



Premier's Department
New South Wales

Guidelines for NSW Board and Committee Members: Appointments and Remuneration

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Ministerial and Parliamentary Services
NSW Premier's Department
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Introduction

This document outlines the Government's policy concerning the appointment and remuneration of members of Government boards, committees and trusts. These Guidelines supersede those issued in Premier's Memorandum 2003-06. Conduct guidelines for members of boards and committees were issued in Premier's Memorandum 2001-17.

This memorandum is current at the date of issue. When seeking clarification on a specific issue it is suggested that a search of more recent memoranda and circulars on the Premier's Department website be made to ensure that the information in this memorandum has not been superseded.

These guidelines apply to statutory and non-statutory boards, committees, advisory councils and trusts of state or regional significance as well as quasi-judicial boards. These bodies range from governing boards involved in decision making for Government Businesses, through to committees that serve in an advisory role to a Minister. Any relevant legislation must be followed and Government policy, as outlined in this document, provides additional guidelines.

The **appointment process** outlined in this document is applied to:

- NSW members of boards of multi-jurisdictional groups
- Ministerial appointees to university councils
- Boards of government/non-government joint ventures

but the remuneration and allowances sections will not necessarily apply.

These guidelines **do not** apply to:

- Local boards, local advisory committees, local advisory councils and local trusts
- Advisory committees and advisory councils of state and regional significance where no members receive remuneration for their work on the committee
- Boards of subsidiaries where the parent body's board is covered by these guidelines
- Departmental and Inter-departmental committees
- Boards of State Owned Corporations.

Note that in these guidelines:

- the term "member" is used to mean director, trustee or member;
 - the term "chair" means chairperson or president.
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1 Board and committee appointments

1.1 Selection of Candidates

It is important that agencies maintain effective records on current membership, including appointment dates and terms of office. This allows agencies to ensure that their Minister is aware that an appointment is due, well in advance of there being a vacancy. It is recommended that agencies have procedures in place to ensure that Ministers receive a minimum of three months' notice of all pending vacancies. However, it is recognised that in some instances this will not be practical.

The Government is committed to providing the community with greater opportunities to participate in its decision making processes. Board and committee positions should be publicised to enable eligible members of the community to apply. Agencies are encouraged to publicise vacancies on their agency web site. Other means to publicise vacancies and invite interest include:

- Requesting searches of the Premier's Department Register [refer below];
- Publicising vacancies at relevant forums;
- Consulting with appropriate networks and stakeholders; and
- Advertising in the press where this is appropriate to the nature of the position and its responsibilities and in compliance with government policy on advertising.

Agencies should ensure that an appropriate process is undertaken to select the candidates they recommend for their Minister's consideration. The process undertaken should be in proportion to the position eg its profile, responsibilities and the remuneration paid.

The composition of the membership also should be taken into account in the selection process in order to achieve an appropriate mix of skills and experience on the board or committee. The number of other positions held by candidates should also be considered so that recommended candidates are not over burdened.

In addition to any checks required by the legislation establishing the board or committee and agency practice, a check should be undertaken of any real or perceived conflicts of interest of any recommended candidate and strategies identified to manage these where appropriate.

The Government believes that the membership of boards and committees should reflect the interest of the community as a whole. Strategies are in place to increase representation of groups within the community who have traditionally been under represented. Specifically, these are women, people of culturally diverse backgrounds, Aboriginal and Torres Strait Islander people, people with a disability and young people.

Ministers and agencies are required to consider the diversity of board or committee membership when making recommendations for new appointments or re-appointments. Stakeholder organisations nominate approximately 40% of all candidates for board and

committee positions and it is essential that agencies keep them informed of the Government's commitment to diversity.

Prior to being submitted to Cabinet nominations are reviewed by Premier's Department to ensure that diversity issues have been addressed. The Minister or agency is contacted and asked to reconsider the proposed appointment if these issues have not been addressed. This may lead to delays in appointments.

Premier's Department Register

Premier's Department maintains a Register of people interested in being appointed to boards and committees. This Register can be consulted by Ministers, agencies and other nominating organisations when vacancies arise. It should be noted that people on the Register have not been formally assessed or interviewed to determine their potential suitability as board or committee members.

Searches of the Register can be arranged by using the following contact details

E-mail:	boards@premiers.nsw.gov.au
Phone:	02 9228 4199
Fax:	02 9228 4421

1.2 Arrangements for submitting appointments to Cabinet

All proposed appointments and re-appointments to boards and committees covered by this memorandum are to be referred to Cabinet.

Documentation

Documentation of all appointments must include a covering letter to the Director General of Premier's Department together with the appointment form, signed by the Minister. The name and phone number of a contact officer within the organisation should also be advised in the letter. It is important that the appointment form be provided in the same format as it appears in this memo and does not cover more than one page.

The appointment form provides Cabinet with a succinct outline of the details needed for each proposed appointment. An appointment form is included with these Guidelines (Appendix A). An electronic version can be downloaded from the Premier's Department web site, www.premiers.nsw.gov.au

All sections of the appointment form must be completed. Agencies will be contacted if information is missing. This may cause delays in submission to Cabinet. An explanatory note for completing the form is provided in these guidelines (Appendix A).

Where appointments require the Governor's approval, an Executive Council Minute, signed by the Minister, should be submitted to the Premier's Department together with an explanatory note and a brief resume for the appointee **at the same time as the appointment form.**

Deadlines

- 1) Appointment forms should be submitted to Ministerial and Parliamentary Services Division, Premier's Department at least two weeks before the Cabinet meeting at which the proposed appointment is to be considered. The details on the appointment form and the composition of the board are reviewed by Premier's Department. **Documentation should not be submitted to The Cabinet Office in the first instance.** The Cabinet Office will only process appointments which have first been reviewed by the Premier's Department.
- 2) Appointments will only be listed on the Cabinet Agenda following the agreement of the Premier and the Premier's Department.
- 3) Only those appointments which have been reviewed and forwarded by Premier's Department to the Cabinet Secretariat by 10 am on the Tuesday preceding the Cabinet meeting will be listed on the next Cabinet Agenda.
- 4) Any appointment submissions which arrive in Cabinet Secretariat after the deadline listed in paragraph 3 above will be held over for a future Cabinet meeting.

- 5) The Premier's Department will provide written advice of the Cabinet decision on the appointment to the responsible Minister.
- 6) Where appointments are to commence during December and January papers must be submitted earlier than normal, preferably during November, as there is usually a period of several weeks from mid-December when Cabinet may not meet.

1.3 Termination of boards

When a board is to be dissolved or members' appointments terminated agencies are requested to inform Premier's Department by email at boards@premiers.nsw.gov.au.

2 Categorisation and Remuneration

2.1 Categorisation

Boards will now fall into the following broad categories:

- **Governing Board-** The board should be empowered to govern the management of the enterprise and circumstances in which Ministerial control and direction will be exercised should be specific.
- **Advisory Board-** The board provides advice to the Minister on all matters relevant to the management of an authority but the Minister retains unfettered right to control and direct the board and the CEO.
- **Advisory Council, Committee, etc.-** These bodies generally have little or no policy determination or operational executive functions and are established primarily to provide advice to a portfolio Minister on policy or operational issues.
- **Quasi judicial Boards/Tribunals;** perform regulatory type functions. In many instances the daily rate is based on the annual equivalent that has been determined by the Statutory and Other Offices Remuneration Tribunal for full time office holders.

2.2 Remuneration

Remuneration for Governing Boards, Advisory Boards and Quasi Judicial Boards will be determined on a case by case basis by the Premier. Agencies will be required to submit details of increases sought. Details should include:

- Board role and responsibilities
- Legislative basis for board/committee if applicable
- Main functions, responsibilities and workload of board members
- Budget dependency

- Organisation turnover, assets and profit (where applicable)
- Qualifications, if any necessary for appointment to the Board
- Impact on the community of the Board's activities
- Justification for increase ie significant change in role and responsibilities of members
- Any other information considered relevant and details of a contact officer

Depending on the particular circumstances of each application, the advice and recommendation of the Statutory and Other Offices Remuneration Tribunal may be sought.

Maximum daily sitting fees for Advisory Councils are advised from time to time by way of Circular. The current rates, effective from 1 November 2004 are:

	Chair	Member
Full day	\$342	\$207
Half day	\$171	\$104

Ministers may determine sitting fees to the current maximum rates. Rates beyond the maximum must be approved by the Premier.

A number of bodies established by Government legislation do not draw on Consolidated Revenue but instead are funded from practitioner charges, grower levies and the like. Where members are elected, or where there is a mechanism to ensure the committee is directly accountable to those upon whom the charges are levied, the committee may determine the fees for its members rather than the Government. The Government must be advised of any changes in remuneration for this group.

Information on remuneration issues should be obtained from:

Sarah Bradshaw 9228 4657
Simon MacKenzie 9228 5292

2.3 Payment to Public Sector Employees

In line with policy decisions against "double-dipping", public sector employees appointed to NSW government boards or committees do not receive remuneration.

Ministers may seek an exemption from this policy in circumstances where public sector employees serving on boards or committees:

- have the approval of their employing agency to sit on the board or committee;
- are not acting as a representative of their employer or of the Government;
- work for the board or committee concerned will take place outside working hours or approved leave will be taken at the time; and
- there is no conflict of interest arising from the combination of their role as a public sector employee and their role on the board or committee.

Any requests for an exemption from the policy based on the above criteria should be referred to the Premier on a case by case basis.

It should be noted that all employees of NSW public service Departments, statutory bodies outside the public service and State Owned Corporations are considered to be public sector employees for the purposes of these guidelines.

2.4 Salary Packaging

The Premier's Department Guidelines for salary packaging for non-SES public employees applies to members of boards and committees. Premier's Department Circular 2002-61 outlines the administration, benefits and limits of the scheme.

In accordance with the guidelines, Members of boards and committees will be permitted to package a range of benefits up to 50% of salary or wages.

Actual implementation and administration of salary packaging arrangements will be matter for each Department and agency.

3 Taxation & Superannuation Guarantee Obligations

Agencies have obligations to the Australian Taxation Office (ATO) when paying remuneration to members of boards and committees.

Information on tax requirements can be obtained from the ATO site at www.ato.gov.au.

3.1 Taxation Arrangements

Pay As You Go (PAYG)

An amount is generally required to be withheld from Board Members' fees for PAYG. The withholding amount is determined with reference to the relevant tax table.

NSW Government policy is to employ individuals on Government Boards. Except as outlined below, payment of fees is to be made to the Board Member.

There will be circumstances where the Board Member advises that he or she is required to remit the fee to another entity, such as the Member's employer or a partnership in which the Member is a partner. In such circumstances the amount required to be withheld from the fee for PAYG is varied to nil. For a member who is required to remit the fees to their employer they must provide written confirmation of this from the employer so that the Department knows that the variation to nil applies.

Goods and Services Tax (GST)

When a Member serves on a board or committee, the member, or his organisation or employer, may be making a supply that is subject to GST. GST is payable only on a taxable supply.

A key factor in a taxable supply is that the appointment must be accepted in the course or furtherance of an enterprise that either the member is carrying on as a sole trader, a partner or director or the Member's employer is carrying on. An "enterprise" includes an activity, or series of activities, done in the form of a business as defined in section 9-29 of the *A New Tax System (Goods and Services Tax) Act 1999* ("the GST Act"). The supplier must be registered or required to be registered for GST.

It is irrelevant whether the fee is paid to the Member or his or her organisation as long as it is paid in respect of the supply.

Where GST applies, the agency paying the fee may be entitled to an input tax credit.

Please note the NSW Treasury requirements regarding government entities and ABNs. For further information concerning GST agencies should contact NSW Treasury.

Agencies should ensure that the correct amount of GST is being charged. Claims for input tax credits should be undertaken in accordance with normal procedures.

Allowances

Members of Boards and Committees are reimbursed the actual cost of travel, accommodation and meals associated with their role on the Board. When expenses are paid as actuals (claimed by member after the expense is incurred) the Member is required to obtain tax invoices, receipts etc., to enable the agency to claim input tax credits, otherwise the agency will only cover the non-GST component of any allowances claimed by a member. Members, therefore, have an obligation to keep all documents relating to their claims.

3.2 Superannuation Guarantee Charge

Agencies are also reminded of their obligations under the *Superannuation Guarantee (Administration) Act 1992* ("the SGAA"). The SGAA requires that an employer provide a prescribed level of superannuation support for all its eligible employees or pay the Superannuation Guarantee Charge (SGC). Boards, commissions, tribunals and similar bodies may be defined "employers" and the members (including part-time members) of such bodies as "employees" for Superannuation Guarantee purposes. It should be noted that who is an employer/employee for purposes of the SGAA is broader than common law definitions. It extends to payments made to a person under a contract that is wholly or principally for labour of the person.

For the years up until 1 July 2003, sufficient superannuation support to a complying superannuation fund or retirement savings account must be provided by the 28 July following the end of the relevant year. From 1 July 2003, sufficient superannuation support must be provided by the 28th day following the end of the relevant quarter (the quarters being 1 July to 30 September; 1 October to 31 December; 1 January to 31 March; 1 April to 30 June). If insufficient support is provided then the employer is liable to pay the Superannuation Guarantee Charge.

From 1 July 2003, the SGAA and 6A of the *Superannuation Guarantee (Administration) Amendment Regulations 2003* require employers to provide written advice to each employee within 30 days of each accumulation fund contribution made that counts toward superannuation guarantee compliance. Employers must report the amount of the contribution, the name of the superannuation fund and the membership number of the employee, if known. The ATO is advising that employers need only report within 30 days of making the final contribution for each quarter.

This information is only required for contributions that are made to accumulation schemes, such as First State Super. Defined benefit schemes like SASS and SSS do not require this information. Employers should note that penalties may be applied under the Criminal Code for non-compliance with these reporting requirements.

The superannuation contributions are in addition to the members approved daily or annual fee.

Superannuation Guarantee Exemptions

Employers do not normally have to make Superannuation Guarantee contributions for members who are:-

- 70 years of age or older (for this group of people the necessary alternative payments are detailed in Premier's Memorandum 99-49 and Premier's Department Circular 2000-4).
- Able to provide the employer with supporting evidence from the Tax Commissioner or the trustee or manager of a benefit body that they exceed the Pension Reasonable Benefit limit and they elect that the employer should not be liable to provide superannuation support. This election is irrevocable.

Although Superannuation Guarantee contributions are not required under Commonwealth law where a person is paid less than \$450 in a calendar month, the *First State Superannuation Act 1992* requires that compulsory employer contributions are paid in this situation. The NSW Government also requires equivalent payment for members of other complying accumulation schemes. Compulsory employer contributions are the same percentage of salary and wages as Superannuation payments.

Payment of Superannuation Guarantee support where GST is payable

Superannuation Guarantee support is required where salary or wages are paid by the agency to the board member. In the case where GST applies to members fees, the SGAA considers that this payment constitutes payment of salary or wages if the payment relates to the performance of duties as a member of the board/committee/tribunal. Under these circumstances, the agency is required to provide sufficient superannuation support for the individual member, where eligible or pay the SGC.

Provision of Superannuation support where Member is required to remit fee to a third party

Superannuation Guarantee support is not required to be paid by a board/agency where the worker contracts on behalf of his or her employer or partnership to pass on any fees received from the board/agency to either the member's employer or partnership. Any fees received by the member from the board/agency are received in the capacity as trustee for the employer or partnership. As the member is not an employee of the board/agency in these circumstances, the board/agency engaging the member does not have to pay any superannuation contributions under the SGAA. However, in the case where a member's appointment to a board/agency is unrelated to the member's own separate employment or membership of a partnership, the appointed member is beneficially entitled to receive any fees. The member, in these circumstances, is an employee of the board/agency for the purposes of the SGAA, irrespective of whether there is any agreement to pay the fees over to another entity or person.

3.3 General

Agencies seeking more detailed information about their PAYG, GST or Superannuation Guarantee obligations should either seek advice from the ATO or obtain independent professional advice. For PAYG and GST inquiries, you may wish to phone 13 28 66. Alternatively, agencies are encouraged to visit the ATOs website at www.ato.gov.au.

For superannuation inquiries, the ATO Superannuation Infoline number is 13 10 20. Further information can also be found at www.ato.gov.au/super.

4 Allowances

4.1 Domestic Travel

Statutory Officers, part-time Chairpersons and members of government boards and committees are reimbursed the amount of expenses actually incurred when required to travel within Australia. The Premier's Department regularly issues circulars advising rates for travel allowances which are to be taken as an indication of the upper limits for reimbursements. Current advice is provided in Premier's Department Circular No. 2004-25.

The lowest public sector rate applies to members of Advisory Committees. The relevant Minister has discretion to decide which rate should apply for members of Governing Boards and Advisory Boards. It will be necessary to ensure that members are aware of the limits set in Tax Ruling 2004/19, which can be found at the ATO web site www.ato.gov.au, and keep any receipts necessary for their tax records.

4.2 Overseas Travel

Official overseas travel by Chairpersons or members of boards and committees requires the approval of the portfolio Minister.

Actual costs of fares and reasonable accommodation costs are met for official overseas travel. In addition, a daily allowance is paid to cover the cost of meals and incidental expenses from the time of arrival at the overseas destination to the time of commencement of the return trip. Incidentals include items such as laundry and dry cleaning, taxi fares (other than for official business), private telephone calls and gratuities.

The procedures to access daily allowance rates when travelling overseas on official business have been revised. The procedures are outlined in Premier's Department Circular 2004-25, which can be accessed at www.premiers.nsw.gov.au.

4.3 Motor Vehicle Allowances

Members of boards and committees are entitled to be paid motor vehicle allowance when using their private motor vehicle to attend meetings. Two rates included in the various public sector awards are:

“Casual Rate” means the appropriate rate payable in respect of a motor vehicle maintained by the staff member for private purposes but which the staff member may elect to use with the approval of the Department Head for occasional travel on official business, subject to the allowance paid for such travel not exceeding the cost of travel by public or other available transport.

“Official Business Rate” means the appropriate rate of allowance payable for the use of private motor vehicle where no other transport is available and such use is directed by the Department Head and agreed to by the staff member or where the staff member is unable to use other transport due to a disability.

An employee using a motor vehicle for work must have for the vehicle a valid Third Party insurance policy and a comprehensive motor vehicle policy to an amount and in a form approved by the department head.

The Public Sector Management Office (PSMO) of the Premier’s Department regularly reviews motor vehicle allowances and notifies all Chief Executive Officers of any changes by way of a circular. Current advice is provided in Circular 2003-30 which can be found at www.premiers.nsw.gov.au.

Parking Fees

Part-time members of boards and committees may be reimbursed the cost of parking fees when driving their private vehicles to attend meetings. Due economies should be observed and the length of time being claimed should be reasonably related to the duration of the meeting. It is not appropriate to reimburse for a full day in a city parking station when the relevant meeting occupies two hours.

In recognition of the contribution made by Chairpersons of Government boards, these arrangements have been extended to include the cost of parking fees or fringe benefits tax incurred by part-time Chairpersons for parking their vehicle at any time when they are performing official duties in relation to their board.

Parking fees will only be reimbursed for motor vehicles which are suitably insured as discussed above.

Tolls, charges and miscellaneous costs

Departments are to reimburse members of boards and committee for an expense such as bridge tolls, road tolls and the like incurred during approved work related travel.

GOVERNMENT BOARDS AND COMMITTEES APPOINTMENT FORM

Government policy is to increase representation of women, people of culturally diverse backgrounds, Aboriginal and Torres Strait Islander people, people with a disability and young people on boards and committees.

1. Name of Board, Committee, etc:	Please tick: <input type="checkbox"/> Part-time <input type="checkbox"/> Full-time	
2. Legislation or terms of reference under which the board is constituted:		
3. Position (eg Chair, Member):		
4. Appointment criteria of position:		
5. Name of previous incumbent or indicate if reappointment:		
6. Reasons for appointment:		
7. Nominee of:		
8. Full name of proposed appointee:	Please tick: <input type="checkbox"/> Male <input type="checkbox"/> Female	
9. a) Does the proposed appointee identify as belonging to one of these groups? b) What is the person's Ancestry? *eg English, Irish, Italian, German, Greek, Chinese, Australian etc	Yes/No <input type="checkbox"/> Aboriginal or Torres Strait Islander <input type="checkbox"/> Person with a disability <input type="checkbox"/> Young Person (under 25) date of birth if young person/...../..... Ancestry (Please specify*) _____ (please provide more than one ancestry if necessary)	
10. Is the proposed appointee a member of any other Government boards or committees? If yes, please list:	Yes/No	
11. Address of proposed appointee:		
12. Qualifications/experience of proposed appointee:		
13a. Please provide details of the remuneration for the position: eg annual retainer fee (\$), other payments amount (\$), /time (hour, meeting, etc)	Annual fee:	Amount \$.....
	Sitting Fee:	Amount /time \$...../.....
13b. Is remuneration actually paid? ("No" in the case of Public Servants)	Yes/No	
14. Term of proposed appointment: Indicate appointment and termination date if possible		

All sections must be complete. Omission of any information will delay submission to Cabinet.

Signed: _____

Minister for

Government Boards and Committees Appointment Form

This Form has been designed with a view to achieving greater consistency in the information supplied to Cabinet for board and committee appointments. If the Appointment Form is copied onto an internal computer system it should be identical to the form attached. It must be one page only. A template for Microsoft Word may be obtained by e-mail from the contacts below. Any enquiries concerning the form should also be directed to these contacts.

E-mail: boards@premiers.nsw.gov.au

Phone: 02 9228 4199

Fax: 02 9228 4421.

Explanatory notes

1. Please give full name of board or committee using no abbreviations Eg. Armidale Local Land Board.
2. Enter current legislation or terms of reference which govern this board or committee. Eg. Crown Lands Act 1989.
3. Enter the position of the proposed appointee on the board or committee Eg. member, chair, ex-officio member.
4. Specify the qualifications, experience, etc **necessary** for appointment to this position as stated in the legislation or terms of reference for this board. Eg. Barrister with a minimum of 7 years experience.
5. Indicate who the proposed nominee is replacing. If the person is new to the board or committee and is replacing a previous member the full name of the previous member must be entered here. Eg. Ms Fiona May DUPONT. If this is a new position and all of the previous members are still sitting then enter the words new position. An explanation of why a new position has been created on the board should be given in the covering letter that is sent with the appointment form. If the person is being reappointed, then enter the word reappointment here.
6. Explain why the appointment is necessary e.g. new board, new position on board, resignation.
7. The nominating body must be entered for each proposed appointee. Eg. Minister for the Environment, Australian Bureau of Statistics. Indicate if the proposed appointee is ex-officio. The full name of the nominating body must be entered with no abbreviations.
8. The full name of the proposed appointee should be entered here with no abbreviations and including title, the tick box indicating gender must always be checked. Eg. Mr Robert James LEE. A tick should be placed in the appropriate box to indicate gender.

9. If the proposed appointee does not identify with any of the groups specified then *No* should be entered. If the proposed appointee does choose to identify with any of these groups *Yes* must be entered and a tick must be placed in the appropriate box/es for the purpose of identifying which group the proposed appointee belongs to. Young Person indicates that the current age of the propose appointee is less than 25 years. Where the proposed appointee is under 25 years of age at the time of appointment their date of birth should also be entered. Board members are also asked to indicate their ancestry. Ancestry should be counted back as far as three generations, if known. For example, consider parents, grandparents and great grandparents.
10. If the proposed appointee is not a member of any other boards or committees *No* must be entered here. If the proposed appointee is a member of other boards or committees then *Yes* must be entered together with a list of all of the boards to which he/she belongs. The information concerning positions on other boards and committees should be checked with the nominee at each reappointment and not taken from a curriculum vitae which may be out of date. Members have a responsibility to the boards and committees to which they belong and should not over-commit themselves by being appointed to many organisations.
11. The address of the proposed appointee must be entered.
12. Indicate what qualifications or experience the proposed appointee has that make him/her suitable for this appointment. Eg. Bachelor of Arts, Bachelor of Laws, Barrister.
- 13a. Annual Fee:** The annual fee in dollars that is associated with this position. Please enter this figure even if the particular member holding this position at this time does not receive remuneration. Enter zero if there is no annual fee associated with this position.

Sitting Fee: The rate in dollars that the member is paid for attendance at meetings. Please enter this figure even if the particular member holding this position at this time does not receive remuneration. Enter zero if there is no sitting fee associated with this position.

Time: Specify whether the above sitting fee is per half day, per day, etc.

Allowances to cover costs of attending meetings etc are not included as remuneration.
- 13b. Remuneration:** *Yes* indicates that the member does receive remuneration for the position. *No* indicates that the person does not receive remuneration for the position. If the member does not receive remuneration please indicate why, eg member is a public employee, member works on the board as an unpaid volunteer.
14. Indicate the appointment date and termination date. Eg. 1/9/2004 to 31/8/2007 or appointment for 3 years from the date of approval.