions (s20-21, s122-125 of the CE Act).

5.6 Conflicts of Interest

The CE Act provisions on conflicts of interest are underpinned by the following principles:

Board Members must ensure they perform all aspects of their work impartially, by:

- avoiding any situation where actions they take in an official capacity could be seen to influence or be influenced by their private interests (eg, company directorships, shareholdings, financial rewards);
- avoiding situations that could impair objectivity or create personal bias that would influence their judgements; and
- ensuring they are free from any obligation to another party.

The Board maintains a register of all interests declared by its Members and shall review the register at the commencement of each Board meeting.

Each Board Member is responsible for disclosing any interests he or she considers may be a conflict of interest and the Board as a whole relies on each Board Member to robustly undertake this self-assessment. A conflict of interest disclosure form is provided to Board Members prior to every meeting along with guidance on assessing interests, a copy of which can be found in **Schedule Five**.

Disclosure of interests can also be made through a 'standing disclosure' if the Member has an ongoing interest in a matter which could be the subject of regular discussion by the Board. Standing disclosures must be updated as soon as there is any material change to the interest disclosed.

Staff who support the Board's work will be made aware of the interests contained in the register; Member's who have declared an interest must not be provided with information relating to that interest unless the Board has determined that the interest does not pose a conflict or the Member has been permitted to act under s68 of the CE Act (see below).

Additional guidance on assessing conflicts of interest and the relevant statutory provisions are attached as **Schedule Five** along with the interest declaration form distributed to Board Members prior to each Board meeting.

6. Board-Chief Executive Interrelationship Policy

6.1 Board Commitment to the Chief Executive

1. The Board will delegate to the Chief Executive the responsibility to implement PHARMAC's SOI and all statutory functions necessary to achieve PHARMAC's statutory objective while complying with the Chief Executive Delegation Limitations.
2. The Board will respect the principle that the Chief Executive is the sole point of operational authority and accountability between the Board and the operational organisation, including the employment, management and determination of salary and benefits of all employees and contractors, and that the Chair is the main point of contact between the Board and the Chief Executive.
3. Instructions to the Chief Executive for the execution of his/her role, e.g. implementation of the Statement of Intent, parameters of authority and performance expectations, will be communicated to the Chief Executive in writing and will reflect whole of Board decisions.
4. The Board will set PHARMAC's SOI including performance indicators to be applied when reviewing PHARMAC's and the Chief Executive's performance.
5. The Board will make clear to the Chief Executive in writing any limitations it chooses to place on his or her freedom to take actions or make decisions that the Board deems unacceptable. Limitations placed on the Chief Executive by the Board are limitations imposed on all employees.
6. The Board will permit the Chief Executive to may make any reasonable interpretation of the Board's policies or written policies (further defined in 6.2). Provided a reasonable interpretation is demonstrated the Board will respect and support his or her choice of actions.
7. The expert knowledge and experience of individual Board Members will be available at any time to the Chief Executive.

6.2 Chief Executive Authority

1. As long as the Chief Executive applies any reasonable interpretation of the Board's policies, i.e. does not set out to defeat the stated intent or the spirit of the policies, he or she is authorised to establish all operational policies, make all operational decisions and design, implement and manage all operational practices and activities.
2. The Chief Executive shall establish, and be accountable for, all authorities and sub delegations to employees.
3. The Chief Executive may sub-delegate his or her delegated authority to any Acting Chief Executive duly appointed from time-to-time. Any such delegation shall be in writing and notified to the Board.

6.3 Chief Executive Remuneration

CE remuneration will be decided by the Board based on terms and conditions that reflect PHARMAC's performance and executive market conditions.

1. Remuneration will be competitive with similar roles and similar performance within the marketplace.
2. A committee process may be used to gather information and to provide remuneration options and recommendations for the Board for its consideration and decision.

6.4 Chief Executive Performance Assessment

The Chief Executive's performance will be continually, systematically and rigorously assessed by the Board against achievement of the Statement of Intent and other targets as reflected in the Chief Executive's Performance Agreement and compliance with Chief Executive Delegation policies.

1. The Board will regard the Chief Executive's performance as synonymous with organisational performance.
2. The Board's assessment of the Chief Executive's performance will be against the role description, key capabilities and performance indicators that have been agreed.
3. The Chair and Deputy Chair will be responsible for the process of assessing the Chief Executive's performance, however all decisions will be made by the Board.
4. The Board may monitor any Board policy at any time but will normally base its monitoring on a predetermined schedule defined in the Annual Agenda.
5. The Board may use any one or more of the following three methods to gather information necessary to ensure Chief Executive compliance with Board policies and thus to determine its satisfaction with his or her performance:
 - Chief Executive reporting,
 - Advice from an independent, disinterested third party, or
 - Monitoring by the Board or group of Board Members.

7. Delegations

The Board's choices on what and to whom it may delegate are restricted by the CE Act which prescribes processes and conditions for delegation (and sub-delegation). The Board is required to formulate and maintain a policy for the exercise of its powers of delegation and make the policy (and any amendments to or replacements of the policy) publicly available. The policy, amendments to or replacements of, must be approved by the Minister of Health (Schedule 6, clause 24 NZPHD Act).

The Board may delegate to Members, employees, office holders and Committee Members, Crown entity subsidiaries, and other persons or classes of persons approved by the Minister of Health. The Board remains legally responsible for delegated functions and powers (see s73-76 of the CE Act).

A delegate to whom functions or powers are delegated may perform the function and power as if the delegate were the Board (unless the delegation provides otherwise) and may only delegate the function or power with the prior written consent of the Board subject to the same restrictions as imposed by the Board in the original delegation (s74 CE Act).

Delegations may be revoked at will by resolution of the Board (and written notice to the delegate) or by any other method provided for in the delegation (s76 CE Act).

7.1 Chief Executive Delegation Policy

The Board delegates to the Chief Executive all statutory functions and powers necessary to achieve PHARMAC's statutory objective and the responsibility to implement PHARMAC's Statement of Intent, subject to him or her complying with the Delegation Limitations.

7.2 Delegation Limitations

For an explanation on how these limitations should be used and interpreted, see **Schedule Six**.

1. The Chief Executive must not take, allow or approve any action or circumstance in the name of PHARMAC that is in breach of statute, regulation or Ministerial direction, is imprudent, which contravenes any organisation specific or commonly held business or professional or public service ethic or the State Sector Code of Conduct or is in breach of generally accepted accounting principles.
2. The Chief Executive must not do, or authorise to be done, anything that could in any way cause financial harm or threaten PHARMAC's financial integrity.
3. The Chief Executive must not do, or authorise to be done, anything that could in any way cause financial harm or threaten the financial integrity of the Pharmaceutical Budget or its future funding path.
4. The Chief Executive must not allow or cause to allow PHARMAC's investment assets to be invested in a manner different to PHARMAC's Treasury Management Policy.
5. The Chief Executive must not make, or allow employee salary or benefits decisions that would in any way cause or threaten financial harm to PHARMAC.
6. The Chief Executive must not fail to take all prudent and reasonable actions to ensure that PHARMAC's and/or the Funder's assets, physical and intellectual, are protected against all foreseeable damaging circumstances.
7. The Chief Executive must not permit the Board to remain uninformed about issues and concerns essential to the meeting of its duty of care, the carrying out of its responsibilities and the meeting of its accountabilities to the Minister of Health and key stakeholders.
8. The Chief Executive must not fail to ensure that there is in place an emergency management regime that can operate in the event of unexpected loss of his or her services.
9. The Chief Executive must not fail to ensure that, in the employment, management, determination of remuneration and benefits and performance evaluation of all PHARMAC

employees and contractors, he or she provides a workplace environment compliant with PHARMAC's Good Employer obligations and the State Sector Code of Conduct.

10. The Chief Executive must not undertake, approve, or in any way support any action that is directly or indirectly demeaning or derogatory or in any way damaging to PHARMAC.
11. The Chief Executive must not fail to ensure that all communications to the media reflect an accurate interpretation of Board and organisational policy and/or current Board decisions and concerns.
12. The Chief Executive must not fail to ensure that in exercising responsibility for the relationship with the Minister of Health, other Ministers, Associate Ministers, MPs and relevant Government agencies regarding operational matters, he or she reflects an accurate interpretation of Board and organisational policy and/or current Board decisions and concerns.
13. The Chief Executive must not undertake, approve, execute or in any way support any agreement that is directly or indirectly in contravention of any of the limitations on his or her delegations.

7.3 Expansion of Limitations

The following expansions to the above delegation limitations make clear to the Chief Executive the limits of authority granted by the Board in carrying out the delegation. While the broad policy statement might remain unchanged over time, at any point the Board might determine to expand or limit the extent of authority granted to the Chief Executive. Ideally, however, the limitations should be relatively stable over time as they relate to any Chief Executive rather than a particular Chief Executive.

1. Overarching Chief Executive Delegation

The Chief Executive must not take, allow or approve any action or circumstance in the name of PHARMAC that is in breach of statute, regulation or Ministerial direction, is imprudent, which contravenes any organisation specific or commonly held business or professional or public service ethic or the public sector code of conduct or is in breach of generally accepted accounting principles.

2. Financial and Operations Management

The Chief Executive must not do, or authorise to be done, anything that could in any way cause financial harm or threaten PHARMAC's financial integrity. Further, and without limiting the scope of the foregoing, the Chief Executive must not:

1. Create financial risk beyond Board-determined parameters.
2. Plan expenditure in any financial year that could result in default under any of PHARMAC's financing agreements or cause insolvency.
3. Fail to incorporate/accommodate medium to long-term financial plans/projections and long-term business direction.
4. Design a financial plan that anticipates the achievement of a 'bottom line', materially different from that determined by the Board, e.g. a predetermined surplus, acceptable deficit or balanced budget.
5. Use any PHARMAC funds, or enter into any contracts or accept other liabilities, other than for the furtherance of Board-approved purposes and priorities as defined in the Crown Funding Agreement.
6. Expend more funds than have been received in the financial year unless offset by approved borrowings or approved withdrawals from reserves.
7. Allow undisputed invoices from suppliers of goods and services to remain unpaid beyond trade credit terms agreed with those suppliers.
8. Approve overseas travel except to Australia.
9. Fail to consult with the Board before making any material changes to the organisational structure of PHARMAC or before making new appointments to the Management Team.

3. Financial Management - Pharmaceutical Budget

The Chief Executive must not do, or authorise to be done, anything that could in any way cause financial harm or threaten the financial integrity of the Pharmaceutical Budget or its future funding path. Further, and without limiting the scope of the foregoing, the Chief Executive must not:

1. Approve any funding proposal that would result in the Pharmaceutical budget and its future funding path being exceeded.
2. Fail to notify the Board in the event of any forecast overspend of the Pharmaceutical Budget.
3. Approve any pharmaceutical funding proposal that has an estimated Financial Impact of more than \$10,000,000 of the Pharmaceutical Budget and the future funding path. Where:

Financial Impact: of a proposal means and is to be calculated on the basis of the Net Present Value (NPV) of the proposed subsidy and/or purchase (ex-manufacturer, exclusive of GST) over 5 years at a discount rate of 8% to be paid by the funder for the product(s) and the forecast demand, taking into account any effect of the change/decision on that demand, versus the status quo.

Net Present Value: of a proposal is calculated as the sum of all the component parts of a transaction, discounted by the appropriate interest factor. For example, if a transaction has NPV savings of \$6 million and NPV investments of \$5 million, the NPV of the transaction would be \$1 million, not \$11 million.

4. Approve any pharmaceutical funding proposal that, in his or her judgment:
 - is not consistent with previous Board decisions or policy;
 - is legally, politically, medically, publicly or for any other reason contentious. For example: it has potential long-term financial risks, such as listing a product for which demand may increase dramatically.
5. In the event of a forecast overspend, agree to any funding proposal inconsistent with the agreed overspending management plan.

4. Investments

The Chief Executive must not allow or cause to allow PHARMAC's investment assets to be invested in a manner that is different to PHARMAC's Treasury Management Policy.

5. Remuneration

The Chief Executive must not make, or allow employee salary or benefits decisions that would in any way cause or threaten financial harm to PHARMAC. Further, and without limiting the scope of the foregoing, the Chief Executive must not:

1. Change his/her salary and/or benefits.
2. Establish compensation that deviates materially from the professional market range for the skill employed.
3. Create obligations that cannot be met over the projected period of the individual's term of employment or over a period for which revenues can realistically be projected.
4. Cause unfunded liabilities to occur or in any way commit PHARMAC to benefits that incur unpredictable future costs.
5. Make promises or offer guarantee of long-term employment under circumstances when such guarantees or promises cannot realistically be honoured.
6. Expend more funds than have been allocated in each relevant year's financial plan for personnel expenses.

6. Protection of Assets

The Chief Executive must not fail to take all prudent and reasonable actions to ensure that PHARMAC's and/or the Funder's assets, physical and intellectual, are protected against all

foreseeable damaging circumstances. Further and without limiting the scope of the foregoing, the Chief Executive must not:

1. Permit any unauthorised person to handle cash.
2. Process the receipt or disbursement of funds outside of controls acceptable to the duly appointed auditor.
3. Allow the assets to be insured for less than is considered necessary for prudent risk-management.
4. Fail to protect PHARMAC, its Board Members or employees against claims of liability.
5. Make any purchase of goods or services without protection against conflicts of interest.
6. Fail to protect intellectual property, information, and files from loss, improper use, improper purposes, or significant damage.
7. Fail to ensure that there are appropriate and effective security systems in place to adequately safeguard against loss, common damage or theft of employees', customer and organisation property.
8. Fail to ensure appropriate management of the risk factors that could conceivably disrupt PHARMAC's effective and efficient operation and ensure that there are plans and systems that, in the event of disruptive events, will allow continuity of business.

7. Communication & Support to the Board

The Chief Executive must not permit the Board to remain uninformed about issues and concerns essential to the meeting of its duty of care, the carrying out its responsibilities and the meeting of its accountabilities to the Minister of Health and key stakeholders. Further and without limiting the scope of the foregoing, the Chief Executive must not:

1. Neglect to provide support and information in a timely, accurate and understandable fashion addressing the various issues to be monitored by the Board.
2. Neglect to provide financial reports that make clear:
 - significant trends
 - data relevant to agreed benchmarks and Board-agreed measures
 - further Board financial data as determined by the Board from time-to-time.
3. Fail to inform the Board of significant external environmental trends, adverse media publicity, achievement of, or progress towards the achievement of, the Statement of Intent or changes in the basic assumptions upon which the Board's policies are based.
4. Fail to notify the Board of all decisions made under delegated authority relating to the Pharmaceutical budget.
5. Fail to notify the Board of any sub-delegation of his or her delegated authority to any Acting Chief Executive.
6. Fail to inform the Board when for any reason there is actual or anticipated non-compliance with a Board policy.
7. Neglect to inform the Board of any serious legal conflict or dispute or potentially serious legal conflict, pending lawsuits or disputes that have arisen or might arise in relation to matters affecting PHARMAC.
8. Fail to ensure that the Board is provided with the necessarily wide range of views and perspectives in support of effective decision-making.
9. Fail to bring to the Board's notice such occasions when it is in breach of its governance policies particularly when this relates to the Chief Executive's ability to carry out his/her responsibilities.
10. Fail to deal with the Board as a whole except when responding to individual requests for information or requests from Board committees or working parties or when accessing the expert knowledge and experience of individual Board Members.

8. Emergency Chief Executive Succession

The Chief Executive must not fail to ensure that there is in place an emergency management regime that can operate in the event of unexpected loss of his or her services. Further and without limiting the scope of the foregoing, the Chief Executive must not:

1. Fail to notify the Board of any standing emergency sub-delegation of his or her delegated authority to any Acting Chief Executive.
2. Fail to ensure that the Board is notified of any business continuity plan or changes to that plan.

9. Employment Conditions

The Chief Executive must not fail to ensure that, in the employment, management, determination of remuneration and benefits and performance evaluation of all PHARMAC employees and contractors, he or she provides a workplace environment compliant with PHARMAC's good employer obligations and the State Sector Code of Conduct. Further and without limiting the scope of the foregoing, the Chief Executive must not:

1. Fail to provide employees with clear guidelines as to their rights, entitlements and workplace obligations.
2. Fail to provide employees with 'equitable', 'safe', 'dignified' and 'fair' working conditions as defined in relevant workplace legislation.
3. Deny to any employees their right to a fair internal grievance process.
4. Fail to ensure that all employees are acquainted with their rights under this policy.

10. Public Affairs

The Chief Executive must not undertake, approve, or in any way support any action that is directly or indirectly demeaning or derogatory or in any way damaging to PHARMAC.

11. Statement to the media

The Chief Executive must not fail to ensure that all communications to the media reflect an accurate interpretation of Board and organisational policy and/or current Board decisions and concerns. Further and without limiting the scope of the foregoing, the Chief Executive must not:

1. Make media statements relating to matters of governance or accountability without first consulting with the Chair of the Board.

12. Political Relationships

The Chief Executive must not fail to ensure that in exercising responsibility for the relationship with the Minister of Health, other Ministers, Associate Ministers, MPs and relevant Government agencies regarding operational matters, he or she reflects an accurate interpretation of Board and organisational policy and/or current Board decisions and concerns. Further and without limiting the scope of the foregoing, the Chief Executive must not:

1. Address matters of governance or accountability without first consulting with the Chair of the Board.
2. Fail to brief the Minister (and Board) on any arising issues on a 'no surprises' basis.

13. Legal Agreements

The Chief Executive must not undertake, approve, execute or in any way support any agreement that is directly or indirectly in contravention of any of the limitations on his or her delegations. Further and without limiting the scope of the foregoing, the Chief Executive must not:

1. Fail to ensure that deeds of agreement are signed by both him or her self and the Chair of the Board or, if the Chair is unavailable, a Member of the Board;

2. Sign a deed where, in his or her judgement (and the judgement of the Member also signing, the deed:
 - is legally, politically, medically, publicly or for any other reason contentious.
 - has potential long-term financial risks (i.e. above \$10 million NPV).
3. Fail to ensure that the Board is informed of all deeds signed under delegated authority.
4. Enter into contracts or agreements relating to the formation of joint ventures.

8. Operation of the Board

Schedule 5 of the CE Act sets out the procedures for Boards of statutory entities; and, generally, states the Board may regulate its own procedure (except as otherwise provided by legislation (Schedule 5, clause 6, CE Act)).

8.1 Committees of the Board

Clause 23(2) of Schedule 6 of the NZPHD Act requires that, in making appointments to a committee of the Board, the Board must endeavour, where appropriate, to ensure representation of Maori on the committee.

8.1.1 Audit Committee

The Board has established an Audit Committee to assist the Board in performing its oversight responsibilities relating to financial management of PHARMAC's operating budget and assist the Board in other areas directly relevant to PHARMAC's annual audit such as risk management, internal controls and monitoring, external accountabilities and legislative compliance.

Audit Committee Members are Board Members, appointed by the Board in accordance with clause 14(1)(a) of Schedule 5 of the CE Act. The Audit Committee's terms of reference (ToR) are set by the Board and must be reviewed regularly. The Audit Committee's ToR along with the membership of the Audit Committee are attached as **Schedule Seven**.

8.1.2 Forecast Committee

The Board has also established a Forecast Committee to assist the Board in performing its oversight responsibilities relating to financial management of the Pharmaceutical budget PHARMAC.

Forecast Committee Members are Board Members, appointed by the Board in accordance with clause 14(1)(a) of Schedule 5 of the CE Act. The Forecast Committee's terms of reference (ToR) are set by the Board and must be reviewed regularly. The Forecast Committee's ToR along with the membership of the Forecast Committee are attached as **Schedule Eight**.

8.1.3 Advisory Committees

The Board also has two statutory advisory committees (as required by s50 NZPHD Act).

8.1.3.1 Pharmacology and Therapeutic Advisory Committee (PTAC)

PTAC is established "to provide objective advice to PHARMAC on pharmaceuticals and their benefits" (s50 NZPHD Act).

In addition, the Board has created a number of PTAC Subcommittees. PTAC Subcommittees are appointed to provide PTAC and/or the Board with specialised advice on particular therapy areas. Information about the subcommittees that exist and their membership is available on PHARMAC's website at www.pharmac.govt.nz/PTAC/PTACsubcommittees.

The terms of reference (ToR) for PTAC and PTAC Subcommittees are set by the Board and must be reviewed regularly. The ToR for PTAC and PTAC subcommittees are available at www.pharmac.govt.nz/PTAC.

Section 50(4) of the NZPHD Act requires that the Members of PTAC are appointed by the Director-General of Health in consultation with the Board of PHARMAC in accordance with an appointment protocol developed by the Director-General in consultation with the Board.

The membership of PTAC, and a short profile of each member, is available at www.pharmac.govt.nz/PTAC/PTACmembership.

8.1.3.2 Consumer Advisory Committee

CAC is established “to provide input from a consumer or patient point of view” (s50 NZPHD Act).

CAC’s terms of reference (ToR) are set by the Board and must be reviewed regularly. The CAC ToR are available at www.pharmac.govt.nz/patients/CAC.

The Board appoints CAC Members in accordance with clause 14(1)(a) of Schedule 5 of the CE Act.

The membership of CAC, and a short profile of each member, is available at www.pharmac.govt.nz/patients/CAC.

8.2 Meeting Protocols and Conduct

8.2.1 Meetings

The Board or the Chair must set the times and places of ordinary meetings which may be held either by a number of the Board Members who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or by remote media (as detailed in 5.2.5).

The Chair, or any 2 Members, may call a special meeting of the Board by giving at least 5 working days’ notice of the meeting and the business to be transacted. The notice must state the time and date of the meeting and may be delivered, sent by post or by electronic communication and must be sent to all Board Members who are in New Zealand. Only the business stated in the notice may be transacted at a special meeting.

An irregularity in a notice of a meeting is waived if all Members either attend the meeting without protesting about the irregularity or do not attend the meeting, but agree before the meeting is held to the waiver of the irregularity (Schedule 5, clause 7, CE Act).

8.2.2 Quorum

The quorum for the Board is half the number of Members (i.e. 3 Members) and no business may be transacted at a meeting of the Board if a quorum is not present (Schedule 5, clause 9, CE Act).

8.2.3 Notice of Unavailability

A Board Member, upon becoming aware that he or she may for any reason be unable to attend a particular meeting of the Board, or unavailable over a particular period to attend any meetings of the Board, must notify the Chair as soon as possible of such inability or unavailability and, where possible, the period for which the Board Member expects to be unavailable to attend meetings of the Board.

On receiving notice from a Board Member or upon otherwise becoming aware that a Board Member may be absent from more than 2 concurrent meetings of the Board, the Chair must notify the Minister of Health – who may or may not wish to appoint an alternate Board Member to act in place of the unavailable Board Member on such conditions as the Minister considers fit.

8.2.4 Meetings by Remote Media

The Board may, if the Chair agrees (and the meeting has a quorum), hold a meeting by contemporaneously linking together by remote media conference (such as teleconference or videoconference). To the extent practicable, the rules and procedure relating to Board meetings will apply to a meeting held by remote media conference. In addition, the following rules shall apply:

- notice of the meeting must have been given to every Member; and
- each Member taking part in the meeting by remote media conference must:
 - at the start of the meeting, acknowledge the Member’s participation in the meeting to the other Members taking part;

- be able to hear the other Members taking part at all times throughout the meeting; and
- on any vote, individually express his or her vote at the meeting.
- a Member may not leave a meeting held by remote media conference by disconnecting his or her remote media connection unless they have first obtained permission from the Chair;
- a Member is presumed to have been present, and to have formed part of the quorum at all times during a remote media meeting unless he or she has been expressly permitted to leave;
- a Member must ensure their participation in the meeting is confidential and, in the event that their comments may be overheard by a third party they must declare this to other Members at the commencement of the meeting.

8.2.5 Chairing and Voting

The Chair presides if he or she is present and does not have a conflict of interest in relation to the matter before the Board. If the Chair is not present or has a conflict of interest then the Deputy Chair presides (Schedule 5, clause 11, CE Act).

Each Member has one vote. In addition to his or her general vote, the Chair at the meeting has, in the case of an equality of votes, a casting vote. A resolution of the Board is passed if it is agreed to by all Members present without dissent or if a majority of the votes cast on it are in favour of it. A Member present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against the resolution at the meeting (Schedule 5, clause 12, CE Act).

A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all Members is as valid (Schedule 5, clause 13, CE Act).

8.2.6 Minutes of Board Meetings

The Board must ensure that minutes are kept of all proceedings at meetings of the Board

8.2.7 Other procedures

Except as set out in this Board Governance Manual and Schedule 5 of the CE Act, the Board may regulate its own procedure.

8.2.8 Standing Agenda items

The Chief Executive will liaise with the Chair to agree and set the items for each Board meeting. Standing agenda items are as follows:

1. Directors only discussion
 - Chairman's report – a verbal briefing of activities the Chair has undertaken during the past month.
2. CE report – matters likely to arise prior to the Board's next meeting that the Chief Executive wishes to advise the Board of or to seek the Board's views (rather than decisions) on.
3. Interests Register – a review and update of the Interest register
4. Board correspondence – copies of all correspondence to the Board will be made available for review.
5. Key issues
 - separate briefing papers on matters that would normally fall within Schedule & Funding Decisions or Strategic Planning & Policy but that are considered by the Chief Executive or Chair to be of such significance that they should be considered as a priority at the meeting and drawn to the particular attention of Board Members.
6. Schedule and Funding Decisions
 - a separate briefing paper is provided for each decision

- a briefing paper summarising the financial impact of decisions before the Board within that month and the total financial impact of decisions made by the Board in the financial year to date
7. Strategic Planning and Policy
- a separate briefing paper is provided for each planning or policy issue requiring Board decisions or guidance.
8. Monthly reports:
- Corporate – a summary of activities of the corporate department
 - Risk – a briefing as follows:
 - Quarterly (as per the Board’s annual agenda) – all key risks identified and assessed through the application of PHARMAC’s risk management framework
 - Monthly (between quarterly registers) – an update on key risk movements or new risks during the month
 - Litigation – a briefing from PHARMAC’s Legal Counsel on litigation and legal issues
 - Expenditure - a briefing on expenditure versus budget for the Community Pharmaceutical Budget
 - Prioritisation – a briefing as follows:
 - Quarterly (or alternate period following internal prioritisation work) – a full update of the prioritisation list, and description of key changes, following PHARMAC’s internal prioritisation work;
 - Monthly (between full updates) – an update on key issues and any changes or additions,
 - Summary of decisions made under delegated authority
9. Regular reports:
- A summary of recommendations from CAC (quarterly)
 - Legislative Compliance (6 monthly) – a briefing on PHARMAC’s compliance with current relevant legislation
 - Access & Optimal Use update (quarterly)
 - Summary of PTAC Minutes (following each PTAC meeting)
 - Summary of Listing Applications received (quarterly)
 - Maori Responsiveness Strategy update (quarterly)

The PHARMAC Annual Board Agenda is agreed by the Board on an annual basis and is provided to the Board Members as part of the Board pack prior to each meeting.

8.3 Board Member Induction

The Board will provide, to all new Members, a thorough induction into the affairs of both the Board and PHARMAC at large.

1. All prospective Board Members will be provided with all relevant information.
2. Upon appointment and prior to attendance at their first Board meeting, new Members will receive a copy of the Board’s Governance Manual including Governance policies, relevant legislation, current and recent meeting papers, an organisational chart, contact details for other Members and key staff, a glossary of key terms, definitions and acronyms, the current year’s meeting schedule and the annual agenda.
3. Meet with the Chair for a governance familiarisation. This meeting may be held as a group session or with individuals.
4. Meet with the Chief Executive for an operational familiarisation.

8.4 Remuneration and Expenses

Each Member of the Board is entitled to receive, from the funds of PHARMAC, remuneration at a rate and kind determined by the Minister of Health in accordance with the relevant fees framework (s47, CE Act). The relevant fees framework is set out in Cabinet Office Circular CO (09) 05: (<http://www.dpmc.govt.nz/cabinet/circulars/co09/5.html>).

Members travelling to meetings, or on Board business (where the Members are required to be away from their normal places of residence), are entitled to reimbursement, out of PHARMAC funds, of out of pocket travelling, meal and accommodation expenses actually and reasonably incurred (s48, CE Act). The rate of reimbursing allowance is to be paid to Members of the Board in accordance with the Travel & Expense Policy for Board Members and Committee Members attached as **Schedule Nine**.

Where a Member is absent from Board business for a period of greater than two months, then the annualised fee will be pro-rated to take account of this absence (e.g. an absence of 2 months would result in payment of 10/12 of their annual fee). Where there are frequent absences over the period of a year, the annual fee will also be pro-rated to take account of those absences.

8.5 Board Performance Reviews

By attendance - Where a Member fails to attend two consecutive meetings, or fails to otherwise perform the duties as a Member, the Chair will raise the issue of expectations about performance with the Member and, if necessary, with the responsible Minister.

Collective Review of Board Performance - The Board will, at least every two years, undertake a process to review its own overall performance. The Chair will decide and run this process.

Individual Board Member Reviews - As part of the collective review of Board Performance, individual Board Member performance will be assessed. The Chair will decide and run this process.

8.6 Governance Policies

The following Governance Policies, not otherwise mentioned elsewhere in this Manual, have been developed and approved by the Board:

- Operational Policies & Procedures (available on PHARMAC's website at www.pharmac.govt.nz/patients/AboutPHARMAC/procedures)
- Acceptance of Gifts and Invitations (attached as **Schedule Ten**); and
- Legal Risk Fund Policy (attached as **Schedule Eleven**).

8.7 Organisational Policies

PHARMAC has a number of organisational policies that can be accessed on request to the Chief Executive, and that are generally provided to the Board, on an informational basis, following finalisation or any significant amendment. The Board's interest in operational policies is to be assured that they have been developed in accordance with applicable public sector standards and legislative requirements, and are followed and regularly reviewed.

Schedule One

Minister of Health's direction to PHARMAC

New Zealand Gazette

Notice Number: 6737
Year: 2001
Publication Date: 27 September 2001
Page Number: 3384
Title: **Authorisation of Pharmac to perform an additional function, August 2001**

Under section 48 (e) of the New Zealand Public Health and Disability Act 2000, after consulting with the board of PHARMAC in accordance with the requirements of that section, I authorise PHARMAC to perform the function specified in the Schedule to this authorisation.

This authorisation is effective from the date of signing and shall remain in force until it is revoked by the Minister of Health.

Schedule

PHARMAC is authorised to manage the purchasing of any or all pharmaceuticals, whether used either in a hospital or outside it, on behalf of DHBs.

In carrying out this function PHARMAC will need to address, at a minimum, the following factors:

- (i) Developing a management strategy;
- (ii) consulting and communicating with DHBs and other interested parties as PHARMAC considers appropriate;
- (iii) amending PHARMAC's planning, funding, and policy documents to the extent appropriate;
- (iv) compiling and analysing information from DHBs on pharmaceutical volumes, expenditure, and contractual arrangements;
- (v) adjusting the pharmaceutical schedule as necessary; and
- (vi) carrying out purchasing on behalf of DHBs.

Dated at Wellington this 4th day of September 2001.

ANNETTE FAYE KING, Minister of Health.

See:

<http://online.gazette.govt.nz/MSOS118/On-Line/NZGazette.nsf/vYearOfPublication?OpenView>

Schedule Two

The Public Sector and Crown Entities

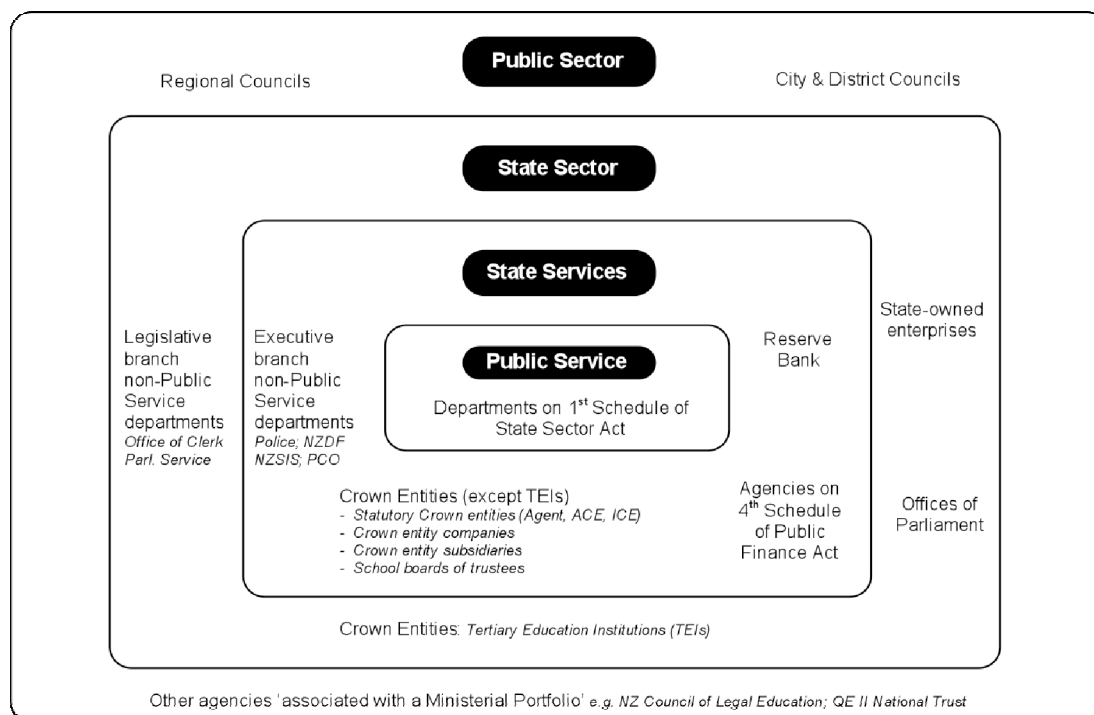
Throughout the public sector some responsibilities of Government are devolved to agencies. Normally these are Crown entities, like PHARMAC, and are covered by the CE Act but they can also be independent organisations that have a Crown connection. All of these agencies have an obligation to operate legally, financially and ethically in a manner consistent with their status as public organisations who receive substantial taxpayer funding.

The fact that there are entities under the devolved model does not mean that Ministers can divorce themselves from all responsibility. The Constitutional framework of New Zealand is such that Ministers are still accountable to the Government for their relevant portfolios. For Crown entities this has been underlined by the CE Act.

PHARMAC Board Members need to be constantly aware of the 'ownership interest' that the Minister of Health has in PHARMAC.

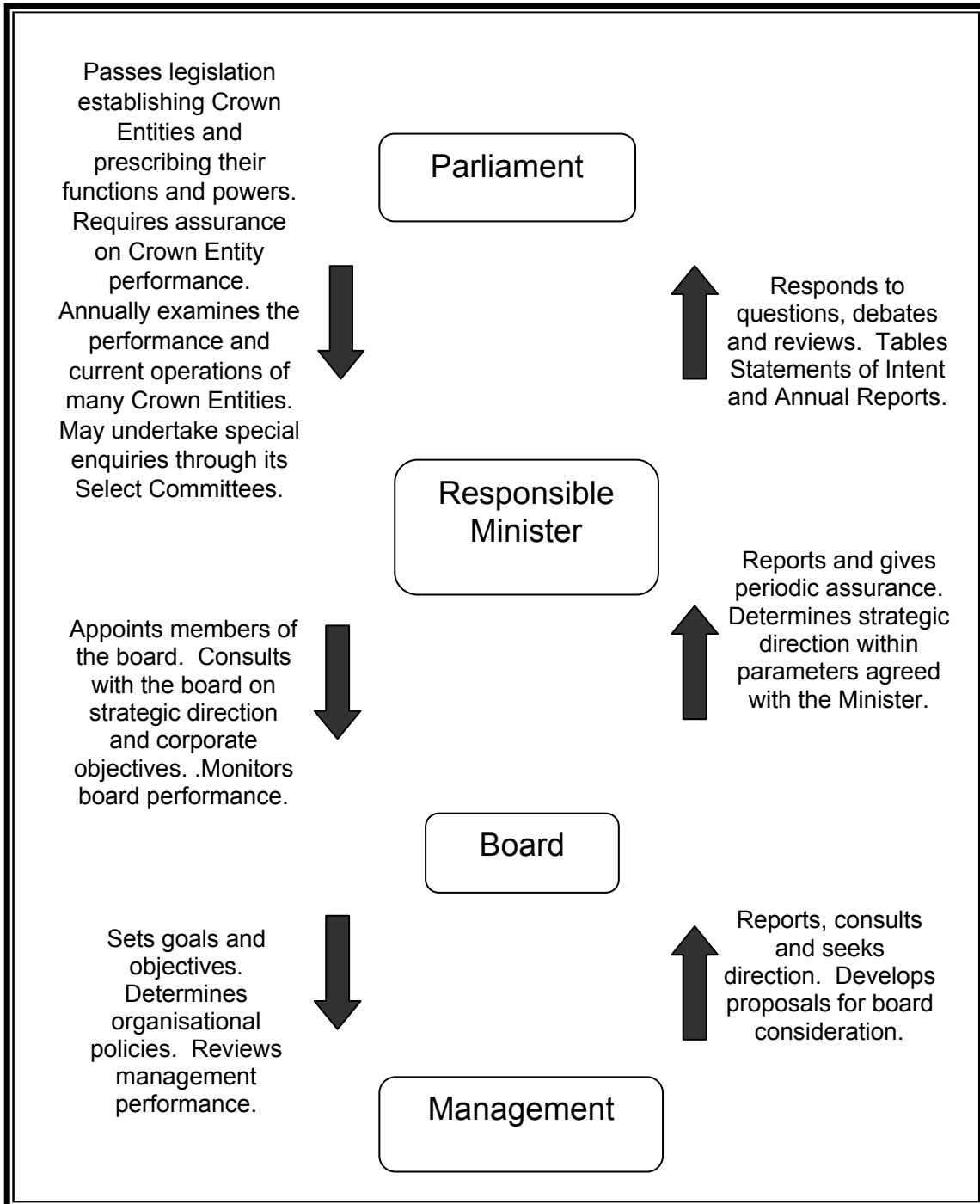
The Government must be able to have confidence in the performance of Crown entity agencies and in particular their boards. Therefore, a skilled and committed board is crucial to the success of these entities whether they are formally or informally connected to the Crown.

The Public Sector



The Governance Framework for Crown Entities

The table below¹ sets out the Governance framework for Crown Entities:



¹ Source: Report of the Controller and Auditor General *Governance Issues in Crown Entities*, November 1996

Schedule Three

State Services Code of Conduct

STATE SERVICES COMMISSION
Te Kaitiaki o ngā Tari Kāwanatanga

STANDARDS OF INTEGRITY & CONDUCT

A code of conduct issued by the State Services Commissioner under the State Sector Act 1988, section 57

WE MUST BE FAIR, IMPARTIAL, RESPONSIBLE & TRUSTWORTHY

The State Services is made up of many organisations with powers to carry out the work of New Zealand's democratically elected governments.

Whether we work in a department or in a Crown entity, we must act with a spirit of service to the community and meet the same high standards of integrity and conduct in everything we do.

We must comply with the standards of integrity and conduct set out in this code. As part of complying with this code, our organisations must maintain policies and procedures that are consistent with it.

For further information see www.ssc.govt.nz/code

FAIR

We must:

- treat everyone fairly and with respect
- be professional and responsive
- work to make government services accessible and effective
- strive to make a difference to the well-being of New Zealand and all its people.

IMPARTIAL

We must:

- maintain the political neutrality required to enable us to work with current and future governments
- carry out the functions of our organisation, unaffected by our personal beliefs
- support our organisation to provide robust and unbiased advice
- respect the authority of the government of the day.

RESPONSIBLE

We must:

- act lawfully and objectively
- use our organisation's resources carefully and only for intended purposes
- treat information with care and use it only for proper purposes
- work to improve the performance and efficiency of our organisation.

TRUSTWORTHY

We must:

- be honest
- work to the best of our abilities
- ensure our actions are not affected by our personal interests or relationships
- never misuse our position for personal gain
- decline gifts or benefits that place us under any obligation or perceived influence
- avoid any activities, work or non-work, that may harm the reputation of our organisation or of the State Services.

newzealand.govt.nz

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Schedule Four

PHARMAC's Vision, Missions and Values

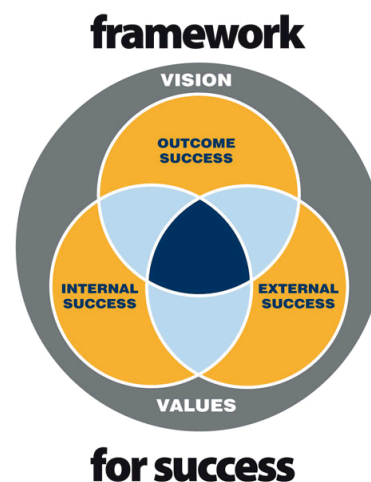
PHARMAC must deliver outcomes, while building effective stakeholder relationships and providing an attractive place to work. Our 'framework for success' helps us keep a balanced focus across these dimensions.

PHARMAC's vision is "leading edge medicines management", a goal that promotes continuous improvement in:

how we conduct our medicines funding and other work – "outcome success";

our understanding of stakeholder views and how we explain our own views, both critical elements of building public confidence in PHARMAC – "external success"; and

attracting and retaining employees, PHARMAC's key asset – "internal success".



PHARMAC's Missions, relating to each core part of the Framework for Success are:

Outcome success – Best Health Outcomes; We'll maximise the health of New Zealand by excelling in the management of taxpayer funded medicines. With tough trade-offs to be made, we recognise we cannot please everyone: our excellence depends on robust processes and analysis, impartiality and integrity.

External Success – To Be Understood; We'll do all we can for PHARMAC's perspective to be heard and for our processes and decisions to be understood. We want to be respected for fair processes, sensible evidence-based decisions, effective communication, responsive engagement and compassion.

Internal Success – Make a Difference; We'll make the most of our opportunity to make a difference for New Zealand, including through developing ourselves and organisational capability. It's our people that make the difference, so we value them and the commitment and professionalism they bring. We also value our unique diversity: science, medicine, commerce, analysis, marketing...and more, including direct personal involvement in outcomes.

PHARMAC's organisational values relate to effective communication; prioritising work; working well together and with others; and making things happen as quickly as we can. These values are:

Above the line – We'll maximise the health of New Zealand by excelling in the management of taxpayer funded medicines. With tough trade-offs to be made, we recognise we cannot please everyone: our excellence depends on robust processes and analysis, impartiality and integrity.

Make it happen – Time is valuable, so let's MAKE IT HAPPEN through commitment and initiative. Through developing ourselves and our organisational capability (including systems and processes), we'll continually strive to make high quality, timely decisions.

Unity – Only when we work well with, and look out for, each other (in and across teams) will we achieve best results. Our success also depends on working well with stakeholders: we'll do all we can to engage and collaborate effectively.

We add value – We'll learn lessons from experience, take managed risks, and use strategic and innovative thinking to remain best practice. We're anything but complacent, knowing that comfort is the enemy of learning and sustained success. Productivity focussed, we'll think "keep, stop, start".

Schedule Five

Conflicts of Interest – Further information

1. What can give rise to a conflict of interest?

An interest arises where a Board Member has a financial, familial or other personal interest in a matter which could give rise to, or create the appearance of, bias in the work of PHARMAC. There are many aspects to be considered, including:

- what comprises an 'interest';
- the obligation under the CE Act to register details of interests in respect of the individual and of family members;
- reviewing/checking on disclosure statements;
- how a conflict of interest can impact on the quality of the Board's decision-making, and on its integrity and reputation;
- providing assurance to Ministers that conflicts can be managed if an appointment proceeds; and
- the need to protect personal information provided.

2. Effect of being interested in a matter

Section 66 of the CE Act states that a Member who is interested in a matter relating to a statutory entity "must not vote or take part in any discussion or decision of the board or any committee relating to the matter, or otherwise participate in any activity of PHARMAC that relates to the matter"; and must be disregarded for the purpose of forming a quorum for that part of a meeting during which the matter is discussed.

Board Members have a collective obligation to be aware of their colleagues' interests. The Board must notify the Minister of Health if it becomes aware that a Member has not disclosed an interest, or has taken part in Board discussions or decisions despite having an interest in a matter. A Member who fails to disclose a known interest is likely to breach the duties of acting in good faith and honestly, which is a basis for removing a Member.

3. Exceptions

Section 68 of the CE Act enables the Chair or Deputy Chair to give prior notice in writing to the Board that one or more Members, or Members with a specified class of interest, may do anything otherwise prohibited under s66 of the CE Act (such as take part in discussion or decision-making relating to an otherwise conflicting matter), provided the Chair (or the Deputy Chair, if there is no Chair or the Chair has an interest in the matter) is satisfied that allowing the Member/s to do so would be in the public interest. The permission to act can be amended or revoked in the same way.

'Specified class of interest' is not defined in the legislation, but could be taken to refer to any class of interest that the Chair specifies in a notice to the Board. It is not restricted to defining the class of interest in the words used in s62(2) of the CE Act. It is a broad power and probably would, for example, allow the Chair of the Securities Commission to permit (subject to conditions) all the Members of that Commission who have shares in listed companies to form part of a quorum when the Commission considers applications for exemptions in respect of listed companies.

Any permission given under s68 must be disclosed in PHARMAC's Annual Report, stating the interest to which the permission related, who gave the permission and any amendments that were made during the year.

4. The importance of declaring interests

New Zealand's comparatively small population and the limited number of people who possess particular combinations of skills and experience, mean it is always possible that the question of interests will arise. This will tend to put a focus on identifying and managing interests, rather than disqualifying all those who have interests.

It is essential that any interests are made known and assessed in advance of an appointment being made. To maintain the confidence of the Government and the public, the Board must conduct its affairs impartially and be seen to be doing so.

Interests are not a matter to be dealt with once and then forgotten. At the time of consideration for appointment, and throughout a Member's term of office, actual and perceived conflicts of interest must be borne in mind.

Board Members must ensure their actions can withstand close public scrutiny, which includes avoiding both the appearance and the reality of any conflict of interest. A reasonable test of which interests should be disclosed is to ask whether a Member's involvement in a decision on a particular matter would be regarded as inappropriate or embarrassing if it were to be made public.

5. Prior to appointment

Before making any appointment or re-appointment to the Board, the Minister of Health needs to be confident that, where interests can be identified:

- their value is assessed and a disclosure made;
- the candidate will be able to make an effective contribution to the Board's affairs, even if their interests mean they cannot participate in any activity of the entity that relates to the matter; and/or
- measures can be put in place to manage conflicts, so that a reasonable person would not perceive any unacceptable influence on the entity's business.

When considering potential appointees to the Board, interests fall under two categories:

- a manageable interest, which can be avoided or managed through an appropriate mechanism. This could be an agreement by the Member to divest the interest (eg, selling shares or putting them into a trust arrangement - see later paragraphs on Direct Financial Benefit), to sever the connection that causes the interest (eg, relinquishing membership of an organisation), or a mutual decision that the interest affects only a narrow part of the Board's operations; or
- an unmanageable interest, which arises if the interest is unavoidable and cannot be managed through an appropriate mechanism; for instance where the Member cannot or will not divest him/herself of the interest, or the interest affects so many of the Board's activities that management mechanisms would not be practicable. Where this situation arises prior to appointment, it would not be possible to give the Minister the necessary assurances about avoidance of conflicts and it is unlikely that an appointment should proceed.

6. Where a Member is deemed not to have an interest

Section 62(3) of the CE Act states that a Board Member is not interested in a matter:

- only because he or she is a Member or officer of a wholly-owned subsidiary of PHARMAC, or of a subsidiary that is owned by PHARMAC in conjunction with another parent Crown entity or entities;
- because he or she receives an indemnity, insurance cover, remuneration or other benefits authorised under this Act or under another Act;
- if his or her interest is so remote or insignificant that it could not reasonably be regarded as likely to be an influence on carrying out responsibilities under this Act or another Act; or
- if an entity's own Act provides that he or she is not interested, despite this section.

The NZPHD Act (Schedule 6, clause 21) states that s66 of the CE Act does not apply to a Board Member who is interested in a matter only because he or she is a Member of the New Zealand Blood Service, the Crown Health Financing Agency or of a DHB.

7. Keeping interests under review

Concerns about interests do not cease on appointment. Members are obliged to consider and determine their interests from PHARMAC's perspective, avoid misusing the opportunities or powers that membership brings, and not to put themselves in a position where their own

interests - or those of relatives or friends - would benefit from their association with PHARMAC (s62-68 of the CE Act).

Interests held by a Member's family as well as the Member personally may change over time. The issues with which an entity deals also will change. So, all PHARMAC Board Members need to review their interests regularly and add or remove them from the register as soon as the circumstances require it.

Members must disclose an interest as soon as practicable once they become aware of it (s 63 of the CE Act). The disclosure must state the nature and extent of the interest including, where appropriate, its monetary value. It must be disclosed in PHARMAC's register of Members' interests, and the Member concerned is disqualified from taking part in any activities relating to the matter. Interests in this context include both financial matters and non-financial interests in a matter that is before the Board.

8. Making judgement about an interest

The following illustrations may help determine whether a Member is interested. In the case of any doubt the presumption should be that the Member has an interest.

Direct Financial Benefit

Subject to the statutory exceptions, any direct financial benefit is a conflict of interest that must be disclosed and managed. Members must not seek to provide paid services to PHARMAC other than through their role as Board Member. They must not be involved in developing, supporting or advising on any matter considered by PHARMAC.

A shareholding or other financial investment in a company engaged with PHARMAC is a direct financial benefit and is therefore an interest, unless it meets the 'insignificance' exception. Many entities make decisions that can affect the value of a financial investment, so the potential for any increase in a Member's interest must be considered when assessing insignificance.

Placing an interest in a blind trust is not of itself sufficient to avoid that interest. Where a Member has recently placed an interest into a blind trust there is unlikely to be sufficient remoteness established to avoid what would otherwise be an interest. The perception will remain that the Member has an interest which could influence decision-making unless a professional trustee, otherwise unconnected with the Member, is appointed with the power to trade trust assets.

Family Members' Financial Interest

A distinction is drawn in the CE Act between immediate family members and other wider family connections. Section 62(2)(b) provides that an interest will arise through a spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter. The Act requires that these interests be regarded in the same way as financial benefits of a Member. Where the Member, acting diligently and in good faith, is not aware of any financial involvement of a wider family member, then the Board Member is unlikely to be interested because the involvement would not be reasonably regarded as likely to influence the Member's responsibilities with PHARMAC.

Financial Interest in other Persons

The CE Act provides that a financial interest in another person may give rise to an interest, because of an apprehension of influence. This might include an employment relationship or engagement in a professional capacity with a party dealing with PHARMAC or with someone else who may be materially affected by a decision.

For instance, a family member might be involved in acting for someone dealing with an entity, as a partner or employee of a law firm representing the party. In that situation the involvement may be regarded as too remote or insignificant to be reasonably regarded as likely to influence the carrying out of entity activities. The position may be different if the family member prepares material for consideration by PHARMAC itself, or appears before the Board Member. In those cases, the latter may be reasonably regarded or perceived as likely to be influenced.

Section 62(2)(d) of the CE Act provides that an interest arises when a Member is a partner, director, officer, Board Member, or trustee of a person who may have a financial interest in a person to whom the matter relates. Whether it comprises an interest depends on whether matters are so remote or insignificant as not to be reasonably regarded as likely to influence decision-making.

Exercising judgement on issues of perceived remoteness and insignificance is essential. For example, a Member may be a trustee or director of an investment business. One of its investments may be with a party dealing with PHARMAC. As the investment business will have a financial interest in the participant, the Member as an officer of the investment business is probably interested.

Other interests

Interests are not limited to financial matters (s62(2)(f) CE Act). A Member may be interested if otherwise directly or indirectly interested in the matter. This will include a personal, non-financial interest in a matter before PHARMAC.

Personal connections or relationships

Personal connections or relationships may constitute an interest, as illustrated in the following circumstances:

Family Members - Any family connection could give rise to an interest where there is a reasonable apprehension of bias. For example, a Member could have a close relative who is personally interested other than by way of a financial interest.

Friendship - Members may have an interest in matters affecting the interests of close friends. Close and reasonably long-standing relationships with demonstrable intimacy are likely to create strong perceptions of interest.

Acquaintance - General acquaintances are not likely to give rise to an interest. Involvement in professional or sporting associations with people interested in a party dealing with PHARMAC would rarely create an interest. Overlapping directorships or similar interests could, however, mean a Member is interested, especially where relationships are long term or close collegiality has developed. Where a Member has acted as an advocate, adviser or material witness in a matter, or a Member's business partner has done so, and the matter is being considered by PHARMAC or relates to a matter it is considering, the Member is likely to be seen as having an interest.

Prior Business Relationships - Where someone had a close association with a business for a significant period before becoming a Board Member, there may well be a strong perception of an interest for at least six months after ending all associations. There is no time period which establishes remoteness, but ending a long business relationship is unlikely to immediately make that interest so remote as to be irrelevant.

Pre-judgement

Pre-judgement of issues would exclude a Member from participation in a matter before PHARMAC. Having a definite point of view about a question of law or legislative interpretation of a policy is not sufficient to give rise to an interest, nor is prior knowledge of circumstances which are in issue. However, a publicly-stated opinion on those facts could raise issues of apparent pre-judgement.

9. Relevant Statutory Provisions

- Schedule 6, NZPHD Act, cl 21
- CE Act s62-68

10. Other Available Guidance

- The Office of the Controller and Auditor-General, Managing Conflicts of Interest: Guidance for public entities - www.oag.govt.nz/2007/conflicts-public-entities

- State Services Commission (2004), Best Practice Guidelines for Departments Responsible for Regulatory Processes with Significant Commercial Implications, Wellington (available at www.ssc.govt.nz/best-practice-guidelines-regulatory-processes).
- State Services Commission (2005), Walking the Line: Managing Conflicts of Interest, Wellington (available at www.ssc.govt.nz).
- State Services Commission (2009), Board Appointment and Induction Guidelines, Wellington (available at www.ssc.govt.nz/board-appointment-guidelines).

Appendix One - CONFLICT OF INTEREST DECLARATION FORM

Name:

Position/role for PHARMAC/Committee/Sub-Committee:

Date:

- I declare the following interests#:

DESCRIBE INTEREST/ ASSOCIATION (including specific position or size of interest where this is relevant, e.g. shareholdings)	ROLE/ DESCRIBE POTENTIAL FOR CONFLICT OR APPARENT CONFLICT WITH PHARMAC/COMMITTEE/SUB-COMMITTEE ROLE
•	
•	
•	

Please use additional paper where insufficient space is provided.

OR

- I declare that, to the best of my knowledge, there is no actual or potential current conflict of interest that will or may arise as a result of my involvement with PHARMAC/Committee/Sub-Committee.

(Check Box 1 or 2, as relevant)

AND

- I undertake to declare the details of any conflict, potential conflict or apparent conflict, or interest that may give rise to such conflict, which arises during the duration of my involvement with PHARMAC/Committee/Sub-Committee. I agree to abstain from any discussion and decision or take any other appropriate steps to manage a conflict where such a conflict arises, should I be required to.

Signed:

Attached are some guidance notes for the person making the declaration regarding conflicts of interest.

CONFLICT OF INTEREST ASSESSMENT

(To be conducted by the Chair of the relevant Board/Committee with advice from PHARMAC Chair or PHARMAC Deputy Chair)

Assessment

Consider whether the declared conflict is remote, significant, manageable or unmanageable.

Action Taken

Record management and mitigation action taken (as relevant)

Signed:

Position/role for PHARMAC/Committee/Sub-Committee:

* Attached are some guidance notes for the person assessing/managing the disclosed conflict of interest

#GUIDANCE NOTES FOR DECLARANT

In making this declaration please consider that your role or position may extend to a range of contexts (for example if you participate in one or more sub-committees) and different issues will arise according to the context. Therefore please carefully consider the following questions, treating them as a prompt to help identify possible conflicts when completing the declaration:

1. What sectors do I work in / what bodies, groups or associations am I a member of / what personal or financial interests do I or members of my family have / what business or personal relationships do I have (including past involvement)?

Consider (without limitation):

- *official positions e.g. director, shareholder, trustee;*
- *personal and social relationships;*
- *consultant/advisory roles (including provision of expert evidence or opinion);*
- *involvement in clinical research/development;*
- *political affiliations;*
- *your sources of income and other areas of financial benefit or opportunity (or that of your close family members);*
- *attendance at events funded by industry.*

2. Thinking about my role(s) for PHARMAC or one of PHARMAC's committees, what types of information can I expect to see / what responsibilities will I have / what types of judgements or decisions will I be expected to make?

For example:

- *Advice to Ministers of Parliament;*
- *Confidential commercial information from pharmaceutical suppliers;*
- *Confidential information about PHARMAC strategies;*
- *Patient information;*
- *PHARMAC Legal advice in relation to (but not limited to) commercial matters, litigation, intellectual property;*
- *Operational/financial information;*
- *Unpublished study information (i.e clinical research).*

3. Is there any foreseeable possibility that one of my roles / duties / responsibilities with PHARMAC or a committee might intersect with one of my other interests / relationships / roles and that the latter might influence the way I carry out my PHARMAC/committee role?

Consider specifically whether confidential information you may see could be relevant to another role that you have, or whether your views or interests as a result of another role or relationship could potentially affect your role with PHARMAC or the committee.

When you have considered the above questions, determine whether there are any potential (though realistic – not purely hypothetical and remote) conflicts of interest that should be declared to PHARMAC. This includes any potential for a perceived conflict, whether or not you would actually be influenced by the interest. It may be useful to bear in mind the perspective of someone negatively impacted by a decision and how they might argue that there was a conflict of interest that prevented you acting objectively in the event they wanted to challenge the process by which a particular outcome was reached.

***GUIDANCE NOTES FOR ASSESSOR/MANAGER**

Unmanageable

- The person cannot or will not divest themselves of the conflict i.e. unavoidable; and
- is serious; or
- is pervasive and would affect so many of PHARMAC's/the committee's decisions that management mechanisms are not practical.

Manageable

- Where the person is prepared to divest themselves of or sever connection with the conflict; or
- the conflict is so minor or remote that it cannot reasonably be regarded as likely to influence the person in carrying out their responsibilities; or
- there is little risk of a negative public perception; or
- the conflict affects a confined area of PHARMAC's/the committee's operations and can be adequately "ring-fenced" from other aspects that it could, or could be seen to, affect.

Management and mitigation strategies

- Divestment – where the person agrees to divest themselves of the interest creating the conflict (this is likely to be necessary where the conflict of interest is serious and pervasive but avoidable through divestment).
- Severing connections – resignation from one or other position or entity (this is likely to be necessary where the conflict of interest is serious and pervasive but avoidable by severance).
- Blind trust – where assets can be transferred to a trust managed by trustees with nearly complete autonomy and the person retains very little knowledge or control over the transferred assets.
- Withdrawing from discussion – must be declared and noted on each occasion in the meeting minutes.
- Abstaining from voting – must be declared and noted on each occasion in the meeting minutes.
- Non-receipt of relevant information – in addition to declaring an interest, withdrawing from the discussions and voting, the person agrees not to be given any information (written or oral) relating to the interest.
- Agreement not to act – where the person does not participate in any other action concerning the interest e.g. signing documents relating to the interest on behalf of PHARMAC/the committee.
- Transferring the person (temporarily or permanently) to another position or project.
- Re-assigning certain tasks or duties to another person.
- Seeking a formal exemption (e.g. from the Board) to allow participation.
- Enquiring as to whether all affected parties will consent to the person's involvement.
- Declarations of interest – where the interest is retained but is declared when related issues arise for discussion or decision (must be declared and noted on each occasion in the meeting minutes).
- Confidentiality agreements – where the person agrees not to pass on confidential information.
- Imposing additional oversight or review over the person (e.g. peer review, where for example a person's role can only be performed by that particular person and the conflict is not viewed as particularly serious).

These methods can be used singly or in combination depending on the nature and extent of the conflict being considered. There may be some situations where a conflict is inevitable and unavoidable, and the matter cannot reasonably be dealt with without the person's involvement. This should be a rare scenario and in such a situation one or more of the above mitigation options may need to be employed.

Schedule Six

How to use and interpret delegation limitations

Board Members' duties and the delegation to the Chief Executive

Board Members have a duty of care under the law. While certain elements of this duty can be delegated, there are other elements that most boards determine should not be. No Chief Executive should reasonably expect that the Board will accord an unbounded delegation.

This is where delegation limitations are intended to have effect, denying the Chief Executive access to certain operational actions or decisions that the Board considers are 'off limits'. This is not to say, however, that such actions or decisions are completely 'off limits' to the organisation. Rather, it is that, because of the risks involved or in response to statutory or constitutional prohibitions, the Board has determined that decisions relating to these matters cannot or should not be delegated.

When confronted with an approach by the Chief Executive seeking permission to breach a delegation limitation or recommending that a prohibited action must be taken, the Board might choose one or other of the following responses:

11. After consideration it might resolve that the delegation is too narrow and that the freedom to take such actions should be included within the delegation. The Board would then change the policy to reflect the expanded delegation.
12. It might decree that the issue or decision remains with the Board and thus the Board would exercise this. In so doing, the Board would accept all accountability for the consequences of the action taken. In other words the limitation would stand.

The scope of the Delegation Limitations

In setting limitations the Board has consciously made every best attempt to address all foreseeable matters that it wishes to address. By starting with a broad statement of limitation and then specifying more detailed statements, the Board has, with some confidence, created a delegation that should stand the test of time and occasion. There might, however, be some circumstances that will cause the veracity of the policies to be tested.

The limitations, once adopted, should be sufficiently detailed and well-considered that the Board can be confident that it can accept the Chief Executive's 'reasonable' interpretation of the policy and subsequent action. In demonstrating that a 'reasonable interpretation' has been made, the onus is on the Chief Executive to show that he or she has not set out to 'defeat' the policy while making every reasonable effort to honour both the 'written word' and its intended 'spirit'.

Using the Delegation Limitations

In developing the limitations the Board has worked from the 'general to the specific'; the CE, in interpreting the policy, works from the 'specific to the general'.

Having first established that the action is consistent with PHARMAC's purpose or the outcomes it must achieve, the Chief Executive should check to see if the proposed action is 'within bounds'. To determine this, the Chief Executive might first check to see if there is a specific prohibition.

This is most likely to be found in the more detailed statements within a delegation limitation, e.g. the numbered detail. If there is nothing specific but the Chief Executive is still unsure, he or she might then move to the next level and check the head statement for each limitation to see if this provides guidance.

Interpretation

Some interpretation might be required. For example, the Financial Management policy statement might commence by stating that the Chief Executive must "... ensure that nothing is done, or authorised to be done, that could in any way cause financial harm or threaten the organisation's financial integrity." The Chief Executive might need to examine a proposed action to be sure that no such harm could occur. If still in doubt, the Chief Executive might go to the highest level

limitations statement (couched more generally still and embracing all the Limitations policies) and ask whether the proposed action, "... is in breach of the law, is imprudent, contravenes any organisation specific or commonly held business or professional ethic or is in breach of generally accepted accounting principles." The Chief Executive should then be in a position to make a reasonable interpretation of the Board's policies. He or she would either take the proposed action with confidence that it is within the delegation or refer it to the Board for a Board-level decision and subsequent action.

Guidance

If, however, there is still doubt, the Chief Executive should approach either the Chair or the Board to seek guidance on an interpretation of the policy.

There is an important distinction to be made at this point. When the Chief Executive approaches the Board (or the Chair) for guidance, he or she is not asking permission to act. Rather the approach should be to seek confirmation that the Board intended its Chief Executive to have the freedom to make the specific decision or take the action; in other words to check the interpretation. This is a subtle but crucial distinction.

At this point the Board might declare that, in setting the policies, it did not anticipate such a circumstance. It may then wish to take the opportunity to include a further limitation designed to make clear to the Chief Executive that the action is not within his or her prerogative. Alternatively the Board might declare that it is perfectly comfortable that the Chief Executive make the specific decision or determine whether to act or not.

The decision then lies with the Chief Executive as does accountability for the outcomes of the action or decision taken.

Spirit and intent

The challenge for both the Board and the Chief Executive lies in the determination and acceptance of the Chief Executive's 'reasonable' interpretation based on the information available, or that could have been reasonably relied on at the time. It is at this point that the 'trust' component of the Board-Chief Executive Interrelationship Policy is put to the test. The Board must 'trust' that the Chief Executive has made an honest interpretation of the delegation limitations and has taken an action with genuine intent, full integrity and professional competence. In turn the Chief Executive must 'trust' that the Board, having defined a boundary and thus created certain freedoms, will honour its policies.

The limitations are not designed to be used as a punitive tool by the Board nor should the Chief Executive regard them in a laissez-faire or careless manner. Ideally no part of any limitation should constrain a Chief Executive from taking actions or making decisions that are in the best interests of the organisation. The Board must accept that a Chief Executive cannot be held to account for that which he or she cannot control; nor should he or she be accountable for that which, under normal circumstances, cannot be known. A Chief Executive, however, can and should be held to account for ensuring that there are adequate systems and processes in place to manage all that can or should be known and controlled.

Regular review

The delegation limitations should be subject to regular review. The key to effective review is that the Board achieves a level of satisfaction with the Chief Executive's demonstration of compliance with the limitations. Ideally the Chief Executive delegation limitations are reported against and, at the same time, reviewed by the Board on a scheduled basis.

Certain of them, for example, the budgeting policy, have a logical time for review, i.e. when the budget is presented. Others might be scheduled for review at a date determined by the Board.

Schedule Seven

Membership of the Audit Committee

Kura Denness (Chair)

Stuart McLachlan

Membership is reviewed annually at the July Board meeting

Audit Committee Terms of Reference – Approved August 2008

OBJECTIVE

The Audit Committee (“Committee”) exists to assist the Board in performing its oversight responsibilities relating to financial management of PHARMAC. As the audit of PHARMAC’s operations is wider than financial matters (and other matters also impact on the effectiveness of financial management), the Committee may also assist the Board in other areas directly relevant to PHARMAC’s annual audit.

ROLE OF THE COMMITTEE

The Committee’s role is to assist the Board in carrying out its functions (not to carry out the functions itself). The Committee will use best endeavours to assist the Board in the following areas:

- **Risk management** – review PHARMAC’s approach to risk management, and the specific identification and control of risks, and advise the Board of any issues or suggestions for improvement;
- **Control framework** – review PHARMAC’s approach to maintaining an effective internal control framework, including relevant policies and procedures, and advise the Board of any issues or suggestions for improvement;
- **External accountability** – review PHARMAC’s approach to meeting external accountability requirements and advise the Board of any issues of suggestions for improvement;
- **Legislative compliance** – review PHARMAC’s approach to ensuring legal compliance and advise the Board of any issues of suggestions for improvement;
- **Internal monitoring** – review PHARMAC’s internal control systems, particularly with respect to financial management (including to regularly meet with PHARMAC’s external financial advisor), and advise the Board of any issues of suggestions for improvement;
- **External audit** – oversee PHARMAC’s relationship with its auditor; review audit findings and advise the Board on those findings; and
- **Projects** – from time to time, the Board may request that the Committee monitor or oversee particular project activities.

For the further avoidance of doubt, all of the above functions – including risk management and legislative compliance – remain the responsibility of the Board.

MEMBERSHIP & CONSTITUTION

Membership of the Committee is determined by the Board and should be considered periodically, at least on an annual basis. The Board also appoints the Chair of the Committee, who shall not be the Chair of the Board.

There will be at least 2 Members and no more than 3, with a quorum for 2 for deciding the views and actions of the Committee.

At least one Member of the Committee will ideally have an accounting, audit or financial background.

The Committee exists to assist the Board in managing its workflow, but the Board retains and does not devolve any decision making powers with respect to audit-related and financial management decisions.

The Board authorises the audit committee, within the scope of its responsibilities (refer Functions of the Committee above) to seek any information it requires from any employee of PHARMAC and external parties; and to obtain external professional advice as required.

For the avoidance of doubt, membership of the Committee does not include any members of PHARMAC's Management. The role of PHARMAC Management is to assist the Committee.

MEETINGS

The Committee will meet as requested by the Board, or at the Committee's own discretion.

The Committee will conduct meetings as it sees fit, but no less than three meetings per year, including at its discretion to meet without PHARMAC management.

The Manager Corporate & External Relations of PHARMAC will act as the Secretariat for the Committee and by the first point of contact within PHARMAC for the Committee.

All members of the Board and PHARMAC's Chief Executive can elect to attend meetings of the Committee, but do not have voting rights on the views or actions of the Committee.

REPORTING

For the first Board meeting of each financial year, the Committee will provide the Board with an indicative work-plan.

At the end of each financial year and in conjunction with the report of PHARMAC's external auditor, the Committee will provide a report to the Board, including the Committee's view on the report of the external auditor. The report will include a summary of the Committee's activities, including the Committee's view on the report of the external auditor.

Minutes of meetings of the Committee will be provided to the Board at its next Board meeting by way of attachment to the Corporate Report.

The Committee may choose to report to the Board directly as and when it wishes, or through the Corporate Report where the Committee's views accord with PHARMAC Management.

REVIEW OF TERMS OF REFERENCE

The Terms of Review will be reviewed annually alongside the annual review of Committee membership.

Schedule Eight

Membership of the Forecast Committee

Jens Mueller (Chair)
Kura Denness

Membership is reviewed annually at the July Board meeting.

The Forecast Committee's Terms of Reference – Approved January 2010

OBJECTIVE

The Forecast Committee (“Committee”) exists to assist the Board in reviewing and interpreting the expenditure forecast for the Pharmaceutical Budget. This includes assessing the forecast results, methodology and assumptions and their impact on possible future spending decisions.

ROLE OF THE COMMITTEE

The Committee's role is to assist the Board in carrying out its functions (not to carry out the functions itself). The Committee will use best endeavours to assist the Board in the following areas:

- **Forecast results review** – review PHARMAC's forecast results, including short, medium and long term expenditure risk and advise the Board of any issues;
- **Assumptions & methodology** – review PHARMAC's forecast assumptions and methodology and in particular, obtain an understanding of the limitations of the forecast. Advise the Board of any issues or suggestions for improvement;
- **Projects** – from time to time, the Board or the Chief Executive acting under delegated authority may request that the Committee monitor or oversee particular project activities or significant proposed transactions.

For the further avoidance of doubt, all of the above functions remain the responsibility of the Board.

MEMBERSHIP & CONSTITUTION

Membership of the Committee is determined by the Board and should be considered periodically, at least on an annual basis. The Board also appoints the Chair of the Committee, who shall not be the Chair of the Board.

There will be at least 2 members and no more than 3, with a quorum for 2 for deciding the views and actions of the Committee.

At least one member of the Committee will ideally have an economic, statistical, financial or accounting background.

The Committee exists to assist the Board in managing its workflow, but the Board retains and does not devolve any decision making powers.

For the avoidance of doubt, membership of the Committee does not include any members of PHARMAC's staff. The role of PHARMAC staff is to assist the Committee.

MEETINGS

The Committee will meet as requested by the Board, or at the Committee's own discretion.

The Committee will conduct meetings as it sees fit, but no less than one meeting per year, including at its discretion to meet without PHARMAC staff/management. Generally, meetings will be held immediately prior to those Board meetings where a forecast paper is to be presented.

The Manager Analysis and Assessment of PHARMAC will act as the Secretariat for the Committee and as the first point of contact within PHARMAC for the Committee.

All members of the Board and PHARMAC's Chief Executive can elect to attend meetings of the Committee, but do not have voting rights on the views or actions of the Committee.

REPORTING

The Committee will verbally report to the Board directly following any meeting.

REVIEW OF TERMS OF REFERENCE

The Terms of Reference will be reviewed annually alongside the annual review of Committee membership.

Schedule Nine

Travel & Expense Policy for Board Members and Committee Members (including other external appointees) – Approved November 2010

Expenses

PHARMAC will reimburse actual and reasonable expenses incurred by Board members and Committee members (including PTAC, PTAC sub committees, CAC, HPAC and Panels) in connection with PHARMAC Board meetings, Committee meetings or other PHARMAC related travel where those expenses are incurred in accordance with this policy.

PTAC and EC Panel members have Board approval for \$5,000 per annum for conferences as per the Pharmacology & Therapeutics Advisory Committee (PTAC) and the Exceptional Circumstances (EC) Panel Conference and Travel Allowance Policy 2007 (A188905). The Travel & Expense Policy for Board Members and Committee Members will only apply in circumstances where PTAC and EC members' travel does not meet the conditions of their existing conference & travel policy, the PTAC Terms of Reference, or the EC Terms of Reference.

GST detailed receipts are required to support claims for reimbursement of expenses. For the avoidance of doubt, eftpos receipts do not contain enough detail and will not be accepted. Expense claims must be accompanied by all relevant receipts, and include the dates and reasons for travel or other expenditure. Expense claims should be linked with the relevant (approved) travel request form and should detail all expenses for the day, even where paid for by another person travelling on PHARMAC business. Expense claims must be verified for completeness and accuracy by the person making the claim before being submitted for approval.

All expense claims by Board members will be submitted to the Chair for approval. The Chair's expenses will be approved by one of the other Board members (who will be nominated for this purpose) in conjunction with the Chief Executive. If Board members prefer, the Board Secretary can submit expense claims on the member's behalf provided GST receipts have been provided, and provided the member verifies the claim being made on their behalf. Once approved, expense claims should be forwarded to the Finance Manager for payment on at least a quarterly basis. International travel by any PHARMAC Board member must be approved by the Board in advance.

Committee expense claims will be approved as follows:

1. All expense claims by PTAC Committee and PTAC sub committee members will be submitted to the PTAC Secretary.
2. All expense claims by Seminar Series Directors and delegates will be submitted to the Medical Director for approval.
3. All expense claims by CAC Committee members will be submitted to the CAC Secretariat.
4. All expense claims by HPAC Committee members will be submitted to the Manager, Funding and Procurement for approval.
5. All expense claims by Panel members will be submitted to the appropriate Panel coordinator.

Once approved, expense claims should be forwarded to the Finance Manager for payment on at least a quarterly basis. International travel by any advisory committee or panel member (aside from PTAC or EC Panel for international conferences) must be approved by the Chair of that committee or panel and the PHARMAC Board (Refer to PTAC and EC Panel Conference and Travel Allowance Policy, Objective Ref: A188905 for international conference travel for PTAC/EC Panel). It is not envisaged that members of other committees will need to undertake international travel on behalf of PHARMAC. However, in such a situation, the relevant travel proposal must be approved by the Chair of that committee/panel and the PHARMAC Board.

Meals

PHARMAC will reimburse the actual and reasonable cost of meals while travelling away from home. This includes the costs of all meals and snacks within that 24 hour period. People travelling on PHARMAC business are expected to use judgement, and minimise costs to PHARMAC. Modest alcohol costs as part of a meal (1-2 glasses of wine) may be reimbursed within the daily allowance.

Meal costs while travelling domestically should not usually exceed NZ\$70.00 per person per 24 hour period (exclusive of GST).

When travelling internationally, as a guideline meal costs should not exceed the equivalent in the relevant currency of US\$100.00 per 24 hour period (GST exclusive).

Incidental expenses

PHARMAC will reimburse other reasonable and legitimate expenses as part of business travel (such as telephone calls, taxi, bus and parking costs). Reimbursement of expenses not explicitly covered in this policy require the approval of the Chief Executive. If in any doubt, the person travelling should discuss any issues with their Support Team staff member before commencing travel.

People travelling internationally on PHARMAC business may claim a daily allowance for incidentals. The amount of this allowance should be discussed with their Support Team staff member before commencing travel and should form part of the overall travel budget.

Travel bookings

Bookings for travel arrangements are made by Support Team staff using PHARMAC's preferred providers.

By using our preferred suppliers, PHARMAC tries to get the best deal possible on flights. While this usually means booking the cheapest available option, it may be more appropriate to book a more expensive flight, particularly for trips to Australia. Such decisions should be made by the approving Manager, taking into account person's time, how many stopovers are needed, and whether they would, practically, be able to work during any travel down time.

Air travel

For domestic travel (including to Australia) approval is only granted for economy class.

For international travel (excluding Australia) premium class travel may be approved prior to travel in certain circumstances, including:

- If the total flying time includes at least one long-haul (in excess of nine hours) sector. In this situation officially paid stopovers are not acceptable, unless the airline schedules make a stopover unavoidable;
- If flights are so over-booked that business class travel is the only option available; or
- Where the person is upgraded at the discretion of the carrier.

Domestic flights as part of an overseas trip should be economy class, except where the ticket has to be common rated premium economy or business class.

Accommodation

Personal expenses

All costs not covered as approved expenses by this policy must be met by the person who incurred the charges on checkout from accommodation. It is not acceptable to charge PHARMAC for the costs of personal expenses, even where repayment is intended and subsequently occurs.

For the avoidance of doubt, the following are classified as personal expenses:

- alcohol from mini-bars
- all other items used from mini-bars in excess of the daily limit for meal expenses
- Pay TV, DVDs and in-house movies
- Optional valet parking
- Parking tickets and/or traffic infringements.

The following may be claimed as business expenses:

- Laundry/ dry-cleaning for travel greater than five working days
- Internet usage and/or phone calls
- Valet parking where there is no other suitable parking option
- General car parking to attend business appointments.

Private accommodation

If the person travelling on PHARMAC business chooses to stay privately while on a business trip, PHARMAC will pay an allowance of \$50.00 per night to be spent on meals, gifts or other contributions for the host in lieu of accommodation costs, recognising the win-win nature of such arrangements and overall cost savings to PHARMAC. Arrangements of this nature should be discussed with the relevant PHARMAC Support staff member prior to travel being approved.

Hotels/Motels

Accommodation is expected to be in modest hotels or accommodation of an equivalent level.

For domestic purposes, accommodation costs should be no more than \$200 (exclusive of GST) per night). Accommodation will be booked by Support staff using preferred providers, where possible, to take advantage of corporate or best available rates.

For international travel, accommodation costs should ideally not exceed the equivalent in the relevant currency of NZ\$350.00 per night (GST exclusive). However, costs in excess of this can be approved by the Board as part of an overall travel budget where it is not possible or desirable to find accommodation within the lesser price bracket (e.g. such as for reasons of security or proximity).

Motor vehicles

Rental cars

PHARMAC uses a preferred supplier of rental cars. A rental car can be arranged through PHARMAC's Support Team. The class or size of rental vehicle booked should be suitable to the requirements for the trip.

Drivers of rental vehicles must be over 21 years of age and hold a current full driver's licence.

People travelling on PHARMAC business will automatically be covered by insurance included in PHARMAC's preferred customer agreement. Any traffic infringements such as speeding or parking offences are a personal expense.

Private motor vehicles

While air travel or hire cars are the usual option for business travel, people travelling on PHARMAC business may use their private vehicle, with the prior agreement of their Support Team staff member, where there is a demonstrable cost saving to PHARMAC or, if not, significantly improved flexibility or other benefits to justify the cost difference.

Use of a private vehicle will be reimbursed at the rate published by the Inland Revenue Department www.ird.govt.nz/business-income-tax/expenses/mileage-rates/#02.

The person whose vehicle is being used is responsible for ensuring appropriate insurance cover.

PHARMAC will reimburse parking costs incurred during business travel, but it will not reimburse infringement fines such as parking or traffic/speeding fines.

Taxis

People travelling on PHARMAC business using taxis regularly can be issued with a PHARMAC Taxi charge card. Alternatively, taxi chits are available from your Support Team member.

Taxi fares should only be charged to PHARMAC where the taxi is required for travel to or from:

- a business meeting or conference being attended for business reasons; or
- the airport for business related travel.

Details of taxi journeys should be recorded on the chit or receipt (date, location, time, travel purpose).

Costs associated with international travel

Insurance

People travelling overseas on PHARMAC business will automatically be provided with travel insurance under a comprehensive policy covering PHARMAC's operations.

Travel documents

PHARMAC will pay the cost of visas or any other travel documents required for travel on PHARMAC business. However, the cost of issuing or renewing passports will not be met by PHARMAC. It is the traveller's responsibility to ensure they have a valid passport.

Currency

When travelling overseas it is preferable to take a small amount of local cash and/or travellers' cheques, credit or debit card. Receipts must be obtained for expenditure on cash advances. Unused cash and travellers' cheques that were originally provided by PHARMAC must be returned to PHARMAC.

Schedule Ten

Board Acceptance of Gifts and Invitations Policy – Approved September 2009

Purpose

To provide guidance for Board Members on accepting gifts and invitations received in the course of working with or representing PHARMAC.

Policy Sponsor

The Audit Committee is responsible for reviewing and updating this policy for approval by the Board. All PHARMAC Board Members are responsible for implementing and complying with the policy.

Guiding principles

- PHARMAC Board Members have a duty to be impartial in their decisions.
- Conflicts of interest must be avoided – these may be either real or perceived.
- As a Government agency, PHARMAC needs to be selective about the gifts and invitations that are accepted by Board Members.

Policy Detail

Gifts

It is important that PHARMAC Board Members are impartial and objective in undertaking their roles and are not influenced, or perceived to be influenced, by possible personal gain through their role at PHARMAC.

Other than for exceptions noted below, all gifts should be:

- a. disclosed to the Chair of the Board;
- b. recorded in a “gifts register” maintained by the Board Secretary; and
- c. provided to the Board Secretary for inclusion in a gift pool for periodic, random distribution to PHARMAC staff members (such as through a random draw of names, or alternate process (including for any perishable items).

Exceptions

Occasionally there may be exceptions to the above policy where, for cultural or other reasons, it may be appropriate for an individual to retain a gift presented to them (and make redistribution inappropriate). This may include gifts of cultural significance to Māori. Such as greenstone/pounamu, kete (woven baskets), whalebone pendants and kakahū (feather cloaks).

Where a Board Member believes that a gift is an exception, the Board will discuss the matter and decide the appropriate treatment, including to recognise any relevant cultural considerations.

Where a Board Member retains a gift, they must be conscious of their overarching obligations to PHARMAC. Maintaining a reputation for impartiality and objectivity is central to PHARMAC’s effectiveness, and PHARMAC does not accept that there is any obligation of reciprocity implied or expected, in accepting a gift from another party.

Invitations to events

PHARMAC Board Members may receive invitations from pharmaceutical companies or service providers to attend various functions and events. In considering any invitation for hospitality, the nature of PHARMAC's relationship with the party extending the invitation is central in deciding whether or not is appropriate to accept. In the majority of cases it will not be appropriate to accept invitations. In some cases attendance at a function may provide an opportunity to network and foster relationships with representatives from organisations that PHARMAC works with. Any invitations accepted by PHARMAC Board Members must provide an opportunity to network. Invitations in the form of tickets to an event, within limited opportunity for networking, will not usually be approved.

Any invitation for hospitality from any stakeholder or service provider is to be declared and attendance approved by the Chair of the Board, or in the case of an invitation received by the Chair, by the Deputy Chair.

If attendance at a function has been approved as having a valid business purpose, then attendees need to remember that they are representing PHARMAC, and expectations about appropriate conduct apply, particularly with regard to the consumption of alcohol.

Schedule Eleven

Use of Legal Risk Fund Policy – November 2010

Purpose

The purpose of this policy is to ensure that PHARMAC can access funding for litigation in a timely manner, while ensuring that expenditure from the Legal Risk Fund (the **Fund**) meets appropriate criteria.

Background

When the Health Funding Authority was disestablished in January 2001, all assets and liabilities were transferred to the Ministry of Health. As part of the transfer, Cabinet approved the transfer of \$5M to the Ministry so that it would have funding available to manage litigation risks against PHARMAC.

The Fund was transferred to PHARMAC in 2004. It was agreed between the Minister of Health and PHARMAC that the Fund should be managed by PHARMAC in a manner that is consistent with the following principles:

- (a) maintaining transparency in the Fund's use and application including a clear separation between PHARMAC's operational legal expenditure, and the yearly maximum allowable use of the Fund;
- (b) ensuring accountability for its use;
- (c) effective reporting of its use;
- (d) managing potential conflicts of interest when accessing and using the Fund;
- (e) effective and efficient auditing of the Fund.

Model for the management of the Fund by PHARMAC

PHARMAC, the Ministry of Health and the Treasury have agreed to the following model for managing the Fund:

Definition of litigation / Permitted uses of the Fund

Permitted uses of the Fund are to meet legal costs and expenses incurred by PHARMAC when:

- (a) defending litigation;
- (b) taking/initiating litigation, where:
 - (i) the PHARMAC Board has considered a business case provided to them for the purposes of their decision as to whether or not to proceed with that particular litigation, and has considered the independent review; and
 - (ii) the business case contains evidence-based analysis of relevant information; and
 - (iii) following consideration of the business case and the independent review, the PHARMAC Board proceeds with the litigation based on its conclusion that the reasonably likely outcomes and benefits of taking the litigation outweigh the anticipated costs and risks (in the event that the Board conclusion differs from that of the business case or independent review, the Board minutes must record the reasons for the Board's conclusion);
- (c) participating in litigation proceedings to which PHARMAC is not a party, for example, providing affidavit evidence or making a non-party application to the Court as part of existing proceedings, in situations where the anticipated expenses cannot be covered from PHARMAC's operational litigation budget;
- (d) proceeding to mediation, or alternative dispute resolution mechanisms, as a genuine alternative to defending or taking litigation;
- (e) defending complaints, litigation, or disciplinary proceedings against employees, officers, or Board members in relation to the performance or intended performance of the functions of PHARMAC, but not including where the PHARMAC Board considers that the employee, officer, or Board member has not acted in good faith, and not including defence of alleged criminal conduct. Where the court or other disciplinary

body determines that the employees, officers, or Board members did not act in good faith, PHARMAC will repay to the Fund any monies that had been used to defend the complaint, litigation, or disciplinary proceeding.

For the purposes of using monies from the Fund, litigation means actual or threatened Court proceedings.

For the avoidance of doubt, funding for 'taking/initiating litigation', referred to in (b) above includes reimbursement for preliminary work already undertaken which was necessary to determine and prepare the strategy and/or business case for taking the litigation.

Decision making process

The PHARMAC Board will be responsible for approving access to the Fund.

For defending litigation, the Board will use its current processes and procedures to approve applications that fit the Fund's permitted use.

For initiating litigation funded by the Fund, the following process has been agreed:

- (a) PHARMAC management presents a business case to the Board:
 - (i) an independent lawyer (that being one who does not benefit from expenses incurred as a result of that litigation) reviews the validity of the business case and provides an opinion to the Board as to whether, of all the options, litigation is a viable and justified option taking into account risks, costs and benefits; and
 - (ii) the PHARMAC Board can then assess both the business case and the independent review before making its decision.
- (b) Where the Board approves the initiation of litigation, it will specify the amounts to be drawn from the fund for each phase of the litigation.
- (c) The General Counsel will update the Board on a monthly basis on the conduct of active litigation matters.

Costs, damages and undertakings

The Fund may be used for awards of court costs against PHARMAC. Costs awarded to PHARMAC will be returned to the Fund on the basis that costs awarded cover litigation expenses paid for from the Fund.

The Fund will not be used to pay damages if those costs relate to pharmaceutical costs. These should be met by DHBs.

In relation to damages awarded to PHARMAC, DHBs need to agree whether part or all of any damages awarded go into the Fund or are reimbursed to DHBs as part of their pharmaceutical budgets.

The Fund can be used in a manner similar to "bridging finance" to enable PHARMAC to make an undertaking promptly. If, however, the undertaking is called upon, then such sum must be met from the DHB pharmaceutical budget, the same way as damages awarded against pharmaceutical companies to PHARMAC are injected into the DHB pharmaceutical budget. PHARMAC will include the management of undertakings in the DHB/PHARMAC relationship agreements.

Accounting treatment

The Fund is in a separate interest bearing bank account and the interest will be added to the Fund. Deductions from the Fund will be for actual expenses only.

At the end of the financial year, the remaining portion of PHARMAC's unspent operational budget for litigation will be transferred to the Fund, up to the amount drawn from the Fund that year. This has been agreed in order to ensure that the Fund is used for expenses over and above the amount in PHARMAC's operational budget for litigation.

Schedule Twelve

Discretionary Pharmaceutical Fund Policy

January 2011

Purpose

The purpose of this policy is to communicate the rationale for the development of the Discretionary Pharmaceutical Fund (DPF), its objectives, core principles, and management.

Rationale

The DPF is a mechanism to improve PHARMAC's ability to manage the Community Pharmaceutical Budget (CPB) with a longer-term focus.

PHARMAC manages the CPB by balancing underlying growth and up-take of new investments against transactional savings (of differing timing and size). In the absence of a DPF, and with the annual budget process, this balancing equation has a short-term focus. This is suboptimal for ensuring PHARMAC obtains the best value possible from the CPB in the medium to longer-term.

The DPF represents a significant shift in management of the CPB. It establishes PHARMAC as a co-funder of the CPB, whereas in the past the DHBs have collectively been the sole funder. PHARMAC retains its role in terms of managing the notional CPB - the total funding provided by DHBs. However, through the DPF (a separate pool of funding owned and managed by PHARMAC) additional funds may be drawn upon in the event that the DHB notional budget proves insufficient for that year.

Under the DPF, overspending of the notional CPB is represented by payments to community pharmacies by DHBs made on PHARMAC's behalf. PHARMAC's liability to community pharmacies is limited to the value of the DPF at that time. DHBs remain liable for any overspending beyond PHARMAC's DPF liability.

For the avoidance of doubt, the existence of this policy does not affect PHARMAC's statutory responsibility to achieve the best health outcomes within the amount of funding available.

While the DPF is PHARMAC's fund, it is topped-up from time to time through requesting payment from DHBs within the quantum available for the CPB in that year.

Objectives

The objectives of the DPF are to:

- reduce the emphasis on meeting short term budget requirements and increase the emphasis on making long term efficient decisions by enabling:
 - funding not to be used in the current year if greater value could be obtained in a future year; or
 - more funding to be used in the current year if greater value could be obtained in that year than in a future year.
- provide more certain outcomes from the exercise of strong baseline expenditure control;
- provide greater certainty of new investment expenditure; and
- reduce reactive baseline expenditure management.

The DPF helps to achieve the above objectives by providing some inter-year flexibility while maintaining the concept of a nominal fixed CPB.

Core principles

The following principles underpin the operation of the Discretionary Pharmaceutical Fund:

- Applied to the Community Pharmaceutical Budget – to avoid doubt, the DPF (as with the CPB) cannot be used to meet PHARMAC's operational expenses, or to manage any other pharmaceutical funding budgets.

- Maintaining the budget constraint – the fixed budget (CPB) is key to the effectiveness of the PHARMAC model. A tight budget situation forces choices which, combined with suppliers' understanding that resources are constrained, provides an incentive to negotiate. In providing greater flexibility to consider medium- to long-term outcomes, the DPF must not undermine PHARMAC's budget constraint.
- Flexibility in timing – the DPF must allow PHARMAC to vary the timing at which it makes decisions, where this would result in benefits that would not otherwise be achievable.
- Accordance with PHARMAC's Operating Policies and Procedures – all funding decisions would be based on PHARMAC's standard decision-making processes, and decision criteria (as outlined in PHARMAC's Operating Policies and Procedures).

Management of the DPF

Criterion for use

The sole criterion for the use of the DPF is that it is used to enable PHARMAC to maximise health outcomes from available funding over the medium term.

It is impossible to describe, prospectively, every situation in which PHARMAC may require the DPF (either additional funding, or to hold funding not spent in the current year) to achieve this. However, the scenarios that have given rise to the development of the DPF include situations in which:

- actual expenditure differs to forecast;
- the spending profile brings savings in the current year and costs in future years that need to be balanced out;
- disruptive commercial arrangements (such as delisting pharmaceuticals from the schedule) where the benefit is marginal, would otherwise be required simply to meet budget;
- there is a commercial opportunity which would not be available if a decision had to be deferred until the following year;
- delaying investment until the following year enables decisions which achieve greater health outcomes.

Governance and reporting

The DPF forms part of PHARMAC's operational funding according to the following arrangements:

- The PHARMAC Board is responsible for approving funding decisions that would require the use of the DPF in line, and accordance, with other decisions made in relation to the Community Pharmaceutical Budget.
- The DPF sits with PHARMAC's accounts to facilitate easier and more efficient application of the Community Pharmaceutical Budget over the medium term.
- DHBs would be updated on the status of the DPF and its anticipated use as part of the current, routine forecast reports that are provided.
- Reporting on actual DPF provision forms part of PHARMAC's audited accounts: the impact on CPB and DHB expenditure would be outlined in the non-financial section of the PHARMAC Annual Report and the additions and withdrawals from the DPF would be recorded within the financial statements, movements in equity.
- The PHARMAC Chief Executive has delegated authority from the PHARMAC Board to authorise payments made from the DPF in accordance with this policy, up to and

including the financial limits specified in the Chief Executive's operational budget delegations.

This policy would be administered by the Manager, Corporate and External Relations and reviewed on an annual basis in conjunction with agreeing the CPB with DHBs and the Minister.

Establishment, replenishment, payment and wind-up arrangements

Initial establishment

The \$10m funding for the establishment of the DPF would be transferred from the Ministry of Health to PHARMAC. This transaction would be recorded in PHARMAC's Output Agreement with the Minister of Health, and would be reported on in PHARMAC's Annual Report.

Size of the DPF

The minimum level of the DPF is \$10M or 1% of the total DHB funding provided for the CPB (whichever is greater) in that year.

The maximum level of the DPF would be 2% of the total DHB funding provided for the CPB in that year. This ensures sufficient funds could be diverted into the DPF to effectively facilitate the objectives. The maximum level of the fund is not of a magnitude that is likely to attract significant demands that the monies are utilised elsewhere (e.g. funding medicines which do not represent value for money).

Pegging the minimum and maximum limits of the DPF as a percentage of the total DHB funding provided for the CPB ensures the size of the DPF remains adequate as the budget increases.

DPF accounting points

- Opening balance
 - This reflects the opening value of the DPF as recorded in PHARMAC's accounts following completion of the previous year's accounts for the CPB including any use or topping-up of the DPF; plus
 - if the value of the DPF is below the minimum level, DHBs will be invoiced (see "Topping-up the DPF" below) and the amount credited to the DPF opening balance.
- Closing balance
 - This is completed following estimation of the final notional CPB expenditure. If the estimate is below the forecast expenditure target (the amount of funding provided by DHBs less any DPF top-up paid by the DHBs at the start of that year), and if the DPF is below the maximum level, DHBs will be invoiced (see "Topping-up the DPF" below) and the amount credited to the DPF closing balance.

Topping-up the DPF

At the start of each financial year in which the DPF needs to be topped-up, PHARMAC's forecast expenditure target would reflect the reduction in DHB funding for the CPB resulting from DHBs' top-up of the DPF to the minimum level (see "opening balance" above). An invoice would be sent to each DHB to obtain this DPF funding top-up. In practice this transaction cannot be concluded until the previous financial year's expenditure estimate is calculated and advised to DHBs.

At the end of each financial year, any surplus that arises from under-spending against the forecast expenditure target would automatically be transferred to the DPF until it reaches 2% of that year's budget, provided the amount invoiced does not cause the level of funding provided by DHBs for the CPB in that year to be exceeded. Any additional surpluses would be retained as a savings by DHBs, as currently occurs.

In these circumstances invoices would be provided to DHBs. Such invoices may reflect PBFF proportions or, at PHARMAC's discretion and in consultation with DHBs, any other basis that represents fair contribution.

Any DPF interest received would be added to the overall value of the DPF.

Payments from the DPF

At the end of each financial year, any overspending against the forecast expenditure target would be reimbursed by PHARMAC's use of the DPF. Any such overspending represents PHARMAC's liability to reimburse community pharmacies, up to and inclusive of the value of the DPF at that time. Any overspending and therefore liability to community pharmacies over and above the value of the DPF remains the liability of DHBs.

Payment from the DPF in these circumstances would be made to DHBs to reimburse them for the payments made to community pharmacies on PHARMAC's behalf. Such payments may be via PBFF proportions or, at PHARMAC's discretion and in consultation with DHBs, any other basis that represents fair reimbursement for the effects of funding decisions made or arising from adverse events.

The DPF would not be used where individual DHBs overspend and where the collective DHB expenditure level is underspent.

Wind-up arrangements

Should it be determined that the DPF is not achieving the objectives for which it was established, PHARMAC would wind-up the fund and transfer the residual value of the DPF to the Ministry of Health.

Accounting Treatment

Establishment

- The Discretionary Pharmaceutical Fund (DPF) would be established using \$10 million of the government funding provided for the Community Pharmaceutical Budget for the 2010/11 financial year.
- This money would be transferred from the Ministry of Health to PHARMAC and recorded in the 2010/11 Output Agreement between the Minister of Health and PHARMAC.
- The DHBs do not record any transaction in relation to the establishment of the DPF.

The initial establishment would be recorded in PHARMAC's ledgers as revenue.

Ongoing treatment

Possible scenarios that could arise include over or under spending within the DHB funding available.

- Where CPB expenditure is less than the forecast expenditure target at year end:
 - In years in which PHARMAC spends less than the forecast expenditure target DHBs have spent less on pharmaceuticals than was planned and agreed at the beginning of the financial year (so have excess funds).
 - In this instance DHBs would be invoiced based on PBFF proportions up to the agreed maximum for the DPF. PHARMAC may invoice on a basis other than PBFF at its discretion and in consultation with DHBs, so long as that alternative basis represents fair payment, provided the amount invoiced does not cause the level of funding provided by DHBs for the CPB in that year to be exceeded.
 - Any additional savings over and above the DPF top-up would be retained by DHBs as underspend.

This would be recorded in PHARMAC ledgers as revenue, and recognised as an expense by DHBs.

(Note: Appendix 1 shows Audit NZ advice that the authority for DHBs to make such payments is provided for in NZPHDA s22-24, and s33A.)

- Where CPB expenditure exceeds the forecast expenditure target at year end:

- In years where more than the forecast expenditure target is spent, DHBs have spent more on pharmaceuticals than was planned and agreed at the beginning of the financial year by paying community pharmacies for PHARMAC's liable expenditure (so require reimbursement of funds).
- In this instance PHARMAC would create a buyer-generated invoice and would credit funds to individual DHBs based on PBFF proportions or, at PHARMAC's discretion and in consultation with DHBs, any other basis that represents fair reimbursement for the effects of funding decisions made or arising from adverse events. This payment would reduce the value of the DPF (which is retained earnings in PHARMAC's accounts). These transactions would be recorded at the end of the financial year by PHARMAC as expenditure in its statement of comprehensive income.
- In the following year, PHARMAC would top-up the DPF if it is below the minimum level and the forecast expenditure target would be set accordingly. An invoice would be sent to each DHB to obtain the DPF funding top-up. This would mean that the DHB funding for the CPB would be reduced by the amount of the minimum top-up required to top-up the DPF to the minimum requirement of the greater of \$10m or 1% of the DHB funding for the CPB.

Accountability documentation

To ensure the operation of the fund is transparent, Audit NZ recommends that the following disclosures be made (see Appendix 1).

- PHARMAC

In the statement of comprehensive income:

- The revenue (e.g. the top-ups) shown as a separate revenue item on the face of the statements.
- The amounts provided to the DHBs shown as a separate expense.

In the notes to the accounts:

- A memorandum account showing the opening balance, the revenue and expenditure and the balance at year-end.

In the statement of service performance:

- The amount shown as expenditure against the CPB should not include the 'top-ups' made by the DHBs to PHARMAC. The CPB-spend should only include the amounts paid by Sector Services for claims submitted.
- PHARMAC to include an explanation of the Fund and the transactions that have taken place during the year.

- DHBs

In the statement of comprehensive income:

- The top-ups paid to PHARMAC should not be shown as a charge against the CPB (if the DHBs were to show that information).
- The amounts received from PHARMAC are to be recognised as revenue; they are not to be offset against the CPB claims paid.

Our Conclusion

It is our understanding that PHARMAC's use of the ESF will differ from its management of the general CPB in that Pharmac will decide the years in which the Fund will be used and how much of the Fund is used in any particular year. That being the case we agree with the EY advice that Pharmac controls the Fund in a way that it does not control the main part of the CPB. Accordingly, we agree with EY that Pharmac should recognise the use of the Fund as expenditure in its statement of comprehensive income.

Pharmac should recognise as revenue the funding it receives (whether from the Ministry of Health or the DHBs) to establish and top-up the Fund.

Accounting by Pharmac

It is our understanding that PHARMAC's use of the ESF will differ from its management of the general CPB in that Pharmac will decide the years in which the Fund will be used and how much of the Fund is used in any particular year. That being the case we agree with the EY paper that Pharmac controls the Fund in a way that it does not control the main part of the CPB. Accordingly, we agree with EY that Pharmac should recognise the use of the Fund as expenditure in its statement of comprehensive income.

Pharmac should recognise as revenue the funding it receives (whether from the Ministry of Health or the DHBs) to establish and top-up the Fund.

Accounting by DHBs

We understand that, after the initial establishment, the DHBs will be required to pass funds directly to Pharmac to top-up the Fund after it has been used, or to increase the size of the Fund.

We also understand that on an individual basis, the amount a DHB receives back from Pharmac (by way of future reimbursement of CP claim payments) may not necessarily equal the amount it has paid over. Further, and as noted above, the amount and timing of the use of the Fund is at PHARMAC's discretion. Therefore the DHB cannot recognise an asset as it does not control its contribution to the Fund. Accordingly, the payments made by the DHB to Pharmac should be recognised as an expense by the DHB.

Authority for DHBs to make such a payment

We note that the provisions of the NZ Health & Disability Act appear to provide authority for a DHB to make the top-up payments to PHARMAC even though it may not get the exact amount back; sections 22- 24& 33A refer.

Accountability

PHARMAC

The papers provided to us indicate that PHARMAC intend the operation of the Fund to be fully transparent and we would endorse that. We think the following disclosures would promote transparency.

- In the statement of comprehensive income:
 - The revenue (e.g. the top-ups) shown as a separate revenue item on the face of the statements
 - The amounts provided to the DHBs shown as a separate expense
- In the notes to the accounts
 - A memorandum account showing the opening balance, the revenue and expenditure and the balance at year-end.
- In the statement of service performance

- The amount shown as expenditure against the CPB should not include the 'top-ups' made by the DHBs to PHARMAC. The CPB-spend should only include the amounts paid by Sector Services for claims submitted (that is, as currently happens).
- We think it would be helpful for PHARMAC to include an explanation of the Fund and the transactions that have taken place during the year.

DHBs

- In the statement of comprehensive income:
 - The top-ups paid to PHARMAC should not be shown as a charge against the CPB (if the DHBs were to show that information).
 - The amounts received from PHARMAC are to be recognised as revenue; they are not to be offset against the CP claims paid.

Descriptor

We suggest something like 'Discretionary Pharmaceutical Fund' would be better than ESF.