



State Sector and Crown Entities Reform Act 2018

Public Act 2018 No 31
Date of assent 21 September 2018
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the State Sector and Crown Entities Reform Act 2018.

2 Commencement

This Act comes into force on 31 October 2018.

Part 1

Amendments to Crown Entities Act 2004

3 Amendments to Crown Entities Act 2004

This Part amends the Crown Entities Act 2004.

4 Section 98 amended (Subsidiaries: rules applying only to statutory entities)

- (1) In section 98(1)(c), delete “(but for this purpose, references to the responsible Minister in section 117 must be read as references to the parent)”.
- (2) After section 98(1), insert:

- (1A) Subsection (1)(c) does not apply to a statutory entity parent that is either of the following:
- (a) a district health board:
 - (b) an organisation within the meaning of clause 1 of Schedule 6 of the New Zealand Public Health and Disability Act 2000.

5 Section 117 amended (Employment of chief executive)

Replace section 117(1) and (2) with:

- (1) A chief executive of a statutory entity is appointed for a term of not more than 5 years, but may be reappointed.
- (2) The terms and conditions of employment of a chief executive of a statutory entity appointed by its board must be determined by agreement between the board and the chief executive.
- (2A) However, the board must obtain the written consent of the State Services Commissioner before—
 - (a) finalising the terms and conditions; or
 - (b) amending any or all of the terms and conditions once they have been finalised.
- (2B) When considering the terms and conditions of a chief executive, the State Services Commissioner must have regard to the following (among any other relevant factors):
 - (a) the legal, commercial, and operational context of the entity;
 - (b) any information provided by the board, which might include, for example, the board's advice about a person's knowledge, skills, experience, and performance;
 - (c) the public interest in prudent stewardship of public resources;
 - (d) Government expectations;
 - (e) relevant market information.
- (2C) The State Services Commissioner must provide reasons for refusing consent to any proposed terms and conditions.
- (2D) The State Services Commissioner must provide the boards of statutory entities with advice and guidance on the terms and conditions of employment of chief executives of entities.

6 Schedule 1AAA amended

- (1) In Schedule 1AAA, before clause 1, insert:

Part 1
Provisions relating to Crown Entities Amendment Act 2013

- (2) In Schedule 1AAA, after clause 4, insert the Part 2 set out in Schedule 1 of this Act.

Part 2

Amendments to State Sector Act 1988

7 Amendments to State Sector Act 1988

This Part amends the State Sector Act 1988.

8 New section 2B inserted (Transitional, savings, and related provisions)

After section 2A, insert:

2B Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

9 New section 9A inserted (Application of Inquiries Act 2013)

After section 9, insert:

9A Application of Inquiries Act 2013

- (1) This section applies if the Commissioner—
- (a) exercises a power to investigate or inquire into any matter in the course of performing his or her functions and duties under this Act or any other Act (whether acting under a requirement imposed by or under the relevant enactment or on his or her own initiative); and
 - (b) has certified, in accordance with section 9B, that he or she is satisfied that, in order to perform those functions and duties, it is reasonably necessary that the provisions specified in subsection (2) apply in relation to the investigation or inquiry.
- (2) The following provisions of the Inquiries Act 2013 apply in relation to an investigation or inquiry to which this section applies:
- (a) section 10 (which relates to the duty of an inquiry to act independently, impartially, and fairly):
 - (b) section 14 (which relates to the regulation of inquiry procedure):
 - (c) section 15 (which relates to the power to impose restrictions on access to an inquiry):
 - (d) section 16 (which relates to the power to postpone or temporarily suspend an inquiry):
 - (e) section 17 (which relates to the designation of core participants of an inquiry):
 - (f) sections 19 to 22 (which relate to evidential matters):

- (g) sections 23 to 26 (which relate to witnesses and immunities):
 - (h) section 29 (which relates to offences):
 - (i) section 30 (which relates to penalties for offences):
 - (j) section 31 (which relates to contempt proceedings):
 - (k) sections 32 and 33 (which relate to the application of the Official Information Act 1982 and the Public Records Act 2005):
 - (l) section 34 (which provides for questions of law to be referred to the High Court).
- (3) The provisions of the Inquiries Act 2013 applied by subsection (2) must be read—
- (a) as if the Commissioner were an inquiry established under that Act and the relevant Minister referred to in section 11 were the appointing Minister; and
 - (b) as if the terms document, information, and officer of an inquiry had the same meanings as in section 4 of that Act; and
 - (c) with the other necessary modifications.
- (4) A delegation under section 21 of the Inquiries Act 2013 must be made in accordance with section 23 of this Act.
- (5) In exercising any powers of the Inquiries Act 2013 under this section, the Commissioner—
- (a) has no power to determine the civil, criminal, or disciplinary liability of any person:
 - (b) may make—
 - (i) findings of fault:
 - (ii) recommendations that further steps be taken to determine the civil, criminal, or disciplinary liability of any person:
 - (iii) findings or recommendations for the improvement and benefits of the wider State services relevant to the findings of the investigation:
 - (c) may receive a report from any person, make a report to any person, or make any public report regarding the matters investigated.

9B Commissioner's certificate under section 9A(1)

- (1) A certificate made under section 9A(1) must—
- (a) be in writing and signed by the Commissioner; and
 - (b) specify the person or persons who will be conducting the investigation or the inquiry; and
 - (c) summarise the subject matter of the investigation or the inquiry; and

- (d) set out the reason or reasons why the Commissioner is satisfied that, in order to perform his or her functions and duties, it is reasonably necessary that the provisions specified in section 9A(2) apply in relation to the investigation or inquiry.
- (2) The Commissioner may not delegate the power to make a certificate under section 9A(1).
- (3) The Commission's annual report, required by section 43 of the Public Finance Act 1989, must include—
 - (a) a statement as to the number of certificates made by the Commissioner under section 9A(1)(b) during the year that is the subject of the report; and
 - (b) for each certificate, a summary description of the matter that was the subject of the investigation or inquiry.

9C Information privacy principles 6 and 7 do not apply during inquiry or investigation in accordance with section 9A

- (1) Information privacy principles 6 and 7 do not apply in respect of personal information contained in evidence given or submissions made to an inquiry or investigation conducted in accordance with section 9A, until the Commissioner publishes a final report or otherwise concludes the inquiry or investigation.
- (2) In subsection (1), **information privacy principle** and **personal information** have the meanings given to them in section 2(1) of the Privacy Act 1993.

Compare: 1993 No 28 s 55

9D Immunities and privileges of participants in inquiry or investigation in accordance with section 9A

- (1) Witnesses and other persons (other than counsel) participating in an inquiry or investigation conducted in accordance with section 9A have the same immunities and privileges as if they were appearing in civil proceedings, and subpart 8 of Part 2 of the Evidence Act 2006 applies to the inquiry or investigation, to the extent that it is relevant, as if the inquiry or investigation were a civil proceeding.
- (2) In addition to a Judge's powers under the Evidence Act 2006 as provided in subsection (1), the Commissioner may make any order or direction that a Judge may make under section 52, 53, 69, or 70 of that Act.
- (3) An order or a direction made by the Commissioner under subsection (2) has effect as if it were an order or a direction of a Judge under the Evidence Act 2006.
- (4) Counsel appearing before an inquiry or investigation have the same immunities and privileges as they would have if appearing before a court.

Compare: 2013 No 60 s 27

10 Section 10 amended (Power to enter premises)

- (1) After section 10(3)(a), insert:
 - (aa) entry shall be made only if the Commissioner has first obtained the agreement of the Minister:
- (2) After section 10(3)(d)(ii), insert:
 - (iii) evidence of the agreement referred to in paragraph (aa):

11 Section 11 replaced (Exercise of functions and powers in respect of other State services)

Replace section 11 with:

11 Functions and powers can be exercised in relation to other State services

- (1) The Commissioner must, if directed in writing by the Prime Minister, perform or exercise in relation to any part of the State services that does not form part of the Public Service any of the functions and powers specified in the direction that the Commissioner has under sections 6 to 10.
- (2) The Commissioner may, in performing any function under section 6(h) or (i), 57(2) or (4), or 57A, exercise any of the powers in sections 7 to 10 in relation to an agency in the State services as if it were a department.
- (3) The Commissioner may, if requested by the head of any part of the State services, and must, if requested by the Minister in charge of, or responsible for, any part of the State services, perform or exercise any of the functions and powers that the Commissioner has under sections 6 to 10.
- (4) The Commissioner may, if requested by the head of any part of the State services that does not form part of the Public Service, or of any corporation listed in Schedule 1 of the State-Owned Enterprises Act 1986, provide assistance in respect of the conditions of employment of its employees.
- (5) For the purpose of this section, sections 6 to 10 apply as if the relevant part of the State services or agency were a department and with the other necessary modifications.
- (6) Nothing in this section—
 - (a) limits or affects any provision of this or any other Act; or
 - (b) affects or prevents the performance or exercise by any part of the State services that does not form part of the Public Service, or by any officer or employee of that part of the State services, of any function or power conferred on or belonging to that part of the State services or officer or employee.

12 Section 23 amended (Delegation of functions or powers)

After section 23(1), insert:

- (1A) The power conferred by subsection (1) includes (without limitation) power to delegate to any person, either generally or particularly,—
- (a) the conduct of any investigation or inquiry that the Commissioner is required or empowered to conduct under this Act or any other Act;
 - (b) all or any of the functions and powers that the Commissioner has under this Act or that other Act in relation to the investigation or inquiry.

13 Sections 25 and 26 repealed

Repeal sections 25 and 26.

14 Section 57 amended (Commissioner may set minimum standards of integrity and conduct)

- (1) In section 57(2), replace “to any agency referred to in subsection (1), by written notice to the agency” with “in accordance with subsection (3), by written notice to the agency or to those concerned”.
- (2) Replace section 57(3) with:
- (3) The Commissioner may apply a code, with any variations that the Commissioner thinks appropriate in light of the legal, commercial, or operational context, to any of the following:
 - (a) any agency or agencies referred to in subsection (1):
 - (b) any particular persons or groups of persons in relation to an agency or agencies referred to in subsection (1) who—
 - (i) are undertaking particular functions, duties, or powers:
 - (ii) are the board:
 - (iii) are board members:
 - (iv) are office holders:
 - (v) are chief executives:
 - (vi) are employees:
 - (vii) are individuals working as contractors or secondees.

15 Section 57A amended (Agencies must comply with minimum standards except in particular circumstances)

- (1) Replace section 57A(1) with:
 - (1) Agencies, persons, and groups of persons must comply with any standards that apply to them under section 57(3).
- (2) In section 57A(3),—
 - (a) replace “an agency” with “an agency or a person or a group”; and
 - (b) replace “applied to the agency” with “that apply under section 57(3)”.
- (3) After section 57A(3), insert:

(4) Nothing in this section limits or affects any provision of this or any other Act.

16 Sections 57B and 57C repealed

Repeal sections 57B and 57C.

17 Section 77ID amended (Conditions of employment of chief executive)

In section 77ID(3), after “with the chief executive”, insert “or amending any or all of the conditions once they have been finalised”.

18 New Schedule 1AA inserted

Insert the Schedule 1AA set out in Schedule 2 of this Act as the first schedule to appear after the last section of the principal Act.

19 Amendments to other enactments

Amend the enactments specified in Schedule 3 as set out in that schedule.

Schedule 1**New Part 2 inserted into Schedule 1AAA of Crown Entities Act 2004**

s 6(2)

Part 2**Provision relating to State Sector and Crown Entities Reform Act 2018****5 Transitional provision relating to amended section 117**

- (1) Section 117(1) (as inserted by the amendment Act) applies only to the appointment or reappointment of a chief executive that is made after that subsection comes into force.
- (2) Subsections (2) to (2C) of section 117 (as inserted by the amendment Act) apply—
 - (a) to the appointment or reappointment of any chief executive that is made after those subsections come into force; and
 - (b) to the amendment of any terms and conditions of a chief executive (whether appointed or reappointed before or after those subsections come into force) that is made after those subsections come into force.
- (3) In this clause, **amendment Act** means the State Sector and Crown Entities Reform Act 2018.

Schedule 2
New Schedule 1AA inserted into State Sector Act 1988

s 18

Schedule 1AA
Transitional, savings, and related provisions

s 2B

Part 1
Provision relating to State Sector and Crown Entities Reform Act 2018

1 Transitional provision relating to investigations or inquiries

- (1) This clause applies to any investigation or inquiry begun by the Commissioner under this Act or any other Act, but not completed, before section 9A (as inserted by the amendment Act) comes into force.
- (2) The investigation or inquiry must be completed or otherwise dealt with as if the amendment Act had not been enacted.
- (3) In this clause, **amendment Act** means the State Sector and Crown Entities Reform Act 2018.

Schedule 3

Consequential amendments to other enactments

s 19

Inquiries Act 2013 (2013 No 60)

In Schedule 1, repeal the item relating to the State Sector Act 1988.

New Zealand Public Health and Disability Act 2000 (2000 No 91)

Replace section 21(3)(h) with:

- (h) sections 116 and 117(2) to (3) (employment of employees and chief executives):

In Schedule 3, replace clause 44(5) with:

- (5) This clause applies despite sections 25 and 117(2) to (3) of the Crown Entities Act 2004, but section 117(1) of that Act applies to a chief executive of a DHB.

In Schedule 6, replace clause 29(5) with:

- (5) This clause applies despite section 117(2) to (3) of the Crown Entities Act 2004, but section 117(1) of that Act applies to a chief executive of an organisation.

Legislative history

12 February 2018	Introduction (Bill 20–1)
20 February 2018	First reading and referral to Governance and Administration Committee
20 August 2018	Reported from Governance and Administration Committee (Bill 20–2)
11 September 2018	Second reading
12 September 2018	Committee of the whole House (Bill 20–3)
13 September 2018	Third reading
21 September 2018	Royal assent

This Act is administered by the State Services Commission.