



# CLAIMANT ASSISTANCE



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# Claimant Assistance

## Becoming an approved client of the Trust

The Trust was established to assist Maori in the preparation, presentation and negotiation of Treaty of Waitangi claims, which involve, or could involve, Crown forest licensed land.

To ensure that the Trust's resources are used in the most efficient and effective way possible, the Trust has established criteria for claimants to be recognised as approved clients of the Trust. These requirements are in accordance with the Trust Deed. The Trust also assesses the organisational capability of prospective clients and their business plan or funding proposal for the work that they wish to undertake.

The Trust has a three-step application process.

Step 1 **Establish Eligibility** as a client of the Trust.



Step 2 **Assess Capability** of the applicant seeking funds to undertake the work they propose.

Step 3 **Approval of Funding** for assistance from an eligible and capable claimant group.

## Establishing eligibility and capability

To be eligible for Trust assistance, an applicant must be Maori and must have registered a claim, or propose to register a claim, which involves, or could involve, Crown forest licensed land.

Groups seeking the Trust's assistance can advance their claims through either the:

-  Waitangi Tribunal process, or
-  Settlement negotiations (Office of Treaty Settlements) process.

The Trust's criteria are set out in the Eligibility and Capability Application Forms for the Waitangi Tribunal and Settlement Negotiations processes which claimants must complete before they can be considered for funding assistance. These forms can be found at the back of this booklet or from the Trust's website [www.cftr.org.nz](http://www.cftr.org.nz).

## Waitangi Tribunal process

To be eligible for Trust funding assistance for the Waitangi Tribunal process, claimants must meet the following four requirements – **registered, clustered, engaged and capable**.

### ***A registered claim***

The applicant must have a claim(s) registered with the Waitangi Tribunal, which involves or could involve Crown forest licensed land.

The Trust requires applicants to have their claims registered with the Waitangi Tribunal. The registration of a claim is effectively a statement of a person or group's commitment to the claims process. It assures the Trust that funding and assistance it provides will contribute to a settlement.

### ***A cluster of claimants***

The applicant must represent a 'cluster' of claimants.

Many of the issues claimants face in a Waitangi Tribunal inquiry district will be similar, and in many cases a single historical report will cover the issues of numerous claimants. It is a more efficient use of the Trust's resources for claimants to cluster together so that there is no duplication of work and expenses. Working together also allows more efficient communication of progress within the wider claimant community. For these reasons, the Trust will not consider funding individual or whanau claims. Claimants will tend to be clusters within a particular geographic area, or according to a shared whakapapa.

In practice, a cluster will be responsible for determining how it will work. An agreement clearly setting out the way the cluster will operate is recommended and should be signed by claimants in the cluster.

In some instances, a single claim may have been registered which consolidates the majority of claimants in a given district. In this case, the need for efficiency will be met by funding that single claim. It will be the responsibility of applicants to demonstrate that a significant proportion of potential claimants do support the application. Such evidence can best be obtained by holding well-advertised hui at which people can indicate their support. Groups that believe they may be eligible under this requirement should talk to the Trust's Relationship Managers.






### ***Engaged in the process***


The Waitangi Tribunal must acknowledge their preparedness to engage in an Inquiry District and indicate that the claims represented by this cluster will be heard. At a reasonable point prior to hearings commencing, the Trust will consider supporting the applicant group to prepare and present its evidence.

### ***Capable of managing the work***

The applicant group must have the ability to manage the work that will be required to get through the process.

The Trust recognises that a cluster applying for funds for the Waitangi Tribunal process may not be the same group that moves on to settlement negotiations with the Office of Treaty Settlements. For this reason the governance requirements of clusters that are engaged in the Tribunal hearings process are different to those groups seeking funding for settlement negotiations. What the Trust is looking for, are arrangements put in place by the cluster that provide for:

-  Regular meetings of claimants.
-  Regular communications of progress.
-  Processes that enable the appointment, discharge and succession of committee/board members and the chair.
-  Procedures that provide for recording of decisions, dispute resolution.
-  Financial management.



Once the Trust has assessed the applicant as having sufficient internal governance, management and financial capability, Trust staff will consider the cluster's business plan setting out its intended work, as well as a detailed budget. This means a sound, robust business case, focused on and setting out the Waitangi Tribunal related activities for which it seeks funding. The Trust's Relationship Managers can assist and advise the cluster on the types of activities that are eligible for funding and the support that the Trust can provide.

### **Direct negotiations process**

To be eligible for Trust funding assistance to engage in negotiations and conclude a settlement, claimants must meet the following three requirements – **grouped, mandated and engaged, and capable**.

#### ***A large natural grouping***

The Office of Treaty Settlements policy is to negotiate with a claimant group that has clear kinship links and a sizeable membership and claim area. This is known as a "Large Natural Grouping". There are no fixed rules on what constitutes a Large Natural Grouping, as it depends on the local context. One important consideration is whether the grouping will reduce or increase the likely number of future negotiations required in a region. The Trust looks for an indication of both the Crown's readiness to engage in negotiations with the Large Natural Grouping, as well as the group's commitment to going through the process. The intended negotiations must relate to claims that involve Crown forest licensed land. The group must provide evidence to support these requirements.

#### ***Mandated and engaged***

Both of these requirements are best shown by the following:

- a) The applicant group possesses a Crown-recognised mandate to negotiate on behalf of the claimants.

Or

- b) The Large Natural Grouping has a comprehensive, realistic and achievable plan for carrying out the mandating process supported by the Office of Treaty Settlements.

And




The group is ready to engage, and fits with the work programme of the Office of Treaty Settlements within the next twelve months.

If the group is not yet mandated, or has not agreed to a mandating plan with the Office of Treaty Settlements, it is not eligible to seek assistance from the Trust.

#### ***Capable of managing the process***

The applicant group must have the ability to manage the work that will be required to work through the process. This is especially the case with settlement negotiations where claimants are responsible for managing most of the process themselves and can be responsible for considerable sums of money at any one time.

Trustees have set minimum requirements for applicant groups to receive Trust assistance. The Trust assesses the applicant group's capability in:

-  Governance arrangements.
-  Management structure.
-  Financial management and systems.

These requirements assure the Trust of the applicant group's ability to manage any funds it receives from the Trust to complete the settlement process.

Te Puni Kokiri has a website dedicated to best practice examples of governance structures. This website is a useful resource to those claimant groups that wish to formally establish their governance and management structure before engaging in settlement negotiations with the Crown or applying for Trust funds. See <http://governance.tpk.govt.nz> for further information.

### **Early stages of claims preparation**

Claimants currently either between the Waitangi Tribunal and Office of Treaty Settlements processes; lower down the Waitangi Tribunal/Office of Treaty Settlements priority list or; in the early stages of claims preparation, can be considered for some assistance. The Trust is able to provide limited funding to these groups for early preparation work where the Trust decides that funding will prepare the claimant groups for settlement negotiations later.

The Trust will consider funding requests for initial research strategies, internal communications and seminars that explain the Waitangi Tribunal hearings and the Crown's settlement negotiation processes. These activities tend to be of short duration and have a benefit beyond a specific group. Some of these projects are likely to be directly contracted by the Trust (eg. delivery of information on the claims settlement processes), but the delivery of assistance (eg. claimant communications) are more suited to a contract with claimant groups.


In exceptional cases the Trust may provide limited funding support to specific claimant groups that are waiting to engage with the Crown or have not received Crown recognition for their mandating plan. Such support would be considered on the individual merits of each proposal.

### **Approval of funding**

The applicant group is required to prepare a business plan which sets out the intended work as well as a detailed budget. For claimants seeking funding to prepare for Waitangi Tribunal hearings or settlement negotiations with the Crown, this will mean a sound, robust business case. The business plan will be focused on progressing the settlement process to the next stage and setting out the eligible activities and costs that the applicant is seeking funding for from the Trust.

Trustees have approved the range of activities that the Trust can fund, and have set maximum costs for these activities. For some activities, a lower cost range has been identified which would be applicable to smaller groups with less complex needs.

If the activity costs more than the Trust is prepared to fund, then it is up to the claimant group to fund the difference. The Office of Treaty Settlements provides some funding to claimant groups to assist them through the phases of the settlement negotiations process.



There is no guarantee that a claimant group will receive the maximum contribution or even the amount requested, even if it is less than the maximum contribution. Rather, the Trust will assess the entire business plan to determine what are fair and reasonable costs taking into account other sources of funding available to claimants from the Office of Treaty Settlements and the Waitangi Tribunal. The actual costs are compared against amounts that claimants have previously spent on these activities. In exceptional circumstances Trustees may approve costs above the maximum benchmark for the activity but any such approval does not automatically set a new cost precedent.

The Trust may also, at its discretion, consider other specific activities if the claimant group can demonstrate how this activity contributes to the achievement of its Business Plan. The activities must, however, still be within the agreed cost areas.

Once the applicant is recognised as an eligible Trust client, is assessed as having sufficient internal governance, management and financial capability, and business plan, the funding application will be considered by the Board of Trustees.

The Trust's Board of Trustees is the only body that can approve or rescind claimant contract funding. The Trust Deed and relevant claimant eligibility criteria, funding policies and procedures guide all Trustee decisions. A copy of the Trust Deed and policies are available to the claimant group or can be accessed from the Trust's website. There is no guarantee that Trustees will approve an applicant group's proposed programme of work or the level of funding sought.

Where the applicant group sits within the Office of Treaty Settlements and the Waitangi Tribunal priorities is a factor that Trustees consider. Priorities are based on the anticipated work programme of the Waitangi Tribunal and the Office of Treaty Settlements and the Trust's own assessment of the readiness of the claimants to engage in the process.

Figure 3: *Funded Activities by settlement* stages on page 23 presents a summary of those Treaty settlement activities that are funded by the Trust and those that are not. The Trust's Relationship Managers can assist and advise claimant groups on the types of activities that are eligible for funding and the level of support that the Trust may provide.

**Figure 3: Funded Activities by Settlement Stages**

Settlement stages	1.1 Preparation of claim before Waitangi Tribunal	1.2 Presentation of claim to Waitangi Tribunal	2.1 Develop and gain Deed of Mandate to negotiate	2.2 Terms of Negotiation signed off by OTS (begin negotiations)	2.3 Negotiations with the Crown	2.4 Ratification of settlement package by Iwi	2.5 Implementation of settlement package by Iwi
Trust funded activities	Historical Research / Oral and Traditional research / Mapping						
		Hearing and witness costs Project management grant		Negotiators costs (fees, travel etc)			
	Communicate with claimant groups		Implement OTS approved mandate plan	Expert advice required for negotiations (financial, commercial, resource management etc)			
				Contribution to develop and implement required Governance Entity			
Activities not funded by the Trust				Stakeholder communications / Beneficiary communications (Hui, panui, website etc)			
			Administration				
				Project Management			
			Develop cluster / administrative base				
			Capital establishment/administrative development				
	Aggregate claims and organise new claimant organisations		Develop mandate plan	Select and train negotiations team			
			Aggregate claims	Recruit support / development team			
			Legal (litigation and representation at Waitangi Tribunal hearings)				

## Assessment and approval process

The applicant group is required to complete an Eligibility and Capability Application Form (refer to the Appendices section) for either the Waitangi Tribunal process or the Settlement Negotiations process. The Trust's Relationship Managers work alongside the applicant to check that the claimant group meets the Trust's eligibility criteria and if eligible, the applicant group will be assessed for their organisational capability to achieve their objectives. Relationship Managers will work with applicant groups to identify those documents that could be used to support their assessment towards Approved Client Status.

Assessments are based on documented evidence supplied by the claimant groups and any information held by the Trust about the claimant groups, usually from past involvements with them. Relationship Managers and Assessors are jointly responsible for undertaking independent, objective and impartial assessments and reporting back to the Trust managers on the results.

The assessment phases broadly follow the steps below. These steps are set out in the Trust Assessment Process Flowchart on page 26.

1. Assessments are undertaken to establish eligibility and capability, once a cluster or Large Natural Grouping has submitted its business plan.
2. Relationship Managers make an initial assessment which is done in consultation with the applicant group.
3. An independent staff member, the Assessor, who has had no prior direct involvement with the assessed group, undertakes an independent assessment of capability by reviewing all available documentation in consultation with the Relationship Manager.
4. At the end of the assessment, the Assessor prepares a report for the Relationship Manager with recommendations to support the proposal or to request further information. Senior Management may refer the application plan back to the Relationship Manager or Assessor for further clarification or work.
5. Once the Trust's Senior Management Team is satisfied that the applicant group has met all the capability requirements of the Trust, and has a sound robust business case, then they will present the funding application to the Trustees for their consideration and approval within the Trust benchmark levels.
6. Once Trustees have approved funding to a claimant group for a particular programme of work, a contract is drawn up which is signed by the claimant group and the Trust's Chief Executive.

## Process timetable

The Trust estimates that from the initial assessment of the eligibility and capability of the applicant group through to a contract signed and the first payment made (assuming a straightforward process) is likely to take three to four months. The estimated time period for each phase is indicated below.

**Assessment phase:** Two weeks (Depending on responsiveness of the applicant group in providing the documents to support the assessment).

**Approval Phase:** Two to three months. (Depending on the robustness the business plan submitted by the applicant group, progress of budget negotiations, and timing of the Trust's Board meetings).

**Funding Phase:** Three to four weeks (The contract is required to be drawn up, signed by both parties and first payment made).

The business plan establishes the work to be done by the claimant group and is the starting point of the contractual relationship. The project work identified in the business plan becomes the basis of the schedules to the contract.

Successful completion of a contract does not guarantee subsequent contracts. The claimant group is required to maintain its approved client status and remain a priority in the Treaty settlement work programme. The Trustees may, in their sole discretion, decline any application for funding, even if earlier funding for the claimant group has been approved.

## Taxation status of a claimant group

The Trust's claimant activities are deemed by the Inland Revenue Department to be exempt from Goods and Services Tax (GST), therefore the Trust does not add GST to funds provided to claimants. In turn, GST cannot be claimed from IRD by claimants. A claimant group may be GST registered for other purposes but this has no effect on the GST treatment of payments from the Trust.

The purpose for which the Trust has granted funds to claimants is to assist them in the preparation, presentation and negotiation of Treaty of Waitangi claims which involve, or could involve, Crown forest licensed land. The claim itself does not involve the supply of goods and services to any person so it is not a taxable activity. However, if a claimant group is involved in a taxable activity **other than** the preparation, presentation and negotiation of a claim then that payment will be deemed to be taxable at the rate applicable to the recipient's tax status.

As a claim does not form part of a "taxable activity", the claimant group, (if registered for GST) cannot claim GST input tax credits in relation to expenditure incurred in advancing the claim, even though the claimant group has paid GST to third parties for goods and services supplied to the group (for example stationary, phone charges, or professional services delivered by a GST registered person).

Claimants should obtain independent tax advice if they have any doubt about their tax status and tax liabilities.

**Figure 4: Trust Assessment Process**

