



Te Kawa Mataaho
Public Service Commission

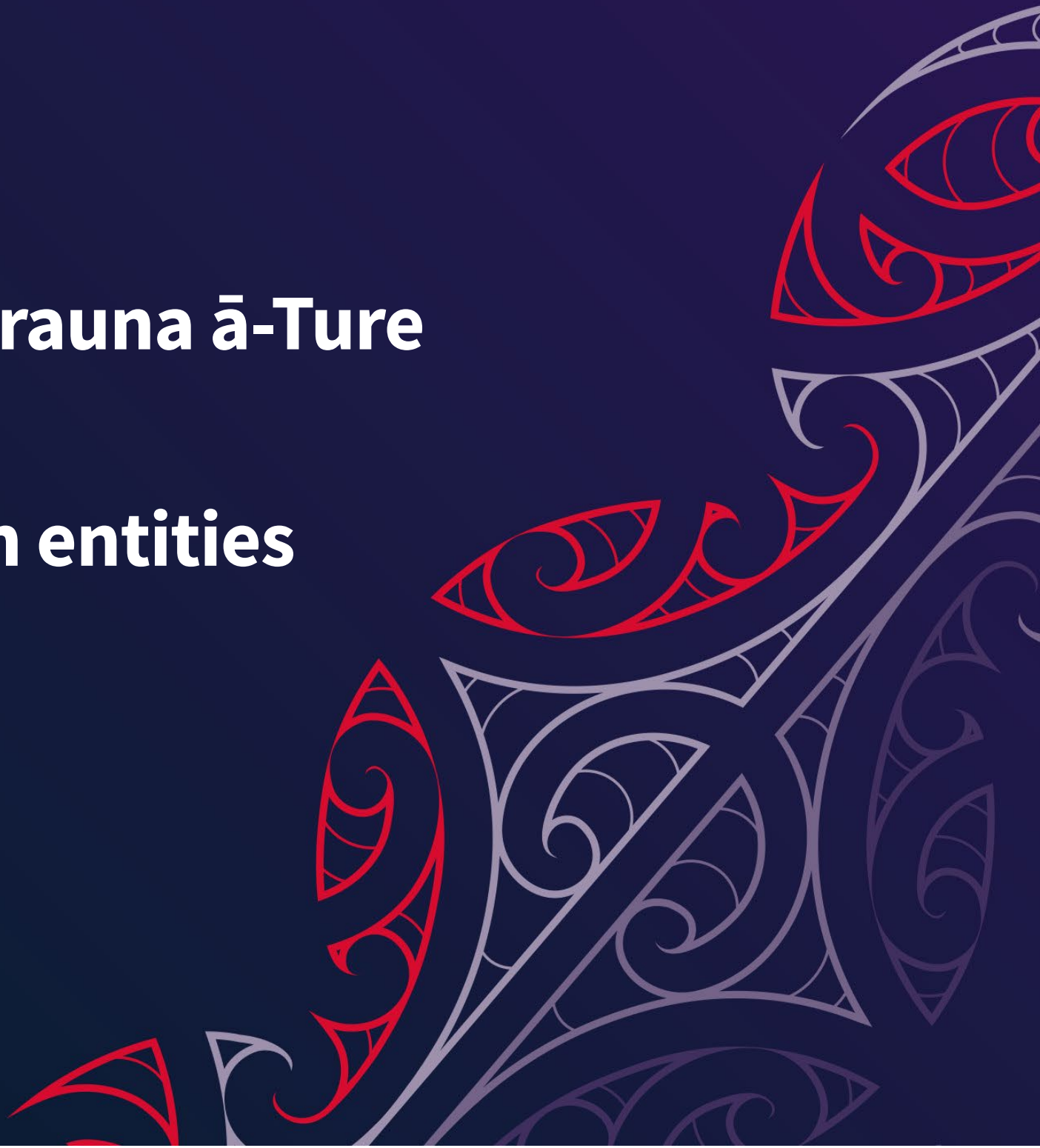
Ngā Hinonga Karauna ā-Ture

He Aratohu mā ngā Minita

Statutory Crown entities

A guide for ministers

Te Kāwanatanga o Aotearoa
New Zealand Government



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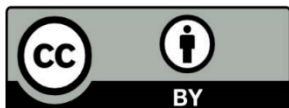
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Table of contents

Introduction	4	Confirming and announcing appointments	25
Overview	5	Post-appointment induction and training	26
Who is this guide for?	5	Removal from office	26
What does this guide provide to you as a minister?.....	5	Fees for board members	28
Other guides	6	Crown agents and Autonomous Crown entities	28
What is a Crown entity?	6	Independent Crown entities and corporations sole.....	29
Categories of Crown entities.....	6	Summary of levers	30
Crown agents and the Public Service Act 2020	7	3. Participating in setting the expectations and direction	31
Ministerial control	8	Regular engagement with boards	31
Who are the key players?	9	Statement of Intent.....	32
What are your roles and responsibilities?	11	Statement of Performance Expectations.....	33
How can your monitoring department help you?.....	11	Publishing and presenting SPEs and SOIs	34
Contact for questions and feedback	11	Ensuring financially responsible management	34
1. Relationships, roles and responsibilities	12	Transparency of reporting	35
Relationships	12	Planning, implementation, monitoring and reporting cycle	35
Ministers	13	Summary of levers for setting strategic direction	37
Crown entity boards.....	14	4. How can your monitoring department assist you?.....	38
Crown entity chief executives	14	Roles and responsibilities – monitoring department.....	38
Monitoring department.....	15	What support can you expect from monitoring departments?	39
Roles of Minister of Finance and Minister for the Public Service.....	15	Where can my monitoring department get help?.....	40
The roles of the Public Service Commission and the Treasury	16	Summary of key levers for monitoring performance	41
2. Appointing and maintaining an effective board	19	Appendices	42
Board appointment roles.....	20	Appendix 1 How Crown entities fit into the Public Service.....	43
Diversity of board membership	20	Appendix 2 Information for Crown entity companies	48
Reappointment of board members.....	24		

Introduction

New Zealand's Public Service has an enviable international reputation for integrity, responsiveness to government and effectiveness for New Zealanders. The work of over 80 statutory entities is immensely important for achieving outcomes for New Zealand and delivering public services to New Zealanders. At their best, statutory entities can help support a more efficient and better value-for-money government. Many of the important public services provided to New Zealanders by central government are supplied by Crown entities. Crown entities collectively employ around 70% of central government employees, hold about 54% of fixed assets on the Crown's balance sheet, and account for more than one-third of total government expenditure.

Governance boards are a central feature of the Crown entity system. Boards are being asked to meet new challenges: ensuring the voices of a diverse population are heard and represented, the need for diverse and inclusive decision-making and contributing to the recovery from COVID-19. Boards that you appoint must do things differently and better. They must work with you and create long-term value to New Zealand.

Expectations of Crown entities include:

- better alignment of their work through collaboration with other government bodies as part of a unified, value-based government
- supporting functional leadership for a whole of government approach
- operating in a spirit of service¹
- supporting future-focussed Māori Crown relationships

¹ See Spirit of Service Purpose, Principles, and Values.

² See Public Service Act 2020 – Part 1 (subparts [2](#) and [4](#)).

- trusted and productive relationships with the monitoring department
- streamlined planning and reporting through four-year Statements of Intent (SOIs), and more meaningful reporting on achievements
- stronger oversight of Crown entity subsidiaries.

Outcomes for New Zealand and services to New Zealanders depend on better alignment of all parts of government to deliver better public services. The new Public Service Act 2020 makes it easier for government agencies to operate more effectively and as a unified public service.

Under provisions of the Public Service Act 2020, Crown agents (a category of Crown entities) are treated as part of the Public Service for the purposes of shared principles, values, spirit of service and standards of integrity and conduct.² Crown agents are closest to government. They can be directed by their minister to give effect to government policy relating to their functions and objectives, include core public-facing service delivery, and often need to work closely with public service departments to deliver public services. It makes sense for all Crown agents and public service agencies to be unified under a common purpose and common principles and values.

The two other categories of statutory entities are Autonomous and Independent Crown Entities. They remain outside the public service but are part of the broader State services.



Overview

Who is this guide for?

This guide is for ministers with statutory Crown entity responsibilities.³

This guide focuses on three types of statutory entities in the Crown Entities Act (CEA) – Crown agents, Independent Crown Entities and Autonomous Crown Entities. The guide refers to these entities, collectively, as Crown entities. See [Crown entities](#) for a list.

What does this guide provide to you as a minister?

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

- your relationships with Crown entities, and how to engage with them on strategic matters important to the Government including the Crown’s ownership and purchase interests
- your role in the appointment and removal of board members, and in setting remuneration for board members, and
- levers available for you to get the performance you want, and how others may assist you
- how to request and get useful performance information from an entity
- information flows between ministers, Crown entities and monitors (usually monitoring departments)⁴
- public reporting by Crown entities
- the importance of trusting, constructive and productive relationships between the Crown entity board and your monitoring department.

³ The main body of this guide focuses on statutory Crown entities. Appendix 2 deals with Crown entity companies and Public Finance Act Schedule 4A companies.

⁴ The term “monitoring department” is used throughout this Guide, although the minister may choose a different body to monitor the entity.

Other guides

A four-page summary is available on the Commission website. A separate reference handout also shows in one place the available levers for ministers to get the performance they want. See [Key levers](#).⁵ For more information, refer to [It Takes Three: Operating Expectations Framework](#), which sets out the roles and responsibilities of the minister relative to a Crown entity board and the monitoring department.

What is a Crown entity?

Crown entities are part of government and are owned by the Crown. Establishing a Crown entity reflects a decision by Parliament that a function or functions should be carried out at ‘arm’s-length’ from ministers. The CEA provides the framework for establishing, governing and operating all categories of Crown entities. It also clarifies the roles, responsibilities and the accountability relationships between Crown entities and their boards, responsible ministers, and their departments.⁶

This arm’s-length separation from ministers may be required to credibly distance ministers from involvement in decision-making that relates to individual persons or organisations (e.g. around funding culture and heritage), and to provide access to the broader range of skills that a governance board brings. Ministers are answerable to Parliament for overseeing and managing the Crown’s interests in, and relationships with, the Crown entities in their portfolios.

⁵ The levers hand-out is necessarily generic, as entities also have their own legislation, which may change how a particular lever is used or provide further specific levers. It is, however, a useful basis for a discussion with the monitoring department about your options.

⁶ Crown entities are subject to both their enabling legislation and the CEA. If there is a conflict between a Crown entity’s own enabling legislation and the

A list of Crown entities is maintained by the Te Kawa Mataaho Public Service Commission (the Commission) as part of [New Zealand’s Central Government Organisations](#). Lists of all Crown entities by Ministerial portfolio can be found in [Directory of Ministerial portfolios](#).

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

Categories of Crown entities

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

1. Statutory entities comprising:
 - Crown agents (e.g. ACC, District Health Boards)
 - autonomous Crown entities (ACEs, such as Te Papa)
 - independent Crown entities (ICEs, such as the Commerce Commission)
2. Crown entity companies (e.g. Crown Research Institutes, and other companies such as Radio New Zealand)
3. Crown entity subsidiaries
4. School boards of trustees
5. Tertiary Education Institutions.

In addition, sections of the CEA (Part 4 in particular) apply to companies listed on Schedule 4A of the Public Finance Act.

As mentioned above, this Guide focuses on statutory entities.

CEA, the CEA prevails unless the entity’s enabling legislation specifically provides otherwise. The Education and Training Act 2020 is the primary statute for the establishment, governance and operation of School Boards of Trustees and Tertiary Education Institutions. Crown agent boards, specifically, are also responsible for ensuring the entities they govern uphold public service principles.

Crown agents and the Public Service Act 2020

Crown agents, the type of Crown entity closest to ministers, are also included in the legal definition of the Public Service for the purposes of shared principles, values, spirit of service and standards of integrity and conduct in Part 1 (subparts two and four) of the Public Service Act 2020. This is because Crown agents deliver by far the greatest number of services to New Zealanders and are the ‘face of government’ to many New Zealanders and how people experience these important government services.

However, Crown agents retain their Crown entity status under the CEA 2004 and their establishment legislation. This means Crown agents also remain outside the core Crown which includes departments and ministers of the Crown.⁷

The Public Service Act sets out five public service principles:

- politically neutral
- merit-based appointments
- free and frank advice
- open government
- stewardship.

⁷ Section 2 of the Public Finance Act defines the ‘Crown’. The Crown or the Sovereign — means the Sovereign in right of New Zealand; and includes all ministers of the Crown and all departments; but does not include: an Office of Parliament; or a Crown entity; or a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986; or a Schedule 4 organisation; or a Schedule

Crown agent boards are responsible for ensuring the entities they govern uphold the public service principles when carrying out their functions. This is a collective duty of the board under the CEA that is owed to the responsible minister in accordance with s58 of the CEA.

Provisions of the State Sector Act 1988 that applied to all Crown entities generally were carried over to the Public Service Act 2020. A detailed information sheet on the Commission website clarifies these provisions and any provisions that apply generally to Crown entities or specifically Crown agents.⁸

4A company; or a mixed ownership model company; or an entity named or described in Schedule 6. It does not include the Reserve Bank, and the New Zealand Superannuation Fund. Core Crown excludes Crown entities and state-owned enterprises (including the mixed ownership model companies).

⁸ See [Statutory Crown entities and the Public Service Act 2020](#).

Ministerial control

The extent to which a minister has control over a statutory Crown entity varies by category. Your powers to direct on government policy vary depending on the type of statutory entity. There are some limits to your powers, for instance you cannot give directions to a Crown entity on a statutorily independent function and you cannot direct a Crown entity, board member, employee or office holder to provide a service to, or bring about a particular result, in respect of a particular person or persons. The table below summarises the differences in ministerial powers for the three types of statutory Crown entities:⁹

	Crown agent	Autonomous Crown entity	Independent Crown entity
Power to appoint board members	Minister	Minister	Governor-General, on recommendation of minister
Power to remove board members	Minister's discretion	Minister, for justifiable reason	Governor-General, for just cause, on advice of minister. Attorney-General consulted
Power to direct on government policy	Must "give effect to" policy that relates to the entity's functions and objectives if directed by minister	Must "have regard to" policy that relates to the entity's functions and objectives if directed by minister	No power to direct, unless specifically provided for in another Act ¹⁰
Power to set overall direction and annual expectations	Minister	Minister	Minister
Whole of Government approach	Must "give effect to" if directed by ministers of Finance and for the Public Service	Must "give effect to" if directed by ministers of Finance and for the Public Service	Must "give effect to" if directed by ministers of Finance and for the Public Service

⁹ The table is based on sections 103, 104, 105 and 107 of the CEA. This table expresses the most general state of affairs under the Act;

variations may be provided for expressly in a particular entity's Act. Sections 147 and 149J make provision for you to direct amendments to the entity's SOI and SPE.

¹⁰ Statutory Crown Entities: A Guide for Departments advises departments to ensure that ministers are advised not to act in any way that could imply a direction to an independent Crown entity.

You may want to direct¹¹ a Crown agent or Autonomous Crown Entity on government policy when:

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

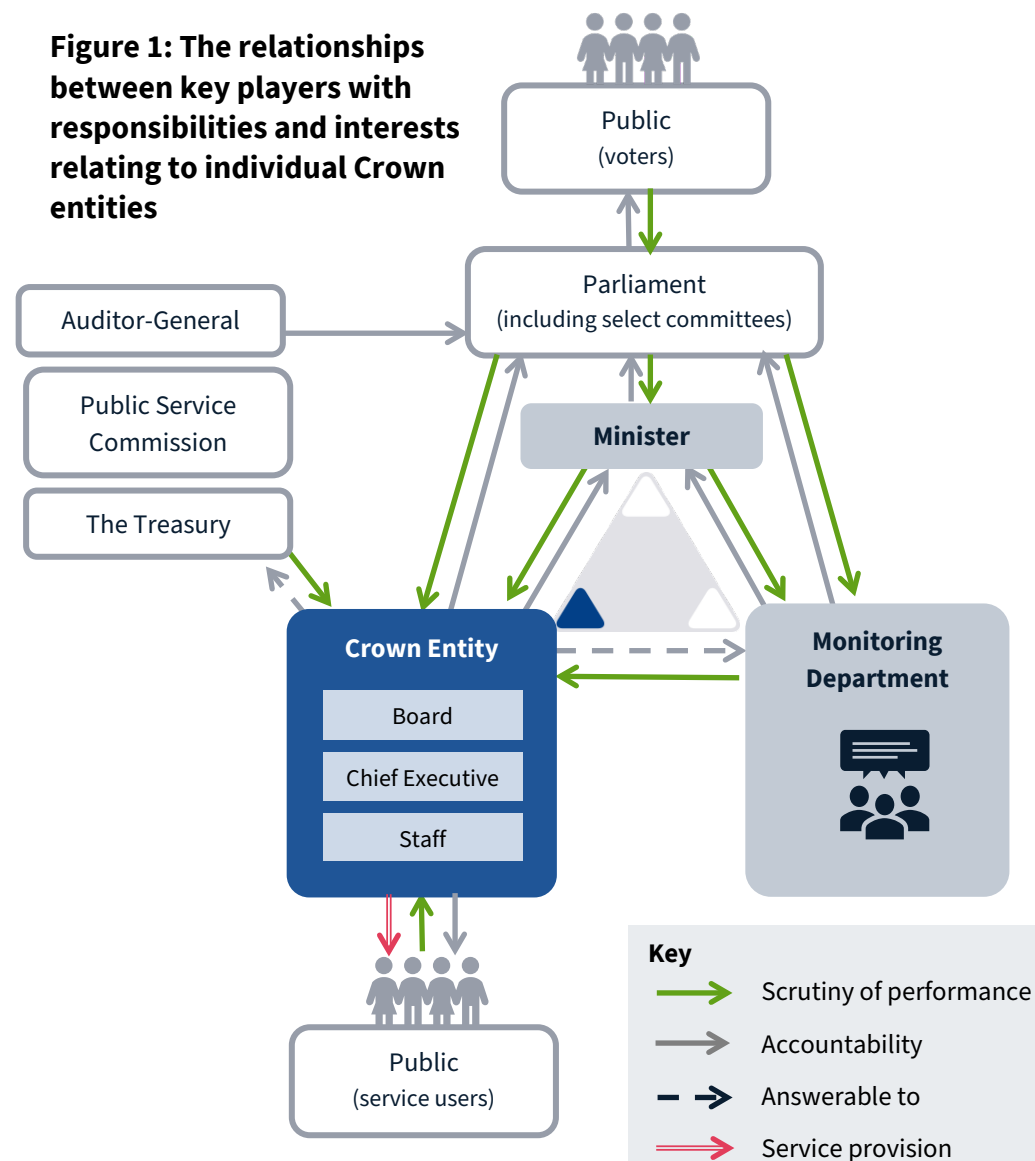
A policy direction must relate to the individual entity's functions and objectives. As discussed below, there are separate powers of direction available to the Minister for the Public Service and Minister of Finance, acting jointly, to issue directions to support a whole of government approach.

The Public Service Act 2020 enables a more adaptive, agile and collaborative Public Service and includes stronger recognition of the role of the Public Service in supporting the partnership between Māori and the Crown.

Who are the key players?

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

Figure 1: The relationships between key players with responsibilities and interests relating to individual Crown entities



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

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

¹¹ Directions may only be given after consultation with the Crown entity. The direction must also be published in the *New Zealand Gazette* and presented to

the House of Representatives. Directions must be reviewed by the minister or ministers, as set out in section 115A of the CEA.

Functions matter

While the legal form and category of a Crown entity determines your level of control over a statutory Crown entity, the critical issue for you to focus on are the nature of the entity's functions. You should ensure the board is clear that services and outcomes for New Zealanders paid for with public money is your and the government's priority, including the conduct and integrity of how they carry out their business.

You should encourage the board to reflect on the purpose, principles and values that apply to the public service and the general ethos of the Public Service Act and have a conversation about the principles.

Ministers oversee and manage the Crown's interests in the entities in their portfolios and remain answerable for their performance. As discussed below, ministers can direct a Crown entity of any type to change its Statement of Intent (SOI) and Statement of Performance Expectations (SPE).

Formal powers of direction are likely to be used infrequently. This is because ministers tend to prefer voluntary compliance with expectations and because other tools (including annual engagement with the board on an entity's strategic direction) work well in conveying ministers' expectations. The CEA does not authorise you to direct a Crown entity in relation to its statutorily independent functions [section 113].

Description of terms

Public:

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

Parliament:

Establishes, disestablishes, merges or changes functions of Crown entities through legislation; agrees much of the Crown funding through

the budget process; scrutinises entity performance (e.g. via Select Committee processes) – among other roles.

Office of the Auditor-General (OAG):

Statutory auditor of all public entities, including Crown entities. Scrutinises Crown entity accountability, reporting and performance information on behalf of Parliament. The Auditor-General will provide you with a letter summarising the entity's annual audit and, where applicable, issues to be addressed.

Responsible minister:

Oversees and manages the Crown's interest in the entity including setting expectations, and exercises statutory responsibilities and powers relating to the entity. Is answerable to Parliament for the performance of the entity (including by presenting entity strategic planning, and annual performance and reporting information). You may also issue directions and letters of expectation.

Board:

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

Monitoring department:

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

Minister of Finance and Minister for the Public Service:

Provide system-wide oversight of Crown entities' performance (through Finance and Public Service portfolios, and as part of Cabinet), e.g. the

Minister for the Public Service has information gathering powers and the Minister of Finance has powers in relation to accountability documentation and financial provisions for entities. These two ministers have a statutory power to jointly issue directions to Crown entities that support a whole of government approach. They also express the Government's expectations of Crown entities through the Enduring Letter of Expectations.

Te Kawa Mataaho Public Service Commission and the Treasury:

The Commission and the Treasury jointly administer the CEA. The Commission is responsible for Parts 1 (preliminary provisions), 2 (establishment and governance), 3 (operation), and 5 (miscellaneous), and the Treasury is responsible for Part 4 (reporting and financial obligations).

Under the Public Service Act, the Commission also provides advice to Crown entities on integrity and conduct, in addition to a range of other functions (see further information in chapter 1 on *Relationships, Roles and Responsibilities*).

What are your roles and responsibilities?

As the responsible minister, your role is to oversee and manage the Crown's interests in, and relationships with, their Crown entities, and to carry out any statutory responsibilities. To do this, you need to:

- make sure a qualified and effective board is in place, with an experienced and qualified chair to lead the entity through the appointment, reappointment and removal of board members
- participate in setting the strategic direction and annual expectations of Crown entities (which may include improving the alignment of multiple agencies in an area) and in some circumstances issuing directions and letters of expectation.

- agree to the levels of funding for reportable outputs
- review entity performance and results
- manage risks on behalf of the Crown
- answer to Parliament for the performance of the entity.

How can your monitoring department help you?

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

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

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

Contact for questions and feedback

The Public Service Commission and the Treasury will keep these guidelines under review. Questions or suggestions for revision and improvement are welcome. These can be sent to:

enquiries@publicservice.govt.nz.

1. Ngā hononga, me ngā tūranga, me ngā haepapa

Relationships, roles and responsibilities



Relationships

A constructive, professional and trusting relationship between the board of the Crown entity, the responsible minister, and the monitoring department is a major enabler of improved board and entity performance. This relationship needs to recognise the statutory roles and responsibilities of all three parties. A “no surprises” relationship is critical for the responsible minister and board chair to build trust and sustained good performance by the entity.¹² “No surprises”¹³ means that the Government expects a board to:

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

High quality trust-based relationships will enable greater transparency, clarify purpose and add value to the entity’s work.

¹² An Independent Crown Entity making quasi-judicial decisions can tell the minister when sensitive decisions are due, but may only tell the minister the actual result when the decision is made public or otherwise released.

¹³ The ‘No surprises’ convention can be found in the [Cabinet Manual](#) at 3.22.

Ministers

Key message

Your roles and responsibilities under the CEA (s. 27) are to:

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

Along with being answerable to the Parliament, you are also answerable to the public for problems or controversies arising in connection with the entity by responding to questions and participating in debates and reviews. You table in the Parliament each entity's Statement of Intent (SOI), annual Statement of Performance Expectations (SPE) and annual report, and appear before Select Committees where you may be asked to comment on the entity's activities.

The board of the entity should maintain open communication with you and your monitor. As the responsible minister, you have a strong interest in the board:

- clearly setting the direction and annual performance expectations for the Crown entity which should align with your priorities and wider government expectations
- managing any risks to the Crown
- collaborating where practicable with other public entities.

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

- You have the formal power to direct a Crown entity of any type to amend parts of the Statement of Intent and annual Statement of Performance Expectations (provided you're not acting outside their statutorily independent functions).
- You also have the power to review a Crown entity's operations and performance at any time. If contemplating such a review, you must consult the Crown entity and consider any submission it makes on the review. Crown entities must take all reasonable steps to cooperate with the review.
- You have the power to require Crown entities to supply a wide range of information which assists you to monitor their performance. You must exercise these powers in a way that recognises any statutorily independent functions.

To ensure the board is clear about your expectations and that you are fully informed about the board's perspective, engaging with the board chair with appropriate frequency is essential. Letters of expectation can reinforce your expectations of the board and entity.

To get the performance you require, there is a range of [key levers available to you](#). It's recommended that ministers seek advice from the monitor before using these levers.

Crown entity boards

Key message

The entity's board has the primary responsibility for the entity's performance – it's the primary monitor of performance.¹⁴ As the responsible minister, you should firmly place responsibility with the board for the delivery of ministerial and Government priorities, the setting and achievement of meaningful performance indicators, for the monitoring of entity performance, and for high quality performance reporting and raising significant risks with you.

The legal mechanisms of board accountability include:

- € the board members' collective and individual duties, including acting consistently with the entity's objectives, functions, SOI and SPE and collaborating with other public entities where practicable
- € obligations to follow ministerial policy directions (according to the category of entity and applicable legislation)
- € an obligation to report on performance to Parliament, and
- € an obligation to appear before a Select Committee if required. Board members who wish (or are invited) to make a submission to a Select Committee on a Bill are expected to discuss the matter with you before doing so.¹⁵

¹⁴ Crown entities are encouraged to undertake the Performance Improvement Framework (PIF) self-review to enhance performance. See [Performance Improvement Framework](#) for further information.

¹⁵ Further guidance is available at [Officials and Select Committees - Guidelines](#).

¹⁶ Refer CEA, [s.49](#)

Boards are accountable to you as their responsible minister and you should expect mutually constructive and professional engagement between you, the board and your monitoring department. The board has a collective duty to you as minister, and must act in a manner consistent with its objectives, functions, current statement of intent, and current statement of performance expectation.¹⁶

Crown entity chief executives

In most cases, a chief executive is appointed by the board and is tasked with running the Crown entity on a day-to-day basis (i.e. a management role).¹⁷ The chief executive manages the Crown entity, including exercising the powers and performance of entity functions as delegated on behalf of the board. Some entity chief executives have statutorily independent powers (e.g. in regulatory activity). The table below briefly outlines the process a board must follow when setting (or changing) a chief executive's terms and conditions of employment.

Entity type	Process for the board setting a chief executive's remuneration
Statutory Crown entities (excluding DHBs)	Crown entities that employ a chief executive must obtain written consent of the Public Service Commissioner before agreeing to any terms and conditions of employment for a chief executive. ¹⁸
District Health Boards (DHBs)	DHBs must obtain the written consent of the Public Service Commissioner on their chief executive's terms and conditions. ¹⁹

¹⁷ In most cases, corporations sole (a Crown entity with one office holder, e.g. the Privacy Commissioner) do not appoint a full time chief executive.

¹⁸ Refer CEA, [s. 117](#).

¹⁹ See [Clause 44 \(1\)](#), Schedule 3 of the New Zealand Public Health and Disability Act 2000.

Monitoring department

Key message

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

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

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

High performing monitoring departments maintain 'high trust' relationships with entities. They engage with entities as a 'friendly critic' (at times acting as an advisor or sector leader) without prejudicing their primary role as the agent of and advisor to the minister, or undermining

²⁰ For a fuller description of the whole of government power of direction and the process for its use, see Cabinet Office [Circular \(13\) 04](#) – Crown Entities Act 2004: [Section 107](#) Directions to Support a Whole of Government Approach (12/08/2013)

the board's direct lines of accountability to the minister. Striking the right balance is not easy.

The roles of the Minister of Finance and Minister for the Public Service

The Minister of Finance and the Minister for the Public Service have both ownership and purchase interests in the overall capability and performance of the Public Service. The Crown owns the entity because it has a purchase/public policy interest. The Minister of Finance and Minister for the Public Service may jointly issue a direction requiring all or some Crown entities to support a whole of government approach. To invoke this power, the direction must support a 'whole of government approach' and must directly or indirectly improve public services.²⁰ The process for such a direction includes a statutory requirement to consult with those entities to which the direction is proposed to apply 'to the extent that ministers consider necessary in the circumstances'.²¹

An enduring letter of expectations sets out the ongoing expectations that the Minister of Finance and the Minister for the Public Service have of all statutory Crown entities. It remains 'in force' until it is replaced. The current enduring letter of expectations includes the need for entities and ministers to have a "no surprises" approach to their relationship. This will ensure that responsible ministers are informed at the earliest possible stage of any matters concerning the entity that may be controversial.²²

The role of the Minister for the Public Service

You should consult the Minister for the Public Service (who has overall portfolio responsibility for the Public Service) on any proposals that

²¹ Refer CEA, s. 108.

²² The letter can be found at [Enduring Letter of Expectations - to Statutory Crown Entities](#).

The role of the Minister for the Public Service

You should consult the Minister for the Public Service (who has overall portfolio responsibility for the Public Service) on any proposals that could result in the establishment of a new organisation that might be a Crown entity, or that could involve the disestablishment or amalgamation of an existing Crown entity. This ensures that any machinery of government implications are considered. See [Machinery of Government – Guidance on the process](#).

As noted above, the Minister for the Public Service has a portfolio overview of overall Crown entity system capability and performance. The Minister for the Public Service may request information from groups of no fewer than three entities for this purpose. In addition, the Public Service Act enables the Minister for the Public Service to approve Government Workforce Policy Statements (GWPS) for the purpose of fostering a consistent, efficient, and effective approach to workforce matters across the public sector. Affected Crown agents must give effect, and ACEs must have regard, to a GWPS. ICEs also need to have regard if a GWPS says it applies to them.²³

The role of the Minister of Finance

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

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

- € some powers to require information

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

You would be involved in any discussion related to the areas above prior to the Minister of Finance employing any of these powers.

The roles of the Public Service Commission and the Treasury

The Commission and the Treasury have statutory roles in respect to Crown entities and jointly administer the CEA. Together with the Department of the Prime Minister and Cabinet they provide guidance material to assist ministers, boards, Crown entity staff and monitoring departments. For more information see [Crown entities guidance](#).

The Public Service Commission

The Commission administers Parts 1 (preliminary provisions), 2 (establishment and governance of Crown entities), 3 (operation of Crown entities), and 5 (miscellaneous provisions) and the Schedules to the CEA.

²³ See [Government’s expectations for employment relations in the public sector](#).

relation to the Minister’s portfolio interests in Crown entities, principally with regard to overall Crown entity system capability and performance.

The Public Service Act 2020

The Public Service Act 2020 provides a modern legislative framework that enables a more adaptive, agile and collaborative public service and includes stronger recognition of the public services role in supporting the partnership between Māori and the Crown.

The new legislation signals a shift in focus, placing a clear emphasis on the benefit to New Zealand’s individuals, organisations and communities as the key focus and motivation for all public service agencies and activities.

Under the legislation, Boards of Crown agents are responsible for ensuring the entities they govern uphold the public service principles.

Under the new Act, the Public Service Commissioner has several responsibilities in relation to Crown entities. The Commissioner’s overall role is to act as the Head of Service by providing leadership of the public service, including of its agencies and workforce and by oversight of the performance and integrity of the system. For this purpose, the Commissioner has a range of functions pitched at the system level, including to review the system of government agencies in order to advise on possible improvements to “delivery of services and inter-agency cohesion” (s.44). The Commissioner also reviews governance and structures across all areas of government, including advice on potential structural change and the allocation and transfer of functions (s. 44(e)). The Commissioner sets standards of integrity and conduct and issues a code of conduct with which Crown entity employees must comply (s.17). Government Workforce Policy Statements (GWPS) are prepared by the

Commissioner, who must consult with affected agencies as part of the process (s.96). Within the GWPS, the Commissioner has the power to require Crown entities to supply information relating to the Commissioner’s functions in respect of the entities, to specify how information is to be collected, classified and reported to the Commissioner (s.96).

The Commissioner must act on a range of matters affecting Crown entities if directed by the Prime Minister or a minister responsible for an agency outside the public service. The Commissioner may also act on a range of matters, if asked by the head of any part of the Public Service.²⁴

Crown agents are now part of the Public Service for some purposes, specifically subparts 2 and 4 of Part 1 of the Public Service Act 2020.

This is because Crown agents deliver by far the greatest number of services to New Zealanders and are the ‘face of government’ to citizens and how people experience these important government services. Crown agents are now covered by the same purpose, principles and values as public service departments and other public service agencies. Boards of Crown agents are responsible for ensuring that the entities they govern uphold the public service principles.

Importantly, under the Public Service Act, the relationship between the Crown agent and the minister remains unchanged. Crown agent duties in relation to the principles and spirit of service are collective duties under the CEA.

The two other categories of statutory Crown entities – autonomous and independent Crown entities – remain outside the public service but are part of the broader public sector.²⁵

government (executive, judicial or legislative) as well as local government. Appendix 1 shows how Crown entities relate to the Public Service and wider public sector.

²⁴ Refer Public Service Act 2020 Schedule 3 Clause 5.

²⁵ The term public sector refers to the Public Service and all other government agencies, including those which support all three branches of central

The Treasury

The Treasury provides advice on:

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

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

The Treasury administers:

- Part 4 of the CEA, which relates to Crown entity reporting (including SOIs, SPEs and annual reports) and Crown entities' financial obligations²⁶
- the Crown Entities (Financial Powers) Regulations 2005, and
- the Public Finance Act 1989 which contains some provisions relating to Crown entities (e.g. powers to obtain financial information from entities) and Minister of Finance instructions on matters such as financial reporting standards.²⁷



²⁶ See [Guidance and information on Crown entities' financial powers](#).

²⁷ Departmental chief executives are responsible for the reporting on the use of non-departmental appropriations ([Section 35](#) of the Public Finance Act) but not the outputs, capability or financial performance of Crown entities.

2. Te kopou me te tuarā i tētahi poari hurikiko

Appointing and maintaining an effective board



Key message

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

Board appointments are your most important way to influence the performance and strategic direction of a Crown entity. Every board vacancy creates an opportunity for you to reassess the competencies, background, experience and diversity required to best complement the talents of the other board members.

A transparent recruitment and appointment process and well supported decisions on possible reappointments are critical to ensuring effective members are appointed to boards. You should seek input from the current board chair and your monitor to assess the board’s needs.

As the first monitor of performance, an effective board will provide good governance of the entity, engage with the minister on strategic direction and performance issues and risk, work cooperatively with the monitoring department, and take opportunities to work with others to improve public services.

An effective board will:

- have a chair whose leadership qualities include the valuing of diverse perspectives and inclusive decision-making
- have members with the competencies (e.g. leadership and professional and sector-specific skills) needed to successfully achieve the entity's purpose and functions
- have members whose governance behaviours will likely enhance inclusive decision-making
- have a well-tuned understanding of risk
- help the entity articulate and achieve its strategic direction and targets
- understand the environment within which it performs its duties and ensure meaningful and regular engagement with the sector it serves
- recognise the importance of collaborating effectively with related departments, and the relevant public agencies, and
- select, mentor, and hold to account an appropriately skilled chief executive.

As well as bringing high quality governance skills to the board, the board chair must be committed to drawing out diverse perspectives from members and be committed to inclusive decision-making. You should also expect the board chair to:

- lead regular (usually annual) self-evaluation of the board's performance
- establish training and development opportunities for the board and its members commensurate with the self-evaluation
- commission occasional independent evaluation of the board's performance.

²⁸ See [Board Appointment and Induction Guidelines](#).

Alongside the information contained in this section, further detail on the processes for board appointments and induction is contained in the Commission's [Board Appointment and Induction Guidelines](#) (BAIG).²⁸ The BAIG also contains additional information on the management and disclosure of conflicts of interest, board member induction, and the process to follow for appointment/reappointment.

Board appointment roles

As the responsible minister, you are responsible for board appointments either directly or through recommendations to the Governor-General (see the table below). Under section 29 of the CEA, you may only appoint or recommend those who you believe have the appropriate knowledge, skills, and experience to assist the entity achieve its objectives and perform its functions. You must also take into account the desirability of promoting diversity in board membership²⁹ and you may look for opportunities for cross-board appointments to support cross-agency working. Your good judgement is needed to ensure the board gets the skills and attributes it needs.

Section 30 of the CEA sets out who is not eligible for appointment to Crown entity boards. An entity's own legislation may also include circumstances that make a person ineligible for consideration.

Diversity of board membership

Diversity of membership means ensuring the mix of skills, knowledge, and experience includes factors such as cultural capability and insight, gender diversity and diversity of thought. Your monitoring department should ensure that these attributes are appropriately considered in role descriptions. These attributes exist alongside governance capabilities

²⁹ Refer CEA, [s. 29\(2\)\(b\)](#).

ordinarily required and while sometimes overlooked, they are critical to ensure the system is being responsive to the needs of all New Zealanders.

The Commission has been working to eliminate the gender pay gap and provide advice on recruitment strategies and processes to ensure they are free from bias. [The Implementing the Gender Pay Principles and removing gender bias in recruitment processes](#) includes a suggested framework for developing the goals, strategy and actions that underpin a bias-free recruitment process. Many of these principles are also helpful for the board appointments process.

Key message

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

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

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

Disclosures can also occur after appointment if a board member becomes aware of and discloses an interest, or when the board itself discloses an actual or perceived interest. A board member failing to disclose a known interest is likely to breach the duties to act in good faith, to act honestly, and with care, diligence and skill. Such a breach of duty is a basis for removing a member.³⁰

³⁰ It's good practice at the start of each board meeting for members to declare any potential conflicts of interest and for such declaration to be recorded in the

Your role in appointing or recommending appointments involves:

- retaining ultimate responsibility for each appointment, while in practice the processes are usually delegated to a monitoring department
- taking account of provisions in the CEA, the entity's establishing legislation and/or other instruments such as Cabinet Office Guide³¹ and relevant Circulars
- consulting the Prime Minister before 'significant appointments' are submitted to Cabinet
- discussing all but the most minor proposed appointments with the Cabinet Appointments and Honours Committee (APH) meeting legislative and Cabinet requirements, and
- setting fees for Crown agent and Autonomous Crown entity board members, in accordance with the Cabinet Fees Framework, and expecting that the appointee receives a proper induction from the monitoring department and entity to which members have been appointed, particularly in the case of chairs.

minutes. Conflicts that arise during the meeting should be declared and minuted along with the course of action taken

³¹ Refer to [The appointments process](#).

Significant and minor appointments

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

In general, 'minor' appointments will be at the lower levels (4 and 5) of category 4 in the [Cabinet Fees Framework](#). However, your monitoring department will advise you on whether the appointment should be considered 'minor'. Again, this is a matter of judgment for you.

Key message

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

Crown agent	Autonomous Crown entity	Independent Crown entity
Minister appoints, for up to three years	Minister appoints, for up to three years	Governor-General appoints, on the recommendation of the responsible minister, for up to five years

In most cases, there is no formal limit on the number of terms for which a member can hold office. You must, however, strike a balance derived from continuity, the value of new perspectives and avoiding the loss of experience over a short period of time³²

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

You may wish to schedule periodic briefings with your monitoring department to discuss upcoming appointments. This could include discussing the objectives and functions of the entity concerned, current board membership, fees and allowances, which members' terms are expiring, eligibility for reappointment, suggestions for revised skill sets and/or succession planning for board chairs. It's important to plan ahead and minimise the use of the provisions in the CEA [s.32(3)] that permit 'rolling over' the terms of existing board members.

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

- the forward programme of board members who are coming to the end of their term
- the competencies, attributes, and diversity of background, experience and thought likely to enhance the board's performance
- an appropriate process to be followed in the circumstances including transparent recruitment
- how best to locate candidates (with help from nominating agencies, e.g. Te Puni Kōkiri, Office for Disability Issues, the Ministry for Pacific Peoples, Ministry for Ethnic Communities and Ministry for Women)³²
- risks and issues arising throughout the process
- keeping you fully informed at critical points
- advice on succession planning
- advising you of the legal requirements and expectations of Cabinet

³² If requested, the Treasury may be able to search its database of prospective board members for other departments and agencies.

- providing advice on board member remuneration³³
- undertaking candidate shortlisting, assessment and probity checks as required (e.g. assess applications, undertake interviews, assess potential conflicts of interest, and CV/qualification checks); and
- arranging for publication of the appointment in the *New Zealand Gazette*, and ensuring appointees receive a proper induction.

You can expect the monitoring department to provide you with an assessment of the board's competencies, member attributes, and diversity of background, experience and thought likely to enhance the board's performance.

You can expect board chairs to:

- ensure an annual self-review of board performance is undertaken
- commission an occasional independent review of board performance
- provide insights into the skill sets the board requires, and
- be involved in the recruitment process, where appropriate.

Background checking

Board members are accountable for an entity's strategy and organisational performance. Their reputation is often on public display and, through their appointment, are directly linked to the appointing minister.

Due diligence background checks (background checks) represent an investment in good appointment outcomes. They provide an opportunity to build a clearer picture of the candidate that informs the shortlisting process and final appointment process. Background checks also aim to ensure the integrity of appointments to public sector boards. They help

ensure the suitability of appointment and to maintain high standards of integrity and honesty.

Comprehensive background checks on potential board appointees take time and effort but are essential for all preferred candidates who have not been previously vetted and may be needed for a reappointment. Checks may also be necessary to assist in the development of a shortlist and/or identifying a preferred candidate.

Timely completion of appointments is important and planning an appointments process should commence early enough to build in robust background checks. Timing pressures such as a minister's need to appoint by a set date or at short notice can make completion of appropriate vetting difficult. When exceptional circumstances preclude a full and timely process, the department should document its approach including reasons for the expedited process.

Induction

New board members should be given an introductory briefing on the Crown entity environment and the expectations that you have for them. The monitoring department and board chair should ensure that a new appointee receives a proper induction with an especial focus on your expectations and the Crown's ownership and purchase interests.

Succession planning

Board members are usually appointed for three-year terms and up to five years for Independent Crown Entities. Long-term stability of the board will contribute to strong governance. Terms of appointment are best staggered, so an appointment round minimises disruption of the board's governance programme while, at the same time, giving you an opportunity to strengthen the board profile. For example, achieving gender balance, diversity and geographical spread will need to be

³³ In consultation with the Commission, as necessary.

matched by the competencies, background, experience and diversity of membership required by the board.

Discussions with the board chair and your monitoring department are an essential part of succession planning. Getting the ideal mix of competencies, diversity and attributes may take time and possibly beyond one term of government.

To ensure the board is taking some responsibility for growing its capability, you should expect the chair to drive a training and development programme for the board, facilitate internships and work closely with the monitor.

Board members may resign their position at any time, by written notice to the responsible minister.

Appointments in the pre-election or post-election period

Appointing members whose terms would conclude immediately before or after a general election should be avoided wherever possible. It has been the practice for successive governments to exercise restraint in making significant appointments in the pre-election period – appointments not considered to be significant proceed in the usual way.³⁴ The Cabinet Office will issue guidance on appointments that may arise during the three months before each general election and in the immediate post-election period.

Nomination for boards in another minister's portfolio

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

³⁴ Whether or not a particular appointment is 'significant' is a matter of judgment as discussed above.

Reappointment of board members

Key message

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

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

Before a board member's term of office expires, you should seek advice from the chair on the member's performance and assess the suitability of that person for reappointment. This discussion should include results of the board's annual performance appraisals to inform reappointment decisions.

Appointees should not be given an expectation that they will be offered a subsequent term. In most cases, there is no formal limit on the number of terms for which a member may hold office. However, there is a balance between the benefits derived from continuity of service on a board, the value of the board gaining new ideas and perspectives, and the need to avoid losing a number of experienced members over a short space of

time. The board's goals, relevant government policy and/or a member's performance may have changed since the board member's term began.

If a reappointment is being recommended, you do not need to follow the full appointment process, but you need to be able to assure your Cabinet colleagues that reappointment is the most appropriate option and that potential interests and conflicts have been reassessed.³⁵

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

Confirming and announcing appointments

Once you have selected the candidate you consider best meets the full range of requirements as an effective board member and undertaken relevant consultation, you should submit the appointment to the Cabinet Appointments and Honours Committee (APH).³⁶ You should expect your monitoring department to provide you with APH papers that meet the requirements set out in the [CabGuide](#).

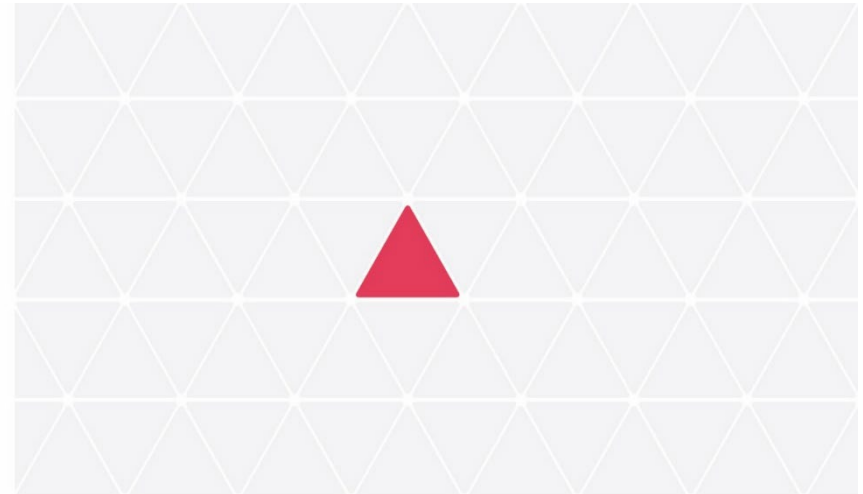
Once the intention to make or recommend an appointment has been confirmed by APH and Cabinet, you should follow all current protocols. For example, before taking a paper to APH, you should consult with government caucuses and in some cases coalition partners and support

³⁵ Should reappointment be recommended, a submission to the Cabinet Appointments and Honours Committee (APH) should clearly state the process that has been followed and the reasons proposed for reappointment.

parties. While not formally required, consultation with opposition parties may be desirable on occasion.

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

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



³⁶ Refer www.cabguide.cabinetoffice.govt.nz/procedures/appointments.

Post-appointment induction and training

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

Induction should be done in conjunction with the monitoring department (which can provide the wider public sector perspective) and by the board chair (who provides the detail for that entity).

A comprehensive set of guidelines and induction modules for board members is available at [Crown entity induction material](#). The Commission and the Treasury are also available to assist with board members' inductions.

Acknowledging a board member's service

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

Removal from office

Key message

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

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

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

Legislation may impose different thresholds before removal can be considered (e.g. Schedule 3 Clauses 8(1) and (9) of the New Zealand Public Health and Disability Act 2000 relating to elected members of DHBs).³⁷ Depending on the relevant legislative powers, the threshold before such an action can be taken may be very high. Where ministers have full discretion to remove board members, there are several possible circumstances in which you might do so. You may lose confidence that a board member is contributing to the implementation of government policy or you may become aware that they do not have the appropriate knowledge, skills, and experience for the role. They may have undisclosed interests or other attributes that call into question their integrity or good directorship. Such awareness may come about through discussions with the board chair concerning board performance.

³⁷ Refer New Zealand Public Health and Disability Act 2000 [Schedule 3 clause 8\(1\)](#) and [clause 9](#).

The table below sets out your powers of removal for each type of statutory Crown entity, and the notification of removal you need to provide:

	Crown agent	Autonomous Crown entity	Independent Crown entity
Power to remove appointed board members	At minister’s discretion	Minister, for “justifiable reason” in minister’s opinion	Governor-General, for “just cause”, on minister’s advice after consultation with the Attorney-General ³⁸
Power to remove elected board members	By minister, for “just cause”	By minister, for “just cause”	Not applicable
Notification of removal to appointed members	Written notice stating the date of the removal (with a copy sent to the entity)	Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)	Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)
Notification of removal to elected members	Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)	Written notice stating the date of the removal and the reasons for the removal (with a copy sent to the entity)	Not applicable

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

Removal of a chair or deputy chair

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

Removal of the whole board

The CEA contains a power to remove the entire board of a statutory entity if the members have breached their collective duties.³⁹ The exercise of powers of removal must comply with the principles of natural justice, as noted above.

³⁸ “Just cause” is defined in s. 40 of the CEA, e.g. misconduct, breach of board member duties. It is a demanding and objective requirement and case law should be studied if such a step is mooted.

³⁹ The Minister of Health has the power to replace an entire board with a commissioner – refer s. 31 of the New Zealand Public Health and Disability Act 2000.

Fees for board members

Key messages

Fees for the board members of Crown agents and Autonomous Crown entities are set under the Cabinet Fees Framework (the Framework) which is approved by Cabinet. Remuneration for Independent Crown entities is set by the Remuneration Authority as discussed below.⁴⁰ As the responsible minister, you use the Framework to determine the fees for members of your board(s). Since the Framework covers a varied array of bodies, it's not intended to be prescriptive, and judgement will be required to determine best fit. The Commission administers the Framework and provides advice and guidance on its application.

A conservative approach to fees is expected. There is provision for an 'exceptional' fees process to be followed where it's necessary to pay fees outside the parameters of the Framework or above your delegated authority. This requires prior consultation with the Commission at an early stage, usually via the monitoring department. If you decide to proceed with a proposal for an exceptional fee, you must consult with the minister for the Public Service and it's likely the fee proposal will need to be referred to APH and Cabinet for consideration.

You have delegated authority for moderate fee increases (up to 5% no more than once p.a.) within the Framework fee ranges. Any proposed fee increase above the fee ranges for chairs or members requires consultation with the Minister for the Public Service in accordance with the guidance under the Framework.

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

⁴⁰ The Framework has a much wider use than for Crown entities and should be used for setting fees for statutory or other bodies and committees in which the Crown has an interest; in particular, for bodies with responsible ministers that are outside the Remuneration Authority's or other fee setting bodies' jurisdiction. This includes Tertiary Education Institutions, some subsidiary bodies, trust boards,

Crown agents and Autonomous Crown entities, excluding corporations sole

When setting fees for members of Crown agents and ACEs, you must use the Framework unless the entity is a corporation sole. The Framework is reviewed periodically – users should check they are using the latest version by visiting the [Fees Framework webpage](#).

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

Exceptions

During a member's term, any proposed increase in their fees must be referred to you as the responsible minister, and to the Minister for the Public Service for consideration as an exceptional fee. The Framework provides for both parties to decide on the case or for

statutory tribunals and authorities, advisory bodies, committees set up to advise ministers and departments, and ministerial inquiries and taskforces.

it to be referred to APH, depending on the circumstances. In all such cases, the Commission should be consulted at an early stage.

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

An exceptional fee agreed for one board member does not apply to subsequent appointments. However, where unusual circumstances apply, for example where there are complexities and functions associated with membership, it may be appropriate to pay fees outside the Framework range to members of that body. In these cases, a standing exception may be agreed. A standing exception is where APH has agreed that those exceptional fees can be paid to all new appointments and re-appointments to that body without the need to refer to Cabinet for further approval.

The Commission will advise on whether the circumstances are likely to meet the threshold for approval as a standing exception.

For advice on the interpretation and application of the Framework, please contact the Commission email fees@publicservice.govt.nz.

Subsequent review of fees

The fees for members of Crown agents and ACEs should be reviewed at regular intervals (for example, when the Framework itself is reviewed or when appointments or reappointments are being made). Fees should not necessarily increase as a result of any review. If there are demonstrable

difficulties in recruitment and retention, or if the member's duties have increased markedly, this may act as a trigger to review fees.

Independent Crown entities and corporations sole

Setting and reviewing remuneration for an Independent Crown entity (ICE) or a corporation sole is the responsibility of the Remuneration Authority, under the Remuneration Authority Act 1977.⁴¹ As the responsible minister, you are not directly involved in the process.

Independent Crown entities and corporations sole

Generally, the remuneration rate payable to any ICE board member or a corporation sole is reviewed at the time of their appointment. When a new entity is established or a 'unique position' is being filled, the Authority provides to the monitoring department an indicative rate for the position. On appointment, the Authority issues a determination, containing the remuneration rate payable, to the appointee or entity concerned as required under the Act.

The Authority reviews the remuneration rates for ICE members or a corporation sole each year. The Authority can be contacted at: info@remauthority.govt.nz.

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

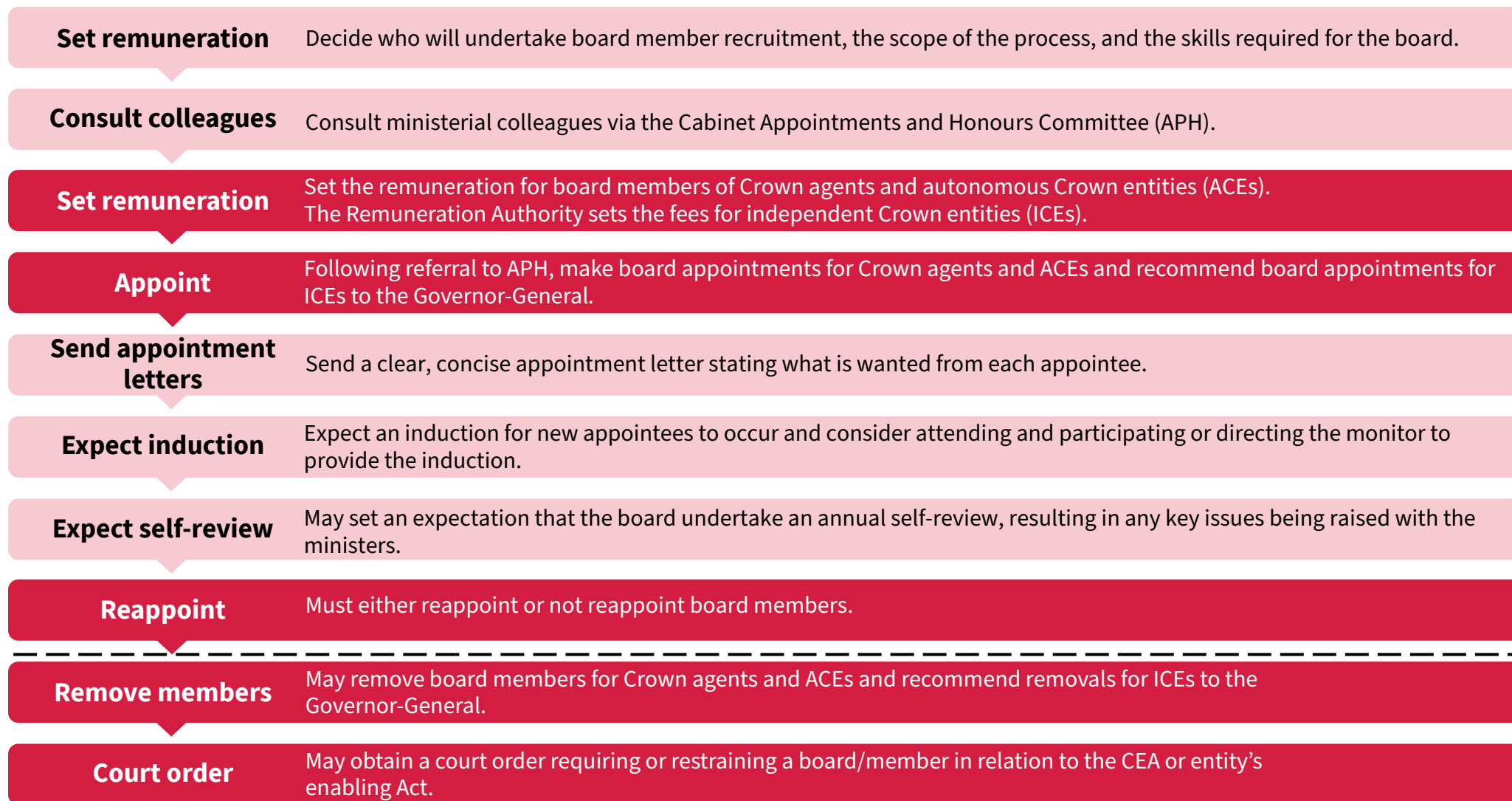
If the board of a Crown entity (including an ICE) establishes a sub-committee or a subsidiary, the board acts as the fee setting authority. In these circumstances the board must follow the provisions in the Framework.

⁴¹ For further information see [Cabinet Office Circular CO \(11\) 07](#).

Summary of levers for appointing and maintaining an effective board

A summary of the responsible minister's levers for appointing and maintaining an effective board is provided below.

Figure 2: The responsible minister's levers for appointing and maintaining an effective board



Good practice convention

Lever in legislation

3. Te whāi wāhi atu ki te whakatakoto i ngā kawatau me te ara whakamua mō ngā hinonga

Participating in setting the expectations and direction for entities



Regular engagement with boards

Key messages:

Setting strategic direction and annual expectations

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

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

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

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

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

You must also consider whether the proposed strategic direction needs:

- any change to the statutory and policy framework under which the Crown entity operates
- a new SOI
- regular reporting to ensure you receive the performance information you require
- a review of the entity's performance and operation
- either a ministerial direction or a direction to support a whole of government approach (if applicable to three or more entities).

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

⁴² In certain limited circumstances (e.g. establishment or disestablishment of an entity) you may grant an extension of time or waive the requirement for an SOI.

Statement of Intent

Key messages:

Purpose of the SOI

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

You can participate in setting an entity's medium-term direction through the entity's annual strategic planning process. Together with the monitoring department, you need to engage with an entity before it starts its annual review. The annual review can result in the SOI being re-confirmed as fit for purpose, amended or replaced.

You have the opportunity to review and provide comment on a draft SOI and, in the case of a newly established entity, to direct that changes occur before it's finalised. The SOI for a Crown entity is prepared by the entity and signed off by the entity's board.⁴² You can direct amendments to a final SOI, excluding the entity's explanation of how it intends to manage its organisational health and capability.

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

- whether the entity has met the legislative requirements for the SOI?
- is the strategy sustainable?

- how well is the entity strategy articulated and is it responding to your priorities?
- whether the entity's strategic planning helps advance stewardship and the long-term public interest including services to New Zealanders and outcomes for New Zealand?
- an analysis of the relationships with stakeholders and how the entity will work with other agencies
- review of financial risks to the Crown
- the effectiveness of the strategic review process, and
- which areas the monitor intends to focus on in the coming year.



Statement of Performance Expectations

Key messages:

Purpose of the SPE

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

When you participate in the annual strategic planning process you can also set annual performance expectations which are to be reflected in the SPE. Your monitoring department⁴³ should advise you on whether an entity's SPE adequately covers matters such as:

- its fit with the agreed strategy
- how well is the entity delivering on its core functions
- its consistency with government policy and any directions (to the extent applicable to the entity concerned)
- whether the level of funding (from appropriations, levies etc) should be adjusted
- what is intended to be achieved with the expenditure
- how performance will be assessed

⁴³ The Treasury has a suite of guidance to help departments and entities with planning and reporting. See [Performance Expectations - 'What Is Intended to Be Achieved'](#).

- whether the SPE would be useful as a standalone document or presented with other accountability documents, and
- whether the performance information tells a meaningful performance story.

You have the right to review and provide comment on the draft SPE and, if the final SPE is not adequate, you may direct the Crown entity to make changes.⁴⁴ Although an SPE must be tabled each year, there may be no need to completely rewrite it. Minimal changes may be made, with your agreement, if there is no substantial shift in the entity’s activities from the previous year.

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

Publishing and presenting SPEs and SOIs

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

Presenting to the House – The responsible minister has an obligation to present the SOI and SPE to the House. There are various options for when and how they are presented to Parliament and which minister presents them. For example, the SOI and SPE could be presented as separate

⁴⁴ Direction may be given on issues of scope (of an SOI), statements of forecast service performance, performance measures and other issues. However the CEA prevents from ministers giving directions on the forecast financial statements or that affect statutorily independent functions. Ministers should seek legal advice before a direction is issued.

documents, combined documents, with the annual report, or within a sectoral report. Presenting the documents together has the advantage of providing the Parliament with a backwards and forwards-looking story. Your monitoring department can advise you on this.

Ensuring financially responsible management

Crown entities are required to ‘operate in a financially responsible manner’.⁴⁵ They must:

- manage their assets and liabilities prudently
- endeavour to ensure their long-term viability
- endeavour to ensure it acts as a successful going concern.⁴⁶

This requires that:

- the board maintain oversight of the entity and its cost drivers, and re-prioritise activities to make the most of the expenditure available without going into deficit
- any application to adjust statutory fees or levies is made early enough to be completed in time for the adjustment to apply from the intended date
- any requests for additional operating funding or a capital injection from the Crown are fully specified, clear about trade-offs, and submitted as per the Budget timetable.

⁴⁵ Section 51 of the CEA applies the requirement for financial responsibility to statutory entities.

⁴⁶ A ‘going concern’ is a business or entity that continues to exist long enough to carry out its objectives and commitments without the threat of liquidation for the foreseeable future.

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

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

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

⁴⁷ For example, DHB results are reported regularly (monthly or six-weekly) through public meetings of their board. This information (operational and financial results) is publicly available through this forum and via the DHBs' websites.

Transparency of reporting

You should encourage the board to publish performance information on its website. The publication of performance information enables greater transparency and supports performance improvement through public monitoring of the entity's performance.⁴⁷

Crown entities, like their private sector counterparts, are only expected to report at the consolidated group level rather than separately disclosing information about the parent and its subsidiaries. The minister of Finance, however, has the power⁴⁸ to require additional reporting from any member of the group (i.e. the parent or the subsidiary) where it's necessary or desirable to enhance public accountability of the individual member of the group.⁴⁹

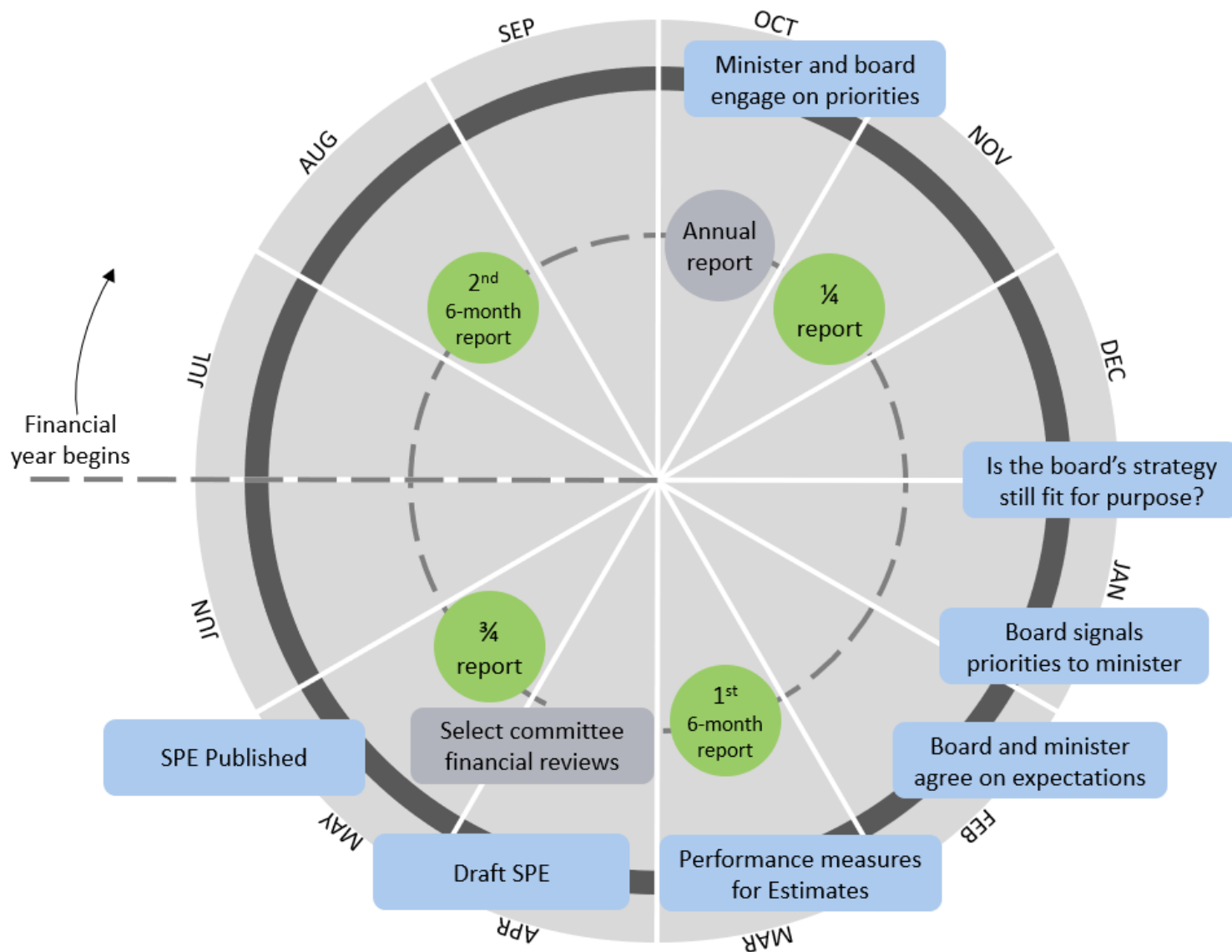
Typical planning, implementation, monitoring and reporting cycle

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

⁴⁸ Refer CEA s.133.

⁴⁹ Particular rules apply to multi-parent subsidiaries. If applicable see: Preparing the Annual Report and End-of-Year Performance Information on Appropriations: Guidance for Crown Entities for more details.

Figure 3: Planning, implementation, monitoring and reporting cycle



Reports key

- Reports to Parliament
- Reports to minister

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

- Meaningful ongoing engagement between the minister and board is essential
- Generally, the minister's priorities should be communicated towards the end of the calendar year

- An SOI must relate to at least the next four financial years [section 139(2)]
- An SOI must be provided at least once every three years [section 139(3)]
- The minister may require a new SOI at any time [section 139A]
- SOI published once finalised
- For further possibilities see [CEA: Statement of Intent Guidance](#).

Summary of levers for setting strategic direction

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

Figure 4: The responsible minister's levers for setting strategic direction

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

4. Ka pēhea tā tō tari aroturuki āwhina i a koe?

How can your monitoring department assist you?



Roles and responsibilities – the monitor

Key messages

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

The CEA recognises the tripartite relationship between the minister, the board and the monitoring department by explicitly including the role of the monitor. As with the board, it's important that you build an effective and high trust relationship with your monitoring department and advise it of your requirements.⁵⁰

You should expect your monitoring department to:

- provide advice and support during the appointment and induction process for board members
- provide advice and support on your participation in setting a Crown entity's proposed strategic direction and annual plan (SOI and SPE)
- advise you whether the Crown entity's strategic direction complements Government and sector goals
- make sure the Crown entity has identified the intended results of its work programme and how it is beneficial for New Zealanders
- monitor performance against the entity's SPE and the SOI
- provide advice on the Crown entity's capability (e.g. by giving advice on major business cases)

⁵⁰ The Treasury has the role of monitoring the Government's investment in companies and entities owned by the Crown, and can provide advice and good

practice guidance to other monitors. See: [Company and entity performance advice](#).

- provide advice on the merit of requests by entities for additional funding
- monitor financial and other risks, and keep you informed of those risks
- keep the Crown entity informed of relevant timetables, guidance and information
- improve coordination of Crown entities within your ministerial portfolio
- provide advice on how sector wide information can be reported, and
- facilitate the entity's collaboration with other agencies in the public sector.

You can set clear expectations for monitoring and should consider periodically sending a letter of expectations to the chief executive of the monitoring department which serves to confirm your expected monitoring arrangements.⁵¹ These expectations may include priority areas of focus for the monitoring department in order to provide advice that adds significant value to you and the entity (e.g. in strategic direction setting and risk analysis). You should emphasise that the staff concerned need to have the credibility and capability to establish high trust working relationships with board chairs and provide high quality independent advice and judgements to the minister. As the responsible minister, you need to be engaged with your monitoring department in order to set expectations and make it clear what you want.

⁵¹ Aligning this letter with expectations sent to Crown entity chairs will give the monitor time to adjust to any new requirements. Letters of expectations canvass the minister's expectations for a Crown entity's strategic direction,

What support can you expect from monitoring departments?

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

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

governance and performance, and the minister's specific priorities for the planning period. Letters of expectations are likely to be sent annually before the board starts preparing its SOI and/or SPE.

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

You need to be able to rely on Crown entities responding to information requests in a timely manner, whether they are made direct from your office or via the monitoring department. You should convey your expectation to entities that they will be responsive to information requests in order to enable effective monitoring. You may wish to formalise the monitoring department's authority to request information by explicitly delegating that power.

The entity should embrace the monitoring relationship, being entirely transparent and open with information and risks, capability and performance. In return, monitors should support a supportive and co-operative relationships for monitoring, including an open sharing of concerns.

Where can my monitoring department get help?

The Commission and the Treasury are jointly responsible for the administration of the CEA. The Treasury administers Part 4 (Crown entity reporting and financial obligations) while the Commission administers all other parts of the CEA. The Public Service Act, Public Finance Act and CEA provide the 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 CEA.

The Commission can provide advice on matters covered in Parts 1, 2, 3 and 5 of the Act including matters relating to governance, board appointments, chief executive appointments and fees.

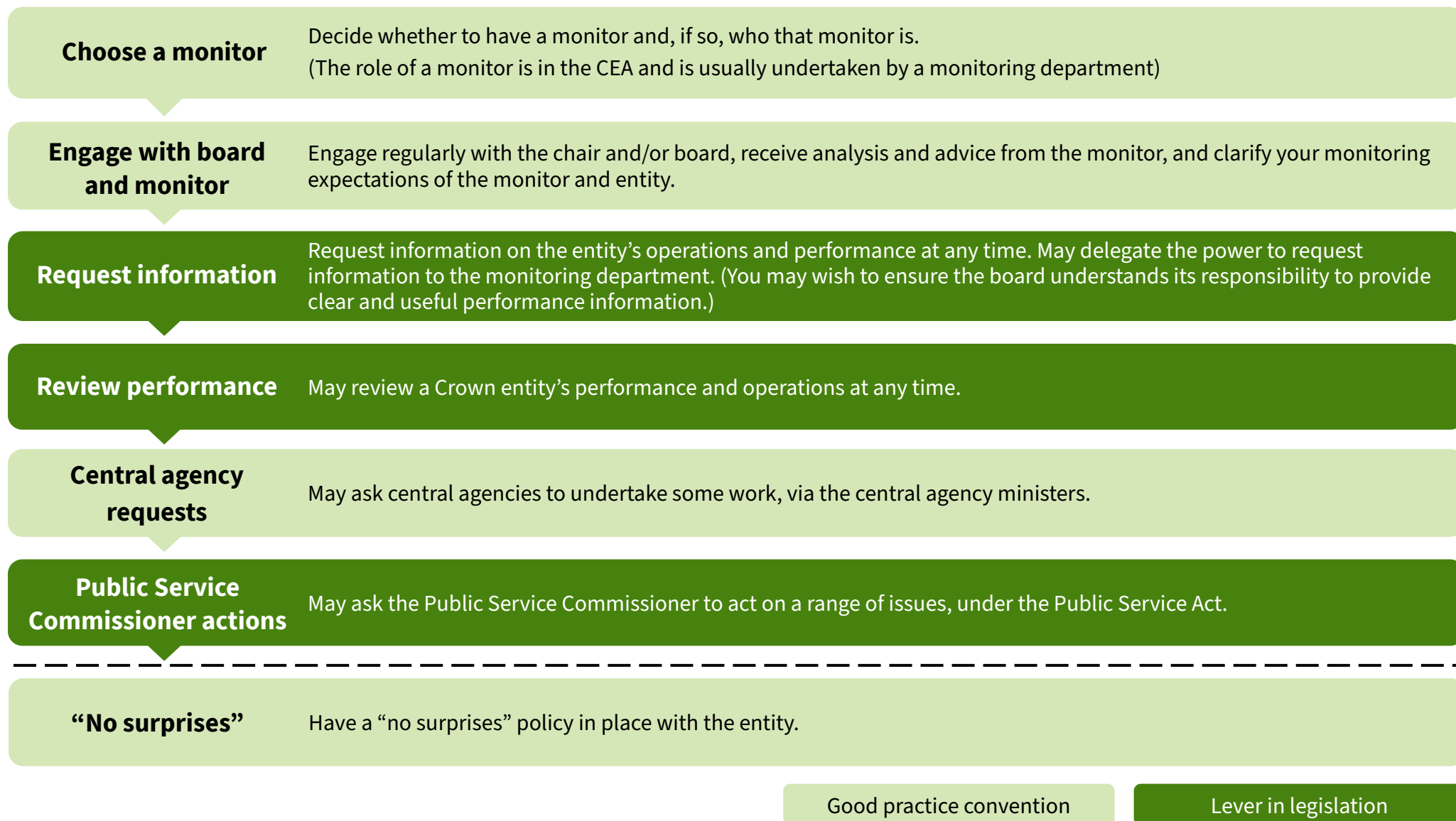
The Treasury can provide advice on performance measures and monitoring financial performance. Information on how the Treasury undertakes its monitoring role is available on its website.⁵² You can ask your monitoring department to review its practice in consultation with the Treasury.

⁵² See [Company and entity performance advice](#).

Summary of levers for monitoring performance

The responsible minister's key levers for monitoring performance are summarised below.

Figure 5: The responsible minister's levers for monitoring performance



Appendices

Appendix 1: How Crown entities fit into the public service

A. Public sector composition

B. Public sector glossary

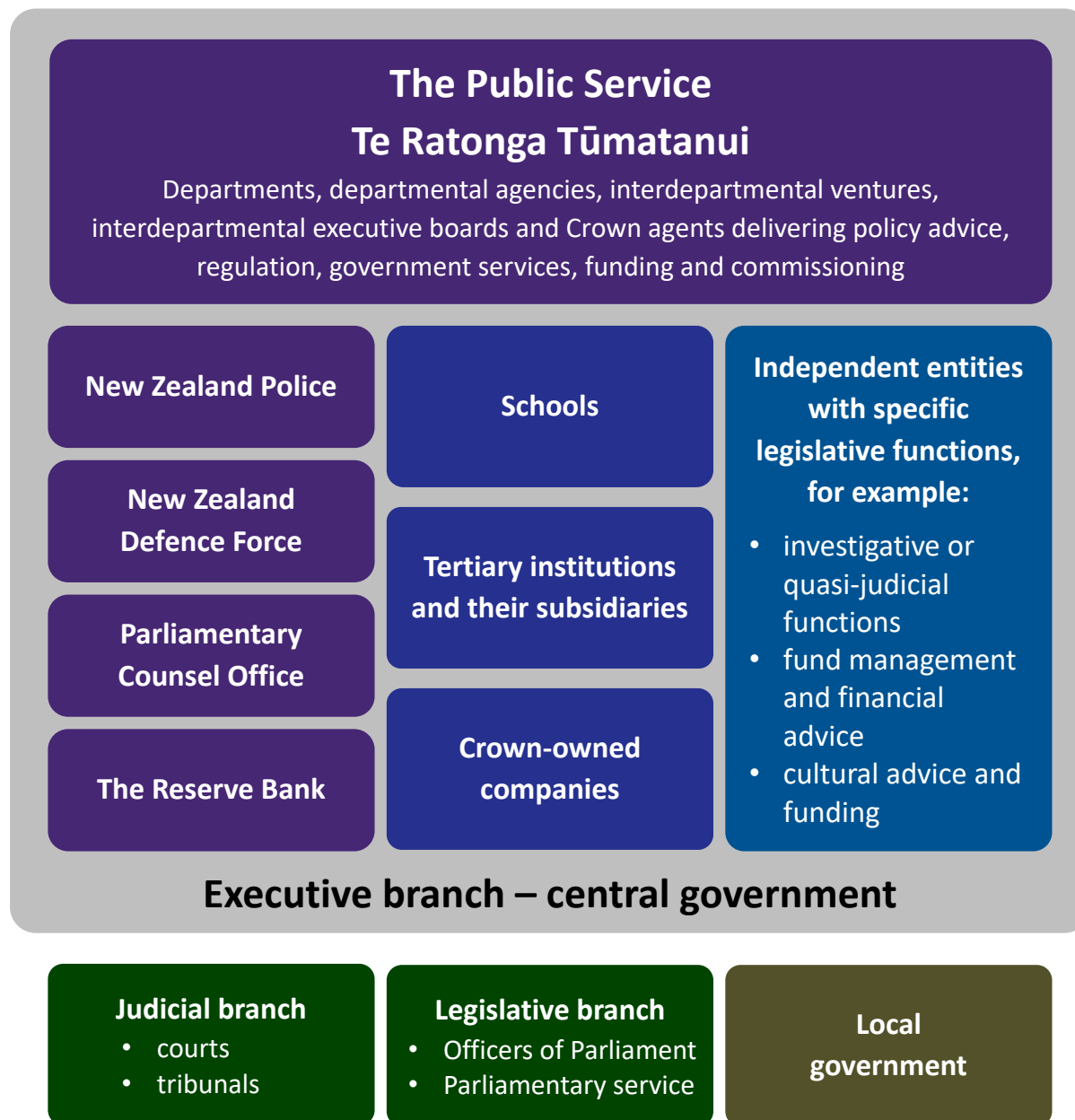
Appendix 2: Information for Crown entity companies



Āpiti 1 – Te wāhi ki ngā hinonga Karauna i roto i te rāngai tūmatanui

Appendix 1 – How Crown entities fit into the Public Service

A. Public sector composition



B. Public sector glossary

Key to terms used in public sector map (these are descriptions not legal definitions)

Agency	Synonym for ‘organisation’. A blanket term that may include departments, Crown entities, State-owned Enterprises, PFA Schedule 4 organisations, PFA Schedule 4A and 5 companies, Offices of Parliament and the Reserve Bank.
Autonomous Crown entity	Autonomous Crown entities (ACEs) are statutory Crown entities that must have regard to Government policy directions, as distinct from giving effect to Government policy directions or being generally independent of Government policy.
Crown	Means the Sovereign and includes all ministers of the Crown and all departments (including any of their departmental agencies). It does not include any other type of ‘organisation’ described in the definition of ‘agency’ above.
Crown agent	Crown agents are statutory Crown entities that must give effect to Government policy directions, as distinct from having regard to Government policy directions or being generally independent of Government policy. Crown agents are those Crown entities most closely subject to ministerial control. They are also included in the legal definition of the Public Service for the purposes of shared principles, values, spirit of service and standards of integrity and conduct in Part 1 (subparts two and four) of the Public Service Act 2020.
Crown entity	<p>Crown entities are stand-alone corporate bodies that are legally separate from the Crown. They are public bodies that operate at arm’s-length from ministers, but still an integral part of the public sector. Ministers have a key role in managing the Crown’s interests in Crown entities, for example through their role in board appointments, setting direction and funding levels, and monitoring entity performance.</p> <p>Section 7 of the CEA 2004 outlines the five categories of Crown entity:</p> <ul style="list-style-type: none">• Statutory entities – bodies corporate established through legislation;• Crown entity companies – companies that are incorporated under the companies act and are wholly owned by the Crown, (e.g. Crown Research Institutes, TVNZ);• Crown entity subsidiaries – companies that are controlled by Crown entities;• School boards of trustees – as constituted under Part 9 the Education Act 1989; and• Tertiary education institutions – NZIST and its subsidiaries, universities and wānanga established under part 4 of the Education and Training Act 2020.
Department	The departments that comprise the Public Service are listed in the Second Schedule to the Public Service Act. In addition to those departments, the Public Finance Act includes the New Zealand Defence Force, New Zealand Police, Office of the Clerk, Parliamentary Counsel

Key to terms used in public sector map (these are descriptions not legal definitions)

	Office, Parliamentary Service and the New Zealand Security Intelligence Service in the definition of department [Section 2]. The latter departments are also referred to as ‘Non-Public Service Act departments’ or ‘Non-Public Service departments’.
Departmental agency	Legally part of the host department and listed in Part 1 of Schedule 2 of the Public Service Act, departmental agency chief executives report directly to the minister responsible for the Departmental Agency, who may or may not be the same as the minister responsible for the host department.
Independent Crown entity	Independent Crown entities (ICEs) are statutory Crown entities that are generally independent of Government policy, as distinct from giving effect or having regard to Government policy.
Interdepartmental executive board	An interdepartmental executive board provides collective strategic policy advice to ministers for cross-agency issues. Their purpose is to align and co-ordinate strategic policy, planning, and budgeting activities for 2 or more departments with responsibilities in a subject matter area
Interdepartmental venture	Interdepartmental ventures bring together the delivery of services from across a small number of agencies. Their purpose is to deliver services or carry out regulatory functions that relate to the responsibilities of 2 or more departments; and to assist to develop and implement operational policy relating to those services or regulatory functions.
Mixed Ownership Model companies	Mixed Ownership Model (MOM) companies are listed in Schedule 5 of the Public Finance Act 1989. This model applies to companies, majority controlled by the Crown, and minority controlled by persons other than the Crown.
Offices of Parliament	The primary function of an Office of Parliament is to be a check on the Executive, as part of Parliament’s constitutional role of ensuring accountability of the Executive. An Office of Parliament must discharge functions which the House itself might appropriately undertake. Currently there are three Offices of Parliament: Office of the Controller and Auditor-General, Parliamentary Commissioner for the Environment, and Office of the Ombudsmen.
Public sector	The public sector refers to the Public Service and all other government agencies, including those which support all three branches of central government (executive, judicial or legislative) as well as local government.
Public Service	Public Service Te Ratonga Tūmatanui refers to public service departments and departmental agencies. It also includes Crown agents (those Crown entities which have the closest relationship with ministers and deliver many important public services) for some purposes. The term

Key to terms used in public sector map (these are descriptions not legal definitions)

	Public Service also includes two types of entities introduced in the Public Service Act 2020: interdepartmental ventures and interdepartmental executive boards.
Public service principles	<p><i>The public service principles are:</i></p> <p>Politically neutral – to act in a politically neutral manner; and</p> <p>Free and frank advice – when giving advice to ministers, to do so in a free and frank manner; and</p> <p>Merit-based appointments – to make merit-based appointments (unless an exception applies under this Act); and</p> <p>Open government – to foster a culture of open government; and</p> <p>Stewardship – to proactively promote stewardship of the public service, including of</p> <ul style="list-style-type: none"> (i) its long-term capability and its people; and (ii) its institutional knowledge and information; and (iii) its systems and processes; and (iv) its assets; and (v) the legislation administered by agencies.
Public service values	<p>The public service values are:</p> <p>Impartial - to treat all people fairly, without personal favour or bias</p> <p>Accountable - to take responsibility and answer for its work, actions, and decisions</p> <p>Trustworthy - to act with integrity and be open and transparent</p> <p>Respectful - to treat all people with dignity and compassion and act with humility</p> <p>Responsive - to understand and meet people’s needs and aspirations.</p>
Responsible minister	The minister accountable to Parliament for the financial performance of a department or Crown entity. In relation to an Office of Parliament, the Speaker is the responsible minister.

Key to terms used in public sector map (these are descriptions not legal definitions)

Public Finance Act Schedule 4 organisations	<p>PFA Schedule 4 has a list of miscellaneous organisations, including Fish and Game Councils and Reserve Boards, which are subject to certain provisions of the CEA (specified in the Schedule).</p>
Public Finance Act Schedule 4A companies	<p>Schedule 4A of the Public Finance Act has a list of companies in which the Crown is the majority or sole shareholder, and which are not listed on a registered market. Public Finance Act schedule 4A companies are treated as Crown entities for the purposes of directions under the section 107 of the CEA 2004, and various sections of that Act relating to financial powers also apply (as specified in the Schedule).</p>
State-owned enterprise (SOE)	<p>SOEs are businesses (typically companies) listed in the First Schedule to the State-Owned Enterprises Act 1986. SOEs operate as a commercial business but are owned by the State. They have boards of directors, appointed by shareholding ministers to take full responsibility for running the business.</p>
State services	<p>A term defined in section 5 of the Public Service Act 2020.</p> <ul style="list-style-type: none"> (a) means all instruments of the Crown in respect of the Executive Government of New Zealand, whether public service agencies, bodies corporate, agencies, or other instruments; and (b) includes Crown entities; and (c) includes organisations named or described in <u>Schedule 4</u>, and companies named in <u>Schedule 4A</u>, of the Public Finance Act 1989; and (d) includes the education service; but (e) does not include— <ul style="list-style-type: none"> (i) the Governor-General; or (ii) members of the Executive Council; or (iii) ministers of the Crown; or (iv) members of Parliament; or (v) organisations listed in <u>Schedule 1</u> of the State-Owned Enterprises Act 1986; or (vi) tertiary education institutions; or (vii) Offices of Parliament; or (viii) the Office of the Clerk of the House of Representatives; or (ix) the Parliamentary Service.

Āpiti 2 – Ngā pārongo mā ngā hinonga Karauna e haere ana hei kamupene

Appendix 2 – Information for Crown entity companies

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

Differences in governance

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

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

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

Setting and monitoring strategic direction

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

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

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

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

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

Different constraints

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

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

Exceptions for Crown Research Institutes

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

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

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

Note on Public Finance Act Schedule 4A companies

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