

Takutai Moana Financial Assistance Scheme Consultation Hui

Date: 22 January 2025

Time: 5:30pm – 6:30pm

Location: Online

This was the second of four consultation hui on the Takutai Moana Financial Assistance Scheme (FAS). The hui serve as an opportunity to discuss the proposed changes to the FAS.

The following is a summary of the key feedback received during the second hui, arranged by themes.

Note that questions asked during the hui have been collated in a Frequently Asked Questions document, which is available [here](#).

Budgeted Workplan and Milestone Funding Issues:

- It was raised that the timing of approval of funding places undue time pressure on the applicants and their counsel about their evidence preparation. Filing for hearings may occur several months before the hearing date. Dependent on the timing of the hearing relative to the financial year end, the budgeted workplan may be approved with short notice, leaving little time for the work to be completed by the deadline.
- Te Arawhiti noted the issue and expressed that there is an intention to mitigate this through the allocation process. Te Arawhiti suggested that the allocation of funding could consider a multi-year approach rather than only being valid for one year. It was requested that this is reflected in the proposed settings.
- A concern was raised that the reporting on spending against the money provided for a milestone adds to the workload of applicants. Te Arawhiti explained that as the reimbursement approach also requires this proof of expenditure to be submitted, it is expected that the work difference will be negligible, or possibly there may be time benefits.

Legal Funding Concerns:

- Multiple attendees noted that the eligible rates, as aligned to legal aid rates, fall below commercial rates (particularly for senior counsel and King’s Counsel where applied). This raises concerns about representation quality and the ability to retain counsel. Te Arawhiti acknowledged that applicants have previously raised this issue and reiterated active efforts to consider it.
- A potential solution was outlined by Te Arawhiti where applicants may consider working collaboratively, which may reduce the overall hours required for the multiple applications, and therefore higher rates may be possible due to the overall cost savings. While the feasibility of such a solution has yet to be tested, Te Arawhiti expressed interest in feedback from groups on their thoughts on this idea.

- A concern was raised by applicant counsel attending the session, regarding a suggestion in material released under the Official Information Act that applicants use counsel who are based in the region of the hearing, to reduce travel costs. Given the low number of counsel who are familiar with the Takutai Moana Act across the country, some areas may have limited appropriate legal representation options available, which may impact the quality of representation.
- It was noted by applicant counsel that the prioritisation process should not be an avenue by which the Minister for Treaty of Waitangi Negotiations can use their own discretion to decide if an application is worthy of funding based upon their assessment of whether or not they meet the test. Te Arawhiti noted that assessments against the tests for customary interests happen at the end of the application process, where the decision maker in the relevant pathway considers submitted evidence against the tests in the Act.

Existing settings and systemic issues

- One applicant [from the ongoing Whakatōhea/Re Edwards proceeding in the Supreme Court] noted that their counsel, including a KC, were not being paid the difference between the funding Te Arawhiti has provided and their lawyers' costs. Te Arawhiti accepted that was an issue but explained that Ministers had capped funding for all hearings, including appeals; that the Supreme Court had increased that funding; and that the applicant had an outstanding application to the Supreme Court for the balance of the costs, so Te Arawhiti couldn't say anything more while that was a live issue before the Court.
- An applicant explained that they are having trouble securing counsel to work on their application due to conflicts of interest arising from working with other applicants. Te Arawhiti proposed a potential solution where a pool of counsel with Takutai Moana experience might be developed or funded that might be big enough to manage conflicts of interest. Te Arawhiti expressed interest in hearing feedback from applicants on this idea. It was noted that the current eligible rates permitted by the scheme may impact the ability to source the proposed pool adequately.