STATE SERVICES COMMISSION
Te Komihana O Ngā Tari Kāwanatanga

Resource for Preparation of Governance Manuals

Guidance for Statutory Crown Entities:

Crown Agents, Autonomous Crown Entities,
Independent Crown Entities
(excluding District Health Boards and Corporations Sole)

State Services Commission 2009
Updated March 2014

Please note that the guidance is not prescriptive. Entities should ensure the issues are covered in their own documentation, while allowing for the context of the entity concerned, and tailoring the material appropriately. This guidance does not cover all topics relevant to governance, and many boards' manuals will need to include additional material to suit their legal circumstances and particular activities.

This guidance may be updated and reissued from time to time. To confirm your document is current, go to www.ssc.govt.nz/crown-entity-governance.

newzealand.govt.nz

Published by the State Services Commission
PO Box 329, Wellington, New Zealand
October 2009
Updated March 2014 to reflect amendments to the Crown Entities Act 2004

ISBN 978-0-478-40984-0

.

Purpose of this guidance

Every statutory Crown entity is expected to have a board governance manual that reflects good practice standards.

Governance includes the processes by which organisations are directed, controlled and held to account.

This guidance seeks to improve the standard of governance manuals so that board members are able to meet the expectations of Ministers. It also aims to strengthen the public's trust by promoting consistent practices in key areas, such as declaring interests or dealing with gifts.

This guidance is a resource to support the preparation of such manuals, recognising that the fundamentals of good governance are common to all entities, despite their widely-differing roles and relationships.

Crown entity governance is different from governance in the private or not-for-profit sectors. Governance in the State sector has added obligations and complexities derived from the ethos of public service, the ministerial role and relationships, and the impact that Crown entities have on individuals, business and communities in New Zealand.

Who is this guidance for

This guidance is intended for those people charged with developing, implementing and maintaining a board's governance manual. Many Crown entities already have well-developed governance manuals and guidance; others may cover some but not all topics fully. The guidance should be used to ensure that all boards have a governance manual that meets good practice requirements across the range of topics.

How to use this guidance

The guidance is not prescriptive. Entities should ensure the issues are covered in their own documentation, while allowing for the context of the entity concerned, and tailoring the material appropriately.

This guidance does not cover all topics relevant to governance, and many boards' manuals will need to include additional material to suit their legal circumstances and particular activities.

Guidance documents are in themselves not enough to guarantee appropriate behaviour and practices. They need to be supplemented by internal procedures that are followed and respected, and that will assure stakeholders that the entity concerned takes its obligations as part of the State services seriously.

Further advice on the implementation of this guidance can be sought from the Chief Legal Advisor, State Services Commission, phone (04) 495-6600 or email commission@ssc.govt.nz. If you have questions that particularly relate to chapters 14 and 15, in the first instance please contact your monitoring department. General enquiries on these two chapters can be emailed to performanceinfo@treasury.govt.nz.

Table of contents

Coverage of this guidance

This guidance applies to statutory Crown entities: Crown agents, autonomous Crown entities (ACEs) and independent Crown entities (ICEs) and their subsidiaries, excluding District Health Boards (DHBs) and Corporations Sole.

This guidance **does not** apply to Crown entity companies, Tertiary Education Institutions or School Boards of Trustees. To locate information sources for these entities refer to www.ssc.govt.nz/crown-entity-governance.

Chapter 1: Relevant legislation

Effective governance of Crown entities requires board members to have a good understanding of the legislative environment in which they must operate. This includes the legislation that establishes their entity, the Crown Entities Act 2004 and other legislation that applies generally to Crown entities.

Entity-specific legislation

Most Crown entities are established by a specific Act or under wider empowering legislation, for instance:

- the Environmental Protection Authority Act 2011; or
- the Commerce Act 1986, providing for the establishment of the Commerce Commission.

The governance manual should provide information on the key elements of the entity's establishing legislation, and make clear the relationship between that and other general legislation that applies to the entity.

Crown Entities Act 2004

The Crown Entities Act 2004 (CE Act) provides a consistent framework for the establishment, governance and operation of Crown entities. It clarifies the accountability relationships between entities, their board members, responsible Ministers and the House of Representatives. Governance manuals need to give all board members a broad understanding of the Act as it applies to their role on behalf of the entity.

Application of some of these provisions will vary according to whether it is a Crown agent, Autonomous Crown Entity (ACE), or Independent Crown Entity (ICE). Key examples of the distinctions are in the table on the following page.

An entity's governance manual needs to describe how the main provisions of the CE Act apply to it: it does not need to refer to all three categories of entity.

Key distinctions between categories of entity

All references are to the CE Act	**Crown Agents**	**Autonomous Crown Entities (ACE)**	**Independent Crown Entities (ICE)**
Government policy directions	*Must give effect to* government policy when directed by the responsible Minister (s. 103)	*Must have regard to* government policy when directed by a responsible Minister (s. 104)	*Are generally independent* of government policy (s. 105), unless specifically provided by an Act
Directions to support a whole of government approach	Must comply with a whole of government direction from the Minister of State Services and the Minister of Finance (s. 107)	Must comply with a whole of government direction from the Minister of State Services and the Minister of Finance (s. 107)	Must comply with a whole of government direction from the Minister of State Services and the Minister of Finance (s. 107)
Appointment of board members	Appointed in most cases by the responsible Minister (s. 28)	Appointed in most cases by the responsible Minister (s. 28)	Appointed by the Governor–General on the recommendation of the responsible Minister (s. 28)
Term of board members	Hold office for 3 years or less (s. 32)	Hold office for 3 years or less (s. 32)	Hold office for 5 years or less (s. 32)
Removal of board members	May be removed by the responsible Minister at his or her discretion (s. 36); unless an elected member (s. 38)	May be removed by the responsible Minister for any reason that in the Minister's opinion justifies the removal (s 37);); unless an elected member (s 38)	May be removed by the Governor-General for just cause, on the advice of the responsible Minister given after consultation with the Attorney-General (s39)
Remuneration	Determined by the responsible Minister in accordance with the Cabinet Fees Framework (s. 47)	In most cases determined by the responsible Minister in accordance with the Cabinet Fees Framework (s. 47)	Determined by the Remuneration Authority in accordance with the Remuneration Authority Act 1977 (s. 47)
Re-categorisation of an entity	May be re-categorised as an ACE or ICE by Order in Council	May be re-categorised as an ICE by order in Council but not as a CA	May not be re-categorised by Order in Council. Would require legislative change.

This table expresses the general state of affairs under the Act; variations may be provided for expressly in a particular entity's Act. There are some differences for different types of boards, such as District Health Boards where the majority of board members are elected rather than appointed.

Other key provisions of the CE Act are discussed in other chapters of this guidance. These include: members' individual and collective duties, the role of responsible Ministers and monitors, accountability relationships, strategic planning and Statements of Intent, reporting requirements, delegation of power and functions, declaring and managing interests, employment of entity chief executives and staff.

State Sector Act 1988

Under the State Sector Act, the State Services Commissioner's mandate applies to Crown entities in a number of ways, including to:

- review the State sector system in order to advise on possible improvements to agency, sector and system-wide performance;
- review governance and structures across all areas of government in order to advise on:
  - the allocation and transfer of functions and powers;
  - the cohesive delivery of services;
  - the establishment, amalgamation and disestablishment of agencies;
- promote leadership capability in departments and other agencies;
- promote strategies and practices concerning government workforce capacity and capability. The Commissioner may draft government workforce policy for the purpose of fostering a consistent, efficient and effective approach to such matters across the State sector. The Minister of State Services may approve a policy as a Government Workforce Policy Statement (GWPS) that may apply to any or all Crown agents and ACEs. Crown agents must give effect, and ACEs have regard, to a GPWS;
- promote transparent accountability in the State services;
- promote and reinforce standards of integrity and conduct in the State services; and
- set minimum standards of integrity and conduct. The State Services Commissioner has issued a code of conduct that applies to the staff of Crown entities (Also, see chapter on *Crown entities as employers*, p39).

Public Finance Act 1989

The CE Act specifies most of the provisions relating to a Crown entity's financial powers, accountability and reporting obligations.

However, the following sections of the Public Finance Act apply to Crown entities:

- s. 19, s. 26Z, s. 29A provide for the Secretary of the Treasury to request information necessary to prepare government statements and reporting;
- s. 35 sets out the responsibilities of departmental chief executives for financial management of non-departmental matters. These responsibilities include reporting on non-departmental appropriations administered by the department (including those used by Crown entities) and advising the appropriation Minister on the efficiency and effectiveness of expenditure under these appropriations. These departmental chief executive responsibilities are distinct from Crown entities' financial management and reporting responsibilities;
- Subpart 1 of Part 5 (which is cross-referenced in s 150A of the CE Act) provides information on:
  - the first annual report of a newly established entity (s. 45I);
  - the final annual report for a disestablished entity (s. 45J);

  - the final annual report for an entity that ceases to be subject to the annual report requirement (s. 45K);

- s. 49 provides that the Crown is not liable to contribute towards payments of debts and liabilities of Crown entities;
- s. 74 provides that money that has remained unclaimed in an entity's account for six years shall be paid to the Treasury;
- s. 80A allows for the Minister of Finance to issue instructions, and Crown entities are required to comply with those instructions. The instructions must be consistent with generally accepted accounting principles; and
- s.81 provides for the Governor-General to make regulations for a variety of purposes.

Other legislation with general application

A considerable body of legislation applies to all **Crown entities as employers**, in respect of matters such as holiday entitlements, employment relations, and health and safety. Employment matters are generally handled by chief executives rather than board members but, in ensuring compliance with them, the chief executive invariably acts under delegation from the board.

The **Official Information Act 1982** applies to Crown entities. Board minutes are among the documents that can be requested under this legislation. The general expectation, as expressed by the Chief Ombudsman for instance, is for official information to be released (either pro-actively or in response to a request), unless there are clear grounds to withhold it under the Act.

For further guidance on the Official Information Act, see: www.ombudsman.parliament.nz/resources-and-publications/guides/.

The principles contained in the **Privacy Act 1993** include:

- how an organisation collects and stores personal information and what procedures are required to protect the security of that information;
- how long an organisation can keep personal information; and
- what personal information can be used for, and when it can be disclosed.

For further guidance, see: www.privacy.org.nz/how-to-comply-with-the-privacy-act/.

The **Protected Disclosures Act 2000 (as amended in 2009)** provides for the reporting of wrong-doing in workplaces (sometimes called 'whistle-blowing') to an appropriate authority, such as an Ombudsman. All Crown entities must have a protected disclosures policy. Under this Act, current or former employees of an entity, contractors and board members can make a disclosure that will be 'protected' if the information they are disclosing is about serious wrongdoing in or by the organisation, and they reasonably believe that the information is true or likely to be true.

For further guidance, see: www.ombudsman.parliament.nz/.

Governance manual content: Relevant legislation

At a minimum a good governance manual should cover:

- the relevant entity-specific legislation, the Crown Entities Act and the relationship between them as it applies to the particular category of Crown entity; and
- all other legislation that has general application to boards and entities.

Chapter 2: Functions and powers of the entity

Board members must know what they and their entity are charged with doing and how they are empowered to carry out their functions and powers.

Section 25 of the Crown Entities Act 2004 (CE Act) states that the board is the governing body of statutory entity with the authority to exercise the powers and perform the functions of the entity. All decisions relating to the operation of the entity must be made by, or under the authority of, the board in accordance with the CE Act or the entity's establishing legislation.

Functions of the board

Under s. 14 of the CE Act the functions of a statutory entity are:

- the functions set out in the entity's establishing legislation;
- any functions that the Minister has added in accordance with the establishing legislation; and
- any functions that are incidental and related to, or consequential on, the entity's functions.

The CE Act contains several safeguards for the independence of entities in carrying out their functions and other business:

- s. 105 provides that a Minister may not direct an Independent Crown Entity (ICE) to have regard, or give effect, to a government policy unless another Act specifically provides for it;
- s. 113 provides that a Minister may not:
  - direct a Crown entity or member, employee or office holder of a Crown entity in relation to a statutorily independent function (entities other than ICEs may also have statutorily independent functions); or
  - require the performance or non performance of a particular act or the bringing about of a particular result in respect of a particular person or persons,

(Refer to section on powers of direction, in chapter *Relevant legislation,* page 4.)

Objective of an entity as it relates to its functions

Section 14(2) of the CE Act states that, in performing its functions, an entity must act consistently with its objectives. "Objectives" is not defined in the CE Act but would include objectives in the entity's Act. It would also cover any objectives, aims and goals expressed in the board documents like a Statement of Intent. For example, the Land Transport Management Act 2003 requires the New Zealand Transport Agency to "undertake its functions in a way that contributes to an affordable, integrated, safe, responsive, and sustainable land transport system." Other entities may have social responsibility objectives.

Government policy statements

Under some entities' establishing legislation, the Government can issue a government policy statement on specified matters. Such a statement can, for example, describe what the Government wants to achieve in an area, the Government's objectives, funding for a sector, what areas will be funded and how funding will be raised. As with objectives, these can affect how an entity undertakes its functions. Government Policy Statements may be revised or new ones issued.

Policy functions

Public Service departments are the usual organisational form for policy functions. However, a minority of Crown entities do have policy functions which are reflected in their establishing legislation. Boards need to be aware of what, if any, their policy functions are, to have clear arrangements on how any such functions will be implemented, and advise the Minister and monitoring department of this.

Powers of the entity

As noted above, an entity's powers are exercised by, or under the authority of, the board.

The CE Act divides powers of entities into:

- Statutory powers: s. 16 provides that a statutory entity may do anything authorised by the CE Act or the entity's establishing Act. Powers may include, for example, the power to make decisions, issue a licence, or execute a search warrant.
- Natural powers: s. 17 provides that entities have all the powers of a natural person of full age and capacity. Boards may only act for the purpose of performing the statutory functions of the entity. The CE Act contains some specific constraints on the exercise of natural powers, for example: the requirement to consult the State Services Commissioner before agreeing to the terms and conditions of employment of an entity's chief executive, constraints on bank accounts and limits on powers to indemnify and insure. Ministers' powers of direction, where applicable, can also act as a restraint on a board's powers.

Exceptions to board implementing functions and powers under legislation

Very occasionally the chief executive or other office holder in an entity has specific statutory functions or powers under the entity's establishing legislation (eg, the Director of Maritime New Zealand). In these cases, the board is not responsible for the exercise of those powers and functions. Boards and chief executives or other office holders need to be very clear about where responsibility lies in these situations.

Structure

The structure of the entity, including the board and committees, should support the implementation of the functions and powers of the entity and should be reviewed from time to time. A diagram of the structure of the board and entity would be a useful addition to a governance manual.

Governance manual content: Functions and powers of the entity

At a minimum a good governance manual should cover:

- the functions as set out in the entity's establishing legislation including clear arrangements for the delivery of any policy functions;
- any functions that the Minister has added in accordance with the entity's establishing legislation (if applicable);
- any functions that are incidental and related to, or consequential on, the entity's functions;
- any underpinning objectives or government policy statements of which the board is required to take account;
- any exceptions to the board implementing the entity's functions and powers, i.e. where these are the responsibility of the chief executive or other office holder; and
- a diagram of the structure of the board and entity would be a useful addition.

Chapter 3: Key relationships

One of the primary purposes of the Crown Entities Act 2004 (CE Act) is "to clarify accountability relationships between Crown entities, their board members, their responsible Ministers on behalf of the Crown, and the House of Representatives" (s. 3 CE Act) in order to assist good governance of the entity.

In simple terms this could be summarised as:

- the responsible Minister is accountable to the House of Representatives;
- the governing board of the entity is responsible to the Minister (usually through the chair), recognising that elements of this will depend on the category of entity concerned;
- the entity's chief executive is responsible to the board; and
- the staff of the entity are responsible to the chief executive.

Crown entity board members need to clearly understand the different roles, responsibilities and accountabilities of each party. This will facilitate the establishment and maintenance of mutually constructive and positive working relationships.

Relationship with Ministers

The role of the responsible Minister is to oversee and manage the Crown's interest in, and relationship with, the entity, and to exercise any statutory responsibilities.

Under s. 27 of the CE Act, Ministers have functions and powers with regard to all entities on the appointment and removal of members, matters of strategic direction and targets, operations and performance, reporting and reviews. The Minister needs to exercise these powers in a way that recognises any statutorily independent functions.

Under s. 133 of the CE Act, the Minister has the power to request information:

- The board of a Crown entity must supply to its responsible Minister any information relating to the operations and performance of the Crown entity that the Minister requests.
- The board of a Crown entity must supply to the Minister of Finance any information requested by the Minister in connection with the exercise of his or her powers under Part 4 of the CE Act.
- The board of a Crown entity must supply the Minister of State Services any information requested by the Minister, where that information is requested for the purpose of assessing the capability and performance of the State services, and the request is made to a group of at least 3 entities that have in common at least 1 significant characteristic that relates to the information requested.
- Section 133 is subject to s. 134 of the CE Act. Section 134 provides certain grounds for refusing to supply information requested by a Minister, for example, to protect the

privacy of a person. However the reason must outweigh the Minister's need to have the information in order for the Minister to discharge ministerial duties.

The Minister is responsible to the House of Representatives for overseeing and managing the Crown's interests in, and relationships with, the entity. The Minister is politically answerable on a day to day basis in connection with the entity. This can include responding to questions, and participating in debates and reviews. The Minister also tables in the House an entity's statement of intent and annual report and appears before select committees where the Minister may be asked to comment on an entity's activities. However, the entity itself is also accountable to the House of Representatives for its own actions (see the chapter on *Planning and reporting*, page 45).

"No Surprises" approach

Boards are expected to engage constructively and professionally with their Minister, which is enhanced when there is a free flow of information both ways, by regular formal and informal reporting and discussion, and through an open and trusting relationship.

The enduring letter of expectations from Ministers to Crown entity boards (www.ssc.govt.nz/expectations-letter-crown-entities-july12) expects boards to adopt a "no surprises" approach with their responsible Ministers. Any protocols adopted in this respect need to recognise that what a board considers to be "business as usual" may be seen by the Minister to come within the requirement of "no surprises".

"No surprises" means that the Government expects a board to:

- be aware of any possible implications of their decisions and actions for wider government policy issues;
- advise the responsible Minister of issues that may be discussed in the public arena or that may require a ministerial response, preferably ahead of time or otherwise as soon as possible;
- inform the Minister in advance of any major strategic initiative.

Relationship with the chief executive and entity staff

All decisions relating to the operation of a statutory entity must be made by, or under the authority of, the board in accordance with the Crown Entities Act 2004 and the entity's Act (s. 25 CE Act).

Where a chief executive has been employed, the management responsibilities within a Crown entity are usually delegated to the chief executive. It is important that the board and the chief executive are clear about the boundaries between governance and management and what duties have been delegated to the chief executive.

While the relationship between the Minister and the board is through the chair, this is not always practical given geographical differences. Board members and the chief executive must be clear about who has contact with the Minister and the Minister's office. Where a chief executive is meeting regularly with the Minister, protocols should be set in place around this including feedback given to the board on all meetings.

The board and chief executive should also be clear on who is the public face of the entity. If this role is shared, protocols are required.

The chief executive and other senior managers of a Crown entity are likely to be in regular attendance at meetings of a board and its committees; when and how often is a matter for each board to decide. Board members may also wish to meet with senior managers and staff to assist with their understanding of the organisation and its operation. Protocols on how board members engage with staff should be in place because staff members may misunderstand a board member's statements on a matter as a direction and therefore give undue priority to those comments over other work requirements.

Relationship with the monitoring department

The CE Act provides for Ministers to monitor Crown entity performance against the entity's strategic direction, as agreed with the Minister and set out in the Statement of Intent (SoI) and, where there is one, the output agreement or Memorandum of Understanding. Ministers are usually supported in this engagement with Crown entities by departmental officials who in this role are known as the 'monitoring department'. Monitoring departments provide a Minister with information about a Crown entity's performance, ensure the Crown entity's approach is consistent with government goals, and support the appointment process for board members. This role is provided for in section 27A of the CE Act. Specifically, key aspects of a monitor's role may include administering appropriations, administering legislation and tendering advice to Ministers.

These monitoring activities complement the broader 'stewardship' responsibilities that are common to all Public Service chief executives, as set out in the State Sector Act. From time to time, a Public Service chief executive's stewardship activities may be of interest to Crown entities, for example in the provision of free and frank advice to government and the administration of legislation, and in matters relating to the department's own sustainability and organisational health and capability.

The guidance for departments on how to monitor an entity is available at: www.ssc.govt.nz/guidance-depts-crown-entities-may06.

Parliamentary select committees

Crown entities are accountable to the House of Representatives (s. 3 CE Act). One mechanism for scrutiny is through parliamentary select committees. The most regular contact Crown entities are likely to have with select committees is for financial reviews, inquiries, and occasionally as when making submissions on bills. Board members should be particularly aware of:

- Examination of the Estimates: The estimates are the Government's request for appropriations/authorisation for the allocation of resources, tabled on Budget day. Crown entities do not attend the select committee when it examines the estimates, but responsible Ministers and monitoring departments may be questioned about the intended activities and expenditure of an entity that receives appropriations from the Crown.
- Financial Review: The financial review is of the entity's performance in the previous financial year and of its current operations. The review can include any public organisation, whether or not it receives appropriations from the Crown. The select

committee will provide written questions for answer, but if the entity is asked to appear, further questions may be asked on the day.

Board members and entity staff who appear before a select committee do so in support of ministerial accountability. Generally, the chair and the chief executive will represent an entity at select committee hearings although this is a matter for the board to decide. The board is answerable to the responsible Minister, who is in turn accountable to the House of Representatives for the operations of the entity.

Representatives of a Crown entity appearing before select committees have an obligation to manage risks and avoid springing surprises on the Minister. This applies even when they appear on matters which do not involve ministerial accountability, such as when exercising an independent statutory responsibility or appearing in a personal capacity. Board members and employees who wish (or are invited) to make a submission to a select committee on a bill on behalf of their entity are expected to discuss the matter with their responsible Minister.

Guidance on appearing before select committees needs to reflect the material contained in *Officials and Select Committee Guidelines*: www.ssc.govt.nz/officials-and-select-committees-2007. Within that guidance, the term 'official' includes board members and employees of Crown entities.

Governance manual content: Key relationships

At a minimum a good governance manual should cover:

- the nature of the relationship between a board and the Minister, taking account of the type of entity, including:
  - the protocols to be observed;
  - identification of any statutorily independent functions, and the relationship with the Minister in regard to these functions;
  - the 'no surprises' approach;
- the nature of the board's relationship with the chief executive and other entity staff, including any protocols to be observed and the boundaries between governance and management;
- the nature of the entity's relationship with the monitoring department, including any protocols to be observed; and
- who will interact with parliamentary select committees.

Chapter 4: Collective duties of the board and individual duties of board members

One of the goals of the Crown Entities Act 2004 (CE Act) is to clarify the roles of board members and the responsible Minister. The Act does this by setting out the accountabilities of each party and in particular board members' duties and who those duties are owed to.

Board members hold positions of trust. Collective and individual responsibility and accountability are fundamental to the integrity of the board. It is important that board members are clear about, and understand, their collective and individual duties that come with appointment to a Crown entity board.

Board duties are often referred to as directors' 'fiduciary duties'. The board's collective duties and members' individual duties are set out in ss. 49-57 of the CE Act. The two types of duties vary with regard to:

- whether the duties are owed by the board as a whole, or by each member individually;
- who they are owed to; and
- what the sanction is if the duty is breached.

All board members are bound by collective and individual duties regardless of whether they are appointed or elected members.

Board members should be made aware of their duties immediately on appointment. Collective and individual duties should be comprehensively covered as a part of a board member's induction and covered again from time to time in ongoing training.

Board members' duties are constant and relevant to all actions undertaken by the board or individual members; a board and its members must always act in a manner consistent with these duties.

Collective duties

The collective duties of a Crown entity are the board's public duties which reflect that the board and the entity are part of the State services. The collective duties are owed to the responsible Minister (s. 58 CE Act). The collective duties of Crown entity boards, as set out in the CE Act, are to:

- act consistently with their objectives, functions, statements of intent and current statement of performance expectations (s. 49);
- perform their functions efficiently and effectively, and consistently with the spirit of service to the public, and in collaboration with other public entities where practicable (s. 50);
- operate in a financially responsible manner (s. 51); and
- ensure that the entity complies with sections 96 to 101 of the CE Act[1] (s. 52).

[1] Sections 96 to 101 of the CE Act relate to subsidiaries or where the entity has other interests, e.g. the acquisitions of shares or interests in companies, trusts, and partnerships.

Breach of duty

The responsible Minister needs to take appropriate action if the collective duties have been breached. If the board does not comply with any one of its collective duties, all or any of the board members may be removed from the board. However, a board member cannot be removed if the member did not know, and could not reasonably be expected to know that the duty was being or was to be breached, or if the board member took all reasonable steps in the circumstances to prevent the duty being breached.

The process for removal from office is different for each type of Crown entity and is set out in ss. 36 to 43 of the CE Act. A board member is not liable for breach of a collective duty other than to be removed from office (s. 58). A board member who is removed from office is not entitled to compensation or any other payment for loss of office (s. 43).

Individual duties of board members

The individual board member duties are a mix of common law duties and duties similar to the ones in the Companies Act 1993. (Common law is law that is derived from judges' decisions.) The individual duties in the CE Act are owed to the entity and the responsible Minister (s. 59). Board members' individual duties, as set out in the CE Act, are to:

- comply with the Crown Entities Act and the entity's own Act (s. 53);
- act with honesty and integrity (s. 54);
- act in good faith and not at the expense of entity's interests (s. 55);
- act with reasonable care, diligence and skill (s. 56); and
- not disclose information (s. 57).

Breach of duty

If a board member does not comply with any of his/her individual duties, the member may be removed from office and the Crown entity may bring a court action against the member for the breach of the duty (ss. 59 – 60 CE Act). The process for removal from office is dependent on the type of Crown entity. (See also *Board appointments and reappointment.*)

Governance manual content: Collective duties of the board and individual duties of board members

At a minimum a good governance manual should cover:

- the collective duties and the role of the board and individual board members in ensuring the duties are complied with;
- the individual duties and the role of the board and individual board members in ensuring the duties are complied with; and
- a process for making sure all board members are aware of their collective and individual duties (eg, member induction, ongoing training, updating requirements) and of the consequences for breaching the duties.

Chapter 5: Role of the board chair

An effective chair is vital to the good governance and performance of an entity. Crown entity chairs are appointed from various backgrounds and they need to understand the requirements of the role. The role has many similarities to that of a private sector chair, but with some different elements – which come from legislation or practice.

A Crown entity chair's role includes:

- providing effective leadership and direction to the board and entity, consistent with the Minister's expectations;
- ensuring effective accountability and governance of the entity, consistent with the requirements of relevant legislation including the Crown Entities Act 2004 (CE Act); see also, the chapter Relevant legislation, page 4;
- developing and maintaining sound relationships with Ministers and their advisors including:
    - leading any formal entity discussions with Ministers, particularly on budget and planning cycles, including the Statement of Intent and letter of expectations (see chapter Planning and reporting, page 45);
    - signing off on formal governance documents (Statement of Intent, Statement of Performance Expectations, Annual Report, Memorandum of Understanding), generally in conjunction with the deputy chair if appointed;
    - acting as spokesperson for the board in ensuring the Minister and other key stakeholders are aware of the board's views and activities, and that Ministers' views are communicated to the board;
    - ensuring that the Minister is kept informed under the 'no surprises' obligations (see chapter *Key relationships*, page 12);
- acting as the leader of the entity including presenting the entity's objectives and strategies to the outside world. Representing the entity to government and stakeholders, including attending any select committee appearance by the entity;
- chairing board meetings including: setting the annual board agenda (see chapter Board meeting procedures, page 33); setting meeting agendas; ensuring there is sufficient time to cover issues; ensuring the board receives the information it needs before the meeting in board papers and in presentations at the meeting; ensuring that contributions are made by all board members; assisting discussions towards the emergence of a consensus view; and summing up so that everyone understands what has been agreed;
- ensuring appropriate policies and structures are in place to support the board, including processes in accordance with Schedule 5 of the CE Act (see chapter *Board meeting procedures,* page 33);
- providing motivation, guidance and support to other board members to ensure they contribute effectively to the governance of the entity;
- taking the lead, often in conjunction with the monitoring department, in providing comprehensive tailored induction for new board members (see chapter Board appointments and reappointment, page 51);

- ensuring that the development needs of individual board members are identified and addressed and, where necessary, dealing with underperformance by board members;
- ensuring that an annual performance evaluation is conducted of the board as a whole, as well as of the chair and members individually (see chapter *Board and member performance evaluation,* page 49);
- participating in the recruitment process for new board members. This is likely to include: maintaining a view on the desired composition of the board; considering succession planning for members and chair; supporting Ministers and monitoring departments in appointing and reappointing board members (see chapter Board appointments and reappointment, page 51);
- providing guidance and support to the chief executive to ensure the entity is managed effectively. This includes establishing and maintaining an effective working relationship with the chief executive while also taking an independent view to challenge and test management thinking (see chapter Key relationships, page 12);
- overseeing the employment of the chief executive including considering succession planning, and organising induction for a new chief executive;
- representing the board in formal assessments of the chief executive's performance and in the required discussions with the State Services Commission in respect to chief executive terms and conditions at time of appointment and performance reviews (see chapter Crown entities as employers, page 39); and
- ensuring that appropriate interest registers are in place (s. 64 CE Act), that members' conflicts of interest (including those of the chair) are dealt with appropriately (s. 66 CE Act), and that, where appropriate, dispensation is given to act despite being interested (s. 68 CE Act) (see chapter *Members' interests and conflicts,* page 22).

Where the chair is unavailable, absent or conflicted, the deputy chair (if appointed) will fulfil these roles (Schedule 5 of the CE Act). A chair may also delegate various of these roles at times, for example to another board member.

Governance manual content: Role of the board chair

At a minimum a good governance manual should cover:

- The key requirements of the Crown entity chair's role; reflecting both the provisions of the CE Act and any functions that are specific to the entity concerned.

Chapter 6: General responsibilities of members

Best practice corporate governance boards ensure they are exhibiting certain behaviours in order to undertake their board role effectively and in accordance with the highest ethical and professional standards. This is notwithstanding any legal requirements that have been placed upon the board. While such behaviours may form the basis of a separate board code of practice / code of conduct, we recommend they also are part of the governance manual.

The list below is not exhaustive, nor is it in order of importance, but it should assist boards to specify appropriate behaviours:

- **Responsibility to the entity.** Members need to recognise and always act consistently with their responsibilities to the entity and to Ministers. They should attend induction training and board members' professional education to familiarise and update themselves with their governance responsibilities.
- **Strategic perspective.** Members need to be able to think conceptually and see the 'big picture'. They should focus, as much as possible, on the strategic goals and overall progress in achieving those rather than on operational detail.
- **Integrity.** Members must demonstrate the highest ethical standards and integrity in their personal and professional dealings. They should also challenge and report unethical behaviour by other board members.
- **Intellectual capacity.** Members require the intellectual capacity to understand the issues put before them and make sound decisions on the entity's plans, priorities and performance.
- **Independent judgement.** Members need to bring to the board objectivity and independent judgement based on sound thought and knowledge. They need to make up their own mind rather than follow the consensus.
- **Courage.** Members must be prepared to ask the tough questions and be willing to risk rapport with fellow board members in order to take a reasoned, independent position.
- **Respect.** Members should engage constructively with fellow board members, entity management and others, in a way that respects and gives a fair hearing to their opinions. In order to foster teamwork and engender trust, members should be willing to reconsider or change their positions after hearing the reasoned viewpoints of others.
- **Collective responsibility.** Members must be willing to act on, and remain collectively accountable for, all decisions even if individual members disagree with them. Board members must be committed to speaking with one voice once decisions are taken on entity strategy and direction.
- **Participation.** Members are expected to be fully prepared, punctual and regularly attend for the full extent of board meetings. Members are expected to enhance the quality of deliberations by actively asking questions and offering comments that add value to the discussion.
- **Informed views.** Members are expected to be informed and knowledgeable about the entity's business and the matters before the board. Members should have read their

board papers before meetings and keep themselves informed about the environment in which the entity operates.

- **Financial literacy.** Boards monitor financial performance and thus all members must be financially literate. They should not rely on other members who have financial qualifications and should undertake training to improve their own financial skills where necessary.
- **Sector knowledge.** Members need to make themselves familiar with the activities of the entity and sector. This is likely to include attending induction sessions and ongoing background study.

Obligations described in other chapters of this guidance (e.g. conflicts of interest, gifts and hospitality) should also be considered for incorporation into a board's material on appropriate behaviours.

Governance manual content: General responsibilities of members

At a minimum a good governance manual should cover:

- a description of the general behaviour expected of and approach to be taken by members; and
- cross-references to relevant chapters, e.g. identifying and managing conflicts of interest, key relationships.

Chapter 7: Members' interests and conflicts: identification, disclosure and management

Interests, if not disclosed, registered and managed properly, have the potential to lead to conflicts that could undermine decisions taken by a board and the confidence held by stakeholders and the public in the actions of the entity. Good governance requires that boards have robust arrangements in place to address perceived as well as actual conflicts.

In the public sector, there will be a conflict of interest where a "member's…duties or responsibilities to a public entity could be affected by some other interest or duty that the member may have"[2]. These "other" interests can take various forms. They may be financial or non-financial. They may relate to a member's close family or friends, or to something the member has said or done.

The existence of the interest is not, in itself, what causes the conflict. The key is to identify any overlap between the interests. Also, appearances in this area can be equally as important as reality. It is often this risk of negative public perception that requires management.

The test of whether a disclosed interest amounts to a conflict is whether the other interest creates an incentive to the person to act in a way that may not be in the best interests of the organisation.

Several factors are relevant when assessing the seriousness of a conflict of interest, including:

- the type or size of the member's other interest and the extent to which it could specifically affect, or be affected by, the entity's decision or activity;
- the nature or significance of the decision or activity being carried out by the entity; and
- the nature or extent of the member's current or intended involvement in the entity's decision or activity.

Seriousness is a question of degree. Directness or remoteness are about how closely or specifically two interests concern each other. Significance is about the magnitude of the potential effect of one interest on the other.

Section 55 of the Crown Entities Act (CE Act) places a duty on board members not to pursue their own interests at the expense of the interests of the entity. This means that members must perform all aspects of their work for the entity impartially, by:

- avoiding any situation where actions they take in an official capacity could be seen to influence or be influenced by a private interest that they, family members or close friends may hold;
- avoiding situations that could impair their objectivity or create personal bias that would, or could reasonably be seen to influence their judgements; and
- ensuring they are free from any obligation to another party.

The Auditor-General has issued guidance on managing conflicts of interest in public entities: www.oag.govt.nz/2007/conflicts-public-entities. This states that public entities, when making

[2] *Managing Conflicts of Interests: Guidance for Public Entities*, Office of the Controller and Auditor-General, p.5.

decisions on conflicts, ought to be guided by the concepts of integrity, honesty, transparency, openness, independence, good faith, and service to the public. The Auditor-General's guidance states that "many situations are not clear-cut. If a member is uncertain about whether something constitutes a conflict of interest, it is safer and more transparent to disclose the interest anyway. The matter is then out in the open, and the expertise of others can be used to judge whether the situation constitutes a conflict of interest, and whether the situation is serious enough to warrant any further action. Disclosure promotes transparency, and is always better than the member silently trying to manage the situation by themselves."

Identifying interests

Members have the fullest knowledge of their own affairs, and will usually be in the best position to realise whether and when there is an overlap between their public and private interests. Members must consider their interests from the entity's perspective, and apply an honest and open approach to considering and keeping under review any potential conflicts.

Section 62 of the CE Act specifies when interests must be disclosed. For this purpose, a 'matter' means the entity's performance of its functions or the exercise of its powers, or an arrangement, agreement or contract the entity has entered into or proposes to enter. A member is "interested" in a matter if the member:

- may derive a financial benefit from a matter (s. 62(2)(a));
- is the spouse, de facto partner, child or parent of a person who may derive a financial benefit from a matter (s. 62(2)(b));
- may have a financial interest in a person to whom the matter relates (s. 62(2)(c));
- is a partner, director, officer, board member or trustee of a person who may have a financial interest in a person to whom the matter relates (s. 62(2) (d));
- may be interested in the matter because the entity's Act so provides (s. 62(2)(e)); or
- is otherwise directly or indirectly interested in the matter (s. 62(2)(f)).

Members must not seek to provide paid services to an entity, nor be involved in developing, supporting or advising on any matter considered by the entity, other than through their role as a board member. A member's shareholding or other financial investment in a company which is, or is seeking to be, engaged with the entity represents a direct financial benefit. It is therefore an interest, unless it can be regarded as 'insignificant'. Many entities make decisions that can affect the value of an investment, so the potential impact on a member's interest – or that of a close family member or friend - must be considered when assessing insignificance.

An interest will arise through a member's spouse, civil union or de facto partner, child, or parent who may derive a financial benefit from the matter. The CE Act regards these interests in the same way as financial benefits of a member. However, if a board member, acting diligently and in good faith, is not aware of the financial involvement of a family member, then the member is unlikely to be interested because it would not be reasonably regarded as influencing their responsibility to the entity.

A financial interest in another person may give rise to an interest, because of an apprehension of influence.

An interest may arise when a member is a partner, director, officer, board member, or trustee of a person who has a financial interest in a person to whom the matter relates. Whether it actually comprises an interest depends on whether it is significant enough to be reasonably regarded as likely to influence decision-making. For example, a member may be a trustee or director of an investment business that invests with a party dealing with the entity. As the business will have a financial interest in the participant, the member as an officer of the investment business is likely to be interested.

Certain exceptions are provided in s. 62(3) of the CE Act, including where the member is a member or officer of a subsidiary, or where the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member in carrying out their responsibilities.

Making judgements

The Auditor-General's guide *Managing conflicts of interest: Guidance for public entities* provides useful discussion to help in making judgements in respect of interests: see www.oag.govt.nz/2007/conflicts-public-entities/.

Any family connection could give rise to an interest where there is a reasonable apprehension of bias, eg if a member has a close relative who may be personally affected by a non-financial decision of the entity that could lead to a conflict for the member.

A member may have an interest in matters affecting the interests of a friend; someone with whom the member has a close and reasonably long-standing relationship with demonstrable intimacy. If such a relationship existed, that could create strong perceptions of a conflict of interest.

General acquaintanceship, such as a shared involvement in professional or sporting associations, would rarely create an interest. Overlapping directorships, for instance, could mean a member is interested, especially where a relationship is long term or a close collegiality has developed. Where a member's business partner has acted as an advocate, adviser or material witness in a matter being considered by the entity, the member is likely to be seen as having an interest.

Where someone had a close association with a business for a significant period before becoming a board member, there may well be a strong perception of a continuing interest even after ending all associations. There is no set time period which establishes remoteness but ending a long business relationship is unlikely to immediately make that interest so remote as to be irrelevant in assessing whether a conflict of interest exists.

Having a definite point of view about a question of law or legislative interpretation of a policy would not give rise to an interest, nor would prior knowledge of circumstances which are in issue. However, a publicly-stated opinion indicating that the member's mind is firmly made up on a particular issue could raise issues of apparent pre-judgement and, therefore, the likelihood of a conflict of interest.

Active involvement by board members in external organisations which lobby or seek government funding is a sensitive matter. Its acceptability would depend on a board member's role within the organisation concerned and the relationship of that organisation with the Crown entity's area of responsibility. Board members must ensure that they do not let

advocacy of particular interests override or undermine their governance responsibilities or duties as members.

Disclosing interests

Prior to appointment, prospective board members will have disclosed in writing the nature and extent of their interests in matters relating to the entity (s. 31 CE Act). Following appointment to a board, members must disclose any interests to the chairperson as soon as practicable after they become aware of the interest (s. 63 CE Act).

Members can make a 'standing disclosure' if they have an ongoing interest in a matter which could be the subject of regular discussion by a board, supplemented by a declaration of interest in other matters before the board, as they arise.

Failure to disclose an interest is a serious matter. It may be a breach of a member's duties under the CE Act and could result in removal from the board.

Registering and reviewing interests

Section 64 of the CE Act requires that all interests, however disclosed, must be entered into a register of members' interests. Entries in the register must state the nature and extent of the interest including, where appropriate, its monetary value. Staff who support the board's work need to be aware of all interests disclosed in the register so that they do not give members information relating to a matter on which they have declared an interest.

Where a member has declared a specific or standing interest in a matter under consideration by a board, this must be recorded in board minutes. All members' interests should be actively reviewed at each meeting of the board so they can be considered in relation to the matters on the agenda.

Interests held by a member or his/her family or friends will almost certainly change over time, as will the issues with which an entity deals. Members need to review their interests regularly, update their disclosures, and add or remove the interest to or from the register as soon as the circumstances require it.

Crown entity board members have a collective obligation to be aware of their colleagues' interests. A board must notify the responsible Minister if it becomes aware that a member has not disclosed an interest, or has taken part in board discussions or decisions despite being conflicted in a matter.

Managing conflicts of interest

Appropriate action must be taken by the board on the involvement of any member who has declared a conflict.

Generally, a member who is conflicted on a matter before the board:

- must not vote or take part in any discussion or decision of the board or any committee relating to the matter, or otherwise participate in activity that relates to the matter;
- may excuse themselves from a meeting during discussions on an issue where they have a conflict of interest;
- must not sign any document relating to entry into a transaction or the initiation of the matter; and
- is to be disregarded for the purpose of forming a quorum for that part of a meeting during which a discussion or decision relating to the matter occurs or is made.

Board members and entity staff must be conscious of any particular requirements relating to conflicts in legislation relating to their entity. For example, for DHB members, the processes around 'disqualification' in the CE Act and the NZ Public Health and Disability Act 2000 differ.

Placing an interest in a blind trust is not enough on its own to avoid a conflict. It would be unlikely to establish sufficient remoteness to avoid what would be regarded as an interest until a period of time has passed. The perception will remain that the member has an interest which could influence decision-making unless a professional and disinterested trustee is appointed with the power to trade trust assets.

Conflicts can be further managed in various ways. For instance, an agreement by the member to divest the interest (eg, selling shares or putting them into a trust arrangement), to sever the connection that causes the interest (eg, relinquishing membership of an organisation), or a mutual decision that the interest affects only a narrow part of the board's operations.

Exceptions

Section 68 of the CE Act provides for a member to take part in discussion or decision-making relating to a matter in which they have declared an interest, by enabling the chair or deputy chair to give prior notice in writing to the board that one or more members, or members with a specified class of interest, may do anything otherwise prohibited under s. 66. The permission to act can be amended or revoked.

'Specified class of interest' is not defined in the legislation but could be taken to refer to any class of interest that the chair specifies in a notice to the board. It is a broad power: it probably would, for example, allow the Chair of the Securities Commission to permit (subject to conditions) all the members of that Commission who have shares in listed companies to form part of a quorum when the Commission considers applications for exemptions in respect of listed companies.

A member who has disclosed any possible influences on their participation in the entity's activities can take part in a board discussion where the connection is so remote or

insignificant that it cannot reasonably be regarded as an interest likely to influence the member in carrying out his or her responsibilities.

Governance manual content: Members' interests and conflicts: identification, disclosure and management

At a minimum a good governance manual should cover:

- the fact that interests, if not disclosed, registered and managed properly, have the potential to lead to conflicts that will undermine decisions taken by a board and the confidence held by stakeholders in the actions of the entity;
- the importance of board members taking a broad and honest approach to identifying their interests and when considering potential conflict of interest situations;
- the need for both perceived and real interests to be identified;
- the importance of fully exploring ways to manage an interest, looking beyond compliance with legal requirements to whether anything more needs to be done;
- any legislative requirements specific to the entity relating to conflicts of interest;
- the process by which board members must declare their interests to the chair. This should include;
  - both standing disclosures and specific interests;
  - the need for declarations to be recorded in board minutes;
  - the need for all interests to be recorded in the board's register of members' interests, including the nature and extent of the interests, and where appropriate, their monetary value;
- the processes and mechanisms for managing a declared interest, including:
  - how the board and entity staff will preclude a member's access to information on any declared interests;
  - how the board will preclude a member's participation in matters relating to any declared interests; and
- the process for members to keep their interests under regular review, and making amendments to previously declared interests if required.

Chapter 8: Disclosure of information

In the course of their work board members will often have access to information that is commercially sensitive or valuable, or that could be personally sensitive for others. For boards and entities to be trusted, this information needs to be handled with the highest standards of care and integrity and in a manner consistent with the relevant legislation.

Principles

Under s. 57 of the Crown Entities Act 2004 (CE Act), board members must not disclose to any person, or make use of or act on information they receive as a member, and to which they would not otherwise have had access; unless it is:

- in the performance of the entity's functions,
- as required or permitted by law,
- in complying with the requirement for the member to disclose his or her interests,
- where the member has been authorised by the board or by the responsible Minister to disclose the information, or
- if the disclosure, use or act in question will not prejudice the entity or will be unlikely to do so.

There are some exceptions under s. 57(2) of the CE Act, in which a member may disclose, make use of, or act on such information, provided that:

- the member is first authorised to do so by the board, and
- the disclosure, use, or act in question will not, or will be unlikely to, prejudice the entity.

An example where disclosure is required or permitted by law is where it is made in accordance with the Official Information Act.

Governance manual content: Disclosure of information

At a minimum a good governance manual should cover:

- The requirement for board members to handle information that they obtain in their board role according to the requirements of s. 57 of the CE Act and consistently with any board policies.

Chapter 9: Gifts and hospitality

The way in which a board handles gifts and hospitality offered to its members has serious implications for the trust placed in the governance of the entity concerned. When a board member is offered gifts or hospitality, careful judgement is needed in light of the entity's roles and responsibilities. The perception of influence being sought can be as important as the reality.

Crown entities all have different constituencies and influences. A single prescriptive policy on gifts for board members is impracticable. Gifts or hospitality may be offered for various reasons including a token of appreciation, as part of a ceremonial occasion, or as an attempt to exercise influence. While the best way of avoiding any perception of influence would be to refuse all offers of gifts and hospitality this is unworkable in practice. However, every board should have a set of principles to inform members' decisions about gifts and hospitality, and to promote transparency and consistency of approach.

Principles

- Board members should not accept gifts or benefits that would, or might reasonably be seen to, compromise their integrity by placing them under any obligation to a third party.
- Members must always be aware of the public perception that can result from their accepting gifts or hospitality. They must never solicit favours for themselves or others.
- Gifts should be declined unless they are of nominal value and their acceptance can be judged against internal or other relevant policies.
- Timing and frequency are relevant. Offers of gifts or hospitality, even if of limited monetary value, may be of concern if offered repeatedly and/or at times when they could be seen to influence or reinforce a particular decision or action.
- The commercial influence, actual or perceived, that a gift or benefit may represent is important.
- Hospitality offered may provide opportunities for members to develop productive relationships but their presence at such occasions is potentially open to criticism.

Practice

The exercise of common sense will usually determine whether an offer of hospitality or a gift should be accepted. Useful tests could be to consider how Parliament, the media, competing suppliers and the wider public might interpret its acceptance; the reasons that may be behind the offer, and how the member would justify accepting what has been offered.

In respect of gifts, board members should carefully consider the timing and frequency. For instance:

- extra vigilance is needed at a time when an entity is negotiating for purchases or services;
- while a small gift from an individual or organisation may be acceptable, if offered regularly, it could be seen as an attempt to build up influence with the board member.

In respect of hospitality, careful judgement must be exercised. Board members should satisfy themselves that:

- it is not too frequent or elaborate, given the nature of the relationship; or
- it is not part of a pattern of invitations from one particular organisation which, taken together, could be considered excessive.

All Crown entity boards need to have in place a clear and well-understood internal policy on accepting and offering gifts, hospitality or other benefits, and how they will be recorded and disposed of. Key elements of any policy and practice require:

- that board members must not solicit gifts and benefits from, or on behalf of, anyone under any circumstances;
- board members not to accept gifts and benefits from anyone, or on behalf of anyone, who could benefit from influencing them or the entity;
- open and transparent practices in relation to gifts that enhance trust in the State services, and reduce any misplaced speculation;
- an agreed approach to the dollar value of gifts or hospitality that are appropriate for board members to accept, and the practice to be followed regarding the use of benefits in kind (eg, air points);
- that, unless they are 'consumable' at the time (eg, meals, invitation to events), gifts should be regarded as the property of the entity;
- the context to be taken into account when considering hospitality offered by stakeholders to balance the opportunities that may be provided against the potential for criticism. For instance, does the timing coincide with a particular board decision that could affect the donor: how relevant is the event or function to the entity's role; will the board's interests genuinely be advanced by having a board member present; should the entity itself meet the costs of attendance in order to avoid any perceptions of influence over the board?
- close scrutiny of offers such as invitations to attend conferences in New Zealand or overseas that may comprise travel, accommodation, meals, a fee for speaking, and/or inclusion of a member's partner. It is essential to consider whether there would be real value to the Crown entity from attendance, and – if so - who is best placed to represent the board or the entity; and
- that all boards which are considering offering gifts or hospitality should think very carefully about both the cost and the public and political perception of doing so. Policies needs to specify the purposes for which, and occasions on which, it is acceptable to give gifts, and the nature and value of gifts that are appropriate to particular occasions.

Koha

Entities should be clear about their approach to the question of koha, to avoid misunderstandings. Koha is a gift, token or contribution given on appropriate occasions, such as a visit by board members in conjunction with a consultation hui. It is not a transaction in the usual sense: for example, there often is no written acknowledgement of receipt.

The Office of the Auditor-General's good practice guide on sensitive expenditure includes an expectation that entities will ensure that:

- their policy on koha includes the means of determining the amount of any koha;
- koha reflects the occasion;
- koha is not confused with any other payments that an entity makes to an organisation; and
- koha is approved in advance, at an appropriate level of authority.

See: www.oag.govt.nz/2007/sensitive-expenditure/part8.htm.

Disclosure

Board members should consider checking with the chair before accepting any gift or hospitality they have been offered. Boards also should have in place procedures that enable the chair to disclose and seek advice on gifts and hospitality they are offered. Members should seek advice from the chair or other appropriate source if they are at all uncertain about the appropriate action to take.

Disclosing gifts and hospitality as soon as practicable after they are accepted and maintaining a register of them represents an effective and transparent way for boards to demonstrate integrity in practice, both as a model of accepted behaviour within the entity concerned and in respect of their stakeholders.

Maintaining such a register is strongly encouraged as a practice to be adopted by all Crown entity boards. There is no standard format. Typically, however, such a register would include the names of the recipient and the donor, the estimated value of the gift and the date received.

Transparency would be increased further by including gifts for board members on the agenda for each board meeting and/or as part of the Audit and Risk committee agenda.

Governance manual content: Gifts and hospitality

Many boards already have internal protocols on gifts and hospitality that are tailored to their particular circumstances, within which gifts of a specific value may be acceptable. The provisions and value thresholds may vary according to the entity's circumstances and stakeholders.

At a minimum a good governance manual should cover:

- the fact that acceptance of gifts and hospitality by a board member can, or may be seen to, impact on the public's trust in the entity and in board governance in general. Therefore, such offers should be accepted only if there is no prospect of the gift or hospitality being seen to influence the board's judgement in any way;
- the need for careful judgement to be exercised when considering offers of gifts or hospitality, in light of the entity's roles and relationships;
- the board's approach to its members accepting offers of gifts and hospitality, including:
  - any entity-specific considerations that needed to be exercised in deciding whether to accept gifts and hospitality;
  - a monetary value above which gifts and hospitality need to be disclosed;
  - the accepted treatment of benefits in kind (eg, air points); and
  - the procedures to follow for declaring and registering offers of gifts and hospitality, and for regularly reviewing such declarations;
- the need to have in place an understanding of and the appropriate protocols surrounding koha;
- the board's approach to offering gifts and hospitality which emphasises the importance of exercising appropriate and sensitive judgement;
- a clear statement that members must never solicit favours for themselves or others; and
- an effective disclosure regime, including maintaining a register of gifts, is strongly recommended.

Chapter 10: Board meeting procedures

Boards need a clear understanding of any legal provisions regarding their meeting procedures, and to organise their business in a way that meets statutory obligations and the expectations of their stakeholders, while maximising the use of members' time and skills.

Schedule 5 of the Crown Entities Act 2004 (CE Act) states that boards may regulate their own procedures except where these are laid down under that Act or in any other legislation. The provisions in Schedule 5 that boards are required to follow cover:

- responsibility for appointing the times and places of ordinary meetings of the board and for calling special meetings;
- the form in which a notice of meeting has to be given;
- methods of holding meetings, which can include audio- or video-conferencing;
- establishing a quorum for a board, and the fact that business may not be transacted if a quorum is not present;
- special provisions for a board if there is only one member available to act;
- who presides at a meeting, including arrangements for when the chairperson is not present, or is interested in a matter under consideration;
- voting procedures at meetings, including provisions on majority voting and dissensions;
- unanimous written resolutions as an acceptable alternative to decisions passed at a meeting.

In addition to meeting all legal provisions, boards should establish a planning process and timetable. This would help ensure they address in a timely way such regular activities as completing strategic planning documents, reviewing regular reports received by the board, undertaking chief executive remuneration reviews, meeting with Ministers, addressing risks and providing sufficient notice of board committee meetings. A sample Ministry for Culture and Heritage board planner is available as an example of good practice:

www.mch.govt.nz/research-publications/publications/ministry-reports/governance-e-manual/developing-board-work-plan.

Other practices to be followed by boards could include using a consistent draft agenda for the board and its committees, and clarifying expense entitlements and procedures for board members.

Governance manual content: Board meeting procedures

At a minimum a good governance manual should cover:

- the meeting procedure requirements that are set out in Schedule 5 of the CE Act and in the entity's own legislation;
- additional provisions that will assist the smooth functioning of the board's business; and
- processes to ensure effective forward planning of the board's regular activities.

Chapter 11: Board committees

Board committees can enhance the effectiveness and efficiency of boards, by allowing closer scrutiny and more efficient decision making in some areas of board responsibility. When boards establish committees, careful consideration is required of the powers, duties, reporting procedures, membership and duration that apply to the committees.

Legislative basis

Clause 14 of Schedule 5 of the Crown Entities Act 2004 (CE Act) provides for a board, by resolution, to appoint committees:

- to advise it on any matters relating to the entity's functions and powers that are referred to the committee by the board; or
- to perform or exercise any of the entity's functions and powers that are delegated to the committee. The board must ensure that at least one of its members is on a committee which is to exercise a board power or function. If a committee does not include a board member it can only have an advisory function.

Committee members of Crown entities must disclose, in a manner similar to that required of board members, any interests they may have (clauses 14 (2) and 15 (2) of Schedule 5 for committees of statutory Crown entities). More detailed provisions on interests can be found in the relevant chapter of this guidance.

An entity's own legislation may also contain provisions relating to the establishment and operation of committees of the board: if so, the board's governance manual must reflect these provisions.

Key considerations

Committees should only exist where there is a clear reason for them, and they assist the governance of the entity. Reasons might include providing increased scrutiny over key areas, and efficient use of resources such as individuals contributing in areas specific to their expertise. Committees can be standing or ad hoc in nature, and should be subject to regular review as to whether they should continue to exist. Good practice could be for a 'sunset clause' to be included in the terms of reference for most, if not all, committees.

The entity's board remains accountable for decisions that are made by committees. Accordingly committees should have clear formal charters that set out their roles and delegated responsibilities. There should be explicit reporting requirements back to the main board, which will allow other board members to question committee members and assess the effectiveness of the committee.

There is no prescribed number or type of committees, but a Finance / Audit / Risk committee is the most common, and is widely recommended in the public and private sectors. An Audit committee provides oversight of the entity's financial and risk management. It should generally include some independent (non-board) members, members with financial expertise, and a committee chair who is not the board chair. For guidance on audit committees in the New Zealand public sector, see the good practice guide issued by the Office of the Auditor-General; www.oag.govt.nz/2008/audit-committees/.

One operational matter that is often delegated to a committee is the review of the chief executive's performance.

See also the chapter on fees and remuneration for members of committees, page 55.

Governance manual content: Board committees

At a minimum a good governance manual should cover:

- details of the entity's committees, including their roles, responsibilities, accountability, reporting procedures, membership and duration; and
- procedures for establishing new committees and for reviewing whether existing committees should continue.

Chapter 12: Delegations

All decisions about the operation of a Crown entity must be made by, or under the authority of, the board in accordance with the Crown Entities Act 2004 (CE Act) and the entity's establishing Act (CEA s. 25). Where a board's powers and functions have been delegated, good governance and statute mean that the board remains legally responsible for the exercise of those functions and powers exercised under the delegation.

The powers of entity boards, including the power to delegate, are set out in ss 16, 17 and 73 of the CE Act. An entity's own legislation may provide additional or specific provisions relating to the authority of the board to delegate.

To whom can the board delegate?

Boards may delegate their functions and powers to members, employees, office holders, committees, Crown entity subsidiaries of the entity, and others approved by the responsible Minister.

Boards do not have unlimited powers to delegate entity functions and powers. To avoid undermining the board's role and responsibilities, boards cannot delegate:

- the general power of delegation (s. 73(4) CE Act);
- statutorily independent functions to a Crown entity subsidiary. (s. 73 (1)(f) CE Act); or
- any of its functions and powers to a committee unless that committee has a board member on it (Schedule 5, CE Act).

An entity's own Act may further restrict the functions and powers that a board can delegate. Where this is the case, it is important for boards to be familiar with this legislation and to handle delegations accordingly.

Conditions attached to delegations

There are a number of procedural checks and balances on delegating. These are designed to ensure the board always remains in control of and responsible for the exercise of functions and powers by delegates. These include:

- The board cannot delegate a function or power unless it has authorised the delegation by resolution and written notice to the delegate. The delegation can be revoked in the same way or by any other method provided in the delegation itself (ss. 73 (1) and 76 CE Act).
- The board can still exercise the functions and powers delegated to a delegate, and the board is legally responsible for the exercise of those functions and powers by the delegate under the delegation (s. 75 CE Act).
- Delegates must produce evidence of their authority to exercise functions and powers when asked to do so. In the absence of evidence to the contrary, they will be presumed to have the necessary authority (s. 74 CE Act).

- The board can impose conditions on a delegate, such as limiting the duration of the delegation, requiring the disclosure of interests or requiring regular reports (s. 74 CE Act).
- A delegate may delegate his or her functions and powers only with the prior written consent of the board and subject to the same conditions that are attached to the delegate's exercise of those functions and powers (s. 74 CE Act).

Chief executives and other staff

Boards may give their chief executives broad delegations, which reinforces accountability and control of the entity. Boards also have the flexibility to delegate directly to specialist staff without first delegating to the chief executive. When this approach is taken, the accountability relationship between the staff member, the chief executive and board needs to be made clear.

Governance manual content: Delegations

At a minimum a good governance manual should cover:

- boards remain legally responsible for the exercise of any functions and powers exercised under delegation;
- delegation policies and procedures, which should include areas such as:
  - the process for reviewing delegations,
  - any generic conditions or restrictions around delegations,
  - policies for the reporting of decisions made under delegation; and
- schedules of delegations, which should include areas such as:
  - the legislative authority for delegation,
  - strategy (planning, setting policy, compliance),
  - expenditure (budgets, contracts, operating and capital expenditure),
  - financial management (bank accounts, investment, financial reporting, audit, taxation)
  - communications (marketing, media, Official Information Act 1982, government)
  - risk (risk management, insurance)
  - legal (appointment, dispute resolution, litigation).

Chapter 13: Crown entities as employers

Crown entity boards will usually employ a chief executive, and will delegate to him/her responsibility for the management of the entity and the employment of other staff. Entities have obligations as employers; these are set out in the Crown Entities Act 2004 (CE Act) and other legislation, and in government statements.

Chief executive employment

The employment of a chief executive is one of the most important things that a board does. The board should ensure that a robust process is followed in preparing the position description, seeking suitable candidates and selecting the chief executive.

Under s. 117 of the CE Act, an entity that employs a chief executive must consult with the State Services Commissioner (usually via the board chair or the remuneration committee of the board) before agreeing to or subsequently amending the terms and conditions of employment, including remuneration. The board must have regard to any recommendation that the Commissioner makes to it. If the proposed terms and conditions do not comply with the Commissioner's guidance, the entity must consult the responsible Minister and have regard to any recommendations made by that Minister.

The State Services Commission has model agreements which contain the standard terms and conditions for chief executives of Crown entities. Use of these model agreements is not mandatory but their use, at least as a starting point, is recommended because they incorporate good legal practice, manage risk, and are likely to make the consultation process smoother. The model agreements can be tailored to the requirements of the particular entity. They are available at www.ssc.govt.nz/model_agreements/.

Chief executive performance management

Good practice in relation to chief executive performance management includes:

- the board defining the performance expectations of the chief executive (including stretch targets), and the criteria against which the chief executive's performance will be measured;
- ongoing and constructive discussions between the chair and the chief executive;
- addressing problems early, for instance by the chair communicating and discussing non-performance concerns; and
- a formal performance evaluation process, managed by the board chair.

Employer responsibilities

The chief executive of statutory Crown entities should employ all other staff of an entity on behalf of the board and would then be responsible for directing their work. Boards need to delegate the appropriate level of authority to the chief executive to manage all operational matters (see the chapter on *Delegations*). The board has overall responsibility for the entity meeting its employment obligations.

Good employer

If a Crown entity employs staff, s. 118 of the CE Act requires it to operate a personnel policy that complies with the principle of being a good employer. These principles include provisions requiring:

- good and safe working conditions;
- an equal opportunities programme;
- impartial selection of suitably qualified people for appointment; and
- recognition of the aims and aspirations of Māori, and of the employment requirements of Māori, women and people with disabilities.

The Equal Employment Opportunities Commissioner at the Human Rights Commission has responsibility for issuing good employer and EEO guidance to Crown entities. That advice can be found at: www.neon.org.nz/crownentitiesadvice/.

Other legislation may prescribe additional employment codes, for example s. 100 D5 of the Employment Relations Act has a code of practice that applies to the staff of the New Zealand Blood Service as well as other entities in the public health sector.

Standards of integrity and conduct

Standards of Integrity and Conduct is the code of conduct issued by the State Services Commissioner under s. 57 of the State Sector Act 1988. The code has been applied to all staff (but not board members) of statutory Crown entities and Crown entity companies, and to board members and staff of some subsidiaries of Crown entities. It must be reflected in each entity's internal policies. The Code can be found at: www.ssc.govt.nz/code, together with additional guidance on its interpretation and application.

Pay and employment conditions expectations

The Government's expectations for pay and employment conditions in the State sector were revised in July 2012 and extended to apply to all employees (not just those covered by collective agreements) and to all Crown entities. Crown entities are required to take a number of factors into account in setting pay and employment conditions, including:

- fiscal sustainability and value for money;
- contributing to the achievement of the entity's strategic business outcomes;
- fairness to employees and taxpayers; and
- enhancing productivity and fostering continuous improvement.

The expectations are set out in: www.ssc.govt.nz/govt-expectations-pay-employment.

responsible Ministers will require boards of Crown entities to have regard to these expectations when establishing their pay and employment conditions.

Governance manual content: Crown entities as employers

At a minimum a good governance manual should cover the provisions of the applicable legislation in respect of:

- the processes to be followed in appointing an entity's chief executive, setting their performance expectations and formally evaluating his/her performance;
- the obligation for Crown entities to operate as good employers;
- where responsibilities lie for the employment of entity staff;
- the board's role in ensuring that the State Services Commission's code of conduct is promulgated within the entity; and
- the factors to be taken into account by Crown entities in setting pay and employment conditions.

Chapter 14: Subsidiaries

A Crown entity may establish one or more subsidiaries, either partly or fully owned, to carry out its functions and contribute towards the achievement of its objectives. The parent entity remains accountable for activities and performance of a subsidiary, which are reported in the parent entity's results. Accordingly the board should ensure that it follows governance good practice in establishing any subsidiary, and in monitoring and reporting on its activities.

Legislative basis

Types of subsidiaries

"Crown entity subsidiaries" are companies that are controlled by one or more Crown entities (Crown Entities Act 2004, ss. 7 and 8). Each such subsidiary is a Crown entity in itself. As companies, the Companies Act 1993 applies to them, and their board members are directors under that Act.

The test for control is that expressed in the Companies Act 1993 (ss. 5 to 8). Essentially this is control of the composition of the board, or greater than 50% of either the shareholding, right to dividends, or voting rights. The definition of a Crown entity subsidiary in s. 7 of the Crown Entities Act 2004 (CE Act) also includes multi-parent subsidiaries i.e. where several Crown entities, each with less than a controlling interest, have come together to establish a company.

Some bodies established by Crown entities do not come within the definition of "Crown entity subsidiary" in s. 8 of the CE Act. These are bodies that are not companies (e.g. trusts, incorporated societies or other non-company bodies), or that are associate companies (i.e. where the test for control is not met). Section 100 of the CE Act specifies the rules for a Crown entity acquiring such an interest. They may still be part of the Crown entity group for financial reporting purposes under Part 4 of the CE Act (s. 136).

Which Crown entities may establish subsidiaries?

All Crown entities (other than corporations sole) are authorised to acquire and establish Crown entity subsidiaries, subject to notifying the responsible Minister or, in the case of Crown entity subsidiaries, their parent entities (ss. 96 and 100 CE Act). Corporations sole are prevented from acquiring or establishing Crown entity subsidiaries because sole members are appointed to carry out statutory functions which rely on their personal expertise. However, they may acquire minority interests in companies or other bodies with the responsible Minister's prior written approval (s. 101).

Some entities may have different provisions in their own legislation for the establishment of subsidiaries. See also, the chapter on collective and individual duties, page 16.

Rules that apply to subsidiaries

The provisions of the Companies Act 1993 apply to Crown entity subsidiaries as companies (except as provided in s. 102 of the CE Act). As subsidiaries are Crown entities themselves, the following applies to them:

- the provisions of the CE Act ;
- other legislation that is applicable to Crown entities (as described in the Relevant Legislation chapter of this guidance, page 4); and
- the other chapters of this guidance.

The responsible Minister's relationship is with the parent entity rather than directly with a subsidiary. responsible Ministers generally have no power under the CE Act to give policy, whole of government or other directions to Crown entity subsidiaries. Accordingly, ss. 97 and 98 of the CE Act set out the obligations the parent has to ensure that the subsidiary acts in accordance with the parent's functions and objectives, and observes the same statutory limitations as are applied to the parent. Sections 52 and 93 of the CE Act specify that one of the collective duties of the board of a Crown entity is to ensure that it complies with ss. 96 to 101 (relating to the formation and shareholding of subsidiaries).

For multi-parent subsidiaries, the responsible Ministers of the parent Crown entities must agree how the restrictions and obligations on subsidiaries in s. 99 of the CE Act apply to the subsidiary.

Key considerations

The parent Crown entity is accountable for the subsidiary's activities, including ensuring it complies with legislative restrictions. Among other things, the board will want to put in place procedures for ensuring:

- best practice in the identification and appointment of directors for the subsidiary (including setting appointment terms and fees, see also the Fees section of this guidance in regard to fees for directors of subsidiaries);
- appropriate business planning and monitoring procedures, including that public accountability documents such as SOIs and annual reports for the parent adequately include information on the activities of the subsidiary;
- an internal control environment is in place in the subsidiary so that it complies with statutory obligations and is well managed; and
- reporting to the parent entity's board on the activities and the performance of the subsidiary, including any exceptions that are highlighted by the internal control environment.

Governance manual content: Subsidiaries

At a minimum a good governance manual should cover:

- the purpose of subsidiaries, how they can be established and by whom;
- key details of any subsidiary, including their role and purpose;
- the ways in which the Companies Act 1993 and any specific provisions in an entity's own legislation apply to subsidiaries; and
- procedures for appointing directors, business planning, monitoring and reporting on the activities of the subsidiary.

Chapter 15: Planning and reporting

Key board responsibilities are strategic planning, monitoring and reporting publicly on the expected and actual performance of the entity: this enables Parliament and the public to hold entities accountable.

The Crown Entities Act 2004 (CE Act) sets out planning and reporting obligations of Crown entities, including the requirements for key accountability documents - the Statement of Intent, Statement of Performance Expectations and Annual Report. The expectation that boards are fully engaged in these areas is reflected by the requirement that these accountability documents are signed by members of the board.

Additional planning and reporting requirements may be specified in the entity's own legislation, and the impact of some of the provisions in this chapter will depend on the category of the entity.

Communications between Ministers and entities that inform boards of the responsible Minister's expectations for the future direction of the entity are also an important part of the planning process.

The range of planning instruments and vehicles make it advisable for each entity to consider setting up a process to record the actions and time frames for key planning and reporting decisions.

Enduring letter of expectations

An enduring letter of expectations to Crown entities is issued periodically, with the most recent on 26 July 2012: see www.ssc.govt.nz/expectations-letter-crown-entities-july12. It sets out the ongoing expectations that the Minister of Finance and the Minister of State Services have of all statutory Crown entities. These expectations include value for money, demonstrating performance, and engagement with Ministers and monitoring departments. An enduring letter remains 'in force' until it is replaced.

Ministerial involvement in setting strategy and annual performance expectations

Ministers "participate in the process of setting the entity's strategic direction and performance expectations and monitoring the entity's performance..." (s. 27(1)(f), CE Act). Ministers' expectations for entities' strategic direction and their specific priorities for the planning period may be provided through meetings with the chair or board, and/ or in an annual letter of expectation from the Minister to the entity. Ideally, the letter will be sent to the chair, before the board starts their strategic review and planning in October.

Statements of Intent

The purpose of a Statement of Intent (SOI) is to promote the public accountability of a Crown entity (s. 138, CE Act) by:

- enabling the Crown to participate in the process of setting the Crown entity's strategic intentions and medium-term undertakings;
- setting out for the House of Representatives those intentions and undertakings; and

- providing a base against which the Crown entity's actual performance can later be assessed.

The 2013 amendments to the CE Act provide a stronger focus on strategic planning. The changes are:

- The SOI is solely about the strategic intentions of the entity.
- The content of an SOI must cover a minimum of four financial years.
- An SOI can last up to 3 years, but should be regularly reviewed and updated where circumstances require. (The 3-year period is measured from the date that the SOI was provided to the responsible Minister.)
- The responsible Minister can ask for a new SOI at any time.
- The Crown entity can provide a new SOI to the responsible Minister instead of providing an amendment to the final SOI.
- In certain circumstances, the responsible Minister can give a Crown entity an extension of time for, or waive the requirement to provide, an SOI.
- The Crown entity must publish the SOI (or any amendments) on its website once it is provided to the responsible Minister, unless the Minister has delayed publication during the pre-Budget period.
- There are a various options for when and how an SOI is presented to the House (after publishing). For example, a Crown entity's SOI can be presented with the annual report from the previous year (giving Parliament both a backward and forward looking performance story) or with other agencies' documents.

Section 141 of the CE Act specifies what a SOI must contain. An SOI must set out the strategic objectives that the Crown entity intends to achieve or contribute to (strategic intentions) and explain how the entity proposes to assess its performance.

Ministers may participate in determining the content of the SOI (s. 145) which includes: agreeing with the Crown entity on any additional information to be incorporated; specifying the form in which any information must be presented; making comment on a draft SOI; and directing amendment in relation to some content of the SOI.

Advice on preparing a meaningful SOI can be found at:

- Performance Expectations – "What's Intended to Be Achieved" www.treasury.govt.nz/publications/guidance/planning/performanceexpectations-achieved.
- Performance Expectations – "How Performance Will Be Assessed www.treasury.govt.nz/publications/guidance/planning/performanceexpectations-assessed.
- CEA: Statement of Intent content www.treasury.govt.nz/publications/guidance/strategy.

Advice on when a new SOI will be provided to the Minister and the production timetable can be found at: CEA: Statement of Intent Timetables, www.treasury.govt.nz/publications/guidance/strategy/soi-timetables.

Statement of Performance Expectations (SPE)

The 2013 amendments to the CE Act provide for a Crown entity's statement of intent (SOI) to last up to 3 years. To give effect to this change, the information a Crown entity needs to provide to Parliament on an annual basis was removed from the SOI. This annual information is now in a document called a "statement of performance expectations" or an SPE. The information is:

- the statement of performance expectations (previously known as the statement of forecast service performance); and
- the annual forecast financial statements.

The purpose of an SPE is to:

- enable the responsible Minister to participate in setting the annual performance expectations of the Crown entity;
- enable Parliament to be informed of those expectations; and
- provide a base against which actual performance can be assessed.

Section 149E of the CE Act specifies the contents of an SPE. An SPE must include a concise explanation of what each reportable class of outputs is intended to achieve and explain how the performance of each reportable class of outputs will be assessed.

Ministers may participate in determining the content of the SPE (s. 149H) which includes: agreeing with the Crown entity on any additional information to be incorporated; specifying the form in which any information must be presented; making comment on a draft SPE; and directing amendment in relation to some content of the SPE.

Advice on SPEs can be found at: CEA: Statement of Performance Expectations (SPE), www.treasury.govt.nz/publications/guidance/planning/appropriations/cea-spe.

Funding or other agreement

These types of agreements are not required by legislation. However, some Ministers and some Crown entities find them useful for documenting such things as how the relationships between the Minister, entity and monitoring department will be managed, when and how any Crown monies will be paid to the Crown entity, and when and how the Minister would like reporting from the Crown entity. They can be as simple as a letter or more formal like a memorandum of understanding.

Annual Report

The entity reports on its performance to Parliament in its annual report (ss. 150 – 157, CE Act). The annual report must include information to enable an informed assessment to be made of the entity's progress against its strategic intentions and statement of performance expectations. Other information that must be included in an annual report is the annual financial statements for the entity, any direction given to the entity by a Minister in writing, the total value of the remuneration paid to each member during the financial year (ss. 151 and 152, CE Act).

The board is informing stakeholders on how it is leading the performance of the entity, and how it is using public resources. The board will lead development of the annual report,

including engagement as necessary with the Minister. The Annual Report must be in writing, be dated, and be signed on behalf of the board by two members.

The Auditor-General is the entity's auditor, but will generally appoint another auditor to act on his or her behalf. The auditor is required to audit the annual financial statements, statement of service performance, the annual report, and any other required or agreed information.

A Crown entity must provide its annual report to the responsible Minister within 15 working days of receipt of the audit report: it is recommended that entities provide a near final draft to their monitoring department to enable the Minister to be briefed on key issues

Guidance on preparing an annual report can be found at: Preparing the Annual Report: Guidance and Requirements for Crown Entities, www.treasury.govt.nz/publications/guidance/reporting/annualreports-ce.

Governance manual content: Planning and reporting

At a minimum a good governance manual should cover:

- each of the key planning and reporting requirements in the CE Act and the board's role, including:
  - the Statement of Intent;
  - the Statement of Performance Expectations;
  - the Annual Report;
- any planning and reporting requirements in the entity's own legislation, the board's role and engagement with the responsible Minister; and
- any relevant non-legislative planning and reporting processes and the boards role, including;
  - enduring letters of expectation;
  - annual letters of expectation; or
  - any other agreements.

Chapter 16: Board and member performance evaluation

Evaluating the performance of the board and board members allows a board, led by the chair, to take stock and reflect on both these aspects of performance. The knowledge gained from the review is a means to continually improve the effectiveness of the leadership and governance of the entity.

The board should assess its own performance in relation to the board's key responsibilities, which include:

- managing the relationship with the Minister and meeting the Minister's expectations;
- strategic planning;
- discharging the board's legal and ethical obligations;
- monitoring entity performance;
- monitoring and reviewing the performance of the chief executive (where there is one); and
- managing relationships with stakeholders.

The benefits of evaluating individual board member performance include:

- providing feedback to individual board members, so their contribution to the board's work can be maximised;
- the ability to put in place mentoring, development or training for individual board members or the board as a whole;
- reinforcing the accountability of the chair for the effective performance of the board; and
- assisting the responsible Minister with succession planning, appointment and reappointment processes.

Evaluating performance should be undertaken each financial year. Having an agreed process and method will assist with the evaluation.

The process for undertaking evaluations is determined by each board. For example, evaluations may be managed internally, or the board may be assisted by an external facilitator.

The chair is expected to offer appropriate feedback to the board and to individual members, and to provide assurance to the monitoring department that a process for performance evaluation is in place and that it is undertaken.

Governance manual content: Board and member performance evaluation

At a minimum a good governance manual should cover:

- the aim of evaluating the board's and individual member performance;
- the method and procedures for carrying out the evaluation; and
- advice to board members on how the information from the evaluation will be used.

Chapter 17: Board appointments and reappointment

Board appointment and reappointment decisions have considerable impact on board and entity performance. Generally, Ministers make the appointments, or recommend them to the Governor-General. Where possible boards, through the board chair, need to be involved in these processes. Every vacancy creates an opportunity to reassess the future needs of an entity and the skills and experience that will best complement the talents of the other board members. The chair's involvement will be through the monitoring department or direct to the Minister.

Responsibility for the appointment

Ministers are generally responsible for board appointments, either directly or through recommendations to the Governor-General (refer to table below). While the Minister retains the ultimate responsibility for board appointments, in practice the process is usually delegated to a monitoring department unless the Minister wishes the appointments to be handled otherwise.

	Crown Agents	**Autonomous Crown Entities (ACE)**	**Independent Crown Entities (ICE)**
Appointment of board members (s 28, Crown Entities Act).	Appointed *in most cases* by the responsible Minister	Appointed *in most cases* by the responsible Minister	Appointed by the Governor – General on the recommendation of the responsible Minister

An example of when appointments to Crown agents and ACEs are not made by the Ministers is the New Zealand Historic Places Trust to which six board members are appointed by the Minister and three are elected by the members of the Trust.

Each entity needs to check its establishing legislation for exceptions under its own legislation.

The Minister or the Governor-General may only appoint a member of a board to hold the chair or deputy chair position on the same board. It is important that chairs and deputy chairs understand that they retain all their member responsibilities as well as any additional responsibilities deriving from their chair or deputy chair role.

Role of board chair in appointment processes

The Minister or monitoring department should generally engage with the board chair throughout the process.

The chair should be able to:

- reflect his/her knowledge of the workings of the board and its less formal interactions and relationships, as part of identifying the skills needed of the appointee;
- provide feedback on the board's annual evaluation as to the future needs of the entity (refer to the chapter on Board and member performance evaluation, page 49);
- assist with the updating of position descriptions; and
- suggest nominees for consideration.

Where possible, board chairs should also be part of the selection and interview panel that will advise the Minister.

An example of where it may not be appropriate for an incumbent chair to be involved in some or all parts of the appointment process is where the chair is being assessed for reappointment or replacement.

Board nomination registers and committees

Some Crown entities are required by their establishing legislation to have nominations registers or nominations committees, from which advice is given to the responsible Minister on proposed appointees. In this situation the Minister can refuse to appoint a person nominated but may not appoint someone who has not been nominated through the appropriate channels. Boards that are required to have nomination registers or committees need to have policies and procedures on how the nominations register works and / or terms of reference for the committee (refer to the chapter on *Board committees*).

Terms of office for board members

Under the Crown Entities Act 2004 (CE Act), the term of office for board members of Crown agents and ACEs is a maximum of 3 years, and a maximum of 5 years in the case of ICE members. However, a board's enabling legislation may specify differing provisions that take precedence over the CE Act. For example the term of office for board members who are elected as representatives of a particular 'constituency' is set by the relevant statute.

A chair or deputy chair person may resign their chair or deputy chair position at any time, without resigning as a member of the board (schedule 5, s. 3 CE Act). Board members may resign their position at any time (s. 44 CE Act). Resignations must be made by written notice to the responsible Minister with a copy given to the entity. The notice must state the date on which the resignation takes effect.

Board members on more than one government board

Generally, a board member may be a member on more than one government board at any one time, as long as there is no legislation or other rules preventing this, there are no conflicts arsing from the situation and the board member has the time available to properly undertake the positions.

Reappointment principles

Ministers decide (or recommend to the Governor-General), in light of the Crown entity's strategic direction and other considerations, whether a member should be reappointed when their term expires. Incumbent board members have no automatic right of reappointment and need to be aware that the requirements for appointment under the CE Act will apply. For example:

- s. 29: Criteria for appointment or recommendations by the responsible Ministers;
- s. 30: Qualifications of members; and
- s. 31: Requirements before appointments, which includes disclosure of interests.

Any further requirements under the entity's establishing legislation for appointments will also apply.

Incumbent board members will be required to provide updated curriculum vitae information to the Minister or monitoring department and may be required to attend an interview. Incumbent board members who are reappointed will receive a notice of appointment and an appointment letter, which may convey a Minister's expectations of that board member.

Appointment by the board of a temporary deputy chair

There is one situation, whereby the power of appointment is vested in the board. Under schedule 5 of the CE Act, where the chair is unavailable or interested in a matter and where there is no deputy chair, or the deputy chair is also unavailable or interested in a matter, by resolution the board can appoint a temporary deputy chair who may exercise all the functions and powers of the chair. In this situation the board should ensure:

- that the person they appoint to the position has the necessary skills and experience to undertake the role;
- where the appointment is not short term, that the appointee is acceptable to the Minister;
- that interests and conflicts are checked prior to appointment; and
- they advise the Minister and monitoring department of the situation as soon as possible where it requires the Minister to undertake a new appointment process.

Post appointment induction

Ministers, boards and monitoring departments all have responsibilities in relation to induction of new board members.

The State Services Commission has developed a set of induction modules: www.ssc.govt.nz/crown-entity-induction-material to assist those giving induction sessions. The primary audience for the induction material is new board members but it may also be helpful for existing board members. These need to be shaped to the board's situation. The State Services Commission is happy to consider requests to assist with presentations in relation to "being a board member in the State services".

It is up to the chair and board to provide the detailed induction and background in relation to what their board does and how the board and entity operate.

Removal from office

Removal from office before the end of a board member's term is an option available to Ministers. Generally, the person with authority to appoint a board member also has the power to remove or suspend a person from office. Unless there are specific statutory or governance provisions to the contrary, each board member holds office at the pleasure of the person (a Minister or the Governor-General as the case may be) who appointed them.

The tables below identify who is responsible for removal of board members in each category of agency:

Statutory entities	Crown Agent	Autonomous Crown Entity	Independent Crown Entity
Power to remove appointed board members	At Minister's discretion.	By Minister, for reason which in Minister's opinion justifies removal. The Minister must cite the reason.	By Governor-General, for just cause, on Minister's advice after consultation with the Attorney-General.

Where a chair or deputy chair is being removed, they can either be removed from their chair or deputy role only, thus remaining a member, or they may be removed from both roles on the board.

Elected members of Crown agents and Autonomous Crown Entities may only be removed by the responsible Minister for just cause. "Just cause" is explained in s. 40 of the CE Act as including "misconduct, inability to perform the functions of office and neglect of duty".

Board members are not employees, and no compensation is made in the event of their removal from a board.

Further information resources

If board members wish to understand further government processes in this area, they should be referred to:

- ss. 28 to 33 of the CE Act (method of appointment, criteria for appointment, qualifications of member requirements before appointments, terms of office, elected or co-opted member) and Schedule 5(1) and 5(2) for chairs' and deputy chairs' appointment and term of appointment;
- ss. 36 to 41 of the CE Act for removal of board member provisions;
- the entity's establishing legislation, where applicable, which may contain further requirements; and
- the State Services Commission's *Board Appointment and Induction Guidelines* www.ssc.govt.nz/board-appointment-guidelines.

Governance manual content: Board appointments and reappointment

At a minimum a good governance manual should cover:

- any legislative qualifications and skill requirements for participation on the board;
- who is responsible for the appointments;
- the chair's role in appointments/reappointments;
- policies and procedures if nominations registers or nominations committees are required;
- the "no automatic right of reappointment" standard;
- reappointment requirements;
- grounds and responsibilities for removal from a board; and
- what to do if a temporary deputy chair appointment is required.

Chapter 18: Remuneration and expenses for board members

Setting fee levels that are sufficient to attract and retain talented board members is an important element of effective governance. Members do not set their own fees, remuneration and allowances but boards should understand how these are set and how to engage with the relevant fee setting authority when fees are reviewed. For further advice regarding the Cabinet Fees Framework, please email fees@ssc.govt.nz.

Sections 47 and 48 of the Crown Entities Act 2004 (CE Act) provide two different mechanisms for setting the remuneration and expenses of board members:

- Crown agents and Autonomous Crown Entity (ACE) members' remuneration and expenses are set by the responsible Minister under the Cabinet Fees Framework. The Framework is contained in Cabinet Office circular CO (12) 6 (www.dpmc.govt.nz/cabinet/circulars/co12/6). The Framework is reviewed periodically, so entities need to be sure they are working from the latest version.
- Independent Crown Entity (ICE) members' remuneration and expenses are set by the Remuneration Authority under the Remuneration Authority Act 1977. The role of the Remuneration Authority in setting remuneration is set out in Cabinet Office circular CO (11) 7 (www.dpmc.govt.nz/cabinet/circulars/co11/7).

When a Crown entity board (including an ICE) establishes a committee or a subsidiary, the board itself becomes the fee-setting authority and should then follow the provisions in the Fees Framework.

In general:

- Board chairs are paid more than other members in recognition of their more substantial role.
- Deputy chairs and those members who chair committees are paid an additional amount on top of their member fee.
- Members who receive an annual fee for board membership do not generally receive additional payment if they are a member of a board's committee; although there may be exceptions in other legislation. Members who receive a daily fee for board activities can, however, be paid for additional days spent on committee work.
- The annual fees paid to members of governance boards are based on an assumed workload of 50 days for chairs and 30 days for members.
- Independent members of board committees (ie, those who are not on the entity board) may be paid a fee, **up to** a maximum of the daily equivalent of the full member fee. The total annual fee paid to an independent member of a sub-committee should not exceed 50% of the total annual fee paid to a member of the entity board. The Auditor-General suggests the fee should be at a level that reflects the time it takes to properly carry out their duties.
- Board members should not be paid when they have not attended a meeting.

Crown Agents and Autonomous Crown Entities (ACEs)

The responsible Minister determines the remuneration for members of boards of Crown agents and ACEs under the Cabinet Fees Framework. The Framework provides a basis for judgement in setting fees, to: ensure a consistent approach to remuneration across all statutory and other Crown bodies; contain expenditure of public funds within reasonable limits; and provide flexibility within clear criteria. Fees should reflect a discount for the element of public service involved. Most Crown agents and ACEs are classified as *Governance Boards* under the Framework; these boards generally have annual, rather than daily fees.

The Framework guidance is for fees to be reviewed periodically, which should not necessarily lead to an increase. This review is normally undertaken by the monitoring department, on behalf of the responsible Minister, in discussions with the board chair.

Under the Framework, members should not receive payment as consultants from an entity to which they are appointed. If, however, the responsible Minister agrees that there are overriding reasons for board members to carry out consulting assignments, any proposal to do so needs to be submitted to Cabinet for consideration.

Independent Crown Entities (ICEs)

Setting and reviewing the fees and remuneration for ICE members is the responsibility of the Remuneration Authority, under the Remuneration Authority Act 1977. The particular things to which the Authority must have regard when determining remuneration are contained in s. 12 of the Remuneration Authority Act.

Generally, the fee paid to an ICE board member is applied to his/her replacement. However, when a new ICE is established or a unique position is being filled (ie, a board chair or deputy, or a full-time role such as Telecommunications Commissioner), the Authority provides the department which is administering the appointment process with an indicative fee range that can be used to discuss the position with interested parties. On appointment, the monitoring department provides the Authority with a copy of the signed notice of appointment, after which the Authority will issue the final fee determination to the appointee and the entity concerned.

The Remuneration Authority reviews fees each financial year. An ICE chair also can make submissions to the Authority for a review of any board fees. The Authority can be contacted at: info@remauthority.govt.nz.

Administrative matters

Board members who travel to meetings or on other board business that requires them to be away from their normal places of residence are entitled to reimbursement of actual and reasonable travelling, meal and accommodation expenses. Boards should have in place appropriate policies and procedures for submitting and approving board member expenses. This should cover matters such as class of travel, entertainment expenditure and use of credit cards. The Office of the Auditor-General has issued guidance on drawing up suitable policies and procedures, which boards should find useful: www.oag.govt.nz/2007/sensitive-expenditure/.

The total value of remuneration paid to each board member is disclosed in the annual report of the entity concerned (s. 152 CE Act).

Taxation matters and their impact on the way the entity pays fees and allowances depend on the personal circumstances of the member concerned. Board members and entity management can clarify the taxation status of members by reference to professional advice or the Inland Revenue Department.

Board members need to take a personal decision on whether they should take out any kind of insurance protection to cover sickness etc.

Board members are not entitled to any compensation or other payment or benefit relating to loss of office (s. 43 CE Act).

Governance manual content: Remuneration and expenses for board members

At a minimum a good governance manual should cover, in a way that is relevant to the category of entity:

- the need for a good understanding of the application of the Cabinet Fees Framework;
- who sets and reviews board fees and remuneration, and who needs to be consulted;
- who in the board engages with the fee setting authority on board fees and remuneration;
- when the board becomes the fee setting authority and the mechanism they are required to use;
- the general principle that board members do not act as consultants to an entity or board where they are a member of that board; and
- the need to have in place appropriate policies and procedures for submitting and approving board member expenses.

Chapter 19: Liability and protection from legal claims or proceedings

To assist in attracting the best quality candidates to serve on boards and to ensure that boards act without fear or favour, the Crown Entities Act 2004 (CE Act) contains a standard regime for immunity, indemnities and insurance.

All boards are expected to govern well and to the best of their abilities. However, even the most careful and law-abiding board can find itself involved in legal claims and proceedings. All board members need to be aware that failing to comply with their duties may lead to personal liability, civil proceedings or criminal prosecution. Individual board members can also be held liable for actions of the board as a collective.

The CE Act also provides for entities to indemnify or insure their members, office holders or employees at their discretion. Protection from liability of board members, office holders and employees is addressed in ss. 120 - 126 of the CE Act. Where entities carry a higher risk of legal liability which warrants more protection from liability, their establishing legislation will contain further provisions.

Although Crown entities are legally separate from the Crown, in some cases a court may decide that the Crown is liable for the agency. This will depend largely on its statutory functions and the extent of control exercised over the entity by Ministers and other central government agencies.

Every board should spend time discussing these matters as they relate to themselves and their employees, preferably with the assistance of a trained specialist, perhaps the entity's legal advisor.

Protection from liability

Section 120 of the CE Act provides that a member is not liable for any liability (civil or criminal) of the entity by reason only of being a board member.

Extent of immunity

The Crown entity itself has no 'blanket' immunity; nor do members, employees, or office holders have immunity from criminal liability.

However, the CE Act does provide that where a board member (office holder or employee) acts in good faith and in performance, or intended performance, of the entity's functions, that board member is immune from civil liability in respect of that act or omission unless:

- it is also a breach of an individual duty of a board member under any of ss. 53 to 57 of the CE Act (s. 121 CE Act); or
- the responsible Minister or entity personnel apply to the court for an order to ensure a member's compliance with the law (s. 60 CE Act).

Indemnities

An indemnity is an agreement by one person to pay another person any sums owed to a third party. "Indemnification" means that the entity relies on its own resources to pay board members' and any others' legal costs for claims that result from board/entity actions, unless the board has decided to take out indemnity insurance.

The CE Act provides that members of an entity are immune from civil liability unless they have breached an individual duty set out in the Act. It also contains express powers for a board to indemnify its members, employees, office holders and committee members at the board's discretion for acts or omissions done in good faith and in the performance or intended performance of the entity's functions (s. 122). Such indemnities can only be for liability for conduct and for costs incurred in defending or settling a claim relating to that liability. Indemnities can cover costs of claims in the absence of court proceedings and also court and disciplinary proceedings (criminal and civil, pre-trial, substantive, and on appeal), provided that the statutory prerequisites are met.

Outside the context of the CE Act, few entities' statutes have explicit indemnity provisions. The board should check the general empowering provisions in the entity's legislation (e.g. all powers reasonably necessary to perform the agency's functions) and seek legal advice on whether the entity's legislation includes powers to indemnify.

Board members should be aware of the extent of any indemnity. If a member, office holder or employee is indemnified or insured for acts or omissions or in relation to costs that the entity is not authorised to indemnify or insure against, then the member, office holder or employee must repay the entity to the extent that the indemnity or insurance cover exceeds what the entity is statutorily authorised to provide (s. 125, CE Act).

Insurance

Insurance provides financial protection for board members and others who are covered, in the event that they are sued in conjunction with the performance of their duties as they relate to the entity.

The CE Act contains express powers for a board to purchase insurance for members, employees and office holders at the board's discretion (s. 123).

A board may effect insurance cover to cover situations where the person involved has not acted in bad faith and the relevant act or omission was done in the performance or intended performance of the entity's functions.

Outside the context of the CE Act, few entities' statutes have insurance provisions. A board should check the general empowering provisions in its legislation (e.g. all powers reasonably necessary to perform the agency's functions) and seek legal advice on whether they include powers to insure.

If insurance is effected beyond what the entity can provide under the CE Act, the insured member/employee/office holder must repay the difference to the entity (s. 125). It is, therefore, important that board members be aware of the extent of any insurance cover.

In the event that insurance is not provided, the board must ensure that the individual member is made aware that he or she is not covered, as well as of any relevant statutory protection from liability, so they can consider whether to make their own provision for such insurance.

Governance manual content: Liability and protection from legal claims or proceedings

At a minimum a good governance manual should cover:

- the approach taken to indemnity for board members, office holders and employees;
- the approach taken to any insurance for board members, office holders and employees;
- who the board has indemnified or provided effective insurance for in relation to employees and office holders; and
- the extent of the indemnity or insurance with an explanation of what acts, omissions and costs are not included.

Summary of minimum content for a governance manual by chapter

At the end of each chapter there are bullet points on the minimum areas an entity's own governance manual should cover on that topic. These bullet points are provided below with the following caveats:

Each chapter provides the background for the bullet points; therefore the relevant chapter must be read before drafting any material for an entity.

The full guidance does not cover all topics relevant to governance, and many boards' manuals will need to include additional material to suit their legal circumstances and particular activities.

Chapter 1: Relevant legislation

At a minimum, a good governance manual should cover:

- the relevant entity-specific legislation, the Crown Entities Act and the relationship between them as it applies to the particular category of Crown entity; and
- all other legislation that has general application to boards and entities.

Chapter 2: Functions and powers of the entity

At a minimum, a good governance manual should cover:

- the functions as set out in the entity's establishing legislation including clear arrangements for the delivery of any policy functions;
- any functions that the Minister has added in accordance with the entity's establishing legislation;
- any functions that are incidental or related to, or consequential on, the entity's functions;
- any underpinning objectives or government policy statements of which the board is required to take account;
- any exceptions to the board implementing the entity's functions and powers, i.e. where these are the responsibility of the chief executive or other office holder; and
- a diagram of the structure of the board and entity would be a useful addition.

Chapter 3: Key relationships

At a minimum a good governance manual should cover:

- the nature of the relationship between a board and the Minister, taking account of the type of entity, including:
  - the protocols to be observed;
  - identification of any statutorily independent functions, and the relationship with the Minister in regard to these functions;

- the 'no surprises' approach;

- the nature of the board's relationship with the chief executive and other entity staff, including any protocols to be observed and the boundaries between governance and management;
- the nature of the entity's relationship with the monitoring department, including any protocols to be observed; and
- who will interact with parliamentary select committees.

Chapter 4: Collective duties of the board and individual duties of board members

At a minimum a good governance manual should cover:

- the collective duties and the role of the board and individual board members in ensuring the duties are complied with;
- the individual duties and the role of the board and individual board members in ensuring the duties are complied with; and
- a process for making sure all board members are aware of their collective and individual duties (eg, member induction, ongoing training, updating requirements) and of the consequences for breaching the duties.

Chapter 5: Role of the board chair

At a minimum a good governance manual should cover:

- The key requirements of the Crown entity chair's role; reflecting both the provisions of the CE Act and any functions that are specific to the entity concerned.

Chapter 6: General responsibilities of members

At a minimum a good governance manual should cover:

- a description of the general behaviour expected of and approach to be taken by members; and
- cross-references to relevant chapters, e.g. identifying and managing conflicts of interest, key relationships.

Chapter 7: Members' interests and conflicts: identification, disclosure and management

At a minimum, a good governance manual should cover:

- the fact that interests, if not disclosed, registered and managed properly, have the potential to lead to conflicts that will undermine decisions taken by a board and the confidence held by stakeholders in the actions of the entity;
- the importance of board members taking a broad and honest approach to identifying their interests and when considering potential conflict of interest situations;
- the need for both perceived and real interests to be identified;
- the importance of fully exploring ways to manage an interest, looking beyond

compliance with legal requirements to whether anything more needs to be done;

- any legislative requirements specific to the entity relating to conflicts of interest;
- the process by which board members must declare their interests to the chair. This should include;
  - both standing disclosures and specific interests;
  - the need for declarations to be recorded in board minutes;
  - the need for all interests to be recorded in the board's register of members' interests, including the nature and extent of the interests, and where appropriate, their monetary value;
- the processes and mechanisms for managing a declared interest, including:
  - how the board and entity staff will preclude a member's access to information on any declared interests;
  - how the board will preclude a member's participation in matters relating to any declared interests; and
- the process for members to keep their interests under regular review, and making amendments to previously declared interests if required.

Chapter 8: Disclosure of information

At a minimum a good governance manual should cover:

- The requirement for board members to handle information that they obtain in their board role according to the requirements of s. 57 of the CE Act and consistently with any board policies.

Chapter 9: Gifts and hospitality

Many boards already have internal protocols on gifts and hospitality that are tailored to their particular circumstances, within which gifts of a specific value may be acceptable. The provisions and value thresholds may vary according to the entity's circumstances and stakeholders.

At a minimum, a good governance manual should cover:

- the fact that acceptance of gifts and hospitality by a board member can, or may be seen to, impact on the public's trust in the entity and in board governance in general. Therefore, such offers should be accepted only if there is no prospect of the gift or hospitality being seen to influence the board's judgement in any way;
- the need for careful judgement to be exercised when considering offers of gifts or hospitality, in light of the entity's roles and relationships;
- the board's approach to its members accepting offers of gifts and hospitality, including:
  - any entity-specific considerations that needed to be exercised in deciding whether to accept gifts and hospitality
  - a monetary value above which gifts and hospitality need to be disclosed;
  - the accepted treatment of benefits in kind (eg, air points); and

  - the procedures to follow for declaring and registering offers of gifts and hospitality, and for regularly reviewing such declarations;
- the need to have in place an understanding of and the appropriate protocols surrounding koha;
- the board's approach to offering gifts and hospitality which emphasises the importance of exercising appropriate and sensitive judgement;
- a clear statement that members must never solicit favours for themselves or others; and
- an effective disclosure regime, including maintaining a register of gifts, is strongly recommended.

Chapter 10: Board meeting procedures

At minimum a good governance manual should cover:

- the meeting procedure requirements that are set out in Schedule 5 of the CE Act and in the entity's own legislation;
- additional provisions that will assist the smooth functioning of the board's business; and
- processes to ensure effective forward planning of the board's regular activities.

Chapter 11: Board committees

At a minimum a good governance manual should cover:

- details of the entity's committees, including their roles, responsibilities, accountability, reporting procedures, membership and duration; and
- procedures for establishing new committees and for reviewing whether existing committees should continue.

Chapter 12: Delegations

At a minimum a good governance manual should cover:

- boards remain legally responsible for the exercise of any functions and powers exercised under delegation;
- delegation policies and procedures, which should include areas such as:
  - the process for reviewing delegations,
  - any generic conditions or restrictions around delegations,
  - policies for the reporting of decisions made under delegation; and
- schedules of delegations, which should include areas such as:
  - the legislative authority for delegation,
  - strategy (planning, setting policy, compliance),
  - expenditure (budgets, contracts, operating and capital expenditure),
  - financial management (bank accounts, investment, financial reporting, audit,

taxation)

- communications (marketing, media, Official Information Act 1982, government)
- risk (risk management, insurance)
- legal (appointment, dispute resolution, litigation).

Chapter 13: Crown entities as employers

At a minimum, a good governance manual should cover the provisions of the applicable legislation in respect of:

- the processes to be followed in appointing an entity's chief executive, setting their performance expectations and formally evaluating his/her performance;
- the obligation for Crown entities to operate as good employers;
- where responsibilities lie for the employment of entity staff;
- the board's role in ensuring that the State Services Commission's code of conduct is promulgated within the entity; and
- the factors to be taken into account by Crown entities in setting pay and employment conditions.

Chapter 14: Subsidiaries

At a minimum a good governance manual should cover:

- the purpose of subsidiaries, how they can be established and by whom;
- key details of any subsidiary, including their role and purpose;
- the ways in which the Companies Act 1993 and any specific provisions in an entity's own legislation apply to subsidiaries; and
- procedures for appointing directors, business planning, monitoring and reporting on the activities of the subsidiary.

Chapter 15: Planning and reporting

At a minimum a good governance manual should cover:

- each of the key planning and reporting requirements in the CE Act and the board's role, including:
  - the Statement of Intent;
  - the Statement of Performance Expectations, and
  - the Annual Report;
- any planning and reporting requirements in the entity's own legislation, the board's role and engagement with the responsible Minister; and
- any relevant non-legislative planning and reporting processes and the boards role, including:

- enduring letters of expectation;
- annual letters of expectation; or
- any other agreements

Chapter 16: Board and member performance evaluation

At a minimum a good governance manual should cover:

- the aim of evaluating the board's and individual member performance;
- the method and procedures for carrying out the evaluation; and
- advice to board members on how the information from the evaluation will be used.

Chapter 17: Board appointments and reappointment

At a minimum, a good governance manual should cover:

- any legislative qualifications and skill requirements for participation on the board;
- who is responsible for the appointments;
- the chair's role in appointments/reappointments;
- policies and procedures if nominations registers or nominations committees are required;
- the "no automatic right of reappointment" standard;
- reappointment requirements;
- grounds and responsibilities for removal from a board; and
- what to do if a temporary deputy chair appointment is required.

Chapter 18: Remuneration and expenses for board members

At a minimum a good governance manual should cover, in a way that is relevant to the category of entity:

- the need for a good understanding of the application of the Cabinet Fees Framework;
- who sets and reviews board fees and remuneration, and who needs to be consulted;
- who in the board engages with the fee setting authority on board fees and remuneration;
- when the board becomes the fee setting authority and the mechanism they are required to use;
- the general principle that board members do not act as consultants to an entity or board where they are a member of that board; and
- the need to have in place appropriate policies and procedures for submitting and approving board member expenses.

Chapter 19: Liability and protection from legal claims or proceedings

At a minimum a good governance manual should cover:

- the approach taken to indemnity for board members, office holders and employees;
- the approach taken to any insurance for board members, office holders and employees;
- who the board has indemnified or provided effective insurance for in relation to employees and office holders; and
- the extent of the indemnity or insurance with an explanation of what acts, omissions and costs are not included.