

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.

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**Private and Confidential
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Table of Contents

	Page No
Executive Summary	2
Introduction	3
Terms of Reference	4
The Investigation Process	5
Preliminary Matters	8
Analysis of Complaint	12
Other Matters	27
Comments on letter received from Counsel for Hon Meka Whaitiri	30
Findings	35

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:

Hon Whaitiri **Mr Patten, I did not touch Employee A. I didn't yank at Employee A, I didn't pinch at Employee A. I just don't touch staff.**

David *That is appreciated, Minister. I have to ask these questions, as you know, or as counsel will know anyway.*

Counsel *Minister, are you left handed or right handed?*

Hon Whaitiri **I'm right handed.**

David *Could I just ask this question just as a point of clarification. I'm just going to go back to the diagram that you usefully identified. When you walked in through the foyer to get Employee A, did Employee A have ^{s(2)(a)} back to you? I think you said Employee A was walking towards you.*

Hon Whaitiri *Yeah, I entered the foyer, I was already in the foyer. It was from the foyer I spotted the stand up which then required me to go look for Employee A so I was already in the foyer. I turned, as I said, went back into the room where we were having lunch and then I saw Employee A coming towards me. We met at "B" in which I said to Employee A then, "You need to come outside and see this and we need to talk." That conversation took part in "B" and then Employee A and I both went out to "C".*

David *What Employee A is saying is that it was at "B" that you grabbed Employee A.*

Hon Whaitiri *No.*

34. Given the different views of Employee A and the Minister I interviewed Employee A further. At the second interview with me Employee A told me as follows:

David *I'd like to come back to that because that, to me, is quite an important point. What the Minister indicated to me at interview was that when the meeting adjourned for lunch, she had her lunch and you had your lunch, as she understands it, back in the welcome room where the welcome took place.*

Employee A *Yes, I did.*

David *As she was leaving lunch she noticed at point "A" in the foyer the huddle taking place on the grass. She indicated to me that she turned around to find you, who she understood was still in the luncheon room, and when she turned around and saw you, you were actually moving through the doorway of the welcome room in her direction.*

Employee A **I remember being in the foyer, absolutely. I, from my memory, had come from the toilets and had walked into the foyer.**

David *The toilets ...*

Employee A *Were here.*

David *Over there.*

Employee A *Yeah.*

Comment

At interview Employee A pointed to toilets located (but not marked) immediately outside the meeting room and in the corridor between the meeting room and the foyer

David *Which is before the foyer on the diagram on the right hand side of the*

Employee A *Yeah.*

David **Could you outline to me again, did you approach each other face on?**

Employee A **No, she came up behind me. I didn't see her approach me, she came up behind me.**

David **You're absolutely sure of that.**

Employee A **Yeah**

David *What she's saying is that she turned around in the foyer and saw you coming towards her coming out of the luncheon room and that's when she had the first interaction with you.*

Employee A **Oh, God. I thought it was coming out of the toilets. I remember it being in there. It absolutely was in the foyer.**

David **Where the two of you met.**

Employee A **Is where we met, absolutely. I confirm that, she said that it was in the foyer.**

David **That's okay, it was a few days ago but you agree that you met in the foyer.**

Employee A **Yes, absolutely I agree with that.**

David **When did you first notice the presence of the Minister in the foyer?**

Employee A **When she grabbed me on the arm.**

David **When she grabbed you around the arm.**

Employee A **She was slightly behind me side of it.**

David **Can you recall what arm she used?**

Employee A **No idea, I wouldn't be able to.**

[NB: Emphasis mine]

And further during the same interview:

David *You confirm that she didn't escort you out to "C", she grabbed your arm then you turned and walked out.*

Employee A *"We need to talk, go outside and talk," that phrase that she said sounds right, absolutely. She let go so we walked outside, I think I followed her.*

David *The alleged grabbing that you refer to, was it hard? Was it soft?*

Employee A *It was hard, it was quite hard.*

David *Thank you. You, I think, confirmed.*

Employee A *Yeah.*

David

Comment

I then asked Employee A to demonstrate to me exactly what happened in respect to the allegation that the Minister grabbed Employee A by the arm. Employee A's support person was present during this demonstration.

.... I am Employee A for the purposes of what I'm going to ask you to demonstrate. Could you demonstrate where the Minister touched you and how she touched you. I'm going to stand up and I'm in the foyer and I'm facing the entrance way into the luncheon room. Remember I'm Employee A.

Employee A *The Minister was behind me and it was this arm that she grabbed, it was up here like that.*

David *She grabbed you across your shoulders ...*

Employee A *... so it was like that. it was up round my shoulder or the top of my arm.*

David *For the purposes of the recording, Employee A, who was acting as the Minister, was slightly behind me and touched my right arm – bearing in mind that I'm Employee A – with the right hand. Can you confirm that, Employee A?*

Employee A *I confirm that's what I did, yes.*

David *That's what you recall happened on the 27th of August.*

Employee A *Yes. I didn't see which arm she used, I assumed it was her right... was there so it was that grip that I gripped on you.*

David *I can also note for the recording purposes that the grip that I was given by Employee A acting as the Minister was quite hard. It was over my shirt, however. Could I just ask one question. Do you recall what you were wearing that day? Were you wearing 9(2)(a) a shirt?*

Employee A

David *So your right arm was not exposed.*

Employee A *No, I was wearing long sleeves.*

David *Jacket long sleeves.*

Employee A Yeah, a coat.

35. As previously stated above both Employee A and the Minister agree that the encounter between the two of them took place during the meeting luncheon intermission. They also agree that the encounter took place in the foyer (described by Employee A at the first interview with me as the 'vestibule').
36. Employee A is clear that s/he entered the foyer after going to the bathroom, moved into the hallway between the bathrooms and then moved into the foyer when the Minister allegedly grabbed Employee A.
37. The Minister for her part is equally clear in that after she had observed, from the foyer, the huddle/stand-up taking place on the lawn outside the meeting rooms, 'she turned back to go into the dining hall to find Employee A and I saw Employee A coming towards me' from the room where the welcome had taken place and where lunch was being served. The Minister marked 'B' in the diagram of the building lay-out.
38. 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.
39. My reasons follow.
 - 39.1 At her interview with me the Minister told me that she was right-handed.
 - 39.2 At interview with me Employee A was unable to confirm what arm the Minister used to grab Employee A because Employee A said that the Minister approached Employee A 'slightly from behind'.

In my view if the encounter between Employee A and the Minister took place as the Minister says (i.e. a face to face encounter), I am of the view that Employee A would have known what arm the Minister used when she grabbed Employee A.

39.3 The Minister was, as I find below, angry with Employee A at missing out on the huddle/stand-up. She therefore immediately went searching for Employee A. There were a number of other people attending the meeting in the immediate vicinity of the encounter. Given this it would be logical, if the Minister wanted the attention of Employee A to remonstrate with Employee A (and take Employee A outside), to physically touch Employee A to get that attention.

39.4 The photographs taken by Morag Ingram on 30 August 2018 of Employee A's upper right arm showing a bruise on that arm and the subsequent selfie taken by Employee A of the same arm are consistent, in my view, with someone being approached from behind (Employee A) and grabbed by a right handed person (the Minister).

On this matter, I also note the comments made to me by Employee A at the second interview with me.

David *Sorry, who asked you?*
Employee A *At the DIA meeting they asked me if I had any marks so that's when we looked. That was the first check.*
David *That's when Morag took the photographs.*
Employee A *Yeah, that was the first check.*
David *When did you?*
Employee A *Then I talked to 9(2)(a) that night and she told me to take.....*
David *That was the night of the 29th.*
Employee A *Yeah, whatever that night was. At the DIA meeting was when they asked me if I had any marks cos I hadn't checked and I said I didn't know.*
Support Person *Your photo on your phone.*
Employee A *Yeah, that was after that meeting. I took my photo after that meeting.*
David *I'm interested to know why you didn't notice the bruising before that? What we're talking about now is the incident on the Monday, then we've got Tuesday, then on the Wednesday you caught up with Employee B, then on the Thursday you had the meeting with ...*
Employee A *I hadn't thought to look. It's right there, it's not somewhere you look.*
David *I don't want to sound smart because it's very relevant to the context of your complaint.*

Employee A *You sure you didn't hit your arm against a door?*
 Employee A *My door handles are much higher, they're about that high. [For reference my door handles in my home are just above my shoulder height]*
 David *Playing sport or at the gym?*
 Employee A *I swim so I don't remember doing anything like that. I don't remember doing anything like that.*
 David *From your point of view, Employee A, the bruise could only have come from the actions of the Minister in grabbing your arm.*
 Employee A *I think so. I swim so that's not something where you would get a bruise there. The door handles in my house are far too high, they're that height on me. It's quite an odd place to bruise in there.*

39.5 In Employee A's statement, Employee A states *The Minister was upset at missing this [the huddle/stand-up] and grabbed Employee A and pulled/dragged Employee A outside'* [see further comment below regarding the latter part of this statement].

40. In making my finding, I have taken into account the following 'inconsistencies' in the information provided to me.

40.1 After the incident that occurred between Employee A and the Minister, Employee A went back inside the building and went to the room where the meeting of the parties was taking place. After the huddle/stand-up ended, Employee B also went into the meeting room. At interview Employee B stated as follows:

David *After the huddle you went back to the hui?*
 Employee B *Yeah.*
 David *And at the hui what happened?*
 Employee B *I saw Employee A and the word I have used to describe how Employee A looked was that Employee A looked traumatised. Employee A looked extremely upset, Employee A wasn't crying but just looked stunned and upset so I was concerned about Employee A. I was extremely busy and I didn't have time to have a full debrief with Employee A but I tried to be comforting.*
 David *You went over and saw Employee A?*
 Employee B *I went over to Employee A, I said, "Are you alright?" Employee A said, "No." I can't remember the words Employee A used but Employee A basically let it be known to me that the Minister had been upset with Employee A about the huddle. I was surprised and I said, "That's my fault, I've already apologised to her about that." We didn't speak much, really. I was really busy and I just said to Employee A, "That's no good, let's talk about this when we get back."*
 David *Employee A didn't go into any detail as to what the Minister said to Employee A?*
 Employee B *Just that Employee A had been blamed for not getting her in the huddle.*
 David ***Did Employee A raise with you the fact that the Minister had grabbed Employee A by the arm and taken Employee A outside?***
 Employee B ***No, not that I remember. I would remember that but I don't think Employee A did.***

[NB: Emphasis mine]

- 40.2 At her interview with me the Minister, properly, alluded to this matter.
- 40.3 In my view nothing turns on the fact that Employee A failed to mention to Employee B at this point that s/he had been grabbed by the Minister. Employee B was 'extremely busy'; Employee A was upset (see also further comment on this matter below); arrangements were made to follow up on the matter when they both got back to Wellington.
- 40.4 In the (redacted) email to the Prime Minister dated 29 August 2018 it is stated that the Minister *grabbed one of her staff by the arm and held Employee A forcibly pinching Employee A at Gisborne this week.*
- 40.5 In the (undated) note of the meeting held on 30 August 2018 attended by Morag Ingram, Aidan Ruland, Employee B and Employee A reference is made to *the grab/pinch left a bruise which Employee A showed us.*
- 40.6 At interview(s) with me, Employee A spoke about being 'grabbed' by the Minister. Employee A made no reference to being pinched, forcibly or otherwise. Given this the reference in the (redacted) email and the subsequent DIA meeting note are wrong.

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

41. At the initial 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]

42. As previously stated in this Report the Minister denies touching Employee A. It therefore follows that from her perspective she did not drag/pull Employee A from the room.
43. Given the position of the Minister on this particular matter at my second interview with Employee A, I asked Employee A to clarify the earlier statement to me at the first interview that the Minister 'pulled Employee A outside'.

David *You were in the foyer at "A", looking at the diagram, and the two of you moved to here to "C" which is outside the meeting room or the entrance way to the meeting room.*

Employee A *Yeah, I guess it's [indistinct 9.15] driveway.*

David ***Did you follow her out to that area or was she physically holding you?***

Employee A ***By then she'd let go so I went with her.***

David *When you say "by then", what do you mean by that?*

Employee A *She said she needed to talk to me and I needed to go outside.*

David *That was in the foyer?*

Employee A ***That was in the foyer, she let go and we went outside.***

David ***She let go of you and then you went outside.***

Employee A ***Yeah.***

[NB: Emphasis mine]

44. Later in the same interview Employee A confirmed this matter to me.

David You confirm that she didn't escort you out to "C", she grabbed your arm then you turned and walked out.

Employee A "We need to talk, go outside and talk," that phrase that she said sounds right, absolutely. **She let go so we walked outside, I think I followed her.**

[NB: Emphasis mine]

45. Again, later in the same interview Employee A confirmed, again, this matter to me.

David You may remember post-interview I asked you a couple of comments on your interview and the first question was, "Was the Minister holding on to you as she took you outside."
"No."

Employee A **Not when she took me outside, she'd let go by then.**

And on the same page

Employee A She let go of me, that was She let go of me before we went outside so outside she was not holding on to me. She was still quite close, a couple of feet.

David **But she didn't escort you outside.**

Employee A **No.**

David **And she didn't touch you outside.**

Employee A **No, she didn't.**

David The distance between you and the Minister when you were talking about the huddle/stand up was approximately two feet.

[NB: Emphasis mine]

46. 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.

47. On this matter I also note that:

47.1 The (redacted) email sent to the PM dated 29 August 2018 makes no mention of Employee A being 'dragged/pulled' from a room.

47.2 The Statement from Employee A is incorrect in the sense that Employee A has subsequently denied to me that s/he was pulled/dragged' from the room.

C Did the Minister raise her voice at Employee A?

48. I have investigated this allegation in two parts, vis:

48.1 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? This observation occurred whilst she was in the foyer of the building.

48.2 Did the Minister raise her voice at Employee A after they had moved from the foyer to outside the building where over on the lawn the huddle/stand-up was taking place.

Part A: 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?

49. In the Statement of Employee A, Employee A stated as follows.

..... The Minister was upset at missing this [the media opportunity] and pulled and grabbed Employee A and pulled and dragged Employee A outside [I have not supported this part of the Statement in my findings]. The Minister proceeded to raise her voice to Employee A about how unhappy she was to have missed the opportunity, that it embarrassed the Minister, especially in her electorate, and that the Minister expected Employee A needed to be across everything and to have ^{9(2)(a)} eyes open for these opportunities at all times.

50. Having reviewed this matter, any implication that the Minister 'raised her voice' at Employee A, inside the meeting rooms, cannot be sustained. I have reached this conclusion based on the following information I received during my investigation.

50.1 At the first interview with me Employee A clearly states ‘...when we were outside she raised her voice...’

50.2 At her interview with me the Minister stated as follows.

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. ...

[NB: Emphasis mine]

Part B: Did the Minister raise her voice at Employee A after they had moved from the foyer to outside the building where over on the lawn the huddle/stand-up was taking place?

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

David When the Minister indicated to you that she’d missed a media opportunity etc and you said that she said that in a raised voice. Was that in the hallway or outside?
Employee A No, it was outside. Unfortunately, there was no one else around outside that I noticed.
David **That discussion was in an elevated tone, if you like.**
Employee A **That’s a good way to put it – elevated tone.**
David **Was she angry?**
Employee A **She was definitely angry, she was definitely mad that I had screwed up.**

[NB: Emphasis mine]

52. At the second interview with me, Employee A told me as follows.

Employee A I don’t remember seeing the huddle but we did have that conversation or very similar to that. Honestly, I was too scared to notice.

Comment

Employee A, could you elaborate on this. What do you mean 'scared'?

*I was shocked about being grabbed **and reprimanded so severely**, I just remember focussing on the minister and trying to hold back tears. She may well have pointed to a huddle, but I don't remember.*

David *The reason I'm asking that, Employee A, of course, is that what the Minister is saying, she pointed to the stand up and what you're now saying to me is that you can recall some of the words that she used but you can't recall seeing the huddle.*

Employee A *I don't recall seeing the huddle but she did say, "What's wrong with this?" This sounds familiar but I don't remember seeing the huddle over there. I remember her saying there was a huddle or a stand up, absolutely, we talked about there being a stand up.*

[NB: Emphasis mine]

And further

Employee A *It was forceful and direct and I would say she raised her voice, from my point of view. It was a forceful tone.*

53. At her interview with me, the Minister told me as follows.

Hon Whaitiri *Yes.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."*

...

And further

Hon Whaitiri *Sure. Again, getting told around expectations of your job in clear and strong language.*

David *What do you mean "strong language"?*

Hon Whaitiri *The way I asked the question, like I said, "What is that? What's missing?"*

David *Pointing your finger.*

Hon Whaitiri *Pointing my finger.*

Counsel *Pointing at what, Minister?*

Hon Whaitiri *At the stand up. That was the whole reason why I asked Employee A to come outside because then Employee A could see rather than me going whatever. I've always found that it's best to show people so they get a context and that's what I did. There were two reason why I asked Employee A out – one, because it was happening; two, it was too noisy inside so part of me thought it best to go] outside was then I could just point so Employee A could get a very clear, "What's that? What's wrong with that picture? This is what I expect you to be able to help me manage." Obviously if that scared Employee A but that was not what I was doing. Not pointing at Employee A, I was pointing at the situation and asking very direct questions and then being really clear, "This is your role." It all took about two minutes because while I was doing that, like I said, the stand up was over, people were walking past and the film crew walked*

right into our conversation and it completely stopped.

54. 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.

55. My reasons follow.

55.1 Whilst at her interview with me the Minister told me that she was not 'angry' with Employee A (for not being in the huddle/stand-up), but rather 'disappointed', her action in grabbing Employee A by the arm and going outside with Employee A strongly suggests to me that the Minister was, in fact, angry with Employee A.

55.2 The language she used with Employee A outside the meeting rooms supports my view of this matter e.g.

'We need to go outside, we need to talk'

'What's that over there?'

'What's wrong with that picture?'

'Employee A, this is your job. This is what you're supposed to be watching out for'.

This is what I can only describe as forceful and/or demanding language, the type of language one would use if angry and/or annoyed, particularly given the Minister's position and status in the Gisborne community and in the electorate. After all, here was the Prime Minister

and other Ministers of the Crown participating in the media opportunity; the Minister was not and yet it was 'her' electorate.

55.3 The fact that the Minister was pointing to the huddle/stand-up whilst she was talking to Employee A, further confirms my view of this matter.

55.4 Employee A has been consistent in respect to the raised tone the Minister used with Employee A e.g.

- At the first interview with me Employee A described the Minister as being '*...definitely angry, she was definitely mad that I screwed up*'.
- At interview with me, Employee B told me that Employee A had [said] '*... Employee A basically let it be known to me that the Minister had been upset with Employee A about the huddle...*'
- At the second interview with me Employee A described the Minister's tone as being forceful

David *When you had that first encounter with the Minister in the foyer "A", what was the tone of her voice?*

Employee A *The tone was forceful, I'd say. I'd say it was a forceful tone.*

David *But she didn't yell at you.*

Employee A *It was raised but not yelling.*

And further during that interview

- The tone of the voice was '*....forceful and direct and I would say she raised her voice, from my point of view. It was a forceful tone.*

Other Matters

Impact on Employee A of Minister's Actions

56. In this Report I have found that the Minister did grab Employee A and did talk to Employee A in a raised voice at the Ngati Porou meeting on 27 August 2018.

57. Given my findings on these two matters, I believe it appropriate to mention, in summary form, the impact on Employee A of the Minister's actions.

57.1 In respect to being grabbed by the Minister, Employee A told me at the first interview that the Minister's actions....*scared the living daylight out of me*' and *it [the grabbing] freaked me out.*

57.2 In respect to being grabbed by the Minister and subsequently reprimanded by the Minister, Employee A told me that s/he *...didn't want anyone to see me crying, I didn't want the Minister to see me crying.*

57.3 Employee B told me that when s/he saw Employee A back in the meeting room:

Employee B ***I saw Employee A and the word I have used to describe how Employee A looked was that Employee A looked traumatised. Employee A looked extremely upset, Employee A wasn't crying but Employee A just looked stunned and upset so I was concerned about Employee A. I was extremely busy and I didn't have time to have a full debrief with Employee A but I tried to be comforting.***

David *You went over and saw Employee A?*

Employee B *I went over to Employee A, I said, "Are you alright?" Employee A said, "No." I can't remember the words Employee A used but Employee A basically let it be known to me that the Minister had been upset with Employee A about the huddle. I was surprised and I said, "That's my fault, I've already apologised to her about that." We didn't speak much, really. I was really busy and I just said to Employee A, "That's no good, let's talk about this when we get back."*

[NB: Emphasis mine]

57.4 At the first interview with me, Employee A told that s/he was 'too scared go back and work in the Minister's office'. At this interview with me Employee A told me as follows:

David *.....Is there anything else that you want to tell me, Employee A, about the incident?*

Employee A *I don't think there was anything else to add. It scared me a lot and I didn't want to return to that workplace, that work environment.*

Other matters Not Relevant to my Investigation

58. During the course of my investigation a number of other matters were brought to my attention. In my view, given my Terms of Reference, these matters, whilst perhaps providing some context to the scope of my investigation, were not directly relevant to it. Having regard to the interview transcripts and except as already referred to in this report and in no particular order, these matters are as follows.

58.1 The events that took place immediately prior to 27 August 2018 involving Employee A and the Minister.

58.2 The events that took place immediately after the incident on 27 August, in the afternoon of that day and prior to Employee A returning to Wellington and the Minister travelling to Rotorua.

58.3 Whether or not 9(2)(a) apologised to the Minister after the huddle/stand-up for not including the Minister in it.

58.4 The events that took place after Employee A (and Employee B) returned to Wellington following the Gisborne meeting.

58.5 The text thread between the Minister and Mike Munro, the PM's Chief of Staff, following receipt by Mr Munro of the (redacted) ~~text~~ [email] from a member of the public.

Comments on Letter Received from Counsel for the Hon. Meka Whaitiri

59. On 19 September 2018 I received from Counsel for the Minister, a letter raising a number of concerns about my draft report – see also paragraph 22A above.
60. I have given careful consideration to the matters raised by Counsel for the Minister. I do not accept that the conclusions I have reached in this report are *not sound or sustainable* as alleged by Counsel. I comment on the matters raised by Counsel below using, where appropriate, the paragraph headings found in the letter.

Threatening email of 29 ~~September~~ [August]

61. I accept that the language used in the email sent to the Office of the Prime Minister contained strong language. However I note that the first time Employee A became aware of and saw the email was when s/he met with Employee B (and during the meeting, with Mike Munro) on 29 August 2018. Employee A was not the author of the email and therefore had no control of the language used in that email. In my view, this does not create an ‘inconsistency’ in the position of Employee A and what s/he subsequently told me at interview.
62. Further, the fact that Employee A used less emotive and dramatic language than that used by the author of the email when Employee A described to me at the interviews with me what actually happened on 27 August 2018, adds to Employee A’s credibility in the sense that s/he was obviously not influenced by the language s/he saw being used in the email.
63. I did not interview either Employee A’s friend or the author of the email. This was a deliberate decision on my part as what they could have told me would be hearsay ‘evidence’, which, in the context of my investigation would not be helpful to me in reaching my findings.

'Complaint process' initiated by Ministerial Services, once wider political context known

64. Counsel is correct. Employee A did not initiate the complaint. It was initiated by Employee A's employer. I do not accept that this impacts on the veracity of the complaint or the subsequent investigation as Counsel implies. An incident took place involving the Minister and Employee A. As a good employer DIA had an obligation to address this matter with its employee when it became aware of the incident. It did so by commissioning an investigation into the matter.
65. Further, in my view, the fact that Employee A's employer initiated the investigation adds to the credibility of Employee A in the sense that s/he did not return to Wellington from Gisborne seeking to somehow punish the Minister. Employee A was upset about what had occurred between Employee A and the Minister (Employee B used the term 'traumatised' when the former saw Employee A post the incident). This upset manifested itself in Employee A not wanting to return to work in the Minister's office.

Finding of grabbing: lack of basis for credibility finding

66. I do not accept that I have in anyway erred in my finding that the Minister grabbed Employee A to get Employee A's attention.

Employee A described to me what happened as far as s/he was concerned; the Minister had a contrary view as to what happened. Further there were no witnesses to the event (or at least none were noted to me by either Employee A or the Minister). Given this it was totally appropriate for me to attempt to reconstruct events. On the balance of probabilities I preferred the 'evidence' of Employee A, which in the context of my Terms of Reference, I am entitled to do.

Version of Events change

67. In my experience it is inevitable that in an investigation of this type, inconsistencies may arise. The critical question however is if there are inconsistencies in the 'evidence' are they fatal to the findings reached by the investigator?
68. In the present instance it is accepted that the notes of the meeting Employee A had with [DIA] on 30 August, reference is made to Employee A having been grabbed/pinched by the Minister; reference is also made in the same notes to Employee A being pulled/dragged outside by the Minister.
69. To Employee A's credit, in my view, at interviews with me Employee A told me that s/he was not pinched by the Minister and further, s/he was not pulled/dragged by the Minister from the room. Are these fatal inconsistencies in respect to my findings? In my view they fall well short of being fatal. Indeed, again in my view, they enhance the credibility of Employee A in terms of my investigation.

Wider circumstances of events in Gisborne

70. I have noted in this Report that there were no witnesses to the incident involving Employee A and the Minister. Given this, and given what I understood to be subsequent media coverage of the matter, I would have thought that it was incumbent on the Minister to raise with me, at interview, any persons she felt could have assisted me in my investigation. She did not do so.

Employee A had not checked for a bruise

Reliance on photographs

72. I accept that at interviews with me Employee A variously described the grab that s/he had received from the Minister as being 'hard' (at interview with me

on 5 September 2018) or 'quite hard' (at interview with me on 12 September 2018). Again I do not accept that this is an inconsistency that invalidates or proves fatal to my finding that the Minister did, in fact, grab Employee A.

73. Neither do I accept that Employee A was 'less than clear' on exactly where the Minister grabbed Employee A. In reviewing this matter, for the purposes of my Report, I found the explanation given to me by Employee A credible and consistent with Employee A being grabbed by the Minister from behind.
74. Further, I do not accept the fact that Employee A only noticed the bruise on the arm when s/he was at the meeting with [DIA] on 30 August 2018, somehow invalidates this 'evidential' matter. The reality is that Employee A did have a small bruise on an arm. The photographs (both those taken by Ms Ingram and the selfie taken by Employee A) show this bruise.
75. I also note that at my second interview with Employee A, I closely questioned Employee A as to possible other causes for the bruise. Employee A, in response, satisfied me that the bruise had been caused by the action of the Minister in grabbing Employee A.
76. Further on this matter, I note the evidential standard that I applied in reviewing the information I received during the course of my investigation – see above. The standard I used was not the criminal standard; it was the civil standard. Based on this standard I found it more likely than not that the bruise on the arm of Employee A was a result of the Minister grabbing Employee A.
77. Finally on this matter I note that Counsel has not challenged the evidential basis that I have applied to the information I have considered in reaching my findings.

Finding that Ms Whaitiri raised her voice

78. For the reasons in my Report I am satisfied that there is a clear evidential basis for my finding that the Minister did raise her voice at Employee A.

Draft findings regarding impact on Employee A of Minister's actions

79. I accept that after the Minister and Employee A left the meeting on 27 August 2018, nothing of an unprofessional or less than cordial nature took place between the Minister and Employee A.
80. In making the above point I do not accept Counsel's view that I have somehow overstated the impact of the Minister's actions on Employee A earlier that day.

Lack of training and induction

81. In my view the matter raised by Counsel under this sub-heading are outside the scope of my investigation, and in the context of the scope, irrelevant.

Proactively released by the Department of Internal Affairs

Findings

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

82. 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.

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

83. 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.

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?

84. 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.

Dated at Wellington this _____ day of September, 2018

David Patten
Barrister
Wellington