

Department of Internal Affairs

Report into a Complaint regarding the alleged actions of

Honourable Meka Whaitiri

Version for public release: all references to DIA employees who were witnesses in the investigation have been replaced with Employee A and Employee B.

Prepared by:

**David Patten
Barrister
Wellington**

**Private and Confidential
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Executive Summary

Finding 1

Did the Minister Grab Employee A by the Arm at a Function held in Gisborne on 27 August 2018?

After giving careful consideration to this matter, it is my view that the explanation provided to me by Employee A is a more probable explanation as to what happened than the explanation provided to me by the Minister. That is, rather than the encounter between the two of them in the foyer being a face to face encounter as described to me by the Minister, the Minister in fact approached Employee A from slightly behind and grabbed Employee A by the arm.

Finding 2

Did the Minister drag/pull Employee A from the room?

After considering this matter and, in particular, having regard to the information provided to me by Employee A, I find that the Minister did **not** pull and/or drag Employee A from the foyer. She did take Employee A outside the building where the meeting was taking place.

Finding 3

Did the Minister raise her voice at Employee A immediately after the Minister, during the luncheon adjournment, observed that she was not in the huddle/stand-up?

After giving careful consideration to this matter, it is my view that the explanation provided to me by Employee A is a more probable explanation as to what happened than the explanation provided to me by the Minister. That is, when Employee A and the Minister went outside (from the foyer) to observe the huddle/stand-up, the Minister did speak to Employee A in a raised voice.

Introduction

1. On 27 August 2018 the Honourable Meka Whaitiri, Minister of Customs and Associate Minister of Agriculture, Crown/Maori Relations, Forestry and Local Government ('the Minister') and 9(2)(a) (provided to the Minister by the Department of Internal Affairs ('DIA'), Employee A, attended a function in Gisborne ('the function').
2. During the course of the function and over a break in proceedings, an alleged incident occurred between the Minister and Employee A. It is alleged that the Minister grabbed Employee A by the arm and pulled/dragged Employee A from a room and subsequently raised her voice at Employee A.
3. Subsequent to the alleged behaviour of the Minister towards Employee A, an email complaint of alleged inappropriate behaviour and physical contact was sent to the Prime Minister, Rt. Hon. Jacinda Ardern, by a member of the public on 29 August 2018.

5. Following meetings with Employee A when Employee A returned to Wellington on 27 August 2018 from the Gisborne function DIA determined that the allegation against the Minister needed to be investigated.
6. I was appointed to carry out this investigation.

Terms of Reference

7. I conducted my investigation pursuant to Terms of Reference provided to me by DIA.
8. In respect to the Terms of Reference I note, inter alia, the following matters.
 - 8.1 I am required to provide unbiased factual findings in respect to the Minister's alleged behaviour towards Employee A in Gisborne on Monday, 27 August 2018, in a written report; and
 - 8.2 I am required to investigate the matters complained of, the circumstances in which the alleged conduct occurred and any relevant factors.
9. Given the scope of my investigation, it is not appropriate for me to comment on or make findings on matters not directly relevant to the alleged incident that occurred between the Minister and Employee A at the function held on 27 August 2018. I have attempted at all times to be scrupulous in respect to the scope of my investigation notwithstanding my awareness of media comment on alleged other matters pertaining to the Minister unrelated to my investigation.

The Investigation Process

Part A

10. In conducting my investigation I initially interviewed the following persons that I determined could assist me with my investigation.

Employee A **Interviewed on 5 September 2018**

Employee B **Interviewed on 7 September 2018**

Hon. Meka Whaitiri Minister of Customs, and Associate Minister of Agriculture, Crown/Maori Relations, Forestry and Local Government

Interviewed on 10 September 2018

11. All interviews were recorded and subsequently transcribed. Copies of the transcribed interviews were made available to the appropriate interviewees for comment.

Prior to my interview with the Minister, I sent to her the confirmed interview transcripts of Employee A and Employee B.

Confirmed Interview Transcripts of Employee A, Employee B and Hon Minister Whaitiri

12. The Minister, at her interview with me, hand drew a diagram of the meeting rooms where the alleged incident between her and Employee A took place. Post interview with me, the Minister (through her Counsel) provided me with a copy of an email she sent to her staff on 28 August 2018. I also received a copy of text exchanges between the Minister and Mike Munro that occurred on 29 and 30 August 2018.

The documents referred to in this paragraph are referred to in the Minister's Interview Transcript.

13. Following my interview with the Minister I determined that I needed to re-interview Employee A in respect to a number of matters raised with me. This interview took place on **12 September 2018**. It was recorded and subsequently transcribed. A copy of the confirmed transcript was sent to the Minister.
14. Following my interview with the Minister I determined that I needed to ask Employee B some further questions. I did this via an email exchange between me and Employee B. I attached to my initiating email to Employee B an extract from the Minister's Interview Transcript.
15. A copy of Employee A's confirmed second interview transcript and a copy of the email exchange between me and Employee B were provided to the Minister.

Part B

16. At interview with me I asked Employee A to comment on and confirm three photographs (both in black and white and colour form) that had been taken of Employee A's upper right arm at a meeting Employee A had with Morag Ingram, General Manager Ministerial and Secretariat Services, and a DIA Portfolio Manager, (and others – see below) on Thursday 30 August 2018. These photographs showed an area of bruising on Employee A's upper right arm that occurred when the Minister allegedly 'grabbed' Employee A during the Gisborne function.
17. At interview with me on 5 September 2017, Employee A told me that after the meeting Employee A had with Morag Ingram, Employee A took a 'selfie' of the upper right arm showing an area of bruising on the arm. At my request Employee A sent a copy of this photograph to me and DIA.

18. I note that prior to me interviewing her on 10 September 2018 the Minister received a copy of the photographs referred to above.

Part C

19. As part of the documentation provided to me by DIA at the commencement of my investigation, I received a document which is a (undated) meeting note of a meeting involving Morag Ingram, Employee A, Employee B and Mr Aidan Ruland, (the DIA Portfolio Manager, Ministerial Resourcing) that took place in the DIA Wellington offices on 30 August 2018 (the date of this meeting was ascertained by me during the course of my investigation).
20. As part of the documentation provided to me by DIA at the commencement of my investigation, I received a document headed **Statement from Employee A**. At interview with me on 5 September 2018, Employee A told me that Mr Ruland prepared this statement post the meeting referred to in the preceding paragraph. After consultation with Employee A the statement was 'agreed'. At interview with me, Employee A confirmed this statement as the 'agreed' statement.
21. I note that prior to me interviewing her on 10 September 2018 the Minister received copies of the documents referred to above.

Part D

22. At her interview with me on 10 September 2018, the Minister drew a diagram of the lay-out of the Ngati Porou meeting rooms where the alleged incident involving Employee A and her took place. This diagram is referred to by the Minister on a number of occasions at interview. I note that the diagram which, it is accepted, is not drawn to scale, provided me with a useful reference point when I came to consider the allegations Employee A has made against the Minister.

22 A. In accordance with my Terms of Reference, a copy of my draft Report was given to Employee A and the Minister for comment. Employee A made no comments of a substantive nature in relation to the draft Report.

The Minister, through her Counsel, provided me with a written response dated 19 September 2018 to my draft Report.

Given the matters raised by Counsel in her written response, I felt it appropriate that I respond to those comments. This response can be found below.

Preliminary Matters

23. Prior to analysing and determining matters pursuant to my Terms of Reference it is necessary, in my view, to provide a brief Timeline of Events both prior to and post the alleged incident that occurred between Employee A and the Minister on 27 August 2018 in Gisborne. This Timeline has been ascertained after reviewing the information I have received during the course of my investigation.

Timeline of Events

9(2)(a)	
Sunday 26 August 2018	The Minister and Employee A travel separately to Gisborne.
Monday 27 August 2018	The Minister and Employee A attend a Women's Suffrage Day breakfast in Gisborne addressed by the Prime Minister.

Following the breakfast the Minister and Employee A travel together from the breakfast to attend a Ngati Porou meeting to be held at the Ngati Porou premises in Gisborne commencing at 10.30am. The meeting is scheduled to last 2.5 hours. In attendance were the Prime Minister, a number of Ministers of the Crown and staff members of the PM and the other Ministers, and the local electorate MP.

After being called onto the premises (karanga) and then being formally welcomed by the hosts (powhiri), the meeting participants, after having a morning tea, moved to the meeting room for discussions on a range of matters – health, social services, economic development (including forestry), environmental matters. The meeting started at approximately 11.00am.

At approximately 12.30pm the meeting adjourned for lunch. This was in the same room where the earlier powhiri had taken place.

Towards the end of lunch a media opportunity took place outside the premises on the front lawn involving the PM and a number of other Ministers attending the meeting. This ‘huddle’ was organised by 9(2)(a) [REDACTED]. The Minister was not part of this ‘huddle’ (or ‘stand up’ as she described it to me at interview).

It was whilst this huddle was taking place that the alleged incident involving the Minister and Employee A occurred.

After the meeting finished the Minister, accompanied by Employee A, attended to one or two local electorate matters. The Minister took Employee A to the Gisborne Airport for the flight back to Wellington. The Minister flew to Rotorua later that evening to attend to matters relating to her Ministerial portfolios.

Tuesday 28 August
2018

Employee A arranges a time to meet with Employee B to discuss an alleged incident that occurred on 27 August 2018.

Employee A speaks to a friend about the Gisborne incident.

Wednesday 29 August
2018

Employee A and Employee B met in the latter's office. Mike Munro attended the meeting, in part. Mike Munro advised of receipt of an email from a member of the public referring to the alleged incident that had occurred in Gisborne

Text exchange between Mike Munro and the Minister.

Thursday 30 August
2018

Meeting in DIA offices attended by Employee A, Employee B, Ms Ingram and Mr Ruland.

Photographs taken by Ms Ingram of the upper right arm of Employee A where a bruise is located.

Later that day Employee A takes a 'selfie' of the bruised arm.

Further text exchange between Mike Munro and the Minister.

Minister steps down from her Ministerial responsibilities pending an investigation into the allegations made against her.

Evidential Matters

24. I note that there were no witnesses to the alleged incident under investigation. I also note that there is a clear difference of view between Employee A and the Minister in respect to their respective recollection of events. Given this my findings are based on my analysis of the information that I have obtained through the interviewing of Employee A, Employee B and the Minister, having regard also to the documentation I have received and referred to in this Report.
25. Given the clear differences in views of Employee A and the Minister in respect to the allegations, to a degree and in terms of my analysis, I have attempted to reconstruct events as they unfolded. I have attempted to do this carefully and logically based on the information I have obtained during the course of my investigation.

Standard of Proof

26. The standard of proof that I have applied is that on the balance of probabilities. This is the standard of proof in civil cases. What I am required to do and what I have done is weigh up the 'evidence' I have obtained during the course of my investigation and determine which version of events as outlined to me by both Employee A and the Minister is most probably true.

Analysis of Complaint

Introduction

27. I am required to investigate the matters complained of, the circumstances in which the alleged conduct occurred and any relevant factors. In other words my focus must be on the alleged incident that took place between Employee A and the Minister and not peripheral events that may have occurred prior to or post 27 August 2018 (except where they are relevant to the incident itself).
28. The approach I have taken to my analysis of the complaint is to:
- 28.1. Examine the alleged grabbing by the Minister of the upper right arm of Employee A **(A)**
 - 28.2. Examine the allegation that the Minister then pulled/dragged Employee A from the room **(B)**
 - 28.3. Examine the allegation that the Minister raised her voice at Employee A **(C)**

A Did the Minister grab Employee A by the arm?

29. Employee A and the Minister agree that during the luncheon intermission on 27 August 2018 they met in the foyer of the Ngati Porou meeting rooms.
30. Employee A alleges that this is where Employee A was grabbed by the Minister.

At the first interview with me Employee A told me as follows.

Employee A

*It was during intermission, during the break so I'd gone out into the hallway, gone to bathroom and I'd just gone out into the hallway into the vestibule for a bit of a breather and that's when she came over. **She grabbed me by the arm and pulled me outside and said she needed to talk to me** and when we were outside she raised her voice. I wouldn't say yelled but she did raise her voice to me and asked me if I knew what I was doing in my job and did I*

realise I'd missed a media opportunity and that that was embarrassing to her because it was her electorate and she should have been in that camera shot. She told me I needed to keep my eyes out for things like that all the time as part of my job.

Employee A

Could you comment in this section

Was the Minister holding onto to you as she took you outside?

What was the approximate distance between where you were in the vestibule and where the 'outside' discussion with you and the Minister took place?

Do you know whether anyone observed the Minister grabbing you and taking you outside?

She was right behind me, so very little distance, maybe a foot, when she grabbed me inside the vestibule. I don't know if anyone else saw, I was too scared to notice who was around.

Outside though, had let go of me and maybe two feet away. There wasn't anyone outside that I remember.

[NB: Emphasis mine]

[NB: For the avoidance of confusion in the above extract from Employee A's interview transcript Employee A uses the term 'vestibule'. The 'vestibule' is the 'foyer' marked 'C' on the handwritten diagram prepared by the Minister]

And further on p.3

David *Just before you go on, Employee A, you mentioned that she grabbed you by the arm. Was it that action that led to the bruising on your arm?*

Employee A *Yeah, I believe so.*

David *The grabbing that took place in the hallway ...*

Employee A *It was hard and it scared the living daylights out of me, actually.*

David *And scared the living daylights out of you.*

Employee A *It freaked me out. I didn't know what to say because I haven't been grabbed like that before.*

David *In the terms of reference it talks here about her pinching you.*

Employee A *I told them to change that to "grabbing".*

David *Okay. I don't want to repeat what took place but ...*

Employee A *It was like that.*

David *It was a grabbing of your arm. Did you see it coming?*

Employee A *Not at all. She was behind me slightly as well so I definitely didn't see it coming.*

31. For her part the Minister denies touching Employee A at any stage during the interaction she had with Employee A in the foyer or elsewhere.

32. At her interview with me the Minister told me as follows.

Hon Whaitiri *Just in terms of your first question, I need to backtrack. We broke for lunch after the third session which was the economic and we had all spoken as Ministers. When they announced that dinner was back in the room where we had the welcome, it also came with we've got 25 minutes so everybody knew that it was going to be a quick lunch. As we peeled out of the room to head back into the welcoming room which was set up for lunch, that's where I grabbed lunch and sat down with folk. All the Ministers had spread out across the room, they weren't all sitting together. One was there, one was there, they were all over the place.*

Then five to 10 minutes the call came to start heading into the meeting room and it was at that point I got up and left my table and as I was coming to return to the meeting room, come through these doors, come through the foyer, I peered out and saw the stand up that was happening.

Counsel *Can you put an "A", Minister, where you were standing when you saw that?*

Hon Whaitiri *There. So coming out heading back and I was [at "A"] there but I looked through. These are all glass doors, glass doors that I saw the Prime Minister's huddle or stand up was happening.*

David *Just for the record, you were in the foyer outside what I call the welcome room?*

Hon Whaitiri *Yes.*

David *And you saw, at a distance, the huddle or stand up?*

Hon Whaitiri *Yes. **At that point I turned immediately to look for Employee A.** Because I left when the call was made to get back into the room I assumed everyone was still behind me in the dining hall where we were having dinner **so I turned to go back into the dining hall to find Employee A and I saw Employee A coming towards me. Shall I put "B"?***

David *Towards you from the welcome room?*

Hon Whaitiri ***Yes. When I turned round and I saw Employee A, we met at the doorway of the dinner room/welcome room in the foyer so just inside where we were having lunch I came across Employee A who was walking towards me.** I then said to Employee A, "We need to go outside, we need to talk." This is where I met Employee A [at "B"]. I turned and **Employee A** followed me outside. I'm going to put "C". [marked on map outside glass doors]. As we walked out, this is where we started, that's where Employee A and I were and that's where I said, "What's that over there?" pointing to the stand up. I can't remember what Employee A said. I said, "What's wrong with that picture?" and, again, Employee A was going, "Oh, Minister, I'm really, really sorry." Then I went, "Employee A, this is your job. This is what you're supposed to be watching out for."*

All of that discussion happened outside because I wanted Employee A to see what was going on and I wasn't there. In terms of your first question, no, I did not grab Employee A. Employee A was coming towards me and all I wanted Employee A was to go outside so Employee A could see the stand up and because there were so many people around the dining hall it was hard to have a conversation cos people were talking over lunch. I thought it would be best to take Employee A out to see it and for Employee A to talk outside where there were less people.

Going to be really clear about your second point around ...

David ***Just before you get to that. What you're indicating to me, Minister, is that at no stage did you physically touch Employee A after you saw Employee A in the welcome room and you pointed out to Employee A from the foyer the huddle that was occurring.***

Hon Whaitiri ***That's what I'm saying, Mr Patten.***

[NB: Emphasis mine]

33. And further at her interview with me the Minister stated:

