The State-Owned Enterprises Act 1986: Accountability?

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The State-Owned Enterprise policy of the present Government has fundamentally affected New Zealand's constitutional and business arrangements. This short article summarises and draws together the various mechanisms that constitute the SOEs' accountability structure. These mechanisms include: the principles of the SOEs Act enforced through judicial review; the organisation of SOEs in company form; Audit Office scrutiny; ministerial responsibility; Parliamentary scrutiny, disclosure and reporting requirements; as well as the operation of the Official Information Act 1982, the Ombudsmen Act 1975 and Parliamentary select committees. The overall structure attempts to balance commercial efficiency and public accountability. The conclusion is that the SOEs' accountability structure is more coherent and extensive than many commentators either realise or acknowledge. Whether or not the structure is judged "adequate" by the New Zealand public remains an open question.

"An Act to promote improved performance in respect of Government trading activities and, to this end, to -

(a) Specify principles governing the operation of State enterprises; and
(b) Authorise the formation of companies to carry on certain Government activities and control the ownership thereof; and
(c) Establish requirements about the accountability of State enterprises, and the responsibility of Ministers"

- Long title, State-Owned Enterprises Act 1986.

I. ISSUES [1]

The State-Owned Enterprises Act 1986 (SOEs Act) is one of the most significant pieces of legislation of the Fourth Labour Government's first term of office. The policy it enacted has effected change in New Zealand's constitutional and business arrangements. It has engendered intense political, cultural and philosophical debate. It directly affects thousands of New Zealanders and the use of millions of dollars' worth of

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1 For a more comprehensive account of the issues touched on in this note, see the writer's "State-Owned Enterprise Accountability: An Economic Analysis of Politics and Profit" (1987) LL.M Research Paper for Administrative Law, V.U.W. Faculty of Law, completed in partial satisfaction of the LL.B. (Hons) degree.

directly affects thousands of New Zealanders and the use of millions of dollars' worth of resources. The Act's relevance has not diminished. It has been amended five times and a further important amending Bill is currently before Parliament.[2] It has been interpreted on at least three occasions by the High Court and once, in a landmark case, by the Court of Appeal.[3] It now signals the direction of further policy and legislative changes. The evolution of State-Owned Enterprises (SOEs) marks a new stage in the development of New Zealand's constitutional and economic history.

The central issue of the SOE exercise is that of accountability. Some public commentators allege deficient accountability generally or criticise specific aspects of SOE operation which implicitly are also accountability issues. The general accountability structure of the SOEs is a framework of institutions and influences which surrounds the actors involved in the operation of each enterprise. The impact of the framework on the behaviour of the actors, as motivated by their incentives, determines the shape of the practical operation of the SOEs. In this way it is the operation of the SOEs within their accountability structure that is pivotal to the success of this "bold new experiment".[4]

This article briefly examines the SOEs Act through the lens of accountability. The Act is divided into four parts: Part I, Principles; Part II, Formation and Ownership of new SOEs; Part III, Accountability; and Part IV, Miscellaneous. These provide a convenient focus on the various elements of the general SOE accountability structure.

II. PRINCIPLES FOR SOES - PART I OF THE ACT AND JUDICIAL REVIEW

Inefficiency in state trading activities is the "mischief" at which the SOEs Act is aimed. This is legislatively captured in the long title of the Act, quoted above.[5] Significant state trading activities were often undertaken by public servants in government departments; subject to direct and theoretically complete ministerial direction. Contrary management decisions, continuous and increasing losses, excess

2 It has been amended by the SOEs Amendment Act 1987, the Finance Act 1987 and the SOEs Amendment Acts (No.s 1,2 & 3) 1988 The Bill before Parliament at the time of writing is the Treaty of Waitangi (State Enterprises) Bill.

3 *The New Zealand Maori Council* v. *Attorney-General* (1987) 6 N.Z.A.R. 353 (C.A.); *Poverty Bay Electric Power Board* v. *Electricity Corporation of New Zealand Ltd.* (1987) Unreported, Wellington Registry, CP552/87 (HC); *Clutha Leathers Ltd.* v. *Telecom Corporation of New Zealand Ltd.* (1987) Unreported, Dunedin Registry, CP120/87 (HC);*Wellington Regional Council* v. *Post Office Bank Ltd.* (1987) Unreported, Wellington Registry, CP720/87 (HC).

4 Geoffrey Palmer *Unbridled Power: An Interpretation of New Zealand's Constitution and Government* (2 ed., Oxford University Press, Auckland) 90.

5 *The New Zealand Maori Council* v. *Attorney-General,* supra n.3, 356 (Cooke P.), 383-384 (Richardson J.)

Economic analyses identified the causes to lie in the incentives faced by actors in the enterprises.[7] SOEs are inherently part of government and may be used to achieve governmental purposes. Yet as trading enterprises they also have another purpose - to operate commercially. This is the universally basic tension at the heart of SOEs. The SOEs Act seeks a more appropriate balance between public accountability and commercial efficiency. It introduces commercial efficiency incentives by providing for the formation of SOEs as companies under the Companies Act 1955 but subjects them to an overlay of public accountability. Eleven new SOEs that were departments now operate under the SOEs Act.[8] Five existing corporations were also brought within most aspects of the SOEs Act, though two have subsequently been removed.[9] Note that certain public regulatory functions are also conferred on new SOEs by legislation specific to each.[10] This article does not deal with the SOE specific legislation.

The first and most basic statement of the principles underlying the SOE exercise was made in December 1985.[11] It foreshadowed separation of responsibility for non-commercial functions from SOEs which, with no special advantages or disadvantages, were to be managed as successful businesses by managers accountable for results to

the factual development of SOEs generally see: Peter McKinlay *Corporatisation: The Solution for State Owned Enterprise?* (Victoria University Press for the Institute of Policy Studies, Wellington, 1987); and Institute of Policy Studies, *Politicians, Public Servants and Public Enterprise: Revolution in Executive Power,* Papers Presented at the Seminar on 18 June 1987, (Victoria University of Wellington, 1987).

7 Much official analysis leading to the SOE policies uses law and economics - an increasingly distinct discipline in the United States. Public New Zealand examples in the SOE area include: R.L. Cameron & P.J. Duignan "Government Owned Enterprises: Theory, Performance and Efficiency" Paper to the New Zealand Association of Economists Conference, 8 February 1984, (Wellington); Stephen Jennings, "State Owned Enterprise Agency Issues" Paper presented to the Institute of Policy Studies Conference on "Corporatisation and Privatisation: Completing the Revolution?" Wellington, 3 September 1987; and The Treasury, *Government Management: Brief to the Incoming Government 1987,* Vol. I, (The Treasury, Wellington, 1987) pp. 96 - 120.

8 The initial nine new SOEs are: Airways Corporation of New Zealand Ltd.; Coal Corporation of New Zealand Ltd.; Electricity Corporation of New Zealand Ltd.; Government Property Services Ltd.; Land Corporation Ltd.; New Zealand Forestry Corporation Ltd.; New Zealand Post Ltd.; Post Office Bank Ltd.; and Telecom Corporation of New Zealand Ltd. The Government Computing Service Ltd. and the Works and Development Services Corporation (NZ) Ltd. have since been added.

9 Air New Zealand Ltd., Petroleum Corporation of New Zealand Ltd., New Zealand Railways Corporation, Tourist Hotel Corporation of New Zealand, and the Shipping Corporation of New Zealand Ltd. Petrocorp was removed from the list by the SOEs Amendment Act 1987 and Air New Zealand by the Finance Act 1987, in both cases to allow (initially) partial privatisation.

10 Eighteen Acts were passed in June and July 1987 that were the State Enterprises Restructuring Bill.

11 Hon. R.O. Douglas, *Economic Statement to the House of Representatives,* 12 December 1985, (Government Printer, Wellington, 1985) 12.

The first and most basic statement of the principles underlying the SOE exercise was made in December 1985.[11] It foreshadowed separation of responsibility for non-commercial functions from SOEs which, with no special advantages or disadvantages, were to be managed as successful businesses by managers accountable for results to ministers and Parliament. Transparency, competitive neutrality and accountability are convenient labels for these concepts. They are reflected in Part I of the SOEs Act. Section 4 provides that the principle objective of SOEs shall be to operate as a successful business - being as profitable and efficient as comparable private sector businesses, being good employers, and exhibiting a sense of social responsibility. Sections 5 and 6 outline the functions and accountability of directors and the responsibility of shareholding ministers respectively. Section 7 requires an agreement on Crown payment to an SOE for any non-commercial activities it is to undertake. Section 8 invokes an industrial relations regime. The now famous section 9 provides that "nothing in this Act permits the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi."

As may be expected such statements of broad principle have attracted litigation by those who quarrel with a particular application of them in practice. In *New Zealand Maori Council* [12] the Court of Appeal was concerned solely with the effect of section 9 though Richardson J. used the inclusion of section 9 in Part I as an indication of the importance accorded it.[13] The Court of Appeal made it clear that section 9 is a principle that overrides all other provisions of the Act and constitutes a general supplement to section 27 which imposes particular procedures for Maori land claims. The Court delivered itself of highly significant statements on several matters.[14] The two important points for this article however are that in appropriate circumstances a Part I principle may be given effect by means of judicial review and that the Treaty of Waitangi, through section 9, has "the impact of a constitutional guarantee within the field covered by the SOEs Act".[15]

Although their importance attracts litigators' attention the subject matter and wide scope of the Part I principles encourages little success unless a clear breach is apparent. As principles they are broad guidelines to a system; not weapons with which to challenge particular decisions.[16] This is emphasised by section 21 of the Act which

11 Hon. R.O. Douglas, *Economic Statement to the House of Representatives,* 12 December 1985, (Government Printer, Wellington, 1985) 12.

12 Supra n.3.

13 Ibid., 383. N.B., the actual sentence in the judgment is wrongly constructed.

14 R.P. Boast, "*New Zealand Maori Council* v. *Attorney-General* : The Case of the Century?" (1987) N.Z.L.J. 240.

15 Supra n.3, 364, (Cooke P.). See the Treaty of Waitangi (State Enterprises) Bill for the legislative upshot of the case.

16 In Wellington *Regional Council* v. *Post Office Bank Ltd.,* supra n.3 the High Court found that a decision under s.7 is not a statutory power of decision per the Judicature Amendment Act 1972 and should not be under the supervision of the Court (p.11). Greig J. also considered that the three matters in s. 4 require balancing but that, however examined, the section was not breached on the facts (pp. 14-17).

Part I contributes to coherence and is valuable to statutory interpretation by the courts. This attempt to legislate the objects of the reform exercise acts as an accessible and authoritative reference point and such a trend in drafting should be encouraged.

III. SOES AS COMPANIES - PART II OF THE ACT

Part II allows the formation of new SOEs as companies under the Companies Act 1955, the voting shares to be held by two shareholding ministers: the Minister of Finance and the responsible minister.[17] Use of the Companies Act invokes an established and detailed accountability framework and, furthermore, reflects the principle of competitive neutrality.[18] Company law largely applies to new SOEs as it does to ordinary companies. Section 30 of the SOEs Act adjusts certain technical provisions of the Companies Act but the major exception to competitive neutrality is non-transferability of control. Section 11(1) prevents a minister disposing of shares (other than non-voting, non-convertible, redeemable preference shares) in a new SOE. It appears, though, that the SOEs Amendment Act 1987, in amending section 10(1) of the Act, may have made room for a technical argument that an initial allocation of shares in a newly established SOE can be made to a third party.[19] In this case, however, amending legislation would still be necessary to bring the enterprise under the SOEs Act.

There are several consequences of non-transferability. Only the shareholding ministers (who form the quorum) may vote at company meetings though all shareholders (including Equity Bond holders) are entitled to receive company notices, reports and accounts and to attend general meetings.[20] No takeovers are possible without legislative amendment; which removes an influence for efficient management much lauded by some economists.[21] Section 12 provides for the issue of Equity Bonds, a financial instrument specific to SOEs that is equivalent to non-voting shares.[22] This provides the new SOEs with "equity" without transferring control. They are: non-voting; transferable; and deemed to be shares for the purposes of the Companies Act

17 After the 1987 General Election the Hon. R.W. Prebble took a new portfolio as Minister for State-Owned Enterprises as well as having responsibility for many enterprises that were not (at that time) under the Act.

18 This is not to say that Company law generally is not in need of reform. E.g. *Company Law,* NZLC PP5 (Preliminary Paper/Law Commission, Wellington, 1987).

19 This depends on the construction of s. 11(1)(b): "No minister who is a shareholder . . shall - (b) permit shares . . to be allotted to any person other than a shareholding Minister."

20 Article 7.5 for the new SOEs. The right to attend meetings is subject to any direction to the contrary by the company in general meeting.

21 E.g. Jennings, supra n.7.

22 A description approved by the Hon. R.O. Douglas in written answer to Question 5 on 2 July 1987, N.Z. Parliamentary Debates, Vol. 482, 1987; 10,220. The issue must be authorised by a resolution of the House of Representatives per Section 12(1) of the SOEs Act.

provides the new SOEs with "equity" without transferring control. They are: non-voting; transferable; and deemed to be shares for the purposes of the Companies Act 1955, the Securities Act 1978, and the Income Tax Act 1976.[23] Holders of Equity bonds are shareholders (except for the purposes of the SOEs Act) and members of the SOE.[24] The bonds may go some way towards substituting for some of the efficiency inducing effects of transferable ordinary shares, though they are inherently inferior securities.[25] The Government has indicated that Equity Bonds will be issued by some SOEs in the near future and possibly listed on the New Zealand Stock Exchange.[26]

The internal constitution of the new SOEs is also of relevance to accountability. Most of the new SOEs' articles (which are all identical) are standard. Article 14.3.1 is, if anything, slightly broader than article 80 of Table A in allocating the power of management to the directors. The more significant shareholder powers exercised by voting concern the shares, directors, dividend and sale of the main undertaking. Apart from these the articles prevent the shareholding ministers from exercising significant power in the operation and management of the company. Of course, in theory this could be easily changed by the shareholders passing a special resolution to change the articles.[27] In practice severe problems in the shareholder-director relationship might well occur.[28] Since the two ministers own the voting shares there is no legal problem for them in enforcing director's duties to the company. Equity Bond holders and redeemable preference share holders do have such a problem though they (and shareholding ministers) may use section 209 of the Companies Act to gain a "remedy in case of oppression" if a court thinks it would be "just and equitable" to grant one.

Finally, there is no difference between SOEs and ordinary companies in the content of material required *by company law* to be disclosed. Section 19 of the SOEs Act provides that the Audit Office, in addition to any other auditor appointed, shall be the auditor of all SOEs and may exercise the functions, duties and powers of an auditor appointed under the Companies Act as well as the powers it has under the Public Finance Act 1977 in respect of public money and public stores. From the perspective of company law, competitive neutrality is violated by this extra accountability. The broader issue is whether competitive neutrality or accountability should outweigh the other.

must be authorised by a resolution of the House of Representatives per Section 12(1) of the SOEs Act.

23 Other characteristics may be specified in the authorising resolution or determined by the shareholding ministers - s. 12(2)(e).

24 Concerning status as members: section 39 of the Companies Act 1955 and the definition of "member" in article 1.2.1.

25 Jennings, supra n.7.

26 *Budget 1987, Pt I Speech,* New Zealand Parliament. House of Representatives. 1987, B.6: 12.

27 Section 24 of the Companies Act 1955; and complying with the disclosure requirements of s. 17(1) of the SOEs Act.

28 Infra n.33 re the problems over the commercial monitoring regime.

IV. THE SHAREHOLDING MINISTERS - BEHIND THE ACT

An important, but somewhat hidden, aspect of public accountability is flagged by section 6 of the SOEs Act. Ministerial responsibility was the cornerstone of accountability in pre-SOE government departments.[29] It was roundly and widely criticised by many commentators as outmoded and inadequate. It may come as somewhat of a surprise therefore to find that ministerial responsibility, and the accompanying parliamentary scrutiny remains an integral part of SOE accountability. This writer is of the opinion that the efficacy of ministerial responsibility, which is admittedly imperfect, is unjustly maligned. Debate over the necessity and circumstances of resignation focusses on merely one (extreme) sanction without regard to other, more salient political effects of the doctrine.[30] Be that as it may this article is concerned with the application of ministerial responsibility to SOEs.

Compared with government departments the scope of ministerial responsibility is narrowed in relation to SOEs. Section 5 provides that the directors of an SOE are accountable to the shareholding ministers for all SOE operational decisions in accordance with the Statement of Corporate Intent. Section 6 provides that "the shareholding ministers shall be responsible to the House of Representatives for the performance of the functions given to them by this Act or the rules of the State enterprise" - a rare, and necessarily broad legislative invocation of ministerial responsibility. The idea is that a minister's attention is focussed, by responsibility, on the broader policy and non-commercial decisions surrounding SOE performance rather than particular commercial operational decisions concerning which a minister, and his or her department, has little knowledge or professional ability. This policy has been attacked as distancing politically dangerous matters from ministers. This may be true in some circumstances but as outlined below there remain more matters for which a minister is responsible than might be expected.[31]

Shareholding ministers are responsible, qua shareholders, for monitoring their SOE. In general the extent and degree of closeness of monitoring are matters for the individual shareholders and the SOEs Act provides ample scope for any sort of shareholder monitoring regime to be instituted. A Treasury proposal, "approved in principle" by

29 John Roberts, *Politicians, Public Servants and Public Enterprise: Restructuring the New Zealand Government Executive* (Victoria University Press for the Institute of Policy Studies, Wellington, 1987).

30 *State-Owned Enterprise Accountability: An Economic Analysis of Politics and Profit,* supra n.1.

31 For a contrary view see Sandra J. Davies, "State-Owned Enterprises Act: Accountability of State Enterprises and Responsibility of Ministers" (1987) 10(2) Public Sector 2; and Graham Taylor, "State-Owned Enterprises Accountability to Parliament" (1987) 10 T.C.L. 16 (431). Also see Jonathan Boston, "Some Reflections on Ministerial Responsibility, Political Accountability, and State-Owned Enterprises in New Zealand", Paper delivered at Institute of Policy Studies seminar, supra n.6.

Cabinet was released for public discussion on 10 June 1987 and encountered vehement criticism by the SOEs.[32] It provided for a relatively high degree of ex post monitoring of SOE performance by officials, plus trigger reporting mechanisms on the occasion of a cause for major concern, and periodic in-depth reviews of performance. SOE boards were concerned that this was too close a degree of scrutiny to allow an arms' length relationship between politics (and officials) and management. From an accountability perspective, the shape of the finally determined regime will be important to the operation of ministerial responsibility.

As discussed in Parts II, III and V of the article, shareholding ministers are also responsible for certain management and public accountability monitoring matters under the SOEs Act and the articles of association. Ministers other than those holding shares may also have responsibilities in relation to SOEs. The most obvious is where the Crown negotiates with an SOE for the undertaking of transparent non-commercial activity under section 7 of the SOEs Act. A minister may be in charge of administering general regulatory law that applies to SOEs and ministerial decisions taken under a specific regulatory regime also involve ministerial responsibility. To the extent that officials are involved in the administration of these regimes, ministers are responsible for them. Finally Cabinet as a whole is involved in SOE matters, to which the creation of the standing Cabinet Committee on State-Owned Enterprises in 1987 attests. For good or ill, principles of collective responsibility operate in relation to SOEs.

It is true then, that ministerial responsibility is narrowed in relation to SOEs. Yet the matters for which responsibility is lost concern commercial management; and the distancing of those matters from political control is exactly the point of the SOE exercise!

V. ACCOUNTABILITY MECHANISMS - PART III OF THE ACT AND BEYOND

Part III of the SOEs Act, headed "Accountability", requires information disclosure and reporting to Parliament. As specific accountability mechanisms this supplements the company law framework and inherent principles of ministerial responsibility. It has been identified by the Government, and observers such as the Auditor-General, as a major component of the accountability structure of SOEs.[33] The most substantive documents required to be laid before the House of Representatives are: the Statement of Corporate Intent (SCI); the annual report; the financial accounts; the auditor's report; and the half-yearly reports. What information will be disclosed? Section 20 provides that nothing in the SOEs Act requires the inclusion in any of these documents of information that could be withheld under the Official Information Act 1982. There are

32 The Treasury, *Commercial Performance of State-Owned Enterprises: Principles for Shareholder Monitoring,* (Wellington, 1987). See *Corporatisation and Privatisation: Completing the Revolution?* Papers presented at a Seminar held on 3 September 1987, (Wellington, 1987).

33 Palmer, supra n. 4, 87.

some statutory requirements as to content and there are powers to require certain information to be in the documents. They are presented in Table 1.

TABLE 1: DISCLOSURE UNDER THE SOEs ACT

Section	Information to be Disclosed
Statement of Corporate Intent - section 14	
(2)	Specify for the Group (SOE & subsidiaries) for the current and next 2 financial years:
(a)	Objectives
(b)	Nature and scope of activities.
(c)	Ratio of consolidated shareholders' funds to total assets, and definitions.
(d)	Accounting Policies
(e)	Peformance Targets
(f)	Estimate of intended distribution of profits and reserves to the Crown.
(g)	What information is to be provided to the Shareholding ministers.
(h)	Procedures for an SOE acquiring any company or other organisation
(i)	Activities for which the board seeks compensation.
(j)	Board's estimate of commercial valute of Crown's investment and manner of reassessment.
(k)	Such other matters as are agreed by the Shareholding Ministers and the board.
(4)	The SCI may be modified by the board using the same procedure as for the SCI proper.
13(1)(a)	The shareholding ministers may direct inclusion in or omission from the SCI of any provision of a kind referred to in s.14(2)(a) to (h).
Annual Report - section 15	
(1)(a)	A report of the operations of the SOE and subsidiaries.
(2)(a)	Such information as is necessary to enable an informed assessment of the operations of the SOE and subsidiaries, including a comparison of the performance of the SOEs and subsidiaries with the SCI.
(2)(b)	The dividend payable to the Crown for that year.

Accounts - section 15

(1)(b) Audited consolidated financial statements for the financial year consisting of:
- statements of
  - financial position
  - profit and loss
  - changes in financial position
- such other statements as may be necessary to show
  - the financial position of the SOE and subsidiaries
  - the financial results of their operations.

Half-Yearly Report - section 16

(2) Such information as required by the SCI.

Other Information - section 18

(1) Such information relating to the affairs of the SOE (or subsidiary) as the shareholding ministers requests after consultation with the board.
(except, under subs.(2) information about, and enabling the identification of, individual employees and customers.

Due to the short period of commercial operation of the SOEs and transitional circumstances it is difficult to assess the level of detail of information that will actually be disclosed under these sections. The 1987 SCIs for the nine new SOEs vary in length from 3 to 7 pages plus annexes. Though elements of the required information are absent due to the incomplete status of asset valuations and other establishment actions the overall impression of the content of the SCIs is that there is much discretion as to what to disclose. Degree of disclosure varies from SOE to SOE. Most provide more than required in some areas and the bare minimum in others. The information required gives some idea of the general character and directions of an SOE and of aspects of its operations. Detail need not be and often is not disclosed. The SCI gives the flavour of an SOE, not the recipe.

There are other public accountability mechanisms for SOEs. The Official Information Act is one that also concerns disclosure of information. It applies, as amended in 1987, to all new and old SOEs (including Air New Zealand which has been removed from the SOEs Act).[34] Section 9(2)(b)(i) and (j) provide the most relevant criteria for SOEs withholding information. The Ombudsmen's jurisdiction to investigate, report and recommend also extends to new SOEs.[35] However the application of both the Official Information Act and the Ombudsmen's jurisdiction is subject to an interesting, legislatively required, review. Section 31 of the SOEs Act

34 Under the Third Schedule of the SOEs Act, and now s. 23(1) of the Official Information Amendment Act 1987.

35 Third Schedule of the SOEs Act.

requires a select committee appointed by the House of Representatives to review the operation of that application, to report to the House of Representatives before 1 April 1990, and to state in its report whether such application should continue and, if so, what changes should be made to it. This is a constitutionally fascinating example of legislation in respect of a select committee: Parliament purporting to bind a presently unconstituted committee of a future Parliament. It is also a reminder of a further agency for SOE scrutiny: select committees. The enlarged powers and terms of reference of select committees constitute them as a powerful force indeed.[36] The terms of reference are intended to cover, and are interpreted by select committee officers to cover, SOEs and in any case challenging the jurisdiction of committees can be a touchy course.[37] Their practical effect will depend on political judgements as to the relative merits of allocating scarce time and resources to SOE matters. Knowledge, time, skills and experience are on the side of the SOEs.

VI. CONCLUSIONS: ACCOUNTABILITY AND THE FUTURE OF SOES

Are SOEs accountable? Several accountability mechanisms have become evident in the course of this article: statutory principles; judicial review; company law; Audit Office scrutiny; ministerial responsibility; parliamentary disclosure and reporting requirements; the Official Information Act 1982; the Ombudsmen's jurisdiction; and Parliamentary select committees. This is a more extensive structure than many commentators either realise or acknowledge. It is certainly a structure that has been deliberately fashioned to be comprehensive and coherent in a way that most state trading enterprises organised along departmental lines never knew.

The structure is predicated on the need to find an appropriate balance between commercial efficiency influences and political accountability influences. Some argue instead that this distinction does not represent opposite ends of a continuum but two discrete, and mutually exclusive alternatives. This implies a choice of policy options between departmental organisation and full privatisation.[38]

Whether the accountability structure is "adequate" or "sufficient" depends on the particular criteria used to judge such concepts. It is clear by the continuing intense public interest in this question that a public judgement on the accountability of SOEs will only slowly emerge, if it does at all, as a coalescence of presently diverse opinions. Further reform will be the best indication of that judgement.

36 Standing Orders 322, 326, 358 and 360.

37 The most recent, detailed consideration of select committees' terms of reference is found in: ***Public Expenditure Committee: Report on Inquiry into Devaluation,*** New Zealand Parliament. House of Representatives. Appendix to the Journals, Vol. 12, I.12.C.

38 G.W. Jones "Privatisation: Reflections on the British Experience" The First National Advanced Systems Lecture, delivered at the seminar ***Corporatisation and Privatisation,*** supra n.7.