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Ministry of Business, Innovation & Employment

WELLINGTON

Submission on Te Ara Paerangi Future Pathways Green Paper 2021

I work at AgResearch, currently as Team Leader – Legal, and am also the company Privacy Officer. I have worked as a lawyer at AgResearch since late 2010. This submission is a personal submission, drawing on my experience as an employee within the CRI environment, and as a senior commercial lawyer with experience both in private practice and in-house at AgResearch.

This submission will look at two areas of the Green Paper: Institutions and Funding

4 Institutions

I note the Green Paper highlights several issues and limitations of the current CRI structure, through sections 4.1 and 4.2. I did want to make some brief observations on some of these:

- I agree that the limitations highlighted in section 4.1 are likely present as between the CRIs. However, I would comment that in my experience some of these issues are faced internally in CRIs too. Where there is competition for scarce funding, this is an inevitable outcome. For example, within AgResearch, siloes and competition for limited resources impacting on collaboration as between science teams have been ongoing issues which we have constantly worked hard to mitigate. In my view, when people in any structure are tasked with responsibility for themselves first, and then keeping those they are either responsible for or work beside busy and occupied, thinking about the big picture for the organisation comes a distant third. I think some of the issues identified are symptomatic of other challenges, such as funding scarcity, rather than being issues that will necessarily be resolved by a substantively different structure.
- In subsection 4.2.1, the observation is made that "*In certain circumstances, CRIs may prefer to lean towards commercial gains from research, rather than maximising the public good (for example, by making research results more freely available)*". I don't believe that this is a particularly correct observation. In my experience, decisions on how to manage research results are reflective more on how to best make impact, rather than purely financial motivations. Findings that demonstrate value in practice change or applying existing technologies in different ways are routinely published and disseminated. It is generally only where the path to uptake is through a new product or technology solution in the market that research results are not published, and only then because technology transfer partners are not likely to take up a new product or technology that has no intellectual property protection or some other first mover advantage.
- Subsections 4.2.3 and 4.2.4 both reflect on CRIs not necessarily responding to priorities – both for research users and more strategic or societal priorities. I don't believe either is necessarily reflective of an issue with the CRI company structure. Rather, in the current framework there is no easy channel for those priorities to come through and be responded to. For example, the Crown Research Institutes Act makes it difficult for the Crown or shareholding Ministers to provide direction to a CRI, except in respect of its statement of corporate intent, dividends, and supporting international relations[1], over and above normal company shareholder control.

[1] Crown Research Institutes Act 1992, s 15

However, the Prime Minister has discretion to direct any CRI both in the event of an emergency[2] and more broadly in respect of its operations[3]. It's not clear to me if the powers of the Prime Minister in respect of a CRI's operations have ever been exercised, but it seems there is adequate scope to provide for direction on responding to the types of priorities identified in the Green Paper. If not, changing the legislative regime and the process that sits behind it would be an easier exercise than significantly restructuring the CRI company system.

KEY QUESTION 9: How do we design collaborative, adaptive and agile research institutions that will serve our current and future needs?

I note the observations under Key Question 9, including the view that fewer, larger organisations may be desirable, and that changes to the company model and research focus of institutions could be pursued.

I believe however that there are some benefits to the current structure that should not be lost sight of. To name a few:

- Each of the CRIs has its own identity and reputation, both nationally and internationally, that have taken a long time to develop. There is value in this which is not easily replaced.
- Within AgResearch, I believe the agricultural industry focus has enabled us to craft an organisation that responds to that industry. We have strong relationships with industry stakeholders, an interest and expertise amongst our staff and board in both agriculture and solving agricultural industry challenges, and facilities that are located around agricultural hubs. I expect the other CRIs, especially the primary sector ones, are similar.
- The company structure of a CRI may require the CRI to maintain financial viability (though not to maximise profit), but that isn't in and of itself a bad thing. Financial discipline is important, and I don't think it would be acceptable to the taxpayer for CRIs to regularly require unbudgeted assistance to maintain viability.

A substantive change to the CRI structure may erase these benefits, and others, so I believe it is worthwhile to entertain alternatives before amalgamating CRIs or instituting something other than a company model.

An idea to consider could be whether the existing CRI structure could be maintained, but instead of being a collection of separate Crown-owned companies, reconstituting the CRIs as a corporate group with a common parent entity. The parent entity could be a Crown company or another type of Crown entity. In my view, this would provide an opportunity to maintain the value in the existing structure, without substantive disruption to CRI scientists and their important work. The common parent entity could then be a platform for addressing some of the challenges with that structure. For example:

- New important research priorities and relationships could be channelled through the parent entity, which could then work to direct the response from the collective capability of the CRIs. Existing priorities and important relationships could still be maintained within existing CRIs, if appropriate.
- The focus on financial performance could be for the group as a whole. This could enable important but less profitable research within one CRI to effectively be cross subsidised from other profitable parts, including from other CRIs.
- The parent entity could be a platform for shared services and important investment and infrastructure. For example, functions that could be performed in a centralised and consistent way for the CRI group such as human resources, finance, legal, IT, communications and marketing could be deployed within the parent entity to serve the group. Similarly, the parent

[2] Crown Research Institutes Act 1992, s 43(1)
[3] Crown Research Institutes Act 1992, s 43(2)

entity could be where decisions on significant infrastructure such as research facilities (buildings) and significant laboratory equipment are made, with regard for the needs of the group as a whole. In this respect, a corporate group structure may go some way to addressing ***Key Question 11*** from the Green Paper.

- The parent entity could have a focus on breaking down barriers to collaboration between and within CRIs. A silo mentality is difficult to get past, but working within a common corporate group, with some mechanisms developed to identify and share information about capability across the group, could be a step in the right direction.
- A corporate group structure may lend itself to much better integrated workforce planning and capability development. It could provide opportunities for researchers to move seamlessly within the group as their careers and research changes, having a more common experience wherever in the group they worked. In this respect, a corporate group structure may go some way to addressing ***Key Question 10*** from the Green Paper.
- Governance would still work with separate boards of directors for each CRI, but on the basis that the directors of a CRI could act in the best interests of the parent entity, rather than necessarily their own CRI. There may need to be some adjustment to how sections of the Companies Act apply to the group, to achieve this[4]. It would be possible to consider slightly smaller boards for CRIs, and possibly a situation where CRI chairpersons served on the board for the parent entity.
- The corporate group could provide a structure that better lends itself to adapting to significant trends in the future, such as forming new CRIs or refocussing the existing ones, and more seamlessly shifting research capability within CRIs.

In my view, such a corporate group could include Callaghan Innovation, or something similar. Callaghan Innovation might be an appropriate vehicle for a parent entity for the group, or reformed with part of its function within a parent entity and its R&D function realigned to existing CRIs or as a separate CRI (like the former Industrial Research).

3 Funding

I wanted to comment briefly on some parts of my experience at AgResearch which have funding as a core issue:

- While I believe that there is a role for a competitive funding model within the RSI system, what I see of it shows an horrendous amount of unfunded time and resource being spent on bids with a low percentage of success. This commonly ends up being a waste of valuable science time. Any competitive funding model going forward should have a simple and relatively low-cost bidding process attached.
- Inadequate 'wins' from competitive funding processes for AgResearch have led to real challenges to organisational financial viability, and for researchers, job security. This suggests to me that too high a proportion of funding comes through this channel.
- The identification and separation of corporate overheads in funding models is in my view unique to the RSI system, and quite unhealthy. In AgResearch, we see situations where some funders (including government) refuse to fund overheads, or at least want to negotiate these down when they are a fixed cost of business. It also leads to an unhealthy cultural dynamic between researchers and support staff. Neither of these issues to my knowledge generally exists in other industries. In no other professional industry that I'm aware of do we see

[4] The Companies Act 1993 s 131(2) already provides that a company director may act in a manner he or she believes is in the best interests of a wholly owned subsidiary's parent company. If a CRI parent entity was not a company but some other corporate entity, this should be adjusted to ensure this subsection applied to that entity. Similarly, for the avoidance of doubt, it could be useful to clarify that a director's duty is discharged if they act in the interests of another CRI in the same corporate group, in this scenario.

separate line items for overheads – these are simply a cost of business in the likes of law, accounting, engineering, and consultancy firms and included in hourly rates or fixed prices, rather than being itemised.

KEY QUESTION 8: Do you think a base grant funding model will improve stability and resilience for research organisations, and how should we go about designing and implementing such a funding model?

I wanted to respond on this question after looking at *Key Question 9* above, as in many respects a base grant funding model would in my view work well with the idea of a CRI corporate group:

- A larger base grant could usefully start to provide greater funding certainty for research. To mind, the competitive funding model is most suitable for research in the blue sky/new idea collection of opportunities. Once an opportunity has some initial proof-of-concept or early research completed, and there is demonstrated efficacy or something that may 'have legs', I'd see funding certainty has far greater importance. Base grant funding, channelled appropriately within CRIs, could be a good way to provide that certainty and keep that research progressing until uptake through industry.
- A parent CRI entity could be a good channel for base grant funding for research. It could be a platform for identifying across the CRI sector the types of research that need base grant funding, the allocation amongst CRIs and internal competitive processes where appropriate.
- A base grant that supports (perhaps fully funds) corporate overheads and research infrastructure could work well through a parent entity too. If that parent entity housed for instance shared services and made the significant infrastructure investment decisions, these sorts of costs could be significantly rationalised and be more easily accounted for the purposes of determining what a base grant should look like.
- A base grant for corporate overheads and research infrastructure would act as a partial subsidy for private sector organisations wanting to engage CRIs for research work if it led to a reduction in commercial rates for that work. In that respect, a base grant could incentivise more investment in research from the private sector.

In terms of the design of a base grant, if this was aligned with a CRI corporate group structure, in some respects it could be left to the group, led by the parent entity, to identify what was required. Some detailed business planning could identify what the group needed, and through engagement with government, this could be shaped and agreed appropriately on a regular basis to identify what a base grant would look like.

Please feel free to contact me if you wish to discuss my submission further.

Yours faithfully,

Nick Barraclough