

Memorandum for Cabinet

COMPENSATION FOR A WRONGLY CONVICTED AND IMPRISONED INDIVIDUAL

Proposal

1. Cabinet is asked to agree in principle to compensate Mr Alan Russell Hall for his wrongful convictions and imprisonment.
2. If Cabinet agrees, I will report back to Cabinet with a proposed compensation package.

Executive summary

3. Mr Hall was convicted in 1986 of murdering Arthur Easton and intentionally wounding Brendon Easton in their home the previous year. He was sentenced to life imprisonment.
4. On 8 June 2022, the Supreme Court allowed Mr Hall's appeal against his convictions.
5. As a result of the Supreme Court's decision, Mr Hall is eligible to apply for compensation under the 2023 *Compensation Guidelines for Wrongful Conviction and Detention* ('the Guidelines'), which are attached as an Appendix to this paper.
6. Under the Guidelines, the Minister of Justice is responsible for considering compensation claims and advising Cabinet on them. Cabinet must agree to any payment of compensation.
7. A person who is eligible to apply under the Guidelines may be compensated only if Cabinet is satisfied on the advice of the Minister of Justice that:
 - 7.1. The applicant is innocent on the balance of probabilities of the offences in respect of which the application was made;
 - 7.2. Compensation is in the interests of justice; and
 - 7.3. The applicant has suffered losses that are compensable under the Guidelines.
8. Rodney Hansen CNZM KC was instructed to provide an independent assessment of whether Mr Hall is innocent on the balance of probabilities of the 1986 charges. He reported on 21 February 2023.
9. Mr Hansen concluded that Mr Hall has proven on the balance of probabilities that he is innocent of murder and intentional wounding.
10. I consider that Mr Hansen has conducted a fair and thorough inquiry and his overall conclusion on Mr Hall's innocence is sound. I further consider that the application has no features that would make it contrary to the interests of justice to compensate Mr Hall. As

such, I seek agreement in principle to compensate Mr Hall under the Guidelines. If Cabinet agrees, I will seek submissions from Mr Hall on matters relevant to determining an appropriate compensation payment and return to Cabinet with a recommended compensation offer.

Background

11. Following a jury trial, in 1986, Mr Hall was convicted of murdering Arthur Easton and intentionally wounding Brendon Easton in their home the previous year.
12. Mr Hall served eight years in prison before being released on parole in 1994. He was recalled to prison in 2012 after breaching a condition of his parole and spent nearly 10 more years in prison before being released again in February 2022.

The offending

13. On 13 October 1985, Arthur Easton was at home with his teenage sons Brendon and Kim. The Eastons were confronted by an intruder at about 8pm. The intruder wore a woollen hat and was armed with a bayonet. There was an initial brief struggle between Brendon and the intruder, Mr Easton, and subsequently, Kim, who came to the assistance of Brendon. Kim punched the intruder before striking the offender three times on the forehead with a squash racquet. The intruder fatally stabbed Arthur Easton and Brendon Easton suffered lacerations that required medical treatment. The intruder escaped through the back of the property, leaving behind the bayonet and the woollen hat he had been wearing.
14. An examination of the scene revealed a partial shoeprint in a gap in a hedge through which the assailant had fled, and blue fibres caught on the hedge.

Police investigation

15. Following an investigation, the police charged Mr Hall with the murder of Arthur Easton and of intentionally wounding Brendon Easton.

Trial

Crown case

16. The Supreme Court noted that the Crown placed considerable weight on three aspects of Mr Hall's statements to Police:¹
 - 16.1. Mr Hall had admitted he had previously owned a bayonet and possessed a woollen hat that fitted the descriptions of those left at the scene;
 - 16.2. Mr Hall's explanations as to why the items did not implicate him were said to be inconsistent and lacked credibility; and

¹ *Hall v R* [2022] 1 NZLR 131 at [7].

- 16.3. Mr Hall admitted walking in the vicinity of the Eastons' home at about the time of the murder.
17. A further significant part of the Crown case was the identity evidence given by Ronald Turner. Mr Turner saw a man fleeing the direction of the crime scene, who on the prosecution's case must have been the offender. He rang Police that night and was interviewed the following day, 14 October 1985. In the phone call and subsequent interview, as well as at a further interview on 19 February 1986, Mr Turner described the man he saw as Māori.
18. At trial, Mr Turner's evidence was adduced by written statement. That statement omitted any reference to the ethnicity of the man he saw² and included an incorrect statement that he identified a blue sweatshirt later recovered from Mr Hall's home.³
19. Kim and Brendon Easton also gave evidence at trial. Their evidence described the intruder as about six feet tall. Brendon Easton accepted during cross-examination that the intruder was fairly strong and of medium build. Kim Easton's evidence was to similar effect. Following the offending, they had described the intruder as Māori but did not confirm this at trial.
20. Mr Hall is Pākehā, five foot seven inches in height and at the time of the offending, weighed 68kg.

Defence case

21. Mr Hall did not give evidence. The defence case focussed on four issues:
- 21.1. That the offender would have been expected to show injuries after being hit on the forehead with a squash racquet and there was evidence that Mr Hall did not show any visible injuries on the day following the offending.
- 21.2. That the blue sweatshirt found in Mr Hall's possession was bought on 6 December 1985, nearly two months after the murder.
- 21.3. Evidence from Mr Hall's sister that she saw Mr Hall on the evening of 13 October 1985 and he was wearing a red sweatshirt and brown trousers.

² The Supreme Court noted that Mr Turner's unchallenged affidavit evidence in 1988 was that he did not notice that the description of ethnicity had been omitted from the statement. The statement of 24 June 1986 was provided to defence counsel and the Court. Mr Turner's earlier statements were not provided to defence counsel until March 1988.

³ The Supreme Court noted that Mr Turner's 24 June 1986 statement said the man "was wearing a dark blue sweatshirt with a hood. (Refer Exhibit '31')". Exhibit 31 was Mr Hall's blue sweatshirt later, subsequently seized by Police. There was no reference to Mr Turner ever being shown the blue sweatshirt or purporting to identify it as similar to the one he saw.

21.4. That Mr Hall's nature and physical attributes did not match the description of the offender.

22. The defence also highlighted a number of weaknesses in the Crown case.⁴

Conviction and sentence

23. Mr Hall was convicted and sentenced to life imprisonment.

Appeal to Court of Appeal and applications for Royal prerogative of mercy

24. Mr Hall's appeal to the Court of Appeal in 1987 was unsuccessful.⁵

25. Three subsequent Royal prerogative of mercy applications were also unsuccessful.

Appeal to the Supreme Court

26. On 3 May 2022, the Supreme Court granted leave to hear an appeal against the Court of Appeal's 1987 decision.⁶

27. On 8 June 2022, the Supreme Court quashed Mr Hall's convictions on the basis that there had been a miscarriage of justice on each of the three grounds of Mr Hall's appeal.⁷

28. The first ground of appeal related to Mr Turner's evidence. The Crown accepted that Mr Turner's statement should have included the description of the man given by Mr Turner in full, and that there was no basis for removing the word "Māori" from the statement. The Crown also accepted that Mr Turner's statement should not have referred to the sweatshirt exhibit or suggested that he had identified the sweatshirt in the exhibit. The Crown accepted that if the statement had not been inappropriately and deliberately altered in the way it was, then the jury would have heard evidence that a man, who on Mr Turner's evidence, could not have been Mr Hall was seen leaving the location of the crime at the relevant time. In addition, the statement would not have linked Mr Hall to the scene through identification of the sweatshirt seized from Mr Hall's home as the sweatshirt worn by the man fleeing the scene. The Court found that the evidence before the jury "misleadingly conformed with the Crown case" and a "substantial miscarriage of justice" had resulted on that ground alone.

29. The second ground of appeal concerned the breaches of the Crown's disclosure obligations. The Court concluded that the Crown did not meet its disclosure obligations and that the failures were material.

⁴ These are noted at paragraph [9] of the Supreme Court judgment.

⁵ *R v Hall* [1987] 1 NZLR 616.

⁶ *Hall v R* [2022] NZSC 51.

⁷ *Hall v R* [2022] 1 NZLR 131. In the Supreme Court, the Crown accepted that the appeal should be allowed, the convictions quashed, and verdicts of acquittal entered.

30. The third ground of appeal related to the statements that Mr Hall had made to police. Counsel for Mr Hall submitted that there were breaches of the then guidelines for acceptable police questioning and expert evidence had been produced showing that Mr Hall has autism spectrum disorder and as to the impact of that on the way Mr Hall answered questions. The Court held that there were several “concerning features” of the interviews, including their length and nature and also noted that the Crown accepted that even at the time it was apparent Mr Hall was a vulnerable person. The Court concluded that the statements should have been excluded.

31. The Court concluded that it was in the interests of justice to direct verdicts of acquittal.

Application for compensation

32. On 4 July 2022, an application for compensation for wrongful conviction and imprisonment was made on behalf of Mr Hall by his lawyer, Nicholas Chisnall KC.

Compensation Guidelines

33. There is no legal right to compensation for wrongful conviction and detention in New Zealand. However, the Government in its discretion may decide to compensate a person who has been wrongly convicted and detained by making an *ex gratia* payment. Compensation is governed by the Guidelines.⁸

34. In order to be eligible to apply for compensation under the Guidelines, a person must have been wrongly convicted of an offence, have served all or part of a sentence of imprisonment or detention in relation to that conviction, and be alive at the time of the application.⁹ A person is considered to be wrongly convicted of an offence where their conviction has been quashed or set aside and no further proceedings can be brought against them in respect of the offence.¹⁰

35. A person who is eligible to apply under the Guidelines may be compensated only if Cabinet is satisfied on the advice of the Minister of Justice that:

35.1. The applicant is innocent on the balance of probabilities of the offences in respect of which the application was made;

35.2. Compensation is in the interests of justice; and

35.3. The applicant has suffered losses that are compensable under the Guidelines.

⁸ New Compensation Guidelines were issued on 28 February 2023, which extended the scope of the compensation scheme to cases of home detention and military detention. The updated Guidelines apply to Mr Hall’s claim, although the amendments made in this update do not affect the assessment of Mr Hall’s claim.

⁹ Paragraph 13.

¹⁰ Paragraphs 14 and 15.

Eligibility

36. Mr Hall is eligible to apply for compensation under paragraph 13 of the Guidelines. He served a term of imprisonment for convictions which were later quashed on appeal, and no further proceedings can be brought against him in respect of the charges.

Innocence

Mr Hansen's report

37. On 13 September 2022, I appointed Rodney Hansen KC to assess Mr Hall's application.
38. In his report, which was finalised on 21 February 2023, Mr Hansen has advised that he is satisfied that Mr Hall has proven on the balance of probabilities that he is innocent of murder and intentional wounding.

Undisputed facts

39. Mr Hansen found there to be no dispute about the circumstances in which Arthur Easton was fatally injured and Brendon Easton was wounded. The injuries were sustained in the course of an altercation with an intruder who entered the house they shared with Brendon's elder brother, Kim, at Section 9(2) Grove Road, Papakura at about 8pm on Sunday 13 October 1985.
40. The intruder grappled with Arthur, Brendon (aged 17) and Kim (aged 18). During the incident the intruder was hit over the head with a squash racquet with sufficient force to break the racquet. In the course of the altercation Arthur and Brendon were both stabbed with a bayonet.
41. The intruder then managed to escape out the back door. He was seen to leave the property through a hole in a hedge which took him onto an alleyway. The bayonet was left behind along with a woollen hat he had been wearing.
42. Arthur had received penetrating injuries to his right upper arm, his right side beneath the ribcage and to his upper abdomen. Brendon was stabbed in his upper back, right arm and left thigh. The wound to Arthur's abdomen proved to be fatal, piercing his liver and causing severe blood loss. He died while being treated by ambulance officers.

Summary of key findings

43. Mr Hansen noted that in effect, as the issue boils down to one of identity, Mr Hall must prove that it is more likely than not that someone else was the offender.
44. Mr Hansen first considered the evidence that was primarily relied on at trial to establish that Mr Hall was the intruder. Both Mr Hall and the Crown accepted that the evidence which points to Mr Hall as the offender is in three categories:
- 44.1. His association with the bayonet and hat left at the scene;
- 44.2. His proximity to the crime scene at the time of the offending; and

- 44.3. The answers he gave under police questioning.
45. All of the evidence in the third category and most of the evidence in the other two categories was derived from Mr Hall's oral and written statements to the Police. Mr Hansen considered it necessary to consider the context in which the statements were made with particular reference to the shortcomings in Police practice highlighted by the Supreme Court and the fresh evidence as to Mr Hall's intellectual disability.
46. Prior to the Supreme Court appeal Mr Hall was diagnosed with Autism Spectrum Disorder (ASD). Persons with ASD face many challenges. Of particular importance when considering Mr Hall's response to Police questioning are issues with memory and inappropriate responses including a lack of outward emotional expression. Individuals with ASD are often impaired or have difficulty in their ability to recall evidence in a sequential manner and with sufficient detail.
47. The Supreme Court was clear that deficiencies in the way Mr Hall's interrogation was managed were so grave as to warrant exclusion of all of the oral and written statements he made. Mr Hansen noted that would not be an appropriate course to take for the purposes of his assessment. Most of what Mr Hall told Police is of direct relevance and most of it is not in dispute. The challenge is to evaluate what was said in light of all the circumstances and, on that basis, to determine what can be relied on and for what purpose.
48. Mr Hansen considered the past possession of the bayonet and the hat, the proximity of Mr Hall to the offending and the opportunity to carry it out, and Mr Hall's incriminating answers to police questioning. Mr Hansen was satisfied that Mr Hall, as a vulnerable person, was severely disadvantaged by his treatment at the hands of the police and that it would be unrealistic and unfair to draw any adverse inferences from the way in which he responded to police questions.
49. Mr Hansen also considered the descriptions of the offender given by the Eastons and other sightings of the offender. Mr Hansen weighed up the additional evidence from the scene (the blue fibres that were found on the shrubbery outside the Easton's home did not match those of Mr Hall's clothing), the injuries that the offender would have sustained and the continuing enquiries by police with respect to other suspects.
50. Having evaluated all the relevant evidence and the context in which it was obtained, Mr Hansen made the following findings:
- 50.1. Mr Hall had the opportunity to commit the crimes of which he was convicted. The assault weapon used by the offender and the hat he wore seem almost certain to have been those previously in Mr Hall's possession. There is, however, no other reliable evidence to link him to the offending. There is, instead, a substantial body of evidence to indicate that he was not the offender.
- 50.2. There was reliable evidence of the description of the offender which established that the offender was dark skinned, possibly Māori, about six feet tall and strongly

built. Mr Hall is fair complexioned, Caucasian, a little over five foot seven and of slight build. He does not bear any resemblance to the man described by the Easton brothers and those who saw the offender flee the scene.

- 50.3. The offender would have shown signs of injury to the upper forehead from the bangs with the squash racquet, yet there was no injury to Mr Hall.
 - 50.4. The offender wore a blue sweatshirt and 'Bata' sports shoes. There is nothing to suggest Mr Hall owned or wore such items of clothing at the time of the offending.
 - 50.5. The offender entered a house that was plainly occupied, armed with a bayonet. It was a high risk criminal act. The offender confronted the occupants, adopting an aggressive martial arts stance rather than fleeing. He was able to hold three burly men at bay before escaping.
 - 50.6. There is nothing to suggest that Mr Hall had a propensity to act in this way. There is no apparent motive for his doing so. He had steady employment and there was no suggestion he needed money. Mr Hall was not robust physically and had no martial arts training. It is difficult to accept that Mr Hall could have presented to the Eastons and challenged them in the way they described.
 - 50.7. Mr Hall's conduct in the hours, days and weeks following the offending was inconsistent with his involvement in the offending. He followed his usual routine and showed no sign of trauma.
 - 50.8. There is at least one other person who fits the profile of the offender and who has not been finally excluded from involvement. The fact that Police enquiries are ongoing is consistent with Mr Hall's case that someone else committed the crimes.
 - 50.9. The evidence pointing to the offender being someone other than Mr Hall is overwhelming. The circumstantial evidence is compelling. Although the offender's possession of Mr Hall's bayonet and hat are troubling, Mr Hall's account that they were stolen or went missing is a plausible explanation as to how that occurred.
51. On the basis of these findings, Mr Hansen concluded that Mr Hall has shown that on the balance of probabilities he is innocent of the crimes of which he was convicted.

My advice

52. I consider that Mr Hansen has conducted a thorough and fair inquiry. I agree with his overall conclusion that Mr Hall has established his innocence on the balance of probabilities.
53. I further consider that there appear to be no features of the application that would make it contrary to the interests of justice to consider compensating Mr Hall.
54. Overall, I am satisfied that Mr Hall meets the Guidelines' criteria for the payment of compensation and recommend that Cabinet agree in principle to compensate him.

Next steps – determining quantum of compensation and offer

55. Subject to Cabinet’s agreement in principle to compensate Mr Hall, the next step will be to determine an appropriate amount of compensation and, if Cabinet approves, make a formal offer to him. Compensation may also include a public statement of the claimant’s innocence and a public apology by the Crown. Any compensation payment will be calculated in accordance with the 2023 Guidelines.¹¹
56. Paragraph 30(a) of the Guidelines provides that losses are compensable to the extent that they are attributable to the applicant’s wrongful conviction and consequent sentence of imprisonment or detention. Mr Hall served two periods of imprisonment (between 1986 and 1994 and between 2012 and 2022). I will ask Mr Hansen to advise what impact, if any, Mr Hall’s recall to prison and the reasons for the recall, have on determining the assessment of compensation.
57. I propose to seek submissions from Mr Hall on matters relevant to the assessment of the amount of compensation. The usual practice is to also invite Crown Law to make submissions in response. I will then report to Cabinet with a recommended compensation package before making a formal offer to Mr Hall

Consultation

58. The New Zealand Police, Crown Law Office, and Treasury have been consulted on this paper. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

59. After considering any submissions from Mr Hall on factors relevant to the quantum of compensation, I will report back to Cabinet with a proposed compensation package and seek agreement to the required financial appropriation.

Human rights

60. Compensation would be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

61. There are no legislative implications.

Regulatory impact analysis

62. Not required.

¹¹ See paragraphs 29 to 30 of the Guidelines for types of compensation, and paragraphs 31 to 43 for how compensation is assessed.

Publicity

63. I do not intend to announce the in principle decision sought in this paper. I may make a media statement if Cabinet subsequently approves an offer of compensation to Mr Hall.

Proactive release

64. I propose that this Cabinet paper and any subsequent Cabinet paper seeking Cabinet's approval of a compensation package be proactively released after a final decision on compensation is made, subject to any redactions as appropriate under the Official Information Act 1982.

Recommendations

65. The Minister of Justice recommends that Cabinet:

1. **note** that, in 1986, Alan Hall was convicted and sentenced to imprisonment on one count of murder and one count of intentional wounding;
2. **note** that, in 2022, the Supreme Court allowed Mr Hall's appeal against the above convictions and ordered that verdicts of acquittal be entered;
3. **note** that, as a result of the appeal, Mr Hall is eligible to apply for compensation for wrongful conviction and imprisonment under the *Compensation Guidelines for Wrongful Conviction and Detention*;
4. **note** that Rodney Hansen KC has assessed Mr Hall's application and concluded that he has established his innocence on the balance of probabilities of the charges of murder and intentional wounding;
5. **note** that the Minister of Justice accepts Mr Hansen's advice and further considers that compensating Mr Hall would be in the interests of justice, having regard to the purposes of the Guidelines;
6. **agree in principle** to compensate Mr Hall for his wrongful convictions and imprisonment under the Guidelines;
7. **invite** the Minister of Justice to seek submissions from Mr Hall and Crown Law on matters relevant to determining the appropriate compensation payment; and
8. **invite** the Minister of Justice to report back to Cabinet with a proposed compensation offer.

Authorised for lodgement:

Hon Kiri Allan
Minister of Justice



Cabinet

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.

Compensation for a Wrongly Convicted and Imprisoned Individual

Portfolio Justice

On 13 March 2023, Cabinet:

- 1 **noted** that, in 1986, Alan Hall was convicted and sentenced to imprisonment on one count of murder and one count of intentional wounding;
- 2 **noted** that, in 2022, the Supreme Court allowed Mr Hall's appeal against the above convictions and ordered that verdicts of acquittal be entered;
- 3 **noted** that, as a result of the appeal, Mr Hall is eligible to apply for compensation for wrongful conviction and imprisonment under the *Compensation Guidelines for Wrongful Conviction and Detention* (the Guidelines);
- 4 **noted** that Rodney Hansen KC has assessed Mr Hall's application and concluded that he has established his innocence on the balance of probabilities of the charges of murder and intentional wounding;
- 5 **noted** that the Minister of Justice accepts Mr Hansen's advice and further considers that compensating Mr Hall would be in the interests of justice, having regard to the purposes of the Guidelines;
- 6 **agreed in principle** to compensate Mr Hall for his wrongful convictions and imprisonment under the Guidelines, subject to the report-back in paragraph 8;
- 7 **invited** the Minister of Justice to seek submissions from Mr Hall and Crown Law on matters relevant to determining the appropriate compensation payment;
- 8 **invited** the Minister of Justice to report back to Cabinet with a proposed compensation offer.

Rachel Hayward
Secretary of the Cabinet

Memorandum for Cabinet

COMPENSATION FOR A WRONGLY CONVICTED AND DETAINED INDIVIDUAL

Proposal

1. Cabinet is asked to agree to compensate Alan Russell Hall for his wrongful convictions and detention.

Executive summary

2. On 13 March 2023, Cabinet agreed in principle to compensate Mr Hall for wrongful conviction and detention in accordance with the 2023 Compensation Guidelines for Wrongful Conviction and Detention (the 2023 Guidelines)¹ in respect of his 1986 convictions for murder and intentional wounding. Cabinet invited the Minister of Justice to seek submissions from the applicant and the Crown on matters relevant to determining an appropriate compensation payment and return to Cabinet with a proposed compensation package (CAB-23-MIN-0075).
3. I now seek agreement to the following compensation package for Mr Hall:
 - 3.1. An *ex gratia* payment of **\$4,933,725.75**, made up of:
 - 3.1.1. An *ex gratia* payment of **\$4,059,725.75** – pursuant to the 2023 Guidelines – representing Mr Hall’s non-pecuniary and pecuniary losses in respect of his wrongful convictions and detention;
 - 3.1.2. An *ex gratia* payment of **\$874,000.00** – outside of the 2023 Guidelines – recognising Mr Hall’s non-pecuniary and pecuniary losses in respect of the period Mr Hall spent on parole between 1994 and 2012; and
 - 3.2. A public statement of innocence and apology made to Mr Hall by the Associate Minister of Justice on behalf of the Government.

Background

4. Mr Hall was convicted in 1986 of murdering Arthur Easton and intentionally wounding Brendon Easton in their home the previous year. He was sentenced to life imprisonment. His appeal to the Court of Appeal in 1987 was dismissed.
5. On 8 June 2022, the Supreme Court allowed Mr Hall’s appeal against his convictions.
6. As a result of the Supreme Court’s decision, Mr Hall is eligible to apply for compensation under the 2023 Guidelines. Mr Hall’s application was received on 4 July 2022 and falls to be determined under the 2023 Guidelines.

¹ New Compensation Guidelines for wrongful conviction and detention were issued on 28 February 2023, which extended the scope of the compensation scheme to cases of home detention and military detention. The updated Guidelines apply to any application that has not been determined at the time of commencement, which includes Mr Hall’s application.

7. Under the 2023 Guidelines, the Minister of Justice is responsible for considering compensation claims and advising Cabinet on them. Cabinet must agree to any payment of compensation. The Minister of Justice has transferred responsibility of this matter to the Associate Minister of Justice.
8. A person who is eligible to apply under the Guidelines may be compensated only if Cabinet is satisfied on the advice of the (Associate) Minister of Justice that:
 - 8.1. the applicant is innocent on the balance of probabilities of the offence(s) in respect of which the application was made;
 - 8.2. compensation is in the interests of justice, having regard to the purposes of the compensation scheme and taking into account:
 - 8.2.1. The conduct of the applicant leading to the prosecution and conviction; and
 - 8.2.2. All other relevant circumstances; and
 - 8.3. the applicant has suffered losses that are compensable under the Guidelines.
9. Rodney Hansen CNZM KC was instructed to provide an independent assessment of whether Mr Hall is innocent on the balance of probabilities of the 1986 charges. He reported on 21 February 2023. Mr Hansen concluded that Mr Hall had proven on the balance of probabilities that he is innocent of murder and intentional wounding.
10. On 13 March 2023, Cabinet agreed in principle to compensate Mr Hall for wrongful conviction and detention in respect of his 1986 convictions for murder and intentional wounding. Cabinet invited the Minister of Justice to seek submissions from the applicant and the Crown on matters relevant to determining an appropriate compensation payment and return to Cabinet with a proposed compensation package (CAB-23-MIN-0075).
11. The former Minister of Justice, Hon Kiri Allan, instructed Mr Hansen to provide advice on an appropriate amount of compensation for Mr Hall in accordance with the 2023 Guidelines. He reported on 14 June 2023. In his report, Mr Hansen recommended that:
 - 11.1. Mr Hall be offered compensation of **\$4,059,725.75** pursuant to the 2023 Guidelines; and
 - 11.2. consideration be given to making an *ex gratia* payment, outside of the Guidelines, of **\$874,000.00** for the period Mr Hall spent on parole between 1994 and 2012, which Mr Hansen concluded did not meet the criteria for compensation under the 2023 Guidelines, but was deserving of compensation for other reasons.
12. I am satisfied that Mr Hansen has conducted a fair inquiry, and that his report on quantum is thorough, robust and reliable.

How is compensation calculated?

What can be included in a compensation package?

13. Compensation is to be calculated in accordance with the 2023 Guidelines (**attached** as Appendix A).

14. The purposes of the compensation scheme are to make good losses incurred when a person has been wrongly deprived of liberty, vindicate innocent defendants and enhance public confidence in the justice system.
15. It is important to note that the compensation scheme is a “no-fault” scheme. It is not the purpose or function of the scheme to attribute responsibility for wrongful conviction. This means the applicant does not need to prove, and the advice on compensation claims does not seek to establish, findings of fault or attribute responsibility for any actions or omissions that may have contributed to the wrongful conviction. As noted above, the only two criteria that need to be established are that the applicant is innocent on the balance of probabilities and that it is in the interests of justice to compensate them. If those criteria are met, it is the fact that the applicant was wrongly convicted, rather than the causes of the wrongful conviction, that justifies compensation under the Guidelines.

What losses may be compensated

16. Losses are compensable:²
 - 16.1. To the extent that they are attributable to the applicant’s wrongful conviction and imprisonment;³
 - 16.2. To the extent they have been incurred by or on behalf of the applicant;
 - 16.3. In respect of the period following conviction only; and
 - 16.4. As assessed in accordance with paragraphs 29 and 31-43 of the Guidelines.

What monetary compensation may include

17. Where a person qualifies for compensation under the Guidelines, their compensation award will comprise a mix of annualised compensation and additional payments for specific losses. This is outlined in the Step by Step guide on page 9 of the Guidelines.
18. Annualised compensation in respect of wrongful imprisonment covers:
 - 18.1. Non-pecuniary losses and minor pecuniary losses while imprisoned for a wrongful conviction at an annual rate of \$150,000;
 - 18.2. Loss of livelihood while in prison following conviction, up to \$100,000 a year;
 - 18.3. Where applicable, non-pecuniary losses while on bail or parole following conviction at an annual rate of \$75,000 a year.
19. There may be additional payments, where relevant:
 - 19.1. A transition allowance of up to \$50,000 to aid reintegration to society and return to work;
 - 19.2. Recovery of legal and other professional fees incurred in challenging the wrongful conviction and pursuing a compensation application;

² 2023 Guidelines, paragraph 30.

³ The 2023 Guidelines cover imprisonment and detention, but this paper will refer only to imprisonment because that is what applies in Mr Hall’s case.

- 19.3. An amount to compensate for significant pecuniary losses between \$50,000 and \$250,000.
20. The total amount of the annualised compensation and any additional payments can then be adjusted – upwards or downwards by up to \$150,000 – to reflect any aggravating or mitigating features relating to the person’s prosecution or conviction.

Proposed compensation package

21. In accordance with the 2023 Guidelines, I recommend that Mr Hall be paid compensation totalling **\$4,059,725.75**. The calculations are explained below and summarised in the table that follows.

Annualised compensation

Annual rate

22. The 2023 Guidelines provide for a monetary amount of up to \$250,000 for each year (or part year) of imprisonment (the adjusted annual rate). This is made up of two elements.
23. The first element is the base annual rate of \$150,000 which provides compensation for non-pecuniary losses, being loss of liberty; loss of reputation; loss or interruption of family or other personal relationships; loss or interruption of school or study opportunities; mental or emotional harm; and pecuniary losses under \$50,000.⁴ The base annual rate of \$150,000 is a flat rate – it does not involve an individualised assessment of losses covered by the rate.
24. The second element is a sum to reflect annual loss of livelihood, where applicable, taking into account any income tax payable and any benefits received by the applicant while imprisoned. It therefore covers loss of net income and is an annualised amount based on the expected earnings, or earnings-related, income over the compensable period. Loss of livelihood is capped at \$100,000 per year.⁵

Compensable period of imprisonment

25. Mr Hall spent two periods in prison in respect of his wrongful convictions:
- 25.1. The first period was from 19 September 1986 until 14 November 1994 which constitutes a period of 8 years, 1 month and 26 days. He was then released on parole.
- 25.2. The second period, following Mr Hall’s recall to prison, was from 9 May 2012 to 2 March 2022, which constitutes a period of 9 years, 9 months and 21 days.
26. The aggregate period that Mr Hall spent in prison is 17 years, 11 months and 17 days, or 17.96 years.
27. Minister Allan specifically sought Mr Hansen’s advice as to whether the second period of imprisonment (after recall) was compensable.
28. In his report, Mr Hansen has briefly set out the circumstances of Mr Hall’s recall to prison.
Section (9)(2)(a)

⁴ 2023 Guidelines, paragraph 32.

⁵ 2023 Guidelines, paragraphs 31-34.

29. Mr Hansen said he could see no reason why the circumstances associated with Mr Hall's recall should affect his right to compensation as he would not have been subject to the parole condition or liable to recall were it not for his wrongful convictions. Mr Hansen considered that while the breach of a parole condition was the instrumental reason for his recall, the non-pecuniary losses the annual rate is intended to compensate are entirely attributable to Mr Hall's wrongful conviction and sentence. Mr Hall sustained those losses during the second term of imprisonment just as he did during the first. Therefore, Mr Hansen recommended that Mr Hall be compensated for both periods of imprisonment.
30. The 2023 Guidelines provide that the annual rate is to be multiplied by the number of years and part years of imprisonment. Accordingly, Mr Hansen calculated the compensable period of imprisonment as 17.96 years.

Loss of livelihood

31. Prior to Mr Hall's arrest in 1986, he was employed as a pharmaceutical factory worker.
32. Mr Hansen concluded that based on Mr Hall's record of steady employment before his arrest, it was reasonable to proceed on the assumption that, had he not been incarcerated in 1986, Mr Hall would have remained in fulltime employment. His inability to find work while on parole was readily explained by the resistance he experienced from potential employers and the effect of imprisonment on his fragile mental state.
33. Mr Hansen considered that with time and experience Mr Hall would have enhanced his skills and could be expected to have been remunerated accordingly. Mr Hansen therefore considered an hourly rate which averaged \$30.00 (in 2023 terms) would appropriately reflect his likely earnings over the two periods of imprisonment.
34. Mr Hansen considered it reasonable to assume that Mr Hall would have worked a 45 hour week (40 hours plus five hours overtime) and should be compensated accordingly.
35. Accordingly, Mr Hansen calculated that Mr Hall's annual loss of livelihood for the period of his incarceration would be \$70,200.00. When adjusted for income tax as required by the Guidelines, this amount was \$55,039.94.

Calculation of adjusted annual rate

36. Mr Hansen concluded that the base annual rate of **\$150,000.00** plus annual loss of livelihood of **\$55,039.94** resulted in an adjusted annual rate of **\$205,039.94**.
37. The next step was to multiply the adjusted annual rate by the compensable period of **17.96**. This resulted in annualised compensation to Mr Hall of **\$3,682,517.32**. Mr Hansen recommended that Mr Hall be compensated accordingly.

Time on bail or parole

38. Compensation for this category provides for a monetary amount of \$75,000 per year for time spent on restrictive bail or parole. Restrictive parole is defined in the 2023 Guidelines

as “a period of parole with a residential restriction condition imposed under the Parole Act 2002”.⁶

39. Mr Hall spent two periods on parole:

39.1. The first was between 14 November 1994 (when he was first released from prison) to 9 May 2012 (when he was recalled to prison). This first period comprises a period of 17 years, 5 months and 24 days.

39.2. The second period was between 2 March 2022 until 8 June 2022 when his convictions were quashed by the Supreme Court. This second period comprises a period of 98 days.

Second period of parole

40. Mr Hansen concluded that it was clear that when releasing Mr Hall in 2022, the Parole Board imposed residential restrictions in terms of the 2023 Guidelines as he was subject to electronic monitoring and a curfew. Mr Hansen recommended that Mr Hall be compensated for the 98 days he spent on restrictive parole in 2022, which at an annual rate of \$75,000 was **\$20,137.00**.

First period of parole

41. Mr Hansen noted that Mr Hall’s release on parole during the first period was subject to standard parole conditions and the following special conditions:

41.1. Reside with Mrs S Hall or at another address approved by the Probation Officer; and

41.2. Undergo any psychological or other counselling as directed by the Probation Officer.

42. Both the standard and special conditions were stipulated to continue for the duration of Mr Hall’s time on parole, that is, for the rest of his life. A non-association condition was added in 2005.

43. Mr Hansen was of the view that the 2023 Guidelines are plainly concerned to ensure that those subject to quasi-custodial restrictions while on bail or parole should be compensated. Those who retain largely unrestricted freedom of movement, without conditions such as a curfew or electronic monitoring are not eligible. The test is whether the conditions imposed on Mr Hall in 1994 under the Criminal Justice Act 1985 are in substance commensurate with residential restrictions imposed under the Parole Act 2002.

44. Mr Hansen concluded that the conditions that Mr Hall was subject to during his first period of parole were not in substance commensurate with residential restrictions imposed under the Parole Act 2002. Significant restraints on liberty and freedom of movement are required. Mr Hansen therefore found that the first period of parole was not “restrictive” and did not qualify for payment under the Guidelines.

⁶ 2023 Guidelines, paragraph 10.

Other pecuniary losses

Significant loss of property or other significant financial loss

45. Significant financial losses, such as the loss of an inheritance or an investment opportunity, may be compensable under the category of significant loss of property or significant other consequential financial loss.⁷ Compensation is available for significant pecuniary losses in cases of imprisonment between \$50,000 and \$250,000.
46. Mr Hansen concluded that there were no losses for which compensation in this category is payable.

Costs of challenging conviction and seeking compensation

47. The reasonable costs of challenging the wrongful conviction and pursuing the compensation application can include legal costs and the costs of engaging other professionals.⁸ This category provides for reasonable rather than actual costs.
48. Mr Hall sought compensation for the legal costs in respect of his 1987 appeal, the applications for the Royal prerogative of mercy, and for pursuing the compensation application. Mr Hall also sought compensation for the costs of a private investigator, and to cover the time spent and costs incurred by his brothers on his case since 2002.

Legal costs incurred by Mr Hall's family

49. Evidence was provided to Mr Hansen that Mr Hall's mother paid legal costs of \$20,081.08 on his behalf in respect of his appeal and Royal prerogative of mercy applications.
50. Mr Hansen was satisfied that the costs incurred by Mrs Hall, as evidenced by invoices, were reasonable and properly recoverable. However, Mr Hansen also considered that reasonable compensation for historical costs incurred would not be achieved unless they were inflation-adjusted. Applying a CPI adjustment to the legal costs incurred by Mrs Hall (\$20,081.08), using a midpoint of the first quarter of 1990, Mr Hansen recommended payment of the sum of **\$42,609.59**.
51. The 2023 Guidelines are silent on whether costs should be adjusted for inflation. Given the amount of time that has elapsed since the historical costs were incurred, I consider that inflation adjustment is reasonable in the circumstances.

Time and costs of family members

52. Mr Hall sought compensation of \$18,630.00 to cover the time spent by his brothers on his case since 2002, proposing that his brothers' time be compensated at \$30.00 per hour for a total of 621 hours.
53. While fully recognising the sacrifices made by members of the Hall family, Mr Hansen concluded that the cost of the brothers' time did not qualify for compensation. This is because the Guidelines require the costs to have been incurred, by or on behalf of Mr Hall, for the purpose of having the wrongful conviction set aside, and that they must be reasonable. The main issue was that there was no expenditure for which reimbursement could be claimed.

⁷ 2023 Guidelines, paragraph 36.

⁸ 2023 Guidelines, paragraph 37.

54. Mr Hall also sought reimbursement for the costs of his and his family members' flights to Wellington and accommodation for the Supreme Court hearing.
55. Mr Hansen accepted that reasonable costs under this head may include the costs of ancillary steps taken for the ultimate purpose of having the convictions set aside. Mr Hansen accepted this claim and recommended payment of **\$4,895.85**.

Legal costs of pursuing compensation application

56. Mr Hall claimed \$53,800.00 plus GST (\$61,870.00 incl GST) for the legal costs of pursuing the compensation application. This represented 134.5 hours of time at an hourly rate of \$400.00.
57. Mr Hansen was satisfied that the time spent and hourly rate was reasonable, and recommended payment of **\$61,870.00**.

Costs of private investigator

58. Mr Hall claimed \$47,695.00 for the costs of private investigator relating to the Supreme Court appeal and compensation application.
59. Mr Hansen was satisfied that the private investigator costs were reasonable and incurred for the purpose of having the wrongful conviction set aside or pursuing the application for compensation and recommended payment of **\$47,695.00**.

Transition allowance

60. A transition allowance may be made to cover some of the costs of reintegration into society, such as counselling, vocational counselling or retraining, education or health costs for a transitional period. The allowance is also intended to provide a catch-up period to compensate for loss of future earning capacity.⁹
61. Mr Hansen was satisfied that Mr Hall should receive the maximum allowable sum of \$50,000. He noted that Mr Hall's well documented mental health difficulties have been exacerbated by two lengthy periods of imprisonment separated by a challenging period on parole. At the age of 61, his prospects of securing gainful employment will be further limited. He will require professional support, counselling and treatment, as recognised by the Parole Board on his release in 2022. Mr Hansen considered that the costs of reintegration will exceed \$50,000.
62. Mr Hansen, therefore, recommended payment of a transition allowance of **\$50,000.00**.

Aggravating and mitigating features

63. After adding the amounts from the previous calculations, the total amount of compensation may be adjusted by up to \$150,000 to reflect specific aggravating or mitigating features:¹⁰

⁹ 2023 Guidelines, paragraph 39.

¹⁰ 2023 Guidelines, paragraph 41.

- 63.1. It may be increased by up to \$150,000 to reflect misconduct or negligence in conducting the investigation that led to the applicant's prosecution or conviction or to reflect bad faith by the prosecution in bringing or continuing the prosecution.¹¹
- 63.2. It may be decreased by up to \$150,000 to reflect "blameworthy conduct by the applicant contributing wholly or in part to the prosecution or conviction".¹²
64. Mr Hansen has seen Nicolette Levy KC's report to the Solicitor-General dated 17 November 2022 following her independent inquiry into the Crown's conduct in the prosecution of Mr Hall. Based on that report, and the Supreme Court decision in Mr Hall's case, Mr Hansen considered that Mr Hall ought to be paid the maximum amount under this head. The Crown accepts that the full amount is payable.
65. Mr Hansen recommended that Mr Hall be paid **\$150,000.00** under this head to reflect the aggravating features of Mr Hall's case.
66. Mr Hansen considered that a downward adjustment for mitigating factors did not arise. There was no blameworthy conduct by Mr Hall contributing wholly or in part to the prosecution or conviction. He co-operated with the Police and advanced his defence properly at trial and consistently over the years.

Summary of recommended compensation payment (pursuant to the 2023 Guidelines)

67. Applying the Step by Step guide on page 9 of the Guidelines, the recommended compensation for Mr Hall – pursuant to the 2023 Guidelines - is **\$4,059,725.75**:

Step	Calculation element	Amount	Mr Hansen's assessment
A	Annual rate for period of imprisonment following conviction	\$150,000	\$150,000.00
B	Annual loss of livelihood during time in prison	\$0-\$100,000	\$55,039.94
C	Add A and B (adjusted annual rate)	\$150,000-\$250,000	\$205,039.94
D	C x years and part years of imprisonment	Subtotal D	\$3,682,517.32
E	Annual rate for time on restrictive bail or parole following conviction	\$75,000	\$75,000.00
F	E x years and parts years on restrictive bail or parole	Subtotal F	\$20,137.00
G	Transition allowance, up to \$50,000	Subtotal G	\$50,000.00
H	Reasonable costs in challenging conviction and seeking compensation		
	(i) Family's costs	\$47,505.44	

¹¹ 2023 Guidelines, paragraph 42.

¹² 2023 Guidelines, paragraph 43.

	(ii) Legal costs	\$61,870.00	
	(iii) Private investigator costs	\$47,695.99	
	Total for H		\$157,071.43
I	Significant pecuniary losses between \$50,000-\$250,000	N/A	N/A
J	Add D, F, G, H, and I	Provisional total J	\$3,909,725.32
K	Adjustment for aggravating and mitigating features	Between +\$150,000 and - \$150,000	\$150,000.00
L	Combine J and K	Final total	\$4,059,725.75

Recommendation of outside Guidelines payment

68. As noted above, Mr Hall spent 17 years, 5 months and 24 days on parole between 1994 and 2012 (“the first period of parole”). Mr Hansen concluded that the first period of parole did not meet the criteria for compensation under the 2023 Guidelines.
69. However, Mr Hansen was sympathetic to Mr Hall’s arguments that he did suffer losses deserving of compensation during the first period of parole. Mr Hansen concluded that consideration should be given to an *ex gratia* payment outside of the 2023 Guidelines for the first period of parole for the following reasons:
55. ... the circumstances of Mr Hall’s case are truly exceptional and, in my view, justify an *ex gratia* payment to recognise the losses he suffered while on parole. While the restraints on his freedom of movement were relatively minor, for the more than 17 years he was on parole, he was branded a convicted murderer and was at constant risk of recall to prison. The social and psychological consequences of his status would have been exacerbated by his disabilities. The effect on his prospects of employment have already been alluded to. Except for the brief period as a part-time supermarket worker, he was unemployed for the entire period he was on parole between 1994 and 2012. He received a benefit, but this would have been significantly less than the wage he could have expected to receive as a process worker.
70. Mr Hansen suggested Mr Hall could be compensated for his losses by way of an *ex gratia* payment assessed by reference to the annual rate for restrictive bail or parole of \$75,000 as prescribed by 29c of the 2023 Guidelines. He suggested an annual sum of two-thirds of the prescribed rate – \$50,000 – could be seen as appropriately recognising his losses (pecuniary and non-pecuniary) over that period.
71. Mr Hansen calculated an *ex gratia* amount for the first period of parole for a total of 17 years, 5 months and 24 days at the rate of \$50,000.00 per year would be \$874,000.00.
72. I emphasise that any compensation for Mr Hall’s losses relating to the first period of parole would be a payment outside the 2023 Guidelines. The purpose of the 2023 Guidelines has always been to set boundaries on the types and amount of compensation payable, and to guide Cabinet’s discretion. It is clear that the losses suffered by Mr Hall during the first period of parole are not compensable under the 2023 Guidelines.

73. I consider that it is, however, open to Cabinet to make an *ex gratia* payment, outside the Guidelines, to recognise these losses, provided Cabinet considers that there is a clear and compelling justification to do so.
74. In my view, there is a real risk that making an outside Guidelines payment will undermine the operation of the Guidelines. Any outside Guidelines payments are likely to create expectations for future applicants and must be carefully circumscribed.
75. I acknowledge that Mr Hansen has described Mr Hall's circumstances as "truly exceptional" and for that reason he considers they justify an *ex gratia* payment, even though his losses are not covered by the Guidelines. I agree that Mr Hall's particular circumstances – the very long period he spent on parole in combination with his ASD and other personal characteristics – can be described as "truly exceptional". For this reason, I consider that a payment to Mr Hall is likely able to be distinguished from other future applications.
76. I consider that an *ex gratia* payment, outside the 2023 Guidelines, of **\$874,000.00** is reasonable in the particular circumstances of Mr Hall's case, and I recommend accordingly.
77. When added to the compensation calculation under the Guidelines, the total amount of compensation payable to Mr Hall is **\$4,933,725.75**.

Section 9(2)(h)

[REDACTED]

Other features of the compensation package

Statement of innocence and apology

79. Compensation under the Guidelines may include a public statement of the applicant's innocence¹³ and where appropriate, a public apology by the Crown/Government.¹⁴ The apology to the applicant is intended to be restorative – it is an acknowledgement to the individual (and to the public) that the person suffered real injustice as a result of their wrongful conviction. It also demonstrates that the Government takes mistakes in the criminal justice system seriously.
80. The letter to Mr Hall will not comment on the actions of any Crown agencies or particular individuals in Mr Hall's case. As noted above, the purpose of the compensation scheme is not to assess fault or attribute responsibility and the reports from Mr Hansen do not make any findings in this regard. I am aware that other inquiries are ongoing, and it would not be appropriate to comment on those matters.
81. Given Mr Hansen's findings, I consider that a statement of innocence and apology on behalf of the Government in Mr Hall's favour is entirely appropriate. That apology would acknowledge the impact on Mr Hall of the wrongful convictions and imprisonment but is

¹³ 2023 Guidelines, paragraph 29(h).

¹⁴ 2023 Guidelines, paragraph 29(i).

not an acceptance of fault on the part of the Crown. This reflects that, under the Guidelines, an offer of compensation is *ex gratia*, and accordingly, is made without admission of liability. In return, the applicant is asked to forgo any claims in relation to the matters in which they are being compensated.¹⁵

Agreement to forgo proceedings

82. As with all previous compensation payments under the Guidelines, the recommended *ex gratia* payment would be subject to Mr Hall agreeing to forego any legal action against the Crown in respect of matters relating to his convictions, imprisonment, claim for compensation for wrongful conviction and imprisonment, and all related proceedings.

Offer to Mr Hall

83. If Cabinet agrees with the recommended *ex gratia* compensation package, I will offer the compensation package to Mr Hall on behalf of the Crown. That offer will enclose a deed of release for Mr Hall to sign.

Consultation

84. The Treasury, the New Zealand Police, and the Crown Law Office have been consulted on this paper. The Department of Prime Minister and Cabinet has been informed.

Financial implications

85. When the 2020 Compensation Guidelines were adopted in 2020, Cabinet agreed that it would decide on a case by case basis to appropriate funds for each compensation payment to a non-departmental “Other Expense” appropriation (SWC-20-MIN-0095). In 2022, when Cabinet considered extending the Compensation Guidelines to home detention, it agreed to continue to determine the funding of such compensation payments on a case by case basis (CAB-22-MIN-0498.01).
86. The Government established the Justice Cluster as part of Budget 2022. The Cluster makes operating funding decisions for a multi-year period rather than on an annual basis. The expectation of this multi-year funding is that Cluster agencies will only seek additional funding in the multi-year period in specific exceptions, approved by the Minister of Finance.
87. *Ex gratia* or compensation payments have not previously been agreed as an exception. The approved exceptions include where there is significant uncertainty with costs and the Cluster has limited options to manage those costs. *Ex gratia* or compensation payments are costs with significant uncertainty and should be considered an exception to the Justice Cluster multi-year funding process.
88. Agencies within the Justice Cluster are not funded for *ex gratia* or compensation payments. If the payment was to come from baselines, Cluster agencies have indicated that their reprioritisation opportunities are limited. Due to high inflationary pressures, it is difficult for them to reprioritise without having to cut existing services and programmes.

Section 9 (2)(g)(i)

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¹⁵ 2023 Guidelines, paragraph 28.

Se. Section (9)(2)(f)(iv)
[Redacted text block]

90. In the past, compensation payments have been a charge against the between-Budget contingency. For example, the three most recent payments (to “A” in 2022, to Tyson Redman in 2018, and to Teina Pora in 2016) were all charges against the between-Budget contingency. This is consistent with the purposes and no-fault character of the compensation scheme, and reflects that it is the fact that the applicant was wrongly convicted, rather than any causes of the wrongful conviction, that justifies compensation under the Guidelines. Therefore, I propose that the payment of **\$4,933,725.75** will be a charge against the between-Budget contingency.

Human rights

91. The proposed compensation package is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

92. There are no legislative implications.

Regulatory impact analysis

93. A regulatory impact analysis is not required.

Publicity

94. My office will coordinate publicity following Cabinet’s decision and the acceptance of the offer by Mr Hall.

Proactive release

95. I propose that this Cabinet paper and the earlier Cabinet paper seeking Cabinet’s agreement in principle to compensate Mr Hall be proactively released, subject to any redactions as appropriate under the Official Information Act 1982.

Recommendations

96. The Associate Minister of Justice recommends that Cabinet:

1. **note** that on 13 March 2023, Cabinet:
 - 1.1. agreed in principle to compensate Mr Hall for wrongful conviction and imprisonment under the 2023 Guidelines in respect of convictions in 1986 for murder and intentional wounding;
 - 1.2. invited the Minister of Justice to seek submissions from Mr Hall and Crown Law on matters relevant to determining an appropriate compensation payment; and
 - 1.3. invited the Minister of Justice to report back to Cabinet with a proposed compensation package (CAB-23-MIN-0075);
2. **note** that on 14 March 2023, the Minister of Justice instructed Hon Rodney Hansen CNZM KC to provide advice on an appropriate amount of compensation for Mr Hall calculated in accordance with the 2023 Guidelines;
3. **note** that on 14 June 2023, Mr Hansen recommended that:
 - 3.1. Mr Hall be offered compensation of \$4,059,725.75 pursuant to the 2023 Guidelines; and
 - 3.2. that consideration be given to making an *ex gratia* payment, outside of the Guidelines, of \$874,000.00 for the period Mr Hall spent on parole between 1994 and 2012, which does not meet the criteria for compensation under the 2023 Guidelines.
4. **note** that the compensation scheme is a “no-fault” scheme and it is not the purpose or function of the scheme to attribute responsibility for wrongful conviction.
5. **agree** that the following compensation package be offered to Mr Hall:
 - 5.1. An *ex gratia* payment of **\$4,933,725.75**, made up of:
 - 5.1.1 An *ex gratia* payment of \$4,059,725.75 – pursuant to the 2023 Guidelines – representing Mr Hall’s non-pecuniary and pecuniary losses in respect of his wrongful convictions and detention;
 - 5.1.2 An *ex gratia* payment of \$874,000.00 – outside of the 2023 Guidelines – to recognise Mr Hall’s non-pecuniary and pecuniary losses in respect of the period Mr Hall spent on parole between 1994 and 2012; and
 - 5.2. a public statement of innocence and apology made by the Associate Minister of Justice on behalf of the Government.
6. **agree** to establish the following appropriation:

Vote	Appropriation Minister	Title	Type	Scope

Justice	Minister of Justice	<i>Compensation for Wrongly Convicted Individuals</i>	Non-departmental Other Expense	This appropriation is limited to compensation or ex gratia payments for persons wrongly convicted and imprisoned
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7. **note** that the non-departmental other expense *Compensation for Wrongly Convicted Individuals* appropriation was previously established in 2022 to give effect to a payment.
8. **approve** the following change to appropriation to provide for the *ex gratia* payment to Mr Hall for wrongful conviction and imprisonment, with a corresponding impact on the operating balance and net debt:

	\$m – increase/(decrease)				
Vote Justice Minister of Justice	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
<i>Non-Departmental Other Expense:</i> Compensation for Wrongly Convicted Individuals	-	-	4.934	-	-

9. **agree** that the expenses incurred under recommendation 8 above are an exception to the Justice Cluster multi-year funding process;
10. **agree** that the proposed change to appropriations for 2023/24 above be included in the 2023/24 Supplementary Estimates and that, in the interim, the increase be met from Impress Supply;
11. **agree** that the expenses incurred under recommendation 8 above be a charge against the between-Budget operating contingency, established as part of Budget 2023;
12. **authorise** the Associate Minister of Justice to offer the compensation package under recommendation 5 above to Mr Hall;

13. **note** that if Mr Hall accepts the offer, he will be required to forego any further legal action against the Crown in respect of matters relating to his 1986 convictions for murder and intentional wounding;
14. **agree** that a copy of this Cabinet paper and the previous one seeking agreement in principle, are proactively released subject to any appropriate redactions under the Official Information Act 1982;
15. **note** that my office will coordinate publicity following Cabinet's decision and the acceptance by Mr Hall of the compensation package.

Authorised for lodgement:

Hon Deborah Russell
Associate Minister of Justice



Cabinet

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.

Compensation for a Wrongly Convicted and Detained Individual

Portfolio **Justice**

On 14 August 2023, Cabinet:

- 1 **noted** that in March 2023, Cabinet:
 - 1.1 agreed in principle to compensate Mr Hall for wrongful conviction and imprisonment under the 2023 Guidelines in respect of convictions in 1986 for murder and intentional wounding;
 - 1.2 invited the Minister of Justice to seek submissions from Mr Hall and Crown Law on matters relevant to determining an appropriate compensation payment;
 - 1.3 invited the Minister of Justice to report back to Cabinet with a proposed compensation package;

[CAB-23-MIN-0075];
- 2 **noted** that on 14 March 2023, the Minister of Justice instructed Hon Rodney Hansen CNZM KC to provide advice on an appropriate amount of compensation for Mr Hall calculated in accordance with the 2023 Guidelines;
- 3 **noted** that on 14 June 2023, Mr Hansen recommended that:
 - 3.1 Mr Hall be offered compensation of \$4,059,725.75 pursuant to the 2023 Guidelines;
 - 3.2 that consideration be given to making an ex gratia payment, outside of the Guidelines, of \$874,000.00 for the period Mr Hall spent on parole between 1994 and 2012, which does not meet the criteria for compensation under the 2023 Guidelines;
- 4 **noted** that the compensation scheme is a “no-fault” scheme and it is not the purpose or function of the scheme to attribute responsibility for wrongful conviction;
- 5 **agreed** that the following compensation package be offered to Mr Hall:
 - 5.1 an ex-gratia payment of \$4,933,725.75, made up of:
 - 5.1.1 an ex-gratia payment of \$4,059,725.75 – pursuant to the 2023 Guidelines – representing Mr Hall’s non-pecuniary and pecuniary losses in respect of his wrongful convictions and detention;

5.1.2 an ex-gratia payment of \$874,000.00 – outside of the 2023 Guidelines – to recognise Mr Hall’s non-pecuniary and pecuniary losses in respect of the period Mr Hall spent on parole between 1994 and 2012;

5.2 a public statement of innocence and apology made by the Acting Minister of Justice on behalf of the Government;

6 **agreed** to establish the following appropriation:

Vote	Appropriation Minister	Title	Type	Scope
Justice	Minister of Justice	Compensation for Wrongly Convicted Individuals	Non- departmental Other Expense	This appropriation is limited to compensation or ex gratia payments for persons wrongly convicted and imprisoned

7 **noted** that the non-departmental other expense Compensation for Wrongly Convicted Individuals appropriation was previously established in 2022 to give effect to a payment;

8 **approved** the following change to appropriation to provide for the ex-gratia payment to Mr Hall for wrongful conviction and imprisonment, with a corresponding impact on the operating balance and net debt:

Vote Justice Minister of Justice	\$m – increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
<i>Non-Departmental Other Expense:</i>					
Compensation for Wrongly Convicted Individuals	-	-	4.934	-	-

9 **agreed** that the expenses incurred under paragraph 8 above are an exception to the Justice Cluster multi-year funding process;

10 **agreed** that the change to appropriations for 2023/24 above be included in the 2023/24 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;

11 **agreed** that the expenses incurred under paragraph 8 above be a charge against the between-Budget operating contingency, established as part of Budget 2023;

12 **authorised** the Acting Minister of Justice to offer the compensation package agreed under paragraph 5 above to Mr Hall;

13 **noted** that if Mr Hall accepts the offer, he will be required to forego any further legal action against the Crown in respect of matters relating to his 1986 convictions for murder and intentional wounding.

Rachel Hayward
Secretary of the Cabinet