

Claimant funding in Waitangi Tribunal kaupapa inquiries

Interim common claimant funding policy for lead agencies

31 July 2023



MINISTRY OF
JUSTICE
Tabu o te Ture

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 awhina 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.