# How "independence" drives governance and form choices – a draft framework for future practice

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## Introduction

This paper seeks to bring together some apparently disparate ideas about "independence" across a range of government roles and activities, such as policy, administrative decision-making, regulation and oversight, to support a combined framework that can be used to support decision-makers to locate and support "independent" functions to perform effectively.

The paper considers what "independence" means in a government context, why the public, politicians and bureaucrats may think it is important, what else needs to be considered in establishing an "independent" function, and how the different aspects of independence apply to the machinery options currently available in the New Zealand environment.

The public choice and agency theories underpinning the development of New Public Management in the 1970s and 1980s encouraged the identification of conflicts between functions in large agencies, and resulted in the creation both of separate agencies and of additional oversight bodies that would be more independent of Ministers and their departments.  This paper explores an emerging view in my own agency, the State Services Commission, that agency proliferation is unwieldy and potentially counterproductive; that more weight should be given to the advantages of bringing (potentially competing) functions together; and that there are many ways to create and sustain the required levels of "independence" for a function, of which creation of a separate agency is only one.

## What does "independence" mean in a government context?

According to the Cambridge and Merriam-Webster dictionaries, "independent" means "not influenced or controlled in any way by other people, events, or things"; "self-governing";

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"not affiliated with a larger controlling unit"; "not requiring or relying on or contingent on something else"; "not looking to others for one's opinions or for guidance in conduct"; "not bound by or committed to a political party"; "showing a desire for freedom".

Gendron et al (2000) note, however, that "independence" is a social construct where different actors apply different meanings, and where there is a tension between an absolute ("virtue") view and a relative "sufficiency" view (neo-liberal economics). As discussed below, independence from whom and for what purpose is a key part of the analysis when determining appropriate scope and location for an "independent" function.

Most of these attributes – non-affiliation, lack of control, lack of influence - cannot and should not be achieved completely in government. After all, government agencies should collaborate, work within their budgets, and comply with codes of conduct. To provide appropriate, high quality, cost effective services and practical, implementable advice, agencies need to be "influenced" by public opinion, the political climate and – above all - the needs of the population they serve.

Our view of "independence" in government relates much more specifically to the checks and balances needed to ensure the proper functioning of our governments. Independence in the New Zealand context starts with an independent judiciary, a non-partisan head of State, a politically neutral public service with merit-based appointments, and robust scrutiny by Parliament. Those fundamentals are supported by requirements for disclosure of interests in decisions and legal barriers to Ministerial involvement in most decisions relating to particular private individuals or businesses.

## Why might the public look for "independence" in relation to government functions?

The 1948 United Nations Declaration of Human Rights reflects the basic things we all expect governments to secure for us: the rights and freedoms to life, liberty, security of person, freedom from torture, equality before the law, equal access to public services and social protection, education etc.

A public sector that is corrupt can make any of these things contingent on personal connections and/or money. An executive that is not robustly held to account by courts and parliament can result in abuses of State power. But even in a jurisdiction where the basic checks and balances are performing well, additional independent oversight may be needed where there is power asymmetry – protection for vulnerable people who do not have full agency, or who are subject to some form of coercive State power such as being held in the justice system. As our systems mature, our expectations also increase – for example that government services will be timely, do what they say they will and treat us and our sensitive information with respect – and those expectations also lead to further oversight, for example a Privacy Commissioner.

People who collect and report the evidence on how well or badly we are doing in relation to human rights – particularly equality and access – need to be able to report sometimes embarrassing findings without being censored by the government of the day. The person or body exercising the oversight is expected to express an independent view, even where government is funding them to provide the bad news – much as companies pay to be independently audited or car owners pay to have faults found in their vehicles.

Good information and transparency is closely connected with independence, as it can help non-government organisations to call out issues. Those who see real problems with government may not seek roles in government or wish to speak to government officials. Persistent disadvantage (eg average Maori life expectancy at birth is still seven years lower than that of other New Zealanders) requires active and authoritative voices from NGOs being heard in government. In New Zealand we pride ourselves on the Treaty of Waitangi and being the first country to give women the vote, but we still have plenty of work to do on genuine equality of treatment and access to services.

## How might Ministers think about independence?

A key design question is always whether "independent" functions need to be provided by agencies separated from Ministers.  Svara (2001) and Keating (1999) both discuss the need for officialdom to show independence – in the form of both professional integrity and capacity to adapt and respond to the government of the day - as an essential complement to the work of politicians, even in jurisdictions such as Australia and the United States where department heads are routinely replaced following a change of government.  In New Zealand, current work on the reform of the State Sector Act is seeking to bring onto the statute book some of the constitutional expectations around the independent character of the Public Service (eg providing free and frank advice) by making explicit the purpose, principles and values of the public service, including its roles in delivering services and regulation, supporting executive government's decision-making and supporting continuity of democratic government (SSC 2018b).  Such provisions should bolster the independence shown by Public Service departments and reduce the need for formal distance between agencies and Ministerial influence.

Conversely, one of the major drivers for Ministers themselves asking for "independent" functions to be created is the desire to establish a more direct relationship with relevant officials.  Under New Zealand's State Sector Act 1988, the chief executive of a department has full responsibility for all the work of the department, supported by the power to manage the work of the department including staff.  The chief executive therefore sets delegations, including determining which staff in the department should deal directly with Ministers.  For a Minister whose portfolio is one of several served by one department, the need for the chief executive to authorise direct access to relevant officials can be frustrating and lead the Minister to ask for a hard-wired arrangement such as a separate department, departmental agency or Crown entity.  Hence the need for SSC to explore how arrangements satisfactory to both the Minister and the chief executive can be established without either a) reshuffling departments to match portfolios whenever they

are revised or b) giving Ministers inappropriate influence over the internal management of a department.

New Zealand Public Service chief executives are appointed and managed by the State Services Commissioner, protecting their political neutrality and supporting their ability to provide free and frank advice. Many operational services have been devolved to Crown entities. Although Crown entities have a more arms-length working relationship with Ministers – and any formal directions from Ministers must be given in writing and published - in most cases their boards are Ministerial appointments[2] and Ministers often exert informal influence, for example through meetings with entity chairs.

## How do different elements of independence support the checks and balances of good government?

As discussed above, the most basic element in a system of checks and balances is the separation of powers between the executive, the legislature and the judiciary. Separation of powers and reporting lines can assist at multiple levels, whether internally (internal audit or inspection functions) or externally (independent bodies or Officers of Parliament such as the Independent Police Conduct Authority or the Auditor-General).

New Zealand compensates for the lack of an upper house in its legislature by having strong and specific limits on the authority of Ministers over government departments. Ministerial inability to intervene in personnel decisions or to change the use of funding without relevant approvals are set down in overarching legislation such as the State Sector Act and Public Finance Act, while requirements on the Public Service for political neutrality and free and frank advice form part of the Codes of Conduct issued by the State Services Commissioner.

Many State services, for example social welfare benefits, are required through legislation to be delivered free from any Ministerial influence or direction on who gets what, even

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[2] Crown Agent board members and chairs are in most cases appointed by, and can be removed by, the responsible Minister. Members of Autonomous Crown Entities and Independent Crown Entities have more formal appointment processes and can only be removed prior to the end of their term through a formal process involving other decision-makers.

when administered by departments normally subject to a high level of Ministerial direction. Murray Horn (1995) examined why the legislature was so keen to limit the powers of the executive in this way (particularly as under the first past the post voting system – replaced in 1996 – the party forming the government would necessarily have a majority in Parliament as well). He concluded that the "enacting" rather than the "incumbent" legislature dominated in the legislative process – Ministers were more concerned to avoid reversals of the legislation than to give themselves extensive powers. Ministers might also wish to reduce the number of controversial matters they will be lobbied on – New Zealand legislation puts decisions on matters such as roading projects and pharmaceuticals outside Ministerial control.

Although free and frank advice to Ministers is a requirement for public service departments in New Zealand, if that advice is not made public it may not contribute to others' ability to hold the government to account. Advice on some topics is legislatively required to be published by departments. Most publication, however, is done in concurrence with Ministers. Our current government has simultaneously got kudos for increasing the expectations on Ministers for proactive release of Cabinet documents, and been criticised for ceasing newspaper publication of league tables of District Health Board performance on key indicators (Kirk, 2018). Some Crown entities also routinely publish their reports, and in some cases Parliament has created officers in part to provide unfiltered advice to the public (eg the Parliamentary Commissioner for the Environment).

Another key factor in checks and balances is enabling a wide range of voices and encouraging ongoing input from people from outside government or the capital "beltway". NZ has several "population" departments such as the Ministry for Women and Te Puni Kōkiri (Ministry for Māori Development), who have an explicit role of holding the rest of government to account for its performance relating to "their" population (usually combined with an explicit role of drawing intelligence from that population).

In recent years Government has also increasingly sought to get more diverse advice and a range of expertise through use of Ministerial advisory committees, working groups or entity boards. Of course these bodies may also be dominated by the sort of people who are already over-represented in the political and public service organisations they are advising. New Zealand is yet to attempt the sort of deliberative citizen assembly process, using randomly selected electors, that has been a significant factor in building support for major and controversial changes in Ireland, such as the change to abortion law.[3]

## What other factors need to be considered alongside a desire for independence?

As mentioned above, independence in a government context is not always a good thing. Bodies that are more independent than they need to be may suffer from lack of connection to the services and stakeholders they are supposed to influence, generating irrelevant and impractical findings and advice and sometimes developing quite adversarial relationships with government.

When this happens, governments have shown willingness to make the effort to disestablish them, even though this can be difficult and public for the more independent types of body. For example, the Road Safety Trust was set up as an independent trust to plough the funds raised by sale of personalised (government-authorised) number plates back into road safety initiatives. When public criticism emerged that it was failing to fund the types of initiatives it was intended to support,[4] the government appointed the head of the road safety regulator as its chair to oversee an orderly winding up.

Current efforts to get better joined up government, and particularly a more unified public service, should drive us to consider at what levels independence is required and what degree of specialisation is needed. It is easy to end up with a patchwork quilt of inconsistent and

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[3] See https://www.citizensassembly.ie/en/, accessed 5 March 2019
[4] Eg David Farrar's column at https://www.kiwiblog.co.nz/2009/12/the_road_safety_trust.html

overlapping mandates, especially when we are using forms that require Parliamentary time to establish.

Transport safety is an example where regulators do great work arguably despite, rather than because of, the multiple formal layers of independence that surround them. New Zealand has one Transport Accident Investigation Commission to conduct no-fault investigations of major accidents and serious incidents across all transport modes. But it has three separate safety regulator bodies designing and enforcing rules in aviation, maritime, and land (road and rail) respectively, while acts and regulations, including transport Rules, are taken through Cabinet by a policy Ministry of Transport. The rationale for all these bodies must have appeared good in the early 1990s – but before 1988, all of these functions were carried out within a large Transport Department (along with other transport functions including road policing). Because all the regulators are Crown entities established under their own Acts, their separate operations are hardwired in a way that would take further primary legislation to change.

At least in transport it is usually fairly obvious which regulator you need to deal with. If you are a member of the public with an issue with a social service, it can be very difficult to work out who to raise it with – or even to figure out what should have happened and whether you have grounds for complaint. Even the professionals can struggle to work out whether a problem is arising because of:

- unprofessional or poor practice by an individual, to be reported to their professional body if they have one, and/or to their employer
- an organisational failure that their organisation should be held to account for
- a failing by a different organisation – for example if you require services from several agencies
- a wider issue of policy or funding for which Ministers should be answerable
- or indeed some combination of all of these.

Faced with navigating a complex system, most people just give up, complain about the government and leave the organisation unaware of the problem.  Those who do complain often go to the office of the Ombudsmen, which has wide-ranging jurisdiction that is able to look past most of the inter-agency finger-pointing.

All of which suggests that instead of setting up new or modified independent functions as yet more separate organisations, we should be looking at how to design functions effectively, cohesively, and avoiding unwarranted levels of independence.  Key questions to consider include:

- does this function provide checks or balances **within** government's policy framework or should it challenge policy from **outside**?

- if within government's policy framework, who does the independence need to be from?  Ministers?  the organisations being overseen or regulated?  Line management?

- if independent of Ministers, how much of the scope and priorities should be determined by government and how much by the body itself?  For example, successive Children's Commissioners (an Independent Crown Entity which is a corporation sole) have perceived quite different priorities based on their different professional backgrounds and experiences

- if the function is intended to support access to vulnerable people's rights, how can it be established and supported to achieve this?[5]

Many of the issues raised with independent bodies aren't really about "independence".  They arise from poor service design, fragmentation, attitude or culture problems, lack of resources and/or deferred maintenance in the relevant government agencies.  Which raises the question of whether to establish more "independent" bodies to intervene, or to consolidate and strengthen the existing ones (at the most independent end, the Auditor-

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[5] Many of New Zealand's most independent bodies are small, based in Wellington and have very limited capacity and capability to engage the people they are supposed to support, compounded by the reluctance of some groups to complain to government, whether for cultural reasons or because they are vulnerable to other government action (for example immigrant women not raising family violence issues because their leave to remain depends on the abusive partner).

General, the Ombudsman, Privacy Commissioner and Human Rights Commission; at the less independent end, large agencies' own quality control and internal audit functions, and monitoring departments' oversight of their Crown entities). Given the existing safeguards around the overall independence of the New Zealand Public Service, creating additional "independent" bodies may risk weakening the underlying ethos of the service.

## What factors make up independence?

Independence can be seen through legal, managerial, policy and financial lenses (Verhoest et al, 2012; NZ Productivity Commission, 2018). Ways in which these affect overall independence can be illustrated as follows:

|  | **More independent** | **Less independent** |
|---|---|---|
| **Legal** | Function required under legislation<br>Powers eg to require information<br>Mandate to drive relevant regulatory changes<br>Appointments process independent of Ministers<br>Security of tenure (eg externally reviewed removal process) | No specific legislation – could be disestablished without reference to Parliament<br>Lack of specific powers<br>Ministers appoint and remove |
| **Managerial/ operational** | Undertake functions without interference<br>Own organisation, or management influence able to be overruled by:<br>Own powers/ specific mandate<br>Professional requirements/ codes | Separate management line/ ethical "wall" within same organisation |
| **Policy** | Not required to give effect to or have regard to government policy<br>Can publish findings without reference to government | Must give effect to or have regard to government policy<br>Publication of work subject to Ministerial protocols |
| **Financial** | Third party funding (although this is usually set through Ministers) or<br>External requirements meaning government must fund (eg enforcement under international convention) | Funding set by executive |

In the New Zealand context, mandate is also critical – a combination of the scope and designed independence assigned to the organisation/person by legislation or Cabinet and

the "earned independence" of the organisation or office, including its public profile. One of the most independent mandates in the New Zealand system is held by the Ombudsman, an Officer of Parliament first established in 1962 as a means for affected individuals to raise complaints about administrative decisions, whose "earned independence" has been rewarded over the years with much wider scope and increased funding (provided through the Officers of Parliament Committee) (Boston et al 1996; NZ Human Rights Commission 2017).

Hanretty & Koop (2013) have worked on measuring formal independence and analysing the differences between formal and de facto independence.[6] They observe that different jurisdictions' legal and constitutional traditions mean that apparently similar measures for formal independence may play out quite differently in practice. The non-legislative factors they have found that correlate with actual independence include age of the agency, how the agency networks with others and the number of "veto players" – actors such as coalition partners whose agreement is necessary for an action to be taken. New Zealand moved from a "winner takes all" first past the post electoral system to mixed member proportional representation at the 1996 election, in effect making some form of coalition essential to each government and hence greatly increasing the influence of veto players. Although Hanretty and Koop found that larger populations are associated with greater agency independence, it is arguable that New Zealand's small population helps to generate swift public outcry about any apparent attempt by politicians to exert inappropriate influence.

## Introducing a framework for independent functions in the NZ government

The State Services Commission's current guidance includes a framework for considering how the level of Ministerial influence (or the level of independence sought from that influence) affects organisational form choice (SSC 2018a). The trap many users then fall

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[6] As have Gilardi and Maggetti, 2011

into is to try to create new things rather than use the framework to select where a function may best fit within existing entities.

The attached draft framework, comprising a landscape diagram and a table outlining how the independence factors above apply, is a first step in exploring how the various meanings of "independence" play out in the New Zealand government landscape. Depending on the nature of the independence sought, there are often options for providing it within existing organisations. You will see that complete independence from the policy of the government of the day is rare, particularly in executive government, and even entities that do have "independent" statutory or constitutional mandates are nevertheless mostly subject to Budget prioritisation by the executive.

## How do concepts of independence fit with new thinking on what makes for good government?

The big changes made to the New Zealand Public Service in the 1980s and 1990s – the "New Zealand model" - had objectives including to enhance effectiveness of government programmes; to improve the accountability of public sector institutions and the accountability of the executive to Parliament; to minimise the opportunities for the non-transparent use of public power; to make public services more accessible and responsive to consumers. As they were based on public choice theory and agency theory, assuming that everyone would act in rational self-interest, the principles of the reform included placing potentially conflicting responsibilities in separate institutions and minimising the scope for "provider capture" (Boston et al 1996, Scott 2001).

The New Zealand model has been gradually modified over the years, particularly to mitigate the costs of fragmentation and "accountability overload" resulting from, for example, separating policy from funding from procurement from service provision. Many formerly separate agencies have been recombined. In rethinking the model itself, it will be important to ensure we do not inadvertently head towards an "accountability deficit" where important

decisions are no longer transparent (Bovens et al 2008).  The international literature is also increasingly making the point that independence is not the same thing as organisational separation, that accountability is not the same thing as control (eg Busuioc 2009), and that politicians and officials should be seen as complementary rather than in competition (Svara 2001).

In terms of future requirements, we need to think about the impact of technology and big data on the nature of services, accountability structures and where future independent functions need to sit.  Miriam Lips (2011) characterises Dunleavy's "digital-era governance" model as:

- "Reintegration: ICTs will put back together many of the functions and expertise clusters that NPM separated into single-function organisational units.  Examples are the use of digital identity management systems to facilitate joined-up government or to re-strengthen central processes in order to reduce duplication across government.

- Needs-based holism: ICTs will simplify and change the entire relationship between agencies and their clients, moving away from the NPM focus on business process management and towards a citizen- or needs-based foundation for organisation. Examples are ICT-enabled public service reorganisations around a single client group or ask-once processes supported by reusing already-collected citizen information.

- Digitisation changes: electronic channels become the central feature of administrative and business processes.  Examples are new forms of automated processes where no human intervention is needed in an administrative operation, such as electronic monitoring of customers (e.g., patients) or increasing transparency, and offering citizens to track and self-monitor the processing of their service applications."

These trends bring new opportunities and challenges.  On the opportunity side, better data can reduce the incidence of incorrect or arbitrary decision-making by agencies through automated processes including use of well-designed algorithms; it can also provide much better tools for assessing aspects such as where New Zealand continues to fall short in human rights and what factors drive that.  For example, social sector agencies have been gaining insights through the matching of anonymised personal data in the Integrated Data

Interface (hosted by Statistics New Zealand) that have highlighted important correlations, helped to make the case for different interventions and shown the economic importance of addressing households with complex needs effectively.

On the challenges side, algorithms risk perpetuating existing system biases and creating new ones (Stats NZ 2018), and there is still much work to do in New Zealand about the extent of social licence for government agencies to share identifiable information and the risks of information sharing for the rights of individuals. Preventing social harms through early intervention needs to avoid getting into *Minority Report* territory (locking people up to prevent crime).

To navigate these challenges effectively, we need to look carefully at our government's regulatory and oversight functions to ensure that they have appropriate scope, critical mass and powers to deal with future risks. A lot of functions are currently designed to limit inappropriate political influence. In future, this may be less of a risk than (unwitting) inappropriate use of personal information by government agencies.

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**Independence – a draft framework (overview)**



Level of practical autonomy

Level of independence from government of day

Inside agency · Other agency in executive · Outside executive · Outside government

Wider statutorily independent role eg Chief Archivist

Statutory independence eg benefit decision

Non-Public Service dept eg Police

Delegation eg Head of Forestry in MPI

Ministerial advisory group Eg Land and Water Forum

Review not by line management Eg internal audit

Own stakeholder group/forum Eg Maritime Reference Group

Separate appropriations eg Vote Fisheries

Independent Crown entity Eg IPCA

Autonomous Crown entity eg Te Taura Whiri

Crown agent eg ACC, NZTA

New department or DA eg Te Arawhiti

Parliament and its Officers eg Ombudsmen

Higher courts

Statutory committee eg Death Review Committee

Lower courts/ tribunals

NGO not reliant on government funding eg Amnesty

NGO carrying out statutory function (government authorises levies) eg NAIT Ltd

NGO dependent on government funding eg VOYCE

**Key**

Review/oversight/ challenge

Independent from government policy

External input to government policy

Operational independence

Independent decisions on individual cases

Transparency

## Independence – a draft framework (detail)

| | What it is | Mandated by | Legal | Managerial | Policy | Financial |
|---|---|---|---|---|---|---|
| **Within a department** | | | | | | |
| *General provisions for all departmental forms below* | *Public Service department* | *Schedule 1 State Sector Act* | *Part of legal Crown/ executive branch* | *Chief Executive responsible for all work of the department* | *Advise on and give effect to policy of government of the day* | *Funded through Budget process* |
| Separate appropriation | Identified separately in published Estimates, and reported on separately | Treasury in consultation with department CE | | | | Proposals to redirect the funding need to go through Ministers and/or Cabinet |
| Review outside line management | Eg internal audit, quality assurance function, complaints or appeals functions | CE | | Oversight outside normal line management | | |
| Internal delegation | CE delegates role to a staff member, eg for head of a business unit to deal directly with a relevant Minister. CE remains responsible | CE | | Can act on CE's behalf in accordance with delegation | | Business units often supported by separate Votes or appropriations |
| Independent individual decision | Requirement for department to act independently in decisions on individual cases | Many such requirements in statute; also usual practice unless statute specifies | Minister barred from influencing individual decision, still accountable for policy | | | |

| | | Ministerial involvement | | | | |
|---|---|---|---|---|---|---|
| Wider statutory independent role | Requirement for department or its CE to lead a function or area of work without Ministerial influence, eg Chief Archivist, intelligence services, Director of Public Health | Statute | Minister barred from influencing | | Usually the independence also applies to related policy | |
| Non-public service department | Has constitutional role extending beyond government of the day (currently Police, Defence Force and Parliamentary departments) | Statute | Ministerial relationships set in statute | Depends on statute | Depends on statute | Executive sets budget for Police and NZDF; Parliament sets budget for others |
| Stakeholder groups/ fora | Convened by department to provide external advice/ views on work | CE | None | None | Potential input to policy | None |
| Ministerial advisory groups | Convened by Minister to advise Minister and/or department | Minister | None | None | Input to policy | Some groups may be provided with small budget eg to commission research |
| **Other agency type (within executive)** | | | | | | |
| New department or departmental agency | Separate department or departmental | Order in Council under State Sector Act | Part of legal Crown/ executive | Own CE has authority (modified in some areas if | Policy of government of the day | Separate Vote or appropriations (if departmental agency, these are |

| | | | | | | |
|---|---|---|---|---|---|---|
| | agency hosted by a department | | | departmental agency) | | administered by host department) |
| Crown agent | Crown entity intended to give effect to government policy (usually service provider, funding agent and/or regulator) | Established in own legislation, governed by Crown Entities Act 2004 | Executive branch but not part of Crown. Functions and powers set out in own statute | Governed by Board usually appointed by responsible Minister, monitored by relevant department | Policy of government of the day | Separate Vote and/or appropriations set through Budget; some also have levy funding or hypothecated source |
| Autonomous Crown entity | Crown entity intended to operate alongside government policy (arts bodies, funding agencies etc) | Established in own legislation, governed by Crown Entities Act 2004 | Executive branch but not part of Crown. Functions and powers set out in own statute | Governed by Board or commissioner(s) usually appointed by the Governor-General on advice of Minister(s), monitored by relevant department | Can be directed to "have regard to" policy of government of the day | Appropriation set through Budget; some also have third party funding (eg ticket or grant revenue for arts bodies) |
| Statutory committee | Usually group of technical specialists convened to undertake review/ advisory function, with secretariat provided by relevant department | Established under legislation | Executive branch, not a separate agency | Members appointed by Minister, serviced by departmental secretariat | Advise on policy | May have an associated budget (through appropriation) eg to commission research |
| Independent Crown entity | Crown entity with oversight and/or quasi-judicial powers, designed to hold | Established in own legislation, governed by Crown Entities Act 2004 | Executive branch but not part of Crown. | Governed by Board or commissioner(s) usually appointed by the Governor- | Cannot be directed on government policy except where specified in | Appropriation set through Budget; some also attract third party funding |

| | | | | | | |
|---|---|---|---|---|---|---|
| | government to account | | Functions and powers set out in own statute | General on advice of Minister(s), monitored by relevant department | establishing legislation | |
| **Outside executive** | | | | | | |
| Parliament | Elected legislature, with select committees of members to examine legislation, petitions and how funds are spent | Election | Constitution | Supported by Parliamentary Services | Debates policy | Sets funding for the Executive |
| Officers of Parliament | Currently three: Auditor-General, Ombudsman and Parliamentary Commissioner for the Environment | Own Acts | Functions and powers and duty to act independently in own legislation | Oversee executive government | Oversee executive government | Funding set by Parliament's Officers of Parliament Committee |
| Lower courts/ tribunals | District Courts and range of Tribunals considering how current law applies to individual cases | District Courts Act and range of Acts establishing Tribunals | Part of judiciary, required to act independently (subject to precedents set by higher courts) | Administration and registry support part of Ministry of Justice (Public Service department) | Apply the law | Vote: Justice funding sought and administered by Ministry of Justice |
| Higher courts | Supreme Court, Court of Appeal and High Court set precedents for lower courts | Superior Courts Act | Part of judiciary | Administration and registry support part of Ministry of Justice (Public Service department) | Apply and interpret the law; some cases result in Parliament making changes when law appears to have unintended consequences | Vote: Justice funding sought and administered by Ministry of Justice |

| **Outside government** | | | | | | |
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| NGO dependent on government funding | Many social services providers are non-government organisations heavily reliant on government contracts | Contracts with government agencies | Non-government but under contract may be subject to government requirements eg personnel checking | Own management, monitored by contracting department(s) | Contracted to give effect to government policy. May also provide public or private feedback on how policy works and potential changes | Funded through contracts from Vote funded agencies |
| NGO mandated with statutory function | Some industry self-regulation bodies are approved and appointed by Ministers under statute (eg professional bodies, some industry regulators) | Appointed to role by Executive under relevant statute | Non-government but need to meet legislative and accountability requirements relating to statutory role | Own management, monitored by relevant department | Appointed to give effect to government policy, usually by agreement with the regulated stakeholders | Funded through levies on the regulated parties, set by statutory process (often require Ministerial approval) |
| NGO not reliant on government funding or mandate | Private sector or charitable organisation | None | Meet relevant requirements to operate, eg Companies Act and/or Charities Act | Own management | Own policy – may be critical of government policy | Third party funded |