



## **Te Kawa Mataaho** Public Service Commission

### Information for negotiations to form a Government

The Public Service Act 2020 sets out the process for political parties that wish to access support from public service agencies for the purposes of negotiations to form a government. The Public Service Commission has also issued standards with the aim of providing negotiating political parties with efficient and timely access to relevant information from agencies, in a way that protects the political neutrality of the public service.

These standards define information that can be requested to include information held by agencies (as defined in section 10 of the Public Service Act 2020) and analysis completed by agencies such as:

- briefings on existing government policy;
- information relating to and analysis of a party's proposals, including costings;
- discussion on the implications of proposed policies; and
- discussions on the effects of modifying or combining policies and the details of their implementation

Following the 2023 General Election a total of four requests for information were received from two negotiation parties.

Included in this release are the requests by political parties for information to support the government formation negotiations following the 2023 General Election.

**From:** 9(2)(a) privacy  
**To:** [Negotiations](#)  
**Subject:** Policy implications: three strikes for burglary  
**Date:** Thursday, 26 October 2023 3:43:56 pm

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**This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.**

Kia ora,

We are looking for information to answer the following question: how would a 'three strikes for burglary' policy increase the prison population compared with the counterfactual? (A three strikes regime would mean that an offender who committed three separate burglary offences would receive the maximum sentence for that offence).

The following information might be useful to help answer the question:

- Number of offenders whose lead offence is burglary, and are reconvicted on a burglary charge.
- Number of offenders who have three or more burglary convictions.
- Number of prisoners who have burglary charges as the lead offence.
- A breakdown of prison sentence lengths for prisoners whose lead offence is burglary.

The information likely falls under the portfolio areas of Corrections, Police and Justice.

It would be great to receive this information by 3pm tomorrow, but happy to discuss what is/isn't feasible in this timeframe.

Happy to clarify anything you need.

Kind regards,

9(2)(a) privacy

9(2)(a) privacy **Senior Policy Advisor**

ACT Caucus Support Centre | Parliament Buildings, Wellington 6160

9(2)(a) privacy E: 9(2)(a) privacy

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**From:** [Negotiations](#)  
**To:** [Andrew Kibblewhite](#); [Andrew Coster](#); [jeremy lightfoot](#); [bex parist](#)9(2)(a) privacy  
**Cc:** [Hugo Vitalis](#); [Erik Koed](#); [Olivia Cross](#); [Vishnu Seger](#)  
**Subject:** URGENT: Negotiations – Request for information  
**Date:** Thursday, 26 October 2023 4:59:45 pm  
**Attachments:** [image006.jpg](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)  
[image010.png](#)  
[GOVFORM REQUEST 2023-002 - AGENCY REQUEST FORM.docx](#)

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[IN-CONFIDENCE]

Dear Andrew

The Public Service Commissioner has received a request for information from a political party that is involved in negotiations to form a government. This request relates to information that I consider your agency is best placed to provide.

### Confidentiality

Given the high importance of the negotiations process, we cannot express enough the need for confidentiality when preparing your response as set out in the Public Service Commissioner's letter to you of 5 September. Please ensure:

- the number of staff involved in a response are limited to the smallest number required.
- all staff are aware of the highly confidential nature of the request and response.
- all folders containing this request and response material are locked down.
- a log of access is maintained.

### Timing

Please let us know as soon as possible if a timeframe of **1pm tomorrow cannot be met**.

Erik Koed will be your point of contact. If it appears this deadline cannot be met, please inform immediately. Similarly, if you have any questions please get in touch.

When your response is ready, please provide a copy to me via [negotiations@publicservice.govt.nz](mailto:negotiations@publicservice.govt.nz). The response will be reviewed before the Commission informs you it is ready to be sent to the requestor.

### Request requirements

Please ensure you follow the [Standards: Providing information to political parties during negotiations to form a government](#).

If the request is not clear please let us know immediately so we can seek clarification.

There is to be no engagement with your Minister on this material. Should you be proactively asked about the provision of any information by your Minister, or asked by your Minister to discuss or withhold any information provided by your agency to that Minister's political party - then please talk to the Assistant Commissioner immediately so they can provide you with advice.

### Proactive release

Please note the Public Service Commissioner intends to proactively release the information and analysis provided to the negotiating parties under this process, at a suitable time following the formation of the Government. An assessment will be made prior to proactive release to determine if any information needs to be withheld. Until the proactive release process is complete, information provided by agencies in accordance with this process is supplied to political parties on the basis that the confidentiality of the information is maintained. Te Kawa Mataaho Public Service Commission will be in touch with you as part of the co-ordination of the proactive release process at a later date.

Please acknowledge receipt of this request and confirm you have work underway to provide the information.

Ngā mihi

Negotiations inbox on behalf of Gaye Searancke, Deputy Public Service Commissioner.

### Negotiations

#### Te Kawa Mataaho Public Service Commission

Logo  Description automatically generated





## FORM SENT TO AGENCY

### NEGOTIATIONS SENSITIVE – NOT FOR CIRCULATION

<b>REQUEST REFERENCE</b>	GOVFORM REQUEST 2023-002
<b>PARTY NAME</b>	ACT Party
<b>DATE RECEIVED</b>	26 October 2023
<b>RESPONSIBLE AGENCY/IES</b>	Justice (Lead), NZ Police, Corrections
<b>PRIORITY</b>	HIGH
<b>DATE DUE</b>	27 October 2023 – 1pm

### THE REQUEST

We are looking for information to answer the following question: how would a ‘three strikes for burglary’ policy increase the prison population compared with the counterfactual? (A three strikes regime would mean that an offender who committed three separate burglary offences would receive the maximum sentence for that offence).

The following information might be useful to help answer the question:

- Number of offenders whose lead offence is burglary, and are reconvicted on a burglary charge.
- Number of offenders who have three or more burglary convictions.
- Number of prisoners who have burglary charges as the lead offence.
- A breakdown of prison sentence lengths for prisoners whose lead offence is burglary.

The information likely falls under the portfolio areas of Corrections, Police and Justice.

It would be great to receive this information **by 3pm tomorrow**, but happy to discuss what is/isn’t feasible in this timeframe.

The information request has been allocated to the Ministry of Justice as the lead agency and will draw information from NZ Police and Corrections as discussed.



## OPC Sub-Committee approval of information to support negotiations

SIGN OFF REQUEST FOR NEGOTIATIONS SENSITIVE – NOT FOR CIRCULATION	
REQUEST REFERENCE	GOVFORM 2023-002
PARTY NAME	ACT Party – 9(2)(a) privacy
DATE RECEIVED	26 October 2023
RESPONSIBLE AGENCY	Justice (Lead), support from Corrections and Police if required.
TREASURY COSTINGS REVIEW	N/A
Sub-Committee Members	Gaye Searancke Rachel Hayward Janine Smith Struan Little Andrew Rutledge
THE REQUEST	
<p>The Committee discussed the format of the proposed answer, and agreed that a short explanation of how the principal answer was arrived at would assist in understanding the answer. It was also agreed that the 'Caveats' would be changed to 'Assumptions' and moved to come directly after the primary answer.</p> <p>In order to meet the timeframe, the Committee agreed the Ministry of Justice will make these changes and send the answer to the requestor, with a copy to the Public Service Commission.</p> <p>The assessment of the Committee is that the response from the agency (with the agreed explanations and changes) appropriately provides the information and analysis requested by the political party. The Committee is not attesting to the detail of the information and analysis.</p>	
<p><i>Gaye Searancke</i></p> <p>Gaye Searancke Chair Date: 27 October 2023</p>	

**From:** [Kibblewhite, Andrew](#)  
**To:** 9(2)(a) privacy  
**Cc:** [Negotiations](#)  
**Subject:** Response to Information Request  
**Date:** Friday, 27 October 2023 3:02:10 pm  
**Attachments:** [image001.jpg](#)  
[Memo - GOVFORM REQUEST 2023-002\\_final.docx](#)

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**This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.**

Good afternoon 9(2)(a) privacy

Please find attached the response to your request for information.

The Ministry of Justice has worked with Corrections and Police where necessary to put this response together.

If you have any further questions or would like to meet to discuss this response, please direct all correspondence to: [negotiations@publicservice.govt.nz](mailto:negotiations@publicservice.govt.nz).

Please note the information and analysis provided to negotiating parties under this process will be proactively released at a suitable time following the formation of the Government. An assessment will be made prior to proactive release to determine if any information needs to be withheld. Until the proactive release process is complete, information provided by agencies in accordance with this process is supplied to political parties on the basis that the confidentiality of the information is maintained.

Ngā mihi

Andrew



**Andrew Kibblewhite** (he/him) | Secretary for Justice and  
Chief Executive  
Ministry of Justice | Tāhū o te Ture  
Justice Centre, 19 Aitken Street, Wellington  
[www.justice.govt.nz](http://www.justice.govt.nz)

 Please consider the environment before printing this e-mail

# Memorandum

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**To** ACT Party  
**From** Andrew Kibblewhite, Secretary of Justice, Ministry of Justice  
**Date** 27 October 2023  
**Security Level** NEGOTIATIONS SENSITIVE  
**Subject** Response to information request

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## Information request to support government formation and negotiations

This memo responds to the ACT Party information request from 26 October 2023 to support government formation discussions and negotiations.

This response has been provided by the Ministry of Justice (MoJ) (lead agency), with support of Corrections and Police.

### This response covers the following questions:

*We are looking for information to answer the following question: how would a ‘three strikes for burglary’ policy increase the prison population compared with the counterfactual? (A three strikes regime would mean that an offender who committed three separate burglary offences would receive the maximum sentence for that offence).*

*The following information might be useful to help answer the question:*

- *Number of offenders whose lead offence is burglary, and are reconvicted on a burglary charge.*
- *Number of offenders who have three or more burglary convictions.*
- *Number of prisoners who have burglary charges as the lead offence.*
- *A breakdown of prison sentence lengths for prisoners whose lead offence is burglary.*

### The response is structured into 3 sections:

- Section 1: Summary results and assumptions
- Section 2: Other requested supporting information
- Appendix 1: ANZSOC division 07 (Unlawful entry with intent/burglary, break and enter) details

## Section 1: Summary Results and assumptions

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***How would a ‘three strikes for burglary’ policy increase the prison population compared with the counterfactual? (A three strikes regime would mean that an offender who committed three separate burglary offences would receive the maximum sentence for that offence).***

### Overall impact

Modelling shows that a ‘three strikes for burglary’ policy would result in an increase in the prison population.

This increase would be small in the initial years as first and second strikes for burglary offences are imposed. The increase in the prison population would then accelerates as people receive their third strikes, which would result in more people receiving prison sentences and those prison sentences being longer. This is illustrated in table 1 below.

*Table 1: Increase in the prison population post implementation*

	5 years post implementation	10 years post implementation	20 years post implementation
<i>Expected increase in the prison population</i>	~1,300	~3,200	~4,500

### Assumptions

1. This analysis assumes “strikes” are only issued for burglary offences and they do not include strikes that could result from other strikable offences.
2. This analysis assumes there are no strikes prior to the policy is implemented (if existing offending is included this would result in a much faster increase in the prison population while the total magnitude of the impact would be similar)
3. This analysis assumes the number and proportion of people with a 3<sup>rd</sup> or subsequent convicted for burglary does not change over time (this rate is based on the average over the last 5 years).
4. All previous burglary offending is counted by unique charge outcome dates. This means if a person is convicted of multiple burglary offences on the same day it would be counted as one previous offence.
5. The maximum penalty for 96% of charges convicted burglary offences is 10 years with the other 4% included charges with a maximum penalty of 3, 5, and 14 years. This analysis assumes that a third strike for burglary would receive a prison sentence of 10 years.
6. Burglary is classified as ANZSOC division 07 - Unlawful entry with intent/burglary, break and enter. A full list of burglary the offences and volumes of the past 5 years has been included in Appendix 1.
7. This analysis only accounts for changes resulting in direct changes to sentencing of 3<sup>rd</sup> or subsequent burglary convictions not to changes in other aspects of the Justice System.

### Logic for the increase in the prison population 20 years post implementation

Average number of people convicted of 3<sup>rd</sup> and subsequent burglary offences, by most serious sentence type, for 5 years between 2018/2019 and 2022/2023



Most serious sentence	Average (per year)	Proportion
Imprisonment	287	60%
Home detention	76	16%
Other	111	23%
Number of people	474	100%

#### Impact of people with 3<sup>rd</sup> and subsequent burglary convictions currently sentenced to prison

The average imposed sentence for people convicted and sentenced with 3<sup>rd</sup> and subsequent burglary convictions is 570 days (1.6 years). On average ~65% of this is served as a sentenced prisoner before being released and monitored in the community. If these people were sentenced to 10 years imprisonment, this would increase their time in the prison population by about 9 years.

On average 290 people are convicted of a 3<sup>rd</sup> and subsequent offence for burglary and sentenced to imprisonment each year. If these people were convicted and sentenced to 10 years imprisonment without parole, this would increase the prison population by about 2,600.

#### Impact of people with 3<sup>rd</sup> and subsequent burglary convictions currently not sentenced to prison

On average 190 people are convicted of a 3<sup>rd</sup> and subsequent offence for burglary and not sentenced to imprisonment each year. If these people were convicted and sentenced to 10 years imprisonment without parole, this would increase the prison population by about 1,900.

## **Section 2: Other requested supporting information**

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### **Number of offenders whose lead offence is burglary, and are reconvicted on a burglary charge**

#### People convicted of burglary

In 2022/2023, there were 1,430 people convicted with burglary as their most serious offence.

Source – [https://www.justice.govt.nz/assets/Documents/Publications/3cvkRt\\_People-with-finalised-charges-including-convicted-charges\\_jun2023\\_v1.0.xlsx](https://www.justice.govt.nz/assets/Documents/Publications/3cvkRt_People-with-finalised-charges-including-convicted-charges_jun2023_v1.0.xlsx)

#### People reconvicted of burglary

Of the 1,430 people convicted of burglary in 2022/2023, 54% had been convicted of burglary previously (since 2004/2005).

### **Number of offenders who have three or more burglary convictions**

Of the 1,430 people convicted of burglary in 2022/2023, 34% had been convicted of burglary two or more times previously (since 2004/2005).

### **Number of prisoners who have burglary charges as the lead offence**

There are currently 400 sentenced prisoners with a lead offence of burglary. Additionally, there are 229 people on home detention and 855 people under other types of Corrections management.

### **A breakdown of prison sentence lengths for prisoners whose lead offence is burglary**

Breakdown of imposed sentence length for people starting prison sentences for burglary over the past 5 years.

Table 2: Imposed sentence lengths 2018/19 to 2022/23

Imposed sentence length	2018/19	2019/20	2020/21	2021/22	2022/23
6 months or less	67	70	42	51	54
Over 6 months to 1 year	166	197	173	158	152
Over 1 year to 2 years	362	428	327	277	321
Over 2 years to 3 years	133	125	100	70	89
Over 3 years to 5 years	59	39	22	37	26
Over 5 years to 10 years	7	18	5	1	11
Over 10 years	1	0	0	2	0

### Appendix 1: ANZSOC division 07 (Unlawful entry with intent/burglary, break and enter) details

Table 3: Number of charges for ANZSOC division 07 (Unlawful entry with intent/burglary, break and enter), between 2018/2019 and 2022/2023, by offence code and maximum penalty

	Maximum penalty	Charges
4125: Burgles (Other Property) Est Val \$500 To \$5000 By Night	10	5,357
4126: Burgles (Other Property) Est Val Under \$500 By Night	10	5,034
4123: Burgles (Other Property) Est Val Under \$500 By Day	10	4,337
4122: Burgles (Other Property) Est Val \$500 To \$5000 By Day	10	4,156
4129: Other Burglary (Other Property)	10	3,548
4124: Burgles (Other Property) Est Val Over \$5000 By Night	10	3,067
4121: Burgles (Other Property) Est Val Over \$5000 By Day	10	1,710
4156: Committing Burglary With A Weapon (Other Weapon)	14	657
4159: Other Aggravated Burglary Offences	14	199
4155: Committing Burglary With A Weapon (Firearm)	14	156
4128: Enters Agricultural Land with Intent	10	103
4127: Remained With Intent	10	70
4158: Remained After Burglary (Other Weapon)	14	48
4113: Burgles For Drugs (Est Val Under \$500) By Day	10	44
4139: Other Burglary Associated Offences (Crimes Act)	3	24
4112: Burgles For Drugs(\$500-\$5000)By Day	10	22
4116: Burgles For Drugs (Est Val Under \$500) By Night	10	20
4115: Burgles For Drugs (Est Val \$500 To \$5000) By Night	10	17
4114: Burgles For Drugs (Est Val Over \$5000) By Night	10	7
4157: Remained After Burglary (Firearm)	14	6
4119: Other Burglaries For Drugs	10	2
4111: Burgles For Drugs (Over \$5000)By Day	10	1
4135: Enters With Intent	5	1
4152: Broken And Entered Has Any Weapon	14	1

**From:** 9(2)(a) privacy  
**To:** [Negotiations](#)  
**Subject:** RE: Response to Information Request  
**Date:** Friday, 27 October 2023 4:36:56 pm  
**Attachments:** [image001.jpg](#)

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**This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.**

Hi there,

Hopefully this is a simple matter as the modelling is already there – could we please get the same calculations done for a regime where there is a minimum sentence of three years no parole (as opposed to the current modelling based on 10 years).

I will take your lead on a reasonable deadline.

Kind regards,

9(2)(a) privacy

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**From:** Kibblewhite, Andrew 9(2)(a) privacy  
**Sent:** Friday, 27 October 2023 3:01 PM  
**To:** 9(2)(a) privacy  
**Cc:** [negotiations@publicservice.govt.nz](mailto:negotiations@publicservice.govt.nz)  
**Subject:** Response to Information Request

Good afternoon 9(2)(a) privacy

Please find attached the response to your request for information.

The Ministry of Justice has worked with Corrections and Police where necessary to put this response together.

If you have any further questions or would like to meet to discuss this response, please direct all correspondence to: [negotiations@publicservice.govt.nz](mailto:negotiations@publicservice.govt.nz).

Please note the information and analysis provided to negotiating parties under this process will be proactively released at a suitable time following the formation of the Government. An assessment will be made prior to proactive release to determine if any information needs to be withheld. Until the proactive release process is complete, information provided by agencies in accordance with this process is supplied to political parties on the basis that the confidentiality of the information is maintained.

Ngā mihi

Andrew



**Andrew Kibblewhite** (he/him) | Secretary for Justice and  
Chief Executive

Ministry of Justice | Tāhū o te Ture

Justice Centre, 19 Aitken Street, Wellington

[www.justice.govt.nz](http://www.justice.govt.nz)



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**From:** [Negotiations](#)  
**To:** [Andrew Kibblewhite](#)  
**Cc:** [Negotiations](#)  
**Subject:** URGENT: Negotiations – Request for information  
**Date:** Friday, 27 October 2023 7:11:00 pm  
**Attachments:** [image007.jpg](#)  
[image008.png](#)  
[image009.png](#)  
[image010.png](#)  
[image011.png](#)  
[GOVFORM REQUEST 2023-003 - AGENCY REQUEST FORM.docx](#)

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Evening Andrew

The Public Service Commissioner has received a request for information from a political party that is involved in negotiations to form a government. This request relates to information that I consider your agency is best placed to provide.

### Confidentiality

Given the high importance of the negotiations process, we cannot express enough the need for confidentiality when preparing your response, including the sharing of information and emails between relevant agencies when preparing a response, as set out in the Public Service Commissioner's letter to you of 5 September. Please ensure:

- the number of staff involved in a response are limited to the smallest number required.
- all staff are aware of the highly confidential nature of the request and response.
- all folders containing this request and response material are locked down.
- a log of access is maintained.
- all email content, attachments and email addresses are carefully checked before sending.

### Timing

Please treat this request as a matter of priority. The deadline for providing your draft response back to the Public Service Commission is **no later than 11.30am tomorrow**.

Erik Koed will be your point of contact. If it appears this deadline cannot be met, please inform Erik immediately. Similarly, if you have any questions please get in touch.

When your response is ready, please provide a copy to me via [negotiations@publicservice.govt.nz](mailto:negotiations@publicservice.govt.nz). The response will be reviewed before the Commission informs you it is ready to be sent to the requestor.

### Request requirements

Please ensure you follow the [Standards: Providing information to political parties during negotiations to form a government](#).

If the request is not clear please let us know immediately so we can seek clarification.

There is to be no engagement with your Minister on this material. Should you be proactively asked about the provision of any information by your Minister, or asked by your Minister to discuss or withhold any information provided by your agency to that Minister's political party - then please talk to the Assistant Commissioner immediately so they can provide you with advice.

### Proactive release

Please note the Public Service Commissioner intends to proactively release the information and analysis provided to the negotiating parties under this process, at a suitable time following the formation of the Government. An assessment will be made prior to proactive release to determine if any information needs to be withheld. Until the proactive release process is complete, information provided by agencies in accordance with this process is supplied to political parties on the basis that the confidentiality of the information is maintained. Te Kawa Mataaho Public Service Commission will be in touch with you as part of the co-ordination of the proactive release process at a later date.

Please acknowledge receipt of this request and confirm you have work underway to provide the information.

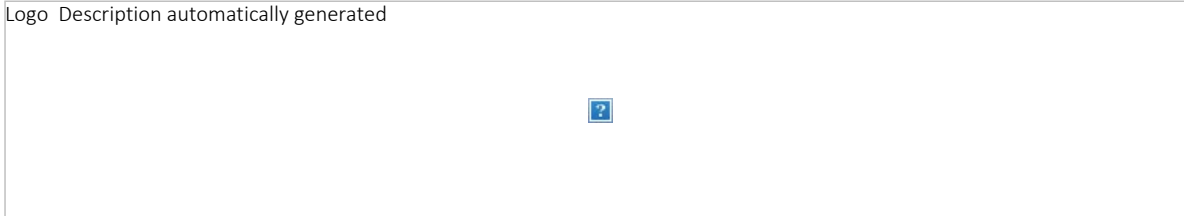
Ngā mihi

Negotiations inbox on behalf of Gaye Searancke, Deputy Public Service Commissioner.

### Negotiations

#### Te Kawa Mataaho Public Service Commission

Logo Description automatically generated



**Te Kawa Mataaho Public Service Commission**  
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## FORM SENT TO AGENCY

### NEGOTIATIONS SENSITIVE - NOT FOR CIRCULATION

<b>REQUEST REFERENCE</b>	GOVFORM REQUEST 2023-003 (Not For External Use)
<b>PARTY NAME</b>	ACT Party
<b>DATE RECEIVED</b>	27 October 2023
<b>RESPONSIBLE AGENCY/IES</b>	Ministry of Justice
<b>PRIORITY</b>	High
<b>DATE DUE</b>	28 October 2023 – 11.30am

### THE REQUEST

Hopefully this is a simple matter as the modelling is already there – could we please get the same calculations done for a regime where there is a minimum sentence of three years no parole (as opposed to the current modelling based on 10 years). I will take your lead on a reasonable deadline.

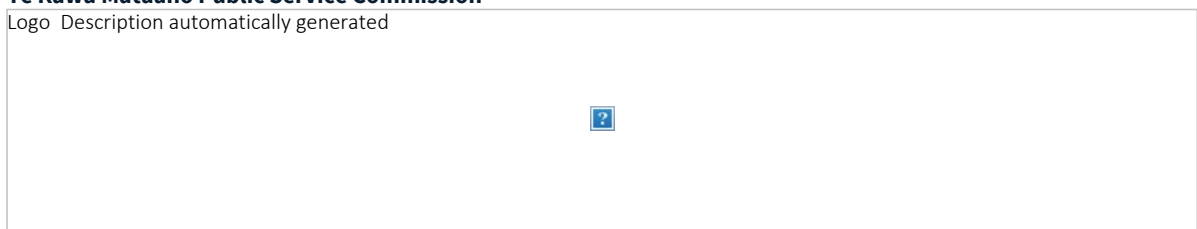
**From:** [Negotiations](#)  
**To:** [Kibblewhite Andrew; rebecca.parist9\(2\)\(a\) privacy](#)  
**Cc:** [Negotiations](#)  
**Subject:** GOVFORM REQUEST 2023-003  
**Date:** Friday, 27 October 2023 6:42:00 pm  
**Attachments:** [GOVFORM REQUEST 2023-003.docx](#)  
[image002.jpg](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

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Evening Andrew and Rebecca

As discussed with Gaye, please find attached the template with the new request wording for you to confirm timeframe for delivery.

**Negotiations**  
**Te Kawa Mataaho Public Service Commission**



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## FORM SENT TO AGENCY

NEGOTIATIONS SENSITIVE – NOT FOR CIRCULATION	
<b>REQUEST REFERENCE</b>	GOVFORM REQUEST 2023-002
<b>PARTY NAME</b>	ACT Party
<b>DATE RECEIVED</b>	27 October 2023
<b>RESPONSIBLE AGENCY/IES</b>	Ministry of Justice (Lead) and Corrections
<b>PRIORITY</b>	
<b>DATE DUE</b>	
THE REQUEST	
<p>Hopefully this is a simple matter as the modelling is already there – could we please get the same calculations done for a regime where there is a minimum sentence of three years no parole (as opposed to the current modelling based on 10 years). I will take your lead on a reasonable deadline.</p>	
<p>The information request has been allocated to the Ministry of Justice as the lead agency. It will draw information from Department of Corrections as required.</p>	



**From:** [Olivia Cross](#)  
**To:** [Andrew Kibblewhite](#)  
**Cc:** [Negotiations](#)  
**Subject:** Response approval (do not forward second email coming)  
**Date:** Saturday, 28 October 2023 12:29:14 pm  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

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Kia ora Andrew

As discussed with OPC sub-committee the response has been approved for sending.

As agreed we will send you a second email that you can forward directly.

Ngā mihi  
Olivia

**Olivia Cross** (she/her)

**Kaitohutohu Mātāmua | Principal Advisor**

Te pono, te matatika me te tautikanga | Integrity, Ethics & Standards

9(2)(a) privacy



**Te Kawa Mataaho Public Service Commission**

[www.publicservice.govt.nz](http://www.publicservice.govt.nz) | [www.govt.nz](http://www.govt.nz)



**From:** [Kibblewhite, Andrew](#)  
**To:** 9(2)(a) privacy  
**Cc:** [Negotiations](#)  
**Subject:** [IN-CONFIDENCE] Fwd: Follow up request - response  
**Date:** Saturday, 28 October 2023 12:52:10 pm  
**Attachments:** [Follow up request - response.pdf](#)

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**This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.**

Good afternoon 9(2)(a) privacy

Please find attached the response to your further request for information.

If you have any further questions or would like to meet to discuss this response, please direct all correspondence to: [negotiations@publicservice.govt.nz](mailto:negotiations@publicservice.govt.nz).

Please note the information and analysis provided to negotiating parties under this process will be proactively released at a suitable time following the formation of the Government. An assessment will be made prior to proactive release to determine if any information needs to be withheld. Until the proactive release process is complete, information provided by agencies in accordance with this process is supplied to political parties on the basis that the confidentiality of the information is maintained.

Kind regards

Andrew Kibblewhite  
Secretary for Justice

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Confidentiality notice: This email may be confidential or legally privileged. If you have received it by mistake, please tell the sender immediately by reply, remove this email and the reply from your system, and don't act on it in any other way. Ngā mihi.

[IN-CONFIDENCE]

# Memorandum

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**To** ACT Party  
**From** Andrew Kibblewhite, Secretary for Justice, Ministry of Justice  
**Date** 28 October 2023  
**Security Level** NEGOTIATIONS SENSITIVE  
**Subject** Response to information request

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## Information request to support government formation and negotiations

This memo responds to the ACT Party follow up information request from 27 October 2023 to support government formation discussions and negotiations.

This response has been provided by the Ministry of Justice (MoJ)

**This response covers the follow up question below the original question is included for context:**

*Original question: We are looking for information to answer the following question: how would a 'three strikes for burglary' policy increase the prison population compared with the counterfactual? (A three strikes regime would mean that an offender who committed three separate burglary offences would receive the maximum sentence for that offence).*

*Follow up question: Could we please get the same calculations done for a regime where there is a minimum sentence of three years no parole (as opposed to the current modelling based on 10 years).*

**The response is structured into 2 sections:**

- Section 1: Summary results and assumptions
- Appendix 1: ANZSOC division 07 (Unlawful entry with intent/burglary, break and enter) details

## Section 1: Summary Results and assumptions

---

***How would a ‘three strikes for burglary’ policy increase the prison population compared with the counterfactual? (A three strikes regime would mean that an offender who committed three separate burglary offences would receive the maximum sentence for that offence). Note for this response the requestor has asked that the modelling assume a third strike sentence of a minimum of 3 years imprisonment, no parole.***

### Overall impact on the prison population

Modelling shows that a ‘three strikes for burglary’ policy with a minimum sentence of 3 years no parole would result in an increase in the prison population.

This increase would be small in the initial years as first and second strikes for burglary offences are imposed. The increase in the prison population would then accelerate as people receive their third strikes, which would result in more people receiving prison sentences and those prison sentences being longer. This is illustrated in table 1 below.

*Table 1: Increase in the prison population post implementation*

	5 years post implementation	10 years post implementation	20 years post implementation
<i>Expected increase in the prison population</i>	~300	~800	~1,200

### Assumptions

1. This analysis assumes “strikes” are only issued for burglary offences and they do not include strikes that could result from other strikable offences.
2. This analysis assumes there are no strikes prior to the policy being implemented (if existing offending is included this would result in a much faster increase in the prison population while the total magnitude of the impact would be similar)
3. This analysis assumes the number and proportion of people with a 3<sup>rd</sup> or subsequent conviction for burglary does not change over time (this rate is based on the average over the last 5 years).
4. All previous burglary offending is counted by unique charge outcome dates. This means if a person is convicted of multiple burglary offences on the same day it would be counted as one previous offence.
5. For this analysis, people convicted of a third strikes for burglary would have a sentence imposed of 3 years imprisonment without the possibility of parole.
6. Over the last 5 years, 4% to 8% of people convicted of a 3<sup>rd</sup> or subsequent burglary offence have received sentences greater than 3 years. In this analysis changes to imposed sentence have been applied to the average sentence length therefore these people will be assumed to have served 3 years. This will result in an underestimation of possible impacts. However, given the low volume this is not likely to meaningful impact these estimates (increase of <20 people in the prison population at 20 years post implementation).
7. Burglary is classified as ANZSOC division 07 - Unlawful entry with intent/burglary, break and enter. A full list of burglary the offences and volumes of the past 5 years has been included in Appendix 1.

8. This analysis only accounts for changes resulting in direct changes to sentencing of 3<sup>rd</sup> or subsequent burglary convictions not to changes in other aspects of the Justice System.

**Logic for the increase in the prison population 20 years post implementation**

Average number of people convicted of 3<sup>rd</sup> and subsequent burglary offences, by most serious sentence type, for 5 years between 2018/2019 and 2022/2023

<b>Most serious sentence</b>	<b>Average (per year)</b>	<b>Proportion</b>
Imprisonment	287	60%
Home detention	76	16%
Other	111	23%
Number of people	474	100%

Impact of people with 3<sup>rd</sup> and subsequent burglary convictions currently sentenced to prison

The average imposed sentence for people convicted and sentenced with 3<sup>rd</sup> and subsequent burglary convictions is 570 days (1.6 years). On average ~65% of this is served as a sentenced prisoner before being released and monitored in the community. If these people were sentenced to 3 years imprisonment, this would increase their time in the prison population by about 2 years.

On average 290 people are convicted of a 3<sup>rd</sup> and subsequent offence for burglary and sentenced to imprisonment each year. If these people were convicted and sentenced to 3 years imprisonment without parole, this would increase the prison population by about 600.

Impact of people with 3<sup>rd</sup> and subsequent burglary convictions currently not sentenced to prison

On average 190 people are convicted of a 3<sup>rd</sup> and subsequent offence for burglary and not sentenced to imprisonment each year. If these people were convicted and sentenced to 3 years imprisonment without parole, this would increase the prison population by about 600.

## Appendix 1: ANZSOC division 07 (Unlawful entry with intent/burglary, break and enter) details

Table 3: Number of charges for ANZSOC division 07 (Unlawful entry with intent/burglary, break and enter), between 2018/2019 and 2022/2023, by offence code and maximum penalty

	Maximum penalty	Charges
4125: Burgles (Other Property) Est Val \$500 To \$5000 By Night	10	5,357
4126: Burgles (Other Property) Est Val Under \$500 By Night	10	5,034
4123: Burgles (Other Property) Est Val Under \$500 By Day	10	4,337
4122: Burgles (Other Property) Est Val \$500 To \$5000 By Day	10	4,156
4129: Other Burglary (Other Property)	10	3,548
4124: Burgles (Other Property) Est Val Over \$5000 By Night	10	3,067
4121: Burgles (Other Property) Est Val Over \$5000 By Day	10	1,710
4156: Committing Burglary With A Weapon (Other Weapon)	14	657
4159: Other Aggravated Burglary Offences	14	199
4155: Committing Burglary With A Weapon (Firearm)	14	156
4128: Enters Agricultural Land with Intent	10	103
4127: Remained With Intent	10	70
4158: Remained After Burglary (Other Weapon)	14	48
4113: Burgles For Drugs (Est Val Under \$500) By Day	10	44
4139: Other Burglary Associated Offences (Crimes Act)	3	24
4112: Burgles For Drugs(\$500-\$5000)By Day	10	22
4116: Burgles For Drugs (Est Val Under \$500) By Night	10	20
4115: Burgles For Drugs (Est Val \$500 To \$5000) By Night	10	17
4114: Burgles For Drugs (Est Val Over \$5000) By Night	10	7
4157: Remained After Burglary (Firearm)	14	6
4119: Other Burglaries For Drugs	10	2
4111: Burgles For Drugs (Over \$5000)By Day	10	1
4135: Enters With Intent	5	1
4152: Broken And Entered Has Any Weapon	14	1

**From:** 9(2)(a) privacy  
**To:** [Negotiations](#)  
**Subject:** Policy costing: fees free  
**Date:** Monday, 30 October 2023 1:13:09 pm

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**This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.**

Kia ora,

Could we please get a costing for a policy that would shift eligibility for the 'Fees Free' tertiary education scheme from first year students to third year full-time students who have successfully passed all coursework to that point.

If possible, it would be great to have this information by Wednesday.

Please feel free to get in touch if you need further clarification.

Kind regards,

9(2)(a) privacy

9(2)(a) privacy **Senior Policy Advisor**

ACT Caucus Support Centre | Parliament Buildings, Wellington 6160

9(2)(a) privacy | E 9(2)(a) privacy

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**From:** [Negotiations](#)  
**To:** [Iona Holsted](#)  
**Cc:** [Joshua Blackmore](#); "Patrick.nola9(2)(a) privacy" [Andrew Rutledge \[TSY\]](#); [Reubhan Swann \[TSY\]](#)  
**Subject:** URGENT: Negotiations - REQUEST FOR INFORMATION  
**Date:** Monday, 30 October 2023 3:08:00 pm  
**Attachments:** [image007.jpg](#)  
[image008.png](#)  
[image009.png](#)  
[image010.png](#)  
[image011.png](#)  
[FORM SENT TO AGENCY - GOVFORM 2023-004.docx](#)  
**Importance:** High

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Dear Iona

The Public Service Commissioner has received a request for information from a political party that is involved in negotiations to form a government. This request relates to information that we consider your agency best placed to provide.

This request may require input from the Tertiary Education Commission. Please liaise directly with the Chief Executive of that agency to determine who their key point of contact will be, if required. If there is any need to go beyond this agency to get the information requested please come back to us first.

### Confidentiality

Given the high importance of the negotiations process, we are strongly emphasising the need for confidentiality when preparing your response, including the confidentiality of information and emails between any relevant agencies when preparing a response, as set out in the Public Service Commissioner's letter to you of 5 September. Please ensure:

- the number of staff involved in a response are limited to the smallest number required.
- all staff are aware of the highly confidential nature of the request and response.
- all folders containing this request and response material are locked down.
- a log of access is maintained.
- all email content, attachments and email addresses are carefully checked before sending.
- you do not include the Public Service Commission in any email discussions during the development of your response.

### Timing

Please treat this request as a priority. The requestor has asked for the information to be provided by the end of Tuesday. This would require you to provide your draft response back to the Public Service Commission, including peer review of costings by the Treasury by **7pm Tuesday, 31 October 2023**.

If this is not possible, **please advise us immediately**. We would then apply our 48 hour deadline, which means we would need your draft response by **11am Wednesday, 1 November 2023**.

Josh Blackmore will be your point of contact. If you have any questions please get in touch.

When your response is ready, please provide a copy to me via [negotiations@publicservice.govt.nz](mailto:negotiations@publicservice.govt.nz). The response will be reviewed before the Commission informs you it is ready to be sent to the requestor.

### Request requirements

Please ensure you follow the [Standards: Providing information to political parties during negotiations to form a government](#). If the request is not clear please let us know immediately so we can seek clarification.

### Input from the Treasury

As this request relates to policy costings please ensure you are following the [costings policy](#). The Treasury is available to provide support as you develop your response, and must peer review your material before you send it back to the Commission. Please correspond with the Treasury officials directly, as required.

The request you have received may require input from the Tertiary Education Commission. You are responsible for managing the response and input required from that entity.

There is to be no engagement with your Minister on this material. Should you be proactively asked about the provision of any information by your Minister, or asked by your Minister to discuss or withhold any information provided by your agency to that Minister's political party - then please talk to the Assistant Commissioner immediately so they can provide you with advice.

### Proactive release

Please note the Public Service Commissioner intends to proactively release the information and analysis provided to the negotiating parties under this process, at a suitable time following the formation of the Government. An assessment will be made prior to proactive release to determine if any information needs to be withheld. Until the proactive release process is complete, information provided by agencies in accordance with this process is supplied to political parties on the basis that the confidentiality of the information is maintained. Te Kawa Mataaho Public Service Commission will be in touch with you as part of the co-ordination of the proactive release process at a later date.

Please acknowledge receipt of this request and confirm you have work underway to provide the information.

Ngā mihi

Negotiations inbox on behalf of Gaye Searancke, Deputy Public Service Commissioner.



**Negotiations**

**Te Kawa Mataaho Public Service Commission**

Logo Description automatically generated



**Te Kawa Mataaho Public Service Commission**  
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## Government negotiations: information request for agency to action

NEGOTIATIONS SENSITIVE – NOT FOR CIRCULATION	
<b>REQUEST REFERENCE</b>	GOVFORM REQUEST 2023-004 ( <b>Not For External Use</b> )
<b>PARTY NAME</b>	Act Party
<b>DATE RECEIVED</b>	30 October 2023
<b>RESPONSIBLE AGENCY/IES</b>	Ministry of Education (possibly with support from the Tertiary Education Commission)
<b>PRIORITY</b>	High
<b>DATE DUE</b>	7.00pm Tuesday, 31 October 2023 (Or if not possible, by 11am Wednesday, 1 November 2023)
THE REQUEST	
<p>Could we please get a costing for a policy that would shift eligibility for the ‘Fees Free’ tertiary education scheme from first year students to third year full-time students who have successfully passed all coursework to that point.</p> <p>If possible, it would be great to have this information by Wednesday.</p>	



**NEGOTIATIONS SENSITIVE – NOT FOR CIRCULATION**

<b>REQUEST REFERENCE</b>	GOVFORM REQUEST 2023-004
<b>PARTY NAME</b>	ACT Party
<b>DATE RECEIVED</b>	30 October 2023

**THE REQUEST**

Could we please get a costing for a policy that would shift eligibility for the 'Fees Free' tertiary education scheme from first year students to third year full-time students who have successfully passed all coursework to that point.

If possible, it would be great to have this information by Wednesday.

**CHECK AND CONFIRM**

<b>Is the Party is entitled to request the information</b>	Yes
<b>Is the request clear and does it contain required information</b>	Yes
<b>Is the requested information relevant to negotiations</b>	Yes

If NO, to any of these questions, a phone call, email or meeting is required to seek additional information.

<b>OPC Sub-Committee meeting required</b>	No
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**CONFIRMED AND APPROVED REQUEST WORDING**

<b>RESPONSIBLE AGENCY</b>	Ministry of Education
<b>TREASURY COSTINGS</b>	Yes
<b>AGENCY CONTACT</b>	Iona Holsted
<b>ASSISTANT COMMISSIONER</b>	Josh Blackmore
<b>PRIORITY</b>	High
<b>DATE DUE</b>	7pm Tuesday 31 October or at the very latest 11am Wednesday 1 November

## OPC sub-committee approval of information to support negotiations

SIGN OFF REQUEST FOR NEGOTIATIONS SENSITIVE – NOT FOR CIRCULATION		
<b>REQUEST REFERENCE</b>	2023-004	
<b>PARTY NAME</b>	ACT Party	
<b>DATE RECEIVED</b>	30 October 2023	
<b>RESPONSIBLE AGENCY</b>	Ministry of Education	
<b>TREASURY COSTINGS</b>	N/A	
OPC sub-committee consideration		
Consideration	Y/N	Comments
Does the response answer the question asked?	Y	Subject to the discussion held at OPC sub-committee.
Has any information been provided that is outside the scope of the Public Service Act 2020 and standards?	N	Discussed the advice dimension, agreed to talk about it in a different way and change.
Are any caveats or assumptions on the information clear?	Y	
<p>The assessment of the Committee is that the response from the agency appropriately provides the information and analysis requested by the political party. The Committee is not attesting to the detail of the information and analysis.</p> <p>The Committee recommends the response is provided to the political party by the agency with a copy simultaneously being sent to the Public Service Commissioner.</p>		
<div style="display: flex; align-items: flex-start;"> <div style="margin-right: 20px;">  <p>Gaye Searancke Chair</p> </div> <div> <p>Date: 1 November 2023</p> </div> </div>		

**From:** [Iona Holsted](#)  
**To:** 9(2)(a) privacy  
**Cc:** [Negotiations](#)  
**Subject:** Response to request for information  
**Date:** Wednesday, 1 November 2023 1:15:00 pm  
**Attachments:** [IU 1319028 Negotiation information request fees free FINAL.docx](#)

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**This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.**

Kia ora 9(2)(a) privacy

Please find attached the response to your request for information.

The Ministry of Education has worked with the Tertiary Education Commission where necessary to put this response together.

If you have any further questions or would like to meet to discuss this response, please direct all correspondence to: [negotiations@publicservice.govt.nz](mailto:negotiations@publicservice.govt.nz).

Please note the information and analysis provided to negotiating parties under this process will be proactively released at a suitable time following the formation of the Government. An assessment will be made prior to proactive release to determine if any information needs to be withheld. Until the proactive release process is complete, information provided by agencies in accordance with this process is supplied to political parties on the basis that the confidentiality of the information is maintained.

Ngā mihi

**Iona Holsted** | Te Tumu Whakarae mō te Mātauranga | Secretary for Education  
Te Tari o te Tumu Whakarae mō te Mātauranga | Office of the Secretary for Education

9(2)(a) privacy

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**DISCLAIMER:**

This email and any attachments may contain information that is confidential and subject to legal privilege. If you are not the intended recipient, any use, dissemination, distribution or duplication of this email and attachments is prohibited. If you have received this email in error please notify the author immediately and erase all copies of the email and attachments. The Ministry of Education accepts no responsibility for changes made to this message or attachments after transmission from the Ministry.

## Government negotiations: information request

**Metis Number:** 1319028

**Date:** 1 November 2023

### Request

Could we please get a costing for a policy that would shift eligibility for the 'Fees Free' tertiary education scheme from first year students to third year full-time students who have successfully passed all coursework to that point.

### Information

#### Costing estimate

The estimated cost of a third-year fees free policy, based on 2022 enrolments but adjusted for 2024 fee levels, is **\$97.4 million per annum (GST exclusive)** – subject to the assumptions and caveats outlined in the following section.

<b>Current Policy: First-Year Fees Free</b>	<b>Proposed Policy: Third-year Fees Free</b>
<b>Cost: ~\$320m</b> per annum (excluding reduced student loan borrowing costs)	<b>Cost ~\$97.4m</b> per annum (excluding reduced student loan borrowing costs)
Key design elements: <ul style="list-style-type: none"> <li>• Eligible for first equivalent full-time year of study (or two years of work-based training)</li> <li>• Part-time learners eligible, including work-based</li> <li>• No requirement to have passed all course work</li> <li>• Only available to learners with no prior study</li> </ul>	Key design elements: <ul style="list-style-type: none"> <li>• Eligible for third equivalent full-time year of study</li> <li>• Effectively limited to degree-level study</li> <li>• Full-time students only (excludes work-based training)</li> <li>• Requirement to have passed all prior degree level study</li> <li>• No prior study restriction</li> </ul>

The difference between the direct costs of the two policies would therefore be approximately **\$220 million** per annum. However, the cost of both policies would be partially offset by reduced write down costs associated with lower student loan borrowing, noting that not all learners are eligible for or choose to take up student loans. The write-down costs reflect losses to the student loan scheme associated with additional lending, in particular due to the interest free student loans policy.

A shift to the proposed policy would increase student loan borrowing compared to the current policy because it covers a lower proportion of total student fees, somewhat reducing the difference in the total operating cost of the two policies. While we are unable to accurately quantify the impact on student loan write-down costs in the time available (which would require more detailed analysis of the eligible cohort, including levels of student loan uptake and their likely repayment and default rates), our best estimate of the resulting difference in operating costs is approximately **\$170 million** per annum.

As is outlined below, the cost of the proposed policy is also highly sensitive to its eligibility settings, and the requirement that students are both full-time and have passed all prior

degree-level study is a significant driver of the reduced costs in comparison to the current policy.

The costing also does not incorporate any costs or savings associated with the transition from the current Fees Free policy settings. In particular, we have not excluded students who have already benefitted from the current Fees Free policy. While the long-term operational costs would not necessarily be higher than the current policy (depending on design decisions), there would be additional implementation costs in the short- to medium-term, such as IT system redesign costs.

### *Assumptions*

- We have prepared a per annum, GST exclusive estimated cost, based on 2022 enrolments of domestic students studying bachelor's degrees (or bachelor's with honours degrees) of at least three equivalent full-time student (EFTS) years in length.
  - Comment: This excludes all sub-degree study (which takes less than three years), and work-based training such as apprenticeships (which can take longer than 3 years but does not have a full-time credit-load). Under the current Fees Free policy, work-based learners can be eligible for up to 2 years of fees-free training, at a cost of approximately \$30 million per annum.
  - The costing also does not capture students who have enrolled in a sub-degree qualification and have subsequently chosen to credit this study towards a degree. While this practice is common in parts of the sector, it is not possible to identify this in the data and would be operationally difficult to include within a third-year fees free policy.
- We have limited eligibility to full-time students who passed all of their degree-level courses prior to 2022.
  - Comment: We note that these settings exclude a large proportion of students who have either been part-time at some point in their studies or who have failed or withdrawn from a course during their studies. The costing is highly sensitive to these settings, with any loosening of eligibility requirements significantly increasing the cost of the policy.
- Eligible study has been determined based on the number of EFTS studied in 2022 that are within the range of 2 to 3 cumulative EFTS for each student (i.e. it includes the courses that eligible students completed in 2022 after they had completed the equivalent of two years of full-time study, through to three years of full time study).
- An average per EFTS fee is multiplied by the eligible EFTS. The fees are 2022 tuition fees and course costs, adjusted to incorporate 2023 and 2024 fee increases.
  - Comment: Any changes to fee regulation settings, including any annual maximum fee increases, would have flow-on cost impacts to this policy.
- The costing does not include compulsory student services fees (fees that providers charge for services and facilities rather than tuition costs), which are covered by the current Fees Free policy. It is not possible to attribute these to eligible third-year students within the available timeframe.
  - Across the tertiary sector these fees average roughly \$500 per equivalent full-time student per annum, so if included could increase the cost of the policy by approximately \$7 million per annum.
- The costing does not make any adjustment for:

- forecast changes in volume from 2022 levels, noting that degree level delivery from 2025 onwards is forecast to be very similar to 2022 levels.
- behavioural changes in terms of changes to course completion rates, or students shifting towards full-time study.
- The costing does not incorporate any operational costs for agencies associated with the policy change, or any costs or savings associated with the transition from the current Fees Free policy settings (as discussed above) .
- The costing does not take into account any changes to student loan borrowing, although we have provided a best estimate of the impact of these changes on the difference between the cost of the current and proposed policies. This estimate is based on assumptions about the proportion of eligible students who would have otherwise paid their fees via a student loan and the write-down cost that would otherwise be incurred on this lending.
- Given the operational implications and need to transition from the current policy we have assumed that the earliest the policy change could be made is for 2025. This is based on learners having already made enrolment decisions for 2024 as well as the extent of operational changes needed to implement the new policy.

#### *Calculations*

- We have identified **131,475** domestic students enrolled in bachelor's degrees or bachelor's with honours (of 3+ EFTS length) in 2022.
- Once applying the above assumptions (had to pass all courses, studied full-time, had cumulative EFTS between 2 and 3 during 2022), there were **20,965** students who would have been eligible for the proposed policy in 2022, in relation to at least some of their study. This is around 16% of domestic students studying at bachelor's degree level in 2022.
- Of the study completed by these students, **14,015** EFTS would have been eligible for the proposed policy. The remainder of their study would not have been eligible because it did not comprise part of their third year of study (for example because some of the study they completed in 2022 was part of their second year).
- The average fee per EFTS in 2022 for these eligible students was **\$7,570 (GST inclusive)**.
- Multiplying the eligible EFTS by the average fee = **\$92.3 million (GST exclusive)**
- Then increasing this amount by the maximum permitted fee increase for 2023 and 2024 (2.75% and 2.8% respectively) = **\$97.4 million (GST exclusive)**.

#### *Calculation of estimated student loan impacts*

- Our best estimate of the impact of reduced student loan borrowing on this cost is less certain and based on an assumption that around 90 percent of eligible students would have otherwise paid their fees via a student loan, resulting in a decrease in student loan borrowing of approximately \$88 million.
- The associated reduction in write down costs would be approximately \$39 million, assuming that the write-down cost of this lending is about 45 percent (based on the average write down cost across the student loan scheme). This gives an estimated net cost for the proposed policy of approximately \$58 million per annum.



- This compares to the current policy, which has reduced student loan borrowing by approximately \$200 million per annum, with a reduction in student loan write-down costs of approximately \$90 million.
- Netting off these reduced write-down costs against the cost of each policy reduces the difference in operating costs to approximately \$172 million, rounded to \$170 million given the uncertainties involved.

SENSITIVE

**From:** 9(2)(a) privacy  
**To:** [Negotiations](#)  
**Cc:** [Gaye Searancke](#)  
**Subject:** Information to support negotiations to form a government - request  
**Date:** Tuesday, 7 November 2023 4:33:15 pm  
**Importance:** High

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**This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.**

Hi there

As part of negotiations to form a government I would like to request some urgent advice on two policy issues.

Obviously it is for you to coordinate the response, but in both instances I expect the information will be best provided by Crown Law.

1. Could you please on the current status of the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**. Specific questions to be answered include:

- What is the current status of UNDRIP in both international law and in New Zealand domestic law?
- Since NZ signed UNDRIP in 2010, what has been the flow-on effects into NZ domestic policy, if any?
- How has UNDRIP influenced the development of the NZ common law since 2010, if at all?
- What obligations does UNDRIP require of New Zealand, particularly in terms of reporting to the UN?
- What is the relationship between UNDRIP and the Universal Declaration of Human Rights?
- How have NZ courts referred to UNDRIP since New Zealand signed it in 2010?
- Can New Zealand “withdraw” from UNDRIP and how would that practically work?
- What would be the international and domestic law implications of formally withdrawing?

2. Could you please also advise on the **Whakatohea Kotahitanga Waka (Edwards) & Ors v Te Kahui and Whakatohea Maori Trust Board & Ors [2023] NZCA 504**. Our understanding is that the Crown has 20 working days to decide whether to seek leave to appeal the decision or not to the Supreme Court, which is the 16<sup>th</sup> of November.

- Is the Crown planning on seeking leave to appeal?
- If not, will the incoming government be able to appeal the decision and how would that be given effect to?

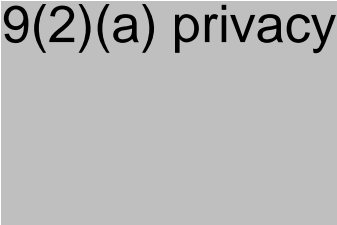
We would like this advice ASAP please – I’m conscious that these are quite detailed questions and so high-level answers only are fine in order to reduce time lines – it would not be necessary for a full legal opinion with cited cases etc.

Very happy to discuss if that is helpful.

Thanks

9(2)(a) privacy

9(2)(a) privacy



**From:** [Negotiations](#)  
**To:** [Una Jagose](#); [Negotiations](#)  
**Subject:** URGENT: Negotiations - REQUEST FOR INFORMATION  
**Date:** Wednesday, 8 November 2023 11:38:00 am  
**Attachments:** [Information request for agency to action - GOVFORM 2023-005.docx](#)  
[image006.jpg](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)  
[image010.png](#)

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Kia ora Una

I refer to the government formation information request received yesterday by the Public Service Commissioner, that you are leading the response on. Thank you for leading the process and liaising with other agencies to develop the response.

### Timing

As discussed with Gaye Searancke, the requestor would prefer short responses (reflecting the quick turnaround). This can be via bullet points and on one page.

We are expecting a draft response from you sometime between 12 - 1pm today, Wednesday 8 November. You will also receive a meeting invite from Olivia Cross for 2:30pm today, which we ask that you join at **2.45pm**. This meeting is of the OPC sub-committee (PSC, Treasury and DPMC - Gaye Searancke, Rachel Hayward, Struan Little and Janine Smith) to review the response and ask any questions. We have 15mins of Committee only time at the beginning, hence asking you to join us 15minutes in. Please forward the meeting invite to any relevant subject matter experts you would like to attend with you.

### Confidentiality

As discussed with Gaye, there is a particular need for confidentiality on these responses, including confidentiality of communication between agencies. Could you please ensure all document management folders relating to the request have access limited only to those necessary, and a record of access is maintained.

When the response is ready, please send it to [negotiations@publicservice.govt.nz](mailto:negotiations@publicservice.govt.nz). We will circulate it to the subcommittee before our meeting.

### Proactive release

Please note the Public Service Commissioner intends to proactively release the information and analysis provided to the negotiating parties under this process, at a suitable time following the formation of the Government. An assessment will be made prior to proactive release to determine if any information needs to be withheld. Until the proactive release process is complete, information provided by agencies in accordance with this process is supplied to political parties on the basis that the confidentiality of the information is maintained. Te Kawa Mataaho Public Service Commission will be in touch with you as part of the co-ordination of the proactive release process at a later date.

Ngā mihi

Negotiations inbox on behalf of Gaye Searancke, Deputy Public Service Commissioner.

### Negotiations

#### Te Kawa Mataaho Public Service Commission

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## Government Negotiations: Information request for agency to action

### NEGOTIATIONS SENSITIVE – NOT FOR CIRCULATION

<b>REQUEST REFERENCE</b>	GOVFORM 2023-005 (Reference number not to be used externally)
<b>PARTY NAME</b>	National Party
<b>DATE RECEIVED</b>	7 November 2023
<b>RESPONSIBLE AGENCY/IES</b>	Crown Law, Ministry of Justice, TPK
<b>PRIORITY</b>	HIGH
<b>DATE DUE</b>	ASAP

### THE REQUEST

1. Could you please on the current status of the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**. Specific questions to be answered include:
  - What is the current status of UNDRIP in both international law and in New Zealand domestic law?
  - Since NZ signed UNDRIP in 2010, what has been the flow-on effects into NZ domestic policy, if any?
  - How has UNDRIP influenced the development of the NZ common law since 2010, if at all?
  - What obligations does UNDRIP require of New Zealand, particularly in terms of reporting to the UN?
  - What is the relationship between UNDRIP and the Universal Declaration of Human Rights?
  - How have NZ courts referred to UNDRIP since New Zealand signed it in 2010?
  - Can New Zealand “withdraw” from UNDRIP and how would that practically work?
  - What would be the international and domestic law implications of formally withdrawing?
2. Could you please also advise on the **Whakatohea Kotahitanga Waka (Edwards) & Ors v Te Kahui and Whakatohea Maori Trust Board & Ors [2023] NZCA 504**. Our understanding is that the Crown has 20 working days to decide whether to seek leave to appeal the decision or not to the Supreme Court, which is the 16<sup>th</sup> of November.
  - Is the Crown planning on seeking leave to appeal?
  - If not, will the incoming government be able to appeal the decision and how would that be given effect to?



## OPC sub-committee approval of information to support negotiations

NEGOTIATIONS SENSITIVE – NOT FOR CIRCULATION	
<b>REQUEST REFERENCE</b>	GOVFORM 2023-005-01 & 005-02 (Reference number not to be used externally)
<b>PARTY NAME</b>	National Party
<b>DATE RECEIVED</b>	7 November 2023
THE REQUEST	
<p>1. Could you please on the current status of the <b>UN Declaration on the Rights of Indigenous Peoples (UNDRIP)</b>. Specific questions to be answered include:</p> <ul style="list-style-type: none"> <li>a) What is the current status of UNDRIP in both international law and in New Zealand domestic law?</li> <li>b) Since NZ signed UNDRIP in 2010, what has been the flow-on effects into NZ domestic policy, if any?</li> <li>c) How has UNDRIP influenced the development of the NZ common law since 2010, if at all?</li> <li>d) What obligations does UNDRIP require of New Zealand, particularly in terms of reporting to the UN?</li> <li>e) What is the relationship between UNDRIP and the Universal Declaration of Human Rights?</li> <li>f) How have NZ courts referred to UNDRIP since New Zealand signed it in 2010?</li> <li>g) Can New Zealand “withdraw” from UNDRIP and how would that practically work?</li> <li>h) What would be the international and domestic law implications of formally withdrawing?</li> </ul> <p>2. Could you please also advise on the <b>Whakatohea Kotahitanga Waka (Edwards) &amp; Ors v Te Kahui and Whakatohea Maori Trust Board &amp; Ors [2023] NZCA 504</b>. Our understanding is that the Crown has 20 working days to decide whether to seek leave to appeal the decision or not to the Supreme Court, which is the 16<sup>th</sup> of November.</p> <ul style="list-style-type: none"> <li>- Is the Crown planning on seeking leave to appeal?</li> <li>- If not, will the incoming government be able to appeal the decision and how would that be given effect to?</li> </ul>	
CHECK AND CONFIRM	
<b>Is the Party is entitled to request the information</b>	Yes
<b>Is the request clear and does it contain required information</b>	Yes – but OPC sub-committee meeting required to consider whether questions can be answered within scope of the standards. Notes of meeting are below.

<b>Is the requested information relevant to negotiations</b>	Yes
If NO, to any of these questions, a phone call, email or meeting is required to seek additional information.	
<b>OPC Sub-Committee meeting required</b>	Yes
<b>Meeting:</b> 7.30pm Tuesday 7 November	<p><b>Attendees:</b> Gaye Searancke, Rachel Hayward, Struan Little, Janine Smith, Hugo Vitalis, Olivia Cross, Vishnu Seger, Fran Hook.</p> <p>Key purpose of meeting is to consider whether responses can be provided to the questions within scope of the standards.</p> <p>Committee agreed that information can be provided beyond costings, but need to be careful about advice that might be outside the scope of the standards. Overall view of the committee is that the questions are essentially factual or could be answered in a factual manner, within scope of the standards. Specific details of what the answers may entail would be required to accurately assess – agencies are best placed to consider and then sub-committee to review.</p> <p>Question 2 - If releasing legally privileged information, likely would need to go through A-G for permission.</p> <p>Factual aspects fine to release in a way that doesn't provide advice. Can't provide advice to a party on whether or not the Crown <i>should</i> appeal.</p> <p><b>Actions:</b></p> <ul style="list-style-type: none"> <li>• Staff in agencies will be ready to respond first thing tomorrow morning.</li> <li>• Gaye to ring the requestor tonight. Will clarify there may be some questions we can't give answers to but will need Crown Law to consider.</li> <li>• Will also find out requestor's timeframe.</li> </ul>
<b>CONFIRMED AND APPROVED REQUEST WORDING</b>	
As above.	
<b>RESPONSIBLE AGENCY</b>	Crown Law (lead) with Justice and TPK for 005-01. Crown Law has sole responsibility for 005-02.
<b>TREASURY COSTINGS</b>	NO
<b>AGENCY CONTACT</b>	Una Jagose
<b>ASSISTANT COMMISSIONER</b>	N/A Gaye Searancke is acting as point of contact.

<b>PRIORITY</b>	High
<b>DATE DUE</b>	8 November 2023

**SIGN OFF REQUEST FOR NEGOTIATIONS SENSITIVE – NOT FOR CIRCULATION**

<b>REQUEST REFERENCE</b>	2023-005-01, 005-02
<b>PARTY NAME</b>	National
<b>DATE RECEIVED</b>	7 November 2023
<b>RESPONSIBLE AGENCY</b>	As above
<b>TREASURY COSTINGS</b>	No

**OPC sub-committee consideration**

<b>Consideration</b>	<b>Y/N</b>	<b>Comments</b>
Does the response answer the question asked?	Y	
<p>Does the response include any information excluded by the Public Service Act and standards?</p> <p><i>The following categories of information are excluded:</i></p> <ul style="list-style-type: none"> <li>• <i>policy advice or recommendations on the design, development or merits of a party's proposed policies;</i></li> <li>• <i>policy advice provided to a past or current government (this can be requested under the Official Information Act 1982 – see the section below: "Requests for information by political parties using other channels"); and</i></li> <li>• <i>personal information (unless the Commissioner otherwise approves the disclosure of that information).</i></li> </ul>	N	Discussion on minor changes held during the OPC sub-committee meeting. Note the information about non-Government activity that was included in the draft response will be excluded from the final answer.
Are any caveats or assumptions on the information clear?	Y	



The Committee's assessment is that the response from the agency appropriately provides the information and analysis requested by the political party. The Committee is not attesting to the detail of the information and analysis.

The Committee recommends the response is provided to the political party by the agency with a copy simultaneously being sent to the Public Service Commissioner (negotiations inbox).



Gaye Searancke

Chair

Date: 8 November 2023

**From:** [Una Jagose](#)  
**To:** 9(2)(a) privacy  
**Cc:** [Negotiations](#)  
**Subject:** UNDRIP request [CLO-Docs.SOL115.708]  
**Date:** Wednesday, 8 November 2023 4:29:44 pm  
**Attachments:** [image001.jpg](#)  
[7580839 PDF National Party Request for Information.PDF](#)

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**This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.**

Kia ora 9(2)(a) privacy

Please find attached the response to your request for information.

Crown Law has worked with the Ministry of Justice, Ministry for Foreign Affairs and Trade and Te Puni Kōkiri to put this response together.

If you have any further questions or would like to meet to discuss this response, please direct all correspondence to: [negotiations@publicservice.govt.nz](mailto:negotiations@publicservice.govt.nz) or contact Gaye Searancke on 9(2)(a) privacy

Please note the information and analysis provided to negotiating parties under this process will be proactively released at a suitable time following the formation of the Government. An assessment will be made prior to proactive release to determine if any information needs to be withheld. Until the proactive release process is complete, information provided by agencies in accordance with this process is supplied to political parties on the basis that the confidentiality of the information is maintained.

Ngā mihi

Una

**Una Jagose KC** ([she/her](#))

Solicitor-General | Te Rōia Mātāmua o te Karauna

Te Tari Ture o te Karauna Crown Law Office

9(2)(a) privacy

19 Aitken Street | PO Box 2858 | Wellington 6011



Executive Advisor: Elizabeth Underhill: 9(2)(a) privacy

Mobile: 9(2)(a) privacy

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(a) reply promptly to that effect, and remove this email and the reply from your system; (b) do not act on this email in any other way. Thank you.



8 November 2023

9(2)(a) privacy

Office of Mr Luxon

By email: 9(2)(a) privacy

**CROWN LAW INFORMATION IN RESPONSE TO NATIONAL PARTY REQUEST, SCHEDULE 3  
PUBLIC SERVICE ACT, DATED 7 NOVEMBER 2023**

**1. On the current status of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP); specific questions to be answered include:**

- **What is the current status of UNDRIP in both international law and in New Zealand domestic law?**

UNDRIP is a declaration adopted by a vote of the United Nations General Assembly, in September 2007. It is a statement of principle, not a treaty, and is not of itself binding at international law.

144 states voted in favour of the adoption, 11 states abstained from voting and four states (New Zealand, Australia, Canada and the United States) voted against the adoption. States did not sign, ratify, or accede to the Declaration.

In April 2010, New Zealand made a formal statement of support for UNDRIP.<sup>1</sup> By this statement, made in a speech to the United Nations Permanent Forum on Indigenous Issues and in Parliament, New Zealand explained and qualified its support for UNDRIP, with a focus on its consistency with the Treaty of Waitangi. Australia, Canada and the United States have also since made public statements in support of UNDRIP.

In terms of international law, declarations such as UNDRIP, may be relevant to the interpretation of existing international obligations and may reflect international customary law.

In terms of domestic law, international instruments are not legally binding unless incorporated into statute. UNDRIP has not been incorporated into statute. However, international instruments may affect New Zealand law through statutory interpretation,

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<sup>1</sup> [Ministerial Statements — UN Declaration on the Rights of Indigenous Peoples—Government Support - New Zealand Parliament \(www.parliament.nz\)](https://www.parliament.nz/ministerial-statements/un-declaration-on-the-rights-of-indigenous-peoples-government-support-new-zealand-parliament)

to the extent they evidence or represent customary international law (and that forms part of domestic law) or in the development of the New Zealand common law.

- **Since NZ signed UNDRIP in 2010, what has been the flow-on effects into NZ domestic policy, if any?**

Consistent with New Zealand's statement of support, the Treaty of Waitangi is the dominant influence on domestic policy. UNDRIP is sometimes referenced in policy papers to reiterate the Treaty articles and principles.

- **How has UNDRIP influenced the development of the NZ common law since 2010, if at all?/How have NZ courts referred to UNDRIP since New Zealand signed it in 2010?**

In this context, the focus in the New Zealand courts has been the Treaty of Waitangi. The courts have referred to UNDRIP in terms of New Zealand's statement of support (which is qualified by reference to the Treaty): (*Ngāti Whātua v Attorney-General* [2017] 3 NZLR 516 at [111]); and cited UNDRIP as a factor influencing the development of the common law: *Takamore v Clarke* [2012] 1 NZLR 573 (CA) at [254]; *Paki v Attorney-General* [2015] 1 NZLR 67 (SC) at [164], [317], *Proprietors of Wakatu v Attorney-General* [2107] 1 NZLR 423 (SC) at [491], *New Zealand Māori Council v Attorney-General* [2013] 3 NZLR 31 (SC) at [92].

- **What obligations does UNDRIP require of New Zealand, particularly in terms of reporting to the UN?**

The Declaration is not a treaty and has no formal reporting requirements.

The New Zealand Government has participated in annual fora (such as UN Permanent Forum on Indigenous Issues and the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)) and has provided updates to those fora on New Zealand's approach to the objectives of the Declaration.

- **What is the relationship between UNDRIP and the Universal Declaration of Human Rights?**

UNDRIP expresses existing human rights standards from other Declarations including the Universal Declaration of Human Rights, as well as making further statements about indigenous peoples.

- **Can New Zealand "withdraw" from UNDRIP and how would that practically work?**

Unlike treaties, there is no formal process for withdrawing from a declaration such as UNDRIP (just as there is no process for signing, ratifying, acceding or making reservations). Any change in New Zealand's position could be made by public statement.

- **What would be the international and domestic law implications of formally withdrawing?**

UNDRIP will remain a statement of international views which the New Zealand courts may consider.

9(2)(a) privacy, 6(a) prejudice security or defence

UNDRIP has been referred to in some of New Zealand's international instruments in recent years, for example:

- a) The NZ-UK FTA (in force) and the EU FTA (to be voted on by the European Parliament later this month as part of the EU's ratification process) both contain provisions that "*note the United Nations Declaration on the Rights of Indigenous Peoples, adopted in New York on 13 September 2007 and their respective positions made on that Declaration;*"
- b) The APEC Indigenous Peoples Economic and Trade Cooperation Arrangement 2021 includes:

*in the preamble "Affirm the need to honour, respect, and promote the inherent rights of Indigenous peoples as reflected in the United Nations Declaration on the Rights of Indigenous Peoples adopted in New York on 13 September 2007 (the United Nations Declaration) and other international instruments and constructive arrangements";*

*in a footnote: "All participating economies, whether they are members of the United Nations or not, affirm the need to honour, respect, and promote the inherent rights of Indigenous peoples as reflected in the principles and intent of the United Nations Declaration"*

6(a) prejudice security or defence

Claims could be made against the Government in the Waitangi Tribunal.

- 2. Could you please also advise on the Whakatōhea Kotahitanga Waka (Edwards) & Ors v Te Kāhui and Whakatōhea Maori Trust Board & Ors [2023] NZCA 504. Our understanding is that the Crown has 20 working days to decide whether to seek leave to appeal the decision or not to the Supreme Court, which is the 16<sup>th</sup> of November. Is the Crown planning on seeking leave to appeal? If not, will the incoming government be able to appeal the decision and how would that be given effect to?**

The appeal period ends on 16 November. The Solicitor-General is considering the filing of an application for leave to appeal. If leave is not sought, court rules allow an application for additional time to file an application for leave to appeal. In addition, the Attorney-General could seek leave to intervene if leave to appeal is granted to another party to the litigation.