

Guidance to Departments in Relation to Crown Entities



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Contents

About this Guidance	3
Overview	3
A. Relationships	5
B. Roles	7
Ministers	7
Boards	7
Central Agencies	8
Departments	8
C. Board Appointments	10
Advise the Minister on the desired composition of entities' boards.....	10
D. Strategic Direction And Planning	12
Support entity planning	12
Build effective 'joined up' or 'sector' approaches	12
Advise Ministers on letters of expectation.....	13
Advise Ministers on priorities for reviews, legislation and policy change..	13
Inform entities about relevant policies, decisions and priorities	14
Support preparation of the Statement of Intent.....	15
E. Output Agreements.....	17
F. Budget Process	19
G. Monitoring.....	21
Monitoring does not displace board responsibilities	21
Monitor results, value-for-money and performance against agreed targets	22
Assure financial viability.....	22
Monitor entity capability	23
A monitoring plan.....	24
Appendix 1: Some specific powers of Ministers in relation to Crown entities	25
Appendix 2: Letter to board chairpersons, 17 December 2004	27
Appendix 3: Central agencies' statutory responsibilities	30

Guidance to Departments in Relation to Crown Entities

About this guidance

This guidance is for departments that support Ministers who have roles and responsibilities in relation to Crown entities

This guidance is for departments that support Ministers with roles and responsibilities in relation to Crown entities. It is part of a set of advice developed by central agencies to help responsible Ministers, their departments, and boards improve the performance of Crown entities under the Crown Entities Act 2004 (“the Act”)¹. This guidance should be read together with Cabinet Office Circular CO (99) 13 *Ministers’ Roles and Responsibilities in Relation to Crown Entities*².

This guidance applies to departments’ engagements with Crown agents, autonomous Crown entities (ACEs) and independent Crown entities (ICEs) – which are the three types of statutory entity described in the Act. Monitoring approaches will be tailored to respect differences between types of entities, and each entity’s enabling legislation.

The term “monitoring department” is in common usage, and this circular continues this practice. A department’s work in relation to a Crown entity involves a diverse range of activities, however, such as board appointments, interactions on strategic planning, direction and budget, as well as ongoing performance monitoring, advice and reporting.

Overview

Monitoring departments work for their Minister. They are expected to help Ministers:

- focus on results for New Zealanders – as well as output and fiscal results
- improve strategic alignment of departments and entities within their area
- build an effective medium and long-run focus and direction
- ensure vital outputs are delivered well, and produce the results intended
- assess non-financial and financial performance

¹ Including “Guidance for Crown entities: planning and managing for results”, “Guidance and requirements for Crown entities: preparing the 2006/07 Statement of Intent”, and relevant Cabinet Office Circulars.

² This Cabinet Office Circular is about to be updated to take account of the Crown Entities Act 2004 and other developments. The 2006 Circular will be available from www.dpmc.govt.nz/Cabinet/circulars

- assess entity capability (e.g. in giving advice on major business cases)
- advise on the merits (or otherwise) of significant business cases, and
- consider risks and avoid surprises through their oversight and review roles.

Crown entities are a large and vital part of government. The Crown Entities Act 2004 clarifies and increases Ministers' roles in relation to Crown entities, and establishes a consistent framework for the governance and operation of entities

Crown entities are a large and vital part of government. The Act clarifies and increases Ministers' roles in relation to Crown entities, and establishes a consistent framework for the governance and operation of entities. The Act:

- mandates an annual and long-run engagement between entities and Ministers about strategic direction, purchasing and performance, and
- focuses on all elements of performance, by requiring a broad and balanced set of information about intended and actual performance.

Crown entities are legally separate from the Crown, and usually governed by boards³. Government's interests in Crown entities are reflected in the primary relationship which Ministers have with entities' boards. This separation is most pronounced for ICEs, many of which perform quasi-judicial roles or comment on issues of political significance. Departments are expected to respect the independence of ICEs, while helping Ministers ensure ICEs contribute to overall achievement and apply good governance practices.

Ministers rely on the services provided by departments to support their interactions with Crown entities. Departments' roles in relation to Crown entities are thus very important

Ministers rely on the services provided by departments to support their interactions with Crown entities. Departments' roles in relation to Crown entities are thus very important. Ministers may use agents other than departments to advise them, but this is uncommon. Departments will support their Ministers unless directed otherwise.

This guidance is framed round a typical Crown entity which has a board, and a single Vote minister and monitoring department, but the guidance applies to other situations.

This guidance emphasises the importance of having a good board in place. Boards develop strategic direction and objectives, maintain systems and controls, and monitor performance and risk. They adjust direction, operational policy, delivery and capability in response to performance feedback and changing needs and environments.

³ Throughout this guidance references to a Crown entity board should be read as applying to the member of a corporation sole (i.e. with a single person performing the governance functions of a board).

Crown entities are bodies corporate established by, or under, an Act. This document covers the monitoring of three types of Crown entity:

- Crown agents must give effect to government policy when directed by the responsible Minister
- Autonomous Crown entities (ACEs) must have regard to government policy when directed by the responsible Minister, and
- Independent Crown entities (ICEs) cannot be directed on government policy (s105), or regarding statutorily independent functions, or to bring about specific results (s113) unless allowed under an Act other than the Crown Entities Act.

Ministers have a range of specific powers (see Appendix 1) with respect to Crown entities, but no Crown entity can be directed regarding statutorily independent functions or to bring about specific results for a particular person (s113).

ICEs typically operate at arm's length from Ministers – either because they are quasi judicial or because they must operate, and must be seen to operate, independently from Ministers.

Ministers have powers with all entities on matters of strategic direction, targets, funding, performance, reporting and reviews (s27). Powers should be exercised so as not to unduly inhibit the functions of ICEs.

Boards govern their entity, and are responsible to the Minister for performance

Boards govern their entity, and are responsible to the Minister for performance. Departments advise Ministers on individual Crown entities' direction, plans and performance. When appropriate, departments should also advise Ministers on how entities can contribute more widely by working with other entities and departments in a sector, or across sectors. In some recent cases Ministers have expected departments to play a leadership role in a multi-entity sector.

A. Relationships

Good relationships between Ministers, Crown entity boards and senior managers, and departments are essential for a department to perform its role in relation to Crown entities

Good relationships between Ministers, Crown entity boards and their senior managers, and departments are essential for a department to perform its role in relation to Crown entities. The parties must share a common understanding of their roles, responsibilities and interactions. The legal separation of Crown entities from the Crown, coupled with Ministers' expectations for professional relationships between departments and entities, can make this a complex relationship to manage.

Ministers want to build and maintain constructive and professional relationships with each of their entities that recognise the statutory role and the responsibilities of each party. In general this will be aided by:

- the Minister, department and board having a clear and agreed understanding of their respective roles and that of any agent supporting the Minister⁴

⁴ This requires clear communication of, and agreement on, roles.

- the Minister setting the Crown’s expectations of the entity, including the supply of information allowing the Minister to be held to account by the House
- departments and boards representing the others’ views in accurate terms, and
- the Minister, department and entity⁵ each adopting a ‘no surprises’ approach⁶.

A memorandum of understanding or relationship letter between a department and a Crown entity is often used to clarify the services that a department performs

Departments will help Ministers to put such arrangements in place. A memorandum of understanding or relationship letter between a department and a Crown entity is often used to clarify the services that a department performs – whether on behalf of the Minister, or to assist the Minister in carrying out his or her functions.

Effective monitoring is built on a foundation of good relationships. Capable monitoring departments and entities say that interaction at the senior management and staff levels of each organisation underpin good relationships between boards and Ministers. Crown entity boards, chief executives and senior managers, as well as departments, must ensure effective working relationships are in place. In large entities in particular, entity management and staff often have best access to the understanding, detailed knowledge and performance data underpinning a good monitoring relationship.⁷

In their engagement with entities, departments should be mindful of the Crown’s desire for a constructive relationship, without losing sight of the Crown’s fundamental interests in transparency and long-run performance. 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 adviser to the Minister, or undermining the board’s direct lines of accountability to the Minister. Striking a balance will not always be easy.

⁵ Note that an ICE making quasi-judicial decisions can tell Ministers when sensitive decisions are due, but may only tell Ministers the actual result when the decision is made public or otherwise released.

⁶ For an ICE making quasi-judicial rulings, ‘no surprises’ would not include advance notification of its decisions. The Minister could however expect to know of the ruling no later than other affected parties

⁷ Crown entity staff are responsible to their board. Boards may restrict access by monitoring departments to their staff. This may signal performance or relationship risks that the Minister should be aware of.

B. Roles

Ministers' roles in relation to Crown entities are to oversee and manage the Crown's interests in the entities and the Crown's relationship with the entities

Ministers

Ministers' roles in relation to Crown entities are to oversee and manage the Crown's:

- interests in the entities, which are broadly to ensure entities:
 - do the right things (e.g. in line with legislation, government goals and, if a Crown agent or ACE, applicable policies and directions)
 - do the right things well (i.e. effectively, efficiently and in a manner consistent with their status as instruments of the Crown), and
- relationship with the entities.

The relationship between a Minister and a Crown entity is more arm's length than between a Minister and a department. Minister's responsibilities are described in the Cabinet Office Circular CO (99) 13 *Ministers' Roles and Responsibilities in Relation to Crown Entities*⁸; many of these responsibilities are expanded on in this guidance by describing how departments can support their Ministers in relation to Crown entities.

Specific powers of Ministers in relation to Crown entities are noted in Appendix 1.

Boards

The board is the governing body of the entity

The role of each board is to:

- be the governing body of the entity
- exercise the powers and perform the functions of the entity
- make decisions (whether themselves or through delegates) about the operation of the entity, and
- ensure that the entity's functions are performed efficiently and effectively.

A board is expected to engage constructively and professionally with the responsible Minister and his/her department. The Ministers of Finance and State Services wrote to boards in December 2004, after the passage of the Act, setting out the Government's expectations of boards (Appendix 2). The letter stresses the need for no surprises, working together for common outcomes, and responsible financial management.

⁸ This Cabinet Office Circular is about to be updated to take account of the Crown Entities Act 2004 and other developments. The 2006 Circular will be available from www.dpmc.govt.nz/Cabinet/circulars

The Minister of Finance, the Treasury, the State Services Commissioner and the State Services Commission have statutory responsibilities regarding Crown entities and the Act

While the Act does not describe a role for departments in relation to Crown entities, departments will help Ministers discharge their responsibilities unless directed otherwise

Central Agencies

The Minister of Finance, the Treasury, the State Services Commissioner and the State Services Commission have statutory responsibilities regarding Crown entities and the Act (Appendix 3). Ministers, and departments supporting Ministers in their interactions with Crown entities, should seek the support of the central agencies when appropriate.

Central agencies advise their Ministers on how the Public Sector Management system is performing (including, at an aggregate level, how entities are performing), and support their Ministers' decision-making and statutory approval roles under the Act. They advise on how departments are performing their monitoring functions.

Departments

The Act describes Ministers' roles in relation to Crown entities. While the Act does not describe a role for departments in relation to Crown entities, departments will help Ministers discharge their responsibilities unless directed otherwise. A department's role derives from its status as an agent of the Minister. Ministers may use other agents, including staff from their private offices, for some tasks, but even in these situations the department will normally have a policy and/or Vote administration role to play.

Ministers usually expect, and will normally receive, the following support services:

- an initial briefing on each entity on becoming Responsible Minister that, among other things, gives the Minister a 'heads up' about how to work with the type of entity (Crown agent, ACE or ICE), and provisions in the entity's empowering legislation or other legislation that materially modify core governance provisions in the Act
- briefings to support Ministers' engagement with entities on strategic matters
- ongoing briefings on each entity that identify emerging governance or performance issues that require the Minister's attention
- management of all processes relating to board membership, including appointments, re-appointments, setting members' fees, helping the board induct and train new members⁹, and ensuring compliance with Cabinet expectations and processes in respect of these matters
- transmittal of information to each 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 entity

⁹ Boards must arrange appropriate induction and training of members.

- critical review of the entity's draft Statement of Intent (SOI)
- negotiation of an annual output agreement and any protocols (e.g. relationship protocols) as required by the Minister
- monitoring of each entity
- advice on the compliance of Crown entities with their legislation, and
- where appropriate, leadership and/or coordination of departments and entities working within a sector, or working in pursuit of interdependent results.

C. Board appointments

Advise the Minister on the desired composition of entities' boards

A key priority for departments is to help the responsible Minister ensure an effective board is in place

An effective board will provide good governance of the entity, engage with the Minister on strategic direction and performance issues, and work cooperatively with the monitoring department

A key priority for departments is to help the responsible Minister ensure an effective board is in place. An effective board will provide good governance of the entity, engage with the Minister on strategic direction and performance issues, and work cooperatively with the monitoring department. 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 they perform their duties, including the sometimes competing interests and demands of different stakeholders
- work well as a collective, with the chair getting members to work as a team
- recognise the role(s) the entity plays within government as a whole and with related departments, entities and other agencies, and
- select and mentor an appropriately skilled chief executive.

Departments and board chairs will work with the responsible Minister on an ongoing basis to review the competencies needed, and to form a view about whether a change in board composition is needed. Departments must monitor the forthcoming ends of terms for incumbent members, and ensure that changes are managed as seamlessly as possible¹⁰. Under the Act, Ministers appoint members who, in their opinion, have the appropriate knowledge, skills and experience to help the entity perform its functions. The Minister's appointment decision may not always follow departmental advice.

Departments should ensure they have the information to provide timely advice on whether the chair, board and entity are working well. Risk indicators include poor strategic direction or results, reports of abnormal behaviour, failure to comply with statutory duties and obligations, poorly managed risks and persistent capability bids.

¹⁰ This includes, when appropriate, drafting a letter from the Minister thanking outgoing board members.

Appointment services will meet Cabinet guidelines. Where the Minister decides on a change in board membership, departments will provide board appointment services (unless explicitly directed not to do so) for that appointment. Departments should apply guidelines the State Services Commission has issued¹¹ on activities required of them to:

- support board appointments and reappointments (including limiting fees), and
- ensure that board members have received appropriate induction and training.

¹¹ See www.crownentities.ssc.govt.nz for the *Board Appointment and Induction Guidelines*.

D. Strategic direction and planning

Guidance for Crown Entities: Planning and Managing for Results gives advice to boards and chief executives of Crown entities on the processes for setting strategic direction and planning

*Guidance for Crown Entities: Planning and Managing for Results*¹² gives advice to boards and chief executives of Crown entities on the processes for setting strategic direction and planning. This section expands on aspects of that advice in relation to departmental roles and responsibilities.

Support entity planning

The Act (s27) allows Ministers to participate in the process of setting entities' strategic directions and targets. When engaging with entities on strategic planning, departments should focus on the fit of entities' proposed direction and targets with the:

- Ministers' objectives and expectations, and government goals, including any applicable directions or sector and/or entity specific planning parameters
- Government's expectation that services will deliver the results sought, and
- existing statutory and policy frameworks (including those that set out entities roles and functions) and any changes needed to accommodate a new direction.

Departments will engage with Crown entities in relation to planning and managing for results. Monitoring departments can be an important source of advice for the entity in assessing opportunities and risks when planning for results, particularly where entities are considering new and innovative approaches.

Build effective 'joined up' or 'sector' approaches

Most departments work with the Crown entities that their Minister is responsible for to develop learning networks, and to build a common understanding of governance and administrative requirements such as the practical implications of *Managing for Results*.

Many Crown entities work with the departments, other entities and non-governmental organisations which share their broad policy interest or goal (a 'sector'). In recent cases Ministers have directed their departments to take a leadership role so departments and Crown entities in a sector are well coordinated and take coherent action: e.g. after recent reviews of the education and transport sectors.

Departments will consider how they need to work on behalf of the Minister to develop a sector approach. The purpose of any collective strategy or approach is to identify common goals and targets and to promote coordination and coherence by influence, not to impinge on independent functions or accountabilities of boards. That said, the boards and management of Crown entities are expected to reflect

In recent cases Ministers have directed their departments to take a leadership role so departments and Crown entities in a sector are well coordinated and take coherent action: e.g. after recent reviews of the education and transport sectors

¹² Available at www.crownentities.ssc.govt.nz

on the needs and priorities of Ministers, and to work cooperatively with monitoring departments as the Ministers' agents. In some cases, a Crown entity rather than a department may have leadership of policy areas and any sector approach¹³.

Many of the principles laid out in *Guidance for Crown Entities: Planning and Managing for Results* should be applied as departments and entities plan collective approaches. In short, collaborating agencies need clear leadership from their senior management, clear governance, goals, responsibilities and work plans, and ways of gauging results.

Where the Minister has endorsed a joined up approach (whatever form this takes and whatever it is called), departments must engage with entities to ensure that they:

- are consulted and provide input as the approach is developed
- fully understand the thinking behind the approach, and
- plan their activities to maximise their contribution to the sector's objectives.

The same principles apply to any Crown entities performing sector leadership roles.

Advise Ministers on letters of expectation

Ministers' expectations for entities' strategic direction, and their specific priorities for the planning period, may be reflected in a letter of expectations prepared by departments for Ministers. For Ministers that choose to use letters of expectation, central agencies will provide generic advice on their form and content. Letters of expectation should be sent annually before boards start their strategic planning and preparing their SOI, and cover the entities' governance and performance over the next three (or more) years¹⁴. If asked, a department will advise its Minister on the content of the letter of expectation.

Advise Ministers on priorities for reviews, legislation and policy change

Departments will advise Ministers when policy and/or legislative change is required in relation to the entity and its enabling legislation. Departments will also advise Ministers where other policy or legislation has implications for the entity. In preparing advice to Ministers, departments will normally consult Crown entities on proposed changes.

Ministers' expectations for entities' strategic direction, and their specific priorities for the planning period, may be reflected in a letter of expectations prepared by departments for Ministers

¹³ This is uncommon, but recent examples include aspects of housing, and sports and recreation, policies

¹⁴ Timing of strategic planning will vary, and should be agreed between departments and Crown entities

Departments will advise Ministers when policy and/or legislative change is required in relation to the entity and its enabling legislation

The department represents the “voice of Ministers” when ensuring Crown entities are informed on government policies, decisions and priorities

Departments will advise Ministers when they consider reviews are required to re-assess performance in specific policy areas, entities or the sector as a whole. Priorities will be informed by the department’s views on strategic direction, performance and risk, and will be sensitive to the situation and type of the entities being considered.

Inform entities about relevant policies, decisions and priorities

The department represents the “voice of Ministers” when ensuring Crown entities are informed on government policies, decisions and priorities. Departments should promptly convey to all entities the substance of policies and decisions that directly or indirectly affect the scope of the businesses and/or the way they are expected to conduct that business. In some cases judgements have to be made on whether entities can be advised about a particular decision or policy (e.g. where it is Budget Secret).

Acting as the ‘voice of the Minister’, departments must take care not to confuse or distort the Minister’s or Government’s messages with their own views and messages.

The process for developing a sector approach, as outlined above, can be an important part of communicating priorities and direction to Crown entities.

In some situations the Minister may wish to direct a Crown agent or ACE (in terms of s103 or s104 of the Act respectively), to give effect to or have regard for, government policy. In preparing their advice on policy directives, departments and Crown entities should note that, in the interest of building and maintaining constructive relationships:

- Ministers usually prefer and expect voluntary compliance with policies
- competent boards of Crown agents and ACEs, respectively, will usually give effect or have regard to Government policies without explicit direction, and
- Ministers do not have the statutory power to direct individual ICEs on matters of policy unless specifically provided in legislation (departments must ensure Ministers are advised not to act in any way that could imply a direction to ICEs).

Ministers may want to issue a direction in certain circumstances, e.g. when:

- Ministers want to provide clarity or consistency of strategic and policy direction
- a board seeks clarification before implementing a policy
- entities and departments must work together to achieve goals

- previous arrangements failed to achieve the intended application of a policy, or
- Ministers want to ensure expectations and performance reporting dimensions are clearly articulated in SOIs and output agreements.

Once a decision is made to issue a policy direction, departments must work to meet statutory provisions relating to consultation about, and notification of, directions (e.g. s115 of the Act). Departments must also ensure that Crown entities comply with whole of government directions (s107 of the Act).

Support preparation of the Statement of Intent

The Statement of Intent (SOI) is prepared by the entity, signed off by the board, and tabled by the Minister. The Minister can participate in setting medium-term direction through the SOI (s138 of the Act).

A department will be able to offer meaningful advice to its Minister on the contents of an SOI to the extent that it has engaged with the entity through the planning process

An entity's strategic planning process is a major input into its draft SOI. Departments should engage with entities before the entity starts its strategic planning, even though the SOI must be submitted to the Minister only 30 days before it comes into effect. A department will be able to offer meaningful advice to its Minister on the contents of an SOI to the extent that it has engaged with the Crown entity through the planning process which culminates in the production of the SOI.

The circular *Guidance and Requirements for Crown Entities: Preparing the 2006/07 Statement of Intent*¹⁵ gives advice to boards and chief executives of Crown entities on preparing the 2006/07 Statement of Intent (SOI). That guidance sets out expectations of entities in the section entitled *Engagement about the Statement of Intent with the Responsible Minister (and the Monitoring Department)*.

Departments must be able to provide Ministers with advice on whether an entity's SOI adequately covers matters such as:

- results the entity must achieve in its own right (and how it could improve)
- results the entity will achieve from working with other agencies, where relevant
- consistency with government policy and any directions
- the outputs the Crown should consider purchasing
- how outputs and performance measures more generally will be reported
- consistency of entity outputs and prices with relevant appropriations
- whether major outputs are effective and efficient

¹⁵ Available at www.crownentities.ssc.govt.nz

- the behaviours, integrity and conduct expected of the entity
- risks the entity faces and its strategies for managing risks, and
- management of the entity's capability.

Guidance and Requirements for Crown Entities: Preparing the 2006/07 Statement of Intent describes the process and key statutory provisions to be followed by an entity to consult with the Minister on its SOI.

Guidance and Requirements for Crown Entities: Preparing the 2006/07 Statement of Intent describes the process and key statutory provisions to be followed by an entity to consult with the Minister on its SOI. The guidance also lays out how a Minister can direct a Crown entity on the content of its SOI. A department is expected to advise and support its Minister through these processes.

A department will often prepare its own SOI over a similar timeframe to the entities it monitors. There may be value in collaborating on plans and exchanging draft SOIs to promote alignment – particularly when working in pursuit of results across a sector. This collaboration may include e.g. helping entities to develop performance measures, while at the same time firming up the hierarchy of outcomes sought across the sector.

E. Output agreements

Section 170 of the Crown Entities Act allows responsible Ministers to require entities to have an output agreement setting out the services and goods to be produced by the entity paid for either by:

- the Crown in accordance with an appropriation, or
- compulsory fees, levies, or charges set under legislation.

This continues and reinforces the usual practice for services paid for by the Crown, and provides a formal basis for clarity about what services and goods will be provided with the money that the Crown pays to entities. The absence of such an agreement can expose Ministers, departments and boards to considerable risk.

An output agreement should be required where there is funding from the Crown unless there is another agreement or document that can adequately serve the purpose

An output agreement should be required where there is funding from the Crown unless there is another agreement or document that can adequately serve the purpose. The Act allows considerable flexibility in relation to output agreements which do not have to be contracts (and typically would not be), and do not have to follow any particular format. A memorandum of understanding may serve as an output agreement.

For small entities, the Minister and the entity may agree that the specification of output classes in the SOI is sufficient, and that a separate output agreement is not required.

In some circumstances Ministers may require an output agreement to cover services paid for by compulsory fees, levies or charges set under legislation. This might be important, for instance, where:

In some circumstances Ministers may require an output agreement to cover services paid for by compulsory fees, levies or charges

- entities receive considerable funding from both Crown and non-Crown sources
- Ministers want a clear agreement about what services are to be provided
- Levy or fee payers want assurance that their payments are used well, or
- Ministers want a clear basis for setting the level of the fees to be charged.

The purpose of an output agreement is to:

- assist the Minister and entity to clarify, align and manage their expectations and responsibilities for the funding and production of outputs
- set standards and conditions under which the entity will deliver and be paid
- for entities funded via output expense appropriations, ensure appropriations and entity outputs are aligned (so funding can be transferred), and

- contract for the supply of information on results, including the nature and timing of performance reporting against outputs in the output agreement.

Board members have a statutory duty to ensure that the entity acts consistently with its output agreement (s49 and s92 of the Act).

Unless directed otherwise, departments will help Ministers negotiate agreements.

F. Budget process

Departments should support government budget processes by:

- distributing budget round information (timetables, templates, etc) to entities
- working with entities to align entity planning and budget processes
- working with entities to understand, improve and critically assess proposals
- ranking bids against other bids from the sector on value-for-money criteria, and
- ensuring all successful bids are reflected in accountability documents (e.g. SOI, output agreements), after budget decisions are released to Crown entities.

The department is responsible for ensuring all proposals make a robust case for funding, are accurate, and comply with Treasury's Budget Circular

The department is responsible for ensuring all proposals make a robust case for funding, are accurate, and comply with Treasury's Budget Circular¹⁶. Proposals should include a cost-benefit analysis¹⁷, and lay out how major benefits will be demonstrated. Entities should prioritise their own bids. All bids will be forwarded to the Minister for decision with advice from the department on their strengths, weaknesses and priority.

Funding proposals may be submitted outside budget rounds, but only for urgent matters. Out-of-budget proposals may count against the allocation in the next budget for the relevant Vote(s). They should not be processed unless they rank over competing bids likely to be presented in the next budget. Late funding requests can reflect poor planning or indicate capability risks in the entity that should be monitored.

All requests for increases in compulsory levies, fees and charges should be presented to the Minister well ahead of the proposed implementation date. Like budget bids, departments should work with entities to improve requests for levy increases, but assess them critically. The Minister should be advised on whether costs can be absorbed, why the levy represents value to levy payers, how consultation with those affected by the change will be managed, and any risks arising from the increase.

These responsibilities do not displace the department's vote administration roles of:

- providing budget and budget update coordination and quality assurance

¹⁶ Available at <http://www.treasury.govt.nz/budgetprocessguide/>

¹⁷ The extent or depth of the analysis should reflect the cost, impacts and risks of the proposal.

- preparing the estimates and other information supporting the budget
- documentation, e.g. of outputs plans showing how resources will be used
- reporting on expenses and capital expenditure against appropriations, and
- advising the Minister on financial and non-financial performance.

G. Monitoring

Departments will monitor entities their Minister is responsible for, unless the Minister directs otherwise and clarifies who will undertake monitoring instead of the department

Departments will monitor entities their Minister is responsible for, unless the Minister directs otherwise and clarifies who will undertake monitoring instead of the department.

Monitoring departments should have explicit agreements in place with their Minister setting out their monitoring responsibilities. Where a department has notable monitoring responsibilities, its output plan should reflect this by covering the:

- specific tasks that will be undertaken
- monitoring priorities, including any risks and opportunities faced by the entity
- relationship management arrangements
- level and type of monitoring capability that will be sustained
- kind of information and analysis that will be provided to the Minister, and
- frequency with which the above information will be supplied.

Where a department monitors a group of entities in a sector, monitoring agreements and outputs should state the advice and analysis to be provided to the Minister on how well the agencies in the sector are working together. This will include:

- the effectiveness and efficiency of cross-agency initiatives
- whether there are gaps in delivery or expected results, and
- what changes are needed to ensure better integration.

Monitoring does not displace board responsibilities

Monitoring activity must recognise the role of the board as the governing body of the entity

A major reason for establishing Crown entities is to take advantage of governance arrangements that are different than those for a department. Monitoring activity must recognise the role of the board as the governing body of the entity. The department should not attempt to be a substitute board. Departments should focus on advising the Minister whether the entity's strategic direction complements Government and sector goals and legislation, advising on performance, and adding value where it can through its advice to the Minister and (given a receptive audience) its work with the entity.

A central facet of the department's monitoring responsibility is to provide Ministers with an independent view of the financial performance and cost-effectiveness of the entity. What this advice covers will vary by entity, but is likely to focus on value-for-money, risk, efficiency and productivity measures, and how these have varied over time.

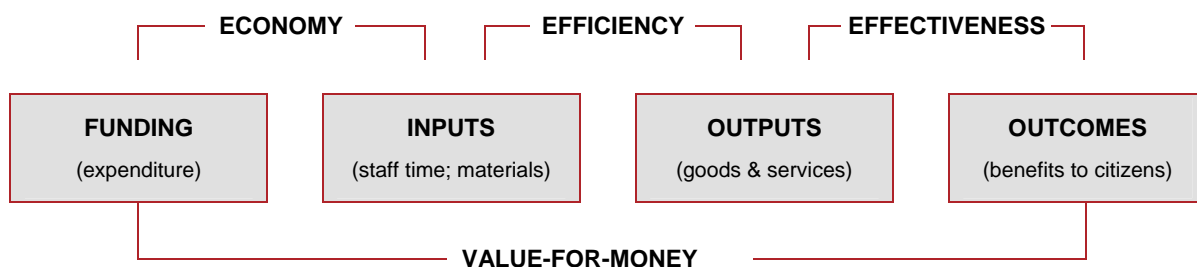
Monitor results, value-for-money and performance against agreed targets

Monitoring occurs against accountability documents (especially the SOI and output agreement), and against the laws, protocols and standards applying to Crown entities. Monitoring occurs against financial and service performance targets.

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Departments should be able to inform the Minister whether:

- major outputs were delivered against specifications in output plans
- “real” costs of major outputs were reasonably consistent over time (i.e. after adjusting for inflation, and taking account of quality improvements)
- effectiveness has been demonstrated appropriately, and is satisfactory
- if like entities exist in a sector, entities compare in efficiency and effectiveness
- trends in outcome indicators suggest progress is being made, and
- at year end, that annual reports detail achievements, outputs, financial results and variances against agreed standards, and explain notable variances.¹⁹



Departments should be able to assure Ministers that major outputs represent value-for-money

Departments should be able to assure Ministers that major outputs represent value-for-money. Well managed entities should develop information on value-for-money, for consideration by their boards. Departments will constructively critique the entity’s approach and analysis, especially in relation to major interventions and services.

Assure financial viability

Departments should be able to assure the Minister whether:

- financial indicators are on track, and any targets have been achieved, and

¹⁸ Departments will have previously advised the Minister on appropriate performance targets.

¹⁹ Appropriate actions and plans should be in place to address under-delivery, over-expenditure, etc.

Ministers, including the Minister of Finance, should be given early warning of threats to the financial viability or effectiveness of any Crown entity

- shortfalls or surpluses in budgets have been explained reasonably. (There should be no un-appropriated expenditure.)

Ministers, including the Minister of Finance, should be given early warning of threats to the financial viability or effectiveness of any Crown entity. Throughout the year, the fiscal situation of the entity is monitored to ensure:

- budgets are sustainable (e.g. full costs are met by revenue, or the Minister has agreed to specific costs not in the budget). This includes reviews of Statements of Financial Performance, and managing emerging risks to sustainability
- third party revenues (if any) are on track or have been achieved
- costs are on track with planning documents, and being managed tightly
- balance sheets are sustainable (e.g. reviewing Statements of Financial Position, and ensuring assets are maintained and can be replaced)
- capital expenditure is on track and well directed, and
- operating cash flows are sufficient to deliver outputs, and maintain capabilities.

Monitor entity capability

Departments should be able to assure Ministers that entities have the capabilities, now and in the future, to deliver their interventions and outputs

In addition to monitoring the performance and financial viability of Crown entities, departments should be able to assure Ministers that entities have the capabilities, now and in the future, to deliver their interventions and outputs. Organisational capability can be described as comprising the following dimensions:

- Leadership
- People
- Culture
- Relationships
- Processes and Technology
- Physical Assets, and
- Structure.

Different entities require a different mix of capabilities, but both boards and monitoring departments need to assure Ministers that entities are planning and managing their capability to meet current and future needs. Departments should ensure they meet any specific capability monitoring responsibilities placed upon them, such as in relation to EEO good practice guidelines issued by the EEO Commissioner.

A monitoring plan

In addition to the agreement with the Minister, a monitoring plan may be developed as an internal document to help focus monitoring efforts. A monitoring plan may also help to gather resources and build commitment from senior management.

Many monitoring departments set milestones around which they organise major activities, and make sense of what can otherwise be a noisy environment. They:

- run meetings with senior staff and chairs of boards to agree the results sought for the entity or sector (e.g. culture and heritage, transport)
- maintain monitoring and reporting calendars, and schedule preparatory work (most agencies)
- maintain risk assessments at the sector and entity level to help the department prioritise tasks as they come in, and commission proactive work when needed
- work together to ensure performance information is available (transport)
- commission benchmarking studies (e.g. Health) or in-depth analyses (e.g. Education, internal affairs)
- run rolling reviews of major entities or interventions (economic development)

Departments should focus monitoring activity on major opportunities and risks, both across the portfolio they monitor, and for individual entities

Departments cannot and should not monitor everything – but they will question activity to ensure entities’ output delivery matches output agreements. Departments should focus monitoring activity on major opportunities and risks, both across the portfolio they monitor, and for individual entities. Detailed reviews and in-depth monitoring should reflect Ministers’ needs, the scale of investment in and spending on entities, the risk posed by entities, and the opportunities that could be realised across the area.

Appendix 1: Some specific powers of Ministers in relation to Crown entities

Effective boards, and effective working relationships with Ministers and boards, usually provide the best ways of improving the direction, performance and capability of Crown entities. But a range of other instruments may be available to Ministers wanting to effect change:

Ministers have specific powers under the Crown Entities Act 2004. Some powers listed below are more limited for ACEs and ICEs than for Crown agents, not applicable to ICEs, or affected by legislation specific to the entity. Examples of powers available to Ministers are:

- Participate in the process of setting and monitoring the entity's strategic direction and targets (this will normally start with letters of expectation)
- Request information
- Review operations and performance
- Appoint, reappoint and remove board members
- Determine the remuneration of members of Crown agents and ACEs in accordance with the fees framework
- Seek court orders restraining or requiring action under relevant legislation
- Direct an entity to perform new functions (if its legislation allows)
- Direct changes to an entity's SOI
- Give statutory directions (Crown agents and ACEs)
- Require a Crown entity to have an output agreement

Ministers have additional powers e.g. as purchasers to:

- Approve or decline funding or increases in funding for specific outputs
- Approve or decline increases in levies (or other sources of funding)
- Contract for the supply of performance information
- Contract for the supply of additional outputs
- Make capital injections
- Promote changes in legislation
- Promulgate regulations or instructions

Under the Crown Entities Act, board members are obliged to:

- Ensure the entity acts consistently with its Statement of Intent and output agreement
- Operate in a financially responsible manner
- Act with honesty and integrity, and with care, diligence and skill
- Act in good faith and not at the expense of the entity's interests

- Inform Ministers about acquisitions of subsidiaries and other interests
- Do other things that are required under the Crown Entities Act or other legislation, e.g.:
 - Cooperate with ministerial reviews
 - Consult the Minister on SOI
 - Comply with any valid directions

Under the Crown Entities Act, the Ministers of Finance and State Services may jointly issue whole of government directions to whole categories of entity. The Minister of Finance may also:

- Request specific information under Part 4
- Regulate or agree to, borrowing, guarantees & indemnities and use of derivative by Crown entities, and to variations from standard banking or investment arrangements
- Require the payment of a capital charge, or payments of surpluses
- Under the State Sector Act:
 - Crown entities must comply with any applicable code of conduct issued by the State Services Commissioner (“the Commissioner”)
 - Crown entities are directly subject to other aspects of the Commissioner’s mandate
 - The Prime Minister and responsible Minister can direct the Commissioner to carry out some functions in relation to Crown entities (e.g. undertake reviews)

Appendix 2: Letter to board chairpersons, 17 December 2004

This letter sets out what the Government expects of Crown entity boards²⁰ in working with responsible Ministers and the Government and draws your attention to some key aspects in the Crown Entities Act.

The Crown Entities Act was passed by Parliament on 16 December 2004. Following Royal Assent, the Act will come into force on 25 January 2005. You should note, however, that some important features of the new legislation will not apply until later, notably:

- the new reporting provisions will not generally apply until the 2006/07 financial year²¹
- the financial powers regime will not apply until 1 April 2005, and the banking provisions until six months after the Act is in force.

Our last letter to you, dated 20 September 2004, advised that the Select Committee had reported back on the Public Finance (State Sector Management) Bill. The governance and accountability provisions that were Parts 3 to 7 of the Bill are now contained in the Crown Entities Act. That letter also set out some broad changes in the State services environment that are important for the Government and Crown entities. There were no significant changes to the Bill as it progressed through its final stages to enactment.

As set out at the end of this letter, the Secretary to the Treasury and the State Services Commissioner will be in contact with you in the New Year about particular matters concerning implementation of the Act.

What the Government expects of Crown entities

No surprises

Ministers with Crown entity responsibilities expect boards to work with them on a “no surprises” basis to maintain a healthy relationship.

A “no surprises” approach is part of operating in the State sector and being part of government in the broadest sense of delivering services to New Zealanders. We expect you to advise Ministers in advance of issues likely to impinge on the Government’s responsibilities or likely to attract political comment.

Crown entities are grouped into categories that reflect, broadly, their closeness to Government and the nature of their main functions. The Crown Entities Act sets up specific protection for Crown entities’ statutorily independent functions (for example, editorial protections for media organisations). A “no surprises” way of working is not intended to interfere with entities’ statutorily independent functions, nor with boards’ operational responsibilities. If you are concerned that this might affect your operations, you should discuss this with your responsible Minister.

In general, we expect you to:

²⁰ The term ‘board’ is used generically to include corporations sole.

²¹ Disclosure of certain remuneration in the annual report will apply from 2005/06, however.

- be aware of any possible implications that your decisions and actions may have for wider Government policy issues
- advise your Minister of issues that may be discussed in the public arena or may require a Ministerial response
- inform your Minister in advance of any major strategic initiatives.

Being part of the State sector

Working together better for common outcomes

Ministers, Crown entities and departments will continue to work together to achieve results for New Zealanders. The Crown Entities Act provides for:

- better quality and more balanced reporting of Crown entity intended and actual performance, with more attention to outcomes
- alignment of Crown entities' strategic directions with the goals of other parts of the broader State services.

Departments assist responsible Ministers by providing strategic advice, identifying possible risks, and giving feedback about Crown entities' performance. We expect Crown entities and departments to continue to work together in a professional and constructive manner.

Within the annual financial cycle, Ministers will engage with Crown entities on portfolio-specific expectations for strategic planning and Crown entity performance. Under the Crown Entities Act all Crown entities will present a Statement of Intent (sometimes called a Statement of Corporate Intent); most Crown entities already prepare such a statement. This statement of intended performance will be the centrepiece of the accountability relationship from boards to their Ministers. The specific expectations for individual Crown entity performance will be communicated directly from Ministers to boards.

As we noted above, the new reporting requirements will not generally apply until the 2006/07 financial year. We encourage you, however, to take the opportunity to think about the new requirements and discuss them with your monitoring department.

Good employer

Being part of the State sector means that you are responsible for some particular obligations towards the people who work in your organisation and, more generally, showing a spirit of service to the public. The Crown Entities Act sets out what it means to be a good employer, including provisions about equal employment opportunities.

While some Crown entities previously carried out, under their various statutes, equal employment opportunities (EEO) obligations, the Crown Entities Act now applies generic good employer and EEO provisions to all Crown agents, autonomous Crown entities (ACEs) and independent Crown entities (ICEs), and to Crown entity companies. (Other categories of Crown entities carry EEO obligations under entity-specific statutes.)

Entities will need an EEO programme in place and must communicate this to staff, as part of personnel policy. Cabinet has determined that portfolio departments (the Crown Company Monitoring Advisory Unit (CCMAU) in the case of Crown entity companies) will have responsibility for promoting and monitoring EEO in individual Crown entities. The EEO Commissioner will provide guidance to Crown entities and departments.

Responsible financial management

The Crown Entities Act now includes an explicit duty on you to ensure that your organisation operates in a financially responsible manner. We know that you already take this seriously.

We expect you to be prudent and sensitive in how taxpayers' monies are used. This includes managing tax affairs in a way that is consistent with your close relationship with the Government. While normal tax planning is acceptable, aggressive tax planning strategies are not. We do not expect State sector organisations to make decisions driven primarily by strategies to minimise tax nor to enable others to use your tax status to gain an advantageous tax position.

The Crown Entities Act introduces a standard financial powers regime that applies to most statutory entities. Many Crown entities previously complied with individual or customised financial powers set out in separate statutes. The Treasury has written separately to you outlining a new financial powers regime that comes into force under the Crown Entities Act. As noted above, this regime will not apply until 1 April 2005.

Implementation

For a number of Crown entities, the requirements will be largely unchanged from previous statutes. Overall, however, the previous patchwork of obligations is now replaced with comprehensive and consistent requirements.

Over the next few months the Treasury and State Services Commission will be in contact with you regarding specific aspects of the implementation process. The Treasury will be providing further information on financial matters and guidance on Statements of Intent to be prepared under the Act for 2006/07. The State Services Commissioner will be conducting a thorough process of engagement on standards of conduct and integrity, starting in February 2005.

Yours sincerely

Hon Dr Michael Cullen
Minister of Finance

Hon Trevor Mallard
Minister of State Services

Appendix 3: Central agencies' statutory responsibilities

The State Services Commissioner (the 'Commissioner') and the Treasury have statutory responsibilities or powers regarding Crown entities and/or the Crown Entities Act 2004 ("the Act"), and Ministers should seek their support as appropriate.

The SSC and the Treasury are jointly responsible for the administration of the Act. The Treasury administers Part 4 (Crown entity reporting and financial obligations) while the SSC administers all other parts. The Act, State Sector Act 1988 and the Public Finance Act 1989 provide the State Services Commission and the Treasury with powers to require the production of information from Crown entities to allow them to carry out their respective functions. These complement Ministers information rights under the Crown Entities Act.

The Act provides for the Ministers of Finance and State Services to jointly issue 'whole of government' directions to entire categories of entities or to types of statutory entities (see s107). Such directions may not be issued to single entities or to smaller aggregations of entities. If departments are considering advising Ministers whether an issue could be addressed by issuing a 'whole of government' direction they should first seek the advice of the SSC and the Treasury. To the extent that the Ministers consider it necessary, consultation must occur with affected entities and stakeholders before a whole of government direction can be issued (s108).

Consultation with the SSC and Treasury is necessary on any machinery of government proposal that could result in the establishment of a new organisation that might be a Crown entity, including a proposal to establish a trust. The SSC and the Treasury have shared interests in reviewing the operations and performance of an entity or group of entities (especially if Ministers exercise their powers under s132 of the Act).

Lead Responsibilities of the State Service Commission

The Commissioner's mandate under the State Sector Act 1988 was broadened from January 2005 to include responsibilities regarding:

- providing advice and guidance on, and setting minimum standards regarding, matters of integrity and conduct in Crown entities (does not apply to Crown Research Institutes)
- providing advice on management systems and structures in Crown entities, and
- reviewing the machinery of government across all areas of government including Crown entities (the latter giving statutory recognition to existing practice).

The Commissioner must also act on a wider range of matters affecting Crown entities if directed by the Prime Minister or a Responsible Minister for an entity. The Commissioner has responsibilities under the Act to review and advise on the remuneration packages of Crown entity chief executives (see s117) and, if so directed by the Governor-General, to review and advise on collective employment agreements applying to entity employees (see s116).

In interpreting the Act, departments should seek advice from the Commissioner or the SSC on:

- the organisational form most appropriate to the functions being performed by an entity
- reviewing the internal management systems and structures of an entity
- establishing and operationalising standards and systems relating to the integrity and conduct of both members and entity employees, including as they relate to identifying and managing conflicts of interest, and
- the remuneration of entity chief executives.

Lead Responsibilities of the Treasury

In interpreting the Act, advice should be sought from the Treasury on:

- budget and expenditure information and processes
- the application of rules set down under the Act 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 will be consulted as part of your normal business practice on all issues that impact on 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.