

# Waitangi Tribunal Legislation Review

## Independent Technical Advisory Group

### Terms of Reference

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#### Background and purpose

In 1975, the Treaty of Waitangi Act established the Waitangi Tribunal. The Waitangi Tribunal was established to make recommendations on claims relating to the practical application of the Treaty of Waitangi/Te Tiriti o Waitangi (**the Treaty**) and to determine whether certain matters are inconsistent with the principles of the Treaty. Amendments to the Treaty of Waitangi Act in 1985 enabled the Waitangi Tribunal to consider historical claims back to 1840.

Since the establishment of the Waitangi Tribunal, it has addressed over 2000 contemporary and historical claims through its inquiries. The Waitangi Tribunal has completed over 130 inquiries, including 37 district inquiries and issued over 150 reports. In that time, notable progress has been made in settling historical claims between iwi and Māori and the Crown. Over 100 deeds of settlement have been signed, with approximately 40 deeds of settlement remaining with 28 of those already being progressed.

There continues to be significant outstanding claims and inquiries. As of 6 February 2025, there are 19 inquiries underway (excluding urgent inquiries), with five of these being district inquiries, 13 kaupapa and priority inquiries as well as a standing panel for remaining historical claims. It is unlikely the existing historical and contemporary claims will be completed by 2035. This is due to several challenges, including Waitangi Tribunal member workload, research funding and claimant readiness.

The legislation sits within the portfolio of the Minister for Māori Development. Given the legislation has implications for a range of portfolios, the review is being commissioned by a Ministerial Group led by the Minister for Māori Development, alongside the Attorney General, the Minister of Justice, Minister for Resources, and Associate Minister for Justice (Hon Seymour). Ministers have decided to utilise external independent reviewers with the support of a secretariat housed by Te Puni Kōkiri to undertake this review.

#### Coalition Agreement

The 2023 Coalition Agreement between the National Party and New Zealand First Party committed the Government to reviewing the Waitangi Tribunal legislation. To give effect to this commitment, the Government will undertake an independent focused review (**the Review**). The review will assess whether certain legislative provisions are effective in achieving key objectives of the Waitangi Tribunal in accordance with these Terms of Reference.

# Objectives

The Review will assess whether key elements of the legislation are:

- Effective in meeting the intent of the legislation, including the ability to address priority matters.
- Enabling claims to be addressed in a thorough and timely manner.
- Effective in supporting historical claims to be addressed and contribute to timely settlements.
- Effective at addressing contemporary inquiries<sup>1</sup>.
- Supporting positive relationships between iwi and Māori and the Crown and outcomes, including the distinctive rights and interests of iwi and hapū, as well as Māori as New Zealand citizens.
- Leading to improved policy processes and outcomes for iwi, hapū and Māori development.
- Identify, within the scope of this Review, any matters that should be prioritised for legislative amendment in the current Parliamentary term and provide advice on sequencing or staging of any further amendments that may warrant consideration beyond 2025.

## Scope

### 1. Tribunal jurisdiction

- Clarity and prioritisation of claims:  
Assess whether section 6(1) of the Treaty of Waitangi Act 1975 provides sufficient clarity to enable the Tribunal to prioritise claims effectively. Consider the extent to which the current urgency process facilitates timely resolution of claims.
- Interaction between claim refusal and urgency:  
Review the Tribunal's discretionary powers under section 7 to decline claims, alongside its criteria for granting urgency. Examine whether these powers, in combination, effectively support the delivery of timely outcomes.

### 2. Types and categorisation of claims

- Historical and contemporary claims:  
Evaluate the clarity and utility of section 6AA and related provisions in distinguishing between historical and contemporary claims. Consider whether this distinction is sufficiently robust to support coherent policy and operational treatment.
- Legislative framework for categorisation:  
Provide a high-level assessment of whether the legislative framework offers a sound and effective basis for the categorisation and management of claims. This should focus on legislative clarity and intent, without delving into operational processes.

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<sup>1</sup> For the purposes of the Terms of Reference, contemporary claims and inquiries includes kaupapa claims and inquiries.

### 3. Interaction with other legislation

- Application of inquiry powers:

Assess whether the Tribunal's investigatory powers, exercised under the Commissions of Inquiry Act 1908, remain appropriate and aligned with the principles of parliamentary privilege, separation of powers, and responsible government, particularly in relation to how these powers interact with the Crown's policy-making functions.

## Independent Technical Advisory Group (ITAG)

The ITAG will comprise four external independent reviewers. One of the reviewers will be appointed as Chair of the ITAG.

The independent reviewers will be drawn from a range of backgrounds and will have deep knowledge and experience in areas such as:

- The roles and responsibilities of the different branches of government, and the context within which they operate.
- The Treaty and its application in government policy and regulatory design.
- The Treaty settlement processes and the implementation of settlements.
- The intricacies of iwi and Māori and Crown relationships, including approaches that deliver benefits for iwi, hapū, Māori, and all New Zealanders.

### Process

The ITAG will consider:

- Waitangi Tribunal reports and publications, academic research, and relevant data.
- Perspectives from representatives of Parliament, the Executive, the Judiciary, the Waitangi Tribunal, claimants, and legal practitioners. This includes designing and implementing an approach to iwi and hapū engagement.
- In addition to assessing the effectiveness of current legislative provisions, the ITAG may make recommendations on how legislative amendments should be prioritised. This includes advising which matters could be progressed in the short term and which may require further consideration in a future legislative cycle.

The ITAG will not consider:

- The funding of the Tribunal, or the funding of its members or participants such as counsel, claimants, and witnesses.
- The Tribunal's interpretation of the Treaty and its principles.
- Any ongoing or lodged claims before the Tribunal.

The ITAG will be supported by a dedicated secretariat hosted within Te Puni Kōkiri. The secretariat will work under the direction of the ITAG and provide impartial analytical, legislative, and engagement expertise throughout the Review. This includes supporting the

ITAG to scope research, synthesise evidence, coordinate stakeholder engagement, and prepare draft outputs for its consideration.

The ITAG, supported by the secretariat, will comply with all relevant legislative requirements, including the Privacy Act 2020, Official Information Act 1982 and the Public Records Act 2005.

## Timeline

The ITAG will undertake its work between May and September 2025.

The ITAG will report its findings and recommendations to the Ministerial Advisory Group (**MAG**) comprising the Minister for Māori Development (Chair), the Attorney-General, the Minister of Justice, the Minister for Resources and the Associate Minister of Justice by the end of August 2025.

This timeline will enable Cabinet consideration of the ITAG's advice and the introduction of any legislative amendments before the end of the 2025 calendar year.

The objective is to pass any required legislative changes within the current parliamentary term.

The ITAG will provide regular updates to the Minister for Māori Development, who will keep the ministerial group informed and seek their direction on key issues as they arise. The ITAG will also provide updates to MAG at key milestones to support governance alignment, validate emerging recommendations, and ensure political steerage throughout the review.

## ITAG members

There are four members of ITAG. Members bring a broad range of expertise in governance, law, tikanga Māori, claimant advocacy, post-settlement development, and policy and implementation.

Name	Expertise	Summary of experience
<b>Bruce Gray KC (Chair)</b>	Legal, Māori development	Senior King's Counsel with extensive experience in civil and public law, including judicial reviews and inquiries. Notably represented the Anglican Church in the Abuse in Care Inquiry. Appointed Queen's Counsel in 2006.
<b>David Cochrane</b>	Public policy, legislation	Senior public policy advisor with experience in Treaty policy, legislative development, and Cabinet processes, bridging legal and kaupapa Māori perspectives.
<b>Dion Tuuta</b>	Strategy, post-settlement governance	Chief Executive of Te Kotahitanga o Te Ātiawa Trust. Former CEO of Te Ohu Kaimoana (2016–2020) and Parininihi ki Waitōtara Incorporation (2008–2016). Began his career as a historian for the Waitangi Tribunal and served as a Treaty negotiator for Ngāti Mutunga. Holds a Master's in History from Massey University.

<b>Kararaina Calcott- Cribb</b>	Senior Māori policy	Former Deputy Chief Executive at Te Kāhui Kāinga Ora and Chief Executive of Te Kōhanga Reo National Trust. Brings strong Treaty and implementation experience, with deep kaupapa Māori grounding and credibility across iwi and the public sector.
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