



Joint Report: Changes to the Public Finance Act and State Sector Act to accommodate organisational forms other than the department

Date:	16 December 2011	Tsy Report No:	T2011/2514
		SSC Report No:	12/11-MoSS/2072

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Bill English)	Agree with recommendations	Friday, 23 December 2011
Minister of State Services (Hon Dr Jonathan Coleman)	Agree with recommendations	Friday, 23 December 2011

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Michele Lloyd	Manager, State Sector Management	Withheld under section 9(2)(a) of the Official Information Act	Tsy contact
Gordon Davis	Chief Legal Advisor	Withheld section 9(2)(a) of the OIA	SSC contact

Minister of Finance's Office Actions (if required)

Forward the report and attachments to the Minister of State Services

Enclosure: No

Joint Report: Changes to the Public Finance Act and State Sector Act to accommodate organisational forms other than the department

Executive Summary

The Better Public Services Advisory Group has discussed the use of alternative organisational forms within the legal Crown to help support innovations in the delivery of services and results, facilitate collaboration on areas that fall between, or sit across, the responsibilities of two or more departments, and to help shift resources to higher priority areas. In particular, this would include new sector arrangements.

This report is a companion to separate reports on the reviews of the Public Finance Act 1989 (PFA) and State Sector Act 1988 (SSA) from Treasury and the SSC respectively (T2011/2449 and 12/11-MoSS/2068 refer). Advice on changes to the PFA and SSA is being provided now, ahead of Cabinet papers in relation to the Better Public Services Advisory Group's report, in order to seek your views in time to develop final proposals for progression in a 2012 Bill.

This joint report provides explanations and illustrative examples of the following alternative organisational forms and describes the changes to legislation required to enable the relevant organisational forms to be used. The proposals in this report are part of the suite of advice relating to the work of the Better Public Services Advisory Group, and final proposals regarding legislative change will depend on decisions taken on the Advisory Group's report.

Mandated sector

A mandated sector would be a formal arrangement that brings together the strategic decisions for a sector (comprising two or more departments) under a single sector leadership board, made up of the chief executives of those departments. The board would be responsible for sector-level policy and resource allocation decisions for the sector, and would report to Ministers as a single entity. Service delivery would continue to occur through the constituent departments. The sector leadership board would be a new organisational form that takes on functions, such as administering sector votes.

Specific purpose board

A specific purpose board would be a formal arrangement that brings together the delivery of a specific sector result or activity requiring cooperation between two or more departments. The specific purpose board would be led by a sector leadership board made up of the chief executives of the constituent departments. This board would be legally the same new organisational form as for a mandated sector, but with a narrower, deeper remit for the strategic decisions and the delivery of the specific result or activity. The departments would continue to deliver their other activities under current vertical arrangements (or a looser sector arrangement).

Executive agency

Executive agencies are units that can be used to create a sector arrangement within a single department. The departmental chief executive has a clear sector leadership role for the strategic policy and resource decisions. Each executive agency would be an independent entity within the host department, focused on operational service delivery and headed by a director. The director of each executive agency would be responsible for operational

decisions within the policy and resourcing parameters set by the host department, and would report directly to the responsible Minister(s) on operational matters. An executive agency would be a new organisational form.

The goal of the changes proposed to the SSA and PFA is to accommodate the organisational forms discussed by the Better Public Services Advisory Group, and to make the legislation *enabling*, so that instances of these alternative organisational forms can be established in the future without the need for repeated legislative amendments.

This flexibility in the SSA can be achieved by:

- adding or removing sector boards and executive agencies to or from a new schedule to the SSA by Order in Council (OIC);
- using the OIC as a Terms of Reference to define the scope of each board or agency; and
- specifying the responsibilities of chief executives (as individuals and as members of a sector board) and of directors of executive agencies in the SSA.

Flexibility in the PFA can be achieved by either referencing the SSA schedules or relevant definition when specifying the types of organisation to which each provision applies, or by specifying in the PFA, for each provision, the circumstances in which it does and does not apply. In particular, the PFA needs to allow other organisational forms to administer appropriations which will support the delivery of results across agency boundaries.

If you agree, and subject to final decisions made in relation to the Better Public Services Advisory Group Report, specific changes to the SSA and PFA to achieve the aims described above will be included in a Cabinet paper in the first half of 2012 that seeks approval to proceed with legislative amendments.

Further work is being performed in relation to how Crown entities can be included in sectors and other mechanisms to encourage participation in cross-system initiatives.

Recommended Action

We recommend that you:

- a. **Note** that the Better Public Services Advisory Group has discussed the use of organisational forms other than departments within the legal Crown to support the delivery of better state services at less cost, and these alternative organisational forms are described in this report.
- b. **Note** that changes to the Public Finance Act 1989 and State Sector Act 1988 are required to enable alternative organisational forms to the department (such as allowing alternative forms to administer appropriations).
- c. **Note** that the proposals in this report are part of the wider state sector reform process arising from the Better Public Services work, and that the final shape of these proposals will be significantly influenced by decisions taken in respect of the Better Public Services work
- d. **Note** that the following changes, detailed in Appendix A, are required to the SSA:
 - i. An amendment to the definition of “Public Service” to include departments, executive agencies in a host department, and sector boards (both mandated sectors and specific purpose boards).

- ii. Provisions to establish executive agencies in a host department, headed by a director appointed by the State Services Commissioner, including provision for Orders In Council to be made to add and remove agencies from a new schedule to the SSA.
 - iii. Provisions to establish sector boards, with the option of a chairperson with a casting vote, including provision for Orders In Council to be made to add and remove boards from a new schedule to the SSA.
 - iv. Provisions to establish direct responsibility from the director of an executive agency to the Responsible Minister.
 - v. Provisions to establish joint and several responsibility among members on a sector board.
- e. **Note** that the following changes, detailed in Appendix B, are required to the PFA:
- i. Where the provisions in the PFA will apply differently to different organisational forms, the types of organisation to which each provision applies will be specified either by referencing the relevant defined term or schedule in the SSA, or by specifying the circumstances in which each provision does, or does not, apply.
 - ii. Where the provisions in the PFA will apply equally to all organisational forms, the wording of the PFA will be amended to encompass the new organisational forms.
- f. **Agree** that the changes to the SSA and PFA outlined in recommendations d and e will be included in a report to Cabinet seeking approval for changes to legislation, due in the first half of 2012.

Agree / Disagree

- g. **Note** that further work is underway in relation to how Crown entities can be included in sectors and other mechanisms to encourage participation in cross-system initiatives.

Michele Lloyd
Manager, State Sector Management
The Treasury

Gordon Davis
Chief Legal Advisor
State Services Commission

Hon Bill English
Minister of Finance

Hon Dr Jonathan Coleman
Minister of State Services

Purpose of Report

1. This report advises you of the changes required to the Public Finance Act 1989 (PFA) and State Sector Act 1988 (SSA) in order to accommodate different organisational forms within the legal Crown (other than departments).
2. This report is a companion to separate reports on the reviews of the PFA and SSA from Treasury and the State Services Commission (SSC) respectively (T2011/2449 and 12/11-MoSS/2068 refer).

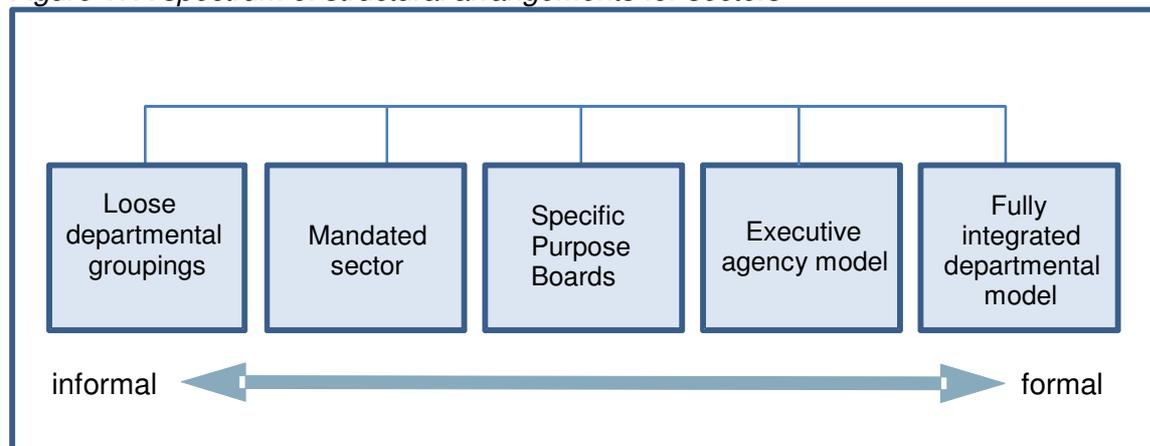
Context

3. The Better Public Services Advisory Group has discussed the use of different organisational forms, with different governance, accountability and operational structures, to enable the state services to more actively focus on delivering better results for New Zealanders. In particular, this would include new sector arrangements to facilitate collaboration on results that cross the responsibilities of two or more departments.
4. The PFA and SSA are currently predicated on departments, headed by chief executives, being the component parts of the legal Crown. Changes to the PFA and the SSA are required to give the Government more flexibility in how the entities that make up the legal Crown are organised. The goal of the proposed legislative changes is to make the legislation *enabling*, so that different organisational forms can be accommodated over time, without the need for repeated legislative amendments.

Proposed alternative organisational forms: explanations and illustrative examples

5. To facilitate new ways of working, particularly regarding specific results, a range of organisational forms could be considered for use within the legal Crown. As shown in Figure 1, these forms range in nature from the existing loose grouping of departments, through to a 'super department' using the existing departmental model. Implementing the three new forms in between these two existing options will require legislative change.

Figure 1: A spectrum of structural arrangements for sectors



6. The following sections describe the characteristics of the proposed new organisational forms. The Justice Sector is used as an example to illustrate each of the new options. Currently, the Justice Sector operates as a loose agency grouping. The chief executives of the Justice Sector agencies have formed an informal sector leadership board to help make shared decisions, but this board does not have formal decision-rights or accountability.

Mandated sector

7. A mandated sector would be a formal arrangement that brings together the strategic decisions for a sector (comprising two or more departments) under a sector leadership board, made up of the chief executives of those departments. One of the chief executives could have an explicit lead role (including acting as chair of the board, with a casting vote when the board is unable to reach consensus).
8. The board would be listed as a legal entity in a schedule to the SSA, and the PFA would enable the board to administer appropriations and a balance sheet for the sector as a whole. The ability of the Board to administer appropriations together with proposed changes to the PFA to enable an output appropriation for a specified purpose would enable outputs currently delivered by more than one department to be combined in a single appropriation to support the delivery of results across department boundaries.
9. The mandated sector board would:
 - report to the sector's Minister(s) as a single entity;
 - collectively administer appropriations and a balance sheet for the sector;
 - make policy advice and resource allocation decisions for the sector as a whole, including shifting resources from one department to another; and
 - be responsible for producing one set of planning and accountability documents for the whole sector (separate departmental documents would only be required where a department had activities that are outside of the sector arrangements).
10. The Board would be supported by a single policy hub, chief financial officer (CFO) and finance team. The chief executives on the board would retain responsibility for the management of their departments, for operational decisions, and for the delivery of specific results within the parameters set by the board.
11. The membership of the board could include non-executive members beyond the chief executives of the constituent departments. External members could provide additional support and experience to the chief executives, and help with stakeholder engagement. In some cases, external members could have an executive role, and a sector could have an appointed external chair with an explicit role to lead the sector.
12. In the Justice Sector, a mandated sector board could comprise the chief executives of the Ministry of Justice, Police and Corrections. The board could collectively administer appropriations which are currently in Vote Police, Vote Justice and Vote Corrections. The sector role that the CFO of Police currently performs could be built on to form a single finance team and the sector policy team in the Ministry of Justice could be expanded to provide policy advice for all three departments. However, legislation would need to provide for the Commissioner of Police to retain constabulary independence in respect of whether to investigate particular incidents or whether to initiate particular prosecutions.

Specific purpose board

13. A specific purpose board would be a formal arrangement that brings together the delivery of a specific sector result or activity that requires cooperation between two or more departments. In contrast to the mandated sector model, each department would also have other significant responsibilities that do not relate to the specific purpose.
14. A specific purpose board would be led by a sector leadership board made up of the chief executives of the constituent departments in the same way as a mandated sector. This board would be legally the same new organisational form as for a mandated sector, but with a narrower, deeper remit for the strategic decisions and the delivery of the specific result or activity. As a result, the sector leadership board(s) for specific purposes would also be listed in the same schedule to the SSA, and their narrower remit would be reflected in the relevant Order in Council (OIC). The PFA would enable the sector leadership board for a specific purpose to administer appropriations and, if necessary, a balance sheet. (In some cases, the assets associated with the specific purpose board may remain on the balance sheets of the constituent departments.)
15. A specific purpose board would:
 - report to the responsible Minister(s) on the specific results or activities;
 - administer the appropriation(s) for the specific results or activities;
 - make policy advice and resource allocation decisions to deliver the results or activities; and
 - be responsible for producing planning and accountability information (to be provided either via separate documents, or as part of the documents of one or more of the constituent departments).
16. The activities of a specific purpose board could be delivered through a single business unit hosted in one department. Alternatively, the specific purpose could be delivered via a virtual unit spread across the constituent departments, with the board formally coordinating activity.
17. For example, in the Justice Sector a specific purpose board could be used to coordinate activities to improve outcomes for parents involved in the Justice system who have young children. Resources could be pulled together from Police, Justice, Corrections and, potentially, Health and Education. The board would have the authority to direct resources to achieve the specific purpose, and would be responsible for reporting to Ministers on the achievement of these results.

Executive Agency

18. Executive agencies are a significant feature in many public management systems, in particular in the UK and Australia. In general, executive agencies are focused on the delivery of a small number of clearly identifiable services, and do not have strategic policy roles. Executive agencies have separate, direct accountability for their operational activities and are part of a host department that provides the broader strategic policy and resource context.

19. Executive agencies can be used as component units to create a sector arrangement within a single department. The departmental chief executive would have a leadership role for strategic policy and resource decisions. Each executive agency would be an independent entity within the host department, focused on operational service delivery and led by a director. The director would be responsible for operational decisions within the policy and resourcing parameters set by the host department, and would report directly to the responsible Minister(s) on operational matters. Executive agencies would be listed in a schedule to the SSA, and the SSA would specify the respective responsibilities of the director and the chief executive of the host department in relation to the executive agency.
20. An executive agency would:
 - report directly to the responsible Minister(s) on operational matters relating to its specific function or service;
 - be led by a director who would be responsible for the delivery of the executive agency's specific functions (the chief executive of the host department would not be responsible for these functions); and
 - operate within the sector-level policy and resource parameters set by the host departmental chief executive (or sector board, if applicable).
21. The performance of each executive agency could be reported as part of the planning and accountability documents of the host department.
22. In the Justice Sector, for example, the Ministry of Justice could be expanded to cover the whole sector, with Corrections, Courts and Police forming executive agencies within the Ministry. The Ministry of Justice would administer the appropriations and balance sheet for the whole sector, and allocate operating and capital budgets to the executive agencies. The directors of the Corrections, Police and Courts executive agencies would be accountable to Ministers on operational issues (the chief executive of Justice would not be accountable for the operational performance of these executive agencies). Where there are statutory functions, particularly in Police, these could be retained and performed by the executive agency.

Changes required to the SSA

23. To "hard wire" sector boards would entail a significant shift in the public sector management system, which is essentially based (in both the SSA and PFA) on the individual responsibilities of chief executives. The introduction of legally-binding collective responsibilities would represent a genuine step-change that would require a new way of thinking and working between and among chief executives and their departments. Legally, there would be no difference between a mandated sector leadership board and a specific purpose board. The difference would lie in the scope of their responsibilities.
24. Appendix A outlines the legislative changes that would be required to establish sector boards and executive agencies. In summary, the SSA would need:
 - a) new provisions to establish sector boards legally comprising the chief executives of the component departments and to provide for the appointment (and removal) of a chairperson with a casting vote, if required. An OIC mechanism would provide flexibility to insert the name of each board in a new schedule to the Act (and to remove a board from the schedule if it is disestablished), including the names of the departments whose chief executives comprise the board. The OIC would define the scope of each board's responsibilities;

- b) amendments to existing provisions to: establish the joint and several (collective) responsibilities of the chief executives who legally comprise a sector board; and provide for the State Services Commissioner to review the performance of a board (in addition to reviewing the performance of each chief executive and each department). In practice, these reviews would be undertaken jointly by the central agencies; and
- c) another OIC mechanism to insert the name of each executive agency in a separate new schedule to the Act (and to remove an agency from it). The Act would exempt the chief executive of the host department from responsibility for the executive agency's operations, and would make the director of the executive agency directly responsible to the appropriate Minister.

Changes required to the PFA

- 25. Given the changes to the SSA outlined above, the new organisational forms can be provided for in the PFA by either referencing the SSA schedules when specifying the types of organisation to which each PFA provision applies, or by specifying in the PFA, for each provision, the circumstances in which it does and does not apply. For example, the rules regarding the administration of Departmental Bank Accounts apply to any organisation that has such an account. In particular, the PFA needs to allow other organisational forms to administer appropriations which will support the delivery of results across agency boundaries.
- 26. Several provisions in the PFA will continue to apply to all organisational forms (such as the specific powers of the Minister of Finance and the Secretary to the Treasury to request information). In these cases, the word "department" needs to be replaced with broader wording that also encompasses other organisational forms.
- 27. Appendix B sets out in more detail how the provisions of the PFA would be amended to accommodate the alternative organisational forms described in this report.

Crown entities

- 28. To this point most work on facilitating cross-agency collaboration has focused on arrangements within the legal Crown, and has not substantially addressed issues around collaboration between Crown entities and departments. Crown entities are separate legal entities distinct from departments within the legal Crown. They operate at arms-length from Ministers under the authority of a governance board and, depending on the category of entity, have varying degrees of statutory independence from the Executive. Further work is underway in relation to how Crown entities can be included in sectors and other mechanisms to encourage participation in cross-system initiatives.

Appendix A: Changes to the SSA to accommodate alternative organisational forms

Provisions in the SSA that relate to departments	Specific purpose board	Sector leadership board	Executive Agencies within sector-based departments
<p>Part 1: State Services Commissioner</p> <ul style="list-style-type: none"> Section 6 sets out the Commissioner’s principal functions. The function of reviewing agency and CEO performance applies (with specific exceptions) to all departments listed in schedule 1. 	<p>The Commissioner would review the performance of each board listed in schedule 3, including the performance of each chairperson where applicable.</p>	<p>The Commissioner would review the performance of each board listed in schedule 3, including the performance of each chairperson where applicable.</p>	<p>The Commissioner would review the performance of each director of an executive agency listed in the relevant schedule, in consultation with the chief executive of the host department (details to be in part 3 of the Act).</p>
<p>Part 2: The Public Service</p> <ul style="list-style-type: none"> Section 27 defines the Public Service to mean the departments listed in schedule 1. The definition will expand to include all “agencies” listed in schedules 1, 2 and 3. The Act needs to provide for the establishment of executive agencies within a host department. The Act would provide for OICs to add and remove the names of executive agencies and their host departments to and from schedule 2, and for the OIC to define the scope of an agency’s operations. The Act needs to provide for the establishment of sector boards legally comprising the CEOs of the participating departments (and the directors of executive agencies, if applicable). The Act would provide for OICs to add and remove the names of sector boards to and from schedule 3, including the names of the departments and executive agencies whose CEOs/directors comprise the board; and for the OIC to define the scope of a board’s responsibilities. 	<p>To be included in the definition of Public Service.</p> <p>To be added to schedule 3 by OIC (and able to be removed from the schedule).</p> <p>Provision for chairperson with casting vote.</p> <p><i>Options</i> for appointment and replacement of chairperson: either by the Commissioner after consultation with appropriate Ministers; or as specified in the OIC, on the recommendation of the Commissioner.</p>	<p>To be included in the definition of Public Service.</p> <p>To be added to schedule 3 by OIC (and able to be removed from the schedule).</p> <p>Provision for chairperson with casting vote.</p> <p><i>Options</i> for appointment and replacement of chairperson: either by the Commissioner after consultation with appropriate Ministers; or as specified in the OIC, on the recommendation of the Commissioner.</p>	<p>To be included in the definition of Public Service.</p> <p>To be added to schedule 2 by OIC (and able to be removed from the schedule).</p>

Provisions in the SSA that relate to departments	Specific purpose board	Sector leadership board	Executive Agencies within sector-based departments
<p>Part 3: Chief Executives</p> <ul style="list-style-type: none"> • Section 32 sets out the responsibilities that CEOs owe to the Minister. The Act needs to: <ul style="list-style-type: none"> ○ cross refer to the PFA, to clarify that CEO responsibilities include those under the PFA ○ add new responsibilities: to ensure the dept operates in the collective interests of government; to position the dept to meet its medium and long term strategies and objectives ○ provide for joint and several responsibilities when CEOs/Executive agency directors comprise a sector board. • Section 33 makes CEOs statutorily independent in matters relating to individual employees. In executive agency arrangements, the CEO will be required to delegate employment related decisions to the director. 	<p>Some individual responsibilities (tendering of advice; the carrying out of functions and duties; financial management and reporting) to become the joint and several responsibility of the board members.</p> <p>Specify that the extent of joint responsibility covers the scope of activities as defined in the OIC (individual responsibilities continue to apply to other departmental activities outside the defined scope).</p> <p>Specify that the joint and several responsibilities apply even when a decision was made by a chairperson with a casting vote.</p> <p>Employment provisions will not be applicable (boards will not have power to employ employees).</p>	<p>Some individual responsibilities (tendering of advice; the carrying out of functions and duties; financial management and reporting) to become the joint and several responsibility of the board members.</p> <p>Specify that the extent of joint responsibility covers the scope of activities as defined in the OIC (individual responsibilities continue to apply to other departmental activities outside the defined scope).</p> <p>Specify that the joint and several responsibilities apply even when a decision was made by a chairperson with a casting vote.</p> <p>Employment provisions will not be applicable (boards will not have power to employ employees).</p>	<p>Provide for the Commissioner to appoint the director of an executive agency, in consultation with the CEO of the host department; likewise to review the director's performance, in consultation with the CEO.</p> <p>Provide for the director to be responsible to the appropriate Minister for the agency's operations as defined in the OIC; specify that the host CEO is not responsible for those operations.</p> <p>Provide for the director to have joint and several responsibility if he or she is a member of a sector board.</p> <p>Directors to have delegated authority from the host CEO in relation to employment decisions for agency employees.</p>

Appendix B: Changes to the PFA to accommodate alternative organisational forms

Provisions in the PFA that relate to departments	Specific purpose board	Sector leadership board	Executive Agencies within sector-based departments
<p>Part 1: Appropriations</p> <ul style="list-style-type: none"> This part specifies the rules regarding the administration of appropriations and the content of the Estimates and Supplementary Estimates. For example, s14 requires that the Estimates state, for each appropriation, which department will administer the Vote containing that appropriation. 	<p>A specific purpose board would administer appropriations for the specific purpose.</p> <p>The PFA needs to be amended to allow the Estimates to specify which <i>organisation</i> (be it a department or otherwise) will administer each appropriation.</p>	<p>A sector leadership board would administer appropriations for the whole sector.</p> <p>The PFA needs to be amended to allow the Estimates to specify which organisation (department or otherwise) will administer each appropriation.</p>	<p>Executive Agencies would administer appropriations under delegated authority from their host department.</p> <p>No change is required for this to occur.</p>
<p>Part 4: Reporting by Departments</p> <ul style="list-style-type: none"> This part sets out the information that departments must provide to Parliament before the start of, and following the end of, each financial year. 	<p>A specific purpose board would report to Parliament on its <i>ex ante</i> intentions, and <i>ex post</i> performance, relating to the specific purpose for which it is responsible.</p> <p>Amendments to the PFA are planned to allow reporting to be tailored to the circumstances and characteristics of individual agencies. This part of the PFA would apply to specific purpose boards, but with sufficient flexibility to ensure the reporting is fit-for-purpose.</p>	<p>A sector leadership board would report to Parliament on behalf of the whole sector.</p> <p>The PFA needs to be amended to exempt departments from reporting to Parliament, where the information about the department is covered in the report from another entity (i.e. the sector leadership board).</p> <p>In some circumstances, a department may need to continue to report separately on functions that are not considered part of the sector.</p>	<p>The department would produce one set of accountability documents that would cover the whole sector, including the executive agencies.</p>
<p>Provisions in the Act relating to departmental balance sheets and provisions in Part 6 of the Act relating to departments operating Crown and Departmental Bank Accounts.</p>	<p>There may be circumstances where all proposed organisational forms would require their own balance sheet, including a bank account. For example, a specific purpose board may have a balance sheet and own assets required to deliver its specific purpose, or it may administer assets held on the Crown's balance sheet, or held by its constituent departments.</p> <p>The wording in this section needs to be broadened to enable this. The PFA will still require agencies to have the approval of the Treasury in order to open a Departmental Bank Account.</p>		

Provisions in the PFA that relate to departments	Specific purpose board	Sector leadership board	Executive Agencies within sector-based departments
<p>Provisions in Part 4 of the Act relating to the financial management and reporting responsibilities of departmental chief executives.</p>	<p>The specific purpose board would be jointly responsible for the management of the unit it administered.</p> <p>For those functions separate from the specific purpose, the chief executives of the constituent departments would retain the responsibility for the financial management of their departments and for fulfilling the reporting requirements.</p>	<p>Departmental chief executives would retain responsibility for the management of their department, including financial management.</p>	<p>The chief executive of the host department would retain responsibility for the financial management and reporting requirements of the Executive Agency.</p> <p>No change required.</p>
<p>Powers of the Secretary to the Treasury to obtain information from departments.</p>	<p>The powers of the Minister of Finance and the Treasury to request information would apply equally to the alternative forms proposed.</p> <p>The wording of the PFA needs to be amended to include other agencies as listed in the schedules to the SSA as well as “departments”.</p>		