



Te Kawa Mataaho
Public Service Commission

Public Service Commission – Crown entity board chair induction



Government priorities: “the big issues” today’s context

- A public sector with a culture of performance and accountable for delivering on the Government’s agenda. Crown entities have a critical role to play in achieving outcomes. They account for a significant proportion of government expenditure and service delivery.
- Strict fiscal management to get the government books back in order and ensure limited funds are directed towards the highest value investments.
- Entities should expect all cost pressures are met internally and not funded through the Budget process.
- Greater focus on reprioritisation and managing cost drivers, while delivering improved performance.
- Boards must focus on improving the effectiveness, efficiency and responsiveness of services and regulatory activities.



This resource pack is for you to use in discussions with the Board

- Public Service context and the Crown entity model environment
- Board's understanding of arm's-length government
- Crown Entities Act 2004 (including role of the Public Service Commissioner)
- Code of Conduct for Crown entity Board Members
- Trust and confidence in the public service and political neutrality
- The *It takes three* operating expectations framework
- How the Public Service Commission can help

This slide pack is a resource for you and your Board. It includes targeted details on trust and confidence, and maintaining political neutrality



Your leadership matters - Crown entities are a critical part of the public sector and a 'joined up' public service

- They are often the 'face of government' delivering:
 - almost all public health, education, transport and housing services
 - key regulatory functions
- Crown entities are collectively responsible for:
 - a significant proportion of total government expenditure
 - the management of approximately 2/3 of the Crown's physical assets
 - over half the workforce employed in the public sector



Your board may not have diverse experience and capabilities

- Incoming private sector Crown entity board members often need clarity about the commonalities and differences between the private and public sector governance
- The commonalities are the board's strong suit
- The differences can overtake the board and “small things can land badly”
- The differences are either:
 - variations on themes private directors will recognise – often as a normal part of business; or
 - obligations on board that have no equivalence in the private sector.

Examples of responsibilities in common include:

- Clarity about organisational purpose and functions
 - Use of resources (public vs shareholder/investor)
 - Strategic risk management (three lines of defense or equivalent) with particular attention to operational, funding, liquidity, workforce
 - Operational risk: the risk of loss resulting from inadequate or failed internal processes, people and systems, or from external events
- Audit and Risk Committee assists the Board with oversight of:
- integrity of the financial statements of the Company
 - the independent registered public accounting firm's (the "independent auditor") qualifications and independence
 - the performance of the Company's internal audit function
 - effectiveness of risk management and internal control systems
 - compliance with legal and regulatory requirements
 - prepare an audit committee report as required

Your board's mindset

- Public sector serves wide and future interests and needs of public
- Most of the important government services are provided by Crown entities
- Important that you succeed
- You (and all Crown entities) are perceived as part of the public sector - so a 'unified' public service way of thinking matters
- Greater openness and transparency is a central value
- Seize opportunities from the use of data and digital
- Public Service Act 2020 – provides a line of sight to purpose, principles, values and Spirit of Service
- Government has expectations for Crown entity boards (see the Enduring Letter of Expectations 2024)



Crown entities and the Public Service

- Under the Public Service Act 2020, Crown agents are made part of the Public Service in relation to the public service purpose, principles, values and spirit of service
 - Boards of Crown agents are responsible for ensuring that the entities they govern uphold the Public Service principles when carrying out their functions ([s12](#))
 - Boards of Crown agents must preserve, protect and nurture the spirit of service to the community that public servants bring to their work ([s13](#))
- The public, however, looks at all public sector bodies as being part of ‘government’
- To help build public trust and confidence in the public sector, all Crown entity boards should think of themselves as part of the wider public service and actively adopt public service, principles, values and spirit of service



Public Service Act 2020

PURPOSE

The Public Service supports constitutional and democratic government, enables both the current Government and successive governments to develop and implement their policies, delivers high-quality and efficient public services, supports the Government to pursue the long-term public interest, facilitates active citizenship, and acts in accordance with the law.

MĀORI CROWN RELATIONSHIPS

The role of the Public Service includes supporting the Crown in its relationships with Māori under the Treaty of Waitangi/Te Tiriti o Waitangi

PRINCIPLES

Foundational principles of the Public Service acting in our constitutional role

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

VALUES

The behaviours needed to deliver the purpose of the Public Service

impartial **accountable** **trustworthy** **respectful** **responsive**

Spirit of Service

The fundamental characteristic of the Public Service is acting with a spirit of service to the community.

Public Service principles are in legislation

[Commission Guidance](#) can help your Board 'breathe life' into the principles

[Politically neutral](#) - to act in a politically neutral manner

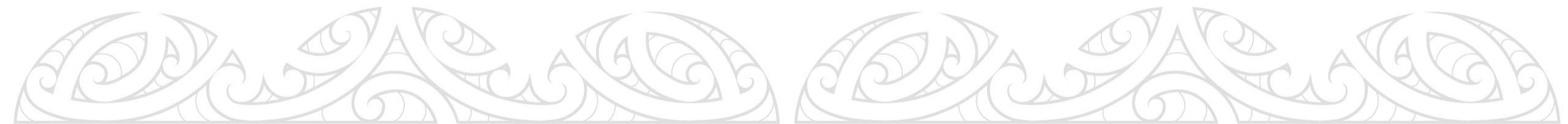
[Free and frank advice](#) - when giving advice to Ministers, to do so in a free and frank manner

[Merit-based appointments](#) - to make merit-based appointments (unless an exception applies under this Act)

[Open government](#) - improving the transparency of the workings of government

[Stewardship](#) - to proactively promote stewardship of the public service, including of—

- 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.

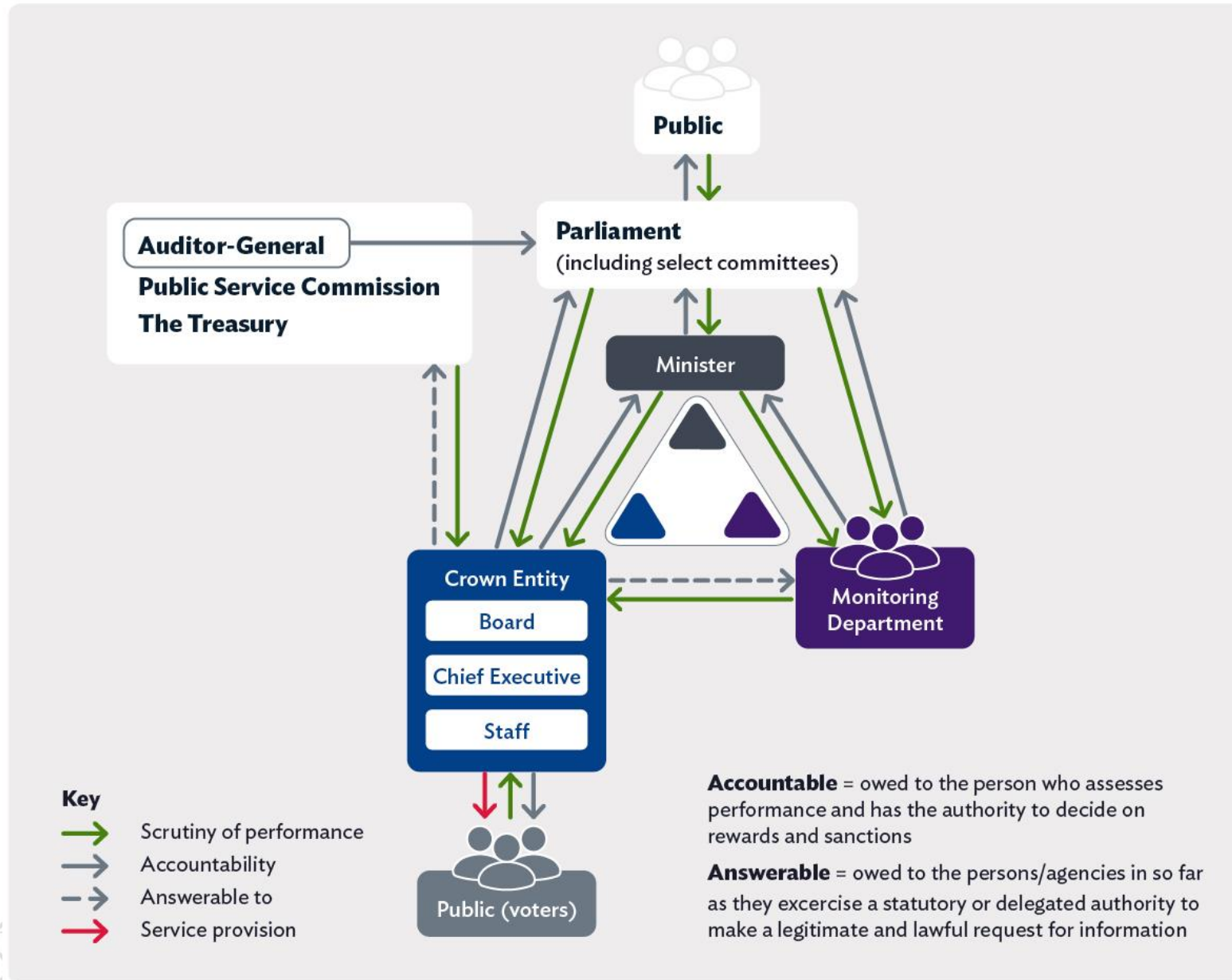


Operating at ‘arm’s-length’ from Ministers

- Because of their functions and the nature of their work, Crown entities are designed to operate at appropriate arms-length distance from Ministers because, for example:
 - decisions on individual cases should be made independently
 - Ministers should be distanced from operations (e.g. investigations, compliance, and enforcement)
 - entities require access to a broad range of skills, knowledge and experience
 - board appointments enable government to harness skills from the private and non-profit sectors
- However, Ministers are still answerable to Parliament for entities’ performance
- Ministers expect you to apply strict fiscal management and ensure funds are directed towards the highest value investments



Figure 2: Relationships between the main actors with responsibilities and interests relating to individual Crown entities



Responsible Minister – Under the Public Finance Act 1989, “responsible Ministers” are responsible to Parliament for the financial performance of the agencies in their portfolios and for protecting the Crown’s interest in those agencies.

Similarly, under the Crown Entities Act 2004, “responsible Ministers” are responsible for the Crown’s interests in, and relationship with, Crown entities in their portfolios.

Public scrutiny and accountability

- Crown entities experience a high level of public scrutiny and accountability. A Crown entity board is directly accountable to Parliament, and the Chair may be summoned to answer select committee questions on conduct and performance. The Official Information Act and Public Records Act apply.
- More generally, Crown entities are often much more in the public eye than a commercial or non-government organisation, often with strong media interest.
- The Crown Entities Act sets out specific requirements of boards and board members on issues such as conduct and integrity that go beyond those required of commercial or NGO boards.
- Ministers expect their Crown entity to behave prudently and sensitively, and in keeping with public sector values.



Crown entity financial reporting

Board and executive management need to be across financial reporting requirements and ensure continuous reporting to the board on critical measures

[Guidance on preparing the Annual Report and other End-of-Year Performance Reporting](#)

Your Board members and senior managers may benefit from reading the Guidance overview to understand the purpose and overall content requirements of the annual report and note any new requirements that are highlighted in the [What's new in 2024?](#) section and [Section 4 Non-financial Performance Reporting – Improvement Guidance](#)

Performance reports to the Board and Minister need to reflect what is in the Annual Report and vice versa

The Treasury reviewed what Crown entities produced in 2022/23 and found that a number of entities did not have a disclosure of significant judgements statement as required by PBE FRS 48. Others produced a statement that does not appear to provide the user with adequate information



Crown Entities Act 2004

Board members have an individual and collective duty to their responsible Minister ([ss49-57](#))

Individual duties include acting with honesty and integrity, acting with reasonable care, diligence and skill, and in good faith and not at the expense of the entity's interest ([ss53-57](#))

The board's collective duties include the board ensuring that:

- the entity performs its functions efficiently and effectively, and in a manner consistent with the spirit of service to the public ([s50](#))
- the entity operates in a financially responsible manner ([s51](#))

Conflict of interest provisions are more specific than those of many private boards ([ss62-72](#)) – if in doubt, it is best to reach out to your monitoring agency and the Commission for advice

The [Code of Conduct for Crown Entity Board Members](#) applies to all statutory Crown entity board members and should be read in conjunction with the duties above

Chief executive employment and remuneration ([s117](#)). The board must obtain the written consent of the Public Service Commissioner before—

- (a) finalising the terms and conditions; or
- (b) amending any or all of the terms and conditions once they have been finalised



Code of Conduct for Crown Entity Board Members

Issued by the Public Service Commissioner in 2020, the Code comprises three sets of responsibilities:

Personal integrity

- We are honest and open
- We are fair
- We speak up

Acting lawfully

- We meet our statutory and administrative requirements
- We identify and manage conflicts of interest

Professional conduct

- We use our positions properly
- We use information properly
- We are politically impartial



Immunity, indemnity and insurance

- Crown Entities Act contains a standard regime for immunity, indemnities and insurance ([ss120-126](#)).
- The Act also provides for entities to indemnify or insure their members, office holders or employees at their discretion. Where entities carry a higher risk of legal liability which warrants more protection from liability, your establishment legislation will contain further provisions.
- Further guidance for the Board and executive management is [here](#).
- Every board should spend time discussing these matters as they relate to themselves and their employees, preferably with the assistance of a trained specialist, perhaps the entity's legal advisor.



Expectations on the Public Service - Trust and confidence

As an apolitical Public Service, our reputation stands and falls on being trustworthy, transparent and impartial. It is vital public servants adhere to the expectations placed on them and maintain the trust and confidence of New Zealanders.

Trust is important. It provides legitimacy for the Public Service to act, to serve communities and improve the lives of New Zealanders.

The New Zealand Public Service enjoys high levels of public trust and confidence, and is focused on delivering better services and outcomes for New Zealanders.

There can be greater scrutiny of the actions of the Public Service during an election year, and it is important that we maintain our high standards of integrity and conduct and the political neutrality of our agencies.

Political neutrality

- Political neutrality is a foundation of New Zealand's system of government. It means the Public Service serves the Government of the day by maintaining the confidence of Ministers, while acting in a way that it will be able to establish a professional and impartial relationship with any future government
- It means that the Public Service does not jeopardise or erode public trust in the entity or the institutions of government
- Political neutrality does not mean individual public servants do not have rights to free speech and independence in the conduct of their private affairs, but factors such as their seniority, role and the proposed actions affect expected conduct



Political impartiality – what does the Code say?

“We act in a politically impartial manner. Irrespective of our political interests, we conduct ourselves in a way that enables us to act effectively under current and future governments. We do not make political statements or engage in political activity in relation to the functions of the Crown entity

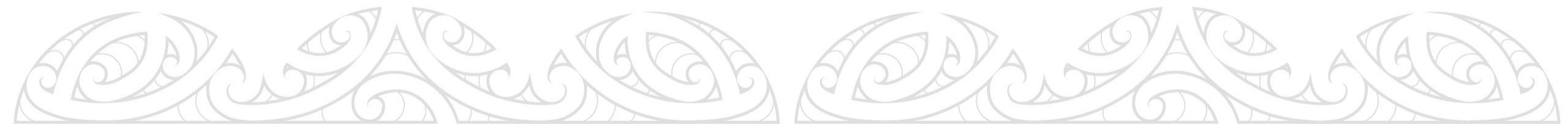
When acting in our private capacity, we avoid any political activity that could jeopardise our ability to perform our role, or which could erode the public’s trust in the entity. We discuss with the Chair any proposal to make political comment or to undertake any significant political activity.

These provisions apply to elected board members in the same way as to appointed members. However elected board members have a relationship with their constituency in addition to their accountability to the responsible Minister. Elected board members must consider how to maintain that relationship while, as for all members, ensuring their actions do not jeopardise the effective governance of the entity”.



The Minister, political neutrality and Crown entity governance

- A board member's political neutrality obligations under the Crown Entities Act and the Code of Conduct are owed to the board's responsible Minister(s)
- The responsible Minister may, at any time and entirely at his or her discretion, remove a member of a **Crown agent** from office ([s36](#) of the Crown Entities Act)
- As an autonomous Crown entity, your responsible Minister may, at any time and for any reason that in the Minister's opinion justifies the removal, remove a member of an **autonomous Crown entity** from office ([s37](#) of the CEA)
- The Governor-General may, at any time for just cause, on the advice of the responsible Minister given after consultation with the Attorney-General, remove a member of an **independent Crown entity** from office ([s39](#) of the CEA).
- The Minister's assessment is whether the member's public comments have jeopardised their ability to effectively perform their role or eroded public trust in the relevant entity



Crown Entities Act 2004 – the ‘it takes three’ relationship

Some success factors

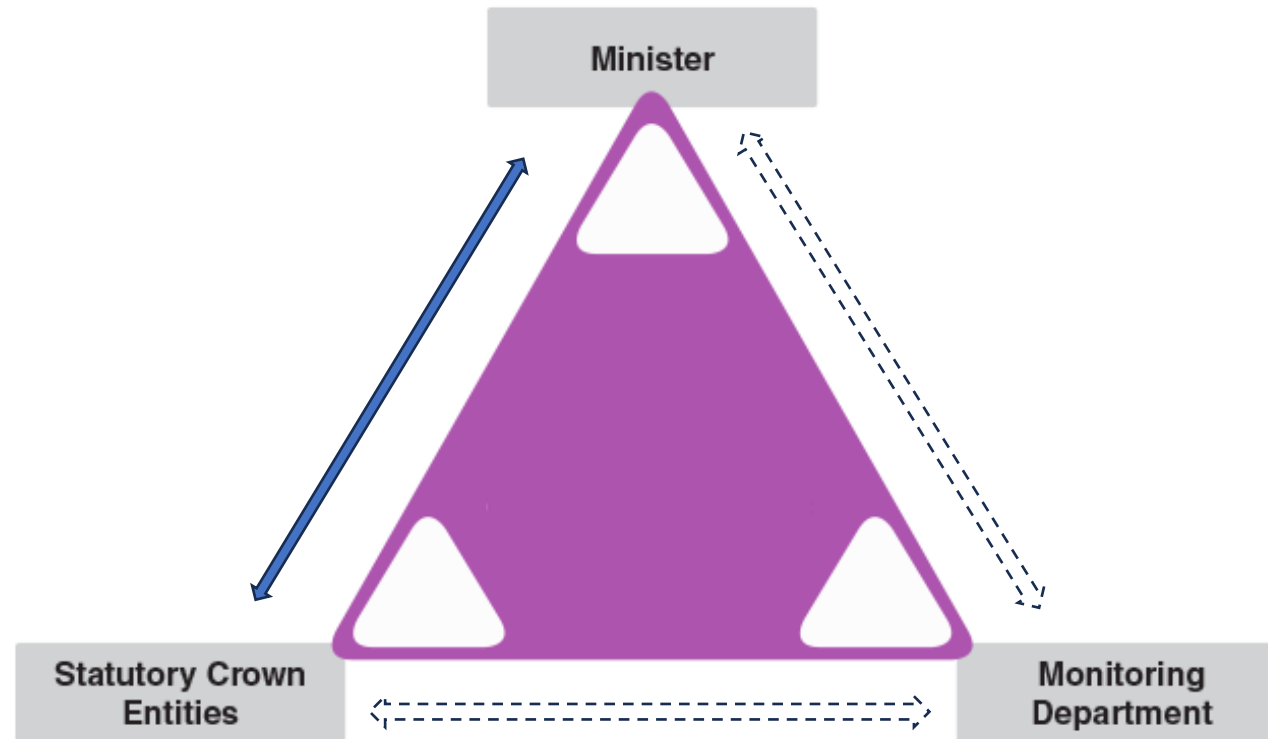
Maintaining a strong and trusted relationship with your Minister

Fostering an open and constructive engagement with your monitoring department

Welcoming diverse views and styles at the board table

Appointing and managing the chief executive

Rich information flows between the parties



It takes three addresses four main principles in detail, applicable to all three parties, often in quite different ways

1. **Clear roles and responsibilities** – a shared understanding of roles and responsibilities, statutory accountabilities and ‘no surprises’.
2. **Strategic alignment** i.e. relevant agencies are driven by the same principles, contribute toward the same outcomes AND achieve cross-government engagement with Crown entities and other parts of the relevant sector.
3. **Efficient and effective monitoring** – a high trust relationship with your monitoring department matters. The Monitor has a statutory responsibility to provide the Minister with independent advice. This is only possible when a rich information trade exists between the entity and monitor.
4. **Trusted engagement** – where relationships are trusting and productive for all parties.



Your operating environment in action - Trust and confidence, and political neutrality (eight examples)

1. 'No surprises'

Actions that private boards may take as a 'cost of doing business', can attract public criticism/scrutiny.

If the action is necessary, the Minister must be consulted as early as possible – [here](#)

2. Managing public money - oversight of executive management decisions

High salaries, substantial salary increases, the use of consultants and contractors may be within the chief executive's delegation, but must be considered in the context of Parliamentary scrutiny of expenditure.

For example, ACC use of security consultants led to a Public Service Commission inquiry - [here](#)



Your operating environment in action continued

3. Board / manager development expenses

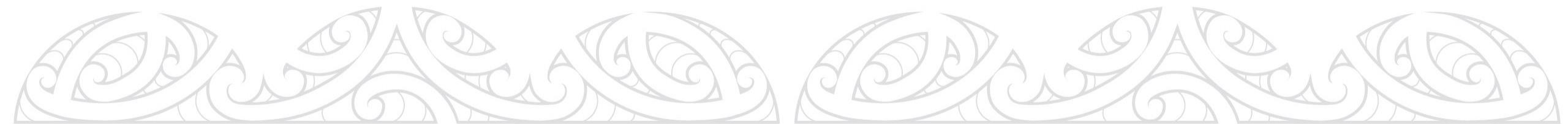
Hosting off-site 'training days' at facilities perceived as incurring high costs will attract public criticism for poor use of tax-payer funds. Similarly for attending overseas conferences or 'fact finding tours'.

For example, in 2017, District Health Board senior managers were criticised for expenditure on travel, training and meetings including destinations such as Paris, London, New York, Amsterdam, Florida, Canada, Ireland, Scotland, Singapore, China and Australia – [here](#)

4. Statutorily independent decision-making

The board may have statutorily independent decision-making. But the Minister is usually the main stakeholder. Public will take an interest.

For example, Creative New Zealand decision to decline funding of a Shakespeare production attracted questions in the House and of the Prime Minister – [here](#)



Your operating environment in action continued

5. Regulatory oversight

Independent function at a distance from the Minister. Failure to fulfil the role will mean Minister and public dissatisfied. Chair will need to front up and/or board subject to inquiry.

For example, independent report on NZTA Waka Kotahi's 2019 failure to prioritise public safety and that appropriate regulatory action was not taken in a timely manner - [here](#)

6. Strategic risk management and the role of Parliament

When asked, Boards and chief executives must appear before Select Committees.

TVNZ Board not happy with Chief Executive's answers to Select Committee and brought forward termination date. Board held to be in breach of Parliamentary privilege and fined. Now on that director's record - [here](#)



Your operating environment in action continued

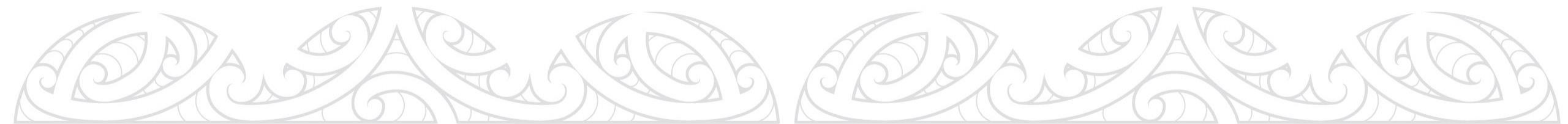
7. Stewards of public funding

Rapid expansion in hiring of public relations staff attracts media attention. Criticism that this expenditure does not contribute to service delivery – [here](#)

8. Background checking

Inadequate background checking of a Ministerial appointee to a government board brought into question previous appointments to Crown entity boards - [here](#)

9. A Crown agent chief executive takes overseas trip while significant job cuts are made across the public sector and within her own organisation. Criticism that this trip is poorly timed – [here](#)



How governance can go wrong: [a case study](#)



The review revealed problems with governance at Qantas and recommended 32 changes. The Institute of Directors (IOD) notes lessons for New Zealand Directors:

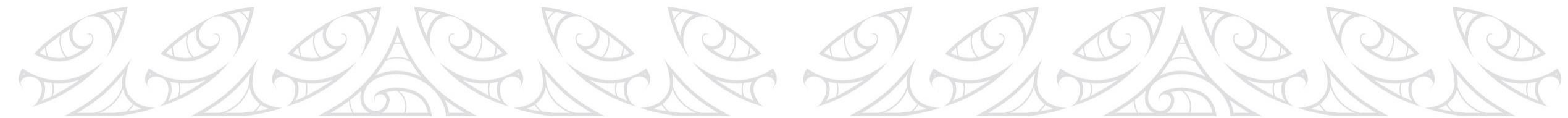
- Need for greater diversity of skills and perspectives
- Decision-making hindered by lack of robust debate
- Deficiencies in how the board managed non-financial risks
- Inadequate stakeholder engagement mechanisms – led to an erosion of trust
- Disconnect between a positive operational safety culture and company's questionable ethical leadership and values.

IoD report and questions for boards and directors [here](#)



Government Expectations

- Your responsible Minister's expectations – formally communicated in the annual letter of expectations, BUT a Minister can write to you at any time.
- The Government's overall expectations for statutory Crown entities are contained in the [Enduring Letter of Expectations](#) (ELOE) from the Ministers of Finance and for the Public Service. In summary your Board is expected to:
 - drive greater value from funds you receive and public assets you manage
 - have a full understanding of your entity's cost drivers and performance against key outcomes
 - take a continuous improvement approach to the activities and programmes you deliver, incorporating strong evidence and evaluation practices and seeking to improve the efficiency and responsiveness of the services you deliver.
- The ELOE also focuses on accountability and performance and maintaining trust and confidence.



What does this mean practically?

Different board thinking and behaviour are needed. Public Service ethos and the public good become prominent and boards need to be across a range of model standards:

[Integrity and ethics standards and guidance](#), for example:

- [Chief executive gifts and expenses model standards](#) (mandatory compliance)
- [Speaking up model standards](#)
- [Conflict of Interest model standards](#)
- [Working with Survivors](#)

A full list of all the model standards for agencies and staff on specific integrity issues can be found [here](#)

Other resources include:

[The Foundations of Good Practice: Guidance for Crown entity monitoring](#)

[Government Workforce Policy Statement](#)



How can the Commission help you?

- Advice on the Crown Entities Act 2004, which governs all Crown entities
- Managing terms and conditions for your Chief Executive ([s117 CEA](#))
- Conduct and integrity issues for your board or organisation
- Good practice on Crown entity governance - [Resource for preparation of governance manuals](#)
- Good practice Crown entity monitoring arrangements
- Fees for bodies set up by your agency (if any) – [Cabinet Fees Framework](#) applies
- Crown Entity Resource Centre – system support and resources
- [Developing leadership and talent](#)



Other links to resources you may find useful

[Guide-for-Ministers-Statutory-Crown-Entities \(4\).pdf](#)

[Managing conflicts of interest: A guide for the public sector \(oag.parliament.nz\)](#)

[“All-of-Government” requirements and expectations on statutory Crown entities](#)

[Increasing diversity and inclusion](#)

[Addressing pay gaps and pay equity](#)

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[LDC : Home](#) - Leadership Development Centre





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Tēnā rawa atu koe
Thank you

