

**PUBLIC AND ADMINISTRATIVE
LAW REFORM COMMITTEE**

NINETEENTH REPORT

**GOVERNMENT DIRECTIONS
TO
STATUTORY BODIES**

Wellington, New Zealand

PUBLIC AND ADMINISTRATIVE LAW REFORM COMMITTEE

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GOVERNMENT DIRECTIONS TO STATUTORY BODIES

A. INTRODUCTION

1. In June 1981 the Public and Administrative Law Reform Committee began a study of statutory provisions that enable the Government to give policy directions to tribunals and independent administrative bodies.

B. SCOPE OF THE STUDY

2. The scope of the study is determined by two matters—
 - (a) the existence of a statutory power exercised by the Government, usually through a Minister, to give directions; and
 - (b) the character of the body that receives the direction—a tribunal or independent administrative body established with power to decide or to carry out certain public activities.
3. The first of these characteristics means that the Committee has not examined the provisions of the relevant statutes which commonly require such bodies to “have regard” to the policy of the government, on the basis either of the bodies’ own knowledge of that policy or of a communication of it from the government. The Committee notes, in respect of such provisions, that that policy must be consistent with the relevant statute and known to those who may be affected by its use. The particular powers with which the Committee is concerned are powers in effect to make law in that they limit the authority of the tribunal or body in question. The tribunal must decide in accordance with that direction. The independent administrative body must carry out its function in accordance with that direction.
4. The second characteristic means that the Committee is concerned with bodies separate from the Government, set up as tribunals or as independent public agencies with members appointed from outside the executive branch of government. That is to say the Committee is not concerned with the regular relationship between a Minister and the Minister’s department and officials. In the normal case that relationship is governed by the legal and constitutional responsibility of the Minister for the work of the department and official and by the Minister’s power to direct the department and officials. Rather the Committee’s concern is with the situation in which Parliament has established the tribunal or other independent body to make decisions or take actions on its own responsibility in a particular area of policy.

5. The co-existence of these two characteristics creates a tension. On the one hand Parliament has established a body, distinct from the Government, with powers to decide or act. On the other it has reserved to the Government the power to intervene in some measure in the work of the tribunal or other body. The Committee notes here that the relationship between the Government and the tribunal or body extends beyond the power to give directions. Thus in the normal case the Government will have powers of appointment and possibly of removal of members. It may have significant control over the budget of, and particular expenditure by, the body. It may control overall levels of staffing. It may have the power to consent to particular activities, and it may sometimes have the power to make regulations relevant to the work of the body. It always of course retains the power to initiate legislation changing the rules under which the body works. In addition there are of course informal contacts between the relevant ministers and officials and the tribunal or body. In respect of all these matters there is a tension between the autonomy of the body and the Governmental interest.

6. In determining just how that tension is to be dealt with in particular cases those responsible no doubt have regard to the reasons why a separate body with some independence was established. Reasons include:
 - (a) The Government may want to have specific decisions in a particular area of industry made by an independent body and not by the Government; consider for example the licensing of fisheries and broadcasting;
 - (b) The particular area of activity may be seen as one that is so very sensitive to political influence that it must be placed at some distance; broadcasting is an example;
 - (c) Some particular areas of activity may be seen as ones which should be essentially subject to the control of the interests immediately affected, with, nevertheless, the Government retaining some hand; consider the Producer Boards;
 - (d) The Government may consider that a particular area of public activity can be carried on more effectively as a commercial concern if there is some degree of autonomy; Railways and the Development Finance Corporation are instances;
 - (e) The particular area of administration may be one that should involve local representation along with some central Government input; consider for example Area Health Boards and Hospital Boards.

7. The question of whether statutory powers to give policy directions are desirable is outside the scope of the reference which the Committee received from the Minister.
8. The study has two aims. The first is to determine a set of desirable characteristics to which all directions should conform. The second, subsidiary, aim is to consider what difficulties may occur when an enactment which empowers the Government to give policy directions also provides a right of appeal to the High Court.
9. The Committee has identified 35 provisions which require an administrative body to comply with Government policy directions. Of these provisions, nine relate to bodies from whose decisions a right of appeal lies. In two of these the appeal lies to an appeal board, in one to a District Court, and in six to the Administrative Division of the High Court. These bodies are named in the First Schedule. The remaining 26 bodies, from which there is no right of appeal, are named in the Second Schedule.

C. CHARACTERISTICS OF GOVERNMENT POLICY DIRECTIONS

10. In May 1982 the Committee sent a questionnaire to Government departments and statutory bodies affected by legislation containing provision for policy directions. The questionnaire invited comment on whether policy directions should conform with the following four characteristics:
 - (a) Directions should be given only by a Minister of the Crown;
 - (b) Directions should be given in writing;
 - (c) Directions should be published in the Gazette and laid before the House of Representatives as soon as practicable after they are given;
 - (d) Directions should be restricted to considerations of general policy.
11. The Committee received a number of helpful responses.

Directions should be given only by a Minister of the Crown

12. At present, all directions are required to be given by the appropriate Minister. There is general agreement amongst the departments and bodies questioned that this is a desirable characteristic of policy directions. Authority to give policy directions should be excluded from any power of delegation, though we note the practice of one Minister acting for another, which is authorised by section 25 (e) of the Acts Interpretation Act 1924.

13. In some cases, such as the Ministry of Agriculture and Fisheries, a Parliamentary Under-Secretary often stands in for the Minister. This is authorised under the Civil List Act 1979 and is unobjectionable. In other cases a Minister delegates to another Minister power to give policy directions. The Rural Bank is an example.
14. Under the Hospitals Act 1957 and the Area Health Boards Act 1983, a notice to a Hospital Board or an area health board of a policy direction may be signed by the Director-General of Health, and, in the absence of proof to the contrary, this is sufficient evidence that the direction was given by the Minister of Health. Provision for such a presumption is undesirable. Because of the importance of such directions, and to avoid the possibility of misinterpretation, policy directions should be signed by the Minister.
15. In some cases Government policy may be conveyed by the permanent head or one of his assistants. The Committee considers that this does not bear on the issue at hand. It is acceptable for a policy direction, once given by the Minister in writing, to be conveyed to the relevant body by officials from the Minister's department. This does not affect the requirement that the policy direction be actually given by the Minister. The Committee considers that this requirement should be adhered to in all cases.

Directions should be given in writing

16. In seven of the statutory provisions there is no requirement that the policy direction be given in writing. There is general agreement among the departments and bodies questioned that such a requirement is desirable. The Ministry of Agriculture and Fisheries is an exception. It stated that directions are often given orally, and while it agrees that the fact that a policy direction has been given should be recorded in writing, it did not accept that it must be given in writing.
17. Where a policy direction has been given, and what its terms are, must be beyond doubt. For that reason the Committee considers that legislation should always provide that policy directions be given in writing. The Committee is not persuaded that it is sufficient that the direction be recorded in writing.

Directions should be published in the Gazette and laid before Parliament as soon as practicable after they are given

18. Fourteen of the enactments examined require that a direction be published: in one instance by the Minister laying it before Parliament; in one instance by the Minister causing it to be published in the Gazette; in three instances by the Minister both causing it to be

published in the *Gazette* and laying it before Parliament; and in nine instances by noting it in the body's annual report. Section 20 of the *Broadcasting Act 1976* gives the *Broadcasting Corporation* a discretion whether or not publicly to announce that it has received a policy direction. This does not affect the Minister's obligation to have it laid before Parliament and published in the *Gazette*.

19. A number of bodies concerned with financial and trading activities objected to the proposal that policy directions be published. For example, the *Bank of New Zealand* considered that it would be inappropriate for commercial and competitive reasons to publicise any policy directions that it might receive. This view was endorsed by the *New Zealand Apple and Pear Marketing Board*, *State Insurance* commenting on the *Export Guarantee Office*, the *Reserve Bank* commenting on the *Overseas Investment Commission*, and the *Ministry of Transport* commenting on the *Shipping Corporation of New Zealand Limited* and on the *New Zealand Railways Corporation*.
20. The Committee accepts that a problem can arise in the application of the publication rule, where immediate publication could be inimical to economic or commercial interests. This might apply in the case of bodies engaged in commercial competitive enterprises, such as the *Bank of New Zealand*, and the *New Zealand Railways Corporation*. The Committee agrees with the view expressed by the *Treasury* that such directions can generally be drafted in a manner to ensure that commercially sensitive information is not released.
21. The Committee also received submissions to the effect that the proposal requiring publication in the *Gazette* and tabling in Parliament involved unnecessary formality. It considered these objections but concluded that, in general, policy directions should be published in both those ways. There are three reasons for this conclusion. First, to avoid delay in publication. Secondly, to highlight the Minister's accountability to Parliament. Thirdly, any party making an application to a body should be aware of any limitations on that body's decision-making authority. Publication should take place as soon as practicable after the direction is given. The Committee does not favour placing a specific time limit on the publication and laying before Parliament.
22. The Committee, in its questionnaire, expressed the view that the publication of a policy direction in a body's annual report is not of itself an adequate form of publication, for two reasons. First, because of the possibility of a long delay between the issuing of the direction and the publication of the report. Secondly, because this provides insufficient opportunity for scrutiny by members of Parliament.

23. The Ministry of Agriculture and Fisheries disagreed with the second reason given above, stating that recording a policy direction in an annual report was the proper way to achieve accountability to Parliament. The New Zealand Forest Service agreed that policy directions should be a matter of public record, but that on balance the best way of achieving this would be to compile a list of all directions given in one document, i.e. the annual report.
24. Although in principle the annual report is the appropriate place, in practice there is still the problem of delay between the giving of the direction and publishing the report. The Committee remains of the view that publication of a policy direction in an annual report is not of itself sufficient. Gazetting and laying before Parliament need not affect the option or obligation to record the direction in the annual report.
25. The Committee considers that the principles of natural justice require that the body to which the policy direction is given ensures that the direction is known to interested parties. For example, it is fundamental that a party making an application to a tribunal should be informed of any direction which might affect the decision.

Directions should be restricted to considerations of general policy

26. The enactments examined commonly authorise directions only in relation to "policy" or "general policy". In five of them there is a proviso that no direction may be given in relation to a particular complaint or application. However, some enactments authorise directions in respect of specific matters.
27. There were considerable differences of opinion amongst the bodies and departments responding to the questionnaire about what is a specific as opposed to a general policy.
28. It is difficult to draw a line between specific and general policy directions. However the Committee considers that although it may be acceptable for a policy direction to be given about a particular kind of situation in some instances, directions should not be given where they might interfere with:
 - (a) the duty of independent tribunals to act judicially; or
 - (b) the determination of individual applications, allegations or cases which relate to a particular person or organisation.

The Committee endorses the formula used in the proviso to section 68 (1) of the Broadcasting Act 1976, which provides:

“... nothing in this subsection shall be construed as authorising the Minister to give any direction in respect of any particular allegation or any particular complaint or that would derogate from the duty of the Tribunal to act judicially.”

29. The Reserve Bank submitted that it has no autonomy to decide or implement any monetary policy other than that decided upon by the Government of the day. Section 8 of the Reserve Bank of New Zealand Act 1964 is the relevant provision. The Committee considers that the power to give directions to the Bank which is conferred by the Reserve Bank Act 1964 falls outside the ambit of its inquiry. The Overseas Investment Commission also submitted that it does not come within the scope of this study. Although the Overseas Investment Commission Act 1973 provides for policy directions, in practice none are given because the Commission has not been given a decision-making role. In fact the Overseas Investment Regulations 1985 (replacing corresponding regulations of 1974) give the power of decision to the Minister, and the Overseas Investment Commission acts as the Minister's delegate. While that continues, the Overseas Investment Commission is outside the scope of this study. There are other special cases. The Liquid Fuels Trust Board and Export Guarantee Office are in that category.

Consultation and Review

30. The Committee has already pointed (in paragraph 5) to the tension created when an independent body is established which may have its decision-making powers limited by a policy direction given by Government. Because of the problems which could arise as a result, and the need for a fully informed decision, the Committee considers that before a direction is given the Government should, wherever practicable, consult with individuals and bodies likely to be affected by it.
31. The Committee considers that the consultation with interested parties and the requirement that policy directions be published, will act as constraints against unreasonableness in the formulation of such directions. However if the application of a policy direction leads to injustice, there are a number of avenues open to the aggrieved party. First, there is the possibility of judicial review by the High Court. Secondly, there is the possibility of review by the Ombudsman. The Ombudsman has the responsibility of reviewing the reasonableness of administrative decisions in individual cases, and recommending a remedy where necessary. The Ombudsman may seek to persuade the Executive that the application of a policy

direction in a particular case has resulted in injustice or even that the policy direction itself is unreasonable. However the Ombudsman has no power to require that such a recommendation be implemented. Thirdly, the aggrieved party may seek to have the policy direction altered through the normal political process. In the last two cases the power of decision is preserved to the Executive.

The Need for Flexibility

32. Both the Ministry of Agriculture and Fisheries and the Reserve Bank of New Zealand stressed the need for retaining flexibility in the process of decision-making. The Reserve Bank noted that often in economic and financial spheres individual directions will develop into general policies. While the Bank sympathised with the object of making Government directions clear, public, and consistent, it felt that the maintenance of flexibility should be the overriding consideration.
33. The Committee accepts that flexibility is necessary for the day-to-day administration of Government, and it has no wish to inhibit this. The Committee is not concerned with policy suggestions which arise out of informal discussions held between a Minister and a body, or which arise from a consensus, or which develop from following earlier precedents. Rather, it is concerned with the exercise by Ministers of the statutory power to give policy directions to tribunals and independent administrative bodies which limit the scope of their discretionary power. The Committee does not believe that any significant administrative problems or loss of flexibility will be caused by a general requirement that policy directions comply with the four characteristics identified in paragraph 10. In the one area where problems might arise (that of publication) the Committee accepts that there may be a need for exceptions to the general rule.

Appeals

34. As already noted, nine of the enactments identified by the Committee as containing a power to give policy directions to a statutory body contain provision for appeals. In two cases it is to an appeal board, in one case to the District Court, and in the remaining six cases the appeal is to the Administrative Division of the High Court.
35. None of the statutory provisions expressly state that the appellate bodies are bound to follow a policy direction. So far as the Committee can discover the issue has seldom been considered by the High Court. In the case of Laing v. New Zealand Milk Board (unreported, 14 July 1981) White J held that if the Milk Board was obliged to comply with Government policy, the Milk Appeal Authority must also comply. It is inferred from that judgment that

the only ground on which the High Court on appeal may question the application of a policy direction is that the direction is *ultra vires* the Act under which it is given. If it is *intra vires*, then its application cannot be questioned on the grounds that in a individual case it produces an unreasonable or inequitable result.

36. The Committee considers that this raises a constitutional issue of some importance. Is it desirable that the High Court should be bound by a policy direction, the application of which would lead to injustice? If it were not bound, would the outcome simply be that the first instance hearing would become a formality, inviting the parties to take the matter on appeal to the body with the unfettered discretion? Those are questions which ought to be considered whenever it is proposed to empower a Minister to give policy directions to a body from whose decisions an appeal lies to the High Court.

RECOMMENDATIONS

37. The Committee recommends as follows:
- (a) Directions should be given and signed only by a Minister of the Crown. Authority to give policy directions should be excluded from any power of delegation.
 - (b) Directions should be given in writing.
 - (c) Directions should be published in the *Gazette* and laid before the House of Representatives as soon as practicable after they are given. Exception to this should be made only where the public interest does not require immediate publication and publication would be inimical to economic or commercial interests.
 - (d) Directions should be restricted to considerations of policy, and should not be given where they might interfere with:
 - (i) the duty of independent tribunals to act judicially; or
 - (ii) the determination of individual applications, allegations, or cases which relate to a particular person or organisation.
 - (e) Before a policy direction is given, the Government should, wherever practicable, consult with individuals and organisations likely to be affected by the direction.
 - (f) Whenever it is proposed to empower a Minister to give policy directions to a body from whose decisions an appeal lies, consideration should be given to the constitutional status of the direction in the appellate tribunal.

- (g) Where necessary the enactments in the schedules should be amended to conform with the foregoing recommendations.

For the Committee



Chairman

Members of the Committee

Judge D. F. G. Sheppard (Chairman)
Mr S. G. Erber
Mr A. R. Galbraith
Mr W. Iles
Professor K. J. Keith
Sir George Laking
Ms J. E. Lowe
Mr E. A. Missen
Mr J. B. Robertson
Mr J. P. Smith (Secretary)

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FIRST SCHEDULE

POLICY DIRECTIONS IN ASSOCIATION WITH RIGHTS OF APPEAL

1. Accident Compensation Corporation
(Accident Compensation Act 1982)

“10. Commission to implement policy of the Government—(1) In the exercise of its functions and powers, the Corporation shall give effect to the policy of the Government in relation to those functions and powers as communicated to it from time to time in writing by the Minister.

“(2) A copy of every such communication shall be laid before Parliament as soon as practicable after it has been made by the Minister”.

Appeal

Appeals lie to the Appeal Authority against the decisions of the Corporation as to whether or not any person has suffered personal injury by accident. (s. 107). Section 111 provides an appeal to the Administrative Division of the High Court from that Authority. There is a further appeal by way of case stated on a question of law to the Court of Appeal in s. 112.

2. Agricultural Pests Destruction Council
(Agricultural Pests Destruction Act 1967)

Section 15

“(3) In the exercise and performance of its powers, functions, and duties under this Act the Council shall implement any decision of the Government in relation thereto that has been conveyed to it in writing by the Minister.”

Appeal

The Council has power to recommend to the Minister that a Board which fails to perform its duties should be abolished or have a new membership. The Board can appeal against such a recommendation to a District Court pursuant to s. 67.

3. Broadcasting Tribunal
(Broadcasting Act 1976)

“68. Tribunal to have regard to Government Policy—(1) In the exercise of its functions and powers under this Act, the Tribunal

shall have regard to the general policy of the Government in relation to broadcasting, and shall comply with any directions given by the Minister to the Tribunal by notice in writing pursuant to that policy:

“Provided that nothing in this subsection shall be construed as authorising the Minister to give any direction in respect of any particular allegation or any particular complaint or that would derogate from the duty of the Tribunal to act judicially.

“(2) As soon as practicable after the date of the notice, the Minister shall publish in the Gazette and lay before Parliament a copy of every notice under subsection (1) of this section.”

Appeal

“84. **Appeals**—(1) Where the Tribunal—

“(a) Refuses an application for a warrant; or

“(b) Refuses an application for the renewal of a warrant; or

“(c) Refuses an application for consent to any transaction requiring the consent of the Tribunal under section 82 of this Act; or

“(d) Amends a warrant; or

“(e) Refuses an application for amendment of a warrant; or

“(f) Revokes a warrant; or

“(g) Suspends a warrant; or

“(h) Reduces the term of any warrant; or

“(i) Imposes a monetary penalty on the holder of a warrant; or

“(j) Grants an application for a warrant in any case where the application was objected to at the hearing by a person who at the time of the hearing was the holder of a warrant—
the applicant, or the warrant holder, or the objector, as the case may be, may appeal to the High Court against the decision of the Tribunal.

“(2) Every appeal under this section shall be heard and determined by the Administrative Division of the High Court.

“(5) The Court shall hear and determine the appeal as if the decision appealed had been made in the exercise of a discretion.”

4. Commerce Commission (Commerce Act 1975)

“2A. **General objects**—(1) In the performance or exercise of their functions, powers, and duties under this Act, the Commission, Examiner, and the Secretary shall be guided by the following objects:

“(e) The economic policies of the Government as transmitted in writing from time to time to the Commission by the Minister and as published by him in the *Gazette*.”

Appeal

Two appeals from the decisions of the Commission are provided for (ss. 42 and 81). They are in the areas of restrictive trade practices and monopolies and both are to the Administrative Division of the High Court.

5. New Zealand Fire Service Commission
(Fire Service Act 1975)

“13. Directions by Minister—The Commission shall comply with all directions given by the Minister in writing with respect to the policy of the Government in connection with this Act.”

Appeal

Appeals lie from various decisions of the Commission affecting individual members of the fire service e.g. against an appointment, against transfer, and against dismissal. All appeals are determined by the Fire Service Appeal Board whose decisions are final.

6. Fisheries Authority
(Fisheries Act 1983)

“26. Authority to implement policy of Government—(1) In the exercise of its functions and powers under this Act, the Authority shall give effect to the policy of the Government in relation to those functions and powers, as communicated to it from time to time in writing by the Minister.

“(2) A copy of every communication under subsection (1) of this section to the Authority in any financial year of the Authority shall—

“(a) Be notified in the Gazette as soon as practicable after its receipt by the Authority; and

“(b) Be included in the annual report laid before Parliament under section 28 of this Act.”

Appeal

Appeals against decisions of the authority lie to the Administrative Division of the High Court (s. 49).

7. New Zealand Fishing Industry Board
(Fishing Industry Board Act 1963)

“12. Board to comply with general policy of Government—In the carrying out of its functions and the exercise of its powers under this Act the Board shall comply with the general policy of the Government of New Zealand in relation to the fishing industry, and shall comply with any general or special directions given by the Minister pursuant to the policy of the Government in relation thereto.”

Appeal

An appeal lies to the Administrative Division of the High Court against a decision of the Board refusing an application by a person for a licence (s. 35A).

8. Land Settlement Board
(Land Act 1948)

Section 13

“(2) In the exercise of its powers and functions under this Act the Board shall have regard to any representations that may be made by the Minister in respect thereof, and shall give effect to any decision of the Government in relation thereto conveyed to it in writing by the Minister”.

Appeal

An appeal lies to the High Court from any decision of the Board that a lessee or licensee of a lease or licence granted under the Act considers aggrieves him. This does not include appeals against valuation which lie to the Land Valuation Tribunal (ss. 123 and 140) and thence to the Administrative Division of the High Court. Appeals against the Board’s determination of 1942 basic value lie to the Land Valuation Tribunal (ss. 157 and 158). The decision of the Tribunal in this case is final.

9. New Zealand Milk Board
(Milk Act 1967)

“13. **Board to comply with general policy of Government**—In the exercise of its functions and powers the Board shall comply with the general policy of the Government in relation to the objects for which the Board is established and to the functions and powers of the Board, and shall comply with any general or special directions given by the Minister pursuant to the policy of the Government in relation thereto.”

Appeal

Appeals lie to the Milk Appeal Authority against decisions affecting milk vendors and against decisions affecting the establishment or operation of milk treatment stations. Decisions of the Authority are final (s. 57C). The Authority has power to state a case to the Administrative Division of the High Court (s. 57G).

SECOND SCHEDULE

POLICY DIRECTIONS IN ABSENCE OF RIGHT OF APPEAL

1. New Zealand Apple and Pear Marketing Board
(Apple and Pear Marketing Act 1971)

“10. Board to comply with general trade policy of the Government—In the exercise of its functions and powers the Board shall comply with the general trade policy of the Government of New Zealand and shall comply with any general or specific directions given by the Minister to the Board pursuant to the policy of the Government in relation thereto.”
2. Area Health Boards
(Area Health Boards Act 1983)

“37. Minister may give directions to boards—The Minister may from time to time give to an area health board such directions, not inconsistent with this Act or with any regulations made under this Act, as he considers necessary or expedient for the purposes of this Act.

“(2) It shall be the duty of a board to comply with all directions, conditions, and restrictions given to or imposed on it by the Minister under this Act; but no action for damages shall lie against a board at the suit of any person in respect of any failure of that board to comply with any such direction, condition, or restriction.

“(3) Notice of any direction or consent of the Minister under this Act shall be given to the board in writing, signed by the Minister or by the Director-General.

“(4) Any such notice purporting to be signed by the Director-General shall, in the absence of proof to the contrary, be sufficient evidence that the direction or consent to which it relates was given by the Minister.”
3. Board of Directors of the Bank of New Zealand
(Bank of New Zealand Act 1979)

“27. Representation by Minister to Board—(1) Subject to subsection (2) of this section, the Board shall—

“(a) Have regard to any representations that may be made to it by the Minister in respect of the business or activities of the Bank; and

“(b) Give effect to any direction of the Government that relates to any such representations and that is conveyed to the Board in writing signed by the Minister.

“(2) The Minister shall not make or convey to the Bank any representation or direction that relates to the account or accounts or banking affairs of any customer or customers, or prospective customer or customers, or group or class of customers, of the Bank.”

4. Broadcasting Corporation of New Zealand
(Broadcasting Act 1976)

“20. Corporation to have regard to Government policy—(1) In the exercise of its functions, duties, powers, rights, and authorities under this Act (including those which the Corporation may exercise, carry out, or perform only with the approval of the Minister or the Minister of Finance), the Corporation shall have regard to the general policy of the Government in relation to broadcasting or to the functions, duties, powers, rights, and authorities of the Corporation as that policy is communicated to the Corporation from time to time by notice in writing by the Minister, and shall comply with any directions given by the Minister to the Corporation by notice in writing pursuant to any such policy.

“(2) Nothing in subsection (1) of this section authorises the Minister to give a direction under that subsection in respect of—

- “(a) A particular programme or a particular allegation or a particular complaint; or
- “(b) The gathering or presentation of news or the preparation or presentation of current affairs programmes; or
- “(c) The power conferred on the Corporation by subsection (4) of this section or section 30A (4) of this Act; or
- “(d) The functions, duties, powers, rights, and authorities conferred on the Corporation by the following provisions of this Act, namely:
 - “(i) Section 17 (1) (b) (which relates to the giving of advice to the Minister):
 - “(ii) Section 18 (which relates to the delegation of functions and powers by the Corporation):
 - “(iii) Section 22 (a) (which relates to the operation of each Service as a public service):
 - “(iv) Section 24 (which relates to the responsibility of the Corporation for programme standards):
 - “(v) Section 27 (which relates to the New Zealand Symphony Orchestra):
 - “(vi) Section 29 (which relates to the *New Zealand Listener*):
 - “(vii) Section 30 (which relates to the powers of the Corporation in relation to publishing):
 - “(viii) Section 34 (which relates to contracts for the provision of services and programmes):
 - “(ix) Part VII (which relates to personnel):
 - “(x) Section 49 (1) (which relates to the giving of advice to the Government as to the rates of fees payable for broadcast receiving-station licences):
 - “(xi) Section 67A (which relates to decisions on complaints):
 - “(xii) Part XIA (which relates to complaints).

“(3) Where a direction given under subsection (1) of this section relates to a function, duty, power, right, or authority which may be exercised, performed, or carried out only with the approval of the Minister of Broadcasting or of the Minister of Finance, that direction,

in respect of the matter to which it relates, shall constitute the approval of the Minister of Broadcasting and, if it is expressed to be given with the concurrence of the Minister of Finance, the approval of the Minister of Finance.

“(4) The Corporation may, in its discretion, publicly announce or refrain from publicly announcing that a notice has been given to it under subsection (1) of this section.

“(5) Where a notice is given to the Corporation under subsection (1) of this section, the Minister shall, as soon as practicable after the giving of the notice, publish in the Gazette and lay before Parliament a copy of the notice.”

5. Building Performance Guarantee Corporation of New Zealand
(Building Performance Guarantee Corporation Act 1977)

“19. **Government policy**—(1) Notwithstanding anything in this Act, in the exercise of its functions and powers under this Act or any other enactment the Corporation shall give effect to the policy of the Government in relation to those functions and powers as communicated to it from time to time in writing by the Minister.

“(2) A copy of every communication given by the Minister in any financial year to the Corporation under subsection (1) of this section shall be included in the annual report of the Corporation to be laid before Parliament under section 33 of this Act.”

6. New Zealand Dairy Board
(Dairy Board Act 1961)

“15. **Board to comply with general trade policy of Government**— In the exercise of its functions and powers under this Act the Board shall comply with the general trade policy of the Government of New Zealand, and shall comply with any general or special directions given by the Minister pursuant to the policy of the Government in relation thereto.”

7. Development Finance Corporation of New Zealand
(Development Finance Corporation Act 1973)

“9. **Directions by Minister**—(1) The Minister may from time to time give to the Corporation in writing such general directions as he thinks fit as to the policy to be followed by the Corporation in the exercise of the functions or powers of the Corporation.

“(2) The Corporation shall, in the exercise of its functions and powers, give effect to any written directions given to it by the Minister under subsection (1) of this section.

“(3) A copy of every direction given by the Minister to the Corporation under this section in any financial year shall be included in the annual report of the Corporation for that year laid before Parliament under section 25 (3) of this Act.”

8. Export Guarantee Office
(Export Guarantee Act 1964)

“8. Determination of policy of Office—(1) The Minister shall from time to time determine the classes of risks that shall be the subject of contracts entered into by the Office and the nature and extent of any service to be provided by the Office under paragraph (c) of subclause (1) of section 7 of this Act:

Provided that, in the exercise of the powers conferred on him by this section, the Minister shall have regard to the general policy of the Government, as communicated to him by the Minister of Overseas Trade, affecting any such classes of risks or any such services.

“(2) The General Manager shall comply with any general or special directions given in writing by the Minister for the purpose of giving effect to the provisions of subsection (1) of this section:

Provided that nothing in this subsection shall—

“(a) Authorise the Minister to give directions with respect to any contract made or proposed to be made with a particular person; or

“(b) Authorise the Minister to give directions in respect of any matter not within the functions of the Office; or

“(c) Affect the validity of any contract entered into with the General Manager.

“(3) Without limiting the provisions of subsection (2) of this section, the Minister may from time to time give directions, in accordance with that subsection, as to the maximum percentage of loss which the Office may assume in respect of any class of contract entered into under this Act.”

9. Government Superannuation Board
(Government Superannuation Fund Act 1956)

“12. Board to comply with directions of Government—In the exercise of its powers and functions the Board shall have regard to any representations that may be made by the Minister of Finance in respect of any functions or business of the Board, and shall give effect to any decision of the Government in relation thereto conveyed to the Board in writing by the Minister of Finance.”

10. Hospital Boards
(Hospitals Act 1957)

“5. Directions to Boards—(1) The Minister may from time to time give to any Board such directions, not inconsistent with this Act or with any regulations made thereunder, as he considers necessary or expedient for the purposes of this Act.

“(2) Without limiting the generality of the provisions of subsection (1) of this section, it is hereby declared that where any duty, power, or function is imposed or conferred on any Board by this Act or by any other enactment, the Minister may—

“(a) Give such directions as he thinks fit, not inconsistent with this Act or with any regulations made thereunder, as to the manner in which and the conditions subject to which that duty, power, or function is to be exercised:

“(b) Where the duty, power, or function is required to be exercised with the prior consent of the Minister, refuse his consent, or grant his consent subject to such conditions and restrictions as he thinks fit:

“(c) Where the duty, power, or function is required to be exercised with the prior consent of the Minister, grant his consent generally or in relation to any particular case or class of case or in relation to any Board or class of Board:

“(d) Where the Minister has granted any consent under paragraph (c) of this subsection, revoke that consent.

“(3) It shall be the duty of the Board to comply with all directions, conditions, and restrictions given or imposed by the Minister pursuant to this Act:

Provided that no action for damages shall lie against a Board at the suit of any person in respect of any failure of that Board to comply with any such direction, condition, or restriction as aforesaid.

“(4) Notice of any direction or consent of the Minister under this Act shall be given to the Board in writing signed by the Minister or by the Director-General. Any notice purporting to be signed by the Director-General shall, in the absence of proof to the contrary, be sufficient evidence that the direction or consent to which it relates was given by the Minister.”

11. Housing Corporation of New Zealand
(Housing Corporation Act 1974)

“**20. Corporation to implement policy of Government**—(1) In the exercise of its functions and powers under this Act or any other enactment, the Corporation shall give effect to the policy of the Government in relation to those functions and powers, as communicated to it from time to time in writing by the Minister.

“(2) A copy of every communication given by the Minister in any financial year to the Corporation under subsection (1) of this section shall be included in the annual report of the Corporation for that year laid before Parliament under subsection (2) of section 42 of this Act.”

12. Liquid Fuels Trust Board
(Liquid Fuels Trust Act 1978)

“**16. Board to comply with directions**—In the exercise of its functions and powers under this Act the Board shall comply with any general or special directions given to it in writing signed by the Minister of Energy, the Minister of Finance, and the Minister of Trade and Industry. As soon as practicable after any such direction is given, the Minister of Energy shall publish in the *Gazette* and lay before Parliament a copy of the direction.”

13. National Parks and Reserves Authority
(National Parks Act 1980)

“19. Authority to implement policy of the Government—In the exercise of its powers and functions, the Authority shall have regard to the policy of the Government in relation to those powers and functions as communicated to it from time to time in writing by the Minister.”

14. New Zealand Export-Import Corporation
(New Zealand Export-Import Corporation Act 1974)

“27. Directions by Minister—(1) The Minister may from time to time give to the Corporation in writing such directions as he thinks fit, as to the exercise of the functions or powers of the Corporation.

“(2) The Corporation shall, in the exercise of its functions and powers, give effect to any written directions given to it by the Minister under subsection (1) of this section.

“(3) A copy of every direction given by the Minister to the Corporation under this section in any financial year shall be included in the annual report of the Corporation for that year laid before Parliament under section 26 of this Act.”

15. New Zealand Railways Corporation
(New Zealand Railways Corporation Act 1981)

“14. Power to alter operations and services—

“(2) The Corporation shall comply with any directions that may be given by the Minister in writing in respect of the provision or curtailment of any passenger services by the Corporation.”

“(6) A copy of every direction given; and details of any approval given or declined by the Minister to the Corporation under this section in any financial year shall be included in the annual report of the Corporation for that year laid before Parliament under section 43 (4) of this Act.”

16. Overseas Investment Commission
(Overseas Investment Act 1973)

Section 9

“(2) In the exercise of its functions, powers, and duties, the Commission shall comply with the general policy of the Government in relation to the functions of the Commission, and shall comply with any general or special directions given by the Minister to the Commission by notice in writing pursuant to the policy of the Government in relation to those functions, powers, and duties.”

17. New Zealand Pork Industry Board
(Pork Industry Board Act 1982)

“21. Board to implement policy of Government—(1) In the exercise of its functions and powers under this Act, the Board shall give effect to the policy of the Government in relation to those functions and powers, as communicated to it from time to time in writing by the Minister.

“(2) A copy of every communication made under this section to the Board in any financial year shall be included in the annual report of the Board for that year laid before Parliament under section 28 (2) of this Act.”

18. New Zealand Potato Board
(Potato Industry Act 1977)

“16. Board to implement policy of Government—(1) In the exercise of its functions and powers under this Act, the Board shall give effect to the policy of the Government in relation to those functions and powers, as communicated to it from time to time in writing by the Minister.

“(2) A copy of every communication under this section to the Board in any financial year of the Board shall be included in the annual report laid before Parliament under section 29 of this Act.”

19. Marketing Authorities
(Primary Products Marketing Act 1953)

“17. Marketing Authority to comply with trade policy and directions of Government—In the exercise of its functions and powers, a Marketing Authority shall comply with the general trade policy of the Government of New Zealand, and shall comply with any general or special directions given by the Minister to the Marketing Authority pursuant to the policy of the Government in relation thereto.”

20. Phosphate Commission of New Zealand
(Phosphate Commission of New Zealand Act 1981)

“9. Commission to comply with policy of Government—In the exercise of its functions and powers under this Act, the Commission shall comply with the policy of the Government in relation to those functions and powers, as communicated from time to time in writing by the Minister.”

21. Private Savings Banks
(Private Savings Banks Act 1983)

“14. Directions by Minister—(1) If in the opinion of the Minister the business of a savings bank company is being conducted in such a way as to be prejudicial to the safety of the funds of the depositors

in its savings bank or as to be prejudicial to the stability of the financial system in New Zealand, the Minister may give, in writing, such directions for the conduct of the company's business as he thinks fit, and the company shall be bound to act in accordance with those directions.

"(2) Nothing in this section shall—

- "(a) Authorise the Minister to give directions with respect to an advance made or proposed to be made to a particular person; or
- "(b) Affect the validity of a transaction entered into in relation to an advance or affect the right of a savings bank company to recover an advance or enforce the security given in respect of an advance."

22. Reserve Bank of New Zealand
(Reserve Bank of New Zealand Act 1964)

Section 8

"(2) For the purposes of this Act, the Minister may from time to time communicate to the Bank the monetary policy of the Government, which shall be directed to the maintenance and promotion of economic and social welfare in New Zealand, having regard to the desirability of promoting the highest level of production and trade and full employment, and of maintaining a stable internal price level."

23. Rural Banking and Finance Corporation of New Zealand
(Rural Banking and Finance Corporation Act 1974)

"23. Corporation to give effect to Government policy—(1) In the exercise of its functions and powers under this Act or under any other enactment, the Corporation shall give effect to the policy of the Government in relation to those functions and powers as communicated to the Corporation from time to time in writing by the Minister.

"(2) A copy of every communication given by the Minister in any financial year to the Corporation under subsection (1) of this section shall be included in the annual report of the Corporation for that year laid before Parliament under subsection (2) of section 39 of this Act."

24. Trustee Banks
(Trustee Banks Act 1983)

"45. Directions by Minister of Finance—(1) If in the opinion of the Minister any trustee bank is in financial difficulties, or its business

is being conducted in such a way as to be prejudicial to the safety of the funds of the depositors or as to be likely to involve action by the Minister under section 44 of this Act, or as to be prejudicial to the stability of the financial system in New Zealand, the Minister may give in writing such directions as he thinks fit—

“(a) For the conduct of the bank’s business:

“(b) Requiring the bank to cease carrying on business or any class of business:

“(c) Requiring the bank to unite with one or more other trustee banks to form a new trustee bank under such name and subject to such conditions as the Minister may specify in the direction:

“(d) Requiring the bank to transfer its operations or any part of its operations to one or more other trustee banks subject to such conditions as the Minister may specify in the direction.

“(2) The Board of the trustee bank shall be bound to act in accordance with any direction given under this section.

“(3) Where the Minister gives a direction under subsection (1) (c) of this section, the provisions of section 5 of this Act shall, with all necessary modifications, apply to the trustee banks named in the direction as if an Order in Council applying to those banks had been made and gazetted under that section.

“(4) Where the Minister gives a direction under subsection (1) (d) of this section requiring the bank to transfer the whole of its operations to one or more other banks, the provisions of section 6 of this Act shall, with all necessary modifications apply to the trustee banks named in the direction as if an Order in Council applying to those banks had been made and gazetted under that section.

“(5) Where the Minister gives a direction under subsection (1) (d) of this section requiring the bank to transfer part of its operations to one or more other banks, the direction may make provision for and prescribe terms and conditions relating to—

“(a) The transfer and vesting of real and personal property:

“(b) The transfer of assets, rights, interests, liabilities, contracts, and engagements:

“(c) Legal proceedings:

“(d) The transfer of accounts of customers:

“(e) Such other matters as may be necessary to give effect to the transfer of the business,—

and shall, upon notification in the *Gazette*, be binding upon all persons and for all purposes.

“(6) Nothing in this section shall—

“(a) Authorise the Minister to give directions with respect to an advance made or proposed to be made to a particular person; or

“(b) Affect the validity of a transaction entered into in relation to an advance or affect the right of a Board to recover an advance or enforce the security given in respect of an advance; or

“(c) Authorise the Minister to give a direction to invest money otherwise than in accordance with section 37 of this Act.”

25. Urban Transport Council
(Urban Transport Act 1980)

“16. Council to comply with directions—In the exercise of its functions, duties, and powers under this Act the Council shall have regard to the policy of the Government in relation to urban transport, and shall comply with any general directions relating to that policy given to it in writing signed by the Minister. As soon as practicable after any such direction is given, the Minister shall publish in the Gazette and lay before Parliament a copy of that direction.”

26. New Zealand Wheat Board
(Wheat Board Act 1965)

“13. Board to comply with general policy of Government—In the exercise of its functions and powers the Board shall comply with the general trade policy of the Government in relation to the functions and powers of the Board, and shall comply with any general or special directions given by the Minister pursuant to the trade policy of the Government in relation thereto.”