

Briefing: Waikeria Ex Gratia Payments – Approval to Draft Cabinet Paper

To Hon Kelvin Davis, Minister of Corrections			
Date	15 March 2021	Deadline	24 March 2021
B number	B4120	Priority	High
Key contact	Jo Perez, Deputy Chief Executive, Finance, Planning and Assurance	Contact number	s9(2)(a)
Second contact	Leisha Pettigrew, Chief Legal Adviser	Contact number	s9(2)(a)

Purpose

The briefing seeks your agreement to draft a paper seeking Cabinet's approval to provide ex gratia payments to staff and people in prison who lost property during the riot at Waikeria Prison.

Key messages

Personal property stored at Waikeria Prison was lost during the disorder event that took place over the period of 29 December 2020 to 3 January 2021.

Corrections is not legally liable for personal property loss in this circumstance. There is no legal obligation to compensate staff or people in prison for their loss and we are not considering compensation or reimbursement. However, we believe an ex gratia payment to staff and men who lost property is appropriate and justified.

A Cabinet Paper is required to gain approval for ex gratia payments because the total amount sought exceeds both the Chief Executive's and your delegation. No payment is sought or considered for men charged with the disorder event.

Should you agree, Corrections will draft a Cabinet Paper for you to take to the Cabinet Social Wellbeing Committee towards the middle of May 2021.

Recommendations

It is recommended that you:

Agree to Corrections drafting a Cabinet Paper seeking approval to provide ex gratia payments to staff and men who lost property during the Waikeria Prison disorder event.

YES/NO

Sign-off



Hon Kelvin Davis
Minister of Corrections

Date signed: 17 / 3 / 2021



Jo Perez
Deputy Chief Executive
Finance, Planning, and Assurance

Date signed: 12 / 3 / 2021

Personal property stored at Waikeria Prison was lost as a result of the disorder event

1. Over the period of 29 December 2020 to 3 January 2021, a riot at Waikeria Prison occurred, resulting in extensive damage to the top jail facility and its contents.
2. As a direct result of the incident, staff and prisoners lost all personal property that was stored in the top jail facility. This personal property was either destroyed by the fires or is unable to be safely recovered.
3. At any one time, around 53 staff worked in the top jail, equating to approximately 190 staff members across a rotating shift pattern. Staff would ordinarily store personal property in approximately 220 staff lockers, on their desks, or elsewhere, within the top jail compound. Not all staff appear to have had property stored on site.
4. It is estimated that a total of 844 people under our management lost personal property. Of this number, approximately 210 individuals in the top jail, 494 individuals in the lower jail, and 140 individuals in other locations across the prison who still had property in storage at Waikeria, lost their items.
5. Shortly after the events on site, ex gratia payments of \$100 were made to men who were most impacted by the disorder event. These payments have been made and totalled approximately \$21,000.

Corrections does not have a legal obligation to provide compensation for the property of people in prison or staff in a disorder event

6. Corrections has some legal responsibility for stored prisoners' property. However, we do not have responsibility for property in their cells or for staff personal property. In this specific situation, Corrections is not legally liable for the personal property losses. As such, there is no legal obligation to compensate staff or the men for their personal property losses.
7. This leaves us with two options, take no further action or seek Cabinet's approval to provide staff and the people under our management with a one-off ex-gratia payment.
8. Corrections believe an ex gratia payment to the men and staff who lost personal property is appropriate and justified, aligned with Hōkai Rangi and our values. For staff, this is also aligned with Corrections' obligations as their employer.
9. We also believe issues within the custodial environment may arise as a result of not appropriately resolving this matter. For example, people in prison taking less appropriate means to recover property, a high number of claims and complaints, and the possibility of legal proceedings irrespective of the prospects of success. All of these matters will result in staff effort and public expense to consider and resolve to the extent that Corrections is able to do so.
10. No payments are contemplated for men who have been charged in relation to the incident, for any personal property losses they may have incurred.

Corrections has estimated property losses for staff and people in prison and we have developed several approaches to determine the amount of the ex gratia payment

11. In determining an appropriate ex gratia payment amount, Corrections is not obliged to quantify individuals' losses, however, we intend to seek Cabinet approval for \$1.3 million for the men in prison and \$50,000 for staff.
12. This amount is based on the following:
 - As at 3 March 2021, the losses incurred for 25 staff, also taking account of personal insurance claims, was estimated to be approximately \$19,000. In the event there are staff claims we are not yet aware of we have provided for a contingency allowance so that we are not obliged to return to Cabinet for small sums that may arise.

- The assessment of available data estimates losses for people in prison to be approximately \$1.3 million.
13. Should you agree to proceed, a Cabinet Paper is required as the amount sought exceeds both the Chief Executive's and your delegations. As you are aware, the Chief Executive is able to approve up to \$30,000, and you are able to approve between \$30,000 and \$75,000 for ex-gratia payments.
 14. If Cabinet approval is not obtained, Corrections cannot lawfully use public funds to make any payments to impacted staff or men.
 15. For staff property, we are proposing to individualise the payments to staff members to match the amount they have indicated as the loss they have incurred, with a contingency allowance in the event that there are staff claims we are not yet aware of.
 16. Corrections is currently considering an option to proceed with to determine an appropriate payment to the affected men in prison.

Funding for the ex gratia payments

17. At this stage it is considered that additional funding is unlikely. The funds will need to be identified within Corrections' existing baseline. We consider these payments would be in scope of our appropriations.
18. If approved, payments will be made into Prisoner Trust Accounts, with oversight of the Administration teams in Corrections Services. Payments to staff will go through the usual expense claims process to their nominated bank account.

Taonga - some items hold sentimental, emotional, cultural or religious value

19. Some items of property will likely hold sentimental, emotional, spiritual, cultural or religious value for which are difficult to quantify and thus make payment for this aspect of loss impossible. Where items of this nature have been lost, we can still acknowledge the impact of the loss.
20. As we undertake demolition works, it is important we acknowledge this aspect of the losses. We will engage with local iwi for an informed view of this, and create an avenue for the voices of staff and men who lost property with special significance to be heard.

Next steps

21. Should you agree, Corrections will begin drafting a Cabinet Paper for you to take to the Cabinet Social Wellbeing Committee towards the middle of May 2021.

Appendices

- Appendix One – Proposed Timeframe is attached.

Minister comments

Appendix One – Proposed Timeframe

Step	Proposed timeframe (10 weeks total)
Briefing seeking approval to draft the Cabinet paper	15 March 2021
Draft the Cabinet paper	By 24 March 2021
Circulate the Cabinet paper for agency consultation	24 March to 8 April 2021 (note: Easter Holiday period)
Incorporate feedback from other agencies	By 12 April 2021
Draft, finalise and send briefing and Cabinet paper to your office	By 16 April 2021
Ministerial consultation	19 April to 3 May 2021
Incorporate feedback from Ministerial consultation	5 May 2021
Lodge Cabinet paper	6 May 2021 (By 10am on Thursday before appropriate Cabinet Committee)
Cabinet Social Wellbeing Committee	12 May 2021
Cabinet	17 May 2021