

In Confidence

Office of the Minister of Corrections

Cabinet Social Wellbeing Committee

***Ex gratia* payments to prisoners and staff who lost personal property as a result of the Waikeria riot**

Proposal

- 1 This paper seeks agreement to the Department of Corrections (Corrections) making an *ex gratia* payment¹ to prisoners and Corrections staff who lost personal property as a result of the Waikeria Prison riot.

Relation to government priorities

- 2 The Government committed to implementing Hōkai Rangi, Corrections' strategy, in its 2020 Election Manifesto. This proposal is aligned to the outcomes in Hōkai Rangi.

Executive Summary

- 3 From 29 December 2020 to 3 January 2021, 17 prisoners at Waikeria Prison caused extensive damage to the prison's 'top jail' facility (**Rec 1**). Prisoners and Corrections staff lost personal property as a result of the riot (**Rec 2**). The 17 prisoners have since been charged in relation to the riot.
- 4 Corrections does not have a legal obligation to compensate for personal property in the circumstances (**Rec 3**). However, I consider that an *ex gratia* payment to prisoners and staff would be appropriate and justified to acknowledge the loss they have suffered (**Rec 4**).
- 5 This paper seeks Cabinet's agreement for Corrections to make an *ex gratia* payment of up to \$1.3 million for prisoners and up to \$50,000 for staff who lost personal property (**Recs 5 and 6**). No payment would be made to the 17 prisoners who have been charged in relation to the riot.
- 6 This proposal requires Cabinet approval as it exceeds \$75,000,² but Corrections would meet the cost within its existing baseline (**Rec 7**).

¹ An *ex gratia* payment is a payment made without the giver recognising any liability or legal obligation; the payment is made out of goodwill or a sense of moral obligation.

² Cabinet Officer Circular "Proposals with Financial Implications and Financial Authorities" (30 July 2018) CO 18(2) at [70]).

Background

The Waikeria Prison riot was resolved peacefully but caused extensive damage

- 7 On 29 December 2020, a group of prisoners located in a recreation yard at the 'top jail'³ at Waikeria Prison refused to return to their cells. It appears that the prisoners were then responsible for lighting fires in several areas of the top jail facility, which caused extensive damage to the facility **(Rec 1)**.
- 8 Due to concerns for the safety of prisoners in the top jail, Corrections staff evacuated approximately 200 prisoners on the 29 December 2020. Staff and prisoners worked together to evacuate safely and peacefully. Many of the prisoners who were evacuated then had to be moved to other prison sites.
- 9 By the morning of 30 December 2020, a group of 17 prisoners remained in the top jail. Negotiations continued until the riot was resolved on 3 January 2021. Police have since laid charges against the 17 prisoners in relation to the destruction of the facility.
- 10 I am grateful that the riot was resolved without any major injury to Corrections' staff, prisoners or emergency services. Mana whenua and local kaumātua played an important role in negotiations with the group and in helping to end the riot peacefully.
- 11 Many of the prison's central support functions and facilities were based at the top jail. This included the health centre, an intervention support unit for people who need mental health support and are vulnerable to self-harm, video conferencing facilities, the kitchen, laundry and property storage.

Prisoners and staff lost personal property as a result of the riot

- 12 As a direct result, prisoners and staff lost personal property that was stored in the top jail, including people living in other parts of the prison and other sites. This personal property was either destroyed in the fires or cannot be recovered safely **(Rec 2)**.
- 13 A total of 844 prisoners lost personal property, including:
- 13.1 210 prisoners in the top jail at the time of the riot
 - 13.2 494 prisoners in the lower jail at the time of the riot
 - 13.3 140 prisoners in other locations who had property in storage at Waikeria Prison.
- 14 At any one time, around 53 staff worked in the top jail with approximately 190 staff on site at any given time. They all had access to storage in the top jail, including lockers and desks. Not all staff appear to have had property stored on-site in the top jail.

³ The 'top jail' is a specific area of Waikeria prison that contained three high security wings.

Recompensing prisoners and staff for personal property loss

Corrections has no legal obligation to compensate prisoners and staff for their loss

- 15 When a prisoner first arrives, their clothes and small valuables are handed over to Corrections to be kept in storage while they are in prison.⁴ Corrections must store any property that a person is not authorised to have in their cell.⁵
- 16 Requirements for the Department and prisoners related to property storage are set out in the Corrections Act 2004, the Corrections Regulations 2005 and the Prison Operations Manual.⁶ The United Nations Standard Minimum Rules for the Treatment of Prisoners say that this property should be kept safe and returned to the prisoner on their release.
- 17 As Corrections did not cause the loss of prisoner or staff personal property, it is not legally liable for the loss of property and has no legal obligation to compensate prisoners or staff (**Rec 3**). This means that it would be inappropriate for Corrections to make compensation payments.

Government departments are authorised to make ex gratia payments

- 18 Although compensation is inappropriate, Corrections could still make an *ex gratia* payment to prisoners and staff. 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.
- 19 Following the riot, Corrections made an initial *ex gratia* payment of \$100 per prisoner to the 193 prisoners who had to be evacuated from the top jail, many of whom were relocated to other prison sites⁷. This payment was in recognition of the significant impact and disruption for these prisoners and enabled them to replace essential items.

An ex gratia payment to prisoners and staff would be appropriate and justified

- 20 I consider it appropriate for Corrections to make an *ex gratia* payment to prisoners and staff who lost personal property due to the riot (**Rec 4**). Making an *ex gratia* payment would align with the outcomes in Hōkai Rangī and support *oranga* and wellbeing. It would lessen impacts of the property loss on the wellbeing of staff, prisoners and their *whānau*. Also, it would align with international guidance around the property of prisoners.
- 21 This is a unique situation and the prisoners who lost property, irrespective of the criminal offending that may have brought them into the corrections system, are not at fault in this situation. They played no part in the riot and

⁴ Prison Operations Manual, P.02 Storing property.

⁵ Authorised Property Rules, made under section 45A of the Corrections Act 2004.

⁶ This includes criteria for storing property, property storage conditions, keeping a register of stored property and prisoner inspection of stored property.

⁷ The total amount of this *ex gratia* payment was approximately \$21,000, which was within the Chief Executive of Corrections' delegations.

were compliant throughout it. They have suffered loss simply because they had property in storage at Waikeria Prison.

- 22 Corrections cannot return the personal property that was destroyed, and compensation is not appropriate. However, an *ex gratia* payment means the prisoners will have some means to replace their lost property when they transition back to the community. It would also limit the effect on the whānau of prisoners, who otherwise could continue to be impacted by the loss.
- 23 Making an *ex gratia* payment to staff aligns with Corrections' responsibilities as an employer. I acknowledge the important work that Corrections staff do and consider this to be appropriate. This would help replace any staff property that was lost due to the riot, where the loss is not otherwise covered by their personal insurance.
- 24 No payment would be made to the 17 prisoners who have been charged in relation to the riot **(Rec 5)**.

There are limited alternatives if no ex gratia payment is made

- 25 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, such as reparations or compensation. Similarly, it is unlikely that staff who lost property, for which they cannot make a personal insurance claim, could recover their losses from other avenues.
- 26 There is a risk, if Corrections does not make an *ex gratia* payment, of a high number of claims or complaints from prisoners. This would require substantially more time and resource to resolve, and it may not be possible to resolve all the complaints received.

Quantifying *ex gratia* payments to prisoners and staff

- 27 The proposed payments would be made to prisoners and staff for personal property⁸ based on the scale of their loss. I consider that this is the most equitable and fair approach due to the differences in the losses faced by each person.

Ex gratia payments to prisoners, up to a total of \$1.3 million, would be appropriate

- 28 Corrections has reviewed the types of personal property held by 686 of the 844 prisoners who lost property, which amounts to 17,622 items. These were all items that people had on them when they arrived at Waikeria Prison.
- 29 Work has been done to further scope the scale and value of these losses. The more commonly stored items included cell phones, wallets, identification, jewellery, clothing and accessories. There are also items of sentimental,

⁸ Property that Corrections ordinarily issues to prisoners and staff is not included in the description of personal property. Corrections will replace these items separately as an operational expense.

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emotional, spiritual, cultural or religious value, such as taonga, that are inherently difficult to value.

30 Based on current estimates, the items amount to a total estimated value of \$700,000. This is unlikely to be fully representative of the total losses. A contingency is required since the total loss is likely to be substantially more with a quarter of prisoners' items yet to be valued.

31 I am seeking agreement from Cabinet for up to \$1.3 million to make *ex gratia* payments to prisoners (**Rec 5**). This will be funded via a reprioritisation of Corrections' baseline.

Ex gratia payments to staff, up to a total of \$50,000, would be appropriate

32 Staff who lost personal property were asked to advise Corrections. The most common items lost by staff included clothing, glasses and other accessories. To date, 24 staff have made claims for property that was stored in the top jail. These claims currently total around \$19,000.

33 I seek approval from Cabinet to a total sum of up to \$50,000, to allow for future claims, to make *ex gratia* payments to staff (**Rec 6**). Like the payments to prisoners, this will be funded from within Corrections' baseline. This will not include property for which staff can make a personal insurance claim.

Taonga and other items with non-monetary value are unlikely to be recovered

34 While Corrections will endeavour to recover taonga as part of the demolition process, most items are unlikely to be recovered. I understand that Corrections has engaged with mana whenua on demolition of the top jail and what may be appropriate to acknowledge loss of taonga.

35 I acknowledge the distress that loss of this nature may have caused for prisoners or staff. It is difficult to quantify and thus make payments for this aspect of loss. I expect Corrections to continue to work with mana whenua, and to engage with staff and prisoners who lost property with special significance.

Corrections requires Cabinet approval to make this *ex gratia* payment

36 As one distinct event caused these losses, I am considering these payments as one total *ex gratia* payment of up to \$1.35 million. This exceeds the threshold of \$75,000 (exc. GST) and requires Cabinet approval.

Financial Implications

37 The financial implications of making an *ex gratia* payment are:

37.1 up to \$1.3 million for payments to prisoners

37.2 up to \$50,000 for payments to staff.

38 The payments will be funded from within Corrections' existing budget allocation through reprioritisation (**Rec 7**). Corrections has included the

amount of *ex gratia* payment in the insurance claim submission. However, Corrections has exceeded its insurance loss limits, resulting in self-funding of the *ex gratia* payment from existing baseline funding.

- 39 The payments are not subject to withholding tax. The *ex gratia* payment will not affect any financial assistance that people are receiving from the Ministry of Social Development.⁹

Legislative Implications

- 40 This paper does not seek legislative change and a regulatory impact analysis is not required.

Climate Implications of Policy Assessment

- 41 This paper does not have climate implications.

Implications for Victims

- 42 Victims cannot make claims under the Prisoners' and Victims' Claims Act 2005 for *ex gratia* payments. This means that victims who experienced the offending, or alleged offending, that brought these people into prison will not be able to seek compensation from funds received under this proposal. While I recognise the experiences of victims and that they may have concerns about the proposal, the only alternative is to not make this *ex gratia* payment.

Other Population Implications

- 43 This proposal will affect a clearly defined group of people: prisoners and staff who lost property as a result of the Waikeria riot. It may also indirectly impact the whānau of those prisoners and staff.

Population group	How the proposal may affect this group
Māori	As at December 2020, Māori made up 68% of the Waikeria Prison population. Māori could be disproportionately affected by the loss of taonga due to the riot. Corrections will work with mana whenua as part of demolition work and engage with staff and prisoners regarding the loss of taonga.
Women	This proposal does not have any significant implications for women. However, making the <i>ex gratia</i> payment may have indirect benefits for the whānau of prisoners, which may include women and children.
Disabled people	24% of the New Zealand population identifies as disabled. ¹⁰ Given this, it is likely that there are disabled prisoners who were affected by the riot and this proposal.
Seniors	On 29 December 2020, 5% of the Waikeria prison population were aged 60 years or older.

⁹ This may include staff or people who have been released from prison since the riot.

¹⁰ Disability Survey 2013, <https://www.stats.govt.nz/information-releases/disability-survey-2013>.

Human Rights

- 44 Making the *ex gratia* payment will align with the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. It will respect the dignity of all prisoners who were affected by the riot.¹¹ Also, it will mean that those who have suffered loss will not be disadvantaged because of that loss.

Consultation

- 45 The following agencies were consulted on this paper: The Treasury, Ministry of Justice, 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. The Department of Prime Minister and Cabinet was informed.

Proactive Release

- 46 I intend to proactively release this paper within 30 business days, subject to redactions as appropriate under the Official Information Act 1982.

¹¹ Section 23(5) of the New Zealand Bill of Rights Act.

Recommendations

The Minister of Corrections recommends that the Committee:

- 1 **Note** that the Waikeria riot, which took place from 29 December 2020 to 3 January 2021, caused extensive damage to the top jail facility at Waikeria Prison;
- 2 **Note** that, as a result of the Waikeria riot, prisoner and staff property stored at the top jail facility has been destroyed or is unable to be safely recovered;
- 3 **Note** that the Department of Corrections has no legal obligation to compensate prisoners and staff for loss of their personal property;
- 4 **Note** that the Department of Corrections proposes making an *ex gratia* payment to prisoners and staff who lost personal property as a result of the riot;
- 5 **Authorise** the Department of Corrections to make *ex gratia* payments to prisoners who lost personal property due to the Waikeria riot (excluding those who have been charged in relation to the riot), up to a total of \$1.3 million;
- 6 **Authorise** the Department of Corrections to make *ex gratia* payments to staff for an amount equivalent to the losses they have incurred, after any personal insurance options have been exhausted, up to a total of \$50,000;
- 7 **Note** that any *ex gratia* payments that are authorised will be funded from the Department of Corrections' existing budget allocation through reprioritisation.

Authorised for lodgement

Hon Kelvin Davis

Minister of Corrections



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Waikeria Prison Riot: Ex Gratia Payments for Lost Personal Property

Portfolio **Corrections**

On 12 May 2021, the Cabinet Social Wellbeing Committee:

- 1 **noted** that the Waikeria riot, which took place from 29 December 2020 to 3 January 2021, caused extensive damage to the top jail facility at Waikeria Prison;
- 2 **noted** that, as a result of the Waikeria riot, prisoner and staff property stored at the top jail facility has been destroyed or is unable to be safely recovered;
- 3 **noted** that the Department of Corrections has no legal obligation to compensate prisoners and staff for loss of their personal property;
- 4 **noted** that the Department of Corrections proposes making an *ex gratia* payment to prisoners and staff who lost personal property as a result of the riot;
- 5 **authorised** the Department of Corrections to make *ex gratia* payments to prisoners who lost personal property due to the Waikeria riot (excluding those who have been charged in relation to the riot), up to a total of \$1.3 million;
- 6 **authorised** the Department of Corrections to make *ex gratia* payments to staff who lost personal property due to the Waikeria riot, for an amount equivalent to the losses they have incurred, after any personal insurance options have been exhausted, up to a total of \$50,000;
- 7 **noted** that any authorised *ex gratia* payments will be funded from the Department of Corrections' existing budget allocation through reprioritisation.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Kelvin Davis
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Kris Faafoi
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Office of the SWC Chair
Officials Committee for SWC