


9 August 2021



Tēnā koe 

Thank you for your email of 29 June 2021 to Oranga Tamariki—Ministry for Children (Oranga Tamariki), requesting the following information under the Official Information Act 1982 (the Act):

- 1. Information on the Ministerial Advisory Board including appointment process, ToR, Reporting timeframes, timeframe for renewal.*
- 2. Information in relation to WT – reports from lead Ministers to Cabinet Māori Crown Relations / Te Arawhiti Committee regarding contemporary OT ToW claim issues.*
- 3. Information concerning any consideration of the findings and recommendations of the WT report.*

On 27 July 2021, we advised you that we were extending your request in accordance with section 15A(1)(b) of the Act, as the consultations necessary to make a decision on the request were such that a proper response could not reasonably be made within the original time limit.

You will find a response to each of your questions in turn and enclosed as appendices.

- 1. Information on the Ministerial Advisory Board including appointment process, ToR, Reporting timeframes, timeframe for renewal.*

Information on the requirements and processes for considering appointments (and reappointments) made by Ministers, or the Governor-General on the advice of a Minister, can be found at the following link on the website of the Department of the Prime Minister and Cabinet:

<https://dpmc.govt.nz/publications/appointments-process>.

On the webpage there is also a link to the Public Service Commission (PSC) website where further information can be found on the appointments process.

While a Minister is not required to consult publicly when seeking nominations for appointments to a Board, all but minor public appointments made by a Minister, or by the Governor-General on the advice of a Minister, should first be considered by the Cabinet Appointments and Honours Committee.

Information about the selection and appointment process for the Ministerial Advisory Board can be found in a paper considered by Cabinet, which is publicly available at following link on the Oranga Tamariki website:

<https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Report-and-releases/Cabinet-papers/OT-Ministerial-Advisory-Board/Cabinet-paper-Ministerial-Advisory-Board-Oranga-Tamariki.pdf>.

Please find attached a copy of the Ministerial Advisory Board's Terms of Reference as Appendix One (Ministerial Advisory Board Oranga Tamariki ToR). Further information on the Ministerial Advisory Board can be found at the following link:

<https://www.orangatamariki.govt.nz/about-us/reports-and-releases/cabinet-papers/oranga-tamariki-ministerial-advisory-board/>.

2. *Information in relation to WT – reports from lead Ministers to Cabinet Māori Crown Relations / Te Arawhiti Committee regarding contemporary OT ToW claim issues.*

There have been no reports from the Minister to the Cabinet Māori Crown Relations: Te Arawhiti Committee regarding contemporary Oranga Tamariki Treaty of Waitangi claim issues. Accordingly, this part of your request is refused under section 18(e) of the OIA, as the document alleged to contain the information requested does not exist.

3. *Information concerning any consideration of the findings and recommendations of the WT report.*

Please find attached the requested information attached as Appendix Two through Six.

Oranga Tamariki intends to make the information contained in this letter and any attached documents available to the wider public shortly. We will do this by publishing this letter and attachments on our website. Your personal details will be deleted and we will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@ot.govt.nz](mailto:OIA_Requests@ot.govt.nz).

If you are not satisfied with this response, you have the right to ask an Ombudsman to review this decision. Information about this is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or by contacting them on 0800 802 602.

Nāku noa, nā

A handwritten signature in grey ink, appearing to be 'Steve Groom', written in a cursive style.

Steve Groom

**General Manager Public, Ministerial and Executive Services**

## **Oranga Tamariki Ministerial Advisory Board Terms of Reference**

### ***Background***

Oranga Tamariki was established 1 April 2017 in recognition that the system around child protection needed to change. It was an acknowledgement that the Government needed to devolve resourcing and responsibilities, and to work in partnership with Māori and community to strengthen families and whānau to protect tamariki from harm. The safety of our tamariki and rangatahi must always be our first concern but their hauora cannot be achieved if across Government we do not also support their families and whānau to be their best.

Three years on from its establishment, Oranga Tamariki has taken significant steps. These have included new and improved relationships with many iwi, Māori organisations and Not for Profit partners. These can be seen in the formation of strategic partnerships with iwi, Memorandums of Understanding with Māori Organisations such as the Māori Council and the Māori Women's Welfare League, and greater stability of contracting with NGOs. Transition Homes and prototypes of Intensive Intervention and Early Intervention to strengthen families and minimise the need for tamariki to come into statutory care have also been created.

While there have been a number of high profile reviews of Oranga Tamariki by the Whānau Ora Commissioning Agencies, the Children's Commissioner and the Ombudsman, they are predominantly retrospective, with many of the cases referred to having occurred prior to the establishment of the new Oranga Tamariki operating model, funded through Budget 2019. They also cover periods of time before the Government had agreed to invest in the implementation and embedding of the changes required to deliver on the vision of that model (1 July 2019).

More than a year has passed since that investment. It is timely to do a stocktake on the pace and implementation of change, to check that we are on the path of devolvement as envisioned, and that we are shifting investment from crisis intervention to prevention, early intervention, and intensive intervention.

Allegations have been made about the organisation's professional social work practice and culture. Public trust and confidence in Oranga Tamariki are crucial to the agency's ability to meet its core responsibilities and care for the tamariki and rangatahi it comes into contact with. It is vital that if there are concerns for the safety or wellbeing of a child or young person that people have no hesitation in raising their concerns with the agency tasked to respond.

The Minister for Children takes these allegations seriously and wishes to receive advice and assurance regarding Oranga Tamariki's current operations and performance along with certainty that the future direction is understood and becoming entrenched.

Formal reporting and data reflect the growing number of new services and support for tamariki and rangatahi in or transitioning from care, and the kin or non-kin carers who give homes to these tamariki and rangatahi.

Importantly, the focus is shifting from those already in care to be on more intensive and early interventions which work to keep tamariki safe in their own homes. These services are increasingly being delivered by or in partnership with trusted providers, including Māori and iwi, who are close to the families that need this support.

What is also needed is “soft data” and real time information around the way the frontline and regional offices are embedding change, how staff are being supported through this change, and to understand the potential impacts of these changes on tamariki and rangatahi while also enhancing social work practices.

### ***Ministerial Advisory Board***

The Ministerial Advisory Board (the Board) will provide advice and assurance to the Minister for Children across three key areas of Oranga Tamariki:

Relationships with families, whānau, hapu, iwi, and Māori including but not limited to:

- If and how the organisation has improved its capability to engage with Māori, including its current ways of working with Māori and/or how it is devolving decision making and actions to Māori for Māori.
- If and how there has been an improvement in the understanding and incorporation of te ao Māori into its work, with a focus on the front line.
- If and how the aims and aspirations of local Māori and local communities are acknowledged and what actions are taken at local and regional levels to partner to deliver on these aspirations.
- What opportunities are there to enhance the experience and value of Māori social workers in the organisation, and how could these be further enhanced.

Professional social work practices including but not limited to:

- Assurance that the organisation is exemplifying quality social work practices that reflect the standards expected by and of the profession in 2020.
- How the organisation is ensuring professional opinion in statutory decision making is respected.
- If and how practices are inclusive and respectful of professional opinion and advice, including when opinions differ.
- Oranga Tamariki’s commitment to training staff from onboarding through to professional development.
- Assurance that a mindset of continuous improvement exists which involves identifying what is working and what is not. That functions exist to allow these learnings to be fed back in to the organisation in order to strengthen it.
- Assurance that continuous improvement includes professional development and appropriate training of staff.

Organisational culture including but not limited to:

- Assurance that the whole organisation practices and adheres to the Positive Workplace Behaviours Model Standards.
- Improvements required to strengthen the connection and alignment between leadership, management and front-line staff.
- Assurance that the organisation has robust procedures in place that relate to the confidence of staff that they can “speak up” safely.
- The level of understanding on the front line and at regional level of the operating model, the vision of devolvement for the future, and their individual roles in achieving that vision.

### ***Contestability of advice***

Both the Board and Oranga Tamariki will provide advice to the Minister for Children on Oranga Tamariki's work programme in good faith, and with regards to the interests of the other. Where appropriate, the Board and Oranga Tamariki will provide the other with copies of relevant advice provided to the Minister.

### ***Operation of the Ministerial Advisory Board***

The Minister will appoint Board members and will designate one member to be the Chair and another member to be the Deputy Chair. The Chair will meet with the Minister for Children to report the advice of the Ministerial Advisory Board. The Chair will facilitate the relationship between the Board and Oranga Tamariki (via the Secretariat).

When appointing members, the Minister will take into account their seniority, experience and standing in New Zealand. They will be paid in accordance with the Cabinet Fees Framework.

Oranga Tamariki will provide Secretariat support to the Board.

In addition to the Minister for Children and Oranga Tamariki, the Board will have relationships with a range of agencies and non-government organisations. Unless otherwise agreed with Oranga Tamariki, the Board's contact with these groups will be facilitated by Oranga Tamariki and the Minister respectively.

The Board may request information and insights from central Government (eg Public Service), children's services providers (eg NGOs), and monitoring bodies (Independent Children's Monitor, the Ombudsman, the Children's Commissioner). The requests should be managed via the Secretariat and Oranga Tamariki.

The Board may request information from Māori and Iwi. It is recommended that the insights and information obtained is shared with the Secretariat and Oranga Tamariki in good faith.

The Board will meet regularly. Members may be invited by the Minister for Children to attend ad hoc meetings, workshops or focus groups consistent with the mandate and objectives of the Board.

The Board will commence on 1 February 2021. The Minister may revoke the appointment of the members or disestablish the Board at any time.

### ***Conflicts of Interest***

Members will disclose all actual, potential or perceived conflicts of interest as they relate to these Terms of Reference to the Minister for Children.

### ***Media***

Members must refrain from representing the Board or commenting on the advice of the Board to the media.

The Chair may seek agreement from the Minister for Children for the Board to release media statements on any matter related to these Terms of Reference.

### ***Confidentiality***

For the Board to operate effectively, members must maintain the confidence of the Board, including maintaining confidentiality of matters discussed at meetings, and any information or documents provided to the Board. These confidentiality requirements do not apply to material that is already in the public domain.

Where the Board needs to release material or discuss the workings or advice of the Board to facilitate engagement with iwi and stakeholders, the Chair will seek permission from the Minister for Children.

All information provided to the Board will be treated as official information under the Official Information Act 1982 and, subject to the requirements of that Act, may be released to the public if there are no grounds for withholding it.

# Waitangi Tribunal final report

Date: 13 May 2021

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## Reviews and Royal Commission working group

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**Purpose** This note provides you with an overview of the Waitangi Tribunal's report *He Pāharakeke, He Rito Whakakīkīnga Whāruara*, published on 30 April 2021, and **seeks your feedback** on our proposed approach to the formal response and related work underway on the strategic direction.

**Overview of the report** The report contains the Tribunal's findings and recommendations from the urgent inquiry into the Treaty consistency of Oranga Tamariki legislation, policies and practices since 2015. The report concludes that the Crown has breached the Treaty and its principles in a number of respects. The primary Treaty breach is Article 2; the Crown's failure to honour the guarantee to Māori the right of cultural continuity embodied in the guarantee of tino rangatiratanga over their kāinga.

The Tribunal's primary finding is that piecemeal reform has not worked, a Treaty consistent transformational shift is needed and that this needs to be led by Māori. The Tribunal also acknowledges that addressing these issues requires a cross-agency approach.

The report identifies an ongoing role for Oranga Tamariki for the most vulnerable tamariki and some constructive examples of our work such as the work at the Whakatāne and Blenheim sites and of our partners ie the Waitomo Papakāigna Collab. However, the report also cites some horrific examples of practice and strongly argues that State care is never appropriate for tamariki Māori.

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**Primary rec** The report recommends that a Māori Transition Authority is established to identify the changes necessary for the care and protection system. It should:

- Consider how responsibilities and statutory functions can be transferred to Māori and advise on system improvements, including legislative and policy changes.
- Be established quickly to support other policy work underway that responds to similar reviews, not be constrained by current legislation and consider locally led approaches.
- As a matter of priority, be led and monitored by the governance group for the Māori-led inquiry (February 2020),<sup>1</sup> with advice on the structure and function of the Transition Authority obtained from claimants.
- Be significantly engaged, supported, and funded by the Crown to allow sufficient time so that Māori can lead the design.

The rationale underpinning this recommendation is:

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<sup>1</sup> The Māori-led inquiry governance group was chaired by Dame Rangimārie Naida Glavish and its members were: Sir Toby Curtis, Sir Mason Durie, Dame Areta Koopu, Dame June Mariu, Lady Tureiti Moxon, Merepeka Raukawa-Tait, the Honourable Sir Pita Sharples, Sir Mark Solomon, Dame Iritana Tāwhiwhirangi, and the Honourable Dame Tariana Turia.



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- The process is just as important as the outcome. The report includes observations about what the future state might look like but the key finding is about how we get there.
  - The Crown should get out of the way and allow Māori to lead.
  - The solution needs a sustained focus on disparities and 'bold and comprehensive' whole of government approach.
  - State care is never appropriate for tamariki Māori, the focus should be on strengthening and restoring whanaungatanga.

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**Our response** We are working with POS and engagement leads to develop the formal response to the report. This will include tabling a paper with the Social Wellbeing and Māori Crown Relations Cabinet Committee in August 2021 on the strategic direction, the Ministerial Advisory Board's interim report and the Crown response to the issues identified in the Tribunal's report and Treaty jurisprudence.

The issues we are working through include:

- How the report influences the strategic direction
- How and when (pre or post August) we engage with the Waitangi Tribunal claimants
- Further analysis on the report, including the report's primary recommendation for Māori to lead at a systems level.

**We welcome your views on the approach outline above and any further considerations.**

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**Next Steps** We will table an updated paper with the MASC on 20 May 2021.

We will provide the Minister with a briefing in the coming weeks which will include further analysis of the Tribunal's report and seek his initial views on engaging with the Waitangi Tribunal claimants and the proposed approach for responding to the report.

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## Work needed for the Cabinet paper / Tribunal response - 10 June 2021

Table 1 – Draft plan for inputs needed for the Cabinet paper

Status	Area of work	Tasks	Due date	Lead	Output
<b>Waitangi Tribunal report response</b>					
Under way/ to do	Recommendations (including Treaty breach acknowledgements)	Collate all recommendations in report into table for initial analysis	Early July	Zoe/Jordan (Policy) working closely with Reviews, Legal and TRU	Detailed analysis about the recommendations. Detailed analysis of Treaty jurisprudence and breaches.
		Input Oranga Tamariki response to similar recommendations in previous review responses			
		Hold workshop with SMEs on the recommendations and our response			
		Options and analysis			
		Considerations – risks/opportunities			
		Analysis of Treaty principles/jurisprudence and breaches into document/table			
		Hold workshop with SMEs to seek views on Treaty principles/jurisprudence and breach			
Under way	Primary recommendation	Options and analysis	Early July	Olivia (Reviews) working closely with Zoe (Policy)	Detailed analysis about the primary recommendation
		Considerations – risks/opportunities			
		Hold workshop with SMEs to seek views on Treaty principles/jurisprudence and breach			
		Meet with Crown Law on Treaty jurisprudence and the breaches			
To do	Overall report	How we intend to address the substantive recommendations in the Tribunal's report (based on feedback from early July report to the Minister)	Mid July	Olivia (Reviews) and Policy	Content for Cabinet paper
<b>Reviews</b>					
To do	What we have heard from the reviews	Include thematic content from the reviews. Include how we have addressed recommendations and what we still have left to do.	18 July	Maggie (Reviews) to draft and work with Monica (Policy)	Content for Cabinet paper
<b>Ministerial Advisory Board</b>					
To do	Interim report	Analysis of the report's findings and recommendations and how this relates to the strategy work. This includes: How we are going to implement/deliver the recommendations in the Board's report (and Waitangi Tribunal) in the: <ul style="list-style-type: none"> <li>• Short term</li> <li>• Medium term</li> <li>• Long term</li> </ul>	Early July	Policy and Org Strat teams to lead analysis of report findings	Content for Cabinet paper
To do	Changes to Board	Proposed changes to Board's Terms of Reference and membership for its future work. Analysis of capability and focus of the Board.	Early July	Olivia	
To do	Recruitment of Secretariat	Analysis of capability and focus of the Secretariat	Early July	Julie (Reviews)	
<b>Engagement</b>					
TBC	Cross-agency consultation	Identify relevant cross overs/analysis from the development of the Māori Health Authority to input into analysis of the Māori Transition Authority	Early July	Policy to lead with support from Olivia (Reviews) and Legal	Cross-agency consultation completed and inputted into our response
		Identify relevant cross overs/analysis from the Corrections response to input into analysis of the Māori Transition Authority	Early July		
		Consult Te Arawhiti on formulating responses			
		Consult TPK on formulating responses			
		Consult DPMC on formulating responses			
		Consult PSC on formulating responses			
		Input external agency advice into response			

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<b>WC 14 June</b>	<b>Tribunal claimants</b>	Seek Minister's direction on: <ul style="list-style-type: none"> <li>Engaging with the Tribunal's recommended claimants (approx. 4-5)</li> <li>Engaging before making a decision on the formal response/primary recommendation</li> <li>Engaging after the Cabinet paper in August as part of the wider strategy consultation</li> </ul>	Early July	Olivia/Jane (Reviews)	Advice to the Minister
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**Table 2 – Initial plan for advice to the Minister**

<b>Date</b>	<b>Advice to the Minister</b>		<b>Lead</b>
<b>WC 14 June</b>	<b>Second report on Tribunal</b>	Provide a number of pieces of advice to the Minister: <ul style="list-style-type: none"> <li>Second report on the Tribunal's report (process focussed, stepping out the decision-points for the formal response)</li> <li>Seek decision about engagement with the claimants: who, when, on what?</li> </ul>	Olivia
<b>Early July</b>	<b>Third report</b>	<ul style="list-style-type: none"> <li>Third report on the Tribunal's report (analysis of Treaty jurisprudence and breaches and recommendations, including the primary recommendation)</li> <li>Ministerial Advisory Board report analysis</li> </ul>	Policy, Olivia to support



# Aide-mémoire

## Meeting

**Date:** 30 April 2021 **Security Level:** In confidence

**For:** Hon Kelvin Davis, Minister for Children

**File Reference:** REP-OT/21/04/123

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## Overview of Waitangi Tribunal urgent inquiry report (Wai 2915)

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**Purpose** This aide mémoire provides you with an overview of the Waitangi Tribunal's report *He Pāharakeke, He Rito Whakakīkīnga Whāruarua*, publicly released on 30 April 2021. The report contains the Tribunal's findings and recommendations from the urgent inquiry into the Treaty consistency of Oranga Tamariki legislation, policies and practices.

Attached at Appendix A is a draft table which provides an overview of the findings and recommendations in the report.

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**Background** The inquiry focused on the following questions (from 2015 onwards):

- Why has there been such a significant and consistent disparity between the number of tamariki Māori and non-Māori children being taken into State care under the auspices of Oranga Tamariki and its predecessors?
- To what extent will the legislative, policy, and practice changes introduced since 2017, and currently being implemented, change this disparity for the better?
- What (if any) additional changes to Crown legislation, policy or practice might be required in order to secure outcomes consistent with te Tiriti/the Treaty and its principles?

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**Overview** The Waitangi Tribunal (the Tribunal) concludes that the Crown has breached the Treaty and its principles in a number of respects. It considers Crown actions and omissions pre 2017 and post 2017 and lists specific areas of Treaty breach.

Most of the areas of Treaty breach identified are consistent either with concessions the Crown made in the inquiry, rationale underpinning the Oranga Tamariki reforms or areas where we have significant work programmes underway and recognise further effort is required (for example, the reform of permanency policy, the procurement model and approach to partnering).

The Tribunal acknowledges the complex issues faced by whānau including drug use, family violence and income and housing insecurity and that Oranga Tamariki is not solely responsible for disparities. However, the Tribunal also notes it heard some appalling examples of Oranga Tamariki practice through the Inquiry.

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The Tribunal’s primary conclusion is that while there are positive initiatives at Oranga Tamariki (such as the work underway at the Blenheim and Whakatāne sites), wholesale reform across the care and protection system/Crown is required to achieve the system transformation necessary and that this needs to be led by Māori.

The Tribunal’s primary recommendation is that a Māori Transition Authority is established to identify the changes necessary so no tamaiti Māori enters state care (the Oranga Tamariki vision as articulated in the Section 7AA report, released August 2020).

The Transition Authority would consider how responsibilities and statutory functions can be transferred to Māori and advise on system improvements, including legislative and policy changes. It should be established quickly to support policy work underway to respond to reviews, not be constrained by current legislation, and consider locally-led approaches.

The Tribunal recommends the Transition Authority is established, led, and monitored by the members of Governance group for the Māori-led inquiry (published February 2020) as a matter of priority.<sup>1</sup> This initial group should also seek advice on the structure and function of the Transition Authority from a number of claimants.

The Crown should significantly engage, support, and fund the Transition Authority, and allow sufficient time so that Māori can lead the design.

The Tribunal does not support calls for the disestablishment of Oranga Tamariki and recommends the Ministry continue to provide a ‘safety net’ for vulnerable tamariki who need care and protection. ‘This is in part due to the large number of tamariki Māori already in State care. Sudden and arbitrary adjustments to their care risks creating further prejudice.’<sup>2</sup>

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**Initial view of the report**

There are a number of areas where recommendations align with the direction of Oranga Tamariki. In the inquiry, we noted that we are on a pathway to a smaller, care and protection focussed agency with communities responsible for locally-led solutions. The report also recommends the system be built upon traditional Māori concepts. We are embedding a practice programme that draws on Māori concepts and promotes Māori values.

The report includes a number of case studies that demonstrate constructive change and good practice. For example, it notes the Blenheim and Whakatāne sites demonstrate constructive ways of engaging with and supporting local Māori communities and refers to the Waitomo Papakāinga collaboration model.

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<sup>1</sup> The Māori-led inquiry governance group was chaired by Dame Rangimārie Naida Glavish and its members were: Sir Toby Curtis, Sir Mason Durie, Dame Areta Koopu, Dame June Mariu, Lady Tureiti Moxon, Merepeka Raukawa-Tait, the Honourable Sir Pita Sharples, Sir Mark Solomon, Dame Iritana Tāwhiwhirangi, and the Honourable Dame Tariana Turia.

<sup>2</sup> p.182

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The Ministry has also made changes to areas the Tribunal has identified as needing transformation, such as the use of Section 78 orders. However, we agree further work is needed to address other areas identified such as institutional bias, cultural competency, the use of Family Group Conferences and social work practice (including education and training).

The Tribunal notes its caution regarding the proposed establishment of the Transition Authority of 'replacing one bureaucracy with another' and the associated risk of 'commercialising kinship.' From initial analysis, we support this view.

There are a number of factual inaccuracies in the report that we have raised with the Tribunal.

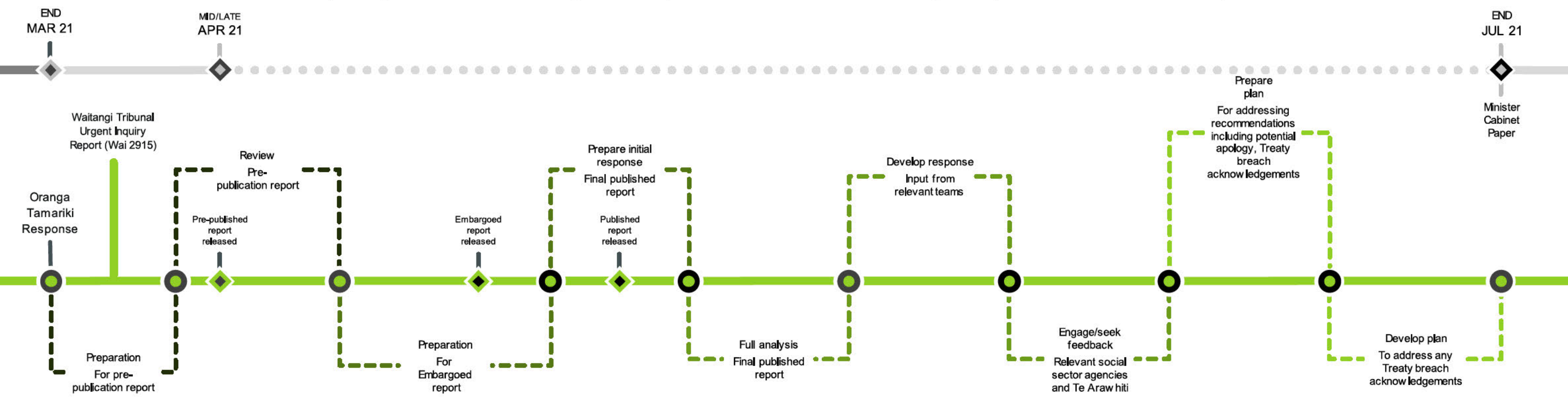
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**Next steps**

Officials are meeting with you on Wednesday 5 May 2021 to discuss the report and next steps.

Subject to the discussion with you on Wednesday we will provide you with a further briefing on the report and seek your advice on the approach for the formal response in the coming weeks.

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## Waitangi Tribunal Urgent Inquiry Report (Wai 2915) Response

### Section 1 Pre-publication report

#### Preparation for pre-published report

- Establish process for receipt and early response with Crown Law Office and relevant teams e.g. Policy Group, Treaty response
- Engage with other agencies to understand format and approach of previous Tribunal reports.
- Engage with government leads of Kaupapa inquiries.
- Confirm who report can be shared with, for both the pre-publication and embargoed version.
- Prepare comms and engagement for Minister, LT, Crown (e.g. SSC and DPMC)

#### Prepare response to pre-publication report

- Share pre-publication report with appropriate groups
- Seek feedback from small group on initial review
- Share report and prepare an initial briefing for:
  - ↳ The Minister's office
  - ↳ LT/RMG/CE
- Provide feedback to the Tribunal via Crown Law based on any corrections or clarifications based on pre-published report.

### Section 2 | Preparing for final release

#### Preparation for embargoed report

- Establish process for receipt and early response with Crown Law Office and relevant teams eg Policy Group, Treaty response
- Prepare comms and engagement (internal, Minister, other Crown stakeholders)
- Confirm timeframe for embargo
- Media Statement

#### Prepare initial response to final published report

- Undertake initial analysis
- Share report with relevant teams for review:
  - ↳ Including Crown witnesses e.g. Paula Attrill
- Seek feedback from relevant teams on initial analysis [?]
- Share report and prepare an initial briefing for:
  - ↳ The Minister's office
  - ↳ LT/RMG/CE
- Share overview of report with staff (Te Pae, publish on reviews webpage?) \*question for CLO meeting about how widely we'll be able to share the report, I assume very as it will be made publicly available on the record of inquiry
- Share with Monitors \*ques for Jane

### Section 3 | Formal response

#### Prepare formal response

- Full analysis of report
- Draft initial response with input from relevant teams: \*(using RWG/RMG as the mechanism?)
  - ↳ Seek feedback and input from Crown witnesses eg Paula Attrill
  - ↳ Review and sign out from RMG, CE
- Engage/seek feedback from relevant social sector agencies and Te Arawa hīti (\*question about whether we want/need to do this)
- Engage with Cabinet/Attorney General\* (question for Crown Law about what the process is if we accept any Treaty breaches that could be proposed)

### Section 4 | Addressing recommendations

#### Next steps

- Provide advice to Minister for July Cabinet Paper
- NB July Cabinet paper will bring together strategic direction and response to reviews including Waitangi Tribunal and Ministerial Advisory Board
- Prepare plan for addressing recommendations and incorporating into RMW Programme, organisational strategy work:
  - ↳ Includes engagement plan
- Develop plan to address any Treaty breach acknowledgements and comms
- Suggest publishing overview of what we agreed to/didn't agree to alongside the final report and our response for transparency (part of Cabinet paper?)



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Appendix A - Waitangi Tribunal report (Wai 2915)

Initial analysis – 30 April 2021

Findings	
<b>Summary of findings prior to 2017</b>	<b>Initial views</b>
<p>Prior to 2017, the Crown breached its Treaty obligation to honour the right of Māori to exercise tino rangatiratanga over their kāinga and taonga in the following ways:</p> <ul style="list-style-type: none"> <li>• by failing to implement the recommendations of Pūao-Te-Ata-Tū to address systemic racism in the State care and protection system, and subsequently failing to support and enable Māori attempts to arrest and reverse the flow of tamariki Māori into State care</li> <li>• by maintaining a care and protection system characterised by asymmetrical control and leadership</li> <li>• by maintaining a care and protection system which in operation continues to reflect and prioritise euro-centric thinking, values, and practices</li> <li>• by failing to ensure that the care and protection system’s workforce is adequately trained to have a requisite level of cultural competency</li> <li>• by failing to monitor and regulate substantive and prejudicial differences in site culture and practice; and social worker practice, discretion, power, and decision-making</li> <li>• by failing to address persistent problems inhibiting the decision-making ability of whānau in family group conferences</li> <li>• by using Section 78 powers in ways that perpetuate and compound issues of structural racism, and contribute to the disparate rates of Māori and non-Māori tamariki being taken into care</li> <li>• by failing to oversee and consistently apply mechanisms for the monitoring and accountability of social work practice.</li> </ul>	<p>These areas have previously been identified as needing significant further work in the establishment of Oranga Tamariki.</p> <p>These areas are consistent either with concessions the Crown made in the inquiry, rationale underpinning the Oranga Tamariki reforms or areas we have identified as needing further effort.</p>
<b>Summary of findings post 2017</b>	
<p>The Crown has continued to breach its Tiriti / Treaty obligation to honour the right of Māori to exercise tino rangatiratanga over their kāinga and taonga in the following ways:</p> <ul style="list-style-type: none"> <li>• by failing to partially repeal the subsequent child provisions</li> <li>• by continuing to operate an inequitable and asymmetrical model in respect of partnerships and procurement</li> <li>• by failing to oversee and consistently apply mechanisms for monitoring and accountability of social work practice, and by failing to apply best practices in terms of data collection and quality</li> <li>• by failing to meaningfully reform permanency policy</li> <li>• by failing to address persistent problems in the operation of family group conferences</li> <li>• by inconsistent and unnecessary use of section 78 uplift protocols across a number of cases prior to mid-2019</li> <li>• by failing to ensure that te Tiriti provisions in the Oranga Tamariki Act are effective and clear.</li> </ul>	<p>These areas have been identified for further work. Work programmes are underway to address these issues. The Tribunal acknowledges this but criticises the pace and extent of change.</p>
<b>Key statements about Treaty principles</b>	<b>Initial views</b>
<p><b>Treaty breach: tino rangatiratanga over kāinga</b></p> <ul style="list-style-type: none"> <li>• Disparity has arisen and persists due to alienation, dispossession and disconnection from culture.</li> <li>• Failure by the Crown to honour the guarantee to Māori of the right of cultural continuity embodied in the guarantee of tino rangatiratanga over their kāinga.</li> <li>• Since the 1850s Crown policy has been dominated by efforts to assimilate Māori to the Pākehā way.</li> </ul>	<p>To come.</p>
<p><b>Treaty breach: partnership</b></p> <ul style="list-style-type: none"> <li>• Little evidence of Treaty partnership in the design or implementation of Crown policy and legislation.</li> </ul>	
<p><b>Treaty breach: active protection</b></p> <ul style="list-style-type: none"> <li>• A fundamental rethink is required re Crown’s duty of active protection now requires in relation to Oranga Tamariki and its operations.</li> <li>• Current policy and legislation dominated by a child rescue imperative.</li> <li>• Crown has not directed appropriate resources to Māori.</li> </ul>	
<p><b>Treaty breach: equity</b></p> <ul style="list-style-type: none"> <li>• Disparities exist and should be addressed. Although equity is not achieved by reducing numbers in care to proportionally represent the Māori population.</li> </ul>	



DRAFT – NOT GOVERNMENT POLICY

Appendix A - Waitangi Tribunal report (Wai 2915)

Initial analysis – 30 April 2021

<ul style="list-style-type: none"> <li>Principles of active protection and equity require the Crown to recognise and accept that the systemic features that cause and sustain the disparities in the number of tamariki Māori being taken into state care require a major system change, together with a significant reallocation of resources towards strengthening whānau 'by Māori, for Māori'.</li> </ul>	
<p><b>Treaty breach: options</b></p> <ul style="list-style-type: none"> <li>The Crown has not adequately protected the availability and visibility of Kaupapa Māori solutions.</li> </ul>	
<p><b>Redress:</b></p> <ul style="list-style-type: none"> <li>Crown should acknowledge its failures of policy and process.</li> <li>Crown should accept that the 2017 reforms are not a sufficient answer.</li> </ul>	
<p><b>Primary recommendation</b></p>	<p><b>Initial views</b></p>
<p><b>Establishment of a Māori Transition Authority:</b></p> <ul style="list-style-type: none"> <li>Independent of the Crown.</li> <li><b>Function:</b> identify the changes necessary so no tamaiti Māori enters state care. Includes considering how to transfer powers/responsibilities/statutory functions to Māori and system improvements (legislative and policy changes).</li> <li>Should be established quickly to support policy work underway to respond to reviews.</li> <li>Should not be constrained by current legislation or national approaches.</li> <li><b>Process:</b> Governance group for the Māori-led inquiry (published Feb 2020) to serve as the foundation membership for the Transition Authority.</li> <li>A number of claimant counsel to support details regarding structure and function, via the Māori-led inquiry governance group.</li> <li>Crown to significantly engage, fund and support. Sufficient time and proper assistance to be provided so that Māori can lead the design.</li> <li>Crown to engage with Māori-led inquiry governance group regarding setting up the transitions agency and appointing initial board.</li> <li>All of government approach needed.</li> <li>Need for Oranga Tamariki in the interim.</li> </ul>	<p>This would be a significant step for the Crown but many of the principles underling the rationale for a separate authority could underpin our strategic direction. These include including solutions designed 'by Māori, for Māori', bold whole of government approaches and a focus on actions, strengthening and restoring whanaungatanga.</p> <p>The Tribunal inquiry focused on the care and protection sphere of the operation of Oranga Tamariki. Other operations such as Youth Justice and Adoptions were not part of the Tribunal's inquiry. Accordingly, the Tribunal has not commented on those parts and it is not clear whether those operations will fall within the ambit of the proposed Transition Authority.</p>