



Occasional Paper No. 20

Crown Entities: Review of Statements of Intent



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Crown Entities: Review of Statements of Intent

Summary

This paper forms part of the background work undertaken by the State Services Commission (SSC) on Crown entities during the 1998/99 financial year. It reports the findings of a review of the 1997/98 statements of intent (SOIs) of 41 Crown entities. Key findings were:

- many SOIs do not comply with the basic legal requirements;
- many do not contain enough information to allow an overall assessment of the performance of the entity to be made and there is a generally poor link between the SOI and the annual report;
- only about half relate the activities of the organisation to either the achievement of the government's outcomes or to outcomes in general and only a small number address risk reasonably well;;
- many contain no or extremely limited financial information; and
- Select Committees do not seem to consistently make use of the documents as part of their financial review of Crown entities.

The paper goes on to discuss the various options for addressing these findings. They include: a non-legislative approach (involving the development of guidelines and Cabinet expectations); possible amendments to the Public Finance Act; and a more thorough review of the legislative framework.

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Introduction

Most government organisations outside the legal Crown are Crown entities. Crown entities are a large group of quite disparate agencies which share certain reporting and accountability requirements under the Public Finance Act 1989. Crown entities include such diverse organisations as the Land Transport Safety Authority (LTSA), the ACC, the Legal Services Board and Housing New Zealand Ltd (HNZ Ltd). They come in a number of different legal forms, and undertake quite different functions.

Crown entities have quite different governance arrangements to those of Public Service departments, being at arm's length from the Minister, and usually governed by a board, which appoints a chief executive. Crown entities vary enormously in terms of their governance and accountability arrangements, and their relationship with their Responsible Minister. One accountability instrument that almost all large Crown entities share in common, however, is that they must produce a statement of intent (SOI) by the beginning of each financial year which sets out their projected performance for the following three financial years.

In principle, the SOI is an important document, for a number of reasons:

- it is the only formal, forward looking public accountability document that most of the entities are required to produce. As such it should provide a basis for accountability to the Minister, the House of Representatives and the public;
- it is one of the ways that the Minister can exercise formal influence over the business of the organisation, to ensure that the Crown's interests are properly managed, and that the activities of the entity are aligned with the Government's objectives, where this is appropriate (since the Minister can direct the entity in respect of the content of the SOI);
- it provides for a dialogue between the entity and the Minister on the nature of the entity's performance, since the Minister must be consulted on the draft SOI; and
- to be produced properly it must be the product of an internal business planning process.

Some entities are, however, also required by their legislation to have other ex ante accountability documents, which may overlap with the contents of an SOI [e.g. the ACC has a Service Agreement, and the Health Funding Authority (HFA)]. Treasury, on the basis of advice from the Crown Law Office, now requires that all Crown entities funded by way of a non-departmental output class have a purchase agreement with their Responsible Minister. This is not usually a public document.

The statement of intent becomes potentially more significant given the developing network model for strategic management. An obvious issue that arises is the extent to which the activities of Crown entities should be aligned with the Government's long term policy objectives, to the extent that this is appropriate given the nature of an entity's legislation. The statement of intent is a possible mechanism for exercising leverage over those entities.

This study was undertaken to examine a number of questions:

- are SOIs a valuable documentary basis for:
 - managing the Crown's policy and other interests, or
 - accountability to Parliament, or
 - accountability to the public?;
- do SOIs generally conform to the basic legal requirements (and how are those requirements interpreted)?;
- do they tell us anything about the adequacy of those legal requirements?;
- what sort of information do they contain (and does it include ownership and purchase elements)?; and
- depending on the answers to the above questions, are there any improvements that could be suggested?

The SOIs were examined not only in terms of their compliance with the legislation, but also to see if they contained other types of information (e.g. whether the SOI included a balance sheet, or covered human resource matters, neither of which is required by the Public Finance Act 1989). Accordingly, the fact that an entity's SOI does not, say, contain information on human resource matters does not mean it has not complied with its basic legal obligations. It is also important to remember that there are no general guidelines available on SOIs - it may not have occurred to entities to include any information other than that legally required¹.

This exercise has been document based. The central element has been a review of the 1997/98 statements of intent of:

- all Crown Research Institutes (CRIs);
- a selection of Crown Health Enterprises (CHEs) (now hospital and health services) - 7 out of 24; and
- most other Crown entities on the Sixth Schedule of the Public Finance Act.

This has involved reviewing 41 1997/98 SOIs. All the SOIs were scored against a standard template. This material was augmented by examining the Reports of Select Committees, comparing the 1996/97 statement of intent and annual reports of 7 Crown entities and reviewing the available literature on statements of intent (mainly a series of reports by the Controller & Auditor-General).

¹ Guidelines on Statements of Intent were released by The Treasury, June 1999.

The legislative framework

A Crown entity listed on the Sixth Schedule to the Public Finance Act 1989 must produce an SOI by the beginning of each financial year.² The Public Finance Act requires that the SOI must be tabled in the House of Representatives by the Responsible Minister. The SOI must set out the projected performance of the Crown entity over the following three financial years. The legislation requires it to define the objectives of the Crown entity, the scope of activities to be undertaken, and the performance targets by which the entity is to be judged, as well as a range of other information. It must cover subsidiaries of the parent organisation as well. The SOI is a public statement of the business the entity is in, how it proposes to carry out that business and, logically, a basis for subsequent reporting of actual performance.

The SOI is forward looking (ex ante) and multi-year in focus. The implication is that the Crown entity will conduct its business in accordance with the SOI, and then report against it in its subsequent annual report (ex post). The only explicit general statutory requirement in terms of the annual report, however, is that the annual report include a comparison of actual and projected financial performance.

Not all Crown entities must produce an SOI, but most of those that have significant assets or revenue must do so (tertiary education institutions being an exception). Parliament's Finance and Expenditure Committee (FEC) recommended that entities be required to have an SOI where the Crown has "a significant ownership risk, a significant purchase contracting risk, or where disclosure at the beginning of the year would promote good management practice".³ The last point is not particularly helpful in terms of sorting Crown entities - it is difficult to see how any organisation would not be included on the basis of it. The requirement to produce an SOI applies to a wide range of different entities, which undertake quite different functions, and range from entities with revenue of billions of dollars to ones with budgets of under \$10 million. Some are companies, some are statutory corporations.

The Crown entity SOI is drawn from, and closely modelled on the statement of corporate intent that SOEs and other commercial public sector bodies (e.g. Local Authority Trading Enterprises (LATES)) are required to produce. The heterogeneous nature of the Crown entities required to produce SOIs, however, makes them a significantly different set of agencies from the commercial organisations required to produce statements of corporate intent, and there is an obvious question about the utility of a document designed for commercial organisations being applied to a varied group of (mainly) non-commercial entities.

The SOI also has some broad similarities to the forecast financial statements of government departments ("DFR"), although there are some significant differences as well. For example, the DFR must include a balance sheet, operating statement, and statement of cash flows. There is no such explicit requirement for a Crown entity SOI. More important, however, is the different context within which these documents are established. In general the DFR adds nothing to the Minister's ability to exert leverage over a department and is, neither in principle or practice a major way of the Minister exercising control (the Police may be a potential exception to this). This is quite the reverse with a SOI, which in principle is one of

² Unless the Responsible Minister specifies a later date.

³ *Report of the Finance and Expenditure Committee on the Public Finance Amendment Bill [No 3], 14C, 1992 - 5.2.2.* A few small bodies like the Building Industry Authority must also have an SOI.

the major means that the Minister has of exerting control and influence. To take an example, the Minister of Cultural Affairs has very limited levers of formal control over the Museum of New Zealand Te Papa, other than the SOI, the purchase agreement (which may not provide a great deal of influence, given the nature of Te Papa's business), and the power to appoint the governing body.

The SOI must meet the needs of a number of different audiences:

- the Responsible Minister and Cabinet, and any agent used by the Minister;
- the House of Representatives;
- customers; and
- the public, including the media and interested sector groups.

These audiences see the SOI at different stages. The Minister sees the draft SOI and can influence the content of the final. The House and the public see the SOI only after it has been finalised. The SOI should be publicly available, and accessible to these audiences in terms of the quality of its presentation.

The Responsible Minister and the SOI

The SOI is the entity's document, not the Minister's. The Minister does, however, have a number of important rights and obligations in respect of the SOI:

- the organisation must consult the Minister on the draft SOI, and properly consider the Minister's comments;
- the Minister can require the entity to include certain matters in the SOI;
- the Minister and the entity can agree on other matters being included;
- the Minister can direct the entity in writing to modify the SOI;
- the Minister must table the SOI in the House;
- the entity must consult the Minister if it wishes to modify the SOI after it has been tabled; and
- specific legislation establishing an entity may give the Minister additional rights and obligations in relation to an SOI.⁴

The Minister's involvement in the preparation of the SOI needs to respect the responsibility of the board for governing the organisation.

⁴ For example, under the Housing Restructuring Act 1992, the process for producing Housing New Zealand Ltd's SOI starts with the Responsible Minister giving the company written notice of the Crown's social objectives in relation to housing and related services. The company is obliged to include information on how it will assist the Crown in meeting those objectives in its SOI (s15).

The SOI and other accountability documents

In practice while the SOI is an important formal document, much of its content may simply reflect planning and discussion which takes place in other contexts (e.g. if an entity is listed on the 5th schedule to the Public Finance Act the information on output classes to be supplied will reflect what is in the statement of objectives which in turn should be drawn from the purchase agreement unless the entity is funded by levy or third party revenue). In itself this is not a problem - the SOI should be a natural by-product of a good planning process, which is capable of producing a variety of information. The difficulties emerge, however, if the SOI is not backed by a good business planning process. This can cause a number of potential problems:

- the SOI not actually providing an accurate statement of expected performance;
- unnecessary duplication of effort if new information has to be created each time to produce different documents; and
- the risk of inconsistency between different documents, which can contribute to significant performance problems, particularly if the management work to priorities set out in other documents.

In terms of the latter point, for example, one of the problems Graham Scott identified with the New Zealand Symphony Orchestra Ltd (NZSO) when he reviewed it in the context of a major financial crisis in 1996 was that NZSO's SOI set out a scope of business that the Minister was unwilling to pay for through the purchase agreement, and which it was unlikely would be funded through third party revenue.

The legislation

The major legislative provisions relating to SOIs are in Part V of the Public Finance Act 1989 (as amended in 1992), and cover process, content and reporting. The SOI must include, "in respect of each of the financial years to which it relates, the following information:

- a The objectives of the Crown entity or group;
- b The nature and scope of the activities to be undertaken by the Crown entity or group;
- c The performance targets and other measures by which the performance of the Crown entity or group may be judged in relation to its objectives;
- d A statement of accounting policies;
- e Where required by the Responsible Minister, the ratio of consolidated shareholders' funds (or equivalent) to total assets, and definitions of those terms;
- f Where required by the Responsible Minister, a statement of the principles adopted in determining the distribution of profits to the Crown, together with an estimate of the amount or proportion of annual tax paid earnings (from both capital and revenue sources) that is intended to be distributed to the Crown;

- g Where applicable, the procedures to be followed before the Crown entity, or any member of the group, subscribes for, purchases or otherwise acquires shares in any company or other organisation;
- h Where the Crown entity is named or described in the 5th schedule a statement of output objectives specifying the classes of outputs to be produced by the Crown entity or group;
- i Any activities (not being outputs related to a class of outputs specified pursuant to paragraph (h) of this subsection) in respect of which the Crown entity or group will be seeking compensation from the Crown (whether or not the Crown has agreed to provide such compensation);
- j Such other matters, including the kind of information to be provided to the Responsible Minister during the course of those financial years, as are agreed by the Responsible Minister and the governing body of the Crown entity.” (41D [1]).

“Where required by the Responsible Minister, each statement of intent shall also include the governing body’s estimate of the current commercial value of the Crown’s investment in the Crown entity or group and a statement the manner in which that value was assessed (41D [2]).”

Crown entities are required to forward their draft SOI to the Responsible Minister not later than one month before the start of the financial year (s41C). The Crown entity must consider any comments on the draft made by the Minister and then deliver the finalised SOI to the Minister on or before the start of the financial year (or such later date as the Minister determines - s41E). The Minister then tables the SOI in the House of Representatives within 12 sitting days of receiving it (s41F). The legislation places no apparent fetter on the ability of the Minister to determine a later date for the SOI to be finalised by the entity, and does not require the Minister to provide the House with any explanation for the delay.

The Minister has the power to require the Crown entity to modify the SOI. Such a direction must be gazetted and tabled in the House (s41G). The Minister cannot direct the Crown entity to modify the SOI in respect of “Any activities (not being outputs related to a class of outputs specified pursuant to paragraph (h) of this subsection) in respect of which the Crown entity or group will be seeking compensation from the Crown (whether or not the Crown has agreed to provide such compensation)” s41D [1] i. Neither the Minister’s comments on the draft SOI, nor a direction to modify the SOI “shall derogate from” any duty the Crown entity has to act judicially in respect of any particular matter (ss41E [2], 41G [3] & 41H [4]).

The Crown entity can modify the SOI by notice in writing to the Minister, which the Minister then tables in the House. Again the organisation must consult the Minister on the proposed amendment (s41H). The Minister still retains the power to direct the entity to change the content of the SOI.

A Crown entity required to produce an SOI must also produce an annual report which contains “such information, including a comparison against the relevant statement of intent, as is necessary to enable an informed assessment to be made of the financial performance of the Crown entity” (s41I). The annual report must incorporate the annual financial statements of the entity (s44).

Section 2 of the Public Finance Act provides that subsidiaries of Crown entities are themselves Crown entities, and deemed to be on the same schedules to the Public Finance Act as their parent. For example Pharmac is a subsidiary of the Health Funding Authority. If the parent is required to have a statement of intent, then either the business of the subsidiary needs to be reflected in the parent's SOI and annual report, or (if parent and subsidiary do not form a "Crown entity group") the subsidiary must produce its own SOI and annual report.

In addition to the general provisions which apply to all entities listed on the 6th schedule to the Public Finance Act, some organisations also have additional requirements in their own legislation for their SOI, as to content, process or reporting. Examples of this include the ACC, Crown Research Institutes (CRIs), Hospitals, Environmental Risk Management Authority (ERMA), Housing NZ (HNZ) Ltd, and the Earthquake Commission (EQC).

Some difficulties with the legislation

The Public Finance Act does not include an explicit description of the purpose of a statement of intent. According to some accounts the SOI is an "ownership" document.⁵ While the SOI certainly contains elements that are part of the ownership interest, the Public Finance Act does not describe the document in these terms and nor does it include any explicit requirements to cover matters that would usually be considered part of the ownership interest, notably capability (e.g. human resources) and ownership risks.

On the face of it a number of the requirements for the content of an SOI could as well be thought of as purchase or policy matters rather than ownership issues (e.g. the requirements to set out the objectives of the organisation, the performance measures in relation to those objectives, and [where relevant] a statement of output objectives). In reality it may not be helpful to think about the SOI as being just about ownership - it includes both ownership and purchase interests.

There also seems to be some uncertainty about the extent to which the SOI is supposed to cover non-financial performance, an uncertainty added to by the fact that the only explicit link required between the SOI and the annual report is to report against financial performance indicators. While financial information may provide a good summary of performance for a commercial body it is unlikely to do so for a non-commercial one. Hence, for most Crown entities an SOI that just focused on financial performance indicators is unlikely to be adequate.

Curiously, while there seems to be some uncertainty about whether the SOI should focus on financial or non-financial information, or a combination of both, the legislation actually requires little financial information to be included as a matter of course, despite the fact that financial indicators are the only aspect of the SOI that there is an explicit requirement to comment on in the annual report. Unlike a DFR, there is no explicit requirement to include a balance sheet, an operating statement or a statement of cash flows, and many Crown entities do not include them in their SOIs. Most companies we reviewed do not do so, for example. Such financial performance indicators as are set out in s41D are generally to be included if required by the Minister.

⁵ For example, the Tertiary Education Green Paper sets out the proposition that the "expected ownership performance of TEIs should be approved by the Responsible Minister for inclusion in the annual SOI, including target ranges covering both financial and non-financial ownership performance". *A Future Tertiary Education Policy for NZ: Tertiary Education Review*, (1997), p59.

As was mentioned above, the Crown entity's SOI is closely modelled on the earlier provisions in the State Owned Enterprises (SOE) Act 1986 which set out the requirements for an SOE's statement of [corporate] intent. This potentially creates some problems in that:

- SOEs all have a similar and relatively straightforward (at least conceptually) primary objective, which can be expressed in financial terms - to be a successful business. This is not generally true of Crown entities most of which (even the companies) are established to further particular policy aims; and
- SOEs are companies.⁶ Many Crown entities which must have SOIs are not. Some of the provisions copied from the SOE Act use language which relates to commercial companies, and does not readily translate to statutory corporations which are established to carry out a variety of non-commercial functions. For example "shareholders' funds", "profits", "annual tax paid earnings" (many Crown entities are exempt from income tax), "current commercial value" (all s41D), "dividend" (s41I). While it is quite possible to think of comparable ideas for non-commercial bodies, the language may seem alien to a non-company, and may encourage Crown entities and their Ministers to ignore the provisions of the legislation.

An SOI must include, "Where applicable, the procedures to be followed before the Crown entity, or any member of the group, subscribes for, purchases or otherwise acquires shares...41D[g]". "Where applicable" can be interpreted in at least two ways. It could mean "where the entity has the power to acquire shares" (which is likely to include most entities that have SOIs, at least in respect of their ability to acquire shares in a subsidiary). This is Treasury's view. Alternatively, it could mean "where the entity intends to acquire shares, or may contemplate acquiring shares". Many entities do not cover this requirement in their SOI whether because of a narrow interpretation or ignorance. In addition this requirement does not mean that the SOI need include any information about the actual nature of any shareholding (other than in a subsidiary), as distinct from including a statement about the procedures to be followed in acquiring shares.

The Public Finance Act requires an explicit link to be drawn between the financial performance projected in the SOI, and the annual report. There is no explicit general requirement to report on other aspects of performance set out in the SOI. The annual financial statements (included in the annual report) must include certain other information that may have been included in the SOI, but there is no explicit link between that information and the SOI.

The fact that a variety of different versions and adaptations of the basic requirements of the Public Finance Act, have been incorporated into the legislation of a number of entities may indicate a level of dissatisfaction with the basic information requirements in the Public Finance Act, or it may reflect the difficulty of applying the standard provisions to such a diverse group of organisations. For example, a number of entities have additional legislative requirements that explicitly tie them into the Government's policy objectives (e.g. HNZ Ltd) but there is no such general requirement in the Public Finance Act.

There is no general guidance available to Ministers, departments or Crown entities on SOIs, other than the provisions of the Public Finance Act itself. Some departments have developed their own material.

⁶ The State Owned Enterprises Act does contemplate a statutory corporation being an SOE.

Findings

Summary

Perhaps the most striking feature of the SOIs we examined is the high level of variation between them, variation in terms of content, variation in terms of the quality of information, variation in terms of compliance with the law, variation in terms of presentation. We were dealing with a quite diverse range of entities must produce an SOI and, consequently, that a certain amount of variety was to be expected. What was observed, however, went well beyond this.

Quite a number of these documents are good in part - they may contain a very good coverage of outputs, for example, but hardly any ownership information (this might still comply with the Public Finance Act since it actually requires limited ownership information). Many of the documents do not contain enough information to allow us to make an overall assessment of the performance and capability of the organisation. The basic themes that emerged:

- many SOIs do not comply with the basic legal requirements;
- many do not contain enough information to allow an overall assessment of the performance of the entity to be made;
- only about a half relate the activities of the organisation to the achievement of the government's outcomes or outcomes in general (which suggested that the SOIs were not consistently used to encourage strategic alignment with the Government's broader objectives);
- ownership is generally covered less adequately than purchase;
- many contain no or extremely limited financial information;
- only a small number address risk reasonably well;
- human resource information, where it exists, is usually very limited;
- there is a generally poor link between the SOI and the annual report; and
- Select Committees do not seem to consistently make use of the documents as part of their financial review of Crown entities.

Companies' SOIs were, on average, to a higher minimum standard. This did not necessarily mean that the best SOIs were produced by companies - just that companies did not figure among the worst of the SOIs. Interestingly, there was more consistency in terms of the quality of CRI SOIs than there was for hospitals. Some companies still failed to comply with the legislation. In addition, the companies generally did not supply any financial information other than the ratio of shareholders funds to assets, a dividend policy and (sometimes) an estimate of the commercial value of the company. Companies did not usually supply balance sheets, operating statements or statements of cash flows.

Complying with the law

Legislative compliance is obviously important in its own right - public entities should comply with the law. In addition, non-compliance is likely to mean that important information is not disclosed. For example, inadequate reporting of subsidiaries means that the Crown (and Parliament) will not have a clear idea of the extent of business being conducted by organisations owned by the parent and the risks that the parent and the Crown might be exposed to.

A significant proportion of SOIs do not comply with the basic legal requirements of the Public Finance Act, or specific requirements in their own legislation. The absence of any information about a dividend/surplus policy or a debt/equity ratio, or on the commercial value of the entity was not regarded as non compliance with the law, because this information only had to be provided “if required” by the Minister and we assumed that the frequent absence of this information meant that the Minister had not required it to be supplied.

The main problems in terms of non-compliance were:

- *not covering subsidiaries properly* - The Public Finance Act 1989 requires that the information in the SOI cover not only the parent organisation, but also the Crown entity group - the parent and its subsidiaries (e.g. s41D). Where the subsidiaries do not form a Crown entity group, they are to separately report as Crown entities. In general, where subsidiaries are reported there is no more than a passing mention - there is no information provided about the subsidiary, and no statement that the information has been consolidated with that of the parent;
- *having no policy in respect of the acquisition of shares* - Most of the non-companies did not include such a policy, despite s41D[1]g, even when they intended to conduct much of their business through subsidiaries;
- *not covering the appropriate time period* - About a quarter of the SOIs do not cover 3 years, or do not do so at all adequately;
- *not including any performance targets at all*;
- *not including an adequate description of outputs classes, where required*;
- *not including an adequate statement of accounting policies*; and
- *not complying with additional legislative requirements*.

Our limited examination of subsequent reporting in the annual report revealed that entities also did not consistently comply with the requirement in the Public Finance Act 1989 to report against the financial performance indicators set out in the SOI.

The extent of non-compliance with the law made it very difficult to be confident about the meaning of a lack of comment on a particular statutory requirement. Did the absence of any comment about subsidiaries mean that the organisation had none, or simply that it had failed to provide any information on the subsidiaries it had an interest in, for example? A number of entities adopted the practice of reporting under all of the headings under s41D[1] of the Public Finance Act, even where that was to give a nil return.

Objectives and outcomes

The first requirement in section 41D [1] of the Public Finance Act is that the SOI include the “objectives of the Crown entity or group”. Given that the SOI must include a statement of the targets and other measures by which the entities performance can be judged in “relation to its objectives”, the question of what objectives are assumes considerable significance. The way that this requirement was interpreted varied a great deal, and included:

- the purposes set out in the organisation’s legislation; or
- the Government’s outcomes, or SRAs; or
- outcomes generally; or
- the outputs the organisation had agreed to produce; or
- a vision and mission statement; or
- some mixture of the above.

A little over a half of the documents include an explicit coverage of outcomes. About half contain a reference to Government policy, outcomes or SRAs. In overall terms, however, the SOIs do not seem to serve to explicitly align the Crown entities with the Government’s strategic priorities. It is important to note that, with a few exceptions (e.g. HNZ Ltd), there is no explicit requirement to link the entity’s SOI to the Government’s outcomes.

Ownership and purchase

If we leave out the companies which, with the exception of Radio NZ Ltd and the NZSO, are not required to report on outputs, ownership was generally covered less adequately than purchase. Purchase is more often the preponderant focus of the SOI than ownership. In some cases the SOI included almost no ownership information whatsoever, not even basic balance sheet information. The provision of very limited ownership information did not mean that the organisation failed to comply with the Public Finance Act.

Changes to the entity’s business or operating environment

Some of the documents contain a good discussion of the operating environment of the organisation, or changes to the business. Many do not. Some documents are surprisingly reticent about change.

Risk

Most of the documents do not explicitly address the issue of risk, although a small number do.

Financial information

Under a third of SOIs examined included a short form balance sheet, operating statement and statement of cash flows. Of those sampled, 39% provided no balance sheet information at all (although some of these report on financial ratios such as the ratio of shareholders' funds to assets). Interestingly, as was noted above, the companies frequently did not include a balance sheet, operating statement and statement of cash flows.

Only 56% of the entities have any stated policy for dealing with a surplus. The figure is much lower for non-companies. Given that the entities must include such information if required to do so by their Minister, this may suggest that the Crown is not paying enough attention to the management of capital in these organisations. This impression is reinforced by the fact that Crown entities are generally not subject to a regime to require them to pay the costs of capital, as departments and SOEs are, and the Crown does not seem to use s16 of the Public Finance Act to require Crown entities to pay surpluses to the Crown.

Most SOIs did not discuss borrowing powers or policies. More covered investment, although in some cases this was merely a limited reference in the statement of accounting policies. A few discussed financial controls.

As was discussed above the SOIs are generally poor in terms of reporting on subsidiaries and, on a policy for the acquisition of shares. Where subsidiaries were mentioned the information provided was usually minimal. Policies in relation to the acquisition of shares were often very general statements, typically about consulting the shareholder before acquiring shares, and did not usually cover the management of shares (although it must be remembered that there is no legal requirement to cover the latter).

While the Audit Office has found an over emphasis on financial information in the past in the statements of corporate intent of commercial bodies, we found that while this was true in a few cases, generally Crown entities SOIs were more likely to err on the side of limited financial information.

Human resource (HR) issues

In general HR issues were not covered well. About half of the SOIs examined provide some information on HR issues, although this is often little more than a short reference to the importance of our staff. Others did not mention HR or staffing issues. Many of these organisations have a statutory obligation to be a good employer. Some are required to produce and report on an EEO plan. Again, the Public Finance Act does not require the SOI to include HR issues.

The Crown entities listed on the 6th schedule ranged from businesses that employ thousands of staff, to those that employ under a dozen. Given the small size and number of staff of some Crown entities it is not surprising in these cases that there is little reporting of HR issues.

Some organisations did, however, address HR issues. One of the CRIs, for example, commented on the difficulty of recruiting and retaining scientists of a certain level of experience and the strategies that it was using to address this issue.

Other information agreed with the Minister

Many SOIs included other information that had been agreed with the Minister. Usually this covered additional reporting requirements.

Presentation and availability

Like the annual report, the SOI is a public document, to be used by Ministers, MPs, stakeholders, the media and the public to gain some understanding of the nature of the organisation, the context it operates in and expected performance. The evidence from our review was at odds with the idea that the document was generally important in terms of public accountability and information. The documents were not readily available, and many seemed to have a relatively low profile.

An interesting practical illustration of this was how difficult it was to get a set of them. Some organisations were less than forthcoming when approached for a copy of the document - asking for example for an explanation of why we wanted the document, or expressing initial reservations about supplying the document. At least one organisation supplied this public document marked “commercial in confidence”. Some organisations, on the other hand clearly regarded the SOI as a useful public relations document.

The quality of presentation varied considerably. The majority are to a reasonably good standard. At least two were outstanding in terms of the quality of presentation. Others are just photocopied and top stapled. There was some correlation between production values and the quality of the content, but this was not the universal pattern. Poor presentation standards tended to reinforce the impression that they are produced just to comply with the Public Finance Act, rather than being produced to cater to the needs of the various external parties who may make use of the document.

Some SOIs refer the reader to other documents for information that should have been in the SOI, both in terms of providing a full picture to the reader and to comply with the Public Finance Act. In part this seems simply a failure to appreciate the public accountability purpose of the SOI.

Some SOIs contained a lot of jargon which, together with the reference to other documents and the unevenness of some information, could make comprehension difficult for the uninformed reader. Some contained useful glossaries.

Other matters

We also looked for certain other types of information (most of which were again not required by law):

- *coverage of information technology* - there was little coverage of IT issues, whether in terms of the general impact on business, risk, or investment. This was interesting in the light of the emerging “year 2000” issue, particularly given that the Year 2000 Taskforce identified some Crown entities as a risk in terms of this. One entity, which included a discussion of the future technological environment in its SOI, was an exception to this;
- *pricing or charging policy* - a significant number of these entities are funded by way of a levy set by regulation (usually by order in council). It was unusual for there to be a discussion of how the amount of this was set;

- *the use of public powers* - a number of these entities exercise regulatory powers. At the time that the FEC was considering the amendments to the Public Finance Act which introduced the term “Crown entity”, it was also concerned with accountability for the use of public powers by such bodies. These were not generally discussed in the SOI, although there were some exceptions to this;
- *identifying “pass through money”* - a number of the entities are “devolved purchasers”, which do not produce goods and services themselves, but are explicitly established to purchase services from (or fund) third parties. Most of these bodies distinguish between this money, and the money used to cover the costs of their own activities. Others do not - at least one such body did not include any financial information in its SOI at all;
- *benchmarking* - there was only limited use of benchmarking against other organisations; and
- *values and ethics* - some SOI covered matters of values and conduct.

Subsequent reporting and accountability

The logic of the legislative arrangements is that the entities required to produce an SOI will use their annual report to account for how their actual performance compares with the projected performance contained in the SOI, even though the Public Finance Act only explicitly requires this in respect of financial performance. The best reports measured their organisation’s progress across financial and non-financial indicators, diagnosed performance variances and identified the impacts on the forthcoming years work.

Two of the seven organisations whose annual reports we examined had a good link between the annual report and statement of intent.

Two other entities made a very limited link between the annual report and the SOI. For the others the annual report made no reference to the SOI or its content at all. This does not merely represent a failure to act in accordance with the logic of the model - it also represents a failure to comply with the specific legislative requirements, since the Public Finance Act 1989 explicitly requires a link to be made between the SOI and the annual report at least in respect of financial performance.

The reports of the financial reviews carried out by select committees themselves generally made limited use of the SOIs as part of their Financial Reviews. Committees did not comment on the SOIs in terms of their quality or their level of compliance with the law.

Conclusion

This study was undertaken to answer these question:

- are SOIs a valuable documentary basis for:
 - managing the Crown’s policy and other interests; or
 - accountability to Parliament; or
 - accountability to the public?;
- do SOIs generally conform to the basic legal requirements (and how are those requirements interpreted)?;
- do they tell us anything about the adequacy of those legal requirements?;
- what sort of information do they contain (and does it include ownership and purchase elements)?; and
- depending on the answers to the above questions, are there any improvements that could be suggested?

On the basis of the study we have undertaken, the answer to these questions has to be mixed. The SOIs varied enormously in terms of the quality of their content and presentation, the type of material they contained, and their usefulness as an accountability document to the executive, to the House of Representatives, and to the public, although there were some good documents. Many of them were not readily available.

Many of these documents do not comply with the legislation.

The nature of the documents does not suggest that they provide a good basis for the Crown’s ownership or purchase interests to be effectively managed. As a set the SOIs are also not being used to align the activities of the entities with the Government’s strategic objectives, although there were examples where this clearly happened. They are also clearly not being used as a mechanism to introduce any collective interest elements into the operation of these entities, even though they are a potential mechanism for doing so for most large Crown entities. It may be that Ministers prefer to deal with strategic alignment on the basis of other formal or informal mechanisms.

Our study has tended to reinforce the suggestion that there are some problems with the legislation itself, in terms of both clarity about the purpose of the document and the type of information it should include, and the specific information requirements of the Public Finance Act, as well as the link to the annual report. The legislation does not prevent the production of a high quality document, but it does not encourage it either.

It is also important to note that any deficiencies in the SOIs do not merely reflect on the organisations that produce them. They also reflect on the Crown’s management of its interests and risks - on the Responsible Minister and the Minister’s advisers, and on the central agencies in terms of the lack of guidelines and standards for such an important document. It also reflects a lack of certainty and focus on the part of central agencies in terms of their role in relation to Crown entities.

Possible approaches to the issues raised

There are a number of ways that these issues could be addressed. One approach would be to conclude that there are some particular problems with the way SOIs function, which could be addressed by modifying the legislation, or by developing guidelines to assist Crown entities, Ministers, and Ministers' advisers in dealing with SOIs. Both approaches could be adopted. Possible modifications to the Public Finance Act 1989 could include:

- a better definition of “objectives” and “nature and scope of activities”;
- more requirements for coverage of existing subsidiaries and acquisition/disposal policies;
- a requirement for SOIs to state why information is missing (e.g. why there is no policy on the acquisition of shares, no debt/equity ratio supplied);
- more ownership information - a statement of what the board considers to be the main risks and issues facing the organisation; and
- a requirement for annual reports to include more than just financial performance measures. At present, some Crown entities that are required to state performance measures in their SOIs are not required to report against these in their annual reports or anywhere else.

Non-legislative responses could include:

- developing guidelines for developing and reporting against SOIs, including the relationship between the SOI and other ex ante accountability documents;
- the identification and promotion of good practice;
- promoting awareness of the role of the SOI; and
- raising the awareness of Responsible Ministers (and their departments) of their responsibilities.

There are currently no guidelines. In addition to developing guidelines, the Government could also adopt a set of expectations of the information it expects SOIs to contain. This would put the onus on Ministers, departments and other ministerial advisers, as well as entities themselves to ensure that the SOIs contained certain information. Such an approach might allow particular issues of collective interest to be highlighted and reported (e.g. the Year 2000 issue). It could also be tailored to reflect the circumstances of the different types of Crown entities. It would have to be done in such a way that respected the role of the board in governing Crown entities, and did not impose unreasonable additional accountability burdens.

Such an approach would also give the Government more confidence that the business of Crown entities was aligned with the Government's long term goals, where this is appropriate, as well as a mechanism to encourage that strategic alignment. It would fit with the emerging network model of strategic management. A significant question which would need to be addressed would be how a Crown entity's contributions to the Government's long term goals

would be managed where the Responsible Minister is different to the Minister with policy responsibility. This is the case with Housing NZ Ltd, for example, an organisation that is explicitly required to conduct its business according to an SOI developed with reference to the Crown's social objectives as communicated to it by the Responsible Minister, but that Minister is not the Minister responsible for the Government's housing policy.

These initiatives are not necessarily alternatives - there would seem little profit in amending the law, without developing guidelines, and some expectations on the part of Government, for example. If legislative change is embarked on in the short to medium term, there is little point in developing guidelines and expectations until the legislation is passed by Parliament. Therefore the priority for legislative changes will need to be determined before it is decided whether or not it is appropriate to develop guidelines etc. In both cases a Cabinet directive to proceed would be required.

Another approach would involve a more substantial review of the legislation on the basis that the findings on SOIs are symptomatic of broader problems with the governance and accountability arrangements of Crown entities.

Postscript

The Treasury issued guidelines on Statements of Intent in June 1999. The *Crown Entities Initiative* launched by the Minister of State Services on 15 July, 1999 included *Guidance for Departments in Relation to Crown Entities* and a Cabinet Office Circular CO (99) 13, *Ministers' Roles and Responsibilities in Relation to Crown Entities*. Both these publications discuss Statements of Intent to some degree.

A review of Crown entities legislation is under way at present. A section of that review is considering accountability documentation, including Statements of Intent.