Ombudsman
Fairness for all

Opinion

Chief Ombudsman's opinion under the Ombudsmen Act

Legislation	Ombudsmen Act 1975, ss 13, 22
Agency	Ministry of Education – Process for considering claims of abuse in care
Ombudsman	John Allen
Case number(s)	014718
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Contents

Summary

1. The Ministry of Education (the Ministry) administers a scheme to assess claims from people who experienced abuse or neglect in certain types of state schools. The Ministry refers to these claims as 'Sensitive Claims'.

2. Cooper Legal represents a large number of claimants who have sought redress through this scheme. In 2023, Cooper Legal complained to me that the sensitive claims process was unreasonable in several respects. The complaint centres on four key areas and involves criticisms of various elements of the process for considering claims.

3. Since the complaint was received by my office, the Royal Commission of Inquiry into Historic Abuse in Care (the Royal Commission) has issued its final report and the Government has taken some steps to implement its recommendations. Of particular relevance are the Royal Commission's wide-ranging recommendations in its *He Purapura Ora, he Māra Tipu from Redress to Puretumu Torowhānui Report* (the Interim Redress Report), issued in 2021. In that report the Royal Commission described the problems with the current redress systems and said that *'Current redress processes are unquestionably failing to produce fair, consistent or adequate outcomes for survivors and their whanau affected by tūkino, or abuse, harm or trauma in care.'*[1] It called for the establishment of a new independent redress scheme, which would replace all current abuse in care claim schemes, including the one administered by the Ministry.

4. In May 2025, the Government announced there would be no independent redress scheme, instead deciding to prioritise *'improving the current system as quickly as possible*

[1] Royal Commission of Inquiry, *He Purapura Ora, he Māra Tipu from Redress to Puretumu Torowhānui*, page 264 of PDF – Volume One, accessible here: https://www.abuseincare.org.nz/reports/from-redress-to-puretumu.

for survivors and investing in changes that have a direct impact for them.' [2] The Government committed $774 million to *'improve the redress system and strengthen the care system to prevent, identify, and respond to abuse in the future.'* Improvements to the redress system will include:

- Increasing the average redress payments for new claims from $19,180 to $30,000;
- Providing for higher payments for the survivors who experienced the most egregious abuse;
- Providing 'top up' payments of 50% to survivors who have already settled claims to ensure consistency with increased payments for new claims;
- Introducing a common payments framework so that survivors receive the same financial redress for similar experiences of abuse, regardless of where in state care that abuse occurred;
- Increasing system capacity to process claims from 1,350 to 2,150 per year from 2027 to reduce wait times for current claimants;[3]
- Implementing a seamless service so that survivors with claims with multiple agencies have those claims managed by one point of contact;
- Introducing a single-entry point for survivors wanting to register new claims;
- Introducing an independent review for people who are unhappy with their redress offer; and
- Funding for redress agencies to provide survivors with access to supports and services.

5. These recent Government announcements mean changes to the Ministry's systems are likely. The Ombudsman needs to review the system as it is operating, but has done so with an eye to likely future changes. Where I have formed an opinion, it is hoped that my expectations help the Ministry/Crown to identify improvements to the current scheme and inform future considerations.

6. The previous Chief Ombudsman, Peter Boshier, investigated a complaint from Cooper Legal that certain aspects of Ministry of Social Development's Historic Claims process were unreasonable. There is some overlap between the two investigations and where applicable, I have made reference to his opinion.

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[2] See https://www.beehive.govt.nz/release/budget-2025-invests-care-system-and-improving-redress-survivors-abuse-state-care

[3] Noting that since the release of the Royal Commission's Final report in July 2024, the Government has invested $32 million to increase capacity in current redress and claims systems from approximately 1,350 to 1,550 claims per year.

7. It is important to acknowledge the enormity and complexity of the task faced by the Ministry and other agencies in assessing whether to accept these kinds of claims of historic abuse in care. The claims raise a host of difficult legal, ethical, emotional and financial issues. Pursuing them can equally have profound emotional and financial consequences for claimants. Claims of abuse in care involve highly traumatic experiences suffered by the claimant many years ago, often in secret and in ways which are necessarily undocumented. Allegations can impact the privacy and reputation of other parties, particularly alleged perpetrators. The government's ability to resource remedies is not unlimited and, to some extent, it may not be wrong for the Crown to resist the settlement of claims where it believes they are not factually made out or where the Crown has a valid legal defence.

8. Despite this complex context, my view is that the scheme has to be consistent with a range of principles of good administrative decision making:

    - There should be proactive publication of eligibility criteria for the scheme and any policies, procedures or guidance used by the agency to assess claims;
    - There must be good engagement with individual claimants so they understand:
        - how their claim is being assessed;
        - what information they can or should provide in support of their claims;
        - what information is being/has been taken into account by the agency;
        - where a final decision is made, a clear explanation of why claims are accepted or rejected and why the agency considers the amount offered to be justified;
    - There must be a simple process for a claimant to raise concerns about the assessment of a claim, particularly where they can point to information suggesting the outcome is wrong or unjust, and the Ministry must preserve a claimant's ability to seek an independent investigation of the approach by an Ombudsman;
    - There must be a clear rationale for the benchmark sums used to categorise payments and, thereafter, a consistent application of those benchmarks in individual cases;
    - Any conflicts of interest must be clearly identified and carefully managed.

9. In summary, the process the Ministry follows and the decision reached must be transparent and clearly justifiable.

10. There are some aspects of the scheme which, in my opinion, are inconsistent with these principles:

    a. The time taken to process some claims is far too long; and

    b. There have been unjustifiable delays in proactively publishing relevant information, including, but not limited to, settlement frameworks and evidential guidelines.

11. It is my opinion that these aspects of the scheme/the Ministry's administration of the scheme are unreasonable.

12. My view is also that while the Ministry is operating in accordance with the current legislative regime, the resulting exclusion of claims relating to open state secondary schools before 1 October 1989 creates significantly different experiences between claimants in a way which is unreasonable.

13. There are however aspects of Cooper Legal's complaint which I do not propose upholding, and where I do not think the Ministry has acted unreasonably, although I have made some observations and suggestions for improvement. I have not made adverse findings on the following aspects of Cooper Legal's complaint:

    a. Access and entry into the Ministry's process:

        i. Complexity of eligibility grounds to enter the Ministry's process; and

        ii. The Ministry's position that a school board is responsible for a claim in situations where the Director of Education has approved and directed admission of a child to a special residential school.

    b. The process itself:

        i. The role of claim reviewers[4] in the settlement process.

    c. The Claim Reviewer's report:

        i. The decisions to withhold Claim Reviewer's reports from certain clients but not others;

        ii. The limited scope of information accepted for consideration in assessments; and

        iii. The differential weighting and treatment of allegations and the improper application of the standard of proof.

    d. Lack of frameworks for false imprisonment/inappropriate detention and breaches to the New Zealand Bill of Rights Act 1990 (NZBORA).

14. Whenever an Ombudsman forms the opinion an agency has acted unreasonably, as I have here, they may make such recommendations as they think fit.[5] I am conscious that the Crown Response Office (CRO) is considering how to improve the current redress systems as a part of the government's response to the Royal Commission's recommendations. In this context, I have not made recommendations in areas addressed by recent Government announcements. However, there are some improvements I consider the Ministry should make to its current process and aspects of my opinion could

[4] Claim reviewers were previously called 'assessors'.

[5] Section 22(3) Ombudsmen Act 1975.

be considered in the improvements to current claims processes. I recommend that the Ministry:

- Identify ways to streamline the Sensitive Claims process and reduce the average processing time;
- Publish its guidance material as soon as possible, and no later than two months from the date of the final opinion; and
- Ensures Ministers receive advice on whether and how claims that would ordinarily sit with Boards of open schools move into the Ministry's Sensitive Claims process.

15. Although I am not sustaining particular elements of the complaint, I have made some observations and, where relevant, suggestions for improvement. In summary:

a. The Ministry appears excessively concerned about consistency and certainty in process and outcomes and this is leading to delays;

b. The Ministry's webpage for Sensitive Claims could be improved by including more information about eligibility for specific schools, and a definition of what a 'specialist school' is;

c. The Ministry could review the way it explains its decisions on claims to ensure the findings from the claims reviewer's report are suitably communicated, and which avoids the need for complex arguments about the extent to which privilege applies to those reports, and requests for reasons under section 23 of the Official Information Act 1982 (OIA);

d. The Ministry should ensure the responsible Minister receives advice on whether and how claims that would ordinarily sit with Boards of open schools move into the Ministry's Sensitive Claims process;

e. The purpose of the claim reviewer is not wholly clear, which is reflected in both the webpage and the guidance material;

f. There appears to be duplication of the claim reviewer function;

g. The Ministry's guidance regarding staff attendance at claim review meetings appears unclear and contradictory;

h. The Ministry should be open to the fact that multiple allegations of abuse against staff, or a school, can be useful in showing patterns of behaviour;

i. The Ministry should consider proactively publishing the spreadsheet of settled claims;

j. The Ministry should ensure that it is not rejecting claims where a claimant has a credible version of events and there is nothing to dispute that version; and

k. Best practice dictates that the Ministry should have frameworks for false imprisonment/inappropriate detention, and NZBORA breaches.

Background

16. From the early 2000s, a number of people were taking the Government to court for serious abuse that they suffered as children in state run institutions. These claims related to historic incidents, some dating back to the 1950s, and included allegations of physical, sexual and psychological abuse at psychiatric facilities, child welfare institutions and residential special schools.

17. The majority of claims were lodged against the Ministry of Social Development (MSD) and the Crown Health Financing Agency (which no longer exists – claims are made against the Ministry of Health). A small number of claims related to incidents alleged to have occurred at residential special schools that were under the administration of the former Department of Education prior to 1989.

18. The court process proved to be an unsatisfactory mechanism to address these claims, as it was long and costly and often prevented otherwise meritorious cases[6] from being heard due to evidential standards and statutory time limits.

19. In 2008, Cabinet approved a Crown Litigation Strategy to manage claims of historic abuse in state care. This strategy established a cross-government alternative dispute resolution process by providing agencies with less formal options outside of the court process to respond to historic abuse claims. Under this strategy, agencies could investigate and settle meritorious claims directly with claimants and out of court. In relation to the Ministry, the Crown Litigation Strategy defined historic abuse claims as claims of abuse or neglect at a residential special school before 1993. For a time, only claims that met this definition were eligible for the Ministry's process. While 1993 was selected as the cut-off point for a claim to be considered 'historic', under the Litigation Strategy any claim relating to events after 1989 would sit with the relevant Board of Trustees,[7] unless the school was closed, in which the claim would sit with the Ministry.

20. Prior to 2010, the Ministry received a small number of direct claims, which were managed on a case by case basis. The Ministry began receiving a number of claims that were not in scope of the definition in paragraph 17, so in 2010, guided by the Litigation Strategy, the Ministry established a process to manage and respond to abuse claims. As a result, in 2018 it was agreed all abuse claims lodged with the Ministry would be managed under the claims process, provided the Crown is the correct respondent to the claim. The Ministry does not manage claims on behalf of schools where the school's Board is the correct respondent.

[6] A claim may be considered 'meritorious' if the allegations meet the threshold for abuse and there is some background information available to support the allegations.

[7] Now known as school boards under the Education and Training Act 2020.

21. The Ministry's claims process operates in accordance with the Crown Resolution Strategy, which was approved by Cabinet following a 2019 review of the Crown Litigation Strategy. This review considered whether it could better reflect the principles Cabinet agreed would guide the Crown's response to the Royal Commission of Inquiry into Abuse in Care. The original principles were updated and a series of new principles on engaging with the Royal Commission were also adopted:

    1. Manaakitanga
    2. Openness
    3. Transparency
    4. Learning
    5. Being joined up
    6. Meeting obligations under Te Tiriti o Waitangi.

    The renamed Crown Resolution Strategy directs the Crown to ensure its approach to claims is guided by these principles.

22. Under the Ministry's Sensitive Claims process, it assesses claims about the following state schools:

    - A primary (including intermediate) school or specialist school prior to-1989;
    - Any closed school; or
    - Any other situation where the Ministry considers it is the correct respondent.

    It will not assess a claim if a school Board is the correct respondent, or if it should sit with another agency, for example MSD. The Sensitive Claims process includes both historical (pre-1989) and contemporary (post-1989) claims.

23. The Ministry operates two processes for Sensitive Claims:

    a. A Rapid Payment Framework for:

        i. Claimants that attended an eligible school. This is currently only Waimokoia/ Mt Wellington residential school but the Ministry intends to include McKenzie and Campbell Park residential schools in the near future, once its research is completed; and

        ii. Priority Settlement payments for eligible claimants with a terminal illness (irrespective of the school they attended but only for schools falling with the Ministry's responsibility).

    b. A full assessment process for claims that are not eligible for the Rapid Payment Framework.

24. For clarity, Cooper Legal's complaint relates to the full assessment process.

The Allen + Clarke report

25. In 2020, the Ministry commissioned consultancy firm Allen + Clarke to the review the Sensitive Claims Process. The purpose of the review was to *'… identify how the Ministry can improve its processes and practices as much as possible within fiscal and policy mandates as it continues to respond to claimants under its current process.'*

26. In August 2020, Allen + Clarke presented its final report. The areas identified as in most need of improvement were those related to timeliness and improving transparency about the process for stakeholders.

27. Allen + Clarke's findings and recommendations regarding timeliness were:

> *One of the key concerns identified by stakeholders with the current process was the time taken to assess and respond to claims. There are approximately 100 claims which have been lodged and not yet assessed or settled, 71 of which have been filed in court. The Ministry informed the review team that their latest data shows that it takes about 2.8 years to resolve a claim. It was agreed that a key goal for the Ministry should be to improve the timeliness of responses to claims, and while additional resources may help, there were other changes to the process that would be required before the full benefit of additional resources could be felt. Potential improvements to address timeliness include:*
>
> - *continuing to explore opportunities to work with Crown Law to reach an agreement on the application of the Limitations Act;*
> - *collate a knowledge base in the form of detailed research reports on the three closed residential special schools to reduce repetitive research activities;*
> - *separate the responsibility for the day-to-day management of the Team from responsibility for strategic and policy decision making; and*
> - *consider establishing a process to accept certain claims without a full review. This would bring the process more in line with other agencies, as well as having time and resource benefits.*

28. As a result of the Allen + Clarke report, and reports from Te Amokura and the Royal Commission, the Ministry advises it took the following actions:

- Research into Waimokoia, Campbell Park and McKenzie residential special schools;
- Introduction of Rapid Payments for Waimokoia claimants, and Prioritised Settlement Process for terminally ill claimants;
- Introduction of the Wellbeing Support Service;

- Work on Limitations Act/Policy, suspending the counting of time for the purposes of any defence under the Limitation Act 1950 and Limitation Act 2010 while the claimant is engaging in the out of court claims resolution process;
- Establishment of a Māori Sensitive Claims team within the wider Sensitive Claims unit,[8] and development of sensitive claims process embedded in tikanga Māori;
- In early 2024, three Māori claim reviewers were added to the pool of claim reviewers, and are available to meet with Māori claimants, or claimants seeking a tikanga Māori approach to resolution of their claim. In late 2024, one Pasifika claim reviewer was added to the pool;
- Regular inter-agency meetings with other claims agencies and improved collaboration and alignment of process and policy;
- Updates to website and information on sensitive claims. Work was undertaken in April 2023 to improve the information available on the Ministry's sensitive claims website. Some further work on the sensitive claims site remains to be finalised and uploaded. It is intended that this work will be able to be progressed and completed by mid-2025. A key future focus and improvement will be ensuring that sensitive claims information is accessible to deaf, blind and/or disabled claimants; and
- Work with the CRO on all-of-government response to the Royal Commission. Most recently, that included Budget Bid 2025 considerations.

Complaint

29. On 13 January 2023, Cooper Legal complained to the Ombudsman that the Sensitive Claims process was unreasonable in multiple respects.

30. The complaint covers the following grounds:

    a. Access and entry into the Ministry's process:

        i. The complications and barriers to entry of the Ministry's redress process;

        ii. The exclusion of claims relating to open state secondary schools before 1 October 1989;

        iii. The Ministry's position that a school board is responsible for a claim in situations where the Director of Education has approved and directed admission of a child to a special residential school;

[8] The Ministry advised: *'With the public sector cost savings and associated restructure, the Māori claims team was merged into the wider claims team effective from November 2024. The specialist Māori roles and skillset still exist within the team and Māori claims kaimahi continue to be available to engage with claimants seeking this preference.'*

b. The process itself:

   i. The role of claim reviewers[9] in the settlement process;

   ii. The unreasonably lengthy processing times for claims;

c. The Claim Reviewer's report:

   i. Decisions to withhold Claim Reviewer's reports from certain clients but not others;

   ii. The limited scope of information accepted for consideration in assessments;

   iii. The differential weighting and treatment of allegations;

   iv. The improper application of the standard of proof;

   v. The inconsistencies with other existing settlement processes, for example MSD's process;

d. The settlement offers:

   i. The absence of an objective and transparent settlement framework;

   ii. The lack of a framework for false imprisonment/inappropriate detention; and

   iii. The lack of a framework for breaches to NZBORA.

31. While Cooper Legal have provided some examples from individual claims in support of their complaint, many of their concerns are about the design or operation of the scheme in a more general sense. While I have not upheld some aspects of Cooper Legal's complaint about the scheme at a high level, it may be that these parts of the scheme are still being applied unreasonably in individual circumstances and I do not preclude receiving, investigating, and potentially upholding complaints from individuals affected by these aspects of the scheme in future.

My expectations in this context

32. As mentioned above, the scheme administered by the Ministry involves complex legal, ethical, moral, emotional and fiscal issues. These complexities necessarily influence my assessment of the scheme and its administration by the Ministry.

33. The context of the scheme is critical. Some claimants under the scheme may be able to bring legal proceedings seeking compensation for abuse suffered in state care. As outlined above, the scheme was initially set up to provide an alternative avenue to settle legal claims which abuse survivors would otherwise be entitled to pursue in Court.

[9] Claim reviewers were previously called 'assessors'.

34. In instances where a claim of abuse is not made out or where the Crown has a valid legal defence, there is no legal entitlement to compensation and, instead, any payment by the Crown would be ex gratia and made out of a sense of goodwill. In other cases where there is a valid legal claim the scheme provides a pathway for a full legal settlement of a claim. Requiring evidence to the standard necessary in Court proceedings is also difficult because of the lack of contemporaneous evidence to substantiate this kind of abuse and the understandable need to avoid re-traumatising abuse survivors.

35. In its evidence to the Royal Commission, the Ministry said it took guidance from MSD when considering how to develop its claims process, as MSD had an established claims process. The Ministry also considered how it managed other sensitive complaints internally, such as protected disclosures. It used the following principles, based on the Crown Litigation Strategy, to guide the establishment of its claims process:[10]

    a. Provision of a process that is less time consuming and onerous on vulnerable claimant groups than the litigation process;

    b. Ensuring that the process supports an outcome that is enduring, fair and based on a degree of supporting information;

    c. Claimants have the opportunity to share their experiences with the Ministry. The process allows the claimant to move on with their lives to the extent reasonably possible;

    d. Public funds are managed appropriately and payments to resolve claims are set at an appropriate level; and

    e. The approach to resolving claims does not create new concerns or risks.

36. The Sensitive Claims process, like other agencies' abuse in care claim processes, is clearly something of a compromise between the competing objectives. As the Ministry told the Royal Commission:

> *We try to take into account the needs of individual claimants and the natural justice considerations of those who have had allegations made against them, while acknowledging the Ministry's claim process does not determine guilt or liability.*[11]

37. I have set these factors out to demonstrate the range of choices which have to be made in the design and operationalisation of the scheme. Each choice involves a range of factors or trade-offs, and it would not be appropriate for an Ombudsman to simply substitute their view of what the scheme should look like or involve. These factors influence the way in which I have assessed whether the scheme is unreasonable.

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[10] See Brief of Evidence of Helen Hurst for the Ministry of Education – Redress, 27 January 2020, available here: https://www.abuseincare.org.nz/research-and-engagement/evidence-library/part-2

[11] Paragraph 4.6, Brief of Evidence of Helen Hurst for the Ministry of Education – Redress, 27 January 2020.

38. The simple fact, however, is that the Ministry is administering a scheme designed to consider claims where *'someone believes they were abused, mistreated or neglected in a state school and would like some form of redress from the Ministry.'*[12] There can be no question of an Ombudsman's ability to review the fairness and reasonableness of such a scheme and the way it is being administered by the Ministry, and in doing so an Ombudsman will apply their own independent expectations of fairness and reasonableness.

39. Having regard to the complexities of this particular context, my expectation as Ombudsman is that the scheme must be consistent with the following principles of good administrative decision making:

    a. There must be proactive publication of eligibility criteria for the scheme and any policies, procedures or guidance used by the agency to assess claims;

    b. Claims must be assessed in a timely way, having regard to the complexity of the issues and in proportion to the amount of redress likely to be granted;

    c. There must be good engagement with individual claimants so they understand:

        i. how their claim is being assessed;

        ii. what information they should provide in support of their claims;

        iii. what information is being taken into account by the agency;

        iv. where a final decision is made, a clear explanation of why claims are accepted or rejected and why the agency considers the amount offered to be justified;

    d. There must be a simple process for a claimant to raise concerns about the assessment of a claim, particularly where they can point to information suggesting the outcome is wrong or unjust, and the Ministry must preserve a claimant's ability to seek an independent investigation of the approach by an Ombudsman;

    e. There must be a logical rationale for the benchmark sums used to assess the amount of payments and consistency in the amounts paid across individual claims;

    f. Any conflicts of interest are clearly identified and managed.

40. Inherent in each of these principles is the need for the Ministry to follow a fair and proportionate process and to be able to justify the approach it is taking in the design and administration of each part of the scheme. Cooper Legal's complaint requires me to identify, assess and express an opinion on the Ministry's justifications for a range of procedural and substantive elements of the scheme. Where I find that a fair

[12] See the Ministry's Sensitive Claims: Assessment Guidelines, and its Sensitive Claims Business Process and Guidelines.

process/good reason does not exist I may make a finding that the scheme is unreasonable or that in administering it the agency is acting unreasonably.[13]

Analysis and findings

Entry into the Ministry's Sensitive Claims process

41. Cooper Legal raised three concerns under this ground and state they would be *'less problematic if MOE was able to triage claims (and refer them on to appropriate organisations) promptly.'* Cooper Legal pointed out that it can take months or years for the Ministry to triage, which causes frustration and distrust, and can potentially negatively impact on a survivor's ability to bring civil claims against the appropriate organisation, in terms of the Limitation Act.

The complications and barriers to entry to the Ministry's redress process

42. Cooper Legal considers the eligibility grounds for entry into the Sensitive Claims process are complex, and the Ministry's guidance documentation on whether a claim will be accepted by the Ministry, or triaged out, is vague. Cooper Legal further states it is unclear whether intermediate schools, special schools or state-integrated are included in the Ministry's claims process. Cooper Legal queries how a non-represented claimant could navigate the claims process on their own.

43. It is clear there are limits to the types of claims the Ministry will accept (which I discuss further in this opinion) and that there is some resultant complexity when it comes to determining whether a claim relates to a school that falls within the Ministry's ambit or not. However, I am not persuaded that there are unreasonable barriers to entering the Ministry's process.

44. I have considered the guidance material available to the public, and a sample number of letters that demonstrate how the Ministry engages with claimants seeking to enter the Sensitive Claims process. My view is that the guidance is not unreasonable or unduly unclear, nor are the Ministry's explanations to claimants unreasonable.

45. The Ministry has advised that in the years 2022-2024, 405 claims were received, of which approximately 13 (just over 3% of claims) were complex and required significant investigation to determine whether the claim was eligible for the Ministry's process. This is an estimate because the Ministry does not track, monitor or report where claims require further investigation, and there are likely to be additional claims that required eligibility assessment. This figure also does not include support provided by the claims team to people who are not eligible for the Ministry's process, or 'out of process' requests to confirm eligibility prior to a claim being lodged. This number is not significant

[13] Section 22(1)(b) Ombudsmen Act 1975.

and suggests that generally, determining issues regarding eligibility is not substantially complex.

46. Cooper Legal disputes that approximately 3% of claims pose a jurisdictional difficulty. By its calculations, Cooper Legal estimate the figure is closer to 7.5-10%. Cooper Legal also queries the Ministry's definition of 'complex and requires significant investigation', raises concerns that the Ministry does not track this issue, and stated that utilising the period of 2022-2024 omits to include cases where jurisdiction has been challenging to establish.

47. I acknowledge Cooper Legal's comments. The purpose of the statistical inquiries made regarding this element of the complaint was to understand if there was a pronounced issue with entry to the Sensitive Claims process. There will always be cases where establishing jurisdiction is difficult. However, I am satisfied that there is not a *systemic* problem with entering the Sensitive Claims process.

48. The Ministry's webpage for Sensitive Claims is well set out and understandable. The Ministry clearly states which claims it cannot accept. It offers to have conversations with claimants to discuss which agency is best suited to consider the claim. The Ministry's written correspondence with claimants is also clear and contains relevant information. Relevant parts of the claims process, or why a claim cannot be accepted, are explained in an easy to understand way. The Ministry advises claimants of contact details for schools, relevant support services, and offers assistance including transferring complaints to an open school and conversations about claims. The Ministry's correspondence with legal representatives of claimants is also clear and easily understood.

49. Having said that, I do think the Ministry's webpage for Sensitive Claims, and its Business Process and Guidelines, could be improved by:

    a. including eligibility information regarding intermediate schools, special schools and state-integrated schools (accompanied by any relevant disclaimers);[14] and

    b. defining what a 'specialist school' is. This is a term used by the education sector but it may be difficult for the general public/claimants to understand.

50. The Ministry has advised it is undertaking work to improve the information on its website, including improved accessibility to sensitive claims information and guidance, including for deaf, blind and/or disabled claimants. I commend the Ministry's commitment to this, and suggest the Ministry incorporate the suggestions at paragraph 47 into this work.

[14] See page 21 of the Crown Response Plan (digital version) where it is noted that the Ministry is undertaking work to improve the information on its website, including making that information accessible for claimants with disabilities.

The exclusion of claims relating to open state secondary schools before 1 October 1989

51. Cooper Legal is dissatisfied with the Ministry's position that it will accept claims about open state primary schools before 1 October 1989 but will not accept claims about open state secondary schools. Cooper Legal states it has put this issue to the Ministry but the Ministry cited this was a policy decision.

52. The Ministry advised me that its position is guided by statute not policy. It advised that its approach to addressing historic abuse claims arising in the primary and secondary schooling system is divided into two distinct periods – pre 1989 and post 1989. Prior to 1989, secondary schools were governed by Boards of Governors and secondary school councils, and the Department of Education oversaw the administration of the primary and secondary schooling system in New Zealand under the Education Act 1964. However, this changed with the Government's 1989 'Tomorrow's Schools' reforms that:

    a. decentralised and devolved responsibility for the administration and management of all State schools (primary and secondary) to independently elected boards of trustees;

    b. abolished the Department of Education, education boards and secondary school councils; and

    c. established a smaller Ministry, the Education Review Office, and the New Zealand Qualifications Authority.

53. The allocation of rights, assets, liabilities, and debts of an education board or secondary school council at the time of the 'Tomorrow's Schools' reforms was determined by statute, being sections 143, 145 and 154 of the Education Act 1989 and section 22 of the School Trustees Act 1989. The Ministry considers this legislation means that rights, assets, *liabilities* and debts of an education board passed to the Minister of Education while those of a secondary school council passed to the new school Board of Trustees.[15] When a school is closed, the assets, liabilities, and debts of the school board pass to the Minister of Education pursuant to section 199(6)(b) of the Education and Training Act 2020.

54. People are eligible to access the Ministry's Sensitive Claims process where they allege abuse, mistreatment, or neglect occurred when they attended a state primary (including intermediate) or specialist school prior to 1989, or any state school that has now closed (including specialist schools and health camp schools). The eligibility criterion reflects the devolution of responsibility for the administration and management of state schools to independently elected boards of trustees, as set out above. Accordingly, the Ministry considers it is appropriate for post-1989 claims relating to schools which remain open to be referred to the responsible school board for investigation and appropriate response.

[15] Now called 'School Boards'.

55. My view is that the Ministry has not acted unreasonably as it appears to be acting in accordance with current legislation. The precise scope of the provisions the Ministry is relying on do not appear to have been tested in Court, but my view is that the Ministry's approach broadly reflects the legislative settings.

56. However, I am concerned that this delineation may result in unfair outcomes for complainants whose claim sits with the Board of an open school. While Boards are independent legal entities that appear to be required to respond to certain claims, they are at a distinct disadvantage when handling claims of abuse in care. The Ministry operates a claims process that is specifically resourced, in terms of staffing, funded to offer monetary redress, trauma-informed training and survivor support services, to process abuse in care claims. The Ministry has access to in-house lawyers and Crown Law, to provide legal advice. The Ministry's claims process has been in existence for some time, and has been subject to reviews and refinement during this time.

57. In contrast, Boards generally have little to none of these resources. Boards are comprised primarily of volunteers who do not necessarily have the skills and resources required to properly and appropriately assess a claim of abuse in care, and certainly not to the extent that government agencies do. If they are presented with a claim, often their only practical option is to outsource the investigation of the claim, including receiving any legal advice on liability of the claim, to an external provider at a financial cost. The Board of one complaint I recently investigated considered they could not allocate money from its state funding to pay financial redress, as that is not what the state funding is for. That Board has a basic policy regarding abuse in care claims – 'Sensitive Claims of Abuse in State Schools' provided by the Secondary Principals Association of New Zealand – but I question whether the remainder of school Boards have such a policy. I anticipate that many school Boards have never received a claim of abuse and would be unsure how to deal with such a claim if they did.

58. What this may mean for claimants is two vastly different experiences. A claimant working through the State's claim process is likely to have a comparatively smoother journey than one engaging with a school Board. While the Ministry provides some guidance and assistance to Boards, the assessment/investigation of a claim of abuse ultimately resides with the Board.

59. For these reasons my view is that while the Ministry is operating in accordance with the current legislative regime, the resulting exclusion of claims relating to open schools before 1 October 1989 creates significantly different experiences between claimants in a way which is unreasonable. In this sense the Ministry is acting in accordance with a law which, as it applies in this particular context, is unreasonable.

60. I note that as part of the government's response to the Royal Commission's recommendations, the CRO is already considering whether to expand the Ministry's eligibility criteria to include legally independent boards.

61. The Response Plan for the Crown Response Office states:[16]

> *Further work is under way to consider the eligibility matters in recommendations 20 and 21 from He Purapura Ora.[17] This includes considering whether access to the State redress system will be made available to survivors outside the core State care system. For example, survivors of abuse and neglect in schools not covered by the Ministry of Education's (Education's) process …*

62. The CRO has indicated it is in the early stages of formulating advice for Ministers, and that the Minister had asked for the advice by October 2025. In the context of an unrelated complaint, I have already written to Minister Stanford and officials at the CRO and the Ministry setting out the views outlined in paragraphs 56-58 in the hope that my opinion will help inform the Crown Response Unit/Crown to identify improvements to the current processes. As such, I recommend the Ministry ensures Ministers receive advice on whether and how claims that would ordinarily sit with Boards of open schools move into the Ministry's Sensitive Claims process.

The Ministry's position that a school board is responsible for a claim in situations where the Secretary of Education has approved and directed admission to a special residential school

63. In specific circumstances, the Secretary of Education can approve an application for, or direct, admission of a student to a specialist school. Cooper Legal's complaint is that in these situations the Ministry considers the board of that school is the only correct respondent for claims of abuse. Cooper Legal believes that the Ministry is jointly liable with the board if the Secretary approves/directs admission to a school where the Ministry was aware of significant concerns about the risk of abuse at that school. Cooper Legal says that the Ministry's position means that affected survivors may need to bring court proceedings rather than engage in the Sensitive Claims process, which is significantly prejudicial.

64. The Ministry does not accept that a direction by the Secretary for Education to enrol a child means that the school was under the Ministry's control. The Ministry's view is that this is simply a statutory power under the Education and Training Act 2020, which extends no further.

65. My view is that there could well be cases where a direction by the Secretary to attend a school where the Secretary was aware of a risk of abuse at that school could form a basis

[16] See page 16 of 'Crown response plan digital version to read online' available at https://www.abuseinquiryresponse.govt.nz/news/newsletter/crown-response-to-the-royal-commission-of-inquiry.

[17] See pages 284 and 285 of Volume One of He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui.

for joint liability. It is difficult to take this matter further in the abstract, because this will be an intensely fact specific exercise. What I can say is that I would expect the Ministry to actively consider any credible allegation of joint liability that a claimant alleges arises from such a direction, and that it should not apply a blanket policy of refusing to accept liability in all instances.

66. It is also possible that this matter may be addressed if Ministers agree to bring claims against boards into the State redress scheme, as all possible liability of the Crown would be assessed in one claim process.

The process itself

The role of Claim Reviewers in the settlement process

67. Cooper Legal considers the role and function of claim reviewers is opaque. Cooper Legal considers the use of external, contracted psychologists to carry out the claim review results in the illusory appearance of independence, but is not transparent. Cooper Legal considers this appearance of independence is further undermined by:

    a. a Ministry employee being present in the interview between the claim reviewer and the claimant;

    b. the Senior Advisor providing 'feedback' on the claim reviewer's report; and

    c. the claim reviewer's reports being advisory and not binding on the Ministry.

68. Cooper Legal points to the Allen + Clarke report, which recommended the Ministry assess whether the external claim reviewer model was fit for purpose, noting that '*In the absence of independence and binding recommendations, the main benefits of an external assessment model are for resourcing purposes.'*

69. I agree with Cooper Legal that the purpose of the claim reviewer is not wholly clear, but I am not persuaded that:

    a. the Ministry is asserting that claim reviewers are independent;

    b. the decision to outsource some elements of the claims assessment process to these reviewers is unreasonable; and

    c. the attendance of Senior Advisors at meetings between claimants and claim reviewers is unreasonable.

70. I am however, concerned about some elements of the claim review process, being:

    a. potential duplication of the claim reviewer function; and

    b. the Ministry's guidance regarding staff attendance at claim review meetings, which appears unclear and contradictory.

71. My reasons for these views are set out below. I invited the Ministry and Cooper Legal to comment on these prior to confirming my opinion.

Independence of claim reviewers

72. In her brief of evidence to the Royal Commission, Helen Hurst, the Associate Deputy Secretary, Operational Delivery, Sector Enablement and Support, stated that:[18]

> *… when considering how to develop our [claims] process, we took guidance from MSD, which by then had an established claims process. We also considered how other sensitive complaints were managed within the Ministry, such as protected disclosures. As a result, an external assessor was contracted to assess our historic abuse claims.*

73. The decision to outsource a review of claims as part of the wider claims process is a decision open to the Ministry. There is an inherent value in engaging an expert third party to assess and advise on claims and I am not persuaded that this is unreasonable. At the end of the day, the Ministry is the final decision-maker on each claim, informed by advice which includes the claim reviewer's report.

74. The Ministry explains that claim reviewers are independent contractors, distinct from Ministry staff, and are engaged by the Ministry due to their specialised skills and experience working with vulnerable individuals. The Ministry seeks specific experience and skill sets when contracting claim reviewers, such as experience working with vulnerable people, backgrounds in social work, psychology or trauma informed practices, as well as any specialist skills that may be required, such as working with Māori claimants. The current pool of claim reviewers have extensive experience working with a diverse range of vulnerable clients. Five are currently registered psychologists and one is a retired psychologist. Two have considerable experience working in senior roles in the public sector and have previously worked for the Ministry. Three have been brought on as 'Māori claim reviewers' to be available for claimants who would prefer a Māori claim reviewer or a tikanga Māori approach to their interview. The three Māori claim reviewers also have extensive experience writing cultural reports for the Courts. Two of the Māori claim reviewers have a social work background.

75. Having reviewed the context it is not clear to me that the Ministry is placing significant reliance on the 'independence' of the reviewers, so much as looking to draw on them as a source of external expertise to help inform its assessments. I understand why the Ministry wants to engage trauma and/or culturally trained people to interview claimants. It is to be commended in its efforts to engage claim reviewers with sufficiently qualified and diverse backgrounds to benefit the claimants who opt for an interview.

[18] Paragraph 4.4, Brief of Evidence for Helen Hurst for the Ministry of Education – Redress, dated 21 January 2020.

The purpose of the claim reviewer

76. Despite this, I agree with Cooper Legal that the purpose of the claim reviewer has not been made wholly clear to claimants and this could be clarified. The Ministry's Sensitive Claims webpage still uses the term 'assessor' when referring to claims reviewers. The webpage simultaneously refers to the overall consideration of a claim as an 'assessment'. This may be confusing for people living with disabilities, or people who do not understand the finer details of the process, and who may not be able to differentiate between the assessment of their claim as a whole, and the purpose of the claim reviewer.

77. The webpage explains the claim reviewer is external to the Ministry, that the Ministry will invite the claimant to meet with the claim reviewer, and that the claim reviewer will consider/review the information to consider the merits of the claim. While not a formal recommendation, I encourage the Ministry to consider revising its guidance to:

    a. change the term 'assessor' to 'claim reviewer'; and

    b. clarify that claim reviewers are advisors with particular expertise who are contracted by the Ministry to assist with part of the overall assessment of the claim.

78. The Ministry's guidance could also be further enhanced by:

    a. explaining that claim reviewers are engaged by the Ministry due to their specialised skills and experience working with vulnerable individuals;

    b. advising that both Māori and Pasifika claim reviewers are available; and

    c. making it clear that the claim reviewer will be giving advice on whether the allegations should be upheld, and will produce a report for the Ministry to consider, but that it is the Ministry that makes the ultimate decision.

Potential duplication of the claim reviewer function

79. Essentially, the purpose of the claim review is for the claim reviewer to consider each claim against the relevant information available, and to give advice to the Ministry on whether it is reasonable to accept the allegation made, for the purpose of settlement.[19] The Ministry reserves the right to accept or reject the claim reviewer's report. One of the frequently asked questions is 'Can the Ministry change what recommendations the Assessors have made?' to which the Ministry's response is '*The Ministry will not change Assessors findings in the report. The Ministry will review the recommendations put forward and consider whether or not to accept them.*'[20]

[19] See page 5 of the Ministry's Sensitive Claims Assessment Guidelines, working version 3, last updated May 2024.

[20] See page 14 in Appendix 2: Frequently Asked Questions of the Sensitive Claims: Assessment Appendices, working version 3, last updated May 2024.

80. Firstly, I think the Ministry's guidance could be clearer on the purpose of the claim reviewer. Page 5 of the Sensitive Claims: Assessment guidelines, and page 12 of the Sensitive Claims Business Process and Guidelines state, respectively [emphasis added]:

    a. The Assessor is responsible for assessing the claim made. This includes:

    - ***Determining** if the allegations are supported by the information available.*

    *b. Assessors will carefully consider the allegations made, review all supporting information and **determine** if the allegations should be upheld for the purpose of settling the claim.*

81. This gives the impression that it is the claim reviewers who decide whether an allegation is upheld. These two statements are contradicted however, further on pages 5 and 12 of the respective documents, by this sentence: *'The information in the assessment report **will be used to inform the Ministry's response** to the claim …'*.

82. My overarching concern however is that there is duplication of the claim reviewer function, both before and after the claim reviewer has completed their function, and that the layering of assessments and reviews is contributing to some of the delays which I have commented on below.

83. In order to prepare the available information for the claim reviewer, it seems the Ministry itself reviews the available information. Then, when the claim reviewer's report is received, the Ministry then reviews that report not once, but twice – once by the Senior Claims Advisor, and then by the Legal team – before advice is provided to the decision-maker.

84. The Ministry explains the 'preliminary assessment' stage involves *'getting the claim ready for Claim Review. Listing known allegations and collating any relevant documents'*. Section 3.4.2 of the Business Process and Guidelines is titled 'Assessment Research' and states [emphasis is mine]:

    a. We will **review the information received from the claimant** or their legal representative about their claim **and collate any relevant documents prior to the assessment**.

    ...

    We should also review resolved claims with similar allegations and collate the findings in those claims for the Assessor to consider.

    …

    In some cases, the assessment process is the main way we gather information from the claimant about their concerns. When that happens, the Assessor may need to request that we **complete further research** after meeting with a claimant.

85. Section 4.5.1 of the Business Process and Guidelines is titled 'Review of Report' and states [emphasis is mine]:

a. The Assessor will provide a draft report to the relevant Senior Advisor. **The Senior Advisor will review the report** and discuss any queries or concerns with the Assessor. If needed, any specific areas of difficulty or concern can be discussed with the Team Leader in the first instance. This is **an iterative process until the report is finalised.**

b. When **reviewing the report**, the Senior Advisor will need to:

i. Confirm that all the claimant's allegations have been assessed. Any allegations that have been missed will need to be referred back to the Assessor for review.

ii. **Consider each of the Assessor's findings, the rationale for the finding and the level of information available to support those findings.** Where the Senior Advisor has queries about the findings made, these should be discussed with the Assessor and clarification sought. **The Senior Advisor may also need to review the documents** footnoted to the report for this exercise.

iii. Ensure the findings are consistent with those previously made in similar claims. If there is a difference in findings between claims, the Assessor will need to clearly explain why.

86. The 'Next steps' section on page 9 of the Assessment Guidelines states [emphasis is mine]:

> *The Senior Advisor will carefully **review the assessment report to make sure all of the allegations are picked up; the findings make sense and meet the required threshold for inclusion in the settlement offer. The report is then reviewed by the Legal team to see how the assessor has reached their findings**. From here it then goes to the decision maker (Hautū -Deputy Secretary) for approval.*

87. It seems the claim reviewer's report duplicates some of the preliminary assessment/research stage of the process, and that the review of the claim reviewer's report is also unnecessarily time consuming. It is not clear why this layering of assessment is necessary and it appears to be out of proportion to the issues being considered. If the Ministry has done all the preparatory work, and a senior advisor is attending the meeting with the claimant, and the Ministry then goes on to review the claim reviewer's report itself, twice, then it is not clear why is there a need for an external person to also advise on whether the allegations can be accepted.

88. I refer to the comments made by Associate Deputy Secretary, Operational Delivery Helen Hurst in her oral testimony to the Royal Commission on 28 October 2020 [emphasis added]:

> *I think we have to look at the resourcing and the processes and how we manage claims. I think the two things together are important. I absolutely think we're going to have to put some more resource in to be able to respond*

> *but **we also have to think about this very long, labour intensive process and if there's more efficient ways that we can do some of that**.*[21]

89. I do question whether the claim process can be streamlined, and potential efficiencies gained, by:

    a. either confining the claim reviewer's role to interviewing the claimant, or upskilling Ministry staff to conduct interviews (if they are not sufficiently skilled already); and

    b. reorganising the claims process to combine stages and remove duplication.

Attendance of Ministry staff at interviews between claimant and claim reviewer

90. I am not persuaded that the attendance of Senior Advisors at meetings between claimants and claim reviewers is inherently unreasonable. However, I do think that the Ministry's guidance is contradictory and would benefit from clarity. The emphasis in the next two paragraphs is mine.

91. Page 14 of the Business Process and Guidelines says *'The Senior Advisor **may** attend the meeting and take notes of the main points discussed (not a transcript).'*

92. In the Assessment Guidelines May 2024:

    a. page six says: *'The Senior Advisor **will** also attend the meeting as well.'* and *'The Ministry **generally sends a Senior Advisor to attend the meeting** to provide the claimant and assessor with support during and after the interview.';*

    b. page eight has a table titled *'who attends the meeting'* which describes Senior Advisors as *'optional'*; and

    c. page 14 says, in the answer to *'What if the Claimant has questions around timeline …'* it says *'The Assessor can defer to the Senior Advisor **if** they are present. **If the Senior Advisor is not present,** …'*

The unreasonably lengthy processing times for claims

93. Cooper Legal is concerned about how long claims take to resolve. It explained that approximately 30 of its clients had been waiting over four years for the Ministry to respond to letters of offer. Cooper Legal refer to Allen + Clarke's findings regarding timeliness. Cooper Legal also state it has seen evidence that direct claimants receive settlement offers significantly faster (sometimes by several years) than its clients, for unknown reasons. Cooper Legal say that if this is so, it effectively punishes claimants for accessing legal assistance, which is plainly inappropriate.

94. The Ministry advised that as at February 2025, it had 462 claims on hand with a current average time of 775 days or 2.1 years to resolve. I note when the Allen + Clarke review was conducted, the Ministry had approximately 100 claims that had been lodged and not

[21] See pages 787-788 of 'Helen Hurst Transcript'

yet assessed or settled, 71 of which had been filed in court. At the time of the review, the Ministry was taking an average of 2.8 years to resolve a claim. I acknowledge this reduction in average processing time from 2020 in the face of a significant increase in claims. This suggests the Ministry has taken action to reduce wait times. However, over two years (on average) is simply too long for claimants to wait.

95. Cooper Legal disputes the accuracy of the 2.1 years resolution time for claims. In its view, claimants wait far longer on average, and provided several examples where wait times have exceeded 2.1 years.

96. I acknowledge Cooper Legal's comments. However, I consider further investigation into the statistics in order to achieve an exact processing time is unnecessary. My overall finding is that wait times are too long; a fact that has been accepted by the Ministry, the Royal Commission, the CRO and the government. Timeliness is intended to be addressed through the recent government announcements, which I discuss in the next paragraphs.

97. The Ministry also advised that at the national apology for abuse in care in November 2024, the Prime Minister announced additional funding for claims agencies to boost resource and allow the agencies to progress more claims and address current backlog. The additional funding is time limited until the end of June 2026. The Ministry advised it intends to hire additional staff, however not all of them will be involved in processing claims.

98. In Budget 2025, the government announced funding to increase system capacity across the relevant agencies to process claims from 1,350 to 2,150 per year from 2027 to reduce wait times for current claimants. The Ministry advised that further information on how this funding will be distributed among agencies, and what the Ministry's target within that increase will be, are being discussed presently. The Ministry also advised that work is underway regarding the common payment framework, common policies and single point of entry. I acknowledge that these elements may have a flow-on effect on claims processing time. It is my hope that processing times are reduced, and not increased by these developments.

99. The Ministry provided a breakdown of the age profile of the 462 cases on hand. 133 are over three years old, with the oldest being approximately 10 years old. Without knowing the specific details of each claim, I cannot categorically say that the delays in these cases are unreasonable. My expectation is that the Ministry actively triages older cases to ensure it is taking all reasonable steps to progress matters. I recognise that not all delays will necessarily be attributable to the Ministry.

100. Of the remaining claims, 137 are approximately 2 years old, 55 are about 1 year old, and 137 claims are less than a year old.

101. Having said the above, I will now make some general observations about the time it takes the Ministry to process a claim. The Ministry has indicated its commitment to streamlining its processes to allow for faster responses to claims. It is hoped that my observations will assist in this process.

102. I accept that assessing claims is relatively time intensive and that historic claims need to be seen in a dynamic policy context with iterative changes made to redress schemes. However, as an alternative avenue to legal proceedings, it is important that claims are processed by the Ministry in a timelier manner than litigation. This is, after all, one of the stated objectives of the Crown Litigation Strategy (see paragraph 35a above).

103. My overall observation is that the Ministry is excessively concerned about consistency and certainty in process and outcome. This results in a process that takes a disproportionate amount of time and resources, and creates undue delay. Consistency in approach and any settlement payments/redress packages are clearly desirable as a matter of fairness between claimants but attempting to ensure absolute consistency in matters such as these claims appears fraught. It may be that the Ministry needs to take steps to empower its claim reviewers and approving staff with a greater degree of autonomy and encourage pragmatism in bringing some lengthy claims to resolution. Equally, the expectations of claimants may need to be adjusted to find the middle ground necessary to resolve their claim and bring finality to matters.

104. My expectation is that a government agency will take proactive steps to address any resource issues causing systemic delays. I would also expect that consideration is given to some form of triage process to ensure cases are being progressed as quickly as possible with the available resources.

105. It seems that there is a bottleneck in the Ministry's process in the 'personal records search' and 'preliminary assessment' stages of the process. Both stages are at the front end of the process. The Ministry may wish to focus some of its extra resources here to improve processing speed.

106. While having extra people to process claims will likely improve timeliness, this may not always be possible, and may also shift the bottleneck to elsewhere in the process. I suggest the Ministry also consider reviewing the claims process itself to determine whether efficiencies can be gained. I echo Associate Deputy Secretary, Operational Delivery Helen Hurst's comments to the Royal Commission [emphasis added]:

> *I think we have to look at the resourcing and the processes and how we manage claims. I think the two things together are important. I absolutely think we're going to have to put some more resource in to be able to respond but* ***we also have to think about this very long, labour intensive process and if there's more efficient ways that we can do some of that.***[22]

107. Cooper Legal claims that non-represented claimants receive settlement offers faster than represented claimants, but there is insufficient evidence to make a finding on this element of the complaint. If Cooper Legal have concerns about delays related to specific complainants, it can make a complaint accordingly.

[22] See pages 787-787 of 'Helen Hurst Transcript'

108. Presently, the only pathway to expedite claims is through the Rapid Payments Framework, which is only available to students of Waimokoia School, and claimants who are terminally ill. The Ministry is close to finalising a rapid payment framework for Campbell Park and McKenzie Schools. However, all other claimants must go through the full assessment process which, as set out above, takes an average of just over two years. Depending on the impact of recent, and any future, Government decisions on the redress system, the Ministry may wish to consider other ways of expediting particular types of claims, or widening eligibility for rapid payments.

109. The Ministry acknowledged that wait times can be lengthy for claimants progressing through the full assessment process and is committed to reducing wait times. It pointed to Objective Two of the Government's '*Redress Implementation Plan'* (August 2025) which focuses on the timely resolution of claims, and advised it is developing a business case to:[23]

- deliver on the Government's redress initiatives
- streamline aspects of the claim review process
- build capacity by increasing staff numbers
- improve the overall experience for survivors.

110. The Ministry advised that subject to final decisions, it is anticipated that these changes will be implemented between November and December 2025.

The claim reviewer's report

The decision to withhold claim reviewer's reports from certain clients but not others

111. The Ministry does not release claim reviewer's reports as it considers they are protected by litigation privilege. Cooper Legal states this report is essential to understand the reasons behind the Ministry's ultimate decisions. Cooper Legal also believes that the Ministry does give a copy of the report to non-represented claimants, and it considers this puts represented clients in a significantly prejudiced position, without a valid reason for the disparity in treatment.

112. I have undertaken a broad analysis of whether litigation privilege applies to the claim reviewer's report.

113. As a general rule, litigation privilege applies to communications or information that is made, received, compiled, or prepared *for the dominant purpose* of preparing for a

[23] See pages 12-14 of the 'Redress Implementation Plan' available at https://www.abuseinquiryresponse.govt.nz/news/newsletter/update-about-the-redress-implementation-plan-national-day-of-reflection-fund-and-top-updates

proceeding or *an apprehended proceeding*. These common law principles are reflected in section 56 of the Evidence Act 2006.

114. It is not clear to me that all claim reviewer reports will always be subject to litigation privilege. This is because:

    a. Litigation must be a real likelihood, rather than a mere possibility. I do not think the Ministry can say litigation is a real likelihood when claimants have only made a claim through the Ministry's alternative resolution process and haven't also filed a claim in court. The fact that a claimant *may* in the future obtain counsel and/or file proceedings does not, in my view, provide a reliable basis to conclude that litigation is a real likelihood;

    b. Where a document is prepared for two or more purposes, litigation privilege will only attach if the *dominant* purpose is litigation. The Sensitive Claims process is an alternative to civil litigation. It appears that the claim reviewer's reports are not prepared for the dominant purpose of litigation, but rather for the Ministry's Sensitive Claims process, which is an alternative to, and an attempt to avoid, litigation.

115. A claim of litigation privilege may be stronger or weaker in particular cases, and it is simply not possible for me to say that privilege will always or will not always apply. This can only be resolved in individual instances, and it is open to claimants to make a complaint to me if these reports are refused under the OIA.

116. While I am not making an adverse finding on this ground of complaint, I would encourage the Ministry to reflect on whether it can avoid this issue entirely by ensuring that the reasons they give claimants address the key matters set out in a claim reviewer's report.

117. I understand Cooper Legal seek access to claim reviewers reports because they are concerned about transparency and the adequacy of reasons given by the Ministry.

118. I refer to Mr Boshier's opinion on MSD's Historic Claims Process, in which he stated:

> *55. A basic principle of good administration is that a person affected by a decision should be given reasons for that decision. Giving reasons is fundamental to helping ensure a person understands a decision and is able to consider whether to contest it. Having to give reasons operates as a check on arbitrary decision making, promotes consistency and accountability, and enhances the quality of the decision making process.*
>
> …
>
> *58. My expectation is that adequate reasons should be given to an affected person proactively, without a person having to make a formal request under s 23 OIA, especially in a context like this where the decision has a significant impact on people and can involve complex matters of fact and law and discretion.*

> *59. The extent to which an agency has to go in giving reasons is of course inherently fact specific. Essentially, giving reasons should enable the person affected to understand why the decision was made.*

119. The importance of giving good reasons for decisions on claims of this nature is self-evident. Section 23 of the OIA gives a person a general right to request a written statement of reasons for a decision affecting them. The written statement of reasons must include the findings on material issues of fact, a reference to the information which the findings were based (subject to certain exceptions), and the reasons for the decision or recommendation. If the claim reviewer's report contains findings of fact and reasons that have been adopted by the Ministry's decision maker, it would appear to me that they are adopted as the Ministry's own findings of fact and reasons and become subject to section 23 of the OIA. In practice, regardless of whether or not a claim reviewer's report is legally privileged, if the Ministry has adopted those findings of fact and reasons as its own the Ministry will need to provide them to the complainant and can do so without attributing them to the claim reviewer's report.

120. I would therefore encourage the Ministry to develop a process whereby the reasons it provides claimants encompass the material findings of fact in a claim reviewer's report. This would avoid the need to get into complex arguments about the extent to which privilege applies to the reports and would enhance transparency in the Ministry's decision-making.

The limited scope of information accepted for consideration in assessments

121. The Ministry prepares a 'Claims Analysis Table' (CAT) for the claim reviewer which, if applicable, includes reference to any similar resolved claims (similar allegations at the same school within a similar time period). The CAT will specify if those allegations were 'supported', 'partially supported' or 'not supported' by the reviewer who considered that claim. The Ministry does not currently include reference to claims/allegations that are yet to be reviewed.

122. Cooper Legal disagrees with this practice. It considers that the Ministry should advise the Claim Reviewer of **any** similar allegations, regardless of whether the claim has been resolved. Cooper Legal considers that the Ministry's current practice disadvantages claimants, for example:

> *… if 20 individuals allege sexual abuse against a teacher, the first of those individuals to have their claim assessed will be at a significant disadvantage to the other 19.*

123. Cooper Legal considers the delays the Ministry has in processing claims exacerbates this disadvantage.

124. The Ministry states that information about other claims is provided to assist with the assessment of the claim and to support the reviewer to be consistent with similar previously resolved claims, but not to determine whether allegations are accepted for

the purpose of settlement. The Ministry states each claim is reviewed and responded to, based on its own merits.

125. While there is some merit in Cooper Legal's argument, I do not consider the Ministry's approach to be unreasonable. The merit in Cooper Legal's argument is that if there is a very high volume of similar allegations, this may be useful evidence for a claim reviewer to consider, even though those other allegations have not yet been tested. This is part of the reason why the Rapid Framework was introduced for Waimokoia and is in the process of being implemented for Cambell Park and McKenzie – because there were multiple allegations against staff. However, the Ministry is also justified in saying that until a claim is concluded, an allegation is just that – an assertion that someone has done something illegal or wrong. It is through the assessment process that a claim is tested and either accepted or rejected. While the Ministry's current process is reasonably open to them, I think the Ministry should keep its mind open to the possibility that multiple allegations against one/many offenders/schools can be useful information during the claims process, and in those cases it may be useful to provide the information to a claims reviewer.

126. I also do not necessarily accept Cooper Legal's argument that this practice disadvantages subsequent claimants. This is an argument in the abstract and would be better tested through an individual complaint.

127. Cooper Legal also states it has not been provided with a list of the 'similar allegations' used by the Ministry, and it wonders whether the list includes the allegations that MSD accepted when it was responsible for responding to historic abuse claims for educational institutions, particularly those relating to Campbell Park School.

128. The Ministry's position on this, which I consider is also reasonably open to them, is as follows:

> *The Ministry does not maintain a list of similar allegations for each claimant that lodges a claim. However, the Ministry does maintain a spreadsheet of all settled claims which includes information about which allegations have been supported, partially supported or not supported. This spreadsheet only holds information about claims that the Ministry has assessed and responded to and does not include claims that MSD responded to or accepted when it had responsibility for abuse claims in an educational setting.*
>
> *The Ministry would consider any request for this information from claimants in accordance with the Official Information Act and the Privacy Act. Each request would be assessed individually to determine whether the information can be released or should be withheld, applying the principle to make information available unless there's good reason to withhold it.*

129. Cooper Legal has queried why the onus is on the claimant to request this list. It states that to be consistent with model litigant and public sector obligations, the Ministry should proactively publish the list of accepted claims.

130. I agree and suggest that for transparency, the Ministry proactively publish the spreadsheet of settled claims.

Comparator cases

131. The Ministry has advised that when responding to a claim, it does not explicitly reference comparator cases but does mention them at a general level. The below example is an anonymised extract from a claim response provided in 2025:

> *Although the Ministry has not identified any documentary information to indicate staff engaged with [claimant] in this manner, it acknowledges that verbal abuse may have occurred based on findings of verbal abuse made in relation to other cases. The allegation of verbal abuse is therefore included in the settlement offer.*

132. As a matter of transparency and fairness, the Ministry should be advising which comparator cases have been taken into account. I note there will be limits on what it can share, but the Ministry should be able to provide a reference to the broad circumstances of comparator cases. I refer back to paragraphs 113, 115 and 116 to further underscore that if the claim reviewer has considered comparator cases, the result of which is then adopted by the Ministry's decision maker, it would appear to me that they are adopted as the Ministry's own findings of fact and reasons and become subject to section 23 of the OIA. In practice, if the Ministry has adopted those findings of fact and reasons as its own the Ministry will need to provide them to the complainant and can do so without attributing them to the claim reviewer's report.

The differential weighting and treatment of allegations, and the improper application of the standard of proof

133. The complaint is:

> *According to the Assessment Guidance, at [2.6]:*
>
> > ***Credibility of claimant:*** *Credibility of the claimant can be considered as part of a holistic assessment. The Assessor could note in their report whether they found the claimant credible and why, but other supporting information beyond a claimant's statements is a/so required to uphold an a/legation for the purpose of settlement.*
> >
> > ***Supporting information required***
> >
> > *While the Ministry does not accept allegations at face value, there is no prescriptive standard or level of information that must be met for an allegation to be accepted.*
> >
> > *The level of proof required to accept an allegation is less than a civil or criminal standard. Principle 2 of the Crown Resolution Strategy says that settlement will be considered for all meritorious claims. By this we mean*

> *that an allegation alone will not be sufficient to accept the allegation and additional information is required.*
>
> *This is based on an incorrect understanding of the test for the civil standard of proof. Civil cases - and indeed, criminal ones - are very often successful on the basis of a claimant's evidence and credibility alone. MOE's guidance is contradictory in asserting that the civil standard does not need to be met, but yet that something more than a credible complainant is required. This error is compounded due to inadequate training being provided to the MOE Assessors - the guidance document suggests that no training on the standard of proof has been provided.*[16]
>
> *Footnote 16* *The Assessor will need to use their professional judgment when considering whether an allegation is sufficiently supported and has merit for the purpose of settlement. If you are unsure or need to discuss this, contact the Senior Advisor working with you on the claim.*

134. It is not unreasonable for the Ministry's policy/procedure to require some information which supports an allegation of abuse before making a settlement offer but it must not apply these criteria inflexibly.

135. I do not agree with Cooper Legal's interpretation of the policy as requiring more than a credible complainant. My view is the policy is saying the Ministry needs more than a simple allegation; some evidence to support the allegation is required. That evidence could be in the form of a formal statement from a claimant. I also consider that the policy allows for the credibility of the claimant to be considered in the claim review. It would appear from the policy that the Ministry could accept a claim solely on the basis of a credible statement from a complainant. Put simply, if a claimant has a credible version of events and there is nothing to dispute that version, there does not appear to be a principled basis for the Ministry to reject the claim.

136. On the matter of evidential burden, my predecessor Mr Boshier formed the opinion that:

> *96. My view is that it is not inherently unreasonable for [MSD] to require supporting information before it accepts more serious allegations for the purpose of a settlement payment. … It is prudent, in my view, for [MSD] to look for substantiating information where the allegations are more serious in nature given they will result in a greater fiscal impact. It would be surprising if [MSD] were to simply accept all claims without some factual inquiry.*
>
> *97. However, I consider [MSD] has acted unreasonably where it has relied solely on the absence of substantiating information in [MSD's] own files to refuse to accept an allegation.*
>
> *98. … Only looking for substantiating material in [MSDs] files also overlooks the fact that a claimant may themselves be able to provide credible and persuasive information to substantiate their allegations. [MSDs] own files*

should not be seen as the only reliable source of information which [MSD] can rely on to substantiate an allegation.

99. …

100. … [MSD] needs to ensure it is taking the more holistic assessment of the credibility of the allegation which its own practice guidance envisages. It would, for example, be reasonable for [MSD] to invite the claimant to put forward their own information to substantiate an allegation in these situations. The information [MSD] has regard to could be in a variety of forms (e.g. an affidavit from the claimant or a supporting witness, alignment of allegation with other accepted claims). It may be reasonable to meet a claimant and assess the credibility of their allegations in some cases. In any case, taking a more holistic approach will help ensure a fair and reliable decision is able to be made.

137. I share my predecessor's views. The Ministry should not simply refuse a claim because it does not have supporting evidence in its records or the records made available to it by schools. If there is no documentary evidence, the Ministry should engage with the claimant to see what other information they can provide. The Ministry should make an assessment of the claimant's credibility.

138. The Ministry considers that accepting claimants' statements unless conflicting information is found would fundamentally change the Ministry's assessment processes, rendering both the full assessment and Rapid Payment processes redundant. The Ministry also does not consider its staff have sufficient expertise to assess a person's credibility or determine whether a statement is accurate or fabricated without reviewing the claim against all relevant information.

139. For clarity, I am not suggesting that the Ministry accept every claim at face value without some form of assessment, or asking it to fundamentally change the assessment process. My view on this is consistent with Mr Boshier's and is outlined in paragraphs 134 and 137 of my opinion. I reiterate paragraph 134 here: *'It is not unreasonable for the Ministry's policy/procedure to require some information which supports an allegation of abuse before making a settlement offer but it* ***must not apply these criteria inflexibly****.'* [emphasis added].

140. What I am suggesting is that in the small number of cases where there are no records – and the Ministry's response acknowledged that *'only a handful of claims have not progressed to assessment because no records have been found. In the majority of cases, sufficient information has been located to assess the claim'* – the Ministry should not take a blanket approach and reject the claim. It should keep an open mind because there are likely to be other steps it can take to check the facts alleged by a claimant, for example by assessing credibility or asking for other substantiating information from the claimant.

141. I refer to the latter part of paragraph 137 – *'If there is no documentary evidence, the Ministry should engage with the claimant to see what other information they can*

provide. The Ministry should make an assessment of the claimant's credibility.' I also draw your attention to Mr Boshier's view that:

> *[MSD] needs to ensure it is taking the more holistic assessment of the credibility of the allegation which its own practice guidance envisages. It would, for example, be reasonable for [MSD] to invite the claimant to put forward their own information to substantiate an allegation in these situations. The information [MSD] has regard to could be in a variety of forms (e.g. an affidavit from the claimant or a supporting witness, alignment of allegation with other accepted claims). It may be reasonable to meet a claimant and assess the credibility of their allegations in some cases. In any case, taking a more holistic approach will help ensure a fair and reliable decision is able to be made.*

142. I reiterate Mr Boshier's recommendation that:

> *[MSD] should review and amend current practice to reflect my expectation that a claim is not declined solely on the basis of an* ***absence*** *of substantiating information in [MSD's] files, and, instead,* ***that there is a more holistic assessment and further engagement with claimants and other information sources before a final decision is made on these claims****.* [first emphasis original, second emphasis added]

143. It is for these reasons that I sustained a separate complaint from Cooper Legal about the Ministry's decision to decline to accept a claim. This claim was rejected because there were no records that could assist in assessing the claim or progressing the claim under the Ministry's claims resolution process. The Ministry subsequently advised that that, in the absence of attendance records, it may accept a statutory declaration to confirm a claimant had attended a particular school, though this does not mean further information or records are not required to consider an allegation for the purposes of settlement.

144. In that case, I formed the opinion that the Ministry's decision to decline to accept the claim solely because there were no records was unreasonable. I opined that the Ministry did not engage with Cooper Legal or indicate a willingness to see whether the complainant had other information that could a) prove that they were a student at the school, and b) support their allegations of abuse.

145. As for the Ministry's statement that its staff are not sufficiently skilled to assess credibility, I point out that claim reviewers have the relevant expertise and experience, and the assessment guidelines permit them to assess credibility. It is also open to the Ministry to consult with other state agencies responsible for handling abuse in care claims to establish how they assess credibility.

146. My expectation is also that the Ministry sufficiently communicates to claimants the reasons why it is accepting or rejecting an allegation. This will help a claimant identify what further evidence they can provide in support of their claim. It is open to Cooper

Legal/its clients and other claimants to complain to me if they consider the Ministry has taken an unfair or unreasonable approach to an individual claim.

The inconsistencies with other existing settlement processes, for example MSD's process

147. Cooper Legal is concerned that the average payment from the Ministry is approximately 25% lower than MSD's, and that average payments have not increased since the Allen + Clarke report in 2020.

148. The announcements made in Budget 2025 will likely address these concerns, so I am not proposing to make findings on this. The Government has/will:

- Increased the average redress payments for new claims from $19,180 to $30,000;
- Provided for higher payments for the survivors who experienced the most egregious abuse;
- Provided top up payments of 50% to survivors who have already settled claims to ensure consistency with increased payments for new claims; and
- Introduce a common payments framework so that survivors receive the same financial redress for similar experiences of abuse, regardless of where in state care that abuse occurred.

Settlement offers

The absence of an objective and transparent settlement framework

149. Cooper Legal complains that the Ministry's process does not include a transparent, published framework for categorising settlement payments. It says the Ministry has *'repeatedly advised us that it intends to create such a framework, but this work has been inexplicably (and repeatedly) delayed.'* Cooper Legal refers to Allen + Clarke's recommendation that the MOE develop payment category bands:

> It is difficult to assess consistency between claimants without a clear framework and transparent policies. Although Ministry stakeholders may feel the process and policies are consistent, documented processes should be finalised so that individual claimants are being treated consistently. This will be ***particularly important if the team and its work continues to grow.*** [original emphasis]

150. The Ministry advised that guidelines to assist with determining a claim for settlement have been in place at the Ministry ever since the first allegations were received in around 2010. These guidelines were required to ensure consistency and fairness across all claims and adherence to the Crown Resolution Strategy (previously the Crown Litigation Strategy). Information about its process and guidelines were initially communicated to claim reviewers through meetings, training days and the statement of work. This was

manageable as the Ministry was only receiving a few claims at a time and was supported by two claim reviewers. With the increase in the number of claims received it was necessary to develop formalised guidelines, such as the assessment guidelines.

151. The Ministry further advised that it is in the process of finalising its evidentiary indicators and other key policy documents and publishing these for transparency, which will bring it into alignment with MSD's approach to releasing published policy and processes. It stated that *'Work was undertaken in April 2023 to improve the information available on the Ministry's sensitive claims website. Some further work on the sensitive claims site remains to be finalised and uploaded. It is intended that this work will be able to be progressed and completed by mid-2025.'*

152. The Ministry has not explained why it has taken so long to finalise the key documents and publish them. The simple fact is that the Ministry is using guidelines to guide its assessment, and these should be published. That the material is being updated does not mean the Ministry should wait to publish the guidelines it is actually applying. While I commend the Ministry's intent to publicise the relevant material, my view is that the review and consideration process has taken far too long. The Ministry has been assessing claims of abuse since 2010, and has in essence, been preparing, review and refining its process since then. My view is that the Ministry must publish what it is using in practice, and allow for the published material to be amended where and when necessary. I am concerned that the Ministry is overly focused on getting the material 'perfect' before it is published.

153. My opinion is that the Ministry has acted unreasonably. I recommend that the Ministry publish its guidance material as soon as possible and no later than two months from the date of the final opinion.

154. As regards Cooper Legal's concerns about consistency between payment amounts, I note the recent Government announcements in Budget 2025, namely the common payments framework, will likely address these concerns.

The lack of frameworks for false imprisonment/inappropriate detention, and breaches to the New Zealand Bill of Rights Act 1990

155. Cooper Legal complains that the Ministry has no framework for either false imprisonment/inappropriate detention and breaches of NZBORA. Cooper Legal contrasts this with MSD's process that does make provision for both these elements.

156. Cooper Legal states that in civil cases, claimants receive significant damages for false imprisonment/inappropriate detention, and consider that the Ministry's lack of framework must be understood in this context, and point me to several court cases.

157. The Ministry's view is that its Sensitive Claims process is available for claims concerning incidents that occurred prior to 1 October 1989 (unless the school is closed) and therefore predating the enactment of NZBORA. It states that the claims lodged with the

Ministry, therefore do not include allegations concerning NZBORA breaches unless the claim is a post 1990 claim inherited by the Minister for a school that has since closed.

158. The Ministry further states that it does not consider a separate amount for NZBORA breaches can be made, as its process does not allow for the establishment of factual allegations to a degree required to include payments for specific NZBORA breaches.

159. I note the Ministry categorises allegations of unlawful detention as misuse of timeout. Its guidance for claim reviewers states:

> *… unlawful detention … is a legal matter. As we do not assess legal matters, we categorise allegations of this nature as misuse of timeout for the purpose of this process.*
>
> *…*
>
> *Unlawful detention is a legal word, and we are not applying a legal threshold to accept allegations.*

160. This delineation between what the Ministry considers a legal matter and a matter for its alternate dispute resolution process is further illustrated in its template to legally represented claimants, which contains the following paragraph:[24]

> *16. [NOTE: Include this paragraph if this is a post-1990 claim with BORA allegations:*
>
> *As you are aware, claims that allege torture or ill-treatment are exceptionally grave and may, if sufficiently substantiated, require independent determination. If settlement between the parties is able to be reached, a statement of the Crown's position will need to be included in the Memorandum of Settlement to make it clear that, in reaching settlement with the plaintiff, the defendant does not in any way accept that the plaintiff's cause of action based on various human rights instruments was properly brought, or that those allegations are made out, or that, that cause of action is the subject of any payment made under the settlement agreement.]*

161. I tend to agree with the Ministry that NZBORA does not regulate actions which took place before it was in force. In *P v Attorney-General* HC, Mallon J rejected the submission that the NZBORA can be applied retrospectively.[25] Her Honour considered the correct position was stated by Paul Rishworth KC in *The New Zealand Bill of Rights Act*:[26]

> *The Bill of Rights, like most enactments, does not purport to regulate or alter the consequence of actions that took place before it was in force. Accordingly,*

[24] Provided by Cooper Legal as part of its complaint.

[25] Wellington CIV-2006-485-874, 16 June 2010 at [209].

[26] Paul Rishworth and Ors *The New Zealand Bill of Rights* (Oxford University Press, Melbourne, 2003) at 22.

> *any invocation of the Bill of Rights in respect of the actions of a body or person to whom it applies, must involve actions after 25 September 1990. As that date recedes, questions about retrospectivity are less likely to arise. As to legislation, the interpretative impact of the Bill of Rights plainly relates to all enactments in force, whenever enacted.*

162. For this reason, it is my opinion that the absence of a Ministry framework to provide for NZBORA breaches is not unreasonable.

163. However, best practice would dictate that the Ministry has such frameworks for NZBORA and false imprisonment/inappropriate detention. This would provide consistency not only between claims, but would align with other agencies' practices, namely MSD. I query how confident the Ministry is that it will never receive a claim alleging false imprisonment/inappropriate detention, and NZBORA breaches, for example from a school that was open from 1990 onward but has subsequently closed.

164. In response to the above paragraph, Cooper Legal notes the Ministry has already received and, in its view, is aware it will likely receive more, claims that allege NZBORA breaches that occurred after 1990.

165. It is possible that the improvements announced by the Government to improve the redress system may address this matter, through the common payments framework. I therefore do not intend to make a recommendation.

Chief Ombudsman's opinion

166. For the reasons set out above, it is my opinion that these aspects of the scheme/the Ministry's administration of the scheme are unreasonable:

    a. The time taken to process claims is far too long; and

    b. There have been unjustifiable delays in proactively publishing relevant information, including but not limited to, settlement frameworks and evidential guidelines.

Recommendations

167. I recommend the Ministry:

- Identify ways to streamline the Sensitive Claims process and reduce the average processing time;
- Publish its guidance material as soon as possible, and no later than two months from the date of the final opinion; and
- Should ensure the responsible Minister receives advice on whether and how claims that would ordinarily sit with Boards of open schools move into the Ministry's Sensitive Claims process.

168. I also reiterate the observations made in paragraph 15 and strongly emphasise my hope that the Ministry accept and act on these observations and suggestions for improvement:

    a. The Ministry appears excessively concerned about consistency and certainty in process and outcomes and this is leading to delays;

    b. The Ministry's webpage for Sensitive Claims could be improved by including more information about eligibility for specific schools, and a definition of what a 'specialist school' is;

    c. The Ministry could review the way it explains its decisions on claims to ensure the findings from the claims reviewer's report are suitably communicated, and which avoids the need for complex arguments about the extent to which privilege applies to those reports, and requests for reasons under section 23 of the Official Information Act 1982 (OIA);

    d. The Ministry should ensure the responsible Minister receives advice on whether and how claims that would ordinarily sit with Boards of open schools move into the Ministry's Sensitive Claims process;

    e. The purpose of the claim reviewer is not wholly clear, which is reflected in both the webpage and the guidance material;

    f. There appears to be duplication of the claim reviewer function;

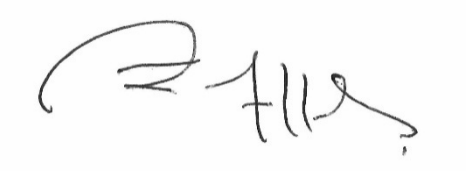
    g. The Ministry's guidance regarding staff attendance at claim review meetings appears unclear and contradictory;

    h. The Ministry should be open to the fact that multiple allegations of abuse against staff, or a school, can be useful in showing patterns of behaviour;

    i. The Ministry should consider proactively publishing the spreadsheet of settled claims;

    j. The Ministry should ensure that it is not rejecting claims where a claimant has a credible version of events and there is nothing to dispute that version; and

    k. Best practice dictates that the Ministry should have frameworks for false imprisonment/inappropriate detention, and NZBORA breaches.



John Allen
Chief Ombudsman

Appendix 1. Relevant statutory provisions

Ombudsmen Act 1975

13 Functions of Ombudsmen

(1) Subject to section 14, it shall be a function of the Ombudsmen to investigate any decision or recommendation made, or any act done or omitted, whether before or after the passing of this Act, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the departments or organisations named or specified in Parts 1 and 2 of Schedule 1, or by any committee (other than a committee of the whole) or subcommittee of any organisation named or specified in Part 3 of Schedule 1, or by any officer, employee, or member of any such department or organisation in his capacity as such officer, employee, or member.

(2) Subject to section 14, and without limiting the generality of subsection (1), it is hereby declared that the power conferred by that subsection includes the power to investigate a recommendation made, whether before or after the passing of this Act, by any such department, organisation, committee, subcommittee, officer, employee, or member to a Minister of the Crown or to any organisation named or specified in Part 3 of Schedule 1, as the case may be.

(3) Each Ombudsman may make any such investigation either on a complaint made to an Ombudsman by any person or of his own motion; and where a complaint is made he may investigate any decision, recommendation, act, or omission to which the foregoing provisions of this section relate, notwithstanding that the complaint may not appear to relate to that decision, recommendation, act, or omission…

22 Procedure after investigation

(1) The provisions of this section shall apply in every case where, after making any investigation under this Act, an Ombudsman is of opinion that the decision, recommendation, act, or omission which was the subject matter of the investigation—

(a) appears to have been contrary to law; or

(b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act, regulation, or bylaw or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or

(c) was based wholly or partly on a mistake of law or fact; or

(d) was wrong.

(2) The provisions of this section shall also apply in any case where an Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or

omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(3) If in any case to which this section applies an Ombudsman is of opinion—

(a) that the matter should be referred to the appropriate authority for further consideration; or

(b) that the omission should be rectified; or

(c) that the decision should be cancelled or varied; or

(d) that any practice on which the decision, recommendation, act, or omission was based should be altered; or

(e) that any law on which the decision, recommendation, act, or omission was based should be reconsidered; or

(f) that reasons should have been given for the decision; or

(g) that any other steps should be taken—

the Ombudsman shall report his opinion, and his reasons therefor, to the appropriate department or organisation, and may make such recommendations as he thinks fit. In any such case he may request the department or organisation to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Ombudsman shall also, in the case of an investigation relating to a department or organisation named or specified in Parts 1 and 2 of Schedule 1, send a copy of his report or recommendations to the Minister concerned, and, in the case of an investigation relating to an organisation named or specified in Part 3 of Schedule 1, send a copy of his report or recommendations to the mayor or chairperson of the organisation concerned…