

House of Representatives

Supplementary Order Paper

Tuesday, 29 January 2013

State Sector and Public Finance Reform Bill

Proposed amendments

Hon Dr Jonathan Coleman, in Committee, to move the following amendments:

Clause 92

In *clause 92*, after *new section 45OA* (after line 4 on page 56), insert:

45OAB Exception to section 45OA(1)(g) for Crown Fibre Holdings Limited

- (1) Despite section 45OA(1)(g), section 97 of the Crown Entities Act 2004 (which sets out rules that apply to a parent Crown entity in respect of its subsidiaries) does not apply to Crown Fibre Holdings Limited in respect of any company that is a subsidiary of Crown Fibre Holdings Limited, provided that the subsidiary has no shareholders other than—
 - (a) Crown Fibre Holdings Limited; and
 - (b) the Crown; and
 - (c) no more than 1 of the following:
 - (i) Chorus Limited;
 - (ii) Enable Services Limited;
 - (iii) Northpower Limited;
 - (iv) Waikato Networks Limited;
 - (v) a wholly owned subsidiary of Chorus Limited, Enable Services Limited, Northpower Limited, or Waikato Networks Limited.
- (2) This section is repealed on the close of 30 June 2021.

Clause 120

In *clause 120*, after *new section 15A(1)* (after line 9 on page 69), insert:

- (1A) However,—
 - (a) in the case of an appropriation for expenses and capital expenditure to be incurred by an intelligence and

security department, **subsection (1)(a) and (d)** do not apply; and

- (b) in the case of an appropriation for borrowing expenses, **subsection (1)(d)** does not apply.

In *clause 120*, delete *new section 15A(5)* (lines 33 and 34 on page 69).

In *clause 120*, after *new section 15B(2)* (after line 35 on page 70), insert:

- (2A) An exemption under this section may be granted for 1 or more financial years or until further notice.

Clause 125

In *clause 125*, replace *new section 19C(3)* (lines 30 to 32 on page 74) with:

- (3) The end-of-year performance information for an appropriation must be prepared in accordance with generally accepted accounting practice, to the extent that the information is of a form or nature for which provision is made in financial reporting standards (within the meaning of section 2 of the Financial Reporting Act 1993).

New clauses 148A to 148C

After the *subpart 1 heading* in *Part 3* (after line 29 on page 87), insert:

148A Section 7 amended (Meaning of Crown entity and categories of Crown entities)

- (1) In section 7(1)(c), replace the definition in the second column with:

“Definition

“A company that is—

- “(a) a subsidiary of another Crown entity under sections 5 to 8 of the Companies Act 1993; or
“(b) a multi-parent subsidiary of 2 or more Crown entities”.

- (2) After section 7(1), insert:

“(1A) Despite section 5(3) of the Companies Act 1993, a Crown entity subsidiary must be a company incorporated under the Companies Act 1993.”

148B New section 7A inserted (Meaning of multi-parent subsidiary)

After section 7, insert:

“7A Meaning of multi-parent subsidiary

- “(1) A company is a **multi-parent subsidiary** if, under sections 5 to 8 of the Companies Act 1993,—
“(a) the company is not a subsidiary of any 1 Crown entity; but
“(b) if 2 or more Crown entities were treated as 1 entity (a **combined entity**), with their rights, entitlements, and

- interests in relation to the company taken together, the company would be a subsidiary of the combined entity.
- “(2) Despite section 5(3) of the Companies Act 1993, a multi-parent subsidiary must be a company incorporated under the Companies Act 1993.

Example

Crown entities A, B, and C each own 20% of the issued shares of Company Limited. The remaining issued shares of Company Limited are not owned by Crown entities. Because Crown entities A, B, and C collectively own more than half of the issued shares of Company Limited (see section 5(1)(a)(iii) of the Companies Act 1993), Company Limited is a multi-parent subsidiary.

148C Section 8 amended (Meaning of parent Crown entity and Crown entity subsidiary)

In section 8(1)(b), after “B is a subsidiary of A”, insert “, or a multi-parent subsidiary of A and 1 or more other Crown entities,”.

Clause 149

In *clause 149*, insert as subclause (2) (after line 6 on page 88):

- (2) In section 10(1), replace the definition of **multi-parent subsidiary** with:
“**multi-parent subsidiary** has the meaning given in **section 7A**”.

New clause 159A

After *clause 159* (after line 30 on page 90), insert:

159A Section 97 amended (Subsidiaries: rules applying to all Crown entities)

In section 97, replace “to the extent of its powers” with “to the extent that it is reasonably able to do so”.

Clause 160

In *clause 160*, insert as subclause (1) (after line 32 on page 90):

- (1) In section 98(1), replace “to the extent of its powers” with “to the extent that it is reasonably able to do so”.

Clause 171

After *clause 171(1)* (after line 25 on page 94), insert:

- (1A) In Schedule 5, clause (2)(d), after “unless the member”, insert “continues to hold office as a member in accordance with section 32(3) or”.

New clause 177A

After *clause 177* (after line 2 on page 96), insert:

177A Section 136 amended (Interpretation for this Part)

In section 136(1), definition of **Crown entity group**, replace paragraph (b) with:

“(b) its Crown entity subsidiaries, other than multi-parent subsidiaries; and”.

Clause 179

In *clause 179*, delete *new section 139(2)* (lines 14 to 20 on page 96).

New clause 182A

After *clause 182* (after line 12 on page 98), insert:

182A Section 144 amended (Application and term of statement of intent)

In section 144(b), delete “or group”.

Clause 188

In *clause 188*, delete *new section 149E(2) and (3)* (lines 16 to 35 on page 103).

Clause 189

In *clause 189*, insert as subclause (2) (after line 33 on page 106):

(2) Repeal section 150(2).

Clause 191

After *clause 191(1)* (after line 10 on page 107), insert:

(1A) Replace section 151(1)(c) with:

“(c) the annual financial statements for the entity in accordance with section 154; and”.

Clause 193

Replace *clause 193* (lines 3 to 31 on page 108) with:

193 Section 154 amended (Annual financial statements)

Replace section 154(1) and (2) with:

“(1) As soon as practicable after the end of each financial year, a Crown entity must prepare financial statements in relation to the entity for that financial year.”

Clause 194

Delete *clause 194* (line 32 on page 108 to line 3 on page 110).

New clause 196A

After *clause 196* (after line 14 on page 110), insert:

196A New sections 156A and 156B and cross-heading inserted

After section 156, insert:

“Application of this subpart to Crown entity groups

“156A Application of this subpart to Crown entity groups

“(1) A Crown entity (**entity A**) that is a member of a Crown entity group need not comply with this subpart except as required by this section and **section 156B**.

“(2) Entity A must prepare a statement or report under this subpart if, at the relevant time,—

“(a) entity A has 1 or more subsidiaries; and

“(b) entity A is not a subsidiary of another Crown entity.

“(3) If entity A is required by this section to prepare a statement or report, this subpart—

“(a) must be read as if it required the statement or report to include consolidated information in respect of the Crown entity group comprising entity A and its subsidiaries, rather than information in respect of entity A only; and

“(b) otherwise applies with any necessary modifications.

“(4) In this section,—

“**relevant time**, in relation to a statement or report, means—

“(a) the end of the period to which the statement or report relates; or

“(b) if the statement or report relates to a period that includes a future period, the time when the statement or report is provided to entity A’s responsible Minister

“**statement or report** means any of the following:

“(a) statement of intent (*see section 139*):

“(b) statement of performance expectations (*see section 149B*):

“(c) forecast financial statements (*see section 149E*):

“(d) annual report (*see section 150*):

“(e) statement of performance (*see section 153*):

“(f) annual financial statements (*see section 154*)

“**subsidiary** means a subsidiary within the meaning of **paragraph (b)** or (c) of the definition of Crown entity group in section 136(1).

“156B Minister of Finance may require additional reporting

“(1) Despite **section 156A**, the Minister of Finance may, by notice in writing, require entity A or any other member of a Crown entity group (a **specified entity**) to prepare 1 or more statements or reports under this subpart as if it were not a member of a Crown entity group.

“(2) A notice must specify—

“(a) which statements and reports are required; and

- “(b) the financial years or other period (which may be until further notice) for which each statement or report is required.
- “(3) Before issuing a notice, the Minister of Finance must—
 - “(a) consider the operations and functions of the specified entity; and
 - “(b) consult the responsible Minister for the parent Crown entity of the Crown entity group to which the specified entity belongs; and
 - “(c) be satisfied that each statement or report is necessary or desirable to enhance public accountability of the specified entity.
- “(4) If a specified entity is required under this section to prepare a statement or report, this subpart applies with any necessary modifications.”

Clause 197

Replace *clause 197* (lines 15 to 21 on page 110) with:

197 Section 157 replaced (Reporting by multi-parent subsidiaries)

Replace section 157 with:

“Multi-parent subsidiaries: Exemptions from reporting requirements under this subpart

- “157 Multi-parent subsidiaries part-owned by school board of trustees or tertiary education institute**
- “(1) This section applies to a multi-parent subsidiary if any of its parent Crown entities is a school board of trustees or tertiary education institute.
 - “(2) The Minister of Finance may, by notice in writing, exempt the multi-parent subsidiary from the requirement to prepare a statement or report (as defined in **section 156A(4)**) if the Minister is satisfied that—
 - “(a) it would be unduly onerous for the multi-parent subsidiary to comply with the requirement; and
 - “(b) the exemption is consistent with maintaining reasonable public accountability of the multi-parent subsidiary.
 - “(3) A notice must specify—
 - “(a) which statements and reports are not required; and
 - “(b) the financial years or other period (which may be until further notice) for which each statement or report is not required.
 - “(4) The exemption may be granted subject to any terms or conditions the Minister thinks fit (which may include a condition that a parent Crown entity must, in its equivalent statement or

report, include certain information about the multi-parent subsidiary).

“157A Other multi-parent subsidiaries

- “(1) This section applies to a multi-parent subsidiary other than a multi-parent subsidiary to which **section 157** applies.
- “(2) The multi-parent subsidiary need not comply with this subpart except as required under this section.
- “(3) The Minister of Finance may, by notice in writing, require the multi-parent subsidiary to prepare 1 or more statements or reports (as defined in **section 156A(4)**).
- “(4) A notice must specify—
- “(a) which statements and reports are required; and
 - “(b) the financial years or other period (which may be until further notice) for which each statement or report is required.
- “(5) Before issuing a notice, the Minister of Finance must—
- “(a) consider the operations and functions of the multi-parent subsidiary; and
 - “(b) consult the responsible Minister for each parent Crown entity of the multi-parent subsidiary; and
 - “(c) be satisfied that each statement or report is necessary or desirable to enhance public accountability of the multi-parent subsidiary.”

Schedule 4

In *Schedule 4*, after the item relating to the Accident Compensation Act 2001 (after line 17 on page 118), insert:

Crown Research Institutes Act 1992 (1992 No 47)

In section 12(4), replace “138 to 157” with “138 to **157A**”.

Explanatory note

This Supplementary Order Paper amends the State Sector and Public Finance Reform Bill.

Clause 92 is amended to add *new section 45OAB*, which exempts Crown Fibre Holdings Limited (**CFHL**), until the close of 30 June 2021, from compliance with section 97 of the Crown Entities Act 2004. That section requires a parent Crown entity to ensure that each of its Crown entity subsidiaries complies with certain rules—for example, requiring a subsidiary to act consistently with the parent’s objectives and current statement of intent and to exercise its powers only for the purpose of performing, or assisting the parent to perform, the parent’s functions. CFHL currently has contractual arrangements (to implement the roll-out of ultra-fast broadband) with Chorus Limited, Enable Services Limited, Northpower Limited, and Waikato Networks Limited (**partner**

companies). These arrangements led to the establishment of certain CFHL subsidiaries, in which—

- CFHL has shares with no dividend rights but full voting rights; and
- a partner company (or its wholly owned subsidiary) has shares with full dividend rights but no voting rights.

On 30 June 2021, the shares will revert to ordinary shares with full dividend and voting rights. Delaying the application of section 97 of the Crown Entities Act 2004 to CFHL aligns the application of that section with the changes in rights attached to the shares.

Clause 120 is amended. This clause inserts *new sections 14 to 15E* into the Public Finance Act 1989. *New section 15A(1A)(b)* is added to provide that the supporting information for the main Appropriation Bill need not include, for an appropriation for borrowing expenses, the end-of-year performance information details specified in *new section 15A(2)*. End-of-year performance information details include a concise explanation of how performance against the appropriation will be measured and details of who, and in what document, information will be reported at the end of the financial year on what has been achieved with the appropriation. In the case of an appropriation for borrowing expenses, the performance measure is the amount of interest paid. This will be recorded from year to year in the supporting information for Appropriation Bills under *new section 15A(1)(c)* and in departmental annual reports under *new section 45A*. Additional performance reporting for appropriations for borrowing expenses would be redundant.

New section 15A(1A)(a) replicates the exemptions in existing *new section 15A(5)*, in the interests of national security, for appropriations for expenses and capital expenditure to be incurred by an intelligence and security department.

New section 15B is amended to provide that an exemption from the requirement to provide end-of-year performance information may be granted for 1 or more financial years or until further notice.

Clause 125 is amended. This clause inserts new provisions into the Public Finance Act 1989 relating to end-of-year performance reporting on appropriations. The amendment provides that all end-of-year performance information, rather than just information relating to output expenses, must be prepared in accordance with generally accepted accounting practice. However, this applies only to the extent that there is an applicable financial reporting standard. This amendment is intended to cater for the future broadening of the scope of financial reporting standards when the Financial Reporting Bill is enacted.

New clauses 148A to 148C are inserted. *New clause 148A* amends section 7 of the Crown Entities Act 2004, and *new clause 148B* inserts *new section 7A*, to clarify the meaning of multi-parent subsidiary. A consequential amendment is made to *clause 149*. *New clause 148C* amends section 8 of the Crown Entities Act 2004 to clarify the meaning of parent in relation to a multi-parent subsidiary.

Clause 159A is added. This clause amends section 97 of the Crown Entities Act 2004 so that a parent Crown entity must, to the extent that it is reasonably able to do so (rather than to the extent of its powers), ensure that its Crown en-

tity subsidiaries comply with certain rules. The amendment is intended to reduce uncertainty about a parent Crown entity's responsibilities where it does not have a unilateral ability to require a subsidiary to comply with those rules. The intention is to clarify that a parent without unilateral control of a subsidiary need not continuously make fruitless attempts to persuade the subsidiary to comply. *Clause 160* is amended to make that same change to section 98 of the Crown Entities Act 2004.

Clause 171, which amends Schedule 5 of the Crown Entities Act 2004, is amended. The amendment changes clause 2 of Schedule 5, which is about the term of appointments of chairpersons and deputy chairpersons of statutory entities. The amendment allows a person who is a chairperson or a deputy chairperson to continue to hold that office despite the expiry of his or her membership of the statutory entity, provided that that membership is rolled over under section 32(3) of the Act. This means that the person will continue as chairperson or deputy chairperson until—

- he or she is reappointed; or
- his or her successor is appointed; or
- the appointor informs him or her by written notice (with a copy to the entity) that he or she is not to be reappointed and no successor is to be appointed at that time.

Clause 177A is added. This clause makes a consequential amendment to section 136 of the Crown Entities Act 2004 to align it with changes made by *new clauses 148A and 148B*.

Clause 196A is added. This clause inserts *new sections 156A and 156B* into the Crown Entities Act 2004. The new sections prescribe how the reporting obligations in Part 4 of the Crown Entities Act 2004 apply to Crown entity groups. The overall parent of a Crown entity group will be required to report for the group as a whole, while other members of the Crown entity group will not report unless required to do so by the Minister of Finance. The new group reporting regime replaces the regime in the Bill as introduced, which generally required group reporting but also required individual reporting in certain circumstances. The change is intended to reduce compliance costs while maintaining an appropriate level of accountability to Parliament.

Clause 197 is amended to replace section 157 of the Crown Entities Act 2004 with *new sections 157 and 157A*. Under these new sections, multi-parent subsidiaries will be required to report as follows:

- if any of the parent Crown entities of a multi-parent subsidiary is a school board of trustees or a tertiary education institute, the multi-parent subsidiary will be required to prepare the statements and reports required under subpart 2 of Part 4 of the Crown Entities Act 2004, unless the Minister of Finance grants an exemption. This is consistent with the current requirements for all multi-parent subsidiaries under section 157 of the Crown Entities Act 2004;
- other multi-parent subsidiaries are not required to prepare those statements and reports. Each parent Crown entity will reflect its interest in

any multi-parent subsidiaries, as appropriate, in the statements and reports that it prepares. If more detailed information is required on a multi-parent subsidiary, the Minister of Finance can require the multi-parent subsidiary to prepare particular statements or reports.

A number of consequential changes are required as a result of the amendments made by *new clause 196A and clause 197*. *Clauses 179, 188, 189, and 191 and Schedule 4* are amended, *clause 193* is replaced, *new clause 182A* is inserted, and *clause 194* is deleted.
