



Granting aid for Waitangi Tribunal matters

Operational policy

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Status of this Operational Policy and Effective Date

1. This operational policy replaces any prior Waitangi Tribunal policies or sections within the Granting decisions section of the online Provider Grants Manual. In all other respects, the relevant provisions of the current Provider Grants Manual continue to apply to legal aid for Waitangi Tribunal proceedings. For ease of reference those policy provisions are accessible via policy links throughout the document.
2. This operational policy consolidates and confirms a number of existing practices, as well as offering clarification of processes and requirements.
3. This operational policy comes into effect 1 October 2012.

Background

Introduction

4. This policy sets out the requirements for legal aid in Waitangi Tribunal proceedings. The aim is to establish consistent, fair and transparent requirements that legal aid providers can work within, and to ensure that the legal services provided to claimants meet the requirements of section 3 of the Legal Services Act 2011:

"The purpose of this Act is to promote access to justice by establishing a system that provides legal services to people of insufficient means; and delivers those services in the most effective and efficient manner"

History

5. In 1987, the Crown and the New Zealand Maori Council (NZMC) concluded an agreement to settle litigation, brought by the NZMC on behalf of Maori, relating to the transfer of Crown assets to state owned enterprises. The agreement included a commitment to provide legal aid for claimants to pursue their Treaty claims in Waitangi Tribunal proceedings.
6. The Treaty of Waitangi (State Enterprise) Act 1988 implemented that agreement by, among other things, amending the Legal Aid Act 1969. Provisions facilitating Legal Aid for Waitangi Tribunal proceedings have been retained in the Legal Services Act 2011.

The Waitangi Tribunal and Legal Aid

7. The Waitangi Tribunal was established in 1975 by the Treaty of Waitangi Act 1975. The Tribunal is a permanent commission of inquiry charged with making findings and recommendations on Treaty claims brought by Maori relating to actions or omissions of the Crown. Unlike other Commissions of Inquiry which may be set up, legal aid is available for claimants appearing before the Waitangi Tribunal.

8. Legal Aid Services may seek information from the Waitangi Tribunal at any time on issues regarding the nature and extent of a claim, the relationship between the claim and other claims, and other matters relevant to grants of legal aid for that claim. Section 49 of the Act requires the Tribunal to provide Legal Aid Services with the information sought.

Defined Terms

9. In this operational policy:

CFRT means Crown Forestry Rental Trust.

Claimant means a named claimant for an individual claim or a claim filed on behalf of a group that has filed a Treaty claim and has a Wai number.

Lead provider means the provider identified in the grant of legal aid as the lead provider for that matter

Legal Aid Services means the division within the Ministry of Justice responsible for the administration of the granting of legal aid and is administered by the Secretary of Justice with the functions set out in sections 68 and 69 of the Act, and the Legal Services Commissioner appointed under section 70 of the Act, with the functions set out in section 71 of the Act, and grants officers and other staff to whom the Commissioner has delegated powers, functions or duties as prescribed under section 72 of the Act.

OTS means the Office of Treaty Settlements

Provider means a person who is approved by the Secretary of Justice to provide legal services.

Supervised Provider Supervised providers are approved as supervised providers who may not have matters assigned to them, and who do not have the necessary experience or competence to be responsible for the overall management and conduct of any legal aid case including any substantive hearings.

The Act means the Legal Services Act 2011. All section references in this document refer to this Act unless otherwise specified.

Treaty means Te Tiriti o Waitangi/the Treaty of Waitangi as set out in schedule 1 to the Treaty of Waitangi Act 1975.

Tribunal means the Waitangi Tribunal established by section 4 of the Treaty of Waitangi Act 1975.

Wai number means the administrative number allocated to a Treaty claim by the Tribunal.

Relevant Statutory and Policy Framework

Legal Services Act 2011

10. The main provisions relating to legal aid for Tribunal proceedings are set out in sections 47 to 50 of the Act. Key matters covered by those sections are set out below:

- a) **Sections 47 and 48** specify the criteria that Legal Aid Services must take into account when considering a grant of legal aid, and provides that Legal Aid Services may apply conditions (i.e. relating to the purposes and/or the period for which aid is granted) to any grant.
- b) **Section 49 (1)** requires Legal Aid Services to seek a report from the Tribunal before making a decision in regards to the application for aid.
- c) **Section 49(2)** enables Legal Aid Services to seek an up-to-date report at any time where the Commissioner believes that the circumstances of the applicant or application have changed.
- d) **Section 50** details the conditions of repayment that may be imposed under a grant of aid made under section 47. Whilst the application of this section is considered when receiving an application for aid, its provisions are rarely invoked.

Other important provisions

11. In addition to these sections of the Act, other sections also affect the granting of aid and the administration of the grant in relation to Tribunal proceedings. Some of these are set out below and others are referred to within the text of this policy:
 - a) **Section 7(1)(f)** provides for legal aid to be granted in Tribunal proceedings.
 - b) **Section 10** outlines when legal aid may be granted (e.g. relevant considerations include an assessment of prospects of success). Note, however, sections 10(1), (2) and (4)(a) do not apply to legal aid applications for Tribunal proceedings.
 - c) **Sections 11(3), 16(4), 18(7)(a) and 36(5)** exempt Tribunal proceedings from the financial criteria relating to disposable income and capital and also from the standard civil Legal Aid charge on the proceeds of proceedings
 - d) **Section 16 (4)** provides that interim grants of legal aid cannot be made in Tribunal proceedings:.
 - e) **Section 28** outlines the requirements for the application for aid or the lead provider to request an amendment to the grant of aid, including an increase in funding.
 - f) **Section 30** allows the Commissioner to determine withdrawal of or amendment to a grant of legal aid or to amend the conditions on a grant of legal aid.
 - g) **Section 105** states that providers cannot take unauthorised payments (“top-ups”), unless authorised by Legal Aid Services.
12. Other provisions are referred to, where relevant, throughout the policy.

Relevant Policy

13. Legal Aid Services will from time to time develop and approve policy relevant to Tribunal legal aid. All such policies are available on www.justice.govt.nz in the information for lawyers section.
14. In particular, various parts of the Provider Grants Manual are relevant to Tribunal legal aid including:

- a) The “*Eligibility*” section
- b) The “*Granting Decisions*” section. In particular, attention is drawn to:
 - Assignment of provider
 - Delegation of work
 - Reassignment
 - Amendments to grant
 - Top up payments
 - Examinations
 - Withdrawal of aid
- c) The “*Applications for Legal Aid*” section
- d) The “*Reconsideration and Review*” section
- e) Provider rates, fixed fees and special rates

Services for Tribunal matters funded by Legal Aid Services

Legal Aid Services for Proceedings before Waitangi Tribunal

15. Legal Aid Services is defined in the Act as being “*legal advice and representation*” for proceedings before the Waitangi Tribunal and includes taking steps that are preliminary to any proceedings but pursuant to section 4(2) of the Act does not include assistance “*with resolving disputes other than by legal proceedings*”; “*taking steps that are incidental to any proceedings*”; or assistance “*in arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings*”.
16. Accordingly:
 - (a) A grant of legal aid is available to fund approved legal services and disbursements required to progress a particular claim or claims before the Tribunal.
 - (b) The legal services must be directly relevant to the Treaty claim; necessary to progress the Treaty claim and consistent with the approval and any conditions applied to that grant of aid.
 - (c) Delivered in the most effective and efficient manner.

17. Legal Aid Services will take a reasonable approach to what work is required and when, on a case by case basis. The most influential consideration will be the stage that an Inquiry is at and what work is required and when, to meet Tribunal timetabling.
18. Legal aid for Tribunal Proceedings is not available for:
 - a) Settlement negotiations and associated activities;
 - b) Other Court or Tribunal processes outside the Waitangi Tribunal;
 - c) Non-Tribunal activities;
 - d) Direct Funding of claimants; and
 - e) Watching briefs and goodwill/relationship maintenance

Settlement negotiations and associated activities

19. In accordance with section 4(2), Legal Aid Services does not fund legal services for settlement negotiations, including pre negotiation processes (such as pre-mandating negotiations and mandating processes).
20. Activities where funding for legal services is not available from Legal Aid Services includes:
 - (a) Negotiations with OTS regarding the settlement of claims;
 - (b) Work associated with settlement, or proposals for settlement from OTS even though a claim is still before the Tribunal;
 - (c) Any work resulting from discussions with OTS or work initiated by OTS regarding settlement of a claim.
21. Claimant funding to assist with negotiation costs is available through OTS to claimants in negotiations, in accordance with the Crown's negotiation policies.
22. Where there were existing grants for legal services for settlement negotiations prior to 1 July 2011, Legal Aid Services continued to manage those grants until 31 December 2011, when those grants were ended in accordance with the Act.

Other Court proceedings

23. Legal aid grants for Tribunal proceedings cannot be used for proceedings in the Maori Land Court or other courts, even if the issues raised appear to be similar to or are related to Treaty claims. This does not mean that legal aid is not available for those other proceedings - it means that a separate civil legal aid application is required and such applications will be subject to different provisions in the Act and/or other relevant policies

Non-Tribunal Activities

24. Legal aid is not available for other non Tribunal activities, for example:
 - (a) meetings with Ministers and lobbying, even if the issues raised appear to be similar to or are related to Treaty claims;
 - (b) file and office administration;

- (c) attendance and correspondence with Legal Aid Services staff or other agencies (for example, seeking funding) - this is administration and not the provision of legal services.

Direct Funding of claimants

- 25. Legal aid is for legal services undertaken by providers on behalf of claimants and is not available to fund work by claimants themselves on their claims, or to meet claimant expenses.

Watching Briefs and Goodwill/Relationship Maintenance

- 26. Legal aid is not available for simply observing and not otherwise participating in Tribunal proceedings and which are referred to as “*watching briefs*”. Approval through an application for legal aid and applications for amendment to grant can be sought for all other forms of participation even where the level of participation of a particular claimant group in an Inquiry is limited. For example where a claimant has been given leave to participate to a limited extent then approval can be sought for funding by the provider at least to the level at which leave was granted by the Tribunal.
- 27. While formal meetings with clients are funded, it is not appropriate to invoice for casual activities such as casual conversations at the end of a hearing day or shared meals and similar activities which might be regarded as goodwill and relationship building rather than legal work.

Applications for and grants of legal aid

General

- 28. Legal aid should be sought as soon as possible. Unless there are special circumstances an application should be made within three months of being instructed due to the invoicing time frames and the fact that legal aid may not be approved, in which case work and disbursements undertaken to the point that the decision is made will not be paid. Providers should minimise the work undertaken on the claim prior to a decision on the grant being made. Providers also need to advise their clients of the risk that Legal Aid may not be granted or may be granted subject to conditions and provide an explanation of why it is advisable to keep the amount of work done prior to any grant of aid to a minimum.

Eligibility

- 29. This Operational Policy should be read in conjunction with the *Eligibility* section of the Provider Grants Manual which applies to legal aid for Tribunal proceedings. This Operational Policy sets out additional matters from the Act, 2011 specific to Tribunal proceedings.
- 30. **Section 47 (1)** states that legal aid for Waitangi Tribunal proceedings can only be granted when:
 - (a) *the application is made by a Māori; and*
 - (b) *the claim to which the application relates is submitted, or is to be submitted, by that Māori for the benefit of a group of Māori of which the applicant is a member.*
- 31. **Section 47 (2)** states that the Commissioner may grant aid only if the Commissioner is satisfied:

- (a) *“that the case is one that requires legal representation, having regard to the nature of the proceedings and to the interest of the group of Maori for whose benefit the claim is submitted or is to be submitted; and*
 - (b) *that the group of Maori would suffer substantial hardship if aid were not granted; and*
 - (c) *that the interest of that group of Maori is not sufficiently protected by any other claim.”*
32. As these are key requirements for consideration of a grant of aid, legal aid providers must clearly identify in the supporting documents with the application for legal aid how the application meets these requirements.
 33. “Substantial hardship” includes but is not limited to financial hardship (i.e. the claimant(s) do not have the financial resources to pursue their claim). It may also include consideration of the consequences of the claimants not being able to progress a Treaty claim.
 34. Financial information is generally not required at the time of an application. However, section 48(1) states that when determining if the claimant group would suffer substantial hardship if aid were not granted, Legal Aid Services may take into account *“...not only the financial resources of those members of the group who are immediately involved in making the claim, but also the extent to which other members of the group, or any incorporated body that represents the members of the group, or both, might reasonably be expected to contribute towards the cost of the proceedings.”*
 35. If Legal Aid Services has reason to believe that the claimant group or members of it are reasonably able to fund legal representation without legal aid, then Legal Aid Services may seek details about:
 - (a) assets owned by the group/incorporated body;
 - (b) any significant assets privately or jointly owned by any members of the group;
 - (c) property or financial reserves including that owned by trusts (a copy of the trust deed and most recent financial statements will be required).
 36. In providing the requested information the provider should ensure that any relevant information about why it would be inappropriate for any part of the claimant group/incorporated body to fund legal representation is provided to Legal Aid Services including relevant obligations and whether any assets held were received as part of a Treaty settlement.
 37. Information relating to the financial eligibility of a claimant group will be referred to a Specialist Adviser for a recommendation before a decision is made.
 38. A legally aided person must have the support of the claimant(s) or claimant group (if there is one). Where there is a dispute between members of a claimant group (for example there are two counsel who have been instructed by different members of a claimant group), Legal aid funding will be suspended until the matter has been resolved.
 39. Legal Aid Services does not fund disputes between Waitangi claimants. Where there is a dispute between claimants and Legal Aid Services considers that the issue under dispute is not

driven by an action taken by the Crown, all legal aid funding will be suspended until the matter has been resolved.

40. Where there is such a dispute, Legal Aid Services may require the provision of updated documentation that evidences the position of the legally aided person within the claimant group.

Requirements for Applications for Legal Aid

41. Applicants for legal aid must have submitted a claim to the Tribunal and have had a Wai number allocated before applying for legal aid.

42. The legal aid application for Tribunal proceedings submitted to the Waitangi team within the Wellington Legal Aid Services office must be:

(a) Made on the prescribed form (**Form 14**):

- fully completed including ensuring that the Wai number is clearly identified;
- signed by a named claimant (who is identified in the statement of claim). Please note that the name on the legal aid application form must exactly match that of a claimant identified in the statement of claim. If other names are used by the claimant then these must be noted in the application as other names; and
- signed by the lead provider. If the lead provider is a barrister sole then the lead provider must identify an instructing solicitor.

(b) Submitted with all relevant supporting information including:

- providing additional detail as appropriate, of what Legal Aid Services is to fund, the issues involved in the claim, the remedies sought, how the application meets the requirements of section 47(2), whether or not the claimants have resources to fund legal services, and the level of support held by the applicant for legal aid from the claimant group;
- providing copies of the statement of claim and relevant Tribunal Memoranda-Directions regarding the status of the claim; and
- providing applications for amendment of grant for :
 - work already completed; and
 - work estimated to be required for up to the end of the next three month period.

43. The lead provider and legal aid applicant are required to complete the prescribed application form with original rather than electronic signatures.

44. Applications for aid may be submitted by fax or email when the application is of an urgent nature or where it must be submitted to comply with legislative timeframes. The original application for aid must be provided to Legal Aid Services as quickly as possible.

45. Incomplete applications for aid will be returned to the provider for further information, which will result in a delay to the process of considering applications for aid. The onus is on the applicant and their provider to ensure that the application for aid contains sufficient supporting information.

Process of making an application for legal aid

46. A claim is filed with the Tribunal and a WAI number is allocated to the claim by the Tribunal.
47. An application for legal aid is made on the prescribed **Form 14**, together with the additional information set out in paragraph **42** above.
48. Once Legal Aid Services is satisfied that the application and supporting information is complete and complies with the requirements of the Act, Legal Aid Services will refer the legal aid application to the Tribunal for a report under section 49 of the Act. Regulation 20 of the Legal Services Regulations 2011 outlines the information the report must contain. In particular regulation 20(1) provides that the Tribunal's report must contain the following information:
- (a) Whether the applicant has submitted a claim to the Waitangi Tribunal, and if so, the group if any for whose benefit the claim is submitted:*
 - (b) a brief description of the claim including
 - (i) the allegations made against the Crown; and*
 - (ii) in relation to a specified period, the extent to which the Waitangi Tribunal has been engaged or is likely to be engaged (if this can be ascertained) in the claim**
 - (c) whether a provider representing the applicant has filed any documents or submissions in relation to the claim, and, if so, whether the documents or submissions were filed solely in relation to the claim, or in relation to more than 1 claim:*
 - (d) the extent to which the claim relates to other claims before the Waitangi Tribunal:*
 - (e) whether the Waitangi Tribunal considers that the terms on which the applicant may be represented by a provider should be limited in any way and, if so, in what way.*
49. Legal Aid Services will send a copy of the Tribunal's section 49 report to the legal aid applicant and lead provider and seek their response.
50. Legal Aid Services considers the section 49 report, and any other relevant matters (including the applicant's information and views) and relevant directions issued by the Tribunal.
51. Legal Aid Services will also outline any matters that the legal aid applicant and/or the provider needs to address or provide further information on prior to a decision on the legal aid application being made.
52. Legal Aid Services will then consider the application in accordance with the Act and may (under the delegation of the Commissioner) grant aid, defer the determination of the application for any period, or decline the application. Whether an application for aid has been approved, deferred or declined, the rationale for the decision and any conditions relating to any approval of aid will be provided to both the applicant and the lead provider in writing.

Conditions on grants of Legal Aid

53. Legal Aid Services (under the delegation of the Commissioner) may grant aid subject to conditions as considered appropriate, relating to the purposes for which aid has been granted, or the period for which aid is granted, or both.
54. Providers are required to comply with the conditions of a grant of aid, including seeking prior approval for all work to be undertaken. Payment may be refused where a provider has failed to comply with a condition of a grant of aid.
55. Examples of such conditions that Legal Aid Services may consider include:
 - (a) Legal aid is granted for a specific aspect of the claim only (e.g. because other parts of the claim have already been determined, have been settled or otherwise addressed by another claim).
 - (b) Legal aid is granted on the condition that counsel will work and cooperate with other counsel whose clients have common interests, unless there are conflicts of interests or other good reasons why this should not occur.
 - (c) Where legally aided claimants share a common lawyer, the lawyer will split work and expenses common to more than one client, across the different claims.
 - (d) Providers must seek prior approval for all work undertaken in relation to Tribunal matters, including prior approval for any and all disbursements incurred in the provision of legal services.
56. Conditions can be amended during the grant or aid withdrawn if circumstances change or where there is a change in the relationship between different claimants.

Inquiry Specific Issues affecting Applications for Aid

CLAIMS THAT FALL INTO MORE THAN ONE INQUIRY DISTRICT OR HEARING

57. Generally separate legal aid applications are required where a Treaty claim falls within more than one Inquiry District. Notwithstanding this a single application for aid may be accepted if it details all particulars in relation to all grievances in each relevant Inquiry district. In such situations because the different inquiry districts will move at different speeds, Legal Aid Services will split the legal aid file and assign new LA numbers and thereafter require separate applications for amendment of grant and separate invoices for each file.
58. Likewise, where there is an existing grant of legal aid and the Tribunal decides to separate the claim into two or more separate Inquiries then Legal Aid Services will split the legal aid file and assign new LA numbers and thereafter require separate applications for amendment of grant and separate invoices for each file. As part of this process Legal Aid Services will seek updated section 49 reports.
59. If either situation occurs, Legal Aid Services will liaise with the provider regarding any further information required and will advise from what date separate amendments and invoicing for each file needs to occur, so that the work can be clearly delineated between the respective files.

60. Examples:

- (a) If an historical claim falls within both the Te Rohe Potae and Taihape districts then regardless of whether one or two applications were made, Legal Aid Services will open two separate legal aid files and they will be managed separately. Separate amendments to grant and invoices will be required.
- (b) If a claim relates to education, health and housing policies and the Tribunal decides to hear the issues as separate Inquiries, Legal Aid Services will then open separate legal aid files for each hearing and they will be managed separately. Separate amendments to grant and invoices will then required.

TWO OR MORE FILES IN SAME INQUIRY

- 61. Separate grants of aid are required for each claim in an Inquiry. The only exception to this is that if individual claims have been consolidated into a single amended statement of claim, and the various claimants agree in writing, Legal Aid Services will manage the claims on a single file and single grant of aid. Where the legal aid file has been consolidated only one application for amendment to grant/invoice will be necessary across the consolidated claims.
- 62. Where the claims have not been consolidated but a provider is nonetheless acting on two or more files in the same inquiry that are addressing similar issues (for example Crown purchase or Native Land Court issues), then costs should be split across those files. Both applications for amendment to grant and invoices must make this explicit and identify the files the work is split between and how the work has been split.
- 63. Providers seeking an amendment for this common work must provide, the legal aid file numbers, an overview of the work common to those files, an indication of how costs will be split across the files, and how duplication will be avoided. Common work is to be clearly identified separately from the specific work undertaken on a particular claim.

INACTIVE INQUIRIES

- 64. If a section 49 report advises that a claim falls within an Inquiry district where hearings have already been completed or which the Tribunal has not appointed a presiding officer or for which the Tribunal otherwise has no present intention to commence hearings, a maximum grant of 30 hours to one provider across all activities will be approved. There will be up to \$100 office disbursements and up to \$400 travel disbursements pre-approved.
- 65. Further funding will only be considered for these cases following an application for amendment to grant with an explanation detailing why further work is necessary when the Inquiry is otherwise inactive.
- 66. If the Tribunal subsequently indicates that the Inquiry will become active then standard funding sought through application for amendment to grant will be considered.

Applications for Amendments to grant

67. An application for amendment to grant is the process by which the provider seeks approval for the work needed to progress the claim before the Tribunal. If the application is accepted the maximum grant will be amended and the provider will be able to proceed to carry out the work that has been applied for.
68. The *Granting Decisions* section of the Provider Grants Manual applies to legal aid for Tribunal proceedings.
69. The following are additional requirements specific to Tribunal proceedings:
 - (a) Providers must seek prior approval for all work undertaken on Tribunal legal aid files via an application for amendment to grant using Form 15.
 - (b) The standard phases for a District Inquiry are well established and are set out at Appendix A. It is therefore important for providers to provide reasons to Legal Aid Services when they consider work needs to be completed early (prior to the phase in which the work would normally be done). For example tasks that would normally be required in preparation for hearings (including the preparation of briefs of evidence or drafting legal submission) would usually not be required during the casebook stage but may be appropriate in some situations including the planned absence or ill health of key witnesses.
 - (c) Applications for amendments to grant are to cover all reasonably anticipated work for up to a three month period, and best practice is to submit the application for amendment of grant not less than one month before the period covered by the estimate to ensure that it is processed before the work is undertaken. In any event an application for amendment of grant is to be made as soon as possible in advance of the period the application covers.
 - (d) Often, not all work in a three month amendment is performed in that three month period, as matters can be delayed, hearings postponed etc. Providers should highlight, in their new amendment, work that was included in the previous amendment that was not completed in the prior three month period and any changes proposed in respect of that work (for example the details of the provider attending a hearing).
70. With respect to the particular types of work for which funding is sought the following should be noted:
 - a) **Preparation** - Preparation time will be paid where that preparation relates to the progression of a Tribunal claim. Preparation includes the general preparation immediately prior to attending a meeting, hui, conference or hearing, and calls or correspondence relating to the organisation of that meeting and writing or reviewing papers on the agenda.

- b) **Attendances** - the following specific points should be noted:
- i) **Hearings** - Prior approval must be sought for all attendances on claimants and attendance at Tribunal hearings, Judicial Conferences, Directions Hearings through appropriate and timely applications for amendment of grant. The presumption is that one lead provider will be approved for relevant attendances. A second lead or supervised provider (or non lawyer) will only be approved where it can be demonstrated that the attendance would make a distinct and justifiable contribution.
 - ii) **Meetings and Hui** - Some providers have sought approval for attending periodic (e.g. monthly) client hui. It is accepted that regular periodic hui do provide a convenient and reasonable opportunity for a provider to liaise kanohi ki te kanohi with claimants and/or wider claimant groups. However, providers should only attend a particular hui when there is a specific reason to attend for example to brief the claimants on the next stage of the Tribunal process or to get instructions on particular issues arising in the hearings. Lead providers must confirm attendance at client hui and the subject matter of those hui when submitting invoices. A copy of the Agenda and any other relevant documentation relating to the Hui may be required by Legal Aid Services.
 - iii) **Judicial Conferences** - It is recognised that not all Judicial Conferences are substantive and that they fall into two categories:
 - (a) Timetabling Judicial conferences, which prior approval will be considered for supervised providers to attend in place of the lead provider as no substantive matters are to be discussed;
 - (b) Judicial conferences where the content of the conferences make it similar in complexity to a defended interlocutory hearing (such as a judicial conference to determine an application for urgent hearing). Special circumstances will be required for attendance by any other than the Lead Provider assigned to the file but consideration will be given to a supervised provider attending as junior counsel depending on the complexity of the hearing.
- c) **Research and Perusal of Documents** - Legal Aid Services is available for time spent undertaking legal research and reading documents where it is justified, reasonable and necessary. Legal Aid Services expects that providers will exercise sensible selectivity regarding what information to read fully and what to skim over. It should be noted that:
- i) Legal Aid Services does not fund multiple re readings of the same document by various/new staff for the purposes of familiarisation with the report;
 - ii) Legal Aid Services does not fund legal research or perusal of documents for the purposes of legal education – the research and/or reading must be relevant to the particular claim and the relevant stage of the Inquiry;
 - iii) Legal research, which may include analysis of both current and repealed legislation and relevant case law will never include original historical research which is undertaken by historians contracted by the Tribunal and/or the CFRT or sometimes undertaken by the claimants themselves; and it is expected that

summaries will be prepared by staff on the first reading of the report and these utilised to the greatest extent possible.

- d) **Document drafting** - Document drafting is an essential part of successful prosecution of Tribunal claims and should be completed in an efficient manner and done when required. For example, whilst the nature of claims may evolve over time, amendments to a statement of claim should not be a regular monthly work item nor should it carry significant hours, at least until after the casebook stage. Where a provider is planning to undertake significant drafting of documents they should seek prior approval and provide an explanation of the amendments and the reasons why they need to be made at the present stage of the Inquiry
- e) **Transcription of recorded hearings** -The transcription of recorded hearings is not usually funded as providers are expected to take notes. However, Legal Aid will consider funding transcription of specific parts of a recording where there are compelling reasons.

71. The application for amendment to grant is to detail the following:

- (a) An overview of the proposed work during that period;
- (b) The current status of the Inquiry and relevant dates of judicial conferences, hearings and hui during the period.
- (c) A summary of work to be undertaken by any lead provider, Supervised provider or non lawyer including proposed attendance at judicial conferences, hearings and hui during the period, why attendance is needed, how duplication of effort is avoided, and the hours sought;
- (d) Details of proposed travel during the period and why the travel is necessary;
- (e) If the lead provider is proposing substantive work is to be undertaken by a supervised provider, the reasons why the assigned lead provider or another lead provider is unable to complete this work and how the supervised provider is to be supervised. For example, where a lead provider is not available and attendance at a hui is necessary, consideration will be given to a supervised provider attending upon the provision of an explanation of the supervision to be provided.
- (f) Details of disbursements expected to be incurred including (where appropriate) quotes for any third party disbursements e.g. external photocopying.

72. Legal Aid Services will consider amendments to the maximum grants on the basis of the applications received, the requirements of the Act, the section 49 report, other information received from the Tribunal, policies, procedure and any other relevant information available. Where the application is accepted a new grant schedule will be approved and the provider notified.

Unforeseen/Urgent work

73. Where a provider is required to attend to a matter that has arisen urgently that is not covered by the current grant of aid, they must seek approval through an application for amendment to grant for that activity as soon as is practicable. Legal Aid Services will take into account any urgent circumstances that prevented the provider from applying for prior approval.

Retrospective application for amendment to grant

74. Where a balance of aid has been exhausted or work has been undertaken that was not contained within the current grant approved providers must:
- (a) provide an application for amendment to grant detailing the activities already completed, the dates these were completed and by whom;
 - (b) provide an explanation of why the work was undertaken without approval, and a request for approval of the retrospective amendment.
 - (c) provide an application for amendment to grant for work required next up to three month period (if applicable)
75. Legal Aid Services will only consider retrospective applications for amendment to grant where there are special circumstances. Special circumstances include unforeseen circumstances outside the control of the provider which prevented the provider seeking prior approval, and the work had to be completed without delay.

Number of Providers for which approval is sought

76. The *Granting Decisions* section of the current Provider Grants Manual continues to apply to legal aid for Tribunal proceedings. The points below are additional matters specific to Tribunal proceedings.
77. The presumption is that one lead provider will be approved for relevant attendances. A second lead or supervised provider (or non lawyer) will only be approved where it can be demonstrated that the attendance would make a distinct and justifiable contribution.
78. Likewise it is Legal Aid Services' expectation that each piece of work will be undertaken by one provider only and not multiple providers. Providers must ensure that there is no duplication of effort within a firm or amongst providers (lawyers and non-lawyers) working together on a claim or a number of claims.
79. Examples of where this expectation will apply are:
- (a) work on a particular Tribunal claim or cluster of claims
 - (b) reading historical reports, researching case law etc (and highlighting or summarising relevant parts for others within the firm)
 - (c) appearing at judicial conferences and directions hearings
 - (d) appearing at hearings
 - (e) attending Hui with claimants and claimant groups.
80. There will be a variety of situations and circumstances where strict compliance with this expectation may not be appropriate. For example:
- (a) division of particular subject areas between different providers on the basis of their areas of particular expertise

- (b) at hearings where there is a demonstrable need for more than one provider because of the complexity or number of issues, or the amount of evidence, or the number of tasks to attend to
 - (c) where there are a series of Hui to attend and two or more providers divide up the Hui so that one attends some Hui and another attends other Hui
 - (d) there are exceptional circumstances and the second provider will make a distinct and justifiable contribution.
81. In all cases the application for amendment to grant will identify in outline of who is doing what and why, and an explanation of why the arrangements are efficient and do not create duplication.
82. Providers need to ensure that they have approval for specific arrangements, through the grant schedule or appropriate application for amendment of grant. It is important to note that Legal Aid Services will not regard a general plan (e.g. for a supervised provider to do work under the supervision of a lead provider) to be an approval for attendance by more than one provider at an event (e.g. both attending a judicial conference). Providers must ensure that they have approval for any situations that appear inconsistent with the avoidance of duplication of work referred to above.
83. The expectation does not apply to situations where a lead provider delegates appropriate work to one or two providers or non-lawyers and provides general supervision for that work. However, if work is to be delegated to more than 3 supervised providers or non-lawyers in any invoice period, the lead provider must seek prior approval by outlining the exceptional circumstances that require more than three providers to be involved.

Legal Aid for Applications for Urgent Hearings

General

84. Applications for urgent hearings in the Tribunal differ from historical claims before the Tribunal in that the claim relates to a specific action that the Crown is currently undertaking or may undertake that will cause significant and irreversible prejudice unless a Tribunal inquiry is convened as a matter of urgency.
85. Claims seeking an urgent hearing generally have a finite term and are usually completed, if the grounds for urgency are accepted, within twelve months, there is significant pressure on the providers to complete an initial body of work within short timeframes.
86. The timeframes for applications for urgent hearings differ considerably depending on their factual background, and can accordingly vary in size and complexity. Legal Aid Services acknowledges that the timing of applications for urgent hearings creates some difficulties because claimants seeking an urgent hearing cannot apply for legal aid until the claim has been filed and a Wai number issued there will be a greater than usual amount of work required before legal aid can be applied for or pre-approved.. The matter may well be significantly progressed or even disposed of by the time Legal Aid Services receives the section 49 report.

87. The need for providers and claimants to have some certainty as to the funding available is recognised by Legal Aid Services which has identified three categories of applications for urgent hearings, and the likely amount of work required which take into account the varying complexities of different types of applications for urgent hearings. These are:
- a) Category 1 – Discrete and confined issues
 - b) Category 2 – Changes to government policy or proposed legislation
 - c) Category 3 – Significant national issues
88. Legal Aid Services will continue to work closely with the Tribunal Unit of the Ministry to ensure that section 49 reports, required prior to aid being considered, will be prioritised for all urgency applications.

Who is required to apply for Aid in Applications for Urgent Hearings

89. Applications for urgent hearings in the Tribunal require a separate legal aid application. A separate application is required by the claimant seeking the urgent hearing, even if the issue in respect of which an urgent hearing is sought arises as part of an existing Inquiry or claim for which there is already a grant of aid.
90. Claimants in a position as respondents to the application, who are both opposed to and who have a direct interest in the subject matter of the application, will not need a separate application for aid. Such responding claimants can seek funding for participation in the determination of the application to urgent hearing by way of an estimate against the grant of aid of their claim that is affected by the application.

Waitangi Tribunal Proceedings

Application for urgent hearing

Category 1 – Discrete and confined issues

Step 1 - Up to Tribunal issuing directions stating how matter is to proceed

Activity	Guideline hours and Disbursements	Tasks normally covered by guideline hours
Preparation and filing application for urgent hearing	Up to 20 hours Up to \$100 office disbursements pre approved (and other reasonable disbursements as approved)	Taking instructions, attending the client Identifying legal and factual issues Preparation of Statement of Claim, memorandum in support of application for urgent hearing and up to 2 briefs of evidence/affidavits in support with the Tribunal Receiving Tribunal directions Reporting to client

Step 2 – Up to Tribunal decision to grant/decline urgency

Determination of application for urgent hearing	Up to 20 hours and actual hearing time, or as approved by Legal Aid Services following application for amendment of grant Up to \$100 office disbursements pre-approved (other reasonable disbursements as approved following application for amendment of grant)	Taking instructions, attending the client Identifying legal and factual issues Preparing of documents as required by Tribunal Attendance at judicial conference to determine urgency Reporting to client
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Step Three – Substantive hearing

Interlocutory process and hearings as directed by Tribunal	As approved by Legal Aid Services following application for amendment of grant	Likely to include taking instructions, attending the client, addressing interlocutory issues, briefing any additional evidence, preparation for hearing including preparation of submissions and cross examination, receive and consider Tribunal report, and reporting to client
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Waitangi Tribunal Proceedings

Application for urgent hearing

Category 2 – Changes to government policy or proposed legislation

Step 1 - Up to Tribunal issuing directions stating how matter is to proceed

Activity	Guideline hours and Disbursements	Tasks normally covered by guideline hours
Preparation and filing application for urgent hearing	Up to 35 hours Up to \$100 office disbursements (and other reasonable disbursements as approved)	Taking instructions, attending the client Identifying legal and factual issues Preparation of Statement of Claim, memorandum in support of application for urgent hearing and up to 4 briefs of evidence/affidavits in support with the Tribunal Receiving Tribunal directions Reporting to client

Step 2 – Up to Tribunal decision to grant/decline urgency

Determination of application for urgent hearing	Up to 35 hours and actual hearing time, or as approved by Legal Aid Services following application for amendment of grant Up to \$100 office disbursements (other disbursements including as approved)	Taking instructions, attending the client Identifying legal and factual issues Preparing of documents as required by Tribunal Attendance at judicial conference to determine urgency Reporting to client
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Step Three – Substantive hearing

Interlocutory process and hearings as directed by Tribunal	As approved by Legal Aid Services following application for amendment of grant	Likely to include taking instructions, attending the client, addressing interlocutory issues, briefing any additional evidence, preparation for hearing including preparation of submissions and cross examination, attendance at hearings, receive and consider Tribunal report, and reporting to client
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Waitangi Tribunal Proceedings

Application for urgent hearing

Category 3 – Significant National Issue

Step 1 - Up to Tribunal issuing directions stating how matter is to proceed

Activity	Guideline hours and Disbursements	Tasks normally covered by guideline hours
Preparation and filing application for urgent hearing	Up to 60 hours Up to \$100 office disbursements pre approved (and other reasonable disbursements as approved)	Taking instructions, attending the client Identifying legal and factual issues Preparation of Statement of Claim, memorandum in support of application for urgent hearing and up to 6-8 briefs of evidence/affidavits in support with the Tribunal Receiving Tribunal directions Reporting to client

Step 2 – Up to Tribunal decision to grant/decline urgency

Determination of application for urgent hearing	Up to 40 hours or as approved by Legal Aid Services following application for amendment of grant Up to \$100 office disbursements (other reasonable disbursements as approved)	Taking instructions, attending the client Identifying legal and factual issues Preparing of documents as required by Tribunal Attendance at judicial conference to determine urgency Reporting to client
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Step Three – Substantive hearing

Interlocutory process and hearings as directed by Tribunal	As approved by Legal Aid Services following application for amendment of grant	Likely to include taking instructions, attending the client, addressing interlocutory issues, briefing any additional evidence, preparation for hearing including preparation of submissions and cross examination, attendance at hearings, receive and consider Tribunal report, and reporting to client
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Process of making an application for legal aid - Applications for Urgent Hearing

91. The process of making an application for legal aid under urgency is:

- (a) A Statement of Claim and supporting documents seeking an urgent hearing are filed with the Tribunal;
- (b) A WAI number is allocated to the claim and preliminary directions issued as to how the application is to be dealt with;
- (c) A completed application for legal aid is made (refer paragraph **42** above for what is required) which, in addition, must also:
 - i) Identify clearly on the application form that the aid sought is in relation to an application for an urgent hearing;
 - ii) Identify the funding category that the application falls within; and
 - iii) In relation to any application for amendment of grant for future work detailing the work required to meet the Tribunal directions.
- (d) Legal Aid Services will seek a s.49 report from the Tribunal upon receipt of a completed application
- (e) Legal Aid Services considers the s.49 report, and the other relevant matters including the applicant's application and supporting information, directions of the Tribunal, and will consider whether or not the application for an urgent hearing has sufficient prospects of success to justify the grant of aid (section 10(4)(d)(i) of the Act).
- (f) Legal Aid Services makes a decision to grant aid subject to any conditions, declines the application for aid, or seeks further information in relation to the application from the applicant/provider
- (g) Legal Aid Services will also determine the category of application and assess applications for amendments to grant against that category. In the event that the category is not specified by the claimant or provider the application will be deemed to be category 1.

Remedies and Resumption Applications

92. Applications for legal aid relating to Remedies and Resumption applications will be considered based on the policy relating to the Urgency applications set out in paragraphs **84-89** above, with appropriate amendments.

Interested Parties

93. Interested parties (being claimants without a direct interest in the application) must demonstrate that they meet the requirements of section 47(2). Interested parties must demonstrate their intent to actively participate in the proceedings and the necessity for their involvement.

94. This work will then be billed on the substantive file.

Invoices

95. The *Granting Decisions* section of the Provider Grants Manual applies to legal aid for Tribunal proceedings, as does all legislation and regulations, including Regulation 19 which refers to timeframes in which invoices must be received. Providers are required to familiarise themselves with and comply with all relevant legislation policy and procedure in relation to invoicing.
96. The following specific matters should be noted:
 - a) Invoices must be physically signed by the lead provider. Electronic signatures are not acceptable;
 - b) The invoice should be accompanied by a report that sets out clearly the work undertaken during the period and by which provider;
 - c) Copies of all disbursements incurred should be annexed to the invoice;
 - d) Copies of relevant documents drafted during the period and relevant Tribunal directions should be annexed in either hard copy or electronic form.
97. Invoices are required to be calculated accurately and are to contain sufficient information to identify the relevancy of the work undertaken. Where invoices are incorrectly calculated (including GST calculations), Legal Aid Services must return these for correction prior to Legal Aid Services considering any amount contained in the invoice for payment.
98. Providers must send a copy of each invoice that it sends to Legal Aid Services, to the legal aid applicant and/or claimant group.

Disbursements

In 2012, the Ministry of Justice undertook a review of the legal aid disbursement policy. As a result, a new disbursements policy came into force on 5 November 2012 and applies to all grants of aid where the application for legal aid is received on or after this date.

The policy will also apply to amendments to grant that are received on or after 5 November 2012, where the application for aid was received prior to 5 November 2012. There will be no change to disbursements for existing grants unless an amendment to grant is made.

Disbursement policy from 5 November 2012

99. The disbursements policy is available on our website in [the grants handbook](#). It applies in the following scenarios:
 - all grants approved on or after 5 November 2012 and
 - all grants approved prior to 5 November 2012 where an amendment request is received on or after 5 November 2012.

Disbursement policy prior to 5 November 2012

100. To view the disbursement policy that applies to legal aid grants that were approved prior to 5 November 2012 and an amendment request has not been received, please see below.
101. Where applicable, the pre-approved sections of the disbursement policy apply to Tribunal matters. All other disbursements are to have prior approval. However, the terms and conditions of the disbursements such as maximum daily allowances or fixed fees apply.

Office disbursements

102. A one off pre-approved office disbursement of up to \$100 is available per grant. Amounts in excess of \$100 will be considered for approval as part of the application for amendment process.

Photocopying

103. Copies of reports and other Tribunal documents are to be provided in electronic form to the greatest extent possible.
104. Where hard copies are required, Legal Aid Services will fund the cost of printing one copy for the claimant/legal aid applicant – but will not fund multiple copies for members of a wider claimant group.
105. Where it is reasonable that a summary or partial documents should be provided rather than full copies providers are required to provide those summaries or partial documents.
106. Providers must obtain prior approval before incurring any photocopying costs.

Travel costs

107. Limited pre-approved travel costs are available as outlined in the Inactive Inquiries section of these guidelines.
108. For all other travel disbursements, providers must obtain prior approval.
109. Where the costs of a meal or accommodation (or other expenses) relate to more than one client, the costs should be split between the relevant clients. This should be clearly identified in the invoice including the number of files and how the amount has been divided.
110. Koha cannot be charged to Legal Aid Services as a disbursement.

Specific Disbursements

111. Specific rules apply in respect of the following:
 - (a) The use of non lawyers; and
 - (b) Expert witnesses

NON LAWYERS

112. Non Lawyers include staff employed by providers with particular skills and include law clerks who may subsequently become providers when qualified.
113. Providers must comply with the Assignment and Disbursements policies in the Provider Grants Manual regarding the use and invoicing of non-lawyers. Providers must seek prior approval before engaging a non-lawyer.

114. Lead providers must provide the following details in their applications for amendments of grants, and invoices:
- (c) The name of the non lawyer, their role and their hourly rate
 - (d) An itemised breakdown of the work completed by the non-lawyer including the total number of hours by activity
 - (e) the reason for the non lawyer undertaking the activities and the necessity of the work undertaken
 - (f) any other costs incurred by the non lawyer
115. The hours for the work undertaken by non lawyers must be entered under disbursements "special".

EXPERT WITNESSES

116. Legal Aid Services may fund the use of expert witnesses as a disbursement. However the expert must be relevant and necessary to progress the particular claim in the Tribunal.
117. Providers must apply for prior approval for an expert's costs. The application must include a full quote from the expert and advice on whether or not other funding agencies have provided funding (or been approached to provide funding) for work by the expert (and if so what funding and what work).

Co-operation between Counsel

Co-ordinating Counsel

118. From time to time, the Tribunal will recognise or put in place arrangements for one or more of the providers already involved in a hearing, to provide coordination on particular issues or matters. In other cases, claimants or providers may develop arrangements to coordinate participation in Tribunal processes on an Iwi-wide or other basis.
119. Prior to providers undertaking this work, prior approval is required for funding for such arrangements. Legal Aid Services welcomes such requests and will provide Legal Aid Services funding where arrangements will result in more efficient and cost effective delivery of legal services within the context of the hearing overall.
120. Supporting evidence from the Tribunal confirming names of co-ordinating counsel and the scope of the role set by the Presiding Officer is required.
121. Co-ordinating counsel are required to submit separate amendments to grant and invoices, as this work needs to be clearly delineated from any work they undertake as individual counsel on claimant specific legal aid files.
122. The legal aid file that the coordinating counsel work in that capacity is to be billed against must contain an element(s) of the claimant's claims of Treaty breaches on the relevant claimant's substantive file. It must also be a file that is assigned to the co-ordinating counsel as Lead Provider.

123. All Co-ordinating counsel must have a current contract as a lead provider, due to the substantive nature of the work undertaken and the requirement that all work is billed to a file assigned to them.

Working cooperatively with others to avoid duplication

124. Providers are expected to co-operate with each other, wherever possible, to reduce duplication of work. For example, lead providers should always consider arrangements that achieve efficiencies such as having one of them conducting legal research on a particular topic and sharing the results, or drafting a memorandum, or having one provider appear on behalf of the group to lead evidence or conduct cross-examinations in the Tribunal.
125. The principle is the extent to which a reasonable self funding client would consider they need to maintain separate legal representation, as opposed to working together with other groups on matters of common interest, even where they may have different interests in relation to other matters.
126. Providers should refer to Legal Aid Services' practice standards for providers. These include provisions regarding the need for providers to work cooperatively to avoid duplication.
127. This expectation does not require providers to consider cooperative arrangements that would create conflicts of interest or are for some other reason inappropriate. Nor is it aimed at promoting cooperative arrangements that are additional to separate client representation and result in additional costs.

Taking a constructive approach to resolving disputes between claimants

128. Providers need to be aware of the Legal Aid Services' practice standards. They contain provisions regarding the need for providers to take a constructive approach to resolving disputes, and to advise clients of options for resolving matters and to encourage them to do so.

Alternative Funding

129. Section 105 of the Act provides:

"No provider may take payments from or in respect of a person to whom legal aid services or specified legal services are provided unless the payments are:

- (a) authorised under this Act; or*
- (b) authorised by the Commissioner acting under the authority of this Act, or the regulations."*

130. Accordingly providers must advise Legal Aid Services of any additional funding for their legal services that is proposed to be paid by the claimants or agencies such as the Office of Treaty Settlements (OTS), Crown Forestry Rental Trust (CFRT) or the Tribunal itself. Providers must also advise Legal Aid Services if they are wishing to accept top-up payments or koha from the claimant group.

131. In order to fully consider the request, the following will need to be provided:

- a) confirmation that an exemption is being sought;
- b) relevant documents that detail the nature of the funding to be received including the amount of the payment;
- c) the legal aid number for the matter referred to;
- d) a brief description of the work that is being carried out under the alternative funding;
- e) an application for amendment to grant to identify the work that will not be covered by the alternative funding.

Relationship between Legal Aid Services and providers

132. Legal Aid Services takes a proactive role in maintaining a professional relationship with providers including assisting Tribunal providers to comply with this operational policy and/or to interface effectively with Legal Aid Services' systems. Options that can be undertaken are:
 - (a) individualised information and training to the provider and or to the provider's staff
 - (b) regular provider clinics
 - (c) Inquiry District Hui with lawyer representatives
133. Should these steps fail or concerns arise following the above steps, the following formal action may be considered.
 - Involving an internal or external reviewer
 - Examination of files
 - Intensive scrutiny of amendment /or invoices/ or invoicing practices
 - Audits or formal referral for investigation under the contract provisions
 - Assisted case management.
 - Mediation
 - Referral to NZLS standards committee/complaints committee
134. Legal Aid Services will discuss relevant issues and options with a provider before taking action.

Appendix A

135. Standard stages for District Inquiries into historical claims

Application stage

136. Section 47 and sections 48 to 50 apply to an application for legal aid made in respect of any proceedings before the Waitangi Tribunal where:

- (a) the application is made by a Maori; and
- (b) the claim to which the application relates is submitted, or is to be submitted by that Maori for the benefit of a group of Maori of which the applicant is a member.

The claim must specify the alleged breach of the Treaty of Waitangi Act 1975.

137. If the claim is accepted by the Tribunal then it is registered and a WAI number is allocated. The claim is then assigned to the Inquiry District that it relates to. Some claims may fall into more than one Inquiry District.

138. The Presiding Judge of an Inquiry District issues directions on how and when the inquiry will be conducted.

Casebook stage

139. Casebook preparation involves determining the scope of the inquiry, and enabling all concerned parties to work together to produce casebook research. Any gaps in historical research for the particular Inquiry are identified.

140. The casebook research of professional or technical evidence is gathered by professional historians and involves working in Crown archives or records, libraries; with private papers and other repositories of historical records. This period of research is usually undertaken by Tribunal staff, CFRT staff, contractors, or Crown Law research staff.

141. Legal Aid Services does not fund historical research as this is generally carried out by historians as outlined above. Where there is an identified gap in the historical research, historians will be engaged to carry out the relevant research. This work can be funded by the CFRT or the Tribunal itself.

142. The final reports of technical evidence are collated into a casebook prior to the commencement of the hearing process.

143. When the casebook stage has been completed, the interlocutory stage commences.

Interlocutory stage

144. This process involves a more formal refinement of the issues to be considered as well as the filing of affidavits of evidence. This stage is also an opportunity to file amendments to the Statements of Claim.

145. The Tribunal holds regular Judicial Conferences during this period in order to narrow down an identified statement of issues. Other important aspects of this stage are that the Crown will file its response to the various claims.

146. The interlocutory stage concludes when the Tribunal issues a statement of issues that sets out all the issues that they are prepared to decide upon during that Inquiry.

Hearings stage

147. Hearings are held so that that the Tribunal can hear evidence from claimants to substantiate their claims and from other parties, including the Crown. The parties' lawyers will also make submissions containing legal arguments based on Treaty principles.

148. The hearings stage is conducted in a similar way to court litigation. All claimants and the Crown's witnesses and experts are heard over a number of hearing weeks. The hearings are usually fixed for a few weeks at a time (or a block) and will continue over a number of months.

Report writing stage

149. Following the conclusion of the hearings, the active part of the particular inquiry is adjourned and the Tribunal retires to start preparing its recommendations. Depending on the complexity of the Inquiry, this period can last for many months and sometimes years.

150. The resulting recommendations are then produced by the Tribunal and circulated to all the parties and the Government.



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