



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

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# Monitoring arrangements for MBIE-monitored Crown entities

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October 2020

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LSE 6017

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ISBN: 978-1-99-001958-6 (print)  
978-1-99-001959-3 (online)



New Zealand Government

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# Introduction and purpose of this document

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On behalf of the Government, Crown entities deliver a range of services that are important for both the New Zealand economy and protecting public safety.

This document provides information on:

- › the legislative reporting and accountability requirements for Crown entities
- › the Ministry of Business, Innovation and Employment's (MBIE's) monitoring arrangements for Crown entities
- › the way MBIE monitors the performance of Crown entities and manages board appointment processes on behalf of Ministers.

MBIE monitors a range of different types of Crown entities, including Statutory entities, Crown entity companies (including Crown Research Institutes [CRIs] constituted as Crown entity companies) and *Public Finance Act 1989* 'Schedule 4A' companies (see **Annex 3** for the full list). This document applies to companies and entities for which MBIE has the primary role in providing advice to Ministers and in general, applies equally to all types of entities. However, because of the particular circumstances applying to CRIs, a separate section is included providing further information for them (see **Annex 7**).

The overall intention is to provide an enduring and useful reference document that can be used by the board members and staff of Crown entities, as well as Ministers' offices, MBIE staff and other readers.

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# Overarching summary

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The following provides a short summary of the accountability and reporting arrangements for Crown entities in New Zealand.

**Requirements and expectations** for Crown entities are set out in:

- › legislation (the *Crown Entities Act 2004* and specific enabling legislation pertaining to individual Crown entities)
- › directions to support a whole of government approach
- › enduring Letters of Expectations that the Minister of Finance and Minister of State Services issue periodically
- › entity-specific Letters of Expectations sent by the 'responsible Minister'.

A Crown entity's board **responds** to these expectations via:

- › individual replies to Letters of Expectations
- › public accountability documents (the Statement of Intent [SOI], Statement of Performance Expectations [SPE] and annual report)
- › regular reporting (typically, quarterly reporting to its responsible Minister and annual reporting).

MBIE is a designated 'Monitor' (or 'Monitoring Department') as defined in the *Crown Entities Act 2004* and **assists the responsible Minister in carrying out their role**.

In its monitoring role, MBIE advises and assists the responsible Minister with:

- › appointments to the Crown entity's board
- › helping to set and clarify expectations for each entity
- › reviewing the performance of the board and the Crown entity overall.

Further detail on each of these matters is set out in the subsequent sections of this document.

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# Roles and responsibilities

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## Role of Ministers

The role of the responsible Minister is defined in section 27 of the *Crown Entities Act 2004* and is to oversee and manage the Crown's interests in, and relationship with, the Crown entity. The role includes appointing board members, participating in setting strategic direction and performance expectations, and monitoring and reviewing performance.

The relevant responsible Minister sometimes delegates certain activities to an Associate Minister, if the Prime Minister of the day has chosen to appoint one.

Ministers are accountable to the public, through Parliament, for the performance of an entity. This can be through parliamentary means (e.g. debates and parliamentary questions), direct to the public (e.g. through official correspondence and Official Information Act [OIA] requests) or through the media. This means that Ministers are often – and sometimes at short notice – called upon to respond to entity issues. Therefore, it is important that Ministers are kept well informed under the 'no surprises' convention (covered in the next section).

A well-performing board, with clear expectations from the responsible Minister, is fundamental for good performance from a Crown entity. If the responsible Minister considers that an entity is not performing as expected, the Minister can choose to:

- › increase reporting requirements
- › seek further information from the Crown entity, including monthly accounts and cash flow forecasts
- › work with the board with a view to improving the entity's performance
- › review the membership of the board
- › discuss the appointment of a special advisor to the board
- › in extreme circumstances, liquidate or re-capitalise the Crown entity if it is a company.

Boards should not, in the absence of an express agreement, assume that additional financial support will be provided by the Crown.

In certain circumstances, the Crown may choose to provide legislative and/or regulatory support to a Crown entity.

## Role of boards and the ‘no surprises’ convention

A board’s primary role is to govern the entity effectively and ensure that the entity operates in a way that is consistent with its objectives, function and public accountability documents. A board is accountable for the overall performance of an entity.

The role of a Crown board differs in some respects from that of a board in the private sector. Some of the additional duties of a Crown board include preparing public accountability documents, appearing before select committees, responding to requests under the *Official Information Act 1982*, providing information for Ministers to reply to parliamentary questions, or submitting additional reporting if required by legislation. Crown boards are also encouraged to reflect broad government priorities.

Boards are expected to keep Ministers informed, in a timely manner, of important initiatives and issues (this is known as the ‘no surprises’ convention). The intention of this convention is that a Minister is prepared, if called upon, to comment on issues and to brief any other members of the Government as required. Such issues may include, for example, changes in key staff members, contractual disputes, financial issues, fraud investigations, litigation, or decisions, such as regional office closures, that might affect certain local or sector groups. A board’s Chair can inform the Minister directly, through his/her office or MBIE, depending on the sensitivity and urgency of the matter.

In practice, to avoid delays in providing information under the ‘no surprises’ convention, the entity’s Chief Executive or other managers often advise the Minister’s office or MBIE about potential issues before they become matters of public interest.

Similarly, the entity is expected to keep the Minister informed of opportunities to make announcements about an entity’s work. Such occasions could include, for example, the launch of new systems or ground-breaking ceremonies for new construction projects. Effective use of such opportunities can also assist entities to promote and raise awareness of opportunities that may benefit the public.

## Role of MBIE as a Monitoring Department

MBIE’s monitoring role is defined in section 27A of the *Crown Entities Act 2004*.

The role of the monitor is, in relation to the monitored statutory entity, to:

- › assist the responsible Minister to carry out his or her role
- › perform or exercise any or all of the following functions, duties or powers:
  - i. administering appropriations
  - ii. administering legislation
  - iii. tendering advice to Ministers
  - iv. any other functions, duties or powers in this Act or another Act that may, or must, be performed or exercised by the monitor.

As a monitor, MBIE acts on behalf of the responsible Ministers and especially acts to protect the Government’s ownership interest in Crown entities. As MBIE may have other additional roles and responsibilities, Crown entities are likely to engage with it about policy, investment, funding and other issues as well.

To deliver on its legislative role, MBIE’s monitoring advisors seek to engage with the entities in a professional and collegial manner.

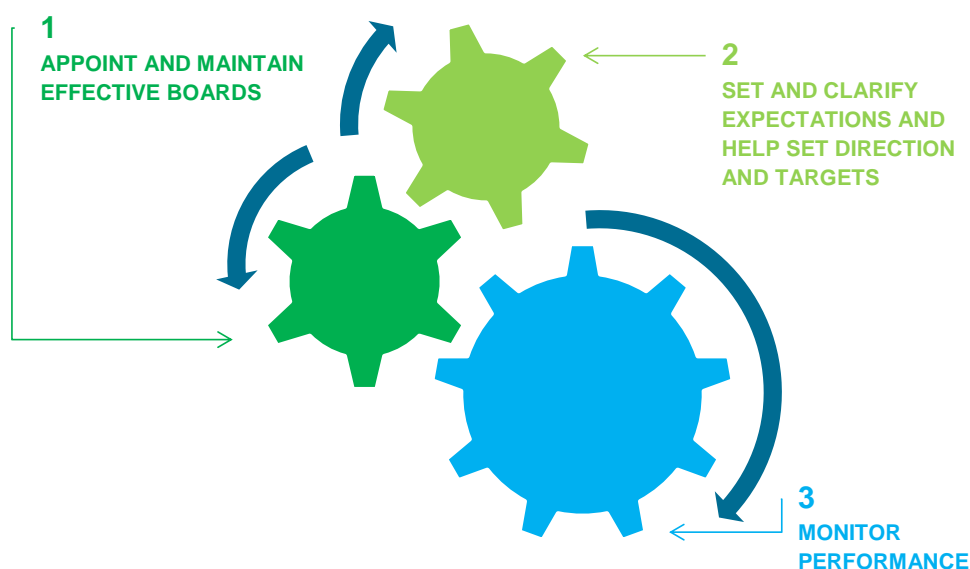
At times, monitoring advisors will provide advice to the entities but at the same time, this must not undermine a board’s direct line of accountability to the Minister and must not prejudice MBIE’s primary role as agent and trusted advisor to the Minister.

## Key aspects of the monitoring role

In its monitoring role, MBIE advises and assists the Minister with 1) appointments to each board; 2) helping to set and clarify expectations for each entity; and 3) reviewing the performance of each board and the Crown entity overall (see Figure 1).

The next section of the guide discusses each component of the way the Entity Performance and Investment team performs MBIE's monitoring role. (See **Annex 1** for a discussion of the roles of other government agencies.)

**FIGURE 1: Key aspects of the monitoring role**



### Appointing and maintaining effective boards

Most Crown entities have 'boards' and 'Chairs'. Independent Crown entities (or 'ICEs'), such as the Commerce Commission, may be called a 'Commission' and have 'Commissioners' and a 'Chief Commissioner'. In this document, we use the terms 'board', 'board members' and 'Chair' to cover both scenarios.

Board members are appointed by the relevant responsible Minister, subject to Cabinet approval. For ICEs, such as the Commerce Commission, Commissioners are appointed by the Governor General, on the Minister's recommendation.

MBIE advises the Minister on the appointment of board members and manages the appointment process. MBIE advises the Minister well in advance of the board members' terms expiring and is likely to recommend one of the following options:

- › reappointment of a member whose term is ending
- › retirement and replacement with a new appointee (or appointees if the size of the board is being increased)
- › retirement without replacement if the size of the board is being reduced
- › allowing a member's term to continue past their term's expiry date if necessary, which is known as a term extension (e.g. appointment decisions are generally not made during the pre-election period).

MBIE's board appointment process is outlined in **Annex 2**.



### Board inductions

MBIE generally arranges an induction process for new appointees. This session usually lasts half a day and covers aspects such as the role and expectations of Crown entity board members, background on the relevant sectors, and the role of MBIE in terms of both its policy and regulatory role and monitoring of Crown entities.

Likewise, the entities are expected to hold induction sessions with new board members to provide more detailed information about the Crown entity and the operations of the board.

The entities' and MBIE's induction processes are complementary and will involve some liaison over their detail. This is an activity on which the entities and MBIE should, and generally do, work closely together.

Boards are expected to have in place procedures for matters such as the identification and management of conflicts, payment of board member expenses, conduct of meetings and the involvement of all members in board discussions. This guide does not discuss such matters. Guidance for boards is available in a number of the references outlined in **Annex 4**.

### Board self-evaluation

Boards are expected to evaluate their performance as a whole and that of individual members on an annual basis, and to advise the Minister and MBIE of the results of this assessment. This helps MBIE when providing advice to the Minister on board reappointments. Some tools for board performance review are available from the Institute of Directors in New Zealand.

### Exit interviews with retiring board members

MBIE conducts exit interviews with retiring board members to ensure that their perspectives of the entity and the operating environment are noted.

### Interaction with boards

Unless required by statute,<sup>1</sup> MBIE representatives do not attend board meetings or receive meeting minutes as a matter of course. However, boards may invite MBIE representatives to meet with them if they wish, such as if the board wishes to ask MBIE about issues. At times, MBIE may offer to meet with a board to discuss specific issues.

To plan their work, some boards may wish to agree a more formal engagement calendar with MBIE, which might be based around particular events such as producing the Letter of Expectations, SOI/SPE and/or annual report. While this is not a requirement, MBIE is happy to accommodate such requests.

MBIE occasionally holds forums to which it invites Chairs from the relevant Crown entities. These are interactive opportunities for Ministers and MBIE representatives to discuss issues of interest across the portfolio and to hear the views of Chairs.

## Setting and clarifying expectations

For boards and entities to perform well, clarity around the expectations regarding priorities, scope, scale and performance is critical. Effective communication of expectations occurs through engagement between boards, Ministers and MBIE. It is an essential part of 'business as usual'. There are also formal channels by which expectations are communicated and which form part of the annual monitoring cycle. These include:

- › Letters of Expectations
- › Statements of Intent
- › Statements of Performance Expectations.

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<sup>1</sup> In the case of Callaghan Innovation and New Zealand Trade and Enterprise, for which MBIE has primary monitoring responsibility, the Minister may appoint a special adviser / special advisers to assist the Board in aligning its strategy and activities with government policy. A special adviser is not a Board member but may attend meetings of the Board.

## Letter of Expectations

The Minister of Finance and the Minister for State Services have issued an Enduring Letter of Expectations to the Chairs of statutory Crown entities on behalf of the Government. This covers the generic expectations applying to all statutory Crown entities and is available at:

<https://publicservice.govt.nz/resources/enduring-letter-of-expectations-to-statutory-crown-entities-2019/>

In addition, the relevant responsible Minister expresses his/her expectations to boards each year through an annual Letter of Expectations. This expression of expectations is intended to help a board as it develops its strategic plan and is a reference document that a board can consult regularly as it considers its plans and activities, to ensure they align with the expectations.

The Letter of Expectations outlines the Government's priorities for the relevant sector in the coming year and in the case of Crown agents, the expectation that the entity will give effect to those priorities. ICEs (e.g. the Commerce Commission) are expected to reflect the priorities in their activities in a more general sense.

The Letter of Expectations includes expectations that are specific to each entity, such as the delivery of major work programmes or the need to address performance issues. These issues should generally already be well known to the entity and discussed in meetings with the Minister or MBIE, meaning the content of the letter should not come as a surprise. The letter may also contain expectations about providing information and working collaboratively with MBIE and the Minister's office.

The entity's strategy and intended actions, in response to the Minister's Letter of Expectations, are expressed through the SOI and SPE.

## Statement of Intent (SOI)

Each entity is required to produce an SOI at least once every three years.<sup>2</sup> The content of the SOI is set out in the *Crown Entities Act 2004*. The SOI outlines the entity's plans for the forthcoming year and at least the following three years.

The entity is required to submit its draft SOI to the Minister two months before the start of the next financial year; that is, by 1 May. Once an entity has provided its draft SOI, MBIE provides advice to the Minister on the draft SOI, including any issues or areas of particular interest or concern. The Minister may provide comment to the board of the entity within 15 working days after receiving the draft SOI. It is then up to the board to consider the Minister's comments and to make any changes to the SOI before sending copies to the Minister's office for presenting in the House of Representatives. Once the SOI has been presented to the House of Representatives, the entity must publish its SOI as soon as practicable after the Minister receives the SOI.

Under the *Crown Entities Act 2004*, the Minister may formally direct the board to make changes to parts of the SOI or to give effect to government policy (in the case of Crown agents). However, any concerns that the Minister may have with an SOI are usually resolved through discussion with the Chair.

## Statement of Performance Expectations (SPE)

The SPE contains the annual performance information previously included in the SOI (prior to amendments that were made to the Crown Entities Act in 2013). Therefore, entities do not need to produce a new SOI each year. However, the Minister has the option of requiring a new SOI at any time. The SPE covers the entity's forecast annual financial statements and service performance information.

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<sup>2</sup> A Crown entity may revise its SOI more frequently should there be a significant change to the nature or scope of its functions.

The content required in an SPE is laid out in the *Crown Entities Act 2004*. The entity is required to present its draft SPE at least two months before the start of the next financial year; that is, by 1 May each year. MBIE provides a briefing to the Minister on the SPE and the Minister may provide comment to the board of the entity within 15 working days. It is then up to the board to consider the Minister's comments and to make any changes to the SPE before sending copies to the Minister's office for presenting to the House of Representatives.

## Monitoring performance

MBIE monitors the performance of Crown entities, with a focus on the viability of the organisation (e.g. financial stability and capability/resourcing), whether it is achieving its purpose, and its ability to deliver services effectively and efficiently.

In performing its monitoring role, MBIE:

- › considers the skills required by the Crown entity's board and (via the responsible Minister) requests boards to carry out annual self-assessments of their performance, consistent with good governance practice
- › considers whether a Crown entity's accountability documents are consistent with legislative requirements and Ministerial expectations
- › analyses the ongoing financial and operating performance of the entity, providing advice as and when appropriate
- › considers changes in the operating environment and factors that may impact the entity's operations and performance
- › when appropriate, analyses major business cases provided by the Crown entity and provides advice to the responsible Minister
- › when appropriate, organises strategic reviews of organisations, which may include consideration of whether an organisation is achieving its purpose
- › meets with the Crown entity on a regular basis to discuss performance and other issues
- › liaises with other government departments (e.g. The Treasury) where relevant and appropriate
- › meets with the responsible Minister as required to discuss performance, issues and major initiatives
- › carries out other ad hoc tasks as and when required.

To determine the level of oversight required from its monitoring function, MBIE remains aware of the risk profile of an entity. Where an entity has high-quality accountability documents/reporting in place and is delivering according to expectations, it is generally subject to 'standard monitoring'.

An entity is usually placed 'on watch' if significant changes occur. These could include adverse changes in the operating environment, major capital or change projects, significant board or management changes, financial issues, significant concerns raised by stakeholders, ongoing instances of non-compliance with standard monitoring requirements, poor engagement by the entity with the monitoring and/or policy function, system failures (e.g. from fraud or inappropriate conduct), significant implementation failures in the information and communications technology (ICT) system, or a general deterioration in performance. In such situations MBIE will have a higher level of engagement with an entity and the responsible Minister is advised of this change in level of oversight.

Where further escalation is required, an entity may move to 'intensive monitoring' and will generally be subject to increased reporting requirements.

Finally, if there is a period of continued non-delivery, additional measures may be implemented (e.g. the appointment of a special advisor to the board) until such time as MBIE and the responsible Minister are confident that the entity's performance is improving.

For the organisations that MBIE monitors, in any given financial year, MBIE’s focus is on:

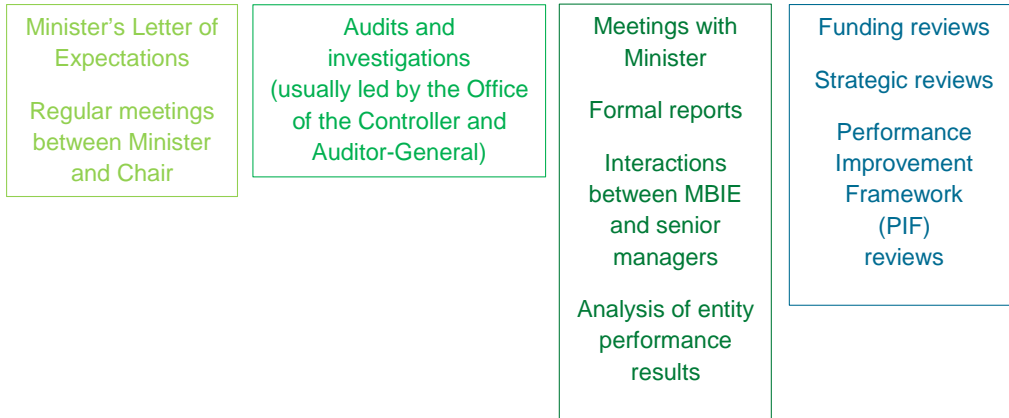
- › **accounting** for the **past** year
- › **reporting** on the **current** year
- › **planning** for **future** years.

MBIE monitors performance across a continuum of assessment tools (see Figure 2).

**FIGURE 2: Continuum of assessment tools**



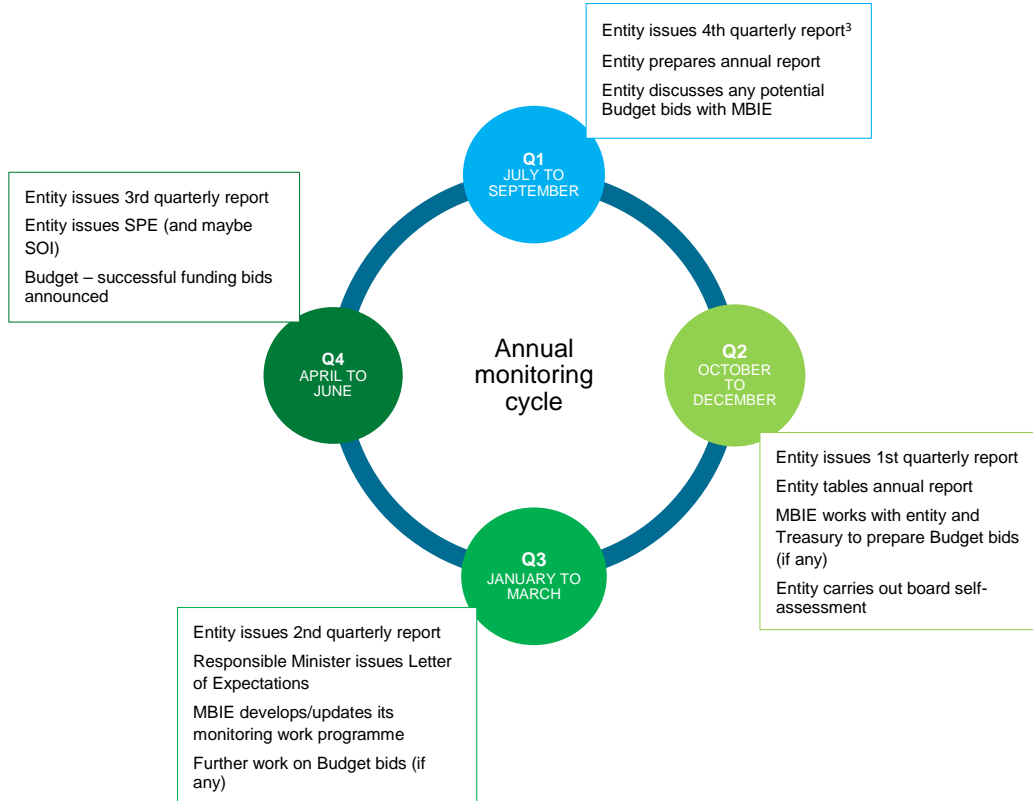
**In the form of...**



## Monitoring cycle of events

The following diagram of the annual monitoring cycle shows the formal elements of regular performance assessment for each entity.

**FIGURE 3: Summary of the annual monitoring cycle**



## Formal reporting

### Performance reports (usually quarterly)

Each entity produces a quarterly report. In exceptional circumstances, where performance has consistently been very strong, reporting may be changed to a six-monthly basis with explicit Ministerial agreement. These reports are produced for the responsible Minister, although an entity can choose whether to make its quarterly reports public. Quarterly reports are due one month after the end of the quarter.

The quarterly reports provide information to the Minister on progress against financial and non-financial performance targets, key initiatives and risks and organisational health. Further information on the minimum level of required content is included in **Annex 6**.

The MBIE monitoring advisors generally consult with other relevant teams in MBIE (e.g. the policy team) and may decide to produce a briefing for the Minister. Such a briefing provides a summary of the performance reported by the entity and provides MBIE's view on performance, risks, issues and any areas of concern.

MBIE will ask the entity to check the factual accuracy of its draft briefing. The quarterly reports may provide the basis for discussion during the next meeting between the entity and the Minister or MBIE.

<sup>3</sup> In some circumstances, where performance has consistently been very strong, reporting may be changed to a six-monthly basis with explicit Ministerial agreement.

**Annual report**

Each entity is required to produce an annual report. The purpose of an annual report is to enable an informed assessment to be made of an entity's performance. Although the minimum required content is laid out in the *Crown Entities Act 2004*, entities may provide further information, given that the annual report is used for wider information purposes.

Companies owned by the Crown are expected to follow guidance on the disclosure of senior management remuneration issued by the Minister of Finance. For statutory entities, the Public Service Commission issues an annual report showing Chief Executive remuneration.

Entities provide a draft of their annual report to MBIE so it can consider whether any information is likely to attract particular attention when the report is published – it may discuss this with the entity. While MBIE will consider whether anything obvious is missing from the content of the report (and alert the entity to this), responsibility for the report rests with the board of the entity.

When the final report is available, MBIE will usually provide advice to the Minister, summarising the content of the annual report, analysing the entity's performance and highlighting any risks and issues. MBIE will ask the entity to check the factual accuracy of its draft briefing. The annual report may form the basis for discussion at the next meeting between the entity and the Minister and/or MBIE.

The entity is required to provide its final report to the Minister no later than 15 working days after receiving its audit report, which is usually in mid- to late-October. The Minister must present the report in the House of Representatives within five working days of receiving the annual report or, if the House is not sitting, as soon as possible after the next sitting commences.

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# Relationships

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## Meetings with Ministers

Ministers meet with Crown entities' Chairs, Chief Executives and senior managers as appropriate. MBIE representatives generally attend these meetings. The meetings provide an opportunity to discuss performance, issues and major initiatives.

Entities provide an agenda to the Minister's office for each meeting, copied to MBIE.

MBIE may provide a briefing for each meeting. In preparing its briefings, MBIE commits to checking facts with the entity but there is no expectation that MBIE will always share its entire briefing with the entity. This is to maintain MBIE's ability to provide free and frank advice to the Minister in certain circumstances.

## Meetings with MBIE

MBIE officials meet regularly with Crown entities' Chairs, Chief Executives and senior managers as appropriate. The frequency and attendees of these meetings depend on the entity and the nature of issues that need to be discussed. The meetings are an opportunity to review progress between regular quarterly (six-monthly in exceptional circumstances) reports, to discuss any risks or issues and to catch up on other activities such as funding reviews or budget bids.

A good flow of additional information is required among entities, MBIE and Ministers to enable performance assessment. This requires a positive and constructive two-way relationship between the entity and MBIE. Mutual trust, respect and cooperation are fundamental to this relationship. The entity should be comfortable sharing its information with MBIE, knowing it will be interpreted, stored securely, and used appropriately. At the same time, MBIE should be open and honest in terms of its view of each entity's performance.

MBIE's primary relationship is with the board of each entity because the board is appointed by the Minister and is accountable to the Minister for the entity's performance. Boards delegate day-to-day responsibility for their entities' activities to Chief Executives, who in turn appoint managers and staff. MBIE will have a secondary relationship with such Chief Executives, managers and staff.

Entities may wish to provide their MBIE monitoring contacts with opportunities to learn about their activities and the sectors in which they work. This could include, for example, invitations to attend stakeholder sessions or conferences hosted by the entities, or visits to entities' operational sites.

## Visits by Members of Parliament (MPs)

Boards and Chief Executives should be aware of the potential implications of engaging with MPs, either through visits or briefings. Crown entities should always contact their responsible Minister's office to advise them of any visits, as well as advise MBIE. Crown entities are encouraged to set an agenda before any such meeting.

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# Funding

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## Funding reviews

Some entities are subject to regular reviews of their fees and levies (at three- to five-yearly intervals) to ensure they remain current and appropriate.

Such reviews are generally facilitated by the entities themselves and the relevant MBIE policy team.

The involvement of MBIE in such reviews can range from assessing funding review documents only, assisting with or carrying out a review. The MBIE monitoring advisors have additional interest in the impact that any changes in revenue resulting from a review may have on an entity's resourcing and financial position.

Usually, with such reviews, the entity and/or MBIE will prepare a consultation document outlining future funding proposals (e.g. changes in fees or levy funding from the relevant sector).

The entity or MBIE will prepare a briefing for the Minister and a Cabinet paper seeking approval for the entity to release the consultation document. Following consultation and the finalisation of proposals, MBIE will prepare a briefing for the relevant Minister and a Cabinet paper on the results of the consultation and any recommended changes to fee and levy regulations.

## Budget bids

On occasions, Crown entities may decide to seek additional government funding to cover operating expenditure and/or capital expenditure. This is something they would be expected to raise with MBIE and the responsible Minister at an early stage in the process.

This may culminate in a Budget bid, which is then considered by MBIE. In general, Budget bids are considered by MBIE's policy teams, rather than its monitoring teams. This is because Budget decisions are matters of policy choices about the range and nature of services the government of the day wishes the public sector to provide or purchase. MBIE will then provide advice to the responsible Minister about the bid. Should the responsible Minister decide to advance a Budget bid, this would then be formally assessed via The Treasury's process, to inform the Minister of Finance.

The Treasury coordinates the Crown's Budget process on behalf of Ministers and issues guidelines and the Budget timetable, generally around September each year. The Treasury communicates such information to Crown entities in Budget Circulars via the Crown Financial and Information System (CFISnet), which Crown entities can access.

## Baseline updates

From time to time, entities may need to update their baseline budgets to reflect recent Cabinet decisions, forecast changes, technical adjustments and fiscally neutral transfers between appropriations. MBIE prepares a briefing for relevant Ministers seeking approval of all relevant baseline updates. Entities should work with MBIE to ensure that any necessary baseline updates are actioned through the October and March baseline update processes.



## Business cases for large capital projects

Periodically, Crown entities may be embarking on large capital projects for physical assets and/or information, communication and technology (ICT) projects.

Ministers expect Crown entities to take a disciplined approach and develop proper business cases for such projects. In principle, a business case needs to outline the full costs, benefits, and risks of a capital project, comparing this with the status quo (the 'do nothing' option).

The Treasury has provided guidance to the public sector (including Crown entities) on developing 'Better Business Cases (BBCs)'.

The objective of BBCs is to provide objective analysis and consistent information to decision makers, to enable them to make smart investment decisions for public value.

BBCs are designed around an internationally recognised best practice standard, the *five-case model*. This builds a business case proposal by answering the following five core questions:

- › What is the compelling case for change?
- › Does the preferred option optimise value for money?
- › Is the proposed deal commercially viable?
- › Is the investment proposal affordable?
- › How can the proposal be delivered successfully?

Where a Crown entity can fund the proposed capital (and/or operating) expenditure from its own resources, there is no expectation for the entity's board to obtain approval from MBIE for the business case. Rather, there is an expectation that the board will follow the BBCs process and keep MBIE informed.<sup>4</sup>

Where a Crown entity is unable to fund the proposed capital (and/or operating) expenditure from its existing resources, it would need to prepare a Budget bid to seek additional capital and/or operating funding.

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<sup>4</sup> In the case of companies owned by the Crown, the provisions of the *Companies Act 1993*, covering major transactions requiring shareholder approval, continue to apply. There are also specific requirements for significant transactions of CRIs, which are set out in **Annex 7**.

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## Select committees

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Select committees have wide powers to require people to appear before them and to give evidence. Among other roles, they play an important part in assessing the performance of Crown entities.

A Crown entity may appear before a select committee to:

- › advise on legislation under formation
- › make a submission on a Bill before Parliament as a witness
- › review a petition submitted to a select committee about a Crown entity
- › provide evidence to be used in an inquiry.

Crown entities are required to regularly appear before the Finance and Expenditure Committee (or another select committee delegated by the Finance and Expenditure Committee) for a financial review.

Normally, the Chair and Chief Executive are expected to appear before the committee. It is not usual practice for external legal representation to attend. Crown entities should view these financial reviews as opportunities to emphasise the importance of what they do.

Responsible Ministers expect to be advised before any Crown entity appears before a select committee and for MBIE to be advised of this too. They also expect Crown entity boards and management to be open and forthright in their dealings with committees.

Chairs can raise any concerns they have about providing information directly with the select committee. The Chair may also request that the committee receive the information as private or secret evidence. Chairs are expected never to refuse to answer a question outright.

Responsible Ministers expect boards and management to familiarise themselves with the Standing Orders of the House of Representatives before appearing in front of select committees. Boards may wish to consider obtaining specific training in this regard.

In particular, the Standing Orders provide rules relating to parliamentary privilege.

Parliamentary proceedings are subject to absolute privilege, to ensure those participating in them, including witnesses before select committees, can do so without fear of external consequences.

This protection, enshrined in the *Bill of Rights Act 1990*, ensures that Parliament can exercise its powers freely on behalf of its electors. There must be no pressure placed on individuals to deter them, nor action taken against them as a direct consequence of giving evidence to a select committee. Any such action might be regarded as contempt of the House, with potentially serious consequences for those involved.

Further information on select committees can be found in the Public Service Commission's *Officials and Select Committees Guidelines* and in the following procedural guides on the New Zealand Parliament website (see links in **Annex 4**):

- › *Natural Justice before Select Committees*
- › *Working with Select Committees – A Guide for Public Service Advisers.*

# Annex 1:

## Role of other government agencies

Apart from MBIE, the following government agencies also have an interest in the performance of Crown entities:

- › The Treasury manages the process through which Crown funding is provided to entities. MBIE works with The Treasury to prepare Budget bids for funding for new initiatives and The Treasury provides advice to the Minister of Finance on these bids. The Treasury is also responsible for preparing the Budget documents, four-year plans, baseline updates and the Estimates of Appropriations. The Treasury may also have a secondary monitoring role in respect of entities monitored by MBIE.
- › The Public Service Commission (PSC) is interested in the performance of Crown entities in general and in particular, in the ability of MBIE to monitor its Crown entities and provide sound advice to Ministers. The PSC is responsible for the fees framework that establishes the amounts paid to board members (except for ICEs and the Retirement Commissioner, which are covered by the Remuneration Authority).

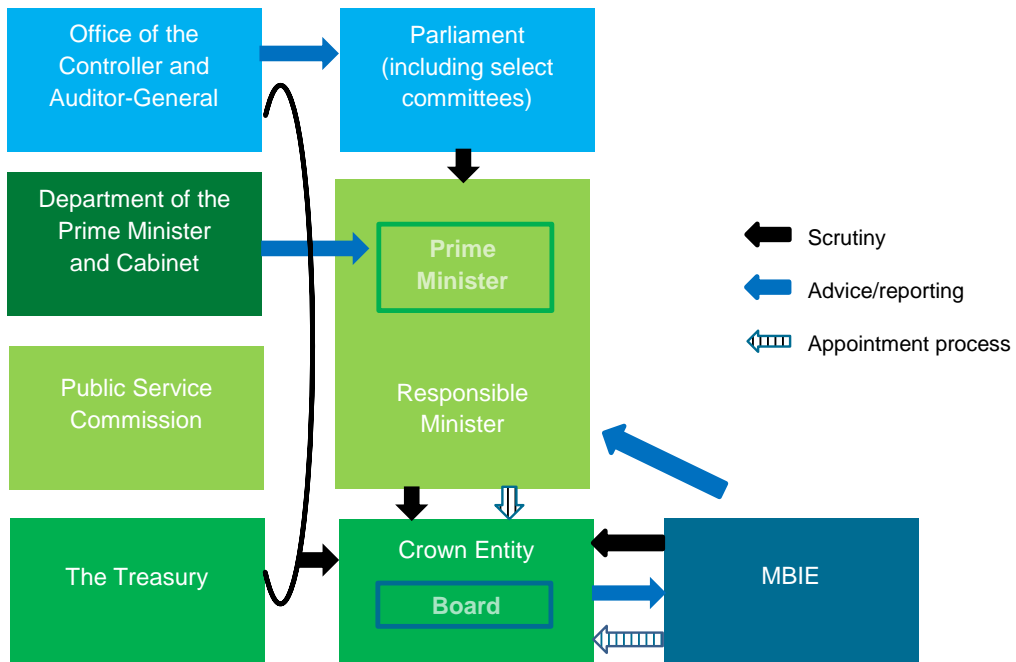
It is also responsible for supporting the Minister of State Services (in conjunction with the Minister of Finance) to issue directions to support a whole of government approach (known as 'Whole of Government Directions') under the *Crown Entities Act 2004*.

For statutory entities, the *Crown Entities Act 2004* requires boards to obtain written consent from the PSC before finalising or amending the terms and conditions of employment of a Chief Executive. The Public Service Commissioner must consider factors such as government expectations and may withhold consent.

- › The Department of the Prime Minister and Cabinet (DPMC) keeps a watching brief on most issues and will want to be briefed when the Prime Minister needs advice on specific issues.
- › The Office of the Controller and Auditor-General (OAG) is responsible for auditing Crown entities and is concerned that Crown entities are effective and efficient. The OAG can also carry out performance audits and independent inquiries. The OAG also supports parliamentary select committees to carry out estimates reviews and annual reviews of Crown organisations.
- › Government Departments and Agencies, including the Ministry for Women, the Office for Disability Issues, the Office of Ethnic Communities, the Ministry of Pacific Peoples and Te Puni Kōkiri, are asked to nominate candidates for board vacancies. They are concerned to ensure that women and people with disabilities are considered for board positions, and that there is ethnic diversity in board appointments.
- › MBIE often consults other departments when issues may have an effect on other portfolios (e.g. the Ministry for the Environment for issues relating to climate change research; the Ministry for Primary Industries for issues relating to biosecurity and/or animal/plant life).

The roles of the various agencies are summarised in the following diagram.

**FIGURE 4: Role of government agencies relating to Crown entities**



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# Annex 2:

## MBIE board appointment process

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### New board appointments

For new board appointments, the process is as follows:

1. MBIE works with the Chair to consider the optimal skill set of the board, identify the skills required of new members and advise the Minister accordingly. The Minister gives approval to commence the appointment process.
2. The Minister calls for nominations from his/her caucus colleagues and any government coalition and/or support parties. MBIE calls for nominations from agencies, including the Ministry for Women, the Office for Disability Issues, the Office of Ethnic Communities, The Treasury, Te Puni Kōkiri, the Ministry for Pacific Peoples and from the board itself. MBIE places advertisements, such as on its website, [jobs.govt.nz](https://jobs.govt.nz), and through the Institute of Directors. MBIE may also approach potential candidates directly. Depending on the particular Crown entity, MBIE may also contact sector representatives, calling for nominees.
3. Candidates can nominate themselves or they can be nominated by other people or organisations. The board of the entity may also nominate suitable candidates.
4. MBIE receives CVs and develops a long-list, in consultation with the Chair (except in some situations where a Chair is retiring and a new Chair is being sought). MBIE consults with the Minister and develops a short-list. Short-listed candidates are generally interviewed by MBIE representatives and the Chair. Where a new Chair is being appointed, the Chair of another Crown entity, or someone with past Chair experience, may assist with interviews. MBIE carries out background and referee checks (including checking for any potential conflicts of interest) and makes a recommendation to the Minister.
5. MBIE prepares a Cabinet paper for the Minister to consult with caucus, as well as any government coalition and/or support parties. This is then taken through the Cabinet's Appointments and Honours Committee (APH) and then through the full Cabinet for approval. The appointment is not confirmed until the full Cabinet has approved it and the candidate has formally accepted the position.
6. MBIE contacts the successful nominee, completes the required paperwork and advises the Chair and the entity's Chief Executive. MBIE also advises the unsuccessful candidates. If the nominee accepts the appointment, the Minister may release a press statement and the appointment may be notified in the New Zealand Gazette.
7. Board remuneration is set by the Cabinet-approved 'Fees Framework', not by MBIE (however, for ICEs and the Retirement Commissioner, remuneration is set by the Remuneration Authority). Entities pay board remuneration from their own budgets.

The Minister appoints the Chair and where appropriate, a Deputy Chair. In the case of ICEs, the Minister makes recommendations to the Governor General on who should be appointed.

## Reappointments

Board members may be reappointed. However, in practice, it is rare for a member to serve more than two full terms. Whether an existing member is reappointed depends on many factors, such as the required skills for the board (which may change depending on issues faced by the entity and the entity's performance), the member's contribution and how long he/she has been on the board. Even when a board member is making a highly positive contribution, there is often a desire to free up positions for other potential directors in the Crown sector or to use the opportunity of a term expiry to achieve diversity of skills and backgrounds on a board.

The process for reappointment is similar to the appointment process; that is, consultation with any government coalition/support parties and caucus colleagues, Cabinet paper through APH and Cabinet, and so on.

If a member is reappointed, his/her term may not necessarily be for the full three or five years, as consideration may need to be given to staggering expiry dates. This is to avoid potential future situations where the terms of multiple members may end at the same time, as this could risk significant loss of experience and institutional knowledge.

## Term extensions

Board members are appointed with a fixed term-end date. However, once they reach the end of their term they automatically continue in the role, in line with the *Crown Entities Act 2004*, unless they are formally reappointed or the Minister advises them that their term has come to an end. No formal action or approval is required. We refer to these situations as 'term extensions'.

It may be appropriate to keep a member in place while the process continues for new appointments and new appointees are not yet in place. This situation could also arise during a pre-election period, when appointment decisions are generally not made.

# Annex 3:

## Entities monitored by MBIE

### Crown entities

FULL NAME	ABBREVIATED NAME	WEBSITE
Accreditation Council	-	<a href="http://ianz.govt.nz">ianz.govt.nz</a>
Callaghan Innovation	-	<a href="http://callaghaninnovation.govt.nz">callaghaninnovation.govt.nz</a>
Commerce Commission	ComCom	<a href="http://comcom.govt.nz">comcom.govt.nz</a>
Commission for Financial Capability (headed by the Retirement Commissioner)	CFFC	<a href="http://cffc.org.nz">cffc.org.nz</a>
Energy Efficiency and Conservation Authority	EECA	<a href="http://eeca.govt.nz">eeca.govt.nz</a>
External Reporting Board	XRB	<a href="http://xrb.govt.nz">xrb.govt.nz</a>
Financial Markets Authority	FMA	<a href="http://fma.govt.nz">fma.govt.nz</a>
New Zealand Electricity Authority	Electricity Authority	<a href="http://ea.govt.nz">ea.govt.nz</a>
New Zealand Tourism Board	Tourism New Zealand	<a href="http://tourismnewzealand.com">tourismnewzealand.com</a>
New Zealand Trade and Enterprise	NZTE	<a href="http://nzte.govt.nz">nzte.govt.nz</a>
Takeovers Panel	-	<a href="http://takeovers.govt.nz">takeovers.govt.nz</a>
WorkSafe New Zealand	WorkSafe	<a href="http://worksafe.govt.nz">worksafe.govt.nz</a>

### Crown entity companies – Crown Research Institutes (CRIs)

FULL NAME	ABBREVIATED NAME	WEBSITE
AgResearch Ltd	AgResearch	<a href="http://agresearch.co.nz">agresearch.co.nz</a>
Institute of Environmental and Scientific Research Ltd	ESR	<a href="http://esr.cri.nz">esr.cri.nz</a>
Institute of Geological and Nuclear Sciences Ltd	GNS Science	<a href="http://gns.cri.nz">gns.cri.nz</a>
Landcare Research New Zealand Ltd	Landcare Research / Manaaki Whenua	<a href="http://landcareresearch.co.nz">landcareresearch.co.nz</a>
National Institute of Water and Atmospheric Research Ltd	NIWA	<a href="http://niwa.co.nz">niwa.co.nz</a>
The New Zealand Institute for Plant and Food Research Ltd	Plant and Food Research	<a href="http://plantandfood.co.nz">plantandfood.co.nz</a>
New Zealand Forest Research Institute Ltd	Scion	<a href="http://scionresearch.com">scionresearch.com</a>

## Crown entity companies – Other

FULL NAME	ABBREVIATED NAME	WEBSITE
New Zealand Growth Capital Partners Ltd	NZGCP	<a href="http://nzgcp.co.nz">nzgcp.co.nz</a>

## 'Schedule 4A' companies

FULL NAME	ABBREVIATED NAME	WEBSITE
Provincial Growth Fund Ltd	PGFL	<a href="http://pgflimited.co.nz">pgflimited.co.nz</a>
Research and Education Advanced Network New Zealand Ltd	REANNZ	<a href="http://reannz.co.nz">reannz.co.nz</a>

### Notes:

1. This list was up to date as at October 2020.
2. MBIE also has a secondary monitoring role for some other entities. These are not listed here because the primary monitoring responsibility sits with other government departments.
3. MBIE administers the board appointment processes for several other entities, on behalf of Ministers, but does not formally monitor those entities. These include some occupational licensing boards, tribunals, advisory boards and committees/panels, dispute resolution entities, trust boards and industry councils.
4. MBIE provides policy advice on the appropriations for various entities, but does not have formal monitoring responsibility for such entities; for example, the Accident Compensation Corporation and Crown Infrastructure Partners Ltd.
5. MBIE undertakes some limited monitoring of two incorporated societies that are not Crown entities: the Building Research Association of New Zealand (BRANZ) and the Heavy Engineering Research Association (HERA).



# Annex 4:

## Sources of information and useful documents

### Organisations

Public Service Commission	<i>New Zealand's State sector – the organisations</i> <a href="https://publicservice.govt.nz/our-work/state-sector-organisations/">https://publicservice.govt.nz/our-work/state-sector-organisations/</a>
	<i>What is the 'public sector'?</i> <a href="https://publicservice.govt.nz/resources/what-is-the-public-sector/">https://publicservice.govt.nz/resources/what-is-the-public-sector/</a>

### Appointments and induction

Cabinet Office	<i>The appointments process</i> <a href="http://cabguide.cabinetoffice.govt.nz/appointments-process-appointments-papers">http://cabguide.cabinetoffice.govt.nz/appointments-process-appointments-papers</a>
The Treasury	<i>Board appointments</i> <a href="http://www.treasury.govt.nz/statesector/boardappointments/induction">www.treasury.govt.nz/statesector/boardappointments/induction</a>
Public Service Commission	<i>Board appointment and induction guidelines</i> <a href="http://www.publicservice.govt.nz/board-appointment-guidelines">www.publicservice.govt.nz/board-appointment-guidelines</a>  <i>Induction material for Crown entity board members</i> <a href="http://www.publicservice.govt.nz/crown-entity-induction-material">www.publicservice.govt.nz/crown-entity-induction-material</a>  <i>Appointment / reappointment flow chart</i> <a href="https://www.psi.govt.nz/assets/MAGNet/BAIG-2009-p7-flowchart.pdf">https://www.psi.govt.nz/assets/MAGNet/BAIG-2009-p7-flowchart.pdf</a>
Department of the Prime Minister and Cabinet	<i>Cabinet Office Circular CO (02) 5: Appointment of public servants to statutory boards</i> <a href="http://www.dpmc.govt.nz/cabinet/circulars/co02/5">www.dpmc.govt.nz/cabinet/circulars/co02/5</a>

### Governance

Institute of Directors	<i>Four pillars of governance best practice</i> <a href="https://www.iod.org.nz/FourPillars">https://www.iod.org.nz/FourPillars</a>
Office of the Auditor-General	<i>Managing conflicts of interest: a guide for the public sector</i> <a href="https://oag.parliament.nz/2020/conflicts">https://oag.parliament.nz/2020/conflicts</a>  <i>Maintaining a future focus in governing Crown-owned companies</i> <a href="https://www.oag.govt.nz/2014/future-focus/docs/future-focus.pdf">https://www.oag.govt.nz/2014/future-focus/docs/future-focus.pdf</a>
Public Service Commission	<i>Resource for preparation of governance manuals – guidance for statutory Crown entities</i> <a href="http://www.publicservice.govt.nz/governance-manuals-guidance-statutorycrownentities">http://www.publicservice.govt.nz/governance-manuals-guidance-statutorycrownentities</a>
Ministry for Women	<i>Board roles</i> <a href="http://women.govt.nz/leadership/all-about-boards/board-members">http://women.govt.nz/leadership/all-about-boards/board-members</a>
Ministry for Culture and Heritage	<i>Governance e-manual</i> <a href="https://mch.govt.nz/governance-e-manual">https://mch.govt.nz/governance-e-manual</a>

<b>Expectations</b>	
The Treasury	<i>Owner's Expectations</i> <a href="https://treasury.govt.nz/publications/guide/owners-expectations">https://treasury.govt.nz/publications/guide/owners-expectations</a>
Public Service Commission	<i>Enduring Letter of Expectations – to statutory Crown entities</i> <a href="https://publicservice.govt.nz/resources/enduring-letter-of-expectations-to-statutory-crown-entities-2019/">https://publicservice.govt.nz/resources/enduring-letter-of-expectations-to-statutory-crown-entities-2019/</a>  <i>It takes three: operating expectations framework for statutory Crown entities</i> <a href="http://www.publicservice.govt.nz/it-takes-three-operating-expectations-framework">www.publicservice.govt.nz/it-takes-three-operating-expectations-framework</a>
<b>Remuneration</b>	
Remuneration Authority	<i>Independent officers and boards</i> <a href="http://remauthority.govt.nz/clients-remuneration/independent-officers-and-boards/">http://remauthority.govt.nz/clients-remuneration/independent-officers-and-boards/</a>
Public Service Commission	<i>Cabinet fees framework for members appointed to bodies in which the Crown has an interest</i> <a href="https://publicservice.govt.nz/our-work/fees/">https://publicservice.govt.nz/our-work/fees/</a>
<b>Monitoring</b>	
Monitoring, Appointments and Governance Network	<a href="https://www.psi.govt.nz/home/communities/magnet/">https://www.psi.govt.nz/home/communities/magnet/</a>
Office of the Auditor-General	<i>How government departments monitor Crown entities</i> <a href="http://www.oag.govt.nz/2009/crown-entities/docs/crown-entities.pdf">www.oag.govt.nz/2009/crown-entities/docs/crown-entities.pdf</a>
Public Service Commission	<i>Statutory Crown entities: a guide for departments</i> <a href="https://publicservice.govt.nz/resources/guidance-depts-crown-entities/">https://publicservice.govt.nz/resources/guidance-depts-crown-entities/</a>  <i>Statutory Crown entities: a guide for Ministers</i> <a href="https://publicservice.govt.nz/resources/crown-entities-guide-ministers/">https://publicservice.govt.nz/resources/crown-entities-guide-ministers/</a>
Ministry of Transport	<i>Monitoring arrangements for transport sector Crown entities</i> <a href="http://transport.govt.nz/assets/Uploads/Paper/Monitoring-arrangements-for-transport-sector-Crown-entities.pdf">http://transport.govt.nz/assets/Uploads/Paper/Monitoring-arrangements-for-transport-sector-Crown-entities.pdf</a>
<b>Legislation</b>	
Parliamentary Counsel Office	<i>Crown Entities Act 2004</i> <i>Crown Research Institutes Act 1992</i> <i>Public Finance Act 1989</i> <i>Public Service Act 2020</i> <a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>

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<b>Releasing copyright works and non-copyright / public domain material</b>	
Government Information Services Department of Internal Affairs	Guidance on releasing copyright works and non-copyright / public domain material for reuse by others: <i>NZGOAL (New Zealand Government Open Access and Licensing Framework)</i> <a href="https://www.data.govt.nz/manage-data/policies/nzgoal">https://www.data.govt.nz/manage-data/policies/nzgoal</a>
<b>Directions to support a whole of government approach</b>	
Public Service Commission	<i>Directions to support a whole of government approach</i> <a href="http://www.publicservice.govt.nz/whole-of-govt-directions-dec2013">http://www.publicservice.govt.nz/whole-of-govt-directions-dec2013</a>
Department of Internal Affairs	<i>Directions and priorities for government ICT</i> <a href="https://www.dia.govt.nz/diawebsite.nsf/ad46619e19fa042bcc256a8a0001c7b4/e138ab958b5d276acc257826001635f0%21OpenDocument">https://www.dia.govt.nz/diawebsite.nsf/ad46619e19fa042bcc256a8a0001c7b4/e138ab958b5d276acc257826001635f0%21OpenDocument</a>
Department of the Prime Minister and Cabinet	<i>Cabinet Office Circular CO (13) 4: Crown Entities Act 2004: Section 107 directions to support a whole of government approach</i> <a href="https://dpmc.govt.nz/publications/co-13-4-crown-entities-act-2004section-107-directions-support-whole-government-approach">https://dpmc.govt.nz/publications/co-13-4-crown-entities-act-2004section-107-directions-support-whole-government-approach</a>
<b>Select committees</b>	
Public Service Commission	<i>Officials and select committees – guidelines</i> <a href="https://publicservice.govt.nz/resources/officials-and-select-committees-2007/">https://publicservice.govt.nz/resources/officials-and-select-committees-2007/</a>
New Zealand Parliament	<i>Natural justice before select committees</i> <a href="https://www.parliament.nz/resource/0000110755">https://www.parliament.nz/resource/0000110755</a>  <i>Working with select committees: a guide for public service advisers</i> <a href="https://www.parliament.nz/resource/0000111113">https://www.parliament.nz/resource/0000111113</a>
<b>Tabling procedure for presenting accountability documents to the House of Representatives</b>	
New Zealand Parliament	<i>Presenting papers to the House of Representatives</i> <a href="https://www.parliament.nz/en/pb/papers-presented/presentation-of-papers/">https://www.parliament.nz/en/pb/papers-presented/presentation-of-papers/</a>

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# Annex 5:

## Reporting and legislative framework

### Organisations

Type of entity	<p><b>Crown agents</b> (Schedule 1, Part 1, <i>Crown Entities Act 2004 [CE Act]</i>): Callaghan Innovation, EECA, NZTE, Tourism New Zealand, WorkSafe</p> <p><b>Autonomous Crown entities</b> (Schedule 1, Part 2, <i>CE Act</i>): Accreditation Council, Retirement Commissioner</p> <p><b>Independent Crown entities (ICEs)</b> (Schedule 1, Part 3, <i>CE Act</i>): Commerce Commission, Electricity Authority, External Reporting Board, Financial Markets Authority, Takeovers Panel</p> <p><b>Crown entity companies</b> (Schedule 2, Part 2, <i>CE Act</i>): Crown Research Institutes, NZGCP</p> <p><b>'Schedule 4A' companies</b> (Schedule 4A, <i>Public Finance Act 1989</i>): PGFL, REANNZ</p>
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### Governing legislation (NB: the CE Act applies to all these entities too)

Accreditation Council	<i>Standards and Accreditation Act 2015</i>
Callaghan Innovation	<i>Callaghan Innovation Act 2012</i>
Commerce Commission	<i>Commerce Act 1986</i>
Commission for Financial Capability (Retirement Commissioner)	<i>New Zealand Superannuation and Retirement Income Act 2001 (Part 4)</i>
Crown Research Institutes	<i>Crown Research Institutes Act 1992</i>
EECA	<i>Energy Efficiency and Conservation Act 2000</i>
Electricity Authority	<i>Electricity Act 1992</i>
External Reporting Board	<i>Financial Reporting Act 2013</i>
Financial Markets Authority	<i>Financial Markets Authority Act 2011</i>
Tourism New Zealand	<i>New Zealand Tourism Board Act 1991</i>
NZTE	<i>New Zealand Trade and Enterprise Act 2003</i>
NZGCP	No specific legislation
PGFL and REANNZ	<i>Public Finance Act 1989</i>
Takeovers Panel	<i>Takeovers Act 1993</i>
WorkSafe New Zealand	<i>WorkSafe New Zealand Act 2013</i>

<b>Governance</b>	
Role of the board	s25 <i>CE Act</i>
Members' duties	s26 <i>CE Act</i>
Responsible Minister	Set out in governing legislation of each Crown entity
Responsible Minister's role and responsibilities	s27 <i>CE Act</i>
Ministerial powers of direction	ss103, 107 and 147 <i>CE Act</i> (however, s105 means there is no power to direct ICEs on government policy unless provided in another Act)
<b>Reporting and accountability</b>	
Reporting requirements	Part 4 <i>CE Act</i>
Letters of Expectations	Sent by Ministers in December where possible, and ideally no later than late-February
Crown entity provides draft SOI/SPE to Minister	ss146 and 149I <i>CE Act</i> – submitted by 1 May
Content of draft SOI/SPE	ss141 and 149E, CAB Min(10) 24/5A re copyright
Minister's comments on draft SOI/SPE	ss146(2)(b) and 149I(2)(b) <i>CE Act</i> – not later than 15 working days after receiving the draft SPE/SOI
Crown entity considers Minister's comment on draft SOI/SPE	ss146(2)(c) and 149I(2)(c) <i>CE Act</i> – as soon as practicable after receiving comments
Crown entity provides final SOI/SPE to Minister	ss146(2)(c) and 149I(2)(c) <i>CE Act</i> – as soon as practicable before the start of the first financial year to which the SOI/SPE relates
Crown entity publishes SOI/SPE on website	ss149(1) and 149L(1) <i>CE Act</i> – as soon as practicable after providing the final SOI/SPE to the responsible Minister
Minister presents SOI/SPE to the House	ss149(3) and 149L(3) <i>CE Act</i>
Quarterly reports <sup>5</sup> expected by Ministers	Yes – one month after the end of the quarter
Crown entity delivers annual report to Minister	s150(1)(b) <i>CE Act</i> – no later than 15 working days from receipt of the audit report of the Auditor-General (which must be provided within 4 months from the end of each financial year)
Content of annual report	s151 <i>CE Act</i>
Minister presents annual report to the House	s150(3) <i>CE Act</i> – within 5 working days of receipt or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament

<sup>5</sup> In exceptional circumstances, where performance has consistently been very strong, reporting may be changed to a six-monthly basis with explicit Ministerial agreement.

Crown entity publishes annual report on website	s150(4) <i>CE Act</i> – as soon as practicable following tabling and no later than 10 working days after receipt by the Minister
<b>Other</b>	
Expectations re appearances before select committees	Yes – required by the Standing Orders of the House of Representatives
Restrictions on financial powers	ss158 to 164 <i>CE Act</i> These apply to all Crown entities unless they have an exemption. Some Crown entities have exemptions from ss161 to 164, as set out in Schedule 1 of the <i>CE Act</i> (covering Crown agents, Autonomous Crown entities and ICEs) or Schedule 2 of the <i>CE Act</i> (covering Crown entity companies).
Capital Charge for Crown entities	In general, Crown entities are subject to the Crown’s Capital Charge if their liable net assets (total assets minus total liabilities) exceed \$15 million. s166 <i>CE Act</i> provides the statutory basis for the requirement to pay a capital charge if the Minister of Finance requires this. s173(1)(h) <i>CE Act</i> allows the creation of regulations prescribing capital charge rules. <i>Crown Entities (Capital Charge Rules) Regulations 2011</i> prescribes the Capital Charge rules for the purposes of s166 of the <i>CE Act</i> .
Net surplus payable to the Crown if the Minister of Finance requests it	s165 <i>CE Act</i> Some Crown entities have an exemption from s165 as set out in Schedule 1 and Schedule 2 of the <i>CE Act</i> .
Subject to the Official Information Act 1982	Yes
Applicability of Public Service Commission’s <i>State Servants, Political Parties and Elections: Guidance</i>	Yes

## Annex 6:

# Table of key reporting dates for MBIE-monitored Crown entities

### Planning process

December – February	<p>Responsible Ministers send Letters of Expectations to boards. The letters detail the responsible Minister’s expectations for the upcoming financial year, expectations for the Statement of Performance Expectations (SPE) and if relevant, the Statement of Intent (SOI), as well as the Minister’s engagement expectations during the planning phase.</p> <p><b>Note:</b> a new SOI is only required once every 3 years, unless substantive change has occurred such that the SOI covering the period no longer fairly represents the intentions of the Crown entity.</p>
March – April	<p>Crown entities typically provide MBIE with an early draft of their SPE and SOI (if applicable) for consideration and feedback.</p> <p><b>Note:</b> the <i>Crown Entities Act 2004</i> sets out the required content of the SOI and SPE. MBIE requests that drafts sent for its review will provide the required content based on best reasonable expectations at the time of preparation.</p>
By 1 May	Boards submit the draft SPE and draft SOI (if applicable) to responsible Ministers and MBIE.
Not later than 15 working days after receiving the draft SPE or SOI (if applicable), which is usually around 20 May	Responsible Ministers provide their comments on the draft SPE and draft SOI (if applicable).
On or before 1 July	Boards deliver the final SPE and SOI (if applicable) to responsible Ministers. As part of this process, Crown entities need to provide their financial information for MBIE to upload to The Treasury’s CFISnet. <sup>6</sup>
As soon as practicable after providing the final SPE and SOI (if applicable) to the responsible Minister	<p>The responsible Minister presents the final SPE and SOI (if applicable) to the House of Representatives.</p> <p>Crown entities publish final SPE and SOI (if applicable) on their websites.</p>

<sup>6</sup> CFISnet is the Crown’s Financial and Information System.

## Performance reports (usually quarterly)<sup>7</sup>

<p>Within 1 month after the end of the quarter, being:</p> <p>31 October</p> <p>31 January</p> <p>30 April</p> <p>31 July</p> <p>Please refer to the footnote below and note that where a different reporting period has been agreed, the report will generally be due within 1 month after the end of the reporting period.</p> <p>Should there be any difficulty in achieving the above dates for a particular quarter (e.g. to fit in with a board meeting date), please discuss this with MBIE as soon as possible.</p>	<p>Boards deliver quarterly reports to the responsible Minister's office and to MBIE.</p> <p>Quarterly reports should generally contain:</p> <ul style="list-style-type: none"> <li>› Key achievements during the quarter and the focus for the next quarter.</li> <li>› Quarterly financial information compared to budget, including: <ul style="list-style-type: none"> <li>- Statement of Comprehensive Revenue and Expense.</li> <li>- Statement of Financial Position.</li> <li>- Statement of Cash Flows.</li> <li>- Memorandum accounts of specific revenue sources (e.g. grants and/or levies) and expenditure against these.</li> </ul> </li> <li>› Non-financial information, including: <ul style="list-style-type: none"> <li>- Progress against the performance measures contained in the entity's annual SPE.</li> <li>- Emerging risks and opportunities.</li> <li>- Any other information the entity considers is appropriate to understand performance.</li> </ul> </li> </ul> <p>MBIE may prepare a briefing for the relevant responsible Minister about the quarterly report.</p> <p>There is currently no requirement for quarterly reports to be made public, although entities may voluntarily choose to do so.</p>
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## Annual report

<p>By 30 September (being within 3 months after the end of the financial year)</p>	<p>Crown entities provide draft financial statements and other material to their auditor.</p>
<p>August – September</p>	<p>Crown entities provide draft annual reports to MBIE.</p>
<p>September – October</p>	<p>MBIE provides feedback on draft annual reports to Crown entities.</p>
<p>Not later than 15 working days from receipt of the audit report of the Controller and Auditor-General (which must be provided within 4 months from the end of the financial year; i.e. by 31 October)</p>	<p>Crown entities deliver final annual report to responsible Minister.</p> <p>Typically, this is in mid- to late-October, with the latest possible date being approximately 20 November.</p>
<p>Within 5 working days of receipt by responsible Minister or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament</p>	<p>The responsible Minister presents the annual report in the House of Representatives.</p>
<p>As soon as practicable after tabling and not later than 10 working days after receipt by the responsible Minister</p>	<p>Crown entities publish the annual report on their website.</p>

<sup>7</sup> In some circumstances, where performance has consistently been very strong, reporting may be changed to a six-monthly basis with explicit Ministerial agreement.



## Annual estimates process for the relevant Vote

December to early-February	MBIE liaises with Crown entities about the forthcoming estimates process and estimates templates.
Late-February	Crown entities provide details of any proposed changes to performance measures in the relevant Vote Estimates for the forthcoming financial year.
Early-March	Crown entities provide any proposed changes to the Supplementary Estimates for the current financial year.  Crown entities provide Estimates performance information for forthcoming financial year.
Late-March	Estimates finalised and data entered into The Treasury's CFISnet.
Late-April	Budget decisions made by the Government and communicated to relevant Crown entities so they may finalise their draft SPEs by 1 May.
May	In-principle technical financial adjustments (such as funding carry forwards) need to be advised to MBIE and The Treasury.
Late-May	Budget presented to the House of Representatives by the Government.

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# Annex 7:

## Supplementary information pertaining to Crown Research Institutes (CRIs)

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### Background on CRIs

CRIs were created in 1992 after the *Crown Research Institutes Act 1992 (CRI Act 1992)* was passed into law. Most CRIs were formed out of parts of the former Department of Scientific and Industrial Research (DSIR), which had existed since 1926, and from elements of various other government departments. They are constituted as limited liability companies.

A list of the current CRIs is included in **Annex 3** of this document.

The *CRI Act 1992* states that the purpose of a CRI is to undertake research for the benefit of New Zealand, pursuing excellence in all that it does, abiding by ethical standards and operating as a good employer. A CRI must do these things while remaining financially viable and exhibiting a sense of social responsibility.

While successive governments have not expected CRIs to maximise profit, they have generally expected them to cover the cost of the capital invested in the CRIs. This approach aims to ensure appropriate commercial disciplines while fulfilling scientific purposes.

The Government charges CRIs with promoting the exchange and dissemination of research, science and technology. In other words, they have the role of 'making a difference' with the research they produce. They do this via strategic, long-term relationships with sectors (the *CRI Act 1992* set up most of the CRIs with a sector orientation), to support, sustain, challenge and develop existing sectors as well as to lead the development of new sectors.

### Governance and administration

The New Zealand Government, via two Cabinet Ministers (the Minister of Research, Science and Innovation and the Minister of Finance – known as 'shareholding Ministers'), holds all shares in each of the CRIs. With Cabinet's agreement, the shareholding Ministers appoint a board of directors for each CRI. Each board is intended to include business, professional and science expertise and to operate according to the *Companies Act 1993* as well as the *CRI Act 1992*, the *Crown Entities Act 2004 (CE Act 2004)* and other relevant Acts.

Each board produces a Statement of Corporate Intent (SCI) that sets out a CRI's Statement of Core Purpose (SCP) goals, how these will be achieved and how success will be measured. CRIs provide six-monthly and annual reports, which are tabled in the House of Representatives. Parliament also reviews each CRI on a regular basis via the Select Committee process.

Day-to-day, however, CRIs operate as any commercial company would, acting within their strategic SCI (which they consult on with the shareholders), which aligns with the *CRI Act 1992*'s purpose and principles. CRIs cooperate on matters of mutual interest via an organisation called Science New Zealand.

## Revenue sources

CRI receive revenue from the following sources:

- › *Government funding provided via MBIE:* Since 2010, the Government has provided each CRI with 'capability funding' to deliver outcomes for the benefit of New Zealand. This public funding provides a stable revenue source to maintain, enhance and foster current or new scientific and research capabilities. This funding is provided from the Strategic Science Investment Fund (SSIF) and is administered by MBIE. This funding gives CRIs greater financial certainty and comprises a significant proportion of the total funding available to CRIs.
- › *Contestable funding provided via MBIE:* CRIs can also bid for funding of specific projects and activities from the Endeavour Fund and other Funds, which exist from time to time, to promote particular scientific research.  
Funding is also available from the Marsden Fund, which is independently overseen and administered by the Royal Society of New Zealand.
- › *Other government funding:* Some CRIs may have contracts with other government agencies to provide services.  
For example, ESR has contracts with the Ministry of Health to provide various public health and disease-monitoring services, and with the New Zealand Police to provide forensic analysis to assist in criminal investigations and prosecutions. Plant and Food Research has contracts with the Ministry for Primary Industries related to maintaining New Zealand's biosecurity.
- › *Government funding for National Science Challenges:* The National Science Challenges were established in 2014 and aim to tackle the biggest science-based issues and opportunities facing New Zealand. The Challenges bring together the country's top scientists to work collaboratively across disciplines, institutions and borders to achieve their objectives.
- › *Commercial revenue and royalties:* CRIs also generate revenue from commercial contracts with a multitude of other parties, some of which may be in other countries. In some cases, they may also receive royalties from the sale of products that were developed using the intellectual property of CRIs. For example, Plant and Food Research receives royalties from the sale of certain varieties of kiwifruit, which it developed for the kiwifruit industry.

## Key differences from other Crown entities

The following table outlines the key differences in the legislative and governance arrangements for CRIs compared to other types of Crown entities.

<b>CRIS (THAT ARE CONSTITUTED AS COMPANIES)</b>	<b>OTHER CROWN ENTITIES (THAT ARE NOT CONSTITUTED AS COMPANIES)</b>
The primary governing legislation is the CRI Act 1992 and this has a range of differences from the CE Act 2004.	The primary governing legislation is the CE Act 2004. For most Crown entities there is also other governing legislation.
CRIs are constituted as limited liability companies and as such, are also subject to the Companies Act 1993. This imposes additional obligations on the board members (who are called 'directors'), over and above the requirements of the CE Act 2004.	The Companies Act 1993 does not apply.
Have two 'shareholding Ministers' who own the Crown's shareholding in the CRIs in equal shares (50% each).	Have a 'responsible Minister'.
Must have a 'Constitution' setting out the rules of the company.	Not applicable to other Crown entities.
Permitted to borrow without the explicit approval of the Minister of Finance.	Unless they have an exemption, not permitted to borrow unless explicit approval is obtained from the Minister of Finance.
The purpose of CRIs is to undertake research. While CRIs have an enduring SCP, expected to remain in place for 10 – 15 years, this can be changed with explicit agreement by the Cabinet.	Not applicable – the purpose of each Crown entity is set out in the relevant governing legislation.
Expected to operate in a financially responsible manner so that they maintain financial viability.  This means they have a profit objective and they are expected to generate an adequate return on shareholders' funds (equity). As a guide, the Crown's Capital Charge rate is currently 5% per annum, although by agreement with the shareholding Ministers, a lower return on equity can be targeted.	Expected to break even financially but do not have a profit objective.  However, they are generally subject to the Crown's Capital Charge if their liable net assets (total assets minus total liabilities) exceed \$15 million.
Are expected to pay surplus cash as dividends to the Crown, unless there is an appropriate alternative use identified for the surplus cash (e.g. increased sector impact) as discussed with the shareholding Ministers.	Not applicable – Crown entities do not pay dividends. However, as above, they may be subject to the Crown's Capital Charge.
Required to produce a Statement of Corporate Intent (SCI) each year.	Other types of Crown entities produce a 3-yearly Statement of Intent (SOI) and an annual Statement of Performance Expectations (SPE).

<p>The SCI of a CRI is required to include financial forecasts for 3 years.</p>	<p>The SPE of a Crown entity is only required to include financial forecasts for 1 year.</p>
<p>The formal draft SCI of a CRI is required 1 month before the start of the financial year. In practice, MBIE seeks the draft earlier to provide sufficient time for the shareholding Ministers to provide feedback.</p>	<p>The formal draft SPE and SOI (if applicable) of a Crown entity is required 2 months before the start of a financial year.</p>
<p>Required to prepare a formal half-yearly report by the end of February each year, which must be presented in the House of Representatives within 5 working days of receipt by the shareholding Ministers.</p>	<p>No requirement to prepare a formal half-yearly report (but note that quarterly reports are still required).</p>
<p>Required to prepare a formal annual report. This must include audited financial statements and be provided to shareholding Ministers within 3 months of the end of the financial year (i.e. by 30 September).</p>	<p>Required to prepare a formal annual report. The financial statements must be provided to the Auditor-General within 3 months of the end of the financial year (i.e. by 30 September) and the audit report must be provided by the Auditor-General within 4 months of the end of the financial year (i.e. by 31 October).</p>
<p>Because CRIs are companies, they are required to hold an annual meeting of the shareholders, unless the shareholders resolve not to hold such a meeting. Shareholding Ministers have typically held annual meetings, often authorising MBIE and/or Treasury officials to act as their representative (formally called 'appointing a proxy') at the meetings.</p>	<p>No requirement to hold an annual meeting.</p>
<p>Subject to the usual corporate income tax rules and rate.</p>	<p>Not subject to corporate income tax.</p>
<p>Must '<i>have regard to</i>' Whole of Government Directions to Crown entity companies.</p>	<p>Generally '<i>must give effect to</i>' Whole of Government Directions, except in the case of Autonomous or Independent Crown entities.</p>
<p>In limited circumstances and after consultation, the Prime Minister may give formal directions to CRIs. These relate to situations where a state of emergency has been declared and/or there is an animal, plant, forestry or apiary emergency.</p>	<p>Not applicable to other Crown entities.</p>

## Ownership issues relevant to CRIs

### CRI borrowing

CRIs are exempt from the restriction on borrowing outlined in the *CE Act 2004* (section 162).

All contracts for loans to CRIs that are not provided by the Crown are required to include an explicit disclaimer clause stating that the Crown does not guarantee or financially support CRI borrowings.

The disclaimer should clearly describe the nature of the relationship between the Crown and a CRI. The disclaimer aims to give a clear signal to third parties/third-party financiers of the nature of the relationship between the Crown and CRIs in respect of any such borrowings.

The explicit disclaimer is consistent with the Crown's arrangements for state-owned enterprises (SOEs) and other Crown entity companies.

### Ownership review clauses in loan documentation

Some loan documents link the loan terms to the shareholder's identity, so that if the control of the company changes, the lender reserves the right to call up the loan.

For CRIs, this would connect the loan terms with the Crown and could give the incorrect impression of an implicit Crown guarantee.

Notwithstanding the Crown's current ownership policy, the policy on such clauses is as follows:

- › It is acceptable to have loan provisions that require lenders to be informed whenever a CRI becomes aware that its ownership will change.
- › Shareholding Ministers prefer CRIs not to enter loan agreements that provide for a review of the loan at the lender's discretion in the event of an ownership change.
- › It is not acceptable to have loan provisions that involve a technical default at the lender's discretion in the event of an ownership change.

There are alternative mechanisms to assure lenders without the drawbacks typically inherent in ownership change clauses.

These range from covenants concerning the debt/equity ratio and interest coverage to lenders taking security over specific company assets.

These mechanisms can place constraints on the company and must be designed to minimise the extent to which they constrain any future restructuring of a CRI. Boards should bear this in mind when considering such mechanisms.

### Significant transactions

CRIs are expected to obtain prior written consent from shareholding Ministers for any transactions (or series of interconnected transactions) involving full or partial acquisition, disposal or modification of property (buildings, land and capital equipment) and other assets with a value equivalent to, or greater than, \$10 million or 20 percent of the CRI's total assets (prior to the transaction), whichever is the lesser. CRIs also need to consider whether a transaction is a 'major transaction' under the *Companies Act 1993*.

Prior written consent of shareholding Ministers is also required for any transactions with a value equivalent to, or greater than, \$5 million or 30 percent of the company's total assets (prior to the transaction) involving:

- › acquisition, disposal or modification of an interest in a joint venture, partnership or similar association
- › acquisition or disposal, in full or in part, of shares or interests in a subsidiary, external company or business unit
- › transactions that affect the CRI's ownership of a subsidiary or a subsidiary's ownership of another entity

- › other transactions that fall outside the scope of the definition of the CRI's core business or that may have a material effect on its science capabilities.

Additionally, the shareholding Ministers expect CRIs to consult with them should any proposed activity fall outside the nature and scope of their activities as defined in the SCP. The shareholding Ministers expect CRI boards to inform them, in advance, of any transaction that does not meet the thresholds outlined above, but which falls within the scope of the 'no surprises' convention.

Intellectual property transactions should be noted in the quarterly reports to shareholding Ministers, in advance if possible.

#### **Process for approval of significant transactions**

The approval process is expected to be conducted in good faith and to include the following steps:

- › The Board advises shareholding Ministers of a relevant pending decision and provides information on the rationale of the proposal.
- › Reasonable time is allowed for Ministers' consideration.
- › The Board considers Ministers' comments with an open mind.
- › The Board proceeds to take the final decision for which it is responsible.

Shareholding Ministers will assess investment proposals against the following investment principles:

- › the business case for the proposal, including expected financial returns and risks, and the sensitivity and volatility of returns to various alternative scenarios
- › the size of the proposal and fit with the CRI's sector and SCP
- › the size and fit of the proposal within the wider CRI portfolio and Crown balance sheet
- › the CRI's record of success in similar expansions
- › an analysis of how the proposal will be funded and the impact of this on the CRI's financial position.

It is expected that CRIs will engage with MBIE to clarify expectations on the content of any business case. Guidance to the public sector about developing Better Business Cases (BBCs) is contained earlier in this document.

#### **Managing intellectual property**

Shareholding Ministers expect that CRIs will remove barriers to technology and knowledge exchange, especially those barriers relating to accessing Crown-funded data, contracting processes and intellectual property (IP).

MBIE sees the commercialisation of IP from research as an important way to create benefits for New Zealand. Generally, it sees research providers as being best placed to make these decisions.

Reasonable steps should be taken to protect IP that is discovered in the course of research and the operation of the CRI. Likewise, effort should be made to look for alternative users of the IP if the companies involved in the research do not have a pipeline to commercialisation and another organisation is better suited to utilise the IP for the national benefit.

#### **Managing research data**

CRIs are expected to plan for the management and development of research data infrastructure.

Data management plans should be developed collaboratively with stakeholders (including other research institutions) and focus on enhancing the ongoing value of the data to New Zealand.

A data management plan should:

- › address the permanent storage, accessibility and reusability of data
- › include collaborative arrangements with other relevant organisations to maximise the shared use of the data
- › consider conditions for the use of data by the CRI's clients, which may be included in a contract
- › specify data management arrangements across all the CRI's collaborations.

CRIs' data management and licensing practices should comply with the:

- › *Public Records Act 2005*
- › *New Zealand Government Open Access and Licensing Framework*
- › *Directions and Priorities for Government ICT* (see **Annex 4** for links to these documents).

### Managing databases and collections

CRIs hold science databases and collections of great significance.

The principles used to identify such databases and collections are as follows:

- › The databases and collections are being held on behalf of New Zealand, where continued provision, maintenance and utilisation are critical for New Zealand science to deliver public benefit.
- › The benefits of these databases and collections accrue to many, varied users and third-party beneficiaries, while the costs of provision belong to the CRI.

CRIs are expected to manage databases and collections in a way that enhances their ongoing value to New Zealand. Management plans should build on existing plans and primarily consider:

- › the expectations outlined in the CRI's SCP for the collaborative use of databases and collections
- › ways to improve stakeholders' access to, and reuse of, databases and collections through better interoperability, relevance and affordability.

Management plans may also include consideration of international commitments, legislative requirements and cost/benefit analysis.

CRIs that wish to cease managing (or to materially reduce) databases and collections should first consult with current and prospective users. The consultation period should explore opportunities to improve stakeholders' access to, and reuse of, databases and collections through better interoperability, relevance and affordability.

The CRI must seek prior agreement from MBIE before making substantial changes to any Nationally Significant Collection or Database.

### Ministerial directions

- › *Directions to support whole of government approach*: Under section 107 of the *CE Act 2004*, the Minister of State Services and the Minister of Finance may jointly direct Crown entities to support a whole of government approach. Currently, directions are in place for procurement, ICT and property activities, although these do not all apply to CRIs (see **Annex 4** for links regarding Directions).

Under section 7(6) of the *CRI Act 1992*, the directors of a CRI must 'have regard to' any such direction given that relates to Crown-entity companies.

Shareholding Ministers expect:

- CRIs to be knowledgeable on any such directions and the available support from central government
- CRIs to apply these directions as appropriate.



- › *Directions from shareholding Ministers:* Under section 15 of the *CRI Act 1992*, the shareholding Ministers may, by written notice to the Board, direct the Board of a CRI to include or omit elements of the SCI or to determine the level of dividend payable.
- › Before giving any direction under their powers, shareholding Ministers must consult with the CRI's Board. They should then table notice of the direction in the House of Representatives and publish the notice in the Gazette.
- › *Directions from the Prime Minister:* In limited circumstances and after consultation, the Prime Minister may give formal directions to CRIs. These relate to situations where a state of emergency has been declared and/or there is an animal, plant, forestry or apiary emergency.

### **Strategic Reviews (sometimes referred to as 'Four-year Rolling Reviews')**

The Government periodically evaluates the performance of each CRI against its SCP. The purpose of the review is to provide shareholding Ministers with an independent evaluation of each CRI's effectiveness in delivering the outcomes set out in its SCP. The Ministers will also be able to judge the long-term performance potential of the CRIs against the strategic role outlined in their SCP and evaluate the durability of their outcome statements.

### **Formation of subsidiaries**

Under the *CE Act 2004*, CRIs are required to notify shareholding Ministers before they acquire or form a subsidiary. Shareholding Ministers also expect that:

- › the parent company will comply with any restrictions in its SCI relating to the acquisition or formation of subsidiaries
- › the powers and function of each subsidiary will be treated in practice as if it is subject to the same statutory limitations as the CRI
- › in establishing the governance arrangements for the subsidiary, the parent will act in accordance with any relevant provisions of its SCI and accepted best practice in the identification and appointment of directors
- › the parent company will be accountable to the shareholding Ministers for the subsidiary's activities and performance, and will have appropriate financial controls, business planning and monitoring procedures in place
- › public accountability documents for the parent company (SCIs, financial statements and annual reports) will include information on the subsidiary's activities and performance.

### **Joint ventures and partnerships**

CRIs may wish to form joint ventures, partnerships or associations with third parties as a way to leverage expertise and capital. Shareholding Ministers expect to be informed via MBIE at the early stage of any joint venture formation, particularly where the joint venture involves another New Zealand Government entity or where it includes a foreign government or sovereign wealth fund.

Such engagements should not affect a CRI's control over its core science activities and capabilities, finances or budget. In general, the shareholding Ministers will not support joint ventures that result in Crown-owned assets and capabilities being transferred or diluted.

In addition, shareholding Ministers expect any joint ventures to be subject to the same level of financial budgeting and monitoring rigour that applies to CRIs and their subsidiaries.

### **Tax planning**

CRIs are expected to conduct their businesses on the same basis as comparable businesses that are not owned by the Crown, including normal and prudent planning of their tax affairs. CRIs are also expected to act as good corporate citizens by exhibiting a sense of social responsibility where able to do so.

These objectives should be met through tax planning that is within the intent and spirit of the law. While shareholding Ministers are comfortable with CRIs engaging in normal tax planning in accordance with tax law, they are not comfortable with CRIs leading the market in developing aggressive tax strategies.

The shareholding Ministers recognise that what might be considered aggressive may change over time and that there will always be an element of judgement involved. This is a judgement for CRI boards to make.

Finally, the Government views dividend payments as if it were a domestic resident taxpayer. This means imputation credits should be attached to any dividend payments.

## Statement of Corporate Intent (SCI) specific requirements

Because CRIs are companies and produce SCIs rather than SOIs and SPEs, there are some particular requirements that are different from those for other Crown entities.

The SCI sets out a CRI's SCP goals, how these will be achieved and how success will be measured. The SCI is considered in conjunction with a CRI's annual report in a statutory performance and accountability framework.

### Purpose and scope of the SCI

The primary focus of the SCI should be explaining how the CRI's planned activities will contribute to the outcomes identified in the SCP. This should be communicated in narrative form, supported by a range of performance indicators explaining the measurable difference that the CRI's activities will make to its sector(s).

The SCI should broadly include:

- › a description of the role and purpose of the CRI (as outlined in the SCP)
- › a description of the nature and scope of the CRI's functions, with reference to:
  - the CRI's operating environment, particularly the Government's priorities
  - the CRI's scope of operations (as identified in the SCP)
  - how the CRI will address the intent of the *National Statement of Science Investment*/ other relevant policies
  - planned outputs and activities at a high level (e.g. basic research, technology and knowledge exchange)
  - how the CRI will work with stakeholders and end-users to deliver the benefit of its activities to New Zealand
  - how the CRI will collaborate with other research organisations to make the best use of expertise
- › an outline of the CRI's rationale for planned outputs and activities, with reference to:
  - how the CRI intends to report progress towards its outcomes, using both qualitative and quantitative techniques, with indicators and narrative to support this
  - the CRI's planned outputs and activities that are expected to impact on end-users
  - the CRI's plan for managing capability, including infrastructure, databases and collections
- › an overview of key performance targets for the year.

The SCI should also focus on major transactions and investment decisions the CRI intends to make and explain how these decisions relate to the SCP.

### Documenting the operating environment

The SCI should provide an overview of internal and external factors that may affect the CRI's operations over the planning cycle. This analysis will need to include a statement about how the CRI will respond to these factors. Key considerations should include the following:

- › *Government goals and strategies*: It is expected that a CRI will reflect the shareholding Ministers' Letter of Expectations. As appropriate, the SCI should highlight the Government's priorities, such as those identified in the Government's Coalition Agreement (if there is one) and documents such as MBIE's *National Statement of Science Investment* and the *SSIF Investment Plan 2017–2024*.
- › *Specific strategies and goals*: In describing the operating environment in the SCI, CRIs should include a summary of their engagement with (and the goals of) their key stakeholders.
- › *Substantial internal matters*: Material items should be highlighted. These may include the need for capital reinvestment or the development of major research collaborations.

### Documenting objectives

- › *Research outcomes:* The SCI should outline the rationale for investing in each type of activity in the context of the outcomes in the SCP. Outputs and activities will need to be described at a high level, supported with narrative on how identified 'next-users' will adopt the research findings, as well as demonstrate a clear pathway to their impact.  
Databases and collections should also be incorporated in the Research Outcomes section.
- › *Organisational vitality:* Successful delivery of research outcomes can only be sustained if they are underpinned by a healthy, vibrant organisation. SCIs are expected to contain a high-level strategy and key objectives for the following matters:
  - People (including diversity), Vision Mātauranga / Māori engagement, Infrastructure, Collaboration, International connections and Financial Performance.

### Generic indicators

When producing an SCI, CRIs should develop a suite of indicators that describe their approach to improving performance over time.

The performance specification has some consistent measures across all the CRIs, as well as allowing the CRIs to select performance indicators that allow them to show their performance against their own strategy. The first set is the generic performance indicators, across all the CRIs, which were developed in consultation with CRIs. The second set is developed by the individual CRI and applies to all or part of their organisation. This additional set should supplement the generic indicators and provide the CRI with scope to reflect the strategy and actions being taken by the CRI to deliver on its SCP.

The following table lists the generic performance indicators.

INDICATOR	MEASURE	REPORTING FREQUENCY
End-user collaboration	Revenue per full-time employee (FTE) from commercial sources	Quarterly
Research collaboration	Publications with collaborators	Quarterly
Technology & knowledge exchange	Commercial reports per scientist FTE	Quarterly
Science quality	Impact of scientific publications	Annually
Financial indicator	Revenue per FTE	Quarterly

For both sets of indicators, the SCI should state the actual performance in the previous financial year and the target figure or range for the forthcoming financial year.

In common with good business practice, shareholding Ministers expect that CRIs will obtain feedback from their customers / stakeholders and report on this at least annually. The following table lists the indicators that CRIs may wish to consider using in obtaining feedback from stakeholders.

INDICATOR	MEASURE
End-user collaboration	Percentage that is satisfied with the way the CRI sets research priorities
	Percentage that have confidence that the CRI considers their sector's priorities when setting research priorities
Overall satisfaction	Percentage of those interacting with CRI in the past 3 years that are satisfied with the overall quality of their experience
Technology & knowledge exchange	Percentage that have adopted knowledge or technology from CRI in the past 3 years
	Percentage that are satisfied with their experience of accessing knowledge or technology from the CRI
Research collaboration	Percentage that have confidence that the CRI has the ability to put together the most appropriate research teams

### Other indicators

CRIs are expected to be a 'good employer'. The following indicators can be used by CRIs as a starting point to assess their 'good employer' practices:

- › improvement in staff engagement survey results
- › reduction in percentage of unplanned staff turnover
- › reduction in average number of sick and domestic leave days taken
- › reduction in percentage of employees with annual leave balances greater than 20 days
- › reduction in workplace accidents.

### Performance against targets

MBIE has adopted a standardised set of financial performance measures to measure shareholder return, profitability and solvency for CRIs. These aim to promote transparency and consistency.

The following table lists these measures and their definitions.

MEASURE	DESCRIPTION	CALCULATION
Operating margin	The profitability of the company per dollar of revenue	Earnings Before Interest, Tax, Depreciation, Amortisation and Fair value adjustments (EBITDAF) / Revenue
Profit per FTE	The ability of the company to generate a return from its staff	EBITDAF / FTEs
Quick ratio	Adjusted ratio of current assets to current liabilities, adjusted for assets that cannot be liquidated quickly and liabilities that do not require cash to settle	Current assets less inventory less prepayments / Current liabilities less revenue received in advance
Interest coverage	The number of times that the company can cover interest expense with profit	EBITDAF / Interest paid
Profit volatility	The standard deviation of the past 5 year's profit, scaled by average profit	Standard deviation of EBITDAF for past 5 years / Average EBITDAF for the past 5 years
Forecasting risk	The average difference between forecast return on equity and actual return on equity for the past 5 years	5-year average of return on equity less forecast return on equity
Adjusted return on equity	Return on equity after removing the impact of fair value movements	Net Profit After Tax (NPAT) excluding fair value movements (net of tax) / Average of share capital plus retained earnings
Revenue growth	Measure of whether the company is growing revenue	% change in revenue
Capital renewal	Measure of the level of capital investment being made by the company	Capital expenditure / Depreciation expense plus amortisation expense

These measures should be included in each CRI's SCI, where relevant.

If a CRI anticipates that it will not achieve its performance targets, the shareholding Ministers expect early advice from the Board, including details of the reason for the expected shortfall and the remedial actions being put in place to remedy the situation. In general, this can be achieved through the quarterly reporting process. Where performance shortfalls are significant, the shareholding Ministers expect more direct notification and to be kept informed of progress.

## Annual report specific requirements

Because CRIs are companies and produce SCIs rather than SOIs and SPEs, there are some specific requirements for their annual reports.

### Content

The annual report encompasses the whole of the CRI's business. If the CRI is the parent company of a group of entities, the annual report must also cover the activities performed by the whole group. Annual reports are used by select committees, Ministers and MPs to review performance and provide information to a wide range of other stakeholders.

The *CRI Act 1992* (section 17) requires that the annual report includes the following:

- › a report of operations for both the CRI and its subsidiaries (if any) during that financial year, providing information as necessary to enable an informed assessment of the operations of the CRI and its Crown entity subsidiaries, including a comparison of the performance against the intentions that were formally set out in the CRI's SCI
- › consolidated audited financial statements and the statement of responsibility for the financial statements.

There is no prescribed format for the annual report; each CRI should determine the format they believe will best promote understanding of the CRI's operations and performance. At a minimum, a CRI's annual report is expected to include the following:

- › Chair and/or Chief Executive overview.
- › Sufficient information to enable an informed assessment of the CRI's and subsidiaries' performance during the financial year.
- › A comparison of the performance of the CRI and subsidiaries against its SCI impacts, outcomes and performance measures, including:
  - commentary on progress toward achieving the SCP outcomes
  - performance against all indicators, including generic and impact indicators, as outlined in the SCI
  - a declaration that all activities undertaken by the CRI are within the scope of operation as specified in its SCP
  - any written direction issued by shareholding Ministers.
- › An average of their top three innovations over the past three years in each outcome area (as specified by the CRI's SCP) that have resulted from Vote Business, Science and Innovation Crown funding (i.e. SSIF, contestable and predecessor research programmes and other funding sources).

This should:

- reflect the balance of the outcome areas – if one outcome area makes up a small fraction of its activity, a CRI may wish to prepare one story for that area and increase the number of stories in other outcome areas
  - the quantifiable impact on industry or sectors from these innovations
  - the total investment made (both public and private) to achieve each innovation (this may be provided to MBIE in a separate confidential document if commercially sensitive)
  - describe the innovation and the benefit to the sector(s) (a short paragraph) and include a link to the CRI website for the full details (e.g. a case study).
- › The specific information required by s211 of the *Companies Act 1993*.
  - › Consolidated audited financial statements for the group that are prepared in accordance with the *Financial Reporting Act 2013*. These need to comply with New Zealand generally accepted accounting practice (GAAP), New Zealand equivalents to international financial reporting standards and any other applicable financial reporting standards appropriate for profit-oriented entities. Additionally, the financial statements should state the dividend (if any) that will be paid to the Crown by the CRI for the financial year to which the report relates and report on the key financial ratios.

- › Report on the CRI and its subsidiaries' compliance with their obligation to be a good employer under section 118 of the *CE Act 2004* (including their equal employment opportunities programmes) in the financial year being reported.

#### **Timetable for submission**

CRIs are required to deliver their completed annual report to the shareholding Ministers within three months from the end of the financial year; i.e. by 30 September.

MBIE requests that once the annual report has been approved by the Board (i.e. the version sent to print), an electronic copy is sent to MBIE's monitoring team to enable MBIE to brief the responsible Minister within an appropriate time frame.

The responsible Minister tables each annual report in the House of Representatives within five working days of receipt. Once tabled, the annual report for each individual CRI is made public and CRIs are expected to publish their annual reports on their websites.

#### **Tabling procedure**

The Parliamentary Bills Office requires five physical copies for tabling and one electronic copy. The appropriate *shoulder number* must be included in the top right-hand corner of the cover/ title page. Shoulder numbers are issued by the Office of the Clerk (Bills Office). They remain constant for the same document from year to year and are never reallocated.

The electronic file must be a Word document or a PDF (formatted, structured and tagged to increase accessibility), 150 dpi minimum and no larger than 5.5 MB (or split into two parts if larger) and sent by email to [parliamentary.papers@parliament.govt.nz](mailto:parliamentary.papers@parliament.govt.nz). The Minister's office requires two copies and MBIE's monitoring team requires three copies (to be submitted to MBIE, 15 Stout Street, Wellington 6011, with an electronic version also submitted by email).

## Glossary of terms relevant to CRIs

<b>TERM</b>	<b>DEFINITION</b>
Attribution	The extent to which an impact or outcome can be directly assigned to the activities undertaken by an agency or agencies.
Capability	The mix of powers, systems, skills, infrastructure and information resources needed, now and in the future, to produce and manage the interventions that best contribute to the outcomes the Government is seeking from the CRI.
Impact	The contribution made to an outcome by a specified set of outputs or activities, or both (also referred to as intermediate outcomes).
Intervention	A range of actions that a CRI will undertake in order to deliver positive change for New Zealand.
Outputs	The goods and services that a CRI delivers to third parties, and which the CRI is accountable for.
Outcome	A state or condition of society, the economy or the environment and a change in that state or condition. (Outcomes flow directly from Ministerial priorities and can also be referred to as a 'final outcomes' or 'end outcomes').
Letter of Expectations	A letter that is sent annually to the CRI board outlining the Government's priorities for the SCI and the upcoming year. It may also include expectations for performance.
Rationale	The strategic and/or operational articulation of how one or more intervention(s) will produce desirable outcomes for New Zealand, including valid measures of success at the output, impact and outcome levels of performance.
Results	A tangible statement of what has been achieved by an agency or sector, at the output, impact or outcome level.
Statement of Core Purpose (SCP)	Key guidance document for CRIs stating desired outcomes, scope of operation and operating principles.
Strategic Issues Letter	A letter from the CRI board to the shareholding Ministers setting out key strategic issues, significant changes to the operating environment and how the CRI intends to respond to the expectations set out in the Letter of Expectations.
Technology exchange	The process of exchanging knowledge and/or technology between the CRI, its stakeholders and end-users to achieve commercial, environmental or social outcomes.





