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Submissions  
 State Services Commission  
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## Submission on the reform of the State Sector Act 1988

The Institute of Directors (IoD) appreciates the opportunity to comment on the [discussion document](#) on the proposed reform of the State Sector Act 1988. The Act is one of New Zealand’s principal statutes (along with the Crown Entities Act 2004) governing the management of the state sector.

Given that the State Sector Act is now 30 years old, the Government has initiated a review to ensure it is fit for purpose and meets the needs of a modern Public Service. The review is not intended to impact the changes made in the State Sector and Crown Entity Reform Act 2018.

Our submission focuses on governance related matters in the discussion document and, in particular, where Crown entity boards may be affected. Notwithstanding our comments here, the IoD may make further and broader comment as the review progresses.

### About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to driving excellence in governance. We represent a diverse membership of over 8,900 members drawn from listed issuers, large private organisations, small and medium enterprises, state sector organisations, not-for-profits and charities. In our 2017 membership survey, which is representative of the membership, 18.5% of members said that they have a government organisation or SOE role.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

### Unifying purpose, principles and values of the Public Service

The discussion document proposes introducing new provisions outlining the purpose, principles, and values of the New Zealand Public Service. It is proposed that these would also apply to Crown entities (eg their management and staff) that fall within the definition of Public Service *but not boards*. However, the document states that boards would be expected to reflect the purpose, principles and values in their agency policies and practices together with supporting the Crown/Māori relationship. The proposed purpose, principles and values are set out in the table below.

Proposed purpose	Proposed principles	Proposed values
This is expected to be about improving intergenerational wellbeing by delivering results and services for citizens, serving the Government of the day effectively and efficiently, and supporting continuity of democratic government	Political neutrality	Impartial
	Free and frank advice	Accountable
	Merit selection	Behave with integrity
	Openness	Respectful
	Stewardship	Committed to service

We note that in essence most of the principles and values are consistent with general principles of good governance (eg responsibility, accountability, fairness and transparency). There is also reasonable alignment with the values contained in IoD's [Code of Practice for Directors](#). The Code provides guidance to directors to assist them in carrying out their duties and responsibilities in accordance with the highest professional standards, and lists the following values: integrity, enterprise, fairness, transparency, accountability and efficiency.

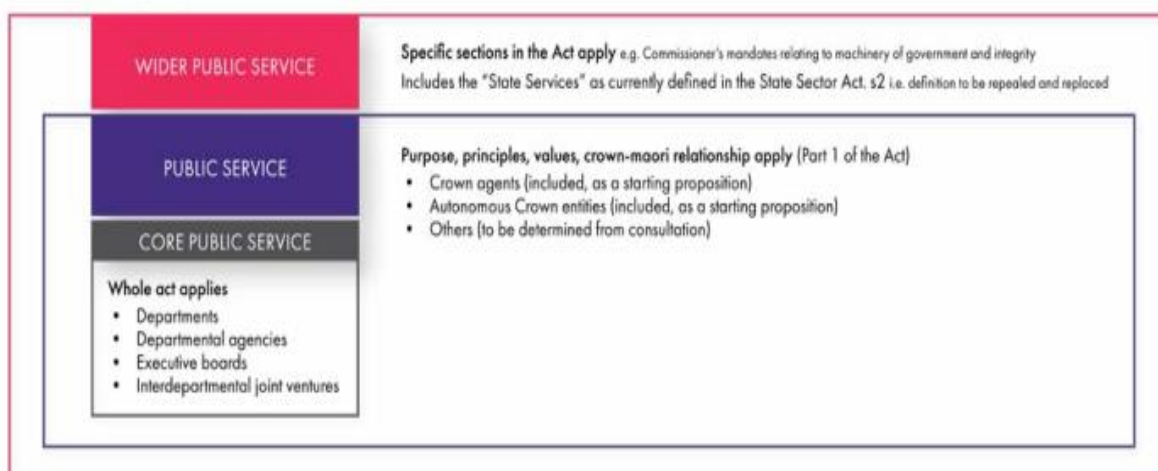
Clarity of purpose, principles and values, alongside high standards of professionalism, help drive excellence in governance and the building of trust across all sectors, private, not-for-profit and the state sector.

### New scope of the Public Service proposed

The discussion document proposes to expand the concept and legal definition of the Public Service to include:

- departments *and*
- all agencies in the existing state services that are subject to a positive degree of Ministerial influence through the power to appoint and remove board members and/or the power to direct an agency to have regard to government policy (Crown entities)

The table below sets out the new structure at a high level:



The proposals will not, it is stated in the discussion document, affect the concept or definition of the legal Crown. Crown entities will continue to exist as legally separate bodies corporate, operating under the governance of a board and at arms-length from the responsible Minister. We urge careful consideration around the proposed wider scope to ensure there are no unintended consequences that could undermine the governance of Crown entities.

### Executive boards

We note that there is a proposal to establish Public Service executive boards to improve the effectiveness of achieving cross sector outcomes. Key features of Public Service executive boards would include:

- a formal terms of reference agreed by Cabinet (including the scope and functions of the board)
- collective accountability to the Minister responsible for the board, for the work of the board
- chief executive membership (no more than six including the chair) appointed by the State Services Commissioner from the departments

- ability for the Commissioner to appoint independent members from outside of the Public Service, to whom the same responsibilities and obligations under the legislation would apply for their work as a board member
- ability of the board to administer an appropriation
- ability of the board to employ staff and enter into contracts (as a separate administrative unit of the legal Crown).

This proposal appears to relate to existing departments and their CEOs (as per figure 3 on page 25) who are employed by the State Services Commissioner. The executive boards do not appear to include Crown entities or their CEOs. However, as many core services (eg health and housing) are delivered by Crown entities it is important that there is clarity that Crown entity CEOs would not be included in the executive boards (including in the future). Crown entity CEOs are employed by boards of Crown entities and accountable to them. It is important that Crown entity boards are able to carry out their core governance function of appointing, managing and holding CEOs to account. We reiterate the concerns raised in our [submission](#) on the State Sector and Crown Entities Reform Bill about diminishing the Crown entity governance model and role of boards. It's important that these wider reforms don't create mechanisms that could further erode Crown entity governance, now or in the future. As noted above, Crown entities are bodies that are legally separate from government departments and the Crown, and Crown entity boards have separate governance responsibilities, obligations, and liabilities under law.

We note that the Commissioner can appoint independent members to executive boards. Having independent members can help ensure that there is the right mix of skills and experience on board and could help enable more effective governance. However, there would need to be clarity around the responsibilities and accountabilities of these independent members, and who can be appointed (we note that the proposal refers to *chief executive membership*).

### Integrity and conduct

On a point of detail, we note that page 16 states that only one of the proposals in the discussion document impacts on Crown entity governance. It states this is the proposal in chapter 5 to augment the Commissioner's powers to issue instructions and require agencies to follow them on integrity and conduct matters. It appears this is covered in chapter 7 at pages 36-37 (as it doesn't appear to be in chapter 5) where the commentary refers to broadening the scope for the Commissioner to issue instructions and require *agencies* to follow them on integrity and conduct matters. However, the corresponding question (no. 50) refers to *departments* rather than agencies (it asks in what circumstances do you think it would be appropriate for the Commissioner to direct departments on specific integrity matters?). Accordingly it is also not clear to us if and how this proposal could impact governance of Crown entities, as stated on page 16.

Crown entity governance is of core interest to the IoD and we would appreciate the opportunity to comment further on this matter and provide input on any policy development.

We appreciate the opportunity to comment on the proposed reform of the Public Service on behalf of our members. We would also welcome the opportunity to discuss this submission and to contribute to the review more generally as it progresses, and in particular how it relates to and affects governance best practice.

Yours sincerely



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**Institute of Directors**