



10 March 2022

DOIA 2122-0571

John Luke

[fyi-request-18242-d11b2ae5@requests.fyi.org.nz](mailto:fyi-request-18242-d11b2ae5@requests.fyi.org.nz)

Dear John

Thank you for your email of 19 January 2022 requesting the following information under the Official Information Act 1982 (the Act):

*“2122-1175 Ministerial Oversight Group on State Sector Employment Relations meeting on 29 September 2021  
2122-1299 MSWG-Officials Meeting  
2122-1328 Tourism Electronic Card Transactions (TECTs) – August 2021  
2122-0870 Copyright Tribunal: Cabinet paper to progress appointments and reappointments”*

On 14 December 2021, the Ministry extended the timeframe to respond to your request in accordance with section 15A(1)(b) of the Act, as 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.

Please find the documents within the scope of your request attached, with some information withheld under the following sections of the Act:

- 9(2)(a), to protect the privacy of natural persons, including that of deceased natural persons;
- 9(2)(b)(ii), to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;
- 9(2)(ba)(i), to protect information which is subject to an obligation of confidence, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied;
- 9(2)(f)(iv), to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials;
- 9(2)(h), to maintain legal professional privilege;
- 9(2)(j), to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities.

I do not consider that the withholding of this information is outweighed by public interest considerations in making the information available.

**Labour, Science and Enterprise**

15 Stout Street, PO Box 1473, Wellington 6140 New Zealand

E [info@mbie.govt.nz](mailto:info@mbie.govt.nz)

T +64 4 472 0030

W [www.mbie.govt.nz](http://www.mbie.govt.nz)

You have the right to seek investigation and review of this decision by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found at: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or by free phone to 0800 802 602.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. McConnell', written in a cursive style.

Lesley McConnell  
Director, Group Operations



## BRIEFING

### Copyright Tribunal: Cabinet paper to progress appointments and reappointments

<b>Date:</b>	6 September 2021	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122 - 0870

Minister	Action sought	Deadline
Hon Dr David Clark <b>Minister of Commerce and Consumer Affairs</b>	<b>Agree</b> to progress the appointments of Wi Pere Mita as Chair and Paul Johns as a member, and the reappointments of Peter Dengate Thrush and Sarah-Jane Weir as members, of the Copyright Tribunal.  <b>Note</b> that, in order to be considered at the APH meeting on Wednesday, 29 September 2021, the Cabinet paper will need to be lodged by 10.00am on Thursday, 23 September 2021.	15 September 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Paul Metcalf	Manager, Appointments and Governance	s 9(2)(a)	✓
Leanne Hay	Advisor, Board Appointments and Governance	04 830 7256	

The following departments/agencies have been consulted
Associate Minister of Justice, Hon Minister Sio, MBIE Corporate Governance and Intellectual Policy, MOJ Justice Services and Tribunals.

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



## BRIEFING

### Copyright Tribunal: Cabinet paper to progress appointments and reappointments

<b>Date:</b>	6 September 2021	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122 - 0870

#### Purpose

To provide you with a draft Cabinet Appointments and Honours (APH) Committee paper to progress the appointments of Wi Pere Mita as Chair and Paul Johns as a member, and the reappointments of Peter Dengate Thrush and Sarah-Jane Weir as members, of the Copyright Tribunal.

#### Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Agree to** progress the appointments of Wi Pere Mita as Chair and Paul Johns as a member, and the reappointments of Peter Dengate Thrush and Sarah-Jane Weir as members, of the Copyright Tribunal.

*Agree / Disagree*

- b **Note** that, in order to be considered at the APH meeting on Wednesday, 29 September 2021, the Cabinet paper will need to be lodged by 10.00am on Thursday, 23 September 2021.

*Noted*

  
Paul Metcalf  
**Manager, Appointments and Governance**  
Labour, Science and Enterprise, MBIE

..... / ..... / .....

Hon Dr David Clark  
**Minister of Commerce and Consumer Affairs**

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## Background

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1. The Copyright Tribunal (the Tribunal) is a statutory body established under section 205 of the Copyright Act 1994 (the Act). The Tribunal resolves disputes between licensing bodies, or proposed licensing bodies, and those who hold, or seek to hold, licenses in respect of copyright works. Following amendments to the Act in 2011, the Tribunal can also hear applications and make awards in respect of claims for breach of copyright, as a result of peer-to-peer file sharing technology over the internet.
2. Under section 206 (1) of the Act, the Tribunal consists of a Chairperson and at least two, but no more than five, other persons. Members are appointed for up to five years and can be reappointed.
3. The Chairperson of the Tribunal is appointed by the Governor-General on the recommendation of the Minister of Commerce and Consumer Affairs, as the responsible Minister, after consultation with the Minister of Justice. The other members are appointed by the Governor-General on the recommendation of the responsible Minister.

## You recently made appointment and reappointment decisions for the Board

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4. The terms of the current Chairperson, Professor Susan Frankel, and two members, Sarah Bacon and Paul Sumpter, expired in 2019. Professor Frankel, Ms Bacon and Mr Sumpter are not seeking reappointment, however they have agreed to remain on the Tribunal until the process to appoint their replacements is completed.
5. You have agreed to recommend the appointment of Wi Pere Mita as Chair for a term of five years, and Paul Johns as a member, for a term of four years, to the Tribunal [briefing 2122-0449 refers]. You have previously agreed to recommend the reappointment of Peter Dengate Thrush and Sarah-Jane Weir to the Tribunal for terms of five years [briefing 2021-1953 refers].
6. s 9(2)(a) [REDACTED] We will provide you with further advice on our recommendation for a replacement Deputy Chair, along with advice on her replacement, once the new Chair of the Tribunal is appointed.

## Next steps

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7. A draft Cabinet paper outlining your intention to recommend the appointments of Wi Pere Mita and Paul Johns, and the reappointments of Peter Dengate Thrush and Sarah-Jane Weir, is attached as **Annex One**. The accompanying Organisation Form and Candidate CV Forms are attached as **Annex Two**.
8. Subject to your approval, the attached Cabinet paper and forms would need to be submitted to the Cabinet office by 10.00am on Thursday, 23 September 2021 to ensure the proposal is included on the agenda for the Cabinet Appointments and Honours (APH) Committee meeting on Wednesday, 29 September 2021.
9. Speaking notes to support your appearance at the APH Committee meeting are attached as **Annex Three**.

## **Annexes**

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- Annex One: Draft Cabinet paper to progress appointments and reappointments to the Copyright Tribunal
- Annex Two: Organisation Form and Candidate CV Forms
- Annex Three: Speaking notes for APH meeting: Summary of proposed appointments and reappointments to the Copyright Tribunal

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**Annex One: Draft Cabinet paper to progress appointments and reappointments to the Copyright Tribunal**

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Appointments and Honours Committee

## **COPYRIGHT TRIBUNAL: APPOINTMENTS AND REAPPOINTMENTS**

### **Proposal**

- 1 This paper outlines my intention to:
  - 1.1 recommend that the Governor-General appoints Wi Pere Mita as Chair and member of the Copyright Tribunal for a five year term from the date of appointment
  - 1.2 recommend that the Governor-General appoints Paul Johns as a member of the Copyright Tribunal for a term of four years from the date of appointment
  - 1.3 recommend that the Governor-General reappoints Peter Dengate Thrush as a member of the Copyright Tribunal for a five year term from the date of reappointment
  - 1.4 recommend that the Governor-General reappoints Sarah-Jane Weir as a member of the Copyright Tribunal for a five year term from the date of reappointment.

### **Background**

- 2 The Copyright Tribunal (the Tribunal) is a statutory body established under section 205 of the Copyright Act 1994 (the Act). The Tribunal resolves disputes between licensing bodies, or proposed licensing bodies, and those who hold, or seek to hold, licenses in respect of copyright works. Following amendments to the Act in 2011, the Tribunal can also hear applications and make awards in respect of claims for breach of copyright, as a result of peer-to-peer file sharing technology over the internet.
- 3 Under section 206 (1) of the Act, the Tribunal consists of a Chairperson and at least two, but no more than five, other persons. Members are appointed for up to five years and can be reappointed.
- 4 The Chairperson of the Tribunal is appointed by the Governor-General on the recommendation of the Minister of Commerce and Consumer Affairs, as the responsible Minister, after consultation with the Minister of Justice. The other members are appointed by the Governor-General on the recommendation of the responsible Minister.



- 5 The Tribunal currently consists of a Chair and five members. A list of the current Tribunal membership is attached.

### **Comment**

- 6 I intend to recommend that the Governor-General appoints Wi Pere Mita as Chair of the Copyright Tribunal to replace outgoing Chair Professor Susan Frankel, for a term of five years, commencing on the date of appointment.
- 7 I also intend to recommend that the Governor-General appoints Paul Johns as a member of the Copyright Tribunal to replace outgoing member Paul Sumpter, for a term of four years, commencing on the date of appointment.
- 8 I intend to recommend that the Governor-General reappoints Peter Dengate Thrush and Sarah-Jane Weir as members of the Copyright Tribunal for terms of five years, commencing on the date of reappointment.

### ***Wi Pere Mita***

- 9 Wi Pere Mita is a practising lawyer, consultant and accredited mediator who has appeared before most Courts, Tribunals and Authorities in New Zealand. Mr Mita has extensive experience in most areas of intellectual property, including copyright, from protection and maintenance through to enforcement. He has represented and advised music recording artists and labels, publishers, authors of literary works, public broadcasters and producers (television and radio), performing artists and arts organisations, collecting agencies, museums, iwi, local and central government, not-for-profit organisations and commercial entities.

### ***Paul Johns***

- 10 Paul Johns is a barrister and solicitor. He is currently the Head of Dispute Resolution at Baldwins Intellectual Property, one of New Zealand's leading intellectual property specialist firms. Mr Johns has specialised in intellectual property, including copyright matters, throughout his legal career of nearly 20 years. As a lawyer, Mr Johns has significant experience in interpreting legislation, including advocating certain interpretations on behalf of clients in hearings before courts and tribunals ranging from the Court of Appeal to Assistant Commissioners of Trademarks and Patents.

### ***Peter Dengate Thrush***

- 11 Peter Dengate Thrush is a barrister and solicitor, and patent attorney, specialising in internet, intellectual property and technology cases. He is the managing partner at McCabe & Co patent attorneys and lawyers. Mr Dengate Thrush spent most of his early career at Baldwins where he became partner and oversaw many designs and implementations of projects and ideas. He also spent 15 years practising as a barrister from chambers.

## **Sarah-Jane Weir**

- 12 Sarah-Jane Weir has over twenty years of experience as a qualified lawyer in New Zealand and Europe, predominantly in corporate and commercial advisory work, with a sub-specialty in advising technology, electronics and telecommunications businesses. Ms Weir has an in-depth understanding of the Copyright Act and Copyright Tribunal responsibilities. She has coordinated intellectual property work at Anderson Lloyd and holds a Masters of Intellectual Property Law.

### **Criteria for appointment**

#### *For the Chairperson role:*

- 13 In line with the previous Minister of Commerce and Consumer Affairs' direction, the Ministry of Business, Innovation and Employment carried out a search process to identify Chairperson candidates with the following attributes (in addition to the criteria for the member role below):
- 13.1 A barrister or solicitor of the High Court with at least seven years' practice, whether or not he or she holds or has held judicial office.
  - 13.2 An understanding of judicial processes, or experience in either conventional judging or another tribunal position.
  - 13.3 Knowledge of, or experience in, intellectual property law (especially copyright).

#### *For the member role:*

- 14 In line with the previous Minister of Commerce and Consumer Affairs' direction, MBIE carried out a search process to identify candidates for the member roles with the following attributes:
- 14.1 Relevant academic or copyright background, preferably in law, economics, commerce, or public administration.
  - 14.2 Experience in or the ability to interpret legislation (experience in judicial or tribunal procedures may be an advantage).
  - 14.3 Understanding of copyright issues, or experience in a sector involving works of copyright (such as the creative arts, publishing or audio-visual services).
  - 14.4 Ability to assess economic evidence, or an understanding of the economic implications affecting copyright works and their owners and users.
  - 14.5 Knowledge of the regulatory settings in New Zealand relating to copyright licensing, or copyright disputes, and familiarity with various approaches taken by relevant overseas jurisdictions.
  - 14.6 Familiarity with the operation of the internet and related technology.

15 I consider that Wi Pere Mita and Paul Johns meet the above criteria for appointment.

16 I consider that Peter Dengate Thrush and Sarah-Jane Weir have specific skills and experience which will continue to be of value to the Copyright Tribunal.

### **Representativeness of reappointment**

17 I am satisfied that the appointments of Mr Mita and Mr Johns, and the reappointments of Peter Dengate Thrush and Sarah-Jane Weir, will provide for a well-balanced Tribunal in terms of gender, age, ethnicity and geographic representation, and an appropriate mix of skills and experience.

### **Remuneration**

18 The Board is classified as a Group 2 Level 1 Governance Board under the Cabinet Fees Framework. The fee for the Chair is s 9(2)(a), and the fees for members are s 9(2)(a). These fees are consistent with the Fees Framework.

### **Appointment process and consultation**

19 I can confirm that an appropriate process has been followed in selecting the proposed appointees, in terms of the Public Service Commission's appointment guidelines. The appointment process included a public call for applications. Nominations were also sought from the Ministry for Women, the Ministry for Ethnic Communities, Te Puni Kōkiri, the Ministry for Pacific Peoples and the Office for Disability Issues.

20 In accordance with Section 206 (2A and 2B) the Chairperson of the Tribunal shall be appointed by the Governor General on my recommendation after consultation with the Minister of Justice. I can confirm that agreement has been sought from the Associate Minister of Justice Hon Minister Sio, who holds this delegation, for this proposed appointment.

### **Conflicts of interest**

21 I can confirm that appropriate enquiries concerning conflicts of interest have been carried out, in accordance with the Public Service Commission appointment guidelines, to identify any conflict of interest that could reasonably be identified.

22 s 9(2)(ba)(i)

23 s 9(2)(ba)(i)

24 s 9(2)(ba)(i)

25 The Copyright Tribunal has no formal policy for managing conflicts of interest, but the same principles that exist around conflicts of interest for courts or tribunals apply for the Copyright Tribunal. As quasi-judicial officers, members of the Tribunal would recuse themselves if any conflict existed.

### **Recommendation**

26 It is recommended that the Committee note my intention to:

- 26.1 recommend that the Governor-General appoints Wi Pere Mita as Chair of the Copyright Tribunal for a term of five years from the date of appointment
- 26.2 recommend that the Governor-General appoints Paul Johns as a member of the Copyright Tribunal for a term of four years from the date of appointment
- 26.3 recommend that the Governor-General reappoints Peter Dengate Thrush as a member of the Copyright Tribunal for a term of five years from the date of reappointment
- 26.4 recommend that the Governor-General reappoint Sarah-Jane Weir as a member of the Copyright Tribunal for a term of five years from the date of reappointment.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

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**Annex Two: Organisation Form and Candidate CV Forms**

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**APH Organisation Form**  
All sections must be completed.

**Organisation and Responsible Portfolio**

*Copyright Tribunal*  
*Commerce and Consumer Affairs*

**Brief Outline of the Functions and Responsibilities of the Organisation**

The Copyright Tribunal is a statutory body established under section 205 of the Copyright Act 1994. The Tribunal resolves disputes between licensing bodies, or proposed licensing bodies, and those who hold or seek to hold licenses in respect of copyright works. The Tribunal also hears applications and makes awards in respect of claims for breach of copyright as a result of file sharing over the internet. Under section 206(1) of the Act, the Tribunal consists of a Chairperson and at least two, but not more than five, other persons. The Chairperson of the Tribunal is appointed by the Governor-General on the recommendation of the responsible Minister made after consultation with the Minister of Justice; and shall be a barrister or solicitor of the High Court of not less than seven years' practice, whether or not the barrister or solicitor holds or has held judicial office. The other members are appointed by the Governor-General on the recommendation of the responsible Minister.

**Current Membership**

Name	Gender Identity*	Region	Ethnicities (and Iwi if applicable)	Date of original appointment	Expiry date of present term
Professor Susan (Susy) Frankel (Chair)	s 9(2)(a)	Wellington	s 9(2)(a)	18/08/2008	17/08/2019
Mrs Sarah Bacon		Wellington		31/01/2014	01/02/2019
Mr Paul Sumpter		Auckland		06/07/2004	05/07/2019
Miss Sarah-Jane Weir		Nelson		27/03/2014	26/03/2019
Mr Peter Dengate Thrush		Wellington		01/03/2010	28/02/2020
Ms Jane Megan Glover		Waiheke Island		01/08/2012	06/11/2021

## Candidate CV Form

Sections with \* must be completed.

This form should be completed by, or in consultation with, the candidate where possible.


<b>Name*</b> (family name in upper case; include title if appropriate)	Wi Pere MITA
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### The Position

<b>Organisation/Entity*</b>	Copyright Tribunal
<b>Position *</b> (chair/member etc.)	Chair
<b>Term*</b>	Five years
<b>Payment*</b> (per day /per year)	s 9(2)(a)

### How the Candidate Meets the Needs of the Position

<b>Skills and attributes the candidate will bring to the position*</b> (e.g. business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	s 9(2)(a)
<b>Possible conflicts of interest*</b>	s 9(2)(ba)(i)

<p><b>Proposals for conflict management (if applicable)</b></p>	<p>s 9(2)(ba)(i)</p> 
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## The Candidate

<b>Name*</b> (family name in upper case; include title if appropriate)	Wi Pere MITA
<b>Address</b>	s 9(2)(a)
<b>Ethnicity(s)</b>	s 9(2)(a)
<b>Age range*</b>	s 9(2)(a)
<b>Gender*</b>	s 9(2)(a)
<b>Current or most recent Employment*</b> (specify position and employer, include years)	<ul style="list-style-type: none"> <li>• Laidlaw Consultants Limited, Managing Director (2015 – present)</li> <li>• Aotearoa Kapa Haka Limited, Te Matatini Society Incorporated, Head of Legal and Operations (2016 – present) – contract</li> </ul>
<b>Government board appointments held*</b> (current and previous, include years)	<ul style="list-style-type: none"> <li>• New Zealand Police, Māori Advisory Board Member (2017 – present)</li> </ul>
<b>Private and/or voluntary sector board appointments held*</b> (current and previous, include years)	<p><b>Current</b></p> <ul style="list-style-type: none"> <li>• Trust Tairāwhiti Limited, Director (2021 – present)             <ul style="list-style-type: none"> <li>○ Audit and Risk Committee</li> </ul> </li> <li>• Prime SPV Limited, Director (2021 – present)</li> <li>• Te Runanganui o Ngāti Porou (Toitu Ngāti Porou Trustee Limited), Director (2021 – present)             <ul style="list-style-type: none"> <li>○ People and Policy Committee</li> </ul> </li> <li>• Resolution Institute, Director (2020 – present)             <ul style="list-style-type: none"> <li>○ Chair, Māori Caucus</li> </ul> </li> <li>• SkyCity Entertainment Group (Auckland Community Trust), Trustee (2019 – present)</li> <li>• Laidlaw Consultants Ltd, Director and Shareholder (2015 – present)</li> <li>• Community Law Centres o Aotearoa Inc (2012 - present)             <ul style="list-style-type: none"> <li>○ Co-Chair, Māori Caucus</li> </ul> </li> </ul> <p><b>Past</b></p> <ul style="list-style-type: none"> <li>• Eventfinda Stadium, Director (2019 – present)</li> <li>• 20/20 Trust, Trustee (2019)</li> <li>• Crescendo o Aotearoa, Trustee (2019 – 2021)</li> </ul>

	<ul style="list-style-type: none"> <li>• Te Kapa Haka o Te Whanau a Kai incorporated, Advisory Board of Trustees (2018 – 2021)</li> <li>• s 9(2)(a) [REDACTED]</li> <li>• Māori Justice Network, Convener – Executive Board (2014 – 2021)</li> <li>• s 9(2)(a) [REDACTED]</li> <li>• Ngā Takere Nui o Ngā Wakā Inc, Executive Board Chair (2012 – 2015)</li> <li>• Auckland District Law Society, Public Issues Committee Member (2014 – 2015)</li> <li>• Waikato Māori Law Students’ Assoc, Chair (2011 – 2012)</li> <li>• Te Manawa Maurea Inc, Governance Advisory Board (2007 – 2014)</li> </ul>
<p><b>Qualifications and experience (include significant work history and community involvement)</b></p>	<p><b>Qualifications</b></p> <ul style="list-style-type: none"> <li>• Bachelor of Laws, University of Waikato (2011)</li> <li>• Bachelor of Arts, University of Waikato (2011)</li> <li>• Professional Legal Studies, College of Law New Zealand (2012)</li> </ul> <p><b>Memberships</b></p> <ul style="list-style-type: none"> <li>• Institute of Directors, Member (2019)</li> <li>• Barrister &amp; Solicitor of the High Court of New Zealand (2012)</li> <li>• Resolution Institute NZ, Professional Member (2016)</li> </ul>

Use further pages, if required.

**Date: 26 / 8 / 2021**

Ethnicity, age and gender information is collected for statistical collation by the State Services Commission, Ministry for Women, and Office of Ethnic Communities.

RELEASED INFORMATION

## Candidate CV Form

Sections with \* must be completed.

This form should be completed by, or in consultation with, the candidate where possible.

<b>Name*</b> (family name in upper case; include title if appropriate)	Paul JOHNS
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### The Position

<b>Organisation/Entity*</b>	Copyright Tribunal
<b>Position *</b> (chair/member etc.)	Member
<b>Term*</b>	Four years
<b>Payment*</b> (per day /per year)	s 9(2)(a)

### How the Candidate Meets the Needs of the Position

<b>Skills and attributes the candidate will bring to the position*</b> (e.g. business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	s 9(2)(a)
<b>Possible conflicts of interest*</b>	s 9(2)(ba)(i)
<b>Proposals for conflict management (if applicable)</b>	s 9(2)(ba)(i)

### The Candidate

<b>Name*</b> (family name in upper case; include title if appropriate)	Paul JOHNS
<b>Address</b>	s 9(2)(a)
<b>Ethnicity(s)</b>	s 9(2)(a)
<b>Age range*</b>	s 9(2)(a)
<b>Gender*</b>	s 9(2)(a)
<b>Current or most recent Employment*</b> (specify position and employer, include years)	<ul style="list-style-type: none"> <li>AJ Park (2020* - present): Principal and Practice Group Leader - Litigation and Commercial.</li> </ul> <p>*Joined AJ Park when it acquired former employer Baldwins, where Mr Johns was Head of Litigation (2015 – 2020)</p>
<b>Government board appointments held*</b> (current and previous, include years)	<ul style="list-style-type: none"> <li>None</li> </ul>
<b>Private and/or voluntary sector board appointments held*</b> (current and previous, include years)	<ul style="list-style-type: none"> <li>None</li> </ul>
<b>Qualifications and experience</b> (include significant work history and community involvement)	<p><b>Qualifications</b></p> <ul style="list-style-type: none"> <li>Bachelor of Laws (Hons) Otago University (2000)</li> <li>Bachelor of Science, Otago University (2000)</li> </ul> <p><b>Awards</b></p> <ul style="list-style-type: none"> <li>University of Otago Award in Law (1999)</li> </ul> <p><b>Professional</b></p> <ul style="list-style-type: none"> <li>Approved to practise on own account (2019)</li> <li>Admitted to the Supreme Court of New South Wales (2014)</li> <li>Attended NZLS Litigation Skills course (2011)</li> </ul>

	<ul style="list-style-type: none"><li>• Admitted to the Supreme Court of England and Wales (2008)</li><li>• Admitted to the High Court of New Zealand (2001)</li></ul>
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Use further pages, if required.

**Date: 26 / 8 / 2021**

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### Candidate CV Form

Sections with \* must be completed.

This form should be completed by, or in consultation with, the candidate where possible.

<b>Name*</b> (family name in upper case; include title if appropriate)	Peter Charles DENGATE THRUSH
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#### The Position

<b>Organisation/Entity*</b>	Copyright Tribunal
<b>Position *</b> (chair/member etc.)	Member
<b>Term*</b>	Five years
<b>Payment*</b> (per day /per year)	s 9(2)(a)

#### How the Candidate Meets the Needs of the Position

<b>Skills and attributes the candidate will bring to the position*</b> (e.g. business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	s 9(2)(a)
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<b>Possible conflicts of interest*</b>	s 9(2)(ba)(i)
<b>Proposals for conflict management (if applicable)</b>	

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**The Candidate**

<p><b>Name*</b> (family name in upper case; include title if appropriate)</p>	<p>Peter Charles DENGATE THRUSH</p>
<p><b>Address</b></p>	<p>s 9(2)(a) [redacted] [redacted] [redacted]</p>
<p><b>Ethnicity(s)</b></p>	<p>s 9(2)(a) [redacted]</p>
<p><b>Age range*</b></p>	<p>s 9(2)(a) [redacted]</p>
<p><b>Gender*</b></p>	<p>s 9(2)(a) [redacted]</p>
<p><b>Current or most recent Employment*</b> (specify position and employer, include years)</p>	<ul style="list-style-type: none"> <li>• Partner, McCabe &amp; Co Patent Attorneys and Lawyers (self-employed 1980- present)</li> </ul>
<p><b>Government board appointments held*</b> (current and previous, include years)</p>	<ul style="list-style-type: none"> <li>• Chair, Electricity Rulings Panel (2008 – 2020)</li> <li>• Member, Copyright Tribunal (2010 – present)</li> </ul>
<p><b>Private and/or voluntary sector board appointments held*</b> (current and previous, include years)</p>	<p><b>Current:</b></p> <ul style="list-style-type: none"> <li>• Independent Chair, Gaming Machine Association NZ</li> <li>• Board, Paycasso Verify Ltd</li> <li>• Board, Dot Kiwi Ltd</li> <li>• Advisory Board, Electronic Markets</li> <li>• Chair, Liz Dengate Thrush Foundation</li> </ul> <p><b>Past:</b></p> <ul style="list-style-type: none"> <li>• Chairman TLDH Ltd</li> <li>• Chairman, Board of Directors, ICANN, Inc.</li> <li>• Managing Director, Brain Fuel Limited</li> <li>• Chairman of the Internet Society of New Zealand Inc. (InternetNZ)</li> <li>• Chair of APTLD (the Asia Pacific Association of national registry managers)</li> </ul>

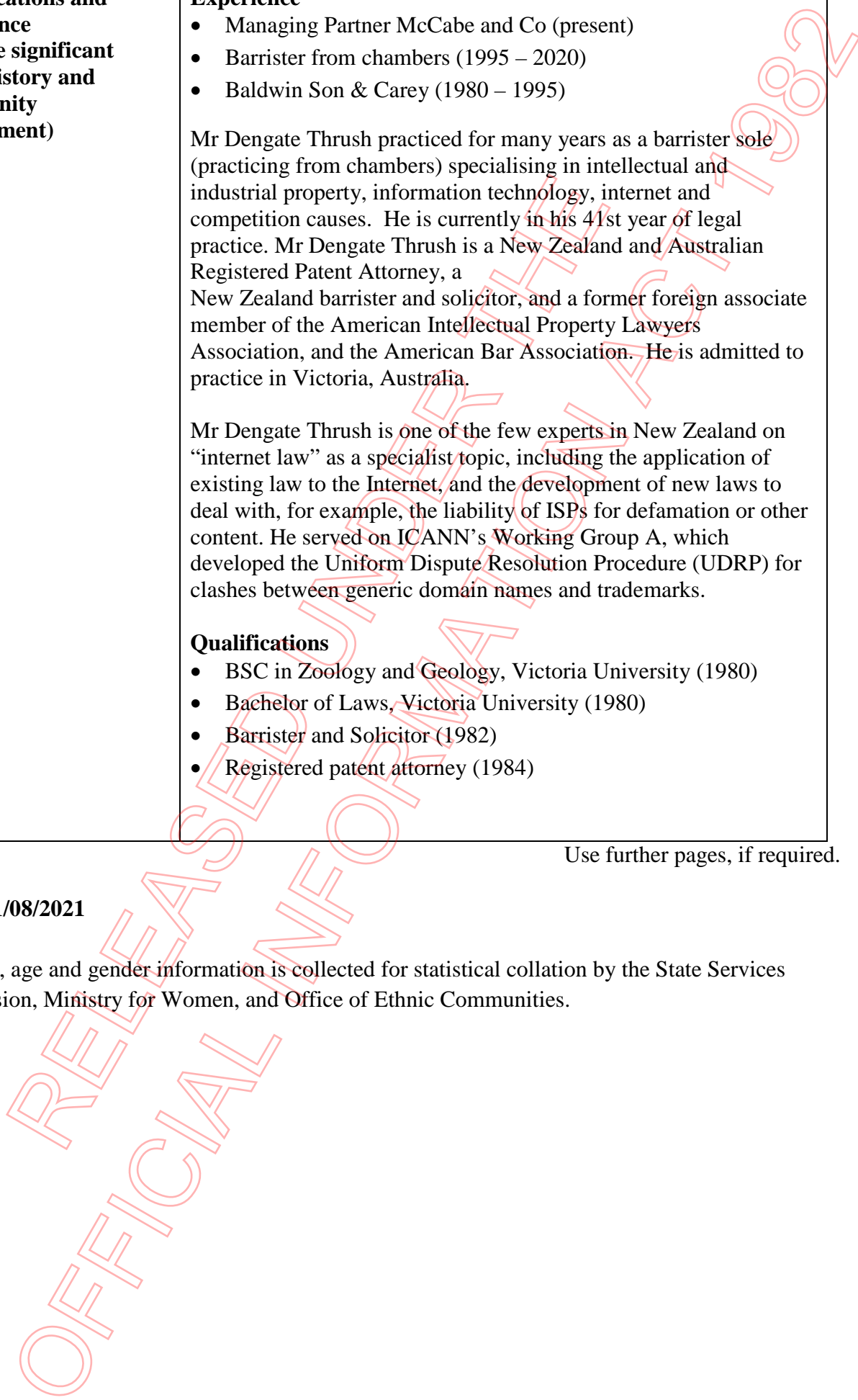


<p><b>Qualifications and experience (include significant work history and community involvement)</b></p>	<p><b>Experience</b></p> <ul style="list-style-type: none"> <li>• Managing Partner McCabe and Co (present)</li> <li>• Barrister from chambers (1995 – 2020)</li> <li>• Baldwin Son &amp; Carey (1980 – 1995)</li> </ul> <p>Mr Dengate Thrush practiced for many years as a barrister sole (practicing from chambers) specialising in intellectual and industrial property, information technology, internet and competition causes. He is currently in his 41st year of legal practice. Mr Dengate Thrush is a New Zealand and Australian Registered Patent Attorney, a New Zealand barrister and solicitor, and a former foreign associate member of the American Intellectual Property Lawyers Association, and the American Bar Association. He is admitted to practice in Victoria, Australia.</p> <p>Mr Dengate Thrush is one of the few experts in New Zealand on “internet law” as a specialist topic, including the application of existing law to the Internet, and the development of new laws to deal with, for example, the liability of ISPs for defamation or other content. He served on ICANN’s Working Group A, which developed the Uniform Dispute Resolution Procedure (UDRP) for clashes between generic domain names and trademarks.</p> <p><b>Qualifications</b></p> <ul style="list-style-type: none"> <li>• BSC in Zoology and Geology, Victoria University (1980)</li> <li>• Bachelor of Laws, Victoria University (1980)</li> <li>• Barrister and Solicitor (1982)</li> <li>• Registered patent attorney (1984)</li> </ul>
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Use further pages, if required.

**Date: 01/08/2021**

Ethnicity, age and gender information is collected for statistical collation by the State Services Commission, Ministry for Women, and Office of Ethnic Communities.



## Candidate CV Form

**Sections with \* must be completed.**

This form should be completed by, or in consultation with, the candidate where possible.

<b>Name*</b> (family name in upper case; include title if appropriate)	Sarah-Jane Ellen WEIR
---------------------------------------------------------------------------	-----------------------

### The Position

<b>Organisation/Entity*</b>	Copyright Tribunal
<b>Position *</b> (chair/member etc.)	Member
<b>Term*</b>	Five Years
<b>Payment*</b> (per day /per year)	s 9(2)(a)

### How the Candidate Meets the Needs of the Position

<b>Skills and attributes the candidate will bring to the position*</b> (e.g. business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	<p>Ms Weir brings over twenty three years of experience as a qualified lawyer in New Zealand and Europe, predominantly in corporate and commercial advisory work, with a sub-specialty in advising technology, electronics and telecommunications businesses.</p> <p>Ms Weir has an in-depth understanding of the Copyright Act and Copyright Tribunal responsibilities. She coordinated intellectual property work at Anderson Lloyd and holds a Masters of Intellectual Property Law.</p> <p>Ms Weir has served as a member of the Copyright Tribunal since 2014, and has experience with various tribunals and disciplinary committees.</p>
<b>Possible conflicts of interest*</b>	s 9(2)(ba)(i)
<b>Proposals for conflict management (if applicable)</b>	

### The Candidate

<b>Name*</b> (family name in upper case; include title if appropriate)	Sarah-Jane Ellen WEIR
<b>Address</b>	s 9(2)(a)
<b>Ethnicity(s)</b>	s 9(2)(a)
<b>Age range*</b>	s 9(2)(a)
<b>Gender*</b>	s 9(2)(a)
<b>Current or most recent Employment*</b> (specify position and employer, include years)	<ul style="list-style-type: none"> <li>• Independent consultant lawyer (2012 – present)</li> <li>• Partner, Anderson Lloyd (2005 – 2012)</li> <li>• Head of the Corporate and Commercial department, Anderson Lloyd (2007 – 2011)</li> <li>• Legal advisor and contract manager, Phillips Electronics UK Limited (1993 – 1998)</li> <li>• Solicitor, Phillips Fox (1990 – 1993)</li> </ul>
<b>Government board appointments held*</b> (current and previous, include years)	<ul style="list-style-type: none"> <li>• Member of the Copyright Tribunal (March 2014 - present)</li> <li>• Member of the Financial Advisers Disciplinary Committee (2020 – present)</li> </ul>
<b>Private and/or voluntary sector board appointments held*</b> (current and previous, include years)	<ul style="list-style-type: none"> <li>• Director, Network Tasman Limited (electricity lines company) (2013 – present)</li> <li>• Trustee, Cawthron Trust Board (2016 – present)</li> <li>• Councillor, Institute of Directors National Council, (2017 – present)</li> <li>• Director, Nelson Regional Development Agency Ltd (2018 – present)</li> <li>• Trustee, Care Foundation (Nelson Health Charitable Trust)</li> <li>• Independent Chair, Nelson Bays Primary Health Organisation Trust (2020 – present)</li> <li>• Director, Nelmac Limited (facilities management, amenity horticulture and infrastructure services to councils in Tasman and Marlborough region) (2010 – 2020)</li> <li>• Chair, Fresh FM (community access radio station run by the Tasman Broadcasting Trust) (2006 – 2015)</li> </ul>

	<p>Honorary solicitor, The Art and Industry Biennial Trust (2004 – 2012)</p>
<p><b>Qualifications and experience (include significant work history and community involvement)</b></p>	<p><b>Qualifications</b></p> <ul style="list-style-type: none"> <li>• LLB, Canterbury University (1990)</li> <li>• Barrister and solicitor of the High Court of New Zealand: 1990, and admitted as solicitor in England and Wales (1997).</li> <li>• Masters in intellectual property law, Melbourne University (2004).</li> <li>• Participated in the Institute of Directors programme “mentoring for diversity” which identifies women ready for large/listed company boards (2013).</li> <li>• Chartered Fellow, Institute of Directors.</li> <li>• Past Member, New Zealand Law Society Commercial and Business Law Committee.</li> <li>• Nelson Law Standards Committee, Member (2014-2017)</li> <li>• Previous member of New Zealand Law Society Electronic Commerce sub-committee.</li> <li>• Co-author, LexisNexis, Electronic Business and Technology Law.</li> </ul> <p><b>Experience</b></p> <p>Independent consultant lawyer with experience in corporate and commercial law and intellectual property law.</p> <p>Experienced director/governor for a range of organisations, including public and community assets, with particular strength in stakeholder interests and complex problem solving.</p> <p>Experienced tribunal/disciplinary committee member, used to working with complex facts and as a collaborative decision maker.</p> <p>Executive-level experience through on-going day-to-day management of her own business and team.</p> <p>Exposure to a variety of sectors and specialist experience including:</p> <ul style="list-style-type: none"> <li>• Infrastructure providers – familiarity with the issues of major utility and infrastructure providers and the regulatory environment within which they operate.</li> <li>• In-depth understanding of regulatory compliance.</li> <li>• Data protection and privacy experience as well as ICT advisory.</li> <li>• Managed Anderson Lloyd’s clients’ intellectual property needs. Including working with clients regarding their branding strategies, registering and defending trade marks, copyright matters such as publishing contracts, documenting intellectual property ownership, education and licensing.</li> </ul>

	<ul style="list-style-type: none"> <li>• Involvement since 1993 in the information technology sector: cloud computing, technology acquisition, licensing, commercialisation and sales. Acted for entities from large public sector clients to small start-ups regarding their information technology strategies, from commercialisation to acquisition and outsourcing.</li> <li>• Over 15 years acting for biotechnology companies with onshore and offshore assets. Advice included contract manufacture, capital raising, intellectual property and structuring.</li> <li>• Not-for-profit formation of many charitable structures and advice regarding appropriate governance and compliance.</li> </ul>
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Use further pages, if required.

**Date: 01/08/2021**

Ethnicity, age and gender information is collected for statistical collation by the State Services Commission, Ministry for Women, and Office of Ethnic Communities.

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**Annex Three: Speaking notes for APH meeting: Summary of proposed appointments and reappointments to the Copyright Tribunal**

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OFFICIAL INFORMATION ACT 1982

# Speaking notes for APH Meeting: Summary of proposed appointments and reappointments to the Copyright Tribunal

## Purpose

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- This note provides you with speaking notes for the Cabinet Appointments and Honours Committee (APH) on Wednesday, 29 September 2021, where you are informing the Committee of your intention to recommend to the Governor-General the appointments of Wi Pere Mita as Chair and Paul Johns as a member, and the reappoints of Peter Dengate Thrush and Sarah-Jane Weir as members, of the Copyright Tribunal.

## Speaking notes

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### Introduction

- The Copyright Tribunal (the Tribunal) is a statutory body established under section 205 of the Copyright Act 1994 (the Act). The Tribunal resolves disputes between licensing bodies, or proposed licensing bodies, and those who hold, or seek to hold, licenses in respect of copyright works. Following amendments to the Act in 2011, the Tribunal can also hear applications and make awards in respect of claims for breach of copyright, as a result of peer-to-peer file sharing technology over the internet.
- The Tribunal currently consists of a Chair and five members.
- The Chairperson of the Tribunal is appointed by the Governor-General on my recommendation, as the responsible Minister, after consultation with the Minister of Justice. I can confirm I have consulted with the Associate Minister of Justice, to whom this appointment is delegated to.
- The other members are appointed by the Governor-General on my recommendation.
- I intend to recommend that the Governor-General appoints Wi Pere Mita as Chair of the Copyright Tribunal to replace outgoing Chair Professor Susan Frankel, for a term of five years, commencing on the date of appointment.

- I also intend to recommend that the Governor-General appoints Paul Johns as a member of the Copyright Tribunal to replace outgoing member Paul Sumpter, for a term of four years, commencing on the date of appointment.
- I intend to recommend that the Governor-General reappoints Peter Dengate Thrush and Sarah-Jane Weir for terms of five year, as members of the Copyright Tribunal.

#### ***Wi Pere Mita***

- Wi Pere Mita is a practising lawyer, consultant and accredited mediator having appeared before most Courts, Tribunals and Authorities in New Zealand. Mr Mita has extensive experience in most areas of intellectual property, including copyright, from protection and maintenance through to enforcement. He has represented and advised music recording artists and labels, publishers, authors of literary works, public broadcasters and producers (television and radio), performing artists and arts organisations, collecting agencies, museums, iwi, local and central government, not-for-profit and commercial entities.

#### ***Paul Johns***

- Paul Johns is a barrister and solicitor. He is currently the Head of Dispute Resolution at Baldwins Intellectual Property, one of New Zealand's leading intellectual property specialist firms. Mr Johns has specialised in intellectual property, including copyright, throughout his legal career of nearly 20 years. As a lawyer, Mr Johns has significant experience in interpreting legislation, including advocating certain interpretations on behalf of clients in hearings before courts and tribunals ranging from the Court of Appeal to Assistant Commissioners of Trademarks and Patents.

#### ***Peter Dengate Thrush***

- Peter Dengate Thrush is a barrister and solicitor, and patent attorney, specialising in Internet, intellectual property and technology cases. He is the managing partner at McCabe & Co patent attorneys and lawyers and is also a company director. Mr Dengate Thrush spent most of his early career at Baldwins where he became partner and oversaw many designs and



implementations of projects and ideas. He practiced as a barrister from chambers between 1995 and 2020.

### **Sarah-Jane Weir**

- Sarah-Jane Weir has over twenty years of experience as a qualified lawyer in New Zealand and Europe, predominantly in corporate and commercial advisory work, with a sub-specialty in advising technology, electronics and telecommunications businesses. She has a strong understanding of the Copyright Act and Copyright Tribunal responsibilities, and coordinated Anderson Lloyd's intellectual property work. Ms Weir has extensive knowledge of technology law and holds a Masters of Intellectual Property Law.

### **Criteria for appointment**

- I can confirm that the proposed appointment of Mr Mita as Chair of the Copyright Tribunal meets the criteria for appointment as set out in Section 206(2)(b) of the Copyright Act 1994.
- I can confirm that Mr Johns' appointment as a member of the Copyright Tribunal meets the criteria as set out in the Draft Cabinet Paper (para 18).

### **Terms of appointment**

- I intend to recommend that the Governor-General appoints Mr Mita for a term of five years, and Mr Johns for a term of four years. I also intend to recommend that the Governor-General reappoints Mr Dengate Thrush and Ms Weir for terms of five years.

### **Appointment process and consultation**

- I can confirm that an appropriate process has been followed in selecting the proposed appointees, in terms of the Public Service Commission's appointment guidelines.
- I am satisfied that the appointments of Mr Mita and Mr Johns, and the reappointments of Peter Dengate Thrush and Sarah-Jane Weir, will provide for a well-balanced Tribunal in terms of gender, age, ethnicity and geographic representation, and an appropriate mix of skills and experience.



## AIDE MEMOIRE

### Ministerial Oversight Group on State Sector Employment Relations meeting on 29 September 2021

Date:	28 September 2021	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2122-1175

#### Information for Minister

Hon Michael Wood  
Minister for Workplace Relations and Safety

#### Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Tracy Mears	Manager, Employment Relations Policy	04 901 8438	✓
Beth Goodwin	Principal Policy Advisor	04 901 1611	

#### The following departments/agencies have been consulted

#### 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

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## AIDE MEMOIRE

### Ministerial Oversight Group on State Sector Employment Relations meeting on 29 September 2021

<b>Date:</b>	28 September 2021	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-1175

#### Purpose

To provide talking points for the next meeting of the Ministerial Oversight Group on State Sector Employment Relations (MOGSSER) on 29 September 2021, 3.30pm – 4.00pm.

Tracy Mears  
**Manager, Employment Relations Policy**  
Labour, Science and Enterprise group, MBIE

28 / 9 / 21

#### Background

- Two items on the MOGSSER agenda are relevant to your portfolio:
  - Item 3: Update on Public Sector Employer Representation in Fair Pay Agreement Bargaining, which you are leading.

9(2)(h), 9(2)(j)

#### Item 3: Update on Public Sector Employer Representation in Fair Pay Agreement Bargaining

- The purpose of this item is to update interested Ministers on decisions you have made about public sector employer representation in the Fair Pay Agreement system, most relevantly:
  - Public Service Commissioner (PSC) will represent the public and education services in bargaining, and the Chief Executive of HealthNZ will represent HealthNZ.
  - The three non-public service departments (Parliamentary Counsel Office, Police, New Zealand Defence Force) can represent themselves, or can ask PSC to represent them.
  - Other state service agencies may use the main representation option of being represented by an incorporated society (eg an employer association), or may ask PSC to represent them.

3. You may also wish to proactively mention two other possible issues you have agreed to not address at this stage, and explain that you've chosen to prioritise getting the Bill introduced as early as possible:
- Representation of legislature agencies
  - The risk that terms set in an FPA may curtail agencies' abilities to perform critical functions

### Talking points for item 3

#### *Representation for the public sector*

- The FPA system requires incorporated societies (eg industry bodies) to represent employers in bargaining, because it would be unworkable to allow each employer to sit directly on the bargaining side.
- Public sector employers are a bit different. The Public Service Commissioner will represent public and education service employers (delegating as needed) and the new HealthNZ will represent itself as public health service employer.
- This recognises the unique accountabilities owed by the public service as employers.
- I've decided that Parliamentary Counsel Office, Police and New Zealand Defence Force should be able to represent themselves as bargaining parties.
- That's because they maintain a degree of independence from the Public Service Commissioner as non-public service departments.
- However there may be situations where they may prefer to ask PSC to represent them in FPA bargaining, for example if they only have a few employees in coverage.
- Similarly, other state service agencies may feel that PSC better understands their perspective, and may want PSC to represent them instead of a private sector industry body.
- The Public Service Act allows state service agencies outside the public service to ask PSC for help in bargaining. PSC can decide whether or not to do so.
- I plan to have consistency of treatment with the Public Service Act, and enable that flexibility in the FPA system too: state service agencies can ask for representation.

9(2)(f)(iv)

9(2)(f)(iv)

- I'm open to hearing more about these concerns, but I'm focussed on getting the Bill introduced as early as I can, so if any changes are needed to address this issue I'm expecting they would happen at Select Committee.

9(2)(h), 9(2)(j)

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## EVENT BRIEFING

### Joint Ministers meeting with the Māori Spectrum Working Group - progressing a Māori-Crown agreement on interests in spectrum

<b>Date:</b>	11 October 2021	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-1299

Action sought		
	Action sought	Deadline
Hon Grant Robertson <b>Minister of Finance</b>	<b>Read</b> this briefing before your meeting with the Māori Spectrum Working Group.	11 October 2021
Hon Kelvin Davis <b>Minister of Māori Crown Relations: Te Arawhiti</b>	<b>Read</b> this briefing before your meeting with the Māori Spectrum Working Group.	11 October 2021
Hon Dr David Clark <b>Minister for the Digital Economy and Communications</b>	<b>Read</b> this briefing before your meeting with the Māori Spectrum Working Group.	11 October 2021
Hon Willie Jackson <b>Minister of Māori Development</b>	<b>Read</b> this briefing before your meeting with the Māori Spectrum Working Group.	11 October 2021

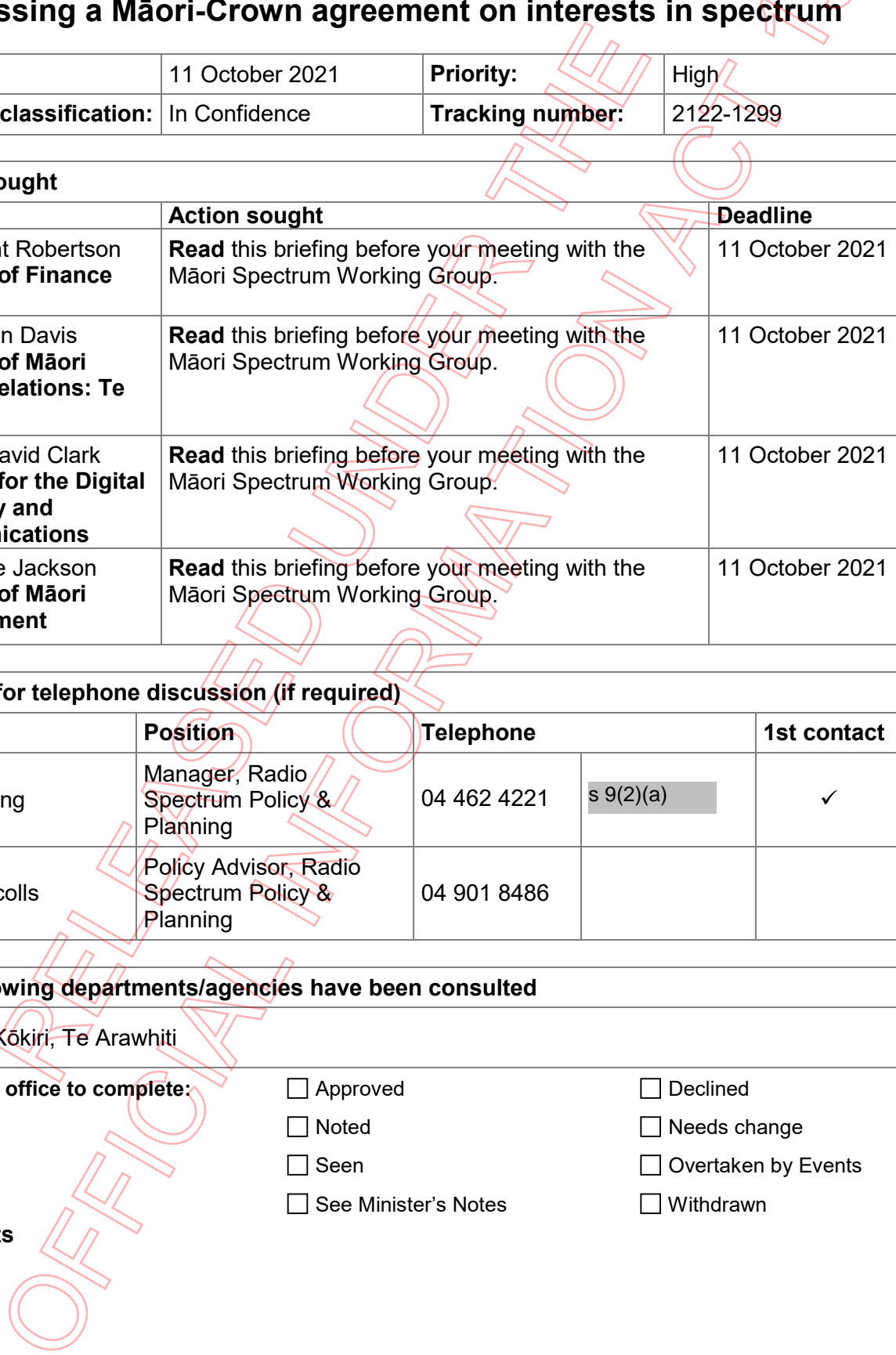
Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Len Starling	Manager, Radio Spectrum Policy & Planning	04 462 4221	s 9(2)(a)	✓
Ceara Nicolls	Policy Advisor, Radio Spectrum Policy & Planning	04 901 8486		

The following departments/agencies have been consulted
Te Puni Kōkiri, Te Arawhiti

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





## EVENT BRIEFING

### Joint Ministers meeting with the Māori Spectrum Working Group - progressing a Māori-Crown agreement on interests in spectrum

<b>Date:</b>	11 October 2021	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-1299

### Purpose

Ministers have agreed to meet with the Māori Spectrum Working Group on Wednesday 13 October 2021 at 9:30 am via Zoom, to discuss progress towards an enduring agreement on Māori interests in spectrum.

This briefing provides background information, a suggested agenda and speaking points for the meeting.

### Recommendations

The Ministry of Business, Innovation and Employment recommends that you:

- a **Read** this briefing before your meeting with the Māori Spectrum Working Group.

*Noted*

Len Starling  
**Manager, Radio Spectrum Policy & Planning**  
Digital Communications and Transformation,  
MBIE

11 October 2021

Hon Kelvin Davis  
**Minister of Māori Crown Relations: Te Arawhiti**

..... / ..... / .....

Hon Grant Robertson  
**Minister of Finance**

..... / ..... / .....

Hon Dr David Clark  
**Minister for the Digital Economy and Communications**

..... / ..... / .....

Hon Willie Jackson  
**Minister of Māori Development**

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## Meeting details

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1. The Minister of Finance, Minister for Māori Crown Relations: Te Arawhiti, the Minister for Māori Development, and the Minister for the Digital Economy and Communications are meeting with the Māori Spectrum Working Group (MSWG) on 13 October 2021 between 9:30 and 10:30am, via Zoom, to discuss progress towards an enduring agreement on Māori interests in radio spectrum.
2. This meeting will be the first between Ministers and the MSWG since Cabinet signalled its position on key elements of an enduring agreement [ref CBC-21-MIN-0091], and asked Minister Clark to bring back a draft agreement for them to consider before the end of the year.
3. The meeting is an opportunity for Ministers to hear the MSWG's response to Cabinet's position on the key elements of the agreement, and agree what work needs to be carried out in order to progress to signing a memorandum of understanding (MOU).
4. This briefing provides some background context for the meeting, as well as a meeting agenda and suggested talking points (refer pages 5-6).
5. The members of the MSWG who are expected to attend are:
  - Brent Reihana - New Zealand Māori Council
  - Piripi Walker - Nga Kaiwhakapūmau i te Reo (the Wellington Māori Language Board)
  - Anaru Robb - Nga Kaiwhakapūmau i te Reo (the Wellington Māori Language Board)
  - Daphne Luke - Te Huarahi Tika Trust
  - Haami Piripi – Iwi Chairs Forum
  - Antony Royal – Technical expert & Chief Executive of the Interim Māori Spectrum Commission (IMSC)
  - Robyn Kamira – Technical expert

## Background

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### An enduring agreement on spectrum

6. Māori and the Crown both seek an enduring agreement that recognises ongoing Māori interests in spectrum. Previous engagement at each new allocation of commercial spectrum has been on an ad-hoc basis.
7. An agreement could be a means to achieve broader outcomes that benefit Māori and Aotearoa. In particular, the Crown and Māori both consider there are economic and social benefits to increased Māori participation in the digital economy. Māori consider that spectrum is a key part of an overall strategy for greater Māori participation in, and benefit from, connectivity and the digital world.
8. In December 2019, Cabinet agreed to allocate short-term rights to a portion of unused spectrum in the 3.5 GHz band to enable early implementation of 5G networks [DEV-19-MIN-0329]. At the same time, Cabinet agreed to give the MSWG, at no cost, a quarter of this spectrum. This short term allocation was made with 'without prejudice' to the long term agreement [DEV-19-MIN-0329 refers].

9. The MSWG has also received \$3.15 million of Crown funding (\$650,000 from the Ka Hao fund, \$500,000 from TPK and MBIE departmental funding and \$2 million from Vote Māori Development) to establish an interim spectrum-holding organisation, and to execute a work programme to develop Māori capability and to engage with Māori more broadly on interests in spectrum. A further \$5.7 million over two years was committed in Budget 2021<sup>1</sup>. (Total \$8.9 million).
10. The MSWG work programme is intended to act as a stepping stone towards an enduring agreement on spectrum. Māori technical and management capability in spectrum is intended to be advanced through research and development, and tests of potential uses of spectrum, particularly in rural communities.

### **Cabinet's position on key elements of an agreement**

11. In September 2021, Cabinet agreed in principle to the key elements of an agreement with Māori on spectrum that includes [ref CBC-21-MIN-0091]:
  - an ongoing allocation of spectrum to the Māori spectrum entity, at no cost;
  - a role for Māori in spectrum policy making;
  - new funding for the Māori spectrum entity to provide spectrum policy advice;
  - establishment of a permanent Māori Spectrum Commission to give effect to the agreement;
  - the transfer of the balance of the Ka Hao Māori Digital Technology Fund to the Māori spectrum entity;
  - that the Minister for the Digital Economy and Communications will retain the option to seek additional funding for the Māori spectrum entity to deliver initiatives that contribute to Crown objectives, subject to final agreement by Cabinet;
12. The MSWG has been made aware of this Cabinet discussion and has now prepared a response. This is attached as Annex 1.

### **Considerations regarding MSWG's response to Cabinet's position**

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13. This note covers key points we understand the MSWG would like to discuss. The MSWG's written response arrived at the point this briefing was being finalised. It is apparent that there is a significant gap between the Crown's preliminary offerings and the MSWG position but officials have not had a chance to analyse the differences in full.

#### **Ongoing allocation of spectrum at no cost**

14. Cabinet has indicated comfort with an ongoing allocation of spectrum to the Māori spectrum entity, with the Cabinet paper suggesting this be a 20 percent allocation of commercial spectrum.

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<sup>1</sup> A funding agreement for this has yet to be signed.

15. The Working Group has stated that a taonga-based argument would see Māori seek 100 per cent of spectrum in this agreement. However, they acknowledge this is not practical, [REDACTED]

ss 9(2)(ba)(i) and s(9)(2)(b)(ii) OIA

16. [REDACTED] ss 9(2)(ba)(i) and 9(2)(b)(ii) OIA [REDACTED]

17. Officials suggested that 20 percent would balance the responsibility of the Crown to allow current network operators to provide high quality services with Māori aspirations for an allocation of spectrum that is usable<sup>2</sup> and could generate a significant income for the entity. It was also be a proportion compatible with Treaty Settlements. The two examples that may be comparable are:

- The Māori Commercial Aquaculture Claims Settlement Act 2004 (Crown accepted an obligation to provide iwi with 20 per cent of the value of all marine aquaculture space).
- The Māori Fisheries Act 2004 (20 per cent of quota for any new Quota Management System stocks is allocated to Māori fisheries).

18. Both of these examples are outcomes of a Waitangi Tribunal settlement process where the Crown has accepted there is an Article Two right to a resource. However, the Crown has not accepted that spectrum is taonga and subject to Article Two rights, and the spectrum agreement is not intended to be a settlement of any Waitangi Tribunal claim. Rather, the Crown is acknowledging that Māori have an economic development interest in the spectrum and is intending to address that interest in a way that benefits Māori and Aotearoa.

19. MSWG regards the negotiations over spectrum as occurring in a 'new era' of Māori-Crown relations and disagrees with government's benchmarking against Treaty settlements from nearly 20 years ago.

20. If a percentage above 20 is chosen, it may create pressure to review the settlements noted above, unless the Crown has clear reasoning to explain why this case is different. However, if Ministers wish, there are ways to enhance the value of the spectrum allocated to Māori without increasing the 20 percent value, as follows:

- The portion of 20 percent is a medium term target, with the expectation of "overs" and "unders" in any specific allocation<sup>3</sup>. It appears it will be possible for the first allocation (of 3.5 GHz spectrum) to be an "over" of 25 percent, without adversely impacting on the service the mobile network operators can provide.
- There is 'spare' spectrum that has been retained for various reasons by the Crown after previous commercial spectrum allocations. This includes spectrum in the 1.8, 2.1 and 2.3 GHz bands. These bands are currently used for 4G, 3G and 4G respectively, and will be repurposed for 5G (or even 6G) in future. Some of this 'spare' spectrum could be allocated to the MSWG without impacting on the target

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<sup>2</sup> Technologies often require a minimum amount of spectrum to operate. If Māori are allocated a portion of spectrum that is too small, there is a risk that this spectrum will not be commercially valuable.

<sup>3</sup> Wireless technologies typically operate in fixed increments (eg 10 MHz steps) so it may not be efficient to allocate exactly 20% in every case (eg if 90 MHz of spectrum is available and the technology increment is 10 MHz, a 20% share [18 MHz] would result in some unusable spectrum. Rounding up to 20 MHz [22.2%] would be more sensible.)

for future commercial allocations. (For example, the spare spectrum in the 2.1 GHz band is worth \$14 million<sup>4</sup>.)

21. If Ministers are open to increasing the value of the spectrum component of the offer we recommend you ask Officials to work with the MSWG to come up with a proposal to add to the initial spectrum holdings that will be granted to the MSWG.

### **Need for legislation**

22. The MSWG considers that, to ensure that the Māori-Crown agreement is enduring, it is important to establish a permanent Māori spectrum entity and give effect to the other commitments in the agreement through legislation. They want the Commission to be a highly autonomous entity, by-Māori-for-Māori.
23. Subject to further work, it appears likely that the Commission will need to be a statutory entity to ensure appropriate definition of functions, governance and beneficiaries. Establishing an entity through legislation will require significant policy work, particularly on representation and mandate. Officials recommend that this work be done after the initial MOU is signed. However, to ensure clarity about intentions the MOU would include the high level agreements and principles that would be used when developing the legislation.

### **Long term sustainability**

24. MSWG have indicated concern that the permanent Commission has enough resources to achieve long-term viability, and see this as essential to an ongoing agreement. MSWG have indicated they intend for the Commission to be self-sustaining in the long-term.
25. Through initial funding agreements and Budget 2021, \$8.9 million is available to the interim entity.
26. Officials note that valuable spectrum resources are being offered and that, with application of some commercial skills, these should be sufficient to generate a significant revenue stream in the medium to long-term. However, there is a judgement call to be made as to what amount of seed funding is necessary to establish the Commission on a strong footing. We suggest Ministers ask how much additional funding the MSWG believe is needed and what this funding would be used for.

### **Role in broader policy work**

27. The MSWG is asking to have a significant role in policy work such as the work on digital inclusion and equity.
28. There are a number of other government initiatives and work streams aimed at improving digital inclusion and equity. The permanent Māori Spectrum Commission may come to achieve a significant level of policy capability, and be able to make an impact on these matters in future. However, in its current state this group has a significant immediate challenge to develop its core spectrum activities. It also has yet to establish a mandate to represent others on topics beyond the spectrum claim.
29. Ministers may therefore wish to consider whether to commit to a specific role for the MSWG in this work, or whether they would prefer that the Commission 'get some runs on the board' in their core role before staking their claim to a wider role.

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<sup>4</sup> At the rate that spectrum in this band was sold to the mobile networks.

## Annotated agenda

Agenda Item	Talking points
<b>Karakia/Opening</b> <b>9:30 – 9:35 am</b>	<b><i>Minister Davis lead</i></b>
<b>1. Welcome/Introductions</b> <b>9:35 – 9:40 am</b>	<b><i>Minister Clark</i></b> <ul style="list-style-type: none"> <li>• I would like to take a moment to acknowledge that this meeting is another significant milestone in our combined efforts to reach an enduring agreement, so thank-you to everyone for your hard mahi in getting us to this stage.</li> <li>• As you know, in September of this year I took an item to Cabinet seeking to progress work towards an enduring agreement on spectrum.</li> <li>• Cabinet has indicated their comfort with an agreement on spectrum that includes the following elements: <ul style="list-style-type: none"> <li>○ an ongoing allocation of spectrum to the Māori spectrum entity, at no cost;</li> <li>○ a role for Māori in spectrum policy making;</li> <li>○ new funding for the Māori spectrum entity to provide spectrum policy advice;</li> <li>○ establishment of a permanent Māori Spectrum Commission to give effect to the agreement;</li> <li>○ the transfer of the balance of the Ka Hao Māori Digital Technology Fund to the Māori spectrum entity;</li> </ul> </li> <li>• Cabinet has invited me to bring back a finalised agreement before the end of 2021. This meeting is a great opportunity for us to keep the momentum going and make further progress. I'd like to use this meeting to identify where we still have divergent views and to agree the work that we need to conclude an agreement.</li> <li>• Ministers have got your letter outlining MSWG's response to Cabinet's offers but I suggest that you start by giving us a summary of your key points.</li> </ul>
<b>2. MSWG response</b> <b>09:40 – 10:00 am</b>	<b><i>MSWG to speak to their paper</i></b> (Suggested responses and follow-up below)

<p><b>4. Discussion on key focus areas to progress agreement/next steps</b></p> <p><b>10:00 – 10:20 am</b></p>	<p><b>Minister Clark</b></p> <p><i>Amount of spectrum</i></p> <ul style="list-style-type: none"> <li>• Cabinet is not looking to set new precedents in terms of percentage allocation of a resource. However, we are open to discussing other options for allocation of additional spectrum to Māori, for example, the allocation of spare spectrum from previous auctions.</li> <li>• We also note that in the first commercial spectrum allocation (3.5 GHz) we are likely to be able to provide Māori with more than 20%.</li> <li>• We ask you to work with officials to come up with a firm proposal on these matters</li> </ul> <p><i>Need for legislation</i></p> <ul style="list-style-type: none"> <li>• While we see the argument for legislation for a permanent commission, it is not practical to have the legislation agreed by Cabinet as part of the MOU.</li> <li>• Instead we could commit to some high level principles in the MOU that can be used to guide later work on the form of the entity.</li> </ul> <p><i>Sustainability</i></p> <ul style="list-style-type: none"> <li>• How much additional funding do MSWG believe is needed from the Crown for the Permanent Commission to be viable long term?</li> <li>• What would this funding be used for?</li> </ul> <p><i>Broader policy role</i></p> <ul style="list-style-type: none"> <li>• Ministers are seeing this agreement as one of several things they are doing to support Māori aspirations in the digital economy. Not everything will be achieved through a spectrum agreement or the MSWG.</li> <li>• What role do MSWG see the permanent Commission playing in the wider work on digital inclusion and equity, and in what way does MSWG believe it is suited for that role?</li> <li>• What further resources would the permanent Commission require if it were to have an impact on digital inclusion and equity?</li> </ul>
<p><b>Close of meeting</b></p> <p><b>10:25 pm</b></p>	<p><b>Minister Davis</b></p>

**Annex 1: Memo from the Interim Māori Spectrum Commission**

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## To Ministers:

Hon Dr David Clark, Hon Kelvin Davis, Hon Willie Jackson, Hon Grant Robertson

**From:** Māori Spectrum Working Group (MSWG)

**Date:** Monday 11 October 2021

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E ngā rangatira, tēnā koutou katoa.

We are writing to set forth the position agreed to by national Māori organisations, claimants (Wai 2224) on Māori interests in spectrum under the Treaty of Waitangi, and Māori stakeholders in spectrum (Māori Spectrum Working Group, MSWG) prior to our hui with Ministers on Wednesday 13 October 2021.

We are seeking to arrive at an agreement that supports MSWG and Crown shared outcomes, provides for a sustainable and enduring solution, and provides for sufficient spectrum and support for Māori to be confident that success will be achieved.

We have been heartened since 2018 by Government support for negotiations and engagement, by the initial spectrum allocations and funding through to the 22/23 year to support the establishment of the Māori Spectrum Commission (MSC), skills, capability and innovation development, and by the agreement of both sides to continue with engagement with Iwi/Māori.

## 1. INTRODUCTION

This paper provides information to help progress negotiation discussions with Ministers prior to reporting back to Iwi/Māori in November. It presents information and a negotiation package ('the package') for discussion that:

- supports MSWG and Crown shared outcomes
- provides for a sustainable and enduring solution
- provides a package that the MSWG can be confident that Iwi/Māori can support

## 2. OUR ACHIEVEMENTS SO FAR

Despite recent global challenges, we have achieved the following together:

### 1. Government support for negotiations and engagement as follows:

- a) Initial funding through to the 22/23 year to support the establishment of the *Māori Spectrum Commission (MSC)*, skills, capability and innovation development, and engagement with Iwi/Māori.
- b) MBIE staff to assist with information and negotiations discussions.

### 2. MSWG and its operational arm the IMSC (Interim Māori Spectrum Commission):

- a) Two national hui (despite Covid lockdowns) and extensive engagement.
  - b) Regular presentations at the Iwi Chairs Forum, and Iwi chairs mandate.
-



- c) *Māori Spectrum Innovation Platform* blueprint that includes a structure, network, relationships, equipment, and expertise for use cases and a testbed for new technologies. It connects government agencies, industry, academics, and Māori in a single supported technical environment.
- d) A mobile 5G network design for testing ready to implement post-Covid.
- e) A tailored process for granting radio spectrum licences, already tested.
- f) A technical and radio engineer support process for Māori businesses and organisations to apply for, and use spectrum licences, already tested.
- g) Independent economic report on priorities and value propositions (see later)
- h) Several independent reports on trends and scenario planning for spectrum bands and management (see later)
- i) Several partnership and planning discussions with Iwi/Māori organisations, WISPs, and other providers for use cases focusing on agritech, aquatech, alternative land uses, forestry, climate change, and more.
- j) Several partnership and planning discussions with local and international companies including MNOs, Tier 1 and 2 equipment suppliers, rural connectivity providers, and use case providers.
- k) Several Government agencies and academic institutes providing (or planning to) digital equity and tech innovation programmes for Māori.

**3. Together, MSWG/IMSC and Crown have agreed:**

- a) As a bare minimum proposition, the package will include:
  - i. Allocation of spectrum in the 3.5 GHz band
  - ii. A mechanism for allocation of future spectrum
  - iii. A collaborative process for developing spectrum policy
  - iv. Short-term support for the establishment of the MSC
- b) In addition, and outside the negotiation package, we are pleased that the Crown and MSWG agree to transfer the Ka Hao Fund to IMSC/MS.

### 3. OUTCOMES WE ARE SEEKING

- 1. We have shared outcomes with the Crown particularly in Māori economic development and Covid economic recovery. They include a commitment to:
  - a) develop Māori capability in telecommunications and several adjacent digital technologies (i.e., Internet of Things, Machine Learning & Artificial Intelligence, Edge Computing, Data analytics).
  - b) develop use cases for economic impact in the regions and rural sector.
  - c) support innovation that can be leveraged for export.
  - d) drive wider economic impact for the country.

2. Māori require a legislated agreement that will withstand election-cycles and enable certainty and long-term strategic planning.
3. It includes an enduring entity and mechanisms to manage spectrum, that help Māori innovate, build capability, and contribute to both the Māori and wider economy.
4. Māori are exploring models for collective & equitable decision-making, benefit and leverage for Iwi/Māori that allows for critical, strategic partnerships with Māori, Crown, and MNOs (Mobile Network Operators including Spark, Vodafone and 2degrees).
5. The IMSC has blueprinted a *Māori Spectrum Innovation Platform* that centres Iwi/Māori in the telecommunications sector, grows the skills pipeline, and facilitates partnerships with government agencies (R&D, trade & enterprise support), industry partners (expertise, equipment, infrastructure), and Māori partners (primary sector and use cases, R&D). It can be activated immediately and is scheduled to begin after Covid factors are resolved, probably in 2022.
6. A fundamental component of sustainability is ensuring we have financial resources that allow the MSWG/IMSC/MSO to plan ahead. To achieve sustainability *either* we would rely on the government to permanently fund the MSO, *or* we would agree to a set of arrangements that positions the MSO for future financial independence and sustainability.

#### 4. ECONOMIC FINDINGS

A recent commissioned report outlines factors to assist us to meet our economic outcomes. It finds:

1. The overarching outcome is to enable the MSO, with Government as partner, to broaden the benefits of new technologies while impacting the Māori and wider economy.
2. The quantity, scarcity, combination, and placement of spectrum is key to creating critical strategic partnerships with MNOs who have the necessary infrastructure, capacity, and know-how to help the MSO decisively meet its economic outcomes.
3. Only the large MNOs have the capacity and capability to assist the MSO with use cases, skills, and capability objectives, that then lead to economic outcomes.
4. Only the large MNOs have the expertise (or access to it), capacity and capability to help the MSO assist future Māori licence holders, and support use cases to achieve research and development goals, while also allowing for *scale and deployment*. This particularly applies to large Iwi asset holders (e.g., forests, farms, aquaculture, energy).
5. The structure of the MSO will determine the success of the economic outcomes. An equitable model that enables shared decision-making and the distribution of opportunity and benefit to Iwi/Māori across the board is recommended.
6. The appropriate negotiation package will enable MSO, in partnership with the Government, to leapfrog Māori to advanced stages of technological development.

7. Further, to be relevant in the sector, the MSC will need to build its capability at speed and to demonstrate to the sector and Iwi/Māori that it is an innovator that can respond strongly to sector trends and disruptions.
8. Solutions to long-standing causes of disparities and barriers to socio-economic development, such as the tyranny of distance, can be alleviated through the MSCs outcomes that lead to improved land use technologies, access to healthcare, education/training, and remote working enabling people to 'return' to the regions.

## 5. SPECTRUM FINDINGS

Recent commissioned reports and scenario planning outline factors that will assist the MSC to meet its outcomes. The reports find:

1. The quantity, scarcity, combination, and placement of spectrum is key to creating critical strategic partnerships with MNOs who have the necessary infrastructure, capacity, and know-how to help the MSC decisively meet its economic outcomes.
2. If the spectrum configuration is appropriate, the MSC will be well-positioned to partner and achieve the outcomes it seeks. If not, the MSC will face compounding challenges that will disrupt its ability to progress and create programmes that help it decisively meet its economic outcomes.

## 6. NEGOTIATION ELEMENTS DISCUSSED TO DATE

The range of negotiation elements discussed to date include:

- a) A spectrum allocation model to Māori, applied to the 3.5 GHz band and future commercial allocations (the definition of commercial is yet to be agreed).
- b) Access to unallocated spectrum.
- c) The establishment of a permanent entity, the Māori Spectrum Commission (MSC) including its own governance model.
- d) A legislated agreement to ensure an enduring arrangement.
- e) Government support for the establishment of the MSC.
- f) Ensuring the package and financial support leads to long term sustainability.
- g) A collaborative spectrum policy development model.
- h) The concept of a "kickstart" to accelerate entry into the telecommunications sector.
- i) New models of spectrum allocation (specifically 600 MHz for rural communities).

Separately, we have also agreed the transfer of Ka Hao to the IMSC/MSc.

## 7. PIVOTAL NEGOTIATION ELEMENTS

The commissioned MSC reports and analyses identify three pivotal negotiation elements that are central to the MSC's success in meeting the outcomes described in this paper:

1. A minimum of [REDACTED] of the 3.5 GHz band with optimal placement that positions the MSC as a *viable* partner to a Tier 1 MNO, international partners, and larger asset holding Iwi/Māori partners. This is also the baseline for a commercial proposition, leading to financial sustainability and independence from the Government for ongoing financial support.
2. A legislated agreement that includes and secures an enduring arrangement, spectrum, and legal mechanisms.
3. A minimum of \$25m establishment funds for the first five years, to allow the MSC to build and bed in its partnerships, establish a skills pipeline for Māori, meet its commercial imperatives, offer “skin in the game” for innovation projects and partners that benefit Iwi/Māori, and recruit and develop the best team.

## 8. THE NEGOTIATION PACKAGE

As a result of the work so far, we have a sound understanding of what it will take to concretely meet the outcomes we share with the Crown.

We request the Ministers agree to:

1. Provide for legislation (enduring arrangement, spectrum, and legal mechanisms).
2. Allocate [REDACTED] in 3.5 GHz band & leverageable placement (a 20 year right).
3. Allocate spectrum in 1800 MHz, 2100 MHz, and 2300 MHz bands.
4. A minimum of [REDACTED] of all new band allocations to Māori.
5. Re-license bands to Māori where an allocation has not yet been made.
6. A governance model (including influence at senior leadership and Minister level decisions, visibility of strategies & proposed work programmes and policies, etc).
7. Provide funds for sustainability, leverage and to attract the right team, \$25m.
8. Allocate 5-year funds for assisting the Government as per its request, for joint initiatives in Digital Equity and Digital Technologies Transformation Plans and programmes, \$200m building on its *Māori Spectrum Innovation Platform*.

## 9. OTHER SPECTRUM NEGOTIATION PACKAGE CONSIDERATIONS

### EXPLORE THE 600 MHz BAND

The MSWG understands that planning has commenced for the availability of the 600 MHz band, and that this is contingent on Te Mātāwai agreeing to relocate its Spectrum Management Rights. This band, like the 700 MHz band, is particularly useful for 5G deployment in rural areas.

The IMSC and Crown Infrastructure Partners (CIP) have discussed developing a new model for the *full spectrum allocation* in the 600 MHz band. If it is passed to the MSC then the MSC, CIP and MNO(s) will partner to more efficiently allocate spectrum in rural areas, benefitting both Māori and farmers.

**We recommend MBIE undertake a joint investigation with MSWG/IMSC and CIP, to explore a new model of spectrum allocation in the 600 MHz band.**

#### **EXPLORE A KICKSTART AND/OR VENTURE INVESTMENT FUND \$20M**

The MSWG proposes a “kickstart” which, like previous precedents (such as the Aotearoa Fisheries Commission – Te Ohu Kaimoana), allows Māori to enter the sector immediately with access to capital, skills, infrastructure, and capability. This may include shares in a well-established telecommunication-related company, for example, or other options that give immediate access to a commercially viable company, skills, and capability.

**We recommend MBIE undertake a joint investigation with MSWG/IMSC to explore a “kickstart” approach.**

### **10. KA HAO: BUILDING DIGITAL TECHNOLOGY CAPABILITY**

External to the negotiation package, but in parallel, the MSWG and Crown have agreed to transfer the Ka Hao Fund to the IMSC/MSG. This is well received by the MSWG.

We have reviewed the report undertaken by Ernst Young and agree with several recommendations to improve outcomes. We intend to act and expand on these including responding to their recommendation for support for more mature Māori-owned companies which require access to capital and research funding.

### **11. RECOMMENDATIONS**

That the Ministers agree to:

1. The elements proposed in section **The Negotiation Package**.
2. Respond to each of the elements identified in section **Other Spectrum Negotiation Package Considerations**.

Signed:



Piripi Walker for MSWG



Antony Royal for IMSC



## AIDE MEMOIRE

### Title

<b>Date:</b>	14 October 2021	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-1328

### Information for Minister(s)

Hon Stuart Nash  
**Minister of Tourism**

### Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Amapola Generosa	Manager, Tourism Team, Evidence and Insights	+64 4 901 3832	✓
Swati Khurana	Analyst	§ 9(2)(a) OIA	

### The following departments/agencies have been consulted

MBIE Tourism Branch

### 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

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# AIDE MEMOIRE

## Title

<b>Date:</b>	14 October 2021	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-1328

## Purpose

This Aide Memoire provides you with a summary of the Tourism Electronic Card Transaction (TECT) release for August 2021. It includes a focus on the five communities that were identified as part of the Tourism Communities: Support, Recovery and Re-set Plan.

Amapola Generosa  
**Manager, Tourism, Evidence and Insights**  
Digital, Data & Insights Group, MBIE

14 / 10 / 2021

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## Background

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1. The tourism electronic card transactions (TECTs) estimate monthly tourism spending at a regional level in New Zealand for both the international and domestic markets. The latest TECT data for August 2021 was released on 7 October.
2. The TECTs only include card spending and not any other forms of spend (e.g. cash, online etc.). This means that dollar spend figures are only partial measures of tourism spend. Therefore, this document focuses on comparison figures such as percentage changes instead.
3. You requested a high-level summary of current trends in the TECTs, as well as an additional focus on the five communities identified as targets in the Tourism Communities: Support, Recovery and Re-set Plan. s 9(2)(f)(iv) OIA
4. Please note, TECT territorial authority level data (as shown in Table 1 and Table 2) is only available at the annual level, not monthly. This is due to confidentiality rules that apply at this level.
5. Also note that domestic and international figures are not able to be added together. This is because, due to the different proportions electronic card transactions represent in each market, adding them together will overestimate one market and underestimate the other.

## Tourism electronic card transaction data for August 2021 has been released

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*Domestic TECT spending in the year-ended August 2021 was up 27% from 2020*

6. Domestic TECT spend increased by 27% in the year-ended August 2021 compared to the year-ended August 2020. It also increased 17% compared to pre-COVID levels in the year-ended August 2019.
7. Alert Level 4 (AL4) was in place nationally from 18 August 2021. This result in monthly domestic TECT spend in August 2021 falling to about half the amount of July 2021.
8. Monthly domestic TECT spend for August 2021 was down 19% on August 2020 and 21% on August 2019. As Auckland was in AL3 for a large part of August 2020, the fall was not as big as it would have been if New Zealand were in AL1 in 2020.
9. As expected due to border closures, international spend in the year-ended August 2021 was down on previous years. Spending decreased 64% compared to 2020 and 72% compared to 2019.
10. However, monthly international spend in August 2021 saw a 2% increase on August 2020.

## Domestic spend increase has offset some of the fall in international spending in the five targeted communities

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*The five targeted communities saw some of the largest falls in international TECT spend in the last year*

11. Five communities (Kaikōura District, Mackenzie District, Queenstown-Lakes District, Southland District and Westland District) were identified as targets in the Tourism



Communities: Support, Recovery and Re-set Plan. These communities were identified because of the high dependence on international tourism in their local economies.

12. These five communities had some of the greatest falls in international TECT spend in the country. In the year-ended August 2021, of these five communities, Westland had the steepest decline, when compared to the same period for 2020 (down 94%) and 2019 (down 96%). Table 2 shows the other communities also saw decreases of around 90%.
13. Other districts, including large cities such as Auckland, Christchurch City and Wellington City, showed smaller declines in international TECT spend, when compared to both 2020 and 2019.

*Some of the fall in international TECT spend in the five targeted communities was offset by increases in domestic TECT spend*

14. The five communities did however see some of the highest increases in domestic TECT spend in the country. In the year-ended August 2021, of these five communities, Southland District saw the highest increase compared to the same period for 2020 (up 55%). Table 1 shows the other communities also saw large increases in the same periods.
15. Other districts saw smaller increases in domestic TECT spend, when compared to both 2020 and 2019.
16. These increases in domestic TECT spend for the five communities helped to offset some of the fall in international spend. However, due to their high reliance on international tourism, they are likely to have seen higher falls in tourism spend overall.

*Table 1: Percentage change in domestic tourism electronic card spend for the year to August 2021 compared to previous years*

<b>TA</b>	<b>Percent change in domestic spend from Year to August-2020</b>	<b>Percent change in domestic spend from Year to August-2019</b>
New Zealand	26.7%	17.2%
Kaikōura District	40.9%	38.1%
Mackenzie District	34.1%	41.8%
Queenstown-Lakes District	50.2%	58.3%
Southland District	54.9%	36.9%
Westland District	48.6%	41.0%
Auckland	20.9%	4.9%
Christchurch City	32.4%	26.1%
Wellington City	24.1%	2.1%

Table 2: Percentage change in international tourism electronic card spend for the year to August 2021 compared to previous years

TA	Percent change in international spend from Year to August-2020	Percent change in international spend from Year to August-2019
New Zealand	-64.1%	-71.9%
Kaikōura District	-90.9%	-92.1%
Mackenzie District	-92.9%	-94.5%
Queenstown-Lakes District	-81.3%	-87.8%
Southland District	-92.6%	-94.6%
Westland District	-94.3%	-96.0%
Auckland	-53.4%	-63.3%
Christchurch City	-61.0%	-68.3%
Wellington City	-62.3%	-71.2%

## Annexes

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Annex One: TECT summary spreadsheet

**Annex One: TECT summary spreadsheet**

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**August-2021 Region Summary Table**

Data Source: Tourism Electronic Card Transactions (TECTs), Ministry of Business, Innovation and Employment

REGION	August-2021 domestic spend	August-2021 International spend	Percent change in domestic spend from August-2020	Percent change in International spend from August-2020	Percent change in domestic spend from August-2019	Percent change in International spend from August-2019	Annual domestic spend year to August-2021	Annual International spend year to August-2021	Percent change in domestic spend from Year to August-2020	Percent change in International spend from Year to August-2020	Percent change in domestic spend from Year to August-2019	Percent change in International spend from Year to August-2019
New Zealand	\$565m	\$55m	-19%	2%	-21%	-74%	\$11,164m	\$915m	27%	-64%	17%	-72%
Auckland	\$111m	\$22m	21%	23%	-32%	-68%	\$2,098m	\$368m	21%	-53%	5%	-63%
Bay of Plenty	\$47m	\$3m	-24%	-10%	-21%	-68%	\$1,014m	\$52m	25%	-66%	18%	-74%
Canterbury	\$75m	\$6m	-28%	-9%	-19%	-73%	\$1,467m	\$110m	29%	-68%	23%	-74%
Gisborne	\$3m	\$0m	-25%	-32%	-17%	-33%	\$83m	\$5m	30%	-41%	27%	-41%
Hawke's Bay	\$18m	\$1m	-28%	-2%	-17%	-42%	\$406m	\$21m	30%	-55%	26%	-60%
Manawatu-Whanganui	\$36m	\$2m	-26%	12%	-27%	-53%	\$631m	\$24m	20%	-49%	12%	-57%
Marlborough	\$9m	\$0m	-15%	-17%	6%	-61%	\$188m	\$9m	45%	-78%	36%	-80%
Nelson	\$6m	\$1m	-31%	-26%	-24%	-42%	\$143m	\$12m	39%	-65%	24%	-67%
Northland	\$25m	\$1m	-19%	-31%	-12%	-47%	\$562m	\$29m	30%	-63%	25%	-66%
Otago	\$80m	\$6m	-23%	8%	1%	-91%	\$1,263m	\$96m	37%	-79%	35%	-86%
Southland	\$13m	\$1m	-23%	-32%	-13%	-79%	\$258m	\$12m	28%	-80%	18%	-84%
Taranaki	\$11m	\$1m	-23%	-1%	-20%	-49%	\$238m	\$14m	24%	-41%	15%	-48%
Tasman	\$4m	\$0m	-23%	-28%	-7%	-57%	\$138m	\$7m	51%	-77%	39%	-80%
Waikato	\$67m	\$4m	-24%	-17%	-23%	-64%	\$1,475m	\$61m	24%	-65%	17%	-71%
Wellington	\$55m	\$6m	-25%	-4%	-29%	-63%	\$1,049m	\$89m	22%	-55%	6%	-64%
West Coast	\$6m	\$0m	-35%	-18%	-7%	-91%	\$152m	\$5m	45%	-92%	42%	-94%



**August-2021 KIO Summary table**

Data Source: Tourism Electronic Card Transactions (TECTs), Ministry of Business, Innovation and Employment

RTO	August-2021 domestic spend	August-2021 International spend	Percent change in domestic spend from August-2020	Percent change in International spend from August-2020	Percent change in domestic spend from August-2019	Percent change in International spend from August-2019	Annual domestic spend year to August-2021	Annual International spend year to August-2021	Percent change in domestic spend from Year to August-2020	Percent change in International spend from Year to August-2020	Percent change in domestic spend from Year to August-2019	Percent change in International spend from Year to August-2019
New Zealand	\$565m	\$55m	-19%	2%	-21%	-74%	\$11,164m	\$915m	27%	-64%	17%	-72%
Auckland Tourism, Events and Festivals	\$111m	\$22m	21%	23%	-32%	-68%	\$2,098m	\$368m	21%	-53%	5%	-63%
Central Economic Development	\$15m	\$1m	-29%	24%	-28%	-27%	\$296m	\$13m	21%	-16%	11%	-24%
ChristchurchNZ	\$49m	\$6m	-27%	-9%	-23%	-68%	\$975m	\$95m	29%	-61%	23%	-68%
Destination Clutha	\$2m	\$0m	-14%	35%	-12%	-52%	\$36m	\$1m	23%	-75%	6%	-78%
Destination Coromandel	\$13m	\$0m	-25%	-19%	-16%	-62%	\$373m	\$8m	26%	-77%	23%	-79%
Destination Great Lake Taupo	\$16m	\$1m	-30%	-25%	-20%	-78%	\$356m	\$14m	30%	-76%	29%	-80%
Destination Kaikoura	\$2m	\$0m	-42%	-38%	-14%	-89%	\$54m	\$2m	41%	-91%	38%	-92%
Destination Marlborough	\$9m	\$0m	-15%	-17%	6%	-61%	\$188m	\$9m	45%	-78%	36%	-80%
Destination Queenstown	\$37m	\$3m	-22%	12%	10%	-94%	\$539m	\$56m	53%	-82%	57%	-88%
Destination Rotorua	\$15m	\$1m	-19%	10%	-28%	-83%	\$315m	\$16m	20%	-81%	10%	-87%
Destination Wairarapa	\$7m	\$0m	-34%	-13%	-17%	-38%	\$153m	\$5m	24%	-52%	22%	-54%
Development West Coast	\$6m	\$0m	-35%	-18%	-7%	-91%	\$152m	\$5m	45%	-92%	42%	-94%
Enterprise Dunedin	\$19m	\$1m	-31%	-8%	-25%	-59%	\$366m	\$21m	19%	-63%	9%	-69%
Great South Bay	\$10m	\$0m	-22%	-31%	-15%	-55%	\$191m	\$9m	21%	-49%	12%	-50%
Hamilton & Waikato Tourism	\$35m	\$2m	-22%	-14%	-27%	-57%	\$690m	\$37m	21%	-52%	9%	-60%
Hawke's Bay Tourism	\$18m	\$1m	-28%	-2%	-17%	-42%	\$406m	\$21m	30%	-55%	26%	-60%
Hurunui Tourism	\$5m	\$0m	-31%	-13%	-9%	-69%	\$97m	\$3m	40%	-72%	32%	-77%
Lake Wanaka Tourism	\$17m	\$1m	-17%	22%	42%	-88%	\$203m	\$14m	42%	-77%	61%	-84%
Mackenzie Region	\$5m	\$0m	-34%	7%	9%	-96%	\$78m	\$3m	34%	-93%	42%	-95%
Nelson Regional Development	\$10m	\$1m	-27%	-26%	-17%	-48%	\$281m	\$19m	44%	-71%	31%	-73%
Northland Inc	\$25m	\$1m	-19%	-31%	-12%	-47%	\$562m	\$29m	30%	-63%	25%	-66%
Not elsewhere classified	\$14m	\$0m	-24%	-4%	-7%	-52%	\$251m	\$5m	27%	-54%	22%	-61%
Tourism Bay of Plenty	\$28m	\$2m	-26%	-19%	-23%	-42%	\$641m	\$35m	24%	-46%	17%	-49%
Tourism Central Otago	\$5m	\$0m	-21%	-12%	-12%	-79%	\$118m	\$4m	30%	-74%	20%	-79%
Tourism Waitaki	\$5m	\$0m	-25%	-21%	-14%	-83%	\$96m	\$2m	23%	-81%	17%	-84%
Trust Tairāwhiti	\$4m	\$0m	-22%	-32%	-12%	-33%	\$107m	\$6m	31%	-43%	30%	-43%
Venture Taranaki	\$11m	\$1m	-23%	-1%	-20%	-49%	\$238m	\$14m	24%	-41%	15%	-48%
Venture Timaru	\$9m	\$0m	-23%	8%	-14%	-54%	\$156m	\$4m	18%	-67%	14%	-70%
Visit Fiordland	\$1m	\$0m	-35%	-34%	-11%	-96%	\$37m	\$2m	72%	-94%	44%	-96%
Visit Ruapehu	\$8m	\$0m	-21%	-9%	-33%	-81%	\$88m	\$3m	22%	-82%	17%	-87%
Visit Southland	\$1m	\$0m	-21%	-35%	-2%	-73%	\$30m	\$1m	38%	-81%	28%	-84%
Visit Whanganui	\$5m	\$0m	-25%	26%	-13%	-22%	\$98m	\$4m	20%	-38%	15%	-41%
Wellington Regional Economic Development	\$48m	\$5m	-24%	-4%	-30%	-64%	\$896m	\$84m	22%	-55%	4%	-65%