

**Hon Aupito William Sio**  
Minister for Courts

**Proactive release – Coroners (Doctors Fees) Regulations 2022**

Date of Issue: 4 July 2022

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

No.	Document	Comments
1	<b>Coroners (Doctors Fees) Regulations 2022</b> <i>Cabinet paper</i> Office of the Minister for Courts 12 May 2022	No redactions proposed.
2	<b>Coroners (Doctors Fees) Regulations 2022</b> <i>Cabinet Minute LEG-22-MIN-0070</i> Cabinet Office Meeting date: 12 May 2022	No redactions proposed.
3	<b>Payment for doctors' reports provided under the Coroners Act 2006</b> <i>Cabinet paper</i> Office of the Minister for Courts 16 February 2022	No redactions proposed.
4	<b>Payment for doctors' reports provided under the Coroners Act 2006</b> <i>Cabinet Minute SWC-22-MIN-008</i> Cabinet Office Meeting date: 16 February 2022	No redactions proposed.

## Budget Sensitive

Office of the Minister for Courts

Cabinet Social Wellbeing Committee

## Payment for doctors' reports provided under the Coroners Act 2006

### Proposal

- 1 This paper seeks Cabinet's agreement to proposed policy settings for new regulations, to enable doctors in private practice to be paid for reports provided to a coroner pursuant to section 40 of the Coroners Act 2006.

### Relation to government priorities

- 2 This proposal will facilitate better access to justice for whānau interacting with the coronial system, as it will support the provision of high quality reports to inform the coronial process.

### Executive Summary

- 3 Under section 40 of the Coroners Act 2006 (**the Act**), a coroner may require a written report from a doctor who attended to a person before their death (a '**section 40 report**'). These reports are usually requested by coroners in the early stages of an investigation for the purpose of determining whether an inquiry is needed.
- 4 Currently there are no regulations to enable doctors to be reimbursed for this service, despite the Act empowering such regulations to be made. Similar regulations already exist for services rendered by pathologists.
- 5 Following complaints to the Regulations Review Committee and the Ombudsman in 2021, the Ombudsman found that the lack of payment is unreasonable. I am therefore seeking Cabinet's agreement to proposed policy settings for new regulations, subject to conditions set out in the paper below, to enable doctors in private practice to be paid for section 40 reports.
- 6 The cost of payments will be ongoing and is currently not funded. The Ministry of Justice (**the Ministry**) estimates that, for the 2022/23 financial year, the total costs could be up to \$2.317 million, depending on the number of reports and how many hours are spent preparing them. The Ministry has prepared a Budget 2022 initiative, included in the Justice Cluster Budget process, seeking \$10.914 million over four years for the cost of payments. If the initiative is not successful, the Ministry will consider other options to meet costs and report back to me.
- 7 I intend to seek Cabinet's agreement to the final regulations in April or May 2022. The regulations will then be gazetted and in place for payments to commence from 1 July 2022.

## Background

### *Section 40 reports assist coroners to decide whether to open an inquiry*

- 8 Coroners are independent judicial officers who, under the Coroners Act 2006 (**the Act**), investigate unexpected, violent or suspicious deaths to determine their causes and circumstances, and provide recommendations on how similar deaths may be prevented from occurring in future.
- 9 Under section 40 of the Act, a coroner may require a written report from a doctor who attended to a person before their death (a '**section 40 report**'). These reports contain health information and are usually sought by coroners in the early stages of an investigation for the purpose of determining whether an inquiry is needed.<sup>1</sup>

### *Doctors are not currently paid for their time preparing section 40 reports*

- 10 Up until 2007, doctors were paid a flat rate of \$19.00 for providing a report to the coroner relating to a person's death. These fees were paid in accordance with regulations made under the Coroners Act 1988, the predecessor to the Coroners Act 2006.
- 11 While section 40 of the current Act also provides for a coroner to require a doctor's report, no regulations were made to prescribe fees that may be paid for this service. Lack of payment has been a source of complaint in recent years. This has included complaints in 2021 to the Ombudsman and the Regulations Review Committee.
- 12 In light of the Ombudsman's investigation, which found that the lack of payment is unreasonable, I asked officials at the Ministry of Justice to begin work to develop regulations to enable the Crown to pay doctors for preparing section 40 reports.

### *It is common for payments to be made for third-party reports or services that assist the judiciary*

- 13 Services and reports prepared by third parties are frequently used in the courts to help the judiciary understand and determine cases. Within the coronial system, this includes: investigations and reports commissioned to assist a coroner in deciding whether to open an inquiry (requested under section 118); and cultural, legal, medical, or other specialist advice required to assist coroners at an inquest (requested under section 83).
- 14 Payment for these services varies and is largely managed through contractual agreements between the Ministry and service providers.

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<sup>1</sup> There were 2,818 section 40 reports requested by coroners over the 2020/21 financial year. Reports vary in length and complexity; some are relatively straight-forward summaries of a patient's medical history, while others require complex and detailed medical analysis and reporting.

## Analysis

- 15 Regulations to enable doctors to be paid for section 40 reports can be made under the existing empowering provision in the Act (section 140). This power has already been used for regulations to pay pathologists who have performed a post-mortem under the Act and given expert evidence in a coronial inquest.<sup>2</sup>
- 16 After consultation with key doctors' organisations, I propose that Cabinet agree to the key features for the regulations relating to:
- 16.1 eligibility requirements
  - 16.2 the fee model, and
  - 16.3 the rate of pay.

*Eligibility: Only doctors working in private practice should be eligible for payments for preparing section 40 reports*

- 17 Approximately 74 per cent of section 40 reports are provided by GPs or other doctors in private practice, with the remaining reports provided by public hospital-based doctors.<sup>3</sup>
- 18 The intent of the regulations is to ensure that all doctors providing section 40 reports are fairly compensated for their work. Therefore, I propose that any payment for preparing section 40 reports should be restricted to General Practitioners (GPs) and other doctors in private practice.
- 19 Salaried doctors employed by District Health Boards (DHBs) would be ineligible for payment. This is because the collective agreement covering DHB-employed doctors already apportions some of their time to administrative tasks, which includes preparing reports for a coroner.

*Fee model: I propose a capped hourly rate model*

- 20 I propose that the fee model is a *capped hourly rate* for up to a maximum of 4 hours, per report produced. In considering options for the fee model, I applied a set of principles, including that the fee model should be fair, transparent, provide certainty around future costs to the Crown, and be simple to administer.

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<sup>2</sup> Refer to *Coroners (Pathologists Fees) Regulations 2007*.

<sup>3</sup> Note there may be a small number of other cases where Crown agencies contract medical practitioners. For instance, the Department of Corrections contracts medical practitioners to prepare section 40 reports. For the avoidance of doubt, the intent of these regulations is to enable doctors who are not already paid by the Crown to be paid for preparing section 40 reports (i.e. doctors in private practice).

- 21 The capped hourly rate fee model would see doctors paid a set hourly rate for the actual time taken to prepare a report up to a maximum 4-hour limit. This is based on advice received by officials from doctors' representative organisations that most section 40 reports typically take 1-2 hours to prepare, while more complex reports usually take 3-4 hours but occasionally up to 6 hours.
- 22 Having a maximum cap of 4 hours provides a clear structure for doctors and officials that strikes a balance between the objective to fully compensate doctors for actual time spent while managing the costs to the Crown.
- 23 I consider the hourly rate model may also confer wider benefits on the coronial system. Compared to other models (e.g. a fixed fee), it will support doctors to spend the time that is needed (up to the cap) to prepare a high-quality report. This should have flow-on benefits to both Coroners and access to justice for whānau.
- 24 The capped hourly rate model would operate on a high-trust basis, accepting a limited risk that time spent on reports may increase once compensation is offered. To mitigate this risk, I considered other fee models that would work on a quote basis or require advance approval of total costs, but these were ruled out because of the administrative complexity of such systems, which I consider disproportionate to the risk.<sup>4</sup>

*Pay rate: The rate of pay should be set at \$200.00 + GST per hour*

- 25 I propose that the rate of pay for doctors preparing a section 40 report should be set at \$200.00 plus GST per hour.<sup>5</sup> Applying the hourly rate to the fee model means that maximum payment available for a report to the coroner is \$800 + GST for 4 hours work. The actual size of payments, however, will be informed by the complexity of the case, and correspond to the length of time to prepare the report.
- 26 I note that this rate cannot be adjusted without further amendments to the regulations.

### Financial Implications

- 27 The cost of payments for section 40 reports will be ongoing and dependent on the number of reports required by coroners each year. For the 2022/23 year,

<sup>4</sup> The following alternative models were considered but ruled out:

- *A single fixed fee.* This model is transparent and simple but was considered by doctors' organisations to be unfair as it does not allow for variations in reporting time, and would likely result in under-payment for complex reports.
- *A fixed fee menu,* enabling payment of a set amount corresponding to two or more defined 'types' of reports (e.g. standard or complex). This model provides greater flexibility but is difficult to administer (guidance would be needed).
- *A default fixed fee with access to an additional payment.* Doctors would be paid a fixed fee (e.g. for 90 minutes of work) but would be able to request approval in advance for up to an additional 2.5 hours if required. This model is administratively difficult requiring the development of criteria, accompanying guidance, a dispute mechanism and extra resources.

<sup>5</sup> This rate is based on consideration of doctors' salary ranges, and similar payments across the Ministry and other agencies (e.g. ACC).

the Ministry estimates total costs may be up to \$2.317 million. This includes the estimated cost of the reports (\$2.245 million) and the cost of one coronial support administration officer to facilitate payments (\$0.072 million).

- 28 This is a maximum estimate based on all reports charged for the maximum 4 hours. The actual costs will depend on the exact number of reports and time spent preparing them, are likely to be lower than estimated because doctors' organisations have advised that most reports take 1-2 hours.
- 29 These costs are currently unfunded. The Ministry has prepared a Budget 2022 initiative included in the Justice Cluster Budget process seeking \$10.914 million over four years for the cost of payments as part of a broader court-ordered and justice services initiative. If the Budget initiative is unsuccessful, the Ministry will need to consider other options to fund the payments and report back to me.

### **Legislative Implications**

*I will seek Cabinet's agreement to the final regulations in April or May 2022*

- 30 This proposal requires regulations to be made by the Governor-General (by Order in Council) under section 140 of the Act. Any future changes to the fee would require amendments to the regulations.
- 31 Once Cabinet has agreed to the new policy settings, Ministry officials will work with the Parliamentary Counsel Office (PCO) to draft the required regulations.
- 32 I intend to seek Cabinet's agreement to the final regulations in April or May 2022. The regulations will then be gazetted before entering into force and enabling payments to doctors by 1 July 2022.

### **Impact Analysis**

#### **Regulatory Impact Statement**

- 33 The Treasury's Regulatory Impact Analysis team has determined that the proposal to pay doctors for reports provided under the Coroners Act 2006 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

#### **Climate Implications of Policy Assessment**

- 34 The Climate Implications of Policy Assessment requirements do not apply to this proposal as it does not meet the qualifying criteria.

### Population Implications

35 The proposals in this paper have no specific population implications.

### Human Rights

36 The proposals in this paper have no specific human rights implications.

### Consultation

37 The following agencies were consulted on this paper: the Ministry of Health, the Treasury, the Accident Compensation Corporation, New Zealand Police, and the Department of Corrections. The Department of the Prime Minister and Cabinet was informed.

38 To inform the proposals in this paper, Ministry officials undertook targeted consultation with four doctors' representative organisations:

38.1 General Practice Owners Association of Aotearoa New Zealand

38.2 General Practice New Zealand

38.3 New Zealand Medical Association, and

38.4 Royal New Zealand College of General Practitioners.

39 All were supportive of the need for change and expressed a desire to see a simple system in which doctors receive full and fair compensation for the time it takes to produce a section 40 report.

### Communications

40 Following Cabinet approval of the final regulations (in April/May 2022):

40.1 the regulations will be gazetted; and

40.2 the Ministry of Justice will inform key doctors' organisations that payments will be made from 1 July 2022.

### Proactive Release

41 I intend to proactively release this paper once the final regulations have been gazetted.

## Recommendations

The Minister for Courts recommends that the Committee:

- 1 **note** that the Ministry of Justice does not currently pay doctors for preparing reports under section 40 of the Coroners Act 2006 (a 'section 40 report') and that the Ombudsman has found that this position is unreasonable
- 2 **note** that, to enable doctors to be paid for preparing section 40 reports, regulations need to be made under the existing empowering provision set out in section 140 of the Coroners Act 2006.
- 3 **agree** that doctors should be paid for time spent preparing section 40 reports, subject to the following conditions:
  - 3.1 any payment for preparing section 40 reports should be restricted to General Practitioners (GPs) and other doctors in private practice, and that salaried doctors employed by DHBs should be ineligible (as part of their salary is already apportioned to such tasks)
  - 3.2 the fee model should be a capped hourly rate for up to a maximum of 4 hours per report produced
  - 3.3 the hourly rate of pay for doctors preparing a section 40 report should be set at \$200.00 per hour plus GST.
- 4 **note** that the cost of payments for section 40 reports will be ongoing and dependent on the number of reports required by coroners each year.
- 5 **note** that the Ministry of Justice estimates the cost of payments for the 2022/23 financial year may be up to \$2.317 million, depending on the number of reports and how many hours are spent on them.
- 6 **note** that the ongoing cost of payments is currently unfunded and the Ministry of Justice has prepared a Budget 2022 initiative, included in the Justice Cluster Budget process, seeking \$10.914 million over four years as part of a broader court-ordered and justice services initiative.
- 7 **Note** that if funding is not secured through Justice Cluster Budget process, the Ministry of Justice will consider other options to meet the costs of payments and report to the Minister for Courts.
- 8 **authorise** the Minister for Courts to issue drafting instructions to the Parliamentary Counsel Office to draft regulations (under section 140 of the Coroners Act 2006) to give effect to recommendation 3 above.
- 9 **authorise** the Minister for Courts to make any minor and/or technical changes to the regulations during the drafting process to ensure that they reflect the policy intent agreed by Cabinet.
- 10 **note** that the Minister for Courts intends to report back to Cabinet in April or May 2022, seeking agreement to the final regulations.

- 11 **Note** that, subject to Cabinet's agreement to the final regulations, the regulations will be gazetted and enter into force, enabling payments to doctors, by 1 July 2022.

Authorised for lodgement

Hon Aupito William Sio

Minister for Courts

Proactive Release

In Confidence

Office of the Minister for Courts

Cabinet Legislation Committee

## **Coroners (Doctors Fees) Regulations 2022**

### **Proposal**

- 1 I seek Cabinet's authorisation for submission to the Executive Council of the Coroners (Doctors Fees) Regulations 2022, which provide for payment to doctors for medical reports to coroners requested under section 40 of the Coroners Act 2006 (the Act).

### **Background**

- 2 Reports requested by a Coroner under section 40 of the Act (section 40 reports) are written reports providing health information from a doctor who attended a person before their death. Section 40 reports are usually sought in the early stages of a coronial investigation for the purpose of determining whether an inquiry is needed. The Act makes non-compliance with a request a fineable offence.
- 3 The Ministry of Justice (the Ministry) currently does not pay doctors for section 40 reports and no regulations exist to enable payments. Non-payment has resulted in an investigation and finding by the Ombudsman that this is unreasonable, and a complaint to the Regulations Review Committee.

### **Policy**

- 4 On 16 February 2022, the Social Wellbeing Committee agreed that doctors should be paid for the time they spend preparing reports required by section 40 of the Act, and that regulations should be made to prescribe the fee model and rate for such payments [CAB-22-MIN-0039].
- 5 The Act includes regulation-making powers for the purpose of prescribing payment for services provided by doctors (and other professionals) who perform a function under the Act.

### *Key features of the Regulations*

- 6 The Regulations prescribe that doctors in private practice who provide a report to a Coroner under section 40 of the Act are entitled to be paid for this service. The Regulations do not cover fees for any other services provided within the coronial system.

- 7 The Regulations have the following key features:
- **Eligibility** – payments will be made to doctors in private practice only. This excludes doctors employed by District Health Boards and other doctors already paid by a public service agency to write section 40 reports as part of their duties.
  - **Fee model** – fees will be paid at an hourly rate up to a cap of four hours.
  - **Pay rate** – the fee payable is at a rate of \$200 + GST per hour.

*I seek agreement that the Regulations will apply only to reports requested after the commencement date*

- 8 I propose that the Regulations only allow doctors to invoice for reports requested on or after the date the regulations come into force. This will mean doctors will not be paid for reports that are in train but not completed, nor receive 'back pay' for reports requested and completed before the Regulations come into force. This issue was not covered at the time SWC took policy decisions to develop the Regulations, so I seek the Cabinet Legislation Committee's agreement to this position.

#### **Timing and 28-day rule**

- 9 I intend for the Regulations to come into force on 1 July 2022.
- 10 If agreed by Cabinet, the Regulations can be submitted to the Executive Council on 23 May 2022 for the Governor-General's approval and published in the Gazette 26 May. This will allow for the requisite 28 days between publication and the regulations coming into force.

#### **Compliance**

- 11 These Regulations comply with:
- 11.1 the principles of the Treaty of Waitangi;
  - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 11.3 the principles and guidelines set out in the Privacy Act 2020;
  - 11.4 relevant international standards and obligations; and
  - 11.5 the Legislation Guidelines (2021 edition).

#### **Regulations Review Committee**

- 12 There are no apparent grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

### Certification by Parliamentary Counsel

- 13 Parliamentary Counsel has certified the attached Regulations as being in order for submission to Cabinet.

### Impact analysis

- 14 Treasury's Regulatory Impact Analysis team has determined that the Regulations are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

### Publicity

- 15 The Regulations will be published in the *New Zealand Gazette* as soon as they have been made.
- 16 Following Cabinet decisions, the Ministry of Justice will write to the following groups advising that the Regulations have been made:
- 16.1 Doctors' representative organisations including General Practice Owners Association of Aotearoa New Zealand, General Practice New Zealand, New Zealand Medical Association, and the Royal New Zealand College of General Practitioners;
  - 16.2 The Regulations Review Committee; and
  - 16.3 The Office of the Ombudsman.

### Proactive Release

- 17 I propose to proactively release this paper in full after the Regulations have been gazetted.

### Consultation

- 18 The following agencies and organisations were consulted on this paper and the draft Regulations: The Treasury, New Zealand Police, Department of Corrections, Ministry of Health, Accident Compensation Corporation. The Department of the Prime Minister and Cabinet was informed.

### Recommendations

- 19 The Minister for Courts recommends that the Cabinet Legislation Committee:
- 1 **note** that on 16 February 2022 the Cabinet Social Wellbeing Committee agreed to provide for payment to doctors who produce a medical report for a coroner under section 40 of the Coroners Act 2006, and that regulations should be made to prescribe the fee model and rate for such payments [CAB-22-MIN-0039];

**IN CONFIDENCE**

- 2 **note** that the Coroners (Doctors Fees) Regulations give effect to the decision referred to in paragraph 1 above;
- 3 **agree** that payments will be made to doctors for reports requested by a Coroner on or after 1 July 2022, when the Regulations come into force;
- 4 **authorise** the submission to the Executive Council of the Coroners (Doctors Fees) Regulations;
- 5 **note** that the Coroners (Doctors Fees) Regulations will be published in the Gazette on 26 May 2022 for 28 days and come into force on 1 July 2022.

Authorised for lodgement

Hon Aupito William Sio  
Minister for Courts

**IN CONFIDENCE**



# Cabinet Legislation 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.*

### Coroners (Doctors Fees) Regulations 2022

#### Portfolio                      Courts

On 19 May 2022, the Cabinet Legislation Committee:

- 1        **noted** that on 16 February 2022, the Cabinet Social Wellbeing Committee agreed to provide for payment to doctors who produce a medical report for a coroner under section 40 of the Coroners Act 2006, and that regulations should be made to prescribe the fee model and rate for such payments [SWC-22-MIN-0008];
- 2        **noted** that the Coroners (Doctors Fees) Regulations give effect to the decision referred to in paragraph 1 above;
- 3        **agreed** that payments will be made to doctors for reports requested by a Coroner on or after 1 July 2022, when the Regulations come into force;
- 4        **authorised** the submission to the Executive Council of the Coroners (Doctors Fees) Regulations [PCO 24628/2.0];
- 5        **noted** that the Coroners (Doctors Fees) Regulations will come into force on 1 July 2022.

Rebecca Davies  
Committee Secretary

#### Present:

Hon Chris Hipkins (Chair)  
Hon Andrew Little  
Hon David Parker  
Hon Kris Faafoi  
Hon Jan Tinetti  
Hon Kiri Allan  
Hon Dr David Clark  
Hon Dr Ayesha Verrall  
Hon Aupito William Sio  
Hon Meka Whaitiri

#### Officials present from:

Office of the Prime Minister  
Officials Committee for LEG



# Cabinet Social Wellbeing Committee

## Minute of Decision

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### Payment for Doctors' Reports Provided under the Coroners Act 2006

**Portfolio**                      **Courts**

On 16 February 2022, the Cabinet Social Wellbeing Committee:

- 1        **noted** that the Ministry of Justice does not currently pay doctors for preparing reports under section 40 of the Coroners Act 2006 (a 'section 40 report') and that the Ombudsman has found that this position is unreasonable;
- 2        **noted** that, to enable doctors to be paid for preparing section 40 reports, regulations need to be made under the existing empowering provision set out in section 140 of the Coroners Act 2006;
- 3        **agreed** that doctors should be paid for time spent preparing section 40 reports, subject to the following conditions:
  - 3.1      any payment for preparing section 40 reports should be restricted to General Practitioners (GPs) and other doctors in private practice, and that salaried doctors employed by District Health Boards (DHBs) should be ineligible as part of their salary is already apportioned to such tasks;
  - 3.2      the fee model should be a capped hourly rate for up to a maximum of 4 hours per report produced;
  - 3.3      the hourly rate of pay for doctors preparing a section 40 report should be set at \$200.00 per hour plus GST;
- 4        **noted** that the cost of payments for section 40 reports will be ongoing and dependent on the number of reports required by coroners each year;
- 5        **noted** that the Ministry of Justice estimates the cost of payments for the 2022/23 financial year may be up to \$2.317 million, depending on the number of reports and how many hours are spent on them;
- 6        **noted** that the ongoing cost of payments is currently unfunded, and the Ministry of Justice has prepared a Budget 2022 initiative, included in the Justice Cluster Budget process, seeking \$10.914 million over four years as part of a broader court-ordered and justice services initiative;
- 7        **noted** that if funding is not secured through Justice Cluster Budget process, the Ministry of Justice will consider other options to meet the costs of payments and report to the Minister for Courts;

- 8 **authorised** the Minister for Courts to issue drafting instructions to the Parliamentary Counsel Office to draft regulations (under section 140 of the Coroners Act 2006) to give effect to paragraph 3 above;
- 9 **authorised** the Minister for Courts to make any minor and/or technical changes to the regulations during the drafting process;
- 10 **noted** that the Minister for Courts intends to seek agreement to the final regulations by 31 May 2022;
- 11 **noted** that it is intended that the regulations enabling payments to doctors be gazetted and enter into force by 1 July 2022.

Jenny Vickers  
Committee Secretary

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**Present:**

Rt Hon Jacinda Arden (Chair)  
Hon Kelvin Davis  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Carmel Sepuloni  
Hon Andrew Little  
Hon Poto Williams  
Hon Kris Faafoi  
Hon Peeni Henare  
Hon Willie Jackson  
Hon Jan Tinetti  
Hon Kiri Allan  
Hon Aupito William Sio  
Hon Priyanca Radhakrishnan

**Officials present from:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet  
Officials Committee for SWC