

## Briefing: Cabinet paper proposing *ex gratia* payments to people in prison and staff due to the Waikeria riot

<b>To</b> Hon Kelvin Davis, Minister of Corrections			
<b>Date</b>	16 April 2021	<b>Deadline</b>	19 April 2021
<b>B number</b>	B4137	<b>Priority</b>	Medium
<b>Key contact</b>	Jo Perez, Deputy Chief Executive Finance, Planning and Assurance	<b>Contact number</b>	s9(2)(a)
<b>Second contact</b>	Leishia Pettigrew, Chief Legal Adviser	<b>Contact number</b>	s9(2)(a)

### Purpose

This briefing provides you with a Cabinet paper that proposes making *ex gratia* payments to people in prison and staff who lost property due to the Waikeria Prison riot.

Corrections seeks your agreement to circulate the attached Cabinet paper for Ministerial consultation and lodge it with the Cabinet Social Wellbeing Committee on Thursday 6 May 2021.

### Key messages

People in prison and Corrections staff lost personal property as a result of the Waikeria Prison riot because of damage to the top jail facility. The attached Cabinet paper seeks agreement for Corrections to make an *ex gratia* payment to people who lost property due to the riot.

This proposal requires Cabinet approval as the total proposed payment, of up to \$1.35 million, exceeds the threshold of \$75,000. Funding for the payment will come from Corrections' existing baselines.

Corrections has consulted a number of agencies and the Chief Victims Advisor on the proposals in the Cabinet paper and did not receive any significant feedback.

Talking points to support you at Cabinet are also attached.

### Recommendations

It is recommended that you:

<b>Agree</b> to circulate the attached Cabinet paper for Ministerial consultation, and lodge the Cabinet paper with the Cabinet Social Wellbeing Committee by 10am, Thursday 6 May 2021.	<b>YES/NO</b>
<b>Note</b> that talking points are attached to support you at Cabinet.	<b>YES/NO</b>

## Sign-off



Hon Kelvin Davis  
**Minister of Corrections**

Date signed:

10/5/2021



Jo Perez  
**Deputy Chief Executive  
Finance, Planning and Assurance**

Date signed:

14/4/21

### **The attached Cabinet paper proposes that Corrections make an *ex gratia* payment for personal property lost in the Waikeria riot**

- 1 From 29 December 2020 to 3 January 2021, a group of 17 prisoners at Waikeria Prison rioted, causing extensive damage to the prison's top jail facility. In total, 844 prisoners and up to 190 Corrections staff lost personal property as a result of the riot. The 17 prisoners have since been charged in relation to the riot.
- 2 You received a briefing on 15 March 2021 [B4120 refers], which outlined that Corrections is not legally liable for this personal property loss and has no legal obligation to compensate staff or people in prison. Corrections proposed making an *ex gratia* payment instead. Government departments are authorised to make *ex gratia* payments, which are made out of goodwill or a sense of moral obligation rather than being required by law.

### **Cabinet approval is required to make the *ex gratia* payment**

- 3 In response to the briefing referenced above, you agreed to Corrections drafting a Cabinet paper seeking Cabinet's agreement to make an *ex gratia* payment to people in prison and staff who suffered loss due to the riot. A Cabinet paper is required to make this *ex gratia* payment because the payment could be up to \$1.35 million, which exceeds the threshold of \$75,000.<sup>1</sup>
- 4 Corrections has drafted a Cabinet paper and circulated it for agency consultation, which is attached as Appendix One. If approved, Corrections will make the *ex gratia* payments, which will be met within Corrections' existing baseline allocation through reprioritisation.
- 5 The *ex gratia* payments align with the outcomes in Hōkai Rangi and international guidance around the property of people in prison. It also means that people in prison have some means to replace their property when they transition back to the community. Making an *ex gratia* payment to staff aligns with Corrections' responsibilities as an employer.
- 6 Corrections has quantified the *ex gratia* payment based on the scale of the loss suffered by people in prison and staff. Based on items valued to date, the items lost by people in prison amount to a total estimated value of \$700,000. Staff claims for property that was stored in the top jail currently total around \$19,000.<sup>2</sup>
- 7 A contingency is required as we still need to value around a quarter of people in prison's items and there are likely to be some outstanding staff claims. With the contingency, Corrections is seeking approval to make an *ex gratia* payment of up to \$1.3 million for people in prison and up to \$50,000 for staff. The amount for payments to staff is less as not all staff stored property at the top jail and some staff are able to make a personal insurance claim for their property.

<sup>1</sup> The threshold is set out in the Cabinet Officer Circular "Proposals with Financial Implications and Financial Authorities" (30 July 2018) CO 18(2) at [70].

<sup>2</sup> This does not include property for which staff can make a personal insurance claim.

## Corrections is considering options for making the payments

*Payments to staff will be individualised based on the staff claims process*

- 8 Corrections' *ex gratia* payments to staff will be individualised to match their reported losses. Given the smaller nature of this payment, this is the simplest method. Payments to staff will go through the usual expense claims process.

*Payments to people in prison will not directly compensate for the items that were lost*

- 9 Corrections is considering the best method to make *ex gratia* payments to people in prison. People in prison lost a wide range of items as a result of the riot. The more commonly stored items for people in prison included cell phones, wallets, identification, jewellery, clothing and accessories. People also lost items of sentimental, emotional, spiritual, cultural or religious value, such as taonga, that are inherently difficult to value.
- 10 Corrections will decide on the preferred option for making payments to people in prison following Cabinet approval of the *ex gratia* payments. The preferred option will likely involve either setting a range of different rates based on the value of items lost by each person or individualising payments to each person.
- 11 While the *ex gratia* payments to people in prison will likely broadly reflect the value of each person's property loss, they will not directly compensate for the items. The payment is intended to give people in prison the means to replace their lost property, but they will not replace exactly what they lost.

## There are implications for victims, Māori and other population groups

- 12 Generally, victims who experience offending can make a claim for compensation under the Prisoners' and Victims' Claims Act 2005. However, that Act does not apply to *ex gratia* payments. Due to this, some victims may not support this proposal. We consulted with the Chief Victims Advisor who had no feedback on the proposal and noted that victims will not be able to make a claim under the Act.
- 13 Māori have been disproportionately affected by the Waikeria riot as they make up around 68 percent of the Waikeria Prison population.<sup>3</sup> Māori are likely to have lost taonga due to the riot. Corrections will endeavour to recover taonga as part of the demolition process, but most items are unlikely to be recovered. Corrections is working with mana whenua as part of demolition work and will engage with staff and people in prison who have lost taonga.
- 14 The proposal may have minor positive implications for disabled people, seniors and women. Making the *ex gratia* payment may have indirect benefits for the whānau of people in prison, which may include women and children.

## Corrections consulted with a number of agencies in developing the Cabinet paper

- 15 In developing the Cabinet paper, Corrections consulted with the Treasury, Ministry of Justice, New Zealand Police, Ministry of Social Development, Te Puni Kōkiri, the Chief Victims Advisor, Crown Law Office, Ministry for Women, Office for Disability Issues and Office for Seniors. We informed the Department of Prime Minister and Cabinet of the proposals.
- 16 In general, these agencies were either supportive, sought minor clarification, suggested minor changes, or did not raise concerns with the proposals.

---

<sup>3</sup> As at December 2020.



## Next steps

- 17 We recommend that you circulate the Cabinet paper for Ministerial consultation on Monday 19 April 2021 and seek feedback by Monday 3 May 2021, to be ready to lodge the paper to take to the Cabinet Social Wellbeing Committee on 12 May 2021. Key dates are set out below:

Step	Proposed timeframe
Minister to sign briefing agreeing to circulate Cabinet paper for Ministerial consultation	By Monday 19 April 2021
Ministerial consultation	Monday 19 April to Monday 3 May 2021
Lodge Cabinet paper with Cabinet Social Wellbeing Committee	By 10am, Thursday 6 May 2021
Cabinet Social Wellbeing Committee	Wednesday 12 May 2021
Cabinet	Monday 17 May 2021

- 18 Corrections can work with your office to answer any questions or make any changes to the Cabinet paper that arise from Ministerial consultation. We have also provided you with draft talking points to support you at Cabinet, which are attached as Appendix Two. We can edit these if necessary following Ministerial consultation.
- 19 Corrections will proactively release the Cabinet paper within 30 business days.

## Appendices

- 20 All appendices referenced in this paper are outlined below:
- Appendix One – Cabinet paper: *Ex gratia* payments to prisoners and staff who lost personal property as a result of the Waikeria riot
  - Appendix Two – Draft talking points to support you at Cabinet.

Minister comments

## Talking points to support the Minister at Cabinet

### *The Waikeria riot caused extensive damage to personal property*

- From 29 December 2020 to 3 January 2021, it appears a group of 17 prisoners based in the top jail at Waikeria Prison lit fires in several areas of the facility [7]<sup>1</sup>.
- As a direct result of the riot, 844 prisoners and up to 190 staff lost personal property that was stored in the top jail [13-14].
- This personal property was either destroyed in the fires or cannot be recovered safely [12].

### *It is appropriate and justified to make ex gratia payments*

- I consider it appropriate for Corrections to make an *ex gratia* payment to prisoners and staff who lost personal property due to the riot. No payment will be made to the 17 prisoners who have been charged in relation to the riot [20] and [24].
- This was a unique situation and the prisoners were not at fault. They suffered loss only because they had property in storage at Waikeria Prison [21].
- Making an *ex gratia* payment will align with the values in Hōkai Rangi. It will support and uplift the oranga, or wellbeing, of those in prison [20].
- Making an *ex gratia* payment to staff aligns with Corrections' responsibilities as an employer [23].

### *Cabinet approval is required*

- I seek your agreement for Corrections to make an *ex gratia* payment of up to \$1.3 million for prisoners and up to \$50,000 for staff [31] and [33].
- This payment requires Cabinet approval as it exceeds \$75,000 [36].
- Corrections will meet the cost within its existing baseline allocation through reprioritisation [38].

### **If asked about the alternatives to an *ex gratia* payment:**

- It is important to make this *ex gratia* payment as there are limited alternatives [25].
- As Corrections did not cause the loss of prisoner or staff personal property, it is not legally liable for the loss of property. This means that it would be inappropriate for Corrections to make compensation payments [17].

---

<sup>1</sup> Refers to relevant paragraph in the Cabinet paper.

- If no *ex gratia* payment is made, it is unlikely that the prisoners who lost property would be able to recover their losses from other avenues [25].
- It is unlikely that staff who lost property could recover their losses from other avenues, if they cannot make a personal insurance claim [25].

**If asked about whether *ex gratia* payments have been made before:**

- To the best of my knowledge, Corrections has not made an *ex gratia* payment to prisoners and staff before on a scale that has required Cabinet approval.
- This was a unique situation due to the large scale of the damage. The top jail is now unusable and personal property is not able to be safely recovered [7] and [12].

**If asked about what items people in prison and staff lost:**

- People in prison and staff lost a wide range of items as a result of the riot, including clothing, cell phones, wallets, identification, accessories and also items of cultural or religious value, such as taonga [28] and [32].
- An *ex gratia* payment is made out of goodwill, rather than as direct compensation. This means the payments will not be direct compensation for what was lost [18].
- Making an *ex gratia* payment will give people the means to replace their lost property but they will be free to use this money as they choose.

**If asked about how Corrections is determining how much to pay people:**

- Corrections will decide on the preferred option for making payments to people in prison following your approval of the *ex gratia* payments.
- This will be based on the scale of the loss suffered by people in prison and staff.

**If asked about the impacts of the proposal on population groups:**

- Victims who experienced the offending, or alleged offending, that brought people into prison are not able to seek compensation from funds received under this proposal [42].
- The Chief Victims Advisor has noted that victims will not be able to make claims under the Prisoners' and Victims' Claims Act.
- Māori could be disproportionately affected by the loss of taonga due to the riot [34-35] and [43].
- Corrections will continue to work with mana whenua as part of demolition work and engage with staff and prisoners regarding the loss of taonga [35].