



Statutory options to enhance the role of the future Rōpū on family violence and sexual violence

Date: 31 August 2021

Security Level: IN CONFIDENCE

Report No: 2021-0249

Contact: Hannah Cameron, Deputy Commissioner, Strategy and Policy

Telephone: 9(2)(a)

	Actions Sought	Due Date
Hon Marama Davidson, Minister for the Prevention of Family and Sexual Violence	Note the information in this briefing	7 September 2021
Hon Chris Hipkins, Minister for the Public Service	Discuss this advice with officials	

Enclosure: No

PROACTIVELY RELEASED BY TE KAWA MATAAHO PUBLIC SERVICE COMMISSION

Recommended Action

We recommend that you:

- a **note** that you can set up an effective and enduring Rōpū for family violence and sexual violence without legislative change, and you can signal to Cabinet your commitment to support this
- b **note** that any future work on statutory options to enhance the role of the future Rōpū would need to consider matters including the problem and objectives; effective statutory design; and the appropriate statutory framework for any new provisions
- c **note** that statutory provisions can be created either by establishing a new Act or by amending an existing Act, and that based on preliminary analysis with the Ministry of Justice, our initial view is that it will be challenging to find an appropriate existing statutory framework for such provisions
- d **agree** to task the new Executive Board for the Elimination of Family Violence and Sexual Violence, once it is established by Cabinet, to provide you with further advice on these matters by December 2021.

Agree/Disagree.

Hon Marama Davidson

Minister for the Prevention of Family Violence and Sexual Violence

PROACTIVELY RELEASED BY TE KAWA MATUAHŌ PUBLIC SERVICE COMMISSION

Statutory options to enhance the role of the future Rōpū on family violence and sexual violence

Purpose of Report

- 1 This report provides initial advice on statutory options that could enhance the role of the future Rōpū for family violence and sexual violence. It sets out key policy and process questions that would need to be considered in any further work.

You are interested in exploring statutory options to enhance the role of the future Rōpū for family violence and sexual violence

- 2 On 10 August 2021, you received advice from Te Kawa Mataaho Public Service Commission and the Family Violence and Sexual Violence Joint Venture Business Unit on arrangements for a future Rōpū for family violence and sexual violence [2021-0219 refers]. You have indicated that:
 - 2.1 you intend to seek Cabinet agreement to establish the future Rōpū as a **Ministerial advisory group**, with its core role being to provide the Minister for the Prevention of Family Violence and Sexual Violence with independent advice, and with a role in monitoring the implementation of the National Strategy and action plans to inform this advice
 - 2.2 you see the Rōpū as representing a mana-to-mana relationship with tāngata whenua who have relevant experience or expertise, rather than a Tiriti partnership between the Crown and iwi/hapū
 - 2.3 you intend to commit funding to support a sector-led 'Kaitiaki Rōpū' to identify sector nominations for the future Rōpū.
- 3 We have reflected these points in the draft Terms of Reference for the future Rōpū. The Kaitiaki Rōpū will be established in September 2021 and will run a selection process to ensure the future Rōpū can be established in February 2022. Once Cabinet has agreed to establish the new Executive Board for the Elimination of Family Violence and Sexual Violence, we have suggested that you seek advice from the Executive Board on appropriate support arrangements for the future Rōpū.
- 4 You have also shown a strong interest in exploring statutory options to further enhance the role of the future Rōpū. You have asked for more information about these options. We understand you want to ensure the Rōpū is:
 - 4.1 **effective** – it has a strong tāngata whenua voice that is credible and is heard by government on key decisions relating to family violence and sexual violence
 - 4.2 **enduring** – it is **positioned** to have a constructive relationship with government in the longer term.

You can set up an effective and enduring Rōpū without legislative change

- 5 We consider that you can achieve your objectives for the Rōpū without establishing it on a statutory basis. Seeking a mandate from Cabinet to establish the Rōpū as a Ministerial advisory group will send a clear signal to other Ministers and the public about its status and role. This is consistent with the approach that has been taken to establish other Ministerial advisory groups such as the Oranga Tamariki Ministerial Advisory Board.

- 6 A key factor in whether the Rōpū may continue in the longer term will be the support it is seen to have in the sector and community. If the Rōpū is seen as having a credible voice, then future governments are more likely to continue to seek its advice. There are examples of Ministerial advisory groups which have had an enduring role even though they were not established on a statutory basis. For example, the National Advisory Council on the Employment of Women has been active since 1967, and the Prime Minister's Chief Science Advisor has been active since 2009. The **Appendix** provides further information about other advisory groups and their key features.
- 7 You could further strengthen the voice of the Rōpū by making commitments to Cabinet and the public that you will have full regard to its advice and will represent its views to Cabinet when you are seeking decisions on family violence and sexual violence issues. You could also commit to making some or all of its advice to you publicly available. We can reflect this in the draft Cabinet paper if you wish.
- 8 Since you can create a clear role and mandate for the Rōpū without legislation, we consider that the benefits of taking a statutory approach may be limited. The main benefit may be that it provides the Rōpū with greater perceived status and sustainability among the sector. On the other hand, a full legislative process generally takes 18 to 24 months at a minimum and requires significant time and input from officials and Members of Parliament. The legislative process will require a regulatory impact analysis to weigh the benefits against the costs.

We recommend that you task the new Executive Board with developing further advice on statutory options with input from the Rōpū

- 9 We recommend taking time to consider the full range of options to enhance the role of the Rōpū, including non-statutory options. When you seek Cabinet's agreement to establish the Rōpū as a Ministerial advisory group, we recommend that you commit to working with the new Executive Board for the Elimination of Family Violence and Sexual Violence and members of the Rōpū to consider the options over the next six months.
- 10 This would enable you and the Executive Board to:
- 10.1 **Develop ideas with input from the future Rōpū.** You could focus first on enabling members of the Kaitiaki Rōpū to run a robust selection process to support the establishment of the future Rōpū. You and officials could then work alongside the future Rōpū to develop options. This would help to manage any risks of being seen to rush decisions and will help to ensure you take the sector along with you 'on the journey'.
 - 10.2 **Take an iterative approach to learning from the initial arrangements.** It may provide time for the future Rōpū to confirm its ways of working. This will then allow you to learn from how the Rōpū is working and **identify** opportunities to enable it to work more effectively. This would help to provide greater clarity about the functions, roles and responsibilities of the Rōpū which will be necessary for legislative design.
- 11 Since the future Rōpū is expected to be established in February 2022, we suggest that you task the Executive Board with providing you with further advice on statutory options by December 2021. You can discuss this advice with members of the future Rōpū in early 2022 once it has been established.

The further advice on statutory options will need to work through key policy and process questions

- 12 There are key policy and process questions that would need to be considered as part of this further advice. The following sections provide more detail on these questions.

Problem and objectives

- 13 Any legislative proposals should be designed with a clear understanding of what problem you are trying to solve and/or what you are trying to achieve, both in the design of the Rōpu itself and how it can contribute to improving outcomes for people impacted by family violence and sexual violence. Having clarity on these matters will help to ensure statutory provisions are well designed and unambiguous. It will also help you to consider the full range of non-statutory options that could also achieve your objectives.
- 14 There are also wider questions about the overall approach government takes to establishing or recognising tāngata whenua advisory groups in statute. There may potentially be implications for compliance with Te Tiriti if some groups are recognised in statute and others are not.

Key legislative options and approaches

- 15 You could consider a range of statutory mechanisms to enhance the role of the Rōpū. These can be tailored depending on what you are trying to achieve. You will also need to consider the appropriate balance between certainty and flexibility. The more that is prescribed in legislation, the less scope the Rōpū may have to determine its own ways of working, or to adjust these as the relationship matures.

- 16 Key features you could consider include:

16.1 **Establishment**

Provisions could either establish the group directly or require the relevant Minister to establish the group. These would have the same practical effect and would ensure that the group continues until the legislation is repealed.

16.2 **Purpose, scope and functions**

These provisions can vary significantly. The simplest provisions will state that the purpose of the group is to advise the relevant Minister on a certain topic, and may provide some details regarding the scope of the advice. They could also reflect the outcomes you are looking to achieve in relation to family violence and sexual violence.

16.3 **Membership, appointment, conditions and removal**

Provisions can specify the number of members to be appointed to the group, a term of appointment, details of the appointment process and other procedural matters. They could also set expectations about the characteristics that must be considered when members are appointed to the group. This could provide greater assurance that the Rōpū would include the right expertise and experience, and has support from the wider community and sector.

16.4 **Operational and administrative matters**

Provisions can set out specific details of the operation and administration of the group. In the case of the Rōpū, you may consider creating requirements around how its advice should be considered and responded to. These would need to be balanced against the need to ensure

Cabinet or the relevant Minister can make decisions on family violence and sexual violence issues without undue constraint. You may also consider requirements for the advice of the Rōpū to be shared or made public in certain circumstances.

- 17 The **Appendix** provides a comparison of existing advisory groups and their key features. Note that you can also reflect many key features in the Terms of Reference for the Rōpū agreed by Cabinet without legislative change.

Appropriate statutory framework

- 18 There is a key question about which legislation any statutory provisions relating to the Rōpū would sit within. Statutory provisions can be created either by establishing a new Act or by amending an existing Act. Note that government's arrangements for eliminating family violence and sexual violence are not underpinned by a specific Act. It is likely to be difficult to gain support for creating a new Act solely to establish the Rōpū. Amending any existing Act would require the agreement of the Minister responsible for that Act.
- 19 Based on preliminary analysis with the Ministry of Justice, our initial view is that **there may not be an appropriate existing statutory framework for such provisions**. We considered a range of Acts and Bills that have some connection to family violence and sexual violence. These generally sit in the criminal justice system. Amending these Acts could risk the Rōpū being linked closely to the justice system rather than being part of a whole-of-government response to family violence and sexual violence:
- 19.1 The **Family Violence Act 2018** is focused on the criminal justice response to family violence at an individual level. We consider it is unlikely to be appropriate to introduce 'system' elements into that legislation, and this could also result in a perceived deprioritisation of sexual violence in relation to family violence.
- 19.2 The **Victims' Rights Act 2002** is focused on victims of offences. We consider this Act would not provide a sufficient platform for the intended focus of the Rōpū on wider strategic issues, including prevention.
- 19.3 The **Sexual Violence Bill** is awaiting its second reading in Parliament. While the Bill has clear connections with the sexual violence aspects of this work (but not family violence), it amends Acts setting out the rules for court procedure across all types of court cases (such as the Evidence Act 2006). We consider it would be inappropriate to establish the Rōpū in Acts dealing with court procedure. Such provisions would also be unlikely to be within the scope of this Bill as authorised by Parliament.
- 19.4 The **Public Service Act 2020** provides the statutory basis for the new Executive Board for the Elimination of Family Violence and Sexual Violence. However, creating specific provisions for Ministerial advisory groups (or to enable the creation of such groups) would not be within the scope of the Act, which is about the operation and ways of working of Public Service agencies. Any provisions in this Act would also have to be generic enabling provisions so would be unlikely to meet sector expectations of a specific provision related to family violence and sexual violence.

Next Steps

- 20 Once Cabinet has agreed to establish the new Executive Board for the Elimination of Family Violence and Sexual Violence, we recommend that you task the Executive Board with providing you with further advice on statutory options by December 2021.

- 21 You can then discuss this advice with members of the future Rōpū from February 2022 once it has been established.

PROACTIVELY RELEASED BY TE KAWA MATAAHO PUBLIC SERVICE COMMISSION

Appendix – Key features of existing advisory groups

The table below provides information about some existing Ministerial and other advisory groups and their key features.

Name	Years active	Established via legislation?	Key features
National Advisory Council on the Employment of Women	1967 - present	No	<p>The Council's role is to:</p> <ul style="list-style-type: none"> advise the Minister for Women on matters referred by her/him concerning the employment of women express views and make recommendations as appropriate to the Minister for Women on matters relating to the employment of women make representations or submissions as appropriate to public bodies such as Commissions of Inquiry subject to the approval of the Minister promote the dissemination of information on the employment of women in New Zealand and overseas.
National Animal Welfare Advisory Committee National Animal Ethics Advisory Committee	? - present	Yes – Part 4 of the Animal Welfare Act 1999	<p>The Act specifies:</p> <ul style="list-style-type: none"> the Committees' functions, including requirements for the Minister to consult with the Committees when making various Orders and using other statutory instruments under the Act the appointment process for members of the Committees.
Arms Advisory Group	2020 - present	Yes – s88 of the Arms Advisory Act 1983	<p>The Act specifies:</p> <ul style="list-style-type: none"> the group's purpose, which is to advise the Minister of Police on a range of matters relating to firearms, and operations matters relating to appointment and removal of members and the operations of the group.
Māori Advisory Group to Taumata Arowai	2020- present	Yes – s14 of Taumata Arowai: The Water Services Regulator Act 2020	<p>Note that the Māori Advisory Group's role is to advise Taumata Arowai, a Crown Agent, rather than a Minister.</p> <p>The Act specifies:</p> <ul style="list-style-type: none"> the role and functions of the group appointment process for members requirements for the board of Taumata Arowai to have regard to the advice of the Māori Advisory Group and demonstrate how it has done so in its annual report, as well as providing the Māori Advisory Group with an opportunity to include commentary in the annual report .

Name	Years active	Established via legislation?	Key features
Prime Minister's Chief Science Advisor	2009-present	No	<p>The Prime Minister's Chief Science Advisor:</p> <ul style="list-style-type: none"> • provides strategic advice across sectors, and does not seek to influence operational or funding matters within the science system • serves as an accessible conduit between the science community and government • provides advice on specific topics to the Prime Minister or other Ministers • plays a role in raising the profile of science in Aotearoa New Zealand • assists in making science more accessible to the public • builds relationships internationally with science advisors and international thought leaders.
Oranga Tamariki Ministerial Advisory Board	2021-present	No	Established to provide independent advice and assurance to the Minister for Children across three key areas of Oranga Tamariki.

PROACTIVELY RELEASED BY TE KAWA MATAAHO PUBLIC SERVICE COMMISSION