

CONSULTATION ON PROPOSED CHANGES TO TAKUTAI MOANA FUNDING

We invite you to provide feedback on proposed changes set out in this document relating to the Takutai Moana Financial Assistance Scheme

The **Takutai Moana Financial Assistance Scheme** supports applicants seeking recognition under the Marine and Coastal Area (Takutai Moana) Act 2011. With an annual limit of \$12.023 million, it is essential that the Scheme is managed sustainably.

The total funding available covers activity and legal fees across all applications. It is important that we manage costs carefully and prioritise funding to ensure progress continues in both pathways.

In July 2024, interim changes to the Takutai Moana Financial Assistance Scheme (FAS) were implemented for the 2024/25 financial year to manage costs within the annual limit. When the changes were signalled, we said we would come back to applicants to consult on proposed permanent changes for the scheme.

Proposed permanent changes to take effect or continue from 1 July 2025

- **Budgeted Work Plans:** Continue the requirement for all groups to have an agreed budgeted work plan with Te Arawhiti before funding is provided.
- **Alignment with Legal Aid Rates:** Continue alignment of legal service costs for hearings with legal aid rates for consistency and equity.
- **Milestone-Based Funding:** Introduce pre-approved funding releases tied to milestones as per agreed work plans.
- **Prioritisation Process:** Introduce criteria to allocate funding annually for activity and court costs, including potential funding caps.

What is the rationale behind these proposed changes?

- To better support applicants while managing limited resources effectively.
- To provide certainty of funding availability through clear allocation processes.
- To ensure equitable cost management, with legal fees aligned to legal aid rates.
- To enable enhanced flexibility and less administration for applicant groups, through milestone-based funding provided in advance.

How can you get involved?

We encourage you to have your say on the proposed changes outlined in the Table 1 below between now and 21 February 2025. You can do this by emailing your feedback to takutaimoana@tearawhiti.govt.nz, or attending an online facilitated hui with us to discuss the changes and provide feedback. The hui are scheduled as below. Links to the hui will be published on the Te Arawhiti website from the week of January 2025:

January 15 2025	12pm – 1pm
January 22 2025	5.30pm – 6.30pm
February 12 2025	12pm – 1pm
February 19 2025	5.30pm – 6.30pm.

Below are some questions you may wish to consider when providing feedback:

- Are there any areas where you think cost savings could be achieved with minimal impact?
- Are there specific tools, training or guidance that would help you navigate the funding changes?
- Do you have any suggestions for how activities and other costs could be made more efficient or effective?
- Are there any processes you feel could be streamlined to save costs?

What happens next?

Consultation on these proposed changes runs from 13 December 2024 – 21 February 2025.

We plan to run further consultation on criteria for annual funding prioritisation and allocation in early 2025.

The Government will make final decisions on the proposals by May 2025, informed by the consultation. Changes to the funding scheme will be fully operational by 1 July 2025 and supported by updated guidance.

Table 1 - Proposed changes to the Financial Assistance Scheme (FAS)

	Description	Current process	Proposed Change	Reason for the proposed change	What the proposed change means for you as an applicant group
1	Budgeted workplan	<p>From March 2023, applicant groups were encouraged to develop budgeted workplans, but it was not compulsory.</p> <p>For the 2024/25 financial year interim changes to the FAS require all applicant groups to have a budgeted workplan agreed by Te Arawhiti before funding is provided.</p>	<p>From 1 July 2025, applicant groups will be required to have a budgeted workplan agreed by Te Arawhiti before funding is provided – <i>interim requirement to be made permanent.</i></p>	<p>Improved visibility of applicant groups' planning and investigation of customary interests and legal costs to better coordinate engagement and funding. This will reduce duplication and costs.</p> <p>Clarity and certainty for applicants and the Crown as to what costs can be funded.</p>	<p>Before funding is provided, you need to develop a budgeted workplan and have it agreed by Te Arawhiti.</p> <p>The final workplan will include agreed amounts linked to specific tasks and activities.</p> <p>The template for budgeted workplans is here: Te Arawhiti - Budgeted Workplan Templates</p>
2	Alignment to legal aid rates	<p>FAS funding rates for Court proceedings were not aligned to legal aid rates, with funding rates exceeding the legal aid rates.</p> <p>For the 2024/25 financial year interim changes to the FAS align funding levels for hearing preparation and hearing costs with legal aid rates.</p>	<p>From 1 July 2025, funding levels for hearing preparation and hearing costs will be aligned with legal aid rates – <i>interim requirement to be made permanent.</i></p>	<p>Alignment to legal aid rates will give greater consistency across the pathways and reduce costs in an equitable way amongst applicant groups.</p>	<p>The amounts you can claim for court related costs incurred from 1 July 2024 cannot exceed the proposed hourly rates for court-related activities set out in Table 2 below.</p>
3	Annual allocation	<p>For the 2024/25 financial year interim changes to the FAS cap the Crown contribution to court costs for all scheduled hearings at \$140,000 per applicant for substantive hearings, \$25,000 per applicant for follow up hearings, and \$30,000 per applicant for appeals.</p> <p>There is currently no business-as-usual mechanism for considering prioritisation or allocation.</p>	<p>Te Arawhiti will develop a prioritisation process and associated criteria which will guide decisions on prioritisation of funding for activity costs or Court costs and necessary funding caps for each</p>	<p>The caps for 2024/25 are tailored to the number and type of hearings already scheduled for this financial year, and the number of applicants in those hearings. Specifically capping court costs was a deliberate choice to ensure funds are also available in the activity funding stream to support applicants to progress the early collaborative and research stages.</p>	<p>Te Arawhiti will communicate any annual funding caps and prioritisation of activity and court funding ahead of the beginning of each financial year. This allows sufficient time to factor funding caps into planning.</p> <p>Te Arawhiti will consult applicants on proposed prioritisation criteria in early 2025.</p>

	Description	Current process	Proposed Change	Reason for the proposed change	What the proposed change means for you as an applicant group
			<p>financial year. The process is still being developed but will be guided by the principle of fairness between pathways.</p> <p><i>Proposed new setting</i></p>	<p>Pressure points are likely to change year to year as applications progress - what works for 2025/26 may not work in other years.</p> <p>An annual process will provide flexibility to manage costs within the appropriation tailored to the situation for the particular financial year. It will ensure that both activity and court costs can be progressed within the limits of the appropriation.</p>	
4	Pre-approved milestone funding	Applicant groups apply for reimbursement of costs from Te Arawhiti once costs have been incurred.	<p>Move from reimbursement to providing pre-approved tranches of funding in advance ('milestone funding') for each separate phase of an application.</p> <p><i>Proposed new setting</i></p>	<p>Providing pre-approved milestone funding in advance for applicants to use in each phase will maximise flexibility and autonomy for applicants while providing certainty about what is being funded.</p>	<p>From the 2025/26 financial year, each tranche of funding will require an agreement on what work will be undertaken with the funding, expected costs and intended outcomes.</p> <p>Further tranches of funding will be contingent on a milestone report on how funding was spent and demonstrating sufficient progress.</p>

Table 2: Proposed guideline hourly rates for court-related activities

Job level	Hourly rate (GST exclusive)		Type of Task
	Previous	Proposed	
Senior Associate, Solicitor or Barrister (minimum 9 years litigation experience)	\$250-\$350	\$167 – High Court	<ul style="list-style-type: none"> Provides legal advice Oversees junior staff and undertakes review of documents for court Strong strategy focus to resolve ambiguities to support the application
		\$178 – Court of Appeal, Supreme Court	
Solicitor or Associate (minimum 4 years and up to 9 complete years litigation experience)	\$150-\$250	\$150 – High Court	<ul style="list-style-type: none"> Assists senior lawyers to prepare court documents Provides legal and administrative support Researches the law and relevant statutes to assist in court strategy
		\$161 – Court of Appeal, Supreme Court	
Junior (including law clerk, paralegal)	Up to \$150	\$134 – High Court	<ul style="list-style-type: none"> Manages and sets up client files Undertakes due diligence Assesses legal precedents Drafts documents Witnesses affidavits
		\$146 – Court of Appeal, Supreme Court	

FREQUENTLY ASKED QUESTIONS – IMPACT OF PROPOSED CHANGES

Why does the Government think these changes are necessary?

1. Due to a higher-than-expected number of High Court hearings and the complexity of applications being processed, interim changes were introduced in July 2024 to make sure there was enough funding for all applicants for the 2024/25 financial year.
2. These interim changes included requiring all applicants to submit a budgeted workplan and adjusting funding rates for pre-hearing and hearing costs to align with legal aid rates. These changes aimed to manage funding more effectively and reduce court funding pressures.
3. With cost pressures on the FAS continuing, we propose these changes be made permanent so the FAS is sustainable.

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4. What happens if the budget of \$12.023 million for the year runs out?

Once the budget for a financial year is exhausted, there will be no funding available for applicants until the next annual allocation. Te Arawhiti cannot exceed budget allocation within a financial year. The proposed changes will help to ensure Te Arawhiti can manage funding within the limits of the FAS.

5. How will the annual allocation process work? How will groups be prioritised?

Our approach to allocating funding will be guided by a prioritisation process and associated criteria. Applicants will be consulted on the proposed process and criteria in 2025.

From the financial year commencing 1 July 2025, Te Arawhiti will give applicants notice of funding allocation decisions and prioritisation of activity and court funding by December each year, so you are able to factor this into your planning ahead of the next financial year.

6. How will milestone funding work? How can my group access it?

From 1 July 2025, you can apply for payments to be made in advance to spend on agreed milestones, in line with the payment schedule in your agreed workplan. Funding in advance to spend on agreed milestones will give applicant groups more flexibility and autonomy while providing certainty about what is being funded.