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Waitangi Tribunal

27 May 25Ministry of Justice
WELLINGTON



Intended for

- All Ministers
- All Chief Executives
- Chief of Staff, Office of the Prime Minister
- Chief of Staff, Office of the Leader of the ACT Party
- Chief of Staff, Office of the Leader of the New Zealand First Party
- All Senior Private Secretaries
- All Private Secretaries
- All officials involved in service design, commissioning, and delivery; and/or policy advice relating to these activities

Needs-based Service Provision

Purpose

- 1 This circular sets out Government expectations for how the targeting, commissioning, and design of public services should be based on the needs of all New Zealanders.
- 2 This circular gives effect to the commitment in the coalition agreements between the National Party and the ACT Party, and between the National Party and the New Zealand First Party, to “issue a Cabinet Office circular to all central government organisations that it is the Government’s expectation that public services should be prioritised on the basis of need, not race.”

Application

- 3 The expectations set out in this circular apply to public sector agencies, as defined in paragraph 3.5 of the Cabinet Manual 2023¹.
- 4 All public service chief executives and those in their agencies who undertake activities related to this circular must follow the expectations. Where Crown entities, state-owned enterprises, or other public sector agencies have roles in service design, commissioning, and delivery, they should comply with the expectations as far as possible, taking into account their legal obligations, statutory functions and duties.

Context

- 5 The Government seeks to ensure that all New Zealanders, regardless of ethnicity or personal identity, have access to public services that are appropriate and effective for them, and that services are not arbitrarily allocated on the basis of ethnicity or any other aspect of identity.

¹ <https://www.dPMC.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/>

6 The International Convention on the Elimination of All Forms of Racial Discrimination provides that:

“Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”²

7 The Government is concerned that in the absence of clear expectations, agencies may use ethnic identity or other forms of personal identity as a proxy for need, and therefore a justification in itself for targeted services. The requirements in this circular aim to address this concern.

What is required?

8 Consistent with this context, Cabinet expects that:

8.1 when considering proposals for services targeted to specific population groups, agencies should engage responsible Ministers early about choices or options being considered and:

8.1.1 provide a strong analytical case for targeted investment (based on empirical evidence about why such interventions are necessary, i.e. the disparity in outcomes between the target and the general population and why general services are not sufficient to address this), and an assessment of any opportunity costs in terms of the service needs of all New Zealanders; and

8.1.2 provide clear advice on how service design, funding, prioritisation, eligibility criteria, and frontline resources can be aligned with this assessment of need.

8.2 when proposing services (including those designed or delivered in a culturally specific or responsive way) agencies should provide clear analysis of the proposed service model, including:

8.2.1 why and how it is expected that such a model will improve the efficacy of the proposed service and how it will be evaluated over time;

8.2.2 how such a model will impact on competitive tendering for the service or its total cost.

8.3 where culturally specific models are used, eligibility should not be restricted to the specific population group unless there is a strong rationale (e.g. value for money).

8.4 agencies should regularly review services targeted to specific population groups to ensure they remain necessary to achieve their original objectives.

9 In making the assessment above, Cabinet expects agencies will recognise that there are many variables that can be used to identify and assess need, and that all variables should be considered before ethnic identity is automatically used to determine need.

² <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

Distribution of circular and further guidance

- 10 Public Service chief executives should forward copies of this circular to the heads of relevant public sector agencies within their Ministers' portfolios.
- 11 The Social Investment Agency provides a range of [guidance](#) on the use of data and analytics in the social sector to help service agencies and providers make decisions grounded in evidence and strengthen evaluation practices. The Treasury's [Living Standards Framework](#) and [He Ara Waiora](#) provide frameworks for thinking holistically about the dimensions of need beyond (but inclusive of) financial capital.
- 12 Statistics New Zealand's [Ngā Tikanga Paihere](#) supports ethical data practice and research by providing guidance about informing or involving communities of focus, transparency of data use, and thinking about the consequences of data use for communities.

Rachel Hayward
Secretary of the Cabinet

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Cabinet

Minute of Decision

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Ensuring Public Services are Based on Need and Contracts are Awarded on Value

Portfolio **Public Service**

On 26 August 2024, Cabinet:

Background

- 1 **noted** that:
 - 1.1 in November 2023, Cabinet agreed to the Government's 100-day plan, which included a commitment to begin work on delivering better public services and strengthening democracy [CAB-23-MIN-0468];
 - 1.2 in December 2023, the Cabinet 100-Day Plan Committee noted the updated 100-day action plan dashboard, which included an invitation for the Minister for the Public Service to report back in late January 2024 on ensuring public services are available to all New Zealanders and are prioritised on the basis of need, not race [100-23-MIN-0016];
- 2 **noted** that in January 2024, the Minister for the Public Service provided oral advice to Cabinet on her intention to report back on the Government's commitments to:
 - 2.1 issue a Cabinet Office circular to all central government organisations outlining the Government's expectation that public services should be prioritised on the basis of need, not race;
 - 2.2 ensure government contracts are awarded based on value, without racial discrimination;
- 3 **agreed** that a Cabinet Office circular be issued to provide clarity about the Government's objectives and expectations for needs-based service provision;
- 4 **endorsed** the contents of the draft Cabinet Office circular on needs-based service provision (the circular), attached as Appendix One to the paper under CAB-24-SUB-0321;
- 5 **noted** that the circular will be binding on the public service and provide guidance for Crown entities with significant service provision roles;

- 6 **authorised** the Minister for the Public Service to make minor amendments to the circular as necessary to reflect Cabinet decisions;

A focus on needs underpinned by data and evidence

- 7 **noted** that public agencies need quality data and data analysis capability to help strengthen needs-based service provision over the medium term, and that this is consistent with a social investment approach;
- 8 **noted** that the Minister for Social Investment has initiated work in this area and will direct officials to explore ways to lift social sector capability for targeting and evaluating the effectiveness of social sector spending, including for example:
- 8.1 options for addressing gaps in the granularity of data for specific populations;
 - 8.2 models for agencies to use in assessing the different dimensions of need in particular contexts;
 - 8.3 options for lifting capability in data analysis across service agencies;
 - 8.4 how robust evaluation can be embedded in social service provision while still promoting innovation in service design;

Ensuring government contracts are awarded based on value

- 9 **noted** that the Government Procurement Rules, Principles and Charter provide a robust framework for assessing contracts on their merits, with a focus on delivering public value;
- 10 **noted** that in 2020, the previous government introduced a Progressive Procurement Policy to increase supplier diversity, starting with a focus on Māori businesses [CBC-22-MIN-0072];
- 11 **noted** that the Progressive Procurement Policy currently provides a target for the proportion of contracts awarded by relevant agencies to certain classes of business, and that this is currently focused on Māori business, with a target of eight percent;
- 12 **noted** that funding to support providers to increase their capability to engage in government procurement as part of the Progressive Procurement Policy ended in June 2024;
- 13 **noted** that a specific target for any type of business sends the wrong signal to agencies about awarding contracts first and foremost on the basis of public value, and risks giving an impression of an uneven playing field for suppliers;
- 14 **agreed** to remove targets for a proportion of contracts awarded to specific businesses and to communicate this to agencies;
- 15 **agreed** that data on supplier diversity be collected and reported;
- 16 **invited** the Minister for Māori Development, the Minister for Economic Development and the Minister for Regional Development to report back to the Cabinet Economic Policy Committee by February 2025 on the scope and nature of any ongoing work programmes proposed to support supplier diversity;

- 17 **noted** that the report referred to above will also meet the 2022 Cabinet commitment to review the Progressive Procurement Policy [MCR-22-MIN-0025], and should include a focus on how government procurement processes can better generate public value and support the engagement of small businesses.

Rachel Hayward
Secretary of the Cabinet

[REDACTED]

[REDACTED]

Office of the Minister for the Public Service

Cabinet

Ensuring public services are based on need and contracts are awarded on value

Proposal

- 1 This report back sets out proposals to advance commitments in the Government's 100-Day Plan focused on delivering better public services and strengthening democracy [CAB-23-MIN-0468 refers].
- 2 The paper covers coalition agreements to:
 - 2.1 issue a Cabinet Office circular to all central government organisations that it is the Government's expectation that public services should be prioritised on the basis of need, not race; and
 - 2.2 ensure government contracts are awarded based on value, without racial discrimination.

Relation to government priorities

- 3 Proposals in this paper support the Coalition Government's priorities around delivering better public services and strengthening democracy.

Executive Summary

- 4 As a society and as a matter of responsible government, it is important that the significant investment made in public services supports all New Zealanders, and particularly those who need them most. By ensuring services are prioritised on the basis of need, we can maximise the impact of this investment and improve people's lives.
- 5 Government in New Zealand acts within a well-established legal and constitutional framework of non-discrimination. Within this framework, services targeted or designed for specific population groups are an established feature of good government and are supported by the New Zealand Bill of Rights Act 1990, international convention and law.
- 6 This practice does not allocate services based on personal identity per se, but aims to invest in specific population groups where there is evidence of persistent disparity in outcomes or opportunities between that group and the general population, or where evidence suggests different service models will improve efficacy. It is not limited to ethnically defined groups, routinely extending to groups such as disabled persons, senior citizens, people living in rural areas, or those with diverse sexualities or gender identities.

- [REDACTED]
- 7 At the same time, we expect that all New Zealanders, regardless of personal identity, will have access to public services that are appropriate and effective for them, and that such services will not be arbitrarily allocated on the basis of those identities. Where targeted services are proposed, I expect these to be informed by clear evidence of a disparity, and evidence that culturally responsive or population-specific service models would be more effective. In other words, targeted services should coincide with a focus on need.
 - 8 In order to embed these expectations in practice and decision-making, I propose we approve the attached Cabinet Office circular (see **Appendix One**), to be issued to all public sector agencies. The circular will formally communicate our objectives, binding public service agencies and providing guidance to Crown entities to ensure a focus on need in service provision.
 - 9 To give full effect to the expectations set out in the proposed circular, agencies need quality data, and the capability to provide robust analysis and evaluation. As Minister for Social Investment, I will explore ways we can improve this across the public service.

Ensuring government contracts are awarded on value

- 10 Ensuring government contracts are merit-based and deliver maximum public value are enduring aspects of the New Zealand Government Procurement Rules, Principles, and Charter, which guide all public service agencies in their procurement duties.
- 11 In 2020, the previous Government introduced a Progressive Procurement Policy. The policy focuses on increasing supplier diversity and promoting regional economic development, with a focus on Māori businesses in the first instance. This included a target that eight percent of agencies' annual contracts will be with Māori businesses.
- 12 I am concerned that retaining targets for a specific group (or groups) of businesses based on ethnicity sends the wrong signal to agencies about awarding contracts first and foremost on public value. I consider this approach, regardless of how carefully it is implemented, leaves an impression of an uneven playing field and a perception (whether warranted or not) of potential discrimination.
- 13 For these reasons, I propose the target is removed, and that this change be communicated to agencies. Our Government can continue to focus on improving opportunities for such businesses to participate in tendering processes, while ensuring that contracts are awarded on value.

Background

- 14 In November 2023, Cabinet agreed the Government's 100-Day Plan and invited the Minister for the Public Service to report back in late January 2024 on "*ensuring public services are available to all New Zealanders and are prioritised on the basis of need not race, e.g. ensuring government contracts are awarded based on value*" [CAB-23-MIN-0468 refers]. I brought an oral

item to Cabinet on 30 January to discuss my proposed approach to these issues, fulfilling Cabinet's invitation. I committed to return to Cabinet with the detailed proposals in this paper, taking into account specific commitments in coalition agreements to:

- 14.1 issue a Cabinet Office circular to all central government organisations that it is the Government's expectation that public services should be prioritised on the basis of need, not race; and
- 14.2 ensure government contracts are awarded based on value, without racial discrimination.

Existing practice of targeting services

- 15 Many New Zealanders need and benefit from public services delivered in our communities every day. Some people experience higher levels of need than others and we need to ensure we are prioritising available resources to meet the needs of our most vulnerable citizens.
- 16 Government in New Zealand acts within a well-established legal and constitutional framework of non-discrimination. Within this framework, services targeted or designed to respond to the needs of specific population groups are an established feature of good government and are supported by the New Zealand Bill of Rights Act 1990, international convention and law. Specifically, the International Convention on the Elimination of All Forms of Racial Discrimination provides that:

"special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved".¹
- 17 In other words, this practice does not allocate services based on ethnicity per se. Instead, it aims to invest in specific population groups where there is evidence of persistent disparity in outcomes or opportunities between that group and the general population, or where evidence suggests different service designs will improve the efficacy of those services (and therefore the efficiency of such services over time).
- 18 Nor is it limited to ethnically defined groups, routinely extending to groups such as disabled persons, senior citizens, rural communities, or groups with diverse sexualities or gender identities.
- 19 As we noted in Cabinet decisions repealing amendments to Smokefree legislation and indicated with our recent investment in Māori immunisation, we still expect to see such services targeted to population groups who have high

¹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

needs, which may include specific ethnic groups, and there is already a wide range of such services.²

- 20 At the same time, it is essential that such services are not arbitrarily allocated on the basis of personal identities. Where targeted services are proposed, I expect all such proposals to be informed by clear evidence of a disparity in outcomes for the relevant group, and evidence that culturally responsive or population-specific service models would be more effective. In other words, targeted services should coincide with a focus on need.

Approach to ensuring services are prioritised on the basis of need

- 21 In this context, I propose two actions to ensure decisions or advice generated about the targeting, design, and commissioning of services are focused strongly on need. These actions, discussed below, are complementary.

A new Cabinet Office circular

- 22 I am mindful that our approach need not be excessively prescriptive or bureaucratic. At the same time, chief executives and agencies exercise significant discretion in the commissioning of services, and I consider some specific expectations are required if we are to achieve our objectives.
- 23 Accordingly, I propose a new Cabinet Office circular is issued (attached as **Appendix One**). This circular would set out Cabinet expectations of agencies when they are considering proposals for services targeted to specific population groups, in order to ensure such proposals coincide with a focus on need. In particular, the proposed circular would set an expectation that:
- 23.1 agencies provide a strong analytical case for targeted investment based on empirical evidence about the specific need (i.e. the disparity in outcomes between the target and the general population and why existing general services are not sufficient to address this), and clear advice on how service design, funding, prioritisation, eligibility criteria and frontline resources can be aligned with this need;
- 23.2 when proposing services (including those designed or delivered in a culturally specific or responsive way), agencies should provide clear analysis of why and how that service model is expected to be more effective, how such a model will impact on the cost of the service, and how it will be evaluated over time;

² For example, the Whāngaia Ngā Pā Harakeke model (developed by NZ Police and iwi) of family harm services was applied in locations with a high incidence of harm, ensuring practice responds to overall whānau needs and is led by tikanga Māori & whakapapa. Independent evaluation has shown quantified reductions in offences, severity of offences, or harm. See [Together alone: A review of joined-up social services](#). Similarly, Rangatahi and Pasifika courts operate in much the same way as the Youth Court but are held in places of cultural significance (marae, churches, community centres), and have been shown to generate a range of positive outcomes for both Māori and Pasifika youth and their whānau, see [Evaluation of the Early Outcomes of Ngā Kooti Rangatahi](#).

- [REDACTED]
- 23.3 where culturally specific models are used, eligibility should not be restricted to the specific population group unless there is a strong rationale (e.g. value for money);
 - 23.4 agencies should regularly review services targeted to specific population groups to ensure they remain necessary to achieve their original objectives; and
 - 23.5 when making their assessments agencies should recognise that there are many variables that can be used to identify and assess need, and that all variables should be considered before ethnic identity is automatically used to determine need.
- 24 The circular would be binding on the Public Service and provide guidance for Crown entities with significant service provision roles. Agencies will need to allocate sufficient resource to deliver these expectations (including to ensure regular evaluation of services and effective contract management).

Strengthening the data and analysis that ensures a focus on need

- 25 In order to deliver on the expectations in the circular, agencies will also need access to timely, high quality, granular data, and the capability to extract, analyse and present it, often in partnership with parties outside government who hold such data. This is at the heart of a social investment approach, where targeted investment or innovative service design for high-needs cohorts can both improve outcomes and reduce long-run fiscal costs.
- 26 I am initiating work to embed a social investment approach and, to support our objectives across both these areas, I will ask officials to work with data system leaders – Stats NZ and the new Social Investment Agency– to explore:
- 26.1 where there are gaps in the granularity of data for specific populations, and where changes to access, data sharing arrangements, or data infrastructure could help to close such gaps;
 - 26.2 approaches and models for agencies to use in assessing the different dimensions of need in particular contexts (e.g. for cyclone recovery, the then Social Wellbeing Agency created a tool to assist with funding allocations that allowed agencies to prioritise and weigh a range of factors likely to contribute to the impact of the event, including environmental impact, deprivation and population demographics. Such tools could be adapted to inform wider service provision);
 - 26.3 options for lifting capability in the analysis and use of data and insights across service-providing agencies; and
 - 26.4 how robust evaluation can be embedded in social service provision while still promoting innovation in service design.

Ensuring government contracts are awarded based on value

- 27 This Government is committed to better public services. This includes ensuring contracts for services are awarded fairly (with an even playing field) and deliver maximum public value for New Zealanders.

Procurement Rules provide a robust framework for agency procurement

- 28 Each year, government agencies spend over \$50 billion on a wide range of goods and services sourced in New Zealand and from overseas. Done well, procurement from this investment can support wider economic and social outcomes in addition to the primary focus of the contract.
- 29 The Government Procurement Rules (and associated Principles and Charter) provide a robust framework for agencies' procurement. The rules are based on best practice and are explicit that all suppliers are assessed on merit, are given equal opportunity to bid for contracts, and are not discriminated against.
- 30 At the same time, the rules require agencies to consider how to involve New Zealand businesses (including Māori and Pasifika businesses) in contract opportunities. I understand this rule promotes supplier diversity and is focused on ensuring all businesses have an opportunity to participate in procurement *processes*, but does not require a preferential awarding of contracts – all contract awards must still be based on best public value.

The Progressive Procurement Policy

- 31 In 2020, the previous Government agreed to a Progressive Procurement Policy. The policy was introduced to support supplier diversity, with a focus on Māori businesses in the first instance. It is consistent with supplier diversity initiatives around the world aimed at improving market access, innovation, resilience, and regional economic opportunity.
- 32 The policy set a target for the percentage of mandated government agencies' annual contracts awarded to Māori businesses. This started as 5% in 2020 and increased to 8% in 2023 (as the 5% target was achieved). Agencies are currently required to report their performance against this target, and the total number and value of contracts awarded to Māori businesses.
- 33 Consistent with the procurement rules, the progressive procurement policy is not a guarantee that suppliers will secure business from participating buyers. Nor does it seek to compromise on the quality, cost or service requirements that are expected of suppliers.
- 34 Implementation of the policy was supported by funding to build the capability and technical expertise of potential suppliers, support their engagement in tender processes, and connect buyers and suppliers. Both departmental and non-departmental funding for the policy ended in June 2024.

Proposal: Remove the target on contracts awarded to Māori businesses

- 35 I consider that the objective to increase supplier diversity has some merit. It is important to encourage diversity, innovation and new entrants, particularly for small to medium-sized businesses.

- [REDACTED]
- 36 However, I am concerned that retaining targets for a specific group (or groups) of businesses based on ethnicity sends the wrong signal to agencies about awarding contracts first and foremost on public value. I consider this approach, regardless of how carefully it is implemented, leaves an impression of an uneven playing field and a perception (whether warranted or not) of potential discrimination. While funding for targeted supplier support expired in June 2024, the target remains in place.
- 37 For these reasons, I propose the target is removed, and that this change be communicated to agencies.
- 38 Consistent with the procurement rules, the wider objective of promoting supplier diversity would remain, and there is now sufficient data for officials to track such diversity. I expect that data on supplier diversity, including the number and value of contracts awarded by agencies to Māori businesses, continue to be collected and reported. I recommend the Minister for Economic Development and the Minister for Māori Development jointly report back to the Cabinet Economic Policy Committee by February 2025 about the scope and nature of any ongoing work programmes proposed to support supplier diversity, taking into account our fiscal strategy.
- 39 I consider that this report-back could be used to meet a Cabinet commitment in 2022 to review the progressive procurement policy [MCR-22-MIN-0025 refers] and would also align with the current review of the Government Procurement Rules being led by Minister for Economic Development. The report-back should include a focus on how procurement can better generate public value – including the achievement of broader community outcomes as well as managing cost – and how procurement processes can support the engagement of small businesses (including Māori businesses).

Treaty of Waitangi considerations

- 40 I consider the proposals in this paper are consistent with the Crown's obligations under the Treaty of Waitangi. We are committed to achieving equitable outcomes for all New Zealanders, and I acknowledge this will often require services targeted or tailored to specific ethnic population groups, subject to the analytical rigour proposed in the circular to confirm such need.
- 41 The proposals allow scope for the use of devolved commissioning models (such as Whānau Ora), engagement of Māori in service design, and other ways the Crown can enable and support Māori aspirations for the exercise of self-determination (tino rangatiratanga) while also exercising its right to govern for all New Zealanders under Article One of the Treaty.

Cost-of-living Implications

- 42 Proposals in this paper do not have direct impacts on the cost of living.

Financial Implications

- 43 Proposals in this paper will be funded within agency baselines.



Legislative Implications

44 There are no legislative implications in this paper.

Impact Analysis

Regulatory Impact Statement

45 A regulatory impact statement is not required.

Climate Implications of Policy Assessment

46 A Climate Implications of Policy Assessment is not required.

Population Implications

47 Specific populations may have higher service needs across multiple domains such as health, education, housing, and employment. Such populations include for example, Māori, Pacific people, disabled people, people living in low socio-economic households, and the rainbow community. The proposals in this paper seek to improve outcomes for all population groups by ensuring any targeted services are focused on a robust assessment of need.

Human Rights

48 Proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Use of external resources

49 No external resources were used in preparing this paper.

Consultation

50 The following agencies were consulted on this paper: Te Puni Kōkiri, Te Arawhiti, the Crown Law Office, the Ministry of Social Development, the Ministry of Health, and the Ministry of Business Innovation and Employment. Statistics New Zealand and the Social Investment Agency were consulted on specific aspects of the paper referring to those agencies. The Department of Prime Minister and Cabinet was informed.

Communications

51 I will liaise with the Prime Minister's Office about announcing the decisions in this paper as part of wider communications on Government milestones.

Proactive Release

52 I intend to proactively release this paper and the Cabinet minute, subject to any necessary redactions, within 30 business days of Cabinet's decisions.

