

Compensation for Wrongful Conviction and Detention

Explanatory Information

February 2023

Background

There's no legal right to receive compensation from the Government for wrongful conviction and detention.

However, the Government in its discretion may decide to compensate someone who has been wrongly convicted and served a sentence of imprisonment or detention by making an *ex gratia* (voluntary) payment.

Cabinet has established Compensation Guidelines to aid consideration of applications for such compensation.

The Guidelines also apply to someone who is convicted and imprisoned or detained under military law.

The latest version of the Guidelines was issued in February 2023.

To read the full Compensation Guidelines, including a printable version, go to

https://www.justice.govt.nz/assets/Documents/Publications/2023-Compensation-Guidelines-for-Wrongful-Conviction-and-Detention_28.02.23.pdf

Main features of the Compensation Guidelines

The information below summarises the main features of the Guidelines.

Eligibility

You can make an application for compensation if:

- you're living at the time of the application (in other words, people can't make an application on your behalf after your death)

- you've been pardoned or had your conviction/s quashed and the criminal proceedings have finished
- you've served all or part of a sentence of imprisonment or detention for that conviction

A sentence of detention means either:

- home detention, or
- the military sentence of detention, when it's imposed by the Court Martial of New Zealand

Criteria for compensation

The payment of compensation is at the discretion of the Government. Cabinet must be satisfied that:

- you're innocent on the balance of probabilities
- you've suffered losses of a type that can be compensated under the Guidelines
- compensation is in the interests of justice

Types of compensation

Pecuniary (financial) and non-pecuniary (non-financial) losses suffered after you've been convicted can be compensated. Compensation includes:

- an annual amount of \$150,000 for each year in prison, or \$75,000 for each year serving a sentence of detention
- an annual amount of up to \$100,000 for loss of livelihood (loss of income such as wages or salary) during that period
- an additional amount of \$75,000 a year for time spent on restrictive bail or parole
- an amount for certain costs incurred in challenging the conviction and applying for compensation

- an amount of up to \$50,000 in cases of imprisonment, or up to \$25,000 in cases of detention, to help re-adjust to living in the community
- an amount for large financial losses between \$50,000 and \$250,000 in cases of imprisonment, or \$25,000 and \$250,000 in cases of detention

The compensation payment can be adjusted upwards or downwards by up to \$150,000 in cases of imprisonment, or up to \$75,000 in cases of detention, for aggravating and mitigating features of the case.

The Government can also decide to make a public apology or statement of innocence.

Information for potential applicants

The information below is to help potential applicants understand the process for making an application under the Compensation Guidelines.

Who can apply for compensation?

If you believe you're eligible to apply for compensation, you can make an application yourself. Alternatively, someone else, such as a lawyer, can apply on your behalf.

A lawyer can advise you on the merits of making an application and, if you go ahead, can also help you collect relevant information and prepare your submissions.

How do I apply?

You'll need to provide information about your convictions and imprisonment or detention, and how your convictions were quashed or set aside.

At the very least, you'll need to explain why you're innocent of the charges and state what evidence you're relying on to show your innocence. As the applicant, it's your responsibility, not the Government's, to establish your innocence on the balance of probabilities.

Send your application, including any supporting documents and submissions, to the Minister of Justice at the following address:

Minister of Justice
Parliament Buildings
Wellington 6160

If your application concerns a military conviction, you should send your application for compensation to the Minister of Defence at:

Minister of Defence
Parliament Buildings
Wellington 6160

Can I get legal aid?

If a lawyer is helping with your application, you may be able to apply for legal aid.

You can find out more about legal aid at: <https://www.justice.govt.nz/courts/going-to-court/legal-aid/>

How are applications decided?

The Ministry of Justice initially considers your application and reports to the Minister of Justice.

If the Minister agrees to further assessment of an application, that will focus on:

- whether you're innocent on the balance of probabilities
- whether it's in the interests of justice to pay compensation; and
- if so, how much compensation should be paid.

The Minister decides on a suitable assessment procedure for each application. The Minister may (but isn't obliged to) seek independent legal advice on any aspect of your application.

Cabinet must make any decision to pay compensation under the Guidelines.

If your application concerns a military conviction, the Minister of Defence will oversee its assessment, in consultation with the Minister of Justice.