

# Retrospective claimant funding policy

Waitangi Tribunal *National Fresh Water and  
Geothermal Resources Inquiry* (Wai 2358) Stages 1 and 2



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*



**Te Kāwanatanga o Aotearoa**  
New Zealand Government

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# Purpose

The Crown has a responsibility to make the processes of the Waitangi Tribunal accessible for claimants in a realistic and practical way. In *Whakatika ki Runga* (Wai 3060), a mini-inquiry into funding for claimants’ participation, the Tribunal set out that this responsibility is an outcome of the creation of the Tribunal under the Treaty of Waitangi Act 1975, and further arises under the principles of partnership, equity, active protection and rangatiratanga.

To give effect to this responsibility, Cabinet agreed in July 2023 to an interim common claimant funding policy which applies across government.<sup>1</sup>

In its 2022 brief of evidence for *Whakatika ki Runga*, te Manatū mō te Taiao | the Ministry for the Environment (the Ministry) committed to:

- fund the claimants in the remaining stages of Wai 2358 (National Freshwater and Geothermal Inquiry); and
- retrospectively fund claimants who participated in Stage 1 (hearings held in 2012) and Stage 2 (hearings held in 2016-2018).

In March 2024, the Ministry launched its claiming funding policy for the remaining stages of the Wai 2358 inquiry (i.e. Stage 3),<sup>2</sup> drawing on the interim common claimant funding policy for lead agencies agreed by Cabinet.

The purpose of this document is to outline the retrospective claimant funding policy for those who participated in the Stage 1 and/or Stage 2 hearings, as set out below:

Stage 1 hearings	
Date	Location
9-16, 19-20 July 2012	Waiwhetu Marae, Lower Hutt
Stage 2 hearings	
Date	Location
7-11 November 2016	Waiwhetu Marae, Lower Hutt
26-30 June 2017	Ohope Marae, Ohope
13-17 August 2018	Waitangi Tribunal offices, Wellington
26-30 November 2018	Waitangi Tribunal offices, Wellington

<sup>1</sup> [Interim-Common-Claimant-Funding-Policy.pdf \(justice.govt.nz\)](#)  
<sup>2</sup> [Claimant-funding-policy-stage-3-Wai-2358.pdf \(environment.govt.nz\)](#)

<sup>4</sup> Retrospective claimant funding policy:  
Waitangi Tribunal National Fresh Water and Geothermal Resources Inquiry (Wai 2358) Stages 1 and 2

# How will the retrospective claimant funding policy for Stages 1 and 2 differ from the Stage 3 claimant funding policy?

Stage 3 participants are able to seek claimant funding prior to, or shortly after, the hearings. Further, Stage 3 claimants and interested parties are able to seek funding based on the actual and reasonable amounts of their costs, either through reimbursement or requesting that the Ministry make travel and accommodation bookings on their behalf.

Given the passage of time since the Stage 1 and 2 hearings, there are two challenges in providing retrospective claimant funding, compared to Stage 3:

- confirming the participants; and
- identifying the costs for those participants.

While we know who spoke at the Stage 1 and 2 hearings by searching the Tribunal transcripts, there are likely to be many more who attended but did not speak at the hearings. There are no available records of the total number of participants in these hearings, so we are pro-actively reaching out to claimants and interested parties, via their counsel and individually, to invite them to seek retrospective funding if they participated.

The other challenge is meeting the current policy standard of providing evidence of the actual and reasonable costs, for expenses such as travel and accommodation, incurred by those who participated in the Stage 1 and 2 hearings. We do not think it would be reasonable for the Ministry to expect claimants and interested parties to be able to provide detailed records of such expenses, dating back to as long as twelve years ago, to be eligible for funding.

Instead, our approach will be to ask claimants and interested parties to complete the attached application form (also available here <https://environment.govt.nz/publications/waitangi-tribunal-national-fresh-water-and-geothermal-resources-inquiry-wai-2358-stages-1-and-2-retrospective-claimant-funding-application-form>), by answering a series of high-level questions about their participation in the hearings. Claimants will be asked to sign the form to attest that their responses to these questions are made to the best of their recollection.

The Ministry will use the responses to these questions to determine the total amount of funding each claimant and interested party is eligible for, by applying standardised rates for each type of cost.

# Who is eligible for retrospective claimant funding?

Consistent with the funding policy for Stage 3 participants, retrospective claimant funding may be available to the following participants in Stages 1 and/or 2 of the inquiry:

- claimants
- claimant witnesses; and
- up to three support people per claimant, or per claimant witness who gave evidence or presented to the Tribunal hearing.

Interested parties (including their witnesses and support people) can also access funding if they:

- were identified by the Tribunal as an interested party in Wai 2358;
- were eligible to make a Tribunal claim; and
- participated in Stages 1 and/or 2 of Wai 2358.

Where claimants or interested parties are in the name of entities such as trusts, the Ministry will provide funding to a representative or representatives of that entity who participated in Stages 1 and/or 2.

We are aware of a number of instances where, sadly, some claimants or interested parties have passed away since the Stage 1 and 2 hearings. The next-of-kin or beneficiaries of those claimants or interested parties will be able to seek the funding which would have otherwise been available to them.

Claimants or interested parties who are named in more than one claim can only be funded once for participating in a particular hearing.

Witnesses whose participation was funded through other sources, such as legal aid or Crown Forestry Rental Trust funding, are not eligible for retrospective claimant funding for the same costs.

# What funding may be provided?

As noted above, the Ministry will ask claimants, interested parties and support people to complete an application form which asks a series of questions about their participation in Stage 1 and/or 2 hearings. The Ministry will use the information gathered to determine the amount of retrospective claimant funding to be paid. This will be calculated using standard rates for each cost category, as set out in the following table:

Standard rates for retrospective claimant funding		
Cost category	Amount	Rationale
Travel – flights	\$500 for return trip, including transfers.	Comparable to the amounts provided to participants in the Wai 2700 (Mana Wahine – 2021) and the Wai 2575 (Health – 2022) kaupapa inquiries.
Travel – mileage	At the standard IRD per km rate at the time of the hearing (the Ministry will calculate this based on the claimants' home location at the time and the location of the hearing).	Consistent with the interim common claimant funding policy and previous inquiries.
Accommodation – commercial	\$200 per day attending the hearing.	Comparable to the rates for the Wai 2915 (Oranga Tamariki – 2020), Wai 2700, Wai 2750 (Housing – 2021), Wai 2575, Wai 3060 (Justice – 2022), and Wai 2660 (Marine and Coastal Area – 2022) inquiries.
Accommodation – private residence or marae	\$50 per day attending the hearing.	Consistent with the amount provided for Wai 2660 claimants.
Food	\$50 per day.	Comparable to the rates for the Wai 2915, Wai 2700, Wai 2750, and Wai 2575 inquiries.

# What will not be funded?

While the interim common claimant funding policy allows funding to be provided for preparatory hui, it is much more difficult to verify such hui on a historical basis (unless counsel hold records, for example). Accordingly, claimants or interested parties who wish to seek retrospective claimant funding for preparatory hui will need to provide further information, such as minutes of the hui, before the Ministry will consider making a payment.

Although the interim common claimant funding policy also enables claimants to seek funding to undertake research to support their claims, this must be agreed with the lead agency in advance. Given the retrospective nature of claimant funding for Stages 1 and 2 of the Wai 2358 inquiry, and the fact that agreement to fund research in advance would not have been possible in this instance, research costs will not be eligible for funding.

The Ministry cannot fund time, lost wages or legal costs for claimants, claimant witnesses, or their support people.

# How long will funding be available for?

The Ministry will be accepting funding applications until 31 May 2025, as retrospective claimant funding will not be available beyond the 2024/25 financial year. The Ministry recommends that funding applications are made as soon as possible to ensure there is enough time for the Ministry to work through any outstanding matters with applicants before the end of the 2024/25 financial year.

The Ministry will be reaching out to claimants and interested parties via their counsel, in the first instance, to ensure they are aware that they may be eligible for funding. We will also be following up directly with claimants and interested parties before applications close.

# How do claimants seek retrospective claimant funding?

Simply complete the attached application form (also available here <https://environment.govt.nz/publications/waitangi-tribunal-national-fresh-water-and-geothermal-resources-inquiry-wai-2358-stages-1-and-2-retrospective-claimant-funding-application-form>) and send it to [claimantfunding@mfe.govt.nz](mailto:claimantfunding@mfe.govt.nz)

If claimants and interested parties require further information or wish to speak with someone regarding funding queries or needs, they can request information or contact a Ministry official via this email.