



CHIEF JUDGE OF THE MĀORI LAND COURT  
TE KAIWHAKAWĀ MATUA O TE KOOTI WHENUA MĀORI

17 October 2023

**MĀORI LAND COURT SPECIAL AID PRACTICE NOTE**

Aio ki te nuku aio ki te rangi ko te kawa ora ko te kawa ora tihei mauri ora. Kei ngā maunga whakahī kei ngā wai tuku kiri, kei ngā manu huia tēnā koutou i raro i ngā āhuetanga o te wā.

I am pleased to confirm that I have approved the release of a new Practice Note covering lawyers appointed and paid for under the Māori Land Court's Special Aid Fund.

I **attach** the new Practice Note for your records and advise that you may also find a copy on the new Māori Land Court website.

The changes to the existing Practice Note were made following a review undertaken by Judge Warren, with helpful input from lawyers who regularly appear in our Court.

We trust that the new Practice Note provides greater clarity about the process and the criteria Judges will follow when making decisions about appointments and the rates that may apply.

We appreciate the work that you and other lawyers do for our Māori landowners, and we thank you once again for your input into this review.

Nāku noa nā

Dr C L Fox  
**CHIEF JUDGE**

**TE KOOTI WHENUA MĀORI**  
**TUHINGA ĀRAHI – KŌPOUTANGA RŌIA NĀ TE TAHUA ĀWHINA**  
**MOTUHAKE**

SPECIAL AID PRACTICE NOTE

*17 October 2023*

## **Hei tīmatanga kōrero**

### *Introduction*

1. This practice note applies to the appointment, engagement and payment of the fees of any lawyer<sup>1</sup> per ss 70(3), 98(3) and 98(9)(c) of Te Ture Whenua Māori Act 1993 (**Act**) out of the Māori Land Court Special Aid Fund (**Special Aid Fund**).
2. This practice note is subject to Part 16 of the Māori Land Court Rules 2011 (**Rules**).
3. This practice note applies to the use of the Special Aid Fund by the Māori Land Court and the Māori Appellate Court (**Court**).

## **Ngā mātāpono whānui**

### *General Principles*

4. The following relevant guiding principles apply to the use of the Special Aid Fund:<sup>2</sup>
  - 4.1 The Māori Land Court Special Aid Fund is not a general legal aid fund.
  - 4.2 The use of the word "special" in s 98 of the Act is a qualifying indicator of how the fund is to be applied, and denotes something distinguished from others of its kind; for a specific purpose; exceptional; particular.
  - 4.3 Any applications for grants from the Special Aid Fund should where possible be filed and determined before a hearing is commenced.

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<sup>1</sup> Barristers and Solicitors of the High Court of New Zealand.

<sup>2</sup> *Mokomoko — Hiwirau C* (2001) 10 Waiariki Appellate Court MB 32 (10 APRO 32) and *Pomare v Rangihaeata — Hongoeka 7 Lots 2 and 3* (2009) 16 Whanganui Appellate MB 108 (16 APWG 108).

- 4.4 The Court will exercise its discretions and powers under the Act in a manner consistent with the scheme, principles, and kaupapa of the Act, including in particular the principles, objects, and provisions contained in the Preamble and ss 2 and 17, and will consider such matters in light of the circumstances of a particular case.
- 4.5 Where the application for Special Aid is for the purpose of assisting a party to proceedings or person or persons who may be affected by an order of the Court, the Special Aid Fund is generally only available for those who would otherwise not be able to prosecute cases because of the special circumstances of their case.<sup>3</sup>

## **E kopoua ana tētahi rōia**

### *Appointing a Lawyer*

5. The Court may appoint a lawyer to be paid out of the Special Aid Fund on application by a party or by the Court's own motion.
6. In determining whether to make an appointment, in addition to the general guiding principles above, the Court may also have regard to the following relevant considerations:
- (a) Whether the applicant(s) are acting in a representative capacity;
  - (b) The amount of Special Aid sought relative to the impacts of a Court order on that person;
  - (c) The degree of hardship if Special Aid is not granted;
  - (d) Whether the proceedings are distinctive or special;
  - (e) The nature of the proceedings before the Court, including an assessment of the degree of need for legal representation;
  - (f) That the experience of the lawyer to be appointed is appropriate, given the nature of the proceedings, the impact of the outcome of the proceedings on the parties or Māori land owners generally;<sup>4</sup> and

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<sup>3</sup> The Court retains a discretion to issue a charging order per s98(6) of the Act.

<sup>4</sup> For example, will the outcome impact on a large group of people or set a precedent, requiring a senior lawyer to be appointed.

- (g) The financial circumstances of the party requesting a lawyer to be appointed and paid out of the Special Aid Fund and whether civil legal aid or other funding is reasonably available.<sup>5</sup>

7. In making an application under the Special Aid Fund, an applicant must:

7.1 Submit a Special Aid Fund application form addressing the matters above;<sup>6</sup>

7.2 Submit an estimate signed by the lawyer to be appointed that should include:

(a) The applicable hourly rate;

(b) An estimate of hours covering the following steps (as applicable):

(i) Receiving initial instructions and reviewing client/Court documentation;

(ii) Initial legal assessment and advice;

(iii) Preparing and advising on client pleadings, evidence and submissions;

(iv) Reading and advising on pleadings, evidence and submissions of other parties;

(v) Interlocutory appearances and responding to Court directions;

(vi) Preparing for Court hearings, judicial settlement conference (**JSC**), and negotiations;

(vii) Attending substantive hearings, JSC and negotiations; and

(viii) Reviewing and advising on the Court decision.

7.3 In the event that a mediation is agreed and directed by the Court, an additional estimate must be filed to cover the mediation.

7.4 The estimate must also address all relevant matters in rr 16.2, 16.6 and 16.7 of the Rules.

8. Lawyers that are appointed by the Court's own motion may:

8.1 Be a lawyer who a Judge considers meets the competency and experience criteria set out below; and

8.2 Be required to submit an estimate of costs, but are not required to submit a Special Aid application form.

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<sup>5</sup> There is no need to prove that civil legal aid has been applied for and has been refused, but applicants must address why civil legal aid or other funding avenues are not reasonably available or appropriate.

<sup>6</sup> Form 53 can be found at <https://maorilandcourt.govt.nz/apply/fees-and-forms/>.

9. The Court will consider the following criteria when appointing a lawyer on the Court’s own motion:
- 9.1 The level of legal experience appropriate for the appointment based on the nature of the proceedings;
  - 9.2 The level of knowledge and experience of te reo Māori, tikanga and Te Tiriti o Waitangi; and
  - 9.3 The level of experience in dealing with Māori Land Court matters, with Māori clients and related legal issues.
10. Lawyers may be appointed (on application or on the Court’s own motion) to provide services other than legal advice (such as facilitating or chairing hui, and investigations).

**Ngā utu ā-rōia**

*Lawyer’s fees*

Time and attendance

11. Subject to the discretion of the Court, lawyers appointed and paid out of the Special Aid Fund are to be paid for their time and attendance as follows:

<b>Lawyers appointed on application by parties</b>	Will be based on the experience level bands and requisite hourly rates for lawyers paid by the Legal Aid Services for appearances before the Waitangi Tribunal. <sup>7</sup>
<b>Lawyers appointed by motion of the Court</b>	Will be an hourly rate as set by the Court at its discretion.
<b>Travel time (for all appointments)</b>	\$75.00 per hour

12. All fees for time in attendance are GST exclusive.

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<sup>7</sup> Unless directed otherwise, the hourly rates will automatically change along with any changes to the Waitangi Tribunal rates. A schedule of the Legal Aid Services rates for Waitangi Tribunal proceedings as at 1 October 2023 is set out in the attached schedule.

13. The Court may approve hourly rates that are higher than the hourly rates paid by Legal Aid Services for appearances before the Waitangi Tribunal.
14. In determining the fees for a lawyer appointed by the Court’s own motion or for an uplift in the hourly rate for appointments on applications by parties, subject to the overriding discretion of the Judge, the Court will take into account the factors outlined above and any other relevant factors.
15. In appropriate circumstances the Court may consider a fixed fee arrangement.
16. Of its own motion or by application of a party, the Court may approve an uplift in the hourly rate or fixed fee arrangement at any time during the course of the appointment of the lawyer.

Disbursements

17. All disbursements are to be approved by the Court and must be included in the estimate provided. Disbursements can include:

Travel (mileage or petrol, flights, rental cars)
Accommodation and meals (when an overnight stay is necessary)
Reasonable photocopying
Toll calls and conference call costs
Venues for hui
Translation or interpretation services
Expert witness costs (a separate order of appointment may be required)
Service and advertising costs

Support staff and other lawyers

18. The Special Aid Fund will not be available to cover any administration or secretarial support incurred by the lawyer, unless that support is specifically approved by the Court.<sup>8</sup>

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<sup>8</sup> For example, to assist in taking minutes at a hui, that the lawyer is appointed to facilitate.

19. The Special Aid Fund may be available to cover costs for a second lawyer at the Court's discretion. The appointment of a second lawyer and the hourly rate or fixed fee for the second lawyer will be set at the Court's discretion.

Further estimates, appeals and rehearings

20. If it becomes evident that actual costs will exceed the grant of Special Aid, the lawyer must as soon as reasonably practicable file a further estimate together with reasons for the increase in costs. To avoid doubt, a further estimate is only required if it becomes evident that the total approved amount for Special Aid will be exceeded.
21. Lawyers must not submit invoices that exceed the total approved amount for Special Aid, unless directed to do so by the Court.
22. A grant from the Special Aid Fund does not continue for any subsequent appeal or rehearing. For any such appeal or rehearing:
  - (a) Where a lawyer has been appointed on application by a party, a new application must be filed in advance of any appeal or rehearing.
  - (b) Where a lawyer has been appointed on the Court's own motion, a new estimate must be filed in advance of any appeal or rehearing.

Changing lawyer

23. If for whatever reason, an appointed lawyer can no longer act, then subject to a direction from the Court a new application is required for any replacement lawyer to be appointed.
24. That said, if the replacement lawyer is within the same firm or Chambers as the departing lawyer, then no further application is required, unless directed by the Court. The replacement lawyer will need to file a memorandum with the Presiding Judge addressing:
  - 24.1 Whether they have the necessary experience to be appointed; and
  - 24.2 Whether any of the existing estimates as approved will need to change.

## **Ngā utu whakawā ki tētahi tangata, ki tētahi kāhui tāngata rānei i whiwhi ai i te Tahua Āwhina Motuhake**

### *Costs against a person or class of persons in receipt of Special Aid*

25. The fact that a party to proceedings before the Māori Land Court is in receipt of Special Aid is not a barrier to costs being awarded against them.
26. In assessing costs against a party in receipt of funding from the Special Aid Fund, the Māori Appellate Court has stated:<sup>9</sup>

We consider that a grant of special aid is relevant to both stages of the inquiry on costs, being whether costs should be awarded, and if so, in what amount. Given the varied circumstances in which special aid may be granted, we do not consider that an inflexible rule, or set of criteria, should be applied. Rather, a grant of special aid is a relevant factor to be taken into account on a case-by-case basis.

## **Pānui whakamōhio ki ngā tāngata mō te kopoutanga a tētahi rōia**

### *Notifying other parties of the appointment of a Lawyer*

27. When a lawyer is appointed and engaged pursuant to ss 70(3), 98(3) and 98(9)(c) of the Act, as soon as reasonably practicable they must give written notice of that fact to every other party to the proceedings.
28. If any other person subsequently becomes a party to the proceedings the lawyer appointed and engaged must, as soon as reasonably practicable, give an equivalent notice to the new party.

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<sup>9</sup> *Taueki v Horowhenua 11 (Lake) Māori Reservation Trust – Horowhenua 11 (Lake) Block* [2019] Māori Appellate Court MB 652 (2019 APPEAL 652) at [27].

## Ngā Kōamuamu mō te Tahua Āwhina Motuhake

### *Special Aid complaints*

29. The Special Aid Fund is administered by the Chief Registrar, any complaints about the administration and operation of the Special Aid Fund should be made to the Chief Registrar of the Māori Land Court and copied to the Chief Judge of the Māori Land Court.



Dr C L Fox  
**CHIEF JUDGE**



D H Stone  
**JUDGE**



A H C Warren  
**JUDGE**

**Schedule of Waitangi Tribunal Costs**

Proceedings category	Level of Experience		
	Level 1 (\$/hr)	Level 2 (\$/hr)	Level 3 (\$/hr)
FC3 (High Court, Māori Appellate Court, Waitangi Tribunal, Employment Court)	\$134	\$150	\$167

Level 1 – A person with up to 4 complete years of litigation experience.

Level 2 – A person with at least 4 and up to 9 complete years of litigation experience.

Level 3 – A person with at least 9 complete years of litigation experience.