

## Compensation for wrongful conviction and imprisonment

There is no legal right to compensation for wrongful conviction and imprisonment. However, the Government in its discretion can compensate someone wrongfully convicted and imprisoned by making an ex gratia payment.

Compensation under the following scheme is only payable to persons who:

- (a) are imprisoned following a wrongful conviction that is subsequently set aside;
- (b) are, at a minimum, innocent on the balance of probabilities.

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### Cabinet guidelines

Cabinet has established guidelines for deciding whether or not someone receives compensation for wrongful conviction and imprisonment and how much compensation they receive.

*Eligible claimants must be imprisoned, and subsequently pardoned or convictions quashed*

The Cabinet guidelines require claimants to:

- be alive at the time of application
- have served all or part of a sentence of imprisonment
- have received a free pardon or have had their convictions quashed on appeal without order of retrial.

*Investigation and determination of claims*

The Ministry of Justice initially assesses each claim. Claims meriting further assessment are referred by the Minister of Justice to a Queen's Counsel for advice. The Queen's Counsel then reports to the Minister on the merits of the claim. If the Queen's Counsel is satisfied that the applicant is innocent on the balance of probabilities, the Queen's Counsel will recommend an appropriate amount of compensation in line with the guidelines. Cabinet makes the final decision on the recommendation of the Minister.

*Types of compensation*

The Cabinet guidelines contemplate three kinds of compensation for successful claimants:

- payments for non-pecuniary losses following conviction (for example, loss of liberty or emotional harm) – based on a starting figure of \$100,000 for each year in custody
- payments for pecuniary losses following conviction (for example, loss of livelihood and future earnings)
- a public apology or statement of innocence.

*Process for determining eligibility and quantum of compensation*

The process for determining eligibility and quantum of compensation for claims within Cabinet guidelines is set out in the flow chart on page 3.

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**Claims outside guidelines**

In making the guidelines, Cabinet reserved the discretion to pay compensation to an applicant who was *not eligible* in extraordinary circumstances, where it is in the interests of justice.

*Non-eligible* claimants include persons who have had their convictions quashed or set aside under the following circumstances:

- where a retrial is ordered by an appeal court but the trial does not proceed;
- where a retrial is ordered by an appeal court and the person is acquitted at the retrial; or
- where the conviction is quashed on a rehearing in the District Court.

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*Investigation and determination of claims outside guidelines*

Cabinet prescribed no additional criteria or process for consideration of claims falling outside the Cabinet guidelines. However, current practice is to ensure that, where relevant, important principles in the Cabinet guidelines are applied in a consistent manner to such claims.

Claimants outside guidelines must show, at a minimum, that they are innocent on the balance of probabilities. They must also show that there are extraordinary circumstances that justify compensation.

Unlike claims inside the Cabinet guidelines, there is no requirement that the claim be considered by a Queen's Counsel. The Ministry of Justice may, however, seek a Queen's Counsel's assistance in relation to any or all aspects of a claim.

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*Types of compensation*

There is no requirement to apply the Cabinet guidelines relating to calculation of compensation. However, an approach is usually adopted that is generally consistent with the guidelines.

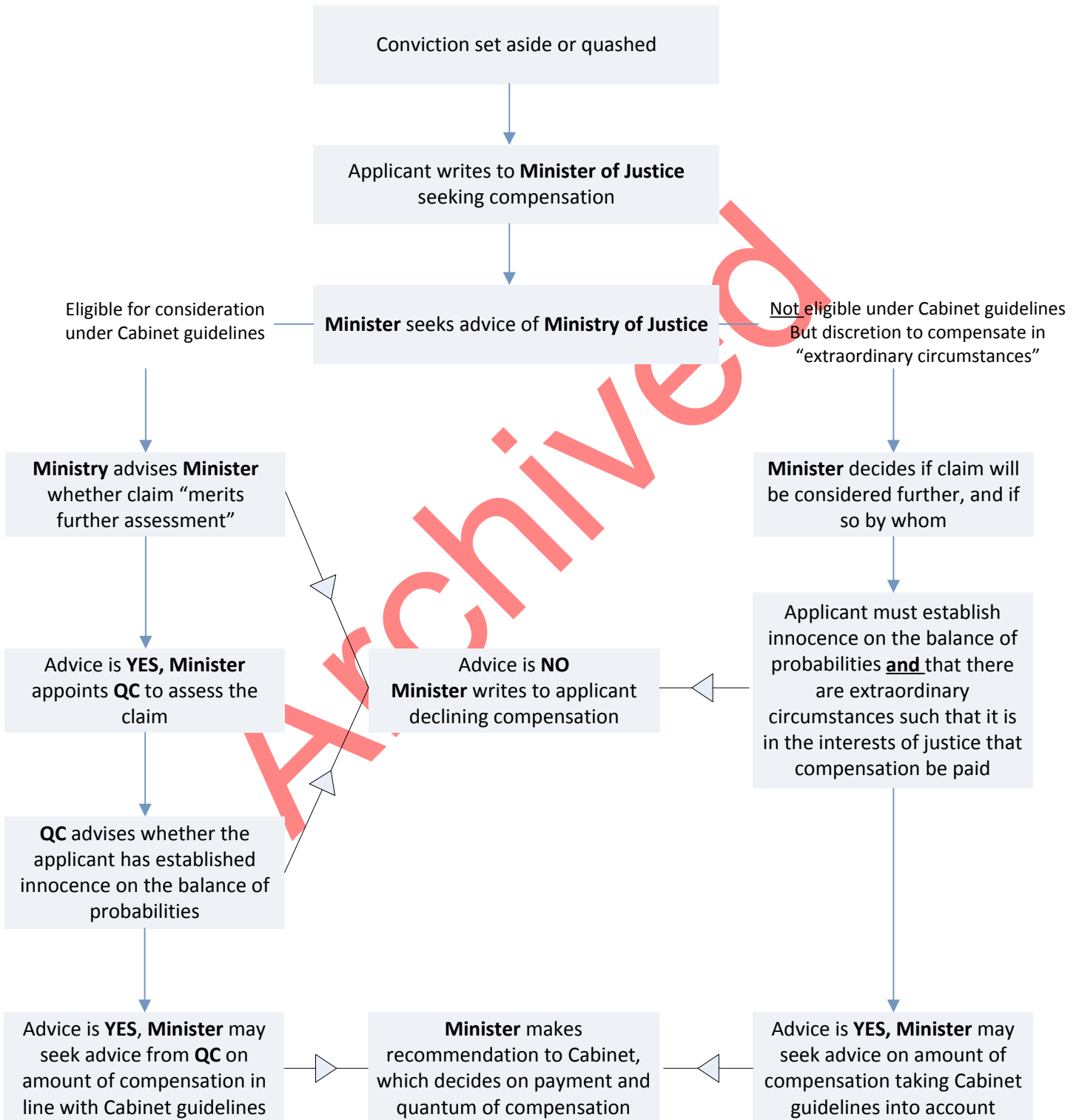
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*Process for determining eligibility and quantum of compensation*

The process for determining eligibility and quantum of compensation for claims outside guidelines is set out in the [flow chart on page 3](#).

# Process for determining eligibility and quantum of compensation

## Compensation for wrongful conviction and imprisonment



## Information for potential applicants

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### Who can apply for compensation?

If you believe you have been wrongfully convicted and imprisoned you can apply to the Minister of Justice for compensation.

You can make an application yourself or someone, such as a lawyer, can apply on your behalf. A lawyer can advise you on the merits of making an application and, if you go ahead, can also help you collect relevant information and prepare your submissions.

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### How do I apply?

Applications for compensation should be submitted to the Minister of Justice. You will need to provide information about your convictions and imprisonment, and how your convictions were quashed or set aside.

At a minimum, you will need to explain why you are innocent of the charges and state what evidence you rely on to show your innocence. The onus is on the applicant to establish his or her innocence, at a minimum, to the balance of probabilities.

If your claim is outside the Cabinet guidelines, you will also need to explain why it is you think there are extraordinary circumstances in your case justifying compensation. This is a high standard to meet.

Your application, including any supporting documents and submissions, should be sent to the Office of the Minister of Justice at the following address:

Minister of Justice  
Parliament Buildings  
WELLINGTON 6160

## Appendix: Cabinet guidelines

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### Cabinet guidelines

Cabinet has approved guidelines for deciding whether someone is eligible for compensation and how much they should receive. The following reproduces the text of:

- Cabinet guidelines on eligibility criteria and factors to be taken into account in determining the size of payments
- Additional guidelines on the quantum of compensation payments.

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### 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.

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**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 that 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 that 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.