

Memorandum for Cabinet

**TYSON GREGORY REDMAN APPLICATION FOR COMPENSATION FOR WRONGFUL CONVICTION AND IMPRISONMENT: NEXT STEPS**

**Proposal**

1. Cabinet is asked to agree to compensate Tyson Gregory Redman for his wrongful convictions and imprisonment.

**Executive summary**

2. Mr Redman was convicted in August 2007 of wounding with intent to cause grievous bodily harm, injuring with intent to cause grievous bodily harm, injuring with reckless disregard for the safety of others, and unlawful assembly. He was sentenced to two and a half years' imprisonment, which he served in full. The convictions arose from two separate incidents that occurred on the same night at a 21<sup>st</sup> birthday party.
3. In December 2013, the Court of Appeal quashed Mr Redman's convictions for wounding and injuring without order of retrial. Mr Redman did not appeal against the unlawful assembly conviction, which related to the earlier of the two incidents.
4. Mr Redman applied for compensation for wrongful conviction and imprisonment on 23 July 2014 in respect of the wounding and injuring convictions that were quashed.
5. On 2 July 2015, the then Minister of Justice instructed Dr Donald Stevens QC to provide her with advice on whether Mr Redman had established his innocence on the balance of probabilities. Dr Stevens' report of 24 February 2017 concluded that, on the balance of probabilities, Mr Redman is innocent of the wounding and injuring charges.
6. On 12 April 2017, the Minister instructed Dr Stevens to provide advice on an appropriate amount of compensation for Mr Redman, calculated in accordance with the Cabinet Guidelines. The instructions asked Dr Stevens not to apply an inflation adjustment to his assessment of Mr Redman's non-pecuniary losses as that issue was (at that time) before the High Court in relation to Mr Pora's compensation payment.
7. In his report of 25 September 2017, Dr Stevens recommended that Mr Redman be paid compensation of \$369,611.43 (comprising \$327,311.43 for non-pecuniary loss, and \$42,300 for pecuniary loss).

8. In his report, Dr Stevens concluded that Mr Redman suffered significant mental and emotional harm, as a result of his wrongful convictions and imprisonment, s 9(2)(a)
  
9. In respect of compensation for pecuniary loss, Dr Stevens also recommended that the amounts referred to in paragraph 7 be augmented by payment of:
  - 9.1. Mr Redman's legal costs in bringing the compensation claim (once the amount is finalised); and
  - 9.2. Mr Redman's costs of receiving counselling and therapy s 9(2)(a) over two years and up to a maximum of \$21,700 including GST, to treat the mental and emotional harm caused by the wrongful imprisonment s 9(2)(a) ('treatment costs'), subject to invoices being submitted to the Ministry of Justice and clarification provided for the basis of the treatment costs.
  
10. The Legal Services Commissioner has now finalised the amount of Mr Redman's legal aid debt as \$32,994.41. That would bring Mr Redman's compensation for pecuniary losses to \$75,294.41.
  
11. In respect of compensation for non-pecuniary loss, Mr Redman requested that the amount assessed be adjusted for inflation. Having reviewed the matter in light of the High Court's decision in *Pora v Attorney-General* [2017] NZHC 2081 and Cabinet's application of that decision to Teina Pora's compensation claim, I consider that the interests of justice require that Mr Redman's non-pecuniary losses be inflation adjusted. This results in an extra amount of \$148,411.32, calculated on the same basis as Mr Pora's claim, bringing Mr Redman's non-pecuniary losses to \$475,722.75.
  
12. That would bring Mr Redman's compensation representing his pecuniary and non-pecuniary losses incurred to date to \$551,017.16. In addition, I accept that Mr Redman should be reimbursed for his future treatment costs over a period of up to 2 years and up to a maximum of \$21,700 including GST, on the terms Dr Stevens proposed.
  
13. I now seek agreement to the following compensation package for Mr Redman:
  - 13.1. an ex gratia payment of \$551,017.16 representing Mr Redman's non-pecuniary and pecuniary losses incurred to date for his wrongful convictions and imprisonment;
  - 13.2. an undertaking to reimburse Mr Redman's future treatment costs, over a period of up to 2 years and up to a maximum of \$21,700 including GST, subject to the provision of satisfactory invoices establishing that the treatment was for the mental and emotional harm caused by the wrongful convictions and imprisonment s 9(2)(a); and

- 13.3. a public statement of innocence and apology to Mr Redman by the Crown.

## **Background**

### *Mr Redman's convictions*

14. Mr Redman's convictions arose from a series of incidents that occurred at a 21<sup>st</sup> birthday party in Mt Roskill, Auckland. Mr Redman and others involved were convicted of unlawful assembly ('first incident'). Many of the same youths returned later in the evening, some with weapons ('second incident'). They attacked the partygoers, six of whom were injured. Mr Redman was charged with wounding with intent to cause grievous bodily harm, injuring with intent to cause grievous bodily harm, injuring with reckless disregard for the safety of others, and unlawful assembly.
15. At trial, the key issue was whether Mr Redman was present at the second incident. In his Police statement, he acknowledged being at the first incident but denied being at the second incident, instead stating he was at home. While Mr Redman did not testify, his mother, Mrs Carol Redman, gave alibi evidence to the effect that her son arrived home mid-evening, before the attack, and did not go out again. However, two of the partygoers said that Mr Redman had participated in the second incident. The jury accepted their evidence. Mr Redman was convicted in August 2007 and sentenced to two and a half years' imprisonment, which he served in full.

### *Appeal against convictions*

16. Mr Redman appealed his convictions to the Court of Appeal, but the appeal was dismissed on 5 May 2008. The appeal focussed on how the identification evidence placing Mr Redman at the fight and his mother's alibi evidence were dealt with at the trial. The Court of Appeal held there was no miscarriage of justice as the jury had not accepted Mrs Redman's account.

### *Royal prerogative of mercy application and Order in Council*

17. On 25 February 2009, Mr Redman applied for the exercise of the Royal prerogative of mercy. Mr Redman submitted that he was not present at the second incident and that a substantial miscarriage of justice had occurred. To that end, he submitted that the verdicts were unsafe in light of the evidence from eight potential witnesses (seven of whom had been co-accused) who provided affidavits sworn after the appeal. The deponents were not called to give evidence during the trial or appeal.
18. After an extensive review, the Ministry was satisfied that the affidavits were sufficiently cogent to warrant consideration by the Court of Appeal.
19. On the Ministry's advice, the then Minister of Justice, Hon Judith Collins, recommended that His Excellency the Governor-General refer the convictions in question to the Court of Appeal pursuant to section 406(1)(a) of the Crimes Act 1961.

20. On 29 October 2012 the Governor-General, the Rt Hon Sir Jerry Mateparae, signed an Order in Council under section 406(1)(a) of the Crimes Act 1961, referring Mr Redman's convictions to the Court of Appeal for consideration.

#### *Referral back to the Court of Appeal*

21. Mr Redman's appeal was heard in October 2013. The issue before the Court of Appeal was whether the new evidence (being the eight affidavits) was sufficiently credible to raise a real doubt about whether Mr Redman was at the second incident.
22. The Court acknowledged that Mr Redman's absence from the second incident was a "consistent theme" of the new witnesses, both in their Police statements at the time of the event and in their affidavits some years later. Further, the Crown made no suggestion that the witnesses had concocted their accounts at either stage.
23. The Court considered the Crown case "far from overwhelming" and concluded that the new evidence might reasonably have altered the verdict. However, the Court did not consider that a verdict of acquittal should be entered. The evidence presented was inconsistent and, while the defence presented new witnesses, the Court did leave open the possibility that even with the material and evidence available, a jury may find Mr Redman guilty at a retrial.
24. On 19 December 2013, the Court of Appeal quashed Mr Redman's convictions in relation to the second incident (wounding with intent to cause grievous bodily harm, injuring with intent to cause grievous bodily harm, and injuring with reckless disregard). The Court did not order a retrial as Mr Redman had served his full sentence. Instead, the proceedings were permanently stayed.

#### **Application for compensation for wrongful conviction and imprisonment**

25. Mr Redman subsequently lodged an application for compensation for wrongful conviction and imprisonment in respect of the wounding and injuring convictions that had been quashed. Mr Redman also sought "a public declaration" of his innocence.

#### *Cabinet Guidelines*

26. There is no legal right to compensation for wrongful conviction and imprisonment in New Zealand. Compensation payments have always been treated as ex gratia and discretionary. They are governed by Cabinet Guidelines first adopted in 1998 [CAB (98) M 46/6C, CAB (00) M 24/6 and POL Min (01) 34/5]. A copy of the Cabinet Guidelines is appended to this paper.
27. Under the Cabinet Guidelines, persons who have been pardoned or had their convictions quashed on appeal without order of retrial may apply to the Minister of Justice for compensation.

28. The Cabinet Guidelines provide that, on receiving an application, the Minister of Justice will, if it “merits further assessment”, refer the application to a Queen’s Counsel for an independent assessment of:
  - 28.1. whether the claimant is innocent on the balance of probabilities; and
  - 28.2. if so, the appropriate amount of compensation.
29. As Mr Redman had served a term of imprisonment and had his convictions quashed by the Court of Appeal without order of retrial, he was eligible to apply for compensation under the Cabinet Guidelines.
30. The Cabinet Guidelines provide that a claimant may be compensated for non-pecuniary and pecuniary losses suffered after conviction. With respect to loss of liberty, that means the period of imprisonment post-conviction that can be attributed to the wrongful conviction. In Mr Redman’s case, that means a period of imprisonment of 896 days or just under two and a half years.<sup>1</sup>

#### **Dr Stevens QC’s advice**

##### *Advice on innocence*

31. On 2 July 2015, the then Minister of Justice instructed Dr Donald Stevens QC to provide advice on whether Mr Redman had established that he is innocent on the balance of probabilities of the wounding and injuring charges arising from the second incident.
32. In the course of his inquiry into Mr Redman’s innocence, Dr Stevens received submissions from both Mr Redman and the Crown Law Office. He examined the evidence that had been before the courts as well as new evidence produced by each of the parties for the purpose of his inquiry.
33. On 24 February 2017, he reported to the Minister his opinion that Mr Redman is innocent on the balance of probabilities. Dr Stevens’ key findings in support of his conclusion were:
  - 33.1. Mrs Carol Redman provided reliable alibi evidence that Mr Redman was at home at the time of the second incident;
  - 33.2. s 9(2)(a) evidence that he recalled Mr Redman being given a lift home supported the evidence of alibi given by Mrs Redman, and the claim that Mr Redman was not at the second incident;
  - 33.3. Two witnesses who were present at the second incident s 9(2)(a) also provided support for the contention that Mr Redman was not at the second incident;

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<sup>1</sup> Mr Redman served 909 days’ prison in total. From this was deducted the 13 days he served for his unlawful assembly conviction, which Mr Redman did not challenge.

33.4. The identification evidence placing Mr Redman at the second incident was, in the circumstances of the case, unreliable.

34. Ultimately, Dr Stevens concluded that it was more likely than not that Mr Redman was not at the second incident and accordingly, Mr Redman had established his innocence on the balance of probabilities of each of the charges relating to the second incident.

#### *Advice on Quantum*

35. On 12 April 2017, the then Minister of Justice instructed Dr Stevens to provide advice on an appropriate amount of compensation for Mr Redman, calculated in accordance with the Cabinet Guidelines. The instructions asked Dr Stevens not to apply an inflation adjustment in his assessment of Mr Redman's non-pecuniary losses, as that issue was (at that time) before the High Court in relation to Mr Pora's compensation payment.

36. In preparing his advice on quantum, Dr Stevens considered written submissions made on behalf of Mr Redman, and the Crown Law Office's submissions in response. On 25 September 2017, Dr Stevens submitted his final report on quantum.

37. Dr Stevens concluded that Mr Redman's wrongful convictions and imprisonment have caused him significant mental and emotional harm that may have a long-term impact. Mr Redman was a first-time offender, aged 17 at the time of his arrest and "a relatively young 19-year-old" when he was sentenced to imprisonment. He was at an age where the prison environment significantly impaired his development in adolescence.

38. Dr Stevens accepted the findings in the clinical psychologist's report s 9(2)(a)

The clinical psychologist's report recommended Mr Redman receive professional counselling and therapy s 9(2)(a) for at least two years, to address the mental and emotional harm suffered as a result of his imprisonment.

39. Dr Stevens followed a three-step approach to calculating quantum, as required by the Cabinet Guidelines and confirmed by the High Court's decision in *Akatere v Attorney-General* [2006] 3 NZLR 705. That approach can be summarised as follows:

- 39.1. **Stage one:** Calculation of an amount for loss of liberty. A base figure of \$100,000 is multiplied by the number of years in custody so that the figure is proportional to the actual period of imprisonment post-conviction;

Dr Stevens' assessment: applying the \$100,000 annual rate, Mr Redman should be compensated \$245,311.43 to reflect the 896 days or just under two and a half years he spent in prison post-conviction on the quashed convictions.

- 39.2. **Stage two:** Calculation of a second, one-off, amount to reflect other types of non-pecuniary loss (loss of reputation, loss or interruption of family or other personal relationships, and mental or emotional harm). This calculation takes into account the aggravating and mitigating factors listed in paragraph 4 of the Cabinet Guidelines. The Guidelines states that only those cases with truly exceptional circumstances should result in a figure of more than \$100,000 and that on average the figure should even out at around \$100,000;

Dr Stevens' assessment: weighing the factors in the Cabinet Guidelines, Mr Redman should receive \$82,000 under this head. Dr Stevens reduced the starting amount of \$100,000 by 33% to reflect Mr Redman's conduct in attending the first incident (unlawful assembly), noting that his actions directly contributed to him being inaccurately identified as being at the second incident. Dr Stevens then made upward adjustments of 10%, to reflect the severity of Mr Redman's sentence, and a further 5% to reflect the seriousness of the offences of which Mr Redman was wrongfully convicted.

- 39.3. **Stage three:** Calculation of an amount to compensate for pecuniary loss, such as loss of livelihood and future earnings potential, loss of property, and costs associated with obtaining an acquittal or compensation.

Dr Stevens' assessment: Mr Redman should be compensated \$42,300. This sum comprises \$7,200 for loss of earnings while in custody and \$35,100 for loss of future earnings potential. Dr Stevens recommended modest sums for loss of earnings and loss of future earning abilities based on the available evidence of Mr Redman's work experience prior to imprisonment, and the extent to which his ability to hold down full-time work after leaving prison was impaired s 9(2)(a).

40. The figures obtained at each of the three stages are then added together to produce a total amount of compensation. In Mr Redman's case, this resulted in a total amount of \$369,611.43 (comprising \$327,311.43 for non-pecuniary loss, and \$42,300 for pecuniary loss).
41. Dr Stevens identified two other pecuniary losses that were not able to be quantified at the time of his report:
- 41.1. **Legal costs:** Mr Redman claimed the legal costs of bringing his compensation application, for which he had legal aid. At the time of Dr Stevens' report, the Legal Services Commissioner had not confirmed the final amount of Mr Redman's legal aid debt.<sup>2</sup> Accordingly, Dr Stevens recommended payment of the amount of the debt due to the Legal Services Commissioner once that sum has been confirmed.<sup>3</sup>

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<sup>2</sup> The Legal Services Commissioner indicated that where costs are awarded to a legally aided client, the Commissioner may seek to recover up to the total cost of legal aid services rendered.

<sup>3</sup> The cost of legal services provided to Mr Redman was \$27,163.85 at the date of Dr Stevens' report.

- 41.2. **Counselling costs:** Mr Redman sought compensation to cover weekly counselling sessions (at \$200 a session) for a 3-year period.

s 9(2)(a)

Dr Stevens' view was that it would be reasonable to provide financial support for a *two-year* period to cover the costs of receiving counselling and therapy

s 9(2)(a)

up to a maximum of \$21,700 including GST,<sup>4</sup> to treat the mental and emotional harm caused by the wrongful imprisonment (‘treatment costs’). This would be subject to invoices being submitted to the Ministry of Justice and clarification provided for the basis of the treatment costs.

#### **Comment on Dr Stevens' advice**

42. The Ministry of Justice is satisfied that Dr Stevens conducted a fair inquiry in relation to both of his reports, and that his reports are thorough, robust and reliable. In particular, the Ministry considers that:
- 42.1. Dr Stevens' calculation of non-pecuniary loss for loss of liberty is accurate;
- 42.2. The stage two figure recommended by Dr Stevens for other heads of non-pecuniary loss is fair; and
- 42.3. Dr Stevens' recommended figures for loss of livelihood and loss of future earning abilities are appropriate in the circumstances.
43. As to Mr Redman's legal costs, the Legal Services Commissioner has now finalised the amount of Mr Redman's legal aid debt as \$32,994.41.
44. I accept Dr Stevens' advice that it would be reasonable to meet Mr Redman's future treatment costs, over a period of up to 2 years and up to a maximum of \$21,700 including GST, on the terms Dr Stevens proposed.

#### **Mr Redman's request for inflation adjustment of non-pecuniary loss**

45. Mr Redman has requested that the amounts assessed for non-pecuniary loss be adjusted for inflation. That request now falls to be considered in light of Ellis J's decision in *Pora v Attorney-General* [2017] NZHC 2081 and Cabinet's application of that decision to Teina Pora's compensation claim.
46. In *Pora v Attorney-General*, Ellis J granted a declaration that the Cabinet Guidelines “permit the quantum of compensation payable to an applicant for non-pecuniary losses to be adjusted for inflation, where it is in the interests of justice to do so”. Ellis J explained how she saw “the interests of justice” being assessed in this context:

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<sup>4</sup> Dr Stevens has confirmed with officials that he intended this \$21,700 figure to be GST inclusive.

- 46.1. The interests of justice ordinarily require those who are in like positions to be consistently treated;
  - 46.2. Consistency would normally suggest that compensation for non-pecuniary loss should be inflation adjusted where not to do so would result in the applicant being treated substantially differently, in real terms, from other applicants;
  - 46.3. In Mr Pora's case, the evidence suggested that Mr Pora had been treated substantially worse in real terms than other applicants and also that an inflation adjustment would not result in Mr Pora being treated substantially better than earlier claimants under the Guidelines.
47. Cabinet applied this approach to Mr Pora's compensation claim [CAB-17-MIN-0493].
48. In assessing Mr Redman's request, I have considered that:
- 48.1. Unadjusted for inflation, there would be a substantial reduction, from year 2000 values, in the purchasing power of Mr Redman's award;
  - 48.2. Mr Redman is in a like position to Mr Pora. In both cases, the amounts assessed for non-pecuniary losses have reduced in real value over a 17-year period and require an adjustment of approximately 45% to restore their value to 2000 standards;
  - 48.3. The impact of inflation makes a significant difference to the total amount of Mr Redman's award for non-pecuniary loss (the difference between the adjusted and unadjusted amount is \$148,411.32);
  - 48.4. Were an adjustment to be made for Mr Redman, his treatment would be consistent with Mr Pora. Were he not to receive an inflation adjustment, he would be treated substantially worse than Mr Pora;
  - 48.5. If there was no adjustment, Mr Redman would also be treated substantially worse than applicants who were compensated under the Guidelines closer in time to 2000, when the benchmarks were set;
  - 48.6. There appear to be no egregious or distinguishing features of Mr Redman's case that would justify withholding the inflation adjustment.
49. Having reviewed the matter in line with the High Court's decision and Cabinet's application of that decision to Mr Pora's compensation claim, I consider that, in the circumstances of Mr Redman's case, the interests of justice favour inflation adjustment of his compensation for non-pecuniary losses. I recommend that he be compensated accordingly.
50. I propose that the amount of compensation paid to Mr Redman for non-pecuniary losses should be inflation adjusted on the following basis, in line with the approach Cabinet adopted in assessing Mr Pora's inflation adjustment [CAB-17-MIN-0493, paragraphs 7 – 8]:

- 50.1. The total amount of compensation assessed by Dr Stevens for non-pecuniary losses (\$327,311.43) should be multiplied by the change in the relevant inflation index;
  - 50.2. The relevant index was the Consumer Price Index (All Groups CPI / index SE9A), which reflects the change in purchasing power over any specified period;
  - 50.3. The starting point for inflation adjustment should be July 2000, when the \$100,000 benchmarks in the Additional Guidelines were set;
  - 50.4. The end point should be the nearest complete quarter year to the time of payment (here being the quarter ending 31 December 2017).
51. Expert advice from an actuary in Mr Pora's case was to use the following calculation formula:

$$\text{Unadjusted amount} \times \frac{\text{Current index value}}{\text{Index value at benchmark date}} = \text{Total adjusted amount}$$

52. Applying this to Mr Redman's assessment, the total inflation adjusted amount for non-pecuniary loss is:<sup>5</sup>

$$\$327,311.43 \times \frac{1006}{692.157986} = \$475,722.75$$

53. The additional payment required to allow for inflation is \$148,411.32, being the difference between the unadjusted amount (\$327,311.43) and adjusted amount (\$475,722.75).
54. I therefore ask Cabinet to:
- 54.1. accept Dr Stevens' advice that Mr Redman is innocent on the balance of probabilities and that he should be compensated \$327,311.43 for non-pecuniary loss, and \$75,294.41 for pecuniary loss (which includes his finalised legal costs of \$32,994.41);
  - 54.2. agree that, in accordance with *Pora v Attorney-General*, an additional amount of \$148,411.32 should be paid to Mr Redman to reflect an adjustment for inflation to the non-pecuniary loss assessed by Dr Stevens (bringing Mr Redman's total non-pecuniary loss to \$475,722.75);

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<sup>5</sup> Since the inflation adjustment for Mr Pora was calculated, a new index series base period has been set by Statistics New Zealand. This process is known as rebasing. The rebased index series can be used in place of the previous index series with the same result. Accordingly, although the figure for the "index value at benchmark date" is a different number from that used in Mr Pora's calculation (as the whole index series has been rebased, including both the June 2000 quarter and the December 2017 quarter), the same measure of inflation is being applied.

- 54.3. agree to make an ex gratia payment of \$551,017.16 as compensation to Mr Redman representing his non-pecuniary losses adjusted for inflation and pecuniary losses (including legal costs);
- 54.4. agree to reimburse Mr Redman's future treatment costs over a period of up to 2 years and up to a maximum of \$21,700 including GST, subject to the provision of satisfactory invoices establishing that the treatment was for the mental and emotional harm caused by the wrongful convictions and imprisonment s 9(2)(a)

### **Other features of the compensation package**

#### *Public statement of innocence and apology*

55. In addition to monetary compensation, Mr Redman has also sought "a public declaration" of his innocence.
56. The Guidelines provide that compensation may include "a public statement of the person's innocence and in appropriate cases a public apology by the Crown". Past practice has been for the Government to issue a public statement of innocence and apology to successful claimants.
57. Given Dr Stevens' findings, I agree that a statement of innocence and apology in Mr Redman's favour is entirely appropriate. That apology would acknowledge the impact on Mr Redman of his wrongful convictions and imprisonment but is not an acceptance of fault on the part of the Crown.

#### *Agreement to forgo proceedings*

58. The recommended ex gratia payment would be subject to Mr Redman agreeing to forego any legal action against the Crown in respect of matters relating to his convictions, imprisonment, claim for compensation for wrongful conviction and imprisonment, and all related proceedings.

### **Offer to Mr Redman**

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

### **Consultation**

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

### **Financial implications**

61. When establishing the Cabinet Guidelines, Cabinet agreed that it would decide on a case by case basis to appropriate funds for each compensation payment [STR (98) M 39/6].
62. The Ministry of Justice is not funded for any ex gratia or compensation payments and is unable to make any cost reductions to absorb this payment. The payment will be a charge against the general contingency.

### **Human rights**

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

### **Legislative implications**

64. There are no legislative implications.

### **Regulatory impact analysis**

65. A regulatory impact analysis is not required.

### **Publicity**

66. My office will co-ordinate publicity following Cabinet's decision and the acceptance of the offer by Mr Redman.

### **Recommendations**

67. The Minister of Justice recommends that Cabinet:
  1. **note** that Mr Redman was convicted in August 2007 of wounding with intent to cause grievous bodily harm, injuring with intent to cause grievous bodily harm, and injuring with reckless disregard for the safety of others, and unlawful assembly;
  2. **note** that in 2013 the Court of Appeal quashed Mr Redman's convictions for wounding and injuring without order of retrial;
  3. **note** that Mr Redman was eligible to apply for compensation under the Cabinet Guidelines governing compensation for wrongful convictions and imprisonment and did apply on 23 July 2014;
  4. **note** that, on 2 July 2015, the then Minister of Justice instructed Dr Donald Stevens QC to advise whether Mr Redman had proved his innocence on the balance of probabilities;
  5. **note** that, on 24 February 2017, Dr Stevens advised the then Minister of Justice that Mr Redman had established his innocence on the balance of probabilities;

6. **note** that, on 12 April 2017, the then Minister of Justice instructed Dr Stevens to provide advice on an appropriate amount of compensation for Mr Redman, calculated in accordance with the Cabinet Guidelines, and instructed Dr Stevens not to include an inflation adjustment in his assessment of calculated losses;
7. **note** that, on 25 September 2017, Dr Stevens recommended that Mr Redman be:
  - 7.1. paid total compensation of \$369,611.43 (comprising \$327,311.43 for non-pecuniary loss, and \$42,300 for pecuniary loss);
  - 7.2. in respect of compensation for pecuniary loss, Dr Stevens also recommended that the amounts referred to in paragraph 7.1 be augmented by payment of:
    - 7.2.1. Mr Redman's legal costs in bringing the compensation claim (once the amount was finalised);
    - 7.2.2. Mr Redman's costs of receiving counselling and therapy s 9(2)(a), over two years and up to a maximum of \$21,700 including GST, to treat the mental and emotional harm caused by the wrongful imprisonment s 9(2)(a) ('treatment costs'), subject to invoices being submitted to the Ministry of Justice and clarification provided for the basis of the treatment costs.
8. **agree**, in light of Dr Stevens' advice, that Mr Redman be compensated for his wrongful convictions and imprisonment;
9. **note** that, the Legal Services Commissioner has now finalised the amount of Mr Redman's legal aid debt as \$32,994.41;
10. **note** that, in light of the High Court's decision in *Pora v Attorney-General* [2017] NZHC 2081, the Cabinet Guidelines permit the quantum of compensation payable to an applicant for his or her non-pecuniary losses to be adjusted for inflation, where it is in the interests of justice to do so;
11. **agree** that the interests of justice require that Mr Redman's compensation payment for non-pecuniary losses be adjusted for inflation;
12. **agree** to make an inflation adjustment to Mr Redman's compensation for non-pecuniary losses of \$148,411.32, based on the change in the Consumer Price Index (All Groups) between July 2000, when the benchmarks in the Guidelines were adopted, and the quarter year ending in 31 December 2017;

13. **agree** that the following compensation package be offered to Mr Redman:
- 13.1. an ex gratia payment of \$551,017.16 representing Mr Redman's non-pecuniary losses adjusted for inflation and pecuniary losses (including finalised legal costs of \$32,994.41) incurred to date for his wrongful convictions and imprisonment;
  - 13.2. an undertaking to reimburse Mr Redman's future treatment costs over a period of up to 2 years and up to a maximum amount of \$21,700 including GST, subject to the provision of satisfactory invoices establishing that the treatment was for the mental and emotional harm caused by the wrongful convictions and imprisonment, s 9(2)(a) ;
  - 13.3. a public statement of innocence and apology made to Mr Redman by the Minister of Justice on behalf of the Crown;
14. **approve** the following change to appropriation to provide for the ex gratia payment to Mr Redman for wrongful conviction and imprisonment, with a corresponding impact on the operating balance:

Vote Justice Minister of Justice	\$m – increase/(decrease)				
	2017/18	2018/19	2019/20	2020/21	2021/22 & Outyears
<i>Non-Departmental Other Expense:</i> Compensation for Wrongly Convicted Individuals	0.573	-	-	-	-

15. **agree** that the proposed change to appropriation for 2017/18 above be included in the 2017/18 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
16. **agree** that the expenses incurred under recommendation 13 above be a charge against the between-Budget operating contingency, established as part of Budget 2017;
17. **authorise** the Minister of Justice to offer the compensation package under recommendation 13 above to Mr Redman;
18. **note** that if Mr Redman accepts the offer he will be required to forego any further legal action against the Crown in respect of matters relating to his wounding and injuring convictions;

19. **note** that my office will coordinate publicity following Cabinet's decision and the acceptance by Mr Redman of the compensation package.

Hon Andrew Little  
**Minister of Justice**

Date signed:

## APPENDIX: CABINET GUIDELINES

### COMPENSATION AND EX GRATIA PAYMENTS FOR PERSONS WRONGLY CONVICTED AND IMPRISONED IN CRIMINAL CASES

#### Criteria for eligibility and factors to be taken into account in determining the size of payments

1. The category of claimants who shall be eligible to receive compensation or ex gratia payment in respect of being wrongly convicted of offences (qualifying persons) is limited to those who:
  - (a) Have served all or part of a sentence of imprisonment; **and either**
    - (i) have had their convictions quashed on appeal, without order of retrial, in the High Court (summary convictions); Court of Appeal (including references under section 406 of the Crimes Act 1961); or Courts Martial Appeal Court; **or**
    - (ii) have received a free pardon under section 407 of the Crimes Act 1961; **and**
  - (b) Are alive at the time of the application.
2. Any qualifying person may apply to the Minister of Justice for compensation or ex gratia payment and the Minister shall refer those cases meriting further assessment to a Queen's Counsel appointed by the Minister for that purpose.
3. In the case of an application by a qualifying person convicted by way of court martial, application should be made to the Minister of Defence who will consult with the Minister of Justice when referring cases meriting further assessment to a Queen's Counsel.
4. The Queen's Counsel shall report to the referring Minister, certifying whether he or she is satisfied that the claimant is innocent on the balance of probabilities. If concluding this is so, he or she will also recommend an appropriate amount of compensation/ex gratia payment, taking into account the following factors:
  - (a) the conduct of the person leading to prosecution and conviction;
  - (b) whether the prosecution acted in good faith in bringing and continuing the case;
  - (c) whether the investigation was conducted in a reasonable and proper manner;
  - (d) the seriousness of the offence alleged;
  - (e) the severity of the sentence passed; and
  - (f) the nature and extent of the loss resulting from the conviction and sentence.
5. Losses are in respect only of the period following conviction and are defined as follows:

*Non-pecuniary losses*

  - (a) loss of liberty;
  - (b) loss of reputation (taking into account the effect of any apology to the person by the Crown);
  - (c) loss or interruption of family or other personal relationships; and
  - (d) mental or emotional harm.

*Pecuniary losses*

- (a) loss of livelihood, including loss of earnings, with adjustments for income tax and for benefits received while incarcerated;
  - (b) loss of future earning abilities;
  - (c) loss of property or other consequential financial losses resulting from detention or imprisonment; and
  - (d) costs incurred by or on behalf of the person in obtaining a pardon or acquittal.
6. Compensation may comprise an ex gratia payment by the Crown, a public statement of the person's innocence and in appropriate cases a public apology by the Crown.
  7. Claimants shall have no right of appeal against an assessment of compensation/ex gratia payment and in accepting any offer made they must agree to forego and discontinue any other claims against the Crown in respect of matters relating to the convictions that led to the offer of compensation/ex gratia payment.

#### **ADDITIONAL GUIDELINES ON QUANTUM OF FUTURE COMPENSATION**

1. The calculation of compensation payments under the Cabinet criteria should be firmly in line with the approach taken by New Zealand courts in false imprisonment cases.
2. The starting figure for calculating non-pecuniary losses should be set at \$100,000 and this base figure is to be multiplied on a pro rata basis by the number of years spent in custody so that awards for non-pecuniary losses are proportional to the period of detention.
3. The figure obtained under the calculations referred to above should be then added to the figure representing the amount assessed for the presence/absence of the factors outlined in the Cabinet guidelines.
4. Only those cases with truly exceptional circumstances would attract general compensation that is greater than \$100,000, and on average the relevant figure should even out around \$100,000.
5. A claimant's pecuniary losses should be calculated separately, and the resulting figure should then be added to the amount assessed for non-pecuniary loss, the sum of which represents the total compensation payable to a claimant.