

In Confidence

Office of the Minister of Justice

Cabinet Social Wellbeing Committee

Proposals to improve court and system performance

Proposal

- 1 This paper:
 - 1.1 provides an update about reducing delays to district court jury trials, including options to change criminal procedure and disclosure legislation to improve court and system performance, and
 - 1.2 seeks agreement to additional funding for Police prosecutions to improve court performance and timeliness.

Relation to government priorities

- 2 One of my key priorities is to reduce court delays. The proposals relating to changes to criminal procedure and disclosure and funding for Police prosecutions support this priority.

Executive Summary

- 3 This paper notes work in progress to improve court and system performance through legislative changes to criminal procedure and disclosure, as well as a proposal providing funding for Police prosecutions.
- 4 In recent years there has been a significant increase in the number of District Court cases awaiting jury trials and the time taken to resolve them. This presents risks to the integrity of, and public confidence in, the court system. This increase is continuing to grow and that is why it is important to address this issue now and urgently.
- 5 To improve timeliness of jury trials, Ministry of Justice (Justice) officials have undertaken targeted consultation on options to amend criminal procedure and disclosure requirements. Subject to further advice on regulatory impacts, I have asked officials to work on the following options and potential improvements or alternatives to them:
 - 5.1 require Police to provide more information to defendants as part of initial disclosure to allow for earlier case resolution and to free up judicial time, and
 - 5.2 change the timing of when defendants can elect jury trial to later in the process so defendants have access to more information and can make more informed decisions about whether to elect a jury trial. This will also provide for more discussions to be held between prosecution and defence and will lead to a reduction in the number of defendants electing a jury trial.
- 6 Further work on the regulatory and financial impacts of these proposals, or refinements to these proposals, is continuing. Once this work is completed, I recommend that the Minister

of Police and I report back to this committee in early August 2023. Any legislative changes will require a Bill to progress.

- 7 This paper also proposes funding options for Police prosecutions to support a more case management-focused system that requires a higher level of resourcing across the Police resolution functions. This is expected to enable consistently high-quality case files which would contribute to timely disclosure and early resolution.
- 8 These proposals sit alongside other operational work that is being progressed with agencies and the Judiciary to reduce court delays. This includes the Criminal Process Improvement Programme, demand-based scheduling, and Police's ReFrame Programme.

District Court jury trial delays

- 9 Defendants have a right to trial without undue delay. However, in recent years, there has been a significant increase in:
 - 9.1 *the number of District Court cases awaiting jury trials*: between March 2018 and March 2023, there was an 81 percent increase (around 1,600 cases) in the number of District Court jury trial cases awaiting trial; and
 - 9.2 *time taken to resolve them*: as at March 2023, the average time to resolve a case where a jury trial is elected was 494 days, up from the pre-COVID-19 average of 374 days.
- 10 This presents risks to the integrity of, and public confidence in, the court system. This also adversely affects participants including defendants, complainants, and witnesses. Court delays increase resourcing pressures and undermine the overall efficiency and effectiveness of the court system.

Non-legislative initiatives that are helping to address court delays

- 11 I consider that non-legislative operational improvements are a valuable method to reduce court delays and any legislative changes would sit alongside those. Non-legislative improvements include:
 - 11.1 The Criminal Process Improvement Programme;
 - 11.2 Police's ReFrame Programme; and
 - 11.3 demand-based court scheduling.

Criminal Process Improvement Programme

- 12 The Criminal Process Improvement Programme is a medium-term sector improvement programme led by Justice. The Programme will introduce a suite of operational improvements across the sector that, collectively, will improve the progression of cases through the district court.

ReFrame

- 13 ReFrame is a three-year service delivery transformation programme designed to deliver the people change, processes, tools and policies required to enable Police to lift its

performance in core policing. I am advised that the purpose of the programme is to ensure Police have the capability and capacity to make better informed decisions to deliver principled, effective, and efficient resolution decisions and policing services. The programme includes longer term initiatives to improve evidential processes and practices to enable early disclosure.

Demand-based court scheduling

- 14 The Chief District Court Judge implemented “demand-based court scheduling” in May 2023. This system is primarily about scheduling judges into the courts with the largest backlogs and scheduling more events for which there is the most demand, such as judge-alone trials and jury trials.

Policy options to reduce jury trial delays

Potential amendments to criminal disclosure and criminal procedure

- 15 Jury trials are generally the most time-consuming criminal court cases. As at April 2023, jury trial cases make up 10 percent of District Court criminal cases yet receive one third of judicial time. (Data is for cases disposed between May 2022 and April 2023 where the defendant has elected a jury trial). Of these jury trial cases, only 35 percent have a jury trial hearing heard with evidence, and they take an average of 386 days to resolve. This indicates that 65 percent of all District Court jury trial cases are resolved without the need for a trial.
- 16 Choosing a jury trial preserves options for defendants, as it is easier for them to later decide to switch to a judge-alone trial. The increase in time taken to resolve jury trials has primarily been driven by an increase in the proportion of defendants choosing jury trial (instead of a judge-alone trial) from 25 to 32 percent between March 2018 and March 2023.
- 17 Defendants do not always have the information that they need to make the most informed decision about whether to elect a jury trial or proceed to a judge-alone trial. A relatively large proportion of court hearings are adjourned (the parties turn up but the hearing is rescheduled) because disclosure is outstanding or incomplete. For the 12 months ending April 2023, 12.1 percent of case review hearing events were adjourned (the parties were present but the hearing was rescheduled) due to disclosure being outstanding or incomplete. The other top reasons recorded for adjournment include that further discussions are required (27 percent), no reason is recorded (15.1 percent), and the defence’s case is not ready (8.9 percent). I note that the defendant cannot be ready until disclosure has occurred.

Broader legislative change proposals

- 18 I consider there is merit in exploring potential changes to the Criminal Procedure Act 2011 and the Criminal Disclosure Act 2008 to require Police to provide more information to defendants as part of initial disclosure, and change the timing of when defendants can elect jury trial to later in the process.
- 19 I have also asked officials to explore broader options to address jury trial delays including looking at the settings for electing a jury trial.

Additional information to be disclosed to defendants

- 20 I am considering changes to the Criminal Disclosure Act to impose additional disclosure requirements, aimed at achieving earlier case resolution and freeing up judicial time to be used elsewhere. Section 12(1) of the Criminal Disclosure Act currently requires the prosecution to provide, as ‘initial disclosure’, the following documents to the defendant no later than 15 days after the commencement of criminal proceedings:
- 20.1 a copy of the charging document;
 - 20.2 a summary of facts;
 - 20.3 a summary of the defendant’s right to apply for further information;
 - 20.4 the maximum penalty for the offence; and
 - 20.5 the defendant’s criminal history including youth offending.
- 21 Initial disclosure is premised on the assumption that, in most cases, these documents are sufficient to inform the defendant so that they can plead either guilty or not guilty. Initial disclosure is generally provided at the defendant’s first appearance at court.
- 22 Justice officials have undertaken targeted consultation on disclosure options, including the option of amending the Criminal Disclosure Act 2008 to require the following additional information to be provided to defendants as part of initial disclosure where the proceeding is a Police prosecution:
- 22.1 the names of any witnesses whom the prosecutor considers may be called at the hearing or trial;
 - 22.2 a list of the exhibits that are proposed to be produced on behalf of the prosecution at the hearing or trial;
 - 22.3 a copy of job sheets and other evidential records completed or taken by a law enforcement officer that contain relevant information; and
 - 22.4 a disclosure list containing the relevant contents of the prosecutor’s file and record of decisions regarding disclosure of each relevant document.
- 23 This additional information is currently required to be provided to defendants ‘as soon as reasonably practicable’ if they request it in writing. The option for change would require the prosecution to proactively provide it as part of initial disclosure within 15 days after the commencement of the proceeding or at first appearance.
- 24 This change would be limited to proceedings commenced by Police given they make up the bulk of cases. Further, restricting it to Police prosecutions will avoid unintended consequences and additional burden for other prosecuting agencies. This means the change would not apply to other prosecution agencies, for example the Serious Fraud Office, Ministry of Social Development, or Inland Revenue Department.
- 25 This disclosure change was trialled as part of the Criminal Process Improvement Programme (see paragraph 12) for a small set of offences (where the maximum penalty was between 6 months and 7 years), in cases where the defendant was summoned to

appear in court (as opposed to first appearing in court after they had been arrested) in the District Court at Hamilton. Higher penalty ranges were excluded because Police advised that meeting disclosure requirements for those cases would be difficult. The result of the trial was that the additional disclosure was found to assist with case progression for some offences, particularly driving offending. That trial relied on voluntary participation of prosecutors and defendants, but to become a requirement it must be legislated.

- 26 Officials are doing further work on the costs and benefits of this option, and refinements to it, to ensure that if Cabinet does agree to it, it would be workable for Police and Crown Law.

Allowing a longer timeframe for electing a jury trial

- 27 I also consider there is potential to reduce delays by changing when the defendant is permitted to elect a jury trial (as opposed to proceeding to a judge-alone trial). Currently, if a defendant wishes to elect a jury trial, this must be done when the defendant pleads not guilty, which is usually by the defendant's second appearance in court. As this point is early in the process, it incentivises defendants to elect a jury trial to preserve their options if they are still waiting for legal advice dependent on the prosecution disclosing relevant information.
- 28 Ministry of Justice officials also consulted on the option of amending the Criminal Procedure Act 2011 to allow the defendant to elect a jury trial at any point up to and including the case review hearing. Although this is **later** in the process than a defendant can currently elect a jury trial, it is expected that fewer defendants will elect a jury trial just to preserve their options while they are awaiting legal advice informed by disclosure information. This amendment would not exclude defendants from electing a jury trial at an earlier stage when they plead not guilty.
- 29 Although the Criminal Procedure Act currently allows the court to grant leave to elect a jury trial at a later time, there must be a change in circumstances that affect the defendant's decision.
- 30 Justice officials are exploring the practical implications of whether there is a risk of further delay if defendants do not elect jury trial until case review hearing for tactical reasons.

Risks to progressing these proposals were identified through consultation

- 31 A strong theme from consultation with legal professional groups and prosecuting agencies was that the criminal procedure and disclosure options may have no or minimal positive impact on reducing court delays. Many submitters stated that defendants do not want to speak to lawyers or appear in court because it is natural human behaviour to avoid negative consequences. Sometimes it is in the defendant's interest to stall, so that charges may be dropped if witness memories fade. Defence counsel may focus their efforts on cases about to go to trial rather than on cases in the disclosure stage. In my view, it is difficult to know the degree to which changes in defendant and defence counsel behaviour is a factor driving increased delays.
- 32 The New Zealand Law Society suggested that adding more information to initial disclosure may increase duty solicitor workload. Without additional Police resourcing to implement the changes, there is a risk of unintended consequences including potential further delays to disclosure. I agree that these are risks, but note that the Criminal Process Improvement

Programme trial, although limited, indicated that there could be improvements to case management processes for some cases (particularly driving offending).

Police comment on options for criminal procedure and disclosure changes

- 33 Police is highly supportive of progressing work to reduce court delays associated with jury trials. Police recognises the importance of timely access to justice, including to support better outcomes for victims, and contributes to a range of initiatives to support a more effective justice system.
- 34 Jury trial delay is a complex issue which requires changes to processes, system incentives and alignment between agencies. Police considers jury trial delay will not be solved by single measures, such as the legislative amendments proposed here. Existing work underway, and the investment in prosecutions proposed in this paper, will improve efficiencies and processes and contribute to improved timeliness of jury trials.
- 35 Police does not support the option for legislative change to the initial disclosure requirements. While additional disclosure may improve case progression in some circumstances, there is no clear evidence that mandating increased initial disclosure will either improve decision making for defendants or reduce jury trial delays. For some types of cases, this additional information is not even required, but Police will nevertheless be required to provide it if mandated. Difficulties complying with additional disclosure requirements could also lead to additional court events.
- 36 Police is particularly conscious of the risk of not being able to comply with the proposed changes, given the complexity of some investigations, the iterative nature of disclosure (which can continue right up to the summing up of the case), and the ongoing operational challenges (not confined to Police) involved. Police does not see clear evidence that the measures proposed will deliver the outcomes sought, and are concerned that the costs of these proposals outweigh any potential benefit.
- 37 Police considers there would be significant resourcing implications associated with these proposals, particularly in the absence of any additional investment. Additional resourcing for prosecutions, while delivering wider system benefits, is unlikely to directly impact on the ability to comply with additional disclosure requirements, as disclosure predominantly sits with Police frontline staff. Police is already facing resourcing pressures with the existing disclosure requirements and additional requirements will divert frontline staff from other policing duties and/or a reprioritisation of resource from other parts of the business reducing Police's ability to deliver on other critical outcomes.

Further work on options for change is required

- 38 I recommend that we direct officials to complete work on the regulatory impact (including financial implications and implementation) of these options, and other options to address jury trial delays including considering the settings for electing a jury trial before the report back to this committee. This should also allow any concerns raised by Police and Crown Law to be resolved.
- 39 I recommend that the Minister of Police and I report back in August 2023 to the Cabinet Social Wellbeing Committee meeting with a range of options to improve court performance and timeliness, and policy options to amend the Criminal Disclosure Act 2008 and Criminal Procedure Act 2011.

Funding for Police prosecutions to improve court performance and timeliness

- 40 Officials advise that the current resourcing within Police prosecutions means that the operation model used is a “tactical, just-in-time” operating model. A better operating model that is more focussed on case management requires a higher level of resourcing. This would enable consistently high-quality case files which would contribute to timely disclosure and early resolution.
- 41 There are several Justice Sector programmes that address improving court system performance and timeliness (ReFrame, Criminal Process Improvement Programme, Demand Based Scheduling). I have been advised that Police has not been funded to support all of these programmes. I have been advised that Police are not in a position to absorb the costs from within baseline funding or cope with the increase demands in prosecutions without drawing on frontline operational resources.

Criminal Process Improvement Programme

- 42 The Police resourcing and operating model changes are an integral component of the sector-wide changes needed to address court delays, backlogs, and time spent in custody. The extra funding required by Police to implement the Criminal Process Improvement Programme is not being funded. I have been advised that Police require an additional 78.3 FTE across the prosecutions and resolutions functions to make the operating model changes proposed under the Programme which would require extra funding of \$9.2 million year on year, alongside \$2.5 million over 18 months to implement these changes.

Demand Based Court Scheduling

- 43 The Chief District Court Judge implemented “demand-based court scheduling” in May 2023. This system is primarily about scheduling judges into the courts with the largest backlogs and scheduling more events for which there is the most demand, such as judge-alone trials and jury trials. Police is running Operation Surge to respond to this additional demand, but I have been advised that there is cost pressure for Police to service the additional sitting hours. I understand that Police is utilising frontline district staff as prosecutors in court or costly Crown Solicitor spending for the difference between available baseline Prosecution resources and extra hours.
- 44 Operation Surge was initially planned for three months until July 2023 and was dependent on the redeployment of existing (predominantly frontline) Police staff. Demand-based court scheduling is to be extended for at least 18 months to reduce the District Court backlog. I am advised that this will have a significant impact on Police’s frontline staff (many of whom are at a supervisory level), as well as on the overall cost pressures.
- 45 Operation Surge is currently running at \$0.5 million per month, equating to \$6 million of additional resourcing required to meet the increase in court sitting time in the 2023/24 financial year. Early modelling indicated a further \$4 million will still be required in the 2024/25 financial year.

Police funding required to deliver Criminal Process Improvement Programme benefits and respond to demand-based court scheduling

- 46 Police officials have identified options to implement the Police aspects of the Criminal Process Improvement Programme while also responding to the extra resource required for demand-based scheduling.
- 47 I am advised that to have enough resources in court to address the case backlog, demand-based scheduling, and additional pressure from defendants on remand, as well as to implement the Criminal Process Improvement Programme, Police need funding of \$12.57 million in the 2023/24 financial year and \$13.45 million in the 2024/25 financial year (see table over the page).

Table One: Funding required by Police for prosecutions to improve court performance and timeliness

(Sm)	FY 2023/24	FY 2024/25	Two-Year Total	Section 9(2)(f)(iv)
Criminal Process Improvement Programme	1.262	1.268	2.530	
Initial appearance and bail	2.319	2.582	4.900	
Case progression and resolution management	3.716	6.899	10.616	
Meaningful court appearance	5.266	2.703	7.969	
Total Funding Required by Police	12.564	13.452	26.016	

- 48 The funding outlined in table one would not cover any resourcing costs associated with the proposed legislative changes to disclosure requirements. The resourcing impact of the proposed legislative changes are yet to be determined and would require further funding analysis to ascertain the costs of delivering an enhanced service.
- 49 The funding proposed will allow for short-term initiatives and sustained support for the improvements to court system performance. This will relieve the pressure on Police to find resources to deliver the increase in scheduled hours to address the backlog. The focus would be on the following three things:
- 49.1 Initial appearance and bail – improvements to file preparation and increasing the use of digital files. This will improve file quality, support improved disclosure and a reduction in adjournments. These improvements will also enable greater flexibility to share workloads across geographically dispersed teams due to a reduced reliance on locally held paper files
- 49.2 Case progression and resolution management – increased focus on earlier resolution to reduce the number of appearances in court, and
- 49.3 Meaningful court appearances – supporting Police Prosecution to move away from a tactical, just-in-time operating model. Testing new ways of working to be prepared for securing increases to existing baseline.

- 50 I am advised that, if required, the proposed improvements to initial appearance and bail described in paragraph 47.1 could be removed from this proposal which would reduce the two-year funding requirement to \$21.11 million (\$10.244 million in the 2023/24 financial year and \$10.870 million in the 2024/25 financial year).
- 51 I am advised that if the initial appearance and bail improvements described in paragraph 47.1 are not funded Police will still deliver the resources and operating model changes needed to meet the requirements of the Criminal Process Improvement Programme and the demand-driven scheduling. I am further advised that Police do not support the removal of those improvements from the proposal.
- 52 I propose that funding for the first two financial years (between \$10.244 and \$12.564 million in the 2023/24 financial year and between \$10.870 and \$13.452 million in the 2024/25 financial year) is allocated from the Justice Cluster Tagged Contingency [GOV-22-MIN-0033 and CAB-22-MIN-0423 refers], with authorisation provided to Justice Cluster Ministers to allocate a proportion of department operating underspends before audited financial statements are available, to enable early funding decisions.
- 53 Section 9(2)(f)(iv)
- 54 Section 9(2)(f)(iv)
- 55 Section 9(2)(f)(iv)

Financial Implications

- 56 Cost implications for agencies of options to amend criminal disclosure and criminal procedure legislation will be included in the Cabinet paper seeking policy approval.
- 57 The cost implications for the Police prosecutions proposal are outlined in the previous section.
- 58 The Police Prosecutions proposal, described in table one, will be funded from the Justice Cluster Tagged Contingency [GOV-22-MIN-0033 and CAB-22-MIN-0423 refers]. The Tagged Contingency facilitates the use of retained departmental operating underspends, and fiscally neutral reprioritisation decisions for the Justice Cluster.
- 59 Actual underspends are not confirmed until agency audits are completed on 30 September 2023. This paper seeks authorisation for Cluster Ministers to make conservative financial decisions around Police prosecutors before actual underspends are confirmed.

Legislative Implications

- 60 To proceed with any criminal procedure and disclosure changes or any other legislative options to address the jury trial election rate, a bill is required. The Criminal Procedure and Disclosure Amendment Bill has been included in the 2023 Legislation Programme with a priority of Category 5 (drafting instructions to Parliamentary Counsel Office before the 2023 General Election).
- 61 I intend to report back to this committee in August 2023 on the legislative implications of any broader changes to address court performance and timeliness.

Regulatory Impact Statement

- 62 Cabinet's impact analysis requirements apply to the proposals to improve court and system performance, but there is no accompanying Regulatory Impact Statement and the Treasury has not exempted the proposal from the impact analysis requirements. Therefore, it does not meet Cabinet's requirements for regulatory proposals.
- 63 The Treasury's Regulatory Impact Analysis team and the Ministry of Justice have agreed that supplementary analysis will be provided at the report back to Cabinet Social Wellbeing Committee.

Climate Implications of Policy Assessment

- 64 The Ministry for the Environment was not consulted, as CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 65 Māori are disproportionately over-represented, as both defendants and complainants, in the cohort of people affected when delays in progressing jury trials occur. Delays in achieving resolution mean that lives are put on hold awaiting an outcome. For the defendant this could also mean lengthy waits in prison, on remand, or being subjected to restrictive bail conditions. This has a flow on effect on tamariki and whānau of the defendant and the complainant. The options to improve timeliness will contribute to improving fair trial rights for Māori. Limited targeted consultation has been undertaken on these proposals.

Human Rights

- 66 The criminal procedure and disclosure change options are expected to strengthen defendants' NZBORA right to a fair trial without undue delay. Further changes to jury trial election settings may have human rights implications, and I intend to report back on these at the time of seeking policy approval.
- 67 The changes proposed for funding for Police prosecutions will improve the ability for bail matters to be proactively discussed before the defendant's first appearance. This will support defendants who are eligible for bail to be released without undue delay and with the appropriate bail terms.

Consultation

- 68 Police, Crown Law, Department of Corrections, other prosecuting agencies, legal professional groups, victims' rights groups, and the judiciary were given the opportunity to

comment on the criminal disclosure and procedure options outlined in this paper. The Treasury was informed of the change options. The following prosecuting agencies provided comments on the proposals: Police, Crown Law, the Ministry of Health, Maritime New Zealand, Corrections, the Serious Fraud Office, Ministry of Social Development, Inland Revenue and the Financial Markets Authority.

- 69 Feedback on the options was mixed. There was broad support for changing the timing of jury election. The Judiciary supports both of the proposals. While Crown Law supports changing the timing of jury election, it does not support changing the existing disclosure regime, primarily on grounds there is insufficient evidence the proposals will be effective, and due to the risks inherent in speeding up the disclosure process (for example, requiring decisions about relevance and disclosure to be made in circumstances where a Police investigation is not complete). Police do not support changing the disclosure rules and their comment is included above. The Chief Victims Advisor has indicated there is no likely impact on complainants from changing timing of jury election. However, she considers that requiring additional initial disclosure could create a risk of errors and privacy breaches which could raise safety concerns for victims.
- 70 Police support seeking additional funding for Police prosecutions.
- 71 Public consultation may be required on broader changes to improve court performance and timeliness, and I intend to report back to this committee regarding that in August 2023.

Communications

- 72 I will consider announcements following Cabinet decisions.

Proactive Release

- 73 I intend to proactively release the paper, subject to redactions as appropriate and consistent with the Official Information Act 1982.

Recommendations

The Minister of Justice recommends that the Cabinet Social Wellbeing Committee:

Reducing delays to District Court jury trials

- 1 note that a Criminal Procedure and Disclosure Amendment Bill has been included in the 2023 Legislation Programme with a priority of Category 5 (instructions to be provided to PCO before the 2023 General Election)
- 2 invite the Minister of Justice and Minister of Police to report back to the Cabinet Social Wellbeing Committee in August 2023 with a range of options to improve court performance and timeliness, and policy options to amend the Criminal Disclosure Act 2008 and Criminal Procedure Act 2011

Police prosecutions

- 3 note that additional funding is sought immediately for Police prosecutions to improve court performance and timeliness

- 4 note that the cost of improving Police prosecutions is \$26.016 million for two financial years with \$12.564 million in 2023/24 financial year and \$13.452 million in 2024/25 financial year
- 5 note that if the proposed improvements to initial appearance and bail are removed from this proposal the two-year funding requirement would reduce to \$21.11 million (\$10.244 million in the 2023/24 financial year and \$10.870 million in the 2024/25 financial year)
- 6 agree that the Minister of Justice and the Minister of Police will decide whether the proposed improvements to initial appearance and bail will be funded under the proposal or removed from scope
- 7 note that on 29 September 2022 Cabinet [CAB-22-MIN-0423 refers]:
 - 7.1 agreed to establish the “Justice Cluster Tagged Operating Contingency” to facilitate the use of retained underspends, and fiscally-neutral reprioritisation decisions for the Justice Cluster
 - 7.2 authorised Justice Cluster Ministers jointly to add funds to, and draw down from, the above tagged contingency
 - 7.3 agreed that the financial decisions to be made by Cluster Ministers must either be consistent with Cluster/Cluster agency priorities or address cost pressures, must not create an implicit or explicit precommitment for net additional expenditure and are subject to approval from the Minister of Finance
- 8 note the balance of the Justice Cluster tagged contingency will not be confirmed until Cluster Agencies final audited actuals have been confirmed on 30 September 2023
- 9 authorise Justice Cluster Ministers to fund the proposal described in recommendations 4 and 5 above using the Justice Cluster Tagged Operating contingency based on a conservative portion of departmental operating underspends before audited financial statements are available provided the decision is fiscally neutral to the Crown
- 10 note that if the balance in the Justice Cluster Tagged Contingency is not sufficient to fully fund the up to \$26.016 million for Police prosecutions over the two-year period described in recommendation 4 above, the Cluster will need to meet the balance through reprioritisation or seek a cluster exception
- 11 agree that if the conservative unaudited amount exceeds actual/audited underspends, the Justice Cluster will at the next available baseline update be expected to reduce their appropriations or fund the increase through reprioritisation agreed by Cabinet [GOV-22-MIN-0033 refers] to ensure all appropriation decisions are fiscally neutral

12 **Section 9(2)(f)(iv)**

13 Section 9(2)(f)(iv)

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.

Proposals to Improve Court and System Performance

Portfolio Justice

On 28 June 2023, the Cabinet Social Wellbeing Committee:

Legislative Changes

- 1 **noted** that a Criminal Procedure and Disclosure Amendment Bill has been included in the 2023 Legislation Programme with a Category 5 priority (instructions to be provided before the 2023 General Election);
- 2 **invited** the Minister of Justice and Minister of Police to report back to SWC in August 2023 with a range of options to improve court performance and timeliness, and policy options to amend the Criminal Disclosure Act 2008 and Criminal Procedure Act 2011;

Police prosecutions

- 3 **noted** that additional funding is sought immediately for Police prosecutions to improve court performance and timeliness;
- 4 **noted** that the cost of improving Police prosecutions is \$26.016 million for two financial years with \$12.564 million in 2023/24 financial year and \$13.452 million in 2024/25 financial year;
- 5 **noted** that if the proposed improvements to initial appearance and bail are removed from the proposal in the paper under SWC-23-SUB-0080, the two-year funding requirement would reduce to \$21.11 million (\$10.244 million in the 2023/24 financial year and \$10.870 million in the 2024/25 financial year);
- 6 **agreed** that the Minister of Justice and Minister of Police will decide whether the proposed improvements to initial appearance and bail will be funded under the proposal or removed from scope;
- 7 **noted** that in September 2022, the Cabinet Government Administration and Expenditure Review Committee:
 - 7.1 agreed to establish the “Justice Cluster Tagged Operating Contingency” to facilitate the use of retained underspends, and fiscally-neutral reprioritisation decisions for the Justice Cluster;
 - 7.2 authorised Justice Cluster Ministers jointly to add funds to, and draw down from, the above tagged contingency;

7.3 agreed that the financial decisions to be made by Cluster Ministers must either be consistent with Cluster/Cluster agency priorities or address cost pressures, must not create an implicit or explicit pre-commitment for net additional expenditure and are subject to approval from the Minister of Finance;

[GOV-22-MIN-0033]

- 8 **noted** that the balance of the Justice Cluster tagged contingency will not be confirmed until Cluster Agencies final audited actuals have been confirmed on 30 September 2023;
- 9 **authorised** Justice Cluster Ministers to fund the proposal described in paragraphs 4 and 5 above using the Justice Cluster Tagged Operating contingency based on a conservative portion of departmental operating underspends before audited financial statements are available provided the decision is fiscally neutral to the Crown;
- 10 **noted** that if the balance in the Justice Cluster Tagged Contingency is not sufficient to fully fund the up to \$26.016 million for Police prosecutions over the two-year period described in paragraph 4 above, the Cluster will need to meet the balance through reprioritisation or seek a cluster exception;
- 11 **agreed** that if the conservative unaudited amount exceeds actual/audited underspends, the Justice Cluster will, at the next available baseline update, be expected to reduce their appropriations or fund the increase through reprioritisation agreed by Cabinet to ensure all appropriation decisions are fiscally neutral;
- 12 **Section 9(2)(f)(iv)** [REDACTED]
- 13 **Section 9(2)(f)(iv)** [REDACTED].

Rachel Clarke
Committee Secretary

Present:

Hon Carmel Sepuloni (Chair)
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Jan Tinetti
Hon Kiri Allan
Hon David Parker
Hon Priyanca Radhakrishnan
Hon Barbara Edmonds
Hon Willow-Jean Prime
Hon Rino Tirkatene

Officials present from:

Office of the Prime Minister
Officials Committee for SWC