

# Briefing

## STOCKTAKE OF WHAIKAHA

To: Hon Grant Robertson

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| Date | 29/09/2023 | Security Level | IN CONFIDENCE |
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### Purpose

1. To assess Whaikaha's (the Ministry of Disabled People) progress in establishing its governance and system leadership arrangements, progress of its establishment and transition stages, Enabling Good Lives initiative, and lessons from its establishment as a new departmental agency.

### Executive Summary

2. Whaikaha is a departmental agency hosted by the Ministry of Social Development (MSD). It was established on 1 July 2022 as part of the health reforms, at the same time as Te Whatu Ora (Health New Zealand) and Te Aka Whai Ora (Māori Health Authority).
3. Whaikaha assumed functions from Manatū Hauora for the commissioning of Disability Support Services, the Enabling Good Lives (EGL) portfolio and two EGL demonstration sites, as well as policy, strategy, and system stewardship functions. Whaikaha also received the Office of Disability Issues and one EGL demonstration site from MSD. Whaikaha commissions \$2.2 billion in disability support services annually.
4. Whaikaha has identified three stages of its organisational set up: Establishment - January 2022 to October 2022; Consolidation – July 2022 to December 2023 and Transformation – July 2023 onwards. This stocktake assesses progress against the first of these stages and identifies 'lessons learned' from implementation of the departmental agency model.

### Whaikaha's short establishment phase involved in a "lift and drop" approach

5. Whaikaha was established over a six-month period from January 2022 to 31 July 2022. This timeframe placed significant pressure on the Establishment Team, set up within MSD in collaboration with Manatū Hauora.
6. In the limited time available, a "lift and drop" approach was taken to transfer staff, functions, roles, and responsibilities. This approach involved limited due diligence relative to the size and complexity and aging legacy systems underpinning disability support services.
7. The Establishment Team's priority was to establish a legal entity on time and continue service for the 45,000+ individuals receiving disability support services and 100,000 clients receiving equipment, housing and vehicle modifications annually. These two priorities were achieved.

### Whaikaha leadership has focused on managing and mitigating the risks it inherited

8. Whaikaha has a significant commissioning function and appropriation for disability support services which sets it apart from other population Ministries. It inherited significant risks that

has placed pressure on leadership to deliver these functions alongside its system leadership, strategy and policy setting roles. Examples of the risks include:

- a. financial risks: it has \$2.2b in non-departmental expenditure and a history of cost increases that are greater than inflation but has limited levers under current policy settings to control spending, and a lack of financial management and monitoring capability to predict and respond to financial challenges.
- b. operational risks: its administration of disability support services is underpinned by legacy IT systems, aging business practices, and weak assurance, audit, monitoring and fraud analysis functions which are not fit for purpose.
- c. s9(2)(h) [REDACTED]
- d. people leadership and management challenges due to staffing capacity and capability gaps inherited from Manatū Hauora that the Establishment Team advised were under-resourced for their workload and needs substantial work to align terms and conditions.
- e. high stakeholder expectations for tripartite governance arrangements that were not aligned with what a new Ministry structured as a departmental agency reporting to a Minister (not a board as with a Crown entity for example) can achieve.

9. The Unit found that there is goodwill and confidence in the leadership of the Chief Executive and the permanent Executive Leadership Team (ELT) to lead the organisation.

#### **Pace and progress of consolidation and transformation activities has been impacted**

10. The Whaikaha Work Programme 2023-2026 is a high-level summary of activities for the transition and consolidation stages across five workstreams. The Unit has assessed that:
  - a. three workstreams are 'mixed', defined as good progress with some areas needing further attention. These workstreams focus on strengthening Whaikaha as a Ministry, developing policy and strategy, and transforming the system including EGL rollout.
  - b. two workstreams are 'problematic', defined as being at risk without further attention and action. These workstreams focus on building partnerships and representing voices and on service commissioning activities. These workstreams are assessed as problematic because they have a high degree of challenge.
11. The permanent organisational model and permanent ELT was announced in July 2023 and went live on 1 August 2023, one year after establishment. This has delayed recruitment into critical teams and positions and, as of September 2023, 97 of 289 positions are vacant.
12. The Unit finds that the new organisational model better reflects Whaikaha's new mandate, but that its operating budget is not necessarily scaled to meet the demands of its large, complex \$2.2b annual commissioning function and new system leadership and policy functions. The Unit assesses that it will remain challenging for Whaikaha to close capability and capacity gaps necessary to fulfil its full range of functions. Whaikaha could consider working with central agencies to determine if its right-sized to fulfil its functions.

#### **Partnership arrangements are being reset and will take time to mature**

13. Cabinet indicated that partnership arrangements between the Crown, disabled people and tangatā whaikaha Māori (Māori with a disability) would inform establishment of the new Ministry, and that officials would work closely with Iwi leaders [SWC-21-MIN-0146 refers].
14. Partnership arrangements in the establishment phase were entered into in good faith by the partners and were intended to end on 31 July 2022. Whaikaha interim leadership team decided to extend those arrangements until the end of April 2023. These arrangements were

challenging to maintain, in particular due to the lack of capability and capacity at the time to meet the needs of the interim partnership arrangements.

15. There remains a fundamental mismatch in community expectations about joint decision making and direction over the work of the Ministry. These expectations cannot be met under the governance and accountability requirements of a departmental agency (as set out in the Public Service Act 2020).
16. Whaikaha has many partnerships in place and is prioritising a reset of partnership arrangements, but these will need time to evolve and mature with clear lines of decision-making rights appropriately assigned between the Crown and partners. Trust with some tangatā whaikaha Māori is eroding as the pathway to partnership remains unclear. Whaikaha continues to engage directly with Iwi.
17. Whaikaha would benefit from an iterative and phased approach as it builds its capability and organisational maturity, as would its tripartite partners. To support this, building the capability and capability of disabled people, whānau and their communities and progress on a Te Tiriti o Waitangi framework for partnership should continue to be a priority.

#### **Whaikaha has substantial operational interdependencies to manage with Te Whatu Ora**

18. Te Whatu Ora operates and administers the claims and payments, contracts administration, and contact service centre for Whaikaha's \$2.2 billion in disability support services. This spans 1,000 provider contracts managed under a Services Agreement.
19. Whaikaha and Te Whatu Ora are due to review the operations of the Services Agreement in January 2024. The Unit recommends this is carried out by an independent third-party entity. In the meantime, there are aspects of the Services Agreement, such as the reporting of service level performance measures and maintaining governance structures, that are not taking place and should be initiated with pace.

#### **The Unit recommends Whaikaha strengthen implementation planning and prioritisation**

20. Whaikaha achieved a significant milestone in the release of the \$73m EGL Tagged Contingency announced September 2023. It will need to recruit and move at pace to undertake implementation planning and partnership arrangements for EGL and undertake fiscal sustainability planning across its disability support services expenditure.
21. Whaikaha should revise its Work Programme 2023-2026 to strengthen implementation planning and prioritisation of activities into a more robust organisational transition plan. The current plan lacks milestones, sequencing, prioritisation, resources, and does not account for potential risks to delivery. Whaikaha leadership is aware of this and actively working towards clear prioritisation and implementation planning across its work.
22. The Unit also recommends that Whaikaha initiates a process to specify its service vision, requirements, functionality, innovation, and efficiency options to transform to disability support services claims, processing, contract management and payment functions that underpin its services. This will better position the agency to take advantage of critical IT transformation programmes currently underway by Te Whatu Ora and MSD.

#### **There are lessons from the implementation of the departmental agency model**

23. The Unit recommends that Whaikaha consider including, as part of its revised Work Programme for 2023-2026, a review period to assess implementation of the departmental agency model working with the Public Service Commission (PSC) and MSD. It should allow sufficient time for the model to mature therefore a review at the end, or closer to the end, of 2026 is advisable. The Unit has identified general lessons from the implementation of the departmental agency model in section two of this report.

## Recommendations

We recommend you:

1. **note** that Whaikaha was established as a departmental agency hosted by the Ministry of Social Development (MSD) on 1 July 2022.
2. **note** the establishment phase was short (six months) and significant risks were transferred to Whaikaha that has impacted the pace and progress of some activities in its consolidation and transformation stages.
3. **note** that Whaikaha’s new organisational model better reflects its mandate, however, it is not necessarily scaled to meet the demands of its large, complex commissioning function and system leadership and policy functions.
4. **note** that Whaikaha has agreed to consider if further work is needed in partnership with central agencies at a future date to assess if it is right-sized.
5. **discuss** with the Minister for Disability Issues the need for Whaikaha to:
  - a. continue to strengthen the Whaikaha Work Programme 2023-2026 to include milestones, sequencing, prioritisation, resources, and potential risks to delivery and include key decision points. **YES / NO**
  - b. initiate a strategic business roadmap that sets out Whaikaha’s disability support service transformation vision, service requirements, functionality, and options to inform key decision points and influence IT transformation programmes underway at Te Whatu Ora and MSD. **YES / NO**
  - c. initiate service level performance reporting and improved governance arrangements over disability support services through its Services Agreement with Te Whatu Ora in advance of its January 2024 review. **YES / NO**
6. **note** the Implementation Unit has developed lessons from the implementation of the departmental agency model that it will share with the Public Service Commission.
7. **agree** to proactively release this report, subject to any appropriate withholding of information that would be justified under the Official Information Act 1982. **YES / NO**

s9(2)(a)

**Maari Porter**  
Implementation Unit

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29/9/2023

**Hon. Grant Robertson**  
Minister of Finance

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## Background

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24. Whaikaha was established on 1 July 2022 as part of the health system reforms enacted through the Pae Ora (Healthy Futures) Act 2022. Cabinet established Whaikaha in recognition that “a dedicated disability Ministry should be responsible for driving improved outcomes for disabled people, leading cross government strategic policy advice and delivering and transforming Disability Support Services”.<sup>1</sup>
25. Whaikaha is a departmental agency – an operationally autonomous agency hosted by a public service department, in this case MSD. The Whaikaha Chief Executive is directly responsible to the Minister for Disability Issues and has the same general responsibilities as a departmental chief executive under section 52 of the Public Service Act 2020 (the Act) and the same powers to carry out their responsibilities and functions under schedule 6 of the Act.
26. Whaikaha was established with a broad range of functions including policy, leadership and stewardship of the cross-government disability system, developing and providing stewardship of relevant legislation. Whaikaha has commissioning, procuring, assurance, monitoring, evaluation, reporting and market stewardship functions. It also has responsibilities for workforce planning to ensure adequate, skilled and culturally competent workforce and building the capacity and capability of disabled people, families and whānau.
27. Whaikaha assumed functions for the commissioning of Disability Support Services, the Enabling Good Lives (EGL) portfolio with two EGL demonstration sites alongside policy, strategy and system stewardship functions from Manatū Hauora. From MSD it received the Office of Disability Issues and one EGL demonstration site.
28. Responsibility for the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2023 (IDDCR) was retained by Manatū Hauora. However, Whaikaha is responsible for commissioning coordination services and supports for people under the High and Complex Forensic Care Framework.
29. The National Disability Support Services Appropriations was transferred from Vote Health to Vote Social Development and a Multi-Category Appropriation was established, with the MSD Chief Executive (CE) as the Appropriations Administrator for non-departmental expenditure.
30. Whaikaha was established with approximately \$1.8b in annual non departmental expenditure from Manatū Hauora, and \$53m (in year one) in departmental expenditure.

## Scope and structure of this report

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31. The Commissioning Brief for this report is in Attachment A.
32. This report is in two sections. The first section assesses Whaikaha’s establishment progress. Whaikaha has identified three stages of its organisational set up which overlap in timing:
  - a. Establishment and ongoing transition activities – January 2022 to October 2022.
  - b. Consolidation – July 2022 to December 2023.
  - c. Transformation – July 2023 onwards. This stage is not assessed in this report.
33. The second section of this report identifies broader implementation lessons learned for the establishment of departmental agencies.

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<sup>1</sup>Cabinet Paper ‘Disability System Transformation: establishing a Ministry for Disabled People and national implementation of an Enabling Good Lives approach’ (September 2021).

## SECTION ONE: ASSESSMENT AND FINDINGS

### Establishment stage and transition activities

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#### Whaikaha's establishment stage was short and resulted in a "lift and drop" approach

34. Establishment took place from January to July 2022. Timing for the establishment of Whaikaha was to align with the establishment of Te Whatu Ora and Te Aka Whai Ora, but Whaikaha's establishment period was far shorter, placed significant pressure on the Establishment Team, and has had a lasting impact on progress.<sup>2</sup>
35. The Establishment Team used a "lift and drop" approach to transfer staff, functions, roles and responsibilities. It prioritised machinery of government and technical critical path changes necessary to create a new legal entity and maintain continuity of services for the 45,000 clients receiving disability support services and approximately 100,000 clients receiving equipment, housing, or vehicle modifications each year.
36. The Establishment Team, with the Manatū Hauora Sector Operations Team, were effective at ensuring continuity of services and no significant or substantial disruptions were reported.
37. MSD worked effectively to set up a range of transitional and permanent shared services, including legal, finance, HR, and information systems. All transitional services have now been transferred or in the process of being transferred, except for legal services, to which MSD had dedicated substantial effort (discussed further in section two).
38. The establishment phase lacked a transition plan and people change management planning or resources dedicated to support staff through transition and building a new organisation. This gap was also present in the broader health reforms and has since been addressed by Manatū Hauora.

#### The Ministry's leadership have focussed on managing and mitigating significant risks and substantial challenges it inherited from the establishment period

39. Whaikaha inherited a range of significant risks, including:
  - a. disability appropriations of about \$2.2b in non-departmental expenditure with a history of 3% above inflation cost increases annually with limited levers (without changing policy settings) for controlling spending, and a lack of dedicated financial management and monitoring to respond to these challenges posing ongoing financial risks to the Crown.
  - b. operational interdependency and risk in the administration of disability support services (claims and payments, contract management and contact call centre) operated by Te Whatu Ora underpinned by aging business practices, weak assurance, audit and monitoring functions, and at-risk legacy IT systems that Whaikaha as limited influence over.
  - c. residential care system that lacks safeguards for disabled people and its historical abuse is the subject of investigation by the Royal Commission of Inquiry into Abuse in State Care and that accounts for half of the disability support services appropriation.
  - d. people management risks with 155 staff transferred under section 86 of the Public Service Act into Whaikaha with 45 different conditions of employment requiring substantial work

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<sup>2</sup> Health and Disability Review Transition Unit was established September 2020, nearly two years before Te Whatu Ora and Te Aka Whai Ora went live.

to be rationalised plus aligning different cultures and ways of working into a new operating culture that is expected to be a model across the public sector.

e. s9(2)(h)

f. Information and privacy risks, including the systems to support the transfer of the EGL sites were identified overall as high-risk by the Establishment Team.

40. The Establishment Team was clear about the status, scale and severity of critical path, financial and legal risks transferred to Whaikaha evidenced by internal 'go live' memos and advice to Ministers leading up to, and soon after, establishment.

## Current consolidation stage

### The Unit assess that Whaikaha's Work Programme 2023-2026 is a good start but should include milestone setting, prioritisation and planning

41. In April 2021 Whaikaha submitted its Work Programme 2023-2026 (Work Programme) to the Minister of Disability Issues, identifying activities for the transition and consolidation stages across five workstreams. The Unit's full assessment of each workstream is in Attachment B.

42. The Unit assessed three workstreams as 'mixed', defined as good progress with some areas needing further attention, they are:

- a. Strengthening Whaikaha as a Ministry: there has been substantial start-up activity to get the new Ministry established, including addressing varied terms and conditions of transferred staff, transferring four out of five transitional shared services to Whaikaha. Attention will be needed on embedding the new organisational model and preparing to operate under its own strategic framework [SWC-22-MIN-0049 refers] which the agency is preparing advice to its Minister.
- b. Developing policy and strategy: good progress has been made with substantial effort leading Government's delegation to Geneva for United Nations Committee on Rights of Persons with Disabilities (UNCRDP) and coordinating the Government's response. Whaikaha is at the early stages of forming its system leadership role and will need to build its capability. Agencies report Whaikaha is an effective advocate but will need to establish clear priorities "otherwise it will get overwhelmed with the needs of others" and ways to align funding are agencies are often serving the same individuals and whānau.
- c. Transforming the system including EGL rollout: (refer para 67).

43. The Unit assessed two workstreams as 'problematic' defined as being at risk without further attention and action. These workstreams focus on:

- a. Building partnerships and representing voices: arrangements are being reset and has a high degree of challenge requiring significant leadership attention (refer para 51).
- b. Service commissioning: Whaikaha was successful in securing received \$863.6m in cost pressures in Budget 2023. The legacy systems and business practices that it inherited, and scale of the transformation required is significant (refer section 57).

44. Whaikaha should strengthen its planning and prioritisation of activities into a more robust organisational transition plan with clear milestones, sequencing, prioritisation, resources, and potential risks to delivery (lacking from the current programme).

45. The Work Programme should also include key decision points over the next one-three years necessary to embed its operating model, including when critical decision points need to be made to influence its partner agencies IT transformation programmes.

**A permanent organisational model is now being implemented and aims to address significant capability and capacity gaps**

46. Manatū Hauora, the Establishment Team and Whaikaha officials consistently reported to the Unit that functions transferred from Manatū Hauora lacked capacity and capability in critical areas, including contract management; provider monitoring; payments and processing; data and insights, financial forecasting and modelling; pricing, and actuarial expertise.

47. A new organisational structure and permanent ELT went into place on 1 August 2023, one year after establishment. Whaikaha leadership did take time to consider how it could best address its capability gaps, but this delayed recruitment and the change management processes essential to building a common culture and ways of working among staff. A tight labour market has also slowed efforts to hire ELT and senior positions.

48. The intent of the organisational model and the design of positions is to:

- a. increase the management, monitoring and audit functions to address the lack of investment and attention in these areas historically.
- b. build Whaikaha's data and analytics capability. The Unit heard from officials that capability is currently weak and hinders the Crown's ability to understand service performance.
- c. create a transformation office reporting to a Transformation Board to oversee the tagged contingency funding drawn down for EGL and the development of longer-term investment case and to receive updates on key transformational projects.
- d. create strategic finance and strategic human resource leadership positions (while MSD provides shared services in these areas).

49. The Unit finds that while the new organisational model better reflects Whaikaha's new mandate, its operating budget is not necessarily scaled to meet the demands of its large, complex commissioning function and system leadership and policy functions. The Unit assesses that it will remain challenging for Whaikaha to close these capability and capacity gaps to fulfil its full range of functions. Whaikaha should consider working with central agencies to determine if it is right sized to fulfil its functions.

50. The Unit heard from stakeholders and officials that there is goodwill and confidence in the leadership of the Chief Executive and the permanent ELT to lead the organisation.

**Expectations of tripartite governance arrangements are high and challenging to achieve**

51. In October 2021 Cabinet agreed to the inclusion of voices of disabled people, whānau and their communities into future partnerships and organisational arrangements, including partnership between the Crown, disabled people and tāngata whaikaha Māori [SWC-18-MIN-0029 refers].

52. During the establishment phase considerable time, energy and resource was invested by all partners to contribute to partnership arrangements. A tripartite Establishment Governance Group was created with three officials, three tāngata whaikaha Māori, and three disabled people.<sup>3</sup> The intent was to guide and shape the work of the Establishment Team.

<sup>3</sup> The Community Sector Group members represented the Disabled Peoples Organisations Coalition, National Enabling Good Lives Leadership Group, Te Ao Marama, Mana Pasefika and the Whanau Ora Interface Group.



53. Other tripartite forums included a Community Steering Group to support the Establishment Governance Group and an Insights Alliance. Except for the Insights Alliance, these forums ceased in April 2023 as it was difficult to maintain their effectiveness and Whaikaha recognised that more work was needed to build enduring partnership arrangements.
54. Whaikaha is currently prioritising how it approaches partnership, governance and independent voice of disabled people through a series of forums and through the establishment of a new Transformation Board (with tripartite composition).
55. A June 2023 Partnership Hui participant feedback shows that a common understanding of what a tripartite relationship means in practice remains unclear and expectations are mismatched to what a departmental agency can achieve, especially in an early stage of maturity. All partners will have to compromise, or otherwise risk endangering the confidence in, and success of, the organisation.
56. Whaikaha's partnership model with some tangatā whaikaha Māori is unclear (refer para 78). Whaikaha would benefit from taking an iterative and phased approach to tripartite partnership arrangements as it builds its own organisational capacity and capability to step into its role as the Crown. Tripartite partners would also benefit from this approach to build maturity and mechanisms for independent voice to engage and partner with the Crown (and April 2023, and report that this work is now underway including as part of the EGL. Whaikaha also funds organisations to build capacity and capability and provide advice.

**Whaikaha has substantial implementation interdependencies and decision points on IT transformation that it needs to prepare for to transform disability support services**

57. Te Whatu Ora operates the claims and payments, contracts administration system (across 1000 contracts) and the contact service center for disability support services on Whaikaha's behalf and established through a Services Agreement.
58. Te Whatu Ora administers these functions through at-risk legacy IT systems that are aging, inflexible, and not fit for purpose to meet Whaikaha's mandate to improve outcomes for disabled people and a transformed services.
59. Te Whatu Ora is undergoing an IT change programme called Health Sector Agreements and Payment (HSAaP) that was initiated and funded before the recent health reforms to replace the disability support services legacy claims processing and contract management systems (also utilised by Te Whatu Ora, Te Aka Whai Ora and Pharmac).
60. At this stage HSAaP is a replacement of the existing system to a more stable modern platform that incorporates existing business processes and rules. It is not, yet, supporting a transformed system that would enable greater personalisation, choice and control that Whaikaha will be seeking through transformation and implementation of EGL principles.
61. Whaikaha would benefit from strategic business plan or roadmap to develop its transformation vision, requirements, and functionality. It could also consider strategic interdependencies and opportunities to align with the other service commissioners (e.g., consideration given to efficiencies with Te Whatu Ora, Te Aka Whai Ora and Whaikaha where they fund the same provider).
62. Whaikaha also has some critical decisions to make within the next 12 to 18 months about IT transformation and developing a strategic business plan will better position itself to understand its requirements and influence its partner agencies respective IT programmes which are well underway (Te Whatu Ora's HSAaP programme and MSD's Te Pae Tawhiti).

**Aspects of the Services Agreement with Te Whatu Ora should be initiated at pace**

63. Some aspects of the Services Agreement are not being met by Te Whatu Ora, such as the reporting of performance standards to help understand the performance of the system (e.g., 95% of claims paid in timely way or 80% of calls answered within 20 seconds).
64. Governance structures (supported by relationship managers, agreement managers) envisioned in the Services Agreement are not operating as intended and should be improved to build common purpose, strengthen relationships and strategic alignment. The day-to-day operations relies on prior relationships, old practices (pre-1 July 2022) that will need to improve, be formalised, and reflect the new operating environment.
65. Whaikaha and Te Whatu Ora are due to commission a review of the operations in January 2024. The Unit recommends the review is independently led by a neutral third party which may be more effective in elevating the respective issues and concerns with the current operating practices and objectively help the agencies to work through these issues.
66. Whaikaha has further interdependencies with Te Whatu Ora to provide beds in secure I health settings for high and complex needs<sup>4</sup> Te Whatu Ora has been unable to provide the required services under the agreements in place with Whaikaha for Forensic Care Services and Mental Health Addiction & Intellectual Disability Services (MHAIDS). Whaikaha report that it has placed it at risk of human rights breaches and necessitated further work to transfer further services into Whaikaha to ensure it meets its responsibilities.

#### **Whaikaha achieved a significant milestone in \$73m EGL Tagged Contingency release ...**

67. EGL is an approach to supporting disabled people that offers greater personalisation, choice and control over budgets, with options of how these are managed so they can plan the lives they want. EGL has eight core principles, a vision and components to guide positive change.
68. Since 2017, successive Cabinet decisions have supported the EGL approach and principles to be rolled out nationwide yet confidence in financial forecasting and sustainability for the Crown, a clear operating model, implementation planning and backbone support, outcome data (amongst other matters) has been lacking.
69. In September 2023 Whaikaha achieved a significant milestone in the release of \$73.7m over next four years and \$40.5m in outyears through the EGL Tagged Contingency. The release is a commitment to resource expansion beyond the three EGL pilot sites (reaching 1,000 people) and transform how existing disability services operate (reaching 5,400 people).

#### **...but will need move at pace to recruit and undertake implementation planning and partnerships for EGL and fiscal sustainability planning for disability support services**

70. Ministerial approval for the EGL Tagged Contingency included the requirement for Whaikaha, working with Treasury, to prepare a work plan around the fiscal sustainability of the disability support system and the impact of the EGL approach with the purpose of providing Ministers with better quality information on the potential costs and risks and the options for operating these. Agencies will report back to Ministers in three months. The Unit strongly supports this approach.
71. The EGL Tagged Contingency release was also contingent, amongst other matters, on a detailed implementation plan. Whaikaha did not provide a detailed implementation plan because national roll-out as originally envisioned was not funded, but it did provide revised timing from the original 2021 roadmap (that was outdated).

<sup>4</sup> Whaikaha produced a High and Complex Framework Operational Strategy 2023-2028 as part response to 2021 Chief Ombudsman inquiry into Ministry of Health's stewardship of hospital-level secure service for people with an intellectual disability.

- 72. The first phase (2023/24 to 2025/26) will include in-depth planning and a business case for the full implementation of system transformation. The Unit strongly supports immediate investment in implementation planning and prioritisation.
- 73. An area for ongoing attention and action is the partnership arrangements. Interviews with EGL stakeholders showed that successful tripartite partnership is both innovative and challenging, with appreciation and high trust in the Whaikaha CE on this matter. At the same time, there is a lack of clarity regarding initial planning for roll-out and a need for transparent and effective tripartite forums, with attention on tangatā whaikaha Māori and Iwi.

**SECTION TWO: LESSONS LEARNED**

**Lessons learned from implementing the Departmental Agency model**

- 74. The departmental agency model was introduced in 2013 through an amendment to the State Services Act, with implementation flexibility introduced in the Public Services Act 2020. Whaikaha is one of seven departmental agencies and is the largest by appropriation.
- 75. The intent of the model is to reduce fragmentation and cost, and to improve system coherence and consolidation in the public sector.<sup>5</sup> In Whaikaha’s case this intent is broadly achieved. The Unit has identified some lessons on the implementation of the model and notes individual agencies may not agree universally on all points.

**Considerations for the Public Services Commission and Whaikaha**

- 76. The PSC which may wish to consider a broader and deeper lessons learned review of implementation of the departmental agency model capturing the expertise and experience of host and departmental agencies chief executives and their leadership.
- 77. The Unit recommends that Whaikaha consider including, as part of its revised Work Programme for 2023-2026, a review period to assess the implementation of its departmental agency model to fulfil its functions and mandate to disabled people, families and their whānau working with PSC. It should allow sufficient time for the model to mature before the review takes place. A review towards the end of 2026 is recommended.

**Table 1: Implementation Unit lessons from the implementation of the departmental agency model**

| Lessons for implementing a departmental agency  |  |
|---|--|
| <b>Establishment timeframe should reflect the size and complexity of the departmental agency.</b> | The departmental agency model was untested for a new Ministry of Whaikaha’s size and complexity, carrying significant risks and cost pressures. The Establishment Team led a herculean effort to establish Whaikaha on time and did work to set expectations that their priority was on legal entity and critical path activities, and that significant risks will be transferred (if not exacerbated). The Public Service Act 2020 provides the flexibility to support longer establishment lead in time. However, for reasons centred on aligning with health entities (Te Whatu Ora, Te Aka Whai Ora) the short lead in time was set creating significant challenges and delays in the subsequent transition phase. |
| <b>Priority was on machinery of government,</b>   | The Establishment Team and Manatū Hauora were engaged in substantial efforts to assess staff positions to be transferred and the practicalities of transferring staff. While this is recognised, some officials interviewed commented that in future emphasis should also be placed on people change management to improve the   |

<sup>5</sup> Public Services Commission (August 2022): Supplementary guidance note – departmental agencies, refer: <https://www.publicservice.govt.nz/guidance/supplementary-guidance-note-departmental-agencies/>

|  |   |
|--|---|
| <p><b>procedural and policy matters, less on people change management</b></p>  | <p>experience of staff during a difficult and unsettling time; with a dedicated team (within a transition or establishment unit) that has change management expertise assigned to lead people and culture change processes; and continue for a reasonable period after establishment to support, embed and communicate change processes. The overall insight has applicability beyond implementation of departmental agencies to other significant reform and transformation efforts.</p>   |
| <p><b>Shared services model reduced fragmentation as intended but has limitations in supporting strategic or bespoke corporate functions.</b></p>  | <p>MSD’s provision of ongoing (e.g., payroll, HR, finance, IT) and transitional (e.g., health and safety, communications, recruitment) shared services enabled a more efficient establishment process utilising MSD capabilities and expertise.</p> <p>In the case of Whaikaha the model has some practical limitations where it cannot fully service the specific characteristics of an agency or the strategic aspects of shared services functions. The Unit notes that Public Service Act 2020 enables the host and departmental agency to negotiate bespoke services or source its corporate services elsewhere under section 24(5) and MSD and Whaikaha have, and will continue to, review their arrangements.</p> <p>Whaikaha’s CE is responsible for its employees through deemed delegation and is responsible for decisions relating to individual employees (e.g., appointment and dismissal, health safety etc). MSD is the bargaining and employing entity. This arrangement has proven challenging for a new departmental agency with a mandate “to do things differently” and “work in a different way than other government agencies” yet it must adopt the conditions, practices and policies of its host with long-standing policies. It is also a challenge for a workforce that has bespoke needs (e.g., accessible filing and information, spaces, IT, human resource policies and procedures). Whaikaha has also created senior strategic human resource and finance positions in addition to receiving HR and finance shared services.</p>   |
| <p><b>Departmental agreements between host and departmental agency should be very clear about the fiscal and performance reporting obligations of the respective chief executives.</b></p> | <p>A departmental agreement that sets out all working arrangements is required under section 24(4) of the Public Service Act 2020. A lesson from the Whaikaha experience is that the fiscal and performance reporting obligations of the respective chief executives should be clearly defined to reduce confusion or concern about risks, including to the host agency.</p> <p>In the case of Whaikaha, MSD’s CE is the Appropriation Administrator responsible for financial management, financial performance and financial sustainability of Whaikaha. MSD also manages assets, liabilities, accounting and reporting on behalf of Whaikaha, and its Chief Financial Officer (CFO) operates for Whaikaha.</p> <p>There is concern the host agency carries financial management risk for Whaikaha’s \$2.2b non-departmental expenditure without ability to direct the appropriation as Whaikaha’s CE has autonomy over its non-departmental expenditure (and reports to Minister of Disability Issues for its departmental expenditure). Where a departmental agency is relatively small the perceived risk is limited but that is not the case for Whaikaha’s non-departmental expenditure.</p> <p>Previously this risk was managed using underspends within Vote Health or through cost pressure bids however the same flexibility within Vote Social Development is no longer available. Officials report that the Public Finance Act is vague and not explicit with regards to the host agency financial responsibility and risk in this regard. The Unit notes the Public Finance Act 2020 does allow for the departmental agency to manage its own assets and liabilities and administer its own appropriations (this option was not taken for the establishment of Whaikaha).</p> |

**An Order of Council allows for efficient establishment**

The advantage of the departmental agency model is that it is established via an Order of Council not through legislation allowing for efficient establishment<sup>6</sup>. An unintended consequence for Whaikaha is that it does not have a legislative mandate or framework. Specifically, the NZ Public Health and Disability Act was repealed by the introduction of Pae Ora (Healthy Futures) Act which removed legislative authority for commissioning disability support services and removed the ability to limit those services based on financial limits.

## Treaty of Waitangi considerations and te ao Māori perspective

78. Māori have a higher disability rate than non-Māori, regardless of age. In the 2013 census 26% of Māori identified as disabled, with the most common types of impairment related to mobility. Comparisons across a range of indicators shows that disabled Māori tend to have poorer outcomes than non-disabled Māori in terms of both material well-being and quality of life, with material disparities being the most marked.
79. Whaikaha's establishment was recognised as the opportunity to ensure the disability system gives full effect to Te Tiriti o Waitangi [SWC-18-MIN-0029 refers]. The Unit finds that the governance arrangements initiated during the establishment stage were challenging for the Crown and for tangatā whaikaha Māori to maintain and were ended in April 2023.
80. Trust is eroding as the pathway to partnership remains unclear for some tāngata whaikaha Māori. The Unit does not underestimate the history, trauma and disappointment that tangatā Māori experience and the scale of the challenge ahead for Whaikaha leadership to reset and rebuild partnership arrangements that are consistent with its authority and accountability as a departmental agency (under the Public Services Act 2020).
81. The appointment of a permanent Kaihautu Chief Advisor, Maori and a cultural advisor will assist in addressing external partnership arrangements as well as building internal cultural capability, areas identified as critical by Whaikaha leadership. Whaikaha is also partnering with Iwi as treaty partner. The Unit did not interview Iwi for this stocktake so cannot report on their views.
82. As difficult as this work will be for Crown, tangatā whaikaha Māori with Iwi, a starting point is to work on the establishment of the Te Tiriti o Waitangi Framework for partnership. Building capacity and capability for tāngata whaikaha Māori and Iwi to mature its independent voice mechanisms should also be a priority to foster partnership arrangements.

## Financial implications

83. There are no financial implications with this Stocktake.

## Consultation

84. The Unit consulted with Whaikaha, Ministry of Social Development, Manatū Hauora, Oranga Tamariki, Te Aka Whai Ora, D of Corrections, Public Service Commission and the Treasury. The Unit also consulted with stakeholders at Te Ao Māori Aotearoa Trust, Mental Health and Disability Commission, Carers Alliance, Home and Community Health Association, NZ Disability Support Network, EGL Mid-Central and EGL National Leadership Group.

<sup>6</sup> Once policy decisions are made by Cabinet, an Order in Council is required under section 23 of the Public Service Act 2020.

## Next steps

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85. The Unit can support you in briefing the Minister of Disability Issues on this report.

| Attachments:         | Title  | Security classification |
|----------------------|--|-------------------------|
| <b>Attachment A:</b> | Implementation Unit Commissioning Brief  | IN CONFIDENCE           |
| <b>Attachment B:</b> | Assessment of transition and consolidation activities in Whaikaha Work Programme 2023-2026 | IN CONFIDENCE           |

## Attachment A: Commissioning Brief

# Implementation Unit: Commissioning Brief

### Stocktake of Whaikaha

|                             |  |
|-----------------------------|--|
| <b>Commissioning Agent:</b> | Minister of Finance  |
| <b>Commission to:</b>       | Implementation Unit, DPMC  |
| <b>Commission:</b>          | Assess Whaikaha, the Ministry of Disabled People progress in establishing its governance and disability system leadership arrangements including the next phase of rolling out the Enabling Good Lives approach; its structure and processes for identifying and managing risk, its commissioning functions, and its arrangements for partnering with other health entities to deliver on its functions. |

### Background

Whaikaha was established on 1 July 2022 as part of the Government's health reforms enacted through Pae Ora (Healthy Futures) Act 2022. From 1 July 2022, Manatū Hauora (the Ministry of Health) transferred disability policy and commissioning of disability support services functions to Whaikaha.

Whaikaha's role is to lead and coordinate cross government strategic disability policy, lead partnership between the disability community, Māori and Government, and to help transform the disability system in line with the Enabling Good Lives approach to give disabled people more choices about how to live good lives.

Whaikaha is a departmental agency within its host department, the Ministry of Social Development (MSD). Whaikaha is headed by its own Chief Executive, responsible to the Minister for Disability Issues. Although Whaikaha operates as its own Ministry, MSD plays a role in providing financial assurance to the Government and the sign-off of the MSD Chief Executive is required as part of material financial matters (e.g., setting the annual budget).

In Budget 2022 the Government allocated \$107.9 million over four years for the establishment of Whaikaha as a new Ministry of Disabled People, with ongoing funding for this at \$23.7 million per annum. Budget 2023 provided a further \$5.3 million per annum to support the establishment (one-off funding).

As part of Budget 2022 the Government allocated \$100 million (over four years) in a tagged contingency to progress Enabling Good Lives towards a national roll-out beyond the three current sites (Christchurch, Mid-Central, and Waikato). This funding is to transform the wider Disability Support System, which Whaikaha funds at around \$2.1 billion per annum.

Whaikaha has identified several phases of its organisational establishment, from 'transition' to 'transformation' and expects to be fully established by 30 June 2024.

## Areas of Focus

1. Assess Whaikaha's progress in establishing its governance, system leadership and partnership arrangements across the health and disability system, including clarity of functions, roles and accountabilities in relation to Manatū Hauora, Te Whatu Ora and Te Aka Whai Ora and the host agency MSD.
2. Identify the progress that Whaikaha has made in its establishment, transition, and consolidation activities, including barriers it is facing and opportunities for improvement to give effect to its roles and responsibilities and ensure that the new agency is fit for purpose (set up to succeed). Including identifying any lessons and contributing factors that would strengthen or limit establishment of new departmental agencies.
3. To assess Whaikaha's arrangements and processes for planning (for current and future risks), identifying, elevating, and managing critical risks, including in the implementation of its commissioning functions and working arrangements for partnering with other health entities and stakeholders.
4. Assess Waikaha's progress in planning for the roll out of the next phase of the Enabling Good Lives initiative agreed in Budget 2022, including the governance, operating framework, fiscal management, and implementation planning for the next phase of the initiative.

## Parties

The Unit will work with relevant senior leaders and teams within the Whaikaha, Manatū Hauora, Te Whatu Ora, Te Aka Whai Ora, Ministry of Social Development, Oranga Tamariki, Ministry of Justice, Accident Compensation Corporation and the Health and Disability Commission and other agencies and stakeholders as relevant to the assignment.

## Timeframe

The Unit will report to the Minister of Finance on 29 September 2023.






Hon Grant Robertson  
August 2023



## Attachment B: Assessment of progress of transition and consolidation activities in Whaikaha Work Programme 2022-2026

| Workstreams  | Delivery Status - September 2023   |
|--|--|
| <b>Strengthening Whaikaha as a Ministry</b>                              | <p><b>Mixed:</b> Overall substantial start-up activity with some attention needed on imbedding the new organisational model and recruitment:</p> <ul style="list-style-type: none"> <li>Organisational model in place 1 August 2023, working on establishment of a new Transformation Office that will report into a Transformation Board.</li> <li>Recruitment of ELT (Tier 2) complete as of 1 August 2023, continuing to recruit management and staff. 97 out of 289 positions are vacant.</li> <li>Good progress in addressing varied terms and conditions of transferred staff, signed Terms of Reference with PSA and has 38% disabled staff employed.</li> <li>Achieved the transition of four out of five transitional shared services from MSD.</li> <li>Beginning to build risk expertise including initiation of risk frameworks and external expertise onto a new risk and assurance committee.</li> <li>Establishment of regional hubs for EGL delayed, awaiting release of Tagged Contingency</li> </ul> |
| <b>Building partnerships and representing voices</b>                     | <p><b>Problematic:</b> Overall partnership and independent voice arrangements being reset and remains a challenge requiring significant leadership attention and action.</p> <ul style="list-style-type: none"> <li>Consultation on representative tripartite partnership arrangements started with a partnership hui in June 2023, including a tripartite Transformation Board.</li> <li>Disabled people and tangatā whaikaha Māori expectations of tripartite partnership arrangements are high and is a significant challenge to manage.</li> <li>Progress in establishing Te Tiriti o Waitangi framework is not visible.</li> <li>Regional Community Leadership Groups (RGLs) across the country to strengthen capability and collective voice beyond existing EGL sites have not started due to time taken to negotiate release of the EGL Tagged Contingency.</li> </ul>   |
| <b>Developing policy and strategy</b>                                    | <p><b>Mixed:</b> Overall good progress with prioritisation needed on policy and system leadership.</p> <ul style="list-style-type: none"> <li>Led NZ Government delegation to Geneva for United Nations Committee on the Rights of Persons with Disabilities (UNCRDP)</li> <li>Substantial work coordinating the Government’s response to the Concluding Observations from UNCRDP and on UNCRDP Cabinet paper.</li> <li>Government agencies report Whaikaha is an effective advocate, has good relationships and should establish clear priorities including ways to influence and align funding of other agencies (because often serving the same individuals and whānau).</li> <li>Improving its data and insights capabilities through organisational model.</li> <li>Whaikaha reports development of workforce strategy to build the capability of disabled people to engage in EGL approach is underway.</li> </ul>   |
| <b>Transforming the disability system (Enabling Good Lives roll out)</b> | <p><b>Mixed:</b> Overall, major milestone receiving approval for EGL Tagged Contingency, attention now on implementation planning and fiscal sustainability.</p> <ul style="list-style-type: none"> <li>EGL release of Tagged Contingency completed and announced September 2023: \$73.7m (2022/23 to 2024/25) and \$40.5m in outyears (2025/26)</li> <li>Fiscal sustainability plan to be provided within next 3 months; detailed implementation planning to begin following drawdown.</li> <li>Tripartite arrangements to be developed and will be challenging to advance.</li> </ul>  |
| <b>Service commissioning</b>   | <p><b>Problematic:</b> Recent positive actions taken by leadership but IT systems and business processes at risk,</p> <ul style="list-style-type: none"> <li>At early stages of transforming its commissioning functions through DSS; operating protocols, guidelines, and policies needed.</li> <li>IT systems are at-risk and aspects of Service Agreement are not being followed.</li> <li>Secured almost \$863.6m of cost pressures funding in Budget 2023.</li> <li>New organisational model to addresses gaps in in monitoring, audit, strategic finance, data, insights.</li> <li>Released High and Complex Needs Framework Strategy.</li> <li>Established steering group to advance “My Home My Choice” to transform services and alternatives and options for entry and exit from residential care.</li> </ul>  |

**Key**

-  On track – continue to refine
-  Mixed – some aspects require attention
-  Problematic – aspect(s) require significant attention and action
-  Off track – requires urgent attention and action
-  Insufficient information available to form an assessment