



## Joint Treasury / SSC Report: Cabinet Papers on legislative changes for Better Public Services

<b>Date:</b>	19 April 2012	<b>Report No:</b>	T2012/736
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### Action Sought

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Minister of Finance (Hon Bill English)	<b>Provide</b> feedback to officials on the proposal for the establishment of Specific Purpose Boards in the State Sector Act <b>Sign and submit</b> the attached papers (subject to any feedback you provide on 23 April) to Cabinet Office by 26 April	State Sector Reform Meeting on 23 April  26 April
Associate Minister of Finance (Hon Steven Joyce)	<b>Provide</b> feedback to officials on the proposal for the establishment of Specific Purpose Boards in the State Sector Act <b>Sign and submit</b> the attached papers (subject to any feedback you provide on 23 April) to Cabinet Office by 26 April	State Sector Reform Meeting on 23 April  26 April
Minister of State Services (Hon Dr Jonathan Coleman)	<b>Provide</b> feedback to officials on the proposal for the establishment of Specific Purpose Boards in the State Sector Act	State Sector Reform Meeting on 23 April

### 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
Ryan Orange	Deputy Commissioner, Better Public Services Programme	Withheld under section 9(2)(a) of the Official Information Act	SSC contact

**Enclosure: Yes (attached)**

## Purpose

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1. This paper provides draft papers with proposals for legislative changes to support the Better Public Services programme. If you agree, the papers are to be signed and submitted to Cabinet Office by 26 April so that they can be considered by SEC on 1 May.

## Analysis

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2. These draft Cabinet papers propose amendments to the Public Finance Act, State Sector Act and Crown Entities Act necessary to support the Better Public Services programme and to enable the public sector management system to continue to adapt to the changing needs of Parliament, Ministers and the state services. These papers (attached) are to be considered by SEC on 1 May:
  - BPS Paper 1: Overview of legislative policy proposals
  - BPS Paper 2: Better system leadership
  - BPS Paper 3: Departmental agencies
  - BPS Paper 4: Sector and specific purpose boards
  - BPS Paper 5: Amendments to the Public Finance Act 1989
  - BPS Paper 6: Amendments to the State Sector Act 1988
  - BPS Paper 7: Amendments to the Crown Entities Act 2004
3. Given the volume of papers for SEC to consider, we are working with your offices on options for effectively presenting the key policy proposals to the Committee. We will discuss these with you at our meeting on 23 April.
4. Earlier drafts of these papers were discussed with the State Sector Reform Ministerial Group on 2 April. The papers have been updated since this meeting to reflect further feedback received from other departments and Crown entities.
5. The key change since our earlier meeting is that *BPS Paper 4: Specific Purpose Boards* now includes recommendations to establish these boards under the State Sector Act. These legislative boards would be in addition to Cabinet mandated boards proposed in the earlier draft. This change follows feedback from officials working on the results approach that a legislative board option may be necessary in some instances to strengthen and more strongly signal a collective approach to tackling cross-agency challenges.
6. One of the key themes from the feedback and consultation is the recognition that greater collaboration and collective accountability involves a more sophisticated, and hence more complex, set of accountability arrangements. Given the additional complexity involved, some of the new tools proposed in these papers, such as Departmental Agencies and legislative Specific Purpose Boards, should be used selectively, after full consideration of the options available. These options include

branded units within departments, Cabinet mandated boards, and merging departments and agencies.

7. The following elaborates on the feedback received regarding the increased complexity of Boards and Departmental Agencies.

*Stronger Collaboration; Greater Complexity*

8. A key trade-off in getting greater collaboration across agencies is that the stronger the mechanism or tool to support this collaboration, the greater the complexity in responsibilities and accountabilities. While formal mechanisms are important for signalling expectations and, in some instances, establishing legal responsibilities, ongoing Ministerial commitment to working across agencies is critical to successful change.
9. With regard to Specific Purpose Boards a key judgement is the extent that a legislative board would further strengthen cross-agency coordination to achieve results compared to a Cabinet mandated board.
10. As mentioned, initial feedback from the ongoing work in the results approach indicates that there is value in having a legislative option for boards, as a legislative board:
  - a. requires a chief executive to go back through the board and its Ministers if that chief executive (with their Minister's concurrence) seeks to progress a proposal that affects the board's ability to fulfil its purpose.
  - b. requires chief executives to give precedence to their legislative board responsibilities over their individual department responsibilities, should the two conflict.
  - c. sends a clearer, public signal that the chief executives, and implicitly Ministers, are to work together and share information to achieve the specified result/purpose.
11. As we have previously discussed, a Cabinet mandated board can go a considerable way towards achieving the step change in cross-agency collaboration if it is backed by strong, collective Ministerial leadership and reinforced with chief executive performance agreements, budgets and other tools that focus on cross-agency coordination. We recognise that these are also critical elements for a legislative board to be successful.
12. To mitigate the risk that a board can become paralysed if it must require consensus, the proposals provide for the board to vote where there is no consensus and for the chair to have a casting vote (this vote may be used where there is a deadlock or to preserve status quo in the scenario where the chair is outvoted by 1). In effect this means that there may be elements of a board's advice to Ministers that was not fully supported by all board members.
13. Collectively, a legislative Special Purpose Board represents a significant shift in decision rights from individual Ministers to the Minister or group of Ministers responsible for the board.
14. With regard to Departmental Agencies, the complexity arises with regard to the responsibilities and accountabilities between the chief executives of the host department and Departmental Agency. This complexity is due the host department ultimately controlling the assets, being the legal employer for all staff and advising Ministers on the policy and resource settings for the Departmental Agency.

15. While acknowledging these complexities, a Departmental Agency offers the potential to:
  - deliver new functions that may have otherwise led to the creation of a separate department or Crown entity;
  - incorporate certain operational and/or regulatory functions presently delivered by separate Crown entities into the legal Crown; and
  - consolidate currently separate departments into a single department (establishing Departmental Agencies for any operational activities).
16. As we work through the drafting process for Departmental Agencies and Special Purpose Boards, we expect further refinements will be needed to the proposed legislative settings. The 'founding' documents for each entity (i.e., Departmental Agency Agreements and terms of reference for boards) are also critical for clarifying and detailing the respective responsibilities and relationships between chief executives and between Ministers.

## Recommended Action

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We recommend you:

- a. **provide** feedback to officials on the proposal for the establishment of Specific Purpose Boards in the State Sector Act (this feedback can be provided at our meeting on 23 April)
- b. **sign and submit** the attached papers (subject to any feedback you provide) to Cabinet Office by 26 April for SEC's meeting on 1 May.

Michele Lloyd  
**Manager**  
**State Sector Management**

Ryan Orange  
**Deputy Commissioner**  
**for State Services Commissioner**

Hon Bill English  
**Minister of Finance**

Hon Dr Jonathan Coleman  
**Minister of State Services**

Hon Steven Joyce  
**Associate Minister of Finance**