State Sector and Public Finance Reform Bill 2012

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Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The main aim of this Bill is to amend the State Sector Act 1988 to, amongst other things, provide for:

- the establishment within government departments of “departmental agencies” reporting directly to a Minister (who might be a Minister other than the Minister responsible for the department);
- the delegation of statutory powers outside the Public Service; and
- the appointment of “Ministerial staff” otherwise than on merit

The Bill also amends the Public Finance Act 1989 and the Crown Entities Act 2004 to enable government agencies to work “more closely together”, share functions and services, purchase goods and services jointly, and develop joint systems.1

Background

New feature: Departmental agencies

A significant new feature introduced into the State Sector Act 1989 by this Bill is the addition of “the new organisational arrangement of departmental agency to the options available for delivering public services”. This is described in the Bill’s Explanatory note as follows:

“A departmental agency legally sits within a host department. Its distinguishing feature is that, unlike other units within departments, it has its own chief executive who is directly responsible to a Minister for the agency’s clearly defined and autonomous set of activities. By operating within the policy and funding framework of the host department (i.e., only the host department administers appropriations), a departmental agency can be a vehicle to reduce fragmentation in the State services either by avoiding the need for a fully separate department or Crown entity, or by absorbing functions that are currently carried out by separate agencies”. ²

Main Provisions

Definition changes to allow for departmental agencies

The Bill changes the definitions of “appropriate Minister” and of “chief executive” to allow for chief executives of departmental agencies. New definitions, those of “ministerial staff”, “outcome”, and “stewardship” are added to the Act.

The term “Ministerial staff” is defined to mean employees (including acting, temporary, or casual employees) who are employed on events-based employment agreements to work directly for a Minister rather than in a department. This is illustrated by an example, which shows that an event that could terminate an events-based employment agreement is the particular Minister no longer holding the relevant ministerial portfolio (Part 1, Clause 6, amending Section 2 of the State Sector Act 1988).

Department and Departmental agency

The Bill defines the term “department” as a department specified in Schedule 1 of the State Sector Act 1988. A “departmental agency” means a departmental agency specified in the first column of Schedule 1A of that Act “which is part of its host department”. The term “host department” means the department identified as the host department of a departmental agency in the second column of Schedule 1A. The Bill also provides that every reference to a department in the State Sector Act 1988 or any other enactment is a reference to the department and also to any departmental agency that is part of the department.

The Bill describes the relationship between departments and departmental agencies. The appropriate Minister of a departmental agency will determine the role and functions of a departmental agency in conjunction with the appropriate Minister of the host department. The working arrangements will be agreed between the departmental agency’s chief executive and the chief executive of the host department (and these arrangements will be approved by the respective appropriate Ministers) (Part 1, Clause 17, inserting New Sections 27A and 27B into the State Sector Act 1988).

Comment

“The paper to Cabinet that sought and obtained Cabinet approval for the adoption of the departmental agency model (the departmental agency Cabinet paper; see http://www.ssc.govt.nz/bps-cab-papers-minutes) indicated that the policy intention is that a departmental agency will carry out discrete operational or regulatory functions, while the host department will manage the related appropriations.

“The departmental agency Cabinet paper noted that the departmental agency model was developed in the United Kingdom with the aim of delivering performance improvements through greater managerial autonomy and clarity of organisational purpose. The departmental agency Cabinet paper concluded that departmental agencies are most suited to functions or services that have relatively stable policy settings and that are—

- cohesive or within a clearly defined area or activity; and
- readily defined and measurable; and

² Ibid, pp. 2 and 3.
severable from the functions or services of the host department.

“The departmental agency Cabinet paper indicated the intention that Ministers for departmental agencies would focus on, and be accountable for, the operational performance of their agencies. Advice on strategy, policy, and funding would be provided primarily through the host department”.3

Responsibilities of chief executives

The provisions of the State Sector Act 1988 relating to the responsibilities of chief executives are changed to make them also apply to the chief executives of departmental agencies. They are also expanded to include stewardship obligations and the responsibility for the department's or departmental agency's responsiveness on matters related to the collective interests of government. The chief executive of a department's responsibilities are in relation only to that part of the department that does not comprise any departmental agency hosted by the department and a chief executive of a departmental agency is responsible only for the part of the department that comprises the departmental agency (Part 1, Clause 25, substituting Section 32 of the State Sector Act 1988).

Comment

“The effect of this is to make each chief executive separately responsible directly to the Minister and not in any way responsible for the performance of functions or duties or the exercise of powers that occur in a part of the department outside his or her reach”.4

Employment responsibilities of chief executives

Currently Section 59 of the Act provides that the chief executive of a department may appoint, remove, and generally act as the employer of employees of the department.

The Bill provides that the chief executive of a department that is a host department for a departmental agency is deemed to have delegated employer responsibilities to the chief executive of that departmental agency in relation to employees of the department who work in the departmental agency. The chief executive of the department is deemed not to have those employer responsibilities in relation to those employees. The chief executive of a departmental agency is to act as the employer in relation to personal grievances and any other employment relationship problems, as well as having the power to require an applicant or employee to undergo a medical examination, and the power to issue binding instructions (Part 1, Clause 48, substituting Section 59 of the State Sector Act 1988).

Independence of chief executives

The Act at present places a duty on departmental chief executive's duty to act independently in matters relating to decisions on individual employees.

The Bill continues that duty and for the same thing in relation to departmental agency chief executives, who not only are not responsible to the appropriate Minister, but are also not responsible to the host department's chief executive. The Bill provides that this independence is subject to the requirement in that a chief executive may only appoint an employee to a key position with the Commissioner's agreement: new section 33(2)(a). Positions are “key” either because of their potential to develop senior leaders or because they are critical to the Public Service. A chief executive must have regard to the wishes of the relevant Minister in relation to decisions on ministerial staff. Also a chief executive, notwithstanding the duty of independence, has the power to give effect to a “Government Workforce Policy Order” (Part 1, Clause 26, substituting Section 33 of the State Sector Act 1988; Clause 40, substituting Section 50 of the State Sector Act 1988; Clause 48, substituting Section 59 of the State Sector Act 1988).

3 Ibid, pp. 9 and 10.
4 Ibid., pp. 8 and 9.
Appointment of chief executives

The Bill provides for the appointment of departmental agency chief executives as well as chief executives of departments (Part 1, Clause 28, amending Section 35).

Comment
“The departmental agency Cabinet paper indicated that a key difference between the departmental agency and branded business units within departments is that the Commissioner (not the chief executive of the host department) would be the employer of the departmental agency's chief executive. The departmental agency Cabinet paper noted that this independent accountability of the chief executive of the departmental agency to the Commissioner would allow for greater autonomy from the host department”. 5

Chief executives may delegate to contractors and to persons outside the Public Service

The Bill provides that a chief executive may delegate functions or powers to an individual working as a contractor. This also applies to a person outside the Public Service, including to a person outside the State services. The person must be approved by the Minister. If functions or powers are delegated to a person outside the Public Service, the same statutory obligations apply as if the delegation had been to a person within the Public Service. (such as obligations under the Official Information Act 1982 and the Ombudsmen Act 1975) (Part 1, Clause 35, substituting Section 41 of the State Sector Act 1988).

Government Workforce Policy Orders

The Bill provides that the Commissioner may draft government workforce policy, and after consulting affected agencies, submit it for ministerial approval as a Government Workforce Policy Order. The Commissioner must advise affected agencies about any such order, and facilitate its operation. The Commissioner also has the function of providing advice and guidance to the State services (except Crown Research Institutes and their subsidiaries) on workforce matters. A Government Workforce Policy Order is not a regulation for the purposes of publication or disallowance. The order may deal with “principle” relating to pay or conditions, the development of workforce strategy, or other workforce matters (including employment and workplace matters). A Government Workforce Policy Order may apply to a single agency or to more than one agency. The agencies may be departments, Crown agents, or autonomous Crown entities. Departments and Crown agents must give effect to a Government Workforce Policy Order and an autonomous Crown entity must have regard to it. A Government Workforce Policy Order does not override existing employment and other legal obligations (Part 1, Clause 42, amending Part 5 of the State Sector Act 1988 by inserting a new subpart, Subpart 1, New Sections 55A-55C).

Ministerial staff

The Bill provides that the term “ministerial staff” means “employees (including acting, temporary, or casual employees) of a department who are employed on events-based employment agreements to work directly for a Minister rather than in a department”. The Bill provides that certain personnel provisions do not apply in relation to ministerial staff. This means that ministerial staff appointments do not need to be on merit. Also, ministerial staff vacancies and appointments do not need to be notified to the rest of the department to which they are appointed. Ministerial staff appointments are not subject to review by other employees in the department (Part 1, Clause 51, inserting New Section 66 into the State Sector Act 1988 (excluding Sections 60, 61, 64, and 65 of the Act); Clause 6, amending Section 2 of the Act, inserting a new definition, that of “ministerial staff”; Clause 43 amending Section 56).

5 Ibid., p.10.
Public Finance Act 1989

The Public Finance Act 1989 sets out the law governing the use of public financial resources. In doing so, it provides the framework for the effective and efficient application of those resources and for transparent accountability and reporting thereon.

The amendments to this Act—

- "improve financial flexibility to facilitate innovation and different ways of working within the executive branch of government; and"
- "require the provision of more meaningful information to Parliament about what the State services are spending and achieving (while reducing the compliance costs involved in producing that information); and"
- "clarify departmental chief executives’ responsibilities for strategic financial management and in respect of non-departmental financial matters; and"
- "specify the governance regime for companies currently named in Schedule 4 of the Public Finance Act 1989; and"
- "improve the operation of the legislation"6 (Part 2, Clauses 58-147).

Crown Entities Act 2004

The Crown Entities Act 2004 sets out the law governing Crown entities, including their establishment, governance, and operation. Crown entities are separate legal entities and are part of the wider State sector. Crown entities are many and diverse organisations in which the Crown has a controlling interest, but which have varying degrees of autonomy from the Crown.

The amendments to this Act—

- "support sectoral leadership by requiring the board of a statutory entity to ensure that the entity collaborates with other public entities where practicable; and"
- "support functional leadership by expanding the scope for the use of whole of government directions; and"
- "formalise the role of the monitoring department and the ability of the Minister of State Services to request information; and"
- "provide for the provision of more meaningful performance information to Parliament and make the default period for the tabling of statements of intent 3-yearly; and"
- "improve the operation of the legislation"7 (Part 3, Clauses 148-202).

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6 Ibid., p. 3.
7 Ibid., pp. 3 and 4.