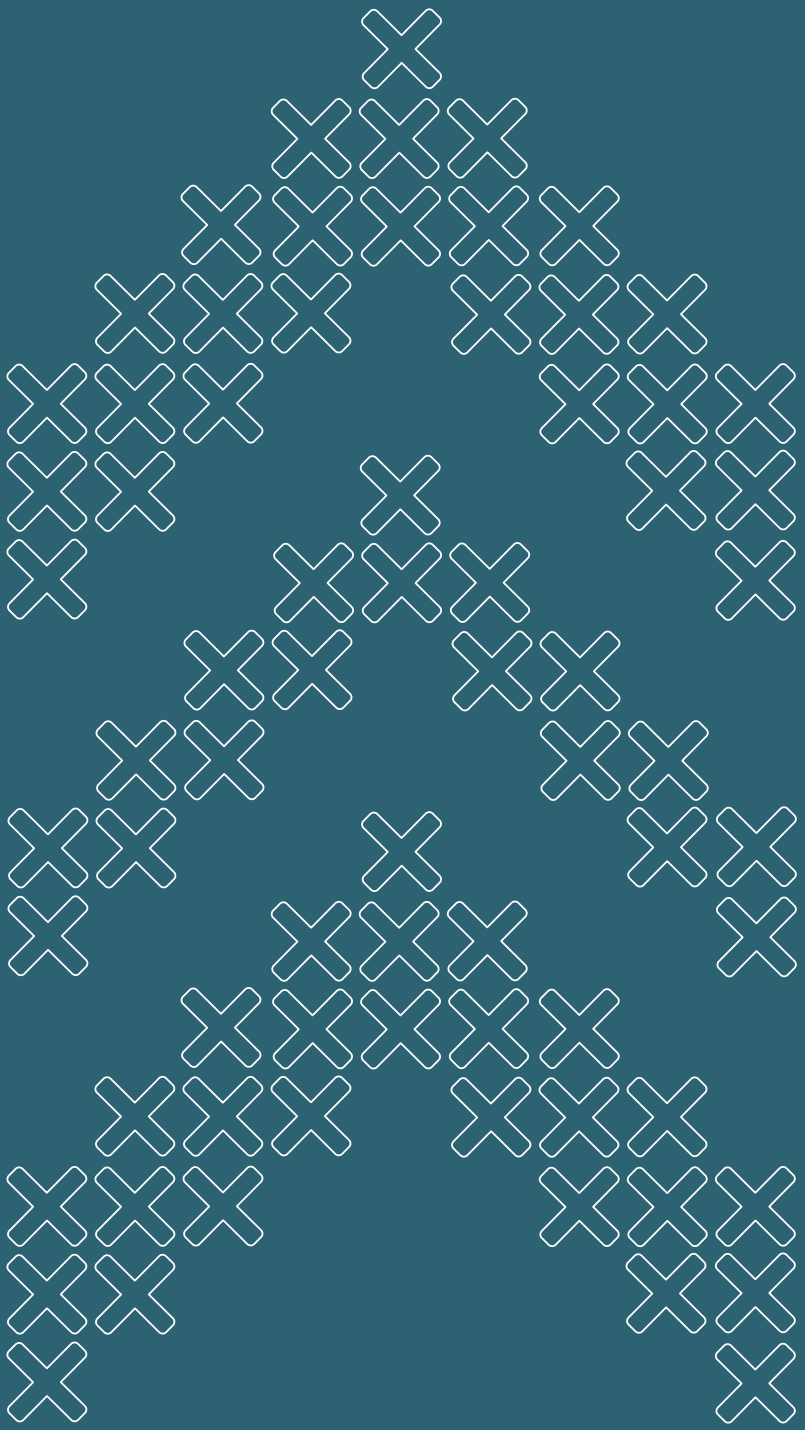
TE TAI ŌHANGA
THE TREASURY

Owner's Expectations

Expectations for Crown companies and entities monitored by the Treasury

JULY 2020

KAOKAO



This *kaokao* design comes from one of the tukutuku woven panels in the Treasury's wharenui, Ngā Mokopuna a Tāne.

Kaokao symbolises protection, knowledge, strength and excellence, and is used throughout this document to denote protection/kaitiakitanga of New Zealand's assets on behalf of her people.

Protection Knowledge Strength Excellence


Perfect Balance

Contents

Photo: Logan Church beaming into Checkpoint. Courtesy of Radio New Zealand

An important role in our economy and society

Foreword

I am pleased to present this updated set of expectations for the Crown companies and entities for which the Treasury provides performance advice to Ministers. I would also like to thank those of you who provided feedback during the review of this document.

Crown entities and companies play an important role in our economy and society, delivering and supporting goods and services that New Zealanders access every day. They are active across many sectors, from investing funds to meet New Zealanders' future superannuation needs or promoting our culture through television and radio, to assisting with the rebuilding of greater Christchurch.

Ministers rely on boards to lead each entity and company. In turn, it is right that boards should receive clear direction on expectations of them in areas such as financial and non-financial performance, board conduct, and the relationship of boards with the Treasury.

High-performing boards and clear performance expectations enable Crown companies and entities to maximise their contribution to New Zealand's overall economic efficiency and wellbeing, and to better deliver the objectives for which they were established. Efficient and effective governance also maintains and enhances the value of the Crown's investment, and enables entities and companies with a commercial mandate to support wider government priorities through taxation and dividend payments.

I encourage you to adopt this document as a key guide to the expectations that apply to all Crown companies and entities, along with the specific expectations of each board provided in annual letters of expectation. Treasury staff are happy to assist you with any questions you have about the expectations in this document.

I also encourage you to share this information with your chief executives and other senior managers so they can better support you in your governance role.

Thank you for making a difference for all New Zealanders.

Ngā manaakitanga

Caralee McLiesh
Chief Executive and Secretary to the Treasury

Introduction

Purpose

Crown companies and entities provide a range of services and products and make a significant contribution to the economic and social wellbeing of all New Zealanders. Their performance contributes to the Crown's overall financial position and the delivery of government policies and priorities.

Scope

The expectations in this document apply to the boards of the following companies and entities (listed in Table 1) for which the Treasury provides performance advice to Ministers:

- State-owned enterprises (SOEs)
- Crown entity companies
- Public Finance Act (PFA) 1989 Schedule 4A companies
- statutory entities
- airport companies in which the Crown has a shareholding.

These expectations relate only to companies and entities for which the Treasury has the primary role in providing advice to Ministers. Companies and entities for which the Treasury has a secondary role should refer to guidance documents issued by their respective monitoring department.

Most expectations outlined in this document apply equally to all company and entity types. We note where that is not the case.

Structure

Part 1 discusses the role of boards and directors, the board appointment process, and expectations relating to governance.

Part 2 outlines expectations for financial and non-financial performance.

Part 3 outlines expectations on matters such as reporting, disclosure, public accountability and business cases.

Further information is provided in the appendices.

This document replaces the Owner's Expectations Manual issued in July 2012 by the Crown Ownership Monitoring Unit (then the part of the Treasury responsible for monitoring Crown companies) and a brief addendum issued in June 2018. The expectations outlined in this document do not override any legislative or regulatory obligations or, where applicable, the NZX Corporate Governance Code or listing rules.

> **"Crown companies and entities make a significant contribution to the economic and social wellbeing of all New Zealanders."**

Photo: Children at Rātā Street School. Courtesy of Network for Learning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PART ONE

Boards and Governance expectations

Role of Ministers

Each **company** has two shareholding Ministers: the Minister of Finance and a 'responsible' Minister, who each hold 50% of the company's shares. They may delegate their daily responsibilities to an associate Minister but they do not delegate their ownership. **Statutory entities** have a responsible Minister. The Minister of Finance also performs functions in relation to matters concerned with financial accountability.

Ministers' powers are set out in the legislation setting up each type of company or entity, and also in the Companies Act 1993 for companies. Their duties include:

- developing and communicating ownership policies and expectations
- appointing and removing directors or members
- assessing board performance and taking necessary remedial steps if boards fail to perform in line with expectations
- commenting on draft accountability documents
- providing or withholding approval for transactions where approval is required.

'Directors' are appointed to companies and 'members' to statutory entities. For convenience in this document we use the term 'director' to refer to both directors and members.

Role of the Treasury

The Treasury acts on behalf of Ministers and advises them on setting expectations and on the performance of each board and organisation overall, with a particular focus on enhancing the Crown's ownership investment. The Treasury also manages the process to appoint directors on behalf of Ministers and provides advice on skills required for each board.

The Treasury assesses performance across several dimensions: leadership, results, organisational performance, and strategy, investment and alignment. The Treasury identifies areas that each company or entity may need to develop or strengthen and adopts a risk-based approach. This means that in-depth analysis or strategic reviews may be appropriate in some cases.

Board appointment processes

Appointments

Ministers, Treasury officials, and chairs review and consider board composition and skill requirements as vacancies arise, when existing director terms come to an end, when there are substantial changes in the nature of a company's or entity's business requiring new board skills, or if there are concerns about the performance of a board or individual members.

Following a nominations process, shortlisted candidates are interviewed. Due diligence and reference and background checks are carried out and Ministers' preferred candidates are presented for approval to the Appointments and Honours Committee and Cabinet. Directors are appointed by the Minister generally for a term of up to three years, subject to satisfactory completion of background checks.

(For the Guardians of New Zealand Superannuation, the New Zealand Superannuation and Retirement Income Act 2001 requires the Minister to establish a committee to nominate candidates and to consult with other political parties.)

While some directors may be appointed because of their knowledge of the sector in which a company or entity operates, they are not appointed to represent that sector.

Induction

Boards must put in place an induction programme for new directors. It is important for new directors to receive an early understanding of the board's business and the organisation's operations, including relevant legislation and statutory requirements. Depending on the nature of the business, this induction and familiarisation process may include visits to key sites and briefings by internal and external experts. New directors should be given a director's manual, or similar document, and recent key board papers or other background material as soon as possible after their appointment. The Treasury also holds induction briefings, usually twice a year, on the role of directors and Ministerial expectations.

The State Services Commission (SSC) has produced induction material for boards of **statutory entities**: https://ssc.govt.nz/resources/crown-entity-induction-material

Term ends and reappointments

Directors hold office at the pleasure of Ministers and may be removed at any time by notice in writing (except for members of independent Crown entities who can be removed only by the Governor-General). Directors may be reappointed at the expiry of their term, subject to their contribution and whether their skills are still relevant for each organisation. In some circumstances, they may serve more than two terms (unless their governing legislation provides otherwise) where there is a strong business need.

Directors should receive a letter from the Minister before the end of their term advising them whether they will be reappointed. A term may be extended for a short period if decisions are still being made about board composition. For **statutory entities**, directors remain in office despite the expiry of their term until they are reappointed, a successor is appointed, or they are advised that they will not be reappointed and that no successor will be appointed.

Directors may resign from a board by notifying the Minister and chair in writing. The Treasury may conduct exit interviews with departing board members. Information provided will be treated in confidence.

Fees and expenses

Crown boards do not set their own fees.

Fees for **statutory entities** are set in accordance with the Cabinet Fees Framework: https://ssc.govt.nz/our-work/fees

For **companies**, ordinary fees are set by shareholding Ministers in line with the Treasury fees methodology approved by Cabinet. In some rare cases, there may be a valid case for special purposes fees for a limited time due to additional duties. This will need approval from the responsible Minister and Cabinet.

For **airport companies**, fees proposed by each board are subject to approval by shareholder resolution.

As part of the annual fee-setting round, boards – with the exception of airport companies – also present for Ministerial approval a proposed budget for director development and training, with any specific item above $5,000 shown separately. The proposed budget should include all relevant costs, including course fees, travel, and accommodation.

Fees and member-related expenses are paid out of the organisation's own budget and the amount paid on director development and training should be published in annual reports. Appendix 3 provides further information on fees, expenses, and related policies.

Photo: Alison Ballance interviewing a conservation dog. Courtesy of Radio New Zealand


DOGS

Board duties, expectations and other governance matters

Board duties

The role of a board is first and foremost to govern the company or entity effectively and to ensure that the company or entity operates in a way that is consistent with its objectives, function, and public accountability documents. The board is accountable to Ministers for overall performance.

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 (OIA), 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.

Furthermore, Ministers, rather than boards, appoint the chair. For most boards, Ministers will also appoint one member as deputy chair.

Guidance notes on issues such as risk management and ethical behaviour are relevant regardless of whether directors are on Crown or private sector boards. They include documents such as the:

NZX Corporate Governance Code: https://nzx.com/regulation/nzx-rules-guidance/corporate-governance-code

Financial Markets Authority's ***Corporate Governance in New Zealand*** handbook: https://fma.govt.nz/compliance/guidance-library/corporate-governance-in-new-zealand-principles-and-guidelines

Institute of Directors' Code of Practice for Directors: https://iod.org.nz/about-us/policies-and-documents/founding-documents

Directors should refer to these and other documents, bearing in mind that some expectations and practices differ.

For **companies**, the Companies Act 1993 sets out the legal duties of company directors: https://companies-register.companiesoffice.govt.nz/help-centre/company-directors/what-it-means-to-be-a-director.

These are supplemented by other duties set out in the Crown Entities Act 2004. For **statutory entities**, the Crown Entities Act 2004 sets out the legal duties of entity boards and board members.

Commitment to board duties and attendance

Directors are expected to allocate two to three days per month to their board duties – to prepare for meetings, to attend board and committee meetings, and for other related duties. Directors should avoid over-committing to too many other roles and should retain flexibility to allocate more time if major issues or emergencies arise. Directors are expected to resign from their position if they are unable to allocate sufficient time and attention to their duties.

Boards should agree in advance on a schedule of meeting dates so that directors can manage their commitments to ensure attendance. The membership of each board is designed to provide a balance of competencies and skills necessary to conduct the board's affairs. If a director is absent, this could have a negative impact on board deliberations.

Companies and entities are expected to show the number of board meetings attended by each director in their annual reports. Missing two or more meetings in a year should raise initial concerns. If a director misses three meetings in a year, this becomes a serious issue unless the board has approved a leave of absence for justifiable reasons such as illness. The chair is required to advise Ministers of such non-attendance. Ministers will communicate concerns to the affected director and, unless there are extenuating circumstances, will ask for the director's resignation.

Partial attendance, if frequent, is also a problem. It is disruptive to board discussions and also means that the director may lose continuity in board decisions and denies the board the benefit of his/her expertise. Boards are encouraged to raise this as an issue with the Treasury if a solution cannot be found.

Regular participation in board meetings by video- or tele-conferencing is not preferred but may be acceptable if the chair takes into account the circumstances involved and considers it effective. Chairs should consider the benefits of personal interaction.

Board committees

Board committees help to increase the overall effectiveness and efficiency of the board. Committees can be standing or ad hoc in nature and typically encompass areas such as audit (finance and risk) and human resource matters. There is no specific expectation for any prescribed or optimum number or type of committee unless, for **companies**, it is stated in the company constitution.

Subsidiary boards

For **companies**, unless there are specific limitations in the company's legislation, constitution, Statement of Corporate Intent (SCI) or Statement of Intent (SOI), the parent board is responsible for appointing directors to its subsidiary companies (if any).

If a director on a parent company board is appointed to the board of a subsidiary, such directorships are already covered by ordinary parent board fees. However, if the additional requirements on the parent directors are significant, the parent company board may set additional subsidiary director fees at appropriately conservative levels. Fees paid by the subsidiary to the directors in this situation do not require Ministerial approval but should be reported.

Ministers do not appoint executive directors to Crown boards unless there are exceptional circumstances. Parent company boards may appoint executive directors to subsidiary boards. Executive directors should not be paid directors' fees. Recognition of their contribution as directors should be included in their remuneration package as managers.

Board conduct and ethics

Boards set the culture, value system, and leadership tone for their organisation through their behaviour and practices in areas such as honesty and transparency, relationship with management and staff members, director attendance and commitment, and control of board expenditure.

Each board should have a charter/code of practice to provide guidance and to assist directors to carry out their duties and responsibilities effectively and in accordance with the highest professional and ethical standards. Some boards may choose to have separate documents, for example a charter covering board procedures and a code of conduct/ethics covering ethical behaviour. It is best practice to disclose these documents to set an example for staff members and to demonstrate the company's values to the wider community.

The NZX Corporate Governance Code provides recommendations on a code of ethics (Principle 1) and a board charter (Principle 2).

Professional and legal advice

Boards should authorise in advance any professional and legal advice that they need to make a decision or deal with an issue that requires consideration independent of management. Where this is impracticable or inappropriate, the chair may initiate matters, with the board to be advised of arrangements entered into as soon as possible and at least at the next board meeting.

Liabilities and indemnities

Failure by directors to diligently and properly discharge their duties can result in personal liability and reputational damage. They are personally responsible for their duties and obligations imposed by legislation, and their personal assets and professional standing are at risk. The Crown does not provide directors and officers with any indemnity against personal liabilities incurred while performing, or failing to perform, their duties. The Crown Entities Act 2004 provides directors of **statutory entities** with immunity from civil liability in respect of an excluded act or liability (an act or omission undertaken in good faith for intended performance of the entity's functions), unless directors breach their individual duties under the Act.

There is no guarantee, implied or otherwise, that the Crown will meet the liabilities of a Crown company or entity. In the event of liquidation of a Crown company, the liquidator will endeavour to make such recoveries as are available for the benefit of the company's creditors, which could include claims against directors for reckless or insolvent trading or other breach of duty.

Boards should establish a comprehensive risk management programme. An essential component of this programme is the ability for Crown companies and statutory entities to indemnify their directors against liability to the extent permitted by law, coupled with adequate insurance for directors against liability. The cost of the premium can be paid by the company if the cover is within the limits and under the criteria prescribed by the Companies Act 1993.

This information should be treated as a guide only. Directors should obtain appropriate legal advice to reflect their own personal circumstances and those of the company/entity.

Conflicts of interest

A conflict of interest arises when a director's duties or responsibilities to the company or entity could be affected by some other interest or duty that may not be in the best interests of the company or entity. Each director must make efforts to identify relationships that do or may give rise to a conflict, either their own or those of fellow directors. For **companies**, the Companies Act 1993 makes it clear that a director must act in the best interests of the company.

Boards must have a process in place for disclosing and dealing with conflicts of interest, including the maintenance of an interests register and the disclosure of interests at meetings or when certain issues are discussed. The board's policy on conflicts of interest should form part of its code of conduct.

Conflicts that arise must be handled appropriately and promptly. When assessing whether a conflict exists, directors need to consider issues of perception as well as matters of fact and should err on the side of caution when deciding what needs to be disclosed.

For **companies**, directors should check whether their company constitution states that directors with an interest in a transaction may not vote on a matter relating to the transaction. Ministers generally expect that directors who are interested in a transaction will absent themselves from deliberation on the matter, unless the board or committee resolves that this is not required.

For **statutory entities**, the Crown Entities Act 2004 provides conflict of interest disclosure rules.

Further information, including examples of conflicts of interest and guidance on how to manage them, can be found in the Office of the Auditor-General's *Managing Conflicts of Interest: Guidance for Public Entities*: https://oag.parliament.nz/2007/conflicts-public-entities

Other issues to raise with Ministers

A director may be in a situation where continuing to act as a director might place the company or entity or Ministers in a position of embarrassment, as a result of circumstances not related to the directorship of a particular company or entity. Examples of such situations might include where:

- legal proceedings have been, or are likely to be, brought against the director
- the director has been, or is likely to be, subject to negative media or public scrutiny
- the director is placed in a situation of actual or perceived conflict of interest
- an issue affects the director's ability to contribute to the board, for example as a result of other time pressures, extended overseas travel, or illness
- the director is appointed to any position as an employee of the Crown, or intends to undertake significant contract work for any Crown organisation
- any other similar situation places the company, entity, or Ministers in a position of embarrassment.

If any of the above circumstances arises, the director concerned should bring the matter to the attention of the chair. The chair should then advise Ministers, if appropriate.

Consultancy services provided by board members

Directors should not undertake consulting work for the company or entity. This does not preclude a director from undertaking assignments for the board that fall within the scope of his/her normal duties, but it does preclude the director from carrying out, for example, a consulting assignment that would otherwise be contracted to a third party. If the chair considers that an exception to this rule is justified, the chair should refer the circumstances to Ministers for approval in advance.

Directors should not be placed in a conflict of interest situation through the company's or entity's involvement with an organisation with which the director has a substantial commercial or professional interest or employment relationship. Such a situation could arise where the organisation:

- has been engaged for a one-off, specific assignment, or
- has an ongoing relationship with the company or entity, for example in the provision of professional services.

In the first situation, provided that the director concerned declares his/her interest in the organisation to be engaged for the assignment and takes appropriate actions (eg, refraining from voting), it is unlikely that the organisation needs to be excluded from undertaking the assignment. In this situation, a director should not to be directly involved in providing the service or advice.

The second situation raises greater concern. Boards should not enter into an ongoing relationship with an organisation in which a director has a relationship of the nature defined above.

Parliamentary and local body elections

Directors need to exercise particular care around political neutrality at election times as there is generally a higher level of scrutiny of public organisations. Chairs should pay particular attention to the 'no surprises' expectation (outlined below) during an election period.

Any director wishing to stand as a candidate for election to Parliament or to be placed on a party list is required to take a temporary leave of absence from his/her board position once his/her intention to stand as a candidate is publicly announced. This is subject to Ministerial discretion. If elected to Parliament, the director must stand down.

Boards should consider on a case-by-case basis the role of directors standing as candidates in local body elections. If there is any conflict between the role of the company or entity and the local body, the director would be expected to take a temporary leave of absence. Crown-appointed directors of **airport companies** in which local bodies have an ownership stake should take a temporary leave of absence, and resign if elected.

Confidentiality and security of information

Directors have a duty of care and need to be vigilant to ensure the security of information that they receive in hard copy or electronically. The company or entity must have processes in place to ensure the proper use and confidentiality of its information and communications. These processes must cover personal devices used by directors to hold and receive information and communications. Board papers remain the property of the company or entity and should be returned when a director retires.

Relationship with the Treasury

Boards and senior managers are expected to work closely and openly with Treasury officials and to provide information where requested. Boards should invite Treasury officials to observe and to engage with them during relevant parts of their annual sessions when they discuss their strategic plans for the coming year. This will give Treasury officials a better understanding of these plans and relevant context and help them to provide informed advice to Ministers.

In turn, Treasury officials will assist companies and entities by providing advice or clarification on processes, advising Ministers in a timely manner on matters such as approval for major transactions, and providing feedback to boards when Ministers or officials have concerns about performance.

Board performance evaluations

Board evaluations are a tool for boards to improve their performance and to allow Ministers to assess the performance of a board. Board evaluations should take place annually, unless there have been recent significant changes to board composition or when commercial imperatives demand full board attention. Each company or entity is responsible for the cost of such evaluations.

Although not always feasible, board evaluations should ideally be conducted by an independent person or group with experience in undertaking board evaluations. Independence is important as it limits bias and provides confidence that the results of the evaluation are reliable and accurate. Independence can also assist in eliciting frank and honest responses from participants, thereby improving the validity of results.

Board evaluations should be tailored to the needs of the organisation and recognise the challenges facing it at the time. The evaluation should assess both performance to date and fitness for future challenges and cover at least:

- performance of the board as a whole, including:
  - strategy (the clarity of the board's aspiration for the organisation)
  - planning (the degree to which the board focuses its time on the most substantive issues)
  - oversight of the organisation (influence on management decision-making, quality of oversight of the CEO, and organisational performance)
  - performance and risk management (the contribution of the board and committees to business activity, operations, and management of risk)
  - management engagement (management's information flow to the board)
  - governance processes and policies (agenda, board packs, committee structures, quality of reports)
  - capability (assessment of board composition to meet the strategy, future challenges, and/or regulatory demands of the company or entity and its environment, including an independent assessment of the board's skills matrix)
  - leadership and culture
  - stakeholder engagement
- performance of individual directors including competence and contribution
- performance of the chair
- board learning priorities and objectives
- recommended actions that the board and individual directors can take to address issues identified.

The content of an evaluation should, as a minimum, include actions taken and progress made following the previous board evaluation and any issues relating to board performance that have emerged since the last evaluation.

Board evaluations should ideally incorporate both qualitative (for example, interview, observations) and quantitative elements (for example, surveys) from a range of sources including feedback from the chair, directors, and management, and comparison with benchmarks or evidence of best practice.

Chairs must see the results of the full board evaluation and provide at least a summary of the results to the Treasury. The Treasury may ask to see the full evaluation if the summary does not provide sufficient information. Chairs may choose not to share individual director assessments. Directors must also see the full results of the full board evaluation, excluding other individual director assessments.

The chair should monitor action points and keep the Treasury informed.

Individual director assessments should be used for professional development and to support succession planning. If a chair has concerns about the performance of a director, the chair should raise these concerns with the individual and advise the Treasury. If a chair's performance is an issue, the deputy chair or other directors should first address this with the chair and, if necessary, discuss with the Treasury.

Photo: Public Trust Office heritage building, Wellington. Courtesy of Public Trust


PUBLIC TRUST BUILDING
Manatū Taonga
Ministry for Culture & Heritage
PUBLIC TRUST
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PART TWO

Performance expectations

Performance expectations

Ministers express their expectations for each board through an annual letter that contains specific expectations for each company or entity.

For **statutory entities**, there is also a broader 'enduring letter of expectations' issued by the Minister of Finance and the Minister of State Services: https://ssc.govt.nz/resources/enduring-letter-of-expectations-to-statutory-crown-entities-2019

Non-financial performance expectations

Besides financial results, companies and entities are expected to perform in line with broader dimensions that underpin their ability to deliver. There are many ways in which a company or entity may already choose to measure its non-financial performance and many aspects that it might consider measuring. The Treasury will be taking a holistic approach when assessing performance in areas including the following.

- Strategy, investment and alignment: is strategy aligned with each organisation's core purpose? Are investments supported by robust business cases and executed well?
- Leadership: do the board and management team have the appropriate skills and are they effectively managing risk?
- Organisation: is each company or entity developing a strong culture and a fit-for-purpose organisational structure? Does the structure promote accountability and flexibility? Does the company or entity have the capability and capacity to deliver?

Companies and entities should look at the ways in which they conduct their business and adopt appropriate values and objectives. Targets and objectives should be set in SOIs/SCIs and companies and entities should monitor their performance and report against them. They should consider practices that make them good corporate citizens exhibiting a sense of social responsibility and good employers considering the interests of staff members, especially when uncertainty may arise during times of restructuring. Boards may also wish to invite potential future directors to observe their meetings under the Future Directors in the State Sector programme as a contribution to growing the pipeline of future directors.

Wellbeing should also be reflected in planning and performance reporting.

The Treasury has developed guidance for departments and **statutory entities**: https://treasury.govt.nz/information-and-services/state-sector-leadership/guidance/financial-reporting-policies-and-guidance/applying-wellbeing-approach-agency-planning-and-performance-reporting.

Companies should be cognisant of the Government's focus on wellbeing and consider the broader impact of their commercial actions.

When developing business cases, companies and entities should consider showing how they create value in more than just financial terms. While there are many templates or methods available, companies and entities may wish to consider the Living Standards Framework (LSF) developed by the Treasury. As part of this framework, the Treasury has developed the LSF dashboard as an analytical tool to provide insights into key aspects of current and future wellbeing.

The Treasury will apply the LSF when assessing and providing advice to Ministers on business cases. Refer to https://treasury.govt.nz/information-and-services/nz-economy/higher-living-standards

Financial performance expectations

Companies and entities are expected to perform in accordance with the requirements in the legislation for each company or entity type, and **companies** are also expected to perform in accordance with the Companies Act 1993.

Company/entity	Financial performance expectation	Legislation
SOEs	To be as profitable and efficient as comparable businesses that are not owned by the Crown	Section 4(1)(a), State-Owned Enterprises Act 1986
Television New Zealand	To operate in a financially responsible manner so that it maintains its financial viability, its activities generate on the basis of generally accepted accounting practice an adequate rate of return on shareholders' funds, and it is operating as a successful going concern	Section 5, Television New Zealand Act 2003
Crown Irrigation Investments	To operate in a financially responsible and fiscally efficient manner	Section 7.2 of company constitution
PFA Schedule 4A companies	Varies in accordance with company constitution	
Statutory entities	To operate in a financially responsible manner, to prudently manage assets and liabilities and to endeavour to ensure long-term financial viability and that the company acts as a successful going concern	Section 51, Crown Entities Act 2004
Radio New Zealand		Section 8A(3), Radio New Zealand Act 1995

Some **statutory entities** such as the Guardians of New Zealand Superannuation, Government Superannuation Fund Authority, Accident Compensation Corporation, Public Trust, and the New Zealand Lotteries Commission have certain legislative provisions in relation to the funds that they manage.

Financial targets for companies

Companies are expected to add to shareholder value in their operations over the longer term and to meet short-term financial targets. They are encouraged to include in their SCI/SOI the financial performance measures shown in Appendix 2, along with other relevant measures.

Boards should advise Ministers if they anticipate that they will not achieve their performance targets, along with proposed actions to remedy the situation. This can generally be achieved through quarterly reporting or interaction with Treasury officials. Where forecast performance shortfalls are significant, more direct and immediate notification is expected. In cases of serious underperformance or financial distress, Ministers have several options, including:

- seeking more detailed information from the company (eg, monthly accounts and cash flow forecasts)
- working with the board with a view to improving company performance
- reviewing the membership of the board
- appointing a special advisor to the board, and
- liquidating or recapitalising the company in extreme circumstances.

Unless there is express agreement from Ministers (subject to Cabinet approval), boards should not assume that the Crown will provide additional financial support to a company.

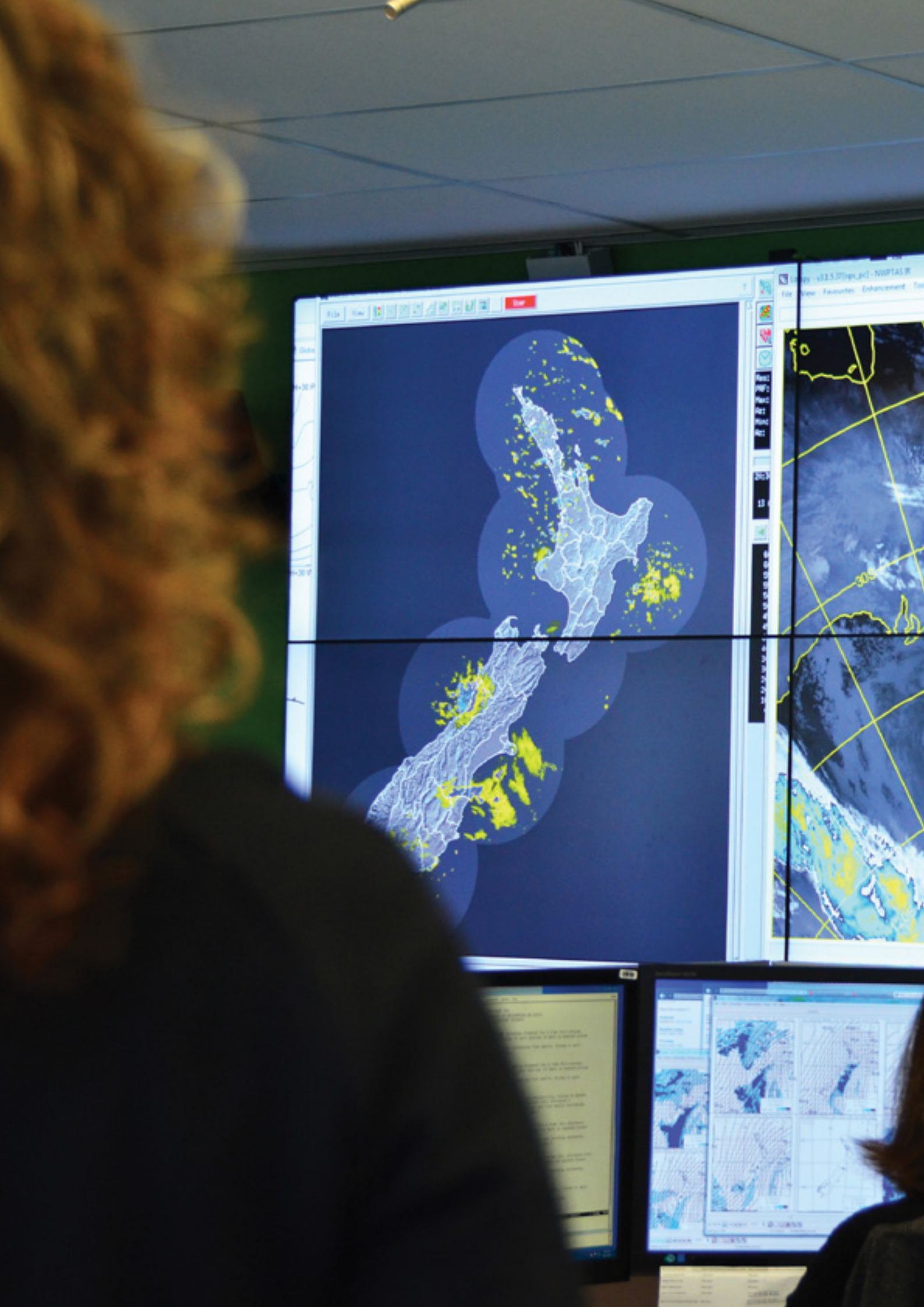
SOEs should set financial targets that:

- are focused on earning appropriate risk-adjusted rates of return over the business planning period
- replicate the disciplines exerted over private sector companies that result from share market trading and the threat of takeover, and
- reflect the SOE's operations in an environment that is competitively neutral with the private sector.

A target in excess of the cost of capital does not need to be achieved consistently every year as long as an appropriate average return is achieved over time.

Ministers are also interested in receiving information on performance against other indicators or internal benchmarks. Such indicators (financial and non-financial) must be:

- meaningful to the SOE and the State-Owned Enterprises Act 1986
- specific, measurable, timely, and able to be audited
- within the SOE's responsibility or power to control
- consistent with and, as appropriate, influence the SOE's purpose, business, and operating principles.



Other expectations

Besides expectations for financial performance, Ministers also have expectations for **companies** for the following operations of a financial or business nature.

Diversification

Companies should diversify only into technologies, products, and markets that are related to their existing core business and in ways that use existing skills. Except in very rare circumstances, the Crown will not provide new capital for diversification.

Overseas expansion

When considering overseas expansion, companies should not lose focus on their core business, and expansion strategies should tend toward developing and leveraging off domestic activities rather than developing entirely new products and services for international markets.

Expansion activities should not significantly increase the company's risk profile, put its local operations and assets at risk, or create a risk that the New Zealand Government may be associated with and held accountable for poor company actions and behaviour overseas.

The company should have some level of private sector debt for expansion and should not seek total funding by the Crown, including through withholding dividends, unless there are extraordinary circumstances. Debt funding should be consistent with a company's capital structure policy.

Joint ventures

Joint venture (JV) arrangements may be a way of leveraging expertise and capital. Companies should enter into JV arrangements only if they retain substantive control over their business activities. They should not enter into JV arrangements that result in Crown ownership of assets and capabilities being transferred or diluted without informing, consulting with, or obtaining approval from Ministers. Refer to Consultation and approval for capital investment decisions

Companies should ensure that any JV arrangements are subject to at least the same level of financial budgeting and monitoring control as that which applies to the company and its subsidiaries. Companies should also take care when choosing their JV partners to avoid any negative reflection on the company and, hence, the Crown as company shareholder.

(Joint ventures may also be relevant for **statutory entities**. Before entering into a joint venture, statutory entities must advise Ministers in writing, in line with section 100 of the Crown Entities Act 2004.)

Subsidiaries

The parent company must comply with any restrictions in its SCI or SOI that relate to the acquisition or formation of subsidiaries and the appointment of directors. The powers and functions of each subsidiary must be treated as if it were subject to the same statutory limitations as the parent company, unless different legislative requirements apply. The parent company board remains accountable to shareholding Ministers for subsidiary activities and performance and must have in place appropriate financial controls, business planning, and monitoring procedures. The board must ensure that any subsidiary over which it has control acts in a manner which allows the board to meet expectations as set out in this document and the annual letter of expectations. Public accountability documents for the parent company must include information on subsidiary activities and performance.

Credit rating policy (for SOEs)

The Government expects that **SOEs** will have a capital structure consistent with a BBB (flat) credit rating as a minimum, unless the SOE can demonstrate good reasons otherwise. This is to ensure that all SOEs have appropriate financial disciplines to manage capital efficiently at similar risk levels.

Photo: Morning weather briefing. Courtesy of MetService

Explicit disclaimer of Crown guarantees for borrowing or financing

For all financing not provided by the Crown, there must be a disclaimer associated with the finance contract that the Crown does not guarantee or financially support any such borrowings. The disclaimer aims to give a clear signal to third parties of the nature of the relationship between the Crown and company in respect of any such borrowings.

Ownership review clauses

Some loan documents link the loan terms to the shareholder's identity so that, if control of the company changes, the lender reserves for itself the right to call up the loan. This would connect the terms of borrowing with the Crown and could incorrectly give the appearance of an implicit Crown guarantee. Ministers prefer companies not to enter into loan agreements that provide for a review of the loan at the lender's discretion or involve a technical default in the event of an ownership change. A change of government or change of Minister does not constitute an ownership change as 'Ministers' are listed as shareholders, not the individuals occupying Ministerial roles.

There are alternative mechanisms that may provide lenders with comfort. These range from covenants concerning debt/equity ratio and interest coverage to lenders taking security over specific company assets. However, these mechanisms can place constraints on the company and must be designed to minimise the extent to which they might frustrate any future company restructuring.

Capital management and dividend policy

Companies and entities should minimise the level of surplus capital on their balance sheets. Companies that pay dividends are expected to return surplus capital to the Crown so that it may be used for other government priorities. The level of estimated dividends (and forecast payout ratio) is set by the board after considering Ministers' comments through the business planning process. It is driven by each company's desired capital structure, profitability, and the level of future capital expenditure as outlined in the business plan and SCI/SOI. Companies should operate a dividend policy that:

- translates to payouts that are commensurate with those of their listed peers not owned by the Crown
- gives an appropriate balance between dividends and re-investment in the business
- shows a degree of consistency and improvement over the years.

An appropriate dividend policy should relate to a proportion of a financial metric that is suitable for each company, either operating or free cash flow, adjusted or underlying net profit after tax, or earnings. The dividend policy should also be linked to the company's desired medium-term sustainable financial structure, for example the desired credit rating. The dividend policy should also aim to maintain consistency in the dollar value of dividend payments from year to year, and preferably with increases over time.

The proposed dividend payout ratio and estimated dividend payment should be included in the business plan for each year covered by the plan.

Ordinary dividends may be paid as an interim dividend and a final dividend. Special dividends may be paid as the board sees fit. Interim dividends are paid as soon as possible after the half-yearly report and final dividends as soon as possible after the annual accounts are finalised.

Tax planning

Companies are required to exhibit a sense of social responsibility. This expectation is not consistent with tax planning that is outside the spirit of the law or leads the market in developing aggressive tax-planning strategies. Boards are fully accountable for their tax-planning activities and need to be able to explain their decisions to all stakeholders.

When assessing company performance, Ministers view dividend payments as if they were a domestic resident taxpayer. This means that imputation credits are treated as if they have value in the hands of shareholders. If the company has imputation credits, they should be attached to dividends and, if sufficient credits are available, dividends must be fully imputed.

Estimate of current commercial value (for SOEs, TVNZ, Public Trust)

The State-Owned Enterprises Act 1986 requires each SOE to include in its SCI the board's estimate of the current commercial value of the Crown's investment in the SOE and its subsidiaries and a statement of how the value was assessed. This expectation applies also to TVNZ and Public Trust. This is consistent with Ministers' expectation that the board has an ongoing fundamental understanding of the company's value, what the value drivers are, and their effect in terms of company value. The following example shows how commercial value can be calculated.

- The valuation was calculated as at 30 June [year].
- The discounted cash flow (DCF) methodology was used to calculate a net present value (NPV) of the entire group, including all subsidiaries, on an after-tax basis.
- The DCF/NPV was based on the nominal (ie, not inflation-adjusted) future cash flows set out in the group's three-year business plan, with forward projections then also made for years 4 to 10. A terminal value of $x million was included in the terminal year. The growth assumption assumed in the terminal value was x%.
- A discount rate of x% was assumed.
- The valuation was prepared internally by the group's finance team and was externally peer-reviewed by XYZ Ltd before approval by the board. Key assumptions underlying the valuation were … . XYZ Ltd reviewed and verified the key underlying assumptions.
- The current commercial value of the Crown's investment of $x billion (often referred to as the equity value) was calculated by taking the enterprise value of $x billion and deducting net debt of $x million.
- Other material factors relevant to the determination of this valuation are …
- The valuation compares with a commercial value as at 30 June [previous year] of $x billion. The key reasons for the change in commercial value are (for example):
  - an increase in year 1 to year 3 cash flows of $x million due to changed expectations for the future price of x
  - a reduction in year 4 to year 10 cash flows of $x due to …
  - a reduction in the terminal value due to …, and
  - a change in the discount rate (WACC) from x% to x% due to …

The DCF methodology should preferably be used when preparing valuations. However, this may not always be feasible and alternative valuation methodologies may be discussed and agreed with the Treasury. Boards are encouraged to have their valuations carried out or at least peer-reviewed by third parties with specialist valuation expertise, and these parties should be regularly rotated.

Chief executive employment

For **statutory entities**, the Crown Entities Act 2004 requires boards to obtain written consent from the SSC before finalising or amending the terms and conditions of employment of a chief executive. The State Services Commissioner must consider factors such as government expectations and may withhold consent. **Companies** may wish to consult the State Services Commissioner on the appropriateness of their proposed terms and conditions.

PART THREE

Reporting and accountability

Business planning

During the business planning process boards develop an annual plan and deliver a Statement of Corporate Intent (SCI) or a Statement of Intent (SOI) to Ministers, and some deliver also a Statement of Performance Expectations (SPE).

Expectations letter

Ministers send an annual letter with expectations for each board and a timeline for the business planning process. In response to the expectations letter, the board is expected to send a strategic issues letter to Ministers outlining major issues that the company or entity expects to address during the business planning round.

Accountability documents

Each board prepares and provides Ministers with a draft SCI or SOI. **SOEs** provide an annual SCI, and the **airport companies** provide an annual SOI. Other **companies** and **statutory entities** subject to the Crown Entities Act 2004 provide an SOI at least once in every three-year period. Companies subject to the Crown Entities Act 2004 and statutory entities must also provide an annual SPE.

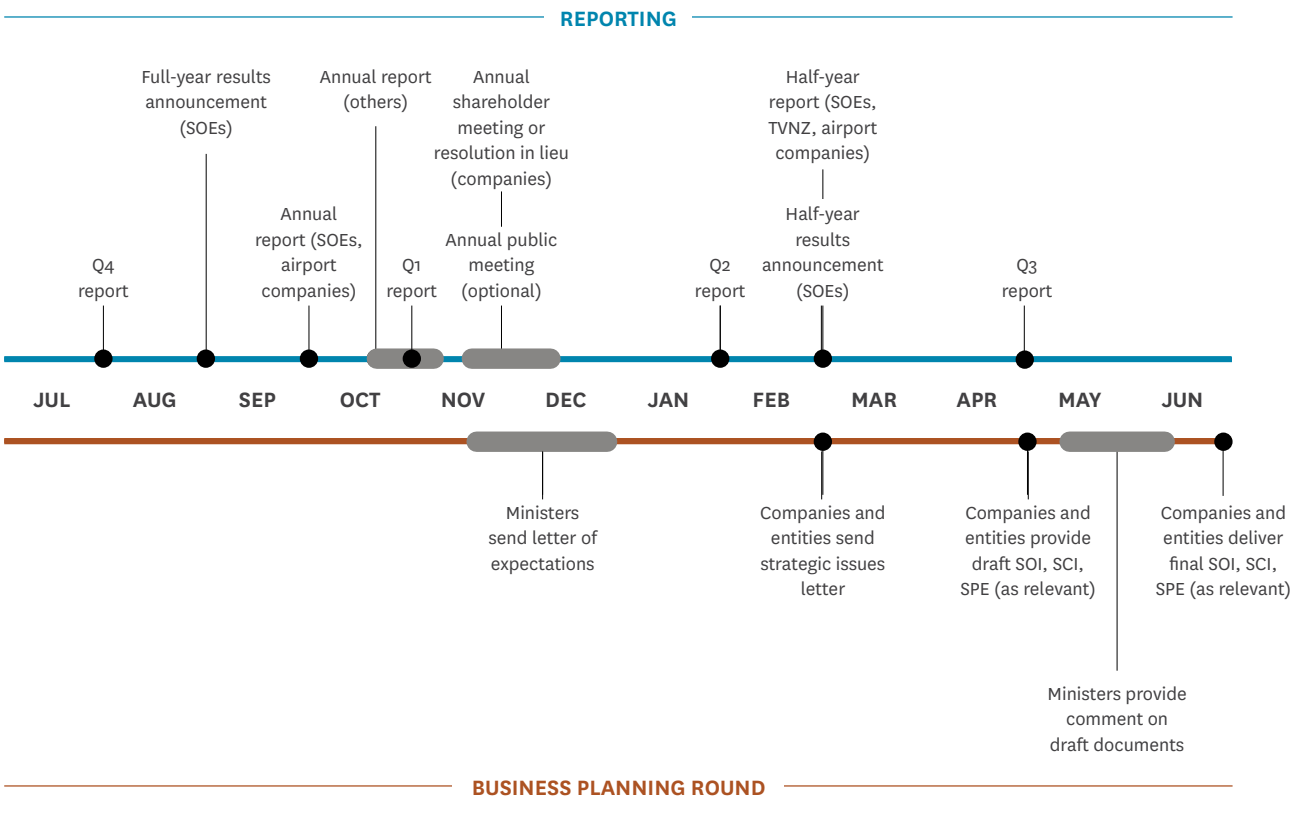
The relevant legislation sets out the information to be contained in each SCI or SOI and SPE and the timeline is shown in Table 1. The Treasury prepares a report for Ministers outlining the key aspects of each company's or entity's plans outlined in its documents. As part of this process, officials will engage with each company or entity to clarify any questions that may arise. Given tight timeframes, companies and entities are encouraged to engage early with the Treasury on draft documents, particularly if substantial changes from previous years are being proposed.

Ministers may comment on the draft documents, which may include a request for further information or clarification of certain matters. This may be in the form of a letter or, if required, a meeting with the board. Boards are required to consider any comments by Ministers and deliver their final documents. Ministers may also direct the board to amend an SOE's SCI or a Crown entity's SOI or SPE. These documents are tabled in the House of Representatives and companies and entities should upload them to their websites.

If the board wishes to amend its SOI, SCI, or SPE after it has been tabled, it must advise Ministers and consider any comments that Ministers may have on the proposed modification(s). If there are significant changes to a company's or entity's areas of activity, strategic plans, or financial forecasts after the SOI or SCI has been tabled, a new document should be prepared and submitted.

The following diagram outlines the key steps in the business planning process. This is a summary only. Dates and requirements vary for some types of companies and entities, and approximate date ranges are shown for some activities. Details for each company and entity type are provided in Table 1.

Figure 1: Key steps in the reporting and business planning processes



Reporting

Quarterly reports

Companies and entities are expected to provide quarterly reports to the Treasury no later than one month after the end of each quarter.

There is no set content or format. The information and commentary in each report should summarise performance against plan, highlight major achievements for the quarter, identify the cause of any major variances, provide an outlook of performance to the end of the year, and signal any developing issues and emerging risks and opportunities. The quarterly reports provide an opportunity for companies and entities to communicate frankly and freely with Ministers and, under the 'no surprises' policy, to advise of sensitive issues.

For **companies**, financial information includes the full suite of financial statements: profit and loss, balance sheet, and cash flow. Companies must provide information on the quarter just ended and for the year to date, with a comparison against budget for each. Comparative (trend) information for the relevant period in the previous year would provide a fuller picture of long-term progress. Separate statements must be provided for each subsidiary.

Result announcements

Each **SOE** must provide a copy of its annual and half-yearly results announcement to Ministers' offices within two months from the end of the half-year or year, before it uploads its announcement to its website.

Half-yearly reports

SOEs and **airport companies** are required to deliver their half-yearly reports to Ministers within two months of the end of the first half of each financial year (ie, by the end of February). They should send 25 hard copies directly to the Bills Office (Room 1-067, Parliament House, Wellington) and two hard copies to each shareholding Minister and his/her Associate Minister. Hard copies do not require a shoulder number. Half-yearly reports are not considered Parliamentary papers; copies are distributed to Members of Parliament for their information.

Legislation does not specify the information to be presented in half-yearly reports. Each company specifies the content in its SCI or SOI.

Annual reports

SOEs and **airport companies** are required to deliver their annual report to Ministers within three months of the end of each financial year. **Crown entity companies, PFA Schedule 4A companies**, and **statutory entities** are required to deliver their annual report by no later than 15 working days from receipt of their audit report.

The required content of annual reports is outlined in legislation. Ministers prefer to receive a draft version before the report is finalised to be aware of any issues.

Annual reports are considered Parliamentary papers and are tabled in the House of Representatives. Companies and entities need to send 30 hard copies directly to the Bills Office (Room 1-067, Parliament House, Wellington) and two hard copies to each Minister and his/her Associate Minister. Hard copies need to have the entity shoulder number on the top right-hand side of the front cover, either printed or via a sticker. Reports also need to be emailed as a PDF to each Minister, to the Treasury, and to parliamentary.papers@parliament.govt.nz for publishing on the Parliament website.

Further information can be found at https://parliament.nz/en/pb/papers-presented/presentation-of-papers

Annual shareholder meeting

The Companies Act 1993 requires all **companies** to call a meeting of shareholders each year unless the company constitution does not require a meeting to be held. The meeting must be held no later than six months after the company's balance date unless shareholding Ministers advise that they will sign a resolution in lieu of an annual meeting. No more than 15 months may elapse between the date of one meeting and the next.

Companies are responsible for setting the date, agenda, and resolutions for the meeting. The agenda (including any resolutions), proxy form, minutes of the previous meeting, and the annual report are sent to Ministers and the Treasury, with sufficient notice for officials to advise Ministers on any relevant matters.

‘No surprises’ policy

Ministers are accountable to the House of Representatives and to the public in general for company or entity performance. When issues arise, it is often both the company or entity and the Minister who will come under scrutiny. Therefore, boards must keep Ministers informed. This is referred to as the ‘no surprises’ policy.

Companies and entities are expected to inform Ministers in advance of any material or significant events, transactions, and other issues that may be contentious or could attract positive or negative public interest. Examples of matters that could fall under this policy include but are not limited to:

- changes in the CEO or other key senior managers
- potential/actual conflicts of interest by directors
- potential/actual litigation by or against the company or entity
- fraudulent acts by directors or employees
- breaches of any social responsibility obligations
- results due to be released that may vary significantly from forecast
- significant restructuring, large-scale redundancies, and office closures or relocations
- for companies, impending changes to a company’s credit rating and the resulting implications
- industrial disputes
- significant transactions, for example acquisitions and divestments, that do not require Ministerial approval or consultation
- significant health and safety issues
- appearances at select committee meetings
- release of significant information under the OIA
- imminent media coverage of any activities that could attract comment or about which Ministers may be asked to express a view.

Similarly, companies and entities are expected to keep Ministers informed of opportunities to make announcements about their work. Such occasions could include, for example, international awards, important successes such as major new contracts, or ceremonies for the opening of new buildings.

CFISnet reporting

Most companies and entities regularly provide their financial information to the Treasury via the Crown Financial Information System (CFISnet). This information is used for performance assessment and the Crown accounts. Companies are expected to upload their CFISnet submissions on time and to a high standard of accuracy.

Photo courtesy of Hawke's Bay Airport Ltd

Public accountability

Disclosure of material information (for SOEs, TVNZ, and Public Trust)

SOEs, TVNZ, and **Public Trust** are expected to keep the public informed of material matters or transactions that have an effect on their business, commercial value, or financial results. Once a company becomes aware of any such material information, it must immediately advise Ministers and the Treasury and release the information to the public. This means more than just uploading information onto its website.

Companies are not required to disclose information in cases where, for example, the information is incomplete (eg, information about a partially developed proposal), where confidentiality needs to be maintained, or where releasing the information would breach the law or an obligation of confidentiality. As far as reasonably possible, without materially affecting its business, each company must avoid entering into any obligation to any person that would prejudice its ability to comply freely with these rules.

As a guide, companies should refer to the NZX continuous disclosure rules (https://nzx.com/regulation/guidance-notes) and aim to comply with the spirit of those rules where relevant for disclosure of information to the public.

In addition, **SOEs** are expected to make a public announcement of their half-yearly and full-year results no later than 60 days after the end of each period.

Public meetings

Boards of companies and entities may hold annual public meetings, if they wish. These meetings are separate from the annual shareholder meeting that is a meeting between a company board and shareholding Ministers. Boards should inform the Treasury of the date(s) of their public meetings, along with the agenda.

Select committees

Select committees provide an opportunity for Members of Parliament from all parties to question or receive information from a Crown company or entity, in the presence of the public. There are several reasons for which a company or entity may appear before a select committee.

- It may be asked to advise a select committee on an inquiry or proposed legislation.
- It may wish to make a submission on a bill that may affect its area of operation.
- A select committee may receive a complaint or petition from members of the public about a company or entity that may then be called in for a review.

Select committees also regularly check on the previous year's performance of public organisations. As Parliament has the ultimate authority over public spending, select committees examine and comment on whether that money was spent as Parliament intended and what was achieved with it. The annual reviews look at a company's or entity's performance in the previous financial year, although reviews may also examine current performance or any other issue.

The annual review process starts once a company or entity has presented its annual report. Each committee will review the organisations in its subject area and normally seek a briefing from the Office of the Auditor-General that is familiar with each company or entity and any particular challenges it faces. This may help the committee decide which organisation to review in depth.

The committee then usually sends a list of detailed questions for the company or entity to answer in writing and calls in the company or entity for questioning in a hearing open to the public. Normally the chair, CEO, Chief Financial Officer, or other senior managers are expected to appear before the committee. These financial reviews should be viewed as opportunities to emphasise the importance of what they do. If the company or entity has concerns about providing information given the public nature of the hearing, these concerns should be raised with the committee rather than refusing to provide the information. If the committee still requires the information to be provided, the company or entity may request that the committee receive the information in private. Chairs are encouraged never to refuse outright to answer a question.

Following the hearing, the committee may send a further set of questions or requests for information, while the company or entity may also send additional information in response to points raised during the hearing. The committee prepares reports on the issues that the committee considered. The committees have until the end of March to complete their reviews. Once all the committees have reported to the House, Parliament holds the annual review debate in which Members of Parliament discuss the reports, sector by sector.

For more information on annual reviews, refer to https://parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/annual-reviews-explained. For further information about select committees, see https://parliament.nz/en/pb/sc

Directors and managers are expected to be open and forthright in their dealings with select committees and to familiarise themselves with the Standing Orders of the House of Representatives: https://parliament.nz/en/pb/parliamentary-rules/standing-orders/#Chapter4

Ministers should be advised when a company or entity is due to appear before a select committee and if it plans to make a submission in person or in writing, and to provide a copy of its submission in advance. This is so that Ministers can be prepared to answer any questions about information provided by the company or entity if asked in the House of Representatives or by members of the public, media, and stakeholders.

Parliamentary questions

Ministers may receive written or oral questions from other Members of Parliament. Ministers have six working days to respond to written questions, while oral questions are received in the morning and answers must be delivered in the House of Representatives during the afternoon session on the same day. Ministers may ask companies and entities to assist within tight timeframes if information is required to answer these questions.

For further information see:

https://parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/the-questions-you-don-t-hear-in-the-house

https://parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/question-time-how-do-oral-questions-work

Official information

Crown companies and entities are subject to the Official Information Act 1982 (OIA) and are expected to comply fully with the OIA in making information available to the public within the stated deadlines unless there are good reasons for withholding information. Companies and entities should inform the Treasury when a significant, topical, or potentially contentious OIA request is received and of the intended response.

Visits by Members of Parliament

Local Members of Parliament or spokespeople from non-government political parties may wish to visit companies or entities or meet with managers or staff members. Companies and entities should advise Ministers' offices before agreeing to such visits/briefings and are encouraged to set an agenda for these meetings.

Disclosure of senior management remuneration

SOEs, PFA Schedule 4A and **Crown entity companies**, and **Hawke's Bay** and **Dunedin airport companie**s are expected to at least meet the disclosure practices of listed companies when reporting the remuneration of their senior managers (the chief executive and the senior managers who report to the chief executive). Each entity has received specific guidance on this from Ministers. Disclosure in annual reports should at least match the disclosures of listed companies.

Refer to Principle 5 of the NZX Corporate Governance Code (https://nzx.com/regulation/nzx-rules-guidance/corporate-governance-code), and in particular recommendation 5.3 (which applies to chief executives only but should be applied to other senior managers).

Good practice disclosure includes:

- the company's strategy and approach to remuneration
- fixed remuneration for senior management
- how short- and long-term incentives for senior managers are set and measured
- senior managers' actual payments under their short- and long-term incentives, including the percentage achieved against the objectives for these incentives
- the amounts of other benefits paid for each senior manager, such as Kiwi Saver, insurance, or fringe benefits such as carparking
- the total remuneration per annum for each senior manager, as an exact dollar amount, not a range, dating back to when they were appointed, and showing the remuneration of their predecessor for comparison (this may not be applicable depending on the time elapsed since appointment).

For **statutory entities**, the SSC issues an annual report showing chief executive remuneration for each entity.

Refer to https://ssc.govt.nz/our-work/workforce-data/senior-pay-report

Consultation and approval for capital investment decisions

For some capital investment decisions, a company or entity may need to **seek approval** from shareholding Ministers, **consult** with shareholding Ministers, or simply **inform** shareholding Ministers.

Seek approval

Companies must not enter into 'major transactions' as defined in the Companies Act 1993 unless the transaction has been approved by special shareholder resolution or is contingent on such approval.

For a capital investment that is not a major transaction but requires additional equity from the Crown and/or where the company proposes to change its dividend policy to fund the investment, shareholding Ministers' approval is also required.

Consult

For any transaction or initiative that is not a major transaction and does not require Crown capital or a change in dividend policy, companies and entities are expected to consult Ministers before entering into such a transaction if it:

- meets the criteria for consultation according to the thresholds set by the board in its SOI or SCI, or
- meets the criteria for consultation if set by shareholding Ministers in the letter of expectations, or
- falls outside the nature and scope of the company's activities as defined in its SCI or SOI, or
- involves diversification or overseas expansion (including offshore investments).

The level of information required to support consultation in these cases, and the time required for the consultation process, is likely to vary depending on factors such as the nature of a transaction or initiative. Boards should discuss each case with the Treasury. As a rough guide, an issue that requires consideration by Ministers will require several weeks. An issue that needs to be referred to Cabinet will need at least two months.

Inform

Boards of companies and entities are expected to inform Ministers, in advance, of any transaction that does not require approval or consultation but that falls within the scope of the 'no surprises' policy.

Photo courtesy of ACC

Business case format and process

Companies should seek advice from the Treasury and consider at an early stage if a capital investment proposal requires shareholder approval.

If that is the case, **Crown entity companies** and **PFA Schedule 4A companies** must follow the Treasury's Better Business Case guidance: https://treasury.govt.nz/information-and-services/state-sector-leadership/investment-management/better-business-cases-bbc.

SOEs and **airport companies** are encouraged to use this approach.

For investments that are subject to shareholder approval, Ministers will decide whether they wish to provide approval. The factors that they will take into account include but are not limited to:

- the business case for the proposal
- the size of the proposal and fit with core business and strategic objectives as set out in the SCI or SOI
- Ministers' expectations set out in the most recent letter of expectations
- the fit of the proposal within the wider portfolio of Crown-owned companies and entities and the Crown balance sheet (ie, whether it would involve a concentration of risk)
- the track record of success with similar investments
- whether the proposal can be funded without the need for a Crown equity injection.

In addition to the previous factors, if a company is considering a significant capital investment decision that involves diversification, overseas expansion, the acquisition or establishment of a subsidiary, or entry into a joint venture, Ministers will take into account the factors set out in Part 2 of this document.

Ministers will advise the company whether they approve the transaction. If the transaction is subject to the injection of Crown equity, this will require Cabinet approval. The threshold for approval will be high as Cabinet will need to consider the request for new capital within the context of the Government's overall investment priorities and objectives.

Significant capital investment decisions may also be subject to:

Cabinet Office Circular 18 (2) (***Proposals with Financial Implications and Financial Authorities***) about approval of proposals with financial implications: https://dpmc.govt.nz/publications/co-18-2-proposals-financial-implications-and-financial-authorities, and

Cabinet Office Circular 19 (6) (***Investment Management and Asset Performance in the State Services***) about Cabinet Office expectations for the management of investments and physical and intangible assets: https://dpmc.govt.nz/publications/co-19-6-investment-management-and-asset-performance-state-services-html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Post-investment reviews (for SOEs and TVNZ)

The boards of **SOEs** and **TVNZ** make decisions each year either to return available cash to the shareholder by way of dividends or to invest surpluses back into the company

Ministers are interested in the value that these companies are creating from these investment decisions and would like to receive information on how successful past investments have been. Therefore, the boards of these companies should conduct post-investment reviews for the following investments:

- for companies with an equity book value <$100 million: investments >$5 million
- for companies with an equity book value between $100 million and $1 billion: investments >5% of equity book value
- for companies with an equity book value >$1 billion: investments >$50 million.

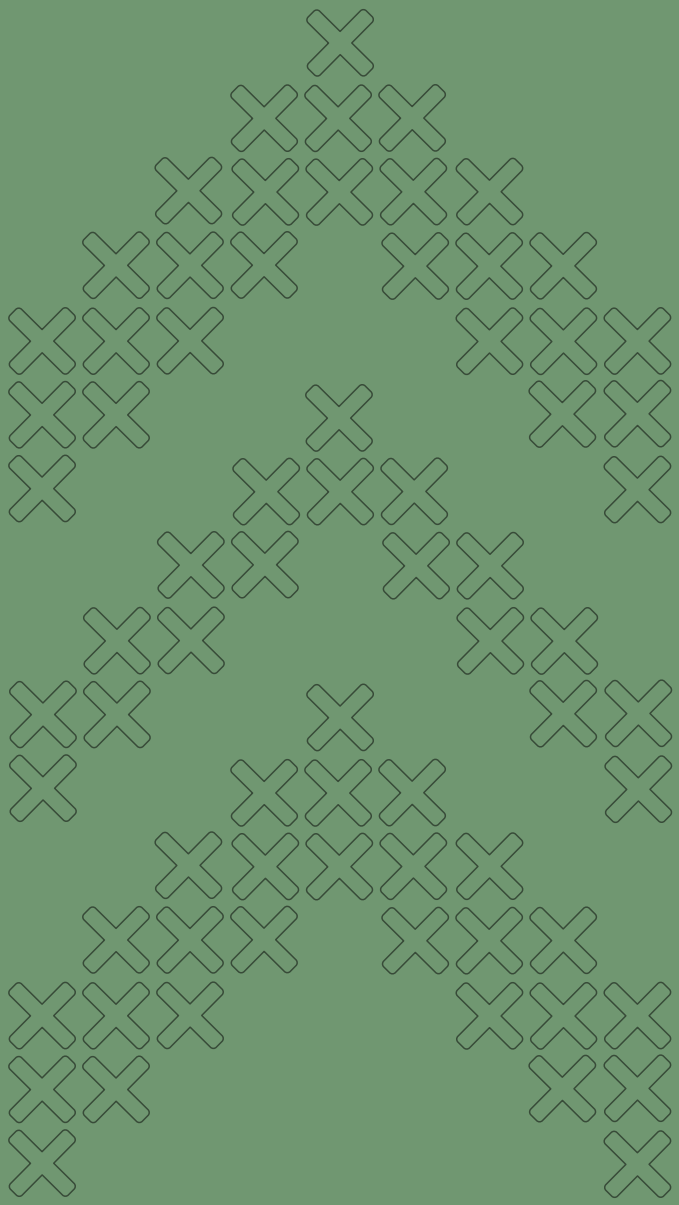
On some occasions, Ministers may ask a board to review an investment that falls below these thresholds.

Ministers would like to see a review 12-14 months following the investment with a second review two years after the first review. There is no prescribed template for a post-investment review, although reviews in general should cover at least the following information:

- actual vs budgeted costs, cash flows, and financial returns by financial year
- the latest forecast of net present value, internal rate of return, payback period, and impact on shareholder value compared with business case projections
- explanations for any key material variances
- financial benefits and business objectives achieved or not, and lessons learnt that boards can incorporate into future investment decisions.

Photo courtesy of KiwiRail

TABLE 1



Summary of features and process requirements

	State-owned enterprises	Crown entity companies	Public Finance Act (PFA) Schedule 4A companies	Statutory entities (not companies)	Airport companies
	1. Airways Corporation **2. Animal Control Products (Orillion)** **3. AsureQuality** **4. KiwiRail Holdings** **5. Kordia Group** **6. Landcorp Farming** **7. MetService** **8. NZ Post** **9. NZ Railways Corp** **10. Quotable Value** **11. Transpower**	**1. Crown Irrigation Investments** **2. Radio New Zealand (RNZ)** **3. Television New Zealand (TVNZ)**	**1. Crown Infrastructure Partners** **2. Education Payroll** **3. Network for Learning** **4. NZ Green Investment Finance** **5. Ōtākaro** **6. Southern Response**	**1. Accident Compensation Corporation** **2. Earthquake Commission** **3. Government Superannuation Fund Authority** **4. Guardians of NZ Superannuation** **5. New Zealand Infrastructure Commission/Te Waihanga** **6. New Zealand Lotteries Commission** **7. NZ Productivity Commission** **8. Public Trust**	**1. Christchurch** **2. Dunedin** **3. Hawke's Bay**
Company legislation and boards					
Governing legislation	SOE Act Companies Act 9. For NZ Railways Corp: New Zealand Railways Corporation Act Companies Act does not apply	CE Act Companies Act and 2. Radio New Zealand Act 3. Television New Zealand Act	Public Finance Act CE Act Companies Act	CE Act and: 1. Accident Compensation Act 2. Earthquake Commission Act 3. Government Superannuation Fund Act 4. New Zealand Superannuation and Retirement Income Act 5. New Zealand Infrastructure Commission/Te Waihanga Act 6. Gambling Act 7. New Zealand Productivity Commission Act 8. Public Trust Act	Local Government Act Companies Act

	State-owned enterprises	Crown entity companies	Public Finance Act (PFA) Schedule 4A companies	Statutory entities (not companies)	Airport companies
Objectives and functions	s4 SOE Act 9. For NZ Railways Corp: s12 New Zealand Railways Corporation Act 1981	1. Company constitution 2. ss7-8 RNZ Act 3. s12 TVNZ Act TVNZ and RNZ also have duties as 'lifeline utilities' under the Civil Defence Emergency Management Act (Schedule 1)	Company constitution	1. ss165, 262-3, 265 Accident Compensation Act 2. s5 Earthquake Commission Act 3. s15D Government Superannuation Fund Act 4. s51 New Zealand Superannuation and Retirement Income Act 5. ss9-10 NZ Infrastructure Commission Act 6. s238 Gambling Act 7. s9 NZ Productivity Commission Act 8. ss8-9 Public Trust Act	s59 Local Government Act Also have duties as 'lifeline utilities' under Civil Defence Emergency Management Act (Schedule 1)
Role of board and director duties	s5 SOE Act Part 8 Companies Act	ss86, 92-95 CE Act Part 8 Companies Act 2. And for RNZ: s15(2) RNZ Act	Part 8 Companies Act	ss25, 49-57 CE Act	s58 Local Government Act Part 8 Companies Act

	State-owned enterprises	Crown entity companies	Public Finance Act (PFA) Schedule 4A companies	Statutory entities (not companies)	Airport companies
Number of directors	2-9 (company constitution) 9. For NZ Railways Corp: not more than 9 (s4 NZ Railways Corporation Act)	1. 2-9 2. 3-7 3. 2-9 All as per company constitution	1. 3-7 2. 2-9 3. 3-9 4. 2-7 5. 2-5 6. 3-7 All as per company constitution	1. Not more than 8 (s267 Accident Compensation Act) 2. 5-9 (s4B Earthquake Commission Act) 3. 4-7 (s15A(4) Government Superannuation Fund Act) 4. 5-7 (s54 New Zealand Superannuation and Retirement Income Act) 5. 3-7 (s8 NZ Infrastructure Commission Act) 6. 2-9 (s240 Gambling Act) 7. 3-4 (s10 NZ Productivity Act) 8. 5-9 (s14 Public Trust Act)	1. 4-6 2. 4 3. 4 All as per company constitution

	State-owned enterprises	Crown entity companies	Public Finance Act (PFA) Schedule 4A companies	Statutory entities (not companies)	Airport companies
Ministers: roles and powers					
Shareholding, responsible Ministers	Minister of Finance and Minister for SOEs 2. Except for Orillion: Minister of Finance and Minister for Biosecurity	Minister of Finance and: 1. Minister of Agriculture 2. Minister of Broadcasting, Communications and Digital Media 3. Minister of Broadcasting, Communications and Digital Media	Minister of Finance and: 1. Minister for SOEs 2. Minister of Education 3. Minister of Education 4. Minister for Climate Change 5. Minister for Greater Christchurch Regeneration 6. (Responsible Minister is the Minister Responsible for the Earthquake Commission) 7. Minister for Greater Christchurch Regeneration	1. Minister for Accident Compensation Corporation 2. Minister Responsible for the Earthquake Commission 3. Minister of Finance 4. Minister of Finance 5. Minister for Infrastructure 6. Minister of Internal Affairs 7. Minister of Finance 8. Minister of Justice	1. Minister of Finance and Minister for SOEs 2. Minister of Finance 3. Minister of Finance and Minister for SOEs.
Powers and roles of Minister, shareholder	s6 SOE Act Part 7 Companies Act 9. For NZ Railways Corp: s30, New Zealand Railways Corporation Act Companies Act does not apply	s88 CE Act Part 7 Companies Act 2. And for RNZ: s11 RNZ Act 3. And for TVNZ: s27 TVNZ Act	s88 CE Act Part 7 Companies Act	s27 CE Act And for EQC: s9 EQC Act	Part 7 Companies Act

	State-owned enterprises	Crown entity companies	Public Finance Act (PFA) Schedule 4A companies	Statutory entities (not companies)	Airport companies
Ministerial powers of direction	Yes, s13 SOE Act re content of SCI 9. For NZ Railways Corp: ss10A and 14 New Zealand Railways Corporation Act	Yes, s147 CE Act re content of SOI 2. For RNZ: s13 RNZ Act (no direction re news/programmes) 3. For TVNZ: ss28-29 TVNZ Act (no direction re news/programmes)	Yes, s147 CE Act re content of SOI	Yes, s103 CE Act, and s147 re content of SOI, and: 1. ss227(4), 274(3B), 345 ACC Act 2. s12 EQC Act 3. s15O Government Superannuation Fund Act 4. s64 New Zealand Superannuation and Retirement Income Act 5. s20 NZ Infrastructure Commission Act 6. ss242 and 263 Gambling Act (also ss243-245 re requirements and instructions) 8. s43 Public Trust Act	No, but shareholders may resolve that a board modify its SOI (Schedule 8, Local Government Act)
Whole-of-government directions apply	No	Yes, s107 CE Act (but does not apply to Crown entity subsidiaries, s107(3) CE Act)			No
Reporting					
Reporting requirements	Part 3 SOE Act and reporting requirements under Companies Act	Part 4 CE Act and reporting requirements under Companies Act 2. And for RNZ: s8D RNZ Act 3. And for TVNZ: Part 3 TVNZ Act	Part 4 CE Act and reporting requirements under Companies Act	Part 4 CE Act	Part 5 Local Government Act and reporting requirements under Companies Act
Quarterly reports due to the Treasury	Within 1 month after end of each quarter				

	State-owned enterprises	Crown entity companies	Public Finance Act (PFA) Schedule 4A companies	Statutory entities (not companies)	Airport companies
Half-yearly reports due to Ministers	By end February, including such information as required by the SCI (s16 SOE Act)	Not required 3. Except for TVNZ: half-year financial statements are required by 28 February (s24 TVNZ Act)			By end February, including information required by the SOI (s66 Local Government Act)
Annual reports due to Ministers	By 30 September (s15 SOE Act)	By no later than 15 working days from receipt of audit report (which must be provided within 4 months from the end of each financial year) (ss150 and 156 CE Act)		1. And for ACC: annual financial condition report as soon as practicable after end of financial year (s278A Accident Compensation Act)	Within 3 months of end of financial year (s67 Local Government Act)
Content of annual reports	s15 SOE Act s211 Companies Act	s151 CE Act s211 Companies Act 2. And for RNZ: s8D RNZ Act	s151 CE Act s211 Companies Act	s151 CE Act 1. And for ACC: annual report on financial condition (s278A Accident Compensation Act) 4. And for Guardians of NZ Superannuation: s68 New Zealand Superannuation and Retirement Income Act	ss68-69 Local Government Act s211 Companies Act
Ministers table annual and half-yearly reports	Within 12 sitting days after receipt by Minister (s17(2) and (4) SOE Act)	(Annual report only) Within 5 working days after receipt or, if Parliament is not in session, as soon as possible after Parliament recommences (s150(3) CE Act)			No requirement
Company publishes half-yearly report	As soon as practicable after delivered to shareholding Ministers (s16A(2) SOE Act)	N/A (half-yearly report not required) 3. Except for TVNZ: TVNZ Act provides no information re publishing			Not required to be published
Company publishes annual report		As soon as practicable after presented in House, but no later than 10 working days after Minister receives (s150(4) CE Act)			Within 3 months of end of financial year (s67 Local Government Act)

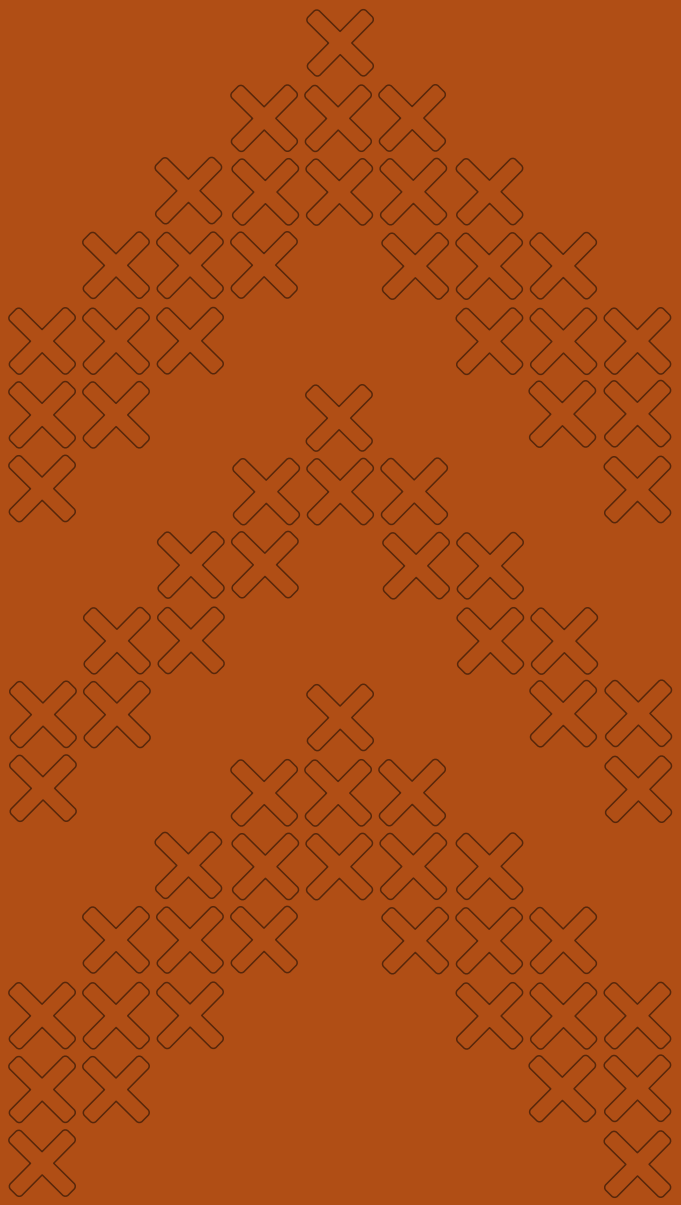
	State-owned enterprises	Crown entity companies	Public Finance Act (PFA) Schedule 4A companies	Statutory entities (not companies)	Airport companies
Business planning and accountability documents					
Ministers send expectations letters	Sent by Ministers between October and January				(The Treasury consults with councils re content of letter)
Boards submit strategic issues letter (response to expectations letter)	By 28 February or other date as may be specified by the responsible Minister or shareholding Ministers				
Companies submit draft SOI/SCI	SCI by end of May, but Ministers prefer by end of April (s14(1) SOE Act)	SOI at least once every 3 years By end of April (s146(2)(a) CE Act)			SOI on or before 1 March (Schedule 8 Local Government Act)
Content of draft SCI/SOI	s14(2)-(3) SOE Act	s141 CE Act		1. And for ACC: s272 Accident Compensation Act Other reporting (not SOI): 6. For Lotteries Commission: estimate of income and expenditure by 1 June for next financial year (s259 Gambling Act)	Schedule 8 Local Government Act
Ministers provide comments on draft SCI/SOI	By 16 June (s14(4) SOE Act)	15 working days after receipt			Within 2 months of 1 March (Schedule 8 Local Government Act)
Companies deliver final SCI/SOI	On or before 1 July or later date as Ministers shall determine (s14(4) SOE Act)	As soon as practicable after receiving comments, at least before start of financial year			On or before 30 June (Schedule 8 Local Government Act)
Ministers table SCI/SOI	Within 12 sitting days after receipt by Minister (s17(2) SOE Act)	With annual report			Not required

	State-owned enterprises	Crown entity companies	Public Finance Act (PFA) Schedule 4A companies	Statutory entities (not companies)	Airport companies
Companies publish SCI/SOI	As soon as practicable after delivered to shareholding Ministers (s16A(2) SOE Act)	As soon as practicable after providing final SOI to Minister (but Minister could require not to be published pre-Budget)			Within 1 month of delivery to shareholders
Process for SPE	Not required	Company provides draft to Minister by 2 months before start of financial year, Minister provides comments within 15 working days, company provides final SPE before start of financial year (but Minister could require not to be published pre-Budget), company publishes as soon as practicable after providing final SPE to Minister (s149(B)-(M) CE Act)			Not required
				3. And for Government Superannuation Fund Authority: s15N Government Superannuation Fund Act 4. And for Guardians of New Zealand Superannuation: s65 NZ Superannuation and Retirement Income Act 1. Except ACC: annual service agreement instead of SPE (s271 Accident Compensation Act)	
Ministers table SPE	N/A	With annual report: within 5 working days after receipt of annual report or, if Parliament is not in session, as soon as possible after Parliament recommences (s150(3) CE Act)			N/A

	State-owned enterprises	Crown entity companies	Public Finance Act (PFA) Schedule 4A companies	Statutory entities (not companies)	Airport companies
Other					
SSC standards of integrity and conduct apply	No	Yes – applies to staff, contractors etc (https://ssc.govt.nz/resources/code-organisations/); SSC developing code for board members			No
Subject to Official Information Act	Yes				Yes, and also subject to Local Government Official Information and Meetings Act
SSC pre-election period guidance applies	No (but use guidance as reference for good practice)	Yes (https://ssc.govt.nz/our-work/parliamentary-election-2020/general-election-guidance-2020/)			No

This table does not include the National Provident Fund (a statutory corporation), Local Government Funding Agency, and companies that are in the process of being wound down.

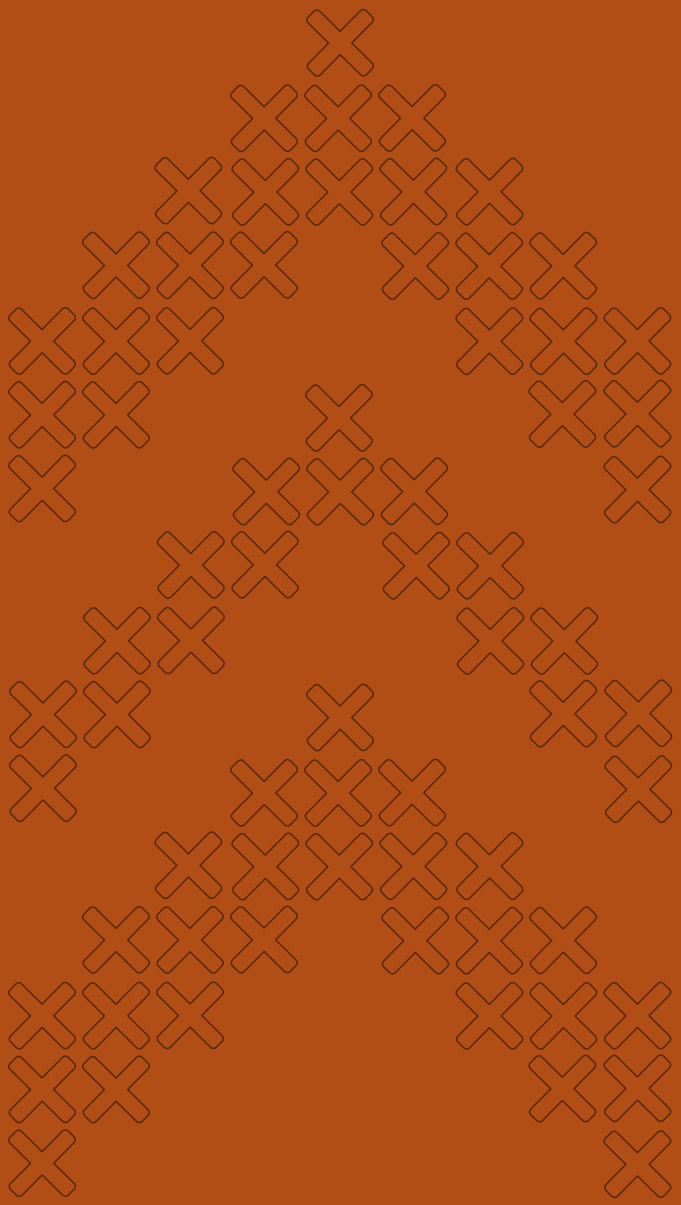
APPENDIX 1



Glossary

CE Act	Crown Entities Act 2004
CEO	Chief Executive Officer
CFISnet	Crown Financial Information System
EBIT	Earnings before interest and tax
EBITDA	Earnings before interest, tax, depreciation, and amortisation
NPAT	Net profit after tax
NZX	New Zealand Stock Exchange
OIA	Official Information Act 1982
PFA	Public Finance Act 1989
SCI	Statement of Corporate Intent
SOE	State-Owned Enterprise
SOE Act	State-Owned Enterprises Act 1986
SOI	Statement of Intent
SPE	Statement of Performance Expectations

APPENDIX 2



Financial performance measures for companies

Companies should report against the following measures, where relevant. However, this list is not exhaustive and companies may use other measures that they consider appropriate.

Shareholder return

Measure	Description	Calculation
Dividend yield	Cash return to the shareholder	Dividends paid/average commercial value
Return on equity	How much profit a company generates with the funds that the shareholder has invested in the company	Net profit after tax/average equity
Total shareholder return	Performance from an investor perspective: dividends and investment growth	Closing commercial value less opening commercial value plus dividends paid less equity injected)/opening commercial value

Profitability/efficiency

Measure	Description	Calculation
Operating margin	Profitability per dollar of revenue	Underlying EBITDA/revenue
Return on invested capital	Efficiency and profitability of a company's capital from both debt and equity sources	Underlying EBIT/average invested capital

Leverage/solvency

Measure	Description	Calculation
Debt to EBITDA	Size of debt relative to earnings	Net debt/underlying EBITDA
Gearing ratio	Measure of financial leverage: ratio of debt (liabilities on which a company is required to pay interest) to debt plus equity	Total debt/total debt plus equity
Interest cover	Number of times that earnings can cover interest	Underlying EBIT/net interest expense

Growth

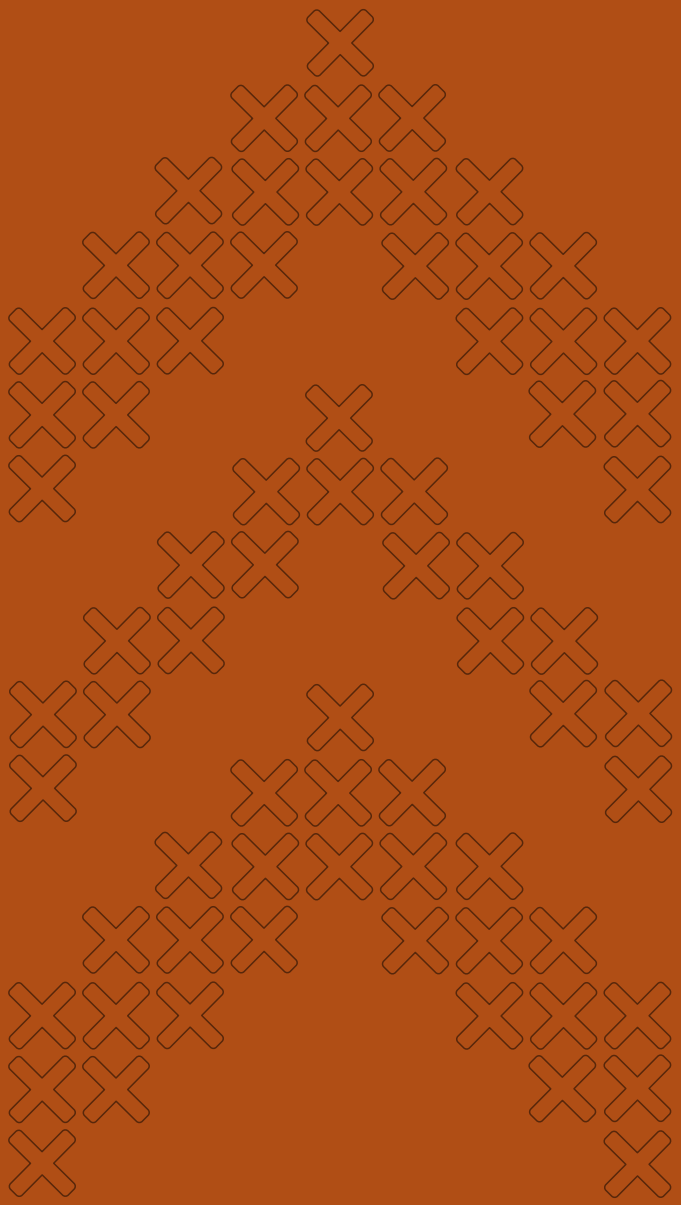
Measure	Description	Calculation
Capital replacement	Measure of capital investment relative to maintenance investment levels	Capital expenditure/depreciation plus amortisation expense
Revenue growth	Change in revenue	Current year's revenue/previous year's revenue
Underlying EBITDA growth	Change in EBITDA	Current year's EBITDA/previous year's EBITDA

Definitions of key terms

Term	Definition
Capital expenditure	Payments for the purchase of property, plant and equipment items, and intangible assets, taken from the cash flow statement
Commercial value	Board's estimate of the current commercial value of the Crown's investment in the company
Dividends paid	Dividends paid to the shareholder during the financial year as per the cash flow statement
Equity	Total shareholder equity taken from the balance sheet
Fair value adjustments	Includes unrealised fair value gains/losses on derivatives or all fair value gains/losses on derivatives where the company does not separately identify unrealised items; also includes changes in the fair value of biological assets and investment properties
Invested capital	Interest-bearing debt plus share capital plus retained earnings
Net cash flow from operating activities	Cash flows from operating activities less cash flows to operating activities
Net debt	Interest-bearing debt such as loans, bonds, and commercial paper plus interest-bearing finance leases less cash and equivalents and short-term investments
Net interest expense	Interest expense less interest revenue as per income statement
Retained earnings	Profits retained in the business (ie, after dividends to the shareholder)
Revaluation reserve	When an asset is re-valued to fair market value for accounting purposes the increase in the value of the asset is reflected in a revaluation reserve within equity
Revenue	Revenue from business operations (excludes interest revenue)
Share capital	Amount of capital originally invested by the shareholder and any subsequent equity injections
Underlying EBIT	Earnings before interest and taxation excluding non-operating items*
Underlying EBITDA	Earnings before interest and taxation, depreciation and amortisation excluding non-operating items*
Underlying NPAT	Net profit after tax excluding other comprehensive income and non-operating items after tax*

* Non-operating items are fair value adjustments, other gains/losses, and extraordinary items from CFISnet submissions to the Treasury's Commercial Performance team.

APPENDIX 3



Directors' fees, payments and related policies

This appendix outlines policies and practices relating to director fees, reimbursement, and related matters. It is expected that each company or entity will adapt the content of this appendix to form part of its policies and procedures manual (or equivalent document).

Ordinary and special purpose fees

For **companies**, directors receive fees from a lump sum approved by responsible Ministers and paid to the company each financial year. Fees consist of:

- ordinary fees to cover the full 'normal' contribution of each director, including attendance at board and committee meetings, meeting preparation and travel time, stakeholder management, and any other agreed tasks, and
- special purpose fees, if requested by a company and approved by the responsible Minister.

Ordinary fees are calculated based on a methodology approved by Cabinet based on factors such as company size and complexity in relation to equivalent non-Crown companies. The fees are reviewed periodically and changes are subject to Ministerial approval. A fees pool is calculated for ordinary fees on the basis of an annual rate per director, twice that rate for chairs, and 1.25 for deputy chairs, based on the actual or expected number of directors. There are no additional fees included in the pool for board committee meetings. Ordinary fees cover the full expected duties of a director. It is up to each board to decide how to allocate the total pool among directors as it sees fit.

Special purpose fees are rare and considered in exceptional circumstances and for a limited period only where directors are required to contribute additional time over and above what would be considered an ordinary commitment. Exceptional circumstances could be where:

- significant director involvement is required in a specific and time-limited major issue, such as establishing or restructuring a company, a major acquisition, or where changes in legislation lead to significant change
- directors represent the company on relevant industry committees or boards, where the commitment is significant, and
- additional contributions are made by directors relating to lengthy travel requirements (although Crown companies should not normally pay additional, special purpose fees to a director who travels on Crown company business unless the director's presence is essential and the circumstances are exceptional).

Special purpose fees are not paid just because of a heavy workload. Having to commit time to handle a heavy workload is already reflected in the level of ordinary fees set for a company. Requests for special purpose fees should be made in advance and take the form of a proposed hourly or per diem rate and the total amount to be paid. The hourly or daily rate should be based on equivalent director fee levels. Special purpose fees, if approved, may be used only for the purpose for which they were approved.

Payment of fees

Towards the end of each financial year, responsible Ministers will confirm the level of ordinary fees and allowance for director training and any special purpose fees approved for the year. Subsequent changes to fee requirements, either through a change in board membership or unexpected circumstances, can be considered throughout the year, and boards should ask for advice from the Treasury on the appropriate process before any additional fee liability is incurred.

It is the board's prerogative to decide the allocation of fees once approved and the frequency of payment. Boards should consider not paying fees as an upfront lump sum to provide for any unexpected events or circumstances that may arise where the input of individual directors during the year may vary. Boards could also consider withholding payment if directors do not attend meetings or make their expected contribution.

Crown company directors do not receive a retirement allowance or any equivalent fee at the end of their term even if the date of retirement precedes the expected end date.

The Companies Act 1993 requires disclosure in a company's annual report of the total remuneration and the value of other benefits received by directors or former directors.

Fees for subsidiary company directors

Additional fees are not paid for parent company directors on subsidiary boards unless the additional requirements on the parent company directors are significant. This would include where the board operates in its own right and has its own regular meetings, committees, and a separate management structure reporting to it.

Fees for members of subsidiaries of statutory entities are set in accordance with the Cabinet Fees Framework. For subsidiaries of other companies, the parent board is responsible for setting fees. Although this is an operational matter, boards should respect the conservative approach adopted by the Crown in setting fees for all Crown company boards. Fees should be set based on an appropriate review of the scale of the subsidiary (eg, revenue, assets, complexity etc) and the level of fees paid to the parent board and company boards of a similar scale in the Crown domain.

Board expenses and claims for expenses incurred by directors

Crown company constitutions restrict the remuneration and other benefits payable to directors to those notified by responsible Ministers from time to time. However, the board may authorise the company to pay or reimburse reasonable expenses for directors to attend company meetings or in relation to other affairs of the company. Costs relating to director development and training should be paid from the budget approved in advance by Ministers.

The board should set an annual budget for board expenses so that they can be dealt with through the company's normal channels of policies, authorisation, and internal control. Performance against budget and company compliance with reimbursement/payment policies should be reviewed regularly by the audit (or other delegated) committee or the board itself if there is no such committee.

In some cases the chair may authorise board expenditure personally, while in other cases he or she may choose to rely on systems within the company. The expenses of the chair should be authorised by the chair of the audit committee or a director of similar standing, or by two other members of the board. The board should approve any financial delegation of directors' expenses.

To support claims for reimbursement of expenses, supporting documentation should be produced at the time of the claim and should clearly illustrate the relevance and business purpose of each item.

Photo: Staff celebrate Pink Shirt Day. Courtesy of MetService


Speak UP
STAND
TOGETHER
STOP BULLYING

Sensitive expenditure

Sensitive expenditure refers to expenditure that could be seen as unusual for the company's or entity's purpose and/or functions or that gives some private benefit to an individual staff member. Travel, accommodation and hospitality spending are examples of areas where problems often arise when individuals are perceived to or do directly benefit personally from sensitive expenditure incurred during the conduct of a public entity's business.

Boards should refer to the Office of the Auditor-General's guidelines on controlling sensitive expenditure: https://oag.parliament.nz/2007/sensitive-expenditure

Policies

Policies relating to director payments and reimbursements should cover at least the following matters. These policies should be reviewed regularly and updated where appropriate.

Travel

Policies for director travel expenditure and reimbursement of expenditure should include but not be limited to the approval process for local and overseas travel, standard of hotels, class of travel, daily allowances, accompanying partners etc.

There should be clear expectations of the reconciliation and approvals required when travel has been completed, including a comparison with budget.

Vehicle expenses

Policies should cover the use of rental cars, taxis, ride-share/hail services, company car parks or other parking, and the use of private vehicles including reimbursement (typically at a rate in line with that paid in the public sector). Where trips can be undertaken by other, similarly convenient, and possibly less expensive means, the policy should also deal with the approval process (eg, where directors wish to drive when there is another transport mode available).

Entertainment and hospitality

Policies should provide guidance to directors when hosting functions or entertaining business stakeholders.

Membership of business organisations, airline club memberships

Policies should state a measure of frequency and business reasons/necessity for use to support any expenditure of this nature.

Communications and telephones

Policies should outline communications and telephone costs including entitlement to and use of mobile phones, claiming for business use of a director's own phone, private calls when away on business etc.

Professional and legal support

Policies should state when professional and legal advice will be provided if required by directors.

Secretarial support for directors

Companies and entities should provide secretarial support for their directors. Where directors require secretarial support but may not have immediate access to company or entity support staff, they might use staff in their own businesses and seek reimbursement.

In principle, payment for outside secretarial support is not a practice that the Crown endorses. However, as a practical and operational matter, it is an issue for the board to resolve. In considering reimbursement for the use of outside support staff, the board should be convinced that it is cost-effective and that the proposed cost is reasonable. Any arrangement should be minuted, monitored, and regularly reviewed.

Medical insurance and key-person insurance

Directors may wish to take advantage of medical insurance policies at corporate rates if offered to company or entity staff members. As these policies are for the personal benefit of directors, they should preferably pay premiums directly to the insurer.

Key-person insurance premiums fall into the same category if the beneficiary is the director concerned. Where the company or entity is the beneficiary of the policy, the matter should be treated as a company expense.

Gifts, koha, and donations

Directors are remunerated through fees only and should not seek to benefit financially in any other way. No director, or any member of a director's immediate family, may accept gifts, entertainment, discounts, loans, commissions or other favours from individuals or organisations, if they could influence or be perceived to influence a business decision or be considered to be extravagant or unduly frequent, particularly if the organisation or individual is soliciting business or information from the company or entity. Policies should outline restrictions, if any, on the maximum value of gifts permitted to be given or received at any one time, or during any given period. Any gift received should be recorded in the company's interests register, and a policy should be in place to assist directors in dealing with such situations.

Childcare, parental leave and care of dependants

A company's or entity's policies on matters of care of children, dependants, and parental leave should (where necessary) be specifically adapted to apply to board members.

Use of company resources

Policies should cover personal use of company or entity assets, including office accommodation, computer equipment, use of internet and email, utilities, stationery and office equipment. The expected practice is that the use of company or entity facilities to conduct private business is not appropriate. However, in some instances it may not be practical to separate out personal expenditure (such as for mobile phones or small-scale internet usage), and the policy should cover this.

Use of director assets

Policies should be very clear and describe the circumstances for use of a director's private assets, and rates should be set to recognise the cost for the company's or entity's use of these assets. If circumstances involve multi-purpose or shared use, this should be clearly covered. Reimbursement rates should be clearly set which reflect the benefits for both the director and the company or entity. Situations where use is made of other assets (eg, use of a relative's accommodation) should be covered by the policy.

Credit cards

Credit cards used appropriately can be an expedient means of managing directors' expenses. However, there have previously been issues in this area and the easiest way to avoid this is to not have credit cards, or to make individual directors directly responsible for payments in the first instance.

Oversight systems must be in place that are rigorous and transparent. There should never be any confusion about whether a director was authorised to incur a payment, what it was for, and where the supporting documentation is located.

Company or entity credit cards should be limited to situations where there is real need and there is no viable alternative. The preferred options are for directors to use their own credit card or to apply for an additional card in their name, to pay the amount due, and to claim reimbursement at the end of the month.

Where significant credit limits are required to cover regular and material expenditure on company or entity business (such as overseas travel), the company or entity could apply for a credit card in the name of the director for exclusive use on company or entity business up to a limit set by the company or entity. The director is responsible for payment of the card by the due date and claims reimbursement at the end of the month.

Generally, cash withdrawals on credit cards or pre-loaded foreign exchange debit cards should not be permitted but, if there is a need to draw foreign currency while on an overseas trip, the director must comply with organisational policy on accountability and documentation.

Claims for allowances from more than one entity

When a director has multiple board appointments or conducts business on behalf of more than one company or entity, the director must allocate expenses between different organisations. The company or entity must ensure that the director has provided supporting information that confirms that any expenses paid relate only to the organisation against which they are claimed. It is not always practical to differentiate explicitly between which organisation is deriving benefit. Policies should ensure that the organisation that gets the substantive benefit from the expenses pays for it.

Loans and guarantees to directors

Directors should not receive loans from the company or entity of which they are a director, nor should the company or entity provide any guarantees for loans to directors, unless the company or entity provides loans in the normal course of its business. In this case there must be clear policies in place on board member access to such loans, which must be at arm's length from the board and on the same terms as for any member of the public.

Breaches

Policies should include procedures for staff, management or directors to raise concerns about possible breaches of approved processes.

Tax matters

Directors should seek professional advice on their taxation obligations.

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