

The Treasury

GOV-22-SUB-0033 - Budget 2022 Pilot: Clusters Multi-Year Funding and Performance Reporting Proposal

November 2022

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Cabinet Document Details

Title: **Cabinet Paper: GOV-22-SUB-0033: Budget 2022 Pilot: Clusters Multi-Year Funding and Performance Reporting Proposal**

Date: **21 September 2022**

Creator: Office of the Minister of Finance

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Budget 2022 Pilot: Clusters Multi-Year Funding and Performance Reporting Proposal

- 1 This submission updates Cabinet on the Budget 2022 Clusters pilot and seeks agreement to associated multi-year funding, planning and reporting requirements. This involves delegating authority for financial decisions that are required to implement these requirements.

Relation to Government priorities

- 2 This submission aligns with the Government's overarching goal of "Laying the foundations for a better future". Providing Cluster agencies with multi-year funding certainty and greater flexibility to plan and manage their spending aims to support the delivery of longer-term wellbeing outcomes and better value-for-money for New Zealanders.

Executive Summary

- 3 The Clusters approach is an opportunity to pilot more-effective agency delivery and accountability for outcomes through a greater focus on inter-agency collaboration, supported by multi-year funding and improved monitoring and reporting.
- 4 In August 2021, Cabinet agreed [CAB-21-MIN-0349 refers] to pilot two multi-agency Clusters (the Natural Resources Cluster¹ and the Justice Cluster²), which in Budget 2022 received operating funding for the next three Budgets [CAB-22-MIN-0129 refers]. This submission seeks your agreement to multi-year funding, planning and reporting requirements for these Clusters over the three-year pilot period.
- 5 The Clusters in the pilot have evolved differently. The Justice Cluster has built on a strong basis of existing cross-agency collaboration and has made progress on all three of the Cluster objectives of better inter-agency collaboration, multi-year funding, and improved monitoring and reporting. In contrast, the Natural Resources Cluster agencies have a mix of complementary and distinct roles, which means the degree of collaboration is different to the Justice Cluster. As a result, I propose that the predominant focus of the Natural Resource Cluster pilot be more on the multi-year funding and reporting dimensions with a limited degree of collaboration.

¹ Natural Resources Cluster consists of three agencies: Ministry for Primary Industries, Ministry for the Environment, and the Department of Conservation

² Justice Cluster consists of five agencies: Ministry of Justice, New Zealand Police, Ara Poutama Aotearoa - Department of Corrections, Serious Fraud Office, and the Crown Law Office

- 6 To support the Clusters manage within the three-year funding envelopes agreed in Budget 2022, I seek decisions from Cabinet to provide additional financial flexibility to that set out in Cabinet Office Circular (18) 2.³ This additional flexibility includes greater ability to retain and manage departmental operating underspends up to a prescribed limit and the ability to make fiscally-neutral reprioritisation decisions by Cluster Ministers⁴ (subject to my approval that the decisions are within the delegations agreed through this submission). I also recommend that Cabinet agrees rules that will help mitigate fiscal risks around these multi-year funding arrangements for Clusters. Beyond the delegations and rules proposed in this submission, I propose that the decision-making authority and procedural requirements as set out in Cabinet Office Circulars (18) 2 and (19) 6 continue to apply to Clusters.
- 7 To ensure greater visibility of the delivery of outcomes and support effective management of Clusters' three-year spending envelope, I also propose the following planning and reporting over the three-year period: annual report-backs in December to Cabinet or Joint Ministers; updates to existing required accountability documents provided to Parliament and the public; and additional reporting on a subset of significant initiatives/programmes. Each Cluster will be expected to produce some additional products: for the Justice Cluster, a strategic narrative, a capital plan, and an end of pilot report; and for the Natural Resources Cluster, an implementation plan.
- 8 The decisions I seek in this submission will support Clusters to manage their multi-year funding, planning and reporting. They will also enable us to learn from the Clusters' experiences, with lessons for other multi-year funding-arrangements, such as in the health sector.

Background

- 9 Our current public finance system is largely based on fiscal control, an annual funding cycle and vertical accountabilities. This means the system is not always as well suited to meeting today's complex opportunities and challenges. These challenges are often inter-agency or inter-sectoral, long term, and often concern social outcomes.
- 10 Also, the current system does not adequately promote some of the key goals of public-sector management (i.e. achieving value for money, assuring delivery, strong agency performance, and improved results) as well as it could. Three key reasons for this are:
 - 10.1 A short-term focus: The combination of fiscal imperatives and an annual Budget encourage deferral of long-term issues;
 - 10.2 A focus on individual agencies: The system promotes a siloed approach to tackling issues, which, as noted above, are often inter-agency or inter-sectoral; and

³ CO (18) 2 applies to proposals with financial implications and includes requirements on where decisions must be made by Cabinet (e.g., when they provide net additional funding, and significant policy decisions as defined in Cabinet Manual) or where they can be made by Joint Ministers (e.g., fiscally neutral adjustments, and retention of underspends within certain criteria).

⁴ All Cluster Ministers for the Justice Cluster but only Portfolio Ministers responsible for appropriations for each agency for the Natural Resources Cluster.

10.3 Not enough meaningful monitoring and reporting: Current monitoring and reporting requirements do not always support the complexity and timeframes involved in addressing the issues important to New Zealand or adequately track the value delivered from expenditure.

11 Clusters were developed in response to these issues. They have three key elements:

11.1 Multi-year funding: A three-year budget cycle that examines baselines in-depth, reducing the overhead of the annual budget cycle, and improves the ability to make trade-offs/prioritise and sequence investments over time by taking a longer-term approach to funding decisions;

11.2 Cross-agency collaboration: Grouping agencies into Clusters and developing collective priorities that contribute to the Government's wellbeing objectives; and

11.3 Improved monitoring and reporting: Planning and reporting organised around clusters of agencies and having a greater focus on value delivered.

Progress to Date

12 In August 2021, Cabinet agreed to pilot two multi-agency Clusters (the Natural Resources Cluster and the Justice Cluster), which were established on a non-statutory basis [CAB-21-MIN-0349 refers]. The Clusters developed shared priorities and underwent spending reviews to assess the efficiency and effectiveness of existing spending, prior to developing multi-year funding proposals for Budget 2022.

13 In Budget 2022, the Clusters received \$3.8 billion total operating funding for the next three Budgets [CAB-22-MIN-0129 refers]. A key intention of the pilot is that the Clusters manage within their Budget 2022 operating funding packages over the next three years. The proposals I am recommending in this submission are intended to support the Clusters to manage within their packages by providing some additional flexibility. However, the Clusters cannot be expected to manage all potential risks. Therefore, an exceptions process has been developed, which is discussed in greater detail in paragraphs 35-40.

14 To simplify the pilot approach some areas of Cluster funding will continue to use an annual Budget process. These include capital⁵ (and associated operating funding) and operating funding outside the Cluster Budget 2022 three-year spending envelopes, e.g., Crown Entities, the Joint Venture for the Prevention of Family Violence and Sexual Violence, Judges' salaries, the Road Safety Partnership Programme, Emissions Trading Scheme, Climate Emergency Response Fund, non-government funded areas such as industry levies, and formula-driven funding that are funded outside Budget allowances.

⁵ This also covers other types of significant investment initiatives, which are now classified as operating expenses but were previously considered capital expenditure, such as the procurement of digital/data as a service.

- 15 The two Clusters have evolved in different ways over their establishment phase:
 - 15.1 The Justice Cluster has built on its existing sector collaboration, for example the Justice Sector Leadership Board. It is well-placed to continue this collaboration across the three-year funding period, including through the use of an ongoing Cluster secretariat; and
 - 15.2 The Natural Resources Cluster has taken a different approach to developing its initiatives and Budget 2022 package, with most initiatives and elements of the package developed on an individual-agency basis. The Natural Resources Cluster also does not have an ongoing secretariat. The development of agency-specific initiatives was primarily related to Cluster agencies having fewer areas of overlap in shared priority-areas for investment, and more areas of potential tension where shared priorities were identified (including, at times, competing interests, in particular balancing economic growth with environmental outcomes). As a result, the degree of future collaboration in the Natural Resources Cluster will be more limited.

Proposals

- 16 This submission recommends multi-year funding and performance-reporting arrangements for the three-year pilot period for the two Clusters (see Annex 1 for more detail). The funding element of these proposals will support the Clusters to manage their budgets over the three-year period and the planning and reporting proposals will enable us to assess progress against both the objectives of the Cluster pilots and the Cluster priorities.
- 17 Based on the experience with the Clusters to date, I am proposing different approaches for the two Clusters. This differentiated approach has the advantage of progressing change in accordance with agency and sector context that reflects how they work together in practice:
 - 17.1 Justice Cluster: a Cluster-based approach to achieve multi-year funding, cross-agency collaboration, and improved performance-reporting, i.e., all three elements noted in paragraph 11; and
 - 17.2 Natural Resources Cluster: an approach that mainly focuses on progressing multi-year funding and improved performance-reporting, with a limited focus on collaboration, i.e., two of the three elements noted in paragraph 11.

18 As the pilot develops further, there will be occasions where technical changes are required to support the application of the proposals in paragraphs 19-44. Therefore, I propose that Cabinet authorises the Minister of Finance to make these technical changes subject to the changes not involving “significant policy issues” criterion as outlined in paragraph 9.1 of Section A of CO (18) 2⁶.

Multi-year funding

Rules that apply to both Clusters

19 To support the Clusters to manage within the three-year spending packages agreed in Budget 2022, I am seeking Cabinet’s agreement to delegate authority to provide additional financial flexibility beyond that which is enabled under Cabinet Office Circular (18) 2. These are:

19.1 To enable additional departmental operating underspends⁷ to be retained up to a prescribed limit;

19.2 To authorise Cluster Ministers to make fiscally-neutral reprioritisation decisions where the funding source is departmental operating funding; and

19.3 To authorise Cluster Ministers to shift the timing of funding to give them increased flexibility to manage funds over the three-year period. This delegation would apply to baseline operating funding, as part of decisions on the use of underspends and reprioritisation (paragraphs 19.1 and 19.2 above), including through the use of the Cluster tagged contingencies discussed below (paragraph 20.5). To manage fiscal risk, there would be a requirement that these funds could not be used in an earlier year, and their use could not result in an increase in out-year funding beyond the forecast period (i.e., could not increase net ongoing expenditure). Given the multi-year funding approach, the forecast period is defined as the relevant forecast period at the time the funding decision is made.

Risk Management of the application of the rules

20 The detail of how these proposals will operate, including mitigations of any fiscal risks, is outlined in Annex 1 and the following section through to paragraph 34:

20.1 Beyond the provisions outlined in paragraphs 20 to 34, existing decision-making authority and procedural requirements set out in Cabinet Office Circulars (CO (18) 2 and CO (19) 6) continue to apply to the Clusters;

20.2 Decisions delegated to Cluster Ministers:

⁶ Proposals with financial implications should be submitted to Cabinet where they:

- are within the criteria set out in paragraph 5.12 of the Cabinet Manual, which include significant policy issues, controversial matters, proposals that affect the government’s financial position, or important financial commitments; or
- meet the general rule set out in paragraph 5.11 of the Cabinet Manual, which states that Ministers should put before their colleagues the sorts of issues on which they themselves would wish to be consulted.

⁷ Additional to the underspends provided for in CO (18) 2 e.g., within the prescribed limits, the existing requirements that savings must be due to efficiency gains or other savings initiatives where the output or service has been delivered in full will not apply.

- i. must be consistent with Cluster priorities agreed by Budget Ministers (including giving effect to the all-of-Government priorities that are relevant to the Cluster) [CAB-21-MIN-0349 refers], or address cost pressures;
- ii. must not create an implicit or explicit precommitment for net additional expenditure⁸ (within or after the three-year Cluster pilot period), except with the approval of Cabinet;
- iii. are subject to the “significant policy issues” criterion outlined in paragraph 9.1 of Section A of CO (18) 2
- iv. must occur within the appropriations framework of the Public Finance Act 1989;
- v. must occur within CO (19) 6 investment management expectations, including on financial management, and investment planning and reporting;
- vi. are subject to approval from the Minister of Finance under paragraph 20.3 below; and
- vii. must be recorded and documented as appropriate to ensure transparency, including a written submission to the Minister of Finance.

20.3 For all delegations of financial decisions to Cluster Ministers, I propose that Cabinet authorises the Minister of Finance to confirm that these decisions are made within the delegations agreed as a result of this submission. After that, the Minister of Finance and the concerned appropriation Minister(s) will approve any relevant changes to appropriations as a result of these decisions;

20.4 The additional departmental underspends proposed in paragraph 19.1 will be limited to actual/audited departmental operating underspends from 2022/23 and 2023/24 subject to the conditions in paragraphs 22, 24 and 25;

20.5 Four tagged contingencies will be established to facilitate the use of retained underspends, and fiscally-neutral reprioritisation decisions:

- i. Justice Cluster Tagged Operating Contingency;
- ii. Ministry for Primary Industries (Natural Resources Cluster) Tagged Operating Contingency;
- iii. Department of Conservation (Natural Resources Cluster) Tagged Operating Contingency;

⁸ Examples of decisions that would create an implicit precommitment for net additional expenditure are:

- Using time-limited savings to start an initiative that could not feasibly be stopped or funded on an ongoing basis by the Cluster, and therefore giving Cabinet limited later options other than providing the Cluster with additional funding.
- Reprioritising operating funding from a significant investment initiative, leaving it with insufficient funding, and therefore giving Cabinet limited later options other than providing the Cluster with additional funding.

- iv. Ministry for the Environment (Natural Resources Cluster) Tagged Operating Contingency).

20.6 I recommend that the relevant Cluster Ministers are delegated authority to add funds to and draw down from the tagged contingencies, subject to paragraph 20.3, and that the tagged contingencies expire 30 June 2025. Use of these funds after 30 June 2025, along with the future of the Clusters, will be considered by Cabinet towards the end of the pilot period;

20.7 To streamline the process, the financial decisions made by the Cluster Ministers will mainly be implemented through baseline updates (October Baseline Updates, March Baseline Updates and Budget Economic and Fiscal Updates) and where urgent funding decisions are needed outside baseline updates, on a case-by-case basis;

20.8 There is an expectation Climate Emergency Response Fund (CERF) underspends are returned to the centre [CAB-22-MIN-0129 refers], and that reprioritisation of CERF initiatives should happen through the CERF under Ministerial oversight. This will ensure that funding remains targeted toward climate objectives. Therefore, the CERF funding is excluded from the scope of the delegations; and

20.9 These delegations do not override any existing agreements (such as with other government agencies) that may restrict Cluster agencies' ability to reprioritise, retain underspends or shift the timing of funds.⁹ Clusters will need to give effect to any such agreements, when using the delegations.

Rules to apply to the Justice Cluster

21 To support the Justice Cluster's collaborative decision-making approach and to provide increased flexibility for the Cluster to manage within its three-year funding-package, I recommend delegating to Justice Cluster Ministers jointly, management of fiscally-neutral reprioritisation decisions where the source of funds is departmental operating funding. The findings of the spending reviews can be used to help the Cluster agencies identify reprioritisation opportunities throughout the pilot.

22 I also recommend delegating to Justice Cluster Ministers jointly decision-rights over additional underspends of up to \$130 million (5 percent of the Cluster budget allocation) over the three-year period (i.e., retained underspends from 2022-23 and 2023-24).

Rules to apply to the Natural Resources Cluster

23 I recommend a more agency-centric funding approach for the Natural Resources Cluster, recognising that shared decision-making is not in place. This would mean delegating to all portfolio Ministers responsible for appropriations for each agency, management of fiscally-neutral reprioritisation decisions where the source of funds is departmental operating funding. The findings of spending reviews can be used to help Cluster agencies identify reprioritisation opportunities throughout the pilot.

⁹ For example, Police road safety funding from Waka Kotahi

- 24 Portfolio Ministers responsible for appropriations for each agency would also be delegated decision-rights over additional underspends up to \$52 million (5 percent of the Cluster budget allocation) over the three-year period (i.e., retained underspends from 2022-23 and 2023-24). There is no exact method of determining the best split of the underspend cap among the three Natural Resources Cluster agencies (and differing views have been raised by Cluster agencies). On balance, I recommend that each agency receives a one-third share of the \$52 million cap, which is broadly aligned with the split of the total Cluster operating funding package in Budget 2022.
- 25 For these additional underspends, each agency would manage its share of the underspend cap (i.e., \$17.33 million) independently. All portfolio Ministers responsible for appropriations administered by an agency are to agree to the use of these additional underspends.

Managing initiative specific tagged contingencies

- 26 Agencies in the Justice and Natural Resources Clusters have a number of tagged contingencies that were established either as part of, or outside, the Cluster envelopes. For clarity, the tagged contingencies in this section are different from the Cluster-wide or agency-wide tagged contingencies being proposed in paragraph 20.5.
- 27 Based on their origin from outside or within the Cluster envelope the tagged contingencies were categorised in three categories as follows:
 - 27.1 Funding in contingencies from outside the Cluster envelope;
 - 27.2 Funding in contingencies within the Cluster envelope; and
 - 27.3 Special Cases ^[38] and implementation of the Arms Legislation Act (Police)).
- 28 There are two broad options for how to manage these contingencies. The funding not drawn down can either be returned to the Centre, or it can be retained by Cluster or Cluster agencies. This includes circumstances when none of the funding in a tagged contingency funded through Cluster envelopes has been drawn down. This may be because Cluster Ministers consider that there are now higher-priority uses for the funding, and/or because the draw-down conditions agreed by Cabinet have not been met.

Options and rules around them

- 29 Option 1 – Return to the Centre: This option is in line with the status quo, where any funding not drawn down would be returned to the Centre.
- 30 Option 2 – Retain by the Clusters: Under this option, the following rules will apply:
 - 30.1 Any retained funding from the specific initiative tagged contingencies would be added to the agency-level or Cluster-level tagged contingencies recommended in paragraph 20.5 above;

30.2 Any retained funding from the specific initiative tagged contingencies would be subject to the rules stated in paragraphs 19 and 20; and

30.3 In line with the different approaches being taken to the two Cluster pilots, for the Justice Cluster this funding would be available for the whole Cluster, but for the Natural Resources Cluster it would be managed by the individual agency that the original tagged contingency was allocated to.

Key considerations

31 In considering which of the above options should apply to different tagged contingencies, the key criterion is consistency with the mutually-reinforcing “package” of design features that make up the Cluster pilot: a multi-year budget constraint, greater flexibility to manage expenditure choices, and improved reporting. Therefore:

31.1 For funding that is within the Cluster envelope, I recommend allowing the Cluster or Cluster agencies to retain any funding that is not drawn down from tagged contingencies. This is consistent with both keeping to their Budget constraint and providing greater flexibility;

31.2 On the other hand, initiatives that were funded outside the Cluster funding envelope (e.g., Climate Emergency Response Fund initiatives¹⁰) are not embedded in this mutually-reinforcing package of constraints, flexibilities and expectations. Therefore, I recommend that the usual rule - funding that is not drawn down should be returned to the Centre - should apply.

32 Post Cabinet approving the above approach, I will write to Cluster Ministers to confirm the specific tagged contingencies in each category outlined in paragraph 27 above.

Special Cases

33 The Justice Cluster envelope was increased to fund [38]
This additional funding therefore came at the expense of other initiatives across Government, rather than at the expense of other Justice Cluster initiatives. Accordingly, I recommend that:

33.1 any funding not drawn down up to the amount that the original envelope was increased by is returned to the Centre; and

33.2 any funding not drawn down in excess of the amount that the original envelope was increased by can be retained by the Cluster.

34 Funding for the *implementation of the Arms Legislation Act (Police)* existed prior to the Cluster, but was topped up through the Cluster envelope. I recommend that:

34.1 any funding not drawn down below the amount that was provided through the Cluster envelope can be retained by the Cluster; and

¹⁰ Climate Emergency Response Fund (CERF) initiatives are not included in the Cluster funding envelope. In line with the CERF's monitoring and reporting approach, funds from tagged contingencies (related to CERF initiatives) that are not drawn down will be expected to be returned to the Fund.

34.2 any funding not drawn down in excess of the pre-envelope funding is returned to the centre.

Exceptions to three-year funding

- 35 As part of the Cluster Budget process, I established a process for Cluster agencies to seek exceptions to multi-year funding. This acknowledged that it would not be feasible to adopt a three-year cycle for all new funding where there is significant uncertainty about costs and where the Clusters have limited options to manage increased costs.
- 36 In November 2021, I granted 11 full or partial exceptions to three-year funding for both Clusters. On 11 April 2022, Cabinet agreed that the Cluster agencies could only seek additional funding over the next three years for these exceptions or where funding was out of the scope of the Cluster envelopes [CAB-22-MIN-0129 refers].^[33]
- 37 I have also agreed that where fiscal risks relate to unforeseeable and high-cost events which cannot be reasonably transferred to the Cluster agencies to manage (e.g., natural disasters), the Clusters can seek additional funding across the three-year period if and when the risk eventuates. This type of exception was omitted from the list agreed by Cabinet on 11 April 2022 [CAB-22-MIN-0129 refers]. I am now seeking Cabinet's agreement that this be an exception to three-year funding for the Clusters.
- 38 It is now evident that Cluster Ministers and agencies are likely to seek further exceptions over the next three years. Therefore, I recommend establishing a formal process, which authorises the Minister of Finance to grant any additional exceptions to multi-year funding for the Clusters.
- 39 I propose that the relevant Cluster Minister or joint Cluster Ministers write to the Minister of Finance to seek an exception to three-year funding. The Treasury would assess the exception against the criteria set out in paragraph 40 below and provide a recommendation to me on whether to support the exception. All criteria would need to be met for the exception to be granted. If I do not support the exception, the Cluster agency would need to manage the costs within its baseline. If I do support the exception, the relevant Minister or joint Ministers could seek additional funding through the normal annual Budget process (as the default), or within the year via Cabinet submission if the CO (18) 2 requirements for doing so are met.
- 40 Given the quantum of funding approved in Budget 2022 for Clusters and that they can already seek additional funding over the next three years in light of already-agreed exceptions and areas outside the scope of the Cluster envelopes, there will be a high bar for any further exceptions. The following criteria will be used to assess any additional exceptions.
- 40.1 The costs are unavoidable and outside the control of the agency (i.e., they have limited options to manage);

- 40.2 The agency has demonstrated that the costs cannot be met through existing baselines, reprioritisation or the use of retained underspends (these should be the first call for any funding pressures before exceptions are sought) – and cannot be deferred to Budget 2025;
- 40.3 The costs could not have been reasonably foreseen when the original exceptions process was run in 2021; and
- 40.4 The exception being sought is not for a new policy proposal.

Planning and Reporting

- 41 I recommend that planning and reporting over the three-year period for both Clusters (as set out in Annex 2) comprises the following products:
 - 41.1 Cluster report-backs in December 2022, 2023, and 2024. These will set out financial and non-financial performance, progress on priorities and work-areas agreed as a result of the Cluster’s spending review, and updates on Clusters’ management of their overall funding including cost pressures, reprioritisation and use of underspends. To inform decisions on each Cluster’s future from Budget 2025, the December 2023 reports will include discussion of the Clusters’ experience of working as a Cluster. For the Justice Cluster, the first report-back will be to Cabinet in 2022, with subsequent report-backs to Joint Ministers (Finance and Cluster Ministers). For the Natural Resources Cluster, the report-backs will collate individual agency reports, with some more-limited joint reporting. All Natural Resources Cluster report-backs will be to Joint Ministers;
 - 41.2 Updates to existing accountability documents provided to Parliament and made public, to reflect the Cluster approach. These include strategic intentions, annual reports and the Estimates; and
 - 41.3 Additional reporting on a subset of significant initiatives/programmes.
- 42 I propose that planning and reporting over the three-year period for the Justice Cluster includes two additional products: a public Strategic Narrative, expected to be published in October 2022, which outlines the Cluster’s collaboration, priorities, strategy, and performance reporting. This will be followed by a Cluster report (also public) in December 2025 describing progress made over the three-year pilot period.
- 43 The Justice Cluster will also be expected to produce a capital plan, to support Budget 2023 and 2024 initiatives by ensuring any planned investment is coordinated and aligned with Cluster priorities.
- 44 For the Natural Resources Cluster, I propose that instead of a Cluster Strategic Narrative, each agency provides the Treasury with an implementation plan, setting out how agencies will track the financial and non-financial progress of key Budget 2022 initiatives. As there will not be a Strategic Narrative, a 2025 Cluster report will not be required. These Implementation Plans will set the framework for the agency December reports and provide assurance that the tracking and reporting mechanisms are in place.

Implementation

- 45 The Treasury will be issuing guidance to provide Cluster agencies with more detailed information on the implementation of the proposals outlined in this Cabinet submission. This guidance along with CO (18) 2 and CO (19) 6 will support Clusters during the three-year pilot.

Financial Implications

- 46 Additional underspends capped at \$130 million for the Justice Cluster and \$52 million for the Natural Resources Cluster for the three-year period (i.e., limited to actual/ audited departmental operating underspends from 2022-23 and 2023/24), will be retained by the Clusters rather than being returned to the centre.
- 47 The tagged contingencies in the category outlined in paragraph 27 – “*Funding in contingencies within the Cluster envelope*” will be retained by the Clusters rather than being returned to the centre.

Legislative Implications

- 48 There are no legislative implications associated with the proposals in this submission.

Impact Analysis

Regulatory Impact Statement

- 49 There are no regulatory proposals in this submission, and therefore Cabinet’s impact analysis requirements do not apply.

Climate Implications of Policy Assessment

- 50 There are no climate implications associated with the proposals in this submission.

Population Implications

- 51 No significant population implications associated with the proposals in this submission.

Human Rights

- 52 The proposals in this submission are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 53 The following agencies have been consulted on the proposals in this submission: Natural Resources Cluster agencies (Ministry for Primary Industries, Ministry for the Environment, Department of Conservation), Justice Cluster Agencies (Ministry of Justice, New Zealand Police, Ara Poutama Aotearoa - Department of Corrections, Serious Fraud Office, Crown Law Office).
- 54 The Department of Prime Minister and Cabinet and the Office of the Auditor-General have been informed.

Communications

- 55 I will shortly be sending letters to the Cluster Ministers summarising Cabinet’s decisions and stating my expectations as the Minister of Finance.
- 56 The Treasury will provide guidance to Cluster agencies on the multi-year funding and performance-reporting arrangements for the three-year pilot period.

Proactive Release

- 57 This submission will be proactively released subject to redaction as appropriate under the Official Information Act 1982 within 30 business days of decisions.

Recommendations

The Minister of Finance recommends that the Committee:

Background

- 1 note that in August 2021 Cabinet agreed to pilot two multi-agency Clusters (the Natural Resources Cluster and the Justice Cluster), which have been established on a non-statutory basis [CAB-21-MIN-0349 refers];
- 2 note that in Budget 2022 the Natural Resources Cluster and Justice Cluster received operating funding for the next three Budgets [CAB-22-MIN-0129 refers];
- 3 note that the Natural Resources Cluster and Justice Cluster may seek additional funding in Budgets 2023 and 2024, or from the between-budget contingency, only for specified exceptions agreed by Cabinet [CAB-22-MIN-0129 refers];

Proposals

- 4 note that the Justice Cluster and Natural Resources Cluster have developed differently over the establishment stages of the pilot;
- 5 agree to a different approach to multi-year budgeting and reporting for each of the two Clusters, reflecting Cluster feedback and progress to date:
 - 5.1 a more collaborative approach for the Justice Cluster with the Cluster agencies working together on planning, reporting, and multi-year funding;
 - 5.2 for the Natural Resources Cluster, an approach mainly focusing on progressing multi-year funding and improved performance reporting, with a limited focus on collaboration;
- 6 authorise the Minister of Finance to make technical changes as required to support the application of the proposals in recommendations 7 to 37 subject to the changes not involving “significant policy issues” criterion outlined in paragraph 9.1 of Section A of CO (18) 2;

Multi-year funding

Rules that apply to both Clusters

- 7 agree that, beyond recommendations 8 to 24 below, existing decision-making authority and procedural requirements set out in Cabinet Office Circulars (CO (18) 2 and CO (19) 6) continue to apply to the Clusters;
- 8 agree that the financial decisions to be made by Clusters Ministers (all Cluster Ministers for the Justice cluster; but just portfolio Ministers responsible for appropriations for each agency for the Natural Resources cluster):
 - 8.1 must either be consistent with Cluster/Cluster agency priorities agreed by Budget Ministers (including giving effect to the all-of-Government priorities that are relevant to the Cluster), or address cost pressures;
 - 8.2 must not create an implicit or explicit precommitment for net additional expenditure (within or after the three-year Cluster pilot period), except with the approval of Cabinet;
 - 8.3 are subject to the “significant policy issues” criterion outlined in paragraph 9.1 of Section A of CO (18) 2;
 - 8.4 must occur within the appropriations framework of the Public Finance Act 1989;
 - 8.5 must occur within CO (19) 6 investment management expectations, including on financial management and investment planning and reporting;
 - 8.6 are subject to approval from the Minister of Finance under recommendation 9 below;
 - 8.7 must be recorded and documented as appropriate to ensure transparency, including a written submission to the Minister of Finance;
- 9 agree that the Minister of Finance will confirm that decisions are within the delegations agreed by Cabinet in recommendations 8 to 28, and that the Minister of Finance and the appropriation Minister(s) will approve any changes to appropriations as a result of these decisions;
- 10 authorise Cluster Ministers to retain actual/audited departmental operating underspends from 2022/23 and 2023/24 subject to the conditions set out in recommendations 22 and 24 below;
- 11 agree to establish the “Justice Cluster Tagged Operating Contingency” to facilitate the use of retained underspends, and fiscally-neutral reprioritisation decisions for the Justice Cluster as set out in recommendations 21 and 22 below;
- 12 agree to establish the “Ministry for Primary Industries (Natural Resources Cluster) Tagged Operating Contingency” to facilitate the use of retained underspends, and fiscally-neutral reprioritisation decisions for the Ministry for Primary Industries as set out in recommendations 23 and 24 below;

- 13 agree to establish the “Department of Conservation (Natural Resources Cluster) Tagged Operating Contingency” to facilitate the use of retained underspends, and fiscally-neutral reprioritisation decisions for the Department of Conservation as set out in recommendations 23 and 24 below;
- 14 agree to establish the “Ministry for the Environment (Natural Resources Cluster) Tagged Operating Contingency” to facilitate the use of retained underspends, and fiscally-neutral reprioritisation decisions for the Ministry for the Environment as set out in recommendations 23 and 24 below;
- 15 agree that the tagged contingencies in recommendations 11-14 above will have an expiry date of 30 June 2025, and that use of these funds after 30 June 2025, along with the future of the Clusters, will be considered by Cabinet towards the end of the pilot period;
- 16 authorise Cluster Ministers jointly (all Cluster Ministers for the Justice cluster; portfolio Ministers responsible for appropriations for each agency for the Natural Resources cluster) to add funds to, and draw down from, the tagged contingencies in recommendations 11-14 above;
- 17 authorise Cluster Ministers jointly (all Cluster Ministers for the Justice cluster; portfolio Ministers responsible for appropriations for each agency for the Natural Resources cluster) to shift the timing of the use of operating baseline or tagged contingency (recommendations 11-14) funding within the forecast period (i.e. the relevant forecast period at the time the funding decision is made), so long as any such decision does not involve funding being brought forward to an earlier year and does not result in an increase in out-year funding beyond the forecast period (i.e., does not increase net ongoing expenditure);
- 18 note that financial decisions made under the Cluster pilot will mainly be implemented through baseline updates (October Baseline Updates, March Baseline Updates and Budget Economic and Fiscal Updates);
- 19 agree that Climate Emergency Response Funding is excluded from the scope of the delegations authorised in recommendations 8 to 33;
- 20 note that the delegations authorised in recommendations 8 to 24 do not override any existing agreements (such as with other government agencies) that may restrict Cluster agencies’ ability to reprioritise, retain underspends or shift the timing of funds;

Rules that apply to Justice Cluster

- 21 authorise Justice Cluster Ministers to jointly make fiscally-neutral reprioritisation decisions where the funding source is departmental operating funding;
- 22 agree that for the Justice Cluster, the total value of additional departmental operating underspends that can be retained and used is capped at \$130 million over the three-year period (2022/23 to 2024/25);

Rules that apply to Natural Resources Cluster

- 23 authorise all Natural Resources Cluster portfolio Ministers responsible for appropriations administered by each agency, jointly, to make fiscally-neutral reprioritisation decisions, where the funding source is departmental operating funding;
- 24 agree that for the Natural Resources Cluster, conditions on the retention of additional departmental operating underspends will apply as follows:
 - 24.1 the total value that can be retained and used is capped at \$52 million over the three-year period (2022/23 to 2024/25);
 - 24.2 each agency is able to receive a one-third share of the \$52 million cap (\$17.33 million), which is broadly aligned with the split of the total Cluster operating funding package at Budget 2022;
 - 24.3 each agency would manage its share of the underspend cap independently of one another;

Managing initiative specific tagged contingencies

- 25 note that agencies in the Justice and Natural Resources Clusters have a number of tagged contingencies that were established either as part of, or outside, the Cluster envelopes;
- 26 agree that where funding is not drawn down for tagged contingencies, it is either returned to the Centre or retained by the Clusters as set out in the categories below:
 - 26.1 *Funding in contingencies from outside the Cluster envelope*: Any funding not drawn down from these contingencies is returned to the Centre since the initiatives were not within the scope of the Cluster funding packages;
 - 26.2 *Funding in contingencies within the Cluster envelope*: Any funding not drawn down from these contingencies is retained by the Clusters, enabling them to fund other cost pressures or new policy initiatives over the next three years;
 - 26.3 ^[38] Any funding not drawn down from this contingency up to the amount that the original envelope was increased by is returned to the Centre, and any funding that is not drawn down in excess of the amount that the original envelope was increased by can be retained by the Cluster;
 - 26.4 *Implementation of the Arms Legislation Act (Police)*: Any funding not drawn down from this contingency in excess of the amount provided through the Cluster envelope is returned to the Centre, and any funding that is not drawn down below the amount provided through the Cluster envelope can be retained by the Cluster;
- 27 note that the Minister of Finance will confirm in writing to the Cluster Ministers the specific tagged contingencies in each of the categories outlined in recommendation 26 above;
- 28 agree that if the funding is retained by Cluster or Cluster agencies the following rules apply:

- 28.1 Any retained funding from the specific initiative tagged contingencies would be added to the agency-level or Cluster-level tagged contingencies established in recommendations 11 to 14 above;
- 28.2 Any retained funding from the specific initiative tagged contingencies would be subject to the rules stated in recommendations 7 to 20 above;
- 28.3 In line with the different approaches being taken to the two Cluster pilots, for the Justice Cluster this funding would be available for the whole Cluster and for the Natural Resources Cluster it would be managed by the individual agency that the original tagged contingency was allocated to;

Exceptions to three-year funding

- 29 note that on 11 April 2022, Cabinet agreed that the Cluster agencies could only seek additional funding over the next three years where the Minister of Finance had agreed to an exception in November 2021 or where funding was out of the scope of the Cluster envelopes [CAB-22-MIN-0129 refers];
- 30 agree that in addition to the exceptions that Cabinet agreed on 11 April 2022 [CAB-22-MIN-0129 refers], where there are fiscal risks related to unforeseeable and high-cost events which cannot be reasonably transferred to the Cluster agencies to manage (e.g., natural disasters), the Clusters can seek additional funding across the three-year period if and when the risk eventuates;
- 31 authorise the Minister of Finance to grant any further exceptions to three-year funding for the Clusters;
- 32 note that if the Minister of Finance supports an exception, the relevant Minister or joint Ministers can seek additional funding through the normal annual Budget process (as the default), or within the year via Cabinet submission if the CO (18) 2 requirements for doing so are met;
- 33 agree that a high bar is applied to any further exceptions, including that:
- 33.1 all the criteria set out in paragraph 40 above must be met for the Minister of Finance to grant an exception;
- 33.2 Clusters are expected to reprioritise existing funding (including funding approved at Budget 2022) and/or utilise retained underspends as the first call for any funding pressures before further exceptions are sought;

Planning and Reporting

- 34 note that Cabinet invited Justice Cluster Ministers to report back to Cabinet and Natural Resources Cluster Ministers to report back to the Minister of Finance by December 2022 on spending to date and progress against the specific Cluster priorities [CAB-22-MIN-0129 refers];

- 35 note that the Justice Cluster and Natural Resources Cluster Ministers will provide further report-backs to the Minister of Finance in December 2023 and 2024 on financial and non-financial performance, analysis of agencies' financial position in the context of the three-year funding period, progress on priorities, management of cost pressures, reprioritisation, and use of underspends;
- 36 note that in addition to the monitoring and reporting outlined above, Justice Cluster and Natural Resources Cluster agencies will report back to Joint Ministers as per recommendations agreed as part of spending review:
- 37 note that Annex 2 outlines the wider set of planning and reporting expectations for the Justice and Natural Resources Clusters.

Authorised for lodgement
Hon Grant Robertson

Minister of Finance

Annex 1: Clusters' Multi-Year Funding

The normal annual Budget process applies for Cluster agency funding *outside* the Cluster pilot funding approach. This includes capital (and associated operating), and operating funding outside the cluster Budget 2022 packages: e.g., Crown Entities, Family Violence and Sexual Violence Joint Venture, CERF, Judge salaries, non-government funded areas such as industry levies, formula-driven funding outside allowances

Three year operating funding applies for the Cluster pilot approach. This means that Clusters/Cluster agencies are to manage within three year (2022/23 to 2024/25) funding packages until Budget 2025. This is supported by the use of the three areas outlined below.

Existing fiscally neutral decisions (FNDs). Clusters can continue to use the existing CO (18) 2 approach, including underspends that meet the existing criteria, and for handling minor changes such as technical adjustments.

Cluster funding decisions (1). Clusters have some increased flexibility to retain underspends and manage fiscally neutral reprioritisation decisions to assist them manage within the three year period. Tagged contingences will be used to transact these decisions.

Specific Initiative Tagged Contingencies. Any funding not drawn down from contingencies from outside the cluster envelopes is returned to the Centre. All funding in contingencies within the cluster envelopes is retained by the Clusters and can be used to fund other cost pressures or new initiatives (subject to the rules below being met).

Exceptions process. Cluster Ministers can write to the Minister of Finance to seek further exceptions to three-year funding. If granted, funding can be sought via Budget process or within year if CO(18)2 requirements are met. If not granted, costs must be met from baselines. High bar for further exceptions.

These funding decisions apply to (2):

- Additional underspends – these cover all other types of departmental operating funding underspends outside the existing CO (18) 2 approach (3).
- Fiscally neutral reprioritisation decisions. This includes where funding is not required to deliver the department's outputs or services in full, or where reprioritising toward a different output or service would result in a similar or greater impact on the Cluster priorities. The funding source must be departmental operating.
- Shifting the timing of baseline operating, and Cluster tagged contingency, funding provided that funding is not being brought forward to an earlier year and it does not result in a net increase in out-year funding beyond the forecast period (i.e. the relevant forecast period at the time the funding decision is made).

Cluster Funding Decision Rules. These rules include that decisions:

- Must be aligned with Cluster/Cluster agency pressures and priorities (including giving effect to relevant all-government priorities)
- Must not create an implicit or explicit precommitment for net additional expenditure, except with Cabinet's approval
- Are subject to approval from the Minister of Finance to confirm that they are within Cabinet's delegations, and approve any appropriation changes
- Are subject to the "significant policy issues" criterion outlined in paragraph 9.1 of Section A of CO (18) 2
- Must be recorded and documented as appropriate to ensure transparency, including a written submission to the Minister of Finance
- must occur within the appropriations framework of the Public Finance Act 1989, and CO (19) 6 investment management expectations, including on financial management, and investment planning and reporting.

Criteria for further exceptions (all must be met to grant exception):

- The costs are unavoidable and outside the control of the agency (i.e., they have limited options to manage)
- The agency has demonstrated that the costs cannot be met through existing baselines, reprioritisation, or the use of retained underspends (these should be the first call for any funding pressures before exceptions are sought) – and cannot be deferred to Budget 2025
- The costs could not have been reasonably foreseen when the original exceptions process was run in 2021, and
- The exception being sought is not for a new policy proposal.

Notes:

(1) **Justice** decisions are managed at Cluster level and must be agreed by all Cluster Ministers.

Natural Resources

decisions are managed by each Cluster agency individually, and must be agreed by all Ministers responsible for appropriations in each agency.

(2) The additional underspends delegation can apply to all Cluster departmental operating underspends.

(3) Over the pilot, these additional underspends are capped at \$130 million for the Justice Cluster, and \$17.3 million for each Natural Resources Cluster agency (MfE, MPI, and DoC). CERF funding is excluded from the scope of the delegations.

Annex 2: Cluster's Multi-Year Planning and Reporting

Area	Justice	Natural Resources
<p>Planning (covers reporting within the Executive, and to Parliament and the public)</p>	<p>Cluster Strategic narrative Due: expected to be published in October 2022. Prepared by: Cluster. Audience: Parliament, public. This document contains information on the Cluster's planned collaboration and reporting approach, priorities and strategy, outcomes, and a set of key initiatives for tracking performance.</p> <p>Cluster Capital Plan Due: December 2022. Prepared by: Cluster. Audience: Treasury. To support Budget 2023 and 2024 initiatives by ensuring any planned investment is coordinated and aligned with Cluster priorities.</p>	<p>Implementation Plans Due: September 2022. Prepared by: Cluster agencies individually. Audience: Treasury. Identifies the financial and non-financial performance-tracking approach for Cluster initiatives, cost pressures, and overall funding.</p>
	<p>Agency Strategic Intentions Due: Every three years (can be revised more often if needed). Prepared by: Cluster agencies. Audience: Parliament, public. These will be updated as appropriate.</p>	
<p>Reporting within the Executive (non-public)</p>	<p>December Report Backs</p>	
	<p>Due: Dec 22, Dec 23, Dec 24. Prepared by: Cluster. Audience: Dec 22 report to Cabinet, followed by reports to Joint Ministers (Finance and Cluster).</p>	<p>Due: Dec 22, Dec 23, Dec 24. Prepared by: Cluster agencies collated into one document with some shared reporting. Audience: Joint Ministers (Finance and Cluster).</p>
<p>These reports include financial and non-financial performance (including for the key initiatives identified in Cluster planning), progress on priorities and items agreed through spending review, and updates on Cluster's management of three-year funding including reprioritisation efforts and use of underspends. The Dec 23 report will include experiences of working as a Cluster to inform decisions on each Cluster's future from Budget 2025. To assist transparency, these reports could include a section that will be made publicly available.</p>		
<p>Reporting to Parliament and the Public</p>	<p>Estimates Overview Due: Annually. Prepared by: Cluster agencies. 2022 overview provided a brief description of the Clusters. The Budget 23 and 24 overviews can help to update Parliament on progress.</p>	
	<p>Agency annual reports Due: Annually. Prepared by: Cluster agencies. To include non-financial performance information for significant initiatives/programmes.</p>	
	<p>Cluster Report back on Strategic Narrative Due: May 2025. Prepared by: Cluster. This will outline progress over the three-year period.</p>	<p>N/A</p>
	<p>Additional Outcome Reporting - For a subset of significant initiatives/programmes (where there is a strong public interest), there could be additional outcome reporting, with flexibility around where, and how often, this reporting occurs.</p>	