STATE SECTOR, PUBLIC FINANCE AND CROWN ENTITY LEGISLATIVE CHANGES OVERVIEW & SUMMARY

Overview

- The Bill[1] amends the State Sector Act (SSA), Public Finance Act (PFA), and the Crown Entities Act (CEA) – the 3 main Acts that govern the management of the State sector and public finances.

- The Bill:
  - **gets the system as a whole better at delivering results** by breaking down "silo" behaviours (e.g., making 'responsiveness to the collective interests of government' an explicit responsibility of departmental chief executives; new multi-category appropriations)

  - **encourages better services/value for money** *(*e.g., greater ability for chief executives to delegate functions & powers will support closer partnering with others to improve services; leverage the scale and expertise of Crown entities through broader grounds for issuing whole of government directions and better targeting of these directions; departmental agencies can provide a more effective and efficient structure than a stand-alone dept or Crown entity)

  - **strengthens leadership** at the system, sector and agency level (e.g., clear role for State Services Commissioner in oversight of state services and development of senior leaders; departmental chief executives responsibilities expanded to include stewardship and financial sustainability)

  - **supports more meaningful information so that Parliament and the public can more easily see what taxpayers' money has achieved***,* and how agencies are progressing against priorities (e.g., through greater emphasis on reporting what is intended to be and has been achieved; lifting the strategic focus of statements of intent; and greater emphasis on flexible reporting arrangements)

- Three key areas that have received most attention to date are amendments to the SSA relating to:
  - <u>departmental chief executives' powers to delegate</u> – this change promotes more effective or efficient service delivery through flexible delegations, including ability of chief executives to delegate to persons outside the Public Service. Extensive safeguards are in place.
  - <u>Government Workforce Policy</u> – this change enables governments to put in place expectations covering bargaining or other workforce matters for departments and Crown entities. Does not over-ride good faith obligations.
  - <u>redundancy provisions</u> – this change provides for fairness to both the New Zealand taxpayer and to Public Service employees. Employees will not be able to claim redundancy if they have been offered a suitable alternative positive elsewhere in the State services.
  - <u>Immunity and indemnity</u> – this change implements the original policy intent that public servants will have immunity from legal action for good faith actions in the course of work, while ensuring people have rights of redress by being able to sue the Crown

- Attached is a summary of each part of the Bill – SSA (Part 1), PFA (Part 2) and CEA (Part 3).

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[1] For the purposes of this document "the bill" refers to the State Sector and Public Finance Reform Bill, which contains the legislative amendments.

Summary of the changes by Part

Part 1: amendments to the State Sector Act 1988

Stronger leadership – system, sector and agency level

1. State Services Commissioner as head of State services

   - For the first time in statute the Bill clearly charges the Commissioner to provide leadership and oversight of the State services.
   - The Commissioner's role and functions are pitched at the level of the system-wide performance, and include reviewing the State sector system in order to advise on possible improvements to agency, sector and system-wide performance. As an integral component, the Commissioner's functions include a renewed emphasis on developing senior leadership and management capability.

2. Collective interest and stewardship responsibilities of departmental chief executives

   - Chief executives will be explicitly responsible for the department's responsiveness on matters relating to the collective interests of government. This will help counter the silo effect of the current public management arrangement, which is one of the most commonly and strongly criticised aspects of the current model. So, where required, chief executives must play their part in contributing to results that their department cannot achieve alone: this may require new ways of working and organising in conjunction with other departments or providers. This area of chief executive performance will be closely watched by the State Services Commissioner.
   - The stewardship responsibility reinforces that chief executives administer their departments on behalf of others, notably current and future Ministers and ultimately all New Zealanders. The responsibility requires chief executives to plan actively and manage for the medium and long term interests. This applies to a whole range of things including departmental sustainability, organisational health, capability, the capacity to offer free and frank advice, the stewardship of assets and liabilities on behalf of the Crown and legislation administered by the department. Ultimately, a chief executive should leave the department in better shape than when he or she took office.

3. Key positions

   - The key positions provision enables the Commissioner to identify roles that are important for ensuring on-going service delivery, or for their potential to build the leadership potential of employees in the Public Service by moving people around to intentionally build capability and depth of experience. Once a role is designated a key position, chief executives are required to obtain the Commissioner's agreement before making an appointment into the role.

Government agencies working more closely – additional service delivery options

4. Departmental agencies

   - A Departmental Agency is an operationally autonomous agency within a host department. It has a clearly identified set of service delivery or other operational or regulatory functions. It is headed by a chief executive who is directly responsible to the Minister.
   - A Departmental Agency operates within the strategy, policy and resource framework of its host department. Because of this connection, and because back office services will usually be provided by the host department, Departmental Agencies can help to reduce fragmentation in the State sector either by transferring functions from Crown entities back into the Crown or by avoiding the need to establish new stand alone departments or Crown entities.
   - The concept of departmental agencies is taken from the UK Executive Agency model, but is substantially modified to mesh with NZ's public management system arrangements.

- The intention is to add to the tool-kit of potential organisational options for Ministers to consider using, alongside the standard department and Crown entity options.

5. Delegations outside the Public Service

- The Bill enables chief executives to delegate functions or powers to a better-placed decision-maker outside the public service e.g. Crown entities, NGOs, private sector.
- The Bill includes extensive controls for delegations outside the public service. It requires the responsible Minister's prior written consent in every case, prevents any sub-delegations, requires conflicts of interest to be avoided or managed, requires delegates to comply with the State Services code of conduct, makes delegates subject to the Official Information Act and Ombudsmen Act, and requires the delegation to be reported to Parliament.
- Nothing in the Bill will change the Crown's power to contract, which has been used for many years to purchase services on behalf of taxpayers.

System-wide approaches – capability and expertise

6. Government workforce policy

- The Bill establishes a new, simple, process for consulting on and distributing workforce policy to public service departments and Crown entities. For example, this process could be used to set out the Government's:
  - expectations around bargaining; or
  - workforce policy in other areas (e.g. leadership development programmes)
- Workforce Policy Statements will be approved by the Minister, distributed to affected agencies and published on the Internet by the Commissioner.
- The Bill ensures that the Workforce Policy Statements will not be regulations, and cannot override any legal rights or obligations, including any relating to good faith bargaining.

7. Restriction of redundancy payments

- The Bill creates a single, consistent scheme for all public service redundancy situations. It expands on existing provisions in the State Sector Act (that limit redundancy payments in situations when functions transfer between agencies). It is based on principles that:
  - taxpayers should not have to pay their employees twice; and
  - employees should only have redundancy payments restricted if they have received a fair offer of employment elsewhere in the State services.

- Under the Bill, redundancy payments will not be paid where an employee has:
  - been offered an "alternative position", which is a fair offer to do a comparable job in generally the same location (or commutable); or
  - accepted an offer of employment to do a different job.

- Offers will not be able to restrict redundancy payments unless they:
  - include terms and conditions that are no less favourable;
  - recognise continuous service as including the time in the old job; and
  - allow the person to start in the new job immediately.

- Of note, the Bill:
  - applies to the <u>same</u> group of employees as does the current Act (public servants, and Crown entity employees in some limited situations);
  - defers implementation for 3 years to enable agreements to be renegotiated in light of the new law.

8. Immunity for public servants – restoring the system

- The Bill implements the original policy intent that public servants will have immunity from legal action for good-faith actions taken in pursuit of their duties. It is required in light of a recent Supreme Court decision that held that public servants may be personally sued.

- Providing public servants with an immunity is consistent with the provisions that apply to broader State servants, such as employees of Crown entities. There is no reason to treat employees of core Crown departments differently from employees in DHBs or agencies such as ACC.

- Importantly, the Bill protects the rights of any person to sue the Crown for the acts of its servants via consequential amendments to the Crown Proceedings Act. Crown Law's advice in the area to the select committee was that "the Bill restores what was, in our view, widely understood throughout the public service to be the status quo... ". It goes on to say " ... we see no reason why the current drafting would prevent a court from finding against the Crown on the basis of vicarious liability for the Act of an immunised chief executive or employee."

- Nobody disputes that public servants should be protected if they are going about their jobs in good faith. It is also important that New Zealanders can continue to sue the Crown if hurt by the actions of a public servant. The Bill as drafted achieves these twin outcomes.

9. Ministerial staff – adapting the system

- The Bill acknowledges that Ministers can and do influence the appointments of ministerial staff, i.e. those employed on events-based employment agreements to work directly for a Minister. The Bill requires the chief executive to have regard to the wishes of the Minister and, as a corollary, exempts the appointment process from some standard obligations (notification of vacancies; merit considerations; and review procedures).

- The Bill ensures that the provisions do not apply widely to departmental staff seconded to a ministerial office, but only to those staff recruited, in practice, by DIA for purposes of Ministerial support.

Part 2: amendments to the Public Finance Act 1989

Greater Financial Flexibility - moving resources to where they have greatest impact

1. New type of appropriation – multi-category appropriation (MCA)

   - This enables a number of expenditure types (output expenses, other expenses, non-departmental capital expenditure) to be included in separate categories of the same appropriation, where they contribute to an overarching purpose. Each MCA has one Minister (appropriation Minister) and one administering department (appropriation administrator)

2. Distinguishing between administration and use of appropriations

   - This enables one department to use a departmental appropriation administered by another department either at the direction of the appropriation Minister (e.g., where the Minister decides a number of departments are to be involved in achieving a particular outcome) or with the agreement of the department administering the appropriation (e.g., where other departments are seconding staff to that department).

Greater Reporting Flexibility – providing more meaningful information

3. Reporting changes in Estimates and after end of year

   - The supporting information in the Estimates will be about what is intended to be achieved with each appropriation (not necessarily in output and outcome terms), how will performance be assessed, who will report after year-end on what has been achieved, and in what document.
   - Greater emphasis for year-end reporting against appropriations to provide information on what has been achieved with each appropriation.
   - There will be more flexibility about the document in which end-of-year reporting is provided e.g., annual reports of departments in a sector could be included in the same document under cover of a sector overview; and performance against appropriations administered by different departments could be reported together where they contribute to a common outcome.

4. Allowing statements of intent (SOI) to be for up to 3 years

   - The annual requirement to provide SOIs encourages a compliance approach to producing a document rather than encouraging strategic thinking about a department's role and functions.
   - The change supports a more strategic approach by allowing an SOI to last for up to 3 years unless there is a significant change in a department's functions or, as recommended by FEC, the department's responsible Minister requires a new SOI to be prepared (e.g., if there is a change of government, or if there is a new responsible Minister for a department).

Stronger leadership and stewardship

5. Clarifying responsibilities of departmental chief executives for departmental and non-departmental financial matters

   - The changes make clear that a departmental chief executive is responsible for:
     - their department's financial sustainability, as well as financial management and performance
     - what is achieved with the departmental appropriations and MCAs their department uses
     - managing and advising on what is achieved with non-departmental appropriations the department administers.

Improved transparency and governance

6. Schedule 4A companies

   - The change is to move companies currently listed on Schedule 4 of the Public Finance Act to a new Schedule 4A and apply to them most of the governance and accountability requirements that apply to Crown entity companies. (Crown entity companies must be 100% owned by the Crown, whereas Schedule 4A companies must be at least 50% owned by the Crown.)

Part 3: amendments to the Crown Entities Act 2004

Agencies working more closely together and leveraging the capability and expertise of the State services

1. Collaborating with other public entities

- The Bill amends the collective duty of statutory Crown entity boards relating to how the board is to perform its functions. Boards will be required to ensure the entity collaborates with other public entities "where practicable". This provision helps break-down a silo approach to providing services, recognising that frequently achieving results requires working in combination with other agencies.
- The limitation of "where practicable" acknowledges that Crown entities are established to perform their own functions, so the board needs to determine the efficiency and effectiveness of collaboration with other agencies in a given situation.
- Directions to support a whole of government approachThe Bill enables directions which support a whole of government approach to:
    - be issued to smaller groups of Crown entities than currently (e.g., some Crown agents rather than all of them), and
    - for a broader range of objectives, including: to secure economies or efficiencies; to develop expertise and capability; to ensure business continuity; or to manage risks to the government's financial position.
- The amendments will make the use of government directions more useful and selective. In particular, they will enable Crown entities to be brought within the influence of functional leaders in the Public Service, but in a way that respects the entities' legal separation and arm's-length relationship. The directions to entities will not come from public servants, but through the proper channel – in this case, the Ministers of Finance and of State Services.
- The Bill does not diminish or impinge upon the protections in the Crown Entities Act for an entity's statutorily independent functions.

Greater Reporting Flexibility – providing more meaningful information

2. Reporting changes at start of and after end of year (similar to those in the PFA)

- Statements of intent to only contain strategy and be able to endure for up to 3 years (similar to the changes for departments in the PFA) unless there is a significant change in an entity's functions or the entity's responsible Minister requires a new statement of intent to be prepared. For example, if there is a change of government, or if there is a new responsible Minister for an entity.
- The annual information that was in the statement of intent will now be in a new document - the statement of performance expectations.
- The annual reporting for the previous financial year can contain the statement of intent and the statement of performance expectations for the current year, so the annual report can both be backward and forward looking, which should assist users to better understand entity performance.
- More flexibility about the document in which end-of-year reporting is provided e.g., annual reports of agencies in a sector could be included within a sector overview document.

3. Subsidiary reporting

- The reporting regime focuses on group reporting and auditing, with the Minister of Finance having a power to require reporting from any member of the group, i.e., parent or subsidiary if it is necessary or desirable to enhance public accountability.
- This group reporting change does not apply where a School Board of Trustees or a Tertiary Education Institution is an investor in a multi-parent subsidiary. In these circumstances the current requirement that the multi-parent subsidiary is required to report unless exempted by the Minister of Finance continues to apply.