



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



# Briefing for the Incoming Minister for the Digital Economy and Communications

**4 November 2020**



# MBIE Karakia

Tāwhia tō mana kia mau, kia māia

Ka huri taku aro ki te pae kahurangi,  
kei reira te oranga mōku

Mā mahi tahi, ka ora, ka puāwai

Ā mātau mahi katoa, ka pono, ka tika

**TIHEI MAURI ORA**

**TRANSLATION:**

*Retain and hold fast to your mana, be bold, be brave*

*We turn our attention to the future, that's where the opportunities lie*

*By working together we will flourish and achieve greatness*

*Taking responsibility to commit to doing things right*

**TIHEI MAURI ORA**

**MĀIA**  
BOLD & BRAVE

**PAE  
KAHURANGI**  
BUILD OUR FUTURE

**MAHI TAHI**  
BETTER TOGETHER

**PONO  
ME TE TIKA**  
OWN IT

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## 1. Portfolio overview

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1. This briefing provides you with information about the Digital Economy and Communications portfolio. You will also receive briefings from the Department of Internal Affairs and the Department of Prime Minister and Cabinet.
2. Further briefings will be provided by the Ministry of Business, Innovation and Employment (MBIE) focussing on specific topics in depth, guided by your priorities.
3. We look forward to discussing how we can work with you to give effect to Labour Party priorities including the commitment to:
  - a. Establish and deploy a \$60m infrastructure fund targeting increasing connectivity in underserved regions in terms of capacity upgrades, backhaul upgrades and enhancing infrastructure in areas of need.
  - b. Enable the release of radio spectrum to support broadband capacity and coverage for rural communities through a \$10m fund.

### Strategic context

4. High performing, resilient communications networks and services are critical for economic and social prosperity, as has been highlighted through the COVID-19 pandemic. Communications infrastructure and services play a key role in supporting digital transformation and enable the delivery of Government initiatives.
5. New technology is expanding the uses and applications for connectivity. Deepening the integration of digital technology across industry and society is expected to play an important role in aiding the lifting of New Zealand's productivity, improving environmental quality and enhancing the lives of New Zealanders.
6. The digitalisation of every aspect of our lives has also decreased the costs and effort needed for criminal actors to conduct cyber-attacks, and increased the rewards, making them more prevalent.
7. Digital technologies evolve at a rapid pace and have wide-ranging impacts across economic, social and public sector domains. It is important for government to respond in an active and coordinated way to new technologies (such as 5G), working in partnership with industry and community groups, to seize the opportunities and manage the challenges that come with technological change.
8. The role of your within this context is to ensure that New Zealand has communications networks and services that are competitive, innovative, secure, fit for purpose and support New Zealand's economic performance now and in the future.
9. The portfolio has several levers to achieve these objectives, including regulatory settings, government programmes, the allocation and licensing of radio spectrum, and the support and advice functions provided by the Computer Emergency Response Team (CERT NZ).
10. Strategic leadership for Communications is also a responsibility of the portfolio and we would welcome the opportunity to discuss with you our ideas in this space.

## Significant progress has been made in this portfolio to date

### Infrastructure deployment

11. New Zealand is nearing the end of a major upgrade of its telecommunications networks. Extensive new network infrastructure has been deployed across the country through over \$2 billion in government investment allocated to three programmes – Ultra Fast Broadband (UFB), Rural Broadband Initiative (RBI) and the Mobile Black Spot Fund (MBSF).
12. As at June 2020, 51,732 rural homes and businesses can access improved broadband through the UFB and RBI programmes and 629km of state highway and 50 tourism sites have mobile coverage through the MBSF. Once these programmes are complete in 2023, 99.8 per cent of New Zealand homes and businesses will have access to quality broadband. There will remain around 4000 households that will not be covered by these programmes and will require bespoke solutions.
13. As New Zealanders' demand for data continues to increase, the focus is shifting to expanding data capacity and resilience of our networks, and addressing barriers to uptake of broadband services.

### Review of regulatory tools

14. As markets evolve with new technologies, business models, competitive dynamics and market structures, our regulatory settings also need to adapt.
15. A comprehensive review of the Telecommunications Act 2001 was completed in 2018, to adapt the regulatory system for the large-scale transformation to a fibre-based network infrastructure. The review resulted in a new regulatory framework that is now being implemented.
16. While the Telecommunications Act reform was a significant piece of work, the job is not done. New technologies are driving change in commercial models and relationships, for example low earth orbit broadband satellite services which are likely to become a commercial reality. There may be implications of the commercial dynamics for regulatory settings in several telecommunications statutes.

### Allocation of radio spectrum to enable new technologies

17. Infrastructure for, access to, and use of radio spectrum is fundamental to enabling uptake up of new technologies. Spectrum is managed through national regimes (management rights and radio licensing) and under international accords. Lead-in times typically take several years due to the need for international harmonisation, and technical and operational work to restructure and allocate spectrum bands.
18. By releasing spectrum, we can contribute to increasing network capacity and enabling digital connectivity in specific locations (for example, in rural and semi-rural areas) or to support new uses (such as for law enforcement or defence purposes, or for discrete satellite and cellular services). The government has supported the accelerated deployment of 5G in New Zealand through early access to 3.5 GHz in 2020. Long-term rights for 5G is planned to be allocated in 2021.

19. The choices government makes about allocation of spectrum have long term effects on the availability and cost of communications services, development of commercial opportunities, and the deployment of innovative applications.

### **Working towards an enduring resolution of Māori interests in spectrum**

20. Engagement between the Crown and Māori on the issue of spectrum has been characterised by disagreement on the nature and extent of Māori interests. To resolve this issue, the Crown and Māori are working towards an enduring resolution of Māori interests in spectrum.
21. Meaningful progress towards this agreement has been made in partnership with the entities established to work with the Crown (the Māori Spectrum Working Group and the Interim Māori Spectrum Commission), and a short-term allocation of spectrum for 5G has been made. Reaching a long-term agreement is critical to Māori interests in spectrum and the timely deployment of 5G in New Zealand and will contribute to long-term digital transformation.

### **Managing and responding to evolving cyber security threats**

22. Cyber security is fundamental to New Zealand's national security and economic growth. Virtually everything now has some connection to the internet, and this connection is becoming increasingly important. It is important to protect the confidentiality, integrity, and availability of New Zealand's data, systems, and networks, and to ensure systems are resilient.
23. The Communications part of your portfolio has responsibility for the telecommunications network security regulatory system (supported by MBIE). In addition, responsibility for cyber security policy is delegated to you from the National Security and Intelligence portfolio (supported by DPMC). Cyber security services are provided by the national Computer Emergency Response Team (CERT NZ). CERT NZ is the Government's public face for cyber security in New Zealand.
24. The number of incidents reported to CERT NZ has grown steadily since it was established in 2017 with 3,102 reported incidents as at 30 June 2020, a 42 per cent increase on 2019 with an estimated \$7.8 million in resulting losses to businesses and individuals. This includes the impact of the sustained phishing campaign by scammers pretending to be New Zealand Transport Agency (NZTA) in 2020. CERT NZ worked with NZTA to remove the fake website.
25. CERT NZ continues to play a significant role in cyber security through receiving reports of cyber incidents, analysing threats, sharing information and advice, coordinating incident responses, promoting good cyber security practices, and is a point of contact for the international CERT community. New Zealand's institutions and regulations must remain flexible and effective to respond to constantly evolving security threats.

### **Key areas of focus to keep pace with the changing environment**

26. Experiences dealing with COVID-19 reinforce the importance of what we consider to be three strategic challenges and opportunities for the Digital Economy and Communications portfolio. We welcome the chance to discuss these with you further.

27. Our view is that taking action in these areas will provide stimulus opportunities, address issues that might impede New Zealand’s recovery work programmes and address issues that could undermine economic performance.

**One: Enabling uptake of new technologies**

28. In support of digital transformation, the Communications regulatory system needs to anticipate, enable and ensure adequate safeguards and maintain consumer confidence in new technologies. Example new technologies include the proliferation of sensors into everyday equipment (the Internet of Things), remote sensing technologies, developments in encryption and mobile applications. The most notable, however, is 5G.

S9(2)(f)(iv)

**Two: Boosting connectivity capacity and improving resilience**

31. In spite of the significant investments made to date, including through the COVID-19 pandemic, there remain areas where telecommunications networks need improvement so that all in the community can connect to broadband services of an acceptable quality.

S9(2)(f)(iv)

33. S9(2)(f)(iv)

[Redacted text block]

. We see these as the focus areas for the Labour Party commitment to a \$60m infrastructure fund and \$10m for radio spectrum to improve broadband capacity and coverage for rural communities.

*Improving infrastructure resilience to reduce the risk of community isolation*

34. As well as being accessible, networks need to be robust. There are high expectations that networks will be resilient in the event of a life-threatening emergency or a natural disaster. In a post-COVID-19 environment, the risk of outages is more significant due to the increasing reliance of social, educational and economic outcomes on the availability of connectivity.

35. Recent outage events caused by natural disasters or human error have highlighted the vulnerabilities in the networks. Building resilience into the physical networks helps to reduce the reliance on network recovery, particularly where re-establishing service might be time consuming and complex.

S9(2)(f)(iv), S9(2)(b), S9(2)(i), S9(2)(j)

S9(2)(f)(iv)

**Three: Addressing barriers to uptake of New Zealander’s access to broadband services**

38. It is estimated that one in five New Zealanders are digitally excluded, and as such are unable to fully realise the social and economic benefits of having access to high quality and affordable infrastructure. We know that Māori, Pasifika people, the elderly, those living in social housing, unemployed people, disabled individuals and those living in rural areas are more likely to face digital exclusion. COVID-19 has brought many of the issues related to digital exclusion to the surface.
39. To be digitally included a person must have access to affordable connectivity, and a device they can confidently use in their day-to-day life. The multifaceted nature of digital inclusion means that addressing it requires a broader focus than just infrastructure, and collaboration across government.

S9(2)(f)(iv)



## 2. Portfolio responsibilities

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41. This section provides a high level overview of the functions and responsibilities that fall within the portfolio. More detailed information is included in Annexes (summary of legislation, Crown entities, key stakeholders, and funds and appropriations).

### Stewardship of the communications markets regulatory system

42. The Government expects government departments to invest in maintaining the quality of the regulation they are responsible for in a similar way to other key assets which departments are responsible for. Cabinet guidance notes that regulatory stewardship involves taking a long term view to ensure that regulation is fit for purpose in the future. It includes a focus on the practice of regulation as well as policy. The Productivity Commission's 2014 Report *Regulatory Institutions and Practices* found that failures of regulation are frequently caused by shortcomings in practice, governance, culture or capability rather than by shortcomings in the rules themselves.
43. MBIE is responsible for a wide range of regulatory systems. The last Performance Improvement Framework Review in 2017 identified MBIE's stewardship of its regulatory systems as a key area to focus on to lift the organisation's performance. In response to these expectations, MBIE has developed a programme of work to enhance its stewardship of all its regulatory systems. The work includes more investment in system assurance to provide confidence that systems are working as intended, and more focus on the governance and oversight of each system. MBIE is also developing a programme of periodic assessments of each MBIE regulatory system to help ensure that MBIE has a good understanding of its fitness for purpose, even where a major policy review hasn't recently been undertaken.
44. The communications markets regulatory system spans fixed line, wireless and postal communications networks and includes the allocation of spectrum resources for radio technologies. The system regulates the natural monopoly features inherent in aspects of communications networks for the long term interests of consumers. It provides:
- The regulatory framework for communications providers to access communications networks.
  - The regulatory framework for allocating spectrum and licensing radio technology equipment.
  - Regulatory powers to support the national security system.
45. There are six core functions relevant to the Digital Economy and Communications portfolio:

<b><i>Policy advice</i></b>
<ul style="list-style-type: none"> <li>• MBIE leads strategy and policy advice functions relating to communications markets and spectrum management.</li> <li>• Treasury provides secondary advice, and is responsible for overseeing the Crown’s trading enterprises such as NZ Post, Crown Infrastructure Partners.</li> <li>• The Commerce Commission provides advice and information on the operational implications of telecommunications policy proposals.</li> </ul>
<b><i>Operational policy and regulatory determinations</i></b>
<ul style="list-style-type: none"> <li>• The Commerce Commission leads operational strategy, policy, processes and determinations to implement law relating to telecommunications. This includes developing rules and processes for regulated entities, making determinations on applications, and general enforcement and regulatory control policies and priorities.</li> <li>• MBIE is responsible for some operational telecommunications policy matters including administration of telecommunications levies. MBIE also administers radio spectrum rights and licences and monitors non-price parameters of postal services.</li> </ul>
<b><i>Service delivery</i></b>
<ul style="list-style-type: none"> <li>• CERT NZ collates a profile of the cyber security threat landscape in New Zealand. It responds to cyber security incidents and coordinates government agencies’ responses to reported cyber security incidents.</li> </ul>
<b><i>Advice, education and information</i></b>
<ul style="list-style-type: none"> <li>• The Commerce Commission provides a range of advice, information, advocacy and education to the public on the Telecommunications Act and to the Minister on particular studies eg mobile market study.</li> <li>• MBIE leads advice, information, advocacy and education to the public on spectrum management.</li> <li>• CERT NZ provides information and advice to help New Zealand stay resilient to cyber security threats.</li> </ul>
<b><i>Compliance and enforcement</i></b>
<ul style="list-style-type: none"> <li>• The Commerce Commission leads enforcement of the Telecommunications Act and the competition issues associated with spectrum holdings.</li> <li>• MBIE is responsible for enforcement of the Radiocommunications Act.</li> <li>• The Telecommunications Industry Forum (TCF) established and implements industry-led customer codes.</li> </ul>
<b><i>Monitoring and evaluation</i></b>
<ul style="list-style-type: none"> <li>• MBIE monitors and evaluates performance of the communications regulatory system through environmental scanning, ongoing stakeholder engagement and initiating particular policy-relevant research.</li> <li>• The Commerce Commission monitors and evaluates communications market developments and any particular need for determinations.</li> </ul>

## Legislative responsibilities

46. As Minister for the Digital Economy and Communications, you have certain functions, duties and powers in relation to communications under the following Acts administered by MBIE summarised as follows:

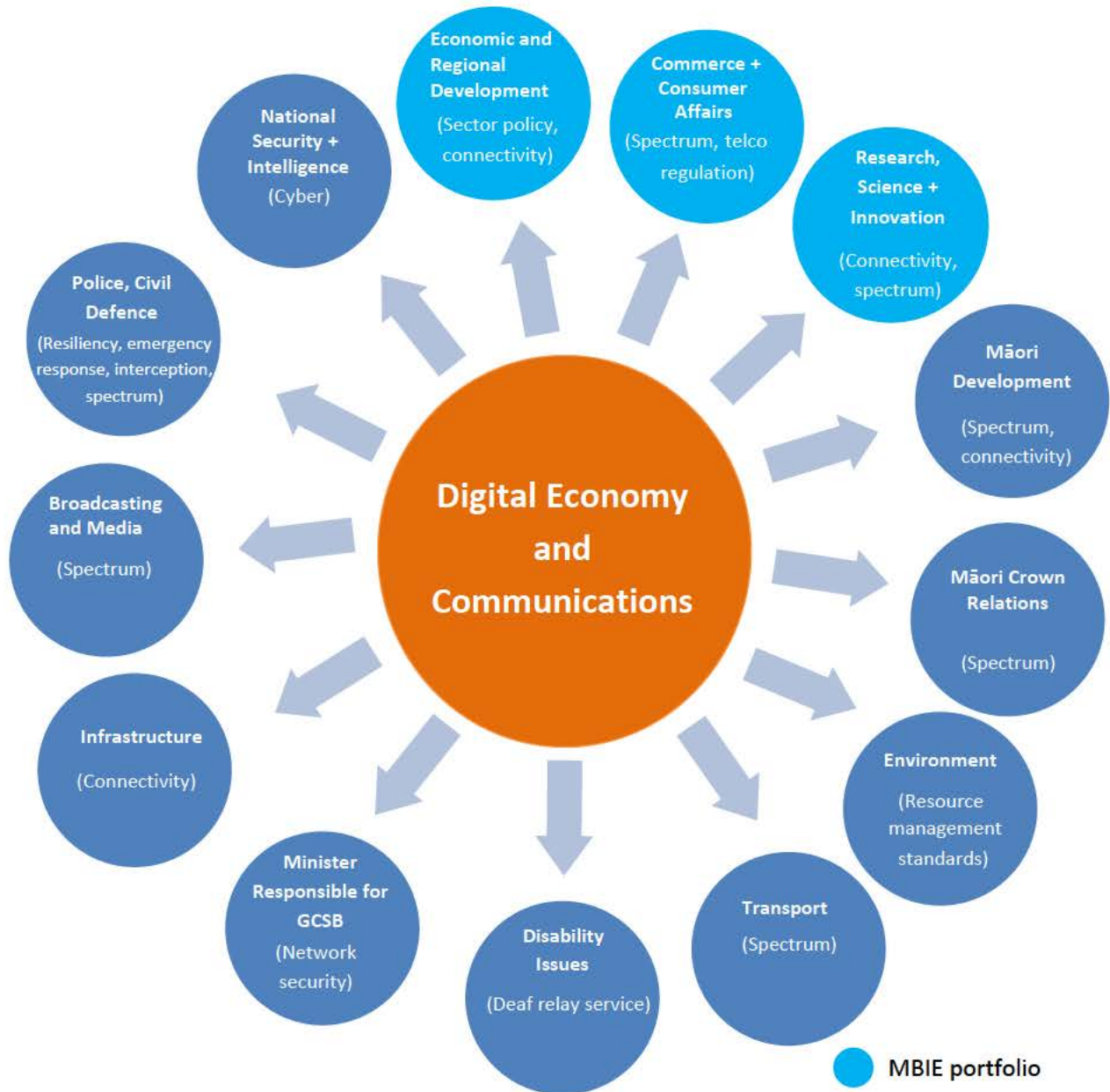
Statutes	Key roles, responsibilities and functions of Minister	Role of Crown entities, Companies, State Agencies and Boards
<p>Telecommunications Act 2001</p> <p><i>Regulates the supply of telecommunications services, promotes competition and protects consumers</i></p>	<ul style="list-style-type: none"> <li>Appointing the Telecommunications Commissioner to the Commerce Commission</li> <li>Policy decisions regarding levies, regulated services and consumer protection.</li> </ul>	<p>Commerce Commission’s main responsibilities include:</p> <ul style="list-style-type: none"> <li>Sector monitoring</li> <li>Regulation of wholesale telecommunication services</li> <li>Liability allocation</li> <li>Consumer advice and protection.</li> </ul> <p>MBIE’s main responsibilities are to:</p> <ul style="list-style-type: none"> <li>Support the Minister</li> <li>Lead policy development</li> <li>Administer the operator network register.</li> </ul>
<p>Radiocommunications Act 1989</p> <p><i>Regulates the use of radio spectrum, sets rules for licensing radio transmitters and associated compliance framework</i></p>	<ul style="list-style-type: none"> <li>Make regulations</li> <li>Give a Statement of Policy and Direction to MBIE.</li> </ul>	<p>MBIE’s main responsibilities are to:</p> <ul style="list-style-type: none"> <li>Provide policy advice</li> <li>Operate a Registry for rights and licences</li> <li>Enforcement</li> <li>Approval of radio engineers</li> <li>Setting reference and equipment standards.</li> </ul>
<p>Postal Services Act 1998</p> <p><i>Regulates postal services, promotes competition and supports an efficient postal market</i></p>	<ul style="list-style-type: none"> <li>Signatory to the Deed of Understanding, an agreement between NZ Post and the Government that places obligations on NZ Post in relation to mail delivery.</li> </ul>	<p>MBIE’s main responsibilities are to:</p> <ul style="list-style-type: none"> <li>Provide policy advice for mail</li> <li>Approve applications and keep a register of postal operators in New Zealand.</li> </ul> <p>Matters relating to misuse of market power between postal operators can be raised with the Commerce Commission.</p>

**BRIEFING FOR THE INCOMING MINISTER FOR THE DIGITAL ECONOMY AND COMMUNICATIONS**

Statutes	Key roles, responsibilities and functions of Minister	Role of Crown entities, Companies, State Agencies and Boards
<p>Telecommunications (Interception Capability and Security) Act 2013 (TICSA)</p> <p><i>Establishes obligations for network operators in terms of interception capability and network security</i></p>	<ul style="list-style-type: none"> <li>• Policy decisions regarding interception and network security.</li> <li>• Minister for Government Communication Security Bureau (GCSB) consults on administrative decisions.</li> </ul>	<p>MBIE is responsible for advising you on the TICSA legislation, as a regulatory system, including:</p> <ul style="list-style-type: none"> <li>• Whether the legislation is achieving its objectives</li> <li>• Whether the legislation need to be amended to reflect a change in the environment.</li> </ul> <p>GCSB is responsible for operationalising the network security provisions of TICSA and Police has responsibilities related to the interception provisions.</p>
<p>Contract and Commercial Law Act 2017 (Part 4 )</p> <p><i>Establishes regulatory framework for contracts, sale of goods, electronic transactions and commercial transactions - Pt 4 facilitates the use of electronic technology to meet legal requirements</i></p>	<ul style="list-style-type: none"> <li>• Policy decisions regarding electronic transactions.</li> </ul>	<p>Department of Internal Affairs (DIA) ensures compliance with the Act and is also the government agency responsible for establishing personal identity, including the use of RealMe as a digital identity service.</p> <p>MBIE’s main responsibility is to lead policy development.</p>
<p>Unsolicited Electronic Messages Act 2007</p> <p><i>Regulates sending of unsolicited commercial electronic messages, requires all commercial electronic messages to include information about who authorised the message and to provide a functional unsubscribe facility, and prohibits address-harvesting.</i></p>	<ul style="list-style-type: none"> <li>• Policy decisions regarding electronic messages.</li> </ul>	<p>DIA has monitoring, compliance and enforcement responsibilities under this Act.</p> <p>MBIE’s main responsibility is to lead policy development.</p>

### 3. Major links with other portfolios








47. The Digital Economy and Communications portfolio provides a range of opportunities to work with other Ministers to deliver broader outcomes. The portfolio is closely linked to the following portfolios:



## 4. How MBIE assists you

48. The key MBIE contacts are set out in the following table.

### Key contacts

Position		Priority Area	Contact details
Carolyn Tremain Chief Executive Ministry of Business, Innovation & Employment			E Carolyn.Tremain@mbie.govt.nz P 04 901 1357 S9(2)(a)
Chris Bunny Deputy Chief Executive Building, Resources & Markets Group		Policy responsibilities, reports to Carolyn Tremain	E Chris.Bunny@mbie.govt.nz P 04 901 8728 S9(2)(a)
James Hartley General Manager Commerce, Consumers & Communications Branch		Policy responsibilities for telecommunications, post and radio spectrum, reports to Chris Bunny	E James.Hartley@mbie.govt.nz P 04 460 1396 S9(2)(a)
Suzanne Stew Deputy Chief Executive Whakatairanga Service Delivery Group		Operational responsibility for radio spectrum management and CERT NZ, reports to Carolyn Tremain	E Suzanne.Stew@mbie.govt.nz P 04 474 2926 S9(2)(a)
Sanjai Raj General Manager Market Integrity		Operational responsibility for radio spectrum management, reports to Suzanne Stew	E Sanjai.Raj@mbie.govt.nz P 04 474 2926 S9(2)(a)
Mike West Strategy and Enablement (Associate DCE)		CERT NZ, reports to Suzanne Stew	E Michael.West@mbie.govt.nz P 04 901 9837 S9(2)(a)
Rob Pope Director CERT NZ		Reports to Mike West	E Rob.Pope@mbie.govt.nz P 04 917 1054 S9(2)(a)


## 5. Immediate priorities and deliverables

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49. This chapter summarises for you the recommended focus for the first three months. This has been grouped as follows:
- *Key decisions* – actions that are required by you to progress key policy work and meet statutory requirements – strategic direction and administrative decisions.
  - *Upcoming events* – events that are expected to occur that are relevant to your portfolio.
50. We are keen to discuss a forward work programme with you.

### Key decisions in the next three months

S9(2)(f)(iv)



S9(2)(f)(iv)





S9(2)(f)(iv)

### Upcoming events

Event	Timing
Spectrum management services for New Zealand's hosting of the America's Cup	Late 2020 / early 2021
Preparation for the Asia Pacific Economic Community Telecommunications Working Group (APECTEL) conference in 2021 – New Zealand will be hosting mid-2021 (dates to be confirmed)	Early 2021

## Annex 1 Legislation for the communications markets regulatory system

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### Telecommunications Act 2001

#### Promotion of competition and incentives to invest

1. The Telecommunications Act promotes competition in the telecommunication services market. The regime seeks to create a level playing field where communications providers are supplying monopoly services to competitors, by establishing an access regime<sup>1</sup>. To this end, the Act empowers the Telecommunications Commissioner to set prices and other terms of supply for regulated services which level the playing field without discouraging investment by the access provider. Effective competition provides strong incentives to invest, as has been the case in the mobile sector, where competition has driven successive upgrades of technology.
2. The Act also provides for the Telecommunications Commissioner to investigate whether additional services should be regulated and to make recommendations to the Minister. The Commerce Commission can also recommend the removal of regulation if markets become more competitive. Its decisions are subject to review on procedural grounds, or points of law, but are not open to merits review.
3. In late 2018 the Telecommunications (New Regulatory Framework) Amendment Bill amended the Act to enable a new form of telecommunications network regulation. The Bill:
  - a. Establishes a stable and predictable framework for fibre access services in New Zealand
  - b. Removes unnecessary copper fixed line access service regulation, given the accelerating transition long term
  - c. Streamlines regulatory processes to enable a more rapid response to any competition problems
  - d. Provides more regulatory oversight of retail service quality and enables the development of Commerce Commission codes and wider Commerce Commission monitoring of consumer matters.

#### Telecommunications Service Obligations

4. The Act requires communications providers to enter into Telecommunications Service Obligations (TSO) agreements with the Crown to deliver communications services that would not otherwise be delivered by the market, at affordable prices. The local calling TSO obliges Spark to provide local residential voice and dial-up internet services and requires Chorus to provide supporting network services. A deaf relay TSO requires a relay service to be provided

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<sup>1</sup> An access regime is a set of rules that requires wholesale network providers to allow their competitors to access their networks on similar terms to the network providers themselves.

for hearing-impaired and speech-impaired customers so they can communicate using a range of communications services.

**Levies**

5. The Act provides for the following levies:
- *Telecommunications Development Levy* – This levy subsidises telecommunications capabilities in the public interest which are otherwise not expected to be available commercially, or which are unaffordable. The levy is collected from telecommunications service providers each year. Levy revenues are currently used to fund the deaf relay TSO, contribute to RBI and MBSF, and the new emergency caller location system.
  - *Telecommunications Regulatory Levy* – This levy funds the Commerce Commission’s telecommunications regulatory functions and is collected from telecommunications service providers each year. S9(2)(f)(iv)
- [Redacted text]

**UFB and RBI Undertakings**

6. The Act provides for access providers to lodge open access undertakings for approval by the Minister. Undertakings have been approved for:
- *Chorus* – in relation to UFB fibre networks, its legacy copper network and RBI networks
  - *Northpower, Ultrafast Fibre Limited, and Enable Networks* – in relation to their UFB fibre networks
  - *Vodafone* – in relation to its RBI networks.
7. The Commerce Commission monitors compliance with the undertakings and can take enforcement action.

*Monitoring*

8. The Commerce Commission must monitor and report on market performance. It has extensive information disclosure powers in relation to UFB fibre networks.

**Radiocommunications Act 1989**

9. The Radiocommunications Act is enabling legislation for the use of radio spectrum in New Zealand. It primarily deals with the coordination of spectrum use to reduce interference between transmitters. Coordination is achieved through two licensing regimes. One comprises tradable, fixed-term rights to manage and/or use spectrum, typically allocated by competitive methods. The second is an administrative licensing regime with spectrum allocated on a “first come, first served” basis.
10. The Act also sets up procedures for dealing with interference and disputes between users when they occur. In addition, it enables MBIE to set equipment standards to manage intended and unintended transmissions from electronic equipment.

11. Most administrative functions are delegated to the Chief Executive of MBIE. The Act sets out two formal roles for the responsible Minister. The first is recommending the making of regulations under the Act, for example to specify processes and requirements under the administrative licensing regime. The second is to issue a Statement of Government Policy and Direction. This document guides MBIE in its administration of the administrative licensing regime.
12. The Act is silent on allocation of the tradeable spectrum rights. When created, these rights are initially owned by the Crown. The convention is for you, on advice from MBIE, to seek Cabinet approval for re-allocation and renewal of rights.
13. In the allocation of spectrum rights, it is common that policy decisions are required about:
  - which parts of the radio spectrum should be allocated for particular kinds of transmission (“radio spectrum planning”)
  - the method to be used for allocation (e.g. auction)
  - how much parties should pay to acquire the rights
  - implementation conditions (eg requirements for the right-holder to provide a certain level of coverage or service)
  - competition (e.g. limitations on the amount of spectrum that can be held by any one entity)
  - renewal terms and conditions at the expiry of spectrum rights.

### **Spectrum management and enforcement**

14. The Radio Spectrum Management (RSM) team issues licences in the administrative licensing regime and administers the online Register of Radio Frequencies, which contains records of all spectrum rights and licences. The RSM team also undertakes compliance and enforcement actions if transmitters are operating without a licence or outside the terms of their licences.
15. The costs associated with licensing, administration of the register, and compliance are funded by annual administration fees levied on licensees. These fees also fund some radio spectrum planning, including New Zealand’s participation in international forums.

### **Crown Spectrum Asset Management**

16. In some instances, the tradeable spectrum rights have been retained by the Crown for social, economic or technical reasons. These rights are used for:
  - AM and FM radio broadcasting: the majority of AM and FM licences are allocated to commercial broadcasters. In addition, the Crown has reserved licences for national Māori and Pacific programmes, Radio New Zealand National and Concert, and iwi radio, as well as for community and youth purposes
  - Some local or regional wireless broadband
  - Digital television
  - Some land mobile services.

## **Postal Services Act 1998**

17. The Postal Services Act came into force on 1 April 1998 and deregulated the New Zealand postal market by removing New Zealand Post's monopoly on letter delivery. Under the Act, anyone can process and deliver mail as long as they are registered as a postal operator with MBIE.
18. The Deed of Understanding between New Zealand Post and the Government sets out New Zealand Post's minimum universal service obligations. These minimum obligations include three-day-per-week deliveries to most urban areas, five-day-per-week delivery for rural areas, and commitments to maintain its network of postal outlets. The Deed was last amended in 2013, and a review is currently underway. The Deed currently requires the Review to be complete by 1 March 2021.
19. The Act permits New Zealand Post to retain certain minor exclusive privileges, including the sole right to represent New Zealand as a postal administration internationally and to issue postage stamps with the words "New Zealand" on them.

## **Telecommunications (Interception Capability and Security) Act 2013**

20. The Telecommunications (Interception Capability and Security) Act 2012 (TICSA) establishes obligations for New Zealand's telecommunications providers in two key areas – interception capability and network security.
21. All telecommunications providers are required to provide assistance to authorised agencies to lawfully intercept communications passing over their networks. In addition, some network operators are required to pre-invest in the equipment and technical resources necessary to carry out interceptions over their networks. The Act does not provide the surveillance agencies with the authority to intercept communications. These powers and processes are provided for in other pieces of legislation.
22. The Act sets out a path to identify, and if necessary, address network security risks which may arise from proposed investments in network equipment by operators such as Spark, Vodafone, 2degrees and Chorus. Network operators are required to engage with the GCSB about changes to their network equipment where such changes could have an impact on network security. MBIE leads on policy and the GCSB is responsible for operationalising the network security provisions of the Act.

## **Contract and Commercial Law Act 2017 (Part 4)**

23. The objective of Part 4 of the Contract and Commercial Law Act, which MBIE administers, is to facilitate electronic transactions by providing legal certainty for the recognition of electronic communications, electronic records and electronic signatures. The Part contains a list of statutory requirements for which non-electronic means must still be used; this list of exemptions has been reduced since the system came into force and it is intended that it will continue to be reduced over time.

## **Unsolicited Electronic Messages Act 2007**

24. The Unsolicited Electronic Messages Act regulates the sending of electronic messages. The Act prohibits the sending of unsolicited commercial electronic messages for marketing or promotional purposes using email, text, fax or instant messaging services and imposes other requirements on the sending of commercial electronic messages. It also requires commercial electronic messages to include accurate information about the person who authorised the sending of the message and a functional unsubscribe facility. Additionally, it prohibits address harvesting. The Act establishes a civil penalty regime for non-compliance. The content of the Act is administered by MBIE but the Department of Internal Affairs is currently responsible for enforcement.

## Annex 2 Crown entities, Companies, State Agencies and Boards

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### Telecommunications Commissioner

1. The Telecommunications Act 2001 establishes a Telecommunications Commissioner, who is a member of the Commerce Commission. The Governor General appoints the Commissioner on your recommendation, and you are the key ministerial contact for the Commissioner.

Name	Date of appointment	Expiry date of present term
Tristan Gilbertson, Telecommunications Commissioner	08/06/2020	08/06/2025

2. The Minister of Commerce and Consumer Affairs is the Minister responsible for the Commerce Commission as a whole.

### Crown Infrastructure Partners

3. On 1 September 2017, Crown Fibre Holdings Limited (CFH) was renamed Crown Infrastructure Partners Limited (CIP) and its scope of work broadened beyond the UFB, RBI and MBSF programmes. In addition to these programmes, the scope includes investigating and implementing commercial models (including those that will enable co-investment from the private sector or any other sector) to achieve the Government's objectives for the deployment of water and roading infrastructure to support a timely increase in housing supply. CFH was originally established (as a Public Finance Act Schedule 4A company) to manage the investment in UFB infrastructure.
4. The shareholding Ministers are the Minister of Finance and the Minister for State Owned Enterprises. The Treasury is the monitoring agency. However, in relation to delivering broadband policy, CIP interacts with you as the Minister for the Digital Economy and Communications. MBIE also works closely with the Treasury to monitor CIP.
5. Directors on the CIP Board are appointed by shareholding Ministers following Cabinet approval.

Name	Date of original appointment	Expiry date of present term
Mr Mark Binns (Chair)	1/06/2018	30/04/2023
Ms Danelle Dinsdale	1/05/2012	30/04/2022
Mr Chris Gudgeon	1/10/2019	30/04/2022
Mr Kerry Knight	1/10/2019	30/04/2022
Mrs Bella Takiari-Brame	16/03/2020	30/04/2022

### New Zealand Post

6. New Zealand Post is a State Owned Enterprise. Its shareholding Ministers are the Minister of Finance and the Minister for State Owned Enterprises. The Minister for the Digital Economy

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and Communications is responsible for the administration of the Postal Services Act 1998 and postal policy generally. A specific responsibility of the Minister for the Digital Economy and Communications is to review the Deed of Understanding, which sets out the minimum standards New Zealand Post must meet.



## Annex 3 Key Stakeholders

Organisation	Scope
New Zealand Telecommunications Forum (TCF)	<p>The TCF is a member organisation representing the majority of telecommunications providers in New Zealand (over 95 per cent by revenue share).</p> <p>Its services include public good initiatives, disputes resolution services, logistical processes and consumer education.</p> <p>The TCF provides neutral, independent information about New Zealand telecommunications products and services and how the industry works in New Zealand.</p>
The Wireless Internet Service Providers Association of New Zealand Inc (WISPA)	<p>WISPA was established in January 2017. Its purpose is to be a unifying point for wireless internet service providers, liaise with central and local government, provide a collective voice for members and negotiate collectively (eg for joint purchase or leasing of wireless spectrum).</p>
Technology Users Association of New Zealand (TUANZ)	<p>TUANZ is a not-for-profit membership association. Its goals are to continue to advocate for ubiquitous high quality connectivity across New Zealand and provide a forum to encourage New Zealanders to make the most of opportunities available in the digital economy.</p>
InternetNZ	<p>InternetNZ administers the .nz domain, and has a mission to create an internet for all New Zealanders that is safe, accessible and a place for good. InternetNZ is involved in a lot of internet-related work throughout New Zealand, funded by the sales of .nz domain names. This includes:</p> <ul style="list-style-type: none"> <li>• Policy work on internet issues faced in New Zealand</li> <li>• Providing community grants to support internet-related projects</li> <li>• Conducting research to highlight the state of the internet in New Zealand</li> <li>• Hosting events, such as NetHui, to bring together New Zealand's internet community.</li> </ul>
<b>Mobile Network Operators (MNO)</b>	
Spark	<p>Spark is a national MNO that provides digital services such as broadband, entertainment media and cloud computing as well as providing traditional fixed and mobile voice services. The company began as a state-owned enterprise, Telecom, in 1987 and launched the first mobile network in New Zealand. In 2011, following changes to the telecommunications industry legislation, Telecom was separated into two distinct companies: Telecom as the mobile network operator and Chorus as a wholesale-focused operator of fixed-line networks. In 2014, Telecom rebranded as Spark New Zealand, in order to personify the roll-out of digital services.</p>

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Organisation	Scope
Vodafone	Vodafone is an international MNO that provides mobile services in over 40 countries. Vodafone New Zealand is owned by New Zealand-based Infratil and Canada-based Brookfield Asset Management. Vodafone New Zealand is a partner market in the Vodafone Group, one of the world’s largest telecommunications companies. Vodafone New Zealand was established in 1998.
2degrees	2degrees is New Zealand's newest full-service telecommunications company. Established in 2009, 2degrees is the result of a partnership between the Te Huarahi Tika Trust and Tex Edwards. In the late 1990s when the government was preparing to auction spectrum for 3G, a group of Māori led by Rangiaho Everton took a claim to the Waitangi Tribunal. The WAI776 claim acknowledged that spectrum was a taonga under Article 2 of Te Tiriti. Although the Crown has never accepted this ruling, spectrum and funding were allocated to Māori and Te Huarahi Tika Trust was established to manage these, resulting in the creation of 2degrees in 2009. 2degrees entering the telecommunications sector broke up the existing oligopoly between Telecom (as it was known then) and Vodafone.
Dense Air	Dense Air specialises in densification and network extension solutions, designed to complement MNOs and enable private networks, critical communications and Internet of Things connectivity. Their small cell solutions economically provide additional network capacity and eliminate coverage black-spots, mostly indoors. Dense Air has partnered with Spark to provide 5G services and has selected Kordia for the provision of its network operations centre in New Zealand. Dense Air is based in London however Dense Air New Zealand LTD was established in 2018.
<b>International bodies:</b>	
APEC Telecommunications and Information Working Group (APEC TEL)	<p>The APEC TEL was established in 1990 and meets biannually.</p> <p>The TEL aims to advance the development of information and communication technology (ICT) infrastructure and services as well as to promote cooperation, information sharing and the development of effective ICT policies and regulations in the Asia-Pacific region.</p>
International Telecommunications Union (ITU)	<p>The ITU is a specialised agency of the United Nations. Its predecessor was established in 1865, leading it to be the oldest UN organisation in existence.</p> <p>MBIE’s main engagement with the ITU is through the radiocommunications sector. Every three to four years MBIE attends the World Radio Conference where the international radio regulations (a Treaty level agreement) are reviewed and updated if agreed upon by the ITU’s members.</p> <p>We also engage with ITU’s Telecommunications sector although as most of the fixed line technology is quite mature, we keep a watching brief on internet governance and standardisation in this sector.</p> <p>Finally every four years, the plenipotentiary meeting takes place which MBIE attends. The plenipotentiary meeting is the highest level conference that runs the ITU and ultimately sets its budgets and direction.</p>

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Organisation	Scope
Asia Pacific Telecommunity (APT)	The APT was founded on the joint initiatives of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), and the ITU.
Universal Postal Union (UPU)	The UPU is a specialised agency of the United Nations which regulates the flow of mail between 192 member nations via the administration of various multilateral international agreements. New Zealand has been a member of the UPU since 1907 and is represented by NZ Post (as a designated postal operator for New Zealand).
Overseas CERT organisations eg Forum of Incident Response and Security Teams (FIRST)	<p>FIRST aspires to bring together incident response and security teams from every country across the world to ensure a safe internet for all.</p> <p>FIRST maintains a focus on providing platforms, means and tools for incident responders to always find the right partner, and to collaborate efficiently. FIRST also supports initiatives to develop common means of data transfer to enable machine-to-machine communication (A Global Language) to ensure incident responders around the world speak the same language and understand each other's intents and methods.</p> <p>All Five Eyes Intelligence Alliance countries, including New Zealand, have computer emergency response teams, and are members of FIRST.</p>
Internet Corporation for Assigned Names and Numbers (ICANN)	<p>ICANN, formed in 1988, is the key organisation responsible for the technical management of the internet. It holds three public meetings each calendar year, comprised of more than 200 different sessions, to introduce and discuss issues related to ICANN policy.</p> <p>The New Zealand Government participates in ICANN through the Governmental Advisory Committee (GAC), which provides advice to ICANN on issues of public policy.</p> <p>Participation in ICANN meetings supports our wider engagement on internet governance matters, as part of ongoing discussions regarding the regulation and management of the internet. Decisions on international internet governance will have implications for New Zealand's telecommunications and security environment.</p> <p>It is important that New Zealand's view is heard throughout these processes, and that we are present to meet with and provide support for the views agreed with our partner countries.</p>

## Annex 4 Funds and Appropriations

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1. The Communications aspects of the portfolio are funded under Vote Business, Science and Innovation. The portfolio received approximately \$81.92<sup>2</sup> million for the 2020/21 year. The diagram below sets out the total 2020/2021 appropriation for Communications. This captures both departmental appropriations (funding granted to MBIE to supply outputs), and non-departmental appropriations (where Ministers have decided to use a supplier other than a department to supply outputs).
2. Vote Business, Science and Innovation has also funded the communications aspects of the Infrastructure portfolio managed by the Minister of Infrastructure in the last term. The Infrastructure portfolio had \$175 million appropriated from this Vote in 2020/21, consisting of:
  - \$83 million for the Broadband Investment (Crown Fibre Holdings Capital Costs) appropriation (which funds Crown Infrastructure Partners Limited's investment in UFB deployment)
  - \$57 million for Regional Digital Connectivity Improvements which is funded through the Provincial Growth Fund
  - \$35 million for the Telecommunications Infrastructure Investment appropriation (this expenditure ensures mobile network coverage is available in identified remote areas with coverage 'black spots', also managed by Crown Infrastructure Partners Limited).

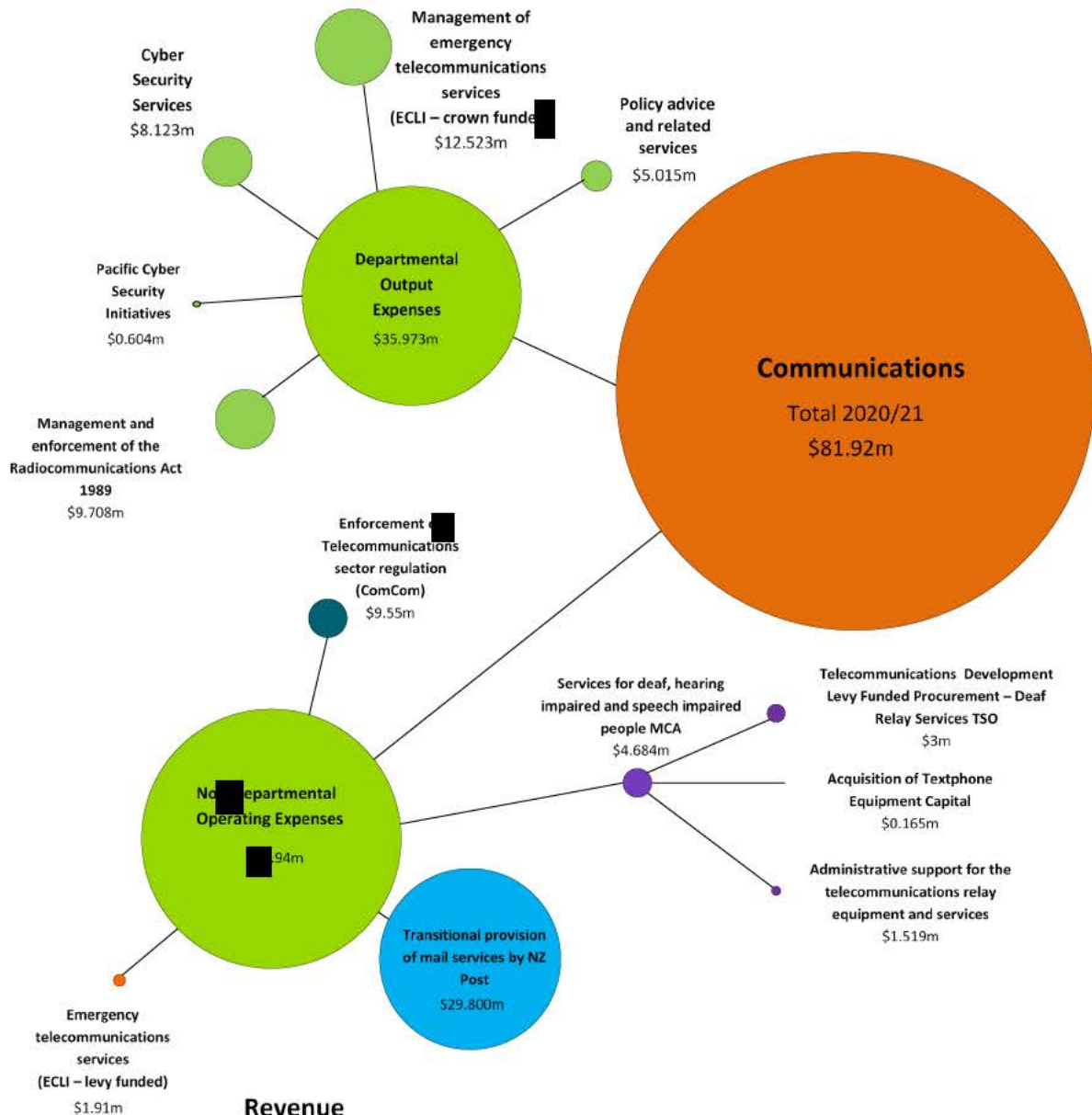
### MBIE's Financial Viability

3. Pre-COVID, 50 per cent of MBIE's departmental revenue was from third-party sources. The remainder is Crown revenue. Third-party revenue has dropped to 37 per cent this year, principally as a result of a significant fall in revenue from immigration fees. While revenue has decreased, our workload has remained at similar levels due to regulatory requirements and new activity (border exemptions process for example). In the absence of new Crown funding, the current shortfall will need to be funded through changes in service levels or investment across MBIE.
4. COVID has had a structural impact on MBIE's funding. S9(2)(f)(iv)  
  
 Departmental funding covers a number of portfolios, making a cross-portfolio approach to prioritisation essential. However, there are limits to our ability to re-prioritise as third party funding can only be used for the purpose that it was collected – for example revenue from the building levy can only be used to fund activities under the Building Act.
5. Uncertainty around our third-party revenue is forecast to remain for the next few years. Looking ahead, a more sustainable funding model, which facilitates greater cross-portfolio prioritisation, will be required to maintain existing services and ensure that MBIE can continue to contribute effectively to the COVID response and recovery.

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<sup>2</sup> This figure does not include the \$165.6m non-departmental capital appropriation, set up to accommodate an accounting adjustment.

## Departmental and non-Departmental Outputs



### Revenue

There are two primary revenue streams in the Digital Economy and Communications portfolio, both relate to radio spectrum management: an average of \$36m per annum in spectrum sales, and around \$6m per annum from the memorandum account for *Management and Enforcement Under the Radiocommunications Act 1989*.