

Takutai Moana Financial Assistance Scheme Consultation Frequently Asked Questions

Last updated: 18 February 2025

The following questions have been received through the consultation process (13 December 2024 – 21 February 2025). Below are our responses.

Settings changes

1. Will the total amount of funding available for each application change under the new settings?

Applications are currently eligible to receive up to \$458,000 of “Activity” funding, to complete work to progress their applications such as research, overlapping discussions, and project management. There is no proposal to change this cap on Activity funding, however, the need to manage within the annual appropriation available for all applicants impacts on the rate at which this funding can be provided. The funding will be provided to groups in accordance with approval of budgeted workplans.

2. Do Crown Engagement applications and High Court applications receive the same funding?

Applicants have access to the same amount of total activity funding to progress their application, regardless of pathway. Applicants participating in the High Court have access to additional funding to cover preparation for, and attendance at, High Court hearings.

3. What are the criteria for prioritisation of funding groups?

These criteria are still in development, but will likely be based on factors such as stage of engagement, upcoming hearings, and fairness. The feedback we receive through the consultation process will be considered in developing this process.

4. How will the split of the appropriation between High Court and Crown pathways be managed?

It is important to ensure all groups have equal opportunity to access funding, regardless of which determination pathway they choose. The long-term process for this is still in development. It will be further informed by the review of our engagement strategy, which is also in development.

5. How do you ensure that groups in the same coastal area are treated equitably?

This will be managed by the prioritisation process. We agree with the need for a fair and balanced approach, ensuring all groups have access to the support they need. Funding decisions should be made transparently and consistently.

6. How does Te Arawhiti plan to address the cost-pressure applicants are under? I.e., they need front-foot extensive costs before being reimbursed.

Te Arawhiti is proposing the introduction of milestone-based funding, which will provide applicants with funding in advance of incurring costs. This funding will align with the payment schedule outlined in your agreed workplan. The proposed change aims to alleviate some of the financial burden applicants face upfront and provide greater certainty as they progress their applications.

7. How does Te Arawhiti plan to address the time-pressure applicants are under due to aging kaumātua who hold critical tikanga knowledge?

Te Arawhiti acknowledges the challenge and sensitivity involved with the collection of evidence / research and accessing the funding to progress this. We recognise the importance of ensuring the proposed changes are workable and effective, and we welcome the insights and guidance of applicant groups to help us get this right.

8. How does Te Arawhiti plan to address the need for a policy framework that ensures independence between decision-making about funding and decision-making about engagement and determinations, as well as alignment with other allocation frameworks?

While we will take this into consideration in the design of our allocation approval process, Te Arawhiti considers that its current model maintains independence, expertise, and alignment between policy and operations.

9. Is Te Arawhiti considering how the allocation criteria for deciding which applications receive funding each financial year aligns with international obligations, such as the Committee on the Elimination of Racial Discrimination (CERD)?

To assist us in taking this into consideration in the design of our allocation approval process, we would be grateful if applicants could explain what these obligations require in this specific context.

10. Do the proposed settings changes incorporate any flexibility for discretion in the rates of lawyers and specialists, such as aligning with pre-existing agreements?

Te Arawhiti recognises the importance of providing applicants with proper notification about changes to the Scheme's financial settings, including those related to rates for lawyers and specialists.

11. Has the Crown considered any of the findings and recommendations of the Royal Commission into Abuse in State Care with regards to the Crown’s conduct as a model litigant and appropriate levels of compensation (drawing parallels with MACA as a grievance)?

The report and findings are not relevant in this context. Further, while the Attorney-General is a party to MACA cases, instructed by Te Arawhiti, our role as a funder is separate to our role as a model litigant.

12. I put a budget up in July 2024, but it has not been approved yet. Does this mean I cannot access funding during this financial year (i.e. July 2024 to June 2025)?

In our [pānui issued on 5 July 2024](#), we set out Cabinet’s criteria for groups being prioritised for funding in 2024/2025, based upon the status of their application. Due to the limitations on funding available for the 2024/2025 financial year (\$12.023 million), minimal or no funding is available for groups outside the criteria.

13. If our hearing is in 2026/2027, will I have funding available in 2025/2026 to prepare for it?

We intend to provide groups with funding needed for preparatory activities such as evidence gathering, through the allocation process in the timeframes they need it. Groups with confirmed hearing dates should reach out to us if they have not already done so, to confirm available funding for this preparatory work.

14. If my application is intending to participate in a High Court hearing, but no hearing date is set, does this mean funding is not available to me yet?

As outlined in our pānui issued on 5 July 2024, Cabinet’s criteria for prioritising funding in the 2024/2025 financial year focuses on applicant groups with scheduled High Court hearings or those close to seeking determination. Due to the limited funding available for 2024/2025 (\$12.023 million), minimal or no funding is available for groups that fall outside these criteria. If your application does not yet have a scheduled hearing date, funding may not currently be available. However, we encourage you to stay in touch with our team for updates as your application progresses and moves closer to meeting the funding criteria.

15. What is the plan if the High Court sets down hearings that exhaust the available funding for that year?

As Cabinet has not approved additional funding beyond the allocated \$12.023 million for 2024/25, Te Arawhiti must manage the Scheme within this appropriation. We will

work proactively to balance funding across all applicants while maintaining fairness and transparency in allocating the limited funding that is available.

16. How does the December announcement of allocation of funding work?

The proposal is to confirm allocation of funding for the following financial year in December of the previous year, i.e. in December 2025 we plan to announce funding available for the 2026/2027 financial year (July 2026 to June 2027). For the 2025/2026 financial year, we are currently working through the available allocation.

17. How will the milestone-based funding improve the process?

Milestone-based funding will allow applicants to access funding approved through their budgeted workplan in advance of expenditure, which will help to alleviate financial burden caused by the need to wait for reimbursement.

18. Does Te Arawhiti have any initial thoughts about what the criteria might look like regarding the annual allocation/prioritisation of the scheme's budget?

The criteria are still in development, but the initial thinking is that groups who are close to a determination in the Court or in the Crown Engagement space would be one consideration.

19. Is the funding approved against each milestone fixed? There are times when there are budget overruns which are outside of our control. Are we stuck with the workplan and budget that is agreed?

The intent is to be flexible to account for the variation that will occur when incurring costs. The earlier that groups can raise these variations with us, the easier it will be to support and approve changes.

20. There are funding caps for hearings in the 2024/2025 year (such as \$30,000 per application for appeal proceedings) – will these continue in future years?

The funding caps for hearings in future financial years will be determined on an annual basis, in accordance with the Cabinet-approved total appropriation of \$12.023 million, and may differ from the 2024/2025 figures. While these caps have not yet been set for future years, our goal is to provide applicants with as much support as possible within the limits of the appropriation and funding guidelines.

21. Where Court decisions results in further legal work, can additional funding be obtained after hearings?

This is to be determined on a case-by-case basis, pursuant to Ministerial approval.

22. Is there funding available for hui between overlapping applicants, if they are directed to do so by the court?

The current settings include the ability to provide Collaboration funding, which is designed to fund costs that may be unreasonable to apply to any specific group or groups. This option is also available under the proposed future settings. For more information, please contact our funding team at fundingtakutai@tearawhiti.govt.nz, or call us on 0800 866 222 (and press 1 for funding enquiries).

23. Are Kings' Counsel (KCs) working for the Crown in the Supreme Court paid at the same rate as the eligible rates under the scheme?

Crown Law has not instructed KCs to work for them in Takutai Moana court hearings, including those in the Supreme Court.

24. What are some potential alternatives or adjustments to the funding model that might offer competitive rates or additional incentives for legal counsel, ensuring that applicants do not suffer from subpar representation due to budget constraints?

Te Arawhiti is exploring options to address this. One option is to consider how applicants working collaboratively may result in cost-savings that allow for higher rates while still working within the limitations on funding.

25. Is the requirement for budgeted workplans only due to the need to manage costs within the appropriation set by Cabinet?

No – while this is part of the reasoning, they are also in place to enable the milestone funding approach, which is designed to reduce the financial burden of upfront costs. They also mitigate the risk of applicants incurring costs that are not fundable by the scheme and map out the activities needed for the applicant's pathway.

26. Is there a cap on the Collaboration funding workstream?

Collaboration is assessed on a case-by-case basis for discrete pieces of work. It has no overarching cap, but available funding is based on what is needed, along with the merit of the request to use this workstream, i.e. that it involves multiple groups, and costs cannot be easily or fairly split.

27. Is the bottom line of the proposal that funding for Takutai moana hearings has been reduced?

While Cabinet has not approved additional funding, the current appropriation of \$12.023 million is higher than in previous years. This means funding remains available, but we must ensure it is allocated fairly and transparently within the limits of the appropriation and funding guidelines.

Reimbursements

28. Why have I not received communications regarding deductions applied to the payment of my reimbursement request? Who can I contact about this?

Our reimbursement process includes communicating details of any deductions made to the requestor at the timing of payment. We apologise for any missed communications on deductions.

Queries regarding deductions can be made to our funding team email fundingtakutai@tearawhiti.govt.nz, or call us on 0800 866 222 (and press 1 for funding enquiries).

29. Is there a system in place to flag reimbursements to prioritise them due to urgency of timing, e.g., costs relating to Whakatōhea hearing participation?

While we do not have a formal triage process to prioritise reimbursement requests based on urgency, the team is mindful of the financial pressures applicant groups face. Reimbursement requests are currently processed within 45 working days, and Te Arawhiti is working hard to improve these timeframes. Where delays may add to the financial burden on applicant groups, we aim to prioritise these requests as quickly as possible.

Other queries

30. There are overlapping applications in my area that do not meet the criteria of having been there since 1840, but we are required to commit resources to engage with them. Why haven't these applications been screened to remove them from the process?

We are working through applications to confirm which applications appear not to meet the relevant statutory tests. This is an in-depth process and for fairness reasons, given the purposes of the Act and noting that the Courts have shown some willingness to allow Court-pathway applicants to amend their applications, we need to ensure we act robustly and lawfully.

31. If the Scheme's appropriation funded actual and reasonable costs for pursuing applications in hearings, how large would it need to be to cover that?

This figure would differ from year to year, but we estimate it currently sits between \$35 to \$50 million per year, with an average of \$45 million. We note that the decision to fund at this level would require a parliamentary decision to increase the appropriation. Te Arawhiti cannot fund applicants above the total amount set by Parliament, which is \$12.023 million per year.

32. Has Te Arawhiti taken on more staff to deal with the workload of the funding scheme?

Like many area of the public service, Te Arawhiti has recently gone through a change process that affects the size and structure of our teams. At present there is no plan to increase the size of the funding team. We believe the team is currently sufficiently resourced to handle the workload, and we will continue to monitor the requirements in this space.

33. What is Te Arawhiti's plan to address the issues raised through the consultation process? Is there a Cabinet paper to go up outlining the concerns?

After the consultation period has ended, Te Arawhiti will report to the Minister of Finance and the Minister for Treaty of Waitangi Negotiations, who have delegated authority for final decisions regarding changes to the Takutai Moana Financial Assistance Scheme. This report will incorporate feedback received through the consultation process.

34. Does Te Arawhiti believe that the consultation process is sufficient for transparency, and ensures stakeholders feel their input is genuinely influencing the outcome?

The intention of the consultation process is to be as transparent as we can and provide an avenue for concerns and feedback to be raised and considered. Te Arawhiti encourages applicants who feel the process is not sufficient to provide feedback to us, and we welcome any proposals on ways to do things differently.