

Hon Andrew Little

Minister for Treaty of Waitangi Negotiations

Proactive release- Revised Takutai Moana Financial Assistance Scheme

Date of issue: 28 June 2022

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Revised Takutai Moana Financial Assistance Scheme Cabinet Paper Cabinet paper Office for Māori Crown Relations: Te Arawhiti 15 February 2022	Information in this document has been withheld in accordance with: No comment.
2	Cabinet Māori Crown Relations: Te Arawhiti Committee Minute of Decision Cabinet Committee Minute MCR-22-MIN-0002 Cabinet Office 15 February 2022	Information in this document has been withheld in accordance with: No comment.

In Confidence

Office of the Minister for Treaty of Waitangi Negotiations

Cabinet Māori Crown Relations: Te Arawhiti Committee

Revised Takutai Moana Financial Assistance Scheme

- 1 This paper seeks agreement to proposed changes to the takutai moana financial assistance scheme (the scheme). The scheme does not effectively provide appropriate levels of funding to iwi, hapū and whānau applicant groups seeking recognition of their customary interests under te Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

Relation to government priorities

- 2 This paper supports the Government's manifesto commitment of continuing the partnership path with Māori and realising the promise of Te Tiriti o Waitangi.

Executive summary

- 3 The scheme was established by Cabinet in 2012 to support iwi, hapū, and whānau groups (applicants) by contributing towards the costs of seeking recognition of customary interests in the takutai moana under te Takutai Moana Act 2011 or Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
- 4 The larger than anticipated number of applications received, the range of applicants, the extent of shared or overlapping interests, the complexity of legal and factual issues, and the pace of progress have combined to put pressure on the scheme.
- 5 In 2017, several takutai moana applicants sought and were granted an urgent Waitangi Tribunal inquiry into te Takutai Moana Act 2011 (Wai 2660 inquiry). Stage 1 of that inquiry focussed on procedural and administrative matters, including the financial assistance available to applicants under the scheme.
- 6 In June 2020, the Tribunal released its Stage 1 Report finding that the failure of the Crown to efficiently provide appropriate levels of funding for applicants is in breach of te Tiriti principles of partnership and active protection. The Minister of Finance and I have considered the findings and recommendations of the Tribunal alongside those of the review conducted by Te Arawhiti. Fundamental change to the scheme is needed.
- 7 The Minister of Finance and I have agreed on the changes proposed in this paper. Those changes are to improve the structure of the scheme to clearly show which activities are funded, provide allocations of financial assistance for court proceedings as individual events, enable grant-based funding (the ability to prospectively provide funding, then seek the return of any funding not needed to progress the application), and ensure the costs incurred in progressing an application are met by the scheme.

- 8 Additional investment will be required to address the fiscal impact of existing cost pressures and the proposed changes to the scheme. This investment is being sought through Budget 22.
- 9 Subject to Cabinet agreement to the proposed changes, and to Budget 22 decisions, Te Arawhiti will work with applicants, and make the required operational policy and process changes to ensure effective implementation of the improved scheme.

The takutai moana financial assistance scheme

- 10 The takutai moana financial assistance scheme (the scheme) was established in 2012 to support iwi, hapū, and whānau groups (applicants) by contributing towards the costs of seeking recognition of their customary interests in the common marine and coastal area [CAB MIN (12)7/5 refers].¹ Applicants do not have access to funding via the Legal Aid Scheme.²
- 11 Customary interests in the common marine and coastal area are recognised by way of:
- 11.1 protected customary rights, which allow an activity, use or practice that has been carried out since 1840 in accordance with tikanga Māori to be carried out by the applicant group without the need for a resource consent; and
 - 11.2 customary marine title, which provides the applicant group with particular rights (specified in te takutai moana legislation) in relation to a specified area of the CMCA.
- 12 Applications for recognition of customary interests together cover the whole coastline of Aotearoa New Zealand and its outer islands, there is considerable overlap of interests in most areas and varying levels of complexity between applications.³ The work required to get applications ready for determination is significant, for example, requiring substantial amounts of evidence to be gathered by applicants.
- 13 The larger than anticipated number of applications received, the range of applicants (hapū and whānau, as well as settled and unsettled iwi), the extent of shared or overlapping interests, and the pace of progress made to-date, have combined to put pressure on settings of the scheme and its operation. This has led to an increasing number of complaints from applicants about the scheme's adequacy.

Progress of applications has been slow but is increasing

- 14 It is now more than four years after the statutory deadline for applications seeking recognition of customary interests and most applications are yet to be decided. While progress has been slow, this is changing.
- 15 In 2021, the first recognition decisions of the Crown took effect and Cabinet approved the takutai moana engagement strategy (the strategy) to achieve the fair, transparent

¹ The scheme also supports iwi, hapū, and whānau groups that do not have an application themselves to appear as interested parties in court proceedings.

² Proceedings for takutai moana applications are not included in the list of relevant proceedings in section 7 of the Legal Services Act 2011.

³ By the statutory deadline, the Crown received 387 applications and the High Court received 202 applications.

and timely determination of applications for recognition of customary interests [CAB-21-MIN-0076 refers]. Te Arawhiti has begun engaging with applicants under the strategy and I will report back on progress to Cabinet in March 2022.

- 16 The High Court has also begun to progress applications. In 2020 and 2021, the court held substantive hearings and issued judgments in the *Whakatōhea (Edwards)* stage 1 hearing, the *Eriha whānau (Clarkson)* hearing, the *Ngā Pōtiki (Reeder)* stage 1 hearing and the *Ngāti Pāhauwera (Taylor)* stage 1 hearing. Further hearings for *Whakatōhea*, *Ngā Pōtiki*, and *Ngāti Pāhauwera* applicants will be held in 2022 as well as a hearing for applicants in Tokomaru Bay. In addition, the judgments from the first *Whakatōhea* and *Ngāti Pāhauwera* hearings are under appeal to the Court of Appeal.

Changes to the financial assistance scheme are needed

The Waitangi Tribunal has found that the current policy settings for the scheme are in breach of Te Tiriti o Waitangi

- 17 In 2017, several applicants sought and were granted an urgent Waitangi Tribunal inquiry into the Takutai Moana Act 2011 (Wai 2660 inquiry). Stage 1 of the Wai 2660 inquiry largely related to the scheme, including the inadequacy of funding provided to applicants and the challenges faced relating to its administrative policies and practices.
- 18 In June 2020, the Tribunal released its Stage 1 Report finding that the current policy settings of the scheme are detrimental to Māori Crown relations and create inequalities amongst applicants. The Tribunal found the failure of the Crown to efficiently provide appropriate levels of funding to applicants is in breach of Te Tiriti principles of partnership and active protection.
- 19 The Tribunal made several recommendations relating to the policy settings and administration of the scheme, including an overarching recommendation that the Crown covers all reasonable costs for applicants regardless of whether recognition was being sought directly from the Crown or from the High Court.
- 20 The Tribunal concluded that Māori would continue to be prejudiced until the Crown takes steps to make the resourcing arrangements fairer, clearer, more cohesive, and consistent with the Crown's obligations as a Treaty partner. The Tribunal's findings and recommendations echo the ongoing feedback received by Te Arawhiti from applicants on their experiences of the scheme.

Applicants are seeking greater transparency, flexibility, certainty, and sufficient funding

- 21 Recognising the issues being faced by applicants, the Minister of Finance and I agreed Te Arawhiti would conduct a comprehensive review of the scheme to ensure it is fit-for-purpose, fair and sustainable. Cabinet invited me to report back following the review [CAB-19-MIN-0660 refers].

- 22 As part of the review, Te Arawhiti:
- 22.1 consulted with all applicants, talked directly to 170 applicants from September to November 2020, and considered 52 formal submissions from applicants and legal counsel;
 - 22.2 drew from the four recent High Court hearings, including the *Whakatōhea (Edwards)* ten-week hearing from August to October 2020, and claimant evidence to the Tribunal during its Wai 2660 inquiry;
 - 22.3 commissioned an independent review by Deloitte on the administration of the scheme (including a survey of applicants and legal counsel); and
 - 22.4 made several administrative or interim changes to make the scheme more flexible and responsive to time-sensitive matters.
- 23 Applicants reported, and continue to report, numerous challenges in interacting with the scheme including the complexity of funding policy and processes, the general inadequacy of funding (particularly for court proceedings), and the financial burden of needing to incur significant costs before reimbursements are made.
- 24 The overall feedback was that the scheme requires fundamental change to enable the Crown to provide the financial assistance needed by applicants to progress their applications – a finding echoing the Waitangi Tribunal findings and those of the independent review commissioned by Te Arawhiti and completed by Deloitte

A better approach to providing financial assistance for applicants

- 25 Taking into account feedback from applicants, recommendations from the Tribunal, and the principles of partnership and active protection, the Minister of Finance and I have agreed to propose the following changes to the scheme that would:
- 25.1 improve the structure of the scheme;
 - 25.2 increase funding for court proceedings;
 - 25.3 enable the provision of grant-based funding; and
 - 25.4 ensure the costs incurred in progressing an application are met.

Improving the structure of the scheme

- 26 Applicants conduct a range of necessary activities to progress their applications including convening and attending hui, obtaining advice and services of legal counsel and other experts, and preparing research and other material to form the evidential base needed to satisfy the statutory tests for recognition of customary interests. All applicants need to undertake these activities regardless of the pathway they are in (High Court or Crown).
- 27 The scheme currently uses tasks, milestones, and matrices to organise funding and these in turn are differentiated by High Court and Crown pathways. Applicants consider this structure is difficult to navigate and creates uncertainty as to whether

specific activities are funded or not, and whether iterative work is accommodated. The current structure is administratively complex and does not have the required flexibility to respond to the range of ways an application progresses.

- 28 I am proposing to simplify the scheme's structure so that activities are organised into workstreams that reflect the overall effort required of applicants. Each workstream will group similar activities together to reflect overall effort required of applicants.
- 29 The first four workstreams would include activities common across all applications, irrespective of the pathway through which they are seeking recognition. This includes project planning and management, legal advice, traditional evidence gathering and mapping.
- 30 The fifth workstream would focus on activities specifically related to court proceedings in the High Court and appellate courts. This would include legal costs for preparing and filing submissions, legal representation at hearings, and the costs of expert witnesses who may be required to participate in the proceedings.
- 31 The sixth workstream would support collaborative activities or projects between applicants, where it is administratively difficult to otherwise split costs between them. For example, engaging a facilitator or mediator to guide kōrero between applicants with shared or overlapping interests.
- 32 Improving the scheme's structure in this way will also provide applicants with a clearer picture of the types of activities needed to progress an application. It will align more comfortably with the engagement strategy and the court process and will remove uncertainty for applicants who are completing activities common to both pathways. A table summarising the improved structure of the scheme is in Appendix One.

Increasing funding for court proceedings

- 33 Current levels of High Court and appellate court funding are largely based on assumptions about the number, duration and complexity of hearings made when the scheme was established as well as an assumption that applicants will only be involved in one substantive hearing over the course of their application. Those assumptions have proven to be incorrect, with the inadequacy of financial assistance for court proceedings now an established cost pressure.
- 34 Hearing duration is longer than anticipated and may be extended by the Court, even during the hearing itself. Hearings are also being held in stages, and each stage must be fully prepared for and participated in, as a separate hearing. The complexity of issues to be determined are more significant than originally assumed, both because of the novel questions of law being raised and because of the number of applicants participating in each hearing.
- 35 The inadequacy of funding and the inflexibility of the funding model has resulted in multiple requests to the Minister of Finance and me seeking agreement to allocate additional funding for High Court hearings. This creates unnecessary hardship for applicants who are uncertain whether additional funding will be agreed to, particularly where they continue to incur costs where hearings are already underway. It has also

led to increasing frustration for those applicants needing to go through this process more than once, as hearing durations continue to change, or because they are involved in more than one hearing and have already exhausted, or are close to exhausting, their funding because of the first hearing.⁴

- 36 To increase the funding allocated under the scheme for applicants involved in court proceedings, we are proposing that allocations are made for hearings as individual events. This enables each hearing to be assessed in terms of the court the hearing is in, duration, complexity of issues, and number of participating parties. Funding would be based on actual court hearing days, with fixed hourly rates for legal counsel and expert witnesses. Travel and accommodation costs for legal counsel and expert witnesses, as well as for the applicant and other witnesses would be covered. Wider costs such as research, mapping, and historical evidence gathering would be covered under the activity-based workstreams, which include the activities common to all applicants
- 37 This approach would apply to all takutai moana court proceedings, including case management and judicial conferences, interlocutory hearings, and appeal proceedings. Allocating funding for court proceedings as individual events would achieve better consistency with comparable schemes such as Legal Aid (civil, appellate, and Tribunal) and the Māori Land Court funding scheme.⁵ It would also remove the risk of prejudice to applicants whose legal counsel cannot carry costs while additional funding is sought and approved.

Enable the provision of grant-based funding

- 38 The policy settings for the current scheme place a burden on applicants by requiring them to incur costs and then seek reimbursement. This is particularly onerous for smaller hapū and whānau groups. The current policy was intended to incentivise cost-savings, to ensure accountability of applicants for the funding they are allocated, and to ensure funding was used for the intended tasks and milestones. Retrospective payments were considered reasonable when the scheme was established because of the balance of certainty that the Crown would reimburse incurred costs.
- 39 Feedback from applicants indicates that many are finding it increasingly difficult to carry the legal, administrative and research expenses they incur until a reimbursement request can be made and processed. Applicants also find the reimbursement process unnecessarily onerous and lengthy.
- 40 The Tribunal in its Stage 1 Report found that the length of delays, before reimbursements are made, carried a risk of Treaty breach for the Crown, and that the

⁴ Applicants are required to participate in multiple hearings when their application area overlaps with the application area the Court is determining. In one example, an applicant group is currently participating in two different High Court hearings, one on the eastern edge of their application area and the other on the western edge. Following these hearings, this applicant will still need to progress the remainder of their application.

⁵ Waitangi Tribunal legal aid scheme and the Māori Land Court special aid scheme set maximum grants based on an assessment of the applicant's own estimate of costs rather than a pre-determined quantum cap. The civil legal aid scheme sets maximum hours for particular tasks involved in preparing for hearing, but funding for the hearing itself is based on actual hours (calculated per ¼ day).

Crown could only meet its obligation of active protection by reimbursing applicants without delay.

- 41 While improvements to the structure of the scheme, and increasing the funding provided under it, will go some way to address this concern, those changes will not do so fully. I propose to also enable grant-based funding, which will reduce the financial burden of applicants in carrying costs incurred, and significantly improve the operation of the scheme.
- 42 To mitigate risk of mismanaged or misspent funds, Te Arawhiti will work with applicants on indicative budgets, with grants being made on a timeframe agreed between Te Arawhiti and applicants for specific activities to be carried out within that timeframe. Considerations will include whether some or all of the grant can be accessed prior to costs being incurred, and any amendments to grants would be made by agreement. Unspent funds for activities that either come in under budget or are not completed in relation to prospective funding allocations will be accounted for and any funding remaining returned or used for the next part of the process. Subsequent grants would require assessment against the indicative budget, the work completed under that budget, and any outstanding work.
- 43 To support transparency and accountability of public funds, and to maintain oversight and assurance over fund use, Te Arawhiti would ensure regular and out-of-cycle audit processes of applicant funding by an external provider.

Ensure the costs incurred in progressing an application are met

- 44 I am proposing removing the policy setting that upper funding limits for each applicant are calculated at 85% of assumed costs. If applicants reach the maximum allocation, then under the scheme's current settings, applicants may need to meet the remaining costs of progressing an application through to determination themselves.
- 45 Applications vary in scale and complexity, and the costs of progressing applications can also vary considerably. In practice, some applicants will require the maximum funding available under each milestone and others will not. Further, as seen in recent High Court cases, the upper funding limits set by the scheme may be far less than 85% of the costs incurred by applicants. While this was intended to incentivise savings and efficiencies, whānau and hapū groups or, unsettled iwi groups, can be disproportionately disadvantaged as they have fewer alternate resources to self-fund once maximums are reached.
- 46 Ensuring the costs incurred in progressing an application are met by the scheme responds directly to the Tribunal's overarching recommendation that the scheme fully funds applicants to avoid prejudice arising from an 85% level of contribution. Applicants would continue, as they do already, to self-fund related costs not covered by the scheme, for example, those related to governance arrangements for their application, time spent in discussions with lawyers or historians regarding their application, and time spent at hearings.

- 47 The Minister of Finance and I also considered the impact of increasing the contribution rate to 90 or 95% of assumed costs, which would provide a partial response to the Tribunal's overarching recommendation. However, while this would lessen the potential disadvantage to applicants and the risk of customary interests not being properly recognised, it would not ameliorate it in all cases.

Te Arawhiti will work with applicants to ensure an effective implementation

- 48 Te Arawhiti plan to launch the revised scheme following Budget 22 decisions. Prior to implementing the new settings for the scheme, Te Arawhiti will report back on progress to the Minister of Finance and me, seeking any final Ministerial decisions if needed.
- 49 Te Arawhiti will also provide quarterly reports to the Minister of Finance and me in the first year of operation to give us an understanding of how applicants are responding to the new scheme settings and any impact on Te Arawhiti in terms of the management and forecasting of costs.

Risks

Applicants may consider that changes do not respond fully to their needs

- 50 There is a risk that applicants will not consider the changes respond fully to their needs. However, I consider this to be low as the proposed changes respond directly to the findings of the Tribunal and the feedback given by applicants to Te Arawhiti.

Unanticipated financial implications

- 51 It is likely that implementation of the proposed changes will result in the need for changes to the lower-level operational settings of the scheme. This is to be expected, and I have asked Te Arawhiti to ensure that the Minister of Finance and I remain briefed on the implementation work. There is also a risk that implementation identifies changes that have a further fiscal impact. I consider this risk to be low. My officials have worked closely with Treasury officials to refine the modelling until it is robust and realistic. If an issue does eventuate, the Minister of Finance and I will look at options to address it.

Changes do not fully address the Tribunal's recommendations

- 52 There is a risk of criticism that the proposed changes to the scheme do not address all of the Tribunal's recommendations from the Stage 1 Report. In particular, that the changes do not address recommendations relating to funding Resource Management Act 1991 related activity, judicial review proceedings, and amendment of the Legal Services Act 2011. These matters fall outside the purpose of the scheme and will be considered following the release of the Waitangi Tribunal's Stage 2 report, expected later in 2022.

Consultation

- 53 The proposals in this paper were informed by the findings of the Waitangi Tribunal; statements made by applicants, their counsel, and judges in the High Court; and Te Arawhiti's consultation with applicants carried out in late 2020. In particular:

- 53.1 direct conversations with over 170 applicant groups from September to November 2020, and 52 formal submissions from applicants and legal counsel;
 - 53.2 lessons learned through the High Court hearings, include the *Edwards* (Te Whakatōhea) ten-week substantive hearing from August to October 2020;
 - 53.3 claimant evidence and the *Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry, Stage 1 Report* on the Waitangi Tribunal’s Kaupapa Inquiry (Wai 2660) into te Takutai Moana Act 2011; and
 - 53.4 an independent Deloitte report commissioned by Te Arawhiti on its administration of the scheme (including survey of applicant groups and legal counsel).
- 54 The Ministry of Justice, the Treasury, the Crown Law Office, and Te Puni Kōkiri were consulted. The Department of the Prime Minister and Cabinet was informed.

Financial implications

- 55 Financial assistance to applicants is funded from the Vote Te Arawhiti Non-Departmental Other Expense appropriation *Financial Assistance Towards Determining Customary Interests in the Marine and Coastal Areas* (NDOE) and Te Arawhiti administration of the scheme is funded from the Vote Te Arawhiti Departmental Output Expense appropriation *Treaty Negotiations and Marine and Coastal Area Customary Interests* (DOE).
- 56 The NDOE appropriation for the scheme is currently \$33.002 million over the next four years. However, the amount available varies significantly between financial years, dropping from \$14.007 million in 2023/2024 to \$5.450 million in 2024/2025. The DOE baseline allocation to administration of the scheme is \$0.764 million, spread evenly across over the next four years (\$0.191 million per year).

Significant cost pressures

- 57 There are already significant cost pressures for the scheme created by the higher than anticipated cost of High Court hearings. Cost pressures have been managed to date through an increase in the appropriation [CAB-19-MIN-0660 refers],⁶ and bespoke agreements from the Minister of Finance and I to allocate additional funding and transfer underspends between financial years. The NDOE appropriation now faces a deficit from 2024/25 onwards.
- 58 The engagement strategy sets the timeframe for the determination of all Crown engagement applications within 20 years. This window for when applicants are likely to need financial support in-turn drives when funding will need to be drawn down from the appropriation. In addition to this, given recent High Court hearings, we now have a better understanding of the pace at which the High Court can move, and the

⁶ In 2019, when agreeing to increase the appropriation and respond to cost pressures during the forecast period from 2019/20 to 2023/24, Cabinet noted the increase proposed was intended to cover applicant groups until the comprehensive review of the scheme was completed [CAB-19-MIN-0660 refers].

costs for applicants associated with this. These considerations have directly informed the financial modelling for the appropriations which fund the scheme.

Costs associated with the policy changes

- 59 The proposed changes to the scheme will increase the financial assistance for applicants from a maximum (other than for court proceedings) of \$442,878 to \$458,000. While this does set a maximum, it is not a target. Given the varying complexity in applications, I do not consider all applicants will require the maximum available to them. With the support of Te Arawhiti under the engagement strategy, and in working more closely with applicants to plan and budget for their applications, I anticipate a reduced overall cost to the Crown.
- 60 Based on the costs incurred by applicants in the court proceedings held to date, additional annual funding of \$4.198 million is required (across all applicants involved in the proceedings). This compares to the current available funding of \$1.302 million, which has led to the ad hoc arrangements to increase funding discussed in paragraph 57 above. Without those arrangements court proceedings would have been unable to go ahead.
- 61 Departmental costs for Te Arawhiti in administering the scheme and ensuring good public finance management will also increase as a result of the proposed changes and responding to the increased demand driven by the engagement strategy and High Court progress. Specifically, additional funding will enable the employment of two additional FTE to administer the scheme and regular and out-of-cycle audit processes of applicant funding by an external provider.

Overall impact and additional investment required

- 62 The following tables provide a four-year view of the net impact on appropriations.

Table One: Vote Te Arawhiti, Non-Departmental Other Expense: Financial Assistance Towards Determining Customary Interests in the Marine and Coastal Areas

Sm		2022/23	2023/24	2024/25	2025/26 & outyears	Total
Non-Departmental Other Expense: Financial Assistance Towards Determining Customary Interests in the Marine and Coastal Area.	Current baseline	8.095	14.007	5.450	5.450	33.002
	Total forecast costs, including cost pressures and policy changes	7.169	10.051	12.023	13.236	42.479
Total surplus/(deficit)		0.926	3.956	(6.573)	(7.786)	(14.359)
Total sought				6.573	7.786	14.359

- 63 The increase in non-departmental funding needed to meet the costs of the scheme is \$6.573 million in 2024/25 and \$7.786 million in 2025/26 and outyears. Financial

modelling estimates that the financial assistance to applicants will cost \$42.479 million over the next four financial years, an increase in funding of \$14.359 million.

- 64 There is sufficient funding in the NDOE appropriation to meet the forecast costs for the new scheme settings for the next two financial years. However, deficits are forecast in the 2024/25 financial year and continuing in out-years. I am seeking additional funding through Budget 22 to address this.

Table Two: Vote Te Arawhiti, Departmental Output Expense: Treaty Negotiations and Marine and Coastal Area Customary Interests

<i>\$m</i>		2022/23	2023/24	2024/25	2025/26 & outyears	Total
Departmental Output Expense: Treaty Negotiations and Marine and Coastal Area Customary Interests	Current baseline allocated to administration of the scheme	0.191	0.191	0.191	0.191	0.764
	Total forecast costs	0.493	0.672	0.493	0.750	2.408
Total surplus/deficit	Surplus/(Deficit)	(0.302)	(0.481)	(0.302)	(0.559)	(1.644)
Total sought		0.302	0.481	0.302	0.559	1.644

- 65 Departmental costs in administering the scheme total \$2.408 over the next four financial years, or an overall increase in funding of \$1.644 million. The variance in departmental funding in 2023/24 and 2025/26 is to support regular review and evaluation of the scheme to ensure it continues to be fit-for-purpose.
- 66 To manage the increased departmental costs, I am seeking agreement through Budget 22 to fiscally neutral changes to appropriations, transferring \$1.644 million to the DOE appropriation from \$3.956 million forecast surplus in the NDOE appropriation for 2023/24.⁷ This would be distributed across the forecast period to manage the deficits as set out in table two above.

Legislative implications

- 67 This paper has no legislative implications.

Impact analysis

- 68 An impact analysis is not required as this paper does not contain regulatory proposals.

Treaty of Waitangi implications

- 69 The Waitangi Tribunal has found that the failure of the Crown to efficiently provide appropriate levels of funding to applicants constitutes a breach of the principles of partnership and active protection. The proposals in this paper respond to those findings.

⁷ Remaining surplus would be returned.

Population implications

70 The proposals in the paper better support iwi, hapū, and whānau applicant groups.

Human rights

71 The proposals in this paper better support access to justice for iwi, hapū and whānau applicant groups and therefore promote the right to natural justice affirmed by the New Zealand Bill of Rights Act.

Gender implications

72 There are no gender implications arising from proposals in this paper.

Disability perspective

73 A disability perspective is not required.

Publicity

74 No specific publicity is intended.

Proactive release

75 This paper will be withheld in full until Budget 2022 decisions are made. I will consider proactive release, with the necessary redactions, at that time.

Recommendations

76 The Minister for Treaty of Waitangi Negotiations, as the responsible Minister for the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, recommends that the Committee:

- 1 **note** that the takutai moana financial assistance scheme provides financial support to applicants seeking recognition of their customary interests under te Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;
- 2 **note** the Waitangi Tribunal found that current policy settings for the takutai moana financial assistance scheme breach the principles of active protection and participation under te Tiriti o Waitangi;
- 3 **note** the Minister of Finance and I, after considering the outcomes from a review of the takutai moana financial assistance scheme conducted by Te Arawhiti and the findings and recommendations of the Waitangi Tribunal, agreed that fundamental changes to the takutai moana financial assistance scheme are needed;

- 4 **agree**, subject to funding being agreed through Budget 2022, the following policy changes:
- 4.1 the structure of the takutai moana financial assistance scheme will be simplified so that relevant activities are organised into activity focussed workstreams;
 - 4.2 allocations of financial assistance for applicants involved in court proceedings will be made for each court hearing as an individual event;
 - 4.3 grant-based funding for applicants to progress their applications will be enabled;
 - 4.4 the requirement that the Crown only make an 85% contribution to assumed costs of applicants will be removed;
- 5 **note** the proposed changes to the takutai moana financial assistance scheme will increase the maximum financial assistance applicants can receive (other than for court proceedings) from \$442,878 to \$458,000;
- 6 **note** the proposed changes to the takutai moana financial assistance scheme will increase the maximum financial assistance for all court proceedings from \$1.302 million to \$5.500 million per annum;
- 7 **note** the existing cost pressures created by the increasing pace of progress for applicants and the higher than anticipated costs of High Court cases;
- 8 **note** the net impact of costs (including existing cost pressures and the proposed changes to the current policy settings for the takutai moana financial assistance scheme) on the Non-Departmental Other Expense appropriation *Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area* is a funding deficit from 2024/2025 onwards
- 9 **note** an increase in funding of \$6.573 million in 2024/25 and \$7.786 million in 2025/26 and outyears needed to implement the proposed policy changes and address the funding deficit, requiring a total of \$14.359 million additional operating funding within the forecast period, is being sought through Budget 2022;
- 10 **note** the net impact of costs to implement proposed changes to the takutai moana financial assistance scheme on the Departmental Output Expense appropriation *Treaty Negotiations and Marine and Coastal Area Customary Interests* is a funding deficit from 2022/23 onwards;

- 11 **note** that forecast deficits in departmental funding can be managed across the forecast period, if \$1.644 million can be transferred from the projected underspend in the Non-Departmental Other Expense appropriation of \$3.956 million in 2023/24 to be agreed alongside Budget 2022.

Authorised for lodgement

Hon Andrew Little

Minister for Treaty of Waitangi Negotiations



Cabinet Māori Crown Relations - Te Arawhiti Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Revised Takutai Moana Financial Assistance Scheme

Portfolio Treaty of Waitangi Negotiations

On 15 February 2022, the Cabinet Māori Crown Relations - Te Arawhiti Committee:

- 1 **noted** that the takutai moana financial assistance scheme provides financial support to applicants seeking recognition of their customary interests under the Marine and Coastal Area (Takutai Moana) Act 2011/ te Takutai Moana Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;
- 2 **noted** that the Waitangi Tribunal found that current policy settings for the takutai moana financial assistance scheme breach the principles of active protection and participation under te Tiriti o Waitangi;
- 3 **noted** that after considering the outcomes from a review of the takutai moana financial assistance scheme conducted by Te Arawhiti and the findings and recommendations of the Waitangi Tribunal, the Minister of Finance and the Minister for Treaty of Waitangi Negotiations have agreed that fundamental changes to the takutai moana financial assistance scheme are needed;
- 4 **agreed in principle**, subject to funding being agreed through Budget 2022, to the following policy changes:
 - 4.1 the structure of the takutai moana financial assistance scheme will be simplified so that relevant activities are organised into activity focussed workstreams;
 - 4.2 allocations of financial assistance for applicants involved in court proceedings will be made for each court hearing as an individual event;
 - 4.3 grant-based funding for applicants to progress their applications will be enabled;
 - 4.4 the requirement that the Crown only make an 85 per cent contribution to assumed costs of applicants will be removed;
- 5 **noted** the proposed changes to the takutai moana financial assistance scheme will increase the maximum financial assistance applicants can receive (other than for court proceedings) from \$442,878 to \$458,000;

- 6 **noted** that the proposed changes to the takutai moana financial assistance scheme will increase the maximum financial assistance for all court proceedings from \$1.302 million to \$5.500 million per annum;
- 7 **noted** that the existing cost pressures created by the increasing pace of progress for applicants and the higher than anticipated costs of High Court cases;
- 8 **noted** that the net impact of costs (including existing cost pressures and the proposed changes to the current policy settings for the takutai moana financial assistance scheme) on the Non-Departmental Other Expense appropriation *Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area* is a funding deficit from 2024/2025 onwards
- 9 **noted** that an increase in funding of \$6.573 million in 2024/25 and \$7.786 million in 2025/26 and outyears needed to implement the proposed policy changes and address the funding deficit, requiring a total of \$14.359 million additional operating funding within the forecast period, is being sought through Budget 2022;
- 10 **noted** that the net impact of costs to implement proposed changes to the takutai moana financial assistance scheme on the Departmental Output Expense appropriation *Treaty Negotiations and Marine and Coastal Area Customary Interests* is a funding deficit from 2022/23 onwards;
- 11 **noted** that forecast deficits in departmental funding can be managed across the forecast period, if \$1.644 million can be transferred from the projected underspend in the Non-Departmental Other Expense appropriation of \$3.956 million in 2023/24 to be agreed alongside Budget 2022.

Gerrard Carter
Committee Secretary

Present:

Hon Grant Robertson
Hon Kelvin Davis (Chair)
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Officials Committee for MCR