

HEI WHAKATAU | BRIEFING

Waitangi Tribunal Legislation Review - draft Cabinet paper

Date:	18 Mahuru 2024	Priority	High
Classification	Subject to Cabinet Decisions: In Confidence	Tracking Number	49593

Action sought	Date action required by
It is recommended that you: 1. Provide feedback on the attached draft Cabinet paper; 2. Agree to Ministerial and Agency consultation on the draft Cabinet paper, subject to any feedback from you, commencing on 30 Mahuru 2024	25 September 2024

Contact for telephone discussion (if required)				
Name	Position	Telephone	Mobile	1 st contact
Laine Fisher	Policy Manager, Te Pae Tawhiti		S 9(2)(a)	✓
Paula Rawiri	Deputy Secretary, Policy			

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 Cabinet paper - Coalition Commitment - Review of the Waitangi Tribunal Legislation 2. Draft Terms of Reference for the Waitangi Tribunal Legislation Review 3. Te Tiriti o Waitangi/The Treaty of Waitangi Systems Landscape A3
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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 Withdrawn |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:



18 September 2024

Te Minita Whanaketanga Māori

Waitangi Tribunal Legislation Review - draft Cabinet paper

Purpose

1. To seek your feedback on the attached draft Cabinet paper relating to the Waitangi Tribunal legislation review. Subject to your feedback, we also seek your approval to undertake Ministerial and agency consultation on the draft Cabinet paper and attachments.

Background

2. Earlier this month, we briefed you on the process to establish the review, namely the finalisation of the Terms of Reference, the appointment of the panel members and the commencement of the review (BP 49505 refers).
3. You have indicated your preferred timing and approach to these matters, which have been reflected in the draft Cabinet paper (**attachment one**).

Finalisation of the Terms of Reference

4. The draft Cabinet paper seeks Cabinet approval to the Terms of Reference for the Waitangi Tribunal legislation review. We seek your feedback on the draft Cabinet paper by 25 Mahuru 2024. This will enable us to address any feedback and provide an updated version to your office ahead of Ministerial and agency consultation. This consultation is scheduled for 30 Mahuru through to 11 Whiringa-ā-nuku 2024.
5. The Cabinet paper will attach the Terms of Reference (**attachment two**) and Te Tiriti o Waitangi/The Treaty of Waitangi systems landscape A3 (**attachment three**) to support the Cabinet discussions with Ministers. The A3 provides an overview for Ministers who might not have visibility of the key work programmes related to Te Tiriti o Waitangi/ The Treaty of Waitangi. Being able to see this overall picture will also support any discussions on how to continue to manage activities across portfolios.
6. We have updated the Terms of Reference, in accordance with your direction, as outlined in the table below:

Change – agreed to in previous briefing	Location in Terms of Reference
Refining the wording relating to review of the Tribunal's powers ' <i>to address contemporary claims</i> '.	Page two – final paragraph on jurisdiction.
End date for the review amended to June 2025 (previously May 2025).	Page three - final paragraph on timelines.

Appointment of the Panel Members

Process to appoint

7. The draft Cabinet paper seeks delegated authority for you to appoint the panel in consultation with the Ministerial group and the Minister for the Public Service, rather than seeking Cabinet approval on the appointments. This approach recognises the time constraints and iterative nature of these types of appointments. Accordingly, it will enable the review to commence this calendar year. The process would involve us providing you with a briefing indicating your preferred candidates, which would then be forwarded to the respective Ministers for their agreement. Returning to Cabinet for a full approval process will likely result in the review commencing in 2025.
8. The Minister for the Public Service is required to be consulted on any appointments outside of the Cabinet Fees Framework. As such, we have included the Minister as part of the consulting group given the potential for fees to be outside the Framework.

Nominations for Appointment

9. Your Office has provided four candidates for consideration: S 9(2)(a) [redacted] We have undertaken an assessment of your recommended candidates based on the criteria in the terms of reference. Our analysis of their suitability is based on information that is publicly available.
10. In our view, 3 out of the 4 candidates meet the criteria for appointment. Given the limited publicly available information on S 9(2)(a) [redacted], we were unable to make a complete assessment of her suitability for this role. As part of the appointment process following Cabinet approval of the Terms of Reference, we would provide CVs and brief biographies to you and delegated Ministers to highlight their alignment with the criteria.
11. You have also asked us to consider alternative recommendations. We consider that many of the strong candidates for the roles have made public statements in the past year about the Waitangi Tribunal's role. As such, it would be difficult for these people to be on the panel as it is likely there will be a public perception of preconceived findings. This would then limit the effectiveness of the Review.
12. We have identified people who could fill the roles, but they have varying degrees of Waitangi Tribunal related work underway which would need to be further considered in relation to management of conflicts, such as S 9(2)(a) [redacted] As highlighted in the previous briefing, we recommend that the National Iwi Chairs Forum (NICF) are also asked for nominees. This would recognise the partnership role with iwi and, for the partnership, the importance of the effectiveness of the Waitangi Tribunal. You noted, in your feedback, general agreement with this noting the need for Ministerial consultation on this point. We will seek your direction on this following Cabinet approval of the Terms of Reference.

Remuneration and cost of the Review

13. The Cabinet Fees Framework provides the standard for fees paid to members of bodies in which the Crown has an interest. However, in exceptional circumstances fees can be outside of this framework.

14. We have discussed the approach to remunerating the Panel (including the Chair) with the Public Service Commission Te Kawa Mataaho (the Commission). The Commission considers that given the key factors for determining the fees (ie skills, scope, complexity and public interest) it is likely that the members of the Panel will be paid at the top end of the fees range or, given its exceptionality, there may be a case for the fees to be outside the Cabinet Fees Framework.
15. We consider that, given the exceptionality, there is a case for fees being above the Cabinet Fees Framework. Typically, in reviews with such profile, the daily fees are a key part of the negotiations with any potential panel members in seeking their agreement to undertake the review. As such, we would recommend using the top daily fee range as a starting point for discussions.
16. The cost of the Panel daily fees forms approximately 90% of the cost of the review. Our high range cost modelling for the review is \$500,000 and based off being 20% above the highest Cabinet Fees Framework daily rate. If the daily fees are higher, we would need to look at cost savings elsewhere (eg travel) in the Review to stay under our high estimate.
17. The table below provides the Cabinet Fees Framework highest fee range and the potential cost that we have modelled our costs on.

Level	Daily fees range – chair	Daily fees range – members
Cabinet Fees Framework	\$594 - \$1,265	\$446 - \$952
TPK high range costing	\$1,500 (+18%)	\$1,150 (+20%)

18. Subject to Cabinet agreement on the delegated authority, we will advise you further on the costing and consultation process.

Commencement of the Review

Alignment with the review of the Tribunal's Strategic Direction

19. The Waitangi Tribunal's review of their strategic direction is progressing on similar timeframes to this Review. The Waitangi Tribunal aims to have their strategic review completed by the end of this financial year.
20. We note there has been some consultation with Chairperson of the Waitangi Tribunal on the timing for their review. As previously advised, given the strategic direction is an operational matter, we do not consider it would be appropriate for involvement in this process itself.
21. The Panel will be required to engage with the Waitangi Tribunal as part of its process to inform its findings. We will work with the Ministry of Justice to form shared key messages on the respective reviews for Ministers and the Waitangi Tribunal.
22. Following Cabinet approval of the Terms of Reference, we recommend that you write to the Chairperson of the Waitangi Tribunal to inform them of the Review and key elements for their awareness. We would work with your Office, following Cabinet approval, to undertake this.

Establishing the Secretariat

23. The panel will be supported by a secretariat resourced by Te Puni Kokiri. We anticipate the secretariat will provide a range of administrative and support services to the panel, ranging from inquiry facilitation, engagement planning, research, and report writing.
24. Te Puni Kokiri will absorb the costs of the Secretariat from its baselines. The other additional costs incurred by the secretariat will relate to travel and sundries to support the engagement throughout the review.

25. Given resourcing pressures across key agencies, we expect that it will be difficult to second staff from other agencies. However, we will establish processes to ensure that the advice provided to the Panel reflects the position of the relevant government agencies.

Role of Crown Law

26. The Secretariat will work with Crown Law Office in providing key pieces of advice to the Panel, particularly in relation to ensuring legal and constitutional risks are well-managed. Inclusion of the Attorney-General in the Ministerial Group is also an important component of the review structures to support connections across portfolios.

Next Steps

27. The overall timeframes for the Review are as follows:

Milestone	Date
Ministerial/coalition/agency consultation	30 Sept – 11 October
Lodge	17 October
Social Outcomes (SOU) Cabinet Committee	23 October
Cabinet	29 October (Labour Day on 28 th)
Give effect to Iwi, hapū, Māori input approach based on Cabinet's decision	Post Cabinet
Review commences	26 November 2024
Review concludes	27 June 2025
Post review - Te Puni Kōkiri provides you with policy advice on Review findings	July 2025
Post review – You determine next steps and take approach to Cabinet	August 2025

Recommended Action

1. It is recommended that you:

1. **Provide** feedback on the attached draft Cabinet paper;
2. **Agree** to Ministerial and Agency consultation on the draft Cabinet paper, subject to any feedback from you, commencing on 30 Mahuru 2024.

Yes / No



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

Hon Tama Potaka
Te Minita Whanaketanga Māori

Date: ____ / ____ / 2024

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 on:
 - 1.1 The attached Terms of Reference for the independent review of the Treaty of Waitangi Act 1975.
 - 1.2 The approach to the independent review, including the input of iwi, hapū and Māori.

Relation to Government priorities

- 2 This paper addresses 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.”

Executive Summary

- 3 The Waitangi Tribunal was established by the Treaty of Waitangi Act in 1975. It has since been subject to several amendments to further support an effective Māori Crown relationship. As we verge upon all iwi and hapū being post-settlement, it is timely to relook at the legislation that determines how the Tribunal undertakes its dispute resolution role.
- 4 I propose an independent review (**the Review**) focused on assessing whether key provisions in the legislation are meeting objectives. This includes as to whether legislative provisions are leading to improved policy processes and outcomes for Māori development. The Review will be undertaken by an independent panel, appointed by a Ministerial group.
- 5 I seek agreement on how iwi, hapū and Māori input into the Review. On balance, I consider seeking a direct submission from the National Iwi Chairs Forum on their perspectives on the priority legislative barriers as the preferred approach.
- 6 The Review will commence in November 2024 and report back to the Ministerial group in June 2025. I will then update Cabinet on the findings and proposed response by October 2025.

Background

- 7 The Waitangi Tribunal was established through the Treaty of Waitangi Act 1975 (**the Act**) as a permanent commission of inquiry. The original purpose of the Act was to provide the Tribunal with jurisdiction to inquire into contemporary issues relating to acts or omissions of the Crown, make findings, and issue non-binding recommendations.
- 8 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. As a result, the Tribunal can inquire into two types of claims:
 - 8.1 historical claims - matters that occurred before 21 September 1992.¹
 - 8.2 contemporary claims - matters that occurred on or after 21 September 1992.²

The need for a review of the Act

- 9 In August 2024, Cabinet agreed to modernise the approach to Māori development and accelerate opportunities for the Māori economy [xx refers]. As part of this approach, Cabinet highlighted the importance of working more effectively with and alongside iwi and Māori organisations including our approach to Treaty of Waitangi issues, that leads to significantly improved economic, social and cultural outcomes for and with iwi and Māori.
- 10 The Coalition Commitment relating to the Waitangi Tribunal legislation provides the opportunity to assess how effective the Waitangi Tribunal is in supporting these aims. In particular, the Review will assess how the Waitangi Tribunal, as a dispute resolution mechanism, enables the effective resolution of both historical and contemporary claims in a timely manner.
- 11 The resolution of historical claims has enabled many iwi and hapū to restore their economic bases. In 2023, post-settlement iwi assets were estimated to be valued around \$11.8 billion.³
- 12 Alongside historical claims, the Review will assess how contemporary issues can be resolved in both an effective and efficient manner. This includes how well the Act can address the change in types and nature of contemporary inquiries. The Tribunal is now nearing the end of its consideration of historic claims. Dependent on the outcomes, the four ongoing district inquiries will conclude existing historic claims.

¹ The Treaty of Waitangi Act 1975, s2.

² The Treaty of Waitangi Act 1975, s2.

³ TDB. (2024). *Iwi Investment Report 2023*. TBD Advisory.

- 13 The Waitangi Tribunal sits within a broader system of mechanisms across policy development, operational policy, dispute resolution, and monitoring and evaluation. An overview of this system and ongoing work is attached as **appendix one**.

The Review and its objectives

- 14 The Review provides an opportunity to assess how the Waitangi Tribunal can evolve to better support the Māori Crown relationship in a post-settlement era. The proposed objectives of the Review will assess whether key provisions within the Act are:
- 14.1 Effective in meeting the intent of the legislation and its provisions,
 - 14.2 Enabling of claims to be addressed in a thorough and timely manner,
 - 14.3 Effective in supporting historical claims to be addressed and contribute to timely settlements,
 - 14.4 Supporting a positive Māori Crown relationship and outcomes, including the distinctive rights and interest of iwi and hapū, and
 - 14.5 Leading to improved policy processes and outcomes for Māori development.

Scope

- 15 The proposed scope of the Review is set out in the Terms of Reference (attached as **appendix two**). In particular, the Review will focus on the following components of the Act:
- 15.1 The jurisdiction of the Waitangi Tribunal, including an assessment of its threshold to consider claims and applications for urgency, and whether there are more effective pathways for Claimants to seek relief.
 - 15.2 The nature of the claims, including the distinction between historical and contemporary claims, and whether the Act is sufficient in providing a framework to triage and address these.
 - 15.3 Interaction with other legislation, including the principles of comity.
 - 15.4 The implementation of recommendations, including any improvements that can be made to section 8(l) reporting.
 - 15.5 Composition of the Tribunal, including the appointment of Tribunal members and their term.

Panel to undertake the Review

- 16 The Review needs to provide the Government with a broader perspective on the operation of the Act and that requires a level of independence from the Government. I will, in consultation with my Ministerial colleagues, appoint an independent panel (the **Panel**) comprising of a chair alongside two or three other members to undertake the Review.
- 17 The Panel will undertake research and analysis as well as targeted engagement with the Waitangi Tribunal, expert witnesses, claimants and claimant counsel to inform its recommendations.
- 18 A secretariat resourced through Te Puni Kokiri will provide advisory and operational support to the Panel throughout the course of the Review.
- 19 It will be critical to appoint a panel with the knowledge and experience given the constitutional significance of the Review, and the implications on the Māori Crown relationship generally.
- 20 Potential candidates will need to come from a range of backgrounds, and have a strong understanding and experience in matters relating to:
 - 20.1 The roles, responsibilities of the different branches of Government and context to which they operate within.
 - 20.2 Te Tiriti o Waitangi/the Treaty of Waitangi and its application in Government policy and regulatory design.
 - 20.3 Te Tiriti o Waitangi/the Treaty of Waitangi settlement processes and the implementation of settlements.
 - 20.4 The intricacies of the Māori Crown relationship, including approaches that create benefits for Māori and all of New Zealand.
- 21 The Panel responsibilities are further outlined in the Terms of Reference. The skills needed, complexity of the work, as well as the public interest and profile means that the Panel will need to be carefully chosen. I expect the daily fees for the Chair and members will be at the high-end or above the Cabinet Fees Framework. Accordingly, I will consult with the Minister for the Public Service in the setting of the fees for the Panel.

Oversight of the Review

- 22 I propose that a Ministerial Group oversees the Review. I would chair the Ministerial Group and include: the Hon Paul Goldsmith (Minister for Justice), Hon Judith Collins KC (Attorney General), Hon David Seymour (Associate Minister for Justice), and Hon Shane Jones (Minister for Resources).
- 23 The Ministerial group would provide strategic oversight and assist in alignment across other Treaty of Waitangi/Te Tiriti o Waitangi initiatives.

Iwi, hapū and Māori input into the Review

24 I seek agreement to how iwi, hapū and Māori input into the Review. The Waitangi Tribunal is a dispute resolution mechanism for Māori and the Crown and, therefore, core to the effective functioning of the relationship.

25 I consider that there are four workable options:

Option & description	Consideration	If preferred, action sought
OPTION A: before the Review – seeks input from iwi/hapū through the National Iwi Chairs Forum on the Terms of Reference following Cabinet approval.	This provides early input into the Review for iwi and hapū. However, there are workability issues as identifying priorities may replicate the Review itself and be difficult to achieve within timing constraints.	Authority is sought to submit a paper directly to Cabinet to seek approval to any substantive amendments to the Terms of Reference prior to the Review commencing.
OPTION B: during the Review – directs the Panel to identify priority issues for iwi, hapū and Māori within the objectives of the Review.	This would enable the Panel to provide discrete recommendations relating to priority iwi, hapū and Māori priorities. However, it may limit the depth and scope from iwi and hapū.	Approval to include within the scope of the Terms of Reference of 'Priority iwi, hapū and Māori issues – The key legislative barriers for iwi, hapū and Māori within the objectives of the Review';
OPTION C: alongside the Review – seeks a submission from iwi and hapū through the National Iwi Chairs Forum on the priority legislative barriers within the objectives of the Review.	This would enable Ministers to consider direct input from iwi and hapū on priority legislative barriers alongside the Panel's report. However, it may have implications for Māori engagement in the Panel's processes.	Direct the Ministerial Group to write to the National Iwi Chairs Forum to seek a direct submission from iwi and hapū on the priority legislative barriers within the objectives of the Review.
OPTION D within the Review – utilise the existing processes within the Terms of Reference for the independent review panel to engage with claimants, including iwi and hapū.	This would enable the Panel to identify the best means to engage. However, it will limit the level of analysis on priority issues for iwi, hapū and Māori available for Ministers in subsequent decision making.	No further action needed.

26 I have considered the options and believe 'Option C' is preferable. Option C balances the need to recognise rights and interests of iwi and hapū under Article Two of the Treaty of Waitangi/Te Tiriti o Waitangi with workability considerations. This is achieved through the direct submission to Ministers on the priority legislative barriers within the Act.

- 27 This option also acknowledges the need for equality of opportunities under Article Three of the Treaty of Waitangi through directing the Panel to engage with claimants as those who engage with the legislation. Option C also enables the Review to occur in a timely manner within the Parliamentary Term.

Timeframes for the Review

- 28 I intend for the Review to begin in November 2024 and the Panel will conclude its report in June 2025. This will enable any recommendations to be considered by Cabinet and progressed by the end of this Parliamentary term. I will then report back to Cabinet by the end of October 2025 with a recommended response.

Risks and mitigations

- 29 I note that it is important for the Panel to be able to access a range of perspectives and information to inform its recommendations. There is a risk that the Review is seen as a foregone conclusion and means people decide not to engage with the Panel.
- 30 To address this, my Office alongside the Secretariat to the Panel, will develop and implement a communications plan that enables clear and effective messaging around the Review to support the Panel's processes. This will include providing Ministers with key messages on the Review to support any engagements.

Financial Implications

- 31 The Review will be fiscally neutral with the costs being prioritised within existing baselines. Based on comparative reviews, the Review will likely cost up to \$500,000 within Te Puni Kōkiri baselines for 2024/2025. Based on my priorities for the Māori Development portfolio and Government priorities, Te Puni Kōkiri will continue to advise me on how to sequence other policy mahi to enable the review to occur.
- 32 Any financial implications of changes in response to the independent panel's recommendations and findings will be considered as part of the advice to Cabinet at that time.

Legislative Implications

- 33 There are no legislative implications of this Cabinet paper. Any legislative changes will be considered as part of the advice to Cabinet at that time.

Regulatory Impact Statement

- 34 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/Te Tiriti o Waitangi Implications

- 35 A review of the Waitangi Tribunal's functions and processes to ensure they remain fit for purpose in a 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 Māori, which gives effect to the Crown's kāwanatanga obligations under Article 1.
- 36 The consideration of the Waitangi 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 Article 1 and Article 3 of the Treaty of Waitangi/Te Tiriti o Waitangi.
- 37 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 Panel's recommendations to assess any Treaty of Waitangi implications.

Human Rights

- 38 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

- 39 No external resources are required to resource the Review.

Consultation

- 40 Te Puni Kōkiri has consulted with officials from the Ministry of Justice, Te Arawhiti: The Office for Māori Crown Relations, the Treasury and Te Kawa Mataaho Public Service Commission on this Cabinet paper. The Department of the Prime Minister and Cabinet was informed.

Communications

- 41 Public statements will be managed by my office in coordination with the Prime Minister's Office. I intend to issue a media release, on behalf of the Ministerial group, about the Review following Cabinet decisions and the appointment of the independent panel. I also plan to make the Terms of Reference publicly available through the Beehive website.
- 42 I also intend to issue a media release, on behalf of the Ministerial group, when the Panel's report is finalised and received. All media releases relating to the Ministerial group will be approved by their respective offices.

Proactive Release

- 43 This paper will be proactively released alongside the Terms of Reference, in accordance with the Official Information Act 1982, with any appropriate redactions.

Recommendations

The Minister for Māori Development recommends that the committee:

- 1 **Agree** to the Terms of Reference for the independent review of the Waitangi Tribunal legislation (**attached** as Appendix 2);
- 2 **Agree** that the Review will be undertaken by a three- or four-member independent panel, including a Chair, which will report back to the Ministerial group with recommendations by June 2025;
- 3 **Authorise** the Minister for Māori Development, in consultation with the Attorney General, Minister of Justice, Minister for Resources and Associate Minister of Justice (Hon Seymour), alongside the Minister for the Public Service, to appoint the independent panel members based upon the criteria within the Terms of Reference;
- 4 **Agree** that the Ministerial group of Minister for Māori Development (chair), Attorney General, Minister of Justice, Minister for Resources and Associate Minister of Justice (Hon Seymour) oversee the review process;
- 5 **Agree** to iwi and Māori input EITHER:
 - 5.1 **OPTION A: before the Review** – seeking input from iwi/hapū on the terms of reference following Cabinet approval, with authority for the Minister for Māori Development to submit a paper directly to Cabinet to seek approval to any substantive amendments to the Terms of Reference prior to the Review commencing; OR
 - 5.2 **OPTION B: during the Review** – direct the independent panel to identify priority issues for iwi, hapū and Māori within the objectives of the review, through an inclusion in scope of the Terms of Reference of ‘Priority iwi, hapū and Māori issues – The key legislative barriers for iwi, hapū and Māori within the objectives of the review’; OR
 - 5.3 **OPTION C: alongside the Review** – direct the Ministerial Group to write to the National Iwi Chairs Forum to seek a submission from iwi and hapū on the priority legislative barriers within the objectives of the review to consider alongside the independent review panel’s report [Preference of the Minister for Māori Development]; OR
 - 5.4 **OPTION D: within the Review** – utilise the existing processes within the Terms of Reference for the independent review panel to engage with claimants, including iwi and hapū.

IN CONFIDENCE – DRAFT FOR CONSULTATION

- 6 **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 panel by October 2025.

[TO BE Authorised for lodgement]

Hon Tama Potaka

Minister for Māori Development

CONFIDENTIAL

Independent Focused Review into the Treaty of Waitangi Act 1975 Terms of Reference

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.
- The extent of the Tribunal's powers to address contemporary claims.

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(1) 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.

Composition of Tribunal

- The appointment of Tribunal members and relevant matters (e.g. term) including officer roles.

Independent review panel

The independent review panel will comprise of three or four 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.

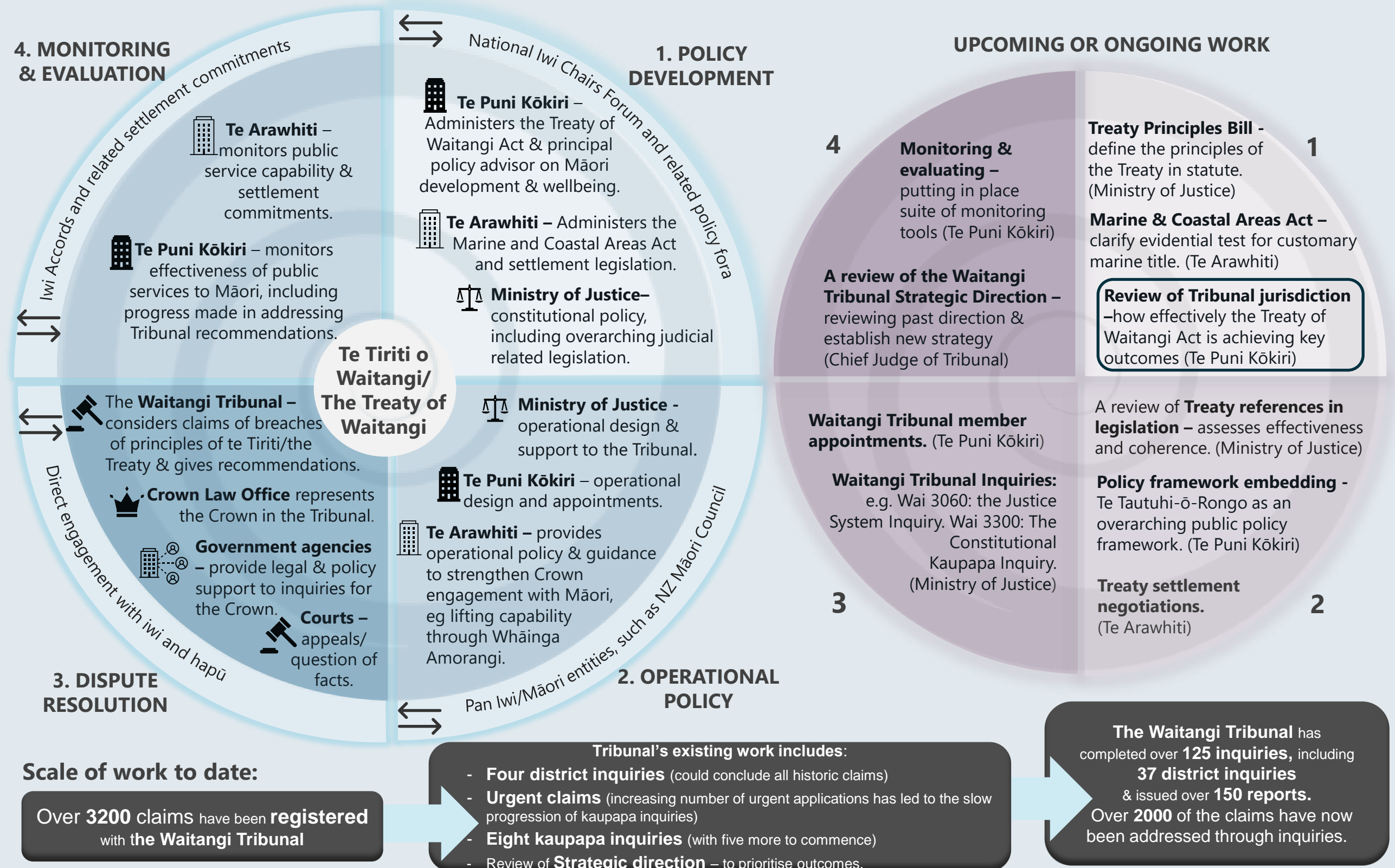
The independent review panel, supported by the secretariat, will effectively implement all legislative requirements, including the Privacy Act 2020, Official Information Act 1982 and the Public Records Act 2005.

Timeline

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

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

Overview of the system at a national level and related work programmes



IN CONFIDENCE



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 of 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 and research outlining good practice. Perspectives of Tribunal, expert witnesses, Crown, Claimants and their representatives. As well as broader Māori perspectives. Completed report – December 2025.