

Kaupapahere pūtea kaikerēme Claimant funding policy

Waitangi Tribunal inquiries

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Background

The Crown has a responsibility to make Waitangi Tribunal processes accessible for claimants in a realistic and practical way. In *Whakatika ki Runga*, the Waitangi Tribunal set out that this responsibility is a corollary of the creation of the Waitangi Tribunal under the Treaty of Waitangi Act 1975, and further arises under the principles of partnership, equity, active protection and rangatiratanga.¹

To give effect to this responsibility, Cabinet mandated the Interim Common Claimant Funding Policy for Lead Agencies (the “Interim Claimant Funding Policy”) (see [Appendix 1](#)) on 31 July 2023 which applies across government. The Interim Claimant Funding Policy sets out minimum funding requirements for agencies leading kaupapa inquiries.

Accordingly, this policy should be applied for all contemporary Tribunal inquiries that Manatū mō te Taiao | Ministry for the Environment (the Ministry) is the lead agency for.

Purpose

The purpose of this claimant funding policy is to outline the funding available for all Waitangi Tribunal inquiries that the Ministry is the lead agency for and how that funding will be administered.²

This claimant funding policy covers:

- who can access funding, including funding to support the participation of kaumātua, whānau hauā and tangata turi
- what funding can be provided for:
 - Tribunal events
 - preparatory hui
 - post-inquiry engagement
 - research
- how to access funding
- guidance on what is actual and reasonable.

This claimant funding policy aligns with the interim common claimant funding policy and is subject to any whole-of-government review.³ In the event of any inconsistency, please refer to the Ministry policy.

¹ Waitangi Tribunal. 2023. *Report on Whakatika ki Runga, a Mini-Inquiry Commencing Te Rau o te Tika – Pre-publication Version*. Wellington: Waitangi Tribunal.

² With the exception of [Wai 2358 retrospective funding and stage-3 funding](#) which have separate policies.

³ Plans for a long-term funding system is outlined in the [Cabinet paper](#) approving the interim claimant funding regime.

Who can access funding

Claimants and claimant witnesses (including up to three support people) participating in an inquiry can access funding. Funding is also available to support people, to ensure all claimants have the tautoko they need during hearings. The funding will ensure kaumātua, whānau hauā and tangata turi can participate.

Interested parties (including their witnesses and support people) may be eligible for funding. This will be determined on a case-by-case basis.

What funding will be provided

Funding for attending Tribunal events

The following costs will be provided for claimants, claimant witnesses, and up to three support people per claimant or claimant witness participating in a Tribunal event:

- domestic travel, where required (such as transport between airports, accommodation and event venues), including:
 - domestic flights where required (actual and reasonable costs)⁴
 - buses, ferries, trains and rental cars (actual and reasonable costs)
 - petrol (actual and reasonable costs) or mileage (\$0.95 per kilometre)⁵
 - taxis or ride share options (actual and reasonable costs)
- parking (actual and reasonable costs)
- accommodation where required (actual and reasonable costs)
- meals (excludes alcohol and minibar) up to \$73 per person per day excluding GST.⁶

The Tribunal recommends that agencies provide a mechanism for upfront funding that does not depend on claimants submitting receipts for reimbursement. The Ministry will consider the use of Tandem, its travel management supplier, to provide claimants the option of upfront funding for travel, accommodation and meals.

Where the specified amounts for mileage and meals do not seem sufficient, agencies can fund higher amounts on a case-by-case basis. Examples of when this discretion may be used include when a location has limited meal options that are high in price, or when there are higher-than-average travel costs for the time of the event.

4 See [What is actual and reasonable for more guidance](#).

5 Use [kilometre rates](#) for the applicable tax year as specified by Inland Revenue. For the 2022/23 financial year this is 0.95 cents per kilometre. Inland Revenue publishes the rates after each tax year ends. However, if the rates for the tax year have not yet been published, continue to use the latest available rate from the previous tax year.

6 \$83.95 inclusive of GST (October 2023).

Funding for preparatory hui

The Ministry will fund the actual and reasonable costs for claimants to hold preparatory hui for claimants and claimant witnesses to meet and prepare for Tribunal events. This will include:

- claimants and claimant witnesses (including up to three support people⁷) to travel to and from preparatory hui (subject to the same parameters as attending Tribunal events above)
- venue hire
- audio-visual equipment hire
- catering
- any required accommodation.

Additional costs will be considered on a case-by-case basis through discussion with claimants.

Funding of research costs

The Ministry will consider requests from claimants to fund research to support their claims. This will involve:

- considering whether the research has a clear link to the claim
- working with the Tribunal and claimants to identify the research topic, whether the research is useful, and who should fund the research.

The Ministry will endeavour to reach agreement with claimants regarding the research topic, who undertakes the research, and what review and quality assurance processes will be in place. However, the Ministry can still fund claimant research where it is agreed they will have limited input into these matters.

The Ministry will engage with the claimant group in a co-ordinated way. Claimants can be funded as a collective.

Funding post-inquiry engagement

The Ministry may fund the actual and reasonable costs of claimants and their support people attending any post-inquiry engagement, including hui between claimant groups and with MfE.

The Ministry may fund other engagement with claimants outside the inquiry process. This will be assessed on a case-by-case basis.

Consideration should be given to the Cabinet Office Circular 19(3) *Better Co-ordination of Contemporary Treaty of Waitangi Issues*, particularly paragraph 1, which outlines the requirements when undertaking formal engagement.⁸ Informal conversations and engagement regarding the Ministry's approach to Tribunal recommendations should be had with claimants before seeking approval from Cabinet on a formal approach.

⁷ More support people can be funded where reasonable and will be determined on a case-by-case basis.

⁸ Available from the [Department of the Prime Minister and Cabinet's website](#).

Funding for one-off costs

Different claimants will have different needs. To respond to these diverse needs, the Ministry may fund other costs not expressly included in this policy where reasonable, on a case-by-case basis. These could include, for example, costs to participate virtually, or koha for staying overnight in a private residence or marae. The Ministry and claimants or claimant counsel will agree to these costs ahead of costs being incurred.

What cannot be funded

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

What is actual and reasonable

Claimant participation is the priority, but when deciding what is actual and reasonable the Ministry will also consider:

- if claimants, claimant witnesses and support people need to be accommodated overnight
- the distance people must travel and if a suitable form of transport has been selected
- if the number of people from a claimant group and support people attending the event is reasonable
- the comparable costs for travelling to the location at the time of the event
- the comparable costs for accommodation in the location at the time of the event.

The Ministry will discuss with claimants or claimant counsel what amounts might be reasonable ahead of costs being incurred or rejecting any payments.

Reasonable costs should include funding additional support to enable kaumātua, whānau hauā and tangata turi to participate. This could include extra nights' accommodation to avoid long periods in cars, extra costs of accessible accommodation, accessible taxis, or provisions for service animals. This is not an exhaustive list, and other costs will be considered by the Ministry on a case-by-case basis.

Appendix 1

Claimant funding in Waitangi Tribunal kaupapa inquiries

Interim common claimant funding policy for lead agencies

31 July 2023



New Zealand Government

Purpose

This interim claimant funding policy establishes:

- what funding (at a minimum) lead agencies for Waitangi Tribunal (Tribunal) kaupapa inquiries are required to provide claimants, and
- where lead agencies have discretion to fund other claimant costs.

The purpose of the policy is to provide more consistency in the funding available to claimants across Waitangi Tribunal kaupapa inquiries and enable lead agencies to be responsive to claimants' specific needs where necessary. This is an interim policy and is intended to be in place until a long-term claimant funding system is developed. It was agreed by Cabinet on 31 July 2023 (CAB-23-MIN-0337.01).

Lead agencies are responsible for communicating to claimants and claimant counsel what funding they will provide to claimants under this policy and administering that funding. The policy covers:

- who can access funding including funding to support the participation of kuia, kaumātua and disabled people
- what funding can be provided for:
 - Tribunal events
 - preparatory hui
 - post inquiry engagement
 - research
- a process for funding costs outside of this policy, and
- guidance on what is actual and reasonable.

This policy applies to claimant funding for kaupapa inquiries. Lead agencies for urgent contemporary inquiries should consider funding claimants according to this policy.

Who can access funding

Lead agencies will fund claimants, claimant witnesses and support people.¹ Support people will be funded to ensure all claimants have the tautoko and awihina they need during hearings. The funding will particularly ensure kuia, kaumātua and disabled people can participate. Agencies can decide to fund interested parties on a case-by-case basis.

What funding will be provided

Funding for attending Tribunal events

Lead agencies will fund the following costs for claimants and claimant witnesses to attend Tribunal events:

- domestic travel, where required (such as transport between airports, accommodation and event venues), including:
 - domestic flights where required (actual and reasonable costs)
 - buses, ferry, and rental car (actual and reasonable costs)
 - petrol (actual and reasonable costs) or mileage (\$0.95 per kilometre),² but not both
 - taxis or ride share options (actual and reasonable costs)
- parking (actual and reasonable costs),
- accommodation where required (actual and reasonable costs), and
- meals (up to \$73 per person per day excluding GST).

If higher amounts are needed: Lead agencies will fund mileage and meals according to the specified amounts included above. Where these amounts do not seem sufficient, agencies can fund higher amounts on a case-by-case basis. This discretion will not be used to regularly fund higher amounts than the policy. The discretion is for use, for example, when a location has limited meal options that are high in price, or when there are higher than average travel costs for the time of the event.

Support people: Lead agencies will also fund the above costs for up to three support people per claimant or claimant witness who is giving evidence or presenting at a Tribunal event. Lead agencies can fund more support people on a case-by-case basis where reasonable. This could include funding support people for claimants and claimant witnesses who are not presenting or giving evidence. Some Tribunal events may not require evidence to be presented.

¹ This may include non-government organisation staff who are support people.

² Use kilometre rates for the applicable tax year as specified by Inland Revenue. For the 2022-2023 income year this is 0.95 cents per kilometre. Inland revenue publishes the rates after each tax year ends. However, if the rates for the tax year have not yet been published continue to use the latest available rate from the previous tax year.

Funding for preparatory hui

Lead agencies will fund the actual and reasonable costs for claimants to hold preparatory hui for claimants and claimant witnesses to meet and prepare for Tribunal events. This will include funding of members within a claimant group and claimant witnesses to travel to and from preparatory hui (subject to the same parameters as attending Tribunal events above), venue hire, audio-visual equipment hire, and catering. Lead agencies will also fund any required accommodation. Agencies can fund other costs on a case-by-case basis and should discuss what costs could be covered with claimants.

Support people: Lead agencies will fund up to three support people per claimant group for preparatory hui. Lead agencies can fund more support people on a case-by-case basis where reasonable.

Funding of post inquiry engagement

Where Cabinet has agreed to engagement with claimants in response to the Waitangi Tribunal's recommendations, and this response requires ongoing engagement with claimants, lead agencies are expected to meet the actual and reasonable costs of claimants, and their support people, attending any required meetings or hui. If agencies intend to fund any other engagement with claimants outside the inquiry process, this is left to agency discretion and should be considered in light of Cabinet Office Circular 19(3) Better Co-ordination of Contemporary Treaty of Waitangi Issues.

Funding of research costs

Lead agencies will consider requests from claimants to fund research to support their claims. This will involve:

- considering whether the research has a clear purpose
- working with the Tribunal and claimants to identify the research topic, and
- working with the Tribunal on whether the research is useful and should be funded by the Tribunal or the lead agency.

Where possible agreement will be reached with claimants on the research topic, who undertakes the research, and what review and quality assurance processes will be in place. However, agencies can still fund claimant research where it is agreed that the agency has limited input into the above matters. Agencies should engage across the claimant group in a co-ordinated way. Claimants can be funded as a collective.³

³ For example, the Tribunal's Mana Wāhine Inquiry has a joint research committee which has the mandate and Crown funding to commission independent research on behalf of claimants.

What cannot be funded?

Agencies will not fund time or lost wages for claimants, claimants' witnesses, or their support people.

Funding costs beyond the policy

Funding of costs on a one-off case-by-case basis

Different claimants will have different needs. To respond to the diverse needs claimants may have, lead agencies can fund other costs not expressly included in this policy where reasonable on a one-off, case-by-case basis. This could include, for example, counselling sessions during the claim process, costs to participate virtually, or koha for staying overnight in a private residence or marae. Lead agencies will keep other lead agencies of all current inquiries informed of the types of costs of this nature that they are funding (eg things not communicated to claimants as being funded more consistently).

Regularly funding costs

Regularly funding costs outside of the interim funding policy could create unnecessary inconsistencies across inquiries and the wider justice system, or other government systems. To balance being responsive to specific claimant needs with the need to improve consistency in practice across inquiries, the lead agency of the relevant inquiry may consider funding beyond this policy on a regular basis (such as though communicating to claimants that a cost will be consistently funded that is not included within the interim funding policy) if it follows one of the approaches outlined below.

Funding that can be approved by agencies

The lead agency has the authority to approve exceptions to regularly fund additional costs beyond the interim funding policy in a particular inquiry where funding the cost fits within existing appropriations, does not have impacts on equality across wider systems, does not have wider policy implications or significant fiscal impacts and officials consider that it is not something that requires the interim funding policy to be updated.

Funding that must be approved by Ministers

If any of these conditions in the previous paragraph are not met, decisions on exceptions to regularly fund additional costs beyond the interim funding policy are to be put to the Minister of the lead agency considering the funding and the Minister of Justice. The Ministers will make a joint decision on the matter. They have the authority to agree exceptions in these circumstances where the cost can fit within existing appropriations and does not meet the threshold of a significant policy issue that should be considered by Cabinet.

The Minister of Justice will also consider if any amendment to the interim funding policy is required so that costs will also be met in other inquiries. The Minister has the authority to make minor updates as required, and will return to Cabinet if the changes being considered to the interim funding policy have wider policy implications, will significantly impact on equality across

wider systems (such as the justice system) or will have significant fiscal impacts across portfolios.

What is actual and reasonable?

What costs are actual and reasonable is a judgment call for lead agencies. Claimant participation is the priority, but when deciding what is actual and reasonable lead agencies will also consider:

- if there is a need for claimants and claimant witnesses to be accommodated overnight
- the distance people must travel and if a suitable form of transport has been selected
- if the number of people from a claimant group and support people attending the event is reasonable
- the comparable costs for travelling to the location at the time of the event, and
- the comparable costs for accommodation in a location at the time of the event.

Agencies will discuss with claimants or claimants' counsel what amounts might be reasonable ahead of costs being incurred or rejecting any payments. Information sharing between lead agencies on judgements about what is actual and reasonable will support consistency in practice. Reasonable costs should include funding of additional support to enable the participation of kuia, kaumātua and disabled people. This could include extra nights' accommodation to avoid long periods in cars, extra costs of accessible accommodation, accessible taxis, provisions for service animals. This is not an exhaustive list and other costs will be considered by lead agencies where needed.

Review of this policy

The Minister of Justice can make minor updates to the amounts included for meals as needed to ensure they are appropriate. If this policy is in place after 18 months, the Government will decide if it should be reviewed.