

The Treasury

Briefing to Incoming Shareholding and Responsible Ministers

February 2023

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TE TAI ŌHANGA
THE TREASURY

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February 2023

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1 Your responsibilities, and how the Treasury assists you

This briefing provides information on entities that you are responsible for as Minister for State Owned Enterprises, to help you meet your Ministerial responsibilities and to support your early engagement with officials.

The entities in this briefing are mainly State-owned enterprises (SOEs) or other companies and entities that carry out commercial activities and for which the Treasury provides ownership, governance, performance and commercial advice. The entities have different arrangements between shareholding or responsible Ministers, as outlined in the table below. This briefing has been sent to all Ministers referenced in the table.

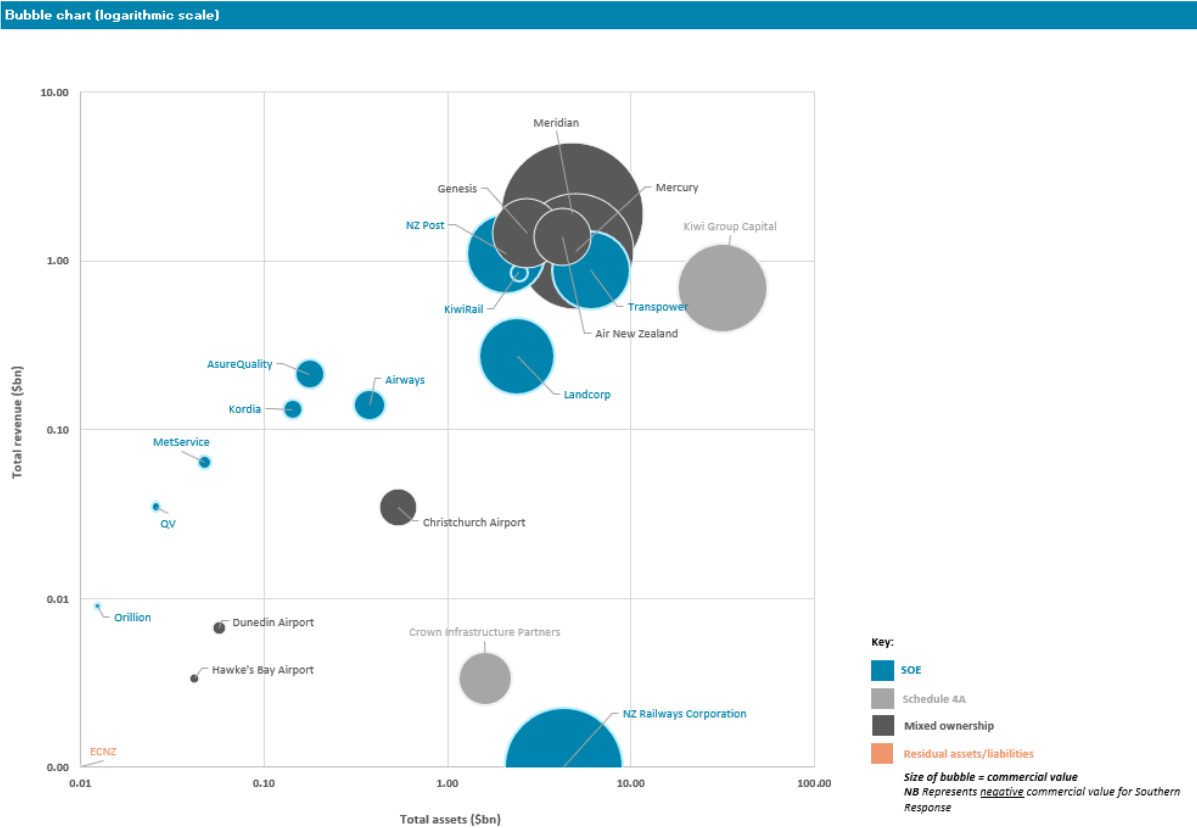
Table 1: Companies and entities within the scope of this briefing

Entity type	Entity (Crown shareholding if not 100%)	Shareholding or responsible Ministers		
		Finance	SOEs	Other Ministerial portfolio ¹
State-owned enterprises	Airways Corporation	x	x	
	Orillion	x		Biosecurity
	AsureQuality	x	x	
	KiwiRail	x	x	
	Kordia	x	x	
	Landcorp Farming	x	x	
	MetService	x	x	
	New Zealand Post	x	x	
	Quotable Value	x	x	
	Transpower	x	x	
	New Zealand Railways Corporation	x	x	
Crown entity companies	Crown Irrigation Investments	x		Agriculture
	Television New Zealand	x		Broadcasting and Media
Public Finance Act Schedule 4A companies	Crown Infrastructure Partners	x	x	
	Kiwi Group Holdings	x	x	
Statutory Crown entities	Lotteries Commission			Internal Affairs
	Public Trust	x		Justice
Companies with mixed ownership				
Publicly listed companies	Air New Zealand (51.0%)	x		None – Minister of Finance is the sole shareholder
	Genesis Energy (51.2%)	x	x	
	Meridian Energy (51.0%)	x	x	
	Mercury NZ (51.7%)	x	x	
Council-controlled trading organisations	Christchurch International Airport (25%)	x	x	
	Dunedin International Airport (50%)	x	x	
	Hawke's Bay Airport (50%)	x	x	
Non-trading companies				
State-owned enterprise	ECNZ	x	x	

¹ Portfolio allocations as at 1 February 2023. Note this list will be updated following the confirmation of delegations.

The diagram below provides a visual representation of the entities that you are responsible for (plus Air New Zealand), with assets and revenues on the x and y axes, and the estimated commercial valuation² of each entity (as at 30 June 2022) represented by the size of the 'bubble'. The exception is KiwiRail (marked white), where the bubble represents the size of KiwiRail's negative commercial value. The commercial valuation reflects each board's estimate of the fair value of the Crown's investment in the company. The scale is logarithmic.

Figure 1: Relative size of companies and entities



Some companies pay the Crown an annual dividend; almost all of this dividend is received from a small sub-set of five companies: Meridian, Mercury, Genesis, Transpower and, before 2020, Air New Zealand. Some other companies pay dividends, but the amount paid is not material, often because the company itself is small. Several companies do not pay any dividends. The Crown received approximately \$607 million in dividends for FY22, compared to \$770 million in dividends for FY19, pre-COVID. We expect dividends to increase slightly in FY23 as companies continue to recover from the effects of COVID.

² With the exception of Crown Infrastructure Partners, New Zealand Railways Corporation and ECNZ, where the size of their bubble corresponds to their net asset value.

1.1 Legislative framework

Each entity is set up under legislation that outlines its purpose and aspects such as expectations around financial performance.

- SOEs are companies subject to the State-Owned Enterprises Act 1986 and are expected to operate as successful businesses, including being as profitable and efficient as comparable businesses not owned by the Crown. SOEs must be 100% owned by the Crown.
- Crown entities are subject to the Crown Entities Act 2004. In general they are expected to act as successful going concerns and to operate in a financially responsible manner. Some Crown entities are companies. Crown Entity companies must be 100% owned by the Crown.
- Public Finance Act (PFA) Schedule 4A companies are subject to the Public Finance Act 1989; some sections of the Crown Entities Act 2004 also apply. Their expectations vary in accordance with their constitutions. PFA Schedule 4A companies can be jointly owned by the Crown and other parties, but the Crown must have a majority shareholding (at least 50% plus 1 share).
- Airport companies are subject to the Local Government Act 2002. Local authorities own at least 50% of their shares. There is no legislative restriction on the Crown's percentage ownership.
- The three publicly listed energy companies are subject to the Public Finance Act. The Crown must retain at least a 51% shareholding, and no other party may own more than 10% of the shares.
- Air New Zealand does not fall under any overarching Crown ownership legislation, and therefore there is no legislative restriction on the Crown's percentage ownership. However Government policy is to maintain a 51% shareholding. The Minister of Finance is the sole shareholding Minister.

All companies are subject to the Companies Act 1993. All companies and entities (except for the publicly listed companies) are subject to other public legislation such as the Official Information Act 1982, the Public Audit Act 2001, and the Ombudsmen Act 1975. They are also subject to public scrutiny through the select committee process and parliamentary questions addressed to Ministers.

1.2 Key Ministerial levers

Ministers have broad ownership oversight for each company and entity. However, governance is the responsibility of boards appointed by Ministers subject to Cabinet approval (with the exception of the publicly listed companies). Boards operate at arm's length from Ministers to develop the overall strategy for their company or entity and appoint a chief executive officer, to whom they delegate management decisions to implement the strategy.

Given the arm's length model, the **two most important levers** available to Ministers to influence the performance of entities and companies are the:

- appointment of effective boards
- annual business planning and reporting process.

The board appointments process

A high performing board with the confidence of shareholding Ministers is a critical enabler for strong Crown company performance. Membership of a high performing board needs a balance of capabilities, skills and experience, and diverse perspectives that work well together to drive performance of the company or entity.

As shareholding and responsible Ministers, you are responsible in most cases for appointing directors to the boards of your entities. The exception is for Mixed Ownership Model (MOM) companies, that follow NZX rules. The Prime Minister should be consulted on major appointments before they are submitted to Cabinet, and all appointments must be confirmed by Cabinet.

Entity/company type	Process and Ministerial involvement
MOM companies	<ul style="list-style-type: none"> • Subject to NZX listing rules. • Boards recommend candidates for appointment as directors. New directors are then elected by all shareholders at the Annual Shareholding Meeting (ASM). • Existing directors must be re-elected by a majority of shareholders every three years at an ASM. • Directors would typically serve for 8-10 years, but it is the board's and the individual's choice when they stand down (subject to re-election by shareholders every 3 years). • As the Crown is the majority shareholder, the Crown's vote determines the outcomes of resolutions to elect or re-elect directors at ASMs. • Well before each ASM, Ministers are consulted regarding the election and re-election of directors, and Ministers consult their colleagues through the Cabinet process. • Boards choose their own chairs, who must be approved by the Minister of Finance.
Non-MOM companies and entities	<ul style="list-style-type: none"> • Ministers appoint and remove board members, subject to Cabinet confirmation. • Ministers appoint the chair and deputy chair.

The Treasury's Governance and Appointments team follows the Cabinet Approved Appointment process providing advice, administrative and nomination support throughout this process, and prepares the Cabinet documentation to confirm appointments.

There are over 200 Crown directors across the SOE boards and three regional airports. All directors are 'independent' in that Ministers and officials are not appointed to boards. Approximately 1/3 of these directors have term ends each year and Treasury will provide advice and support to enable Ministers to make decisions on the:

- retirement, reappointment or elevation of existing board members
- optimum size of the board
- capabilities and skills requirements for vacancies
- shortlist of candidates for due diligence interviews
- preferred candidates for appointment and length of term
- advice on Chair succession planning, board composition and performance.

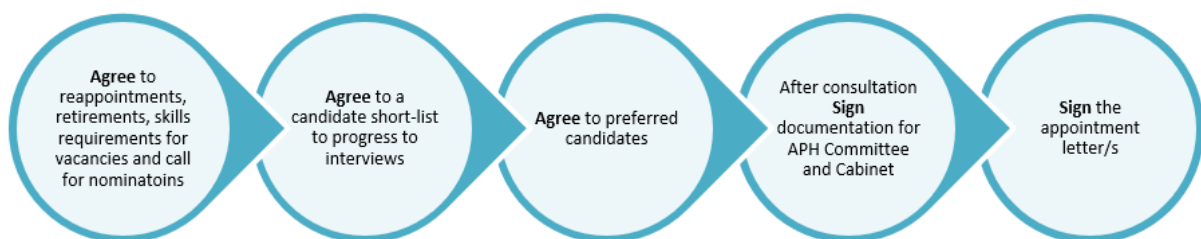
In providing this advice the Treasury considers:

- member composition across individual boards and across the SOE portfolio – ensuring there is a mix of capabilities (governance and executive level experience, skills, and backgrounds), and demographic diversity such as gender, age, ethnicity, and perspectives to achieve portfolio objectives
- director capabilities as outlined in Treasury's Board Governance Capability Framework, giving consideration to whether members have the required:
 - a. **Crown portfolio alignment** - demonstrates awareness of context, understanding of own motivations, and commitment to requirements
 - b. **Skills, Knowledge & Experience** - the expertise that a director brings to the role, and their understanding and applications of practical and theoretical information
 - c. **Behaviours, Attributes and Characteristics** - disposition that shapes a director's responses and behaviours
- entity specific goals in the Letters of Expectations, strategic objectives (current and future), and priorities
- the entity's leadership and organisational performance results
- views of the current chair and entity monitors, skills assessments, recent board evaluations, and reviews of each board
- available opportunities for early-stage directors and/or future directors.

Increasing both demographic diversity and wider diversity has been a key focus for appointments to Crown boards. Nominations and expressions of interest are sought from:

- Shareholding Ministers and your caucus colleagues
- Chairs
- nominating agencies across government
- the public notification of vacancies through the Treasury's database of 6000+ candidates,
- advertising the vacancy on LinkedIn, through CommunityGovernanceNZ website, the Super Diversity Institute membership, Infrastructure New Zealand LinkedIn page and other community or industry groups where particular capabilities are sought.

Treasury will engage you throughout the board appointment process and ask for your input and to make decisions at five points as outline below.



Appointments occur throughout the year, and can be driven by the board's composition, term end dates, the length of time directors have been on boards, and whether board members seek reappointment or resign, for example due to changes in their circumstances. A typical appointment round can take five to seven months, from identifying upcoming vacancies, working with the chair to develop the capabilities and skills profile and calling for nominations, to new board members commencing in their role.

The initial term for newly appointed directors is usually three years. Directors are typically reappointed for a further three years if they have performed well and their skills remain relevant to the company's or entity's needs. Directors may be reappointed for a third term in exceptional circumstances and there is no maximum number of terms a director can serve.

Director Fees

Under section 161(1) of the Companies Act 1993 (Companies Act), Crown company boards can set their own fees subject to any restrictions contained in the constitution of the company. Crown company constitutions provide that the determination of board fees is to be made by shareholders (i.e., shareholding Ministers).

Shareholding Ministers receive advice from the Treasury on appropriate fees which are calculated in accordance with the existing framework set out in the Crown Company Fees Methodology (the Methodology) approved by Cabinet in 2003. This is separate from the Cabinet Fees Framework (CFF) for Crown entities, which is administered by the Public Service Commission and does not cover the Crown companies.

The business planning cycle

Setting clear performance expectations

Ministers send a letter of expectations to each board at the end of each calendar year outlining what Ministers expect of that board. The letter may refer to overall expectations for the Crown company/entity sector depending on government priorities of the day, as well as company-specific expectations. For example, Ministers may express their expectation that a board will appropriately manage its strategic change process or address emerging strategic or financial concerns.

In addition to the annual letters of expectations, generic expectations for all boards are outlined in the Owner's Expectations document issued by the Treasury. This document includes expectations in areas such as financial and non-financial performance, board conduct, business planning, reporting, engagement with the Treasury, and public accountability.

Business planning and reporting

Boards hold an annual strategic session to develop their strategy. They are expected to bear in mind the expectations outlined in your annual letter of expectations. The Treasury encourages boards to invite Treasury officials to attend relevant parts of these sessions to enable us to develop a better understanding of company and entity strategies.

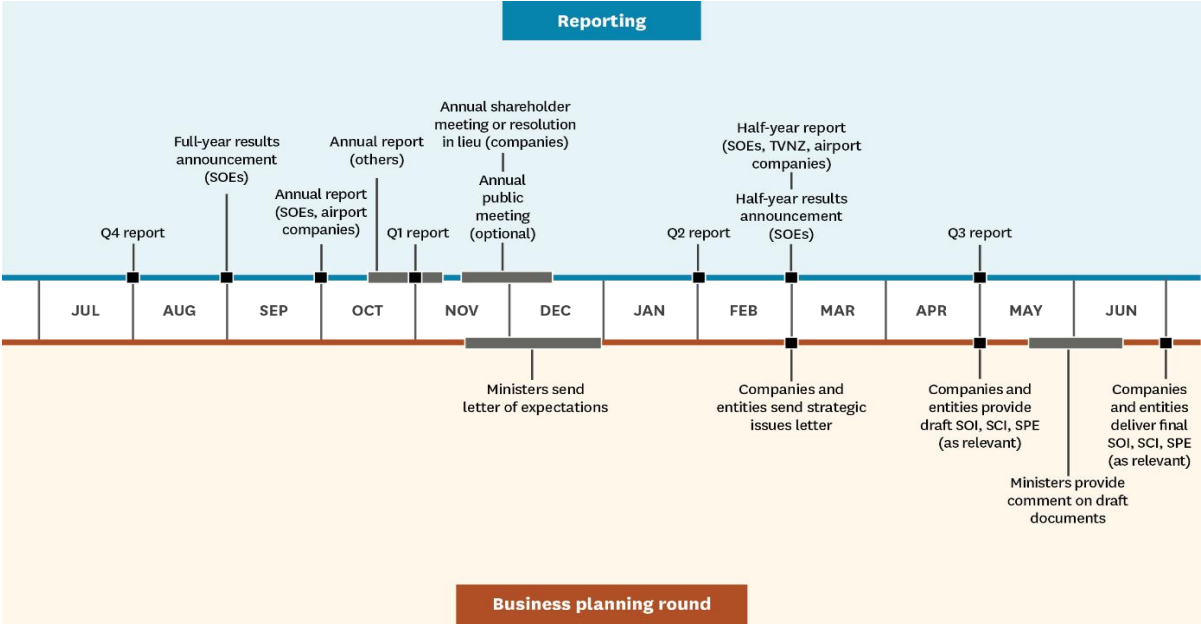
Boards set out their plans and strategies in the form of a Statement of Corporate Intent (SCI) or Statement of Intent (SOI), and also a Statement of Performance Expectations (SPE) for some companies and entities.

Once a company or entity presents its draft planning documents, the Treasury analyses them and provides comment to the company or entity, and advice to Ministers. You then have the opportunity to comment on the draft plans. In line with legislation, boards are expected to consider your comments, although they are not required to reflect those comments in their final documents. Boards submit their final documents for tabling in the House of Representatives (except for the SOIs for airport companies, because they fall under the Local Government Act and so are primarily accountable to local authorities rather than central government).

Boards provide quarterly reports (confidential to shareholders) and half-yearly and annual reports (which are made public) outlining progress against their plans and broader performance. The Treasury uses these reports to analyse company performance and to brief Ministers. We also provide advice to Ministers for regular and one-off meetings with chairs. Serious or ongoing performance concerns can be discussed at these meetings, or you may choose to express your concerns in writing.

The business planning and reporting cycles are outlined below. This is a generalised diagram. While the steps apply to most company and entity types, there are some exceptions.

Figure 2: General business planning and reporting cycle



Other Ministerial levers

Other levers available to Ministers include the following.

- **Funding:** Ministers have the ability to lend money to entities or to provide them with new equity – typically, this happens only when the companies are experiencing financial difficulty and cannot borrow from the private sector. Over the last few years, several entities have required support from the Crown, most notably Air New Zealand, Airways and NZ Post.
- **Shareholder approval for transactions:** You must be consulted or, rarely, give approval, when a board proposes a transaction with a value above certain thresholds. Consultation thresholds are normally set through shareholder expectations, while shareholder approvals are less common and are based on a particular transaction, or series of transactions, being a ‘major transaction’ under the Companies Act 1993 or the NZX listing rules. Such transactions are normally asset purchases or disposals and may reflect a change in a company’s or entity’s strategy. To seek approval, boards prepare a business case for Treasury analysis. In some cases, Ministers must also be asked to approve some financial operations such as investing and borrowing.
- **Amendment of company constitutions:** Shareholding Ministers can amend constitutions when they wish to change the purpose or objectives of a company. This happens rarely.
- **Contracts for purchase:** Ministers can enter into contracts to provide funding for a company or entity to deliver certain goods or services. Any Minister can enter into such a contract, not just shareholding Ministers.

- **Information requests:** You can also request information from a board, for example if you have concerns about a company's or entity's performance.
- **Directions:** Ministers can also issue directions to groups of entities subject to the Crown Entities Act to support a whole-of-government approach, for example to improve public services or to secure efficiencies. Such directions have been infrequent. An example is a direction in 2018 to implement the New Zealand Business Number.

There are varying powers for Ministers to give specific directions to particular entities, in some circumstances, and with specific limitations or exemptions. For Crown entities, the responsible Minister:

- can issue specific directions to a Crown agent to give effect to a government policy that relates to the entity's functions and objectives
- can direct autonomous Crown entities to have regard to a government policy that relates to the entity's functions and objectives
- cannot issue directions to independent Crown entities or Crown entity companies, unless specifically provided for in other legislation (which is rare). Most of the Crown entities for which the Treasury provides ownership and governance advice are Crown entity companies.

For SOEs, shareholding Ministers can direct them to include or exclude specified matters from their Statements of Corporate Intent (e.g., to make changes to their nature or scope of business), or to pay a dividend or provide information. Ministers cannot direct SOEs to carry out (or not carry out) particular actions. Because the power of direction for SOEs is very limited, it has been used very rarely.

Shareholding Ministers have no powers to direct the listed companies. However, the Crown's majority shareholding gives Ministers influence, and listed company Chairs and directors take comments from Ministers seriously.

1.3 How we advise on company and entity performance

The Treasury provides advice to Ministers in the following areas:

- **Ownership advice:** what is the Crown seeking to achieve through ownership of its Crown companies and entities?
- **Governance advice:** how are the skills and experience of the Chair and other directors contributing to the success of the entity, and what changes need to be made to the board to strengthen it (including advice on specific appointment decisions)?
- **Performance advice:** how is a company or entity delivering against its objectives?
- **Commercial advice:** how can the Crown best deliver a commercial outcome through its ownership, for example as a potential means of intervention in certain sectors, or what are the ownership implications and options if market disruption significantly affects some business models?

For each company and entity, we appoint a lead and support relationship manager (RM). The RMs become familiar with the operations and strategy of each company and entity through regular interactions, most often with senior managers. The RM's drafts an entity assessment plan that:

- analyses each company's or entity's performance
- identifies priority areas that need development or strengthening
- assesses what will be required for successful performance engagement, for example regular performance-focused meetings
- outlines key deliverables, for example reports and relationship meetings.

The Treasury assesses performance across the following four dimensions:

- strategy, investment and alignment
- leadership
- organisational performance
- results.

We start with an assessment of company or entity strategy; that is, we ask whether the strategy is clear and focused, sufficient to address the changes we are seeing in the company's or entity's industry, and whether it is able to be executed. We examine the track record of major investments and the rationale behind current/planned investments. An ongoing track record of low returns or business cases with unclear rationale will be

factored into our assessment. We assess not only whether a company or entity is performing well commercially but also whether it is aligned with legislative and Ministerial expectations.

We assess the effectiveness of the board and management. We look at organisational culture and aspects such as structure, asset management, and disclosure.

We look at whether the company or entity has achieved growth and performed well against forecasts. For those companies and entities that compete in open markets, we consider factors such as growth in market share and the development of a competitive advantage.

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.

Figure 3: General engagement by the Treasury with companies and entities



Various levers are available to Ministers to influence performance, including closer interaction between the Treasury and boards, Ministerial meetings with chairs or entire boards to discuss specific issues, and expression of concerns and expectations through formal correspondence, annual letters of expectation, and feedback on draft annual accountability documents.

We report to you on entity performance six-monthly, against both financial results and key performance indicators. We use a Performance Assessment Framework (using the four dimensions mentioned above) to help identify and report against the factors underlying a company’s success. The next of these will be on the half-year results, which we aim to provide to you in April 2023.

Where performance does not meet expectations, various actions are available, including, for example:

- a requirement for additional or more regular reporting

- a request for a board action plan to address performance issues, or commissioning of an independent report
- withholding of Ministerial support for significant or major transactions
- Ministerial directions for some entity forms (as mentioned above, this has limited scope and is very rarely used)
- Crown financial support with conditions, or closure or substantial reconfiguring of a company's or entity's business
- non-reappointment of directors at term end, or dismissal of a chair or entire board.

Different approach for listed companies

The four publicly listed companies are subject to NZX Listing Rules, under which they release regular updates to all shareholders. We receive the same level of information as other shareholders in normal circumstances. We rely heavily on market analysis and the company's share price as an indication of performance. Air New Zealand is not currently in normal circumstances, and there are different arrangements in place for it.

We maintain a relationship with boards and management and engage with them regularly on matters requiring shareholder approval (director appointments and fees and, rarely, on major transactions) and to discuss strategy and performance.

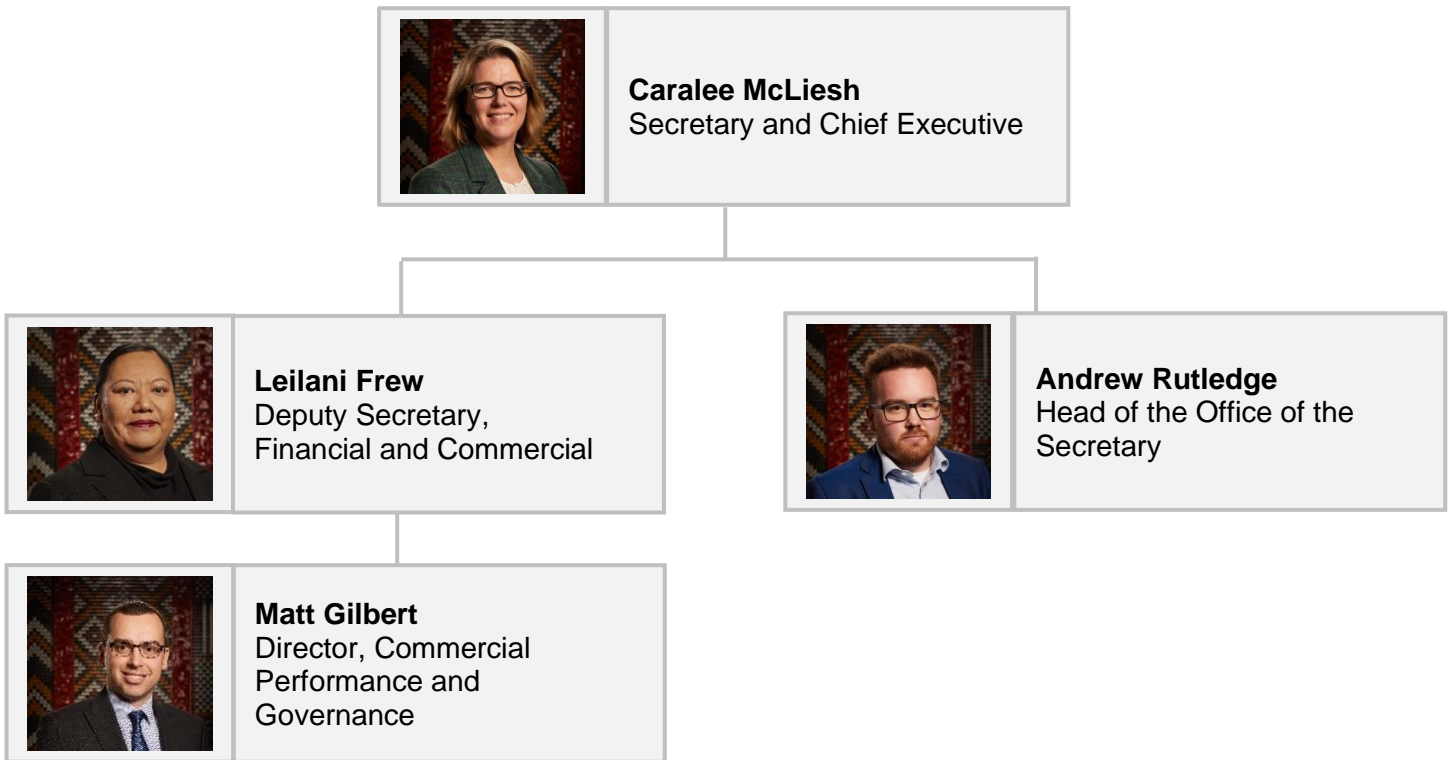
Secondary advisory role

For some companies and entities the Treasury has a secondary role in providing performance advice. For example, the Ministry of Business, Innovation and Employment has lead responsibility for providing advice to shareholding Ministers on the Crown Research Institutes. We are involved in a secondary advisory role where required, often when significant financial matters are concerned.

Ministerial servicing

We draft responses to Ministerial correspondence, media enquiries and Official Information Act requests. We liaise with companies and entities to provide information to support Ministers to respond to Parliamentary debates and questions. We provide briefings when you meet with companies or entities, and keep you informed of events such as when a company or entity is to appear before a select committee.

1.4 Key Treasury contacts



2 Matters of current interest

Upcoming appointments

The terms of multiple directors are due to expire in 2023. These include two Chair appointments for AsureQuality and MetService. We will provide you with advice on new appointments, reappointments, elevations and retirements in time for decisions to be progressed through APH and Cabinet before the pre-election “period of restraint” begins. You will also need to take decisions on voting on director elections and re-elections at the listed company Annual Shareholder Meetings, and have these decisions noted by APH and Cabinet. We will provide you with advice on this shortly.

KiwiRail

KiwiRail is currently undertaking a multi-year, \$1.45 billion dollar project to procure new, larger Interislander ferries, and to develop landside infrastructure in Picton and Wellington to support the new ferries (Project iReX). The project is at a critical phase as the scope, and projected cost, of works are currently being finalised for the landside infrastructure. KiwiRail is scheduled to write to Ministers (shareholding Ministers and the Minister of Transport) in February 2023 with an update on progress, costs and proposed funding arrangements. Any cost increases may put pressure on current funding arrangements, noting that the Crown has already committed to provide significant funding support to KiwiRail for the project.

Following a review of entity form completed in July 2022, KiwiRail’s shareholding Ministers and the Minister of Transport determined that a state-owned enterprise remained the most appropriate form for KiwiRail. To support this decision, Ministers reinforced their expectation that KiwiRail achieve above-rail commercial self-sustainability and to this end, any further Crown funding for KiwiRail’s above-rail business, including for Project iReX, should be on a ‘funder of last resort’ basis.

Kiwi Group Capital following acquisition of Kiwi Group Holdings (owner of Kiwibank and the New Zealand Home Loan Company)

Kiwi Group Capital Limited (KGC) is a 100% Crown-owned company that is subject to Schedule 4 of the Public Finance Act. KGC purchased Kiwi Group Holdings Limited (KGH) for \$2.1 billion (subject to final adjustments) on 30 November 2022. Funding for the purchase was provided by the Crown. KGH is the owner of Kiwibank and The New Zealand Home Loan Company (NZHL). Also on 30 November 2022, Fisher Funds Management completed the acquisition of KiwiWealth from KGH for \$310 million, as a result of a decision by KGH’s previous owners to divest that company. The KiwiWealth proceeds, net of KGH loan repayments, remain with KGH. KGC is now putting in place organisational and structural arrangements to enable it to best achieve its purpose and meet owners’ expectations – shareholding Ministers having sent the KGC board a Letter of Expectations in December 2022.

Processes underway include:

- The appointment of additional directors to the board of KGC. Following consultation with shareholding Ministers, potential candidates have been approached and interviews have begun. The Treasury will provide advice to shareholding Ministers by March 2023, and
- Preparation of the company's Statement of Intent and Statement of Performance Expectations which will then be submitted to you for comment. The Treasury expects to provide you further advice relating to these documents and other matters related to KGC's post-establishment phase over the next few months.

Strong Public Media (SPM) Programme

The SPM programme is supporting the establishment of a new public media entity, Aotearoa New Zealand Public Media (ANZPM), which will subsume Radio New Zealand Ltd (RNZ) and Television New Zealand Ltd (TVNZ). While the Minister of Finance and Minister for Broadcasting and Media are the shareholding Ministers of RNZ and TVNZ (which are Crown Entity companies), the Minister for Broadcasting and Media would be the responsible Minister for ANZPM (which would be a statutory Crown Entity).

The ANZPM Bill (the Bill) passed its first reading in July 2022 and is being considered by the Economic Development, Science and Innovation Select Committee, which is due to report back by 26 January 2023. The Bill provides for the Act to commence on 1 March 2023, with ANZPM to be operational from 1 July 2023.

Landcorp Farming: strategic review

An independent review into Landcorp Farming (Landcorp) was carried out in 2021. This review raised a number of concerns about Landcorp's performance, which have not yet been satisfactorily resolved by the board and management. We wish to discuss the findings of this review, and the next steps with regard to Landcorp, with you.

New Zealand Post

Mail volumes have declined to a point where New Zealand Post providing mail services in their current form is no longer a viable commercial service. However, the Government has decided there is still value in mail as a communication service, at least in the near term, and it decided to procure these services from New Zealand Post. Funding of \$130 million over three years was allocated to New Zealand Post through Budget 2020. As at 30 June 2022, \$93 million of this funding had been drawn down. NZ Post has also retained \$400m of the proceeds of the sale of KGH to help support the financing of its transformation programme, with the expectation that surplus capital will be returned to the Crown once the optimal capital structure of its future operating model has been implemented. We are engaging with NZ Post on its optimal capital position and will provide you with advice once the optimal capital assessment is completed.

In October 2021, Cabinet noted that New Zealand Post's Board adopted a plan to make its mail business commercially sustainable. This involved price increases which took effect in July 2022. The Ministry of Business, Innovation and Employment is leading policy work during 2023, working with the Treasury, to identify options for mail services to be continued once the three year Crown funding provided in Budget 2020 is exhausted. Throughout the work programme, we will engage with you on the options canvassed for mail services in New Zealand and the impacts on New Zealand Post's commercial position.

MetService

MetService is undertaking a transformation programme to better position itself for the future. The programme includes optimising its operating model and upgrading its IT system. MetService is facing increasing competitive pressures as weather forecasting technology is becoming more sophisticated. This includes increased competition, mainly from the National Institute of Water and Atmospheric Research (NIWA), but also new entrants including large international technology companies. The Treasury will be providing advice to shareholding Ministers on the progress of MetService's transformation programme as well as on other matters relating to MetService and the weather forecasting market.

3 Key upcoming decisions and issues

We would like to engage with you on a range of key decisions and critical issues. These relate to legislative requirements and your priorities. We will provide you with a more detailed list of these issues and proposed timeframes for engagement shortly.