# **Briefing to the Incoming Minister**





# Te Kāhui Tātari Ture

# Criminal Cases Review Commission

This whakatauki encapsulates the work and aim of Te K $\bar{a}$ hui T $\bar{a}$ tari Ture in the way we approach working with applicants.

It acknowledges that we need to protect and enhance the mana of people who have been subjected to miscarriages of justice.

It is embodied in the way we work and is representative of the brand of our organisation.

The binding hands that protect and enhance the mana of the people.

That hold fast the values of family.

The significance of friendship.

The power of support.

# He mihi | Chief Commissioner's message

Tuia te rangi e tū iho nei
Tuia te papa e takoto nei
Tuia te muka tāngata
Ka rongo te pō, ka rongo te ao
Tuia te here tāngata kia puta ki te wheiao ki te ao mārama
Tīhei mauri ora!

We would like to take the opportunity to congratulate you on your appointment as the fiftieth Minister of Justice. We look forward to working more closely with you in your role in the formulation of justice policy and for the administration of law courts across Aotearoa.

As you may be aware, New Zealand's justice system has a well-established rights of appeal process and various procedural safeguards against unsafe convictions. But miscarriages of justice sometimes occur, because as with any system, mistakes are made.

The establishment of Te Kāhui Tātari Ture | Criminal Cases Review Commission is a welcome new layer in our criminal justice arrangements. It provides a safety valve for addressing concerns that have prevailed for some time, amongst the legal profession and elsewhere, about the handling of unsafe convictions.

There were several compelling reasons to set up a criminal cases review entity in New Zealand, stemming from concerns that had been previously expressed about the independence, timeliness, quality, and fairness of investigations into miscarriages of justice.

Our jurisdiction is to review and investigate a conviction or sentence, or both, and decide whether there has possibly been a miscarriage of justice. The test we apply is the 'interests of justice', which is a broad concept but one which is designed to capture all considerations that are relevant to a particular case.

Our medium-term challenge is to complete quality investigations in a timely manner, applying the interests of justice test. We will identify cases where the potential unreliability of a conviction or sentence is so apparent to us that those cases, on analysis, represent a possible miscarriage of justice which ought to be considered by an appeal court.

By 2023 we want to have established a reputation for delivering fair and rigorously researched decisions, reached by following coherent frameworks and procedures which reflect statutory obligations that are consistent with Te Tiriti o Waitangi.

We want to be recognised for demonstrating respect to all those we deal with, which requires us to adapt to the different cultural backgrounds of applicants and their whānau and wider family groups.

It is essential that those who have potentially suffered a miscarriage of justice are dealt with fairly and humanely, and that we recognise, too, the interests of victims of crime.

Chlamiken

Colin Carruthers, QC
Chief Commissioner
30 Novmber 2020

#### Ko Wai Mātou? Ko Te Kāhui Tātari Ture

Waikato-Tainui the mandated tribal entity of Kirikiriroa | Hamilton region gifted the name of Te Kāhui Tātari Ture to the Criminal Cases Review Commission in recognition of the Māori-Crown relationship between the two organisations as Treaty partners.

The provenance of Kāhui Tātari is synonymous with the ancient Whare Wānanga or centres of learning with a role in adapting procedures, processes and mātauranga mainly led by a Tohunga Ahurewa (High Priest).

The literal meaning of the full name Te Kāhui Tātari Ture: Kāhui or group, Tātari or review, Ture or law.

It is an honour for the Commission to receive Te Kāhui Tātari Ture as our name and understanding that it specifically recognises the work and role of the Commission. We acknowledge Rahui Papa, Taki Turner and Mahana Toka for their advice and guidance to the Commission.

Te Kāhui Tātari Ture | Criminal Cases Review Commission was launched on 1 July 2020 to review and investigate criminal convictions and sentences in Aotearoa | New Zealand and decide whether to refer them to an appeal court.

It is an independent Crown entity for the purposes of the Crown Entities Act 2004. This Briefing to the Incoming Minister (BIM) has been prepared to meet the requirements of that Act, and the Crown Entities Amendment Act 2013.

This BIM will set out to describe the responsibilities of Te Kāhui within the Justice portfolio. It will set out briefly the aims of the Criminal Cases Review Commission Act 2019, the governance membership, and terms of office for which the Minister is responsible.

It will include and highlight major policy issues which will prelude further discussion with the Minister and the implementation of current work programmes; and set out details of pending decisions or action that will be required of the Minister.

# Te Whāinga Matua | Our Main Aim

# As an independent Crown entity that reviews criminal convictions and sentences where there is a claimed miscarriage of justice.

Under the Criminal Cases Review Commission Act 2019 we can refer a conviction or sentence to an appeal court if we determine that it is in the interests of justice to do so.

Any living individual who has been convicted or sentenced in a New Zealand court is able to make an application for an independent review of their case, though an important factor we consider, before accepting an application is whether or not an applicant has used all their rights of appeal.

Te Kāhui is based in Hamilton, it is important that we are independent from central government and the main judicial centres of Auckland and Wellington.

Te Kāhui comprises a Chief Commissioner, a Deputy Chief Commissioner and five Commissioners.

Our governing legislation stipulates that at least one member must have knowledge or understanding of te ao Māori and tikanga Māori, at least one-third must be legally qualified and at least two-thirds must have experience working in the justice system. These requirements have been fulfilled.

We engage deeply and respectfully on matters that likely have caused considerable suffering and distress, not just to applicants but also more widely to their whānau, and families.

We will also work with victims of crime as appropriate.

Our investigations of possible miscarriages of justice are rigorous and thorough, to minimise the risk of error, and to preserve New Zealanders' confidence in the criminal justice system.

# Ngā Pūrongo | Reports

# We provide the following documents as part of our monitoring reporting and accountability arrangements:

- · Annual Report, required by the Crown Entities Act 2004
- · The Statement of Intent, required by the Crown Entities Act 2004
- The Statement of Performance Expectations, containing the annual forecast of performance and financial information as required by the 2013 amendments to the Crown Entities Act 2004
- · Trimester report to the responsible Minister three times per year

# Ngā Takohanga a Te Tiriti | Treaty of Waitangi obligations

# Our legislation requires that any procedures developed by Te Kāhui Tātari Ture must be consistent with the principles of Te Tiriti o Waitangi.

Te Kāhui Tātari Ture is committed to being a good partner to address inequality and promote development. Te Kāhui Tātari Ture is committed to being a member of a better, more inclusive public service.

Building capability to better support the Māori-Crown relationship has been identified by Māori, the government, and the public service as a critical area of development for the public service.

We are committed to living up to the name that Waikato-Tainui gifted us - Te Kāhui Tātari Ture. To be successful we have ensured that cultural competency is being built through the organisation.

#### That is:

- · Commissioners with expertise in tikanga and te ao Māori
- Chief Executive and Manager Engagement and Communications have expertise in te ao Māori and te reo Māori
- Kaumātua from Waikato-Tainui
- · Māori and Pasifika language translations for application forms
- A growing partnership with Waikato-Tainui including property, translation services, recruitment, cultural support, and training.

Over the next year Te Kāhui Tātari Ture will investigate a te ao Māori reference group, language and tikanga training for all staff and availability of translation services.

We engage deeply and respectfully on matters that in all likelihood have caused considerable suffering and distress, not just to applicants but also to their whānau and families.

Our investigations of possible miscarriages of justice are rigorous and thorough, in order to minimise the risk of error, and to preserve New Zealanders' confidence in the criminal justice system.

### Mō Te Kāhui | About Te Kāhui

#### Te Aronga | Purpose

The purpose of Te Kāhui Tātari Ture is to operate as an independent body to investigate and review criminal convictions and sentences and decide whether to refer to an appeal court.

#### Ngā Mātāpono | Design Principles

As a new organisation, we are still developing our values and our culture.

#### Through the establishment phase the principles and values we embraced were:

- Manaakitanga We will ensure our systems, processes and interactions demonstrate integrity whilst protecting and enhancing the mana of all people involved
- Accessible and responsive We will identify and mitigate any existing or potential barriers to people
  accessing the application process, which will be easy to find and understand. Throughout the
  process, the applicant will be kept informed
- Independence and fairness We will perform Te Kāhui's functions without interference and in an equitable fashion
- Transparency We will consider when and how people are informed of our processes in a way which is respectful, whilst at the same time promotes accountability including victims of crime
- Whānau-centred We will allow for the involvement of people's support networks and recognise that the effects of an event have far- reaching, intergenerational impacts for their entire whānau
- Māori worldview We will elevate understanding of mātauranga Māori (Māori knowledge) and tikanga Māori (Māori customs and practices) in the policies, process, and design of Te Kāhui
- Partnership We will emphasise that the authentic partnerships between Te Kāhui, Māori and those impacted by Te Kāhui functions, are critical to the achievement of better outcomes in the justice sector
- Respect and recognition We will understand the historical, structural, and relational factors that underpin current experiences and outcomes for people affected by the criminal justice system
- Efficiency and effectiveness We will perform Te Kahui's functions in a thorough manner and without undue cost.

# Ngā Mahi a Te Kāhui | What does Te Kāhui do?

The primary function of Te Kāhui Tātari Ture is to investigate and review convictions and sentences and decide whether to refer them to an appeal court.

#### The purpose of this function is to:

- Improve the independence, timeliness, quality and fairness of investigations into miscarriages of justice in New Zealand
- Review suspected miscarriages of justice and refer cases back to the appeal courts if it is in the interests of justice to do so
- Enhance public confidence in the justice system through the delivery of its primary function. It will do this by:
  - » Serving the interests of justice
  - » Maintaining independence
  - » Resolving cases in a timely manner
  - » Providing transparency over its processes and appropriately managing the expectations of the people involved
  - » Increasing the level of participation from Māori and Pacific people

A secondary function is that we promote, by way of education and discussion, our primary function as outlined above.

Te Kāhui also has the power to initiate and conduct inquiries into a general matter. This applies if, when performing our functions, we identify a practice, policy, procedure or other matter of a general nature that we consider may be related to cases involving a miscarriage of justice, or has the potential to give rise to such cases.

# Ngā Āheinga | Functions



#### **Case Review**

The primary function of Te Kāhui Tātari Ture is to review and investigate convictions and sentences and decide whether to refer them to an appeal court.

#### The purpose of this function is to:

- Improve the independence, timeliness, quality, and fairness of investigations into miscarriages of justice in New Zealand
- Review suspected miscarriages of justice and refer cases back to the appeal courts if it is in the interests of justice to do so
- Enhance public confidence in the justice system through the delivery of its primary function. It will do this by:
  - » Serving the interests of justice
  - » Maintaining independence
  - » Resolving cases in a timely manner
  - » Providing transparency over its processes and managing the expectations of the people involved appropriately
  - » Increasing the level of participation from Māori and Pacific people.

There are four core processes within case review. They are:

- Application receiving, processing, and accepting applications according to statutory criteria, or declining applications that fail to meet those criteriaa
- Initial review collating and reviewing all documents related to the application to assess if there is merit in moving the application forward
- · Investigation conducting investigations of cases approved to move forward to this stage
- Referral deciding whether to refer a case back to the relevant appeal court.

#### **Education and Awareness**

Te Kāhui Tātari Ture will educate and inform the public by:

- Building public awareness of Te Kāhui Tātari Ture objectives and functions
- Minimising misunderstandings and addressing misperceptions regarding the miscarriage of justice process
- De-escalating concerns and criticisms of Te Kāhui Tātari Ture's actions and decisions.

#### **Systemic Inquiries**

Te Kāhui Tātari Ture has a discretionary power under the Act to conduct systemic enquiries.

The Act provides that the Commission may in the course of performing its functions and duties investigate and report on any practices, policies, procedures or other matter of a general nature that it considers may be related to cases involving a miscarriage of justice or has the potential to give rise to such cases.

The systemic inquiry function will be further developed as Te Kāhui is established. It is anticipated that Te Kāhui will, in the course of its work, be able to identify themes and trends that could then be investigated further.

For example, themes may be identified as part of the annual review process. These will be collated into an annual inquiry work programme. This work will be done in partnership with others, such as Waikato University for example.

# Te Aronga Rautaki | Strategic Framework

#### What we are seeking to achieve

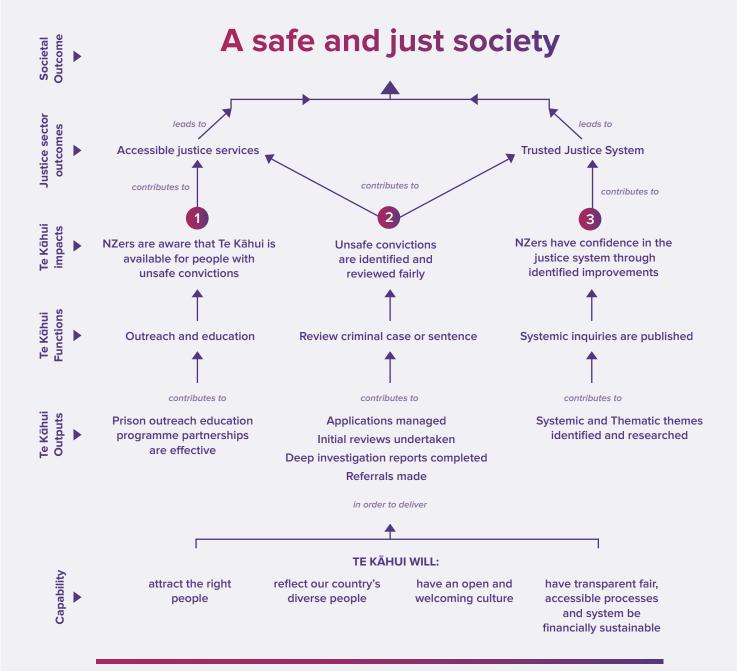
To support the Government's priority of improving the well-being of all New Zealanders and their families across a range of portfolio areas, including justice, we have identified long-term outcomes for Te Kāhui.

#### They are:

- modern justice services that contribute to a safe and just New Zealand
- improved access for anyone who believes they have suffered a miscarriage of justice in a New Zealand court
- increased public trust and confidence in the justice sector
- a diminished sense of alienation from, and dissatisfaction with, the criminal justice system improved justice outcomes for Māori and Pasifika.



At the launch of Te Kāhui Tātari Ture | Criminal Cases Review Commission on 1 July 2020 in Kirikiriroa | Hamilton.



#### Outcome 1 - New Zealanders are aware that Te Kāhui is available for those with unsafe convictions

We are a new organisation in the New Zealand justice system. We want to ensure that the people who need to know about our services are aware and can access both information on how to apply. This year we will develop our outreach strategy and action plan. This will help us to target those who may have had an unsafe conviction, their families, their advocates or representatives.

Te Kāhui will work hard to ensure that the information that is required to undertake the investigations is available. We will do this by building relationships with the institutions that hold the information required for the investigation. By the end of 20/21 we expect to have Memorandum of Interest with all organisations/institutions that hold files pertinent to miscarriages of justice.

#### Outcome 2 - Unsafe convictions are identified and reviewed fairly

Te Kāhui Tātari Ture aims to be open, transparent, accessible and independent in all its mahi. This year we will publish all our procedures on our website, and launch an outreach programme to those with unsafe convictions.

#### Outcome 3 – New Zealanders have confidence in the justice system through identified improvements

Te Kāhui has discretionary power to undertake systematic reviews in areas that are re-occuring themes in our review function. As this is the first year of operations Te Kāhui Tātari Ture will focus on the reviews and design, with partners, how in future years it will undertake the systemic reviews.

# **Strategic priorities**

#### Managing our caseload

Our top priority and the focus for all Commissioners and staff is to ensure that all applications to Te Kāhui Tātari Ture are treated independently, fairly, and efficiently. We will unashamedly prioritise this work. It is expected in this three-year period that the first referrals will be made to an appeal court.

#### Finishing establishment

A top priority at the outset of the three-year period covered by the Statement of Intent was completing the establishment project in time for the 1 July 2020 launch of Te Kāhui. This was achieved under time pressure, and the disruption caused by the response to the Covid-19 pandemic. Decisions on elements such as our structure, governance, operating model, functions, systems, and visual identity were finalised with remarkable efficiency.

#### Attracting and welcoming top people

Staff recruitment has been accorded urgency in the first quarter. The team being assembled will be straight into the hard mahi of investigation more than 101 applications (as of 31st October 2020). We are expecting this number to continue growing steadily and expect that some of our investigative work will be outsourced.

#### Health, safety, and wellbeing

Health, safety, and wellbeing is of critical importance to Te Kāhui Tātari Ture. For our staff, contractors, visitors, applicants, victims of the crimes leading to the convictions and sentences that we review and for our Commissioners. A key focus in year one is ensuring we have an appropriate safety and wellbeing system in place.

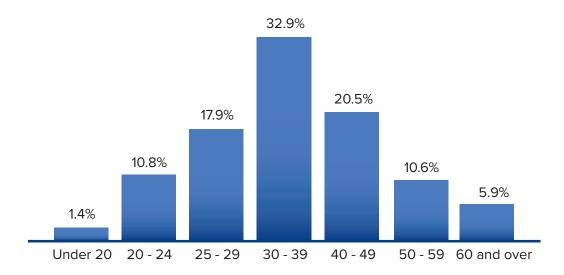
#### **Outreach and education**

We are prioritising the design and implementation of our outreach programme. Using education and discussion to promote our primary function of investigating and reviewing convictions and sentences is an essential component of our work.

## **Current themes**

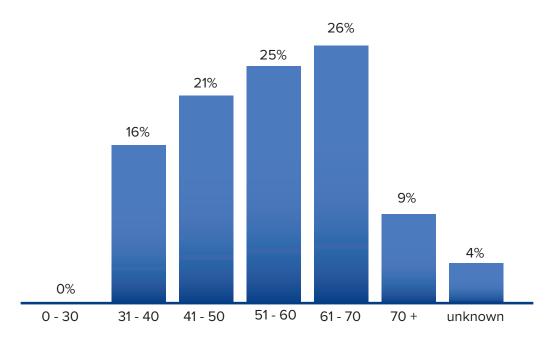
In terms of the applications that we have received at Te Kāhui there are some themes emerging from the statistics. We have used the current New Zealand Corrections figures as a benchmark to use the application statistics which highlights areas of need and will provide the focus for the Outreach and Education strategy.

#### **NZ PRISON AGE RANGE**

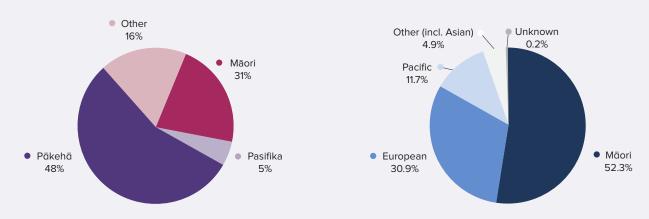


NZ Prison Population June 2020

#### TE KĀHUI APPLICATIONS BY AGE



### **ETHNICITY**



Te Kāhui Ethnicity Applications

NZ Prison Population June 2020

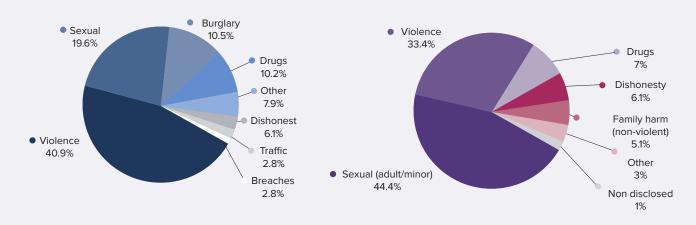
## **GENDER**



Te Kāhui Applications Gender

NZ Prison Population Gender

### **OFFENCE TYPES**



NZ Prison Population Offence Types

Te Kāhui Offence Types

# **Partnering**

Te Kāhui is establishing memoranda of understanding and partnership arrangements that will bring outside perspectives to our work, build knowledge, and ensure that we are respectful and collaborative in the way in which we operate.

Our relationship with Waikato-Tainui is one that we value and aim to grow and nurture. We are committed to living up to the name that the lwi gifted us - Te Kāhui Tātari Ture. We are grateful for the manaakitanga Waikato-Tainui has extended us.

We have agreed a partnership with the University of Waikato. We have signed agreements with the Department of Corrections and the New Zealand Police in order to facilitate the smooth process of information transfer and the ability to access and perform our statutory duties.



Te Kāhui Tātari Ture Kaumātua, Taki Turner at the official opening of the Criminal Cases Review Commission in Kirikiriroa | Hamilton.



Te Kāhui Tātari Ture Chief Commissioner Colin Carruthers (right) signs a memorandum of understanding with Jeremy Lightfoot (left) Chief Executive Officer at Department of Corrections, which details the way in which the two organisations will work together.



Te Kāhui Tātari Ture Chief Commissioner Colin Carruthers (right) signs a memorandum of understanding with Commissioner of Police, Andrew Coster (left) to better enable and facilitate the flow of information between the two organisations as needed.

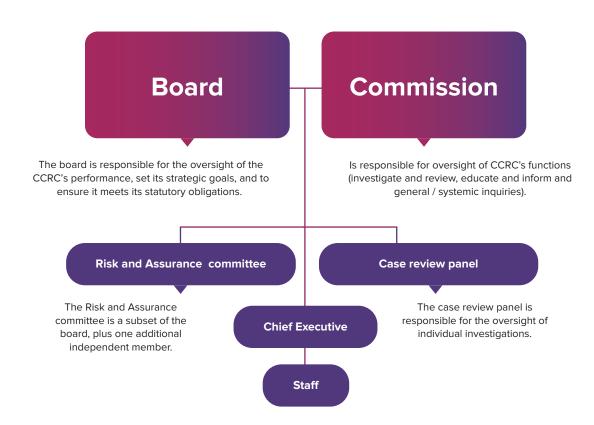
### Te Mana Whakahaere | Governance

From a governance perspective, Te Kāhui Tātari Ture has a dual role:

- · To deliver on its functions as set out in the Criminal Cases Review Commission Act 2019
- To deliver a sustainable organisation as a Crown Entity as per the Crown Entities Act 2004 and other relevant acts, such as the Health and Safety at Work Act 2015.

Our governance structure is as follows:

# TE KĀHUI TĀTARI TURE



# Ngā Kaikōmihana | Commissioners

#### Te Kāhui Tātari Ture currently has six Commissioners.

Under section 9 (1) of the Criminal Cases Review Commission Act 2019 (Membership of Te Kāhui)

Te Kāhui Tātari Ture must have a Chief Commissioner, a Deputy Chief Commissioner and at least one, but not more than five, other Commissioners.

Section 9(2) to (4) sets out the composition requirements for membership of the Commission.

#### At least:

- · One member must have knowledge or understanding of te ao Māori and tikanga Māori
- · One-third of members must be legally qualified
- Two thirds of the members must have experience in working in the criminal justice system or have other knowledge or expertise relevant to the Commission's functions and duties, which may include experience, knowledge, or expertise acquired overseas.

Legally qualified is defined under s9 (5), meaning a person who has practised in New Zealand or overseas as a barrister or barrister and solicitor for not less than seven years.

Note however we have one vacancy currently.

#### **Risk and Assurance Committee**

Te Kāhui Tātari Ture has a Risk and Assurance Committee made up of three Commissioners and one external member (still to be appointed at the time of printing). The Risk and Assurance Committee will meet quarterly and report to Te Kāhui.

#### Case Review Panels

Te Kāhui Tātari Ture has six case review panels that direct and govern our case investigations. Each Case Review Panel has two or three Commissioners. They are a sub-committee of Te Kāhui. The Case Review Panel oversees the scope of the investigation, provides direction on lines of inquiry, and ensures that the investigation is undertaken in an effective and efficient manner

Case Review Panels report to Te Kāhui each month.

Each case is assigned a case review panel when the application is accepted. The investigators report monthly into the Case Review Panel.

# Governance and management

#### **Board members**



#### Chief Commissioner - Colin Carruthers QC

**Colin Carruthers QC** is one of New Zealand's most experienced barristers and has an extensive legal repertoire. He has led many high-profile defence and prosecution cases throughout his career. He was appointed Queen's Counsel in 1990 and was awarded the New Zealand 1990 Commemorative Medal for services to New Zealand.

As Chief Commissioner he chairs the CCRC Board and leads the implementation of the Criminal Cases Review Commission Act 2019.



#### **Deputy Chief Commissioner - Paula Rose**

Paula Rose QSO OStJ has investigation experience, is a current member of the Parole Board, and had an extensive career at New Zealand Police, including as National Manager Road Policing. Ms Rose is Commissioner for the Transport Accident Investigation Commission, member of the Broadcasting Standards Authority, Deputy Chair of Worksafe New Zealand and director of several nongovernmental organisations including St John South Island Regional Trust Board.

As Deputy Chief Commissioner she chairs the CCRC Risk and Assurance committee.

#### Commissioners



**Nigel Hampton CNZM OBE QC** is a lawyer who has worked in New Zealand and on the international stage, including the Pacific. Mr Hampton has been a QC since 1989. He was Chief Justice of the Kingdom of Tonga, was the first Disciplinary Commissioner of Counsel in the International Criminal Court and presently is Presiding Member of the Disciplinary Board for the International Criminal Court counsel. His experience in the criminal justice sector includes academic writing on advocacy and criminal law, including in Adams on Criminal Law. He is also an instructor on litigation skills, including in New Zealand, Tonga and Samoa.



**Dr Virginia Hope MNZM** is a pre-eminent health scientist who has worked in universities and research institutes. She is currently Medical Director Health Group at Environmental and Science and Research. Dr Hope has management and governance experience. She was made a Member of the New Zealand Order of Merit in June 2014 for services to health.



**Professor Tracey McIntosh MNZM (Ngāi Tūhoe)** is a Professor of Indigenous Studies and Co-Head of Te Wānanga o Waipapa at the University of Auckland. Dr McIntosh is also currently the Chief Science Advisor for the Ministry of Social Development. She has a strong interest in the interface between research and policy and ensuring that processes are responsive to, and inclusive of, tikanga and mātauranga Māori.



Kingi Snelgar (Ngāpuhi, Ngāti Whakaue, Te Whakatōhea, Ngāi Tahu) is a criminal defence lawyer and youth advocate based in Manukau. He is an academic with knowledge and understanding of tikanga Māori and te ao Māori. Mr Snelgar is also a counsel to assist the Royal Commission into Abuse in State Care. Before working as a barrister, he worked at Meredith Connell specialising in criminal prosecution. Mr Snelgar has also been a human rights observer at Standing Rock, USA. He has completed a Masters of Law at Harvard Law School as a Fulbright Scholar.

#### **Chief Executive**



Parekawhia McLean (Ngāti Mahanga-Hourua, Waikato, Ngāti Maniapoto) is the Chief Executive (from early November 2020). She has over 20 years of public policy and public sector management experience including almost seven years as a Director and Consultant of her own company Mauriora-ki-te-Ao/Living Universe Ltd (MKTA) - a company dedicated to advancing the creative potential of Māori knowledge, people and resources.

Ms McLean was previously Director of Strategy and Infrastructure at Counties Manukau DHB. Previously she has been a regional director for NZTA and Chief Executive of Waikato-Tainui.

She has held a number of strategic governance roles including with Global Women's Forum, Strategic Advisory Panel to the National Institute of Water and Atmospheric Research Crown Research Institute, Te Māngai Pāho (Māori Broadcasting Funding Agency); and as Director of Mighty River Power and Deputy Chair, Te Wānanga o Aotearoa (Māori Tertiary Education Institute).

She has a Masters in Social Sciences from Waikato University and a Master of Arts in Public Administration and Development Policy from the University of Wisconsin-USA.

# Summary of outputs and output expenses

### **Appropriation**

Appropriation	Description
Vote:	Justice
Appropriation:	Services from the Criminal Cases Review Commission
Description:	This appropriation is intended to achieve the operation of the independent review of suspected miscarriages of justice and any secondary functions outlined in the statute
Output class:	Operation of the Criminal Cases Review Commission

#### The forecast revenue for 20/21:

Forecast	\$0,000
Revenue Crown	\$3,987
Interest revenue	\$ 43
Total forecast revenue	\$4,030

### The forecast expenture for 20/21:

Forecast	\$0,000
Forecast expenditure	\$3,938

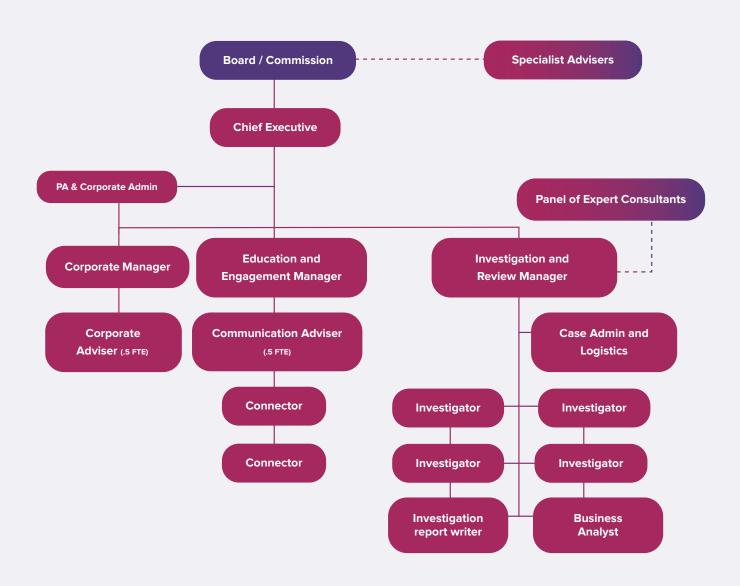
# **Statement of financial performance**

Te Kāhui started the year with reserves of \$1.7 million. This year we expect to have income of \$4 million. Expenses were forecast to be \$3.9 million. At the stage we are anticipating to be underspent due to new employees starting later than expected and investigation costs falling into the following year.

Some of the underspend will be used to manage the larger than expected number of cases so we can manage this as efficiently as possible.

Given that investigations are unlikely to be completed in the same fiscal year as the application received any other identified underspend will be used in 2021/22 and 2022/23 for investigation costs.

# Te Kāhui Tātari Ture Organisational structure



# **Principles**

- Separation between investigation and care of applicants, whānau and support
  - Outsourced, efficient back office
  - · External resources for investigation

Justice Young strongly believes our criminal court process must remain as robust as possible, because it can make mistakes.

"I accept there are clear exonerations - as you know I regard Teina Pora as a clean exoneration."

Justice Young (Supreme Court Judge)



#### 0800 33 77 88

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**New Zealand Criminal Cases Review Commission** 

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