



# PRE-INTRODUCTION PARLIAMENTARY BRIEFING

## STATE SECTOR REFORM (PUBLIC FINANCE) BILL

JUNE 2012



# Contents

<b>Contents</b> .....	<b>1</b>
<b>Delivering Better Public Services</b> .....	<b>3</b>
<b>Amendments to the State Sector Act 1988</b> .....	<b>4</b>
Main points .....	4
Strengthening the State Services Commissioner’s role in leading the State services .....	4
Extending the responsibilities of chief executives .....	5
Adding a new organisational arrangement option for delivering services .....	6
Improving the operation of the legislation .....	7
<b>Amendments to the Public Finance Act 1989</b> .....	<b>11</b>
Main points .....	11
Improving financial flexibility .....	12
Reporting more meaningful information to Parliament .....	15
Public Finance Act 1989 companies .....	17
Chief executives’ financial management and financial stewardship responsibilities .....	18
<b>Amendments to the Crown Entities Act 2004</b> .....	<b>20</b>
Main points .....	20
Supporting sectoral leadership by strengthening the alignment of Crown entities .....	21
Supporting functional leadership through whole-of-government directions .....	21
Simplifying, streamlining, and improving the planning and reporting provisions .....	22
Strengthening the role of the monitoring department and the Minister of State Services .....	22
Improving the operation of the legislation .....	23
<b>Glossary</b> .....	<b>24</b>



# Delivering Better Public Services

Delivering better public services to New Zealanders within tight financial constraints is one of the Government's four priorities.

The State Sector Reform (Public Finance) Bill contains legislative amendments to the State Sector Act 1988, Public Finance Act 1989 and Crown Entities Act 2004 to support delivering better public services.

The amendments provide a wider range of public sector management tools to support and encourage:

- government agencies working more closely together and organising themselves around results that make a difference to New Zealand;
- government agencies sharing functions and services, purchasing goods and services, and developing systems together in order to leverage the scale and expertise of the State services;
- greater financial and reporting flexibility to support agencies working together and to provide more meaningful performance information to Parliament; and
- stronger leadership at the system, sector and departmental level to achieve the desired change in the performance of the State services.

The State Sector Reform (Public Finance) Bill is informed by recommendations from the *Better Public Services Advisory Group*. The Advisory Group identified that, while there is much that works well about the New Zealand State services, the State services need to perform much better in securing the outcomes that matter most to New Zealanders. That is, the State services need to be reshaped so that they are fit-for-purpose – not just for the present, but for the next decade or more.

Delivering better public services involves a comprehensive, and ongoing, programme of work supporting the effort and commitment of public servants. The State Sector Reform (Public Finance) Bill tackles an important component of this programme of work by providing adjustments to the current legislative framework to support better-performing State services.

# Amendments to the State Sector Act 1988

Purpose of the changes to the State Sector Act

## Main points

The proposed changes to the State Sector Act 1988 (SSA) will:

- ▶ Strengthen the State Services Commissioner's role in leading the State services;
- ▶ Extend chief executives' responsibilities to consider the collective interests of government and make their stewardship role more explicit;
- ▶ Add a new organisational arrangement called 'Departmental Agency' to the options available for delivering public services; and
- ▶ Improve the operation of the legislation.

## Introduction

The SSA is one of the primary statutes setting out how the State sector system operates. However, it currently provides no clear responsibility for overall leadership of the State sector system, in particular the leadership, development and deployment of chief executives. This creates a fragmented approach to leadership and results in a much less flexible and responsive system.

The proposals outlined below reflect a combination of initiatives to support stronger coordination, collaboration and governance across the State services, and ensure the SSA's provisions remain fit for purpose.

## What does this mean for Parliament?

The key changes to the SSA are predominantly relevant to the improved functioning of the Executive. The key benefit for Parliament is greater confidence in an improved and better functioning State sector system.

## Strengthening the State Services Commissioner's role in leading the State services

The State Services Commissioner's leadership role

### Role of the Commissioner

It is proposed that the SSA set out the role of the State Services Commissioner (Commissioner) in exercising oversight and leadership of the State services. In doing so the SSA would broadly list the critical roles of the Commissioner, including the principal leadership role that is expected.

### Leadership development

It is proposed that the Commissioner be responsible for creating and implementing a strategy for the development of senior leaders in the Public Service. To provide for more flexible deployment of senior leaders to areas of need and to support their leadership development, the SSA would enable the Commissioner to designate certain positions in departments as key positions which must be filled by agreement between the relevant departmental chief executive and the Commissioner. A chief executive's independence in matters relating to appointments would be subject to this requirement pertaining to key positions.

### Transfer of chief executives

Under the proposals, the Commissioner would be able to transfer an existing chief executive into a vacant chief executive position in any Public Service department, following consultation with the appropriate Minister(s), where the Commissioner believes it is in the best interests of the Public Service to do so – for example, to fill a critical vacant position or to provide for different skills.

### Agency, sector, and system-wide performance

Under the proposals, the Commissioner would have a broader function of reviewing and advising on agency, sector, and system-wide performance, rather than the present more narrow function of individual agency performance, to ensure the State services work as a system.

### Government workforce policy

The Commissioner's functions under the proposals would include preparing draft government workforce policy. This would relate to workforce and employment matters from a State sector systems perspective and could include (without limitation) items such as workforce strategy guidance and pay or conditions. Once issued as a Government Workforce Policy Order by Order in Council, affected departments would be required to implement the policy, affected Crown Agents must give effect to it, and affected Autonomous Crown entities must have regard to it.

### Extending the responsibilities of chief executives

#### Collective interests of government

The proposed changes to the SSA will reinforce the need for chief executives to think in the collective interests of government, by establishing statutory responsibility for departments' responsiveness on matters relating to the collective interests of government. Chief executives must be aware of the system-wide influences on their departments, the system-wide opportunities and connections that departments should make, and the reciprocal system-wide impacts and implications of departmental policies and activities and those of related agencies.

A shift in focus for  
departmental chief executives

## Stewardship

The proposals would require chief executives to focus on their departments' longer-term sustainability, organisational health, and capability. This strategic, longer-term departmental focus may be referred to as “stewardship”, which embodies responsible planning and active management now and for the future. Stewardship would also include other matters for which the department is responsible, such as assets and liabilities on behalf of the Crown and legislation assigned to, or otherwise administered by, the department.

Good stewardship of a department will include positioning it to meet medium and long-term objectives as well as ensuring that appropriate infrastructure, management systems, and succession planning are in place to enable it to do so.

## Adding a new organisational arrangement option for delivering services

### New arrangements for service delivery

### Departmental Agencies

The proposals provide for the establishment of Departmental Agencies, to be placed within a “host” department while retaining operational autonomy. Departmental Agencies would maintain a focus on service-delivery, while having closer policy and resource coordination with the host department than would be possible if a separate stand-alone department or Crown entity were created.

The Departmental Agencies model is based on the UK “Executive Agency” model, adapted to the New Zealand context. Executive Agencies are used in the UK to deliver non-commercial operational and/or regulatory functions within a “host” department; examples in the UK context include the Education Funding Agency, Highways Agency, and National Archives.

A Departmental Agency would have a chief executive, appointed through a joint process undertaken by the Commissioner and the host department's chief executive. The Commissioner would be the formal employer of the chief executive of a Departmental Agency. The Departmental Agency's chief executive would report directly to a Minister responsible for the Agency, who may or may not be the same as the Minister responsible for the host department. The host department would provide advice to Minister(s) on strategy, policy, and funding for the Departmental Agency. A Departmental Agency Agreement would be critical to ensuring that accountabilities are clear between the chief executive of the Departmental Agency, the chief executive of the host department, and the Minister(s).

The chief executive of the host department would be responsible for administering departmental appropriations (including appropriations used by a Departmental Agency); but the chief executive of the host department would not be responsible for operations that are within the remit of the Departmental Agency's chief executive. Legally, the chief executive of the host department would be the employer of the Departmental Agency's employees – however, the

host department's chief executive would delegate his or her employer responsibilities for Departmental Agency employees to the Departmental Agency chief executive.

Both the host department and Departmental Agency would table an Annual Report in Parliament. The Departmental Agency Annual Report would provide an account of its performance in carrying out its operations, but would not include separate financial statements for the Departmental Agency. Its financial activity would be reported within the financial statements of the host department.

Departmental Agencies would be used selectively and considered alongside other options such as stand-alone agencies or branded business units within a department. Departmental Agencies are most suitable for functions or services that: have relatively stable policy settings; are cohesive and/or fall within a clearly defined area/activity (for example, administrative or regulatory); and are readily defined and measurable, with low levels of interconnectedness with other functions within the host department.

#### Chief executives' powers to delegate

The proposals provide for chief executives to delegate statutory functions and powers between agencies, and even to non-government service providers where that is warranted. A delegation regime of this scope will serve to remove potential barriers to the efficient and effective delivery of government services, and potentially to avoid the need for structural change in certain cases.

#### Improving the operation of the legislation

Flexibility and agility in carrying out appointments, reorganising departments, and applying codes of conduct

##### Appointments of an acting Commissioner or Deputy State Services Commissioner

The proposals would allow for the Governor-General to appoint an acting Commissioner or an acting Deputy State Services Commissioner, as the case may be, *"in the event of the incapacity of the [Commissioner/Deputy Commissioner] by reason of illness or absence or any other cause"*.

The meaning of "any other cause" would encompass situations where it is appropriate to appoint an acting Commissioner or acting Deputy because the incumbent must stand aside – for example, to avoid a conflict of interest if a close friend applies for a chief executive position. The changes will provide for the appointment of an acting Commissioner or acting Deputy in the event of incapacity or any other reasonable cause that requires the Commissioner or Deputy to stand down.

##### Appointment panel for chief executive positions

The SSA currently requires a panel for each chief executive vacancy, comprising the Commissioner as chairperson, the Deputy State Services Commissioner, and one or more people appointed by the Commissioner after consultation with the appropriate Minister(s).

The proposals would provide for flexibility by permitting the Deputy to substitute for the Commissioner as chairperson of a panel, and for the Commissioner to appoint another employee (from within the State Services Commission) to substitute for the Deputy.

#### Appointments of acting chief executives

From time to time governments decide to transfer the functions of one department to a department that will be established on a future date, or to disestablish one or more departments and transfer their functions to a new department to be established.

When this occurs, offers of employment need to be made to employees for the new department. However, offers cannot technically be made to employees until a chief executive or acting chief executive of the new department is appointed. This situation is unwieldy, creates uncertainty for employees, and delays the implementation of government decisions.

The proposals allow for (a) appointing an acting chief executive when a new department is to be established on a known date, and (b) appointing any person whom the Commissioner considers suitable to discharge the responsibilities (and not just a present chief executive or employee of the State services).

An acting chief executive will only be a temporary appointment. As soon as is practical after the establishment of the new department, a chief executive would be appointed under s35 of the SSA.

#### Streamlining provisions that deal with reorganisations

Issues relating to reorganisation in the Public Service and redeployment, redundancies, and transfers of employees are dealt with (at present) in two separate parts of the SSA, which have been amended over time to address certain issues as they arose, rather than introducing a cohesive scheme that addressed reorganisations and consequential employee redundancies and transfers.

For clarity, the proposals will streamline and group all the provisions relating to employees in part 5 of the SSA, which is about 'Personnel Provisions'; the various provisions relating to agency reorganisations will be left in part 2, which is about the 'Public Service'.

The proposals call for the introduction of a new provision that prevents payment of technical redundancy compensation to an employee when no loss is suffered – for example, where an employee receives a redundancy notice, and within the notice period and prior to his or her employment ceasing, the employee is offered an alternative position in the State services on substantially similar conditions.

### Core Ministerial Office Staff

“Core Ministerial Office Staff” refers to a distinct group of public servants recruited on events-based employment agreements to support Ministers. Some of their tasks are of an undeniably political character, including but not limited to providing advice of a political nature. While the chief executive is always solicitous to adhere to requirements for independence, the proposed amendments would enable the chief executive to take account of the Minister’s wishes, and would not impose obligations to notify vacancies or have a review procedure.

### Tailoring the Code

A vital function of the Commissioner is setting and reinforcing standards of integrity and conduct, and promoting transparent accountability. Under the proposals, this function will continue with increased flexibility in applying codes of conduct with particularised applicability. For example, Core Ministerial Office Staff or someone seconded to a role (such as with the Financial Markets Authority) where it may be appropriate to comment adversely on government policy. This increased flexibility would be used in circumstances where it is unreasonable for a generic code to apply to individuals or groups of individuals.

### Sundry amendments to the SSA

#### Section 86

The Supreme Court has recently ruled that, while s86 protects chief executives and Crown employees who have acted in good faith from being sued by their department, it does not protect them from being sued by members of the public in respect of those acts. There is a need to ensure that s86 achieves its intended purpose – that is, to provide protection from personal liability (while not precluding a proceeding from being brought against the Crown as vicariously liable for the acts of its servants).

Legislative amendment would achieve the intended purpose of s86: to protect Public Service chief executives and employees from personal liability when they act in good faith in the performance of their functions and powers.

#### Technical amendments

Over the past quarter of a century, some of the SSA’s provisions have become out of date, redundant, or inconsistent. A number of proposed technical amendments to the SSA will address these problems, including:

- Using the same definition of “Crown entity” as that used in the Crown Entities Act 2004;
- The requirement for the chief executive of the Ministry of Education to obtain the Commissioner’s agreement when prescribing matters relating to the performance assessment of teachers will be removed, as these assessments are outside the Commissioner’s domain;

- Transfer of the Commissioner’s function in s6(g) – to promote, develop, and monitor equal employment opportunity policies and programmes – to part 5 of the SSA (“Personnel Provisions”);
- Combining two similar advisory functions regarding matters of integrity and conduct into a single function; and
- Several changes will consolidate related sections of the SSA, remove redundant provisions, and relocate some provisions to more logical places in the SSA.

# Amendments to the Public Finance Act 1989

Purpose of the changes to the Public Finance Act

## Main points

The proposed changes to the Public Finance Act 1989 (PFA) will:

- ▶ Improve financial flexibility to facilitate innovation and different ways of working within the Executive branch of government;
- ▶ Provide more meaningful information to Parliament about what the government is spending and achieving, and reduce the compliance costs involved in producing that information;
- ▶ Clarify departmental chief executives' responsibilities for financial management and financial stewardship; and
- ▶ Specify the governance regime for PFA Schedule 4 companies.

The changes to the PFA proposed to be made in this Bill do not include the amendments to Part 2 of the PFA (fiscal responsibility), which are to be the subject of a separate Bill.

## Introduction

New Zealand's public finance legislation has a strong reputation internationally for being robust and comprehensive. However, to be enduring, all good law needs to evolve over time in order to accommodate changes in society's needs and address identified limitations.

Agencies, commentators, Ministers, and the Controller and Auditor-General have expressed some concerns about the effects of some aspects of the PFA. In particular, concerns have been raised regarding the:

- lack of financial flexibility acting as a barrier to greater cross-agency collaboration and innovation in service delivery;
- prescriptive and inflexible nature of reporting requirements and the corresponding compliance costs imposed; and
- lack of role-clarity and emphasis in relation to sustainable, longer-term financial management and financial stewardship of public financial resources by departments.

The PFA proposals outlined below address these concerns. They are designed to enable better strategic, and collective, management of public financial resources and more meaningful accountability and reporting to Parliament.

### What does this mean for Parliament?

These changes will:

- shift the focus from reporting by departments to reporting against appropriations, sharpening the focus on what is achieved with public resources;
- improve the quality of information received by Parliament and reduce the compliance costs in providing it; and
- improve the ability for Parliament and Ministers to scrutinise and control departmental capital expenditure.

In addition, these changes will provide a better balance between flexibility and control with respect to the use of public resources.

Flexibility in the management of financial resources, while retaining Parliamentary appropriation and scrutiny

### Improving financial flexibility

- Establish a new multi-component purpose-based appropriation.
- Clarify that more than one department can incur expenses under an appropriation.
- Improve Parliament's and Ministers' ability to scrutinise and control departmental capital expenditure.

Appropriations are an authority from Parliament to incur expenses or capital expenditure and they set limits on how much the Crown can spend and for what purpose. The appropriations for each financial year are set out in the Estimates tabled with the Budget.

Departmental appropriations are for outputs, other expenses, or capital expenditure incurred by a department. Non-departmental appropriations relate to transactions with parties outside the legal Crown. For example, purchasing outputs from, and making transfer payments to, outside parties, and investing capital in other entities or persons.

### New multi-component purpose-based appropriations – provide greater financial flexibility and direct focus on results

Appropriations provide a necessary control and transparency mechanism for public spending but, by their nature, they also restrict flexibility to reprioritise spending. Multi-class output expense appropriations (MCOAs) have proven useful in providing some flexibility, but they are limited to only one type of appropriation (output expenses).

The proposals extend the MCOA concept by enabling different types of expenditure (components) to be grouped into a single appropriation where they contribute to the same over-arching purpose. These components could be output expenses, other expenses and non-departmental capital expenditure. This would be a new appropriation type – a multi-component purpose-based appropriation (MPA).

This new appropriation type would direct focus towards achieving results and facilitate the movement of resources towards effective initiatives whilst preserving Parliamentary control and scrutiny.

**Example:** To achieve a specific purpose or result, the Government could create a MPA that brings together departmental funding for targeted interventions (output expenses), grants to non-government organisations (other expenses), and/or funding to purchase assets (non-departmental capital expenditure).

An illustrative example of how a MPA might look in the Estimates follows:

Titles and Scopes of Appropriations by Appropriation type	2014/15		2015/16
	Budgeted \$000	Estimated Actual \$000	Budget \$000
<i>Multi-component purpose-based appropriation – increasing participation in X</i>			
<b>Departmental Output Expenses</b>			
Interventions for Y Groups	240,000	240,000	250,000
<b>Non-Departmental Other Expenses</b>	15,000	15,000	20,000
Grants to Z Groups			
<b>Non-Departmental Capital Expenditure</b>	-	-	10,000
Purchase of new furniture and equipment assets			
<b>Total Appropriations</b>	<b>255,000</b>	<b>255,000</b>	<b>280,000</b>

The Minister responsible for the MPA would have the authority to shift resources between the MPA’s constituent components without the need to seek further Parliamentary approval. As Parliamentary approval would be granted at the level of the total of the MPA, as well as at the level of the scope of the individual components, Parliament would be focused on approving funding for what is to be achieved. Parliament will receive information on the components and, therefore, will be able to scrutinise how the purpose will be achieved.

#### Use of appropriations to facilitate cross-departmental collaboration

To support the implementation of MPAs and facilitate collaboration between departments, the proposals clarify that the department administering an appropriation is not the only department that can spend against it. This will

facilitate better collaboration, such as through the provision of shared services, short-term secondments of staff and of services provided by one department as inputs for another department. A notable benefit for Parliament is that this change will also reduce compliance costs by preventing unnecessary double-appropriation in such circumstances (as is currently the case).

**Example:** Department A may provide staff on secondment to Department B to assist in the delivery of policy advice by Department B to Ministers. Typically, Department A would incur costs (salaries) against an appropriation administered by Department B and charge Department B for those costs. Currently, the practice is that both departments seek an appropriation for the output expenses. The proposals will clarify that Department A will be able to use the relevant appropriation administered by Department B.

### Improving Parliament's and Ministers' ability to scrutinise and control departmental capital expenditure

In 2004 changes were made to improve Parliament's ability to scrutinise and control departmental capital expenditure by requiring Parliamentary confirmation of the level of each department's net assets each year. However, with this requirement (known as the "net assets rules") technical breaches can occur. For example, where a department forecasting a small deficit in third-party funded outputs ends up recovering all its expenses and, therefore, does not end up with a deficit. Remedying these breaches can result in undue compliance costs on Parliament, Ministers and departments. These breaches can also create disincentives for positive behaviours (for example, by penalising a department for making cost efficiencies resulting in a deficit reduction).

A further challenge in focusing on net assets, albeit supported by some disclosure, is that it does not provide the same level of Parliamentary control and scrutiny as required for other expenditure approvals, such as appropriations and permanent expenditure authorities.

The proposals replace the net assets rules with a requirement for Parliament to authorise capital injections made to departments. Transparency over the nature and amount of the capital injections, and their purpose, would be required to be set out in the supporting information. These changes will maintain Parliament's ability to control the amount of departmental capital expenditure, make it better able to scrutinise the nature of capital injections being sought, remove unnecessary compliance costs for Parliament and the Executive, and remove disincentives for departments to display positive behaviours.

## Reporting more meaningful information to Parliament

- Creating a shift in emphasis to reporting on what has been achieved with appropriations.
- Removing the existing one-size-fits-all approach to reporting requirements by providing flexibility for how performance is specified and where it will be reported.
- Providing a more strategic focus to reporting on a department's future intentions and providing this information at least three-yearly instead of annually.

The proposals seek to provide more meaningful information to Parliament by addressing the following concerns with the existing accountability reporting framework:

- Reporting often fails to give an integrated explanation of what is achieved with the resources (appropriations) provided.
- Prescriptive reporting requirements often result in detailed performance measures being reported that can make the information less transparent and that are of limited value to external users.
- Compliance costs associated with the prescriptive requirements and duplication are relatively high compared to the value of information provided.

### Reporting on appropriations

The proposals address these concerns by:

- Shifting the emphasis from reporting by departments to reporting on appropriations, sharpening the focus on what is achieved with public resources.
- Providing greater flexibility in a number of ways:
  - removing the one-size-fits-all approach to reporting on appropriations to allow selection of the most meaningful measures of performance. Performance measures may reflect outputs or services delivered, outcomes, impacts, capability provided or some combination of these. A consequence of this approach is to shift the focus of year-end reporting from completion of a technical statement of service performance to providing a meaningful discussion of what has been achieved with the resources provided; and
  - providing greater flexibility to enable information to be reported by department, by cluster, or by sector (as appropriate) to facilitate more coherent reporting across related areas of spending. There will also be transparency in the Estimates about where performance information will

be reported and why performance information will not be reported for specific appropriations.

- Reducing compliance costs in terms of:
  - reducing duplication – for example, removing double-reporting for certain output expenses; and
  - removing the prescriptive reporting requirements that give rise to much of the existing detailed reporting that is of limited value. In particular, it is the conjunction of the requirement to report measures of performance at both the appropriation/output level and at the entity level which contributes in places to unnecessary compliance costs.

### Reporting on a department's forward-looking strategic information

In 2004 PFA changes were introduced requiring departments to set out their future operating intentions in an attempt to encourage robust strategic planning and management. Although there have been some exceptions, these prescriptive requirements have not had their desired effect and are often seen as a compliance exercise by departments.

The proposals encourage a more strategic focus in the future intentions information and more sophisticated strategic management within departments, enable better integration of reporting on past performance and future intentions, and reduce compliance costs.

Specifically, the proposals:

- provide flexibility in how a department specifies what it wants to achieve through its operations and remove the requirement to define, and report against, specific measures of performance. Measures of impacts and progress in achieving outcomes or objectives will be reported at the appropriation level where meaningful;
- shift the default for providing strategic information to once every three years, rather than annually as at present, and for the information to cover at least a four year period. The information is to be tabled no later than, and may be provided in conjunction with, the Annual Report for the previous year; and
- remove the requirement introduced in 2004 to provide measures in relation to the cost-effectiveness of the interventions delivered. Understanding the cost-effectiveness of expenditure requires analysis rather than merely reporting against specific measures of cost-effectiveness.

### Departmental reporting – Annual Reports

Each department will still be required to provide an Annual Report with financial statements but there will be flexibility to present reports in combination to provide a sector perspective and reduce duplication. A department will continue

to be required to report on organisational health and capability in its Annual Report.

A department will continue to be required to provide the information necessary to assess its performance during the year. In practice this would involve an evidence-based overview of the department's activities, and reporting on progress against its strategy and management of its organisational capability.

The proposals require the two statements<sup>1</sup> relating to appropriations administered by a department, which are at the heart of accountability to Parliament, to be a separately identified component of the Annual Report (rather than a subset of a department's financial statements). This will enable a more direct link between these two statements and reporting on what is spent and achieved under the appropriations.

The role of the Controller and Auditor-General in auditing financial and non-financial information reported to Parliament will be unchanged.

Improving the governance regime applying to PFA companies

### Public Finance Act 1989 companies

There is a weakness in the public sector management system applying to entities listed on Schedule 4 of the PFA that needs to be corrected. When the Crown Entities Act 2004 (CEA) was developed, Schedule 4 was created as a 'parking lot' for a range of very small public bodies (such as Reserve Boards) for which the CEA was judged inapplicable. Seven new companies have been added to Schedule 4 since the CEA was passed in 2004.<sup>2</sup> The Schedule was never intended to be used to create a separate, specific organisational form, so it provides few specific rules about the governance regime that applies. For example, the whole-of-government direction provisions of the CEA do not apply to Schedule 4 entities. This creates uncertainty about the applicable governance provisions.

The proposals apply the relevant reporting and governance CEA provisions applicable to Crown entity companies to companies on Schedule 4 of the PFA (PFA companies). This will require amending the Schedule to separate non-company entities on Schedule 4 from PFA companies.

As listing on Schedule 4 of the PFA requires that the Crown has at least a 51% controlling interest, the proposals will also provide that certain CEA company provisions (such as s87 in relation to the board's duty to the Minister) would not apply where a PFA company is less than 100% owned. The term 'PFA companies' here refers to companies currently on Schedule 4 of the PFA and

---

<sup>1</sup> Statement of Expenditure Against Appropriations and Statement of Unappropriated Expenditure.

<sup>2</sup> Crown Fibre Holdings, Health Benefits, Learning State, Research and Education Advanced Network New Zealand, the Dispute Resolution Services Limited, Crown Asset Management Limited and Southern Response Earthquake Services Limited.

does not include companies covered by the Mixed Ownership Model Bill (introduced to the House on 5 March 2012) or Crown entity companies on Schedule 2 of the CEA.

Clarity in departmental chief executives' financial responsibilities

### Chief executives' financial management and financial stewardship responsibilities

- Clarifying a departmental chief executive's financial responsibilities with respect to the department.
- Clarifying a departmental chief executive's responsibilities with respect to non-departmental appropriations and transactions.

The PFA currently specifies that a departmental chief executive is responsible for the department's financial management, financial performance and reporting (sections 34 and 35). Not explicitly captured in these responsibilities is the role of chief executives in ensuring departments are financially positioned to continue delivering into the future; nor are they clear about the responsibility of the chief executive for non-departmental appropriations and transactions administered by his/her department.

The proposals will clarify that a chief executive's financial responsibilities in respect of the department will include:

- responsibility for financial sustainability, to make it clear that a department must be capable of continuing to deliver in the future, as well as in the present;
- responsibility for what is achieved with each departmental appropriation administered by the department (except where the Estimates states all of the appropriation is to be used by Departmental Agencies or other departments), to make it clear that managing a department's finances includes what is achieved with them; and
- responsibility for advising the appropriate Minister on the performance of each departmental appropriation administered by the department, where the Estimates states all of the appropriation is to be used by Departmental Agencies or other departments.

For non-departmental appropriations and transactions, administering departments are acting, in effect, as agents on behalf of the Crown. With respect to responsibilities for non-departmental appropriations and transactions, the PFA currently focuses on what a chief executive is not responsible for. The PFA is in essence silent on what a chief executive's responsibilities are for these non-departmental transactions.

The proposals are to specify that a chief executive's financial responsibilities in respect of non-departmental transactions will be:

- responsibility for the financial management of, and financial reporting on, the non-departmental appropriations administered by the department and the assets, liabilities and revenue managed by the department on behalf of the Crown; and
- responsibility for advising the appropriate Minister on the performance of those appropriations, assets, liabilities and revenue.

Crown entities or non-government organisations funded through a non-departmental appropriation would remain responsible to the Minister responsible for that appropriation for the services they provide and what is achieved with that funding.

# Amendments to the Crown Entities Act 2004

## Main points

Purpose of the changes to the Crown Entities Act

The proposed changes to the Crown Entities Act 2004 (CEA) will:

- ▶ Support sectoral leadership by strengthening the alignment of Crown entities;
- ▶ Support functional leadership by expanding the scope for the use of whole-of-government directions;
- ▶ Simplify, streamline, and improve the planning and reporting provisions by providing greater flexibility to provide more meaningful performance information to Parliament and by making the default for tabling Statements of Intent three-yearly;
- ▶ Formalise the role of the monitoring department and the ability of the Minister of State Services to request information; and
- ▶ Improve the operation of the legislation.

## Introduction

The CEA balances the role of Crown entities as an integral part of the broader State sector while recognising their varying degrees of autonomy and arm's-length relationship from the Crown. The proposed changes to the CEA bring Crown entities within the influence of the proposed new leadership arrangements. These changes will improve the alignment of the State sector while retaining Crown entities' self-governing autonomy.

## What is a Crown entity?

Crown entities provide the majority of the public services that New Zealanders use. They are separate legal entities at arm's-length from the Crown that, unlike departments, are not directly controlled by the Crown. There are five categories of Crown entities as shown in the table below.

Category	Comment
Statutory Crown entities	There are three types in this category: <ol style="list-style-type: none"> <li>1. Crown agents: such as NZTA and ACC, which are closest to the Crown.</li> <li>2. Autonomous Crown Entities: such as Te Papa and the Standards Council.</li> <li>3. Independent Crown Entities: such as the Commerce Commission and the Human Rights Commission.</li> </ol>
Crown entity companies	For example, Radio New Zealand and the Crown Research Institutes.
Crown entity subsidiaries	There are approximately 200 Crown entity subsidiaries.
School boards of trustees (SBOTs)	There are around 2,430 SBOTs.
Tertiary Education Institutions (TEIs)	There are 29 TEIs, which cover universities, polytechnics/institutes of technology and wānanga.

The amendments proposed are focused on statutory Crown entities, Crown entity companies, and Crown entity subsidiaries.

#### What does this mean for Parliament?

The changes to the governance provisions of the CEA, while mainly changing the interface between the entity and the Executive, will improve the ability of Crown entities to set their overall strategy and direction. However, and importantly, Parliament will receive better quality, better integrated, and more relevant performance information. For example, Select Committees will receive integrated performance information by allowing for one document to include both backward-looking performance information as well as forward-looking financial and non-financial performance information.

Providing better alignment between Crown entities and other public entities

#### Supporting sectoral leadership by strengthening the alignment of Crown entities

The proposals strengthen the alignment of Crown entities by amending the collective duties of Crown entity boards, so that Board members ensure their entity collaborates with other public entities where practicable. This will bring sector or system-wide interests within the entity's 'line of sight', without imposing specific new requirements on Crown entities.

Improving functional leadership through greater flexibility in the use of whole-of-government directions

#### Supporting functional leadership through whole-of-government directions

Expanding the scope for the use of whole-of-government directions will allow greater functional leadership. The proposals broaden the grounds on which the Minister of Finance and the Minister of State Services can issue a whole-of-government direction. This includes allowing the government to be more selective about the groups of Crown entities to which a whole-of-government direction applies. At present, these directions can only be applied to all entities

within a category (such as SBOTs) and/or to a type (for example, all Crown agents).

In practice, should the government decide on a whole-of-government plan for some business activity (for example, ICT investment or procurement) consideration can be given to including just some of the entities within and across categories and types of Crown entities.

Improving the quality of information reported to Parliament and the Executive, consistent with changes to the PFA

### Simplifying, streamlining, and improving the planning and reporting provisions

The proposals simplify, streamline and improve the planning and reporting provisions by:

- Removing the one-size-fits-all approach through providing flexibility for how performance is specified and reported (in line with the proposed changes to the PFA reporting provisions, it is also proposed to generalise the reporting provisions in the CEA);
- Making the default for the publication of a Statement of Intent (SOI) every three years;
- Consolidating reporting to Parliament by allowing for one consolidated document – for example, a combined SOI and Annual Report; and
- Removing the provision for an output agreement.

The annual information, forecast service performance and financial forecasts, which were previously incorporated into the SOI, would be updated and made available annually to the Executive for preparation of the Budget, made available to the public on entity websites as soon as possible after Budget day, and tabled in Parliament with the Annual Report by November.

In practice, this will allow for the possibility that Parliament may get one consolidated document containing integrated information that gives an account for the stewardship of resources by the entity in the previous year, and looks forward to the expected performance over the next year.

Including the role of monitoring departments in legislation as well as an information gathering power for the Minister of State Services

### Strengthening the role of the monitoring department and the Minister of State Services

The proposals formalise the role of the monitoring department by including cross-references to the role of monitoring departments required by other statutes in administering appropriations, legislation, providing policy advice and assisting the responsible Minister. For example, the CEA will cross-reference the enhanced departmental chief executives' financial responsibilities that are part of the proposed amendments to the PFA (for example, to advise on the performance of non-departmental appropriations, assets, liabilities and revenue).

The changes also provide the Minister of State Services with statutory power to require the provision of information relating to the Minister's portfolio interests in system-wide capability and performance.

Improving the legislation through minor remedial amendments

### Improving the operation of the legislation

Since it was enacted in 2004, the CEA has proved itself to be a well constructed and well drafted Act which has generally been easy for entities and the public to use. Nonetheless, experience with the operation of the legislation has identified areas where it is unnecessarily complicated, such as with the subsidiaries regime, or where the interface with other legislation needs to be made clear. An example of the latter is to clarify that s28 of the SSA (Ministers' powers of delegation) would not apply to Crown entities.

The proposals provide a legislative vehicle to address these issues and clarify ambiguities in legal drafting.

# Glossary

Agency	Synonym for ‘organisation’. A blanket term that may include departments, Crown entities, State-owned Enterprises, Schedule 4 PFA companies, Offices of Parliament and the Reserve Bank.
Appropriations	A Parliamentary authorisation for Ministers to incur expenses or capital expenditure.
Autonomous Crown entity	Autonomous Crown entities (ACEs) are Crown entities that must have regard to Government policy directions as distinct from giving effect to Government policy directions or being generally independent of Government policy.
Better Public Services Advisory Group	The Better Public Services Advisory Group was established by the government in May 2011 to provide advice on State sector reform.
Bill	Unless otherwise stated, “Bill” means the State Sector Reform (Public Finance) Amendment Bill.
Code of Conduct	Under the State Sector Act, the State Services Commissioner has issued a code of conduct covering the minimum standards of integrity and conduct that are to apply to the Public Service and most Crown entities.
Crown	Means the Sovereign and includes all Ministers of the Crown and all departments, but does not include an Office of Parliament, a Crown entity, a Schedule 4 PFA company, or a State enterprise. Departmental Agencies would also be part of the Crown.
Crown agent	Crown agents are Crown entities that must give effect to Government policy directions as distinct from having regard to Government policy directions or being generally independent of Government policy. Crown agents are those Crown entities most closely subject to ministerial control.
Crown company	The term Crown company is best avoided, as it is not used consistently. It is sometimes used as a synonym for CROC (see below), and is sometimes used to include both CROCs and SOEs.

Crown entity	<p>Crown entities are bodies generally established by statute in which the Government has a controlling interest - for example, by owning a majority of the voting shares or through having the power to appoint and replace a majority of the governing members. Crown entities are legally separate from the Crown. Section 7 of the Crown Entities Act 2004 outlines the five categories of Crown entity:</p> <ul style="list-style-type: none"> <li>• Statutory entities - bodies corporate established through legislation;</li> <li>• Crown entity companies - often known as Crown-owned companies (CROC);</li> <li>• Crown entity subsidiaries - companies that are controlled by Crown entities;</li> <li>• School boards of trustees - as constituted under the Education Act 1989; and</li> <li>• Tertiary education institutes – polytechnics/institutes of technology, universities and wānanga.</li> </ul>
Crown-owned company (CROC)	CROCs are Crown entities that are companies. Also known as Crown entity companies.
Department	<p>The departments that comprise the Public Service are listed in the First Schedule to the State Sector Act. In addition to those departments, the Public Finance Act includes the New Zealand Defence Force, New Zealand Police, Office of the Clerk, Parliamentary Counsel Office, Parliamentary Service and the New Zealand Security Intelligence Service in the definition of department. The latter departments are also referred to as ‘Non-State Sector Act departments’ or ‘Non-Public Service departments’.</p>
Departmental Agency	<p>A new concept involving a specific operational delivery or regulatory function or functions placed within a host department. A Departmental Agency would have a chief executive employed by the State Services Commissioner. The Departmental Agency’s chief executive would report directly to a Minister responsible for the Departmental Agency, who may or may not be the same as the Minister responsible for the host department.</p>
Departmental appropriations	Departmental appropriations are for outputs, other expenses, or capital expenditure incurred by a department.

Estimates of Appropriation	A statement of the proposed expenses and capital expenditure to be incurred by the Crown. The Government's request for appropriations, and supporting information, is presented to the House of Representatives at Budget time in a formal document known as the Estimates and Information Supporting the Estimates.
Functional leadership	Functional leadership may be defined as leadership, on a cross-agency or cross-system basis, of an aspect of business activity. It is aimed at, <i>inter alia</i> , securing economies or efficiencies, improving services and service delivery, and developing expertise and capability across departments.
Independent Crown entity	Independent Crown entities (ICEs) are Crown entities that are generally independent of Government policy as distinct from giving effect or having regard to Government policy.
Information Supporting the Estimates	The Information Supporting the Estimates is organised by sector, and provides a statement of responsibility and performance information for each appropriation.
Multi-component purpose-based appropriations	A proposed new single appropriation to be made up of multiple components, which could be different types of expenditure, including output expenses, other expenses and non-departmental capital expenditure, that all contribute to the same purpose. This concept is similar to the existing multi-class output appropriation (MCOA) instrument, but is more flexible as it is not limited to output expenses.
Net assets rules	The existing requirement in section 23 of the PFA for Parliamentary confirmation of the level of each department's net assets each year.
Non-departmental appropriations	Non-departmental appropriations relate to transactions on behalf of the Crown with parties outside the legal Crown. For example, purchasing outputs from, and making transfer payments to, outside parties, and investing capital in other entities or persons.
Offices of Parliament	The primary function of an Office of Parliament is to be a check on the Executive, as part of Parliament's constitutional role of ensuring accountability of the Executive. An Office of Parliament must discharge functions which the House itself might appropriately undertake. Currently there are three Offices of Parliament: Office of the Controller and Auditor-General, Parliamentary Commissioner for the Environment, and Office of the Ombudsmen.
Outcomes	The impacts on, or the consequences for, the community or society of the outputs or activities of the Government.

Outputs	Goods or services provided by departments and other entities. Outputs are a variety of types, including policy advice, administration of contracts and grants, and the provision of specific services.
Permanent legislative authority	Also known as a Permanent Legislative Appropriation, PLA, or permanent expenditure authority, this is an authority contained in statute that continues in effect until repealed by Parliament. An example of a PLA is in relation to departmental capital expenditure, where a PLA is used to authorise the purchase or development of departmental assets funded from a department's balance sheet.
Public sector	The public sector comprises the State sector ('central government') and all local authorities ('local government'), including council-controlled organisations.
Public Service	The Public Service comprises the departments listed in the First Schedule to the State Sector Act. Departmental Agencies would also be part of the Public Service. Sometimes described as the first, or inner, tier of the 'three tier State', the other two tiers being Crown entities and State-owned enterprises. Narrower than both 'State sector' and 'public sector'.
Responsible Minister	The Minister accountable to Parliament for the financial performance of a department or Crown entity. In relation to an Office of Parliament, the Speaker is the Responsible Minister.
Schedule 4 Public Finance Act 1989 companies	These are companies that are currently listed, along with a range of other miscellaneous organisations, on Schedule 4 of the PFA. They are also referred to as 'PFA companies'.
State-owned enterprise (SOE)	SOEs are businesses (typically companies) listed in the First Schedule to the State-Owned Enterprises Act 1986. SOEs operate as a commercial business but are owned by the State. They have boards of directors, appointed by shareholding Ministers to take full responsibility for running the business.

State sector	The State sector comprises all organisations that are included in the ‘Government reporting entity’ and are referred to in s 27(3) of the Public Finance Act 1989, namely: Public Service and other departments under the PFA; Offices of Parliament; State-owned enterprises; Crown entities; organisations listed on schedule 4 of the PFA; and the Reserve Bank of New Zealand. Departmental Agencies would also be part of the State sector.
State services	A term defined in section 2 of the State Sector Act 1988. It is a broad definition that, essentially, includes departments, most Crown entities and other organisations that are “ <i>instruments ... of the Government of New Zealand</i> ”. “Government of New Zealand” is interpreted (consistent with the definition of “Government” in the Public Finance Act 1989) as the Executive branch of government.
State Services Commissioner	The chief executive of the State Services Commission who has the key role in leadership of the State services.
Statement of Intent	Identifies, for the medium term, the main features of intentions regarding strategy, capability and performance. SOIs are developed after discussion between an agency and its Minister(s). After being finalised, the SOI is presented to the House.
Vote	A grouping of one or more appropriations that are the responsibility of one or more Ministers of the Crown and are administered by one department.