



30 July 2020

James Watson  
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Our ref: OIA 81304

Dear Mr Watson

**Official Information Act request: Cabinet Papers relating to The Treaty of Waitangi and the Foreshore and Seabed Act 2004**

Thank you for your request of 19 March made under the Official Information Act 1982 (the Act) to the Department of the Prime Minister and Cabinet (DPMC). Your request was subsequently refined on 20 March 2020 and then transferred to the relevant agencies. The Ministry of Justice received your request on 3 April 2020 as follows:

*“(a) all Cabinet papers since 2005 which discuss the constitutional status of the Treaty of Waitangi.  
(b) all Cabinet papers relating to the foreshore and seabed act 2004.”*

The Ministry of Justice (the Ministry) accepted the transfer of parts a) and b) of your request and subsequently extended your request on 6 May 2020 making the new due date for release 30 July 2020. After further consultation, part b) of your request was transferred to the Office for Māori Crown Relations – Te Arawhiti on 13 July 2020. Therefore, the Ministry is responding to part a) of your request.

Due to the need for further consultation we are releasing the information you have requested in two stages. Please find attached a list of documents (see **Appendix A**) that are being released to you in the first stage. The documents involved in the second stage were formed during a previous government administration, and as such require consultation with the Leader of the Opposition prior to release. We will endeavour to respond in respect of the remaining documents as soon as possible, following the completion of this consultation.

If you require any further information, please contact Jerram Watts, Acting Team Leader, Media and External Relations, by calling (04) 918 8980; or emailing [media@justice.govt.nz](mailto:media@justice.govt.nz)

If you are not satisfied with my response, you have the right to complain to the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by emailing [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz)

Yours sincerely

Caroline Greaney  
**General Manager, Civil and Constitutional Policy**

Encl: Appendix A and released documents

Appendix A

DOC #	Date	Title	Status	OIA Section
1	8/08/2005	Crown-Maori Relationship instruments: Implementation of Policy Framework – Guidelines and Advice for Agencies and Application to Crown Entities	Released in Full	N/A
2	19/12/2005	Government Response to the Report of the Constitutional Arrangements Committee on New Zealand's Existing Constitutional Arrangements	Released in Full	N/A
3	23/05/2007	A New Procedure for Considering Significant Constitutional Change	Released in Full	N/A

Office of the Associate Minister for Justice  
Office of the Minister of Māori Affairs

Chair  
Cabinet Policy Committee

## **CROWN-MĀORI RELATIONSHIP INSTRUMENTS: IMPLEMENTATION OF POLICY FRAMEWORK - GUIDELINES AND ADVICE FOR AGENCIES AND APPLICATION TO CROWN ENTITIES**

### **Purpose**

- 1 This paper asks Cabinet to approve the following steps to complete development and implementation of the Crown-Māori Relationship Instruments policy framework:
  - Guidelines to assist agencies to comply with the Crown-Māori Relationship Instruments (CMRI) policy framework, and the public release of these Guidelines; and
  - A proposed approach for the application of the CMRI framework to Crown entities.

### **Executive Summary**

- 2 The Guidelines will assist agencies to establish and maintain CMRI that comply with the policy framework. These Guidelines will be used widely throughout the state sector.
- 3 The proposed Guidelines are presented in four main parts:
  - Contemplating a CMRI;
  - Negotiating and Drafting;
  - Formalisation and Execution; and
  - Evaluation, Review, and Renegotiation.
- 4 It is also proposed that the CMRI policy framework should be promulgated as a tool to inform and assist Crown entities in establishing CMRI with their respective Māori stakeholders but a mandatory application of the CMRI policy framework should not be imposed on Crown entities.

### **Background and Previous Consideration**

- 5 In July 2003, the Attorney-General advised Cabinet that formal Treaty partnership instruments had and were being developed between the Crown and iwi and other Māori groups. These agreements were later re-named Crown-Māori Relationship Instruments (CMRI). The Crown Law Office expressed concerns over possible legal and relationship risks arising from the lack of:
  - a consistent approach to the development of these instruments; and
  - a common understanding as to the correct process by which such documents ought to be considered and executed.



- 6 In response to these concerns, Cabinet directed officials led by the Ministry of Justice and Te Puni Kōkiri to:
- prepare a paper for the Cabinet Policy Committee recommending a policy framework for the preparation and execution of CMRI [CAB Min (03) 32/3 refers];
  - prepare guidance on the use of statements on Treaty obligations in CMRI [CAB Min (04) 25/8 refers]; and
  - prepare comprehensive Guidelines to assist agencies to establish and maintain CMRI which comply with the policy framework [CAB Min (04) 25/8 refers].
- 7 In August and November 2004 Cabinet approved components of the CMRI policy framework [CAB Min (04) 25/8, and CAB Min (04) 39/1B refer] which include minimum requirements for CMRI, guidance on the use of Treaty statements in CMRI, an approvals process for CMRI, and a central repository and database of CMRI.
- 8 Pending the passage of the Public Finance (State Sector Management) Bill, Cabinet directed officials to promulgate the CMRI policy to Crown entities and report to the Attorney-General and the Minister of Māori Affairs on the application of the policy framework to Crown entities when the Bill passed [CAB Min (04) 25/8 refers]. The Attorney-General and Minister of Māori Affairs signed a letter requesting Ministers inform their Crown entities of the policy on 20 September 2004. The Public Finance (State Sector Management) Bill was passed in December 2004 having been split into the Public Finance Amendment Act 2004, State Sector Amendment Act (No 2) 2004, Crown Entities Act 2004, and the State-Owned Enterprises Amendment Act 2004.
- 9 Consistent with the reassignment of Ministerial responsibility in December 2004, the Associate Minister of Justice (Hon Marian Hobbs) has assumed responsibility of the CMRI work stream in place of the Attorney-General.

### Proposed Guidelines for Crown- Māori Relationship Instruments

- 9 The proposed CMRI Guidelines are attached to this paper as Annex 1. The Guidelines assist agencies to comply with the decisions of Cabinet, including the requirements for CMRI and the guidance on the use of Treaty statements in CMRI agreed by Cabinet. The following table summarises the key elements of the proposed CMRI Guidelines:

#### Key Elements of Crown-Maori Relationship Instruments Guidelines

Element	Content
Contemplating a CMRI	An effective CMRI relies on building and managing an effective relationship. These instruments should formalise rather than supersede the relationships that they document.  Developing and managing effective CMRI, requires resources including: time, staff and finances.
Negotiating and Drafting	Negotiating a CMRI requires trust and good will, understanding, and respect for differences.  Draft CMRI must comply with the decisions of Cabinet.



Formalisation and Execution	<p>Before a CMRI can be executed internal processes must be followed.</p> <p>Process for seeking Cabinet approval if parties wish to execute CMRI which the CMRI officials group consider to be inconsistent with the policy framework.</p> <p>Once a CMRI has been formalised it must be submitted to Te Puni Kōkiri for inclusion in the national database of CMRI.</p>
Evaluation, Review and Renegotiation	It is important to consider processes for evaluation and review of CMRI, and renegotiation where necessary.

### Application of the CMRI Policy Framework to Crown Entities

- 10 As noted in paragraph 8 above, officials were directed, following the passing of the Public Finance (State Sector Management) Bill, to report to the Attorney-General and the Minister of Māori Affairs on the application of the policy framework to Crown entities.
- 11 Although government departments must comply with the CMRI policy framework, officials recommend a different approach for the implementation of the CMRI policy framework by Crown entities. The nature of Crown entities differs from government departments in that they are legally separate from the Crown, have their own powers, functions and liabilities, and tend, in general, to have more of an operational rather than a strategic or policy making focus. The implementation of the CMRI policy framework across Crown entities needs to be flexible enough to take these differences into account.
- 12 We note that the Crown Entities Act 2004 clarifies the relationship between Crown entities and Ministers and departments, with a Minister's power to direct an individual entity, and the corresponding nature of the response by that entity dependant upon the category into which it falls. Apart from a whole-of-government direction, Ministers may direct only Crown Agents *to give effect to* government policy. A whole-of-government direction in this instance would be a heavy-handed approach and could have potentially adverse effects, particularly in terms of the relationships between Ministers, departments and their Crown entities.
- 13 However, we consider it is desirable that Crown entities have available to them, the agreed practices, standards and advice provided by the CMRI policy framework and the corresponding Guidelines.
- 14 Accordingly, it is proposed that the CMRI policy framework should be promulgated as a tool to inform and assist Crown entities in establishing CMRI with their respective Māori stakeholders but that a mandatory application of the CMRI policy framework should not be imposed on Crown entities.
- 15 This approach will provide a meaningful balance between the government's need to manage potential policy, legal and relationship risks effectively, and its concern not to cut across the new statutory framework provided by the Crown Entities Act 2004.

- 16 Therefore as a complement to their existing CMRI policies and practices (if any), Crown entities will be invited to:
- apply the standards set out in the CMRI Guidelines to the development of their CMRI;
  - submit their CMRI to the CMRI Officials Group for advice on compliance with the Guidelines and general advice relating to the development of the CMRI policy framework; and
  - submit executed CMRI to the CMRI database to ensure completeness of the record of CMRI, and to aid consistency between CMRI.

*Comment – Potential Exclusions and Likely Response of Crown Entities*

- 17 Cabinet was advised when this matter was last before it, that following the passage of the Public Finance (State Sector Management) Bill 2003, it may be appropriate to exclude some forms of Crown entity from coverage by the CMRI policy framework. At that time, the Independent Crown Entities and Tertiary Education Institutions had been identified as possible exclusions from the ambit of the CMRI policy framework. Officials have also considered the appropriateness of including the Independent Crown Entities within the approach proposed – for instance, whether this would be perceived by these entities to compromise their independence. However, there do not appear to be any policy or legal reasons why all forms of entity should not be included in the approach proposed by this paper.
- 18 Officials consider that most Crown entities are likely to receive the Guidelines positively. Recent examples, including Housing New Zealand Corporation and the Alcohol Advisory Council of New Zealand seeking guidance from CMRI officials on progressing relationship agreements with iwi, illustrate the usefulness of making tools such as these available to all of government. We are confident that other Crown entities will find these materials of similar value.

*Implementation*

- 19 We recommend that responsible Ministers be invited to develop strategies to inform their respective Crown entities about the Guidelines and their implementation, tailored to reflect the specific operational circumstances of the entity and the respective working relationships entities have with their responsible departments. Departments will need to provide advice and support to Ministers for this purpose. The Ministry of Justice and Te Puni Kōkiri will liaise with responsible departments to assist them to develop their strategies.
- 20 Mechanisms to disseminate the CMRI policy framework and Guidelines across Crown entities could include a mix of hard and electronic publications, as well as links to relevant government websites. As well as being invited to use the Guidelines as a complement to their existing practices and procedures, entities could also be directed to other relevant sources of information and assistance including Te Puni Kōkiri and the Ministry of Justice as lead agencies responsible for the wider CMRI policy framework. The Ministry of Justice and Te Puni Kōkiri will continue to provide publications, website information and ad-hoc advice to departments to assist them with both their own CMRI and in promulgating the CMRI policy framework to Crown entities.



### **Financial implications**

21 The proposals in this paper are able to be met from departmental baselines.

### **Treaty of Waitangi implications**

22 The proposed Guidelines will help agencies fulfil their Treaty of Waitangi obligations and support the development of relationships with Māori collectives.

### **Human Rights implications**

23 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The development of CMRI does not preclude the development of similar instruments with other communities.

### **Legislative implications**

24 There are no legislative implications arising from the proposals in this paper.

### **Gender implications**

25 There are no implications for gender arising from the proposals in this paper.

### **Communication**

26 It is proposed that the CMRI Guidelines attached to this paper be published in hard copy and electronic form by Te Puni Kōkiri. No press release is proposed.

### **Consultation**

27 Drafts of this paper were provided to all departments and the following agencies: Accident Compensation Corporation, Alcohol Advisory Council, Archives New Zealand, Education Review Office, Land Information New Zealand, New Zealand Customs Service, New Zealand Defence Force, Office of the Community and Voluntary Sector, Office of Treaty Settlements, State Services Commission, Statistics New Zealand and Transit New Zealand.

28 Comments, which are reflected in this paper, were provided by: Crown Law Office, Department of Conservation, Department of Corrections, Department of Inland Revenue, Department of Internal Affairs, Department of Labour, Department of Prime Minister and Cabinet, Education Review Office, Ministry of Culture and Heritage, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Social Development, Ministry of Women's Affairs, Ministry of Youth Development, New Zealand Defence Force, Office of Treaty Settlements, State Services Commission, Statistics New Zealand, Transit New Zealand, Treasury, the Historic Places Trust, the Alcohol Advisory Council of New Zealand, the New Zealand Film Commission, Creative New Zealand, and the Museum of New Zealand – Te Papa Tongarewa.

### **Recommendations**

29 It is recommended that the Cabinet Policy Committee:

1. **note** that Cabinet approved components of a policy framework for the development and execution of Crown-Māori Relationship Instruments [CAB Min (04) 25/8 and CAB Min (04) 39/1B refer], including minimum requirements for CMRI, guidance on the use of Treaty statements in CMRI, an approvals process for CMRI, and a central repository and database of CMRI;



2. **note** that Cabinet directed officials to prepare comprehensive Guidelines to assist agencies to establish and maintain CMRI which comply with the policy framework [CAB Min (04) 25/8 refers];
3. **note** that consistent with the reassignment of Ministerial responsibility in December 2004 the Associate Minister of Justice assumed responsibility of the CMRI work stream in place of the Attorney-General;
4. **approve** the Guidelines attached to this paper as Annex 1 for publication by Te Puni Kōkiri;
5. **note** that the statutory framework provided by the Crown Entities Act 2004 means that a general mandatory application of the CMRI policy framework across Crown entities is not appropriate;
6. **agree** that it is desirable that Crown entities have available to them, the agreed practices, standards and advice provided by the CMRI policy framework and the corresponding Guidelines;
7. **agree** that promulgating the CMRI policy framework and associated Guidelines to Crown entities as a tool to inform and assist entities seeking to establish Crown Māori Relationship Instruments, is an effective means of providing support and assistance to Crown entities seeking to enter into relationship agreements with Māori collectives, without cutting across the new statutory framework provided by the Crown Entities Act 2004;
8. **invite** responsible Ministers to develop strategies for disseminating both the CMRI policy framework and the Guidelines to Crown entities, tailored to reflect the specific operational circumstances of each entity, and the respective working relationships individual entities have with their responsible departments;
9. **direct** departments with responsibility for Crown entities to assist responsible Ministers to implement recommendation h, with support from the Ministry of Justice and Te Puni Kōkiri;
10. **agree** that mechanisms to disseminate the CMRI policy framework and Guidelines across Crown entities could include a mix of hard and electronic publications, as well as links to relevant government websites;
11. **agree** that Te Puni Kōkiri and the Ministry of Justice will have an ongoing role to advise Crown entities on the CMRI policy framework when required.

*Marian Hobbs*

Hon Marian Hobbs  
Associate Minister for Justice

*P. T. Horomia*

Hon Parekura Horomia  
Minister of Māori Affairs

# **Crown-Māori Relationship Instruments:**

**Guidelines and Advice  
for Government and  
State Sector Agencies**

**July 2005**

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

# Introduction

The government values the many productive working relationships it has with whānau, hapū, iwi and Māori organisations in all forms. These guidelines have been prepared to assist state sector agencies in developing and formalising relationships with these organisations.

The guidelines provide advice on:

- negotiating and drafting Crown-Māori Relationship Instruments (CMRI)
- the process for finalising relationship instruments, creating a consistent internal Crown process for the execution of CMRI, and
- mechanisms for evaluating and reporting on CMRI.

To encourage consistency, the guidelines should be used when forming new CMRI and when re-negotiating existing relationship instruments.

Throughout the guidelines reference to government policy appears in shaded boxes. These are usually accompanied by explanatory notes. Additional material is included in the appendices.

We hope you find these guidelines useful and welcome any feedback on their application.



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# Purpose of the Guidelines

In 2004 the government agreed to a CMRI policy framework designed to:

- increase consistency between CMRI
- increase awareness of the agreements executed across the state sector
- contribute to the living relationship envisaged by both parties to the Treaty of Waitangi
- assist the development of robust relationships between the Crown and Māori.

The purpose of these guidelines, therefore, is to assist compliance with the CMRI policy framework.

## Definitions

A CMRI is:

**A documented agreement or arrangement, signed by both parties, that establishes or recognises an ongoing collaborative relationship between Ministers, government agencies or Crown entities, and a whānau, hapū, iwi, Māori organisation or Māori community.**

CMRI often take the form of Memoranda of Understanding, Deeds of Agreement, or similar documents, however, the following exclusions to the definition apply:

- contracts for the purchase of services, which contain purely contractual provisions and which do not contain provisions referring to the wider relationship
- Memoranda of Understanding or protocols developed *pursuant to Deeds of Settlement*. These are developed through the historical Treaty settlement negotiation process, are informed by the Office of Treaty Settlements' *Ka tika a muri, ka tika a mua Healing the past, building a future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, and are subject to a separate vetting and Cabinet approval process.

Advice on whether a contract constitutes a CMRI is available from the Ministry of Justice and Te Puni Kōkiri. Experience suggests that developing good relationships is still important to the effectiveness of contracts, and the parties should consider whether a CMRI would usefully support their contractual arrangements with Māori. However, it is recommended that contracts be written as separate documents to manage legal obligations and facilitate



periodic review or renewal. Agencies should follow their internal processes, and guidelines on contracting for services with non-governmental organisations which have been promulgated by the Treasury in the document titled: *Checklist for Agencies - Guidelines for Contracting with Non-Government Organisations for Services Sought by the Crown - The Treasury*

**Agency:** for the purpose of these guidelines the term "Agency" is used to refer to any Crown party to a CMRI. An "Agency", therefore, may be a Department, Ministry, or any other Crown body that may become or is a Crown party to a CMRI.

**Māori Collective:** for the purpose of these guidelines Māori Collective is used to refer to any whānau, hapū, iwi, Māori organisation, Māori community, or any other Māori collective that is, or may become, party to a CMRI.

**CMRI Officials group (CMRIOG):** is comprised of officials from the Ministry of Justice and Te Puni Kōkiri. CMRIOG is responsible for advising Agencies on compliance of proposed CMRI with respect to the CMRI policy framework, and advising more widely on matters regarding CMRI and the policy framework.

**Key Government Goals to Guide the Public Sector in Achieving Sustainable Development:** issued on 22 February 2000 and reconfirmed by Cabinet on 10 April 2001. They are the Government's 'high-level' goals for New Zealand. Their purpose is to provide a clear frame of reference to guide public sector policy and performance. The current key government goals to guide the public sector in achieving sustainable development are available on the Department of the Prime Minister and Cabinet website: [www.dpmc.govt.nz/](http://www.dpmc.govt.nz/).

**Principles for Crown Action on the Treaty of Waitangi:** issued by the Fourth Labour Government in 1989, set out the principles by which the government would act and make decisions about matters relating to the Treaty of Waitangi. These principles were accompanied by quotations from the courts and the Waitangi Tribunal with explanatory comment by the government.

**Statement of Government Intentions for an Improved Community-Government Relationship:** issued in December 2001, signed by the Prime Minister and the Minister responsible for the Community and Voluntary Sector. This Statement articulates clear objectives for an improved relationship with the community sector.



# Overview of Minimum Standards and Guidelines

## Overview

In developing and executing a CMRI there are generally four phases:

- Phase 1: Contemplating a CMRI
- Phase 2: Negotiating, Drafting, and Compliance Advice
- Phase 3: Formalisation and Execution of a CMRI
- Phase 4: Evaluation, Review and Renegotiation of a CMRI

These guidelines have been structured with each phase in mind.

### Phase 1: Contemplating a CMRI

This section includes:

- preliminary advice on relationship management
- advice on various resource requirements which may be necessary to develop a CMRI
- a summary of themes arising from consultation with parties to some existing CMRI.

### Phase 2: Negotiating, Drafting, and Compliance Advice

This section includes:

- guidance on relationship-building
- advice on drafting a CMRI
- information on compliance with Cabinet's directions
- the process for obtaining advice on whether your CMRI complies with the policy framework from the officials group.

### Phase 3: Formalisation and Execution of a CMRI

This section includes:

- submission of your completed CMRI to Cabinet for approval if necessary
- submitting executed CMRI to Te Puni Kōkiri for inclusion in a national CMRI database.

### Phase 4: Evaluation, Review and Renegotiation of a CMRI

This section includes:

- advice on 'future-proofing' your CMRI
- the need for evaluation and review of your CMRI
- the possibility of renegotiation.

## Phase 1 – Contemplating a CMRI

In contemplating a CMRI the following three principles should guide your approach:

- both parties should have a shared interest in developing the relationship
- it must lead to an identifiable outcome
- both parties should set the parameters of the relationship together.

### Promoting a positive and worthwhile relationship

**Before any Agency enters into a CMRI, it must consider whether the proposed instrument can contribute in a genuine way to the promotion of a positive and worthwhile relationship for both parties, and whether the human and financial resources and commitment to the relationship are in place to ensure that the CMRI operates as intended for a sustained period.**

Relationships are stronger when based on rules that both parties establish together. A CMRI can formally record these rules.

When contemplating if a CMRI is desirable the Agency should consider whether:

- the CMRI will help develop or maintain a positive relationship between the parties and that the views of the respective parties have been appropriately taken into account
- both parties are committed to the relationship documented by the CMRI, and to the outcomes sought under it
- both parties consider there are benefits of a CMRI
- the outcomes expected of the CMRI are clear to both parties and are achievable
- the CMRI is an effective way for the Agency to accomplish its objectives/outcomes<sup>1</sup>
- the CMRI will assist the Māori Collective to accomplish its goals
- the CMRI will have implications for the broad Crown-Māori relationship including Treaty based relationships or Government/Māori relationships (observing that a Treaty relationship between the parties may not exist)
- the CMRI will impact on the Agency's relationships with other stakeholders.

<sup>1</sup> These include the *Key Government Goals to Guide the Public Sector in Achieving Sustainable Development*, Department of Prime Minister and Cabinet (2003), and *Statement of Government Intentions for an Improved Community-Government Relationship*, issued December 2001.



As an integral part of strategic planning and stakeholder management, Agencies should consider whether developing CMRI is appropriate or whether there are other ways of achieving the same objective.

Where the Māori Collective is a representative body, the Agency should make every effort to understand the membership of the group, that the Collective has authority to represent the group's interests, and the geographical area represented.

Agencies should be aware that the Crown may enter (or may have already entered) into CMRI with different Māori Collectives that have overlapping interests, boundaries, or membership. Consistency is important. Therefore Agencies should be confident that the membership and territory represented by a particular Māori Collective is consistent with who and what area it represents in other CMRI.

The CMRI database, within Te Puni Kōkiri, can be accessed to help establish this information. Alternatively officials in Te Puni Kōkiri or the Office of Treaty Settlements can be contacted for advice. Tūhono ([www.maori.org](http://www.maori.org)), and Te Aka Kumara o Aotearoa ([www.takoa.co.nz](http://www.takoa.co.nz)) are also useful resources to help establish or confirm this information.

## Resource Implications

**Agencies should consider whether the human and financial resources and commitment to the relationship are in place to ensure that their CMRI operates as intended for a sustained period, before entering into any CMRI.**

### Staff and Time

Parties to existing CMRI have found that developing and implementing a CMRI can require significant investment in terms of staff and time. The following should be considered:

- does your Agency have staff with the requisite:
  - experience to build an effective CMRI and sustain a relationship with the Māori Collective or
  - empathy and skills to learn how to do this?
- if neither, how does the Agency plan to build its capacity and skill-base?

CMRI are more successful when organisations are committed to advancing the relationships; and, individuals establish personal ownership of the relationship and the CMRI, including capacity to handle tasks appropriately and provide for succession needs. A clear avenue of contact for the Māori Collective, and the ability to interact kanohi ki te kanohi (face-to-face) when necessary will facilitate a stronger relationship between the parties, and a more effective CMRI.



## Finances

Financial resources will be required to develop and manage a CMRI. The resources available to both parties should be considered in the development stage, especially if the CMRI is intended to last for an extended period of time. Māori Collectives can have very stretched human and financial resources. This may need to be reflected in the CMRI and Agencies may need to contribute to the development and management of the CMRI.

Agencies should consider expenses relating to:

- staffing costs for those allocated to the work
- developing the requisite understandings for the parties to operate effectively under the CMRI, such as
  - the Agency's overall objectives for the Crown-Maori relationship
  - cultural training for staff (for example, in te reo or the tikanga and kawa of the particular Māori Collective)
  - building of technical capacity relating to the subject-matter of the CMRI for staff of the Māori Collective
- negotiating the CMRI
- operational aspects of the CMRI, such as:
  - regular meetings
  - travel
  - hosting expenses
  - exchange of information
  - reporting and monitoring progress
  - reviewing the relationship.

## Common Themes (from discussions with parties to CMRI)

The comments set out in this table illustrate the kinds of issues which parties to CMRI considered important or relevant to the development of effective CMRI.

Theme	Comment
Capacity, resourcing and commitment	The capacity within Māori Collectives is often spread very thin: financially and personnel-wise.
	Resources of Agencies can be limited and some may only enter agreements with Māori on an "as needed" basis.
	Matauranga (knowledge) is an important resource. Seek to understand what knowledge is being contributed by each party
	Commitment levels on both sides should be equal and agreements should embody the principle of reciprocity.

	<p>CMRI should be entered into with genuine intent, not for reasons perceived to be tokenistic (especially not as a statutory “tick-box” for interaction with Māori). Agreements should be based on the parties seeking solid outcomes. The Agency should consider what benefit Māori will get from the agreement, not just what the Crown will gain.</p>
Succession planning	<p>While there is generally continuity of personnel on the Māori side, there can be difficulty in maintaining effective relationships between parties to CMRI and institutional knowledge as staff move through the public service. Good internal processes can assist this.</p>
Benefits of CMRI	<p>Relationships based on a CMRI can also extend to other aspects of an Agency’s work, and give each party a channel of communication into the other.</p>
	<p>Some Agencies feel these agreements are beneficial because they get the input they need to make decisions more effectively.</p>
Trust and good will	<p>Trust and good will are vital to relationships, and can only be built up over time. This includes developing understanding of and respect for the other party’s particular circumstances and its social and cultural context.</p>
	<p>The efficacy of the agreement is dependent on the health of the relationship between the parties.</p>
	<p>Crown constraints and risks are more often accepted when they are made clear in the context of acting in good faith and intent.</p>
	<p>The drafting process should have equal input by both sides in order to assist in creating trust and enhancing the relationship.</p>
Appropriate level of interaction	<p>Appropriate levels of communication and interaction are important. For example, a Crown official who does not have ‘signing-off’ authority should not approach the Chief Executive of a Māori Collective to develop or discuss a CMRI.</p>
	<p>The Agency should gain an understanding of the internal structures of the Māori Collective (which can parallel those of the Crown) and work within these structures.</p>
	<p>It is important to have clear avenues of communication at all levels between the Agency and Māori Collective. For example, where an agreement has sign-off at a high level, both parties need to ensure that the agreement is working well lower down at the operational level.</p>
Significance of agreements to Māori	<p>CMRI may represent commitments to the tipuna and future generations.</p>
	<p>When a Māori Collective enters into a CMRI, it may be offering the mana of that group and expect the same commitment from</p>



	the Agency.
Treaty underpins the agreements	Even if not explicitly stated within the agreement, Māori may see the partnership inherent in the Treaty of Waitangi as the basis of the agreement (especially apparent with iwi).
Clarity of agreement	Agreements should always have a clear purpose.
	There should always be clarity in relation to each party's expectations and understandings. If there are separate understandings on particular issues, the CMRI should be clear about which views are shared and which are not.
	Most agree that there should be a division between the higher level CMRI, and the more operational matters under it (other protocols or contracts).
	Agencies should be clear in relation to the following: <ul style="list-style-type: none"> <li>• whether they are the Crown or an agency for the Crown</li> <li>• their right to interact with other Māori Collectives if necessary (for example in the same area)</li> <li>• their constraints and obligations (statutory or otherwise).</li> </ul>
Uniqueness of agreements	If agreements are based on a template there should be room for variation depending on the objectives and circumstances of the parties. It is important to affirm the uniqueness of each relationship.
Disputes	Dispute resolution works best if it can be done by discussion between the parties – using the relationship rather than the document.
Crown agencies indivisible from 'the Crown'	Notwithstanding an Agency's particular mandate and responsibilities, it may be seen by the Māori Collective as representing the whole of the Crown because it may be the only existing relationship the particular Māori Collective has with the Crown.
Monitoring relationship	Regular interaction is important for maintaining the relationship. More lasting and healthy relationships are facilitated by regular review of the CMRI and relationship.



## Phase 2 – Negotiation and Drafting

### The Relationship

#### Building a strong relationship

Once both parties have decided that they want a CMRI, they will need to invest in establishing a strong relationship, and CMRI, by building:

- trust and goodwill
- mutual understanding
- respect for the differences between them.

Strong relationships are built over time, however both parties should consider how they can strengthen the relationship when initiating, drafting, executing or renewing a CMRI.

#### Building Trust and Goodwill

Building trust and goodwill requires:

- continual commitment of both parties to the goals of the relationship
- both parties acting with good intent and in good faith
- ensuring the ability of the parties to live-up to their commitments.

Where a relationship does not pre-exist the CMRI, or needs improvement, building trust, respect and understanding are the most important steps.

#### Understanding each other

It is important for both parties to a CMRI to understand the other's internal processes and practices. In some cases a facilitator has been useful, especially early in the relationship. This is usually a person with experience of both types of organisation.

Every organisation is unique, so there will be no standard response to how a CMRI is established. Even where an approach has been effective in the past, it should not be assumed that it will always be appropriate.

The Agency should attempt to understand the particular circumstances of the Māori Collective and its social and cultural context. Examples of where understanding will be most important are:

- importance of the CMRI to the Māori Collective
- how the Māori Collective views the Agency's relation to the Government (*for example: the independence of a Crown entity*)
- the Māori Collective's view on the role of the Treaty of Waitangi and how it relates to the CMRI, if at all
- what both parties are willing and able to offer the relationship
- the implications of any iwi management plan or other policy documents

- the appropriate avenues and means of communication and interaction in the relationship and under the CMRI.

It is important that both parties understand what the other can and cannot do in the context of the relationship and any potential CMRI. This includes any statutory and other constraints. Best practice involves the Agency advising the Māori Collective and ensuring understanding of:

- any objectives the Agency has, and any outcomes it is responsible for managing
- any statutory imperatives, obligations or limitations that may bind the Agency including the requirements of the Official Information Act
- the financial constraints of the Agency regarding the operation of the CMRI
- any policy that may impact on the CMRI (including the fact that policy can change)
- any government policy that may have a bearing, including an early and clear understanding of the requirements of the CMRI policy framework.

Lines of communication and contact within the Agency should be made clear to the Māori Collective very early, and when and as they change.

### **Respecting differences**

Compromise on particular issues is not always possible or appropriate. Sometimes the priorities and restraints of the Agency are incompatible with the commitments and beliefs of the Māori Collective. In these circumstances, both parties should attempt to understand the reasons for the differences between them and respect those differences. In some matters, such as understandings of the Treaty of Waitangi, it may be possible to recognise differences between the parties in the CMRI (see the section on Use of Treaty statements, Phase 2, Negotiating and Drafting).

Parties need to exercise judgment regarding situations where a difference is so fundamental that a CMRI is not possible or appropriate.

### **Drafting your CMRI**

Drafting CMRI should be collaborative to allow for genuine input by both parties and to ensure the continuation of a shared sense of vision for the agreement. Agencies should avoid presenting Māori Collectives with CMRI that are largely complete. Basic template agreements may be useful, but it should be apparent to both parties that the CMRI can be individualised to suit the circumstances, the relationship, and its particular purpose. Appendices can be a useful means of including specific information or protocols.

Cabinet has decided that every CMRI should demonstrate certain characteristics. The shaded boxes that follow contain the requirements, and are accompanied by advice where necessary. All the requirements for CMRI are contained together in the Checklist (Appendix 1).



This section also includes advice on Dispute Resolution, Confidentiality, and Information-Sharing clauses in CMRI.

## Definition of the Parties

All CMRI are to include clear statements of who the parties are and who they represent, preferably with a legal description and reference to their accountabilities and relationships.

### Agencies

The full name of the Agency should be used, with reference to any Act under which it is established, and to appropriate rights and responsibilities that may relate to the subject-matter of the CMRI.

*For example:*

*Te Kaunihera Whakatūpato Waipiro o Aotearoa, the Alcohol Advisory Council of New Zealand ("Te Kaunihera"), is a Crown entity and a body corporate established under the Alcohol Advisory Council Act 1976. Te Kaunihera has the objective of encouraging responsible use of alcohol and minimising its misuse.*

Where the Māori Collective will effectively have dealings with one particular department, using the name of that department provides clarity about the principal lines of communication.

*For example:*

*The Director General of Conservation acting by and through the Rotorua Lakes Area Manager, Department of Conservation, Bay of Plenty Conservancy.*

In the case of a Crown entity it may be useful to set out its relationship to the government in the CMRI.

### Māori Collectives

It is useful if the Māori Collective is a legally constituted body, as this provides certainty in dealings with the organisation.

*For example:*

*<The Māori Collective> is represented in this Memorandum by the <e.g. Trust>, <address>. The Trust was incorporated on 30 January 1998 with the purpose of addressing the collective needs of <the Māori Collective>.*

Where the relationship is with a discrete part of a larger group, the party specified in the CMRI should reflect this. If the Māori Collective is subject to other agreements that might affect its relationship with the Agency, these should be reflected.

*For example:*

*<The Māori Collective> is a business unit of <the iwi council> ("Te Rūnanga") which is the tribal representative body of <the iwi>*



*Whanui, established under <section x of the relevant Act>. Te Rūnanga represents the collective of Papatipu Rūnanga (council of owners of land with Māori title) with which it must consult on all appropriate matters.*

## Purpose

**All CMRI must contain clear statements of purpose.**

Clarity of purpose means that a CMRI should include:

- why the CMRI is being executed and/or
- what the CMRI aims to achieve.

*For example:*

*The objective of the agreement is to define the roles, responsibilities and obligations of the parties in a co-operative and joint project for the ecological restoration of the area*

The Agency should be clear whether it is developing the CMRI as part of fulfilling Treaty of Waitangi obligations or not. See the section on Use of Treaty Statements.

## Definition of terms

**All CMRI are to include clear statements of definition of any terms liable to cause misunderstanding.**

Both parties must be clear about the meaning of terms used in a CMRI, and definitions should be used where necessary. It should be made clear that the definition of some terms in CMRI refer to the context of the particular CMRI and relationship, and do not apply to other parts of the Crown.

'Partnership' in particular can mean many different things and should generally be avoided in CMRI, if it is used it should be defined very carefully.

### Use of Te Reo Māori

The use of te reo Māori (the Māori language) in CMRI is entirely appropriate, but mutual understanding of the content is essential. Where text is included in te reo Māori, it should also be translated into English, for example "*kanohi ki te kanohi*" (face to face). A section defining terms used within the instrument may be useful where the use of a word-for-word translation does not offer a full understanding of the concept.

*For example:*

*Rangatiratanga - Autonomy. Recognising that each party will have different lines of accountability. Enabling each party to develop and grow in its own way while recognising and acknowledging difference.*

Kōtahitanga - Unity. Agreement to work together towards a shared vision.

Manaakitanga - Goodwill. A commitment to work together, within an environment of trust, respect and generosity towards each other. Recognising and understanding the capabilities and constraints each party brings to the relationship.

Where an instrument is written in both Māori and English, it is useful to state how the two documents will work together – for instance, which document has precedence if there is conflict.

## Undertakings

**All CMRI must contain clear statements of any undertakings regarding outcomes, aspirations, deliverables or processes.**

Where the parties to a CMRI share the same understanding and expectations, it leads to a more effective CMRI and helps sustain a good relationship between the parties. Conversely, misunderstanding can have the opposite effect on the agreement and relationship.

Both parties should be clear about their intended outcomes and how they intend to achieve them. Flexibility is also an important attribute in many CMRI, and clarity and flexibility must be balanced in the drafting process. Therefore, while understandings between the parties need not be set out in detail in the CMRI, understanding between the parties outside of the CMRI is essential. However, setting this out in the CMRI itself has the advantage of aiding longevity of understanding, especially important in CMRI which are intended to last for a long period of time.

Clarity of undertaking means that a CMRI should include:

- the specific outcomes/aspirations/deliverables that the CMRI is intended to achieve
- the processes agreed upon to achieve those outcomes/aspirations/deliverables (for example: consultation, sharing of information, working together on an action plan or to promote mutual outcomes)
- the roles and responsibilities of the parties (what is to be achieved, by whom and by when)
- any relationships that might impact on the operation of the CMRI, including accountability arrangements with a responsible organisation and relationships with third parties
- details of operation of the CMRI (for example: funding for meetings or training, channels of communication, the kawa/protocol that will govern the relationship).

How undertakings in a CMRI relate to one another, and to the other sections of the agreement, should also be clear.



The use of vague terminology is a common difficulty in interpreting undertakings in CMRI. For instance, the parties may have a different understanding about what is meant by 'regular discussion' (weekly, monthly, yearly?) or of what is 'relevant to the interests of the parties' (in relation to the CMRI or anything that could potentially affect either party?). CMRI should therefore avoid imprecise language and the Agency should ensure that the Māori Collective shares the same understanding about undertakings.

## Legal status

**All CMRI are to include clear statements of whether or not they are intended to be legally binding upon the parties, noting that CMRI should only be legally binding where circumstances require this.**

CMRI should generally not be legally binding, as they are aspirational rather than contractual documents. They do carry moral obligations and rest on the honour of the parties, so the Agency must be sure that it can fulfil its obligations under the CMRI. Unless the CMRI is part of, or includes, a contract for service, the parties' intention not to be legally bound by the CMRI should be expressly recorded.

*For example:*

*The parties acknowledge that this <CMRI> is not legally enforceable, but that this does not diminish the intention of the parties to comply with the terms and conditions of this <CMRI>.*

Any contract for service should be recorded separately from the CMRI, in a document that is intended to be legally binding on the parties they should generally not be combined. If the two are combined, the document should clearly indicate which parts are, or are not, legally binding.

## Duration

**All CMRI must contain clear statements of duration and/or any date for review.**

If a CMRI only refers to a particular task or outcome, a clause agreeing to a particular duration may be appropriate. CMRI require substantial commitment and should continue to exist only where the purpose for the CMRI and the commitment of the parties to it continues. Otherwise, there is a danger of the CMRI becoming tokenistic. Where the parties to a CMRI wish to continue the formal relationship, review of the CMRI can facilitate re-investment in the relationship and provide a regular opportunity for:

- the relationship to continue to develop
- the relationship's protocols to be improved or re-confirmed
- the relationship to change direction.



Specifying a review date therefore commits the parties to re-examining and developing the relationship.

## Signatories

**All CMRI must contain clear statements of the identity of the signatories, date the agreement is signed, and date of the execution of the agreement.**

Only those with authority to represent the parties should be signatories to CMRI. Signatories should be identified by name and office for ease of future reference. The date the agreement is signed and the date the instrument comes into effect should be specified in both the signatory section and the front page of the CMRI. If witnesses are used, their names and contact details should be included and clearly visible.

## Statutory obligations

**Any commitments undertaken within CMRI are to be consistent with the Agency's statutory obligations and not devolve statutory obligations inappropriately or limit the ability of the agency to meet those obligations.**

A CMRI should acknowledge any legal obligations that cannot be contracted out of or abrogated by relationship instruments. Commitments to address any concerns about these obligations should be recorded, to provide legal protection and clarify expectations between the parties.

*For example:*

*The <Māori Collective> acknowledges that the <Agency> is a Government Department, and that this agreement will not require the <Agency> to act in any way contrary to its obligations pursuant to ministerial or Cabinet direction, or under relevant legislation, or pursuant to any contractual obligations it has established with other parties.*

*The <Māori Collective> agrees that nothing in this agreement shall be taken to mean that the <Agency> or any other Crown agency or department in any way abrogates its statutory or contractual responsibilities. The <Māori Collective> further agrees that it will take all steps within its power to ensure that the <Agency> and any other relevant Crown agency or department is able to comply with the same.*



## Acknowledgements of the status, representative role, mandate

Agencies are to ensure that acknowledgements of the status, representative role, mandate or rohe of Māori Collectives are accurate, by checking with relevant authorities such as the Office of Treaty Settlements and Te Puni Kōkiri.

Agencies will be expected to maintain systems to ensure that signatories and acknowledgements are correct, and to check with relevant authorities such as the Office of Treaty Settlements and Te Puni Kōkiri in cases of doubt.

## Consistency

Agencies should ensure consistency among and within their CMRI in respect of:

- compliance with policy and legislation
- acknowledgments of tangata whenua/mana whenua status
- recognition of rohe/areas of interest
- recognition of mandate
- fairness between parties in similar situations.

Agencies are generally best-placed to ensure consistency within their CMRI in terms of compliance with policy and legislation and fairness between parties in similar situations. Consistency in acknowledgements and recognition of status, rohe and mandate can be aided by seeking the advice of relevant agencies such as Te Puni Kōkiri and the Office of Treaty Settlements or through accessing the CMRI database. The CMRI database is a database and repository of all CMRI from across government; the information contained in the database can be accessed through Te Puni Kōkiri (for contact details refer to *Phase 3: Formalisation and Execution of a CMRI*).

## Commitments by officials

Undertakings in CMRI should be given only by signatories with the authority to implement them.

Commitments in CMRI may bind the Crown legally or morally and should be made by those with the ability to operationalise them. Commitments on behalf of an Agency can generally only be given by the chief executive of that Agency or the responsible Minister, although additional signatories responsible for the day-to-day operation of the CMRI (for example, the Departmental or Regional Manager) will also be appropriate. Commitments on behalf of "the Crown" as party to the CMRI should generally be avoided. However, if such commitments are made they should only be made by the responsible Minister.