

Modern governance provisions

At its December meeting, the Panel highlighted the need to think broadly about changes to the Bank's governance arrangements and the role of the Board. This is to ensure that the governance model is modern and best practice.

Panel paper 3 focuses on the changes necessary to implement a Monetary Policy Committee, and panel paper 4 noted that further changes to the Governance model could be recommended as part of phase 2. Panel paper 4 also asks if changes to the Reserve Bank Act should cover any further issues.

The Crown Entities Act 2004 includes comprehensive provisions that set out the framework for the establishment, governance, and operation of Crown entities.¹ Although the Bank is not a Crown entity, the Crown Entities Act provides an example of modern legislative provisions relating to governance for a public entity in New Zealand.

The Crown Entities Act focusses on the 'boards' of Crown entities. The concept of 'board' differs between the Crown Entities Act and the Reserve Bank Act. Under the Crown Entities Act, the 'board' has different meanings depending on the type of entity; however, generally speaking, it is the Crown entity's governing body with the authority to exercise the entity's functions and powers. The Crown Entities Act specifies that "*all decisions relating to the operation of [the entity] must be made by, or under the authority of, the board...*". Under the Reserve Bank Act, the 'Board' is currently more of a monitoring agent (rather than a governing body) and the Governor has the powers and duties normally associated with a board.

To help with the Panel's discussion, this note lists the key governance topics that are covered in the Crown Entities Act that could be dealt with in the Reserve Bank Act. Generally speaking these provisions are potentially relevant in respect of each of:

1. the Governor in his/her management and governance role; and
2. the Board either:
 - a) as a monitoring body; and / or
 - b) in a management and governance role if it were to be reconstituted as a management/governance body rather than a monitoring body; and
3. any committees that are established, such as a Monetary Policy Committee.

The key governance topics in the Crown Entities Act are:

- The board's role
- Accountability of members of the board to the Minister²

¹ Further detail on governance matters for Crown entities can also be included in the applicable enabling legislation for a Crown entity. For example, the Financial Markets Authority Act provides that the Crown Entities Act applies to the FMA except to the extent that the Financial Markets Authority Act expressly provides otherwise, which include exceptions relating to matters such as quorums and assenting to resolutions without meeting.

² Under the Reserve Bank Act the Governor and the Board are accountable to the Minister via the Minister's appointment/dismissal powers (although there are only limited grounds for which the Minister can dismiss the Governor, which reflects the Bank's independence). This can be contrasted with the Crown Entities Act where there is a specific provision that states that members are accountable to the Minister for performing their duties.

- Responsible Minister's role³
- Monitoring agency's role⁴
- Appointment, removal, and conditions of members of the board
 - Method of appointment
 - Criteria for appointments or recommendations
 - Qualifications of members
 - Procedural requirements before appointment (such as requirement to consent in writing, certifications that not disqualified from being a member, etc)
 - Term of office
 - Validity of acts
 - Validity of appointments
 - Removal
 - Process for removal
 - No compensation for loss of office
 - Resignation of members
 - Members ceasing to hold office
 - Vacancies in membership of board
- Remuneration and expenses of board members
 - Remuneration
 - Expenses
- Collective duties of board⁵
 - Ensure that the entity acts consistently with objectives, functions, statement of intent, and statement of performance expectations
 - Ensure that the entity performs functions appropriately
 - Ensure that the entity operates in financially responsible manner
- Individual duties of members of the board
 - Duty to comply with the Act
 - Duty to act with honesty and integrity
 - Duty to act in good faith and not at expense of entity's interests
 - Duty to act with reasonable care, diligence, and skill
 - Duty not to disclose information

³ The Crown Entities Act specifically sets out the nature of the role of a responsible Minister of a Crown Entity, which is to oversee and manage the Crown's interests in, and relationships with, a Crown entity, and to exercise any statutory responsibilities given to the Minister. The Minister's role is not specifically set out in the Reserve Bank Act. Instead, it must be inferred from the powers the Minister has under that Act.

⁴ Under the Crown Entities Act, the responsible Minister of a Crown entity has the direct responsibility to oversee and manage the Crown's interests in, and relationships with, a Crown entity, and to exercise any statutory responsibilities given to the Minister, which include certain functions/powers to monitor the performance of a Crown entity. Crown entities also have a monitor that is either a government department or another Crown entity (e.g. MBIE monitors the FMA) to assist the responsible Minister carry out the Minister's role, and to carry out other functions such as administer appropriations, administer legislation, and tender advice to Ministers. In the context of the Bank, the Board has a role of monitoring the Bank and the Governor. The Treasury also has a role in monitoring the Bank (in its role of advising the Minister on matters relating to accountability and performance of the Bank, funding, and policy advice), although the role of the Treasury monitoring the Bank is not specifically set out in legislation as it has been for the monitors of Crown entities under the Crown Entities Act since 2013.

⁵ These responsibilities currently sit with the Governor, and the Board has a responsibility to keep these under constant review (not ensure they happen per se).

- Effect of non-compliance with duties
 - Accountability for collective board duties
 - Accountability for individual member duties
 - Court actions requiring or restraining board or members
- Reliance on information and advice by the board
 - When members may rely on certain information and advice
- Conflict of interest disclosure rules for the board
 - When interests must be disclosed
 - Who disclosure of interests must be made to
 - What must be disclosed
 - Consequences of being interested in matter
 - Consequences of failing to disclose interest
 - Permission to act despite being interested in matter
 - Entity may avoid certain acts done in breach of conflict of interest rules
 - Effect of avoidance on third parties
- Delegation by the board⁶
 - Ability for board to delegate
 - Powers of delegation
 - Effect of delegation on entity or board
 - Revocations of delegations
- Appointment of Chair and Deputy Chair of the board
 - Appointment
 - Term of appointment
 - Resignation
 - Removal
 - Exercise of chairperson's functions and powers during vacancy⁷
- Board procedure
 - Board can regulate own procedure, except as otherwise provided
 - Notice of meetings
 - Methods of holding meetings
 - Quorum
 - Who presides at meetings
 - Voting at meetings
 - Unanimous written resolutions
 - Board may appoint committees

The Crown Entities Act can be found at the following link: [Crown Entities Act 2004](#)

⁶ The Governor has the power to delegate his/her functions/powers. The Board can only delegate to a committee of the Board.

⁷ This may be less relevant in the context of the Board, as the Chair of the Board is appointed by the Board (whereas the Chair of a Crown entity is appointed by or on the recommendation of the applicable responsible Minister).