

- Re: spreadsheet required...

**From:** Celia Robinson  
**To:**  
**Date:** 7/07/2010 2:50 p.m.  
**Subject:** Re: spreadsheet required...

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Kia ora

the other day I spoke with you on the phone seeking clarification around whether the creation of a website was acceptable under the new OTS tranche funding changes. You indicated it was okay. May I please have this in writing because our Trustboard will be meeting on the 17th July 2010 and would require written confirmation to go forward.  
Many thanks for you help.

Noho ora mai.

Celia Robinson  
Secretary  
Ngatikahu ki Whangaroa Trustboard

**From:** Celia Robinson  
**To:** "Robinson, Celia" <...>  
**Sent:** Mon, 5 July, 2010 8:54:47 AM  
**Subject:** Re: spreadsheet required...

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Kia ora Celia

Thank you for your phone message. Please find attached the claimant funding spreadsheet. I have also attached an electronic copy of the claimant funding policy. If you have any questions please get in touch with me.

Cheers



Senior Analyst | Office of Treaty Settlements

[www.ots.govt.nz](http://www.ots.govt.nz)

Te Tari Whakatau Take e pa ana ki te iira o Waitangi

>>> Celia Robinson <...>  
Kia ora

2/07/2010 9:27 a.m. >>>

May I please have emailed to me an electronic version of the latest spreadsheet now required by OTS for the reconciliation

of receipts/invoices and the summary of expenditure for our next tranche of funding requirement.

Many thanks.

Celia Robinson  
Secretary  
Ngatikahu ki Whangaroa Trustboard

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**Claimant funding payment schedule**

lwi/claimant group: ABC DEF  
 negotiation expenses for the period (month and year) from: xx/xxx 2010

to: xx/xx/2010

subtotal 0.00

Invoice/ Expense Date	Invoice number/ reference	Supplier	Description of service - expense	OTS cost category	Amount \$	Date paid
				GST incl (y/n)		

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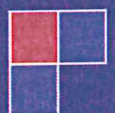
# Office of Treaty Settlements Claimant Funding Policy and Guidelines

May 2010

Final version

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## Introduction

This document

- sets out the Office of Treaty Settlements' (OTS) claimant funding policy; and
- provides a set of guidelines for the use of claimant funding.

## The claimant funding policy

The Crown makes what it considers to be a reasonable contribution to the expenses a claimant group's mandated representatives incur in negotiating a historical Treaty settlement. This contribution, referred to as claimant funding, is separate from the cash or assets that will eventually transfer to the claimant group in settlement. Claimant funding is not intended to cover all the expenses incurred by a claimant group during negotiations but is intended to contribute to key milestones in the negotiation process.

### *The process the Crown undertakes to assess claimant funding for each claimant group*

The Crown determines its contribution towards a claimant group's negotiation expenses once a claimant group has had its mandate recognised by the Crown. This is done by assessing the specific features of a claimant group and the claim or claims to be negotiated. Based on the assessment, officials write a report to the Minister for Treaty of Waitangi Negotiations, who makes a decision on the upper limit of claimant funding that the Crown will provide to a claimant group and how much is to be allocated to each milestone. The Minister for Treaty of Waitangi Negotiations then writes to the mandated representatives advising them of the Crown's total claimant funding contribution.

### *Distribution of claimant funding*

Claimant funding is distributed across negotiations and specified amounts are allocated to the key negotiation milestones of 'Deed of Mandate', 'Terms of Negotiation', 'Agreement in Principle', 'Deed of Settlement', 'Ratification', and 'Legislation and Governance'.

The Crown's claimant funding contribution to the cost of achieving the Deed of Mandate milestone is paid retrospectively. The Crown's contribution towards the milestones Terms of Negotiation, Agreement in Principle, Deed of Settlement, Ratification of the Deed of Settlement and Legislation and Governance are usually paid in advance, in instalments of \$50,000.

At one of the first negotiations meetings between the Crown and the mandated representatives the parties discuss and agree on appropriate sub-milestones within the 'formal negotiations of Deed of Settlement' and 'Ratification' milestones. These sub-milestones provide the claimant representatives with indicators of progress throughout the settlement process and the amount of funding that will be available to them at each stage. The allocation of funding to these sub-milestones can assist the mandated representatives to set a budget.

### ***Requesting instalments***

Once a claimant group has had its mandate recognised by the Crown, it can apply for the reimbursement of costs up to the approved limit of the Crown's contribution towards the costs incurred in achieving a mandate. This is the only time that claimant funding is paid retrospectively. OTS can then progressively release installments of claimant funding in advance. However OTS must ensure that each prior release has been spent appropriately on negotiation expenditure before releasing the next payment in advance.

The mandated representatives must provide documentary evidence to substantiate the costs incurred. A copy of the Claimant funding payment schedule (Sample 1 & Appendix 1) must be provided electronically when requesting instalments. A statement that expenses have only been incurred for negotiation-related purposes must accompany each request for funds. OTS also requires a system generated bank deposit slip or bank statement header showing the account name and number.

Itemised invoices make it possible for OTS to verify that the costs claimed are negotiation expenses. This is particularly the case with regard to costs such as legal or consultancy costs, which are common and significant expenses for mandated representatives. Therefore itemised invoices should be provided on request.

Where the claimant funding payment schedule is not in order or it is clear that costs are being incurred in an unsustainable manner, or when milestones have not been achieved due to lack of progress, instalments may be withheld.

### ***The Crown's decision to release claimant funding instalments***

The Crown requires that its contribution to the expenses of mandated representatives relate to negotiations. The Secretary for Justice is responsible for approving the release of instalments. OTS reviews the request by applying the following tests and then reports to the Secretary for Justice on:

- Whether the money provided to date has been spent on negotiations;
- Whether the expenses were reasonable; and
- Whether progress has been made in negotiations.

Mandated representatives are encouraged to consider timing when requesting claimant funding instalments as requests may take the Crown a number of weeks to process. A good claimant funding management plan and budget will assist the representatives in maintaining sufficient funding levels for negotiations costs and will also allow them to forecast when additional funding will be required. Mandated representatives may also be asked to provide estimates of the timing and amount of requested instalments.



## Guidelines

### *Managing claimant funding*

Claimant funding is managed by the mandated representatives on behalf of the claimant group. The mandated representatives must develop a transparent and accountable claimant funding management process that describes who will control the funding, how it will be controlled and how the funds will be used. For example, the mandated representatives should prepare a claimant funding management plan that sets out:

- i. the basis/limits on financial spending including negotiators' fees, hourly rates for employees, travel and accommodation allowances;
- ii. the process to approve invoices and payment of invoices;
- iii. a budget that sets out where the funds will be needed to ensure that the claimant funding lasts for the duration of negotiations (take into account that the latter end of the process is generally more costly);
- iv. a reporting mechanism for all incoming revenue/receipts and expenses/payments (i.e. an income statement that lists transactions of all incoming receipts and payments, their purpose and cost category); and
- v. when and how the annual review of the mandated representatives negotiation related financial statements (bank account and transactions) will take place.

It is the Crown's strong preference to pay claimant funding to a legal entity that is accountable to the mandated representatives and ultimately the claimant group. However, the onus is on the mandated representatives to be accountable to its claimant group.

This includes:

- seeking the claimant group's approval of the claimant funding management policy; and
- disclosing the manner in which the claimant funding is being managed and reported to the claimant group, i.e. by providing financial reports to hui-a-iwi and/or including financial reports in regular newsletters.

It is the Crown's experience that mandates are challenged if claimant groups feel that their funding is being used inappropriately.

## ***GST status of claimant funding***

The IRD has issued advice on the GST treatment of funding provided to Treaty of Waitangi claimants by the Crown through OTS.

This advice states that "claimant funding is not subject to GST, because:

- Claimant groups do not supply goods or services to the Crown in the course of negotiating a Treaty settlement;
- Claimant funding does not constitute "consideration" within the statutory definition as there is an insufficient relationship between claimant funding and any supply that might be made by a claimant group to the Crown; and
- Claimant funding is not in the nature of a grant or subsidy in terms of section 5(6D) of the Goods and Services Tax Act 1985 ("the Act")."<sup>1</sup>

The above item does not address the GST treatment of supplies received by claimants that are paid for out of claimant funding.

OTS policy is that if claimant groups are claiming the GST content of negotiation expenditure in GST returns then only the GST exclusive portion of the expenditure should be returned in the claimant funding payment schedule as evidence of negotiation expenditure.

If claimant groups are not claiming GST on negotiation expenditure, then GST inclusive totals can be returned in the claimant funding payment schedule as evidence of negotiation expenditure.

### ***Review of negotiation related financial statements (bank account/receipts and payments)***

Mandated representatives are required to undertake an annual independent review of negotiation related financial statements and provide the review results to the Office of Treaty Settlements. The submission of an annual review and supporting documentation provides assurance to both the Office of Treaty Settlements and claimant groups that the funding released to the mandated representatives has been used appropriately. The review requirements are discussed in detail in Appendix 2.

#### ***Separate bank account.***

The Crown requires that claimant representatives maintain a separate bank account for their claimant funding receipts and negotiations expenses. Any change of bank account must be notified immediately.

Other sources of funding, such as Crown Forestry Rental Trust funding, must be kept in a different account from the Crown negotiations and claimant funding account. Expenses claimed against Crown claimant funding must not also be claimed against other sources of funding (and vice versa).

<sup>1</sup> <http://www.ird.govt.nz/technical-tax/questions/questions-gst/qwba-gst-funding-treaty.html>

## Capital items

Claimant funding may not be used to pay for capital items, such as computers and furniture. (This doesn't apply to minor assets costing less than \$500) Where this is not possible and the claimant representatives can demonstrate that the purchase of such an item is required for negotiations purposes, OTS and the mandated representatives may negotiate an agreement that a proportion of the cost of such items may be offset against claimant funding.

## Administration costs

For some mandated representatives Treaty negotiations only form a small part of the range of functions they perform. The Crown will not reimburse mandated representatives for costs that they incur in the normal process of carrying out their responsibilities as representatives of their respective claimant groups.

Only costs associated with Treaty settlement negotiations can be claimed as negotiations expenses. Consequently, only a proportion of generic expenses, such as office administration, rent, power, and phone, should be claimed as negotiations expenses.

## Litigation against the Crown

Claimant funding may not be used to pay for litigation against the Crown.

## Multi iwi organisations

If the Crown provides claimant funding to several mandated representatives, who then choose to progress their claims collectively, one set of financial statements is sufficient. However, there needs to be sufficient separation in the statements so that each mandated representatives' individual revenue/receipts and expenses/payments are explicitly identified.

## Sample 1 Claimant Funding Payment Schedule

The claimant funding payment schedule should be completed and returned electronically as a spreadsheet. Please use the template supplied. (See Appendix 1)

Below is a sample of what a completed claimant funding payment schedule looks like.

Claimant funding payment schedule								
Invoice/Expense		Invoice number/reference	Supplier	Description of service - expense	OTS cost category	GST incl (y/n)	Amount \$	Date paid
Iwi/claimant group:		ABC DEF		negotiation expenses for the period (month and year) from: 01 May 2010		to: 30-Sep-10	subtotal	2,400.00
31/05/2010	nm0015	Callum Bruce		negotiator fees - may 2010	negotiators' fees	n	2,000.00	20/06/2010
15/05/2010	taxinv10005	whitcoulls		office supplies	admin/office expenses	n	150.00	15/05/2010
30/06/2010	nm0015	xxx marae		koha for hui re discussions on overlapping issues	hui costs-venue/koha	n	250.00	30/06/2010

**Appendix 1 Claimant Funding Payment Schedule**

Claimant funding payment schedule						
Invoice/ Expense Date	Invoice number/ reference	Supplier	Description of service - expense	OTS cost category	Amount \$	Date paid
Iwi/claimant group: ABC DEF						
negotiation expenses for the period (month and year) from: 01 May 2010						
			to:	30-Sep-10	subtotal	0.00
					GST incl (y/n)	

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## Appendix 2

### Claimant Funding Review Guidelines

*An annual review of the mandated representatives' negotiation related financial statements (bank account/receipts and payments) will provide assurance to both the Office of Treaty Settlements and claimant groups that the funding released to the mandated representatives has been expensed in an appropriate manner.*

- It is the responsibility of the reviewer to express an independent opinion on the financial statements relating to the claimant funding under the control of the mandated representatives for the period under review.
- There must be a clear statement by the reviewer that all expenses incurred relate directly to the negotiation of the Treaty claim.

#### *Purpose*

The review is required for the following reasons:

- To provide verification that the information provided to OTS represents an accurate view of transactions that have occurred for the period.
- To ensure that claimant funding has been used on valid negotiations-related expenses. This verification is not part of a standard review and therefore must be agreed with the reviewer before the review is performed.

#### *Review frequency*

- Annual review results must be provided to the Office of Treaty Settlements every 12 months. The timing of these financial reviews is to coincide with the claimant group's annual financial reporting cycle, or for the period ending 30 June 2010
- The Office of Treaty Settlements may also request invoices and receipts if further evidence is required. This request may be made before the claimant funding payment is released.
- In exceptional circumstances, the Office of Treaty Settlements may require an interim review of negotiation related financial statements. The financial statements must be prepared by one person and reviewed by another.
- There must be sufficient separation in the financial statements to enable the Office of Treaty Settlements to discern the main areas of expenditure. Appropriate headings include:
  - administration/office expenses
  - financial advice
  - hui costs/ venue/koha
  - internal comms/consultation
  - legal advice

- negotiators' fees
  - other (identify)
  - other consultants
  - rent
  - travel/accommodation
- The person conducting the review must be a chartered accountant and independent of the mandated representatives.
  - Where the reviewer has doubt that expenses incurred are not directly related to negotiation of the Treaty claim this is to be clearly stated in the management letter along with the basis for this conclusion.
  - The Office of Treaty Settlements will require the mandated representatives to provide it with a copy of the reviewer's management letter.
  - On receipt of reviewed financial statements and the associated management letter, the Office of Treaty Settlements may request a more detailed breakdown of expenses or the provision of invoices for particular categories of expenses.

#### *General comment*

The Office of Treaty Settlements has found it useful to discuss the presentation and preparation of negotiation related financial statements and review management letters with the mandated representatives and their reviewers before the annual review is performed and claimant funding is released. We encourage the mandated representatives to approach us with any questions about these requirements before making any significant changes to their current accounting systems.