

10 February 2025

File Ref: OIA 50336

[REDACTED]

Tēnā koe [REDACTED]

Official Information Act request

Thank you for your information request dated 15 December 2024. You asked for the following information:

"I want to request a timeline and all information (emails, briefing notes, aide memoir's, memo's to and from Ministers and CEO's advisors etc) held by Te Puni Kōkiri, Te Arawhiti, The Ministry of Justice and MFAT related to the follow-up country engagement, terms of reference and process for the Expert Mechanism on the Rights of Indigenous Peoples.

We have sought this information from individual agencies in the last 6 months and have been told that other agencies are holding up this process. This request also seeks to understand the timeframes and advice being given from and between agencies and Ministers with regard to a follow up visit from EMRIP, where the "stagnation" is occurring and why".

On 20 December 2024, you clarified the scope of your request to emails between Chief Executives and Ministers. Your request has been considered in accordance with the Official Information Act 1982 (the Act).

Te Puni Kōkiri does not hold a "timeline", however in an effort to assist you, this letter provides you with an overview of key events since the initial request for a follow up visit from the Exert Mechanism on the Rights of Indigenous Peoples (EMRIP) in 2023.

On 8 September 2023, the New Zealand Human Rights Commission (the Human Rights Commission) sent a letter of invitation to EMRIP to conduct a follow up visit to Aotearoa New Zealand, copying officials from Te Puni Kōkiri and the Ministry of Foreign Affairs and Trade (MFAT), and members of the National Iwi Chairs Forum, including yourself.

The EMRIP Secretariat (the Secretariat) acknowledged receipt of the letter and noted it would be presented for discussion at the next EMRIP intersessional meeting scheduled for November 2023. On 15 November 2023, the Secretariat informed the Human Rights Commission and all previous email recipients that EMRIP had decided to transmit the request to the Government of New Zealand with a proposal for a mission in the second half of 2024, due to previous country engagement commitments. You were copied into these emails.

On 15 and 17 November 2023, the Secretariat sent a Note Verbale proposing a visit in the second half of 2024 to the Permanent Mission of New Zealand to the United Nations Office and other international organisations in Geneva (the New Zealand Permanent Mission). The Secretariat acknowledged the recent General Election in New Zealand and agreed to wait until all relevant officials were fully briefed in order to discuss with them the nature of the visit and the dates. The Secretariat noted that visits are conducted when Terms of Reference for the mission have been drafted and agreed with all parties involved and nothing will be actioned without the Government's agreement of the Terms of Reference.

The coalition Government was formed in late November 2023 and announced nine targets to help improve the lives of New Zealanders in April 2024. As a result, the focus of government departments efforts shifted to the delivery of the Government's targets.

In February 2024, the Secretariat sought an update from the New Zealand Permanent Mission and undertook to proceed with developing draft Terms of Reference. MFAT provided them to Te Puni Kōkiri on 19 June 2024.

In July 2024, following the United Nations Permanent Forum on Indigenous Issues and the annual EMRIP meeting, officials from Te Puni Kōkiri agreed to develop a briefing paper seeking a coordinated Government response to the request for a follow-up visit. This paper, dated 20 September 2024, is the only document that has been identified in scope of your request and is attached as Appendix A. Some information has been withheld in accordance with the Act on the following grounds:

- section 6(a), which applies to the international relations of the Government of New Zealand;
- section 9(2)(a), which applies to protect the privacy of natural persons;
- section 9(2)(f)(iv), which applies to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials (some information relating to advice that is still under active consideration by the Minister has been withheld to enable the Minister to consider the advice and reach a decision in an orderly manner);
- section 9(2)(g)(i), which applies to maintain the effective conduct of public affairs through the free and frank expression of opinions (expressing and testing ideas freely is an important aspect of policy development); and
- out of scope (the paper addressed two different issues and we have withheld all the information pertaining to the other issue as it does not fall within the scope of the request).

In making the decision to withhold information, I have considered the public interest considerations in section 9(1) of the Act. No other document has been identified within the scope of your request.

On 1 November 2024, the Vice-Chair of EMRIP wrote to the New Zealand Permanent Mission expressing its hope to receive soon the Terms of Reference to progress the country engagement with New Zealand.

I acknowledge that the National Iwi Chairs Forum has regularly been seeking updates from officials. Decisions relating to the EMRIP request for visit are still under consideration by Ministers. Once a decision has been made, we will inform the Secretariat accordingly.

I trust my response satisfies your request.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that Te Puni Kōkiri publishes some of its OIA responses on its website, after the response is sent to the requester. The responses published are those that are considered to have a high level of public interest. We will not publish your name, address or contact details.

If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact us at uia@tpk.govt.nz.

Ngā mihi



Paula Rawiri
Hautū, Te Puni Kaupapa | Deputy Secretary, Policy

Appendix A – documents OIA request from [REDACTED] dated 15 December 2024

Item	Date	Document description	Decision
1.	20 September 2024	<p>Te Puni Kōkiri briefing paper 49385 titled: <i>Requests to visit Aotearoa New Zealand from XXX Expert Mechanism on the Rights of Indigenous Peoples</i></p> <p>Note: Attachment 1 (Draft Terms of Reference from the Expert Mechanism on the Rights of Indigenous Peoples 29 Mei 2024), is withheld in full under section 6(a)</p>	<p>Released with certain information withheld in accordance with the Act under:</p> <ul style="list-style-type: none"> • section 6(a) • section 9(2)(a) • section 9(2)(f)(iv) • section 9(2)(g)(i). <p>Some information was outside the scope of the request.</p>



HEI WHAKATAU | BRIEFING

Requests to visit Aotearoa New Zealand from **out of scope**
Expert Mechanism on the Rights of Indigenous Peoples

Date:	20 Hepetema 2024	Priority	Medium
Classification	In Confidence	Tracking Number	49385

Action sought	Date action required by
It is recommended that you:	
a. 9(2)(f)(iv)	4 Oketopa 2024
b.	
c.	
d.	

Name	Position	Telephone	1 st contact
Paula Rawiri	Deputy Secretary, Policy	027 280 8206	
Jaclyn Williams	Acting General Manager, Development	9(2)(a)	√

Other Agencies Consulted					
<input type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input type="checkbox"/> MHUD	<input type="checkbox"/> Other				

Attachments
1. Draft Terms of Reference from the Expert Mechanism on the Rights of Indigenous Peoples (29 Mei 2024)
2. out of scope
3. 9(2)(f)(iv)

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:



20 Hepetema 2024

Te Minita Whanaketanga Māori

Requests to visit Aotearoa New Zealand from **out of scope** Expert Mechanism on the Rights of Indigenous Peoples

Purpose

1. This paper:
 - a. provides background information on United Nations (UN) independent experts;
 - b. **9(2)(f)(iv)** [redacted]
 - c. [redacted]

Key messages

2. **out of scope** independent UN experts focused on Indigenous rights are seeking to visit Aotearoa New Zealand in early 2025. Aotearoa New Zealand has a standing invitation for UN experts or bodies and, in principle, is prepared to receive any visit upon request. **6(a)** [redacted]
3. **9(2)(f)(iv)** [redacted]
4. [redacted]

Background

United Nations independent experts

5. **out of scope** [redacted]
6. [redacted]

7. out of scope

8. The Expert Mechanism is a UN expert body that provides the UN Human Rights Council with expertise and advice on the rights of Indigenous peoples. The Expert Mechanism has a mandate to undertake country engagement, with a view to facilitating dialogue and providing independent advice. UN experts on Indigenous rights have a particular interest in Aotearoa New Zealand due to the central role of Te Tiriti o Waitangi/ the Treaty of Waitangi. The Expert Mechanism visited Aotearoa New Zealand in 2019. In Hūrae 2024, Valmaine Toki, a law professor at Waikato University, was appointed chair of the Expert Mechanism. She is the first New Zealander to be appointed to this role.

9. The Expert Mechanism is framing its proposed visit as a follow-up from its 2019 visit. At the time, te Minita Whanaketanga Māori was leading work on the development of a plan to implement the UN Declaration on the Rights of Indigenous Peoples (the Declaration) and Te Puni Kōkiri played a central role liaising with the NICF and the Human Rights Commission to prepare for the visit. The visits of ^{out of scope} the Expert Mechanism ^{out of scope} are likely to seek an update on the previous Government's work on a Declaration plan which was driven through the Māori Development portfolio. 9(2)(f)(iv)
9(2)(f)(iv)

10. Officials note that Indigenous issues relate to a range of portfolios and the delegations are likely to seek to meet with a number of Ministers, including Te Minita Whanaketanga Māori, the Minister of Foreign Affairs, the Minister of Justice, the Associate Minister of Justice, the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Treaty of Waitangi Negotiations and the Attorney General.

Communications to date

11. In Hepetema 2023, the NICF and the Human Rights Commission made a formal request for a follow up country engagement mission by the Expert Mechanism. In Noema 2023, MFAT acknowledged the request and agreed to receive draft Terms of Reference.

12. 6(a)

13. out of scope

out of scope

14.

15. On 2 Ākuhata 2024, the NICF addressed Government Ministers at the quarterly hui held in Tāmaki Makaurau. In its presentation, Pou Tikanga asked the Government to invite the Expert Mechanism to undertake a follow up country visit. We understand Professor Mutu (chairperson of Pou Tikanga) raised this issue directly with Minister Goldsmith and it is likely to be discussed again at the next quarterly hui in Oketopa.
16. out of scope requests came through MFAT, including via the Permanent Representative of New Zealand to the UN Office and other international organisations in Geneva. Officials from MFAT and Te Puni Kōkiri discussed the process for seeking a Government response to the requests. MFAT confirmed that, as a well-established practice, relevant lead domestic policy agencies are the appropriate decision-makers for incoming visits of this kind. Accordingly, officials agreed that Te Puni Kōkiri brief you on seeking a coordinated Government response to the requests.

Aotearoa New Zealand policy on visits from UN special procedures

17. The special procedures of the UN Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They are unpaid and elected for three-year mandates with a maximum of six years. While technically not a Human Rights Council special procedure, the Expert Mechanism also has a mandate to perform similar functions.
18. Since 2004, Aotearoa New Zealand has a standing invitation for thematic special procedures to come to visit. This means that the Government, in principle, is prepared to receive a visit from any thematic mandate-holder. Aotearoa New Zealand issued this standing invitation in line with its strong support for the multilateral rules-based system and to demonstrate the importance of promoting and protecting human rights in all countries. Currently, 128 countries have extended a standing invitation to thematic special procedures. The International Human Rights Governance Group convened by the Ministry of Justice recently confirmed this general approach to Special Rapporteur's requests for country visits.
19. 6(a)
6(a) typically, when a request is made, the host Government needs to agree timing and, generally, terms of reference. There is a relatively standard format for formal visits which only take place after confirming the availability of the relevant Ministers and hosting agencies. The visits usually last seven to ten days with two days set aside in the middle for the special procedure to draft a summary report which is then provided to the host country. On the second to last day, they typically meet with the relevant Ministers and on the last day they undertake a press briefing in which they would identify areas for improvement. The visits are paid for by the UN with the main costs to the New Zealand Government being officials' time and any associated travel by officials (should the visits include engagements outside Wellington). There may be scope for shorter visits too based on previous visits.

Comments

Other requests for country visit

20. out of scope

Purpose of the visits of the out of scope Expert Mechanism

21. 9(2)(f)(iv)

9(2)(f)(iv)

9(2)(f)(iv)

9(2)(f)(iv)

22. out of scope

23.

24. 9(2)(f)(iv)

Timing of the visits of the out of scope Expert Mechanism

25. out of scope

but the Expert Mechanism has suggested Hānuere or Pēpuere 2025. Typically, the beginning of the year is a busy time for Ministers with public engagements including the Rātana and Waitangi Day celebrations, leading to Budget announcements in Mei. 9(2)(f)(iv)

9(2)(f)(iv)

26. out of scope

out of scope

9(2)(f)(iv)

out of scope

9(2)(f)(iv)

9(2)(f)(iv)

27. 9(2)(g)(i) out of scope 9(2)(g)(i)
9(2)(g)(i)

28. 9(2)(f)(iv)

29.

Options

30. Te Puni Kōkiri officials have identified three options for your consideration:

a. 9(2)(f)(iv)

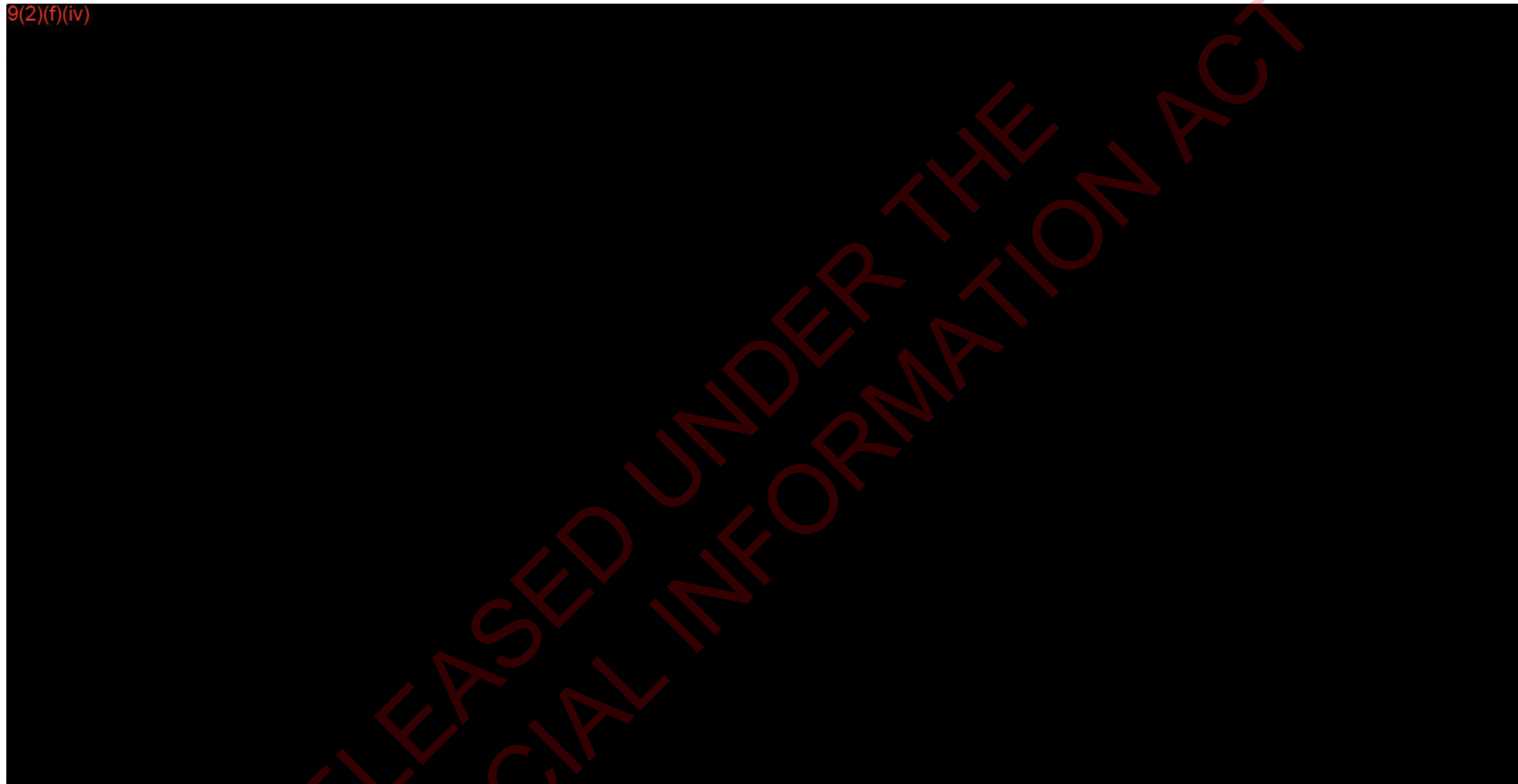
b.

c.

31. The table below outlines the risks and benefits as well as a risk assessment for each option.

out of scope

9(2)(f)(iv)



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32. 9(2)(f)(iv)

Next steps

33. 9(2)(f)(iv)

34. Once a preferred option has been agreed, the Government's response to the requests will be conveyed to the Expert Mechanism and out of scope via MFAT in Geneva who have been liaising with the respective secretariats. Te Puni Kōkiri and MFAT officials will draft responses to out of scope and the Expert Mechanism to confirm the next steps, including proposed timeframes 9(2)(f)(iv)

Consultation

35. The Ministry for Foreign Affairs and Trade, the Ministry of Justice and Te Arawhiti have been consulted on this paper. The Crown Law Office has been informed of the paper.

Recommended Action

36. It is recommended that you:

1. 9(2)(f)(iv)

2.

3.

4.



Paula Rawiri

Paula Rawiri
Hautū, Te Puni Kaupapa | Deputy Secretary, Policy


Hōri Tama Potaka Te Minita Whanaketanga Māori
Date: ____ / ____ / 2024

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