

Chair

Cabinet Committee on State Sector Reform and Expenditure Control

**Proposed directions under the Crown Entities Act 2004 to support a whole of government approach for Procurement, ICT and Property Functional Leadership**

**Paper 1 of 4 – Overview**

**Proposal**

- 1 This paper seeks Cabinet approval to consult on three directions to support whole of government approaches under section 107 of the Crown Entities Act 2004 (the Act).

**Executive Summary**

- 2 The provisions for section 107 directions under the Act were recently amended to increase the range of purposes for which a direction can be used, and to allow the Government to be more selective about the Crown entities to which a direction applies. As required under the Act, we are seeking Cabinet agreement to consult on three draft directions. Details of each direction are given in the attached suite of papers. They are presented together to ensure coordinated oversight of the consultation process.
- 3 The proposed directions, if approved, will:
  - extend mandatory application of the Government Rules of Sourcing beyond government departments to all entities subject to direction under section 107 of the Act (listed in Appendix 1), except for school boards of trustees – 100 additional entities;
  - extend ICT Functional Leadership and Assurance requirements to a group of Crown agents with sizeable ICT business transactions and investments – 27 additional entities; and
  - extend Property Functional Leadership to all Crown agents, except District Health Boards (DHBs) – 26 additional entities.
- 4 We consider that the proposed section 107 directions and consultation plans comply with the provisions of the Act, and that these directions are the most effective means to achieve the intended purposes. There are no human rights, legislative or regulatory implications.
- 5 We recommend that the Committee agree that consultation on the three directions proceed as proposed, and that this suite of papers be proactively released on the State Services Commission website.

## Background

- 6 A direction to support a whole of government approach under section 107 of the Act can be used where the government has decided on a multi-agency or system-wide approach to an activity, and there are benefits from applying this to some or all Crown entities and/or companies listed in Schedule 4A of the Public Finance Act 1989.
- 7 Under amendments made to the Act in 2013, the Ministers of Finance and State Services may jointly direct Crown entities to support a whole of government approach by complying with specified requirements for any of the following purposes:
  - a. to improve (directly or indirectly) public services;
  - b. to secure economies or efficiencies;
  - c. to develop expertise and capability;
  - d. to ensure business continuity;
  - e. to manage risks to the government's financial position.
- 8 A section 107 direction can also now be given to one or more specified "groups", "categories" or "types" of entity under sections 107(2) and 107(2A), for example to:
  - a group of at least three entities, where the entities in the group have in common at least one significant characteristic that relates to the direction; or
  - all statutory entities, or all Crown agents, or all autonomous Crown entities, or all independent Crown entities; or
  - all Crown entity companies, or
  - all companies listed in Schedule 4A of the Public Finance Act 1989; or
  - all school boards of trustees; or
  - a combination of these categories or types or all of them.
- 9 Except for Crown Research Institutes, entities subject to a section 107 direction must "give effect" to the direction as soon as it comes into force. Section 7(6) of the Crown Research Institutes Act 1992 specifies that Crown Research Institutes are only required to "have regard" to a section 107 direction.
- 10 Section 113 of the Act specifies that a direction cannot relate to an entity's statutorily independent functions or change how these functions are carried out, or require action in respect of a particular person or persons.
- 11 Cabinet Office Circular CO (13) 4 sets out the requirement for issuing a section 107 direction. Cabinet approval must be secured to undertake consultation and issue the direction.

## Comment

- 12 The Government has decided on a whole of government approach to functional leadership for ICT, Procurement, and Property. The ICT and Procurement Functional Leaders have been directed to develop section 107 directions in consultation with the State Services Commission [CAB Min (13) 20/12, CAB Min (13) 20/13 and CAB Min (13) 10/4A refer].



- 13 Extending the functional leadership mandates beyond core Public Service departments is desirable to secure economies of scale, improve operational efficiency, build capability, and improve service delivery. The attached papers provide more information on the benefits of each proposed direction.
- 14 This suite of papers seeks approval to commence the process for these directions in a coordinated way to ensure that:
- the government is aware that the Functional Leadership roles are being extended to support the delivery of Better Public Services (facilitated by the changes made to the Act this year);
  - we are properly scrutinising the range of directions that restrict decision-making in arm's length agencies;
  - Ministers responsible for Crown entities and Schedule 4A companies are aware of draft directions that could eventually apply to those entities; and
  - duplication of background and process information is avoided.
- 15 We propose that the Head of State Services put in place a process for coordinated consultation on the proposed directions on our behalf. We anticipate that issues may arise during consultation that could potentially lead to some modifications, as happened with the previous direction that was issued in 2008.

Withheld under section 9(2)(g)(i) of the Official Information Act 1982

#### Proposed directions

- 16 Agencies will be consulted on:

- **mandatory application of the Government Rules of Sourcing** to all entities subject to direction under section 107(2) and section 107(2A) of the Act, except school boards of trustees (100 additional entities). The Rules reflect internationally recognized minimum standards of good procurement practice, and Cabinet has noted that to get full benefit of the Rules, they should be used as widely as possible [CAB Min (13) 10/4A refers];
- **extension of ICT Functional Leadership and Assurance requirements** to specified Crown agents with the common characteristic of sizeable ICT business transactions and investment: Accident Compensation Corporation, all DHBs, Earthquake Commission, Housing New Zealand Corporation, New Zealand Qualifications Authority, New Zealand Trade and Enterprise, New Zealand Transport Agency, and Tertiary Education Commission. The new direction will replace the existing July 2008 direction to Crown agents to use shared authentication services for those Crown agents subject to the new direction. The July 2008 direction will continue to apply to Crown agents not subject to the new direction.
- **extension of Property Functional Leadership requirements** to all Crown agents, except DHBs (26 additional entities). This group of entities has the common characteristic of owning or leasing office and/or public interface space that can be managed in its own right (ie, not inextricably linked to

operations, as is in the case of DHBs). The majority of Crown agents currently act in accordance with the property Functional Leadership mandate, but this does not guarantee future cooperation. The direction will mitigate risk and ensure consistent, efficient and reliable ongoing implementation of Property Functional Leadership.

- 17 Details of each direction – including the specific entities to which they would be applied, the benefits and costs of applying them, and the proposed consultation processes – are in the attached suite of papers.

18

Withheld under section 9(2)(g)(i) of the Official Information Act 1982

### **Compliance with the provisions of the Crown Entities Act**

- 19 We consider that the proposed draft directions meet the following "tests" established in the Act, and in Cabinet Office Circular CO (13) 4, because they:

- are being applied to achieve approved purposes in section 107(1);
- apply to entities that can be directed under section 107(2) and 107(2A);
- do not contravene section 113 by interfering with the operation of statutorily independent functions; and
- meet the intentions of the Circular by:
  - reflecting interests that are wider than the interests of any individual entity;
  - generating benefits from a common approach that may not be achieved through individual decision-making;
  - relating to matters that are relevant to the selected entities; and
  - being clear about the obligations they impose.

- 20 The Act also requires us to be satisfied that appropriate consultation will occur with entities to which a direction is proposed to apply, and parties who represent interests of those likely to be substantially affected by the proposed direction. We consider that the plans put forward in each paper will satisfy these requirements.

### **Effectiveness of section 107 directions compared to alternatives**

- 21 Issuing section 107 directions is the best way to ensure a consistent and efficient approach to enforcing these requirements across a broad range of entities. The process ensures transparent procedure through consultation, and submission of the directions for consideration by the House of Representatives.
- 22 Officials have considered alternative approaches which, in other situations, may be open to Ministers to specify the Government's requirements. These are noted in Appendix 2, but are considered to be ineffective because they are not binding, or are unavailable in the present context, or are unlikely to ensure a consistent and cost-effective approach.



### **Monitoring compliance and assessing the benefits achieved**

- 23 Compliance with each direction will be monitored by each initiating department. They will also assess the benefits of applying the approved directions. Methodologies for monitoring and evaluation will be noted in the report-back papers to Cabinet after consultation with entities.

### **Time limits not considered necessary**

- 24 Given the ongoing need for applying the functional leadership requirements, no time limits will be set on any directions that follow the consultation processes. A new section 115A of the Act provides that where no expiry date is set, a direction shall be reviewed five years after it is given. Those reviews will assess whether the directions need amendment or continuance, and will be informed by the monitoring and evaluation work done by each initiating department.

### **Next steps**

- 25 Once approved, consultation will commence as projected. Subject to the outcome of those processes, we expect to submit papers to Cabinet early in 2014 to:
- report on the outcome of the consultations; and
  - seek Cabinet's agreement to issue directions to support whole of government approaches.
- 26 Subject to Cabinet approval, the Ministers of Finance and State Services will issue the direction, notify the affected entities, and present the direction and any relevant material to the House of Representatives. The direction comes into force 15 sitting days after it is presented to the House, unless the House has resolved to disapply it.

### **Consultation on the suite of papers**

- 27 This suite of papers has been prepared by the State Services Commission; Treasury; Department of Internal Affairs; Ministry of Business, Innovation and Employment; and the Property Management Centre of Expertise in the Ministry of Social Development. The Department of the Prime Minister and Cabinet has been informed. Monitoring departments have been informed about the proposed directions, and will be further engaged as the coordinated consultation process is designed. There has been no consultation on this suite of papers with Crown entities as they will be advised or consulted in the next stage of the process. However, there have been initial discussions with some entities about the likely proposals.

### **Financial implications**

- 28 The costs of the proposed consultation processes will be funded from within the relevant departmental baselines.
- 29 The financial implications for each direction are set out in the relevant papers. It is anticipated that the costs to entities will be manageable within current funding levels.

### **Human rights, gender and disability implications**

- 30 There are no human rights issues, under either the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993 or gender or disability implications, associated with the proposed directions.

### **Legislative implications**

- 31 There are no legislative implications from the proposal to consult, or from any subsequent proposals to issue directions.

### **Regulatory impact analysis**

- 32 Directions are not regulations so regulatory impact statements are not required.

### **Publicity**

- 33 Pro-active release of this suite of papers on the SSC website is recommended, but no additional publicity is planned regarding the consultation. We expect an active publicity release when directions are eventually issued, as these will be demonstrating the Government's work to improve the operation of state services.

### **Recommendations**

- 34 We recommend that the Cabinet Committee on State Sector Reform and Expenditure Control:
- 1 **note** that this suite of papers proposes consultation on three directions under section 107 of the Crown Entities Act 2004, to support whole of government approaches with respect to Procurement, ICT and Property Functional Leadership;
  - 2 **note** that Cabinet has previously indicated support for whole of government approaches in these three Functional Leadership areas [e.g. CAB Min (13) 20/2, CAB Min (13) 20/13, CAB Min (13) 10/4A refer] and that alternative approaches to a section 107 direction are considered to be unavailable or inappropriate;
  - 3 **note** that the Ministers of Finance and State Services consider that the proposed directions and consultation processes comply with the relevant provisions of the Crown Entities Act 2004;
  - 4 **direct** the Head of State Services to put in place a process for coordinated consultation on the three directions on behalf of the Ministers of Finance and State Services
  - 5 **note** that the report back on the outcome of the consultation will specifically address any issues leading to any modification of any direction
  - 6 **agree** that this suite of papers be pro-actively released on the State Services Commission website.

  
Hon Bill English  
Minister of Finance

Date: 27/11/2013

  
Hon Dr Jonathan Coleman  
Minister of State Services

Date: 28-11-13



## **APPENDIX 1**

### **Entities to which a section 107 direction can be applied under the Crown Entities Act 2004**

#### **46 Crown Agents**

---

Accident Compensation Corporation  
Callaghan Innovation  
Careers New Zealand  
Civil Aviation Authority of New Zealand  
District Health Boards (20)  
Earthquake Commission  
Education New Zealand  
Energy Efficiency and Conservation Authority  
Environmental Protection Authority  
Health Promotion Agency  
Health Quality and Safety Commission  
Health Research Council of New Zealand  
Housing New Zealand Corporation  
Maritime New Zealand  
New Zealand Antarctic Institute  
New Zealand Blood Service  
New Zealand Fire Service Commission  
New Zealand Qualifications Authority  
New Zealand Tourism Board  
New Zealand Trade and Enterprise  
New Zealand Transport Agency  
New Zealand Walking Access Commission  
Pharmaceutical Management Agency  
Real Estate Agents Authority  
Social Workers Registration Board  
Sport and Recreation New Zealand  
Tertiary Education Commission

#### **18 Autonomous Crown Entities**

---

Arts Council of New Zealand Toi Aotearoa  
Broadcasting Commission (NZ On Air)  
Families Commission  
Government Superannuation Fund Authority  
Guardians of New Zealand Superannuation  
Museum of New Zealand Te Papa Tongarewa  
New Zealand Artificial Limb Board  
New Zealand Film Commission  
New Zealand Historic Places Trust (Pouhere Taonga)  
New Zealand Lotteries Commission  
New Zealand Symphony Orchestra  
New Zealand Teachers Council  
Public Trust  
Retirement Commissioner

Standards Council  
Te Reo Whakapuaki Iirangi (Māori Broadcasting Funding Agency)  
Te Taura Whiri I Te Reo Māori (Māori Language Commission)  
Testing Laboratory Registration Council

### **17 Independent Crown Entities**

---

Broadcasting Standards Authority  
Children's Commissioner  
Commerce Commission  
Drug Free Sport New Zealand  
Electoral Commission  
Electricity Authority  
External Reporting Board  
Financial Markets Authority  
Health and Disability Commissioner  
Human Rights Commission  
Independent Police Conduct Authority  
Law Commission  
New Zealand Productivity Commission  
Office of Film and Literature Classification  
Privacy Commissioner  
Takeovers Panel  
Transport Accident Investigation Commission

### **11 Crown Entity Companies**

---

All Crown Research Institutes (7)  
Crown Irrigation Investment Limited  
New Zealand Venture Investment Fund Limited  
Radio New Zealand Limited  
Television New Zealand Limited

### **8 Non-listed companies where the Crown is the majority or sole shareholder (listed in Schedule 4A of the Public Finance Act 1989)**

---

Crown Asset Management Limited  
Crown Fibre Holdings Limited  
Fairway Resolution Limited  
Health Benefits Limited  
The Network for Learning Limited  
Research and Education Advanced Network New Zealand Limited  
Southern Response Earthquake Services Limited  
Tāmaki Redevelopment Company Limited

### **School Boards of Trustees**

---

2,435 approx (including Te Aho o Te Kura Pounamu – The Correspondence School)

(These lists are taken from [http://www.ssc.govt.nz/state\\_sector\\_organisations](http://www.ssc.govt.nz/state_sector_organisations))



## APPENDIX 2

### Effectiveness of section 107 directions compared to alternatives

#### *Individual letters of expectation from Ministers to boards*

- 1 Individual Ministers could write to entities for which they are responsible, expressing expectations to be addressed in Statements of Intent. However, this would be administratively cumbersome for a large group of entities, cannot bind those entities, and would be referring to operational matters that are unlikely to be covered in strategically-focused Statements of Intent.

#### *Directions by responsible Ministers under section 103 of the Crown Entities Act*

- 2 This section enables the responsible Minister of a Crown agent to direct the entity to "give effect" to a government policy that relates to the entity's functions and objectives.
- 3 However, we do not recommend the use of section 103 because this approach would:
  - a only apply to Crown agents and not cover all the entities targeted by the proposed directions;
  - b be inefficient, requiring multiple Ministers to make individual directions; and
  - c raise questions as to whether the specified operational obligations would relate to "functions and objectives" as considered in terms of section 103.

#### *Cabinet Office circulars*

- 4 Cabinet Office circulars are another possibility for consideration. Cabinet Office circulars are used to provide guidance to Ministers (or Ministers and departments) on particular issues. However, they are not intended for a wider entity audience and, given the processes set out in the Act to issue directions, it is unlikely that the contents of a Circular would be considered binding on entities. They are, therefore, not considered appropriate to ensure support for a whole of government approach.

#### *Regulations or instructions under the Crown Entities Act, Public Finance Act or other legislation*

- 5 Officials are not aware of any other regulation-making or instruction-giving power under the Crown Entities Act, Public Finance Act or other legislation that could produce the same effect as, and have the flexibility of, the proposed directions.
- 6 We consider that the subject-matter of the proposed directions is suited to an administrative direction rather than legislation. The directions express the Government's expectations that entities comply with specified operational requirements. We consider that such expectations do not need to be subject to the wider-ranging consultation, select committee scrutiny and staged deliberation by the House of Representatives that a Bill would receive.

