

Supplementary Paper: Crown Entities

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This paper is a supplement to the TINZ 2013 National Integrity System Assessment. The analysis in this paper was drawn on in the public sector pillar of that report.

Crown entities are a diverse collection of organisations fulfilling a broad range of functions such as funding, managing complaints, advocacy, special purposes, policy advice, rules and monitoring compliance, industry regulation, and delivering services. Assigning functions or activities to a Crown entity indicates that the functions should be carried out at 'arm's length' from the Government.²

There are five types of Crown entity:

- Statutory Crown entities: these are further classified as Crown agents, autonomous Crown entities (Aces), and independent Crown entities (Ices) reflecting the degree of independence from Government;
- Crown entity companies;
- Crown entity subsidiaries;
- school boards of trustees; and
- tertiary education institutions.³

The following table shows the approximate numbers and some examples for each type of Crown entity.⁴

Figure CE.1: Types and examples of Crown entities

Type of Crown entity	Number	Example
Statutory Crown entities	Crown agents (47)	ACC, District Health Boards, New Zealand Transport Agency
	Aces (18)	Families Commission, Guardians of New Zealand Superannuation, New Zealand Teachers Council

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² Cabinet Manual 2008, <http://www.cabinetmanual.cabinetoffice.govt.nz/3.28>

³ Section 7, Crown Entities Act 2004. Schedule 1 of the Act lists the names of the Crown entities.

⁴ Schedule 1-2, Crown Entities Act 2004, <http://www.msi.govt.nz/get-connected/crown-research-institutes>, <https://www.ssc.govt.nz/sites/all/files/guide-to-nzcga-1nov12.pdf>

CROWN ENTITIES

Crown entity companies	Ices (17)	Broadcasting Standards Authority, Human Rights Commission, Privacy Commission
	Crown research institutes (7)	ESR, NIWA
	Companies (3)	Radio New Zealand Limited
	Crown company subsidiaries (around 200)	
Boards of Trustees	Around 2,435	
Tertiary education institutions	Universities (8)	AUT, University of Otago
	Polytechnics/Institutes of Technology (18)	Bay of Plenty Polytechnic, WELTEC
	Wānanga (3)	Te Wānanga o Aotearoa

Source: State Services Commission, 2012

Crown entities are a substantial part of government operations in New Zealand. There are more than 2,700 Crown entities, and they spend approximately two-thirds of the resources budgeted for the operation of New Zealand government and one-third of total Crown expenses.⁵

Crown entities are not considered part of the public service but are part of the broader state services in New Zealand. They are established by an Act of Parliament and are legal entities in their own right but are owned by the Crown.⁶

Crown entity governance involves relationships between a responsible minister, a board of directors and a monitoring department. The responsible minister oversees and manages the Crown's interests in Crown entities and carries out any statutory functions conferred on him or her as minister. The minister is also responsible for appointing the board of directors who oversees the entity's day to day operations. Ministers are assisted with their responsibilities for Crown entities by a monitoring department. These departments monitor Crown entities and provide advice to the minister on the entity's performance.⁷

Crown entity boards are accountable to the responsible minister who in turn is accountable to Parliament for their operations and spending of public monies. Boards have powers similar to those held by boards of private enterprises and appoint the Chief Executive. While most Crown entity boards are appointed by the minister,

⁵ <http://www.ssc.govt.nz/node/1314>

⁶ Cabinet Manual 2008, <http://www.cabinetmanual.cabinetoffice.govt.nz/3.28>

⁷ Cabinet Manual 2008, <http://www.cabinetmanual.cabinetoffice.govt.nz/3.28>, Office of the Auditor-General, How government departments monitor Crown entities, June 2009 <http://www.oag.govt.nz/2009/crown-entities/part1.htm>

CROWN ENTITIES

some boards contain a mix of elected representatives and ministerial appointees while boards of trustees are elected by the school communities they serve.

Crown entities are funded in different ways, reflecting the different types of entity and varying degrees of autonomy. Funding arrangements include:

- a dedicated appropriation, e.g. Vote ACC;
- receiving an appropriation as part of a broader vote, e.g. Careers New Zealand is funded through Vote Education;
- funding allocated from an appropriation using a formula (usually administered by the Department responsible for the vote) e.g. the Ministry of Education funds schools from Vote Education;
- a mix of government and other funding, e.g. schools supplement government funding with donations, activity fees, fundraising, charging international students;
- charging third party fees for services; and
- making a profit from services provided.

To summarise, Crown entities are not a particularly homogenous collection of agencies. They vary significantly in terms of size, structure, function and the degree of autonomy from Government.

Summary of findings

Overall, Crown entities perform well in the key areas of independence, transparency, accountability and integrity from a legislative point of view. There are clear and comprehensive legislative provisions which support Crown entities to operate openly and account for their actions. This is an improvement on Transparency International's 2003 assessment of Crown entities. However, a potential area of major systemic risk is ministerial board appointments and the perception that these appointments are a form of political patronage.

Transparency International's 2003 National Integrity Systems assessment noted long-standing concerns about the clarity of Crown entities' governance framework and the State Services Commissioner's mandate for integrity and conduct issues in the Crown entity sector. At the time of the 2003 report, a Bill to address these matters had been introduced to Parliament.⁸

The Crown Entities Act 2004 (the Act) came into effect in January 2005, so the current legislative framework for Crown entities has been in place for some time. The Act was introduced to provide a consistent framework for the establishment, governance and operation of Crown entities and to clarify accountability relationships between Crown entities, their board members, their responsible ministers on behalf of the Crown, and the House of Representatives. The Act provides for different

⁸ Transparency International, National Integrity Systems Transparency International Country Study Report New Zealand, 2003, p.28

CROWN ENTITIES

categories of Crown entities and for each category to have its own framework for governance (including the degree to which the Crown entity is required to give effect to, or be independent of, government policy). It clarifies the powers and duties of board members in respect of the governance and operation of Crown entities, including their duty to ensure the financial responsibility of the Crown entity, and sets out reporting and accountability requirements.⁹

While the Act applies to Crown entities generally and provides a clear legislative framework for Crown entity governance, this remains a complex area. Under the Act there is provision for an entity's enabling legislation to modify or negate provisions in the Act. For example, boards of trustees and tertiary education institutions are exempted from parts of the Act but usually have corresponding provisions (for example, annual reporting requirements) included in their enabling legislation, the Education Act 1989.¹⁰ There are some tensions inherent in the Crown entity model as the entities must balance multiple accountabilities – to the communities they serve as well as the responsible minister and Parliament.¹¹ However, to a certain extent these tensions work together to promote transparency and accountability.

Transparency International's 2003 report also raised concerns about the level of political patronage in government appointments to public sector boards.¹² The Act contains appointment procedures which support merit based appointments¹³ which is an improvement on the 2003 findings. However, ministers still wield substantial power in making board appointments without any particularly strong checks and balances. Perceptions that government appointments to Crown entity boards are politically motivated remain.

The media raised concerns about board appointments in 2012.¹⁴ These included appointments to boards of the Accident Compensation Commission, New Zealand on Air, and the Health Promotion Agency (HPA). One article noted that three of seven appointees to the HPA board had close political affiliations with the National Party. One appointee was the chief executive of a lobbying group whose interests would appear to conflict with those of the HPA board.

Because decisions to appoint members rest solely with the minister and are not subject to independent scrutiny, appointments can be perceived as being politically motivated or seeking to influence a Crown entity's independence whether or not this is the case in practice. The perceived risk to Crown entities' independence is a

⁹ Part 1 purpose, Crown Entities Act 2004, <http://www.legislation.govt.nz/act/public/2004/0115/latest/DLM329637.html>

¹⁰ Sections 4-6, Crown Entities Act 2004

¹¹ Derek Gill, Visiting Senior Fellow, Institute of Policy Studies, Victoria University of New Zealand, Crown entity reform in Aotearoa-New Zealand – Pendulum Shift?, <http://www.irspm2008.bus.qut.edu.au/papers/documents/pdf/Gill%20-%20Crown%20Entity%20Reform%20in%20Aotearoa%20New%20Zealand%20Pendulum%20Shift.pdf>

¹² Transparency International, National Integrity Systems Transparency International Country Study Report New Zealand, 2003, p.27

¹³ Section 29, Crown Entities Act 2004 (although it does not use the word "merit")

¹⁴ http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10831727

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10832252

http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10815422

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10815974

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10783229

CROWN ENTITIES

concern, considering these boards are responsible for overseeing a substantial amount of public service delivery and significant levels of public spending.

Options to improve the transparency of the appointments process may include:

- Establishing an independent commissioner responsible for providing assurance about public board appointments. The United Kingdom operates such a system,¹⁵ although a similar system established in Canada appears to have encountered substantial issues¹⁶.
- Widening or strengthening the State Services Commissioner's mandate (or that of some other existing independent office) to provide assurance over board appointment processes. Transparency could be improved by annual reporting on appointments in the same way that the State Services Commissioner currently reports on human resources and capability in the state sector. Legislative changes would probably be necessary.

Capacity

4.1.1 To what extent do the Crown entities have adequate resources to effectively carry out their duties?

Given the diversity of the Crown entity sector there is little information available specifically on the resourcing of Crown entities as a collective. The main reference source for this is the Financial Statements of the Government for the Year ended 30 June 2012. Excluding tertiary education institutions, Crown entity sector revenue for this period was \$35,185 million with expenditure being slightly less at \$33,776 million.¹⁷ This suggests that Crown entities are managing within the resources provided.

The State Services Commission (SSC) data on the public sector occasionally includes information on parts of the Crown entity sector. SSC data has been used as a proxy for indications of Crown entity resourcing.

There do not appear to be particular issues with Crown entity resourcing. Crown entities, like other agencies within the state sector, are operating in an environment of fiscal constraint. Still, there is a general sense that services are being delivered effectively.¹⁸

Board fees and Crown entity employees' wages and salaries are set within broader requirements and expectations for state sector remuneration. These aim to achieve consistency in levels of remuneration and ensure reasonable use of public funds.¹⁹

¹⁵ <http://publicappointmentscommissioner.independent.gov.uk/>

¹⁶ <http://www.cbc.ca/news/politics/story/2012/01/26/weston-commission-politics.html>,

¹⁷ <http://www.treasury.govt.nz/government/financialstatements/yearend/jun12/100.htm>

¹⁸ <http://www.ssc.govt.nz/sscer-speech-bps-12july12>, <http://www.ssc.govt.nz/kiwis-count-update-nov12>

¹⁹ Fees for Crown entity companies and state owned enterprises are subject to separate guidance from Crown Ownership Monitoring Unit (COMU). See COMU, Owners' expectations manual, July 2012; CO(12) 6 Fees framework for members appointed to bodies in which the Crown has an interest,

CROWN ENTITIES

SSC notes that the current fiscal climate is a challenge for ensuring that pay and benefits attract and retain high performing employees. There is likely to be a similar challenge for Crown entities.²⁰

4.1.2 To what extent is the independence of Crown entities safeguarded by law?

Within the legislative framework of the Crown Entities Act 2004 and the Crown Companies Act 1993, there are clear provisions for safeguarding Crown entities' independence at operational and governance levels.²¹ The provisions focus on relationships between ministers, boards and Crown entities. How entities interact with the public, stakeholder groups, or business does not appear to be specifically addressed in legislation. There may be provision in individual Crown entities' enabling legislation. However, most Crown entities are subject to the SSC code of conduct provisions which address independence requirements for interactions with these groups – for example, making decisions impartially, working to make services accessible and effective, and ensuring actions are not affected by personal interests or relationships.²²

There is a specific section in the Crown Entities Act which outlines the independent nature of Crown entities and provides clear guidance on ministerial relationships with Crown entities.²³ The Act also outlines ministerial powers to request information from Crown entities and the circumstances under which a Crown entity can refuse such a request.²⁴ These provisions support the independent nature of Crown entities.

Crown entities such as school boards of trustees and tertiary education institutions have independence provisions included within the Education Act 1989. A school board has complete discretion to control the management of the school as it thinks fit, except to the extent that any enactment or general law provides otherwise.²⁵ Similarly, tertiary education institutions are accorded academic freedom. In terms of the legislation, this means the freedom of:

- academic staff and students, within the law, to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions;
- academic staff and students to engage in research;
- the institution and its staff to regulate the subject matter of courses taught at the institution;

²⁰ State Services Commission, Remuneration of Public Service and State Sector senior staff as at 30 June 2011, September 2011, p. 3. <http://www.ssc.govt.nz/sites/all/files/rem-senior-state-sector-staff-2011.pdf>, <http://www.ssc.govt.nz/sites/all/files/hrc-survey-2012.pdf>, p. 16

²¹ Due to the sheer number of Crown entities (eg, around 2,700) individual legislative provisions for safeguarding independence have not been examined. For broad provisions see: Section 113, Crown Entities Act 2004., Section 133, Crown Entities Act 2004, Section 75, Education Act 1989, Section 161, Education Act 1989

²² State Services Commission, Standards of Integrity and Conduct, <http://www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf>

²³ Section 113, Crown Entities Act 2004. See also working paper 2.

²⁴ Section 133, Crown Entities Act 2004

²⁵ Sections 75, Education Act 1989

CROWN ENTITIES

- the institution and its staff to teach and assess students in the manner they consider best promotes learning; and
- the institution, through its chief executive, to appoint its own staff.

In exercising these freedoms, institutions are expected to maintain high ethical standards, permit public scrutiny of these standards, and be accountable for resources allocated to them. The legislation also provides that, in performing their functions, councils and chief executives of the institutions as well as ministers shall act so as to preserve and enhance academic freedom and the autonomy of institutions.²⁶

Legislative provisions concerning board appointments emphasise appointment based on merit as well as providing for diversity. In making appointments, ministers must take account of these factors.²⁷

A Crown entity's enabling legislation sets the requirements for board composition.²⁸ Board structures reflect the degree of Crown entity independence with some boards requiring a mix of ministerial appointees and elected representatives from communities and staff groups. There are limits on the length of board members' terms although, for some boards, members can be reappointed for further terms.²⁹

Board members' fees are set through independent mechanisms and within frameworks designed to ensure consistency of remuneration in keeping with reasonable spending of public monies.³⁰

4.1.3 To what extent are Crown entities free from external interference in their activities?

There are tensions around the degree to which Crown entities operate independently, but these are mitigated somewhat by the various checks and balances that promote accountability and transparency. In general, legislation provides a clear framework for Crown entities to operate without political interference in keeping with the varying levels of autonomy of different types of Crown entities. Crown entities appear to have a good understanding of their status as a Crown entity and there are various checks and balances (boards, monitoring departments, external watchdog agencies) that work to safeguard Crown entities from external interference.

Operating independently requires a fine balance as some entities must give effect to or have regard for government policy and Crown entities are subject, in some circumstances, to whole of government direction and integrity and conduct expectations issued by the State Services Commissioner.

²⁶ Section 161, Education Act 1989

²⁷ Section 29, Crown Entities Act 2004

²⁸ For example, section 94, Education Act 1989 sets out provisions for boards of trustees, section 267 of the Accident Compensation Act 2001 or section 10, Museum of New Zealand Te Papa Tongarewa Act 1992.

²⁹ Section 32, Crown Entities Act 2004

³⁰ Section 47, Crown Entities Act 2004, Cabinet Office Circular CO(12) 6 *Fees framework for members appointed to bodies in which the Crown has an interest.*

CROWN ENTITIES

A recent example illustrates some of these tensions between government policy and the independence of Crown entities. In relation to tertiary funding policy changes for science, technology, engineering and mathematics (STEM) subjects, the Minister for Tertiary Education, Skills and Employment said publicly that he would tell a university how many students to enrol if the university did not respond to market needs. This is a particular concern given that safeguards for the academic freedom of tertiary institutions are specified in legislation.³¹

A challenge is ensuring that board members understand the framework within which they operate and their obligations to the public. Board appointees are not always familiar with the expectations of public service and the public sector environment. This responsibility falls to monitoring departments and is likely to be reinforced as boards interact with the Crown entity through their work. SSC provides guidance to monitoring departments on inducting board members.³²

There are perceptions that ministerial board appointments are, in some instances, politically motivated or seeking to influence a Crown entity's independence because Ministers are solely responsible for these appointments. This is discussed above in the summary section. The issue appears to be one of transparency as appointment processes are not subject to routine independent scrutiny.

Governance

4.2.1 To what extent are there provisions in place to ensure transparency in financial, human resources, and information management of the Crown entities?

Overall, there are clear provisions in place that support Crown entities' transparency in financial, human resources, and information management.³³ However, some aspects of board appointments are not supported by provisions that promote transparency. This includes advertising board appointments and the absence of any obvious mechanism that enables independent scrutiny of appointment decisions.

Legislation requires Crown entity board members to declare interests to the responsible minister prior to appointment. The responsible minister must be satisfied that the interest is manageable. The Crown Entities Act provides guidance on how to manage interests and what must be disclosed. The legislation also provides for the on-going management of interests.³⁴

Legislation outlines how board members fees are set and specifies who may not receive a fee for services as a member of a statutory entity.³⁵

Crown entities must publish an annual report on their affairs including content prescribed by legislation. This includes financial statements and in some cases human resources information.³⁶

³¹ <http://www.3news.co.nz/Joyce-threatens-academic-freedom--Greens/tabid/1607/articleID/277252/Default.aspx>

³² State Services Commission, Board Appointment and Induction Guidelines, March 2012

³³ See <http://www.ssc.govt.nz/node/1314>

³⁴ Sections 62-72, Crown Entities Act 2004

³⁵ Sections 47-48, Crown Entities Act 2004

CROWN ENTITIES

Legislation requires that:

- Crown entities disclose board members' remuneration, and employees' remuneration over \$100,000, in the annual report which is publicly available;
- Crown entities' annual reports are subject to independent scrutiny by the Auditor-General; and
- the annual report is provided to the responsible minister who must table the report in the House of Representatives.

Crown entities are expected to include in their annual report how they comply with good employer requirements.³⁷

As well as annual reports, Crown entities' financial information is publicly available through the Treasury's website when it makes the Government's financial statements available.³⁸

Crown entities are subject to the information management provisions set out in the Official Information Act 1982, the Privacy Act 1993 and the Public Records Act 2005.³⁹

Crown entities' actions are subject to review under the Ombudsmen Act 1975. A Crown entity may have its own independent review and appeal authority so there are circumstances in which the Ombudsmen cannot investigate a complaint.⁴⁰

Processes for appointing Crown entity board members are set out in legislation.⁴¹ There are no general requirements that board vacancies are advertised. Some provisions may be included in Crown entities' enabling legislation.⁴²

There is no requirement that information about board appointments is publicly reported.

4.2.2 To what extent are the provisions on transparency in Crown entities' financial, human resources and information management effectively implemented?

Existing provisions concerning financial, human resources, and information management in Crown entities are implemented effectively. As noted above, there are some areas where provisions to promote transparency either do not exist or provide for limited scrutiny of parts of board appointment processes.

Crown entities comply with annual reporting requirements, and through this mechanism information on their activities, finances and human resources is freely

³⁶ Sections 150-157, Crown Entities Act 2004

³⁷ Section 118, Crown Entities Act 2004

³⁸ <http://www.treasury.govt.nz/government/financialstatements/yearend/jun12/100.htm>

³⁹ Public Records Act schedule 4 definition of public office includes Crown entities as defined in the Crown Entities Act.

⁴⁰ Schedule 1, Part 2, Ombudsmen Act 1975, Ombudsmen Accident Compensation Corporation fact sheet, published 6 August 2012

⁴¹ Sections 28-46, Crown Entities Act 2004

⁴² For example, TEC board appointments must be advertised in accordance with section 159D(2) of the Education Act 1989

CROWN ENTITIES

available. Annual reports are tabled in Parliament, thus providing for scrutiny through Parliamentary processes, and Crown entities make their annual reports available on their websites with a small number of reports published in hard copy.⁴³ Also, as part of the Better Public Services programme, the government expects Crown entities to disclose non-sensitive performance information more frequently on their websites.⁴⁴

Chief executives of statutory Crown entities comply with the State Service Commissioner's disclosure regime for expenses, gifts, and hospitality. This information is freely available on the internet.⁴⁵

Crown entities are subject to public information provisions. Agencies responsible for investigating complaints under these provisions publish opinions and case notes. A small number of these concern Crown entities.

Processes for managing board member interests are not subject to routine external review. This places increased emphasis on integrity provisions and guidance for board members.

Some board appointments are publicly advertised although this is not a legislative requirement.⁴⁶

There are few mechanisms in place to enable transparent scrutiny of decisions on board appointment.

4.2.3 To what extent are there provisions in place to ensure that Crown entity employees have to report and be answerable for their actions?

There are clear legislative provisions in place to ensure that Crown entity boards have to report and be answerable for their actions to the responsible minister and through the minister to Parliament.

Ministers are responsible to Parliament for overseeing and managing the Crown's interests in, and relationships with, the various entities that fall within Ministers' portfolios. Crown entity boards are the primary monitor of an entity's performance and governance and are accountable to one or more Ministers. Despite the different establishment frameworks of entities, all provide for the participation of ministers (with differing rights and restrictions) in strategy setting, requesting information, and monitoring the performance of each entity. Entities also operate within a wider system of accountability and scrutiny which includes the Auditor-General, Ombudsman, and regulatory bodies as appropriate (for example, the Commerce Commission).⁴⁷

The Crown Entities Act 2004 provides for clear accountabilities for Crown entity boards and their members. It describes the board's role and explicitly states the

⁴³ For example, see University of Otago http://www.otago.ac.nz/about/official_documents.html#annualreport, Radio New Zealand http://www.radionz.co.nz/assets/cms_uploads/000/000/035/RNZ_2011-12_Annual_Report.pdf and New Zealand Trade and Enterprise <http://www.nzte.govt.nz/about-nzte/pages/our-corporate-documents.aspx>

⁴⁴ Office of the Deputy Prime Minister, Office of Minister for State Services, Paper to Cabinet State Sector Reform and Control Committee: Better Public Services Paper 7: Amendments to the Crown Entities Act 2004, 4 May 2012 (released 29 June 2012): available from <http://www.ssc.govt.nz/bps-cab-papers-minutes>

⁴⁵ <http://www.ssc.govt.nz/ce-expenses-disclosure>

⁴⁶ COMU has a dedicated website for board appointments.

⁴⁷ <http://www.comu.govt.nz/about-comu/our-role/>

CROWN ENTITIES

accountability of members to the responsible minister for performing their duties as members.⁴⁸ The responsible minister has powers under the Crown Entities Act to remove board members for just cause ('just cause' includes misconduct, inability to perform the functions of office, neglect of duty, and breach of collective or individual duties). The Act sets out a process which must be followed to remove a board or board member in keeping with the principles of natural justice.⁴⁹

Legislation requires Crown entities to report to Parliament and to account for their actions annually through statements of intent and annual reporting mechanisms.⁵⁰ This system also provides for scrutiny through select committee financial reviews.

Legislation provides for 'whistle-blowing' and makes corrupt use of official information and bribery of an official an offence.⁵¹

4.2.4 To what extent do Crown Entity employees (and boards) have to report and be answerable for their actions?

Crown entity boards and their members are held to account for their actions using various accountability mechanisms.

The statutory accountability framework appears to apply in practice as there have been several occasions in the past ten years where the activities of boards and their members have been subject to scrutiny. These include:

- Inquiries and performance audits conducted by the Auditor-General:
 - Inquiry into aspects of ACC's board-level governance (August 2012);
 - Management of conflicts of interests in the three Auckland district health boards (October 2007);
 - Cambridge High School's management of conflicts of interest in relation to Cambridge International College (NZ) Limited (October 2005); and
 - Inquiry into certain aspects of Te Wānanga o Aotearoa (December 2005).
- Ministers using powers to remove boards or board chairs/members:
 - Replacing a board of trustees with a Commissioner (April 2012);
 - Removing the Otago District Health Board Chair (February 2009); and
 - Removing the Hawkes Bay District Health Board over managing conflicts of interest (March 2008).⁵²
- Board member resignations following ACC privacy breaches.
- Privacy Commissioner investigation

⁴⁸ Sections 25 and 26, Crown Entities Act 2004.

⁴⁹ Sections 36-41, Crown Entities Act 2004. Similar provisions for polytechnic council members are provided in the Education Act 222AJ and 222AK.

⁵⁰ Sections 138-149 and 150-157 Crown Entities Act 2004

⁵¹ Schedule 1, Protected Disclosures Act 2000, Sections 105 and 105A Crimes Act 1961

⁵² <http://www.radionz.co.nz/news/regional/104063/school-board-sacked-after-refusing-to-close-unit>
http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10557206
http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10498778

CROWN ENTITIES

- Independent Review of ACC's Privacy and Security of Information (August 2012)
- Police and Serious Fraud Office investigation
 - A former Hawkes Bay District Health Board member was investigated and cleared by the Serious Fraud Office (July 2008)⁵³

Board members may also be subject to less public forms of accountability. For example, a minister may decide not to renew a board member's term when it expires.

4.2.5 To what extent are there provisions in place to ensure the integrity of Crown Entity employees (and boards)?

Integrity for Crown entities and their boards is ensured through a mix of statutory and formal provisions. These provisions cover key areas such as the need for impartiality, acting legally, honestly, observing a duty not to disclose information, acting in good faith and without pursuing personal interests.

Standards of behaviour expected of Crown entity boards are set out in legislation.

Legislative provisions concerning integrity and conduct align or are consistent with Cabinet Manual expectations for integrity and conduct in the public sector.

The Crown Entities Act 2004 sets out the collective duties of board members.⁵⁴ Section 50 provides that the board has responsibility for ensuring the entity acts in a manner consistent with the spirit of public service. Sections 53-57 outline the individual duties of board members, which include duties to:

- comply with the Crown Entities Act and the entity's enabling legislation;
- act with integrity and honesty;
- act in good faith and not pursue their own interests;
- act with reasonable care, diligence and skill; and
- not disclose information except in certain circumstances.

The Crown Entities Act also sets out conflict of interest disclosure rules.

As the Crown Entities Act specifies the individual and collective duties of board members, the State Services Commissioner decided not to include the personal conduct of board members in the coverage of the code of conduct for the public service (see below).

Many parties can have a legitimate interest in the conduct of Crown entity board members (e.g. the chairperson, other members on the board, a select committee undertaking a review, the Minister of Finance, the Auditor-General, the Ombudsman,

⁵³ http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10521645

⁵⁴ Similar provisions for TEI boards and boards of trustees are contained in the Education Act 1989. For TEIs see s222AH for duties of polytechnic council members, s180 for duties of Councils. Note these are slightly more limited.

CROWN ENTITIES

the State Services Commissioner, the public), but the board's most important relationship in terms of accountability is with the responsible minister. In the event of members' wrong-doing, the minister may lose confidence in their ability to fulfil their responsibilities and initiate statutory processes for removing them from office. This is the same process the minister would consider if members were included in the code coverage.⁵⁵

Setting standards for employees' integrity and conduct

In general, Crown entity employees are subject to integrity and conduct standards set by the State Services Commissioner.

The State Sector Amendment Act 2004 gave the State Services Commissioner the mandate to set minimum standards of integrity and conduct for most organisations in the State Services (including most Crown entities). Once each organisation covered by the code has been notified in writing that the code applies to it, the "agency, including its employees, must comply".⁵⁶

The 2007 code of conduct for the state services, *Standards of Integrity and Conduct*, applies to employees of most Crown entities.⁵⁷ The State Services Commissioner does not have the power to set standards of integrity for Crown research institutes and tertiary education institutes, although these are Crown entities. The Cabinet manual recommends that the responsible minister should establish expectations for conduct/ethics with the board chair.⁵⁸ The Code has not yet been applied to school boards of trustees or their staff.

The State Services Commissioner's mandate⁵⁹ includes providing advice and guidance to employees within the State Services (excluding Crown research institutes) on matters or at times that affect the integrity and conduct of employees in the State Services. The State Services Commissioner has powers of investigation and inspection in this respect. The State Services Commissioner can require agencies to provide information in relation to matters concerning integrity and conduct.

The SSC Code of Conduct, issued under section 57 of the State Sector Act 1988, provides for:

- fairness;
- impartiality;
- acting responsibly (including acting lawfully and objectively, using organisational resources carefully and for intended purposes); and
- being trustworthy (including being honest, ensuring actions are not affected by personal interests or relationships, never misusing positions for personal

⁵⁵ SSC rationale for not including board members in the code.

⁵⁶ s57 State Sector Amendment Act 2004

⁵⁷ <http://www.ssc.govt.nz/code-organisations>

⁵⁸ Cabinet manual paragraph 3.61, <http://cabinetmanual.cabinetoffice.govt.nz/>

⁵⁹ Section 6, State Services Act 1988

CROWN ENTITIES

gain, declining gifts or benefits that could create obligation or could be perceived as influence).⁶⁰

Section 105 of the Crimes Act 1961 covers corruption and bribery of an official. Section 135 of the Crown Entities Act 2004 sets out a definition of an official for these purposes. Officials include members, office holders, and employees of Crown entities.

The Cabinet Manual sets out expectations for integrity and conduct across the State Sector. Crown entity employees are expected to follow the principles of public service and maintain the highest standards of integrity and conduct in everything they do. Employees must be fair, impartial, responsible and trustworthy. There is emphasis on political neutrality and ensuring that personal interests or activities do not conflict with the aims and objectives of the employer. The Cabinet Manual provides references to further guidance on managing conflicts.

4.2.6 To what extent is the integrity of Crown entity employees ensured in practice?

Results of the Auditor-General's 2012 survey on fraud awareness, prevention, and detection in the state sector suggest that integrity mechanisms contribute to high levels of integrity in practice. The Auditor-General commissioned the survey to gain better insight into fraud in the public sector. The results confirmed a strong commitment within the public sector to protecting public resources.⁶¹

The survey found that codes of conduct, and policies on accepting gifts or services, were generally in place in Crown entities. Rather fewer had protected disclosures policies. Respondents also displayed a high level of confidence that managers and other employees in the organisation understood their role in preventing and detecting the risks of fraud and corruption, and that the organisation encouraged staff to come forward if they detected fraud or corruption. There was a very high level of confidence that organisational culture supported staff raising concerns about fraud and corruption, that these concerns would be taken seriously, and that there would be no retaliation. Monitoring of credit card expenses and staff expenses appeared to be routine. Inappropriate use of credit cards, or inappropriate expense claims were taken seriously and resulted in disciplinary action.⁶² Figure 2 below provides some indicative responses for Crown entities.

The integrity and conduct of boards does come under scrutiny from time to time as evidenced by Auditor-General inquiries into various aspects of board operations. Board chairs have a responsibility to ensure that board members' conflicts of interest are managed effectively. However, it is difficult to know the extent that integrity provisions for board members are ensured in practice. This may be an area for future work.

⁶⁰ <http://www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf>

⁶¹ <http://www.oag.govt.nz/2012/fraud-summary-govt-departments/part1.htm>
<http://www.oag.govt.nz/2012/fraud-summary-crown-entities/part2.htm>

⁶² Office of the Auditor-General, Fraud awareness, prevention and detection in the public sector, June 2012

CROWN ENTITIES

Figure CE.2: Select Crown entity responses from the OAG's 2012 survey of fraud awareness, prevention and detection in the public sector

	Autonomous Crown entities	Central government - other	Crown agents or companies	Crown research institutes	Independent Crown entities
Code of conduct in place	100	94	97	92	86
Policies on accepting gifts and services	98	78	97	87	95
Protected disclosures policy in place	87	87	76	87	62
Organisational culture supportive of concerns about fraud and corruption	98	100	98	97	97
Monitoring of credit card expenses	94	100	97	97	95
Monitoring of staff expenses	98	100	99	97	97
Action on inappropriate credit card spending	94	98	86	86	86

Source: Office of the Auditor-General, June 2012

Note: Figures are the percentage of entities in that category of entity that responded 'yes' to that question in the survey. A description of the survey methodology and questions is available on the Office of the Auditor-General website www.oag.govt.nz.

Role

4.3.1 To what extent do Crown entities inform and educate the public on their role in fighting corruption?

It is unlikely that Crown entities play a significant part in informing and educating the public on their role in fighting corruption unless this is a specific part of the Crown entity's functions.⁶³ It is more likely that interaction with the public during the course of providing services contributes to educating the public.

4.3.2 To what extent do Crown entities work with public watchdog agencies, business, and civil society on anti-corruption initiatives?

⁶³ For example, the Financial Markets Authority has a role in educating the public around fraud and what to look out for in financial advice and investments.

CROWN ENTITIES

Again Crown entities' role in this area is likely to be fairly limited unless anti-corruption activity forms a specific part of the Crown entity's mandate.

4.3.3 Procurement question addressed through public sector procurement subsector

4.4.1 Do Crown entities give effect to the spirit and principles of the Treaty of Waitangi?

The Crown Entities Act 2004 good employer provisions include the expectation that Crown entities' personnel policies include recognition of the aims and aspirations of Māori, the employment requirements of Māori, and the need for involvement of Māori as employees of the entity.⁶⁴

⁶⁴ Section 118 (2)(d), Crown Entities Act 2004