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Introduction

The work of Crown entities is immensely important for achieving results for New Zealanders, and for building a more efficient and better value-for-money government. Most of the services provided to New Zealanders by the State services are provided by Crown entities. Crown entities collectively employ around 70% of central Government employees, hold about 45% of fixed assets on the Crown’s balance sheet, and account for more than one-third of total government expenditure.

The 2013 State sector reforms have significant implications for Crown entities. Delivery depends on better alignment of all parts of the State services to deliver better public services. Amendments were made to the Crown Entities Act 2004 (CEA), the State Sector Act 1988 (SSA), and the Public Finance Act 1989 (PFA) to make it easier for government agencies to operate more effectively. The amendments to the Crown Entities Act included:

- strengthening the alignment of Crown entities through expanding board duties for statutory Crown entities to include collaboration
- supporting functional leadership by expanding the scope for the use of directions to support a whole of government approach
- formalising the role of the monitor
- creating a new power for the Minister of State Services to request information on capability
- streamlining planning and reporting from 1 July 2014 by providing for the possibility of four-year Statements of Intent (SOIs), and more meaningful reporting on what has been achieved, and
- simplifying the regime applying to Crown entity subsidiaries.
Overview
Overview

Who is this guide for?

This guide is for Ministers with statutory Crown entity responsibilities and their staff.\(^1\)

What does this guide provide to you as a Minister?

It provides practical information and an easy reference point for you and your staff about:

- your relationships with Crown entities, and how to engage with them on strategic matters important to the government
- how to request and get good performance information from an entity
- information flows between Ministers, Crown entities and monitors (usually monitoring departments\(^2\))
- public reporting by entities, and
- your role in the appointment and removal of board members, and in setting remuneration for board members.

A separate quick reference handout shows the key levers available for you to get the performance you want, and how others may assist you. This handout is available at [www.ssc.govt.nz/sites/all/files/performance-levers-for-ministers.pdf]\(^3\). For more information also refer to *It Takes Three: Operating Expectations Framework*, which sets out the roles and responsibilities of the Minister relative to a Crown entity board and the monitoring department [www.ssc.govt.nz/it-takes-three-operating-expectations-framework].

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\(^1\) The main body of this guide is focused on statutory Crown entities (defined below) while Appendix 2 deals with Crown entity companies and, briefly, Public Finance Act Schedule 4A companies.

\(^2\) The term “monitoring department” is used throughout this Guide, although the Minister may choose a different body to monitor the entity.

\(^3\) The levers hand-out is necessarily generic as entities also have their own legislation, which may change how a particular lever is used or provide further specific levers. It is, however, a useful basis for a discussion with the monitoring department about the options that are available.
What is a Crown entity?

Crown entities are part of the State sector⁴, and are owned by the Crown. The CEA provides the framework for establishing, governing and operating all categories of Crown entities. It also clarifies the roles, responsibilities and the accountability relationships between Crown entities and their boards, responsible Ministers, and their departments.⁵ Establishing a Crown entity reflects a decision by Parliament that a function or functions should be carried out at ‘arm’s-length’ from Ministers. This arm’s-length separation from Ministers may be required to credibly distance Ministers from involvement in decision-making that relates to individual persons or organisations (e.g. around funding culture and heritage), and to provide access to the broader range of skills that a governance board brings. Despite this separation, Ministers are answerable to Parliament for overseeing and managing the Crown's interests in, and relationships with, the Crown entities in their portfolios.

Lists of all Crown entities by Ministerial portfolio can be found at: www.dpmc.govt.nz/cabinet/portfolios/list.

Crown entities matter because they deliver many public services of importance to New Zealanders and often are the ‘face of government’.

Categories of Crown entities

Crown entities are defined under the CEA as falling within five categories:

1. Statutory Crown entities comprising:
   - Crown agents (e.g. ACC, District Health Boards)
   - Autonomous Crown entities (ACEs, such as Te Papa)
   - Independent Crown entities (ICEs, such as the Commerce Commission)

2. Crown entity companies (e.g. Crown Research Institutes, and other companies such as Radio New Zealand)

3. Crown entity subsidiaries

4. School boards of trustees, and

5. Tertiary Education Institutions.

In addition, sections of the Crown Entities Act (Part 4 in particular) now apply to companies listed on Schedule 4A of the Public Finance Act. As mentioned above, this Guide focuses primarily on statutory Crown entities.

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⁴ The current list of State sector organisations can be found at: www.ssc.govt.nz/state_sector.organisations. Appendix 1 shows how Crown entities fit into the State sector and wider public sector.

⁵ Crown entities are subject to both their enabling legislation and the CEA. If there is a conflict between a Crown entity’s own enabling legislation and the CEA, the CEA prevails unless the entity’s enabling legislation specifically provides otherwise. The Education Act 1989 is the primary statute for the establishment, governance and operation of School Boards of Trustees and Tertiary Education Institutions.
The extent to which a Minister has control over a statutory Crown entity varies by category. Your powers to direct on government policy vary depending on the type of statutory entity. There are some limits to your powers, for instance you cannot give directions to a Crown entity on a statutorily independent function and you cannot direct a Crown entity, board member, employee or office holder to provide a service to, or bring about a particular result, in respect of a particular person or persons. The table below summarises the differences in Ministerial powers for the three types of statutory Crown entities:

<table>
<thead>
<tr>
<th>Power to appoint board members</th>
<th>Crown agent</th>
<th>Autonomous Crown entity</th>
<th>Independent Crown entity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minister</td>
<td>Minister</td>
<td>Governor-General, on recommendation of Minister</td>
</tr>
<tr>
<td>Power to remove board members</td>
<td>Minister's discretion</td>
<td>Minister, for justifiable reason</td>
<td>Governor-General, for just cause, on advice of Minister. Attorney-General consulted</td>
</tr>
<tr>
<td>Power to direct on government policy</td>
<td>Must “give effect to” policy that relates to the entity’s functions and objectives if directed by Minister</td>
<td>Must “have regard to” policy that relates to the entity’s functions and objectives if directed by Minister</td>
<td>No power to direct, unless specifically provided for in another Act</td>
</tr>
<tr>
<td>Power to set direction and annual expectations</td>
<td>Minister</td>
<td>Minister</td>
<td>Minister</td>
</tr>
<tr>
<td>Whole of Government approach</td>
<td>Must “give effect to” if directed by Ministers of Finance and State Services</td>
<td>Must “give effect to” if directed by Ministers of Finance and State Services</td>
<td>Must “give effect to” if directed by Ministers of Finance and State Services</td>
</tr>
</tbody>
</table>

You may want to direct a Crown agent or Autonomous Crown entity on government policy when:

- you want to provide clarity or consistency of strategic and/or policy direction
- a board asks for clarification or a Ministerial mandate before implementing a policy, or
- Crown entities and departments need to work together to achieve goals.

A policy direction must relate to the individual entity’s functions and objectives. As discussed below, there are separate powers of direction available to the Minister of State Services and Minister of Finance, acting jointly, to issue directions to support a whole of government approach.

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6 The table is based on sections 103, 104, and 105 of the CEA. This table expresses the most general state of affairs under the Act; variations may be provided for expressly in a particular entity’s Act.

7 Statutory Crown Entities: A Guide for Departments advises departments to ensure that Ministers are advised not to act in any way that could imply a direction to an independent Crown entity. This guidance can be found at www.ssc.govt.nz/guidance-depts-crown-entities.

8 Directions may only be given after consultation with the Crown entity. The direction must also be published in the New Zealand Gazette and presented to the House of Representatives. Directions must be reviewed by the Minister or Ministers, as set out in section 115A of the CEA.
Ministers oversee and manage the Crown’s interests in the entities in their portfolios and remain answerable for their performance. As discussed below, Ministers can direct a Crown entity of any type to change the Statement of Intent (SOI) and Statement of Performance Expectations (SPE).

Formal powers of direction are likely to be used infrequently. This is because Ministers tend to prefer voluntary compliance with expectations and because other tools (including annual engagement with the board on an entity’s strategic direction) work well in conveying Ministers’ expectations.

Who are the key players?

The diagram below shows the relationships between key players with responsibilities and interests relating to individual Crown entities, with descriptions overleaf.

Key
- Scrutiny of performance
- Accountability
- Answerable to
- Service provision

Accountable = owed to the person who assesses performance and has the authority to decide on rewards and sanctions

Answerable = owed to persons/agencies in so far as they exercise a statutory or delegated authority to make a legitimate and lawful request for information
Public:

May have a variety of interests in a Crown entity, for example as a client or service recipient, as a funder (through specific levies and charges or general taxes) and/or as a member of regulated groups and industries.

Parliament:

Establishes, disestablishes, merges or changes functions of Crown entities through legislation; agrees much of the Crown funding through the budget process; scrutinises entity performance (e.g. via Select Committee processes) – among other roles.

Office of the Auditor-General (OAG):

Statutory auditor of all public entities, including Crown entities. Scrutinises Crown entity accountability, reporting and performance information on behalf of Parliament.

Responsible Minister:

Oversees and manages the Crown’s interest in the entity, and exercises statutory responsibilities and powers relating to the entity. Is answerable to Parliament for the performance of the entity (including by presenting entity strategic planning, annual performance and reporting information).

Board:

The governing body of the entity, with the authority to exercise its powers and perform its functions, makes decisions about its operations and appoints its chief executive (where applicable). It is accountable for entity performance.

Monitoring department:

Supports the responsible Minister to fulfil his/her role and undertakes other statutory functions such as administering appropriations and legislation as required. Monitoring is the process whereby you obtain independent advice, usually via the monitoring department, about a Crown entity’s performance and how any risks will be managed.

Minister of Finance (MoF) & Minister of State Services (MoSS):

Provide system-wide oversight of Crown entities’ performance (through Finance and State Services portfolios, and as part of Cabinet), e.g. the Minister of State Services has information gathering powers and the Minister of Finance has powers in relation to accountability documentation and financial provisions for entities. MoF and MoSS have a statutory power to jointly issue directions to Crown entities that support a whole of government approach.

The State Services Commission (SSC) and the Treasury:

The SSC and the Treasury jointly administer the Crown Entities Act. The SSC is responsible for Parts 1 (preliminary provisions), 2 (establishment and governance), 3 (operation), and 5 (miscellaneous), and the Treasury is responsible for Part 4 (reporting and financial obligations). Under the State Sector Act, the SSC also provides advice to
Crown entities on integrity and conduct, in addition to a range of other functions (see further information in chapter 1 on Relationships, Roles and Responsibilities).

What are your roles and responsibilities?

The role of the responsible Minister is to oversee and manage the Crown’s interests in, and relationships with, their Crown entities, and to carry out any statutory responsibilities. To do this you need to:

- make sure an effective board is in place to govern the entity through the appointment, reappointment and removal of board members
- participate in setting the strategic direction and annual expectations of Crown entities (which may include improving the alignment of multiple agencies in an area)
- agree to the levels of funding for reportable outputs
- review entity performance and results
- manage risks on behalf of the Crown, and
- answer to Parliament for the performance of the entity.

How can your monitoring department help you?

Your monitoring department provides you with information, analysis and advice about the effectiveness, efficiency and financial performance of the Crown entity. The monitoring department should focus monitoring on major opportunities and risks. Monitoring should be proportionate to:

- your needs
- the scale of investment in, and expenditure of, the Crown entity
- financial and other risks posed by the Crown entity, and
- the opportunities that could be realised across your area of responsibility.

The role of the monitoring department is discussed in more detail in section 4 of this guide – How can your monitoring department assist you?

Contact for questions and feedback

The State Services Commission and the Treasury will keep these guidelines under review. Questions or suggestions for revision and improvement are welcome. These can be sent to: commission@ssc.govt.nz.
Detailed information on
THE TOPICS IN THE OVERVIEW
1 Relationships, roles and responsibilities
1 Relationships, roles and responsibilities

Relationships

A constructive and professional relationship between the board of the Crown entity, the responsible Minister, and the monitoring department is a major enabler of improved board and entity performance. This relationship needs to recognise the statutory roles and responsibilities of all three parties. A “no surprises” relationship is critical for the responsible Minister and board chair to achieve sustained good performance by a Crown entity.9 “No surprises” means that the Government expects a board to:

- be aware of any possible implications of their decisions and actions for wider government policy issues
- advise the responsible Minister of issues that may be discussed in the public arena or that may require a Ministerial response, preferably ahead of time or otherwise as soon as possible
- inform the Minister in advance of any major strategic initiative.

Roles and responsibilities – Ministers

Key message:

Overall, your roles and responsibilities under the CEA (s. 27) are to:

- oversee and manage the Crown’s interests in, and relationships with, the Crown entities in your portfolio. You are answerable to Parliament for these interests
- make sure an effective board is in place to govern the Crown entity through the appointment, reappointment, and removal of board members, and determine the remuneration of some board members (see section 2 of this guide)
- participate in setting the strategic direction and annual performance expectations of Crown entities, which may include multiple agencies operating within a sector (see section 3 of this guide)
- review Crown entity performance and results (see section 4 of this guide), and
- manage risks on behalf of the Crown.

Along with being answerable to the House of Representatives, you are also answerable to the public for problems or controversies arising in connection with the entity by responding to questions and participating in debates and reviews. You table in the House of Representatives each entity’s SOI, annual SPE and annual report and appear before Select Committees where you may be asked to comment on an entity’s activities.

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9 An ICE making quasi-judicial decisions can tell the Minister when sensitive decisions are due, but may only tell the Minister the actual result when the decision is made public or otherwise released.
The board of the entity should maintain open communication with you and your monitor. As the responsible Minister, you have a strong interest in the board:

- clearly setting the direction and annual performance expectations for the Crown entity
- managing any risks to the Crown, and
- collaborating where practicable with other public entities.

As set out below, boards have the primary responsibility for entity performance. As the responsible Minister you have many levers to assist you in getting the performance you want from your entities, for example:

- You have the formal power to direct a Crown entity of any type to amend parts of the Statement of Intent and annual Statement of Performance Expectations.
- You also have the power to review a Crown entity's operations and performance at any time. If contemplating such a review, you must consult the Crown entity and consider any submission it makes on the review. Crown entities must take all reasonable steps to cooperate with the review.
- You have the power to require Crown entities to supply a wide range of information which assists you to monitor their performance. You must exercise these powers in a way that recognises any statutorily independent functions.

The handout available at www.ssc.govt.nz/sites/all/files/performance-levers-for-ministers.pdf provides the range of levers available to you to get the performance you require. It is recommended that Ministers seek advice before using these levers as required.

### Roles and responsibilities – Crown entity boards

**Key message:**

The entity’s board has the primary responsibility for the entity’s performance. As the responsible Minister, you should firmly place responsibility with the board for the setting and achievement of key performance indicators, for the monitoring of entity performance, and for high quality performance reporting.

The respective governance and management responsibilities need to be clear. The board governs the Crown entity and exercises its powers, carries out its functions and makes decisions about its operations (i.e. a governance role). It also makes decisions (either itself or through delegated powers) about the operation of the entity, and ensures that the entity’s functions are performed efficiently and effectively. The entity itself is accountable to the House of Representatives for its own actions.

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10 Crown entities are encouraged to undertake Performance Improvement Framework (PIF) reviews to enhance performance. See www.ssc.govt.nz/pif for further information.
The legal mechanisms of board accountability include:

- the board members’ collective and individual duties, including acting consistently with the entity’s objectives, functions, SOI and SPE and collaborating with other public entities where practicable
- obligations to follow Ministerial policy directions (according to the category of entity and applicable legislation)
- an obligation to report on performance to Parliament, and
- an obligation to appear before a Select Committee if required. Board members who wish (or are invited) to make a submission to a Select Committee on a Bill are expected to discuss the matter with you before doing so.\(^\text{11}\)

Boards are accountable to you as their responsible Minister and you should expect them to engage constructively and professionally with you and your monitoring department.

**Roles and responsibilities – Crown entity chief executives**

A chief executive is appointed by the board and is tasked with running the Crown entity on a day-to-day basis (i.e. a management role).\(^\text{12}\) The chief executive manages the Crown entity, including exercising the powers and performance of entity functions as delegated on behalf of the board. The table below briefly outlines the process a board must follow when setting (or changing) a chief executive’s terms and conditions of employment.

<table>
<thead>
<tr>
<th>Entity type</th>
<th>Process for the board setting a chief executive’s remuneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory Crown entities (excluding District Health Boards)</td>
<td>Crown entities that employ a chief executive must consult with the State Services Commissioner before agreeing to any terms and conditions of employment for a chief executive. If the proposed terms and conditions are outside the Commissioner’s guidance, the entity must consult you. However, the entity’s board has the final responsibility for setting its chief executive’s terms and conditions.(^\text{13})</td>
</tr>
<tr>
<td>District Health Boards (DHBs)</td>
<td>DHBs must obtain the consent of the State Services Commissioner on their chief executive’s terms and conditions.(^\text{14})</td>
</tr>
</tbody>
</table>

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\(^{12}\) In most cases, corporations sole (a Crown entity with one office holder, e.g. the Privacy Commissioner) do not appoint a full time chief executive.

\(^{13}\) Refer CEA, s. 117.

\(^{14}\) See Clause 44 (1), Schedule 3 of the New Zealand Public Health and Disability Act 2000.
1 Relationships, roles and responsibilities

Roles and responsibilities – monitoring department

Key message:
The monitoring department supports the Minister to fulfil his or her role and undertakes other statutory functions such as administering appropriations and legislation as required. You need to decide on your expectations of the monitoring department and whether you want to make alternative arrangements for another agent to undertake selected monitoring functions.

The monitoring of an entity is usually undertaken by the relevant policy department, unless a Minister makes alternative arrangements with Ministerial office staff or staff from another department. Monitoring is the process whereby you obtain independent advice on how to:

- work with the particular type of entity (Crown agent, ACE or ICE), and any entity specific provisions that apply
- manage the processes relating to board membership such as upcoming appointments
- engage in setting strategic direction and annual expectations, and
- respond to issues and risks that emerge from monitoring the entity's performance.

High performing monitoring departments should engage with entities as a ‘friendly critic’ (at times acting as an advisor or sector leader) without prejudicing their primary role as the agent of and advisor to the Minister, or undermining the board's direct lines of accountability to the Minister. Striking a balance will not always be easy.

The roles of the Minister of Finance and Minister of State Services

The Minister of Finance and the Minister of State Services have interests in the overall capability and performance of the State services. The Ministers of Finance and State Services may jointly issue a direction requiring all or some Crown entities to support a whole of government approach. To invoke this power, the direction must support a ‘whole of government approach’ and must directly or indirectly improve public services. The process for such a direction includes a statutory requirement to consult with those entities to which the direction is proposed to apply “to the extent that Ministers consider necessary in the circumstances”.

An enduring letter of expectations sets out the ongoing expectations that the Minister of Finance and the Minister of State Services have of all statutory Crown entities. It remains ‘in force’ until it is replaced. The current enduring letter of expectations includes the need for entities and Ministers to have a “no surprises” approach to their

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16 Refer CEA, s. 108.
relationship. This will ensure that responsible Ministers are informed at the earliest possible stage of any matters concerning the entity that may be controversial.17

The role of the Minister of State Services

You should consult the Minister of State Services (who has overall portfolio responsibility for the State services) on any proposals that could result in the establishment of a new organisation that might be a Crown entity, or that could involve the disestablishment or amalgamation of an existing Crown entity. This ensures that any machinery of government implications are considered.

As noted above, the Minister of State Services has a portfolio overview of overall Crown entity system capability and performance. The Minister of State Services may request information from groups of no fewer than three entities for this purpose. In addition, recent amendments to the State Sector Act enable the Minister of State Services to approve Government Workforce Policy Statements (GWPS) for the purpose of fostering a consistent, efficient, and effective approach to workforce matters across the State sector. Affected Crown agents must give effect, and ACEs must have regard, to a GWPS.

The role of the Minister of Finance

You should seek the Minister of Finance’s support or advice on proposals that have budgetary implications or regulatory requirements that may involve regulatory impact analysis.

The CEA gives the Minister of Finance important powers regarding the finance of Crown entities. In partnership with you, the Minister of Finance has the power to approve the acquisition of securities, borrowing, guarantees, indemnities and derivatives. In addition, the Minister of Finance has the following powers on his/her own:

- some powers to require information
- some powers to set standards of reporting
- power to approve use of bank accounts not automatically authorised for use in the CEA
- power to approve an entity holding money other than in New Zealand dollars
- power to require a Crown entity to pay to the Crown an amount up to its net surplus
- power to set a capital charge, and
- a new power to require additional reporting from any member of a Crown entity group (i.e. the parent or the subsidiary) where this is necessary or desirable to enhance public accountability of the individual member of the group).

17 The letter can be found at: www.ssc.govt.nz/expectations-letter-crown-entities-july12.
You would be involved in any discussion related to the areas above prior to the Minister of Finance employing any of these powers.

The roles of the State Services Commission and the Treasury

The SSC and the Treasury have statutory roles in respect to Crown entities and jointly administer the CEA. Together with the Department of the Prime Minister and Cabinet they provide guidance material to assist Ministers, boards, Crown entity staff and monitoring departments. Other useful information can be found at www.ssc.govt.nz/crown-entities.

The State Services Commission

The SSC administers Parts 1 (preliminary provisions), 2 (establishment and governance of Crown entities), 3 (operation of Crown entities), and 5 (miscellaneous provisions) and the Schedules to the CEA. SSC also advises the Minister of State Services in relation to the Minister's portfolio interests in Crown entities, principally with regard to overall Crown entity system capability and performance.

Under the State Sector Act, the State Services Commissioner has a number of responsibilities in relation to Crown entities. The Commissioner’s overall role is to provide leadership and oversight of the State services. For this purpose, the Commissioner has a range of functions pitched at the system level, including to review the State sector system in order to advise on possible improvements to agency, sector, and system-wide performance (s. 6(a)). The Commissioner also reviews governance and structures across all areas of government, including advice on potential structural change and the allocation and transfer of functions (s. 6(b)). The Commissioner sets standards of integrity and conduct and issues a code of conduct that Crown entity employees must comply with (s. 57). Government Workforce Policy Statements are prepared by the Commissioner, who must consult with affected agencies as part of the process (s. 55B). The Commissioner has the power to require Crown entities to supply information relating to the Commissioner’s functions in respect of the entities (s. 9).

The Commissioner must act on a range of matters affecting Crown entities if directed by the Prime Minister or a Minister responsible for a particular part of the State services. The Commissioner may also act on a range of matters, if asked by the head of any part of the State services. ¹⁸

The Commissioner also has a role in advising on the remuneration of board members of Crown agents and Autonomous Crown entities and in advising on the terms and conditions of employment of chief executives in statutory Crown entities (see table on p.16).

¹⁸ Refer State Sector Act, s. 11.
The Treasury

The Treasury provides advice on:

- Budget and expenditure information and processes
- the application of rules set down under the CEA relating to: the acquisition of securities; borrowing; the giving of guarantees; the granting of indemnities, and the use of derivative financial instruments, and
- the interpretation of, and compliance with, reporting requirements.

The Treasury should be consulted on all issues that impact on appropriated expenditure or revenue, or that have financial, fiscal or economic implications. This includes all performance and reporting issues that may influence decisions on value-for-money.

The Treasury administers:

- Part 4 of the CEA, which relates to Crown entity reporting (including SOIs, SPEs and annual reports) and Crown entities’ financial obligations
- the Crown Entities (Financial Powers) Regulations 2005, and
- the Public Finance Act 1989 which contains some provisions relating to Crown entities, e.g. powers to obtain financial information from entities, and Minister of Finance instructions on matters such as financial reporting standards.

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20 Departmental chief executives are responsible for the reporting on the use of non-departmental appropriations (Section 35 of the Public Finance Act) but not the outputs, capability or financial performance of Crown entities.
2 Appointing and maintaining an effective board
2 Appointing and maintaining an effective board

Key message:

Crown entities are established at ‘arm’s-length’ from Ministers where decision-making needs to be, and be seen to be, independent from Ministers. Furthermore, Crown entity governance boards can provide Ministers with access to a broader range of skills. Assembling an appropriate mix of board skills and experience has a considerable impact on board performance. Therefore, one of the most important decisions you can make in relation to a Crown entity is the set of expertise you appoint to the board.

Board appointments are a very important way in which you influence the performance and strategic direction of a Crown entity. Every board vacancy creates an opportunity to reassess the needs of an entity, and the skills and experience that would best complement the talents of the other board members. A good recruitment and appointment process and well supported decisions on possible reappointment are critical to ensuring effective members are appointed to boards.

An effective board will provide good governance of the entity, engage with the Minister on strategic direction and performance issues, work cooperatively with the monitoring department, and take opportunities to work with others to improve public services. An effective board will:

- have members with the competencies (e.g. leadership and professional and sector-specific skills) needed to understand the entity’s purpose and functions
- help the entity articulate and achieve its strategic direction and targets
- understand the environment within which it performs its duties
- work well as a collective, with the chair getting members to work as a team
- recognise the importance of collaborating effectively with related departments, and the relevant public agencies, and
- select and mentor an appropriate skilled chief executive.

Alongside the information contained in this section, further detail on the processes for board appointments and induction is contained in the Board Appointment and Induction Guidelines (BAIG). The BAIG also contains additional information on the management and disclosure of conflicts of interest, board member induction, and the process to follow for appointment/reappointment.

Board appointment roles

As the responsible Minister, you are responsible for board appointments either directly or through recommendations to the Governor-General (see the table below). Under section 29 of the CEA, you may only appoint or recommend those who you believe have the appropriate knowledge, skills, and experience to assist the entity achieve its objectives and perform its functions. You must also take into account the desirability of promoting diversity in board membership \(^\text{22}\) and look for opportunities for cross-board appointments to support cross-agency working. Your good judgement is needed to ensure the board gets the skills it needs.

Section 30 of the CEA sets out who is not eligible for appointment to Crown entity boards. An entity’s own legislation may also include circumstances that make a person ineligible for consideration. Cabinet has agreed, as a general rule, that Ministers will not appoint public servants to statutory boards. \(^\text{23}\)

Key message:

The existence, or perception, of undisclosed interests could have a substantial impact on a board’s standing and on public trust in the institutions of government.

There are two points at which Ministers will become aware of board member interests: before or after appointment.

Before appointment candidates are required to disclose actual or potential interests. Identifying and dealing with all potential or actual board member interests prior to appointment is ideal since Cabinet requires Ministers to certify that appropriate appointment processes have been followed and that Ministers have identified all interests that could reasonably have been identified.

Disclosures can also occur after appointment if a board member becomes aware of and discloses an interest, or when the board itself discloses an actual or perceived interest. A board member failing to disclose a known interest is likely to breach the duties to act in good faith, to act honestly, and with care, diligence and skill. Such a breach of duty is a basis for removing a member.

Your role in appointing or recommending appointments involves:

- retaining ultimate responsibility for each appointment, while in practice the processes are usually delegated to a monitoring department
- taking account of provisions in the CEA, the entity’s establishing legislation and/or other instruments such as Cabinet Office Guide \(^\text{24}\) and Circulars

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\(^\text{22}\) Refer CEA, s. 29(2)(b).
\(^\text{23}\) Refer Cabinet Office Circular CO (02) 5 Appointment of Public Servants to Statutory Boards www.dpmc.govt.nz/cabinet/circulars/.
\(^\text{24}\) Refer http://cabguide.cabinetoffice.govt.nz/procedures/appointments.
• consulting the Prime Minister before ‘significant appointments’ are submitted to Cabinet\textsuperscript{25}

• discussing all but the most minor appointments with the Cabinet Appointments and Honours Committee (APH)\textsuperscript{26}

• meeting legislative and Cabinet requirements, and

• setting fees for Crown agent and Autonomous Crown entity board members, in accordance with the Cabinet Fees Framework, and expecting that the appointee receives a proper induction, particularly in the case of chairs.

**Key message:**

Who appoints board members and what are their terms of office?

<table>
<thead>
<tr>
<th></th>
<th>Crown agent</th>
<th>Autonomous Crown entity</th>
<th>Independent Crown entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who appoints</td>
<td>Minister appoints, for up to three years</td>
<td>Minister appoints, for up to three years</td>
<td>Governor-General appoints, on the recommendation of the responsible Minister, for up to five years</td>
</tr>
</tbody>
</table>

The term of office for board members who are elected as representatives of a particular ‘constituency’ is set by the relevant statute. For example, District Health Boards have a mixture of appointed and elected board members under the New Zealand Public Health and Disability Act 2000.

You may wish to schedule periodic briefings with an entity’s monitoring department to discuss upcoming appointments. This could include discussing the objectives and functions of the entity concerned, current board membership, fees and allowances, which members’ terms are expiring, eligibility for reappointment, suggestions for revised skill sets and/or succession planning for board chairs. It is important to plan ahead and minimise the use of the provisions in the CEA that permit rolling over the terms of existing board members.

You can expect the monitoring department to advise you on all parts of the appointment process, including:

• the forward programme of board members who are coming to the end of their term

• an appropriate process to be followed in the circumstances

\textsuperscript{25} The term ‘significant’ is not defined; it is a matter of judgement. A case-by-case assessment is required, considering factors such as: the public profile of the entity, whether the entity has a strategic or decision-making role, whether the entity controls significant assets or funds, and whether the entity is an executive (as opposed to an advisory or technical) body.

\textsuperscript{26} Also a matter of judgement; in practice, statutory Crown entity appointments are invariably referred to APH.
• how best to locate candidates (with assistance from nominating agencies, e.g. the Ministry of Women’s Affairs, Te Puni Kōkiri, Office for Disability Issues, the Ministry of Pacific Island Affairs, and the Ministry of Consumer Affairs)\(^{27}\)

• risks and issues arising throughout the process

• keeping you fully informed at critical points

• advising you of the legal requirements and expectations of Cabinet

• providing advice on board member remuneration\(^{28}\)

• undertaking candidate probity checks as required (e.g. assess applications, undertake interviews, assess potential conflicts of interest, and CV/qualification checks), and

• arranging for publication of the appointment in the *New Zealand Gazette*, and ensuring appointees receive a proper induction.

You can expect the monitoring department to provide you with an assessment of board skill requirements.

You can expect board chairs to:

• ensure an annual self-review of board performance is undertaken

• provide insights into the skill sets the board requires, and

• be involved in the recruitment process, where appropriate.

New board members should be given an introductory briefing on the Crown entity environment and the expectations that you have for them. The monitoring department and board chair should ensure that a new appointee receives a proper induction.

You can expect candidates to:

• provide all necessary personal information (provided they consent to probity checks), and

• before appointment, consent in writing to being appointed, certify that they are not disqualified under any of the CEA’s provisions\(^{29}\), and disclose to you the nature and extent of all interests that they have or are likely to have in matters relating to the entity.

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\(^{27}\) The Treasury can make its database of prospective board members available to monitoring departments, on request.

\(^{28}\) In consultation with SSC, as necessary.

\(^{29}\) It is important to deal with Board members’ interests as failure to do so can have a substantial impact on a board’s standing and on public trust in government institutions.
Board members may resign their position at any time, by written notice to the responsible Minister.

**Appointments in the pre-election or post-election period**

Appointing members whose terms would conclude immediately before or after a general election should be avoided wherever possible. It has been the practice for successive governments to exercise restraint in making significant appointments in the pre-election period – appointments not considered to be significant proceed in the usual way.\(^{30}\) The Cabinet Office will issue guidance on appointments that may arise during the three months before each general election and in the immediate post-election period.

**Nomination for boards in another Minister’s portfolio**

Cabinet Office issues a schedule of *current board members and upcoming appointments* at the beginning of each calendar year. If you want to nominate someone for a board for which you do not have portfolio responsibility, you should contact the office of the responsible Minister as early as possible in the appointment cycle.

**Reappointment of board members**

### Key messages:

Where a reappointment is being contemplated, the following points need to be considered:

- Are there any legislative requirements, e.g. a formal limit on the number of terms?
- Do the existing skill requirements align with the current and future work of the entity?
- Is the current contribution made by the incumbent relevant to the current and future work of the entity?
- How well does the current composition of the board match the future work programme, governance requirements and general needs of the entity?

Before a board member’s term of office expires, you should seek advice on the performance of the member and assess the suitability of that person for reappointment. You should discuss the results of the board’s annual performance appraisals with the chair to inform reappointment decisions.

Appointees should not be given an expectation that they will be offered a subsequent term.

In most cases, there is no formal limit on the number of terms for which a member may hold office. However, there is a balance between the benefits derived from continuity of

\(^{30}\) Whether or not a particular appointment is ‘significant’ is a matter of judgment as discussed above.
service on a board, the value of the board gaining new ideas and perspectives, and the need to avoid losing a number of experienced members over a short space of time. The board's goals, relevant government policy and/or a member's performance may have changed since the board member’s term began.

If a reappointment is being recommended, you do not need to follow the full appointment process, but you need to be able to assure your Cabinet colleagues that reappointment is the most appropriate option and that potential interests and conflicts have been reassessed. 31

The CEA provides for all board members to continue in office beyond the expiry of their term until they are reappointed, a successor is appointed, or a decision is taken that the member will not be reappointed and no successor will be appointed at this time. This is a short-term measure to enable the appointment of a successor to be completed, or until after a general election. It must not be used to bypass the terms of appointment that are prescribed in legislation.

Confirming and announcing appointments

Once you have selected the candidate you consider best meets the full range of requirements as an effective board member, you should submit the appointment to the Cabinet Appointments and Honours Committee (APH). 32 You should expect your monitoring department to provide you with APH papers that meet the requirements set out in the CabGuide.

Once the intention to make or recommend an appointment has been confirmed by APH and Cabinet, you should follow all current protocols. For example, you should consult with government caucuses and in some cases the parties supporting the Government. While not formally required, consultation with opposition parties may be desirable on occasion.

In recommending appointments for Independent Crown entity board members to the Governor-General, you should attach a covering note to accompany the recommendation. The covering note should include information on the position and recommended appointee, a brief description of the board’s role/functions, and any other information that the Governor-General would find useful.

Appointees and unsuccessful candidates must be advised before public announcements are made. All appointees should receive a detailed appointment letter and their notice of appointment, which will be signed by either you or the Governor-General. All appointments must be published in the New Zealand Gazette. You may also wish to provide a media release which may serve to raise the profile of the entity.

31 Should reappointment be recommended, a submission to the Cabinet Appointments and Honours Committee (APH) should clearly state the process that has been followed and the reasons proposed for reappointment.

Post-appointment induction and training

Board members should receive initial and ongoing support so they are aware of the total environment within which they work. It is important that new board members and those not used to being a Crown director have adequate induction and training to ensure they understand their role and any expectations the Crown might have of them. In practice, this role is delegated but you may wish to play a part in this, for instance, following the appointment of a new chair. In some cases, responsibility for training new members is specified in legislation. For example, District Health Boards are required under their legislation to ensure new board members have appropriate training and that it is recorded.

Induction should be done in conjunction with the monitoring department (which can provide the State services perspective) and by the board chair (who provides the detail for that entity). A comprehensive set of guidelines and induction modules for board members is available at www.ssc.govt.nz/crown-entity-induction-material. The SSC and the Treasury are also available to assist with board members' inductions.

Acknowledging a board member's service

If a member resigns before the conclusion of their term, or is not reappointed, you (or the monitoring department) should formally acknowledge their services in an appropriate way.

Removal from office

**Key message:**

You may decide, or recommend, that a board member should be removed before the expiry of their term. This is a powerful tool, which must be used in a way consistent with legislation and the principles of natural justice.

Generally, the person with the authority to appoint a board member has the power of removal. Board members are not employees and no compensation is made in the event of their removal or non-reappointment.

Any decision to remove a board member must be consistent with the principles of natural justice (e.g. sections 5 and 27 of the New Zealand Bill of Rights Act 1990) and a proper consideration of the matter irrespective of the type of entity.

Legislation may impose different thresholds before removal can be considered (e.g. Schedule 3 Clause 8(1) of the New Zealand Public Health and Disability Act 2000 relating to elected members of DHBs). Depending on the relevant legislative powers, the threshold before such an action can be taken may be very high. Where Ministers have full discretion to remove board members, there are several possible circumstances in which you might do so. You may lose confidence that a board member is contributing to the implementation of government policy or you may become aware that they do not have the appropriate knowledge, skills, and experience for the role. Such awareness may come about through discussions with the board chair concerning board performance.
The table below sets out your powers of removal for each type of statutory Crown entity, and the notification of removal you need to provide:

<table>
<thead>
<tr>
<th>Power to remove appointed board members</th>
<th>Crown agent</th>
<th>Autonomous Crown entity</th>
<th>Independent Crown entity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>At Minister’s discretion</td>
<td>Minister, for “justifiable reason” in Minister’s opinion</td>
<td>Governor-General, for “just cause”, on Minister’s advice after consultation with the Attorney-General</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Power to remove elected board members</th>
<th>Crown agent</th>
<th>Autonomous Crown entity</th>
<th>Independent Crown entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>By Minister, for “just cause”</td>
<td>By Minister, for “just cause”</td>
<td>Not applicable</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Notification of removal to appointed members</th>
<th>Crown agent</th>
<th>Autonomous Crown entity</th>
<th>Independent Crown entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written notice stating the date of the removal (with a copy sent to the entity)</td>
<td>Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)</td>
<td>Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Notification of removal to elected members</th>
<th>Crown agent</th>
<th>Autonomous Crown entity</th>
<th>Independent Crown entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)</td>
<td>Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)</td>
<td>Not applicable</td>
<td></td>
</tr>
</tbody>
</table>

In contemplating board member removal, you should consider informing Cabinet colleagues of any such intention, and obtaining legal advice. Notice of any removal should be published in the *New Zealand Gazette* as soon as practicable after notice has been given to the member. Where appropriate, you should send a letter thanking the outgoing board member or members.

**Removal of a chair or deputy chair**

Board chairs and deputy chairs in effect hold two appointments – as a board member and as an office holder. Only a board member may be appointed to the chair or deputy chair role. A chair or deputy chair removed from that office continues to be a member of the board unless they are also removed as a member.

**Removal of the whole board**

The CEA contains a power to remove the entire board of a statutory entity if the members have breached their collective duties. The exercise of powers of removal must comply with the principles of natural justice, as noted above.

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33 “Just cause” is defined in s. 40 of the CEA, e.g. misconduct, breach of board member duties. It is a demanding and objective requirement and case law should be studied if such a step is mooted.

34 The Minister of Health has the power to replace an entire board with a commissioner – refer s. 31 of the New Zealand Public Health and Disability Act 2000.
Fees for board members

**Key messages: Board member fees**

Fees for the board members of Crown agents and Autonomous Crown entities are set under the Cabinet Fees Framework (the Framework) which is approved by Cabinet, while remuneration for Independent Crown entities is set by the Remuneration Authority as discussed below. As the responsible Minister, you use the Framework to determine the fees for members of your board(s). Since the Framework covers a varied array of bodies, it is not intended to be prescriptive, and judgement will be required to determine best fit. The SSC administers the Framework and provides advice and guidance on its application.

A conservative approach to fees is expected. There is provision for an ‘exceptional’ fees process to be followed where it is necessary to pay fees outside the parameters of the Framework. This requires prior consultation with the SSC at an early stage, usually via the monitoring department. If you decide to proceed with a proposal for an exceptional fee, you must consult with the Minister of State Services and it is likely the fee proposal will need to be referred to APH and Cabinet for consideration. Any proposed fee increase for chairs or members is regarded as 'exceptional' and must be handled in accordance with the guidance under the Framework.

Remuneration for members of Independent Crown entities and corporations sole is set by the Remuneration Authority, which does not involve reference to Ministers or the SSC.

**Crown agents and Autonomous Crown entities, excluding corporations sole**

When setting fees for members of Crown agents and ACEs, you must use the Framework unless the entity is a corporation sole. The Framework is reviewed periodically – users should check they are using the latest version (found at: www.dpmc.govt.nz/cabinet/circulars/co12/6).

Each entity is classified under the Framework, on the basis of its roles and responsibilities. Most Crown agents and ACEs are classified as governance boards. The appropriate fee is then determined from within the ranges available for governance boards depending on factors such as the complexity of functions, recruitment, retention, risk to reputation, and affordability.

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The Framework has a much wider use than for Crown entities and should be used for setting fees for statutory or other bodies and committees in which the Crown has an interest; in particular, for bodies with responsible Ministers that are outside the Remuneration Authority’s or other fee setting bodies’ jurisdiction. This includes Tertiary Education Institutions, some subsidiary bodies, trust boards, statutory tribunals and authorities, advisory bodies, committees set up to advise Ministers and departments, and Ministerial inquiries and taskforces.
Exceptions

During a member's term, any proposed increase in their fees must be referred to you as the responsible Minister, and to the Minister of State Services for consideration as an exceptional fee. The Framework provides for both parties to decide on the case or for it to be referred to APH, depending on the circumstances. In all such cases, the SSC should be consulted at an early stage.

If you wish to pay a new appointee fees that are above the applicable fee range under the Framework, you must follow the process set out by the Cabinet Office Circular (see above). Any proposal to pay fees outside the applicable fee range should be supported by a strong rationale and is often time bound. Possible justification could include: demonstrated difficulty in recruitment or retention; the particular skills and expertise required for a specific task; an immediate need; or a period of intense workload.

An exceptional fee agreed for one board member does not apply to subsequent appointments. Each appointment and reappointment must be treated as a new exception. Full justification needs to be provided in the APH submission for applying such a fee to any other appointments to that board or to the reappointment of an incumbent.

For advice on the interpretation and application of the Framework, please contact the Executive and Practice Services team at SSC: phone 04 495-6731 or email fees@ssc.govt.nz.

Subsequent review of fees

The fees for members of Crown agents and ACEs should be reviewed at regular intervals (for example, when the Framework itself is reviewed or when appointments or reappointments are being made). Fees should not necessarily increase as a result of any review. If there are demonstrable difficulties in recruitment and retention, or if the member’s duties have increased markedly, this may act as a trigger to review fees.

Independent Crown entities and corporations sole

Setting and reviewing remuneration for an Independent Crown entity (ICE) or a corporation sole is the responsibility of the Remuneration Authority, under the Remuneration Authority Act 1977. As the responsible Minister, you are not directly involved in the process.

Generally, the fee paid to any ICE board member or a corporation sole will continue to apply to his/her replacement. When a new entity is established or a ‘unique position’ is being filled, the Authority provides an indicative fee range. On appointment, the Authority issues a final fee determination to the appointee and the entity concerned.

The Remuneration Authority reviews fees for ICE members each financial year. The Authority can be contacted at: info@remauthority.govt.nz or 04 499-3068.

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Crown entity board as the fee setting authority for their sub-committees and subsidiaries

If the board of a Crown entity (including an ICE) establishes a sub-committee or a subsidiary, the board acts as the fee setting authority. In these circumstances the board must follow the provisions in the Framework.

Summary of levers for appointing and maintaining an effective board

A summary of the responsible Minister’s levers for appointing and maintaining and effective board is provided below.

| The responsible Minister’s levers for appointing and maintaining an effective board |
| Decide recruitment process | Decide who will undertake board member recruitment, the scope of the process, and the skills required for the board. |
| Consult colleagues | Consult Ministerial colleagues via the Cabinet Appointments and Honours Committee (APH). |
| Set remuneration | Set the remuneration for board members of Crown agents and autonomous Crown entities (ACEs). The Remuneration Authority sets the fees for independent Crown entities (ICEs). |
| Appoint | Following referral to APH, make board appointments for Crown agents and ACEs and recommend board appointments for ICEs to the Governor-General. |
| Send appointment letters | Send a clear, concise appointment letter stating what is wanted from each appointee. |
| Expect induction | Expect an induction for new appointees to occur, and consider attending and participating or directing the monitor to provide the induction. |
| Expect self review | May set an expectation that the board undertake an annual self review, resulting in any key issues being raised with the Minister. |
| Reappoint | Must either reappoint or not reappoint serving board members. |
| Remove members | May remove board members for Crown agents and ACEs and recommend removals for ICEs to the Governor-General. |
| Court order | May obtain a court order requiring or restraining a board/member in relation to the Crown Entities Act or entity’s enabling Act. |

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| good practice convention | lever in legislation |
3 Participating in setting the expectations and direction for entities
Participating in setting the expectations and direction for entities

Regular engagement with boards

Key message: Setting strategic direction and annual expectations

As the responsible Minister, you “participate in the process of setting and monitoring the entity’s strategic direction and targets” (s. 27 of the CEA). This is an important way for you to influence the performance of Crown entities. There are various ways you can engage with an entity to achieve this – for instance, by a letter of expectations, through the annual Statement of Performance Expectations (SPE) process, and through the development and review of an entity’s Statement of Intent (SOI). Many Ministers meet regularly with boards, especially when they are engaged in strategic planning and preparation of the annual business plan.

As the responsible Minister, you should regularly engage with your board(s) to clarify performance and any other expectations you or the Government may have, reduce misunderstandings, and enhance the relationship you have with the board. When involved in strategic conversations with Crown entities, you should make sure the entity’s proposed direction:

- adequately reflects the Crown’s interests, including the results across a sector
- presents an acceptable balance between opportunities and risks, and
- is achievable by the Crown entity and its board.

You should engage with the entity on issues that relate to its performance, in particular:

- the activities/projects that were undertaken in the past year
- the intentions of the entity for the coming year and the next three years
- any changes being made to its operating environment
- the financial implications of the entity’s future work programme, and
- what reporting you require and how performance should be reported.

You must also consider whether the proposed strategic direction will require:

- any change to the statutory and policy framework under which the Crown entity operates
- a new SOI
- regular reporting to ensure you receive the performance information you require
- a review of the entity’s performance and operation
Participating in setting the expectations and direction for entities

- either a Ministerial direction or a direction to support a whole of government approach (if applicable to three or more entities).

You may choose the methods of engagement with the entity as best fits your relationship with the particular board. For example, you may choose to discuss the direction and expectations for the next year in a meeting with the chair/entire board and/or may decide to send a written document in the form of a letter of expectations. Such a letter would usually be sent to the chair before the board starts its strategic planning for the coming year.

**Statement of Intent (SOI)**

**Key message: Purpose of the SOI**

The SOI is a key opportunity for the Minister to influence the medium-term strategic direction of the entity. The SOI is an enduring document with a four-year focus that must be updated at least once every three years. The annual review of an entity’s strategy may result in the SOI being amended or a new one produced. There is provision for the Minister to ask for a new SOI at any time.

You can participate in setting an entity’s medium-term direction through the entity’s annual strategic planning process. In late September/early October each year, the Ministers of Finance and State Services will remind all responsible Ministers of the need to engage with their entities, and of any whole of government messages. Together with the monitoring department, you need to engage with an entity before it starts its annual review. The annual review can result in the SOI being re-confirmed as fit for purpose, amended or replaced.

You have the opportunity to review and provide comment on a draft SOI and, in the case of a newly-established entity, to direct that changes occur before it is finalised. The SOI for a Crown entity is prepared by the entity and signed off by the entity’s board.\(^{37}\) You can direct amendments to a final SOI, excluding the entity’s explanation of how it intends to manage its organisational health and capability.

Your monitoring department should be engaging with the entity as it develops its strategic intentions, and advise you on whether an entity’s draft SOI adequately covers matters such as:

- whether the entity has met the legislative requirements for the SOI?
- is the strategy sustainable?
- how well is the entity strategy articulated and is it responding to your priorities?
- do their business models make sense?
- an analysis of the relationships with stakeholders and how the entity will work with other agencies

\(^{37}\) In certain limited circumstances such as establishment or disestablishment of an entity you may grant an extension of time or waive the requirement for an SOI.
• review of financial risks to the Crown
• the effectiveness of the strategic review process, and
• which areas the monitor intends to focus on in the coming year.

Statement of Performance Expectations (SPE)

Key message: Purpose of the SPE

The SPE is a key instrument of public accountability and enables the Crown to participate in setting annual expectations for outputs directly funded by appropriations, levies or by compulsory fees or charges set under legislation. It also serves to set out those intentions for the House of Representatives, provides a base against which the entity’s actual performance can be assessed, and includes the entity’s financial forecasts for the next year. The SPE results from the entity’s annual business review and planning processes.

When you participate in the annual strategic planning process you can also set annual performance expectations which are to be reflected in the SPE. Your monitoring department\(^{38}\) should advise you on whether an entity’s SPE adequately covers matters such as:

• its fit with the agreed strategy
• how well is the entity delivering on its core functions
• its consistency with government policy and any directions (to the extent applicable to the entity concerned)
• whether the level of funding (from appropriations, levies etc) should be adjusted
• what is intended to be achieved with the expenditure
• how performance will be assessed
• whether the SPE would be useful as a standalone document or presented with other accountability documents, and
• whether the performance information tells a meaningful performance story.

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\(^{38}\) The Treasury has a suite of guidance to help departments and entities with planning and reporting. This guidance can be accessed at [www.treasury.govt.nz/publications/guidance/strategy](http://www.treasury.govt.nz/publications/guidance/strategy), and [www.treasury.govt.nz/publications/guidance/planning/cea-spe](http://www.treasury.govt.nz/publications/guidance/planning/cea-spe).
You have the right to review and provide comment on the draft SPE and, if the final SPE is not adequate, you may direct the Crown entity to make changes.\(^{39}\) Although an SPE must be tabled each year, there may be no need to completely rewrite it. Minimal changes may be made, with your agreement, if there is no substantial shift in the entity’s activities from the previous year.

In some circumstances, while not provided for in legislation, you may request the entity prepare a memorandum of understanding, relationship agreement, or similar document to assist you, the monitor and the entity to clarify, align, and manage expectations and responsibilities.

### Publishing and presenting SPEs and SOIs

**Publishing** – Crown entities must publish the SPE or SOI (and any amendments to either document) on their website once the final document has been provided to you as responsible Minister, unless you have required that publication be delayed during the pre-Budget period.

**Presenting to the House** – The responsible Minister has an obligation to present the SOI and SPE to the House. There are various options for when and how they are presented to Parliament and which Minister presents them. For example, the SOI and SPE could be presented as separate documents, combined documents, with the annual report, or within a sectoral report. Your monitoring department can advise you on this.

### Ensuring financially responsible management

Crown entities are required to ‘operate in a financially responsible manner’.\(^ {40}\) They must:

- manage their assets and liabilities prudently
- endeavour to ensure their long-term viability, and
- act as a successful going concern.\(^ {41}\)

This requires that:

- the Board maintain oversight of the entity and its cost drivers, and re-prioritise activities to make the most of the expenditure available
- any application to adjust statutory fees or levies is made early enough to be completed in time for the adjustment to apply from the intended date, and

\(^{39}\) Direction may be given on issues of scope (of an SOI), statements of forecast service performance, performance measures and other issues. However the CEA prevents from Ministers giving directions on the forecast financial statements or that affect statutorily independent functions. Ministers should seek legal advice before a direction is issued.

\(^{40}\) Section 51 applies the requirement for financial responsibility to statutory entities.

\(^{41}\) A ‘going concern’ is a business or entity that continues to exist long enough to carry out its objectives and commitments without the threat of liquidation for the foreseeable future.
• any requests for additional operating funding or a capital injection from the Crown are fully specified, clear about trade-offs, and submitted as per the Budget timetable.

To help ensure all Crown entity funding issues are appropriately managed, you can ask the monitoring department to:

• advise on the efficiency and effectiveness of Crown entity spending
• critically assess proposals for new money or adjustment to fees and levies
• distribute Budget-round information to Crown entities (timetables, templates, Budget decisions that relate specifically to the entity, etc.) and rank bids for additional funding against other bids from the sector, and
• ensure funding decisions are reflected in accountability documents.

As the responsible Minister, you may be involved in an examination of the Estimates. The Estimates are the government’s request for appropriations/authorisation for the allocation of resources and are tabled on Budget day. Crown entities do not attend Select Committees when they examine the Estimates, but you and the monitoring department may be questioned about the intended activities and expenditure of an entity that receives funding from appropriations.

Transparency of reporting

The enduring letter of expectations to Crown entities from the Ministers of Finance and State Services emphasises increasing transparency by Crown entities disclosing non-sensitive performance information throughout the year via their websites. During their regular interim performance reports to their responsible Minister, the board of the entity will identify any non-sensitive performance information that can be disclosed via the entity’s website. The information released may vary between Crown entities and what is released can be decided by the entity and responsible Minister. The publication of performance information enables greater transparency and supports performance improvement through public monitoring of the entity’s performance.42

Crown entities, like their private sector counterparts, are only expected to report at the consolidated group level rather than separately disclosing information about the parent and its subsidiaries. The Minister of Finance has a new power to require additional reporting from any member of the group (i.e. the parent or the subsidiary) where it is necessary or desirable to enhance public accountability of the individual member of the group.43

42 For example, DHBs’ results are reported regularly (monthly or six-weekly) through public meetings of their board. This information (operational and financial results) is publicly available through this forum and via the DHBs’ websites.

Typical planning, implementation, monitoring and reporting cycle

The diagram below sets the planning, implementation, monitoring and reporting cycle. The planning cycle starts with a strategy development phase, usually from October on, during which the Minister and board engage on priorities. The SOI can be amended or replaced at any time if required. However, the SPE timetable is clearly prescribed in legislation, and follows a regular annual pattern.

Key
- Reports to Parliament
- Reports to Minister

In general, entities report formally on a quarterly or six-monthly basis. However, Ministers can ask for information at any time and entities will update Ministers on critical issues as they occur.

- Meaningful ongoing engagement between the Minister and Board is essential
- Generally, the Minister’s priorities should be communicated towards the end of the calendar year
- An SOI must relate to at least the next four financial years [hyperlink to section 139(2)]
- An SOI must be provided at least once every three years [hyperlink to section 139(3)]
- The Minister may require a new SOI at any time [hyperlink to section 139A]
- SOI published once finalised
- For further possibilities see www.treasury.govt.nz/publications/guidance/planning/
## Summary of levers for setting strategic direction

In summary, key levers that the responsible Minister can use in the directions-setting process are shown below:

**The responsible Minister’s levers for setting strategic direction**

<table>
<thead>
<tr>
<th>Set expectations</th>
<th>Engage regularly with the chair/board on expectations for entity performance.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Require SOI</td>
<td>May require a new Statement of Intent (SOI) at any time. An SOI may last up to 3 years, and must cover 4 years.</td>
</tr>
<tr>
<td>Extend or waive SOI</td>
<td>In certain circumstances, may grant an extension of time, or waive, the requirement for a entity to provide an SOI.</td>
</tr>
<tr>
<td>Amend SOI</td>
<td>May comment on an entity’s draft SOI and may require amendments to some parts of the final SOI.</td>
</tr>
<tr>
<td>Amend SPE</td>
<td>May comment on a draft annual Statement of Performance Expectations (SPE), and may require amendments to a final SPE, excluding the forecast financial statements.</td>
</tr>
<tr>
<td>Adjust funding</td>
<td>May, subject to Cabinet consideration, adjust funding provided for the entity by the Crown eg. via appropriations, fees, levies, grants etc.</td>
</tr>
<tr>
<td>Agree reporting</td>
<td>Agree to interim reporting requirements with the board to ensure useful performance information is received.</td>
</tr>
<tr>
<td>Give policy direction</td>
<td>May give a direction on government policy relating to an entity’s functions and objectives. Crown agents must give effect to the direction. ACEs must have regard to the direction.</td>
</tr>
<tr>
<td>Policy direction (ICE)</td>
<td>May only give a policy direction to an ICE if specifically provided for in an Act.</td>
</tr>
</tbody>
</table>

*good practice convention*  
*lever in legislation*
4 How can your monitoring department assist you?
4 How can your monitoring department assist you?

Roles and responsibilities – monitoring department

Key message: Monitoring

As the responsible Minister, you can expect reporting from your monitoring department that is timely, comparable over time, contains analysis and monitoring judgments on key financial and non-financial issues and performance risks, identifies future implications or trends, and provides clear information on your options if action is required.

The amendments to the CEA in 2013 recognised that there is a triangular relationship between the Minister, the board and the monitoring department by explicitly including the role of the monitor. As with the Board, it is important that you build an effective and strong relationship with your monitoring department and advise them of your requirements.44

You should expect your monitoring department to:

- provide advice and support during the appointment and induction process for board members
- provide advice and support on Crown entities’ strategic direction, planning processes and SPE and SOI
- advise you whether the Crown entity’s strategic direction complements Government and sector goals
- make sure the Crown entity has identified the intended results of its work programme and how it is beneficial for New Zealanders
- monitor performance against the entity’s SPE and the SOI
- provide advice on the Crown entity’s capability (e.g. by giving advice on major business cases)
- provide advice on the merit of requests by entities for additional funding
- monitor financial and other risks, and keep you informed of those risks
- keep the Crown entity informed of relevant timetables, guidance and information
- improve coordination of Crown entities within your Ministerial portfolio
- provide advice on how sector wide information can be reported, and
- facilitate the entity’s collaboration with other agencies in the public sector.

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44 The Treasury has the role of monitoring the Government’s investment in companies and entities owned by the Crown, and can provide advice and good practice guidance to other monitors. See: www.treasury.govt.nz/commercial/.
You can set clear expectations for monitoring and should consider periodically sending a letter of expectations to the chief executive of the monitoring department which serves to confirm your expected monitoring arrangements. These expectations may include messages that the monitoring department should focus on in order to provide advice that adds significant value, e.g. in strategic direction setting and risk analysis. You may wish to emphasise that the staff concerned need to have the credibility and capability to work with board chairs and provide high quality independent advice and judgements to the Minister. As the responsible Minister, you need to be engaged with your monitoring department in order to set expectations and make it clear what it is that you want.

What support can I expect from monitoring departments?

The monitoring department should advise you on the use of your powers under the CEA and provide you with the following support services:

- an initial briefing on each Crown entity that gives you information about any provisions in the individual Crown entity’s empowering Act (or any other Act) that materially modifies the core governance provisions in the CEA
- ongoing briefings on each Crown entity that identify emerging governance or performance issues that require your attention
- management of all processes relating to board membership including appointments, reappointments, setting members’ fees, and the induction and training of new members
- distribution of information to each Crown entity about relevant decisions and/or changes in policy by the Government, relevant government processes (especially the Budget), and the Government’s expectations of the Crown entity
- negotiation of a SPE and any protocols (if required by you)
- critical review of each Crown entity’s draft SOI, and
- advice on how the entity proposes to assess and report performance and the quality of that performance reporting.

The monitoring department should have an explicit agreement with their Minister that sets out what monitoring they will undertake and how they will do it. Where a department monitors a number of entities on behalf of a Minister, monitoring agreements should require the agencies in the sector to work together. For example, the effectiveness and efficiency of cross-agency initiatives and what changes are needed to ensure better integration may be best set out in a monitoring agreement.

You need to be able to rely on Crown entities responding to information requests in a timely manner, whether they are made direct from your office or via the monitoring

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45 Aligning this letter with expectations sent to Crown entity chairs will give the monitor time to adjust to any new requirements. Letters of expectations canvas the Minister’s expectations for a Crown entity’s strategic direction, governance and performance, and the Minister’s specific priorities for the planning period. Letters of expectations are likely to be sent annually before the board starts preparing its SOI.
How can your monitoring department assist you?

You should convey your expectation to entities that they will be responsive to information requests in order to enable effective monitoring. You may wish to formalise the monitoring department’s authority to request information by explicitly delegating that power.

Where can my monitoring department get help?

The Treasury provides a centre of expertise for monitoring departments and can assist with capability-building in appointments and monitoring financial performance. Information on how the Treasury undertakes its monitoring role is available on its website. You can ask your monitoring department to review its practice in consultation with the Treasury.

Summary of key levers for monitoring performance

The responsible Minister’s key levers for monitoring performance are summarised below.

<table>
<thead>
<tr>
<th>The responsible Minister’s levers for monitoring performance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Choose a monitor</strong></td>
</tr>
<tr>
<td><strong>Engage with board and monitor</strong></td>
</tr>
<tr>
<td><strong>Request information</strong></td>
</tr>
<tr>
<td><strong>Review performance</strong></td>
</tr>
<tr>
<td><strong>Central agency requests</strong></td>
</tr>
<tr>
<td><strong>State Services Commissioner actions</strong></td>
</tr>
<tr>
<td><strong>“No surprises”</strong></td>
</tr>
</tbody>
</table>

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46 See [www.treasury.govt.nz/commercial](http://www.treasury.govt.nz/commercial/).
Appendices
Appendix 1  How Crown entities fit into the public sector

Public sector map

- **Public Sector**
  - Local Government
- **State Sector**
  - Offices of Parliament (e.g. Auditor-General)
- **State Services**
  - Crown Entities (except TEIs)
  - Other departments (e.g. NZ Police)
- **Public Service Departments**
  - Organisations and companies on PFA Schedules 4 and 4A, (e.g. Fish & Game Councils, Fishway Resolution Ltd)
  - SOEs (e.g. NZ Post) and MOM companies (e.g. Meridian Energy)
  - Other (e.g. Reserve Bank)
- **Tertiary Education Institutions (TEIs)**
  - (e.g. Auckland University)
- **Other agencies “associated with a Ministerial Portfolio”**
  - (e.g. ASB Trust)
### Key to terms used in public sector map

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Agency</strong></td>
<td>Synonym for ‘organisation’. A blanket term that may include departments, Crown entities, State-owned Enterprises, PFA Schedule 4 organisations, PFA Schedule 4A and 5 companies, Offices of Parliament and the Reserve Bank.</td>
</tr>
<tr>
<td><strong>Autonomous Crown entity</strong></td>
<td>Autonomous Crown entities (ACEs) are statutory 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.</td>
</tr>
<tr>
<td><strong>Crown</strong></td>
<td>Means the Sovereign and includes all Ministers of the Crown and all departments (including any of their departmental agencies). It does not include any other type of ‘organisation’ described in the definition of ‘agency’ above.</td>
</tr>
<tr>
<td><strong>Crown agent</strong></td>
<td>Crown agents are statutory 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.</td>
</tr>
</tbody>
</table>
| **Crown entity**      | Crown entities are stand-alone corporate bodies that are legally separate from the Crown. They are public bodies that operate at arm’s-length from Ministers, but still an integral part of the State sector. Ministers have a key role in managing the Crown’s interests in Crown entities, for example through their role in board appointments, setting direction and funding levels, and monitoring entity performance. Section 7 of the Crown Entities Act 2004 outlines the five categories of Crown entity:  
  - Statutory entities – bodies corporate established through legislation;  
  - Crown entity companies – companies that are incorporated under the companies act and are wholly owned by the Crown, (e.g. Crown Research Institutes, TVNZ);  
  - Crown entity subsidiaries – companies that are controlled by Crown entities;  
  - School boards of trustees – as constituted under Part 9 the Education Act 1989; and  
| **Department**        | 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’. |
### Key to terms used in public sector map

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition/Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Departmental agency</strong></td>
<td>A new organisation form involving a specific operational delivery or regulatory function or functions placed within a host department. A Departmental Agency has a chief executive employed by the State Services Commissioner. The Departmental Agency’s chief executive reports directly to the Minister responsible for the Departmental Agency, who may or may not be the same as the Minister responsible for the host department.</td>
</tr>
<tr>
<td><strong>Independent Crown entity</strong></td>
<td>Independent Crown entities (ICEs) are statutory Crown entities that are generally independent of Government policy as distinct from giving effect or having regard to Government policy.</td>
</tr>
<tr>
<td><strong>Mixed Ownership Model companies</strong></td>
<td>Mixed Ownership Model (MOM) companies are listed in Schedule 5 of the Public Finance Act 1989. This model applies to companies majority controlled by the Crown, and minority controlled by persons other than the Crown.</td>
</tr>
<tr>
<td><strong>Offices of Parliament</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Public sector</strong></td>
<td>The public sector comprises the State sector (‘central government’) and all local authorities (‘local government’), including council-controlled organisations.</td>
</tr>
<tr>
<td><strong>Public Service</strong></td>
<td>The Public Service comprises the departments listed in the First Schedule to the State Sector Act. Any Departmental Agencies hosted within a Public Service department are also 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’.</td>
</tr>
<tr>
<td><strong>Responsible Minister</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Public Finance Act Schedule 4 organisations</strong></td>
<td>PFA Schedule 4 has a list of miscellaneous organisations, including Fish and Game Councils and Reserve Boards, which are subject to certain provisions of the Crown Entities Act (specified in the Schedule).</td>
</tr>
<tr>
<td><strong>Public Finance Act Schedule 4A companies</strong></td>
<td>Schedule 4A of the Public Finance Act has a list of companies in which the Crown is the majority or sole shareholder, and which are not listed on a registered market. PFA schedule 4A companies are treated as Crown entities for the purposes of directions under the section 107 of the Crown Entities Act 2004, and various sections of that Act relating to financial powers also apply (as specified in the Schedule).</td>
</tr>
</tbody>
</table>
## Key to terms used in public sector map

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>State-owned enterprise (SOE)</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>State sector</strong></td>
<td>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 departments and departmental agencies; other departments under the PFA; Offices of Parliament; State-owned enterprises; Crown entities; organisations listed on schedule 4 of the PFA; companies listed on Schedule 4A and Schedule 5 of the PFA; and the Reserve Bank of New Zealand. A comprehensive list of State sector agencies is available at: <a href="http://www.ssc.govt.nz/state_sector_organisations">www.ssc.govt.nz/state_sector_organisations</a>.</td>
</tr>
<tr>
<td><strong>State services</strong></td>
<td>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 &quot;instruments ... of the Government of New Zealand&quot;. &quot;Government of New Zealand&quot; is interpreted (consistent with the definition of &quot;Government&quot; in the Public Finance Act 1989) as the Executive branch of government.</td>
</tr>
</tbody>
</table>
Appendix 2  Information for Crown entity companies

The Crown Entities Act applies to the ‘Crown entity companies’ category in much the same way as it does for statutory entities. However the Crown entity companies are subject to the Companies Act as well as the Crown Entities Act and a number of the governance provision of the CEA are designed for Statutory Crown entities and do not apply to companies. As a result there are some specific differences.

Differences in governance

Whereas statutory entities have ‘Responsible Ministers’, Crown entity companies have ‘Shareholding Ministers’, the Ministers who hold shares in a Crown entity company. One of these must be the Minister of Finance.

The process for removing board members of Crown entity companies is slightly different from that for statutory entities. Shareholding Ministers may remove members by shareholder resolution under the Companies Act 1993 (see s. 88(1)(a)). Under the Companies Act 1993, an alternative process (for example, removal by notice in writing) may be followed if allowed by the company’s constitution.

Ministers do not have the power to direct Crown entity companies on matters of policy unless specifically provided in another Act (s 105). However, Crown entity companies may be subject to directions to support a whole of government approach. A Crown entity company must comply with any direction given to it under a power of direction in another Act, and any whole of government direction given to it under s. 107 of the Crown Entities Act, except that Crown Research institutes (CRIs) are only required to ‘have regard to’, not ‘give effect to’, s. 107 directions.

Setting and monitoring strategic direction

Shareholding Ministers of Crown entity companies have an important role participating in setting and monitoring the strategic direction of Crown entity companies (s. 88). To assist in this role, Ministers may require Crown entity companies to supply a range of information (s. 133) subject to certain limitations (s. 134).

The Treasury has a monitoring role on behalf of the shareholding Ministers in relation to Crown entities. Treasury:

- monitors the government's investment in many Crown entity companies
- assists with the appointment of directors to boards, and
- provides performance and governance advice to Shareholding Ministers.

In exercising the Crown entity company's powers the board owes a collective duty to its shareholding Ministers to make sure that the company:

- acts in a manner consistent with its objectives functions SPE and SOI, and
- complies with its duties to its subsidiaries.
Different constraints

The CEA contains specific constraints on the exercise of Crown entity companies’ powers. There may be other constraints in the Companies Act or other Acts that are also relevant. The constraints in the CEA include:

- conditions on acquiring subsidiaries, interests in joint ventures etc
- conditions on bank accounts
- conditions on the exercise of various financial powers, unless an exemption is granted in the Act, and
- a requirement to consult with the State Services Commissioner before agreeing to the terms and conditions of collective employment agreements, if an Order in Council has been made to that effect.

Exceptions for Crown Research Institutes

CRIs, as Crown entity companies, are subject to the CEA with several notable exceptions. For example:

- the duties of the board and board members in s. 92-95 of the CEA do not apply to CRIs
- the rules applying to the operation of Crown entity subsidiaries in s. 97 do not apply to CRIs
- CRIs are required to ‘have regard to’, not ‘give effect to’, s. 107 directions to apply a whole of government approach, and
- a number of the reporting provisions do not apply to CRIs.

These exceptions reflect that CRIs also have governance and accountability requirements as set out in the Companies Act and the Crown Research Institutes Act 1992. They also reflect that CRIs have been encouraged to take a greater role in commercialising their own research through the establishment of subsidiaries and joint ventures.

Note on Public Finance Act Schedule 4A companies

Schedule 4A of the Public Finance Act has a list of companies in which the Crown is the majority or sole shareholder, and which are not listed on a registered market. PFA schedule 4A companies are treated as Crown entities for the purposes of directions under the section 107 of the Crown Entities Act 2004, and various sections of that Act relating to financial powers also apply (as specified in Schedule 4A).