Supplementary Analysis Report: State Sector and Crown Entities Reform Bill

Purpose
The State Services Commission has prepared this Supplementary Analysis Report (SAR). On 20 December 2017, the Cabinet Business Committee agreed to a set of discrete amendments to the Crown Entities Act 2004 and State Sector Act 1988, subject to the Minister of State Services submitting the draft Bill to the relevant Cabinet committee for final confirmation of policy [CBC-17-MIN-0091]. The State Sector and Crown Entities Reform Bill is an omnibus Bill introduced under Standing Order 263(a). That Standing Order states that an omnibus Bill to amend more than one Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy of the Bill is to provide for greater integrity and accountability in the management of the State services by providing for strengthened and more consistent regulation of conduct and remuneration of employees at the most senior level and a more consistent approach to the State Services Commissioner's investigatory and inquiry powers when dealing with agencies in the State services outside the public service. The Bill provides for a single integrated approach in the State services across these dimensions. To achieve that purpose, the Bill amends the Crown Entities Act 2004 and State Sector Act 1998. This SAR has been prepared in accordance with Cabinet Office Circular CO (17) 3 which requires an SAR for government regulatory proposals which have not already had regulatory impact analysis as part of the substantive decision to proceed by Cabinet. This SAR is presented in two parts covering the proposals most likely to have impacts on third parties, which are: • the proposal to amend the Crown Entities Act 2004 to require boards of statutory Crown entities (Crown agents; autonomous Crown entities; independent Crown entities) to obtain the State Services Commissioner's consent to the terms and conditions of employment for a chief executive • the proposal to set standards of integrity and conduct by issuing a code of conduct that applies to Crown entity Board members collectively and individually.

Responsible Manager (signature and date):
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A. Terms and conditions of employment for a chief executive

What is the situation?

Crown entities are bodies established by law in which the Government has a controlling interest but which are legally separate from the Crown. The boards/councils of Crown entities are the employers and are responsible for the employment of their chief executive, including managing, assessing, and rewarding her or his performance in the role. However in the interests of consistency and trust in government, the boards of various groupings of Crown entities are required to either consult (and have regard to the recommendations) or obtain the consent of the State Services Commissioner (the Commissioner) to the terms and conditions, including remuneration, of their chief executives.

The proposals in this SAR apply to the statutory Crown entities comprising Crown Agents, Autonomous Crown Entities (ACEs) and Independent Crown Entities (ICEs). A more prescriptive regime already applies to some Crown entities. The 20 District Health Boards (DHBs) and the other health sector Crown Agents are required by their own legislation to obtain the consent of the State Services Commissioner to the terms and conditions of employment of their chief executives. The 26 Tertiary Education Institutions (TEIs) are required to obtain the Commissioner's concurrence to the conditions of employment before finalising them with their chief executives. Thus DHBs, other health statutory Crown entities and TEIs are excluded from the proposals in this SAR. Some ACEs and ICEs (e.g. Retirement Commissioner and Independent Police Conduct Authority) do not have a chief executive so these proposals will not have practical impact for them. The subsidiaries of statutory Crown entities that have a chief executive are also required to consult the Commissioner and these proposals will apply to them. So these proposals will impact 22 Crown Agents, 14 ACEs, 10 ICEs and 4 Crown entity subsidiaries that are currently required to consult and have regard to the recommendations of the Commissioner to the terms and conditions, including remuneration, of their chief executives.

For the statutory Crown entities, the Crown Entities Act 2004 section 117 sets out:

(1) A statutory entity must not agree to the terms and conditions of employment for a chief executive, or to an amendment of those terms and conditions, without—

(a) consulting the State Services Commissioner; and

(b) if the proposed terms and conditions or amendment do not comply with any guidance issued by the State Services Commissioner to 1 or more Crown entities, consulting the responsible Minister.

(2) A statutory entity must have regard to any recommendations that the Commissioner and (if applicable) the responsible Minister makes to it within a reasonable time of being consulted.

In practice the Commissioner provides guidance to Crown entity board chairs, prior to the commencement of the chief executive appointment and once a preferred candidate has been identified by the board, and then in advance of annual performance reviews. This guidance includes:

- model employment agreements that can be used by board chairs as a starting point as they incorporate good legal practice and manage risk, and thus reduce the need for every Board to obtain individual legal advice

- a remuneration range based on the job size provided by the board (the board is responsible for arranging for the chief executive's job to be sized by reputable independent consultants).
- guidance on the valuation of components of the chief executive's remuneration package, so that the remuneration packages can be compared in a standardised fair manner
- recommended remuneration increases based on the performance of the chief executive (the board chair is responsible for managing and assessing the chief executive's performance)

The board chair then proposes the terms and conditions including remuneration of its chief executive. If the proposal is within certain parameters, the Commissioner delegates the decision to the board chair. This occurred for 80% of proposals (both consults and consents) in the 2016/17 year. For the remaining 20% of proposals that were outside these parameters, the Commission considered the proposal individually and for 16% of cases agreed to an increase that was outside the original guidance, due to the specific rationale provided by the board chair. In the 2016/17 year there were three cases where entities did not follow the Commissioner's and Minister's recommendation, and this has been a regular pattern in recent years.

What is the policy problem?

The State services exist to serve in the public interest. Boards of statutory Crown entities have collective duties (Crown Entities Act sections 49 - 52) that are owed to the Minister which include ensuring the entity performs its functions:

- Efficiently and effectively, and
- In a manner consistent with the spirit of service to the public.

The spirit of service has multiple dimensions, including:

- Acting responsibly, i.e. in the public interest: this includes being guided by concern for, and appreciation of, the public good
- Being responsive to the public and Ministers: this includes acting ethically, prudently and accountably.

State services chief executive remuneration must reflect the spirit of service and safeguard the reputation of the State services whilst also attracting and retaining the leadership talent required for effective delivery for the State. How leaders of the State sector are paid requires a careful balance of being fair to the chief executives themselves by recognising the job they do, whilst also being fair to the taxpayers and users who ultimately pay the bill. The public can and should expect Crown entities to be governed in a responsible and responsive manner that is consistent with them being a part of the State. State services chief executives deserve to be fairly paid but they are still public servants with an accountability to taxpayers and the public.

Internationally public service salaries are lower than private sector equivalents, particularly at senior executive levels. There are good reasons for this including that private sector companies work in an environment of competing for business and having a limited life if not commercially successful. A key difference is the spirit of service to the public which is a

foundation of public service and a vital motivation for its people. For these reasons comparisons with private sector salaries are of limited relevance for State services roles.

The Commissioner has been concerned about the trajectory of chief executive remuneration levels for some time. There is a high level of public concern and media comment about State sector chief executive remuneration. The concern is that the levels of pay for the highest paid chief executives are excessive, and that there is a growing gap between staff wages and chief executive pay. The Government and the Commissioner consider public concern regarding senior pay is starting to erode trust in the State services.

Since his appointment, the Commissioner has signalled his intention to take a conservative approach to Public Service chief executive remuneration (which he has control over) particularly at the top levels. The Commissioner has also publicly signalled his concern about remuneration for Crown entity chief executives directly to board chairs and in response to Official Information Act requests and the media.

The State Services Commissioner has varying levels of influence over the terms and conditions, which includes remuneration, of chief executives in the State sector. The Commissioner's influence affects the rate of remuneration growth and means lower levels of pay for the same size of job where his influence is greatest. The average increase in remuneration for Public Service chief executives was 2.0% for 2016/17 compared with 2.3% for DHBs, 3.0% for TEIs and 4.1% for other Crown entities.

Successive governments and Commissioners have expressed concern about the levels of remuneration paid to chief executives in some Crown entities where the Commissioner and the Minister are consulted but their agreement is not required. Boards were advised of this concern in a letter from the Commissioner in July 2017. Ministers, when consulted on proposals that do not follow SSC guidance, have advised boards not to implement the proposed increases. Ministers have over several years given explicit advice about their expectations about remuneration, but some boards have, after having regard to the advice, choose to act independently of that advice.

The Commissioner has been clarifying publicly and directly with Crown entity Board chairs that they are accountable for making the decisions about their chief executive's remuneration and therefore should be prepared to defend their decisions to the Government and the public. For the first time, the Commissioner has disclosed to the public the organisations who have chosen not to follow the advice of the Commissioner in the Senior Pay Report 2017.

Whilst most Crown entities do comply with the Commissioner's advice, a few consistently do not, and have continued to implement remuneration increases that are above the Commissioner's guidance, thus increasing the extent to which the remuneration of the chief executive is inconsistent, for the same job size, with others in the cohort.

The Boards of these agencies have not given any indication that they will not continue to implement levels of remuneration which are greater than the Commissioner or Government think are consistent with being part of the State services.

The Government's view is that articulating expectations and providing guidance about reasonable remuneration levels for these chief executives has been tried for many years and has not worked. The solution is to change the Crown Entities Act to give the Commissioner greater influence over these decisions.

Those agencies who choose not to follow the Commissioner's guidance (and also sometimes the Minister's advice) with respect to their chief executives' remuneration argue that their market is the private sector rather than the State sector. The Guardians Annual Report states:

"The Board's view is that the CEO's remuneration, which is benchmarked against New Zealand companies, is competitive and appropriate" (Guardians Annual Report). The Board of Telarc has said that "Telarc SAI Limited is a trading company, competing in the open market. It just so happens that our major shareholder is a Crown entity and that the Telarc is therefore a Crown entity subsidiary. However in all operational respects it is a business, operating in a competitive environment, and is required to pay its staff market rates, rather than Government entity rates" (David Bone, Chair Telarc, email to SSC dated 22 September 2016)

This fundamental disagreement about which market to benchmark chief executive remuneration to, means that it is unlikely that these agencies will ever agree voluntarily to comply with the Commissioner's guidance and government expectations. The three agencies who chose not to follow the Commissioner's advice in 2016/17 had each chosen not to follow his advice at least once before.

In summary, the Government and the Commissioner consider that public concern regarding the growth in senior pay is starting to erode trust in the State services. There are good reasons why public service salaries are lower than private sector equivalents and there should be more consistency within the State services of remuneration for similarly sized jobs and between jobs. There are strong indications a small number of agencies will continue to ignore the Commissioner's and Ministers' advice on chief executive remuneration.

What are the options to address the problem?

Two options beyond the status quo have been considered to address these problems:

1 Setting stronger expectations (by communication to Board Chairs) and transparency of accountability (especially by naming the entities who did not follow SSC recommendations in the Senior Pay report)

2 Legislative change to require statutory Crown entities to obtain the Commissioner's consent to the terms and conditions of employment of their chief executives.

Option 1

The Commissioner has for some time recognised the problems set out in this SAR. He wrote to the Chairs of statutory Crown entities in July 2017 indicating a stronger emphasis on expectation setting both at an overall level and in regard to guidance and recommendations made on remuneration.

The Commissioner has backed this up by indicating he will support, publicly if necessary, the entity Boards if their decisions on chief executive remuneration are in line with his advice. Transparency of accountability also now occurs through the Commissioner naming in the annual Senior Pay Report (public disclosure of State services chief executive remuneration) the entities which do not follow the Commissioner's recommendations. This public identification happened for the first time with the 2016/17 report published in December 2017 with three entities (Accident Compensation Corporation, Guardians of New Zealand Superannuation and Telarc SAI Ltd) being named as awarding remuneration packages to their chief executive which were outside the Commissioner's guidance. Previously the public did not know which entities did not follow the Commissioner's and Minister's guidance.

In this option the Minister could also choose to not reappoint a board Chair when their term expires or, in the case of chairs and board members of Crown Agent and ACEs, could remove them. However these are difficult tools to use in practice, with a chair's term possibly expiring several years later and removal a very formal process.

This option is similar to the status quo with agencies still able to disregard the Commissioner's and Minister's guidance, but with stronger statements on expectations combined with public disclosure of the entities that do not follow the guidance.

Option 2

Option 2 involves legislative change to require statutory Crown entities to obtain the Commissioner's consent to the terms and conditions of employment of their chief executives. There is a precedent for this as District Health Boards and Tertiary Education Institutions already require the consent of the Commissioner to the terms and conditions of employment including remuneration of their chief executives. The change to occur would be to the current section 117 of the Crown Entities Act.

In practice the same process from the Commissioner as the basis for consultation between the board and Commissioner would continue:

- once guidance is issued, boards would continue to make proposals based on their own judgement of the situation
- consultation between the board and Commissioner would follow
- the Commissioner may agree to terms and conditions that fully or partially meet the board's proposal
- if a proposal differs significantly from the guidance, the Commissioner may decide to not give consent (expected to be rare).

These provisions will not be used to reduce the remuneration of any existing chief executive. It will apply to chief executives appointed after the provision comes into effect and for any changes to current chief executives' terms and conditions, where these changes are intended to be offered after the legislative provision comes into effect. The driver for this proposal is to reduce the level of increase of chief executive remuneration, particularly by some entities, which is considered unsustainable and threatening trust in government.

Other possible solutions

Two other possible solutions were rejected at an early stage as not meeting the policy objective. They were:

- The Government's Expectations for Pay and Employment Conditions in the State sector are being reviewed currently. These expectations are in relation to the negotiation or collective and individual employment agreements and any agency policies on pay and conditions in the State sector. They cannot be made to cover chief executives specifically. They do not override the legislation, so that Crown entities would still retain decision-making rights about their chief executives.
- A Government Workforce Policy Statement (GWPS) is a statement of workforce policy drafted by the Commissioner and approved by the Minister, after consultation with affected parties. It is possible that the GWPS could have specifically covered terms and conditions of chief executives of Crown agents and ACEs. These expectations cannot determine pay or conditions but would have provided a public (the GWPS is published on the SSC website) and possibly more specific set of expectations about remuneration levels. There has not been a previous GWPS and so there was uncertainty about how specific it could be, especially as it could not determine pay and conditions. In addition, it would not have been able to override the legislation.

Proposed approach

The proposed approach is Option 2 - Legislative change to require statutory Crown entities to obtain the Commissioner's consent to the terms and conditions of employment of their chief executives. The main reason for choosing Option 2 is that the agencies which have disregarded the Commissioner's guidance in recent years have a fundamental disagreement with the Commissioner and Ministers as to which market to benchmark chief executive remuneration to, with the agencies believing private sector benchmarks are appropriate. This means that it is unlikely that these agencies will ever agree voluntarily to comply with the Commissioner's guidance and government expectations. The three agencies who chose not to follow the Commissioner's advice in 2016/17 had each chosen not to follow his advice at least once before. Thus Option 1 is unlikely to achieve the policy objective of maintaining trust in government.

What are the risks or potential unintended consequences of the proposal?

There are three main risks or potential unintended consequences of implementing Option 2. These risks could possibly result in reduced Crown entity performance over time. These risks are that the proposals could:

- Reduce the ability of Crown entity boards to attract and retain the best chief executives for the role
- Affect the felt responsibility of Crown entity board members for oversight of the recruitment and performance of chief executives
- Mean that some high calibre potential board members are not prepared to serve on Crown entity boards.

A key risk is that boards will find it harder to recruit the best candidate for chief executive if they are unable to pay sufficient remuneration. However the Commissioner already shows considerable flexibility in considering proposals that are outside the standard guidance. The Commissioner engages with the board chair on these and takes recruitment and retention difficulties into account in agreeing to proposals that are outside guidance. The Commissioner recognises and makes allowance that these issues particularly may affect statutory Crown entities with quasi-commercial functions where there is competition with the private sector for talent and Crown entities requiring chief executives with particular industry skills.

In practice 28% of applicable statutory Crown entity chief executives are currently paid above 110% of the remuneration range midpoint, with some well above this figure. The entities that implement remuneration that is beyond what the Commissioner considers reasonable usually have chief executives on remuneration packages already well above the standard range but they are proposing substantial increases as a result of annual performance reviews. In these cases it is often not clear that there is a retention issue for the chief executive. The Commissioner is already required to give consent to the remuneration of TEI and DHB chief executives and there is little indication that this hinders the appointment of suitable candidates.

We do not believe these changes will affect the 'ownership' of Crown entity boards for the performance of the chief executive and the entity and the willingness of good candidates to put themselves forward as board members. We are aware that many Crown entity board members serve in the public interest and are likely to be supportive of a system which addresses public concern about the growth in senior pay. As noted, the 'consent' regime has applied to TEIs and DHBs for a considerable time and there has been no indication it is hindering good candidates to serve on these boards.

There are very limited likely cost impacts for the Commissioner and Crown entities in the proposed changes. The same process as is currently in place for consultation between the board and the Commissioner will continue with the only change being that the Commissioner's final decision on the board's proposal will now be binding rather than optional.

What do stakeholders think?

There are two main groups of stakeholders interested in this proposed change:

- Departments that support the Minister in appointing Crown entity board members and monitoring the performance of Crown entities.
- Crown entity boards that appoint the chief executive of the entity and are interested in attracting and retaining high quality candidates in order to support the performance of the entity.

Monitoring departments have been consulted and are generally supportive of the proposed changes. One department raised a transitional issue which the State Services Commission is clarifying with the department. Another department indicated that care will be required that these changes do not impact the statutory independence of ICEs and the State Services Commission agrees.

The Treasury, which monitors the semi-commercial entities, and one other department indicated that the Commissioner approving remuneration of chief executives could potentially impede the ability of boards to recruit the best possible candidate and manage the ongoing relationship with the chief executive. The issues raised are covered in the section above on risks and unintended consequences.

Crown entity board chairs will be informed of these proposals when the draft Bill is introduced into Parliament and will have the opportunity to input during the Parliamentary process. Several departments indicated they consider earlier consultation with boards would be useful but this has not been possible in the time available.

What is the overall conclusion about the merit of the proposal?

The State Services Commission considers that there is a good case for legislative change to require statutory Crown entities to obtain the Commissioner's consent to the terms and conditions of employment of their chief executives. The Government and the Commissioner consider that public concern regarding the growth in senior pay is starting to erode trust in the State services. There are good reasons why public service salaries are lower than private sector equivalents and there should be more consistency within the State services of remuneration for similarly sized jobs and between jobs. The Commissioner already takes recruitment and retention difficulties into account in considering proposals and shows considerable flexibility in recommending remuneration, especially where there is completion with the private sector for talent and where particular industry skills are required. Without legislative change there are strong indications a small number of agencies will continue to ignore the Commissioner's and Ministers' advice on chief executive remuneration.

B. Code of conduct for Crown entity board members

What is the situation?
Crown entities are bodies established by law in which the Government has a controlling interest but which are legally separate from the Crown. Prior to 2005 the State Services Commissioner's mandate to set standards of integrity through a code of conduct was limited to Public Service departments. The Commissioner's mandate was extended by amendments to the State Sector Act in 2005 to apply to all Crown entities and their subsidiaries, except Tertiary Education Institutions and Crown Research Institutes and their subsidiaries. Section 15 of the Crown Entities Act 2004 clarifies that a statutory Crown entity is a body corporate and is accordingly legally separate from its members, office holders, employees, and the Crown. Section 57(2) of the State Sector Act 1988 enables the State Services Commissioner to apply a code of conduct to an agency. Section 57A(1) then requires the agency "including its employees and individuals working as contractors or secondees" to comply with any standards that apply to the agency. Section 57A(1) omits to include the board members of an entity within the scope of those required to comply. When the code of conduct for the State services (Standards of Integrity and Conduct) was issued in 2007 the then Commissioner made it clear that it applies to employees (those working in a department or Crown entity) and the agency (its policies and procedures), but not to the boards of Crown entities. The collective and individual duties of Crown entity board members are set out in sections 49 – 57 of the Crown Entities Act. Briefly the collective duties of the board are to ensure that: the entity acts in a manner consistent with its objectives, functions, current statement of intent, and current statement of performance expectations; the statutory entity performs its functions efficiently and effectively, in a manner consistent with the spirit of service to the public, and in collaboration with other public entities; and the entity operates in a financially responsible manner. Briefly the individual duties of members include to: act with honesty and integrity; act in good faith and not at the expense of the entity's interests; act with reasonable care, diligence and skill; and not disclose information apart from in the performance of the entity's functions. At the moment there are a variety of integrity and conduct provisions at board level to give practical effect to the statutory duties. Recognising the gap that exists and after approaches from entities, in 2009 the State Services Commission issued 'Resource for Preparation of Governance Manuals – Guidance for Statutory Crown Entities'. This was not intended to be prescriptive given the different activities and legal circumstance across these entities. It has been a resource some Crown entity boards have used to create their Board Governance Manual, although there is no full record of who has used it and how it has been adapted. Among other topics, it covers the general responsibilities of members, members interests and conflicts, disclosure of information and gifts and hospitality.

What is the policy problem?
By definition, Crown entities are instruments of the Crown in respect of the government of New Zealand. Crown entity board members, as governors and leaders of their entities, should demonstrate and be held accountable for high standards of integrity and conduct. Since the Crown Entities Act came into force in in 2005 there have been various breaches by Crown Entities board members of the standards of behaviour that Ministers and the public

expect. Board members are subject to the collective and individual board members' duties set out in the Crown Entities Act but these are not pitched at a level that always gives clarity of this expected behaviour. While the number of such breaches is relatively small, the senior nature of board members' roles mean these incidents have considerable influence on New Zealanders confidence in government.

At the moment it is not clear whether the Commissioner may set standards of integrity and conduct by issuing a code of conduct that applies to Crown entity board members collectively and individually. It is highly desirable, at least for the avoidance of doubt and to remove any ambiguity, to clarify explicitly that the Commissioner may issue a code of conduct that applies to Crown entity board members collectively and individually.

What are the options to address the problem?

The only option that will address these issues is to amend to the State Sector Act to make it explicit that the Commissioner may set standards of integrity and conduct by issuing a code of conduct that applies to Crown entity board members collectively and individually. This will clarify a current uncertain legislative situation.

Applying a code of conduct to board members:

- is inherently the right thing to do. There is no reason from a public transparency and accountibility perspective to treat board members differently to staff or contractors. If anything, public expectations are higher in terms of the behaviourial standards by governors of these entities, given their senior positions and the impact of breaches on the reputation of both the entity and the broader State services
- would support the legislative expression of members collective and individual duties and guide them on how to give effect to these duties. A code would not conflict with the duties but would flesh them out and provide much greater clarity for members.
- would catch up with international practice, such as the *Code of Conduct for Board Members of Public Bodies,* issued by the UK Cabinet Office
- is necessary for reconnecting the system around a unifying ethos of a spirit of service to the community.

Any process to apply a code of conduct for Crown entity board members will involve full consultation with boards, as occurred in 2006/7 when a code was applied to Crown entity employees. There is considerable flexibility for the Commissioner in deciding how best to exercise this mandate. Section 57(3) provides broad discretion to vary the standards in a code for different agencies and for different persons or groups of persons. It would be entirely possible, for example, to:

- apply a code to board members that differs from the code applying to employees
- apply a code to elected board members that differs from the code applying to appointed members
- apply a code to the members of one type of entity (e.g. Independent Crown entities or partly owned Crown entity subsidiaries) that differs from the code applying to members of a different type of entity.

The standards applied to board members must not conflict with their duties set out in the Crown Entities Act or imply a lesser standard, and these will be key considerations in any

decision to apply a code. The duties set out in the Crown Entities Act take precedence but as noted they are pitched at a level which does not always provide clarity.

The Commissioner currently has powers under the State Sector Act section 57C to use his investigatory powers in relation to any code of conduct matter. Clarifying that the Commissioner can issue a code of conduct to apply to Crown entity board members will mean the Commissioner can use his investigatory powers in support of such a code when required, as he can already for employees.

This proposal is not intended to broaden the range of agencies that are subject to the Commissioner's mandate to apply a code of conduct. The proposal is intended to apply to board members of the entities that are currently within scope of the Commissioner's mandate. These are the statutory Crown entities (Crown agents, Autonomous Crown entities and Independent Crown entities), Crown entity subsidiaries and Crown entity companies excluding Crown Research Institutes. The Commissioner's current mandate to apply a code of conduct to agencies and their employees does not cover Tertiary Education Institutions and Crown Research Institutes and their subsidiaries, and they are excluded from this proposal.

What are the risks or potential unintended consequences of the proposal?

As noted above there will need to be careful consideration in any decision to apply a code of the potential interaction between the code and the board members' individual or collective statutory duties. There may also need to be some adaption of standards to different types of entities or members (e.g. elected board members). A lack of attention to these matters in the development of a code could impact on its effectiveness.

There is a risk the proposals could mean that some high calibre potential board members are not prepared to serve on Crown entity boards and this could possibly result in reduced Crown entity performance over time. This is not regarded as a major risk as Crown entity board members are already subject to the collective and individual duties set out in the Crown Entities Act and boards generally already have governance manuals which include some integrity and conduct provisions. A code issued by the Commissioner for Crown entity board members will clarify members' responsibilities, create much more consistency of practice and will promote a unifying ethos across the State services.

There are also precedents from overseas with the United Kingdom introducing a comprehensive code for the board members of public bodies, including corporations, in 2011.

Compliance costs for boards are expected to be very limited if a code of conduct for board members is introduced. The State Services Commission will use its experience in consulting on, developing and implementing the State services code for employees (Standards of Integrity and Conduct) and the recent Code of Conduct for Ministerial Staff to work with entities, including providing supporting resources and training material to entities if a code is introduced.

What do stakeholders think?

There are two main groups of stakeholders interested in this proposed change:

- Departments that support the Minister in appointing Crown entity Board members and monitoring the performance of Crown entities

- Crown entity board members who any code of conduct issued by the Commissioner will apply to collectively as a board and individually.

Monitoring departments have been consulted and are generally supportive of the proposed changes. One department indicated that care will be required in implementing any code that the statutory independence of ICEs is not threatened. The Commissioner is aware of this issue which will require close attention in any decision to apply a code. Options to apply differential codes or only to particular groupings will be part of this consideration.

Another department noted that care is required on the interface between the duties of board members in the Crown Entities Act and a code. These issues will be the subject of consultation with boards and given due attention in any process to apply a code. As noted above, the duties set out in the Crown Entities Act take precedence but they are not pitched at a level which always provides clarity.

One department indicated there should be a statutory obligation on the Commissioner to consult with Crown entities on any proposed code of conduct before it is issued. The Commissioner has considerable experience in applying codes of conduct and consultation is an essential element of achieving the acceptance of any code, so a statutory obligation is not regarded as necessary.

Crown entity board chairs will be informed of these proposals when the draft Bill is introduced into Parliament and will have the opportunity to input during the Parliamentary process. Several departments indicated they consider earlier consultation with boards would be useful but this has not been possible in the time available.

What is the overall conclusion about the merit of the proposal?

The State Services Commission considers that there is a good case for legislative change to make it explicit that the Commissioner may set standards of integrity and conduct by issuing a code of conduct that applies to Crown entity board members collectively and individually. Crown entity board members should demonstrate and be held accountable for high standards of integrity and conduct. Breaches of behaviour at such a senior level can have a considerable effect on public confidence in government. A code will provide greater clarity for board members to support their duties set out in the Crown Entities Act and will help reconnect the system around a unifying ethos. At the moment it is not clear the Commissioner can apply a code and legislative change will resolve this uncertainty.