

Where the Agency is a regional office, or the CMRI is negotiated by regional officials, the head office should be kept informed of the progress and content of the CMRI. It may be useful for government departments to institute policies to ensure head office approval of regional CMRI.

Impacts on other agencies

Agencies should ensure that where a CMRI creates obligations for other Agencies they are joined in the CMRI.

Commitments by the Māori Collective

Undertakings from Māori may be accepted only from people with the necessary authority and mandate to give them.

Non-exclusivity

Agencies should avoid CMRI which limit the government's ability to recognise third party interests or to interact with any citizens or their representatives.

The interests of different Māori Collectives sometimes overlap. This could give rise to claims (for example, of exclusive mandate) by one Māori Collective that are disputed by others or by the government. Agencies should ensure that they reserve the right to interact with any stakeholders, and not give undertakings in a CMRI that might inadvertently create an exclusive relationship.

It is desirable to:

- discuss whether the Agency has, or intends to enter into other CMRI to work towards the same set of outcomes
- discuss any intention or potential of the Crown to deal with parties individually (where there is more than one Māori Collective) or with non-parties
- consider whether the instrument is intended to affect any Waitangi Tribunal proceedings, or settlements.

For example:

Nothing in this agreement shall affect the obligations of the Crown to also deal with each <party> individually and according to each <party's> own circumstances. Nor shall it affect the rights and obligations of the Crown and each of the parties in relation to any settlement agreements that are or have been reached in respect of the Wai XXX Claim.

Other provisions

Dispute resolution

As with any relationship, it is better if the parties have an agreed process to resolve any difficulties. Outlining that process in the CMRI, and clearly indicating that it should start with discussing problems or misunderstandings as soon as they become apparent, commits both parties to valuing the relationship. Examples of resolution processes are included in the model MOU's, Appendix 4 and 5.

The form of a dispute resolution clause is best determined by the parties to the CMRI. An appropriate process is one that suits the needs of the relationship and the personalities involved. For example, dispute resolution clauses may set out an agreed formal process by which the parties will act in the case of a dispute, or the clause may reflect the desire of the parties to act at all times to preserve the relationship informally.

For example:

The parties will act at all times in good faith and with the goal of preserving their relationship. However, in the event of a dispute the parties agree to the following process:

- a) In the first instance the agreed representatives of the parties will meet and attempt to resolve the dispute*
- b) If following (a) the dispute is not resolved the parties will engage in mediation through an agreed process.*

Confidentiality

The confidentiality requirements of the parties to a CMRI should be well-understood and agreed by the parties.

Often information generated by or shared within the relationship will be sensitive and/or the intellectual property of one of the parties. Understanding between the parties about appropriate use of the information is essential.

For example:

All information shared between the parties or created during the course of the relationship is confidential to the parties to this <CMRI> and will:

- a) only be used for the purpose for which it was gathered or created*
- b) remain the property of the originating party/ies*
- c) only be disclosed to third parties by mutual consent or where the release is required by law.*

The parties should also be clear about any constraints under which they act in relation to confidentiality. For instance, the Crown is limited in its ability to treat information confidentially by the provisions of the Official Information Act 1982. Māori Collectives should be made aware of that constraint. The parties

may wish to provide a process for inclusion of both parties in the process of release of information.

For example:

The <Agency> is bound by the provisions of the Official Information Act 1982. In any instance where the <Agency>, is bound to supply information in accordance with Official Information Act, this will be done only after the <Māori Collective> has been notified of the proposed release.

Māori Collectives may operate under similar constraints. For instance, if the Māori Collective is a subsidiary, or business unit, of a larger entity it may have policy or reporting requirements relating to that entity.

Information sharing

Both parties to a CMRI should have the same understanding about the extent of the information which they intend to share with the other party. Detailing the limits of the obligations of the parties in relation to information-sharing in the CMRI is a good way to avoid future misunderstandings and dispute. For example, the parties might wish to agree to share information in relation to a certain subject-matter or agree to generally share relevant information while retaining the right to keep certain information private. A CMRI might also set out how shared information may be used by the other party.

For example:

Subject to the constraints set out in this <CMRI>, the parties agree to provide each other with any information that relates to the subject-matter of this <CMRI>.

The parties acknowledge that care needs to be taken when using such information and agree that the other party will be notified before any proposed release of the information to third parties.

Use of statements about the Treaty of Waitangi

Definition of Treaty statement

A Treaty statement is any statement acknowledged or used by an Agency in a CMRI that refers to or is based on the Treaty of Waitangi, including:

- **references to the Treaty or its principles, including statutes**
- **statements intended to give effect to the Treaty**
- **commitments by agencies to act in a manner consistent with the Treaty, whether generally or with respect to particular functions or activities**
- **undertakings arising from the parties' understanding of the effect of the Treaty on their relationship**
- **quotations from the text of the Treaty**
- **statements of Treaty concepts such as kāwanatanga, and tino rangatiratanga**

- **statements describing the circumstances surrounding the signing of the Treaty.**

Cabinet has directed that CMRI may include Treaty statements provided that:

- the agreed aim is to build or maintain a good relationship between the parties
- there is broad agreement between the parties on the role of the Treaty in their relationship and in government (i.e. the government's right to govern is accepted)
- the reciprocal nature of Treaty obligations is recognised and demonstrated in the agreement;
- proposed Treaty commitments are relevant to the context of the CMRI and to the business of the relationship
- the Agency has explicitly considered how Treaty-based commitments will contribute to the objectives of the CMRI and how they will be achieved.

CMRI in which the Agency deals with interests directly protected by the Treaty (e.g., fisheries, land), or which have Treaty clauses in their regulatory frameworks (e.g., Conservation, Health) may require quite specific Treaty references. Treaty references by Agencies whose operations or interests do not have an obvious Treaty aspect, or which are not subject to Treaty clauses in legislation, are likely to be more general.

The overall approach to guidance on Treaty statements

Three sources of Treaty statements may be used to assist the drafting of CMRI:

- 1 approved statements of government policy on the Treaty which are already in use in a variety of contexts including legislation, government goals and policy frameworks
- 2 statements based on Treaty statements which the government has previously used in submissions to the courts or the Waitangi Tribunal and which represent the Crown's understanding
- 3 statements drafted especially to meet the particular circumstances or relationship, which satisfy the conditions set out for such statements.

Treaty Statements approved by Cabinet are enclosed as Appendix 3.

Differences of interpretation

There may sometimes be matters of importance to either party which might usefully be recorded within CMRI even though they are not agreed. There is room for recording some differences of view over the meaning and effect of the Treaty, as long as such views are:

- attributed to the particular party concerned
- are not so extreme as to undermine the basis for the CMRI or be otherwise unacceptable – for instance, in constituting a challenge to

the Crown's sovereignty or its capacity to establish an effective legal system.

References to Treaty breaches

Agencies should not include statements in CMRI that:

- acknowledge breaches of the Treaty, unless by reference to a pre-existing Treaty settlement and then only in the precise language of the settlement
- refer to Waitangi Tribunal findings of breaches that have not been acknowledged by the Crown or
- contain apologies for breaches, even if an apology has already been delivered in the context of a Treaty settlement.

CMRI are intended to be forward looking and should avoid any risk of duplicating matters covered in a Treaty of Waitangi settlement process.

Room for development of the CMRI policy on Treaty statements

The government accepts that the Treaty is a living document in the sense that policy on the meaning and implications of the Treaty will evolve over time, informed by the courts and the Waitangi Tribunal and in the course of discussion and agreement with Māori.

There is a trade-off to be made between achieving national consistency and building relationships at the local level. The approvals process (see Phase 3, Formalisation and Execution) is intended to provide scope for Agencies to negotiate meaningfully with Māori Collectives (i.e. as principals) by allowing them to depart from the CMRI framework in particular cases if this is deemed necessary to maintain good faith in relationships, and as they develop their understanding of the application of the Treaty, subject to noting and approval by Ministers.

Consistency with Policy Framework

CMRI officials group

The CMRI officials group neither plays a role in negotiating CMRI nor intrudes in the relationships documented by them, it simply provides advice on whether draft CMRI are consistent with the CMRI policy framework.

Cabinet has directed Agencies to seek advice from the CMRI officials group regarding compliance with the policy framework. The officials group is comprised of representatives from the Ministry of Justice and Te Puni Kōkiri and is responsible for checking proposed CMRI for consistency with the policy framework before they are executed.

The Agency should:

- submit its proposed CMRI to the officials group for advice on consistency before it is executed
- include any explanatory material to help demonstrate that the CMRI is consistent with the policy framework if it is not obvious in the actual

agreement. For example, an Agency might state that it has ensured the accuracy of the mandate of the Māori Collective, or that the CMRI complies with the Agency's statutory obligations.

If a proposed CMRI is not consistent with the policy framework, the officials group will assist with revising the document.

When the officials group receives a proposed CMRI it will:

- send notice of receipt within one week by the same medium that it receives the CMRI
- determine whether a proposed CMRI is consistent with the policy framework and advise accordingly (generally within two to three weeks)
- advise the Agency if any delay is expected.

Crown Law Advice

In exceptional circumstances the officials group may require Crown Law advice on a proposed CMRI. In such cases, the officials group will discuss further with the Agency as the advice will need to be paid for by the originating Agency.

CMRI that are consistent with the policy framework

If the officials group considers that the proposed CMRI is consistent with the policy framework, it will send confirmation to the originating party. Upon receipt of this advice the CMRI can be executed.

CMRI that are inconsistent with the policy framework

If the proposed CMRI is not consistent with the policy framework, the officials group will:

- advise the Agency in writing
- work with the Agency to ensure that the CMRI reaches the required standard and
- arrange the process and timeframe for revisions with the Agency.

If, after advice from the officials group, an Agency still wishes to execute a CMRI which is inconsistent with the policy framework, Cabinet has directed that it be submitted to the Policy Cabinet Committee (POL) for approval. This process is discussed below (Phase 3).

Multi-Agency CMRI

Single CMRI that are signed by several Agencies will have wider resource and relationship implications for both the Crown and Māori. Therefore, after receiving advice from the officials group they should be considered and approved by Cabinet.

Contact details

Proposed CMRI can be submitted to the officials group by two means:

By mail to:

Crown-Māori Relationship Instruments Officials Group
c/o Te Puni Kōkiri
PO Box 3943
WELLINGTON

AND

By email to:

cmriog@tpk.govt.nz

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Phase 3 – Approval and Execution

Approval of CMRI

The approval process for CMRI, includes:

- parties' internal processes
- Agencies receiving advice from the officials group assessing the consistency of the CMRI proposal with the policy framework
- Cabinet approval (if required).

Internal Processes

Parties may need to follow their own internal processes, such as approval by the Chief Executive or responsible Minister in the case of Agencies, before the formal approval and execution a CMRI.

How parties coordinate these approval processes is at their discretion. It may be useful, however, if Agencies obtain internal approval 'in principle' for their CMRI before seeking advice from the CMRI officials group regarding compliance with the policy framework.

Consistency with CMRI Policy Framework

Agencies are directed to seek advice from the CMRI officials group regarding the consistency of their CMRI with the policy framework. This process is described above (Phase 2). CMRI can be executed when the officials group informs the Agency that their CMRI is consistent with the policy framework.

Cabinet approval

Should your Agency choose not to comply with the policy framework and advice from the CMRI officials group, CMRI inconsistent with the policy framework can be submitted to POL for approval. Should your Agency take this option your Minister should submit a paper to Cabinet.

The process for submitting inconsistent CMRI to POL is as follows:

- the responsible Minister presents a Cabinet paper to POL containing the following:
 - details of how the agreement is inconsistent with the CMRI policy framework
 - an explanation of why the CMRI is inconsistent with the framework and the reasons Cabinet should approve the agreement in its submitted form
 - a section on consultation with the CMRI officials group concerning the agreement
- POL will make recommendations to Cabinet. For example, POL may recommend that the inconsistency is appropriate and that the CMRI should be executed, or that the CMRI should be varied to comply with the CMRI policy framework
- the recommendations of POL will be considered by Cabinet

- Cabinet will decide that the form of the CMRI is appropriate or to vary the CMRI
- the Agency may execute the CMRI according to Cabinet's decision, but may need to re-negotiate any changes to the CMRI with the Māori Collective.

Execution

The execution of a CMRI is a significant event for both parties. Therefore they may wish to consider some form of celebration on the execution of the agreement to reinforce the importance of the formalisation of their relationship.

Central repository and annual reporting

A central repository and database of CMRI has been created within Te Puni Kōkiri to maintain consistency of CMRI over time and across the state sector. The database will also assist the Ministry of Justice and Te Puni Kōkiri to report annually to Cabinet on trends in CMRI and any parts of the CMRI policy framework that require review. The following sections set out the roles of Agencies in relation to the database. The Terms of Reference for use of the CMRI database, with full details of the conditions relating to its use, are attached as Appendix 6.

Input of CMRI into database

Cabinet has directed Agencies to send Te Puni Kōkiri all new CMRI upon their execution, for input into the CMRI database.

Agencies should provide Te Puni Kōkiri both a hard copy and scanned electronic version of the original signed and executed CMRI for entry into the database. The signatures of the parties and any hand-written additions should be clearly visible on both versions.

The hard copy of the CMRI should be submitted to:

Crown-Māori Relationship Instruments Database
c/o Te Puni Kōkiri
PO Box 3943
WELLINGTON;

AND a scanned copy, by email to:

cmridatabase@tpk.govt.nz

Release and confidentiality of CMRI

Release of all or part of a CMRI will be governed by the provisions of the Official Information Act 1982.

Access to CMRI database by Agencies

The CMRI database will enable officials to advise Agencies on issues relating to CMRI. For instance, access to the information will be available to ensure consistency in proposed CMRI relating to:

- an attribution of mandate to a Māori Collective;
- recognition of rohe;
- acknowledgement of status;
- obligations for the Crown with the same Māori Collective;
- obligations for the same Agency with different Māori Collectives; and
- use of Treaty statements in CMRI.

This advice is available:

By mail from:

Crown-Māori Relationship Instruments Officials Group
c/o Te Puni Kōkiri
PO Box 3943
WELLINGTON

OR by email from:

cmriog@tpk.govt.nz

Ongoing obligation of Agencies

Agencies should inform Te Puni Kōkiri at the above addresses when a CMRI has been terminated or expired.

Revisions of existing CMRI should also be sent to the CMRI officials group for advice on compliance with policy before being submitted to the database to ensure that a comprehensive record of the commitments of government is maintained.

Phase 4 – Evaluation, Review and Renegotiation

The following is advice on:

- future-proofing CMRI in the face of potentially changing circumstances (for example, mitigating against effects of staff turnover or organisational restructuring)
- evaluating, reviewing, and renegotiating agreements to meet the demands of changing relationships.

Future-proofing your CMRI

Some parties have included clauses in their CMRI to “future-proof” them. Such clauses ensure that staff from both parties who work on or through the CMRI are obliged to maintain an intimate knowledge of:

- the contents of the CMRI
- its purpose
- the people and organisations involved in the relationship the CMRI documents.

Robust processes to allow institutional knowledge to be passed on to new staff members are required for these clauses to have the desired effect.

Evaluation

Both parties should evaluate their existing CMRI regularly, regardless of whether a formal review process is built into the CMRI. Parties to existing CMRI have found it desirable to ensure that both parties evaluate the performance of their CMRI against:

- its purpose
- its objectives
- the outcomes it is to produce.

Experience has also shown it to be useful to consider whether the CMRI:

- continues to be mutually beneficial
- is achieving or has achieved what it was designed to achieve.

If either party thinks the CMRI or relationship is not working as intended, procedures for review should be followed. Some CMRI will contain provisions for regular review. Parties to these should evaluate their CMRI individually prior to the scheduled review. Where the CMRI is to be reviewed on an ad hoc basis, by mutual agreement, a review process should be instigated if or when either party considers that the CMRI is not performing to its expectations.

Review

Reviewing CMRI can be:

- regular and part of a formal review process, or
- informal and subject to mutual agreement by the parties.

If either party considers that the CMRI is failing or has failed to achieve its purpose, consideration should be given to how these outcomes could be better achieved or whether a CMRI continues to be necessary.

Reviewing a CMRI requires both parties consider:

- processes to be used for the review
- resources required.

For CMRI that contain provisions for regular review, details of the processes and resources for review should have been factored into the preparation of, and be included in, the CMRI. For those CMRI that do not contain provisions for regular review and in which review would only take place according to agreement between the parties, consideration should be given to the processes and resources for review should it be required.

If during the course of a review, the parties propose to make substantial changes or additions to the CMRI, the Agency should submit the revised agreement to the officials group for advice regarding its compliance with the policy framework.

If reviewing a CMRI that predated the development of the policy framework, the Agency should apply the framework and follow the approvals process detailed above.

Renegotiation

If the review process shows the CMRI to be failing to achieve its purpose, but parties still think it necessary or desirable, the negotiation process should be re-instigated.

If the parties decide to renegotiate their CMRI, consideration must be given to the processes that were observed during the original negotiation phase. It is possible that it was the negotiation process itself that led to the CMRI being ineffective. If either party considers that the negotiation process adversely affected the ability of the CMRI to produce the desired outcomes an alternative process should be proposed for mutual agreement by the parties.

If, after review, both parties consider the CMRI to be effective they may still wish to renegotiate some aspect of the relationship or the CMRI. If so, agreement of both parties should be sought to undertake this renegotiation.

Appendix 1: Check list (Cabinet requirements)

This checklist will help you ensure that your CMRI complies with Cabinet requirements. Further detail on each of these points is provided in the body of the guidelines.

Does your CMRI contain a clear statement of:

- who the parties are and who they represent, preferably with a legal description and reference to their accountabilities and relationships
- the purpose of the agreement
- definition of any terms liable to cause misunderstanding
- any commitments regarding outcomes, aspirations, deliverables or processes
- whether or not the agreement is intended to be legally binding upon the parties (in general they should not be)
- the duration of the agreement and/or a date for review
- the identity of the signatories, date the agreement is signed, and date of the execution of the agreement?

Have you ensured that the commitments undertaken in your CMRI:

- are consistent with the Agency's statutory obligations
- do not devolve statutory obligations inappropriately or limit your ability to meet those obligations
- are only given by signatories with the authority to implement them?

Have you taken care that:

- acknowledgments of the status, representative role, mandate or rohe of Māori Collectives are accurate,
- where your CMRI creates obligations for other Agencies, that they are joined in the CMRI, or if such obligations arise after the CMRI has been executed that the parties are notified of the details of the CMRI, and
- if you have included a statement referring to the Treaty of Waitangi in your CMRI you have complied with advice regarding the use of Treaty statements (pages 27-29)?

Have you also ensured consistency among and within your CMRI in respect of:

- compliance with policy and legislation
- acknowledgements of status
- recognition of rohe/areas of interest
- recognition of mandate

- fairness between parties in similar situations?

Check list (relationship management)

This checklist will help you ensure that you consider a range of important relationship and operational matters when developing your CMRI. Further details are provided in the body of the guidelines.

The CMRI documents a relationship. Therefore the following should be taken into consideration:

- do both parties want the CMRI?
- will your CMRI help develop or maintain a positive relationship?
- have the views of the Māori Collective been taken into account appropriately?
- are both parties committed to the relationship created by the CMRI, and to the outcomes sought under it?
- are the outcomes expected of the CMRI clear to both parties and achievable?
- is your CMRI an effective way for the Agency to accomplish its objectives/outcomes?²
- will the CMRI assist the Māori Collective to accomplish its goals?
- does your CMRI have implications for the broad Crown-Māori relationship including any Treaty relationship between the parties or the Government and Māori in general?
 - how will these be dealt with?
- will your CMRI impact on relationships with other stakeholders?

Successful CMRI can require resources to be committed, including staff and time, and financial resources.

Staff and Time

- do your staff have:
 - the requisite experience to build an effective CMRI and sustain a good relationship? or
 - the requisite empathy and skills to learn how to do this?
- if neither, are the parties willing to build that capacity and skill-base?

² 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.

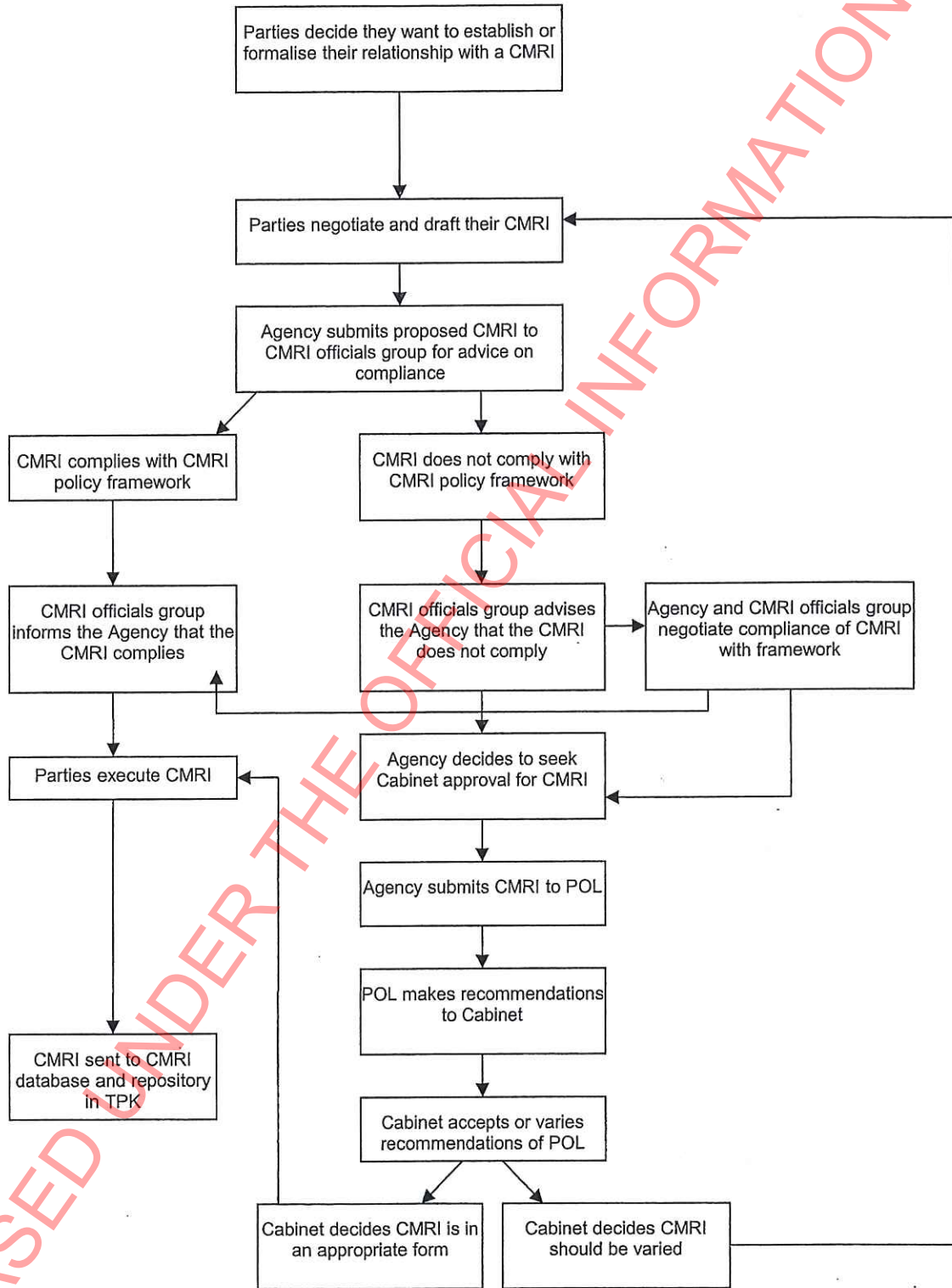
Financial Resources

Has the Agency considered expenses relating to:

- staff allocated to the work
- development of the requisite understandings for the parties to operate effectively under the CMRI, such as
 - cultural training for staff
 - building technical capacity relating to the subject-matter of the CMRI for staff of both parties
- negotiating the CMRI, and
- operational aspects of the CMRI, such as:
 - regular meetings
 - travel
 - hosting expenses
 - exchange of information?

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Appendix 2: Flow Diagram Developing a Crown Māori Relationship Instrument



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Appendix 3: Cabinet Approved Treaty Statements

1 Statements of Treaty policy and obligations which have been previously approved by government

Provided such statements meet the general requirements of relevance and effectiveness, then they are permitted within CMRI. They include:

- clauses which refer to or note references to the Treaty in legislation
- statements which recognise the Treaty in government goals and policy frameworks (for example, *the Key Government Goals to Guide Public Sector Policy and Performance*, *Statement of Government Intentions for an Improved Community-Government Relationship*)
- the 1989 Principles for Crown Action on the Treaty of Waitangi, which the government has endorsed
- those recommendations of the 1988 Royal Commission on Social Policy which the government has approved.

Treaty-related provisions in statutes

Use of statutory expressions within CMRI is subject to the condition that all general undertakings, including those derived from statute, be accompanied by statements of what these will mean in practical terms for the parties.

2 Treaty statements endorsed by the Crown

The second category of Treaty statements allowed under the CMRI policy framework are those which repeat or closely reflect statements already made by the Crown in submissions to the courts or the Waitangi Tribunal. Below is a selection of such statements. Subject to all other requirements of the CMRI policy framework, these statements can also be used within CMRI.

Statements which refer to the Treaty as the basis of Crown-Māori relationships and as a founding document of New Zealand

"The Treaty of Waitangi establishes the unique relationship between the Crown and Māori."

"The Treaty of Waitangi is a founding document of government in Aotearoa/New Zealand"

Treaty principles and concepts

"The Crown acknowledges that it has an obligation to act in an informed manner when it forms policy or acts in ways that affect Māori interests."

"The Crown acknowledges that it is under a duty of active protection in relation to Māori rights and interests guaranteed pursuant to Article 2."

"The parties each have an obligation to act in good faith, fairly, reasonably and honourably towards the other."

“Central to the Treaty relationship and implementation of Treaty principles is a common understanding that Māori will have an important role in implementing [policies/services] for Māori and that the Crown and Māori will relate to each other in good faith and with mutual respect, cooperation and trust.”

“In order to recognise and respect the principles of the Treaty of Waitangi, the parties have agreed to establish [mechanisms/processes/structures] to enable [the Māori Collective] to contribute to the [planning/policy development/decision-making/delivery] of [the agency's] specified [policies/functions/services].”

“In order to recognise the Crown's obligations to act in an informed manner, [the agency] will [provide information/seek input/give adequate time for response/consider submissions] on the exercise of [particular] functions.”

3 Treaty statements developed by the parties

The third category of Treaty statements approved for use in CMRI are those developed by the parties to meet particular requirements of their relationships. The central CMRI advice and vetting process (see Phase 2) will ensure that all such statements are assessed in accordance with the requirements of the CMRI policy framework.

In addition to the general requirements of the CMRI framework, Treaty statements developed by parties to CMRI are subject to the following conditions:

- Except as provided above, CMRI may not comment on constitutional principles or the constitutional status of the Treaty.
- Quotations from the text of the Treaty are permitted, although it is preferable to include the full text. The authoritative Māori and English versions of the Treaty text are contained in the Treaty of Waitangi Act 1975.
- Statements relating to the circumstances surrounding the signing of the Treaty may be included by the Māori Collective provided that these are attributed to that party and do not give rise to expectations of the Crown.
- Agencies should avoid trying to define or interpret the meaning of the Treaty in the abstract. What is important is that they are clear as to its effect on their own relationship with the Māori Collective. General statements should be limited to those approved in this paper.
- Terms which interpret such Treaty concepts as kāwanatanga, rangatiratanga or taonga may be used provided that their meaning is clearly agreed between the parties.

General commitments to observe Treaty principles, including those taken from legislation, must not be used unless accompanied by statements of what these will mean in the context of the particular CMRI. This means that commitments to act in particular ways because of the Treaty may be included in CMRI, provided that:

- the commitments require clearly defined conduct – it is generally not appropriate for an agency to commit to “act in accordance with the Treaty in the exercise of its functions”, without greater specification
- the commitments are specific to the particular interests of the parties and the context of their agreement – they should not relate to matters outside the immediate context of the agreement and should not impose obligations or expectations on third parties
- the commitments are consistent with applicable statutes and policies, and are compatible with all other commitments between Māori and the Crown
- any legal or statutory constraints on the agency which may have a bearing on the agreement are explicitly noted
- the reciprocal obligations of the Treaty, in which rights and duties flow both ways between the parties, are explicitly included and agreed
- references to iwi-specific versions of rangatiratanga such as Ngā Raurutanga or Ngāti Poroutanga have been used in some Treaty settlements and are acceptable provided their meaning is clear to both parties and explained in the CMRI.

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Appendix 4: Model CMRI between a Māori Collective and an Agency

The following model CMRI is illustrative of the principles expressed in these guidelines. It is not intended to be used as a template. CMRI should reflect the particular circumstances and needs of the parties to them.

MEMORANDUM OF UNDERSTANDING between <the Māori Collective> and <the Agency>

Date of execution _____

Parties

1. <The Māori Collective>

<The Māori Collective> is represented under this Memorandum of Understanding ('MOU') by <for example, the name of the Rūnanga (Council), or Trust Board, or iwi organisation>, which acts in the interests of all members of <the Māori Collective> living within te rohe o (the area of) <the Māori Collective>. Attached as Schedule A is a map defining the area agreed to by the parties as te rohe o <the Māori Collective> for the purposes of this MOU.

This MOU is signed by te Kaiwhakahaere and the Chief Executive on behalf of <the Māori Collective>.

2. <The Agency> (represented by the Minister <of, or responsible for, the Agency>)

<The Agency> is represented under this MOU by the Minister <of, or responsible for, the Agency> ('the Minister'), acting through <the Agency> ('the Ministry', or 'the agency'). The Minister has statutory responsibility under the <name of the Act> for the <for example, health/education needs of Māori>. <The Agency> also has statutory rights and obligations under the <name of the Act> to improve the <for example, health/education outcomes for Māori>.

This MOU is signed by the Minister and the Chief Executive of <the Agency>.

Purpose of this MOU

3. This agreement sets out the framework for an ongoing relationship between <the Agency> and <the Māori Collective>.
4. The purpose of this agreement is to record the mutual commitment of the parties:

- (1) to work together in good faith to safeguard and promote the mutual interests of the parties in improving the <for example, health/educational> outcomes of the people of <the Māori Collective>;
- (2) to address any conflict or tension openly and constructively;
- (3) to act in ways that enhance the mana (prestige/dignity) of both parties.

Legal Effect

5. This MOU is not legally binding and does not create a legal relationship.

Goals of the Relationship

6. The parties commit to the following goals for the relationship under this MOU:
 - (1) to create and foster a high trust environment which allows the parties to work together while growing within their own tikanga (customs, obligations and conditions) and pursuing their own interests and priorities;
 - (2) to provide a framework for the parties and Government to work together towards improving <for example, health/educational> outcomes by <for example,:
 - (i) efficient use of resources;
 - (ii) effective representation.>

Principles of the Relationship

7. The following principles will guide the relationship:
 - (1) acknowledgement that there is an important Treaty of Waitangi aspect in the relationship between <the Agency> and <the Māori Collective>;
 - (2) acknowledgement of the shared interests of the parties in the development and promulgation of policy and legislation in the <for example, health/education> sector that benefits the people of <the Māori Collective>;
 - (3) acknowledgement of the Crown's interest in the development and promulgation of policy and legislation on behalf of the public at large and in managing the allocation of public financial resources;
 - (4) commitment to the following values in the conduct of the relationship:
 - (i) Autonomy (Rangatiratanga): Recognising that each partner will have different lines of accountability. Enabling each party to develop and grow in its own way while recognizing and acknowledging difference.

- (ii) Unity (Kōtahitanga): Agreement to work together towards a shared vision; and
- (iii) Goodwill (Manaakitanga): 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.

Treaty of Waitangi

8. The parties acknowledge that the Treaty of Waitangi is a founding document of Aotearoa/New Zealand and as such lays an important foundation for the relationship between the Crown and Māori. The parties wish to record their agreed understanding of their respective Treaty rights and obligations in the context of this MOU:

- (1) that <the Māori Collective> exercises te tino rangatiratanga (authority, chieftainship) in te rohe o (the area, territory of) <the Māori Collective>, meaning that it has responsibilities for its people in relation to ensuring improvement in <for example, health/educational> outcomes;
- (2) that the Crown exercises kāwanatanga (governance), meaning that it is required to make decisions that take account of the interests of all New Zealanders in achieving [e.g. health/education] outcomes;
- (3) that decisions made by the Minister and <the Agency> on behalf of the Crown will require a balance to be struck between these considerations; and
- (4) that the parties will act towards one another at all times reasonably and in good faith.

Processes for Working Together

- 9. The relationship will be given effect by a programme of regular consultation and information-sharing between the parties.
- 10. Consultation will consist of meetings on an annual basis between the Chief Executives of <the Māori Collective> and <the Agency>, and bi-annual meetings between officials acting on behalf of the parties.

Resourcing

- 11. Costs associated with meeting for the purposes of this MOU, including travel, will be shared by the parties.

Statutory and contractual obligations

- 12. The parties acknowledge that <the Agency> is a <Government department/Crown agency> and that this MOU will not require the Ministry to act in any way contrary to its obligations pursuant to Ministerial or Cabinet direction, or under its statutory responsibilities,

or pursuant to any contractual obligations it has established with other parties.

13. The parties further agree that they will take all steps within their power to ensure that <the Agency> is able to comply with the same.

Non-exclusive relationship

14. <The Māori Collective> acknowledges the agreements under this MOU do not create an exclusive relationship and the Minister and <the Agency> may develop other appropriate relationships.

Representations

15. The parties agree that they will not make any statement on the other's behalf to any third party without the express authorisation of the other party.

Confidentiality

16. The parties agree that unless otherwise required by law, or by mutual agreement, they will keep confidential all information acquired as a result of this agreement.
17. The parties specifically acknowledge that information relating to or produced by the relationship may be required to be released under the Official Information Act 1982.

Review and variation of MOU

18. This MOU records a commitment to a long-term ongoing relationship. The parties acknowledge that over time the nature and focus of the relationship will evolve to reflect changing circumstances. Therefore, the parties will meet solely for the purpose of reviewing this MOU every three years, or otherwise as mutually agreed.
19. The parties may at any time and by mutual agreement amend this agreement to reflect:
 - (1) changes to the goals of the relationship as they reflect changing circumstances; and
 - (2) any other changes both parties agree are necessary.

Termination of memorandum

20. This memorandum may be terminated by one party giving 60 days notice to the other, or by mutual agreement at any time.

Dispute Resolution

21. The parties will act at all times in good faith and with the goal of preserving their relationship. However, In the event of a dispute the parties agree to the following process:

- (1) In the first instance the agreed representatives of the parties will meet and attempt to resolve the dispute;
- (2) If following (1) the dispute is not resolved the parties will engage in mediation through an agreed process.

Term of MOU

22. This MOU:

- (1) commences upon signing by both parties; and
- (2) may be terminated by the mutual agreement of the parties or by either party giving three months notice of termination to the other.

Execution

Date: _____

Date: _____

Minister <of, or responsible
for, the Agency>

Te Kaiwhakahaere o
<the Māori Collective>

Witness

Witness

Chief Executive;
<the Agency>

Chief Executive;
<Māori Collective>

Witness

Witness

Additional clauses can be added to cover such matters as confidentiality.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Appendix 5: Model CMRI between a Māori Collective and a Crown Entity

The following model CMRI is illustrative of the principles expressed in these guidelines. It is not intended to be used as a template. CMRI should reflect the particular circumstances and needs of the parties to them.

MEMORANDUM OF UNDERSTANDING between <the Māori Collective> and <a Crown Entity>

Parties

1. <The Māori Collective (MC)>

<MC> is a Charitable Trust incorporated under the Incorporated Societies Act 1908. <MC> provides <for example, health/education> services for Māori in the <specific> region and is a representative of <group of people/iwi> Māori for the purpose of improving their <for example, health/educational> outcomes.

2. <The Crown entity (Ce)>

<Ce> is established and constituted under the <Crown entity Act>. The statutory role of <Ce> is to improve outcomes in the <for example, health/education> sector. <Ce> provides policies, programmes and funding in furtherance of this objective.

Purpose

3. The purpose of this memorandum is to assist <Ce> to meet the needs of its Māori stakeholders in the <specific> region by providing opportunities for <MC> to influence policies and programmes developed by <Ce>, as they impact on Māori within the <specific> region.

Acknowledgements of parties

4. The parties acknowledge:

- a. that te Tiriti o Waitangi/Treaty of Waitangi is a founding document of Aotearoa/New Zealand, and lays an important foundation for the relationships between the Crown and Māori;
- b. that the role of <Ce> as defined by statute benefits from the input of its relevant stakeholders, in this case Māori in the <specific> region;
- c. that the relationship created by this memorandum is not an exclusive one and that both parties reserve the right to create or

maintain relationships with any other group that may assist them in the furtherance of their respective objectives;

- d. that this memorandum does not alter or diminish <Ce>'s statutory powers and obligations under the <Crown entity Act> or any other statute in any way;
- e. that the relationship developed in this memorandum may also lead to the development of contracts for the provision of relevant services but that this memorandum is not developed in this expectation. Any such contracts that may be developed will form separate legal documents but will be attached as schedules to this memorandum;
- f. that this memorandum is not legally enforceable, but that this does not diminish the intention of the parties to comply with the terms and conditions of this memorandum.

Agreement of parties

5. The parties agree that they will:
 - a. work together to improve <for example, health/education> outcomes in the <specific> region;
 - b. share information as it relates to the subject-matter of this memorandum;
 - c. mutually support the endeavours of the other; and
 - d. act at all times in good faith and with good intent.
6. <MC> further agrees that it will:
 - a. assist <Ce> to identify problems with its policies and programmes related to Māori in the <specific> region;
 - b. provide <Ce> with advice on developing solutions to any problems; and
 - c. provide <Ce> with advice on matters of protocol and tikanga (customs, obligations and conditions).
7. <Ce> further agrees that it will:
 - a. take account of any information and advice provided by <MC>;
 - b. provide <MC> with opportunities to contribute to <Ce>'s decision-making processes, where the decisions are relevant to the subject matter of this memorandum; and
 - c. keep <MC> informed about relevant policies and programmes, including the outcome of any decision-making process.

Disclosure of Information

8. Any information exchanged under this memorandum remains the property of the originating party and will be kept confidential to the

parties. Such information will only be disclosed with the prior approval of the relevant party and/or according to law.

Execution of memorandum

9. This memorandum comes into effect on _____ 2009.

Review of memorandum

10. This memorandum will be reviewed one year from the date of execution.

Termination of memorandum

11. This memorandum may be terminated by one party giving 60 days notice to the other, or by mutual agreement at any time.

This memorandum was-

Signed this ___ day of ____ 2009
by

Signed this ___ day of ____ 2009
by

Chief Executive of <Ce>
Before witnesses:

Chief Executive of <MC>
Before witnesses:

Name of Witness 1

Name of Witness 1

Name of Witness 2

Name of Witness 2

Additional clauses can be added to cover such matters as dispute resolution.

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