

Hon Ginny Anderson
Minister of Justice

Proactive release – Accessing the Special Fund surplus and carry-forward of the offender levy underspend

Date of issue: 4 September 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1	Accessing the Special Fund surplus and carry-forward of the offender levy underspend Cabinet paper Office of the Minister of Justice 21 06 2023	Released in full.
2	Accessing the Special Fund surplus and carry-forward of the offender levy underspend Cabinet Minute SWC-23-MIN-0069 Cabinet Office 21 06 2023	Released in full.

[In Confidence]

Office of the Minister of Justice

Cabinet Social Wellbeing Committee

Accessing the Special Fund surplus and carry-forward of the offender levy underspend

Proposal

- 1 I seek Cabinet's agreement to:
 - 1.1 increase the *Community Justice Support and Assistance MCA – Community Legal Assistance* appropriation proportional to the surplus revenue in the lawyers and conveyancers' Special Fund, which provides funding for community law centres; and
 - 1.2 transfer an underspend in the revenue collected from the offender levy from 2022/23 to 2023/24.

Relation to Government priorities

- 2 Access to the surplus revenue in the lawyers and conveyancers' Special Fund is related to the Government's priority of better access to justice. The extra funding from the surplus revenue will help community law centres implement initiatives that provide free legal advice and representation to disadvantaged whānau and communities.
- 3 The transfer of an underspend in the revenue collected from the offender levy from 2022/23 to 2023/24 is related to the Government's priority of supporting victims.

Executive summary

Special Fund – increasing the funding available to support community law centres proportional to the surplus revenue

- 4 The Special Fund consists of interest collected from banks on lawyers' and conveyancing practitioners' nominated trust accounts.
- 5 Under the section 298 of the Lawyers and Conveyancers Act 2006 this money must be "paid to the Secretary for Justice for the purpose of funding community law centres."
- 6 The amount collected by the Special Fund in 2022/23 will be significantly more than the current *Community Legal Assistance* appropriation.
- 7 The *Community Legal Assistance* appropriation was not set up for a situation where the revenue from the Special Fund is more than the appropriation.

8 Cabinet is asked to:

- 8.1 approve a one-off increase to the appropriation for *Community Justice Support and Assistance MCA – Community Legal Assistance*, so the surplus money paid from the Special Fund can be used to fund the community law centres
- 8.2 delegate future decisions about the appropriation to joint Ministers and agree that in future it will be managed through the normal baseline update process, as long as there is no funding requirement from a fiscal management approach.

Transfer of revenue collected through the offender levy

9 Support to victims of crime is partially funded from the cash collected from the offender levy. The Sentencing (Offender Levy) Amendment Act 2009 states in section 105J that offender levy revenue can only be spent on victims of crime.

10 Cabinet is asked to:

- 10.1 approve the in-principle transfer of up to \$0.500 million in the *Community Justice Support and Assistance MCA – Victim Entitlements* appropriation from 2022/23 to 2023/24
- 10.2 delegate future decisions about the appropriation to joint Ministers and agree that in future it will be managed through the normal baseline update process, as long as there is no funding requirement from a fiscal management approach.

Background

Special Fund – increasing the funding available to support community law centres proportional to the surplus revenue

- 11 Established in 1982, the Special Fund consists of interest collected from banks on lawyers' and conveyancing practitioners' nominated trust accounts (less an administration fee). Under section 298 of the Lawyers and Conveyancers Act 2006 this money must be "paid to the Secretary for Justice for the purpose of funding community law centres."
- 12 The funding available from the Special Fund does, by its nature, fluctuate. The Government has been 'topping up' the amount available from the Special Fund to provide consistent, stable funding to community law centres. In practice that is done by funding a non-departmental appropriation in Vote Justice (non-departmental output expense *Community Justice Support and Assistance MCA – Community Legal Assistance* appropriation) and the Ministry of Justice sending the money it receives from the Special Fund to the Crown.
- 13 The recent increase in interest rates has led to a corresponding increase in the amount collected through the Special Fund. As a result, the amount collected by the

Special Fund in 2022/23 will be significantly more than the current year appropriation.

- 14 As of 30 April 2023, the Special Fund had received \$32.349 million in revenue. This is a current surplus of \$15.752 million and is forecast to be at least \$20 million surplus by 30 June 2023.
- 15 This is a novel situation. Historically the revenue collected through the Special Fund has been less than the appropriation available for community law centres, with the Crown topping up any shortfall as below:

\$m	2019/20	2020/21	2021/22	2022/23 April YTD
Community Legal Assistance appropriation level*	13.260	16.545	16.455	16.597
Interest received from Special Fund	6.954	4.092	9.135	32.349
Difference	-6.306	-12.453	-7.320	+15.752

**In 2021/22 the Community Legal Assistance category in the Community Justice Support and Assistance MCA was created and consolidated the Community Law Centres appropriation.*

- 16 Between 1984 and 2011, funding for community law centres was transferred to, and managed through, the Legal Services Agency. In July 2011, following the significant legal aid reforms enacted through the new Legal Services Act 2011, the Legal Services Agency was incorporated back into the Ministry of Justice. Since the transfer back to the Ministry of Justice there has not been a situation where the revenue collected through the Special Fund has been more than the appropriation available for community law centres.
- 17 The *Community Legal Assistance* appropriation was not set up for a situation where the revenue from the Special Fund is more than the appropriation.
- 18 Therefore, I am seeking approval to establish a financial mechanism that enables the Ministry of Justice to access the excess interest revenue paid to the Special Fund as a time-limited increase to the non-departmental output expense *Community Justice Support and Assistance MCA – Community Legal Assistance*.
- 19 Future decisions about this appropriation category will be taken at a later stage if interest revenue from the Special Fund continues to be greater than the initial appropriation. I recommend that Cabinet delegates future decisions to joint Ministers on appropriation increases and transfers, up to the amount of interest received from the Special Fund in the previous year less the current year's appropriation limit.
- 20 This will be managed through the normal baseline update process and only after the interest revenue has been confirmed by the finalisation of the audited financial statements. Appropriation increases and transfers above this amount will still be subject to the normal criteria under Cabinet Office Circular (18) 2.
- 21 The Ministry of Justice is working with Community Law Centres o Aotearoa to develop a plan for how the surplus will be used and distributed to the individual

community law centres. Contract variations or conditional grants may be used as the method of distributing the surplus to community law centres.

- 22 Any plan will consider the sustainability of the surplus. Due to the interest rate fluctuations any funding from the surplus revenue provided to community law centres will be time limited. The Ministry of Justice will recommend to community law centres that any surplus revenue is used to fund pilot initiatives (such as an expanded national disability legal service or a kaupapa Māori legal service) over a fixed period of time. Any funding provided to community law centres will include clear communication that the funding is for a set period of time and not guaranteed in outyears.

Transfer of revenue collected through the offender levy

- 23 Support to victims of crime is partially funded from the cash collected from the offender levy. The Sentencing (Offender Levy) Amendment Act 2009 states in section 105J that offender levy revenue can only be spent on victims of crime.
- 24 The amount of revenue collected from the levy represents the minimum spend on victims' entitlements.
- 25 In practice victim entitlements are delivered through the non-departmental other expense *Community Justice Support and Assistance MCA – Victim Entitlements* appropriation and the Ministry of Justice sends the money it receives from the offender levy to the Crown. The funding available from the offender levy does, by its nature, fluctuate. The Government has been 'topping up' the amount available from the offender levy to provide consistent, stable funding for victim entitlements.

\$m	2019/20	2020/21	2021/22	2022/23 Apr YTD
Community Justice Support and Assistance MCA – Victim Entitlements appropriation level*	6.784	9.246	9.554	10.106
Offender Levy Revenue	2.685	2.760	2.095	1.907

**In 2021/22 the Victim Entitlements category in the Community Justice Support and Assistance MCA was created and consolidated the Victims' Services appropriation.*

- 26 This category appropriation relates to demand-driven services (including home safety, funeral grants for families bereaved by homicide, travel assistance grants), for which the final spend is difficult to forecast. Similar expense transfers have been processed through the Budget technical process, but given the aforementioned forecasting issues an underspend of \$0.500 million has only become evident now.
- 27 Therefore, I am seeking approval to an in-principle expense transfer of the current underspend of up to \$0.500 million to ensure existing grants and services can be maintained in the 2023/24 financial year.
- 28 Under Cabinet Office Circular (18) 2, joint Ministers are not authorised to transfer funding repeatedly for a similar purpose, however given the provisions in the Sentencing Act 2009 that require offender levy to be spent on victims I am seeking approval to delegate to the Minister of Finance and myself, as joint Ministers, the authorisation for:

28.1 transfers in the *Community Justice Support and Assistance MCA – Victim Entitlements* appropriation

28.2 up to the amount of the offender levy revenue collected year to date of the request.

29 In proposing this delegation, I am assuming that the last portion of this appropriation is funded by the offender levy. Joint Ministers still retain the right to decline transfers where the spend in the *Community Justice Support and Assistance MCA – Victim Entitlements* annual appropriation is more than the offender levy revenue, and the Ministry of Justice will continue to ensure expenses are forecasted as accurately as possible to prevent the need for transfers.

30 Transfers more than the offender levy revenue collected year to date will still be subject to the criteria for transfers under Cabinet Office Circular (18) 2.

Financial implications

Special Fund – – increasing the funding available to support community law centres proportional to the surplus revenue

31 As of 30 April 2023, the Special Fund had received \$32.349 million in revenue. This is a current surplus of \$15.752 million and is forecast to be at least \$20 million by 30 June 2023.

Transfer of revenue collected through the offender levy

32 The changes to the appropriation relate to the transfer of an underspend of up to \$0.500 million in the *Community Justice Support and Assistance MCA – Victim Entitlements* appropriation from the 2022/23 financial year to the 2023/24 financial year.

33 I am recommending that Cabinet delegates to the Minister of Finance and myself, as joint Ministers, to make future decisions on:

33.1 appropriation increases and transfers in the *Community Justice Support and Assistance MCA – Community Legal Assistance* appropriation up to the amount of interest revenue received in the Special Fund in the previous year, less the current year's appropriation limit; and

33.2 expense transfers and/or in principle expense transfers in the *Community Justice Support and Assistance MCA – Victim Entitlements* appropriation, up to the amount of revenue received from the offender levy, from the beginning of the current financial year to the date of the requested transfer.

34 These requests will be managed through the normal baseline update process. Changes beyond the above criteria will still be subject to the normal criteria under Cabinet Office Circular (18) 2.

Legislative Implications

35 There are no legislative implications associated with this paper.

Impact Analysis

- 36 A Regulatory Impact Statement and the Climate Implications of Policy Assessment requirements do not apply to this paper.

Population Implications

- 37 There are no population implications associated with this paper.

Human Rights

- 38 There are no human rights implications associated with this paper.

Consultation

- 39 This paper has been circulated for Ministerial consultation, including consultation with the Minister of Finance.
- 40 The Ministry of Justice has consulted with the Treasury on this paper.

Communications

- 41 I will work with Community Law Centres o Aotearoa to make an announcement once agreement is reached on how the Special Fund surplus will be used.

Proactive Release

- 42 I will proactively release this paper under the usual proactive release provisions within 30 business days of the Cabinet decision.
- 43 Should this paper be subject to a request under the Official Information Act 1982, this paper will be released with redactions as appropriate under the Act.

Recommendations

The Minister of Justice recommends that the Committee:

Special Fund – – increasing the funding available to support community law centres proportional to the surplus revenue

- 1 **note** that the Special Fund consists of interest collected from banks on lawyers and conveyancing practitioners' nominated trust accounts.
- 2 **note** that under section 298 of the Lawyers and Conveyancers Act 2006, this money must be "paid to the Secretary for Justice for the purpose of funding community law centres."
- 3 **note** that the amount collected by the Special Fund in 2022/23 will be significantly more than the current year appropriation and is forecast to be at least a \$20 million by 30 June 2023.

- 4 **note** that the *Community Legal Assistance* appropriation was not set up for a situation where the revenue from the Special Fund is more than the appropriation limit.
- 5 **agree** to a one-off increase to the non-departmental output expense *Community Justice Support and Assistance MCA – Community Legal Assistance* as below, to enable the surplus interest revenue from the Special Fund to fund community law centres, based on the April 2023 year to date interest revenue collected by the Special Fund, less the year-to-date appropriation expenditure.
- 6 **approve** the following changes to the appropriation give effect to the policy decision in recommendation 5 above, with no impact on the operating balance and/or net debt across the forecast period.

	\$m – increase/(decrease)				
Vote Justice Minister of Justice	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Multi-Category Expenses and Capital Expenditure:					
Community Justice Support and Assistance (MCA)					
<i>Non-Departmental Output Expenses:</i>					
Community Legal Assistance		15.752	-	-	-
Total Operating		15.752	-	-	-

- 7 **agree** that the proposed change to the appropriation for 2023/24 above be included in the 2023/24 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply.
- 8 **note** that, following completion of the 2022/23 audited financial statements, if the surplus interest revenue is beyond the amount stated in recommendation 6, an additional increase in the appropriation of up to the remaining surplus interest revenue of 2022/23 is required.
- 9 **note** that the expenses and in-principle expenses incurred under recommendations 5 and 8 above be funded from hypothecated revenue – Community Law Centre Receipts.
- 10 **authorise** the Minister of Finance and the Minister of Justice to jointly agree the final amount of the appropriation increase described in recommendation 8 above at the 2023 October baseline update, following confirmation of the total interest revenue from the Special Fund in the 2022/23 audited financial statements, with no impact on the operating balance and/or net debt across the forecast period.
- 11 **note** that following completion of the 2022/23 audited financial statements, if the surplus interest revenue is less than the amount stated in recommendation 6, the difference will return to the centre.

- 12 **authorise** the Minister of Finance and Minister of Justice to approve future time-limited appropriation increases and transfers for the *Community Legal Assistance* category of the *Community Justice Support and Assistance MCA* through the regular baseline update process:
- 12.1 up to the amount of interest revenue paid to the Special Fund in the previous year less the annual appropriation limit in the current year
- 12.2 where the interest revenue has been confirmed following the finalisation of the audited financial statements, and
- 12.3 there is no funding requirement from a fiscal management approach.

Transfer of revenue collected through the offender levy

- 13 **note** that a portion of the non-departmental *Community Justice Support and Assistance MCA – Victim Entitlements* appropriation relates to demand-driven services (including home safety, funeral grants for families bereaved by homicide, travel assistance grants) for which the final spend is difficult to forecast and requires an expense transfer outside the scope of joint Ministers' delegations.
- 14 **note** that an in-principle expense transfer of up to \$0.500 million is needed in the non-departmental other expense *Community Justice Support and Assistance MCA – Victim Entitlements* from 2022/23 to 2023/24.
- 15 **authorise** the Minister of Finance and the Minister of Justice to jointly determine the final amounts to be transferred at the 2023 October Baseline Update, following completion of the 2022/23 audited financial statements, or if required earlier by a separate request, as per the criteria in Cabinet Office Circular (18) 2 for early confirmation of in principle expense transfers.
- 16 **note** there is no impact on the operating balance or net debt across the forecast period from the decisions in recommendations 14 and 15.
- 17 **note** that section 105J of the Sentencing Act 2009 states that offender levy revenue can only be spent on victims of crime.
- 18 **authorise** the Minister of Finance and the Minister of Justice as joint Ministers through the regular baseline update process to:
- 18.1 approve expense transfers and/or in-principle expense transfers by the Ministry of Justice of underspends in the non-departmental *Community Justice Support and Assistance MCA – Victim Entitlements* appropriation to the following years
- 18.2 up to the amount of Offender Levy revenue year to date, as of the date of the request, to fund victims' entitlements.
- 19 **note** that beyond the criteria set out in recommendations 12 and 18, Cabinet Office Circular (18) 2 continues to apply to the specified appropriations as well as the criteria set out in paragraphs 29 and 30 of this paper.

Authorised for lodgement

Hon Kiri Allan

Minister of Justice



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.

Accessing the Special Fund Surplus and Carry-Forward of the Offender Levy Underspend

Portfolio Justice

On 21 June 2023, the Cabinet Social Wellbeing Committee:

Special Fund

- 1 **noted** that the lawyers and conveyancers' Special Fund (the Special Fund) consists of interest collected from banks on lawyers and conveyancing practitioners' nominated trust accounts;
- 2 **noted** that under section 298 of the Lawyers and Conveyancers Act 2006, this money must be "paid to the Secretary for Justice for the purpose of funding community law centres";
- 3 **noted** that the amount collected by the Special Fund in 2022/23 will be significantly more than the current year appropriation and is forecast to be at least a \$20 million by 30 June 2023;
- 4 **noted** that the *Community Legal Assistance* appropriation was not set up for a situation where the revenue from the Special Fund is more than the appropriation limit;
- 5 **agreed** to a one-off increase to the non-departmental output expense *Community Justice Support and Assistance Multi-Category Appropriation (MCA) – Community Legal Assistance* as below, to enable the surplus interest revenue from the Special Fund to fund community law centres, based on the April 2023 year-to-date interest revenue collected by the Special Fund, less the year-to-date appropriation expenditure;

- 6 **approved** the following changes to the appropriation give effect to the decision in paragraph 5 above, with no impact on the operating balance and/or net debt across the forecast period:

Vote Justice Minister of Justice	\$m – increase/(decrease)				
	2022/23	2023/2 4	2024/2 5	2025/2 6	2026/27 & Outyears
Multi-Category Expenses and Capital Expenditure:					
Community Justice Support and Assistance (MCA)					
<i>Non- Departmental Output Expenses:</i>					
Community Legal Assistance		15.752	-	-	-
Total Operating		15.752	-	-	-

- 7 **agreed** that the change to the appropriation for 2023/24 above be included in the 2023/24 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
- 8 **noted** that, following completion of the 2022/23 audited financial statements, if the surplus interest revenue is beyond the amount stated in paragraph 6, an additional increase in the appropriation of up to the remaining surplus interest revenue of 2022/23 is required;
- 9 **noted** that the expenses and in-principle expenses incurred under paragraphs 5 and 8 above be funded from hypothecated revenue – Community Law Centre Receipts;
- 10 **authorised** the Minister of Finance and the Minister of Justice to jointly agree the final amount of the appropriation increase described in paragraph 8 above at the 2023 October baseline update, following confirmation of the total interest revenue from the Special Fund in the 2022/23 audited financial statements, with no impact on the operating balance and/or net debt across the forecast period;
- 11 **noted** that following completion of the 2022/23 audited financial statements, if the surplus interest revenue is less than the amount stated in paragraph 6, the difference will return to the centre;
- 12 **authorised** the Minister of Finance and Minister of Justice to approve future time- limited appropriation increases and transfers for the *Community Legal Assistance* category of the *Community Justice Support and Assistance MCA* through the regular baseline update process:
- 12.1 up to the amount of interest revenue paid to the Special Fund in the previous year less the annual appropriation limit in the current year;
- 12.2 where the interest revenue has been confirmed following the finalisation of the audited financial statements;
- 12.3 there is no funding requirement from a fiscal management approach;

Transfer of revenue collected through the offender levy

- 13 **noted** that a portion of the non-departmental *Community Justice Support and Assistance MCA – Victim Entitlements* appropriation relates to demand-driven services (including home safety, funeral grants for families bereaved by homicide, travel assistance grants), for which the final spend is difficult to forecast and requires an expense transfer outside the scope of joint Ministers’ delegations;
- 14 **noted** that an in-principle expense transfer of up to \$0.500 million is needed in the non-departmental other expense *Community Justice Support and Assistance MCA – Victim Entitlements* from 2022/23 to 2023/24;
- 15 **authorised** the Minister of Finance and the Minister of Justice to jointly determine the final amounts to be transferred at the 2023 October Baseline Update, following completion of the 2022/23 audited financial statements, or earlier if required by a separate request, as per the criteria in Cabinet Office circular *Proposals with Financial Implications and Financial Authorities* [CO (18) 2] for early confirmation of in principle expense transfers;
- 16 **noted** there is no impact on the operating balance or net debt across the forecast period from the decisions in paragraphs 14 and 15;
- 17 **noted** that section 105J of the Sentencing Act 2009 states that offender levy revenue can only be spent on victims of crime;
- 18 **authorised** the Minister of Finance and the Minister of Justice as joint Ministers through the regular baseline update process to:
- 18.1 approve expense transfers and/or in-principle expense transfers by the Ministry of Justice of underspends in the non-departmental *Community Justice Support and Assistance MCA – Victim Entitlements* appropriation to the following years;
- 18.2 up to the amount of Offender Levy revenue year to date, as of the date of the request, to fund victims’ entitlements;
- 19 **noted** that beyond the criteria set out in paragraphs 12 and 18, CO (18) 2 continues to apply to the specified appropriations as well as the criteria set out in paragraphs 29 and 30 of the paper under SWC-23-SUB-0069.

Rachel Clarke
Committee Secretary

Present:

Hon Carmel Sepuloni (Chair)
Hon Dr Ayesha Verrall
Hon Willie Jackson
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Willow-Jean Prime
Hon Rino Tirikatene
Hon Jo Luxton

Officials present from:

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