

**IN CONFIDENCE**

Office of the Minister for Māori Development

Cabinet Social Outcomes Committee

## **Coalition Commitment - Review of the Waitangi Tribunal Legislation**

### **Proposal**

1. This paper seeks agreement to the scope and approach to the National Party and New Zealand First Party coalition commitment to amend the Waitangi Tribunal legislation which is to "amend the Waitangi Tribunal legislation to refocus the scope, purpose, and nature of its inquiries back to the original intent of that legislation."

### **Executive Summary**

2. The Waitangi Tribunal (the **Tribunal**) was established by the Treaty of Waitangi Act 1975 (the **Act**). It has since been subject to several amendments to further support effective Māori Crown relationships. Given the substantial progress on historical claims inquiries (and settlements) and concerns about its current case load, it is timely to review the legislation that determines how the Tribunal undertakes its inquiries.
3. I propose a department-led policy review (the **Review**) led by Te Puni Kōkiri, with a technical advisory panel providing technical advice and assurance. The Review will focus on assessing whether key elements in the legislation are meeting objectives, particularly in relation to the clarity and prioritisation of claims, as well as the differentiation between historical and contemporary claims, and interaction with key legislation.
4. The Review will commence in April 2025 and report back to the Ministerial group in September 2025. I will then update Cabinet on the findings and introduce legislation to amend the Act by December 2025, with the intent to pass in to law any necessary legislative changes this Parliamentary term.

### **Background**

5. The Waitangi Tribunal was established through the Act as a permanent commission of inquiry. The original purpose of the Act was to "make recommendations on claims relating to the practical application of the principles of the Te Tiriti o Waitangi / the Treaty of Waitangi (**Treaty**) and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles".

6. The Act provides that the jurisdiction of the Tribunal to consider claims “*where any Māori claims that he or she, or any group of Māoris...is or is likely to be prejudicially affected, ... , “by any policy or practice (whether or not still in force) adopted by or on behalf of the Crown, or by any policy or practice proposed to be adopted”*. This provides a very wide remit for the Tribunal to hear and inquire into issues relating to acts or omissions of the Crown, make findings, and issue non-binding recommendations.
7. The operation of the Tribunal is required by the Act to hear, with few exceptions, all valid claims submitted to it. Over time the Act has been amended to broaden its jurisdiction and how it undertakes inquiries.
8. From 1975 to 1985 the Tribunal’s jurisdiction was limited to contemporary claims. Subsequent amendments to the Act have sought to further utilise the Tribunal to address remaining historical Treaty breaches and progress towards a post-settlement environment.
9. Currently, the Tribunal can inquire into two types of claims:
  - a. Historical claims - matters that occurred before 21 September 1992, and
  - b. Contemporary claims - matters that occurred on or after 21 September 1992.
10. Since the mid-1990s the Tribunal has grouped generally related claims (by district) for joint inquiry. Initially this was in district inquiries for mainly historical claims. More recently the Tribunal has introduced the Kaupapa Inquiry Programme, which involves grouping claims that raised nationally significant issues affecting Māori as a whole in a similar ways, covering both historical and contemporary claims, and prioritising in order in which they were to be heard. These include claims regarding health, housing and mana wahine.
11. Since 2014, two unanticipated district and three Kaupapa inquiries have been added to the inquiry programme. Progress in two large, complex district inquiries was slower than anticipated and the workload in urgent inquiries, including remedies proceedings, was much heavier than expected. As a result, with priority given to the completion of district and urgent inquiries, Kaupapa inquiries were not able to progress at the pace that was anticipated in 2014. This has contributed to a significant backlog of claims, with claimants waiting several years (sometimes decades) for their claims to be heard.
12. Currently there are 19 inquiries underway, excluding those under urgency. These consist of five district and 13 Kaupapa inquiries, alongside the standing panel to hear remaining historical claims.
13. The Tribunal is progressing its consideration of historic claims. However, it is expected to take another decade to close these out completely with final reports.

#### **The Need for a Review of the Act**

14. There is a perception that the Tribunal is no longer comprehensively meeting the objectives in the legislation nor meeting the needs of Tribunal claimants. Specifically, there is a concern around the workload which may have been intensified due to the number and nature of claims the Tribunal is receiving and hearing, and how the Tribunal prioritises claims.

15. After 50 years it is also timely to review the Tribunal legislation given the vast majority of historical claims have been heard, and the way in which the Treaty (and references to Treaty principles) has been incorporated into legislation and interpretations have evolved. There are concerns about the application of the Parliamentary Privilege Act 2014, and the principles of comity and separation of powers.
16. The existing legislation is inconsistent with the overarching framework for inquiries, specifically the use of the Commissions of Inquiry Act 1908 as opposed to the Inquiries Act 2013.

#### *Waitangi Tribunal's Strategic Direction Review*

17. In 2024, the Tribunal undertook a Strategic Direction review against its strategic direction. The review group was appointed by the Chairperson. The co-chairs were selected by the New Zealand Law Society and the Māori Law Society. Other members were selected based on their depth of experience and their knowledge of Tribunal processes.
18. That review included what practical, procedural and legislative changes might assist the Tribunal to make more efficient, effective and responsible use of its resources.
19. While the Tribunal's review focused on its performance against its strategic direction, there are some findings and recommendations that can be incorporated into this legislative review, for example, addressing resourcing issues.

#### **Scope of the Review**

20. Given the concerns about the number of outstanding cases, Tribunal workload and the conclusion of historical claims, I propose the scope of the Review focuses on the following key areas:
  - a. **Tribunal Jurisdiction**
    - i. **Clarity and prioritisation of claims:** Assess whether section 6(1) of the Act provides sufficient clarity to enable the Tribunal to prioritise claims effectively. Examine the adequacy of the current urgency process in facilitating prompt resolution of claims.
    - ii. **Combined inquiry on claim refusal and urgency:** Review the Tribunal's discretionary power to refuse claims in conjunction with its criteria for granting urgency, ensuring these functions jointly support timely outcomes.
  - b. **Types and Categorisation of Claims**
    - i. **Differentiation between historical and contemporary claims:** Evaluate whether section 6AA of the Act and related provisions provide a clear distinction between historical and contemporary claims.
    - ii. **High-level assessment of the legislative framework:** Provide a concise analysis of whether the legislative framework establishes an effective basis for categorising and managing claims, without delving into the operational specifics of inquiry management.

**c. Interaction with Other Legislation**

- i. **Alignment of legislative frameworks:** Assess whether the current legislative framework—specifically the use of the Commissions of Inquiry Act 1908 versus the Inquiries Act 2013—optimally supports the Tribunal’s functions.
- ii. **Broader legislative considerations:** Identify any additional issues arising from the application of the Parliamentary Privilege Act 2014 and the principles of comity and separation of powers, as matters for future or supplementary consideration.

21. This scope also enables the Crown to consider the findings and recommendations of the Tribunal’s recent Strategic Direction Review.

22. In considering the scope I have considered how the Review can give effect to the coalition commitment to “amend the Waitangi Tribunal legislation to refocus the scope, purpose, and nature of its inquiries back to the original intent of that legislation”. I am confident that by focusing on reviewing the jurisdiction, the types and categorisation of claims, and interaction with other legislation the review can identify how the Act could be amended to better reflect the original intention of the legislation as summarised in paragraph 5.

23. Note, parallel to this Review, the Ministry of Justice is separately progressing analysis and consultation on potential new arrangements for legal assistance to claimants in the Tribunal.

**Process for the Review**

24. The review will be led by Te Puni Kōkiri as a department-led policy process, supported by an external Technical Advisory Panel to provide technical assurance and expertise. This panel will ensure that the findings and recommendations are robust and well-informed. The panel will comprise three or four members appointed by the Secretary of Māori Development.

25. Genuine engagement with Iwi and Māori will be fundamental to the successful outcome of the review and potential legislative changes. Engagement will be undertaken with peak Māori entities like the National Iwi Chairs Forum, the Māori Council, and Te Hunga Rōia Māori o Aotearoa (Māori lawyers’ association) and targeted engagement with Iwi and key Māori organisations that have expertise in Treaty law and legal matters.

26. I propose that a Ministerial Group oversees the Review. I will chair the Ministerial Group, which will include: Hon Judith Collins KC (Attorney General), Hon David Seymour (Associate Minister for Justice), and Hon Shane Jones (Minister for Resources).

27. The Ministerial group will provide strategic oversight and assist in alignment across other Treaty initiatives.

**Timeframes for the Review**

28. I intend for the Review to begin in April 2025, and I will report back to Cabinet in with a recommended response in September 2025. This will enable any recommendations to be considered by Cabinet and progressed, with legislative changes introduced before the end of 2025, and passed within the current Parliamentary term.

## Risks and mitigations

29. I expect some commentators will question the legitimacy of the policy work, for example, that the scope has been predefined, and the outcomes have been predetermined. To manage this risk Te Puni Kōkiri will provide an engagement roadmap, including the names of some of the organisations proposed for engagement, and demonstrate how feedback will inform decision-making.
30. Objectors may assert that the compressed timeframes reduce the opportunities for deep and/or broad engagement with Māori. I did consider a wider scope for review and a review led by an external independent panel. While a wider scope might facilitate different engagement with Iwi and Māori, it would not meet the coalition commitment as it could not be conducted within this Parliamentary term.
31. My expectation is that officials will engage with Iwi and Māori in a deliberate matter at the outset and throughout the Review. The engagement will be framed as iterative and targeted, with built-in feedback loops throughout. This engagement is necessary to enable decision-making to effectively consider Iwi and Māori perspectives, particularly as participants in the Tribunal.
32. Some commentators may interpret the review as being a politically motivated restructuring of a quasi-judicial body. It may result in legal challenge and Crown reputational damage. By engaging directly with Iwi and Māori organisations, current and former Tribunal members, frontloading legal analysis with Treaty law experts, and clearly articulating that the Review's intention is not to weaken the Tribunal's role, some of these risks (including litigation risks) can be mitigated.
33. I expect in the context of this review that Iwi, Māori and other stakeholders will raise other matters concerning the form and function of the Tribunal that fall outside the scope of the Review. It will be important to note and consider this feedback but any policy work to assess that feedback can be progressed in 2026.
34. It will also be critical to ensure appropriate resourcing of the Review to ensure that it is concluded within this Parliamentary Term.
35. Given the risks relating to the Review, my office alongside Te Puni Kōkiri will develop and implement a communications plan that enables clear and effective messaging around the Review. This will include engaging with peak Māori bodies early and providing Ministers with key messages to support any engagements.

## Financial Implications

36. The costs of conducting the Review are expected to be met within Te Puni Kōkiri baselines. The costs of the Technical Advisory Panel are estimated to be \$100,000. There will be other resource implications for Iwi and Māori groups to resource engagement and obtain expert advice on the potential legislative implications. Te Puni Kōkiri may need to backfill resource to attend to other Government priorities.

### **Legislative Implications**

37. There are no legislative implications of this Cabinet paper. Any legislative changes will be considered as part of the planned report back to Cabinet in September.
38. The Parliamentary Counsel office will provide preliminary advice on the nature and scale of the legislative changes required in the September Cabinet paper.

### **Regulatory Impact Statement**

39. There are no regulatory impacts in this proposal, and therefore Cabinet's impact analysis requirements do not apply. For any regulatory proposals that arise from the Review, a Regulatory Impact Statement will be completed as appropriate.

### **Treaty of Waitangi Implications**

40. A review of the Tribunal's functions and processes to ensure they remain fit for purpose in an evolving post-historical inquiry and post-settlement era, is a process that forms part of the Crown's good governance and stewardship responsibilities. The Review provides an opportunity for a continuing constitutional dialogue between the Crown and Iwi/Māori, and give effect to the Crown's kāwanatanga obligations under Article 1.
41. The consideration of the Tribunal's functions and processes to assess whether there are more effective and efficient pathways for claimants to seek relief will further support the Crown in upholding its obligations under the Treaty.
42. Any substantive changes to the Act must also be consistent with the Crown's obligations to actively protect tino rangatiratanga under Article 2. As such, a further analysis will need to be undertaken following the release of the recommendations to assess relevant implications.
43. The Tribunal sits within a broader system of Treaty-based mechanisms that stretch across policy development, operational policy, dispute resolution, as well as monitoring and evaluation. As such, the Review is occurring at a time when relationships within this system are being tested, and impacted by, a range of related workstreams. I recognise the need for ongoing coordinated management of work across this system.

### **Human Rights**

44. Any proposals that result from the Review will undergo analysis to identify any implications on the Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Use of External Resources**

45. Te Puni Kōkiri will contract individuals for the Technical Advisory Panel. Additionally, Te Puni Kōkiri is assessing how to meet the ambitious timeframes for this work. All external resource costs will be met within Te Puni Kōkiri baselines.

### **Consultation**

46. Te Puni Kōkiri has consulted with officials from the Ministry of Justice, Te Tari Whakatau: The Office of Treaty Settlements and Takutai Moana, Parliamentary Counsel Office, the Treasury and Te Kawa Mataaho Public Service Commission on this Cabinet paper. The Department of the Prime Minister and Cabinet was informed.

47. I have spoken with the Chairperson of the Waitangi Tribunal and a co-Chair of Pou Tikanga regarding the Review.

### Communications

48. My office, in coordination with the Prime Minister's Office, will manage public statements. I intend to issue a media release on behalf of the Ministerial group regarding the Review following Cabinet decisions. This will be coordinated to coincide with the Minister of Justice's media release on the Legal Aid Review.

### Proactive Release

49. This paper will be proactively released, in accordance with the Official Information Act 1982, with any appropriate redactions. The Cabinet paper will be released on Te Puni Kōkiri's website alongside key documents relating to the review shortly following the announcement.

### Recommendations

50. The Minister for Māori Development recommends that the committee:
1. **Note** the with the expected conclusion of historical inquiries but an increasing workload, it is timely to review the Treaty of Waitangi Act 1975.
  2. **Note** that the National Party and New Zealand First coalition commitment to "amend the Waitangi Tribunal legislation to refocus the scope, purpose, and nature of its inquiries back to the original intent of that legislation."
  3. **Agree** to the scope for the departmental policy review of the Waitangi Tribunal legislation consisting of:
    - a. Tribunal Jurisdiction;
    - b. Types and Categorisation of Claims; and
    - c. Interaction with Other Legislation.
  4. **Note** Iwi, Māori and other organisations and individuals may raise other issues relating to the form and function of the Waitangi Tribunal in the context of this Review and those matters may be considered as part of wider policy work in 2026.
  5. **Agree** that the Review will be undertaken by Te Puni Kōkiri, supported by a Technical Advisory Group, which will report back to the Ministerial group with recommendations by September 2025.
  6. **Note** that the Secretary for Māori Development will appoint the Technical Advisory Panel based on feedback from the Minister for Māori Development and the Minister for Resources.
  7. **Agree** that the Ministerial group of Minister for Māori Development (Chair), Attorney General, Minister for Resources, and Associate Minister of Justice (Hon Seymour) oversee the review process.

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8. **Note** the range of work underway across the system in relation to Treaty of Waitangi/Te Tiriti o Waitangi matters.
9. **Invite** the Minister for Māori Development to report back to Cabinet following the conclusion of the Review, with proposals to address the recommendations of the review by the end of September 2025.
10. **Note** the intention to introduce legislation to amend the Treaty of Waitangi Act 1975 before the end of 2025.

AUTHORISED FOR LODGEMENT

Hon Tama Potaka

Minister for Māori Development

Released by the Minister  
for Māori Development

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