

The Treasury

Management of Cluster Underspends - Adjustment of Existing Rules Information Release

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Office of the Minister of Finance
Chair, Cabinet Business Committee

Adjustment of existing rules for the management of Cluster underspends

Proposal

- 1 This submission seeks agreement to adjust existing rules for the management of Cluster underspends. It also seeks to clarify the Minister of Finance's delegations to approve technical changes to rules during the rest of the Cluster pilot.

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 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 In August 2021, Cabinet agreed [CAB-21-MIN-0349 refers] to pilot two multi-agency Clusters (the Natural Resources Cluster¹ and the Justice Cluster²) (the Clusters).
- 4 A key goal of the pilot is that the Clusters manage within their Budget 2022 three-year operating funding, over the life of the pilot. To support this goal Cabinet agreed to new multi-year funding arrangements, and planning and reporting requirements for the Clusters [GOV-22-MIN-0033; CAB-22-MIN-0423 refers].
- 5 As part of this, Cabinet [decision 10, GOV-22-MIN-0033 refers] authorised Cluster Ministers to retain (subject to certain rules) actual/audited departmental operating underspends from 2022/23 and 2023/24, additional to those allowed under Cabinet Office Circular (18) 2.
- 6 However, the Clusters have indicated that there are challenges with only being able to use their additional financial flexibility to manage funding decisions after confirmation of audited financial statements at the October Baseline Update. The current Cluster delegations agreed by Cabinet [GOV-22-MIN-0033 refers] do not provide for Cluster Ministers to seek early agreement (from Joint Ministers) to retention and allocation of the additional underspends.

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

- 7 In line with the original intent of providing flexibility to Clusters to manage within their Budget 2022 operating funding over the three-year life of the pilot, I recommend that Cabinet adjust existing rules:
- (a) to allow Cluster Ministers to seek early agreement (from Joint Ministers) to retention and allocation of a conservative portion of expected actual/audited departmental operating underspends before audited financial statements are available, where early decisions are necessary, and
 - (b) to require any decisions resulting from (a) to be fiscally neutral.
- 8 Further adjustment of the rules applying to Clusters may be desirable as they progress through the three-year pilot. I therefore propose that Cabinet authorises the Minister of Finance to make technical changes to the rules for the Clusters, subject to the changes not representing “significant policy issues”, as defined in the Cabinet Office Circular (18) 2.

Background

- 9 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]. In Budget 2022, the Clusters received \$3.8 billion total operating funding for the next three Budgets [CAB-22-MIN-0129 refers].
- 10 A key intention of the pilot is that the Clusters manage within their Budget 2022 operating funding over the three-year life of the pilot (i.e., fiscal years 2022/23, 2023/24, and 2024/25).
- 11 To support this key intention, in October 2022 Cabinet agreed to new multi-year funding, and planning and reporting requirements for Budget 2022 Clusters [GOV-22-MIN-0033; CAB-22-MIN-0423 refers]. This provided Clusters with financial flexibility additional to that set out in Cabinet Office Circular (18) 2 (CO (18) 2), to be able to manage within the three-year envelopes.
- 12 As part of this additional financial flexibility, Cabinet [decision 10, GOV-22-MIN-0033 refers] authorised Cluster Ministers³ to retain (subject to certain rules) additional⁴ actual/audited departmental operating underspends from 2022/23 and 2023/24, additional to those allowed under CO (18) 2.

Need to adjust existing rules for the management of Cluster underspends

- 13 To be used, the additional underspends are currently required to be confirmed as actual/audited at the October Baseline Update (OBU).

³ All Cluster Ministers for the Justice Cluster; portfolio Ministers responsible for appropriations for each agency for the Natural Resources Cluster.

⁴ Additional to the underspends provided for in CO (18) 2, *e.g.*, within the prescribed limits, the requirement will not apply that savings must be due to efficiency gains or other savings initiatives where the output or service has been delivered in full.

- 14 The Clusters have indicated they face challenges with only being able to use their additional financial flexibility to manage funding decisions after confirmation of audited financial statements at the OBU. In line with the original intent of the pilot, the Clusters want to be able to plan for implementation of new spending prior to the start of the financial year, and to begin incurring expenditure in some cases from 1 July.
- 15 Waiting until the OBU for confirmation of these funding decisions (which generally get finalised by mid-November) means that a portion of the financial year has already passed, which leads to potential delays and inefficiencies. This includes, for example, lack of funding certainty for decisions that Cabinet has pre-committed or that Cluster Ministers have agreed in principle (e.g., improving court and system performance) and lack of a mechanism to action these decisions until the underspends are confirmed through the OBU.
- 16 On 28 June 2023 the Justice Cluster Ministers took a proposal to Cabinet Social Wellbeing Committee, "*Proposals to improve court and system performance*" seeking Cabinet decisions to the proposal being funded using a conservative portion of unaudited Cluster underspends.
- 17 Given above example scenarios, the Clusters have indicated the need for Cluster Ministers to seek early agreement (from Joint Ministers, and prior to the OBU) of a conservative portion of additional departmental operating underspends and their allocation.
- 18 The other mechanism to fund such programmes is through fiscally-neutral reprioritisation [decisions 21 & 22, GOV-22-MIN-0033 refers]. However, the Cluster agencies have indicated that reprioritisation opportunities are limited, in particular due to high inflationary pressures.
- 19 I consider adjusting existing rules to allow Cluster Ministers to seek an early agreement (from Joint Ministers) on additional underspends supports the Clusters to achieve one of their goals: managing within the three-year funding package. The original intent of requiring the additional underspends to be audited/actual was to manage the fiscal risk that this financial flexibility posed to the Crown. This risk can be mitigated by agreeing to conditions that include that the underspends being sought are conservative, fiscally neutral and do not commit the Crown to additional net expenditure.
- 20 The current Cluster delegations agreed by Cabinet [GOV-22-MIN-0033 refers] do not provide for Cluster Ministers to seek early agreement (from Joint Ministers) to retention and allocation of the additional underspends. Enabling this requires additional decisions by Cabinet, including setting rules about the management of the fiscal risk that may occur due to this greater flexibility.

Adjustment of existing rules for the management of Cluster underspends

- 21 I recommend that Cluster Ministers are authorised to seek early agreement (from Joint Ministers) to retention, and allocation of a conservative portion of expected departmental operating underspends before audited financial statements are available, where early decisions are necessary, subject to the conditions stated below:

21.1 Financial decisions must be fiscally neutral:

- (i) at the time of seeking the early agreement, the Clusters (Justice Cluster collectively, individual agencies in the Natural Resources Cluster) must confirm that the amount being sought is conservative, *i.e.*, it is less than expected actual/audited underspends;
- (ii) if the conservative unaudited portion exceeds actual/audited underspends, the Clusters (Justice Cluster collectively, individual agencies in the Natural Resources Cluster) will (at the next available baseline update) reduce their appropriations or offset the increase through reprioritisation agreed as part of GOV-22-MIN-0033 to ensure all underspend decisions are fiscally neutral;
- (iii) 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.

22 In addition to this condition, the existing rules established by Cabinet [GOV-22-MIN-0033 refers] still apply, specifically financial decisions:

22.1 are subject to approval from the Minister of Finance, to confirm that decisions are within the delegations agreed by Cabinet, and that the Minister of Finance and the relevant appropriation Minister(s) will approve any changes to appropriations as a result of these decisions (decision 9).

22.2 must be transacted through Cluster/Cluster agency specific tagged contingencies established by Cabinet (decisions 11-14);

23 If the conservative portion agreed is lower than the actual/audited underspends, the difference can be confirmed later and added to the respective tagged contingency through the OBU.

24 These changes do not affect the process and rules for obtaining Cabinet and Parliamentary spending authority as part of the regular Budget cycle.

Delegation for the Minister of Finance

25 Further adjustment of the rules applying to Clusters may be desirable as they progress through the three-year pilot. I therefore propose that Cabinet authorises the Minister of Finance to make technical changes to the rules for the Clusters (set out in paragraphs 7-37, GOV-22-MIN-0033 and paragraphs 21-23 above), subject to the changes not representing “significant policy issues”, as defined in CO (18) 2. This confirms and clarifies the intent of the original delegation in decision 6, GOV-22-MIN-0033.

Implementation

26 The Treasury will support the Cluster agencies with more detailed information, as required, on the implementation of the proposals outlined in this Cabinet submission.

Financial Implications

- 27 Decisions resulting from this proposal are required to be fiscally neutral across the forecast period. The proposed change in the underspend rules should therefore have **no fiscal implications** for the Crown.
- 28 There is, however, some residual fiscal risk to the Crown, as the actual amount of underspends following confirmation of audited financial statements may be lower than earlier expected. This risk is adequately mitigated by the conditions outlined in paragraphs 21-23 above, along with other rules previously set by Cabinet [GOV-22-MIN-0033 refers].

Legislative Implications

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

Impact Analysis

Regulatory Impact Statement

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

Climate Implications of Policy Assessment

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

Population Implications

- 32 There are no population implications associated with the proposals in this submission.

Human Rights

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

Consultation

- 34 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). They support its recommendations.
- 35 The Office of the Auditor-General has been informed.

Communications

- 36 The Treasury will provide more information, as required, to Cluster agencies on the decisions made through this submission.

Proactive Release

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

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), with operating funding provided for the next three Budgets as part of Budget 2022 [CAB-21-MIN-0349 and CAB-22-MIN-0129 refers];
- 2 note that a key goal of the pilot is that the Clusters manage within their multi-year Budget 2022 operating funding over the three-year life of the pilot, and that to support this intent Cabinet agreed to new multi-year funding arrangements, and planning and reporting requirements for the Clusters [GOV-22-MIN-0033; CAB-22-MIN-0423 refers];
- 3 note that Cabinet [decision 10, GOV-22-MIN-0033 refers] authorised Cluster Ministers (all Cluster Ministers for the Justice Cluster; portfolio Ministers responsible for appropriations for each agency for the Natural Resources Cluster) to retain (subject to certain rules) actual/audited departmental operating underspends additional to those allowed under Cabinet Office Circular (18) 2;
- 4 note that Cluster agencies have indicated there are that they face challenges with only being able to make use of their additional financial flexibility to manage funding decisions after confirmation of audited financial statements at the October Baseline Update;
- 5 note that the current Cluster delegations agreed by Cabinet [GOV-22-MIN-0033] do not provide for Cluster Ministers to seek early agreement (from Joint Ministers) to retention and allocation of the additional underspends;

Adjustment of existing rules for the management of Cluster underspends

- 6 authorise Cluster Ministers (all Cluster Ministers for the Justice Cluster; portfolio Ministers responsible for appropriations for each agency for the Natural Resources Cluster) to seek early agreement (from Joint Ministers) to retention and allocation of a conservative portion of expected departmental operating underspends before audited financial statements are available, where early decisions are necessary, subject to the condition stated below:
 - Financial decisions must be fiscally neutral:
 - i. at the time of seeking the early agreement, the Clusters (Justice Cluster collectively, individual agencies in the Natural Resources Cluster) must confirm that the amount being sought is conservative, *i.e.*, it is less than expected actual/audited underspends;
 - ii. if the conservative unaudited portion exceeds actual/audited underspends, the Clusters (Justice Cluster collectively, individual agencies in the Natural Resources Cluster) will (at the next available baseline update) reduce their appropriations or offset the increase through reprioritisation agreed as part of GOV-22-MIN-0033 to ensure all underspend decisions are fiscally neutral;

- iii. 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;
- 7 note that if the amount agreed is lower than the actual/audited underspends, the difference can subsequently be confirmed and added to the respective tagged contingency through the October Baseline Update;

Delegation for the Minister of Finance

- 8 authorise the Minister of Finance to make technical changes to rules for Clusters (set out in paragraphs 7-37 of GOV-22-MIN-0033 and in recommendations (6) and (7) above), subject to the changes not representing “significant policy issues”, as defined in Cabinet Office Circular (18) 2.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance