Teina Pora compensation claim – Q&As

What has Cabinet decided?
Cabinet has accepted Mr Pora's application for compensation for wrongful conviction and imprisonment. This means that the Government accepts that Mr Pora is innocent of murder, sexual violation by rape and aggravated burglary, and has agreed to compensate Mr Pora accordingly.

What is the background to Teina Pora's application for compensation?
Mr Pora was convicted in 1994, and again in 2000, of murder, sexual violation and aggravated burglary in relation to the death of Susan Burdett in Papatoetoe in 1992. In 2015 the Privy Council quashed his convictions and did not order a retrial. An application for compensation for wrongful conviction and imprisonment was lodged by Mr Pora on 13 April 2015.

Was Mr Pora eligible to apply for compensation?
There is no legal right to compensation for wrongful conviction and imprisonment in New Zealand. Compensation may, however, be paid at the Government's discretion.

Under Cabinet Guidelines, the category of applicants who are eligible for compensation is limited to those who have had their convictions quashed on appeal without order of retrial, or who have received a free pardon.

As the Privy Council quashed Mr Pora's convictions without order of retrial, his application fell to be considered under the Cabinet Guidelines.

To qualify for compensation, eligible applicants must, at a minimum, establish their innocence on the balance of probabilities.

How was Mr Pora's application assessed?
On 4 June 2015, Justice Minister Amy Adams instructed former High Court Judge Hon Rodney Hansen CNZM QC to advise whether he was satisfied that Mr Pora had proven his innocence on the balance of probabilities. In the course of his inquiry into Mr Pora's innocence, Mr Hansen received submissions from both the applicant and the Crown Law Office. He examined the evidence that had been before the courts as well as new evidence produced by each of the parties for the purpose of his inquiry.

Mr Hansen provided his report to the Minister of Justice on 23 March 2016, concluding that, on the balance of probabilities, Mr Pora is innocent of the charges on which he was convicted.

On 5 April 2016, Ms Adams instructed Mr Hansen to provide advice on an appropriate amount of compensation for Mr Pora's post-conviction losses, calculated in accordance with the Cabinet Guidelines. In preparing this advice, Mr Hansen considered written submissions made on behalf of Mr Pora and the Crown Law Office. He provided his report on 31 May 2016, in which he recommended that Mr Pora be paid compensation of $2,520,949.42.

Cabinet then considered Mr Hansen's advice and decided that Mr Pora should be compensated for wrongful conviction and imprisonment in the amount recommended by Mr Hansen.

Why did Mr Hansen find Mr Pora innocent?
In the course of his inquiry into Mr Pora's innocence, Mr Hansen received submissions from both the claimant and the Crown Law Office. He examined the evidence that had been before the courts as well as new evidence produced by each of the parties for the purpose of his inquiry.

Mr Hansen's key findings in support of his conclusion that Mr Pora had established his innocence on the balance of probabilities are:

- Mr Pora's confessions to Police, affected by his foetal alcohol spectrum disorder, were a clear fabrication and cannot be relied upon. In particular, Mr Pora did not disclose anything to Police that he could have known only had he been present at the attack on Ms Burdett

- Evidence said to corroborate Mr Pora's confession is unreliable as it came from family members who had already concluded that he was guilty

- Evidence relied on to show an association between Mr Pora and Mr Rewa is also unreliable. Mr Hansen said the undisputed evidence leads to the "irresistible inference" that Mr Rewa acted alone in the sexual violation and murder of Ms Burdett and that there is no credible evidence he was accompanied by Mr Pora.

Mr Hansen concluded that the "state of the evidence is such that … [Mr Pora] could have proved his innocence to an even higher standard."

How was the compensation figure calculated?
The Cabinet Guidelines provide that an appropriate amount of compensation should be calculated in three steps:

- First, to compensate for loss of liberty, a rate of $100,000 per annum is multiplied by the number of years that the applicant spent in prison post-conviction

- A second amount is then calculated to compensate for the other categories of non-pecuniary loss (being loss of reputation, loss or interruption of family and other personal relationships, and mental and emotional harm). The Cabinet Guidelines provide that the figure should average out at $100,000, and that only those cases with truly exceptional circumstances should result in a figure of more than $100,000;

- A third amount is then calculated to compensate for pecuniary losses, such as loss of livelihood and future earnings potential, loss of property, and costs associated with obtaining an acquittal or compensation.

The three figures are then added together.

Mr Hansen recommended a total sum of **$2,520,949.42**, comprising:
- $1,961,895 for loss of liberty, being $100,000 per annum for the 19 years, 7 months and 13 days he spent in prison post-conviction

- $225,000 for Mr Pora's other non-pecuniary losses. This figure reflects the nature and extent of Mr Pora's loss overall, the seriousness of the offences alleged, the severity of the life imprisonment sentence, and restrictive periods he spent on bail and parole. Mr Hansen considered Mr Pora's losses under this category to be "of such a magnitude" that despite being twice the average figure, $225,000 was appropriate

- $334,054.42 for pecuniary losses, comprising $100,000 for loss of livelihood, $100,000 for loss of future earnings potential, and $134,054.42 to cover costs incurred on Mr Pora's behalf (being fees for lawyers and other professionals) in challenging his convictions and bringing the application for compensation.

How many applications for compensation are received?
About two or three applications are received each year. Most are declined as they do not meet the criteria for compensation. Usually that is because applicants have not or cannot prove their innocence on the balance of probabilities.

Including Mr Pora's, 27 applications for compensation have been decided since the Cabinet Guidelines were introduced.

Including Mr Pora, there have been seven successful applications. These are:
- David Dougherty (received $868,729)
- M ($570,697)
- F ($144,221)
- Lucy Akatere, McCushla Fuataha, and Tania Vini (between $162,000 and $176,000 each)
- Aaron Farmer ($351,575)
- Phillip Johnston and Jaden Knight (who received $146,011 and $221,936 respectively)
- Teina Pora ($2,520,949.42).