

## Draft Funding Application Guidelines for the Research, Development, and Submission of Specific Claims

### Recommendations by Claims Research Units in Response to Draft Dated June 30, 2021

#### 1. Introduction

We acknowledge the wording change in the June 30, 2021 guideline revision to: “Specific Claims deal with past wrongs committed by the Crown against First Nations.” Thank you for your input.

#### 2. Objective

We acknowledge the June 30, 2021, revisions contain the following wording: “Under the section entitled “Advancing Reconciliation by Settling Specific Claims, Budget 2019 committed \$40.0 million over five years, starting in 2019-2020, to First Nations to help research and develop their claims. This commitment of \$8 million per year for five years was an addition to the \$4 million per year that was already committed to this funding program on an on-going basis.” We recommend a wording inclusion that explicitly states the total yearly budget of \$12 million: “... on an on-going basis. This means a total of \$12 million is allocated on a yearly basis for research funding.” We recommend addressing the outstanding issue of reabsorption of surplus funds at a future meeting of the working group. We are unable to accept this proposed change since only the \$4M is available on an ongoing basis. The \$8M is currently set to sunset in 2023-2024. The Department will work with CRUs and other partners to seek to extend the funding.

#### 3. Who can apply?

We recommend that the wording around Nations changing research service providers be clarified. We suggest the following wording: “*First Nations who are considering a change of mandate must work in collaboration with the CRU to determine the best approach in order to avoid duplication of work and funding. Continued discussions on potential approaches to better respond to these requests in the future are underway with the CRU-NSD Working Group.*” Change made

#### 4. Application Deadline

We acknowledge the wording change in the June 30, 2021, guideline revisions indicating that “the deadline to submit a proposal for research funding is January 31 of each fiscal year or the next business day where January 31 falls on a weekend or statutory holiday.” Thank you for your input.

#### 5. Eligible Activities and Expenditures

- a. The June 30, 2021 revised guidelines contains the following bullet point: “*Joint activities and/or meetings with Canada in the development of claims.*” We understood from our June 28, 2021 CRU-NSD working group meeting that references to “joint activities” would be removed. We recommend the removal of this sentence in its entirety as it lacks clarity and transparency and requires further discussion. Meetings

with Canada in the development of a claim can be useful for First Nations and CRUs in the process. We have deleted “Joint activities and/or” but will leave “Meetings with Canada in the development of a claim”.

- b. The paragraph beginning: “Consistent with the Department’s collaborative approach to specific claims resolution, eligible recipients can also seek research funding after a claim is submitted...” lacks sufficient clarity and transparency. This issue of funding for additional research activities requires further discussion with the working group, particularly since a number of the activities referenced in our June 28<sup>th</sup> meeting have been resourced historically through negotiation funding. We strongly recommend removal of this section until this discussion can occur and a full understanding and agreement is reached between Canada and First Nations. We appreciate CRU comments and will be pleased to continue to discuss how increased collaboration in the specific claims process is assisting in the resolution of claims, but we will need to leave this paragraph in as it is important that First Nations have access to this funding to support claims development. The Department’s experience is that collaboration between First Nations and Canada during the assessment stage and support to First Nations in further developing their claims after a claim is submitted is well received by First Nations and supports claims resolution. We adjusted the text to make it clear that the eligible recipient determines the need through engagement with SCB.
- c. Paragraph beginning “The *Stages of Specific Claims Research for Measurable Progress* paragraph 27...” We note that there have been several changes made to Stage IX of the *Stages of Research* document (“Following the Minister’s Letter Advising Whether Canada Wishes to Negotiate a Claim”). These changes were made unilaterally, without discussion with the CRU side of the working group. We recommend the following:
- Changing the wording of section 24 to read “Receipt of Minister’s letter to explain Canada’s decision to accept or reject the claim.” Changes made and also adjusted title to be consistent.
  - The “additional research” noted in section 25(b) lacks clarity and transparency and must be subject to the same fulsome discussion by the working group as noted in our point b) above since this research will occur post-assessment. We strongly recommend removing this point and discussing the issue with the working group. Bullet b) has been removed together with addition of 27.
  - We recommend clarifying the language in section 26(a) to avoid misinterpretation. Change to read “Prior to a First Nation accepting Canada’s offer to negotiate, a First Nation may require assistance and/or information from CRU and/or legal counsel.” Change made
  - Regarding section 27, which is left out of Annex A, we note the in the original *Stages of Research* document, this section referred to additional historical and legal work in preparation for the Specific Claims Tribunal. The new section 27 refers to post-assessment research activities, which lack clarity and transparency. We strongly recommend using the wording in the original *Stages* document as the working group must discuss the full range of issues and concerns regarding funding for post-assessment

research activities. We have added the Section 27 main bullet as per original version but discarded the sub-bullet related to Tribunal since under the Research program it would not be eligible as stated in the Guidelines and added under the note). Also moved reference to inactive claims under Section X since it was miss-placed under Section IX.

- We recommend the paragraph starting: “Eligible recipients who wish to pursue research at this stage can discuss the scope of the project with the Specific Claims Branch lead negotiator...” be removed until further discussion can take place since these activities have been resourced historically via negotiation funding. We have removed the paragraph that begins “Eligible recipients” and have adjusted the subsequent paragraph to clarify the extent of SCB engagement i.e not involved in the administration of funding proposals – however we want to be fully transparent that NSD will seek confirmation from SCB that the workplan received support additional research to further the development of the claim given that the funding is provided within the context of a collaborative approach to specific claims resolution.

## 6. Ineligible Activities and Expenditures

We acknowledge the wording change made in the June 30, 2021 guidelines to say “Activities associated with the costs of litigation and Specific Claims Tribunal are also not eligible.” We are satisfied with this change. Thank you for your input.

## 7. Maximum Amount of Funding

- a. We recommend further discussion about including funding for claims undergoing review in light of new case law at a future meeting of the working group. We welcome continued discussions.
- b. We recommend further discussion regarding NSD’s determination, on an annual basis, of funding maximums, as well as the availability of supplementary funding in a given year, and potential surpluses. We welcome continued discussions.
- c. We recommend that the maximum funding per active claim be clearly communicated in the call for proposals each year, including details about how this figure is determined, and that a funding threshold be established to ensure fairness and First Nations’ access to research funding. We welcome continued discussions.

## 8. Determination of the Amount of Funding and Stacking

- a. While general criteria used to assess funding amounts is given, there remains a lack of transparency about how funding is determined. We recommend this be discussed at a future meeting of the working group and that the guidelines clearly express that these discussions are ongoing. Thank you for your input.

## 9. Application Process

- a. We recommend clearly indicating that the CRU-NSD working group is addressing the nine recommendations submitted by the National Claims Research Directors in their

- April 27, 2021 “Issues of Concern” document. Paragraph added highlighting continued work with CRU on the funding process.
- b. We recommend that wording be added to the paragraph starting: “*Application for funding to support the planning and hosting costs of the National Claims Research Workshop and travel costs for delegates to attend...*” to clarify that a framework for organizing and attending these events is currently in discussions with the working group. Change made
  - c. We recommend removing the references to an “agenda” and “list of participants” since this is routinely finalized no earlier than 30 days prior to the events taking place; while previous years’ attendance rates are used to calculate budget estimates, a list of attendees will be unavailable by the January 31<sup>st</sup> budget deadline. Change made

**10. Claims Research Units** As a matter of practice and transparent communications, we reiterate our request that CRUs receive copies of all correspondence related to the administration of claims research and development funding for those First Nations who have provided the CRU with a mandate to conduct research on their behalf, and that this acknowledgement of agreed correspondence is included in the guidelines. Since these correspondence would include Third Party Information, we are unable to share this information with the CRU. CRUs and First Nations who give them a mandate are best placed to discuss how information will be shared between them.

**11. Intellectual Property and Ownership Requirements** -We acknowledge the June 30, 2021 revisions that remove the provision regarding intellectual property. If there is intent to introduce a provision about intellectual property in the future, there must be comprehensive engagement on this issue, as per the UN Declaration on the Rights of Indigenous Peoples. We welcome continued discussions aimed at ensuring the intellectual property rights of First Nations in their claims are upheld.