

OFFICE OF THE
MINISTER OF HEALTH

MEMORANDUM TO CABINET SOCIAL POLICY AND HEALTH COMMITTEE

OTHER AGENCIES: APPROPRIATE CORPORATE FORM AND FUNCTIONS OF: NZ BLOOD SERVICE; PHARMAC; HEALTH BENEFITS LTD; NATIONAL HEALTH COMMITTEE; RESIDUAL HEALTH MANAGEMENT UNIT

PROPOSAL

1. In light of the future dis-establishment of the HFA and the establishment of District Health Boards it is necessary to consider the appropriate legal form for PHARMAC, Health Benefits Limited (HBL) and the New Zealand Blood Service (CAB (00) M/2/4).
2. In addition, Officials have provided advice on the appropriate legal form for the Residual Health Management Unit (RHMU) and the National Health Committee (NHC).

EXECUTIVE SUMMARY

3. In order to identify the appropriate organisational arrangements for the "other agencies", Officials have considered the following:
 - i. the entities' current ownership, corporate structure and accountability arrangements;
 - ii. the desired and appropriate degree of independence for the individual entities;
 - iii. linkages with key structural changes occurring in the health sector e.g. establishment of DHBs and changes to the Ministry of Health.
 - iv. potential liability and/or risk for the Crown;
 - v. flexibility/durability of organisational form and the scope of the entities' activities;
 - vi. desired skill set of any Directors;
 - vii. need for legislation.
4. On the basis of these factors Officials reached the following conclusions:
 - i. **NZ Blood Service.** The New Zealand Blood Service's functions should remain unchanged. Officials note that in fulfilling these functions the NZBS should be structured as a Crown Entity, and within this model either as a Crown Company (Treasury preferred option) or a Statutory Corporation (MoH and SSC consider that either model could apply).
 - ii. **Health Benefits Ltd.** HBL should remain as a Crown Entity (with its current limited liability company status) until a review of its functions by MoH, HFA and Treasury is completed by 30 September 2000, at which

time recommendations on its long term functions and HBL's long term future organisational form will be determined.

- iii. **PHARMAC.** Pharmac's functions should remain unchanged. Officials note that in fulfilling these functions Pharmac should be structured as a Crown Entity (and within this model could either be structured as a Crown Company (Treasury preferred option) or a Statutory Corporation (MoH and SSC consider that either model could apply)).
 - iv. **Residual Health Management Unit.** RHMU should continue with its current set of functions. These functions should be reviewed by MOH, Treasury and CCMAU and the outcome of this review reported to the Ministers of Health and Finance by 30 April 2001.
 - v. **National Health Committee.** NHC should continue with its current set of functions. The NHC should remain as an independent advisory committee to the Minister of Health, but should not be included in legislation, to allow flexibility around its future role.
5. Treasury considers the key decision about the New Zealand Blood Service and Pharmac is whether or not they should be Crown Companies or Statutory Corporations. Treasury supports Pharmac and the New Zealand Blood Service continuing with their existing company form because:
- i. Both agencies function well in their current Crown Company form. If the Crown Company form is viable, there is no benefit in applying Statutory Corporation form, which is useful for cases where specific legislation is necessary to provide customised design.
 - ii. Statutory corporation form requires most features of the agency to be set out in legislation, replicating desirable features of a Crown Company. This runs the risk of error and delays in legislation.
 - iii. A Crown Company form may be more attractive to individuals with business skills because it conveys similar status and responsibilities as a director of a private company.
 - iv. A Crown Company potentially offers more flexibility in changing the future functions or directions of both entities.
 - v. There is greater common understanding about how companies will behave, and vigorous bargaining for the best price or services is more likely to be acceptable.
6. It is the Ministry of Health's and SSC's view that either the company model or the Crown entity (Statutory Corporation) could equally apply in enabling PHARMAC and the NZ Blood Service to effectively and efficiently carry out its functions.
7. Detailed discussion on each of the agencies is attached as Appendix 1.

BACKGROUND

8. In determining the most appropriate governance arrangements for the "other agencies" Officials considered the applicability of the Government Department, SOE and Crown Entity models. Crown Entities are further divided between (a) Crown Company, (b) Trust and Corporations Sole and c) Statutory Corporations (Crown Agent, Independent Crown Entity and Autonomous Crown Entity).
9. Officials' analysis has focused on the Crown Company and Statutory Corporation models. The alternatives (ie SOEs and Trusts and 'Corporations sole') were not seen as appropriate for any of the entities because:
 - i. SOEs are only appropriate where there are clear commercial objectives
 - ii. Corporations sole are only used in exceptional circumstances where it is desirable to have a statutory officer established outside the Crown whose office has the powers of a legal person.
 - iii. Trusts are unsuitable for entities intended to carry out Government policy and which are subject to ministerial direction, and lack a statutory basis to carry out regulatory functions.
10. A full discussion of the differences between the governance models is outlined in Appendix 2. This includes:
 - i. an overview of the current developmental work occurring within the "Crown Entities Initiative; and
 - ii. key differences between Crown Companies and Statutory Corporations.

COMMENT

NEW ZEALAND BLOOD SERVICE

11. A national blood service was established in 1998 as a Hospital & Health Service (HHS) under the Health and Disability Services Act 1993. The primary objective in establishing the NZBS was to establish a sole national provider of safe and adequate supplies of blood services at least cost.
12. The NZBS is currently in the second year of a three-year plan to establish an integrated national blood service.
13. The key question for officials was whether the current company status will remain applicable in the new health environment. Consideration was given to Crown Company or Statutory Corporation status. Officials concluded that both organisational forms were feasible (see Appendix 2(b) for further details).
14. An important issue is the relationship the Minister of Health wishes to have with the NZBS. It is important that the NZBS:

- i. is a stand-alone organisation with clear responsibilities, focus and accountabilities;
 - ii. has autonomy for operational management, thus enabling it to respond rapidly in emergencies and be held accountable for such operational performance.
15. The Ministry of Health's view is that the experience associated with managing blood services argues for a relatively open relationship between the NZBS and the Minister of Health. This is necessary for the Minister of Health to obtain the reassurance that the NZBS is managing the services and associated risks appropriately, and that it is also reflecting the wider interests of the health sector.
16. This "assurance" can be achieved under both organisational models, that is the Crown Company model and the Statutory Corporation model, so long as the nature of the relationship between the NZBS and the Minister of Health is clearly defined.
17. As the existing organisational form appears to operate effectively, Treasury recommend continuing with the company form (status quo) for NZBS (see paragraph 5 for the detail).

HEALTH BENEFITS LTD

18. Health Benefits Limited (HBL) was set up in 1993 by the four Regional Health Authorities to process subsidy payments to primary health care providers. HBL is a wholly owned subsidiary of the HFA and has limited liability company status.
19. In light of the establishment of DHBs, HBL, or its successor(s) need to be able to:
 - i. provide DHBs with ongoing claims processing and payment mechanisms for funding purposes;
 - ii. appropriately arm DHBs with current, inclusive information for the purposes of their information requirements;
 - iii. develop an appropriate relationship with DHBs.
20. There are currently a number of information collections, claims processing and payment operations across the health sector in addition to those run by HBL, namely SSSG (HFA)¹, NZHIS and ACC. Consideration needs to be given to the relationship between these functions. In particular work should be undertaken, both as support for a generic claims payment system (and information requirements generated for same) and consistency of payment

¹ Shared Services Support Group operating in Dunedin.

activity across the health sector, to consolidate the activities of HBL and the SSSG.

21. It is the view of the Officials that the future form, structure and functionality of HBL should not be determined until the platform for provision of payment and information requirements of DHBs has been determined (“the review process”). It is proposed that the review process be completed by 30th September 2000.

PHARMAC

22. PHARMAC is a subsidiary of the HFA, operating as a limited liability company. Its mission is to improve the value (considered in terms of health gain) of the Government’s expenditure on pharmaceuticals.
23. It is considered that PHARMAC’s current functions should remain unchanged and that it is important that these functions should be managed centrally. Scope for PHARMAC undertaking further functions will need to be considered in light of developments in arrangements relating to District Health Boards.
24. There are a number of important arrangements which should apply to PHARMAC:
 - i. The main outputs of PHARMAC will continue to be decisions about the subsidisation of pharmaceuticals. These decisions are best made by a Board, so that there is a measure of separation between officials and decision-makers.
 - ii. Primary responsibility of PHARMAC should be to assist in managing the budget for pharmaceuticals. However the national budget for pharmaceuticals could be held separately by the Ministry of Health, DHBs or another agency. Advice on which agency holds the pharmaceutical budget will be provided as part of the “role of DHBs” report back on 30 April.
 - iii. Board representation will be one way of maintaining linkages with both the Ministry of Health and the DHBs. Board representation could be a mix of health bureaucrats, representation from DHBs and independent non-executive appointees with an independent Chair.
 - iv. Board members will need to evaluate the trade-offs between pharmaceuticals and other forms of healthcare.
 - v. The Minister will want the ability to direct PHARMAC.
 - vi. The environment will continue to be litigious, and this requires PHARMAC to retain a degree of separation from the Minister of Health.
 - vii. Fiscal and legal (litigation) risks would increase following any significant change to PHARMAC’s role and functions, or to its structure.
 - viii. PHARMAC will also need to maintain close linkages with the HFA (and its successor), HBL and NZHIS, because functions undertaken by these organisations (such as PCO and pharmacy contracting, pharmaceutical claims processing and data storage) have a significant impact on PHARMAC’s operations.

25. The PHARMAC Board and Treasury support the continuation of PHARMAC's existing company form.
26. The Ministry of Health and SSC consider that either the Crown Owned Company Model or the State Corporation models would be appropriate organisational structure to manage PHARMAC's objectives.

RESIDUAL HEALTH MANAGEMENT UNIT (RHMU)

27. RHMU was established as a Crown Entity (Statutory Corporation) in 1993 to manage assets and liabilities of former Area Health Boards that for various reasons were not, at the time, assigned to Crown Health Enterprises. When established, it was considered that the RHMU functions would all be of relatively short duration. In fact, the issues involved were more complicated than anticipated and RHMU continues to discharge some of its original functions as well as some additional functions.
28. Current RHMU functions required in the short term are:
 - i. Managing AHB residual assets.
 - ii. Managing AHB historical debt.
29. Current RHMU functions likely to be required in the medium/long term are:
 - i. Managing AHB residual liabilities.
 - ii. Disposal of surplus HHS property.
 - iii. Transitional banking and bankability.
30. Officials consider that it is beneficial for RHMU to continue to undertake the functions outlined above. A review of RHMU's role and function will be necessary once DHBs are established and the full extent of RHMU's ongoing role is clear. Officials therefore propose that a review of RHMU roles and responsibilities be undertaken before 30 April 2001.
31. Officials recommend that:
 - i. The location of specific HHS liabilities is considered as part of the 30 June report back on the process for establishing DHBs. (NB The process for establishing DHBs is not yet finalised.)
 - ii. HFA's contingent liabilities are considered as part of the Ministry of Health and HFA change management process.
 - iii. Consideration should be given to whether there should be a time limited severance recovery function, to recover severance paid to those affected by changes in the sector, who then re-engage in the sector, as there was following the last round of sector changes. Officials propose that this issue is also considered as part of the 30 June report back on DHB establishment.
32. It is proposed that RHMU remain a Crown Entity at this time because:
 - i. the management of contingent liabilities must be seen to be carried out free of political interference;

- ii. there is merit in signaling independence of the Crown in terms of the bankability function so that the private banking sector maintains confidence with investing in DHBs;
- iii. RHMU has an established track record as a high performing organisation that has competently managed down residual activities and fiscal risk to the Crown.

NATIONAL HEALTH COMMITTEE (NHC)

- 33. The NHC has evolved from the Core Service Committee that was established as part of the health reforms in 1993. Originally, the Committee was commonly known as the “Core Health Committee”. This reflected the original idea that the Committee would come up with the “core list” of services that would be publicly funded and anything that fell outside the core would not receive public funding. The Committee rejected the list approach fairly early on, and instead focused on building public consensus on specific services.
- 34. The current NHC functions are deemed necessary under the new health arrangements because:
 - i. there will be continued debate about the appropriate mix and coverage of health and disability services. Indeed, establishing DHBs may increase the tension between providing services that are responsive to local populations and ensuring that there is some equity concerning national minimum service coverage; and
 - ii. Government remains concerned over ensuring the greatest benefit within available resources to the health and independence of the population, and particularly to groups at risk or disadvantage.
- 35. Should Ministers agree that the NHC continue to provide its current function, the further question is whether this function needs to be included in legislation. The benefit of having the NHC function in legislation is that it clearly established the NHC as an independent, ongoing function.
- 36. The NHC consider that the current legislative provisions have been flexible enough to allow their role to evolve in response to changes in the sector. The NHC consider that its statutory status has helped them get the co-operation of health providers and the public to undertake their role.
- 37. There are, however, risks associated with having the role of the NHC specified in legislation. These include:
 - i. Legislation is always inherently constraining which means that the Minister would not have the flexibility to alter the functions of the committee.
 - ii. There could be a potential conflict between the role of the NHC as specified in the legislation and the evolving nature of roles and

relationships within the health sector, in particular the emerging responsibilities of DHBs.

38. The original role of the Committee – to specify core services that should attract public funding - had a stronger need for legislative based functions. This was because their advice could potentially have been the basis for decisions on what services, under what conditions would receive public funding. On balance, Officials consider that it is not necessary to have NHC functions specified in legislation.

CONSULTATION

39. This report was prepared in consultation with the Department of Prime Minister and Cabinet, Crown Company Monitoring Advisory Unit, the Health Funding Authority, the State Services Commission, the Treasury, and Te Puni Kōkiri. The NHC Secretariat also contributed to analysis of options for the future of the NHC.

FINANCIAL IMPLICATIONS

40. Fiscal implications will be outlined in the Fiscal Implication Workstream's paper.

LEGISLATIVE IMPLICATIONS

41. The legislation required for NZBS and PHARMAC will form part of the New Zealand Public Health Service Bill. Officials will report on the requirement of the new Health Sector legislation to incorporate share transfer provisions for HBL in the event of its continuation as a Crown Company following HFA disestablishment.

HUMAN RIGHTS ACT 1993

42. The proposals do not have Human Rights Act 1993 implications.

REGULATORY IMPACT STATEMENT

43. A regulatory impact statement is attached in accordance with the requirements set out in CO(98)5.

PUBLICITY

44. Any publicity on matters related to this paper is being managed as part of the Communications Strategy that forms part of the wider work on health and disability change.

CABINET

NEW ZEALAND BLOOD SERVICE (NZBS)

- a agreed that the current role and functions of the NZBS remain unchanged;
- b noted that either the Crown company (status quo) or statutory corporation organisational form could apply to the NZBS and that the Ministry of Health, Treasury and SSC are of the view that either the Crown company or statutory corporation model could apply to managing its functions;
- c noted that Treasury has a preference for the status quo (company model) to minimise the risks and costs arising from changes to the current organisational model;
- d agreed that the NZBS be established as a statutory corporation;
- e noted that the Minister of Health asked Health officials to report to her by 30 April 2000 on the specific constitution and rules that would be required for inclusion in legislation, in the event of the statutory corporation model being agreed to for the NZBS;

HEALTH BENEFITS LIMITED (HBL)

- f agreed that HBL retain its current status as a Crown entity, remaining as a limited liability company until completion and implementation of the review referred to in paragraph (g) below;
- g agreed that the Ministry of Health (MoH), the HFA (during the life of the HFA) and the Treasury review HBL and Shared Services Support Group functions and report to the Ministers of Health and Finance by 30 September 2000 on:
 - a considered position on the payment and information requirements of DHBs (as the end customer);
 - the Crown's strategic approach to funding primary health care in the medium term, including capitation arrangements, and the implications for HBL;
 - the suitability of co-joining this activity with a full menu of common services that DHBs will require (i.e. those that extend beyond payment and information requirements);
 - the appropriate form, structure and functions of any preferred organisation;
- h agreed that if the timing for implementation of the review extends beyond the date of HFA disestablishment, and in the event that the organisational form of a common service agency of DHBs has not been concluded, then pending any decision to the contrary, the review team be mandated to transfer the operations of HBL to the MoH;
- i agreed that if the review identifies, on or before 30 September 2000, that HBL should not provide the form and platform to provide for the payment and

information requirements of DHBs, then HBL will be wound up and its residual business operations transferred to the MoH for management;

PHARMAC

- j agreed that PHARMAC's current role and functions remain unchanged;
- k noted that PHARMAC is currently a subsidiary company of the HFA and that either Crown company or statutory corporation organisational forms could apply to PHARMAC;
- l noted that the Ministry of Health and SSC are of the view that either the company or statutory corporation model could apply to managing PHARMAC's functions;
- m noted that Treasury has a preference for the status quo (company model) to minimise the risks and costs that could arise from changes to the current organisational model;
- n agreed that PHARMAC be established as a statutory corporation;
- o noted that the Minister of Health asked Health officials to report to her by 30 April 2000 on the specific constitution and rules that would be required for inclusion in legislation, in the event of the statutory corporation model being agreed to for PHARMAC;
- p noted that advice on which agency holds the pharmaceutical budget will be provided as part of the "role of DHBs" report back to the Ad Hoc Committee by 8 May 2000;
- q noted that further legislative changes will be necessary to preserve PHARMAC's partial exemption from the Commerce Act;

RESIDUAL HEALTH MANAGEMENT UNIT (RHMU)

- r agreed that RHMU's current role and functions remain unchanged;
- s agreed that the placement of HFA residual liabilities be considered as part of the MoH/HFA change management process, in consultation with Treasury;
- t agreed that the 30 June 2000 report back on the process for finalising DHB establishment identify:

management of any residual HHS asset and liability issues;

placement and management of HFA residual liabilities as determined as part of the MoH/HFA change management process;

issues regarding severance paid to those affected by changes in the sector, who then re-engage in the sector;

- u agreed that the role and responsibilities of RHMU be reviewed by MoH, with input from CCMAU and Treasury, reporting to the Ministers of Health and Finance by 30 April 2001, following decisions on HHS and HFA residual liabilities and advice on the establishment of, and investment policy for, DHBs;

NATIONAL HEALTH COMMITTEE (NHC)

- v agreed that the current role and functions of NHC remain unchanged;
- w agreed that NHC continue to be an independent advisory committee to the Minister of Health;
- x agreed that NHC functions not be specified in legislation.

Hon Annette King
Minister of Health

APPENDIX 1: DETAILED DISCUSSION ON EACH OF THE AGENCIES

NEW ZEALAND BLOOD SERVICE

Objectives

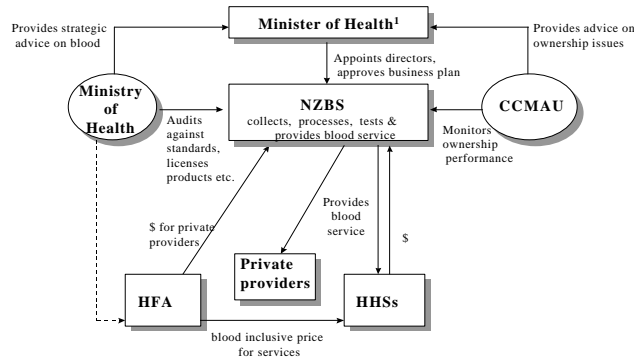
1. A national blood service was established in 1998 as a Hospital & Health Service (HHS) under the Health and Disability Services Act 1993. The primary objective in establishing the NZBS was to establish a sole national provider of safe and adequate supplies of blood services at least cost.

Roles and Responsibilities

2. NZBS undertakes the following responsibilities:
 - i. Set operational policy for the provision of blood and blood services.
 - ii. Be responsive to situations such as emergencies, potential infection risks that threaten the safety of blood, and fluctuations in the supply of, or demand for, blood and blood products.
 - iii. Minimise and manage the risks to recipients of blood and blood products and to the Crown.
 - iv. Through supply contracts with HHSs and other providers, impose safety standards for provision and collection of blood, and send appropriate cost signals to hospitals and their decision-makers.
 - v. Manufacture a range of blood components and plasma products, and manage the fractionation of plasma by contract.
 - vi. Address a variety of issue-based risks including widely varying standards, poor national inventory management, inefficiencies, difficult communication, limited customer focus, scarcity of key skills, and lack of sector-wide planning.
 - vii. Protect the gift status of blood through a stewardship role.

Inter-Agency Relationships

3. The following diagram and discussion outline how the NZBS and other health sector agencies relate to each other.



1. As owner of the NZBS, the Minister of Health is a joint shareholder with the Minister of Finance

Contractual and Funding Arrangements

4. NZBS contracts with each of the 22 HHSs to allow for the reasonable cost of blood services to hospitals to be recovered. The HFA's contracts with HHSs are inclusive of the cost of blood services.
5. A funding arrangement between the NZBS and the HFA exists for the provision of services to private hospitals, GPs and midwives. This avoids any risk that the cost of the blood itself is passed onto the recipients.

Monitoring and Audit Arrangements

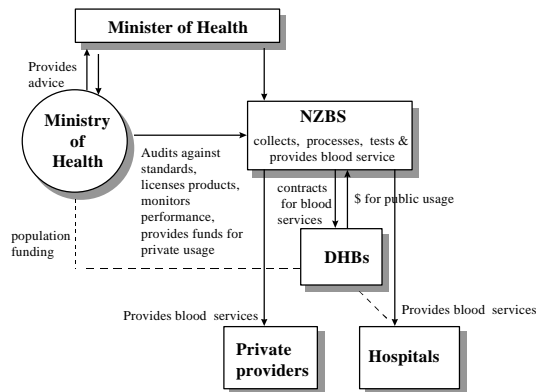
6. Current monitoring arrangements have an ownership perspective and a quality/safety perspective:
 - i. Ownership: CCMAU monitors NZBS' performance in meeting the Crown's ownership objectives. It also provides advice to shareholding Ministers on investments in the NZBS and on appointments to the NZBS Board.
 - ii. Ownership/Safety: MedSafe, Ministry of Health, is responsible for auditing sites to ensure compliance with minimum standards (developed by MedSafe) and good manufacturing practice. Medsafe is also responsible for licensing products under the Medicines Act.

Progress towards achieving an integrated national blood service

7. The NZBS is currently in the second year of a three-year plan to establish an integrated national blood service. Current work underway includes:
 - i. the ongoing integration of the 22 HHS based transfusion services into the NZBS (to be completed 30 June 2000);
 - ii. reconfiguring service delivery;

- iii. implementing a national information management system that will record all events and processes from “vein to vein”.

Potential Future Model:²



NB the above assumes that the current contracting function of HHSs will be undertaken by DHBs

Relevant Organisational Option Forms Considered

8. The key question for officials was whether the current company status remains applicable in the current health environment. Consideration was given to Crown Company or Statutory Corporation status. Officials concluded that both organisational forms were feasible (see Appendix 2(b) for further details).
9. An important issue is the relationship the Minister of Health wishes to have with the NZBS. It is important that the NZBS:
 - i. is a stand-alone organisation with clear responsibilities, focus and accountabilities;
 - ii. has autonomy for operational management, thus enabling it to respond rapidly in emergencies and be held accountable for such operational performance.
10. The Ministry of Health's view is that the experience associated with managing blood services argues for a relatively open relationship between the NZBS and the Minister of Health. This is necessary for the Minister of Health to obtain the reassurance that the NZBS is managing the services and associated risks appropriately, and that it is also reflecting the wider interests of the health sector.
11. This “assurance” can be achieved under both organisational models, that is the Crown Company model and the Statutory Corporation model, so long as the nature of the relationship between the NZBS and the Minister of Health is clearly defined.

² Decision on ownership monitoring by CCMAU is pending

12. The Treasury's view supports continuing with the existing company form of NZBS. The rationale is as follows:
 - i. A Crown Company form may be more attractive to individuals with business skills because it conveys similar status and responsibilities as a director of a private company.
 - ii. A Crown Company potentially offers more flexibility in changing the future functions or direction of both entities.
 - iii. There is greater common understanding about how companies will behave, and vigorous bargaining for the best price or services is more likely to be acceptable.
13. Treasury considers that a key disadvantage of setting up NZBS as a Statutory Corporation is that most of the features of Statutory Corporations will need to be set out in legislation. This includes replicating desirable features of a Crown Company (e.g. the duties of the members of the Board). This runs risks of error and delays in the legislation.
14. As the existing organisational form appears to operate effectively, Treasury recommend continuing with the company form (status quo) for NZBS.

HEALTH BENEFITS LTD

Objectives

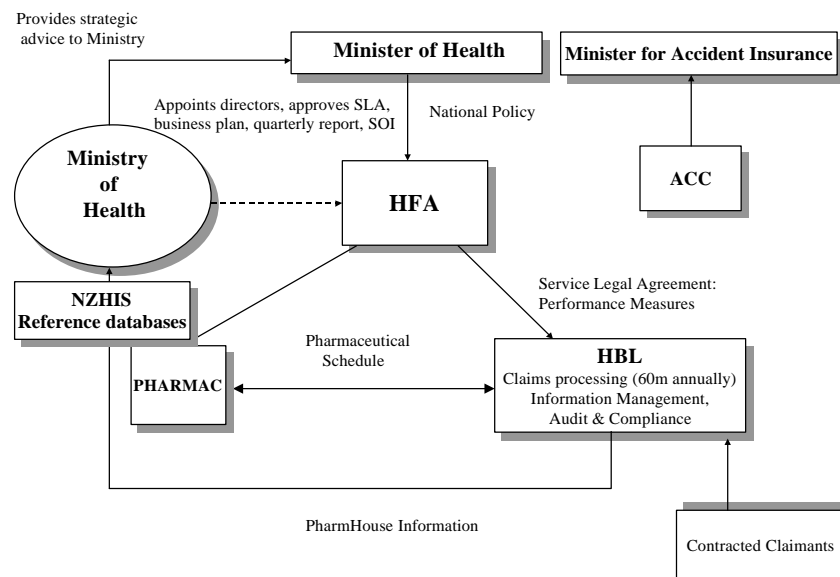
15. Health Benefits Limited (HBL) was set up in 1993 by the four Regional Health Authorities to process subsidy payments to primary health care providers. HBL is a wholly owned subsidiary of the HFA and has limited liability company status.

Current Role of HBL

16. HBL undertakes the following responsibilities:
 - i. Processes Government subsidy payments to Primary Care providers on receipt of valid claims.
 - ii. Provides information including raw data, along with analysed and consolidated data to the HFA, providers and third party agencies about patterns of spending on health, prescription costs, medicine usage, health trends and claiming patterns.
 - iii. Monitors the accuracy of payments through a best business approach to Audit and Compliance.

Inter-Agency Relationships

17. The following diagram provides an outline of how HBL and other Health Sector agencies relate to each other



Contractual and Funding Arrangements

18. HBL services are defined via a negotiated Services Agreement with the HFA and comprise claims processing and non-claims processing services.

Monitoring and Audit Arrangements

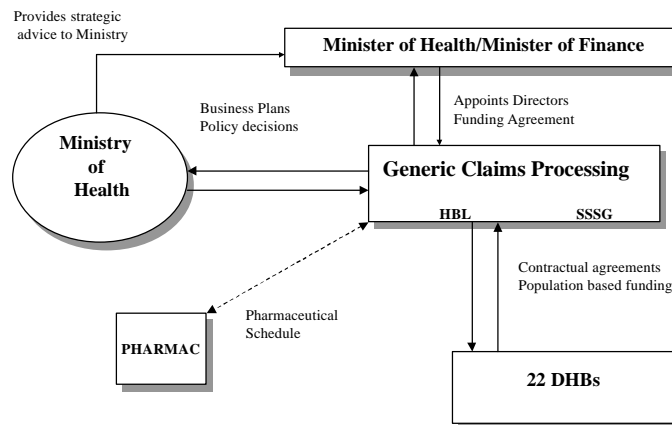
19. HBL is audited externally by Audit New Zealand. The Services Agreement with the HFA has been established with a strong customer focus on monitoring performance of HBL as a service provider.

Future Information Management and Claims Processing Structure

20. A number of internal projects are underway to move HBL towards an electronic commerce environment and away from paper based claiming collections, specifically:
- i. managing the transition to electronic claiming for Pharmacy and Primary Care payments; and
 - ii. the development and introduction of a generic claims processing system.
21. Both developments will facilitate the move to online processing by permitting real time, efficient and low cost processing to occur in conjunction with the provision of accurate and timely information. It will also produce cost reductions for processing organisations, particularly reductions in manual processing and the costs of operating stand-alone systems. It will confer

significant financial, administrative and strategic advantages when collating health information and processing claims.

22. In light of the establishment of DHBs, HBL, or its successor(s) need to be able to:
- i. provide DHBs with ongoing claims processing and payment mechanisms for funding purposes;
 - ii. appropriately arm DHBs with current, inclusive information for the purposes of their information requirements;
 - iii. necessitate the development of an appropriate relationship between HBL and DHBs.
23. There are currently a number of information collections, claims processing and payment operations across the health sector in addition to those employed by HBL, namely SSSG (HFA)³, NZHIS and ACC. Consideration needs to be given to the relationship between these functions. The processes and systems employed by HBL provide a platform for undertaking this development work. In particular work should be undertaken, both as support for a generic claims payment system (and information requirements generated for same) and consistency of payment activity across the health sector, to consolidate the activities of HBL and the SSSG.
24. A suggested future model might look like:



25. Any reconfiguration of HBL should continue to support its contractual requirements with providers. Instability will weaken its contractual obligations with providers (ability to process and pay) and financial management (budgetary control).

³ Shared Services Support Group operating in Dunedin.

26. Any preferred model and supporting organisational option should ultimately ensure the separation of the policy/regulatory obligations from the most appropriate information and infrastructure functionality. Information management – and related issues such as privacy, intellectual property ownership, the advent of e-commerce solutions and the impact of information standards – needs at least, from the outset, to be very carefully managed by a central approach.
27. The long term needs of the health sector, not only in terms of efficient payment processing models but information and its management generally, can be considered. This will emerge in conjunction with the development of the DHBs and the definition of their requirements once their operational activity has been turned into experience. The Officials recommend that HBL retain its current status as a Crown Entity until the disestablishment of the HFA. It is proposed that a review of HBL and SSSG functions is undertaken by 30th September 2000.
28. The view of the Officials is that continued operation and development of HBL functions will require governance by individuals with business skills similar to that sought by private companies. Such individuals have a focus on vigorous bargaining for best price and service and elimination of duplication of bureaucracy and administration.
29. It is the substantive view of the Officials that the determination of future form, structure and functionality of HBL should not be determined until the platform for provision of payment and information requirements of DHBs has been determined (“the review process”). It is proposed that the review process be completed by 30th September 2000.

PHARMAC

Objectives

30. PHARMAC is a subsidiary of the HFA, operating as a limited liability company. Its mission is to improve the value (considered in terms of health gain) of the Government’s expenditure on pharmaceuticals.

Current Role of PHARMAC

31. PHARMAC undertakes the following responsibilities:
 - i. Manages the growth rates of Government expenditure and patient access to pharmaceuticals. Growth has been reduced from an unsustainable 8-14% per annum to an acceptable 3-4%, while patient access to drugs has been expanded, both through a growing number of subsidised prescriptions and access to an increasing number of drugs.
 - ii. Manages the fiscal risks via innovative supply contracting. Maintain robust internal processes to minimise legal risk in a contentious and

litigious environment. (PHARMAC has a partial exemption from the Commerce Act that is valuable in terms of avoiding costly litigation.)

- iii. Develops the techniques for prioritising pharmaceutical expenditure to ensure correct balance of expenditure within pharmaceuticals and between pharmaceuticals and other forms of healthcare.
- iv. Develops the demand side programmes encouraging cost-effective use of pharmaceuticals.

Contractual and Funding Arrangements

32. At present PHARMAC's funding occurs through the HFA's operational budget.

Monitoring and Audit Arrangements

33. PHARMAC is audited externally by Audit New Zealand.

Future Functions of PHARMAC

34. It is considered that PHARMAC's current functions should remain unchanged and that it is important that these functions should be managed centrally. Scope for PHARMAC undertaking further functions will need to be considered in light of developments in arrangements relating to District Health Boards.

Relevant Design Features

35. There are a number of important arrangements which should apply to PHARMAC:
 - i. The main outputs of PHARMAC will continue to be decisions about the subsidisation of pharmaceuticals. These decisions are best made by a Board, so that there is a measure of separation between officials and decision-makers.
 - ii. Primary responsibility of PHARMAC should be to assist in managing the budget for pharmaceuticals. However the national budget for pharmaceuticals could be held separately by the Ministry of Health or another agency. Advice on which agency holds the pharmaceutical budget will be provided as part of the "role of DHBs" report back on 30 April. Equity, efficiency and effectiveness arguments all point to this function being better handled on a centralised, national basis than being devolved to DHBs.
 - iii. Board representation will be one way of maintaining linkages with both the Ministry of Health and the DHBs. Board representation could be a mix of health bureaucrats', representation from DHBs and independent non-executive appointees with an independent Chair.
 - iv. Board members will need to evaluate the trade-offs between pharmaceuticals and other forms of healthcare.
 - v. The Minister will want the ability to direct PHARMAC.

- vi. The environment will continue to be litigious, and this requires PHARMAC to retain a degree of separation from the Minister of Health.
- vii. Any significant change to PHARMAC's role and functions, or to its structure could result in increased Fiscal and legal (litigation) risks.
- viii. PHARMAC will also need to maintain close linkages with the HFA (and its successor), HBL and NZHIS, because functions undertaken by these organisations (such as PCO and pharmacy contracting, pharmaceutical claims processing and data storage) have a significant impact on PHARMAC's operations.

Organisational Options Considered

36. Workstream participants considered that the most appropriate options for organisational form were as follows:
 - i. Crown Owned Company; or
 - ii. Statutory Corporation.

Evaluation of the Options

37. It should be noted that PHARMAC is at present a subsidiary company of the HFA.
38. In considering the relevant merit of retaining PHARMAC as a company versus eliminating this status and establishing it as a Statutory Corporation, Officials would make the following comments;
 - i. Each of the organisational options is feasible.
 - ii. The advantage of both models is that they establish the management of pharmaceutical subsidies as a centrally and nationally managed function. This will minimise fiscal and litigation risks and also ensure equity of outcomes for patients.
 - iii. Each model incorporates an appropriate balance between accountability to the Minister (and ability to be directed by the Minister) and separation from the Ministry that, in turn, will shield the Minister from direct involvement in litigation.
 - iv. The different models may have an impact on the skills of people attracted to being directors, but it is not obvious which model is necessarily superior, in that Board members are required to make subsidy decisions in addition to the normal board functions of corporate governance.
 - v. The Statutory Corporation model may require additional legislation to the Crown Company model (as the Crown Company can rely on Companies Act legislation). However, this is unlikely to be significant since legislation will be required in any case, given that PHARMAC's current owner the HFA is to be disestablished. Further legislative changes will be

necessary to preserve PHARMAC's partial exemption from the Commerce Act.

39. Treasury's view supports the benefits of continuing with the existing company form for PHARMAC:
 - i. as a Crown Company form may be more attractive to individuals with business skills because it conveys similar status and responsibilities as a director of a private company;
 - ii. as a Crown Company potentially offers more flexibility in changing the future functions or direction of both entities; and
 - iii. as there is greater common understanding about how companies will behave, and vigorous bargaining for the best price or services is more likely to be acceptable. Pharmaceutical companies in particular may perceive a change in PHARMAC's status to signal less resolve by the Crown to constrain the costs of pharmaceuticals, and they may therefore see more opportunity for litigious action.
40. The PHARMAC Board supports the continuation of PHARMAC's existing company form.
41. The Ministry of Health and SSC considers that either the Crown Owned Company Model or the State Corporation models would be appropriate organisational structure to manage PHARMAC's objectives.

RESIDUAL HEALTH MANAGEMENT UNIT (RHMU)

Objectives of RHMU

42. RHMU was established as a Crown Entity (Statutory Corporation) in 1993 to manage assets and liabilities of former Area Health Boards that for various reasons were not, at the time, assigned to Crown Health Enterprises. When established, it was considered that the RHMU functions would all be of relatively short duration. In fact, the issues involved were more complicated than anticipated and RHMU continues to discharge some of its original functions as well as some additional functions.

Current role of RHMU

43. Statutory and non-statutory functions currently undertaken by the RHMU are:
 - i. residual asset management (management of long term property leases);
 - ii. contingent liabilities (covers legal liabilities of former area health boards);
 - iii. historical debt (managing the debt of the former area health boards);

- iv. transitional banking (transitional lending facility for HHSs – lender of last resort for HHSs unable to secure private sector finance);
 - v. bankability (facilitating and promoting provision of private sector debt financing);
 - vi. disposal of surplus HHS property.
44. Some of the statutory functions of the RHMU have ceased or diminished. The severance recovery function (review of cases where severance was paid to individuals as a result of the 1993 reforms, who then re-engaged in the sector) and patient frozen funds has expired, whilst the activity around residual area health board (AHB) management, contingent liabilities and AHB debt management has diminished, but still needs to be managed. The demand for transitional banking facility has also declined.

Inter-Agency Relationships

45. RHMU operates under the direction of a three-member board appointed by the Minister of Health. RHMU uses contractors and outsourcing arrangements rather than establishing a more permanent presence. Its performance monitoring relationships are with the Ministry of Health and Treasury. It has relationships with HHSs over bankability and disposal of surplus property issues.

Contractual and Funding Arrangements

46. Funding is through a separate Non-Departmental Output Class appropriation within Vote Health and lending as a capital contribution through Vote Health Service Providers. Appropriation is to some extent offset by residual rental income and surpluses on the provision of HHS debt.

Monitoring and Audit Arrangements

47. Primary accountability rests with the Minister of Health and, for HHS debt issues, the Minister of Finance.
48. Performance Agreements are set within the framework of the Public Finance Act 1989. The Ministry of Health monitors RHMU's Management Agreement and Treasury monitors debt issues.

Future Function of RHMU

49. Current RHMU functions required in the short term:
- i. Managing AHB residual assets.
 - ii. Managing AHB historical debt.
50. Current RHMU functions likely to be required in the medium/long term:
- i. Managing AHB residual liabilities.

- ii. Disposal of surplus HHS property.
 - iii. Transitional banking and bankability.
51. RHMU undertook an internal review of roles and functions prior to RHMU being given the role of disposing of surplus HHS property and the Government's announcements regarding the establishment of DHBs. Their review concluded that it was appropriate to begin planning for the dissolution of RHMU, or at least the significant revision of its roles and responsibilities.
52. However, Officials consider that there is little benefit in considering disestablishing RHMU at a time when Government is likely to require the facility to manage residual issues arising from the establishment of DHBs. Officials consider that it is beneficial for RHMU to continue to undertake the functions outlined above. A review of RHMU's role and function will be necessary once DHBs are established and the full extent of RHMU's ongoing role is clear. Officials therefore propose that a review of RHMU roles and responsibilities be undertaken before 30th April 2001.
53. The management of contingent liabilities from the HFA and any residual HHS asset and liability issues need further legal advice, along with other policy decisions before a final decision is reached.
54. Officials recommend that:
- i. The location of specific HHS liabilities are considered as part of the 30th June report back on the process for establishing DHBs. (NB The process for establishing DHBs is not yet finalised.)
 - ii. HFA's contingent liabilities are considered as part of the Ministry of Health and HFA change management process.
 - iii. Consideration should be given to whether there should be a time limited severance recovery function, to recover severance paid to those affected by changes in the sector, who then re-engage in the sector, as there was following the last round of sector changes. Officials propose that this issue is also considered as part of the 30 June report back.

Governance Options

55. It is proposed that RHMU remain a Crown Entity at this time because:
- i. the management of contingent liabilities must be seen to be carried out free of political interference;
 - ii. the management of assets and property leasing is an activity that is readily "contractable", therefore it does not need to be undertaken by a Government department;
 - iii. of the need for separation of legal risk from the Crown;
 - iv. there is merit in signaling independence of the Crown in terms of the bankability function so that the private banking sector maintains confidence with investing in DHBs;

- v. RHMU has an established track record as a high performing organisation that has competently managed down residual activities and fiscal risk to the Crown.

56. There may be future roles that need to be picked up as a result of recommendations from the investment workstream.

Costs of proposal

57. The proposal to continue RHMU will be fiscally neutral. Further consideration of costs will be necessary if there are any additional functions conferred on the RHMU.

Legislative implications

58. The legislative implications of the proposals made here will depend on decisions made by Parliamentary Counsel further down the track. The Health Reforms (Transitional Provisions) Act 1993 may remain, with any new functions in the new legislation. The current legislation does not prevent the RHMU from taking on new functions that are conferred by the Minister.

NATIONAL HEALTH COMMITTEE (NHC)

Background

59. The Core Service Committee was established as part of the health reforms in 1993 and tasked with getting better definition around what services should be publicly funded and under what circumstances. The Minister of the day wanted to ensure that there was a vehicle for consultation with the public on issues that were essentially about rationing publicly funded health services. The legislative mandate reflected the Minister's view that it was an important role. The consultation role of the Committee also addressed criticism that there had been minimal consultation on the health reforms.

60. Originally, the Committee was commonly known as the "Core Health Committee". This reflected the original idea that the Committee would come up with the "core list" of services that would be publicly funded and anything that fell outside the core would not receive public funding. The Committee rejected the list approach fairly early on, and instead focused on building public consensus on specific services. They became known as the "National Health Committee" following a 1996 amendment to the Health and Disability Services Act 1993. They were also given the additional function of covering public health services.

Current role of NHC

61. The Committee's current functions as specified in the legislation are to advise the Minister on:

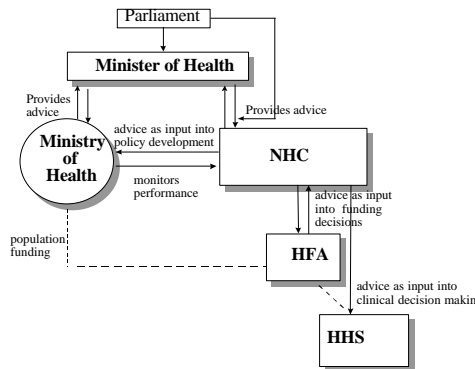
*“the kinds and relative priorities, of public health services, personal health services and disability services that should, in the committee’s opinion, be publicly funded and other matters relating to public health including personal health matters relating to public health and regulatory matters relating to public health and such other matters as the Minister specifies by notice to the Committee”.*⁴

62. The terms of reference of the NHC are as follows:

- i. provide an independent assessment to the Minister of Health of the quality and mix of services that should, in the Committee’s opinion be publicly funded;
- ii. advise the Minister on measures that would deliver the greatest benefit to the health of the population, and groups of the population, with particular regard to groups at risk or disadvantage, having regard to available resources.

Inter-Agency Relationships

63. The following diagram and discussion outlines how NHC and other health sector agencies relate to each other:



Contractual and Funding Arrangements

64. Funding is through the Ministry of Health’s budget and is not subject to any Ministry reprioritisation process.

Monitoring and Audit Arrangements

65. A Memorandum of Understanding between the Ministry of Health and NHC clarifies roles and establishes expectations.

66. Budget responsibility and reporting to the Ministry of Health rests with the NHC Director; responsibility for the performance of the NHC work programme sits with the NHC Director.

⁴ Section 6 Health & Disability Services Act 1993

67. Legislation requires NHC to report to the Minister on its advice on matters regarding types and priorities of services.

Future Role of NHC

68. The current NHC functions are deemed necessary under the new health arrangements because:
- i. there will be continued debate about the appropriate mix and coverage of health and disability services. Indeed, establishing DHBs may increase the tension between providing services that are responsive to local populations and ensuring that there is some equity concerning national minimum service coverage; and
 - ii. Government remains concerned over ensuring the greatest benefit within available resources to the health of the population, and particularly to groups at risk or disadvantage.
69. The beneficiaries of NHC advice are:
- i. The *Minister of Health/Parliament* – source of independent advice that is credible both with the public and the sector.
 - ii. The *Ministry of Health* – assist with getting good definition of services and rationing decisions.
 - iii. The *DHBs* – provide information regarding key issues and best practice on either specific services and/or specific population groups which they will need to address.
 - iv. *Public/consumers* – information on what services they ought to receive.
 - v. *Health professionals* – evidence based information to increase quality of clinical decision making.
70. It is proposed that NHC functions continue and that it:
- i. provides an independent assessment to the Minister of Health on the quality and mix of services that should, in the Committee's opinion be publicly funded, within the context of the New Zealand Health Strategy;
 - ii. advises the Minister on measures that would deliver the greatest benefit to the health of the population, and groups of the population, with particular regard to groups at risk or disadvantage, having regard to available resources.

Location of Current NHC Function

71. The key question for Ministers is where the NHC's current function is best located e.g. whether the function should be carried out by NHC or whether the NHC is disestablished and its function be performed by another entity (i.e. Ministry of Health, DHBs).

72. The advantages of the NHC continuing to provide its current functions are that:
- i. the public and providers engage in the NHC consultation processes and advice because they perceive the NHC as independent from the Ministry.
 - ii. the NHC have developed expertise and a successful track record in undertaking their functions.
 - iii. the NHC can provide advice regarding the performance of the sector which the Ministry and DHBs may find difficult to proffer because it could be inherently critical of their own performance.
73. The disadvantages of the NHC continuing to provide its current functions are that:
- i. there is a risk that the NHC will duplicate work that is or should be undertaken by other agencies i.e. the Ministry of Health and DHBs who also have an interest in influencing the kinds and relative priorities of publicly funded services;
 - ii. DHBs engagement with their local populations regarding funding decisions may reduce if DHBs consider that the NHC function as a substitute for local consultation;
 - iii. the independence of the committee means that poor performance is not easily sanctioned; and
 - iv. an independent entity will publicly provide that Government may not choose to follow.
74. It may be possible, however, to minimise these risks through clear specification of roles, responsibilities and accountabilities of the Ministry of Health, DHBs and the NHC.

Requirement for Legislation

75. Should Ministers agree that the NHC continue to provide its current function, the further question is whether this function needs to be included in legislation. The benefit of having the NHC function in legislation is that it clearly established the NHC as an independent, ongoing function.

NHC Comment

76. The NHC consider that the current legislative provisions have been flexible enough to allow their role to evolve in response to changes in the sector. The NHC consider that its statutory status has helped them get the co-operation of health providers and the public to undertake their role.

Conclusion of Officials

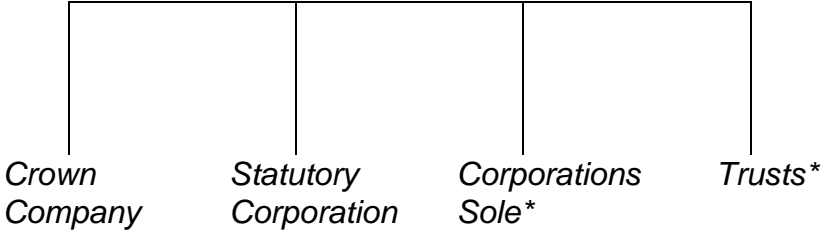
77. There are risks associated with having the NHC mentioned in legislation. These include:
- i. Legislation is always inherently constraining which means that the Minister would not have the flexibility to alter the functions of the committee.
 - ii. There could be a potential conflict between the role of the NHC as specified in the legislation and the evolving nature of roles and relationships within the health sector and the emerging responsibilities of DHBs.
 - iii. Putting the NHC into legislation could create confusion in the public's mind about the status of its advice vis a vis all the other advice to which the Minister is and should be exposed.
78. The role of the Committee has evolved over time. It was clear that the original role of the Committee – to specify core services that should attract public funding - had a stronger need for legislative based functions. This was because their advice could potentially have been the basis for decisions on what services, under what conditions would receive public funding. The Committee's role today does not require the same legislative mandate; its role is much more of an influencer of decisions regarding publicly funded health services.

APPENDIX 2 (a): Design Options for Crown Entities

Government
Department
(inside legal
Crown)#

State Owned
Enterprises
(company
outside legal
Crown)*

Crown Entities (outside legal Crown)



The Crown Entities Initiative suggests a further categorisation of the above two types of Crown Entities into Crown Agent, Autonomous Crown Entity or Independent Crown Entity – see Appendix 1(c).

Note 1:

* Not seen as appropriate for Health Crown Entities (refer Clause 5).

Note 2:

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A State Services Commission paper (*Occasional Paper No. 21 – Crown Entities: Organisational Design – September 1999*) suggests that activities should be carried on *inside* the legal Crown (i.e. by a Department) where they:

- are not readily “contractible” because of difficulties either in specifying the nature of the outputs required or in assessing whether the outputs have been produced, or where there is likely to be a frequent need to re-specify the outputs required; or
- are “material” in the sense that they are of high strategic relevance to the Government or to society and where the risks associated with them would more effectively be managed if the provider were subject to direct Ministerial oversight; or
- involve the use of significant coercive power (e.g. tax collection) or otherwise are in some sense an inherent function of the state (e.g. the conduct of foreign policy), so that the principle of political accountability requires Ministers to have direct oversight and responsibility.

APPENDIX 2(b): Key Differences Between Crown Companies and Statutory Corporations

GENERAL

- Some of the differences for the Statutory Corporation depend on what type it is in relation to its functions (e.g., Independent Crown Entity, Autonomous Crown Entity or Crown Agent) – see Appendix 1(c).
- Either option may provide for a not-for-profit objective.
- The health sector change legislation will be developed in liaison with the Crown Entities Legislation Steering Group. However, it is unlikely that the Crown Entities Bill will be enacted in time to facilitate its application to the health sector legislation. The former Bill will provide generic legislation for different types of Crown entities and set out the accountability framework and duties of members. It will need to be supplemented by specific enabling legislation.

Features	Crown Company	Statutory Corporation
<i>Function</i>	Typically established to undertake commercial or mainly commercial functions or to operate in a commercial environment	Used to undertake a wide variety of functions (e.g. regulatory, service delivery, advisory, devolved purchase)
<i>Legal Powers</i>	Subject to other legislation or general law, a separate legal person with full capacity, rights, powers and privileges. Unusual for company to have regulatory powers.	Depends on legislation. Typically, those of a legal person, although it may be subject to constraints (e.g. powers to borrow). Some Statutory Corporations have significant regulatory powers.
<i>Governing Body</i>	Board appointed by shareholding Ministers. Responsible only for governing company.	Typically, board or board-like body appointed by Responsible Minister, or by Governor-General on advice of Ministers, although there are some significant exceptions (e.g. schools). Responsible for governing organisation but may also have some operational responsibilities – notably small to medium-sized regulatory bodies (e.g. Human Rights Commission).
<i>Responsible Minister</i>	In the Public Finance Act 1989 the “Responsible Minister” comprises the two shareholding Ministers, one of whom is the Minister of Finance; otherwise the Responsible Minister is the	One Responsible Minister, normally portfolio Minister.

	portfolio Minister.	
Features	Crown Company	Statutory Corporation
<i>Ability to Attract Directors/Members with Requisite Skills</i>	Directors with business skills are more likely to be attracted to become a director of a Crown Company because it conveys similar status, roles, rights, responsibilities, risks, rewards and sanctions as a director of a private company. Conversely, this option may deter people with other required skills who do not wish to become a company director.	Directors with business skills may be less keen to become a member of a Statutory Corporation. This is probably because the role of the member is less well understood and may pose greater reputational risks due to being <i>perceived</i> as closer to Ministerial control. Conversely, this option may attract people with other required skills who do not wish to become a company director.
<i>Need for Legislation</i>	A Crown Company can be established without enacting legislation by executive decision under the companies Act. This “off-the-peg” Act defines shareholders’ powers, nature of board, directors’ duties etc.). However, nearly all Crown Companies have some specific features modified by legislation (e.g., Public Finance Act 1989; Health and Disability Services Act 1993).	Most features of a Statutory Corporation have to be set out in full in legislation but generic features applied in Public Finance Act 1989.
<i>Responsibilities of Directors/Members</i>	Company law, especially on the responsibilities etc., of directors, is certain and publicly understood, having been settled by the courts over the past 300 years ⁵ , which reduces the costs of anyone interacting or transacting with the company including, in particular, potential lenders.	The responsibilities etc., of the members need to be specified in detail in new legislation. It may take some time for this legislation, including its relationship with the proposed Crown Entities Bill, to be fully publicly understood, tested, and tried in the courts. Major transactions may involve other parties in greater legal costs in order to understand the risks of doing business with the corporation.

⁵ The NZ Companies Act 1993 has a high and world-wide reputation.

Features	Crown Company	Statutory Corporation
<i>Relationship with Ministers</i>	<p>The relationship is between the Minister as shareholder of the company and the directors subject to any modifying legislation. The starting point for the directors is they must act in good faith in what they believe to be the best interests of the company. This position may be modified by sector-specific or generic legislation, including the Public Finance Act 1989. Ministers do, however, have significant influence through the powers to appoint and dismiss the governing body, change the constitution, direct the company over its statement of intent and any other powers of direction provided in legislation. If Ministers seek to influence the board in ways not legally contemplated he/she may become a “deemed director” and subject to the legal regime pertaining to directors. For other parties, determining the degree of ministerial independence usually requires analysis of the modifying legislation only.</p>	<p>The legislation must define the members’ roles, rights, responsibilities, rewards, and sanctions including the degree of independence from Ministers. The Public Finance Act 1989 is also applied. Determining the degree of independence from the Ministers usually requires a complete understanding of the whole Statutory Corporation legislation.</p> <p>Ministers have a significant level of control over many Crown entities (e.g. the HFA), but quite limited control over some others, particularly Independent Crown Entities (e.g. Police Complaints Authority).</p> <p>With Autonomous Crown Entities and Crown Agents, Ministers may be at “arms-length” but they may be <i>perceived</i> as closer than with a company (whether true or not).</p>
<i>Scope of Business</i>	<p>Limited by sector-specific legislation, the company’s constitution, statement of intent, Ministers’ support of business plans and consideration of equity requests and issuance of Ministers’ Expectations and with ability to remove directors who do not meet them</p>	<p>Defined by legislation, the corporation’s statement of intent, Ministers’ support of business plans and consideration of capital injection requests and issuance of Ministers’ Expectations and with ability to remove members who do not meet them.</p>

Features	Crown Company	Statutory Corporation
<i>Accountability for Performance</i>	Defined in terms of the readily understood relationship between shareholders and directors but modified by legislation (e.g. Public Finance Act 1989) to provide accountability to Parliament. Accountability to the Crown for performance may be perceived as stronger – and therefore more attainable – because company law provides the directors with much clearer responsibilities for operating in terms of directors’ rights, obligations and potential liabilities than the current law on Statutory Corporations.	To be defined by legislation. Accountability arrangements would need to be specifically designed and members’ rights and duties set out in legislation.
<i>Potential Crown Liability</i>	<p>In principle Crown liability is limited by the limited liability of the company and section 54 of the Public Finance Act 1989 – Crown not generally liable for Crown entity liabilities. In practice, it may be difficult to rely on this entirely.</p> <p>However, potentially less risk of the Crown being taken to court or held liable for the company’s actions as the Crown’s control over it may be <i>perceived</i> to be less strong. Indeed, Ministers as shareholders cannot usually be cited in legal action against Crown companies unless Ministers have exercised a power outside of Companies Act or have become “deemed directors”.</p>	In principle, Crown liability is limited by section 54 of the Public Finance Act 1989 – Crown not generally liable for Crown entity liabilities. In practice, it may be difficult to rely on this entirely. Potentially greater risk of the Crown being taken to court or held liable for the corporation’s actions, as the Crown’s control over it may be <i>perceived</i> to be greater with no “shareholder’s” protection for the Ministers.
<i>Flexibility, Durability</i>	A flexible form that can be easily established/ disestablished and flexible in terms of changing functions or direction while subject to the Public Finance Act 1989	Experience shows that Statutory Corporations are less flexible and once set up in legislation will be harder to disestablish or change unless careful legislation to

	or sector-specific legislation.	establish in the first place.
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PHARMAC View

Advice provided by Bell Gully (Corporate Lawyer) in relation to the Pharmac structure sets out its conclusions over the relative benefits of a company structure compared to other entities. This advice concludes that *“the limited liability status of a company would provide little additional benefit to PHARMAC and would impose additional Companies Act compliance obligations that are of relatively limited added value.”*

“It is not clear that a great deal of value is added by the existence of a further layer of reporting requirements and directors’ duties under the Companies Act; particularly where the Organisation is not operating commercially for a profit and is not competing with ordinary commercial entities that are subject to the Companies Act.”