

Terms of Reference [for option 2]**Independent Focused review into the Treaty of Waitangi Act 1975****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 and to determine whether certain matters are inconsistent with the principles of the Treaty of Waitangi/Te Tiriti o Waitangi. 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. In that time, notable progress has been made in settling historical claims between Māori and the Crown. Over 100 deeds of settlement have been signed, with approximately 38 deeds of settlement remaining with 28 of those already being progressed.

The 2023 Coalition Agreement 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.

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.

Objectives

The review will assess whether key provisions within the legislation are:

- Effective in meeting the intent of the legislation and its provisions,
- Enabling of claims to be addressed in a thorough and timely manner,
- Effective in supporting historical claims to be addressed and contribute to timely settlements,
- Supporting a positive Māori Crown relationship and outcomes, including the distinctive rights and interest of iwi and hapū, and
- Leading to improved policy processes and outcomes for Māori development.

Scope

The review will consider the following provisions:

Jurisdiction

- The Tribunal's threshold for claims to be considered, namely the acts or omissions that are considered within claims.
- The Tribunal's ability to refuse claims and whether there is sufficient provision for the Tribunal within legislation. This includes the ability to assess whether there are more efficient and effective means than an inquiry to address all or part of a claim.
- The Tribunal's ability to appropriately scope, refine and address kaupapa inquiries.
- The Tribunal's threshold to consider applications for urgency, including exploring whether there are more effective pathways to seek relief.

Nature of claims

- The distinction between historical and contemporary claims and whether there is sufficient differentiation between these two forms of claims.
- The interpretation of legislated settlements and what they exclude from consideration in Tribunal claims and whether greater clarity is needed.
- The types and categorisation of contemporary claims being considered and whether the legislation is sufficient in providing a legislative framework to triage and address these.

Interaction with other legislation

- The application of the Commissions of Inquiry Act 1908 and whether this is an appropriate legislative framework for the Waitangi Tribunal, including whether the Tribunal should be subject to the Inquiries Act 2013.
- The application of the Parliamentary Privilege Act 2014 and the principles of comity and separation of powers, including whether further clarity is required in the Treaty of Waitangi Act on the interaction of these.

Implementation of recommendations

- The improvements that could be made to section 8(l) of the Treaty of Waitangi Act 1975 in terms of supporting progress through providing transparency and accountability relating to the response to Waitangi Tribunal recommendations.

Independent review panel

The independent review panel will comprise of three external independent reviewers. One of the independent reviewers will be appointed as the Chair of the independent review panel.

The external independent reviewers will come from a range of backgrounds, while having a strong understanding and experience in matters relating to:

- The roles, responsibilities of the different branches of government and the context to which they operate within.
- The Treaty of Waitangi/Te Tiriti o Waitangi and its application in government policy and regulatory design.
- The Treaty of Waitangi/ Te Tiriti o Waitangi settlement processes and the implementation of settlements.
- The intricacies of the Māori Crown relationship, including approaches that create benefits for Māori and all of New Zealand.

Process

The independent review panel will consider:

- Waitangi Tribunal reports and publications, academic research, and relevant data, and
- Perspectives from representatives of the Parliamentary/legislative branch of government, Executive branch, Judiciary, the Waitangi Tribunal, claimants, and legal practitioners.

The independent review panel will not consider:

- The funding of the Tribunal and its members and participants such as counsel, claimants and witnesses.
- The Tribunal's interpretation of the Treaty of Waitangi/ Te Tiriti o Waitangi and its principles.
- Any ongoing or lodged claims to be considered by the Tribunal.

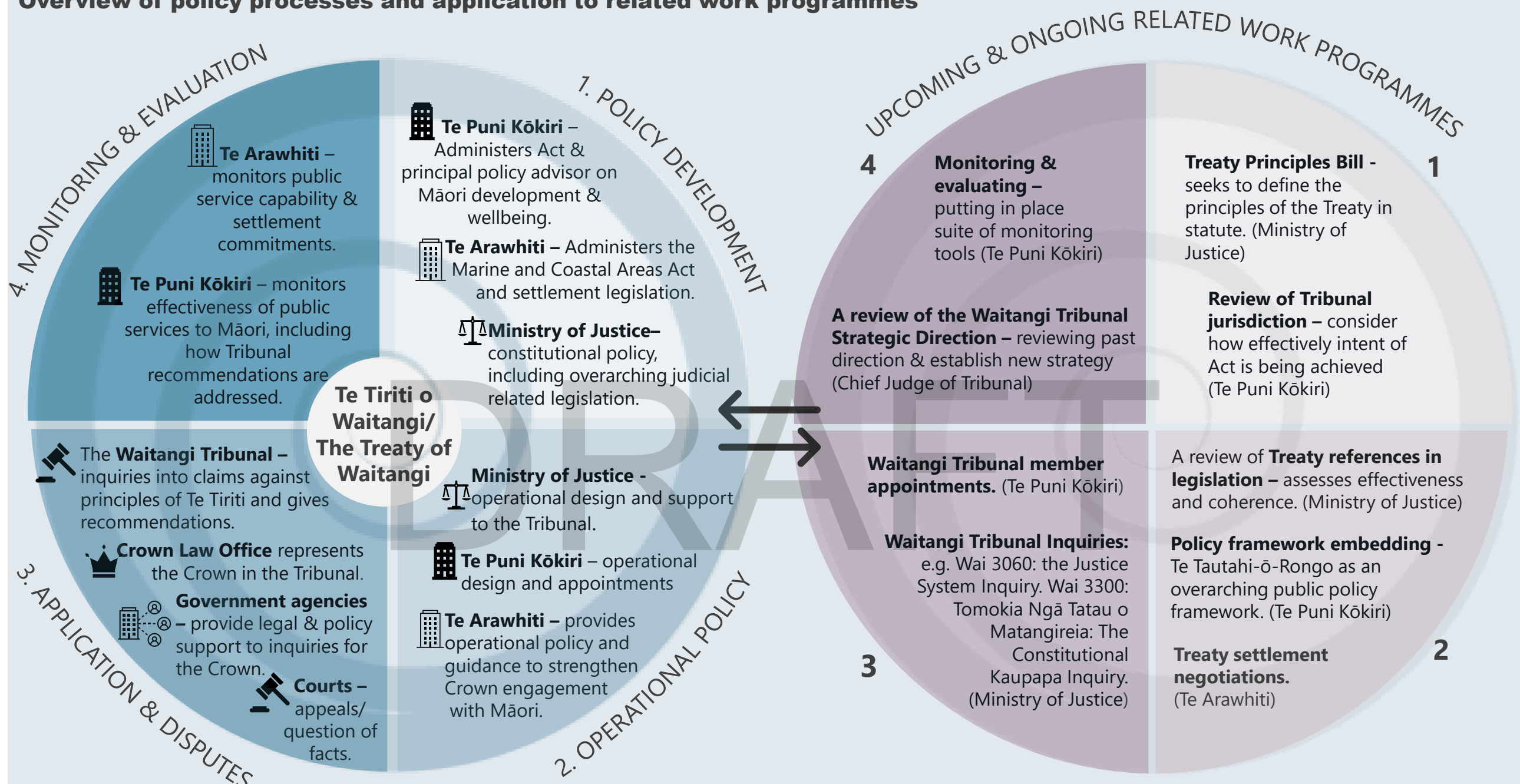
The independent review panel, supported by the secretariat, will effectively implement all legislative requirements, including the Privacy Act 2020, Official Information Act 1982 and the Public Records Act 2005.

Timeline

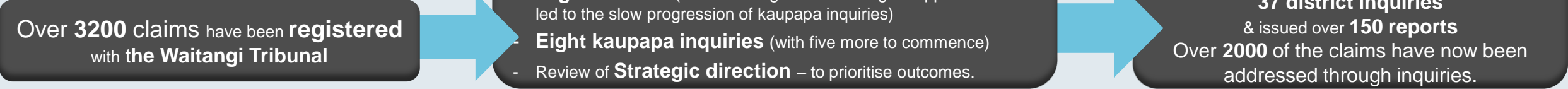
The independent review will report back to the Ministerial Group of the Minister for Māori Development, the Attorney General, the Minister of Justice, Minister for Resources, and Associate Minister for Justice (Hon Seymour) in May 2025.

Systems landscape of the Te Tiriti o Waitangi/Treaty of Waitangi

Overview of policy processes and application to related work programmes



Scale of work to date:



Overarching options and considerations for the review

The options assume that the review will be a **Government-led review** undertaken by an **independent panel**. The review **will begin and be concluded within this financial year** to enable any recommendations to be considered and addressed this Parliamentary term. The panel will be supported by a secretariat. The cost estimate for the review is estimated to be \$0.3m-\$0.4m. If option four is preferred, further timing and cost estimates would be provided given the range of variables. A Ministerial Group (existing or new) would be utilised to respond to the review.

Option	Scope	Considerations for the panel	Process
Option 1: Review of substantive amendments to the Act	Any substantive amendments made to the Act since 1975, namely the ability for the Tribunal to: <ul style="list-style-type: none"> Consider historical claims (from 1840-1992). Make binding recommendations for the return of Crown Forest Land, railway lands, state-owned enterprise land, and/or land transferred to educational institutions. It may include amendments that removed the Tribunal's ability to: <ul style="list-style-type: none"> Recommend the return or purchase by the Crown of any private land, other than that covered by covenants, and Consider historical claims lodged after 2008 or from settled groups. 	Assess whether the substantive amendments to the Act have been effective in: <ul style="list-style-type: none"> Meeting the original intent to establish a "Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty". Enabling claims to be resolved in a timely and robust manner. 	For all options: <ul style="list-style-type: none"> Cabinet approval of terms of reference – September 2024. Establishment of panel – October 2024. Panel to consider: <ul style="list-style-type: none"> Documents outlining how the provisions have been implemented and their effect. Perspectives of the Tribunal, expert witnesses, Crown, Claimants and their representatives. Completed report – May 2025.
Option 2: Focused review of key elements of the Act	Specific elements of the legislation and how they are operationalised. This could focus on one, or more, of the: <ul style="list-style-type: none"> Scope of claims that can be considered. Membership of the Tribunal. The scope, effect and monitoring of the Tribunal's recommendations. 	Dependent on the focus, assess how the Act has been effective in: <ul style="list-style-type: none"> Meeting the original intent of the Act Enabling claims to be resolved in a timely and robust manner. Leading to improved policy design, processes and outcomes. 	Panel to consider: <ul style="list-style-type: none"> Documents outlining how the provisions have been implemented and their effect Perspectives of the Tribunal, expert witnesses, Crown, Claimants and their representatives. Completed report – May 2025.
Option 3: Review to modernise the Act	Given the resolution of a significant number claims and settlements alongside the increase in complexity and urgency of claims, ways to modernise the Tribunal's inquiries and legislative processes, including: <ul style="list-style-type: none"> How the Act would need to be amended to better adapt to the types of claims it receives. Ensuring that all remaining historical claims will be heard and reported on in a timely manner. How Tribunal recommendations are made, considered and monitored. 	Assess how effective the Act is to address the types of claims the Tribunal receives, including: <ul style="list-style-type: none"> Legislative barriers, lack of clarity or provision to support the effective and efficient resolution and addressing of claims. Further dispute resolution processes that would enable claims to be addressed, to varying degrees, before being considered by the Tribunal. Operational barriers to the efficiency and effectiveness of the Tribunal. 	Panel to consider: <ul style="list-style-type: none"> Documents outlining how the provisions have been implemented and their effect Perspectives of the Tribunal, expert witnesses, Crown, Claimants and their representatives. Completed report – June 2025.
Option 4: Future-focused review of the Act	The panel would be charged with a broad terms of reference . This option would broadly assess the next evolution of the Waitangi Tribunal in a post-settlement era. This would include: <ul style="list-style-type: none"> A comprehensive review of the form, role, purpose, functions, jurisdiction and operation under the Act. The concurrent review of the Tribunal's Strategic Direction 2014-2025 will also inform recommendations made by the panel.	Assess the future role of the Tribunal in a post-settlement era. By taking a wider-lens approach to this review, it will identify: <ul style="list-style-type: none"> How the Tribunal can evolve to support a strong Māori Crown relationship that leads to broad benefits for Māori and New Zealand. How the Tribunal would be a world-leading mechanism in addressing indigenous and government disputes. 	Panel to consider: <ul style="list-style-type: none"> Documents identifying emerging priorities and future issues for the Tribunal. Domestic or international models or research outlining good practice. Perspectives of Tribunal, expert witnesses, Crown, Claimants and their representatives. As well as broader Māori perspectives. Completed report – December 2025.