

Office of Te Minita Whanaketanga

Cabinet Social Wellbeing Committee

Update on the development of the Declaration Plan

Proposal

- 1 This paper is a report back to Cabinet on feedback from targeted engagement with iwi, hapū, whānau and Māori organisations on their aspirations for the development of a plan to implement the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration plan).
- 2 This paper seeks Cabinet agreement to the next steps for drafting the Declaration plan.

Relation to government priorities

- 3 The development of the Declaration plan aligns with the Government's priority to lay the foundations for the future. It will contribute to our priority to strengthen Māori Crown relations and promote equity and fairness in the Māori Crown partnership. The development of the Declaration plan will assist New Zealand to comply with our international obligations under the Declaration and enhance New Zealand's reputation internationally on Indigenous peoples' rights, at a time when we are forging country-to-country relationships with other Indigenous peoples to support trade-led recovery from the impacts of COVID-19. The development of the Declaration plan will benefit all New Zealanders.

Executive Summary

- 4 In June 2021, Cabinet invited me to report back on feedback from the targeted engagement and seek approval to a process for drafting the Declaration plan. The targeted engagement largely consisted of around seventy workshops that were held with rūpū Māori representing a broad range of groups who responded to invitations to participate. Through the process of targeted engagement, tangata whenua shared their vision of the Aotearoa/ New Zealand they want to live in. The approach was consistent with the international guidance on how to develop a Declaration plan and our own processes for engagement with Māori.
- 5 The aspirations of Māori as tangata whenua raised during the workshops were wide ranging. Equally, a wide range of issues and barriers were identified by participants to the realisation of these aspirations. The strengthening of the rangatiratanga of tangata whenua was the most consistent aspiration identified from the feedback by participants. A summary of the feedback collected from participants is presented in **Appendix 1** and **2**.
- 6 I now seek your agreement to continue the work in partnership with Pou Tikanga and the Human Rights Commission for the development of a draft Declaration plan that will form the basis of wider public consultation later this year.

- 7 The draft Declaration plan should outline our commitment to realising the Declaration by presenting a roadmap of the key actions to achieve change. Implementing the Declaration will not take away from the rights of all citizens or threaten the unity of our country. While some of our laws and policies are not consistent with the Declaration, any changes to specific policy and statutory settings to achieve greater consistency with the Declaration would only be made over time, through a full public consultation process.

Background

Previous Cabinet decisions

- 8 In 2014, as a result of New Zealand's acceptance of a Universal Periodic Review recommendation on the Declaration, New Zealand committed to "take concrete measures to ensure the implementation and promotion" of the Declaration [CAB Min (14) 17/5].
- 9 In March 2019, Cabinet agreed for te Minita Whanaketanga Māori to lead a process to develop a national plan of action, strategy or other measure to progress the realisation of the Declaration. In 2019, te Minita Whanaketanga Māori appointed a technical advisory group, the Declaration Working Group (DWG), to develop a plan and engagement process strategy to realise the Declaration. The DWG provided its report, He Puapua, to te Minita Whanaketanga Māori in late 2019. Cabinet also invited te Minita Whanaketanga Māori to report back to the Cabinet Māori Crown Relations: Te Arawhiti Committee seeking initial decisions on a Declaration plan, and a preferred option for engagement with iwi, hapū, whānau and Māori [MCR-19-MIN-0003].
- 10 In June 2021, Cabinet agreed to a two-step process for the development of a Declaration plan including targeted engagement and wider public consultation on a draft Declaration plan.
- 11 Cabinet agreed to te Minita Whanaketanga Māori in consultation with the Minister for Māori Crown Relations: Te Arawhiti, the Minister of Foreign Affairs and the Minister of Justice to:
- 11.1 approve plans for the targeted engagement, including working with Pou Tikanga representatives of the National Iwi Chairs Forum¹ to help formulate the targeted engagement;
 - 11.2 consider feedback from the targeted engagement; and
 - 11.3 report back to Cabinet on the proposed process and arrangements for drafting a Declaration plan.
- 12 Cabinet noted that He Puapua is not government policy but provides an opportunity for further discussion.

¹ The development of a Declaration plan is one of the shared priorities agreed between the Government and the National Iwi Chairs Forum, alongside eliminating racism, Justice sector reforms, data and other priorities.

- 13 Cabinet invited te Minita Whanaketanga Māori to report back:
- 13.1 in December 2021 on feedback from targeted engagement and seeking approval of a proposed process for drafting a Declaration plan;
 - 13.2 in April 2022 seeking approval of a draft Declaration plan and a proposal for wider public consultation; and
 - 13.3 in December 2022 seeking approval of a final Declaration plan by December 2022 [SWC-21-MIN-0083].
- 14 The COVID-19 resurgence in 2021 and uncertainty created by changing alert levels have required adjustment to the reporting timeframes initially planned.

International precedents

- 15 Bolivia was the first country in the world to incorporate the Declaration into domestic law in its 2009 constitution. Since then, many countries have implemented changes to give effect to the Declaration. While New Zealand was one of the first countries committed to developing an action plan, there is global momentum in this area and other countries, such as Mexico and Ecuador, are making significant progress.
- 16 In June 2021, Canada passed the United Nations Declaration on the Rights of Indigenous Peoples Act. This Act requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to:
- 16.1 take all measures necessary to ensure the laws of Canada are consistent with the Declaration;
 - 16.2 prepare and implement an action plan to achieve the Declaration's objectives; and
 - 16.3 table an annual report on progress to align the laws of Canada and on the action plan.
- 17 An engagement process was launched in December 2021 for the federal government of Canada to work in partnership with Indigenous peoples to develop the action plan to achieve the objectives of the Declaration. Canada aims to develop the action plan by June 2023. As part of this collaborative work, \$23.6 million is available to support participation of Indigenous partners in the consultation and engagement process, including Indigenous-led engagement with their citizens and members to develop a shared vision for the action plan.
- 18 At the provincial level in Canada, British Columbia passed the Declaration on the Rights of Indigenous Peoples Act in November 2019. The Act requires the province to develop and implement an action plan, in consultation and cooperation with Indigenous peoples, to meet the objectives of the Declaration. Consultation took place last year and a draft action plan is available. The final action plan is expected to be publicly released in 2022.

Partnership approach and targeted engagement

- 19 Following Cabinet decisions in June 2021, te Minita Whanaketanga Māori worked in partnership with Pou Tikanga representatives of the National Iwi Chairs Forum (NICF) and the Human Rights Commission to formulate, implement and consider feedback on the targeted engagement on a draft Declaration plan.
- 20 This partnered approach, grounded in the Te Tiriti o Waitangi, is consistent with the guidelines provided by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) following its visit to New Zealand in 2019. EMRIP recommended that in developing a national plan of action, New Zealand and/or Māori should “consider how to engage with Māori on implementing their right to autonomy or self-government in matters relating to their internal and local affairs within the context of the State”². This is consistent with Cabinet-agreed guidelines on engagement with Māori. Pou Tikanga technician has held up this approach to NICF as an exemplar of a Te Tiriti based partnered approach.
- 21 Te Puni Kōkiri, Pou Tikanga and the Human Rights Commission identified key objectives for targeted engagement and arrangement to support the partnered approach to targeted engagement. This comprised a Governance Group, Steering Committee and working group. The Governance Group was established to provide oversight at key stages of the process. The Governance Group is co-chaired by Te Minita Whanaketanga Māori and Professor Margaret Mutu (Pou Tikanga chair), alongside the Minister for Māori Crown Relations, the Minister of Foreign Affairs, the Minister of Justice, Dayle Takitimu, Aroha Mead, Liana Poutū and Te Huia Bill Hamilton.

Feedback from targeted engagement

- 22 The intent of the targeted engagement phase was initially to engage with key iwi and significant Māori organisations to inform the process for the development of Declaration plan. Engagement with and the involvement of diverse Māori groups was considered critical to distil a set of Māori priorities and expectations on the process of developing the plan.
- 23 During this phase we reached out to a wide range of Māori to seek their participation in the targeted engagement. Te Puni Kōkiri, Pou Tikanga and the Human Rights Commission reached out to national Māori organisations, iwi through the National Iwi Chairs Forum network and Māori groups representative of specific Māori interests and sections of the Māori population. Workshops were held with those groups who expressed an interest in the process and were keen to share their views on how to give effect to the Declaration.

² The Expert Mechanism on the Rights of Indigenous Peoples is a subsidiary body of the United Nations' Human Rights Council and provides member states with expertise and advice on achieving the goals of the Declaration. The EMRIP guidelines require the development of a Declaration plan to be in partnership with Indigenous peoples and to include Māori elders, Māori women, Māori youth, Māori children, Māori LGBTQI+ people (takatāpui) and Māori disabled persons (tāngata whaikaha Māori) in the engagement process.

- 24 Targeted engagement ran from September 2021 to February 2022. The COVID-19 resurgence required the majority of the workshops to be held on-line. Prioritisation by iwi, hapū and Māori communities to responding to the re-emergence of COVID-19 affected the ability of some people to attend workshops and delayed the timing of some. Nonetheless, a very rich kōrero came out of the targeted engagement, sufficient to usefully inform the development of a Declaration plan.
- 25 Around seventy workshops were held with a wide range of groups including tāngata whaikaha Māori, iwi/hapū, rangatahi, and with rōpū with specific interest in health and education. A number of workshops included participants from varying backgrounds and representing a cross section of interests. Key iwi and significant Māori organisations were involved through the process.
- 26 **Appendix 1** provides a summary of the targeted engagement process. While targeted engagement was completed in early February, this is not the end of the conversation about the Declaration. Workshops will continue with interested groups, with a view to building broader knowledge and understanding of the Declaration, and there will be much wider consultation later this year.
- 27 The key themes emerging from the targeted engagement are summarised in **Appendix 2**. The Declaration covers a broad range of rights and freedoms and the issues and aspirations raised during the workshops were as a result quite extensive. These have been themed into 12 overall sections covering: tino rangatiratanga; participation in kāwanatanga; land, resources and the environment; education; provision of information about indigenous / Māori rights; health; justice; cultural expressions and identity; housing; equity and fairness; economic development and business; and te ora o te whānau. In addition to these themes, attendees shared their views on the process and structure for a Declaration plan and how the plan should be monitored.
- 28 The themes should not be considered in isolation as there is a high degree of overlap between what was heard in each of them. Strengthening the rangatiratanga of tangata whenua was the most consistent matter raised. It was discussed at every workshop and was at the heart of many of the issues raised by participants in discussions ranging from health, justice and education, through to the protection of the taiao and te reo Māori.
- 29 It is intended that both appendices to this paper will be made publicly available on the Te Puni Kōkiri website when this paper is proactively released.

Next steps in the development of the draft Declaration plan

Parameters for developing the draft Declaration plan

- 30 When New Zealand announced its support for the Declaration in 2010, it reaffirmed the importance of Te Tiriti o Waitangi as a unique feature of indigenous rights in New Zealand, alongside our other legal and constitutional frameworks [CAB Min (10) 10/11 refers]. It was noted that existing frameworks will continue to evolve in accordance with New Zealand's domestic circumstances. New Zealand's support for the Declaration recognises that the

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Declaration is consistent with the duties and principles inherent in Te Tiriti o Waitangi and confirms the special cultural and historical position of Māori as tangata whenua of New Zealand.

- 31 Previous Cabinet considerations provide parameters for the development of the Declaration plan.
- 32 In 2019, the paper to Cabinet said that the Declaration plan should include time-bound and measurable actions that show a concerted effort towards achieving the objectives of the Declaration. These actions should:
- 32.1 come from the intersect between government priorities, Māori aspirations and international Indigenous rights discourse;
 - 32.2 contribute to enhancing the self-determination of Māori as the Indigenous peoples of Aotearoa / New Zealand;
 - 32.3 contribute to improving intergenerational Māori wellbeing; and
 - 32.4 demonstrate ambitious action as opposed to business as usual [MCR-19-MIN-0003].
- 33 In 2021, Cabinet also noted that the implementation of the Declaration in New Zealand should:
- 33.1 be consistent with international law, and New Zealand law and policy;
 - 33.2 protect the rights of all citizens; and
 - 33.3 safeguard territorial integrity and political unity as well as the responsibility of all democratically elected governments to govern for the welfare of all their citizens [SWC-21-MIN-0083].
- 34 In other words, Cabinet intended that implementing the Declaration will not take away from the rights of all citizens or threaten the unity of our country. While some of our laws and policies are not consistent with the Declaration, any changes to specific policy and statutory settings to achieve greater consistency with the Declaration would only be made over time, through a full public consultation process.
- 35 The Declaration plan will reaffirm New Zealand's commitment to realising the Declaration and will present a roadmap of actions to be taken to achieve change. This may require some adjustment to our legal and policy settings over time.
- 36 In addition to the above parameters, I seek your agreement that the draft Declaration plan include the points discussed below.
- 37 The Declaration plan will be a living document and will keep the Government accountable to its commitment to the Declaration. I expect the Declaration plan to be subject to regular reviews and updates leading up to 2040 when we celebrate 200 years since signing Te Tiriti o Waitangi. Regular reviews will help

monitor our progress against the direction of travel set. The first Declaration plan might not be perfect, but it will confirm the overall direction of travel and our commitment to change over time.

Table 1: Declaration plan cycle

Date	Action
December 2022	Initial Declaration plan
Jan-Dec 2028	Review plan and update process
February 2029	Updated Declaration plan published
Jan-Dec 2034	Review plan and update process
February 2035	Updated Declaration plan published

- 38 This timing would enable the plan to be reviewed regularly with a goal to achieving the rights in the Declaration by 2040 and to align with other activities by the Government and iwi, hapū and whānau.
- 39 Through the targeted engagement, tangata whenua clearly shared their vision of the Aotearoa/ New Zealand they want to live in. These aspirations will inform the Declaration plan and from their perspective they said the Declaration plan should cover off self-determination, participation in kāwanatanga, land, resources and the environment, education, health, justice, culture, housing, equity and fairness, economic development and business, whānau ora and ongoing education about the Declaration and Indigenous rights. The workshops were an opportunity for participants to identify possible actions to realise the rights in the Declaration and share their aspirations for a Declaration plan. The purpose of the targeted engagement was not to restrain these aspirations. The Declaration plan will need to acknowledge that adjustments needed to our legal and policy settings to be fully consistent with the Declaration will need to take place over time and with ongoing public consultation.
- 40 Wherever possible, the plan will make explicit reference to relevant articles of the Declaration and Te Tiriti o Waitangi and use the language of the Declaration³. The Declaration is attached as **Appendix 3**. The plan will also include monitoring and evaluation frameworks. Further discussions need to take place with Pou Tikanga, the Independent Monitoring Mechanism (IMM) and the Human Rights Commission to determine how to best monitor progress against the Declaration plan. I will address this point in my report back to Cabinet in June 2022 on the draft Declaration plan.
- 41 The Government is committed to realising its obligation to implement Indigenous peoples' rights under the Declaration. The actions in the Declaration plan will need to be measurable and for specific agencies to take responsibility

³ Consistent with the 2019 EMRIP guidelines.

for resourcing or implementation. The plan will be an opportunity for Māori to guide the development of a plan and for the Government to implement the Declaration. It is also an opportunity to establish greater coherence across Government in delivering beneficial outcomes for Māori on wellbeing and development, and achieve better outcomes for everyone. The development of the Declaration plan will benefit all New Zealanders. The Declaration plan will include a small number of iconic and ambitious actions that will help give effect to the Declaration, alongside interim short-term and long-term actions.

Process for developing the draft Declaration plan in partnership with Indigenous peoples

- 42 Māori have provided leadership in developing innovative responses to issues with a strong Indigenous perspective and engaged with successive governments on possible paths forward. Most recently, in the context of COVID-19 and preparing our communities to best respond to the pandemic; iwi, hapū, whānau and Māori organisations have been instrumental in rolling out initiatives and creating responses that best serve the interests of communities. We have seen across the country benefits of working in partnership to achieve a more equitable and prosperous future for everyone and we are learning from these initiatives. Let's continue on this path.
- 43 The partnership approach undertaken so far with Pou Tikanga for the development and implementation of the targeted engagement strategy, and the analysis of the engagement workshops has been successful. It affirms the cultural and historical position of Māori as tangata whenua of New Zealand and demonstrates a level of maturity in the relationship between the Government and the Indigenous peoples of Aotearoa.
- 44 I seek your agreement to continue working in partnership with Pou Tikanga and the Human Rights Commission for the development of a draft Declaration plan. Pou Tikanga and the Human Rights Commission representatives on the working group and Steering Committee referred to in paragraph 21 bring a wealth of knowledge about the Declaration, Indigenous peoples and human rights, and Te Tiriti o Waitangi.
- 45 The Governance Group has agreed to an approach which will see Te Puni Kōkiri, Pou Tikanga and the Human Rights Commission work collectively to draft the Declaration plan. Te Puni Kōkiri will provide resource support to Pou Tikanga and the Human Rights Commission to enable their involvement. The development of the draft Declaration plan will require engagement across Government agencies to help shape and consider the implications of potential actions.
- 46 The Governance Group will approve the draft Declaration plan before it progresses to Cabinet for confirmation.

Advisory Panel of Legal Experts

- 47 In June 2021, I informed you that I intended to engage with a small group of advisors with legal expertise. I have established an advisory panel comprised

of Mr Craig Linkhorn, Ms Horiaana Irwin-Easthope, Ms Natalie Coates and Mr Tim Castle. These advisory panel members were chosen because of their broad range of expertise in human rights and international law, the Declaration, te Tiriti o Waitangi, Māori and Indigenous law including customary rights, and an understanding of Māori aspirations.

- 48 The panel will provide advice on the development of a draft Declaration plan and its consistency with New Zealand law and policy. It will provide its advice to the Minister for Māori Development, and the Chair of Pou Tikanga, Professor Margaret Mutu, as the co-chairs of the Declaration Governance Group, on the extent to which the proposals for inclusion in the draft Declaration plan meet some of the key parameters identified by Cabinet.

Next Steps

- 49 Subject to Cabinet's agreement to continue to progress this work in partnership with Pou Tikanga, I will report back to Cabinet in June 2022 with the draft Declaration plan, including a proposed monitoring and evaluation process, and a proposal for public consultation. I intend for the start of the broader public consultation to coincide with the new Matariki public holiday on 24 June 2022.
- 50 I will report back to Cabinet for approval of the final Declaration plan by December 2022 with a view to formally release it in December 2022.

Financial Implications

- 51 Any financial implications associated with the drafting of the Declaration plan will be met from within Vote: Māori Development baselines.

Legislative Implications

- 52 There are no legislative implications for this paper.

Impact analysis

- 53 A regulatory impact statement and a climate implications of policy assessment are not required for this paper.

Population Implications

- 54 In line with the Declaration, particular attention needs to be given to the rights and needs, both as individuals and collectively, of Māori elders, Māori women, Māori youth, Māori LGBTQI+ people (takatāpui) and Māori disabled persons (tāngata whaikaha Māori) as the next steps are taken towards developing the Declaration plan.
- 55 Engagement on the Declaration plan was led by Te Puni Kōkiri, Pou Tikanga and the Human Rights Commission and efforts were made to ensure the participation of these communities in the engagement workshops. Their views and aspirations for the Declaration plan have been collated and analysed. This

will influence the development of the draft Declaration plan. We will continue to engage with these groups as part of the wider public consultation.

Human Rights

- 56 Developing a plan on the Declaration will align with New Zealand's existing human rights obligations and ensure that these are realised in practice.

Consultation

- 57 This paper was developed in partnership with Pou Tikanga and the Human Rights Commission. Members of the Governance Group have indicated their support for the paper.
- 58 The Crown Law Office, the Department of Conservation, the Department of Corrections, the Department of Internal Affairs, Land Information New Zealand, the Ministry of Business, Innovation and Employment, the Ministry for Culture and Heritage, the Ministry of Education, the Ministry for the Environment, the Ministry for Foreign Affairs and Trade, the Ministry of Health, the Ministry of Justice, the Ministry of Primary Industries, the Ministry of Social Development, the Social Wellbeing Agency, the Office for Disability Issues, the Ministry for Women, the Ministry for Pacific Peoples, the Ministry for Housing and Urban Development, New Zealand Police, the Office for Māori Crown Relations: Te Arawhiti, Oranga Tamariki–Ministry for Children, the Treasury, the Public Service Commission and Statistics New Zealand were consulted on a draft version of this paper. The Department of Prime Minister and Cabinet was informed.

Communications

- 59 Following Cabinet consideration of this paper, I will make the key themes arising from the engagement workshops (summarised in **Appendix 2**) publicly available on the Te Puni Kōkiri website and compliant with the Website Accessibility Guidelines. The Governance Group co-chair and I will make a press release outlining the latest progress and the upcoming wider public consultation.

Proactive Release

- 60 Subject to Cabinet approval, please note my intention to release this Cabinet paper on the Te Puni Kōkiri website within 30 working days of Cabinet approval.

Recommendations

I recommend that the Committee:

- 1 **note** that in June 2021, Cabinet invited te Minita Whanaketanga Māori to report back on feedback from targeted engagement and seek approval of a proposed process for drafting the Declaration plan [SWC-21-MIN-0083];
- 2 **note** that the Government has worked with Pou Tikanga representatives of the National Iwi Chairs Forum and the Human Rights Commission to formulate and

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- implement the targeted engagement on the draft Declaration plan and consider feedback from the targeted engagement;
- 3 **note** the key themes arising from the targeted engagement summarised in Appendix 2;
- 4 **agree** to make Appendix 1 and Appendix 2 publicly available on Te Puni Kōkiri's website;
- 5 **note** that previous Cabinet considerations provide parameters for the development of the Declaration plan [MCR-19-MIN-0003] and [SWC-21-MIN-0083];
- 6 **note** that consistency with the Declaration will need to happen over time and require some adjustments to our legal and policy settings;
- 7 **agree** that the draft Declaration plan will:
- 7.1 outline an iterative process of regularly reviewing and updating the Declaration plan through to 2040;
 - 7.2 confirm the Government's commitment to realise the Declaration and present a roadmap of actions to be taken to achieve change;
 - 7.3 be informed by key themes that arose from the targeted engagement workshops;
 - 7.4 make explicit reference to relevant articles of the Declaration and Te Tiriti o Waitangi and use the language of these documents wherever possible;
 - 7.5 include an approach to monitoring and evaluation;
- 8 **agree** to continue working in partnership with Pou Tikanga and the Human Rights Commission for the development of a draft Declaration plan; and
- 9 **note** that te Minita Whanaketanga Māori will report back to Cabinet in June 2022 with the draft Declaration plan and a proposal for wider public consultation.

Authorised for lodgement

Hon Willie Jackson
Te Minita Whanaketanga Māori