



# Review of the Takutai Moana Financial Assistance Scheme

The Takutai Moana Financial Assistance Scheme (the scheme) was set up to support applicant groups to progress their applications under the Marine and Coastal Area (Takutai Moana) Act 2011 (te Takutai Moana Act).

We want to understand your views on, and experiences with the scheme, including any problems you have encountered, concerns you may have, or improvements you think should be made to the scheme. Your feedback will assist us in developing options to improve the scheme and ensure it is fit-for-purpose.

This document provides context to the review of the scheme and supports you to provide feedback.

## Why the review now?

The scheme was established in 2013. In 2016, before the deadline for applications had closed, we reviewed the scheme and adjusted the levels of funding based on the costs that applicants had incurred at that time.

The volume of applications we received after the deadline in 2017 challenged the scheme. It raised questions about the design and administration of the scheme.

Last year, we heard from claimants involved in the Waitangi Tribunal kaupapa inquiry into te Takutai Moana Act (Wai 2660) of their experiences accessing and using the scheme.

We heard that the scheme needed to be clearer, more consistent, and ensure adequate levels of funding to assist applicants.

We have engaged Deloitte to facilitate the review of the scheme, and have a dedicated team working to ensure that we engage with all applicants (and legal counsel) that wish to participate.

This review is an opportunity for us to understand what is and isn't working, and to work collaboratively with you, as applicants, to develop solutions.

### Key Terminology

**High Court pathway:** Applications filed in the High Court to have customary rights and interests recognised by an order of the High Court.

**Crown engagement pathway:** Applications filed directly with the Crown to have customary rights and interests recognised by agreement with the responsible Minister.

## What is the Scheme?

The scheme was established to support applicant groups with the costs of progressing their application in either the High Court, or in Crown engagement.

The scheme aims to ensure that every applicant group—iwi, hapū, whānau— can have their customary rights in the common marine and coastal area considered for recognition under te Takutai Moana Act, while ensuring the appropriate and transparent use of public finances.

The scheme provides a contribution of 85 percent of the estimated costs for achieving key milestones and tasks in the application process. The scheme is not intended to cover all the expenses that are likely to be incurred by an applicant during the application process.

How much funding an applicant is entitled to depends on how complex their application is assessed as (low, medium, high or very high), and whether the application is being progressed in the High Court or in Crown engagement.

Funding matrices specify the types of costs that are funded and the level of funding available (pages 4 -8). While Te Arawhiti administers the scheme, only the Minister for Treaty of Waitangi Negotiations and the Minister of Finance can authorise additional funding outside of the matrices.

HE PĀTAI

Based on your understanding and experience, is the scheme fit-for-purpose?

## How the scheme currently works

As an applicant, when you can access funding depends on which pathway you are in—the High Court or Crown engagement.

If your application is progressing in the High Court, funding can be applied for once the application has been publicly notified.

If your application is progressing in Crown engagement, you can apply for funding once the Minister has agreed to engage with you, and after Terms of Engagement have been signed.

If an applicant who the Minister declines to engage with also has an application in the High Court, they could then transfer their application to the High Court and access funding under that pathway.

### APPLYING FOR FUNDING

To obtain funding you need to first apply for an upper funding limit.

The upper funding limit is the maximum funding available to you. It is based on the complexity of your application and which pathway your application is being progressed in.

We only provide funding to progress an application through one pathway at a time. We do not fund the same work more than once, regardless of the pathway in which that work is undertaken.

To apply for funding, you must complete and submit a complexity assessment form to us (page 9). The form lists a set of indicators and measures and assigns a weighting. The higher the weighting score, the higher the complexity level and the related upper funding limit. The main indicators in the complexity assessment are the size of your applicant group and the size of your application area.

Once your application has been assigned a complexity

#### Key Terminology

**Terms of Engagement:** Agreed and signed by the Minister and the applicant group.

**Milestones:** Key steps to progress an application made under the Takutai Moana Act.

**Tasks:** Steps required to achieve the milestone.

level, we will advise you of your upper funding limit and how much funding is available to achieve specific milestones and tasks. You are then able to seek reimbursement for expenses you may have incurred.

We can reassess your upper funding limit if:

- you request it, or
- the complexity of your application changes.

### What we've heard so far

We have heard from applicants that:

- It is difficult to find helpful information about the scheme and how it works.
- There is not enough funding available to achieve particular milestones.
- Applications in the Crown engagement pathway are at a disadvantage because they are unable to access funding until the Minister has signed Terms of Engagement, but applicants may have already incurred substantial costs.
- Whānau groups, or hapū and iwi who have not received a historical Treaty settlement are disadvantaged because they are less likely to be able to contribute to the costs of progressing their applications.
- The 85 percent contribution does not take into account real, and non-financial costs incurred by applicants.
- Some applicants are unable to cover any costs above what is funded through the scheme and that limits their ability to progress applications.
- There should be no limit on funding.

### HE PĀTAI

- Does the scheme provide enough funding to progress your application?
- If not, what would you change?
- What non-financial support could Te Arawhiti provide?

## SEEKING REIMBURSEMENT

There are upper limits of funding on what activities the scheme will contribute towards, such as the gathering of evidence, the preparation of submissions, obtaining legal advice and project management support.

Actions or costs that fall outside of the specified milestones and tasks are not funded.

Once the limits in the milestones have been reached, applicants are required to meet any further costs.

Funding can only be transferred between milestones by agreement from the Minister of Treaty of Waitangi Negotiations and the Minister of Finance.

To apply for a reimbursement, we require:

- a completed Summary of Costs form which indicates the amount to be reimbursed and the relevant milestones and tasks they relate to
- copies of invoices or receipts that total at least \$3,000 and no more than \$50,000.

### *What we've heard so far*

We have heard from applicants that:

- There is not enough information available about the reimbursement process.
- It is not clear what will and will not be reimbursed.
- There are significant delays in receiving reimbursements.
- The reimbursement threshold of \$3,000 is too high and is a burden.
- The maximum reimbursement amount of \$50,000 makes it difficult for applicants to cover large invoices.
- The milestone approach is too inflexible and should take greater account of your unique circumstances.
- You should be able to transfer unspent funds between milestones.

## HE PĀTAI

**What activities have you undertaken to progress your application that are not funded?**

## TRANSFERRING BETWEEN PATHWAYS

You can transfer between pathways if you have an application in Crown engagement and in the High Court.

If you do transfer, you are required to make a new application for funding under the new pathway.

As many of the tasks are the same under both pathways (e.g. evidence gathering), funding is not provided for tasks that have already been reimbursed.

### *What we've heard so far*

We have heard from you that:

- It is not clear why there are differences in funding levels between pathways and how these differences were calculated.
- It is not clear how unspent funding is affected if an applicant transfers between pathways, given that the two pathways have different milestones and different upper funding limits.

## HE PĀTAI

**If you have transferred between pathways, what challenges did you experience?**

## Have your say

- ⇒ Fill out the 'Submission Form' or write your own submission and send to: Level 3/19 Aitken St, Wellington 6011.
- ⇒ Complete the online survey —click [here](#) or go to [https://deloitte.nz.au1.qualtrics.com/jfe/form/SV\\_aXYQRPJTxaQnG73](https://deloitte.nz.au1.qualtrics.com/jfe/form/SV_aXYQRPJTxaQnG73)
- ⇒ Attend a hui—click [here](#) to register or go to [https://deloitte.nz.au1.qualtrics.com/jfe/form/SV\\_7PcMrWLVfGJOMN](https://deloitte.nz.au1.qualtrics.com/jfe/form/SV_7PcMrWLVfGJOMN).
- ⇒ Talk to us: send us an email at [maca@tearawhiti.govt.nz](mailto:maca@tearawhiti.govt.nz) or call us on 0800 866 222.

**Submissions close 5 pm, Friday 24 April 2020**

## Funding matrix for applicants to the High Court

Milestone	Task	Expenditure type	Complexity Band			
			Low	Medium	High	Very High
<b>Pre-notification Appointment*</b> Work undertaken up until the representative has established that they have authority to represent the application group.	Appointment process	Project Manager	\$5,000.00	\$15,000.00	\$35,000.00	\$50,000.00
<b>Notification</b> Work undertaken up until public notice of the application (under s103)	Project Planning and Project Management	Project Manager	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
	Court fees			<i>real court fees at that time</i>		
	Public notice	Project Manager	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
	Legal advice	Lawyer	\$6,000.00	\$9,000.00	\$12,000.00	\$15,000.00
<b>Pre-hearing/ Evidence gathering</b> Work undertaken until hearing commences	Project Planning and Project Management	Project Manager	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
	Legal advice and representation	Lawyer	\$16,000.00	\$22,000.00	\$28,000.00	\$40,000.00
	Court fees			<i>real court fees at that time</i>		
	Historical research	Historian	\$40,000.00	\$50,000.00	\$60,000.00	\$70,000.00
	Traditional evidence gathering	Researcher	\$40,000.00	\$50,000.00	\$60,000.00	\$70,000.00
<b>Interlocutory hearing</b> <i>if arising</i>	Legal representation and advice	Lawyer	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
	Travel and accommodation		\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
	Court fees			<i>real court fees at that time</i>		
<b>Hearing</b> Work undertaken up until hearing concludes	Project Planning and Project Management	Project Manager	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
	Legal representation and advice	Lawyer	\$15,000.00	\$20,000.00	\$25,000.00	\$30,000.00
	Research/expert witnesses	Historian	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00
	Hearing fees			<i>real court fees at that time</i>		
	Any other Court fees at this time			<i>real court fees at that time</i>		
	Travel and accommodation		\$1,500.00	\$2,000.00	\$5,000.00	\$6,000.00
	Legal advice	Lawyer	\$750.00	\$750.00	\$750.00	\$750.00
<b>Determination</b> Work undertaken until recognition order is sealed	Project Planning and Project Management	Project Manager	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
	Drafting of order	Lawyer	\$5,000.00	\$6,500.00	\$7,000.00	\$7,500.00
	Court fees			<i>real court fees at that time</i>		
<b>Totals:</b>			<b>\$156,750.00</b>	<b>\$202,750.00</b>	<b>\$260,250</b>	<b>\$316,750.00</b>

**\*Note: a voluntary step that applicant may determine to undertake - to establish their authority to represent the applicant group in accordance with the 'appointed by' aspect of the definition of the applicant group under the Act. May take place after the application has been filed – the applicant would still be able to access this funding should they incur real costs related to appointment at a later stage**

## Funding matrix for applicants in Crown engagement

Milestone	Task	Expenditure type	Complexity Band			
			Low	Medium	High	Very High
<b>Pre-Engagement</b> Work undertaken up until the responsible Minister determines whether to proceed to formal engagement under s95(3)	Review of Crown preliminary appraisal	Project Manager	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
<b>Terms of Engagement</b> Work undertaken up until terms of engagement entered	Project Planning and Project Management Mandating process Legal advice	Project Manager Project Manager Lawyer	\$5,000.00 \$5,000.00 \$3,000.00	\$5,000.00 \$15,000.00 \$3,000.00	\$5,000.00 \$35,000.00 \$3,000.00	\$5,000.00 \$50,000.00 \$3,000.00
<b>Collection of evidence</b> Work undertaken up until OTS assessment of the application is provided to the applicant for review	Meeting with the Crown Project Planning and Project Management	Project Manager Project Manager	\$2,000.00 \$3,000.00	\$2,000.00 \$3,500.00	\$2,000.00 \$4,000.00	\$2,000.00 \$4,500.00
<b>Assessment of evidence</b> Work undertaken up until Minister's view on rights presented to applicant	Legal advice Historical research Traditional evidence gathering Project Planning and Project Management Response to OTS assessment of application and preparation of submissions to OTS and the Independent Assessor Meetings with the Crown	Lawyer Historian Researcher Project Manager Project Manager Lawyer	\$6,000.00 \$40,000.00 \$40,000.00 \$2,000.00 \$22,000.00	\$10,000.00 \$50,000.00 \$50,000.00 \$2,000.00 \$33,000.00	\$14,000.00 \$60,000.00 \$60,000.00 \$2,000.00 \$44,000.00	\$18,000.00 \$70,000.00 \$70,000.00 \$2,000.00 \$55,000.00
<b>Internal consultation</b> Work undertaken to get consensus on who should be the holder of any recognition right which might be brought into effect*	Consultation Disbursements	Project Manager Lawyer Project Manager	\$3,000.00 \$7,000.00 \$2,000.00	\$4,000.00 \$9,000.00 \$2,000.00	\$5,000.00 \$11,000.00 \$2,000.00	\$6,000.00 \$13,000.00 \$2,000.00
<b>Consideration of draft recognition agreement</b> Work undertaken until ratification process commences	Disbursements	Lawyer	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
<b>Ratification</b> Work undertaken until ratification result received from returning officer	Disbursements	Project Manager	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
<b>Final Agreement</b> Work undertaken until recognition agreement signed/entered	Disbursements	Project Manager	\$5,000.00	\$15,000.00	\$35,000.00	\$50,000.00
<b>Legislation</b> Work undertaken until agreement brought into effect	Disbursements	Project Manager	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
		Project Manager	\$5,500.00	\$11,000.00	\$25,000.00	\$50,000.00
		Project Manager	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
		<b>Totals:</b>	<b>\$162,000.00</b>	<b>\$226,000.00</b>	<b>\$318,500.00</b>	<b>\$412,000.00</b>

## Funding matrix for applicant group to appeal High Court decisions

Milestone	Task	Expenditure type	Court of Appeal	Supreme Court	Secondary consideration by HC*
<b>Leave to appeal</b> Work undertaken in relation to decisions to appeal, cross-appeal, or oppose an appeal	Legal advice	Lawyer	\$3,000.00	\$3,000.00	\$3,000.00
	<b>Court fees:</b>				
	Filing of application for leave to appeal		real court fee at that time		N/A
	Filing of response to application for leave to appeal by another party		real court fee at that time		N/A
<b>Pre-hearing</b> work undertaken prior to a hearing but after a decision has been made by the party to proceed with legal proceedings	Filing of application for reconsideration of Application under Act by HC on back of Appeal success		N/A	N/A	real court fee at that time
	Project Planning and Project Management	Project Manager	\$1,500.00	\$1,500.00	\$1,500.00
	Legal advice and representation	Lawyer	\$10,000.00	\$10,000.00	\$5,000.00
	Historical research	Historian	\$5,000.00	\$2,500.00	N/A
<b>Interlocutory hearing</b> if arising	Legal representation and advice	Lawyer	\$3,000.00	\$3,000.00	N/A
	Travel and accommodation		\$1,500.00	\$1,500.00	N/A
	Court fees			<i>real court fees at that time</i>	
	Legal advice and representation	Lawyer	\$15,000.00	\$15,000.00	\$10,000.00
<b>Hearing</b> work undertaken up until hearing concludes	Hearing fees				
	Court fees (other than hearing fees)				
	Travel and accommodation			<i>real court fee at that time</i>	
<b>Determination</b> work undertaken until High Court determination is made / order is granted.	Sealing fee	Lawyer			\$1,500.00
	Legal advice	Lawyer		<i>real court fee at that time</i>	\$750.00
			<b>Totals:</b>	\$39,000.00	\$36,500.00
					\$21,750.00

## Funding matrix for overlapping customary interest groups in relation to High Court applications and appeals to High Court decisions

Milestone	Task	Expenditure type	High Court	Court of Appeal	Supreme Court
Pre-hearing Work undertaken until hearing commences	Project Planning and Project Management	Project Manager	\$1,500.00	\$1,500.00	\$1,500.00
	Legal advice	Lawyer	\$10,000.00	\$10,000.00	\$10,000.00
	Court fees e.g. - filing fee - notice of appearance			<i>real court fee at that time</i>	
	filing fee to file to seek to be an interested party or oppose application			<i>real court fee at that time</i>	
Interlocutory hearing <i>if arising</i>	filing fee to file to seek leave to appeal in relation to an application		N/A	<i>real court fee at that time</i>	
	Historical research and traditional evidence gathering	Project Manager	\$5,000.00	\$5,000.00	N/A
	Legal representation and advice	Historian	\$20,000.00		
	Travel and accommodation	Researcher	\$15,000.00		
Hearing Work undertaken up until hearing concludes	Court fees	Lawyer	\$3,000.00	\$3,000.00	\$3,000.00
	Project Planning and Project Management	Project Manager	\$1,500.00	\$1,500.00	\$1,500.00
	Legal advice and representation	Lawyer	\$20,000.00	\$10,000.00	\$5,000.00
	Court fees (if any)			<i>real court fees at that time</i>	
Determination	Travel and accommodation		\$1,500.00	\$1,500.00	\$1,500.00
	Court fees (if any)			<i>real court fee at that time</i>	
	Legal advice	Lawyer	\$750.00	\$750.00	\$750.00
<b>Totals:</b>			<b>\$79,750.00</b>	<b>\$34,750.00</b>	<b>\$24,750.00</b>

**Funding matrix for overlapping customary interest groups to research evidence relating to applications to the Crown**

Milestone	Task	Expenditure type	Upper Limit
Initial consideration of application Following being notified by OTS that an application has been filed of relevance to their role	Meeting with the Crown	Project Manager	\$2,000.00
	Legal advice	Lawyer	\$6,000.00
Collection of evidence After applicant has entered Terms of Engagement with the Crown	Project Planning and Project Management	Project Manager	\$3,000.00
	Legal advice on Act and evidence required	Lawyer	\$6,000.00
	Historical research	Historian	\$15,000.00
	Traditional evidence gathering; internal communications	Researcher	\$15,000.00
Assessment of evidence and response to OTS assessment of application Work undertaken until OTS submits report to Independent Assessor	Meetings with the Crown	Project Manager	\$3,000.00
	Legal advice	Lawyer	\$20,000.00
<b>Total:</b>			<b>\$70,000.00</b>

**Complexity self-assessment form**

The below matrix is to inform a complexity assessment of your application under the Marine and Coastal Area (Takutai Moana) Act 2011 for funding purposes.  
 [TICK ONE CATEGORY PER INDICATOR LINE]

**Applicant Name:**

INDICATORS	Category 1		Category 2		Category 3		Category 4	
Size of customary group on behalf of whom the funding application is sought	<input type="checkbox"/>	A whānau	<input type="checkbox"/>	A hapū	<input type="checkbox"/>	A small iwi (population size of <15,000 in most recent Census)	<input type="checkbox"/>	A large iwi (population size of >15,000 people in most recent Census)
Size of application area	<input type="checkbox"/>	1-2 bays and/or less than 10km of coastline (6km)	<input type="checkbox"/>	3-6 bays and/or 10-50km of coastline	<input type="checkbox"/>	7+ bays and/or 50-100km of coastline	<input type="checkbox"/>	More than 100km of coastline
Number of groups with potential overlapping customary interests in the application area	<input type="checkbox"/>	1-2 neighbouring/ overlapping iwi on land adjacent to CMCA recognised by the Waitangi Tribunal/Crown	<input type="checkbox"/>	3-4 neighbouring/ overlapping iwi on land adjacent to CMCA recognised by the Waitangi Tribunal/Crown TBC	<input type="checkbox"/>	5-6 neighbouring/ overlapping iwi on land adjacent to CMCA recognised by the Waitangi Tribunal/ Crown	<input type="checkbox"/>	6+ neighbouring/ overlapping iwi on land adjacent to CMCA recognised by the Waitangi Tribunal/Crown
Nature of relations with customary interest neighbours on land adjoining the CMCA	<input type="checkbox"/>	Relatively amicable relations with neighbours	<input type="checkbox"/>	Some areas of dispute with neighbours	<input type="checkbox"/>	Persistent dispute with neighbours	<input type="checkbox"/>	Persistent and heated dispute with neighbours
Current use of the application area	<input type="checkbox"/>	Low (low local population adjoining CMCA, none-few commercial activities, infrequent use)	<input type="checkbox"/>	Mix of areas of predominantly low use and some with high use	<input type="checkbox"/>	Mix of areas of predominantly high use and some with low use	<input type="checkbox"/>	High (frequent, many stakeholders and members of the public, many activities including commercial activities)
Number of activities sought (if PCR application)	<input type="checkbox"/>	1-2 activities	<input type="checkbox"/>	3-4 activities	<input type="checkbox"/>	5-6 activities	<input type="checkbox"/>	6+ activities
Level of research or evidence already accessible to applicant	<input type="checkbox"/>	Some	<input type="checkbox"/>	Some	<input type="checkbox"/>	None	<input type="checkbox"/>	None
Historical Treaty claims	<input type="checkbox"/>	Settled	<input type="checkbox"/>	Settled	<input type="checkbox"/>	Unsettled	<input type="checkbox"/>	Unsettled