CHAPTER 35

Financial Scrutiny

MONITORING AND CONTROL OF PUBLIC ENTITIES

Departments

The financial management provisions in the Public Finance Act 1989 devolve financial authority to departments and Offices of Parliament. These entities operate their own bank accounts and are responsible for making payments on their own authority rather than through the Treasury. But departments still represent central government, and they are subject to detailed requirements as to the financial information and reports they must provide to the Treasury and, in particular, as to the accounting policies and practices that they must follow in their handling of public money, as signalled through Treasury instructions and regulations. The Treasury, the State Services Commission and the Department of the Prime Minister and Cabinet are the central agencies that lead the co-ordinating and monitoring of the policies and practices of departments, under the political direction of the Cabinet. End-of-year performance information may also inform an annual review of the performance of chief executives by the State Services Commissioner.

Non-departmental performance

Outside the departmental structure, the entities performing public functions are more heterogeneous. The internal governmental processes for monitoring their performance are therefore more various. The decision on how to monitor such entities is essentially one for the Government to make. Following changes made to public sector management in 2013, the Crown Entities Act 2004 now provides for the role of Monitor to assist the responsible Minister.

The Treasury monitors commercial assets owned by the Crown through a Commercial Operations Advisory Board, which was established to improve commercial analysis and advice. Whereas the Crown Ownership Monitoring Unit used to monitor all public entities on a quarterly cycle, Treasury now conducts strategic reviews of major entities on a rolling basis.

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2 See: Public Finance Act 1989, s 15C for an explanation of what is to be included in end-of-year performance information.
3 Crown Entities Act 2004, s 27A.
In respect of non-departmental performance, chief executives of Government departments are responsible for:\(^5\)

(a) the financial management of, and financial reporting on, appropriations for non-departmental expenses and non-departmental capital expenditure administered by the department; and

(b) advising the appropriation Minister on the efficiency and effectiveness of expenditure under those appropriations; and

(c) the financial management of, and financial reporting on, assets, liabilities, and revenue managed by the department on behalf of the Crown; and

(d) advising the Minister responsible for those assets, liabilities, and revenue on their performance.

However, through arrangements with Ministers who have responsibilities for Crown entities, State enterprises or other organisations, departments may also be required to monitor the performance of these organisations and provide advice to their Ministers on them.\(^6\)

Thus, a department is likely to provide advice on appointments to Crown entities within the purview of votes administered by the department, and to report regularly to Ministers on their funding and overall performance.\(^7\) Departments that are discharging a monitoring role (as provided for under the Crown Entities Act) are expected to be proactive in this regard and to require regular reporting from the entity concerned. They should be aware of issues affecting the entities for which they have a responsibility and monitor their activities so as to enable their Ministers to carry out their responsibilities actively and on the basis of good information.\(^8\) In conducting annual reviews on behalf of the House, committees are likely to probe the way departments are monitoring the performance of Crown entities in their sector.\(^9\)

**PARLIAMENTARY ACCOUNTABILITY**

Parliamentary accountability for departments, Offices of Parliament, Crown entities, State enterprises and other organisations can arise in a number of ways. The most obvious is through parliamentary questions, oral and written, which can be put to the responsible Minister. Even though there may be no legal responsibility for the actions of the entity concerned, a general political responsibility falls on the responsible Minister as the parliamentary mouthpiece through which the entity answers to the House. The performance of a department or other entity can also be the subject of debate on legislation relating to it, the weekly general debate, any urgent debate that the Speaker may accept, the debate on the annual Estimates, or occasionally a special debate.\(^10\) Select committees may receive petitions touching on entities’ work, and have a general power within their areas of subject competence to initiate inquiries into the performance and actions of public sector entities.

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\(^5\) Public Finance Act 1989, s 35.

\(^6\) Crown Entities Act 2004, ss 27A and 88A.


Although by these means the House and select committees can monitor the actions of public sector entities and hold them accountable, there is also a special accountability procedure known as annual review (called a “financial review” before the 51st Parliament). It was devised to form the parliamentary counterpart to the financial and operational reporting by these entities, and to guarantee that some parliamentary attention is paid to them annually. Annual reviews consist of examinations of the entities by select committees (focused, but not exclusively, on their reporting documentation) and debates in the House.

GOVERNMENT’S FINANCIAL STATEMENTS

The Finance and Expenditure Committee is required to report to the House on the annual financial statements of the Government as at the end of the previous financial year.11 These statements will have been presented to the House and thus become available to the committee about three months after the financial year ends. The committee must present its report within one week of the first day on which the House sits in the new year.12 This first sitting is usually on a Tuesday in February.13 The deadline for reporting may be extended by the Business Committee.14

The Minister of Finance and the Secretary of the Treasury are the principal witnesses before the committee in its examination of the Government’s financial statements. The committee’s report forms one of the bases for the committee stage of the Appropriation (Confirmation and Validation) Bill.15 In 2015, the Business Committee allocated 10 hours to the annual review debate and determined that two hours would be set aside for debating the Government’s financial position as reflected in the report of the Finance and Expenditure Committee. There is nothing to prevent the committee reporting to the House on the Government’s financial statements before the Appropriation (Confirmation and Validation) Bill is introduced.

ANNUAL REVIEW

The Finance and Expenditure Committee leads the co-ordination of the House’s annual review process. The purpose of carrying out a review is to determine whether the entity concerned has performed as promised—whether its actual performance, in supplying services and in managing its balance sheet and other assets, is consistent with its forecast performance.16 It also involves considering how the entity is currently performing.

Annual review involves a review by select committees of the annual reports, financial statements, and end-of-year performance information on appropriations of departments, Offices of Parliament, Crown entities, State enterprises and any other public organisation that the House resolves to make subject to the review procedures. For the 51st Parliament, the House resolved to extend these procedures to the Reserve Bank of New Zealand, the Abortion Supervisory Committee, Air New Zealand Ltd, Genesis Energy Ltd, Meridian Energy Ltd, and Mighty River Power Ltd.17 Where an entity is not subject to the annual review procedure, committees can still use their general inquiry powers to examine the matters regarding the entity that would be considered in an annual review. For example, every second year since 2010, the Māori Affairs Committee has conducted

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11 SO 345(1).
12 SO 345(1).
13 SO 81(3).
14 SO 248.
15 SO 347(1)(a).
16 (1996) 553 NZPD 11530 Hilt (Chairperson).
17 (21 October 2014) 701 NZPD 25.
inquiries to review the financial performance and current operations of the Māori Trustee and the Māori Television Service, two entities that would otherwise not be reviewable. The Standing Orders provisions for a debate on annual reviews do not apply to such reviews.

**Allocation of reviews**

The Finance and Expenditure Committee is required to allocate to the subject select committees (or retain for itself) the task of conducting an annual review of the performance in the previous year and of the current operations of each individual department (and departmental agency), Office of Parliament, Crown entity (and Public Finance Act Schedule 4A company), State enterprise and public organisation. It may do this as soon after the commencement of the financial year as it thinks fit.

As with the allocation of Estimates, a select committee may express a view on whether it is the most appropriate choice to review a particular entity. But the matter is ultimately for the Finance and Expenditure Committee to determine.

Because departmental agencies are defined as departments and produce their own annual reports, they are subject to annual review. However, as their annual reports address only operational performance, while any financial performance information is included in the host department’s financial statements, the Standing Orders Committee decided that their annual reviews should be grouped—that is, undertaken and reported on jointly with those of their respective host departments, to reduce the sheer volume of reports from committees. It is for the Finance and Expenditure Committee to consider any such groupings of reviews in making its allocation of annual reviews.

For the 2014/15 financial year, the Finance and Expenditure Committee retained 15 organisations for review itself and allocated 145 organisations to the other committees for review.

**Preliminary information gathering**

The annual review formally begins when the annual report of the department or entity is presented. The annual report, strategic intentions or statement of intent and performance expectations, and end-of-year performance information of the department or entity concerned are the basic materials on which each committee’s work proceeds (though a review has proceeded even though the annual report had not yet been presented to the House).

Formerly, these reporting documents were supplemented for departments by a standard questionnaire drawn up by the Finance and Expenditure Committee and invariably used by the other committees in their reviews. However, the standard questionnaire was discontinued in 1997 on the understanding that departments would provide the information previously sought in the questionnaire (key result

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19 SO 344(1).


22 SO 344(2).

areas, measurable milestones, expenditure variances, and so on.) in their annual reports. Nevertheless, each committee may devise and issue its own questionnaire to an entity that is to undergo review.

Although a standard questionnaire is no longer issued, committees often ask an entity to provide more information on its operations, either before oral examination by the committee commences or after it has concluded. Committees have criticised entities for failing to respond to such questions, and for the quality of the responses received. Only questions forwarded to the department or entity with the committee’s authority are formally part of the review. Questions sent to the entity by members without being submitted first to the committee are not part of the review; they are merely individual information requests.

After gathering such preliminary information, including the answers to questions that the committee requires, and before any oral examination of the entity, the committee receives a briefing from the Office of the Auditor-General on the entity’s financial performance. Committee staff may provide supporting analysis of issues outstanding from previous reviews and matters of current concern to the committee. The Auditor-General provides a written brief on each entity unless directed otherwise by the committee concerned. The Office of the Auditor-General officials may also remain present throughout the hearing of evidence to assist the committee at any point. Other advisers may also be appointed.

Examination

It is entirely over to committees how they conduct the reviews that are entrusted to them. Because of the large number of reviews recurring each year (approximately 160 entities to be dealt with by the 13 subject select committees), it is not possible to conduct in-depth reviews of each one, each year. Indeed, the annual review is not necessarily the place for an in-depth examination of an entity, since it operates within strict timeframes and is focused on recent performance. But issues that emerge in the course of an annual review may be addressed subsequently by the committee utilising its inquiry powers. Annual review is not intended to replace the committee’s inquiry powers as regards public sector scrutiny, though work previously undertaken through the inquiry function may be absorbed into it.

Many annual reviews are completed on the basic documentation and the audit briefing, without the need for an oral examination or follow-up by written questioning. Where an oral examination of a department is held, it is focused on the chief executive and senior officials. Unlike the Estimates, for which a Minister is responsible, the chief executive of a department is primarily responsible for answering to the committee for the performance of the department in fulfilling its objectives. Even in reviews of non-departmental entities the focus is on the performance of the entity, and the responsibility for this lies with its board and the management. However, Ministers have attended select committee examinations when critical questions of the governance of the entity and the respective roles of the Minister and the board were in issue, for example when a board chairperson was removed several days before the hearing. Exceptionally, committees may

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27 See, for example: Parliamentary Commissioner for the Environment, annual report (14 October 2004) NZPP C.12 at 40 (commissioner acted as adviser for review of two departments).
hear from other witnesses, for example when justice sector organisations were invited to make submissions on the review of the Ministry of Justice. Normally, the time constraints under which committees conduct annual reviews preclude this, but any follow-up inquiry will inevitably open up the opportunity for other groups to give their views. A committee may also combine an annual review with any other related business before it (such as a petition on a matter related to the entity's area of responsibility).

As annual review is generally concerned with entities in the public sector rather than with companies listed on the stock exchange, usually no issues regarding the insider-trading legislation arise. (Questions of commercial confidentiality do sometimes arise.) However, the annual review procedure can be extended to a public organisation that is also a listed company (such as with mixed-ownership model companies and Air New Zealand Ltd). In such an instance (the review of Air New Zealand Ltd), the committee conducting the review organised its proceedings so as to avoid infringing the insider-trading provisions.

As a result of the examination, the department or entity may be asked (or may itself ask) to respond in writing to questions put to it. If there is an expectation of response before the committee reports, the department or entity will face criticism if it fails to do so. Indeed, the report may be delayed in consequence. Committees may also criticise in their reports the quality of responses that they feel are inadequate.

**REPORTS ON ANNUAL REVIEWS**

**Time for report**

Following the committee's consideration of the documentation, its receipt of an audit briefing, and any oral examination of the chief executive, the committee reports the results of the review to the House.

Reports on departments and Offices of Parliament must be made within one week of the first sitting day in each year. This is likely to be in February. So committees have some four to five months from the presentation of the annual report to complete their work. But this period includes the Christmas/New Year break. Every three years it also includes the time at which a general election is likely to be held. The House usually therefore extends the time allowed for reporting.

For reviews of Crown entities, State enterprises and the public organisations that have been made subject to review, committees have six months to conduct the review from the date the entity's annual report is presented to the House. The financial year of Crown entities is generally 1 July to 30 June. The financial year of State enterprises and mixed-ownership model companies is not statutorily prescribed and varies with entities’ own rules. Nevertheless, most annual reports are presented in the second half of the year, and it is at that point that the six-month reporting time limit begins to run.

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35 SO 345(2).
36 (1999) 581 NZPD 37 (to 6 April); (2001) 597 NZPD 14074 (to 22 February).
37 SO 345(3).
38 Crown Entities Act 2004, s 136(1).
For the 2014/15 round of annual reviews, the Business Committee determined that all annual reviews were to be reported by the same deadline, thus extending the timeframe for reviews of departments and Offices of Parliament, but reducing it for reviews of Crown entities, State enterprises and public organisations. 39

If a committee fails to report in time, its obligation to report is not discharged immediately. (This contrasts with a failure to report on a bill in time, where the bill is automatically discharged from the committee. 40) The obligation to report still remains. However, a committee cannot remain indefinitely in breach of an obligation to report. The House or the Business Committee may therefore regularise the position by granting an extension of time. 41 In the absence of such an extension, the Speaker determines when the committee must report. If it fails then to do so in time, its task is at an end. The Speaker has ordered a committee that had failed to report in time on its review of a Crown entity to present its report by the end of the current week. 42

Nature of the report

Committees make a mixture of narrative and formal reports on the results of their annual reviews. Where they do not feel it necessary to prepare a detailed narrative report, they present pro forma reports, merely recording the fact that they have carried out an annual review of the department and that they have nothing to draw to the attention of the House. Usually these are cases where no oral examination was held. This does not mean that the process was not of value. Constant monitoring of the activities of departments was one of the main aims of the select committee structure when it was introduced in 1985. Annual review ensures that there is at least an annual interchange between a committee and the departments it is to monitor, superficial though it may be in some cases. If there are no apparent matters of concern to report, committees have pragmatically decided that they do not need to write a detailed report each time to explain this. On the other hand, the annual review may reveal matters of concern that the committee considers should be followed up in other ways, such as by the use of the committee’s inquiry powers or by requesting the Auditor-General to investigate. 43

Failure to make any statutory report in good time will inevitably be commented on, as will non-compliance with other reporting requirements, such as that of reporting on equal employment opportunity initiatives, 44 and that of giving reasons for any unappropriated expenditure. 45 The discretionary contents of an annual report will also be commented on, such as any failure to give a breakdown of expenses or a clear explanation of how funds have been expended, 46 or any lack of detail about an agency’s business streams. 47 The omission of a narrative from a department’s report (though it technically followed the State Service Commission’s reporting guidelines) was criticised by a committee as diminishing the report’s

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39 Business Committee determination for 23 September 2015.
40 SO 295(3).
41 SO 248. See, for example: (24 March 2004) 616 NZPD 11907 (House granted committee an extension of time to report on an entity).
43 See, for example: Controller and Auditor-General New Zealand Trade and Enterprise: administration of the Visiting Investor Programme (7 December 2004) (initiated on the request of the Commerce Committee).
usefulness, and its reinstatement was recommended. 48 Errors of fact in the annual report are also likely to attract comment.

The examining committee will focus on any illegality revealed in the materials before it. Thus, a department that was in breach of the law by writing off a debt without ministerial approval was criticised in the committee’s report on the review of that department. 49

Where a committee has detected an error in an annual review report subsequent to its presentation, it has presented a special report to correct the error. 50

**APPROPRIATION (CONFIRMATION AND VALIDATION) BILL**

The House’s vehicle for considering the results of the investigations into the financial performance of the Government and Government departments conducted by select committees is the passing of the annual Appropriation (Confirmation and Validation) Bill (previously known as the Appropriation (Financial Review) Bill).

The Appropriation (Confirmation and Validation) Bill is a Government bill whose provisions deal exclusively with the confirmation or validation of expenditure incurred in any previous financial year. 51 These provisions concern financial matters that occurred in a previous year that are required by law to be included in an Appropriation Bill in the succeeding year: the confirming of transfers between classes of outputs that have been made by Orders in Council; 52 the confirming of excess expenses or capital expenditure approved by the Minister of Finance; 53 and the confirming of emergency expenses, capital expenditure and capital injections approved by the Minister of Finance. 54 The bill may also include provisions validating illegal expenses or capital expenditure incurred in a previous financial year. 55

**Introduction, first reading and second reading**

The Appropriation (Confirmation and Validation) Bill must be introduced before the end of March. 56 It is, in fact, usually introduced before Christmas. There is no amendment or debate on the bill’s first reading. 57

Like any Appropriation Bill, the bill is not referred to a select committee after its first reading. 58 It is set down as a Government order of the day for a formal second reading. There is no amendment or debate on the second reading of the bill.59

**Annual review debate**

The committee stage of the bill is the annual review debate. This is the House’s opportunity to debate the Government’s financial position as reflected in the Finance and Expenditure Committee’s report on the Government’s financial

51 SO 346(1).
52 Public Finance Act 1989, s 26A.
53 Public Finance Act 1989, s 26B.
54 Public Finance Act 1989, ss 25 and 25A.
56 SO 347(5).
57 SO 346(2).
58 SO 288(2).
59 SO 346(2).
Financial Scrutiny statements, and to debate the previous year’s performance and current operations of departments and Offices of Parliament.\(^{60}\)

The annual review debate must be held by 31 March,\(^{61}\) by which time the select committees’ reports on their annual reviews of departments and Offices of Parliament will all have been presented. When committees have been given a substantial extension of their reporting time on annual reviews, the House has also extended the time within which the annual review debate may be held.\(^{62}\)

The Government is entitled to select any day (other than a Members’ Wednesday) for the annual review debate,\(^{63}\) and to decide which annual reviews are available for debate on that day and how long is to be spent on the debate.\(^{64}\) This information must be included on the Order Paper.\(^{65}\)

Four hours in total is allowed for the annual review debate. The Minister responsible for the department or Office of Parliament may make multiple speeches of five minutes each but not normally more than two speeches consecutively. Other members may make two speeches of five minutes each on each annual review.\(^{66}\) In practice, the Business Committee\(^{67}\) or the whips are likely to work out a suitable allocation of time among the parties from the overall time available for the debate, and the order in which particular annual reviews will be considered.

At the commencement of the annual review debate (subject to any determination by the Business Committee or leave of the committee to the contrary), the committee considers the report of the Finance and Expenditure Committee on the annual financial statements of the Government.\(^{68}\) It then turns to consider the annual reviews nominated by the Government for consideration that day.\(^{69}\)

When the four hours for the debate have elapsed, the provisions of the bill and any amendments from the Minister in charge of the bill that are notified on a Supplementary Order Paper are put as one question without debate.\(^{70}\) No other amendments to the bill are permitted.\(^{71}\)

**Passing of the bill**

When the report of the committee on the bill has been adopted, the bill is set down for third reading forthwith.\(^{72}\) There is no amendment or debate on the question for the third reading.\(^{73}\)

**DEBATE ON CROWN ENTITIES, PUBLIC ORGANISATIONS, AND STATE ENTERPRISES**

The reports of committees on their annual reviews of Crown entities, public organisations, and State enterprises are not debatable when presented to the House. But a debate of three hours during the course of each financial year is provided for, for the House to consider the performance and current operations of Crown entities, State enterprises and other public organisations.

The Government selects the day for such a debate to be held (it may extend over more than one day).\(^{74}\)

60 SO 347(1).
61 SO 347(5).
63 SO 350(1).
64 SO 350(2).
65 SO 350(2).
66 SOs, App A.
67 SO 350(3).
68 SO 347(2).
69 SO 347(3).
70 SO 347(4).
71 SO 347(4).
72 SO 348(1).
73 SO 348(2).
74 SO 350(1).
The day selected may not be a Wednesday on which Members’ orders of the
day take precedence. The Government also decides which annual reviews are
available for debate and how long in total (up to the maximum time for the debate)
is to be spent on it that day. This information is advised on the Order Paper.
The Business Committee may determine the order in which annual reviews are to be
considered and how long is to be spent on each.

The debate is usually held in the period from April to June, as annual
review reports will have been presented by then. However, because reporting
is a continuous process there will always be some entities’ reports outstanding
whatever date is chosen for the debate. Leave has been given to debate an entity’s
performance even though the report relating to it had not yet been presented.

On the day selected, the debate is set down as a Government order of the day
for the consideration in committee of the performance in the previous year and the
current operations of Crown entities, public organisations and State enterprises.
A Minister is nominated by the Government to take charge of the order of the day.
The Speaker has an obligation to ensure that the Government allows time in the
Government orders of the day for such a debate, and if necessary will interrupt
other business on the final sitting day in the financial year.

The debate does not have to be the first order of the day. When the order
of the day for the debate is reached, the House resolves itself into committee to
consider the annual reviews available for consideration. Each member may speak
on each review twice, for five minutes each time. The Minister responsible for an
entity is allowed multiple five-minute speeches but not normally more than two
consecutive speeches. The overall length of the debate is limited to three hours.
A question is proposed on each annual review as it is raised, that the select
committee’s report on it be noted. The debate covers both performance in the
previous financial year and the entity’s current operations. The history of the entity
before the period covered by its annual report is outside the scope of the debate.
The annual report of the entity, its statement of intent and other documents
presented in respect of the current and previous years can be referred to and
used in the debate. The responsibilities of the shareholding Minister for a State
enterprise are within the scope of the debate and members can attack the Minister
in that capacity, but not other aspects of the Minister’s performance.

ORGANISING THE ANNUAL REVIEW DEBATES

In its 2014 review of the Standing Orders, the Standing Orders Committee suggested
a reasonably flexible approach to financial scrutiny, because the 2013 changes to the
Public Finance Act had not come into force until 1 July 2014. In 2015, the
House trialled a new approach to the annual review debate, as determined by the
Business Committee. The annual review debate was combined with the debate on
the annual reviews of Crown entities, public organisations and State enterprises, to
form one long debate (scheduled to be completed before Budget day) in which the
2014/15 annual reviews of all reviewable entities of any type could be debated. The
A themed approach was adopted for organising the debate. The House first held a two-hour debate on the Government’s financial statements, allowing the House to consider the Government’s overall management of the economy. The House then had a total of seven hours dedicated to seven debates, each focused on a specified theme: services for citizens, services for business, infrastructure, justice, natural resources, primary industries, and internal affairs and Government relationships. All the entities that were subject to an annual review were assigned to at least one theme. Members were then free to debate the performance of all entities deemed to be relevant to the theme. The question put for each of the seven debates was that “the reports of committees relevant to [the theme being debated] be noted.”

The themed debates did not have individual time limits; the main constraint on the length of each themed debate was the overall time limit for the entire annual review debate. The first call in each themed debate was taken by the chairperson of a relevant select committee, and the remaining calls in the annual review debate were allocated to parties on the proportional basis used for oral questions, excluding Ministers, giving parties in Opposition about four calls in each themed debate. The Minister nominated by the Government to take charge was allowed three calls in each debate to encourage the answering of questions raised. The remaining time was allocated on the same proportional basis as supplementary calls, for parties to use during the themed debates as they saw fit.

The advantage of this approach was that it ensured the debate was focused not only on how well a particular entity was operating, but on how all of the entities operating in a particular area functioned individually and collectively. It also more closely reflected the realities of Government spending, where various entities operate and interact in the same area. So the debate allowed the House to assess more fully the effectiveness of spending within such an area in achieving the desired outcomes.

This may become the permanent approach to the annual reviews debate, as it stands or modified, or the House may revert to the previous two-debate single-entity structure for considering annual reviews. For the debate on the 2014/15 annual reviews, which took place early in 2016, the Business Committee determined a similar approach, with the entities grouped into the 10 sectors used for the Estimates debate, rather than by theme.89

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89 Business Committee determination for 23 September 2015.