



Cabinet

Minute of Decision

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Responding to the Waitangi Tribunal's Recommendations for Claimant Funding

Portfolio **Justice**

On 31 July 2023, following reference from the Cabinet Māori Crown Relations: Te Arawhiti Committee, Cabinet:

- 1 **noted** that there is no whole-of-government claimant funding system endorsed at a Ministerial or Cabinet level for claimants in Waitangi Tribunal kaupapa and contemporary inquiries;
- 2 **noted** that without a claimant funding system, agencies have made their own decisions on how to fund claimants, resulting in funding being provided in an unclear, inconsistent and ad hoc way;
- 3 **noted** that the Waitangi Tribunal has found that the Crown breached its Treaty of Waitangi obligation to ensure that Māori claimants have the necessary resources to participate fully in all its processes;
- 4 **noted** the Waitangi Tribunal's long-term recommendation that the Crown and Māori engage in a process to design a suitable system to fund claimants in Waitangi Tribunal inquiries where there is no other claimant funding;
- 5 **agreed** to officials conducting targeted engagement with Māori to develop advice on next steps the Government could take in response to paragraph 4;
- 6 **invited** the Minister of Justice (the Minister) to seek Cabinet's agreement in mid 2024 to the next steps the Government could take in response to paragraph 4, and in doing so take account of the policy work undertaken to date, the proposed interim policy, what was heard from Māori during the Whakatika ki Runga Inquiry, and the Waitangi Tribunal's findings;
- 7 **noted** that for the short-term the Waitangi Tribunal recommended that the Crown:
 - 7.1 act urgently to require lead agencies to adopt a common set of claimant funding policies; and
 - 7.2 develop arrangements that no longer depend on claimants submitting receipts for reimbursement;

- 8 **agreed** (in response to paragraph 7.1) to the interim common claimant funding policy for kaupapa inquires (interim funding policy), attached as Appendix A to the paper under MCR-23-SUB-0022, that all lead agencies will apply until a long-term claimant funding system is in place;
- 9 **noted** that lead agencies with existing claimant funding policies for kaupapa inquiries will adopt the interim funding policy;
- 10 **agreed** that the Ministry of Justice will periodically update funding amounts for meals in the interim funding policy as required;
- 11 **agreed** that the lead agency of a relevant inquiry may approve exceptions to regularly fund additional costs beyond the interim funding policy where:
- 11.1 funding the additional cost fits within existing appropriations;
 - 11.2 funding the additional cost does not have impacts on equality across wider systems, wider policy implications or significant fiscal impacts; and
 - 11.3 officials consider it is not something that requires updating the interim funding policy;
- 12 **agreed** that if agencies cannot approve an exception to regularly fund additional costs beyond the interim funding policy under paragraph 11, then the Minister, in collaboration with the Minister of the lead agency of the relevant inquiry, may agree the exception in a particular inquiry 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;
- 13 **authorised** the Minister to make minor updates to the interim funding policy as required;
- 14 **noted** that the Minister will return to Cabinet if 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;
- 15 **noted** that if the interim funding policy is still in place after approximately 18 months the Minister will return to Cabinet to revise or update the policy as required;
- 16 **noted** that the financial implications of the interim funding policy are uncertain as they are dependent on when the Waitangi Tribunal commences inquiries and schedules events, how many claimants there are and the needs of those claimants;
- 17 **noted** that lead agencies with, or most likely to have, inquiry events in 2023/24 expect to be able to fund the implementation of the interim funding policy within baselines or within existing project funding;
- 18 **noted** that (in respect of paragraph 17), Section (9)(2)(f)(iv)
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- 19 **noted** that lead agencies for other inquiries, including those yet to commence, may also need to fund claimant participation according to the interim funding policy.

Rachel Hayward
Secretary of the Cabinet

Secretary's Note: This minute replaces MCR-23-MIN-0022. Cabinet agreed to amend paragraph 6.
