



## Machinery of Government Supplementary Guidance Note: Departmental Agency model

### Purpose

This guidance note explains what a “departmental agency” is, including the background and purpose to the introduction of this organisational form into New Zealand’s machinery of government landscape. It describes key features of the model, when it might be used and also when it is not intended to be used. This note also covers the roles and relationships between key participants in a departmental agency arrangement, which are fundamentally important to its successful operations.

This guidance note will help officials who are carrying out policy analysis and undertaking due diligence to support decisions about machinery of government change proposals. It will also help with planning and scoping work for a machinery of government project.

The State Services Commission (SSC) is currently updating its machinery of government guidance. This note provides supplementary information to the existing guidance document and should be read in conjunction with this document <http://www.ssc.govt.nz/reviewing-mog>

### What is a departmental agency?

#### *Description*

A departmental agency is an operationally autonomous agency within a host department in the Public Service. Accordingly, it is part of the legal Crown. A departmental agency is headed by its own chief executive who is directly responsible to the agency’s Minister for its clearly identified, ring-fenced activities and performance. The departmental agency and its host department may, or may not, have the same Minister: this is determined by the relevant ministerial portfolio(s). The State Services Commissioner appoints the chief executive of a departmental agency, with the chief executive of the host department being an ex officio member of the selection panel.

## *Background and objectives*

The departmental agency concept in New Zealand was based on the United Kingdom's model of executive agencies, but with some substantive modifications to fit New Zealand's Public Service framework (eg, the State Services Commissioner is responsible for the appointment and performance review of the chief executive of a departmental agency).

Amendments in July 2013 to the State Sector Act 1988 (SSA) enabled the establishment of departmental agencies. Their establishment was recommended in the report of the Better Public Services Advisory Group (BPSAG) provided to the Government in December 2011. The BPSAG proposed additions to the available 'menu' of organisational forms to address problems with on-going 'silos', fragmentation and consequent co-ordination difficulties that made it difficult for the State services to work together on longer-term cross-agency challenges.

The BPSAG considered that departmental agencies would provide an alternative to establishing wholly separate departments or new Crown entities. In this way, the departmental agency model can be used to:

- consolidate similar operational, service delivery or regulatory functions from different agencies that serve similar objectives and priorities, especially if doing so would shore up capabilities and produce back office efficiencies
- transfer functions from Crown entities into the legal Crown (ie, into a department) in a manner that retains their separate identity and accountability
- provide greater autonomy and transparency for existing functions that might otherwise lose 'visibility' or focus as part of a large multifunctional department.

In these ways, the departmental agency model can serve to improve system coherence and consolidation, provide benefits of scale and leverage from Crown investments, and reduce fragmentation and costs in the State sector.

## **When might a departmental agency be used?**

In order to maintain flexibility, the SSA is deliberately silent about the role, functions and scope of any departmental agency (just as it is silent about the establishment of any department). Such things are for Ministerial agreement in every particular case. At a policy level, the model is envisaged for a clearly identifiable and separately accountable set of functions. The reporting provisions in the Public Finance Act 1989 (PFA) reflect this intention, by requiring a departmental agency to prepare its own annual report containing a specified set of information.

The activities best suited to the departmental agency model would tend to be regulatory, service delivery or other ring-fenced operations that do not need to be carried out by an entity separate from the legal Crown and that can be accountable directly to a Minister (rather than come under the authority of a governance board)<sup>1</sup>. Such functions:

- are readily identifiable and measurable, and therefore lend themselves to ring-fenced, transparent funding and reporting arrangements
- are cohesive and/or fall within a clearly defined area
- have relatively stable policy settings
- have low levels of operational connection with other functions of the host department
- are carried out by clearly identifiable staff (employees or secondees) who come within the employer responsibilities of the departmental agency's chief executive.

Another important consideration involves an assessment of whether the relative size (employees and/or revenue), and/or nature of the substantive functions warrant the appointment of a Public Service chief executive.

### **When wouldn't this model be useful?**

Because of the 'vertical' relationship between a host department and a departmental agency in relation to appropriation administration and financial delegations, the model is not intended for activities involving direct responsibility as an appropriation administrator.

Because of the 'parallel' relationship whereby each chief executive is directly responsible to the appropriate Minister for an autonomous sphere of activity, the departmental agency model is not suited to functions that have a relatively high level of connection or cross-over with those of the host department or any other agency, or where the boundaries are uncertain or blurred. This could be the case in many policy spheres.

### **Key points to consider in establishing a departmental agency**

The SSC and Treasury must be consulted about any proposal that might lead to the establishment of a departmental agency.

The SSA and PFA both deal with the relationships between a host department and a departmental agency, and their chief executives.

The relationship between a departmental agency and its host department, and their chief executives, is not purely hierarchical. It can be described as vertical, horizontal, or parallel, in relation to different aspects of the model.

- Vertical – in relation to:
  - strategic intentions (the host department presents and publishes information for the whole department, including any departmental agency that it hosts)

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<sup>1</sup> A policy role that is clearly identifiable and separately accountable can also fit the departmental agency model.

- appropriation administration (the host department administers Votes/appropriations)
- financial delegations (the departmental agency is intended to use appropriations administered by the host department under delegation, though an appropriation Minister may also direct that a departmental agency use certain types of expenditure).
- Horizontal – in relation to:
  - advice on direction setting and priorities (this may be provided by both the host department and the departmental agency, in relation to their respective spheres of responsibility)
  - staffing (the chief executive of the host department is responsible for department-wide personnel matters, but is deemed under the SSA to delegate to the departmental agency chief executive responsibility for all decisions relating to individual employees engaged on the work of the departmental agency, including dealing with personal grievances and any other employment relationship problem)
  - health and safety (responsibilities lie with both the host department and the departmental agency and their respective chief executives; liabilities can lie with the host department and its chief executive as well as the chief executive of the departmental agency. How this plays out in practical circumstances rests with the legislation for health and safety at work, rather than being an inherent function of the departmental agency model).
- Parallel – in relation to:
  - responsibilities under the SSA (each chief executive is directly responsible to the appropriate Minister for the performance of their autonomous sphere of functions, duties, or powers)
  - powers under the SSA (each chief executive has the powers necessary to carry out their functions, responsibilities, and duties)
  - responsibilities for reporting under the PFA (for example, the respective chief executives are responsible for signing the department's or the departmental agency's annual report). The Treasury website contains detailed guidance about reporting requirements.

In addition to legislation, a Departmental Agency Agreement is also a key part of the model: it is not named in the SSA as a mandatory document, but section 27B(b) requires the working arrangements between a departmental agency and its host department to be agreed by the respective chief executives and approved by their appropriate Ministers.

Other points to consider in establishing a departmental agency include the following.

- Legislation is not required to establish a departmental agency, apart from an Order in Council to name it and its host department in Schedule 1A of the SSA. This factor may be relevant, particularly for Ministers, if it is a close call whether to allocate functions to a departmental agency or Crown agent (the latter requires primary legislation).

- Although primary legislation is not needed to establish a departmental agency, nonetheless there may be instances where an Act is required, for example to establish a new regulatory regime that includes statutory powers or penalties that will be administered by the agency.
- As indicated above in relation to the ‘vertical’ relationship between a host department and a departmental agency, the host department provides information on its strategic intentions, as required under section 38 of the PFA. The information covers the whole department, including any departmental agency hosted in the department. Whenever a new departmental agency is established, the host department should review the suitability of the current information provided to the Minister and published on its website. Almost certainly, an updated set of information would need to be prepared. The departmental agency’s annual report must include an assessment of progress relating to the host department’s strategic intentions that are relevant to the departmental agency.
- Financial responsibilities lie generally with the host department, as the appropriation administrator (refer to the Treasury website – [www.treasury.govt.nz](http://www.treasury.govt.nz) – for detailed information about the responsibilities of an appropriation administrator). The host department’s annual report includes consolidated financial statements for any departmental agency that it hosts. Upon establishment of a departmental agency, the chief executive of the host department should ensure that appropriate financial delegations are in place for the departmental agency chief executive. Nonetheless, the departmental agency model is flexible, with provision for:
  - the departmental agency to be responsible for the end-of-year performance reporting on what has been achieved with relevant appropriations (excluding a multi-category appropriation), provided that the departmental agency is identified in the supporting information to the Estimates or Supplementary Estimates as the end-of-year performance reporter
  - the Minister to direct that a departmental appropriation or multi-category appropriation administered by the host department may be used by the departmental agency (in which case the departmental agency chief executive becomes directly responsible to the Minister for what is achieved with the appropriation).
- It is generally expected that there would be a shared services arrangement for the host department to provide corporate services (finance; payroll; human resources; information technology) to the departmental agency. The departmental agency is part of the host department, and it would generally be uneconomical to duplicate support services.

## Examples of departmental agencies

At the time of the publication of this guidance note (April 2017), New Zealand has had limited experience of the departmental agency model. The first example was the period from 1 February 2015 to 19 April 2016 when the Canterbury Earthquake Recovery Authority (CERA) ceased to be a stand-alone Public Service department and became a departmental agency hosted in the Department of the Prime Minister and Cabinet (DPMC).

Establishing CERA as a departmental agency hosted in DPMC was the first step in the process of transitioning to long-term arrangements once the legislation that established

CERA expired in 2016. Positioning CERA within DPMC placed it within a central agency involved across the full range of government business and policy. The arrangement fitted well with DPMC's existing functions around civil defence and emergency management and recovery from disasters, all aimed at lifting the resilience of New Zealand's communities. It also strengthened the alignment between lessons learned from a very real example of recovery, and planning for a response to any future large scale emergencies.

The process of moving from recovery to the regeneration of greater Christchurch involved the transition of CERA's functions to successor agencies, including Ōtākaro Limited, Regenerate Christchurch and local and central government agencies. Once accomplished, CERA was disestablished.

Another example is the recent decision to establish a new Social Investment Agency hosted in the State Services Commission with a commencement date of 1 July 2017.

### **Further information**

The following diagram summarises key points in this guidance note, along with some additional detail.

# Departmental Agency Model

## What is a departmental agency?

An operationally autonomous agency within a host department in the Public Service. Accordingly, it is part of the legal Crown.

A DA is headed by its own chief executive who is directly responsible to the appropriate Minister for the DA's clearly identified, ring-fenced activities and performance.

## Background and objectives

The design concept was based on the UK's Executive Agency model, with modifications to mesh with NZ's State Sector Act and Public Finance Act.

The establishment objectives differed between the UK and NZ:

- UK: to improve performance through greater clarity of purpose, responsibility for results, and freedom from unnecessary uniform rules
- NZ: to improve system coherence and consolidation and to reduce fragmentation and costs in the State sector.

Provides an alternative to establishing wholly separate departments or new Crown entities. It can be used to:

- consolidate similar functions from different agencies that serve similar objectives and priorities
- provide greater autonomy and transparency for existing functions
- transfer Crown entity functions into the legal Crown (ie, a department), while retaining their separate identity and accountability.

## Key features

Cabinet agrees to establish, including the DA's role and principal functions.

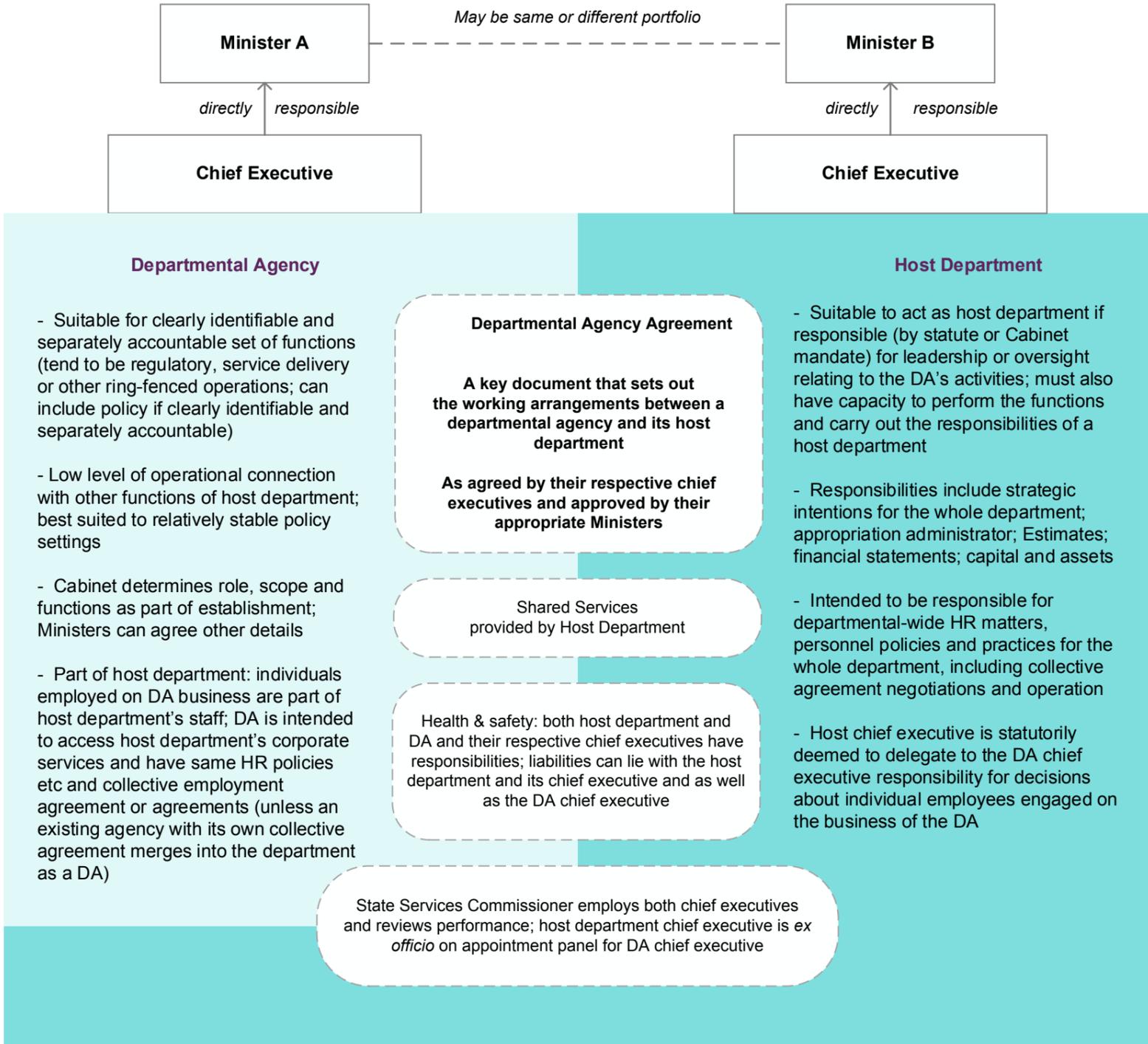
Requires an Order in Council to name the agency and host department in schedule 1A of the State Sector Act (primary legislation may be needed for specific powers).

A Departmental Agency Agreement is a key document: it sets out the working arrangements agreed between the chief executives and approved by appropriate Ministers.

There is a three-fold relationship between host department and the agency (vertical, horizontal, parallel) as described at the top centre of the page.

## Three-fold relationship between host department and departmental agency (DA) and their Ministers

- **Vertically integrated:** strategic intentions; appropriation administration; financial delegations
- **Horizontally integrated:** both host department and DA may provide advice on direction setting and priorities relating to their spheres of responsibility; both chief executives have employer responsibilities (host, for department-wide matters; DA, for decisions about individuals employed on DA's activities)
- **Parallel:** each chief executive is directly responsible to own Minister for autonomous range of functions, duties and powers, with distinct reporting



## Financial framework

### Host department:

- Administers Votes/appropriations
- Host chief executive responsible to responsible Minister for department's financial management, performance, sustainability
- Host chief executive responsible to appropriation Minister for what is achieved with departmental expenses and capital expenditure, and for advice to that Minister on the efficiency and effectiveness of those expenses and expenditure.

### Departmental Agency:

- DA intended to use appropriations administered by host department under delegation from host department's chief executive, who would be responsible for what is achieved with the appropriation
- If no delegation is given (for whatever reason) the appropriation Minister has the power to direct that a departmental appropriation or multi-category appropriation administered by the host department may be used by the DA; in this case, the DA chief executive becomes responsible for what is achieved with the appropriation
- DA may use departmental expenses administered by another department with that department's agreement: is accountable to that administrator for what is achieved.

## Planning and strategic intentions

### Host department:

- Must publish and present information on strategic intentions for the whole department including any DA it hosts
- Content as per Public Finance Act s40
- In practice a revised document would be expected whenever a department becomes host to a new DA
- Four-year plan covers both department and any DA it hosts, although there is flexibility as to how this is presented.

### Departmental Agency:

- Does not have strategic intentions separate from those of its host department, and therefore does not provide to Parliament a document containing strategic intentions.

## Annual reporting

### Host department:

- Includes consolidated financial statements for DA
- Excludes operations on which DA is required to report.

### Departmental Agency:

- DA annual report can be in standalone document; must be separately identifiable if placed in another document, eg host department's report
- Contents: assessment of DA's operations; assessment of progress relating to any of the host department's strategic intentions relevant to the DA; the DA's organisational health and capability; any other relevant matters
- Does not need to contain financial statements, but can contain financial information; audited
- Must be provided to the responsible Minister for both the DA and host department; the Public Finance Act is flexible about which Minister presents the annual report to the House.