



# Te Tari Whakatau Claimant funding Policy and Guidelines

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## Introduction

This document:

- sets out the Te Tari Whakatau claimant funding policy; and
- provides a set of guidelines for the use of claimant funding.

*This document is an update to the 2010 Claimant funding policy and guidelines. Changes have been made to reflect the current nature of the organisation, but no changes have been made to the substance of the content.*

### **The claimant funding policy**

The Crown makes what it considers to be a reasonable contribution to the expenses a claimant group's mandated representatives incur in negotiating a historical Treaty settlement.

This contribution, referred to as claimant funding, is separate from the cash or assets that will eventually transfer to the claimant group in settlement. Claimant funding is not intended to cover all the expenses incurred by a claimant group during negotiations but is intended to contribute to key milestones in the negotiation process.

### **Claimant funding assessment process**

The Crown determines its contribution towards a claimant group's negotiation expenses once a claimant group has had its mandate recognised by the Crown. This is done by assessing the specific features of a claimant group and the claim or claims to be negotiated.

Based on the assessment, officials write a report to the Tumu Whakarae, who makes a decision on the upper limit of claimant funding that the Crown will provide to a claimant group and how much is to be allocated to each milestone.

The Minister for Treaty of Waitangi Negotiations then writes to the mandated representatives advising them of the Crown's total claimant funding contribution.

### **Distribution of claimant funding**

Claimant funding is distributed across negotiations and specified amounts are allocated to the key negotiation milestones:

- Deed of Mandate
- Terms of Negotiation
- Agreement in Principle
- Deed of Settlement
- Ratification; and
- Legislation and Governance.

The Crown's claimant funding contribution to the cost of achieving the Deed of Mandate milestone is paid retrospectively. The Crown's contribution towards the other milestones<sup>1</sup> are usually paid in advance, in instalments of \$50,000.

At one of the first negotiations meetings between the Crown and the mandated representatives, the parties discuss and agree on appropriate sub-milestones within the Agreement in Principle, Deed of Settlement and Ratification milestones.

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<sup>1</sup> Terms of Negotiation, Agreement in Principle, Deed of Settlement, Ratification, and Legislation and Governance.

These sub- milestones provide the claimant representatives with indicators of progress throughout the settlement process and the amount of funding that will be available to them at each stage. The allocation of funding to these sub-milestones can assist the mandated representatives to set a budget.

### **Requesting instalments**

Once a claimant group has had its mandate recognised by the Crown, it can apply for the reimbursement of costs up to the approved limit of the Crown's contribution towards the costs incurred in achieving a mandate. This is the only time that claimant funding is paid retrospectively (not including exceptional circumstances funding requests). Te Tari Whakatau can then progressively release instalments of claimant funding in advance. However, Te Tari Whakatau must ensure that each prior release has been spent appropriately on negotiation expenditure before releasing the next payment in advance.

The mandated representatives must provide documentary evidence to substantiate the costs incurred. A copy of the Claimant funding payment schedule (see Sample 1 and Appendix One) or similar must be provided electronically when requesting instalments. A statement that *expenses have only been incurred for negotiation-related purposes* must accompany each request for funds. Te Tari Whakatau also requires a system generated bank deposit slip or bank statement header showing the account name and number.

Itemised invoices or statements make it possible for Te Tari Whakatau to verify that the costs claimed are negotiation expenses. This is particularly the case with regard to costs such as legal or consultancy costs, which are common and significant expenses for mandated representatives. Therefore, itemised financial documents should be provided on request.

Where the claimant funding payment schedule is not in order or it is clear that costs are being incurred in an unsustainable manner, or when milestones have not been achieved due to lack of progress, instalments may be withheld.

### **Releasing claimant funding instalments**

The Crown requires that its contribution to the expenses of mandated representatives relate to negotiations. Te Tari Whakatau reviews the request by applying the following tests and then reports to the appropriate level within Te Tari Whakatau on:

- Whether the money provided to date has been spent on negotiations;
- Whether the expenses were reasonable; and
- Whether progress has been made in negotiations.

Mandated representatives are encouraged to consider timing when requesting claimant funding instalments, as requests may take the Crown a few weeks to process. A good claimant funding management plan and budget will assist the representatives in maintaining sufficient funding levels for negotiations costs and will also allow them to forecast when additional funding will be required.

Mandated representatives may also be asked to provide estimates of the timing and amount of requested instalments.

## Exceptional Circumstances Funding

Exceptional circumstances funding (**ECF**) is additional non-matrix claimant funding for specific circumstances that fall outside of matrix claimant funding or where previous funding provided may – subject to understanding the context and rationale – have been insufficient.

In recognition of the fact that negotiations don't always go to plan, and challenges and delays can sometimes be experienced, in 2009 Cabinet delegated the Minister for Treaty of Waitangi Negotiations the authority to approve ECF. In 2018 this delegation was amended to:

- delegated authority for the Secretary of Justice (and subsequent delegation to the Tumu Whakarae, Te Tari Whakatau) to agree funding applications for ECF and sub-group funding processes, capped at \$150,000 per application;
- delegated authority for the Minister for Treaty of Waitangi Negotiations to agree funding applications for ECF and sub-group funding processes, capped at \$500,000 per application; and
- a requirement to return to Cabinet for all applications for funding under ECF and sub-group funding processes over \$500,000.

ECF can be sought for (but not limited to) items such as historical research costs or because matrix claimant funding was not sufficient (e.g. if a negotiation is delayed outside of iwi control, like COVID). Some of the previous factors that have justified the use of ECF are:

- claimant groups have taken significant resources to get to mandate;
- claims have been more complex and/or taken longer than expected;
- additional funding has been required to assist with complex overlapping interests; or
- claimant groups have required funding to enable them to participate in a Waitangi Tribunal or Court process in support of the Crown.

To request ECF, a mandated entity must submit a request to the Te Tari Whakatau negotiations team. Before applications are submitted to the Tumu Whakarae for approval, they are considered by the Claimant Funding Oversight Group (**CFOG**).

The Te Tari Whakatau negotiation team will present the funding request to CFOG, including why the group is seeking additional funds, how much they are seeking, and an assessment of the application.

CFOG meets fortnightly to consider applications. If CFOG endorses an application, a report is then prepared for the Tumu Whakarae seeking a decision on the funding.

## Sub-group funding

In 2010 Cabinet extended the Te Tari Whakatau funding policy to make sub-group<sup>2</sup> funding possible, up to \$150,000 per any one sub-group as a contribution to specific legal or specialist advice for sub-groups unable to access funding for this purpose under the existing Crown Claimant Funding policy. For example, legal or specialist assistance may be required for:

- Separately mandated groups within a region to come together as a forum or collective to make decisions about overlapping claims.
- A hapū, whānau or Wai claim group within a mandated entity to resolve issues about internal representation in order to maintain a mandate.

Sub-group funding cannot be used to pay for litigation against the Crown.

Requests for funding will be assessed against the following criteria:

- whether or not the sub-group has accessed funding for specialist or legal advice under existing Crown claimant funding policy;
- why the cost has arisen;
- how the funding will assist to resolve issues and advance the progression of settlement negotiations for the mandated claimant group as a whole;
- whether the funding will assist with the maintenance of the mandate or promote good working relationships; and
- whether the mandated representatives of the relevant Large Natural Grouping have been consulted.

The approval process for sub-group funding is the same as ECF, and any releases are made in arrears with evidence of spending.

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<sup>2</sup> A sub-group can include separately mandated groups within a region and/or hapū, whānau or WAI claim groups within a mandated entity.

## Guidelines

### Managing claimant funding

Claimant funding is managed by the mandated representatives on behalf of the claimant group. The mandated representatives must develop a transparent and accountable claimant funding management process that describes who will control the funding, how it will be controlled and how the funds will be used. For example, the mandated representatives should prepare a claimant funding management plan that sets out:

- the basis/limits on financial spending including negotiators' fees, hourly rates for employees, travel and accommodation allowances;
- the process to approve invoices and payment of invoices;
- a budget that sets out where the funds will be needed to ensure that the claimant funding lasts for the duration of negotiations (take into account that the latter end of the process is generally more costly);
- a reporting mechanism for all incoming revenue/receipts and expenses/payments (i.e. an income statement that lists transactions of all incoming receipts and payments, their purpose and cost category); and
- when and how the annual review of the mandated representative's negotiation related financial statements (bank account and transactions) will take place.

It is the Crown's strong preference to pay claimant funding to a legal entity that it is accountable to the mandated representatives and ultimately the claimant group. However, the onus is on the mandated representatives to be accountable to its claimant group.

This includes:

- seeking the claimant group's approval of the claimant funding management policy; and
- disclosing the manner in which the claimant funding is being managed and reported to the claimant group, i.e. by providing financial reports to hui-a-iwi and/or including financial reports in regular newsletters.

It is the Crown's experience that mandates are challenged if claimant groups feel that their funding is being used inappropriately.

### GST status of claimant funding

The IRD has issued advice on the GST treatment of funding provided to Treaty of Waitangi claimants by the Crown through Te Tari Whakatau.

This advice states that claimant funding is not subject to GST, because:

- Claimant groups do not supply goods or services to the Crown in the course of negotiating a Treaty settlement;
- Claimant funding does not constitute "consideration" within the statutory definition as there is an insufficient relationship between claimant funding and any supply that might be made by a claimant group to the Crown; and
- Claimant funding is not in the nature of a grant or subsidy in terms of section 5(6D) of the Goods and Services Tax Act 1985.

The above item does not address the GST treatment of supplies received by claimants that are paid for out of claimant funding.



Te Tari Whakatau policy is that if claimant groups are claiming the GST content of negotiation expenditure in GST returns then only the GST exclusive portion of the expenditure should be returned in the claimant funding payment schedule as evidence of negotiation expenditure.

If claimant groups are not claiming GST on negotiation expenditure, then GST inclusive totals can be returned in the claimant funding payment schedule as evidence of negotiation expenditure.

## **Review of negotiation related financial statements**

Mandated representatives are required to undertake an annual independent review of negotiation related financial statements<sup>3</sup> and provide the review results to Te Tari Whakatau. The submission of an annual review and supporting documentation provides assurance to both Te Tari Whakatau and claimant groups that the funding released to the mandated representatives has been used appropriately. The review requirements are discussed in detail in Appendix Two.

### ***Separate bank account***

The Crown requires that claimant representatives maintain a separate bank account for their claimant funding receipts and negotiations expenses. Any change of bank account must be notified immediately.

Other sources of funding, such as Crown Forestry Rental Trust funding, must be kept in a different account from the Crown negotiations and claimant funding account.

Expenses claimed against Crown claimant funding must not also be claimed against other sources of funding (and vice versa).

### ***Capital items***

Claimant funding may not be used to pay for capital items, such as computers and furniture (this doesn't apply to minor assets costing less than \$500). Where this is not possible and the claimant representatives can demonstrate that the purchase of such an item is required for negotiations purposes, Te Tari Whakatau and the mandated representatives may negotiate an agreement that a proportion of the cost of such items may be offset against claimant funding.

### ***Administration costs***

For some mandated representatives, Treaty negotiations only form a small part of the range of functions they perform. The Crown will not reimburse mandated representatives for costs that they incur in the normal process of carrying out their responsibilities as representatives of their respective claimant groups.

Only costs associated with Treaty settlement negotiations can be claimed as negotiations expenses. Consequently, only a proportion of generic expenses, such as office administration, rent, power, and phone, should be claimed as negotiations expenses.

### ***Litigation against the Crown***

Claimant funding may not be used to pay for litigation against the Crown.

### ***Multi iwi organisations***

If the Crown provides claimant funding to several mandated representatives, who then choose to progress their claims collectively, one set of financial statements is sufficient. However, there needs to be sufficient separation in the statements so that each mandated representatives' individual revenue/receipts and expenses/payments are explicitly identified.

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<sup>3</sup> E.g. bank account, receipts and payments.

## Claimant Funding Payment Schedule

The claimant funding payment schedule should be completed and returned electronically as a spreadsheet. Please use the template supplied. (See Appendix One)

Below is a sample of what a completed claimant funding payment schedule looks like.

*Sample 1: Claimant funding payment schedule*

Claimant funding payment schedule							
Iwi/claimant group:			ABC DEF				
negotiation expenses for the period (month and year)			from: 01 May 2025	to: 30-Sep-25			
			subtotal			2,400.00	
Invoice/ Expense Date	Invoice number/ reference	Supplier	Description of service - expense	OTS cost category	GST incl (y/n)	Amount \$	Date paid
31/05/2025	nm0015	Callum Bruce	negotiator fees - May 2025	negotiators' fees	n	2,000.00	20/06/2025
15/05/2025	taxinv10005	whitcoulls	office supplies	admin/office expenses	n	150.00	15/05/2025
30/06/2025	nm0015	xxx marae	koha for hui re discussions on overlapping issues	hui costs-venue/koha	n	250.00	30/06/2025

## Appendix One: Claimant Funding Payment Schedule

[illegible]

## Appendix Two: Claimant Funding Review Guidelines

An annual review of the mandated representatives' negotiation related financial statements (bank account/receipts and payments) will provide assurance to both Te Tari Whakatau and claimant groups that the funding released to the mandated representatives has been expensed in an appropriate manner.

It is the responsibility of the reviewer to express an independent opinion on the financial statements relating to the claimant funding under the control of the mandated representatives for the period under review.

There must be a clear statement by the reviewer that all expenses incurred relate directly to the negotiation of the Treaty claim.

### *Purpose*

The review is required for the following reasons:

- To provide verification that the information provided to Te Tari Whakatau represents an accurate view of transactions that have occurred for the period.
- To ensure that claimant funding has been used on valid negotiations-related expenses. This verification is not part of a standard review and therefore must be agreed with the reviewer before the review is performed.

### *Review frequency*

Annual review results must be provided to Te Tari Whakatau every 12 months. The timing of these financial reviews is to coincide with the claimant group's annual financial reporting cycle, or for the period ending 30 June 2025.

Te Tari Whakatau may also request invoices and receipts if further evidence is required. This request may be made before the claimant funding payment is released.

In exceptional circumstances, Te Tari Whakatau may require an interim review of negotiation related financial statements. The financial statements must be prepared by one person and reviewed by another.

There must be sufficient separation in the financial statements to enable Te Tari Whakatau to discern the main areas of expenditure. Appropriate headings include:

Administration/office expenses	Negotiators' fees
Financial advice	Other (identify)
Hui costs/venue/koha	Other consultants
Internal comms/consultation	Rent
Legal advice	Travel/accommodation

The person conducting the review must be a chartered accountant and independent of the mandated representatives.

Where the reviewer has doubt that expenses incurred are not directly related to negotiation of the Treaty claim this is to be clearly stated in the management letter along with the basis for this conclusion.

Te Tari Whakatau will require the mandated representatives to provide it with a copy of the reviewer's management letter.

On receipt of reviewed financial statements and the associated management letter, Te Tari Whakatau may request a more detailed breakdown of expenses or the provision of invoices for particular categories of expenses.

### *General comment*

Te Tari Whakatau has found it useful to discuss the presentation and preparation of negotiation related financial statements and review management letters with the mandated representatives and their reviewers before the annual review is performed and claimant funding is released. We encourage the mandated representatives to approach us with any questions about these requirements before making any significant changes to their current accounting systems.