

# HEI WHAKATAU | BRIEFING

## Options Waitangi Tribunal Legislation Review

<b>Date:</b>	14 March 2025	<b>Priority</b>	Medium
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	TPK-72004

Action sought	Date action required by
<p>It is recommended that you:</p> <ol style="list-style-type: none"> <li><b>Agree</b> to amend the Cabinet paper to include both an Independent Panel Review and a Policy Review Process as options.</li> <li><b>Agree</b> that officials draft an updated Terms of Reference, including a refined Terms of Reference to support the selected option.</li> </ol>	17 March 2025

Contact for telephone discussion (if required)				
Name	Position	Telephone	Mobile	1 <sup>st</sup> contact
Laine Fisher	Policy Manager		S 9(2)(a)	✓

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	Annex 1 - Summary of Options for the Waitangi Tribunal Legislation Review
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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 Withdrawn           |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:



14 March 2025

Te Minita Whanaketanga Māori

## **Options Waitangi Tribunal Legislation Review**

### **Purpose**

1. This briefing seeks your direction on the shape of the options for the Waitangi Tribunal Legislation Review (the Review) to be included in the Cabinet paper.
2. This follows Ministerial and Coalition consultation on the Review and the view that the Review should proceed at pace and result in legislation passing this Parliamentary term.
3. As a result, we have adapted the existing approach and also developed an officials' led policy review process as an alternative.
4. Your approval is sought to amend the Cabinet paper to reflect both options and to provide an indication of your preferred approach before proceeding.

### **Background**

5. The Waitangi Tribunal, established under the Treaty of Waitangi Act 1975, has historically played a key role in the Treaty settlement process. As its focus shifts to contemporary claims, concerns have emerged about its capacity, jurisdiction, and efficiency. In August 2024, Cabinet [CAB-24-MIN-0295] endorsed modernising the Crown's approach to Māori development and expediting Treaty-related issue resolution. This review aligns with that goal, ensuring the Tribunal's legislative framework remains fit for purpose.
6. We have developed an approach to the Review and drafted a Cabinet paper, which you have socialised with your Ministerial and Coalition colleagues. The consultation process has identified the need to conclude the Review at pace and have legislation passed when the House dissolves this Parliamentary term.
7. As such, the Cabinet decisions to be made in order to commence the Review are:
  - a. Scope of the review (the what)
  - b. Level of independence of the review (the who)
  - c. The process for the Review (the how).
8. The table in Annex 1 attached summarises the key options in each of these decisions and highlights our preferred options. All options would achieve the ambition outlined through consultation.
9. Given the Policy review process is a new option, we outline the risks associated with the process and why an independent Ministerially appointed panel is preferable in achieving the outcomes of the Review.

### **Policy Review Process**

10. A policy-led review process offers a focused and timely approach to assessing the Waitangi Tribunal's legislative framework. Unlike an independent review, which provides a broad examination of the Tribunal's structure, role, and effectiveness, a policy review would be designed to deliver targeted recommendations that can be actioned more rapidly.
11. A policy review could assess a range of potential areas, including but not limited to:
  - a. The effectiveness of the Tribunal's jurisdiction and decision-making framework.
  - b. The feasibility of alternative pathways for resolving Treaty-related disputes.
  - c. Mechanisms to enhance the Tribunal recommendations.
  - d. The Tribunal's role in a post-settlement era, ensuring its continued relevance.
12. Given the need to deliver within the December 2025 timeframe, the scope of a policy review needs to be more targeted than a full independent review.

### **Implications of a Policy Review – Scope Limitations**

13. The policy review could be limited to three key areas to ensure timely recommendations while maintaining policy integrity:
  - a. **The Tribunal's discretion to decline claims** where other resolution mechanisms might exist.
  - b. **Optimizing the Tribunal's caseload** to prioritise high-impact claims without undermining access to justice.
  - c. **Exploring legislative amendments** to improve efficiency and ensure the Tribunal operates effectively in a modern Treaty environment.
14. This narrower focus would allow for a structured and efficient review process, ensuring that officials can deliver practical, actionable policy recommendations without extending beyond the December 2025 deadline.

### **Independent Panel Review (Currently Proposed and recommended in Cabinet Paper)**

15. The independent review would be conducted by a Ministerially appointed expert panel. It would:
  - a. Undertake comprehensive engagement with iwi, hapū, claimants, and stakeholders.
  - b. Provide a detailed assessment of the Tribunal's role, effectiveness, and legislative framework.
  - c. Consider a broad range of issues, including jurisdiction, process efficiencies, implementation of recommendations, and alignment with Treaty-based mechanisms.

- d. Deliver a final report with recommendations by **November 2025**.

16. **Benefits:**

- a. High credibility and independence.
- b. Extensive engagement ensures a well-rounded review.

17. **Challenges:**

- a. Longer timeframe.
- b. Higher costs due to panel remuneration and broad engagement.

### **Policy Review Conducted by Officials (Alternative Option)**

18. A policy-led review would be conducted by Te Puni Kōkiri officials, focusing on targeted policy analysis and limited consultation.  
It would:

- a. Assess specific legislative barriers that impact the Tribunal's efficiency and effectiveness.
- b. Deliver within a shorter timeframe, with recommendations and legislative drafting instructions finalised by December 2025.
- c. Include targeted consultation with key stakeholders but avoid a broad inquiry.

19. **Benefits:**

- a. Faster completion, ensuring timely legislative amendments.
- b. Lower cost, leveraging existing departmental resources.

20. **Challenges:**

- a. Perceived lack of independence.
- b. Limited engagement could affect stakeholder buy-in.

### **Governance and Oversight**

21. The policy review will be led by Te Puni Kōkiri, with strategic oversight provided by a Ministerial Group comprising:

- Minister for Māori Development (Chair)
- Attorney-General
- Minister of Justice
- Associate Minister for Justice
- Minister for Resources

22. Regular progress updates will be provided to Ministers to ensure alignment with government priorities.

## Risk Analysis

23. Both the Independent Panel Review and the Policy Review Process present distinct advantages and challenges. The Independent Panel Review, as currently proposed in the Cabinet paper, offers greater independence, broader engagement, and a more comprehensive assessment of the Tribunal's legislative framework. However, it comes with higher costs and a longer timeframe.
24. Conversely, a Policy Review Process led by officials provides a more targeted, cost-effective, and timely approach, allowing for faster implementation of legislative amendments. However, it carries greater risks in terms of perceived independence, limited stakeholder engagement, and potential legal challenges.

Risk Factor	Independent Panel Review	TPK Policy Review
<b>Independence Concerns</b>	High credibility due to independent panel	Perceived lack of independence as officials lead the review
<b>Timeliness Constraints</b>	Longer timeframe, final report by Nov 2025	Faster, Drafting Instructions by Dec 2025
<b>Stakeholder Engagement</b>	Broad, in-depth engagement with iwi, hapū, claimants, and legal experts	Targeted engagement with key stakeholders only
<b>Cost Implications</b>	Higher cost due to panel fees and extensive engagement	Lower cost, conducted within existing resources
<b>Legislative Readiness</b>	Comprehensive recommendations, but slower drafting	Quicker drafting but may require further refinements post-implementation
<b>Reputational Risk</b>	Seen as a rigorous, independent process, ensuring credibility	Risk that it may be perceived as rushed, lacking depth
<b>Legal Risk</b>	Stronger legal standing with expert input	Higher risk of legal challenges due to limited external oversight

## Next Steps

25. Pending your approval, officials will amend the Cabinet paper to reflect both review options.
26. Officials will draft an updated Terms of Reference, including a refined Terms of Reference to support the selected option.

## Designation

Hon Tama Potaka  
Te Minita Whanaketanga Māori

Date: \_\_\_\_ / \_\_\_\_ / 2024

## Annex 1: Summary of Options for the Waitangi Tribunal Legislation Review

### Key Points to Support Discussion:

- The decision on the **scope** of the review will significantly influence resource requirements and the practicality of delivering timely outcomes.
- Choosing the appropriate **level of independence** will affect stakeholder perceptions and the credibility of the review process.
- The selected **review process** should balance thoroughness, speed, and stakeholder involvement according to immediate and future needs.
- The decision on **timeframe** will directly impact the ability to meet immediate political goals versus ensuring comprehensive analysis and consultation.

**Note:** The scope options in this table have been derived from **Appendix I – Systems Landscape**, which was part of the original Cabinet paper outlining the broad approaches for reforming the Waitangi Tribunal legislation.

Decision Area	Options	Key Points
Scope of the Review (What)	<b>Scope Option 1: Review of Substantive Amendments</b>	<ul style="list-style-type: none"> <li>– Focuses on assessing past legislative amendments and their effectiveness.</li> <li>– Limited to evaluating existing statutory provisions rather than proposing fundamental reforms.</li> <li>– Provides a contained approach but does not address broader operational issues.</li> </ul>
	<b>Scope Option 2: Focused Review of Key Elements</b>	<ul style="list-style-type: none"> <li>– Examines <b>3-4 priority areas</b> from the Terms of Reference.</li> <li>– Targets legislative amendments addressing jurisdiction, Tribunal membership, and efficiency of recommendations.</li> <li>– More achievable within this term while ensuring meaningful reform.</li> </ul>
	<b>Scope Option 3: Modernisation of the Act</b>	<ul style="list-style-type: none"> <li>– Explores broader systemic reforms to update the Tribunal's legislative framework.</li> <li>– Addresses long-term operational and structural improvements.</li> <li>– Requires extensive consultation, making full implementation within this term unlikely.</li> <li>– Considers large-scale reform of the Tribunal's role in a post-settlement era.</li> </ul>
	<b>Scope Option 4: Future-Focused Review</b>	<ul style="list-style-type: none"> <li>– Requires in-depth assessment, external research, and broad stakeholder engagement.</li> <li>– Not feasible within this term but could be staged for future implementation.</li> </ul>
Level of Independence (Who)	<b>Option 1: Independent Panel Review</b>	<ul style="list-style-type: none"> <li>○ Ministerially appointed panel providing independent oversight.</li> <li>○ Ensures high credibility and stakeholder confidence.</li> <li>○ Requires extensive consultation and engagement.</li> </ul>
	<b>Option 2: Internal Departmental (Policy-led) Review</b>	<ul style="list-style-type: none"> <li>○ Conducted internally by Te Puni Kōkiri officials.</li> <li>○ More efficient and quicker, leveraging existing expertise.</li> <li>○ Perceived as less independent by stakeholders.</li> </ul>
Review Process (How)	<b>Option 1: Independent Panel with Secretariat Support</b>	<ul style="list-style-type: none"> <li>○ Independent analysis with structured iwi/Māori engagement.</li> <li>○ Secretariat manages consultation and ensures broad participation.</li> <li>○ Ensures independence but requires resourcing.</li> </ul>
	<b>Option 2: Internal Policy Review Process</b>	<ul style="list-style-type: none"> <li>○ Led by Te Puni Kōkiri with targeted iwi/Māori engagement.</li> <li>○ Includes hui with key Māori organisations, Tribunal claimants, and formal submission opportunities.</li> <li>○ Ensures Māori input while maintaining a streamlined process.</li> </ul>
	<b>Option 3: Two-Phase Independent Panel Review with Secretariat Support</b>	<ul style="list-style-type: none"> <li>○ <b>Phase 1:</b> Delivers immediate legislative amendments.</li> <li>○ <b>Phase 2:</b> Explores broader reforms beyond the current term.</li> <li>○ While balanced, the feasibility of the second phase depends on future government commitments.</li> <li>○ Secretariat manages consultation and ensures broad participation</li> </ul>

Annex 1: Summary of Options for the Waitangi Tribunal Legislation Review

Timeframe (When)	Option 1: Accelerated Timeframe (By December 2025)	<ul style="list-style-type: none"><li>○ Completion by December 2025 aligning with political expectations and delivering timely legislative outcomes.</li><li>○ Limited opportunity for extensive consultation.</li></ul>
	Option 2: Extended Timeframe (Beyond Current Term)	<ul style="list-style-type: none"><li>○ Allows for broader consultation and deeper analysis.</li><li>○ Not feasible within current political commitments.</li><li>○ Risk of losing momentum and delaying implementation.</li></ul>

Refining the Review Scope to Align with Legislative Timeframes

The original Cabinet paper outlined multiple options for reforming the Waitangi Tribunal legislation. These ranged from targeted legislative amendments (*Scope Option B: Focused Review of Key Elements*) to a future-focused, post-settlement review (*Scope Option D: Future-Focused Review*).

Given the need to deliver legislative outcomes within this term, the review scope must be clearly defined to ensure feasibility.

1. **Scope Option A: Review of Substantive Amendments** is limited to assessing previous legislative changes without introducing fundamental reforms.
2. **Scope Option B: Focused Review of Key Elements**, prioritising **3-4 key areas**, is the most practical approach for achieving meaningful reform within the available timeframe.
3. **Scope Options C and D** require broader consultation and are unlikely to be feasible in this term without a staged implementation strategy.

Proposed Approach

To ensure the review remains achievable, a Focused Legislative Review (*Scope Option B: Focused Review of Key Elements*) is recommended.

This approach:

- Prioritises legislative amendments that can be passed within this term, ensuring timely outcomes.
- Enables structured iwi/Māori engagement, aligning with Cabinet discussions.
- Ensures legislative feasibility while avoiding unnecessary delays.