

# Waitangi Tribunal Legislation Review

## Independent Technical Advisory Group

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### Briefing: Update to the Ministerial Advisory Group

**Date:** 28 July 2025

**To:** Hon Tama Potaka – Minister for Māori Development (Chair), Hon Paul Goldsmith – Minister of Justice, Hon Judith Collins – Attorney-General, Hon David Seymour – Associate Minister of Justice, Hon Shane Jones – Minister for Resources

**From:** Bruce Gray KC, Chair, Independent Technical Advisory Group

**Phone:** [REDACTED] Withheld under OIA  
S9(2)(a)

### Purpose

1. This paper provides the Ministerial Advisory Group (**MAG**), with July's progress update on the Waitangi Tribunal Legislation Review (the **Review**) that is being undertaken by the Independent Technical Advisory Group (**ITAG**).

### Background

2. The Review, and the appointment of ITAG was announced on 9 May 2025. The scope of the Review is provided in the Independent Technical Advisory Group – Terms of Reference.<sup>1</sup>
3. ITAG has been undertaking targeted engagement as described in the April 2025 Cabinet paper (SOU-25-MIN-0047 refers). ITAG agreed to engage as widely as possible to learn from iwi, hapū and claimants, peak Māori organisations, and stakeholders and interested parties from Government, the public sector, the judiciary, legal and academic sectors. ITAG also sought written submissions from engagement participants.
4. In addition to these monthly reports to MAG, the Chair of ITAG reports fortnightly to Hon Tama Potaka as the Chair of MAG.

### Status update

5. ITAG is now in phase three of the review and progress is on track to deliver final recommendations to MAG by the end of August 2025, to enable introduction of legislative amendments to the House before the end of 2025.
6. The work programme status update is set out below:

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<sup>1</sup> [Independent Technical Advisory Group - Terms of Reference \(May 2025\)](#)

**Table 1 – High-level review work programme**

Phase	Objective	Approach	Key deliverables	Date	Status
<b>ONE</b>	Establish ITAG, Secretariat, and plan work programme	ITAG induction hui	Induction pack	17 May 2025	Completed
		ITAG hui	Supporting papers	Weekly	Ongoing
	Commence research	ITAG commission Secretariat to undertake research	Research papers commissioned and approved by ITAG	End of June 2025	Completed
		ITAG instruct Crown Law	Legal advice commissioned from Crown Law	26 June 2025	Completed
<b>TWO</b>	Implement targeted engagement plan	Meetings with key stakeholders	Stakeholder database Letters and participant communications Participant insights and meeting notes	26 May to 18 July (now extended to 1 August 2025)	Completed and extended
		Four regional wānanga with iwi and hapū and their representatives	Event management Regional facilitators Participant insights and meeting notes	30 June to 3 July 2025	Completed
		Written submissions	Submissions template distributed to iwi, hapū, post-settlement governance entities and targeted stakeholders	12 June to 3 July 2025 (three weeks)	Completed

Phase	Objective	Approach	Key deliverables	Date	Status
<b>THREE</b>	ITAG consider inputs to the Review	ITAG hui	Analysis, synthesis and drafting of recommendations	Key focus from 7 July to 31 July 2025	Underway
<b>FOUR</b>	Finalise report for MAG	ITAG prepare report for MAG	Draft report and recommendations Final report and recommendations	By 29 August 2025 September 2025	Underway

## Engagement update

7. ITAG has largely concluded the engagement phase of the Review, with an extension applied for a few outstanding online hui and written submissions. ITAG intends to complete the remaining hui in the week of 4 August 2025.
8. Full and final analysis of key themes and insights from hui, wānanga and written submissions is still underway. ITAG intend to provide MAG with a report of engagement when this is complete.
9. ITAG attended all engagement hui and wānanga and have had the opportunity to read all written submissions and the draft analysis of written submissions. It is on this basis that ITAG have deliberated and come to some initial views on likely recommendations.
10. An early indication of what ITAG have heard is provided below, noting that this may be subject to change as the materials are finalised.

### Engagement themes

11. The Tribunal believes the Act is generally fit for purpose but have suggested minor amendments.
12. In relation to the Tribunal's jurisdiction, many submitters expressed the view that legislative change is not necessary. Where changes were proposed, they were generally seen as minor in nature, and submitters suggested these could be addressed through non-legislative fixes, such as Tribunal processes or improving Crown practices, rather than requiring amendments to the Act.
13. Overall, submitters indicated that no substantive legislative change is required in relation to the categorisation and management of claims.
14. There were mixed views on the need for change relating to the Act's interaction with other legislation, though many felt the existing framework continues to serve the Tribunal's role. Some advocated for moving to a standalone statutory framework that better reflects the Tribunal's unique constitutional role under The Treaty/Te Tiriti o Waitangi.

### *Broader issues on resourcing, the scope of the review and the purpose of the Tribunal*

15. Submitters also raised broader issues outside the specific scope areas but relevant to the Review and the Tribunal's long-term role and effectiveness. These include:

- a) that the major barrier to the Tribunal's effectiveness is the resource constraints,
- b) concern and perception that the Review is politically motivated and opposition to the Review resulting in any weakening of the Tribunal's role,
- c) concerns round the scope and timing of the Review, suggestion that the timeframes are too rushed allow for meaningful engagement with Iwi/Māori, or for proper consideration of the Tribunal's purpose and function, and that further consultation is needed on the proposed changes, with many suggesting that any changes to the Tribunal should be co-designed with Iwi and Hapū,
- d) the importance of tikanga within the Tribunal's processes,
- e) praise for the flexibility of the Tribunal's processes, and opposition to any changes limiting flexibility,
- f) a view that the Tribunal's processes are too adversarial,
- g) some favoured more consolidation of parties with essentially the same Kaupapa Inquiry claims (and consequent reduction in the number of counsel and amount of evidence and documentation); especially once the Statement of issues has been settled,
- h) a need for greater Crown accountability for its participation in, and response to the Tribunal's inquiries, and
- i) a need to uphold the Tribunal's quasi-judicial status and independence as a check on executive power.

### **Proposed approach to amendments in scope**

16. ITAG is considering the insights gathered throughout engagement, including written submissions, and relevant research, Cabinet Circulars, case law and historical documentation.

17. ITAG have formed initial views on likely recommendations, in line with their Terms of Reference.

18. ITAG have also formed a view on policy issues that could be further assessed as part of the policy programme in 2026.

19. The direction of thought at this stage may be subject to change and refinement as deliberations continue. ITAG welcome a discussion with you on this early thinking.

20. The recommendations that ITAG are likely to make can be characterised as a significant modernisation of the Treaty of Waitangi Act 1975 (the Act), which is now 50 years old.

21. The intention of the likely recommendations would connect the Act with other mechanisms for the public to hold government accountable, such as the Official Information Act 1989 (OIA), and the Crown's duties to engage with Māori on government policy, which has developed from various instruments such as case law, Tribunal findings, and statute.

22. Since the Act was enacted, there has been an increased use of alternative dispute resolution (ADR) and associated techniques. It may be beneficial to build the use of such tools into the Act.

*Likely recommendations that may require changes to the Act*

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S9(2)(f)(iv)

23. [REDACTED]
24. [REDACTED]
25. [REDACTED]
26. [REDACTED]

*Likely recommendations that could be implemented through changes to the Act or the Waitangi Tribunal Guide to Practice and Procedure*

27. [REDACTED] Withheld under OIA  
S9(2)(f)(iv)
28. [REDACTED]
29. [REDACTED]

*Issues ITAG have considered that are not likely to result in recommendations*

30. [REDACTED] Withheld under OIA  
S9(2)(f)(iv)
31. [REDACTED]
32. [REDACTED]



### *Issues that ITAG consider should be addressed in further policy work to be undertaken in 2026*

33.

[REDACTED]

Withheld under OIA  
S9(2)(f)(iv)

### *Risks and mitigations*

34. The timeframes for the Review have limited the engagement approach, and submitters have expressed concern around this, as described in para 14.c above. ITAG are strongly of the view that any recommendations made by ITAG, whether they remain consistent with current thinking or are amended and refined, should be engaged upon more broadly before they are adopted as legislative amendments.
35. ITAG will continue to apply the identified mitigation approaches as findings are drafted. This includes updated media and communications products, talking points and reactive Q&As, to be provided to Minister Potaka as the Chair of MAG, and the publication of engagement materials, for transparency.
36. Risk assessment is provided to Minister Potaka in fortnightly updates from the Chair of ITAG.

### *Next steps*

37. ITAG are scheduled to meet with Minister Potaka on Tuesday 29 July, ahead of the next MAG meeting.
38. ITAG are receptive to any Ministerial feedback on the contents of this briefing.
39. ITAG are on track to deliver a report, including recommendations, by the end of August 2025.