

Terms of Reference – Proceeds of Crime Fund

Part A: The Fund

1. The Proceeds of Crime Fund (the Fund) consists of the monies forfeited to the Crown under the Criminal Proceeds (Recovery) Act 2009, once all other interests and matters are satisfied¹.

Purpose²

2. The purpose of the Fund is to:
 - address organised crime harm and drug-related harm
 - test innovative solutions to complex issues relating to crime-related harm
 - enable agencies to build an evidence-based case of what works in addressing crime-related harm.
3. The scope of the Fund includes both prevention and remediation of harm to raise the wellbeing and resilience of communities affected by drugs and crime.
4. The Fund enables a two to three-year funding cycle to allow sufficient time to implement and evaluate funded initiatives. This will help funding sustainability by allowing a stronger case for Budget bids for initiatives showing promise.

Funding Criteria

5. Funding recommendations will be based on the likelihood that the completed initiative will deliver the benefits and outcomes described in the funding proposal and contribute to the purpose of the Fund.
6. An initiative must align with at least one of the four criteria approved by Cabinet:
 - Expansion of alcohol and other drug treatment services.
 - Initiatives to fight organised criminal groups dealing in methamphetamine and other drugs.
 - Initiatives to address mental health issues within the criminal justice system.
 - Initiatives that address crime-related harm to communities and improve community wellbeing³.
7. At least one third of the funds for allocation are to be prioritised for fighting organised criminal groups dealing in methamphetamine and other drugs.

¹As set out in the Criminal Proceeds (Recovery) Act 2009

²See Cabinet Social Wellbeing Committee Paper: Proceeds of Crime Fund: the future of the Fund, March 2019

³See CAB-19-MIN-0087: Proceeds of Crime Fund: The Future of the Fund, 25 March 2019

Part B: Roles and responsibilities

Ministers

8. The Prime Minister, Minister of Justice and Minister of Finance determine which initiatives should receive Proceeds of Crime funding [CAB–19–MIN–0087], on the advice of a multi-agency Panel (the Panel). Joint Ministers may also agree to fund the costs of the New Zealand Police and the Official Assignee in realising assets for the Fund.

Ministry of Justice

9. The Ministry of Justice is responsible for administering the allocation process as the Secretariat of the Fund. The Secretary for Justice oversees the Secretariat performance of the Fund. The role of the Secretariat for the Fund is undertaken by the Investment team within the Ministry of Justice.

The Panel

10. Ministers determine the agencies represented on the Panel. Each agency is responsible for delegating an appropriate person to the role of Panel representative and notifying the Secretariat of any changes.
11. The Panel is chaired by a senior official from the Secretariat and comprises of a senior representative from:
 - Ministry of Education
 - Ministry of Health
 - Ministry of Justice
 - New Zealand Police
 - Oranga Tamariki
 - Te Ara Poutama (Department of Corrections)
 - Te Puni Kokiri
 - The Treasury
 - Chief Science Advisor (Justice Sector)
12. The Panel:
 - are responsible for considering and prioritising proposals
 - providing recommendations to the Prime Minister, Minister of Justice and the Minister of Finance for final decision-making
 - following relevant good practice and guidance including maintaining confidentiality, declaring and managing conflicts of interest.

Secretariat

13. The Secretariat will:

- run the allocation process and brief Ministers on the funding recommendations from the Panel
- report to the Minister of Justice and Minister of Finance on funds raised, funds allocated, the progress and outcome of each funded initiative, and the actual costs of the Official Assignee and the New Zealand Police
- provide Secretariat support to the Panel, setting timetables, triaging proposals, and providing advice
- engaging with applicant agencies to provide information, updates and oversee their obligations, including reporting
- maintain records and information for accountability and transparency.

Eligible agency

14. Proposals to the Fund can be made by public and non-public service departments (as defined by the Public Service Commission).
15. Agencies and organisations that are not eligible to apply directly to the Fund may partner with an eligible agency to submit a proposal. The eligible agency submitting the proposal is expected to take on the role of Lead Agency. Lead agencies are expected to take a pro-active approach in reviewing proposals and working with organisations seeking partnership.
16. Where a proposal is being submitted by multiple eligible agencies, one of the eligible agencies will be expected to take on the role of Lead Agency.

Lead Agency

17. Lead agencies will be responsible for:

- ensuring the initial and full proposals are submitted correctly and on time
- complying with the terms and conditions of the funding agreement
- making funds available to the partner agency/organisation
- overseeing and ensuring performance reporting is undertaken
- resolving any issues between the partnering agencies/organisations.

Agency Key Contact

18. The Justice Sector Leadership Board agreed (on 12 March 2020) that Justice Sector agencies will identify a key contact for oversight of proposals from their agency. This key contact is responsible for ensuring:
- all proposals are peer reviewed and templates are completed appropriately
 - all initiatives have the support of the lead agency
 - other agencies involved in the delivery of the initiative are appropriately consulted
 - the agency's finance team is consulted on the financial implications and recommendations
 - the agency's Panel representative is briefed on the initiatives being submitted and the agency's priorities
 - proposals are submitted on time.

Part C: Consideration of Proposals

19. The Secretariat will check all proposals for completeness and eligibility. Proposals which are incomplete, or ineligible, will not progress to the Panel for consideration. The Secretariat will be responsible for notifying a submitting agency/organisation of incomplete and/or ineligible proposals.
20. Initial and full proposals are expected to be submitted by the respective closing dates. Late submissions will be held for submission to the next funding round. The Secretariat will inform the submitting agency of the expected date for consideration.
21. When considering proposals, the Panel considers:
- whether the initiative meets the purpose and criteria of the Fund
 - the requirement that at least one third of the funds for allocation are to be prioritised for fighting organised criminal groups dealing in methamphetamine and other drugs
 - how well the initiative is designed and planned
 - the likelihood the organisation can deliver the initiative successfully
 - whether the proposal is likely to deliver the proposed outcomes and benefits
 - the amount of funding available in any round.
22. The Panel will take a consistent approach, where possible, to the consideration of proposals and the expectation placed on applicant.

Part D: Panel Meetings

23. The Panel meet twice for each funding round. There are usually two funding rounds per year. The Panel may meet at other times as required.
24. The first Panel meeting for each round is to shortlist proposals. Agencies with shortlisted proposals will then be invited to submit a full proposal.
25. The second Panel meeting is to consider the full proposals and make funding recommendations for Ministers.
26. The quorum for Panel meetings shall be five, or more than half of the Panel membership.
27. The Panel make recommendations by consensus decision-making. Panel members are conscious of conflicts of interest and confidentiality. They do not participate in decision making related to proposals from their own agency.
28. Prior to the meeting, the Secretariat will provide a copy of all submitted proposals for consideration at the meeting. Panel members are expected to read the material and be ready to make recommendations at the meeting.

Conflict of Interest

29. A conflict of interest arises where a Panel member has, or may have, a specific or material interest which conflicts with, or may be perceived to conflict with, the interests of fair and impartial distribution of funds.
30. The key question to ask when considering whether an interest may create a conflict is whether a reasonable, informed observer would think that the impartiality of the decision-maker may be affected.
31. There are circumstances where a Panel member must disclose an interest, or possible interest, and absent themselves from the decision-making process, solely because of the relationship between the Panel member and the applicant. For example:
 - a direct financial interest (however small) in an applicant organisation, or in the outcome of the decision
 - an indirect financial interest in the outcome of a decision, such as when a Panel member, or their agency, stands to make a potential benefit, or suffer potential liability (Panel members should not make funding recommendations related to proposals from their agency)
 - a personal non-financial interest, such as a member who plays an active role in an applicant organisation
 - a non-financial interest and there is, objectively, a real possibility of bias.

32. Conflicts of interest are to be declared and minuted, together with the action taken in response to the conflict.

33. When a conflict of interest is identified, the Panel member with a declared interest must:

- not vote on the sponsored proposal but may otherwise stay in the room to contribute information to the discussion or due diligence
- not make recommendations on the proposal

Confidentiality

34. It is expected that Panel members will:

- accept that they have a collective responsibility for all recommendations
- treat any information acquired in their role as Panel members with confidentiality, unless it is public information
- not disclose the nature of any discussions held within meetings
- not disclose the outcome of funding proposals before decisions have been made by Ministers and applicants have been formally notified
- refrain from making public comments on the Fund.

Part E: Final decisions and disclosure of information

Decisions

35. Funding decisions are made by joint Ministers (Prime Minister, Minister of Finance and Minister of Justice). They are final but may be subject to judicial review. Funding decisions may be publicised on the Ministry of Justice website.

Availability of Information

36. Agencies and organisations who receive funding must make any files or records (relating to the expenditure of the funding) available for inspection if requested by the Ministry of Justice, for a period of seven years after the receipt of the funding.

Proactive information release

37. An approach to proactive information release, consistent with government guidance, will be considered in due course.

Official Information Act 1982

38. All information provided to, and generated by, the Secretariat is able to be requested under the Official Information Act 1982 (OIA). As such, all funding proposals, Panel minutes and information relating to funding decisions (both successful and unsuccessful) are available unless there are good reasons under the OIA to withhold such information.