



Statutory Crown entities and the Public Service Act 2020

Introduction

This document:

1. Addresses changes for Crown agents under the Public Service Act.

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 retain their Crown entity status under the Crown Entities Act 2004 and their establishment legislation. This means Crown agents also remain outside the core Crown which includes departments and ministries of the Crown.¹

2. Provides information on key other provisions that apply to statutory Crown entities generally.

Provisions of the State Sector Act 1988 that applied to Crown entities generally are carried over to the new legislation. This information sheet clarifies these provisions and any new provisions that apply to Crown entities and/or Crown agents specifically.

¹ Section 2 of the Public Finance Act defines the ‘core 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 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 (NZS Fund). Core Crown excludes Crown entities and state-owned enterprises (including the mixed ownership model companies).

Next steps

Statutory Crown entity boards should ensure that, where necessary, governance manuals, and board and employee policies, procedures and processes are updated to reflect provisions of the new legislation that affect them.

July 2020

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
Part 1, Subpart 2 Public Service defined, purpose, Public Service principles, and spirit of service to community			
<p>NEW</p> <p>s.10 Public service defined</p> <p>Crown agents are included in the definition of the Public Service for the purposes of subpart 2 and subpart 4 of Part 1 of the Public Service Act (the Act).</p>	<p>Yes</p> <p>(as part of the Public Service)</p>	<p>No</p>	<p>No</p>
<p>NEW</p> <p>s.11 Purpose</p> <p>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.</p>	<p>Yes</p> <p>(as part of the Public Service)</p>	<p>No</p>	<p>No</p>
<p>NEW</p> <p>s.12 Public service principles</p> <p>The Act legislates five public service principles: politically neutral, free and frank advice, merit-based appointments, open government, stewardship. Boards of Crown agents 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 Crown</p>	<p>Yes</p> <p>(as part of the Public Service)</p>	<p>No</p>	<p>No</p>

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>Entities Act (CEA) that is owed only to the responsible Minister in accordance with s58 of the CEA.</p> <p>Comment</p> <p>The five principles above express basic ground rules for the way in which the Public Service operates; inherited through New Zealand’s Westminster system of government. The principle of stewardship is separate and in addition to the duty of Crown entity boards under s51 of the CEA. Although new in statute the principle of political neutrality already applies to Crown entity staff through the current Standards of Integrity and Conduct (this Code continues to apply to agencies until any part or all of its contents are altered or replaced). In practice, the Board would fulfil its duty through the entity’s policies, procedures and employment arrangements.</p>			
<p>NEW</p> <p>s.13 Spirit of service to the community</p> <p>The fundamental characteristic of the Public Service is acting with a spirit of service to the community. Crown agent Boards must preserve, protect, and nurture the spirit of service to the community that Public Service employees bring to their work. This is a collective duty of the Board under the CEA that is owed only to the responsible Minister in accordance with s58 of the CEA.</p> <p>Comment</p> <p>A collaborative Public Service that acts as a unified team, with a spirit of service to the community, will lead to more joined-up and better services to New Zealanders. Under CEA s.50, Crown entity boards must ensure that the statutory entity performs its functions in a manner consistent with the spirit of service to the public. To preserve protect and nurture the spirit of service to the community that employees bring to their work is an additional aspect.</p>	<p>Yes</p> <p>(as part of the Public Service)</p>	<p>No</p>	<p>No</p>

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>Part 1, Subpart 4 Public Service values, minimum standards of integrity and conduct, and New Zealand Bill of Rights Act 1990</p>			
<p>NEW</p> <p>s.16 Public Service values</p> <p>The Public Service values are:</p> <ul style="list-style-type: none"> • Impartial - to treat all people fairly, without personal favour or bias • Accountable - to take responsibility and answer for its work, actions, and decisions • Trustworthy – to act with integrity and be open and transparent • Respectful – to treat all people with dignity and compassion and act with humility • Responsive – to understand and meet people’s needs and aspirations. <p>The Public Service values are given effect to only through minimum standards set by the Public Service Commissioner.</p>	<p>Yes</p> <p>(as part of the Public Service)</p>	<p>No</p>	<p>No</p>
<p>CARRIED OVER FROM THE STATE SECTOR ACT s.57 WITH AMENDMENT</p> <p>s.17 Commissioner may set minimum standards</p> <p>The Public Service Commissioner may set minimum standards of integrity and conduct including related to the Public Service values and principles. The standards may apply in or to the Public Service (including Crown agents), and other specified Crown entities and agencies. The Commissioner may vary the application of minimum standards in or to agencies, individuals or groups due to their legal, commercial, or operational context. The Public Service Commissioner applying or varying the application of a minimum standard must consult on the proposed content with all agencies that it applies to.</p> <p>Comment</p> <p>Agencies, individuals or groups must comply with whatever minimum standards apply to them. The Act contains a transitional provision stating that the code of conduct issued</p>	<p>Yes</p> <p>(as part of the Public Service)</p>	<p>Yes</p>	<p>Yes</p>

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>under s57 of the State Sector Act continues to apply to agencies until any part or all its contents are altered or replaced.</p>			
<p>CARRIED OVER FROM THE STATE SECTOR ACT s.57A WITH AMENDMENT</p> <p>s.18 Commissioner may set minimum standards unless exception granted</p> <p>The Public Service Commissioner or the appropriate Minister can grant an exception to the particular minimum standard for agencies other than the Public Service agencies including Crown agents.</p>	No	Yes	Yes
<p>AMENDED LANGUAGE</p> <p>s.19 Guidance on integrity and conduct</p> <p>The Public Service Commissioner may issue guidance on integrity and conduct matters for the Public Service (including Crown agents), and all others who may be subject to minimum standards. Guidance must be in writing and notified to the agency. The content of this guidance is not limited to the subject matter of the minimum standards. The Commissioner may also provide advice to agencies in the State services on matters that affect the integrity and conduct of individuals [s.17(7)].</p>	Yes (as part of the Public Service)	Yes	Yes
<p>NEW</p> <p>s.20 Required content of guidance on political neutrality</p> <p>If guidance is issued under s19 that includes the principle of political neutrality, that guidance must address the right to freedom of expression and the responsibilities of individuals who have obligations as a member of a profession. ‘Profession’ means an occupational group with a registration requirement.</p> <p>Comment</p> <p>These areas have been raised specifically as they can be difficult for public servants to navigate, given tensions between responsibilities such as acting with political neutrality in discharging their duties as officials while also discharging professional duties.</p>	Yes	Yes	Yes

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>NEW IN ACT (BUT MAINTAINS STATUS OF EXISTING CODE)</p> <p>s. 21 Status of minimum standards and guidance</p> <p>Minimum standards and guidance are neither legislative instruments or disallowable instruments and do not have to be presented to the House of Representatives.</p> <p>Comment</p> <p>Legislative instruments are made by the Governor-General, Ministers of the Crown, and certain other bodies under powers conferred by an Act of Parliament. In order to be a legislative instrument, they must have “legislative effect”. A disallowable instrument is delegated legislation that must be presented to the House and can be disallowed by the House.</p>	<p>The minimum standards or guidance set by the Public Service Commissioner do not fulfil the tests for them to have “legislative effect” i.e. instruments tend to have legislative effect if they:</p> <ul style="list-style-type: none"> • regulate conduct where compliance is a prerequisite for something under the empowering provision, or non-compliance would incur a sanction • create, alter, or remove a right where there is a mechanism for enforcing the right • set procedural requirements for a legal right or obligation • set the amount of a fee or levy • change the scope of legislation whether by way of application, modification, or exemption. 		
<p>NEW</p> <p>s.22 Rights and freedoms of employees</p> <p>This section acknowledges that Public Service employees (including Crown agent employees) have all the rights and freedoms affirmed in the New Zealand Bill of Rights Act.</p> <p>Comment</p> <p>The section explicitly acknowledges that public servants, including Crown agent employees, all the rights and freedoms under the New Zealand Bill of Rights Act. That and other Acts including the Human Rights Act 1993, apply to employees exercising have or seeking to enforce those rights and freedoms.</p>	Yes	While this is a new section when compared to the repealed State Sector Act 1988, New Zealanders have these rights and freedoms under the New Zealand Bill of Rights Act and other Acts including the Human Rights Act 1993.	
<p>Public service agencies and joint operational agreements</p>			

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>NEW</p> <p>s. 29 Selection of board members and designation of chairperson (interdepartmental executive boards)</p> <p>An Interdepartmental Executive Board is a new type of organisational form to align and co-ordinate strategic policy, planning and budgeting activities. The Public Service Commissioner must select members from chief executives of departments that are included in the board’s remit and designate one of the members as the chair. The Board can have independent advisers appointed by the Public Service Commissioner.</p>	<p>Anyone could be an independent adviser, excluding an appointed member of the Interdepartmental Executive Board itself. Crown entity board members, Crown entity chief executives, or other Crown entity employees can be appointed as independent advisors. A Crown entity board member appointed as an independent adviser would be eligible for fees for their services and expenses [see Schedule 3 clause 12(1)]. However, a Crown entity chief executive or Crown entity employee appointed as a representative of their entity would not be entitled to any payment.</p>		
<p>People working in the public service</p>			
<p>AMENDED LANGUAGE</p> <p>s.43 Commissioner’s role</p> <p>The Public Service Commissioner acts 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. The Commissioner also provides leadership, as described above, for other State services, and other agencies, in the ways provided in this Act.</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>
<p>AMENDED LANGUAGE</p> <p>s.44 Commissioner’s general functions that extend beyond public service agencies</p> <p>This includes provisions substantively carried over from the State Sector Act:</p> <ul style="list-style-type: none"> • Section 44(b) - promoting integrity, accountability, and transparency throughout the State services, including setting standards and issuing guidance. • Section 44(e) - review the design and operation of the system of government agencies in order to advise the Minister or the appropriate Minister on possible 	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>improvements to delivery of services and inter-agency cohesion, agency establishment, disestablishment, and amalgamations, the governance and allocation of functions, and the transfer of functions between agencies.</p>			
<p>AMENDED LANGUAGE</p> <p>s.50 Advisory committee</p> <p>The Public Service Commissioner may appoint advisory committees to assist with carrying out any of the Commissioner’s functions. When deciding on members, the Public Service Commissioner must have due regard to the nature of the community interest in the particular matter or matters to be addressed by that advisory Committee</p>	<p>A Crown entity board member or employee (or anyone else) can continue to be appointed as a member of an advisory committee. The same remuneration provisions apply as above for independent advisers to departmental executive boards discussed above [see s.29].</p>		
<p>NEW</p> <p>s.56 System Leaders and s.57 Standards and guidance</p> <p>The Public Service Commissioner may designate a Public Service chief executive (this does not include a chief executive of a Crown agent) as a System Leader to lead and co-ordinate best practice in a particular subject-matter area across the whole or part of the State services. If agreed by the appropriate Minister, the System Leader may set standards (applicable only to Public Service agencies) and issue guidance to the State Services.</p>	<p>Yes</p> <p>(guidance issued to State services)</p>	<p>Yes</p> <p>(guidance issued to State services)</p>	<p>Yes</p> <p>(guidance issued to State services)</p>
<p>NEW</p> <p>s.59 Public Service Leadership Team and s.60 Purposes of the Public Service Leadership Team</p> <p>The Public Service Commissioner must establish and lead a Public Service Leadership Team. The Public Service Leadership Team can include chief executives of Crown agents, as the Public Service Commissioner thinks fit. The Team provides strategic leadership that contributes to an effective and cohesive Public Service, works co-operatively and models leadership behaviours and assist its members to fulfil their responsibilities under the Act.</p>	<p>Yes</p> <p>(This section puts in law the current arrangements)</p>	<p>No</p>	<p>No</p>

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>CARRIED OVER FROM S.47 OF THE STATE SECTOR ACT WITH AMENDMENT</p> <p>s.61 Commissioner must develop and implement leadership strategy</p> <p>The Act places a new requirement on the Public Service Commissioner to consult with public service leaders to develop the strategy. This is for the development of senior leadership and management capability in the Public Service. The Public Service Commissioner may promote the leadership strategy to other State services and may invite them to assist to develop and implement the leadership strategy.</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>
<p>NEW</p> <p>s.62 Guidance</p> <p>The Public Service Commissioner may issue guidance, if applicable, to assist chief executives and boards that lead other State Services to implement the leadership strategy.</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>
<p>Application of employment provisions to transfers of functions between Crown entities and Public Service agencies (Schedule 8, clauses 9-14, which include the application of sections 88(1) and (3), s.89)</p> <p>(Crown entity definition is the same as s.7 Crown Entities Act so ACEs/ICEs as well as all other Crown entities)</p>			
<p>AMENDED LANGUAGE</p> <p>Schedule 8 Application of employee and reorganisation provisions to transfers of functions between Public Service agencies and Crown entities</p> <p>Clause 9 to 11 apply to a transfer of functions from a Crown entity to a Public Service agency or to a transfer of functions from a Public Service agency to a Crown entity.</p> <p>Comment</p> <p>For Crown entities, they carry over the substance of s61B from the State Sector Act 1988.</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>AMENDED LANGUAGE</p> <p>Clause 9 Restrictions of redundancy payments</p> <p>This clause advises that when reading s88 (1) and (3) and s89 of the Act, reference to “Public Service employee” includes reference to an employee of a Crown entity and a reference to “the employees current department or interdepartmental venture” includes a reference to the employee’s current Crown entity.</p> <p>Comment</p> <p>This section was broadened to take account of the new Public Service form, an interdepartmental venture (refer s29 of the Act). For Crown entity employees, redundancy payment is restricted if the redundancy arises due to a transfer of functions (whereas for Public Service agencies employees the redundancy could arise in any situation). Section 88 identifies which sections do not apply to the move to another position i.e. appointments on merit, obligation to notify vacancies and review of appointments.</p>	Yes	Yes	Yes
<p>AMENDED LANGUAGE</p> <p>Clause 10 Application of reorganisation provisions to collective agreements</p> <p>Clause 11 Application of collective agreements to employees following reorganisations</p> <p>Comment</p> <p>This section continues to put limits around which employees are bound by collective agreements before and after reorganisations</p>	Yes	Yes	Yes
<p>AMENDED LANGUAGE</p> <p>Clauses 12 - 14 Superannuation schemes for employees of State Service agencies</p> <p>This provision carries over the effect of section 84A and B in the State Sector Act. It includes the State Services for cl.13 Power for employers to establish superannuation schemes for officer and employees and cl.14 Contributions to superannuation Schemes).</p>	Yes (as part of the State services)	Yes (as part of the State services)	Yes (as part of the State services)

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
Government workforce policy			
<p>AMENDED LANGUAGE</p> <p>s.95 Commissioner’s functions in relation to this Part</p> <p>The Public Service Commissioner may provide advice and guidance on workforce matters including to Crown agents and other Crown entities, consider whether to draft and submit Government workforce policy for Ministerial approval as a Government Workforce Policy Statement (GWPS), advise affected agencies on the operation of the GWPS, and facilitate the operation of a GWPS in conjunction with affected agencies.</p>	Yes	Yes	Yes
<p>AMENDED LANGAUGE AND EXPANDED</p> <p>ss. 96 – 101 Government workforce policy</p> <p>These provisions cover the content, coverage and drafting of government workforce policy, and its promulgation and application of a formal Government Workforce Policy Statement (GWPS). It also allows the Public Service Commissioner to, within the GWPS, request information from affected agencies and specify how information is to be collected, classified and reported to the Commissioner.</p> <p>Comment</p> <p>The information requests power is new but does not limit any other Act that imposes a prohibition or restriction on the availability of any information. The range of matters that a GWPS can address, without limitation, have been expanded (beyond government expectations and collective agreement negotiations and workforce strategy) to include:</p> <ul style="list-style-type: none"> - the promotion of more effective management of employment relations generally in the agencies - workforce capacity and composition - pay equity and workforce diversity and includes inclusiveness - data and information held in the Public Service about agencies contracted to deliver that service. 	Yes (give effect to)	Yes (have regard to)	Yes (NEW - have regard to)

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>Section 101(3) also expands the range of agencies which must ‘have regard’ to a GWPS by including a Crown entity other than a Crown agent (already required to give effect to) or an autonomous Crown entity (already required to have regard) and consider any request for information made under it.</p>			
<p>Schedule 3 Other functions and powers of the Commissioner</p>			
<p>AMENDED LANGUAGE</p> <p>Clause 5 Functions and powers may be carried out for other State services</p> <p>The Public Service Commissioner</p> <ul style="list-style-type: none"> • If directed by the Prime Minister <u>must</u> • If requested by the head of an agency <u>may</u> • If requested by the Minister responsible for an agency <u>must</u> <p>carry out the Public Service Commissioner’s general functions or powers, including investigatory powers, in relation to other State Services Agencies.</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>
<p>CARRIED OVER FROM S.9 OF THE STATE SECTOR ACT</p> <p>Clause 8 (5)(b) AND (c) Application of the Inquiries Act 2013</p> <p>In exercising powers under the Inquires Act, the Public Service Commissioner may make 1 or more of the following:</p> <ol style="list-style-type: none"> findings of fault recommendations that further steps be taken to determine the civil, criminal, or disciplinary liability of a person findings or recommendations for the improvement and benefits of the State services relevant to the findings of the investigation <p>(c) may receive a report from any person, make a report to any person, or make any public report regarding the matters investigated.</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>	<p>Yes</p> <p>(as part of the State services)</p>

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>NEW</p> <p>Clause 16 Three-yearly briefings on state of public service</p> <p>The Public Service Commissioner must give a briefing to the Minister, on the state of the Public Service at least once every three years. The briefing may include an assessment of whether and the extent to which Public Service chief executives, Public Service agencies, and Crown agents are upholding the Public Service principles, are promoting stewardship of the Public Service, in particular its long-term capability. The Commissioner can include any other matters the Commissioner thinks relevant. The Minister must present a copy of the briefing to the House.</p> <p>Comment</p> <p>The purpose of a briefing is to promote stewardship of the Public Service.</p>	Yes	There is the potential for a matter having something to do with an autonomous Crown entity and / or an independent Crown entity.	
Schedule 6 Other functions and powers of Public Service chief executives			
<p>NEW</p> <p>Clause 8 Long-term insight briefings and Clause 9 Public consultation</p> <p>At least once every three-years, departmental chief executives must give a long-term insight briefing to the appropriate Minister who must present it to the House. The purpose of the briefing is to make available in the public domain information about medium and long-term trends, risks and opportunities that affect or may affect New Zealand and New Zealand society and information and impartial analysis, including policy options for responding to matters identified in the briefing. Any agency in the State services may contribute to such a briefing on subject matter relevant to their operations. The chief executive must undertake public consultation on the subject matters and a draft of the briefing.</p>	Yes (as part of the State services)	Yes (as part of the State services)	Yes (as part of the State services)
Consequential amendments			

Public Service Legislation	Crown agents	Autonomous Crown entities	Independent Crown entities
<p>There are consequential amendments to the Crown Entities Act 2004 as a result of the Public Service Act 2020.</p>	<p>These are purely technical changes to references from the repealed State Sector Act 1988 to the new Act and to amend the title of the State Services Commissioner to Public Services Commissioner in the relevant sections.</p>		