Under	The Inquiries Act 2013
In the matter	of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

Brief of Evidence of Helen Hurst for the Ministry of Education – Redress

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1 Witness statement

1.1 Tēnā koutou katoa. My name is Helen Hurst and I am the Associate Deputy Secretary, Operational Delivery in the Ministry of Education's Sector Enablement and Support group.

1.2 The Ministry is pleased to have the opportunity to contribute to this important inquiry.

1.3 I started in the Associate Deputy Secretary role in 2019, following a period acting in the role for more than half of 2018. I have held various senior management roles at the Ministry since late 2012. Prior to that I worked at the New Zealand Department of Corrections in leadership roles spanning service design, change, organisational design and human resource management, and worked as a human resource consultant.

1.4 My role as Associate Deputy Secretary includes oversight of our Sensitive Claims team.

1.5 Sector Enablement and Support is the Ministry's front-line, service delivery group. We work closely with the sector to ensure early childhood services, schools, kura and communities have the support they need to achieve the best education outcomes for our children and young people currently within education settings. There are around 800,000 children and young people currently in schools and a further 200,000 children in early childhood settings.[1] Our group includes 10 education regions, with 38 offices spread throughout the country. Our staff in the regions manage day-to-day relationships with over 5000 early learning services and over 2500 schools and kura. Their work includes providing advice and guidance on education strategies, participation and interventions, working in partnership with early childhood education and school communities to understand their needs and promote education success, and ensuring regulatory compliance across the sector.

1.6 The Operational Delivery group is mostly based at National Office and provides support to our regional teams through groups such as school support, governance and resourcing. Our Sensitive Claims team is based within Operational Delivery. It is separate from the teams that deal with Learning Support, which sits within the wider Sector Enablement and Support group.

2 Overview

2.1 My brief includes discussion of the following topics:

(a) The education landscape between 1950 and 2019, including significant structural changes to the sector such as the Tomorrow's Schools reforms and the establishment of school Boards of Trustees. This background provides relevant context when considering responsibility for responding to claims of abuse in schools.

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1 As at June 2019. Figures published in the Ministry of Education's Annual Report at http://education.govt.nz/our-work/publications/annual-report/annual-report-2019/.

(b) The Ministry's process for resolving abuse claims lodged with it, including the information specifically requested by the Royal Commission, including:

(i) the policies, procedures, processes and strategies of the Ministry of Education in relation to (monetary and non-monetary) redress for civil claims made or filed between 1 January 1950 and 30 August 2019, including the reasons for changes to those policies, procedures, processes and strategies;

(ii) the criteria under which survivors were eligible for and able to receive monetary redress for civil claims made or filed during the relevant timeframe, how such monetary amounts were calculated, and the means by which such information was made available to survivors and/or their legal representatives;

(iii) the extent to which the Ministry's policies, procedures, processes and strategies have had regard to Te Tiriti o Waitangi and tikanga Māori;

(iv) the approach to, use or application of legislative provisions including the Limitation Act 1950, the Limitation Act 2010, the Accident Compensation Act 1972 and successive legislation, the Privacy Act 1993 and the Official Information Act 1982, including whether or how legislative provisions hindered or precluded the ability of individuals to bring or pursue civil claims against the Crown;

(v) the means of resolution or settlement and outcomes (monetary and non-monetary) of all civil claims between 1 January 1950 and 30 August 2019; and

(vi) the total costs to the Ministry of all monetary settlements for civil claims made or filed between 1 January 1950 and 30 August 2019, and the total expenditure by the Ministry on litigation costs in the same period.

2.2 To the extent that I was not involved in the matters addressed in this brief, I have relied on the relevant background documents held by the Ministry.

2.3 I am mindful that this evidence is about processes and topics that are also lived experiences. At the outset, I want to say that no child should be harmed while in the care of the education system and abuse of any kind is not tolerated.

3 Background: Education Sector and Tomorrow's Schools Reforms

Statutory overview 1950 - 1989

3.1 The following paragraphs briefly provide background information on the administration of education and key changes to the sector, as this provides important context in relation to the responsibility of different agencies over time. Between 1950 and 1989, the Director General of Education oversaw the administration of primary and secondary education systems under the

Education Acts 1914, 1964 and 1989. With the exception of residential special schools, which were administered directly by the Child Welfare Division, state primary schools were generally maintained and controlled by Education Boards and School Committees. Secondary schools were governed by a Board of Governors.

3.2 The Child Welfare Division, established by the Child Welfare Act 1925, was a division of the Department of Education. This division provided administration and clerical services to the residential special schools in existence at that time. The Superintendent of Child Welfare had statutory responsibilities separate to those of the Director of Education, and was accountable to two Ministers, including the Minister of Education via the Director of Education, and the Minister in Charge of Welfare (who could approve some matters; for others, joint Ministerial approval was required).

3.3 On 1 April 1972, the Child Welfare Division became part of a newly formed Department of Social Welfare. Direct responsibility for residential special schools remained with the Department of Education and administrative functions previously carried out by the Child Welfare Division were taken on elsewhere in the Department of Education.

Residential special schools

3.4 Many of the historic abuse claims received by the Ministry have involved residential special schools. Residential special schools were established in the early 1900s to provide for students who were deaf, had behaviour management challenges, or learning needs. Prior to 1989, admission to residential special schools was by direction of the Director General of Education.[2]

3.5 Since 1989, admission to a residential special school has been by agreement between the Secretary for Education and a student's parents, or by direction of the Secretary or her delegate.[3] In 2013, the Intensive Wraparound Service (**IWS**) was established to provide support for students with high and complex needs within in their local community. Students that would have previously been referred to these schools are now provided for in their home community. As a result, student enrolment numbers for these schools have reduced in recent years. For those students that do attend a residential special school, 18 months is the maximum recommended duration of enrolment, with the student returning to their community with IWS support.

3.6 There are currently six residential special schools open:

(a) Salisbury Girls School (opened in 1928);

(b) Van Asch Deaf Education Centre (opened in 1908 as Sumner School for Deaf);

(c) Kelston Deaf Education Centre (opened in 1942 as Auckland School for Deaf);

(d) Hallswell Residential College (opened in 1984 as Hogben School);

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2 Education Act 1964, s 115.

3 Education Act 1989, s 9.

(e) Westbridge Residential School (opened in 1981 as Glenburn Centre); and

(f) Blind and Low Vision Education Network New Zealand (opened in 1964 as Homai Vision Education Centre, outside the ambit of the state school system, and became part of the state system in 2000).

3.7 A 1986 Ministerial review of residential special schools identified that the needs of some children attending these schools could be met within their local area. Three residential special schools subsequently closed:

(a) Campbell Park (opened in 1958, closed in 1987, with services consolidated to two other residential special schools – Salisbury in Nelson and Hallswell/Hogben in Christchurch);

(b) McKenzie Residential School (opened in 1971, closed in 2013); and

(c) Waimokoia (opened in 1960 as Mt Wellington and closed in 1979, reopened as Waimokoia in 1980, closed in 2010).

Health Camps

3.8 We have also received claims regarding Health Camp Schools.

3.9 The Health Camps Movement began in 1919. The establishment of the camps was motivated by the belief that the health of malnourished children could be improved at minimal cost by camping outdoors. Over the years, the movement underwent significant changes in response to Government policy and changing social conditions. Fewer children were referred to health camps for physical health reasons, with increasing numbers put forward for admission because of behavioural problems and/or dysfunction in their family situation. Attendance at a Health Camp was usually for a short period of around two months, although some children attended more than one camp.

3.10 At the local level, each Health Camp had a camp manager and its own community-based advisory committee.

3.11 Nationally, Health Camps were administered by the Children's Health Camps Board. This body was established in 1938 by statute (King George V Memorial Fund Act 1938, updated by the Children's Health Camp Act 1972) and was an independent organisation. The Board's membership included chairpersons from camp advisory committees, as well as local government and the Departments of Health and Education. Board members worked in conjunction with the Executive Director. The board structure was abolished in 1999.

3.12 Health Camps operated under the Children's Health Camps Act 1989, were managed by the Executive Director of the Children's Health Camps Board, and provided services purchased by the Ministry of Health, through the Health Funding Authority. The Health Funding Authority contracted for the numbers and types of camps to be held each year at each Health Camp site.

3.13 Health Camps had schools on site, with teaching staff employed by the local Education Board until 1989, when governance of these schools passed to Boards of Trustees. The schools operated under the provisions of the Education Act 1989 and provided services purchased by the Ministry of Education.

3.14 A 1999 report by the Education Review Office highlighted difficulties arising from the separation of services between the Ministry of Health and the Ministry of Education, with respect to health camps and health camp schools.

3.15 From July 2007, the Ministry of Social Development, with its Strong Families focus, funded the health camps through service level agreements with Te Puna Whaiora Children's Health Camps.

3.16 In 2012, all remaining Health Camp Schools closed.

3.17 Stand Children's Services Tu Māia Whānau has an integrated outcome agreement with Oranga Tamariki and the Ministry of Education to provide Oranga Tamariki's intensive therapeutic services and integrated education provision for children aged 5-12 years who have experienced trauma. These services are delivered at five sites nationwide. The Ministry currently provides $2,108,985 (ex GST) per annum to Stand Children's Services to provide for the education component of the Integrated Outcome Agreement. This funds 136 placements per annum.

Private and integrated schools

3.18 The Private Schools Conditional Integration Act 1975 facilitated the voluntary integration of private schools into the state education system. At this time private schools catered for 11% of primary school students and 18% of secondary students. By 1983, 249 Catholic and nine non-Catholic private schools had integrated. As of January 2020, there are 332 state integrated schools, 236 of which are Catholic schools. There are currently 91 private schools.

3.19 The Ministry receives applications from people or groups wanting to register a private school, and considers each application against suitability criteria set out in the Education Act 1989. Once registration is granted, the Ministry provides support as required, though in practice there is little interaction between the Ministry and private schools, unless an issue arises. Like all other schools, private schools are also subject to review by the Education Review Office.

3.20 Residential facilities attached to these schools were not subject to integration and continued to be run privately by Proprietors.[4]

Key changes to the education sector following the Tomorrow's Schools reforms

3.21 The Education Act 1989 gave effect to the *Tomorrow's Schools* reforms, which marked a significant change to the way schools were governed. Tomorrow's Schools moved responsibility for the administration, management and governance of individual schools away from regional Boards to individual Boards of Trustees.[5] Individual Education Boards and Boards of Governors (for secondary schools) were abolished and replaced with individual and elected local Boards of Trustees. Each school Board was established as an independent legal entity capable of suing and being sued.[6]

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4 Education Act 1989, s 414.
5 Education Act 1989, sch 6 pt 2.
6 Education Act 1989, sch 6 pt 1.

3.22 As the employer of all staff in a school, Boards of Trustees are responsible for employment and disciplinary matters.[7] Boards are also responsible for setting their school's strategic direction, in consultation with parents, staff and students, and for ensuring their school is a physically and emotionally safe place for students and staff.[8] Schools also hold and manage their own records, subject to relevant legislative provisions. Ownership of records for closed schools passes to the Ministry.[9]

Ministry of Education – Te Tāhuhu o Te Mātauranga

3.23 In 1989 the Department of Education was abolished and replaced with a smaller Ministry of Education. The Ministry of Education, Te Tāhuhu o Te Mātauranga, is the Government's lead adviser on education from early learning, primary and secondary schooling through to tertiary education. Functions that once sat with the Department of Education were decentralised and new regulatory agencies were established. The Ministry works with schools and other organisations and agencies across the education sector, as set out below.

The Education Review Office – Te Tari Arotake Matauranga (ERO)

3.24 ERO, an independent government department, publicly evaluates and reports on the education and care of children and young people in early childhood services and schools. While the majority of its reviews are regular institutional reviews, occasionally it will complete a review on a particular matter of concern or as directed by the Minister of Education.

3.25 Specialised education settings such as residential special schools, regional health schools, teen parent units, schools in Stand Children's Services (formally known as Health Camps), disability school settings as well as boarding/hostel facilities also fall within ERO's review mandate.

New Zealand Qualification Authority (NZQA)

3.26 NZQA ensures that New Zealand qualifications are credible and robust. It also administers the codes of practice for the pastoral care of international students and domestic students.

Teaching Council

3.27 The Teaching Council of Aotearoa New Zealand (formerly the Teacher Registration Board) is the professional body for the New Zealand teaching profession. It promotes and shares good practice, including setting expectations for teacher practice and behaviour. It also manages and investigates complaints related to teacher conduct and competence.

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7 Education Act 1989, sch 6 pt 2.

8 Education Act 1989, sch 6 pt 2.

9 For more information about education sector records, see the Ministry's records summary of its record, prepared and submitted to the Royal Commission (Ministry of Education *Royal Commission of Inquiry into Historical Abuser in State Care and in the Care of Faith-based Institutions: Ministry of Education Records* 2019).

Health and Safety in education settings

3.28 The Ministry works closely with Oranga Tamariki, the Teaching Council and Police to manage reports of suspected abuse or neglect. We are committed to ensuring a safe and supportive environment for all children and young people, and abuse of any kind is not tolerated.

3.29 Our regional staff treat any reports of abuse or neglect as a priority. In accordance with the Children's Act 2014, all staff working at the Ministry are trained in identifying child abuse and neglect, and what to do if abuse or neglect is suspected.

3.30 The Ministry provides Traumatic Incident support to schools to assist them to manage traumatic events, including abuse. This support is delivered by experienced Ministry staff, such as psychologists.

3.31 Despite the best efforts of the Ministry and school Boards of Trustees, there have been incidents where school staff have abused children in their care. Where this is discovered, the Ministry works with Oranga Tamariki, Police and the Teaching Council to immediately remove the accused staff member and ensure there is no threat to children while the staff member is investigated. In these cases we also provide Traumatic Incident support to the school.

Changes in the legislative and regulatory environment

3.32 Over time various legislative and regulatory requirements have been implemented to improve student safety in educational settings, including:

(a) National Administration Guideline 5. This is a basic requirement on boards of trustees to ensure a safe physical and emotional environment for students.[10]

(b) Early Learning Services and Te Kohanga Reo operate under a comprehensive set of regulations requiring licensed services to comply with health and safety standards.[11]

(c) The Education (Hostels) Regulations 2005 came into force on 1 March 2006. The purpose of these regulations is to ensure the safety of students who board at hostels. The definition of hostel covers a wide range of boarding establishments, including residential special schools, health camps, hostels operated by state and state integrated schools and private hostels serving groups of international students attending registered schools. The regulations brought in minimum requirements for pastoral care, including a code of practice for the management of hostels.[12] The safety of international boarders is already addressed through the administration of the Code of Practice for the Pastoral Care of International Students, established under s 238G of the Education

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10 Education Act 1989, sch 6 cls 5 and 6.

11 Education (Early Childhood Services) Regulations 2008

12 For further information about the hostels regulations, refer to The Education (Hostels) Regulations Guidelines https://www.education.govt.nz/school/property-and-transport/school-facilities/running-a-hostel/.

Act.[13] The regulations also brought in an enforcement mechanism that enabled direct intervention when serious safety concerns are identified.

(d) All staff working with children are required to be safety checked and police vetted.[14]

(e) Schools are required to have their own Child Protection Policies providing information on how staff are expected to respond when they have concerns about the safety and well-being of children.[15] We contract the New Zealand School Trustees Association (NZSTA) to support school boards to develop and implement Child Protection and other policies. This support includes provision of a template to set out the key requirements of a Child Protection Policy, to ensure they are comprehensive and meet the requirements set out in the Children's Act 2014, in addition to sample policies.

(f) Schools must comply with other legislative requirements that prohibit the use of corporal punishment[16] and seclusion, and place limits on the use of physical restraint.[17]

3.33 Under this devolved system of functions and administration by different agencies and Boards of Trustees, the Ministry has oversight but few direct influences on what happens day-to-day in schools. Boards of Trustees are legally responsible for ensuring that their schools are properly managed and comply with health and safety requirements.

3.34 Under Part 7A of the Education Act, the Ministry has certain powers to intervene in the running of schools for the purposes of addressing "concerns about or risks to the operation of individual schools or to the welfare or educational performance of their students."[18] Such direct interventions are relatively rare and tend to relate to concerns of mismanagement rather than individual complaints.

3.35 Unless an intervention is considered necessary under Part 7A of the Education Act 1989, in the first instance Boards will generally be the recipient of any complaints about its staff, or administrative and management issues at the school. If the Ministry is approached by a parent or member of the public with a complaint, we support them to contact the school. If a complainant is unhappy with the response to their complaint, they can contact the Ministry to ask for an intervention, or alternatively the Ministry may assist the complainant to refer their complaint to another agency, such as the Ombudsman, Oranga Tamariki or Police where it is appropriate to do so.

3.36 Following the review of Tomorrow's Schools in 2019, it has been agreed to establish a dispute resolution scheme, where independent panels are

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13 For further information about the Code, refer to https://www.nzqa.govt.nz/providers-partners/education-code-of-practice/.

14 Teachers are police vetted as part of their teacher registration , a requirement introduced in 1991; ss 78C- 78CD and ss 319D-319FD of the Education Act 1989 and the Children's Act 2014 require all staff to be safety checked and police vetted.

15 Children's Act 2014.

16 Education Act 1989, s 139A.

17 Education Act 1989, ss 139AB and 139AC.

18 Education Act 1989, s 78H.

established (by regulations) to facilitate the resolution of serious complaints between students (and their whānau if they are under 16) and their schools.[19] Serious complaints include the learning support a student receives at the school, use of force, and concerns about a student's physical or emotional safety at the school. The panel will include experts and members of the community.

Corporal punishment and seclusion

3.37 Corporal punishment in New Zealand schools was made illegal in 1990, and seclusion was made illegal in 2017.

3.38 In 1960 in a submission to the Currie Commission on Education, the Department of Education stated that:

Dependence in teaching on corporal punishment is regarded as a serious professional weakness, and most head teachers keep a careful eye on the amount of corporal punishment in their schools. Education by-laws set limits to its use... [for post-primary schools, controlling authorities are responsible for all matters of discipline within their schools, and] ...the Department of Education cannot direct what is to be done, but its general attitude is quite clear. It believes that in almost every case of indiscipline, a more appropriate form of punishment than corporal punishment can be found.

4 Receipt of historic abuse claims and establishment of a claims resolution process

Development of process

4.1 The Crown Litigation Strategy, initially issued in 2005, provided for relevant agencies, including the Ministry of Education, to assess and settle meritorious historic abuse claims out of court. For the Ministry, the Litigation Strategy defined an historic abuse claim as relating to allegations of abuse and/or neglect at a residential special school before 1993. While 1993 was selected as the cut-off point for a claim to be considered 'historic' under the Litigation Strategy, following the Tomorrow's Schools reforms, any claim relating to events after 1989 would sit with the relevant board of trustees. If the school is closed, the claim sits with the Ministry under s154(3) of the Education Act 1989.

4.2 I understand the reason the Litigation Strategy was limited to residential special schools (and did not include all schools) was because the claims received by the Crown at that time related to incidents in residential care settings and concerned matters particular to the residential elements of institutional care, for example, issues with residential staff and supervision. At this stage, it was not envisaged that a general claims resolution process that applied to all schools by default would be established. Prior to 2010, the Ministry received a small number of direct claims and these were managed on a case-by-case basis.

4.3 Guided by the Crown Litigation Strategy, the Ministry established a process to manage and respond to historic abuse claims in 2010. This followed receipt of a direct claim when an ex-staff member of Waimokoia Residential School was convicted for abusing students at the school during the 1980s. Media coverage

[19] See Education and Training Bill 2019 (193-1), cls 202-215.

of this prosecution resulted in the Ministry receiving a number of other direct claims from former students of the school. An 0800 help line was established to facilitate contact and provide support to former students who wanted to discuss their time at Waimokoia. This became a general contact number for all queries about historic abuse claims.

4.4 When considering how to develop our 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.[20]

4.5 The establishment of our process was guided by the following principles, based on the Crown Litigation Strategy:[21]

(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 us. The process allows claimants 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.

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

4.6 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 claims process does not determine guilt or liability.

4.7 As the volume of claims was initially very low, our claims process was managed by the Principal Advisor to the Deputy Secretary, Special Education. In 2011, this workstream was allocated to another Principal Advisor based in the Special Education Group, on a part-time basis. As the number of claims gradually increased, this work became a full-time commitment for this person, who was sole charge until 2016 when a second advisor was appointed to process claims.

Increase in claims activity

4.8 Between 2010 and 2013, we received fewer than 10 claims each year (23 claims were received in total for this period) and most claimants did not have legal representation so worked directly with us. These claims were generally quite narrow in scope and included reasonably specific allegations. At this stage we were generally resolving claims in under 12 months.

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20 See para 4.20 for further information about our claims assessors.

21 These factors were used by in assessing the review of the Crown Litigation Strategy, see for example Report to Joint Ministers of Justice, Health, Education, Social Development and Employment, and to the Attorney-General *Historic Claims – Update on Review* (15 December 2009).

4.9 In 2013, our claims activity gradually began to increase. It was around this time that an information analyst from the Records Services team was allocated to support our claims work and complete research for claim assessments and information requests. Temporary staff were hired when needed to assist with preparing responses to Privacy Act requests related to claims and a second claims assessor was also contracted at this point.

4.10 During this period we also began to receive an increase in the number of claims from individuals who were legally represented. As a result, in December 2013 we entered into a Legal Aid agreement with the Ministry of Justice to ensure legally represented claimants would be able to keep any payments they received from us in full. Under this agreement, we pay 50% of a claimant's legal aid costs, with the remainder written off by the Ministry of Justice.

4.11 There has been a steady rise in the number of claims lodged with us each year. We've gone from receiving around 10 to 15 claims per annum, to 25 to 30 claims being lodged each year since 2017. As we continue to receive a steady stream of Privacy Act requests (often the precursor to a claim being lodged) this trend looks set to continue.

4.12 With increases in volume, the range of claims we receive has also expanded. Claims have been lodged that were not originally eligible for our claims process, either because the claim related to incidents alleged to have occurred at later time periods or at schools that were not residential special schools.

4.13 With a spike in the number of these claims being lodged in 2017, we received approval the following year from the responsible Deputy Secretary to extend the eligibility of our process. It was agreed that we could consider claims about incidents after 1993 at closed residential special schools and health camp schools, with claims about other state schools considered on a case-by-case basis to ensure we are the right place for it.

4.14 Generally speaking, if the Crown is the correct respondent to a claim about a school, we will manage it through our claims process.

4.15 There have been a number of other factors that have contributed to mounting pressure on our process. This includes individual claims becoming larger and increasingly complex, particularly as further records are released to claimant counsel. In recent years our wider claims work has escalated. We've had claims (often jointly with MSD) placed on a trial track, initiating further work. Our role in the management of joint claims has altered and an assortment of other issues in the claims space have arisen in the last few years that have diverted our resource away from claims processing.

4.16 While the number of claims we have received is much less than some other agencies, the reality of having a very small team doing this work, combined with a work programme that has grown in scope, breadth and complexity has meant that we have not processed claims as fast as we once did. As a result, our timeframes to respond to claims has been impacted.

4.17 We currently have 101 unresolved claims. These claims are at various stages of the process, with the majority waiting to be assessed. A large number of claims (74) are under three years old. Our two oldest claims are around 10 years old and have been on hold for a number years, either because we have been waiting for further information from the claimant or due to other court proceedings

relevant to the matters raised in the claim. In some cases, claims originally lodged with MSD have later been filed against the Ministry and are therefore older than our involvement with them.

4.18 In response to increased work, we have grown the size of our claims team, creating additional roles with some changes in responsibilities to reflect the work involved to process our claims. Since mid-2019, our claims team has five full-time staff, including:

(a) a Team Leader, who manages the team and reports to the Chief Advisor, Operational Delivery;

(b) two Senior Advisors who are responsible for processing claims, liaising with and guiding unrepresented claimants throughout the process and preparing advice about settlements; and

(c) two Advisors who complete research for information requests and claim assessments, prepare responses to Privacy Act requests, prepare information to be released in court-ordered discovery, and provide records management support for the team.

4.19 The team works closely with the Ministry's Legal team.

4.20 Our work continues to be supported by our two assessors, who have now undertaken this work for a number of years. Both assessors have considerable experience working in senior roles in the public sector and experience working with a diverse range of vulnerable clients. Both individuals have previously worked for the Ministry. Our assessors are:

(a) a retired psychologist, previously a district manager for special education with the Ministry, as well as a district psychologist for the psychological services branch of the Department of Education; and

(b) a previous senior manager for the Ministry, who worked in the areas of schooling policy and ministerial support, has a long work history in the education and training sectors and has formal qualifications and experience working with Māori.

4.21 We are about to get a procurement process underway to recruit more assessors, which will help to reduce waiting time for assessments. Contracting a diverse range of assessors with strong experience working with Māori is a priority.

Our claims

4.22 Since 2010, a total of 144[22] abuse claims have been lodged with the Ministry of Education. 85 of these claims have been filed in court, with the remaining 59 claims lodged directly with us.

4.23 We have resolved 43 of these claims, as follows:

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22 This figure does not include those claims that may have been separately lodged with MSD, but included complaints about a residential special school.

(a) 33 claims included either an ex-gratia or settlement payment, except one individual, who received an offer of the Ministry paying for 10 counselling sessions;

(b) 5 claims were not supported in the assessment so did not receive an offer of settlement;

(c) 4 claims were withdrawn by the claimant; and

(d) 1 claimant whose claim was not eligible for our process and was referred elsewhere.

4.24 We have paid a total of $595,953.79 to resolve our claims, which includes payment of claimant legal fees and Legal Aid.

Extent of abuse

4.25 Across the claims we have received, a range of allegations have been made at varying degrees of severity. Claims have tended to focus on the actions of particular individuals or concerns about past standards of care and practices (such as behaviour management techniques), which were considered acceptable at the relevant time periods but may not be permissible now.

4.26 We acknowledge, however, that our assessments completed to date have related to a reasonably small number of claims and a limited range of schools, and our body of knowledge will grow as we continue to research and assess further claims.

Agreement with Cooper Legal regarding the Limitation Act 1950

4.27 In 2014 Cooper Legal approached us to discuss implementing a limitation agreement similar to the one it already had with MSD, which provided for claimants to engage in its claims process without needing to file claims in court to stop time being counted under the Limitation Act.

4.28 Work on the agreement paused when it became apparent that there were complex issues that needed to be resolved, such as clarifying the scope and coverage of the agreement and ensuring consistency with any existing equivalent agreements with other Crown agencies.

4.29 In 2018, Crown Law initiated work to prepare a whole of Crown policy on limitation issues for historic abuse claims.

5 Current claims process

5.1 Our claims process has remained broadly the same since it was established in 2010.

5.2 The general process as it usually operates is set out below. There is however enough flexibility in the operation of this process for us to respond to and accommodate the needs of individual claimants. Claimants are also free to decide how and when they engage with us throughout the process.

Lodgement of claim

5.3 Claims can be lodged directly with us, either by email, letter or over the phone. Claimants can contact us via our 0800 number or team email, which are advertised on our website.[23] Claimants do not need to have legal representation to work with us.

5.4 When an unrepresented person first lodges their claim with us, it is allocated to a Senior Advisor in our claims team. The Senior Advisor will contact the claimant directly, typically by telephone, and have an initial conversation with them to check their personal details and gather sufficient information to confirm that they would like to make a claim and the school/s the claim relates to.

5.5 The claimant is not under any obligation to talk in depth about their complaints at this stage. The Senior Advisor will explain the process, answer initial queries, discuss any particular needs and issues raised by the claimant and advise them that they can seek independent legal advice at any time during the process.

5.6 Following this conversation, the claimant is sent an acknowledgment letter, which includes the Senior Advisor's contact details as the claimant's contact person throughout the process, provides some high-level information about our process and confirms any other relevant details that were raised in this discussion.

5.7 If a claimant is legally represented, the claim is received in writing either by our legal team, or Crown Law if it is filed. Correspondence about the claim is managed through these channels, as appropriate.

Information gathering and triage

5.8 When a claim is lodged, we will search the records available to the Ministry for the claimant's information. This includes searching the Ministry's own electronic and hard copy (often offsite) records, as well as files held by Archives New Zealand. For legally represented claimants, a Privacy Act request has usually been completed before the claim is lodged, so their documents have already been gathered and released.

5.9 From time-to-time, we may also need to contact a school for a claimant's records. When this is the case, we will ask the claimant to sign a form providing consent for us to access their records.

5.10 We offer claimants a copy of their records, which are prepared for release in accordance with the Privacy Act 1993. Third party information, such as information about other students, is withheld for reasons provided under the Act.

5.11 It is also during this stage of the process that we consider whether the Ministry is the correct respondent to a claim, or whether it should be referred to another entity for a response, such as a school board of trustees.

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[23] http://education.govt.nz/our-work/contact-us/regional-ministry-contacts/learning-support-services/historic-claims-for-abuse-or-neglect-at-a-residential-special-school/. Our website is currently being updated.

5.12 If the claim should sit elsewhere, we will notify the claimant or their lawyer of this. Where the claim should sit with a school board, we can refer it on the claimant's behalf with their consent, if the claimant prefers we do that. To date, we have had a very small number of claims that have resulted in a referral.

5.13 We also consider whether there could be any current safety concerns raised in a claim, particularly if allegations have been made about an individual who is still working in a school. This may result in referrals to a third party, such as Police, the Teaching Council and/or a Board of Trustees. Referrals are made with the claimant's consent or leave of the Court, in accordance with the High Court direction.

5.14 If the claim sits with us, it is placed in the queue for assessment. The assessment of a claim can be prioritised in special circumstances, for example, where a claimant is in ill-health. When allocating claims for assessment, we consider the age of the claim and, where appropriate (such as where claims relate to abuse in the school during a similar time period) claims are clustered together and assessed by a single assessor.

5.15 Each claim is researched to support the assessment process. As well as the claimant's information, the type of material we search for and review includes:

(a) records about the school, including Annual Reports, review reports prepared by the Education Review Office, inspection reports and punishment logs;

(b) policy and procedure documents;

(c) staff files;

(d) court documents, including conviction material, where available; and

(e) files of other students.

5.16 Of course, we also consider resolved claims with similar allegations about the same school.

Assessment of claim and preparation of report

5.17 Claims are allocated to an assessor on a case-by-case basis under a Statement of Work, which sets out the tasks to be completed and an estimate of hours and costs. The scope of the assessment encompasses the broad period in which abuse is alleged to have occurred.

5.18 Once the assessor has been assigned to a claim, they are provided with the information that has been collated. While we attempt to find all relevant information prior to the assessment, the assessor may request further information as the assessment progresses and may also complete further research themselves during the course of the assessment.

5.19 Claimants are offered a meeting with the assessor to discuss their claim.

Meeting with assessor and claimant

5.20 If the claimant chooses to meet with the assessor, a suitable venue for the meeting is discussed with the claimant. To date, meetings have generally taken place at a Ministry of Education regional office closest to the claimant's place of residence. The assessor will ensure the venue is suitable and allows for confidential discussion. Meetings are flexible and informal, and are able to be guided by the claimant, as appropriate.

5.21 Any special requests or needs are considered and provided for, as appropriate. For example, this has included the Ministry paying for a sign-language interpreter selected by the claimant to support them through the process. Claimants are welcome to bring whānau and other support people, including their lawyer.

5.22 The assessor will explain the process, before inviting the claimant to share their story and explain what they would like from the process. The assessor will ask questions to ensure they understand the claim and have as much relevant information as possible from the claimant. Often a Ministry official attends to take notes, which can be provided to the claimant if requested. Sometimes the meeting is recorded, if the claimant is happy with that.

5.23 There are occasions where claimants choose not to meet with an assessor. Where a claimant is unable to manage a meeting or does not wish to have one, the assessor works from the documents or information provided by the claimant or their counsel along with any further information located during research by the Ministry or the assessor.

Preparation of the assessment report

5.24 The assessor will then consider the merits of the claim, taking into account the information shared by the claimant and the available, relevant documents. From time-to-time an assessor may also speak to other individuals, such as ex-staff from the school complained about.

5.25 A detailed assessment report is prepared and provided to the Ministry by the assessor. These reports include the following material:

(a) All the allegations made by the claimant are explained in detail.

(b) Relevant information, including background information about the school, relevant policies and procedures and staff. The claim is assessed against the standards and policies that applied at the relevant time, not those applicable today.

(c) The allegations are analysed against the information available. The assessor will then make findings about whether there is enough support for the allegations made.

(d) Recommendations about any appropriate action to take to resolve the claim are also made. This includes a recommendation on whether an apology and/or a payment is appropriate.

5.26 The assessor provides their report to the Ministry for consideration.

5.27 Once we have considered the assessor's report, a memo of advice about how to respond to the claim and any recommended payment is prepared for the Deputy Secretary, Sector Enablement and Support, who approves our claim responses. The assessor's report is also provided to the Deputy Secretary for consideration.

Supporting information

5.28 We do not have a prescribed threshold of evidence that needs to be met for allegations to be supported. The assessor will consider each claim against the relevant information available to determine whether it is reasonable to accept the allegations made, for the purpose of settlement. Given the historic nature of many of our claims, the passage of time and unavailability of witnesses does mean that there can be limited information available to shed any light on a claimant's allegations.

5.29 Bearing in mind the principles discussed at 4.5 above, some information in addition to statements made in claims is looked for to support allegations made.

5.30 For example, if a claimant alleges they were kept in time-out to an excessive degree in breach of the policies at the time, we will search the records to confirm whether the school had a time-out space and/or a history of such a practice and whether there is any information in the claimant's records to show either timeout usage or indicate behaviour that would have resulted in timeout usage. Where a claimant alleges abuse from a particular staff member, we will consider any evidence of that staff member having committed similar abuse. This might include records of complaints, criminal convictions or disciplinary procedures.

Response to claim

5.31 Once our response to the claim has been approved, it is provided to the claimant or their lawyer in a letter. The documents relied on by the assessor can be made available as well. There is often a telephone conversation about our response with unrepresented claimants. Occasionally we will meet with the claimant to discuss our response to their claim if that is needed, but this hasn't been common.

5.32 The letter sets-out each allegation and explains the findings made. If the claimant has any concerns about how we have responded to their claim, they are welcome to raise these with us. Claimants can also provide further information if they wish to make additional allegations or are concerned that there is material we have not taken into account.

Offer of settlement

5.33 Settlement offers may include:

(a) a payment (settlement or ex-gratia);

(b) payment of legal fees, whether to Legal Aid or to the claimant's lawyers, so the payment is received by the claimant in full;

(c) an apology; and

(d) access to other support requested by the claimant, which could include counselling.

5.34 Offers are made on a without prejudice basis and are usually in full and final settlement of the claim.

Payment amounts

5.35 Where it is appropriate to offer a payment to a claimant, we calculate the amount by considering payments made in resolved claims with similar facts. In the early stages of our process payments made by MSD were used as a comparator, in an effort to maintain equity in payments for similar types of abuse.

5.36 To date, our payments have ranged from $3,000 for the least serious claims, up to $40,000 for very serious cases. Higher level payments have been made for claims with extremely serious allegations, greater evidential support for the complaints made and often multiple types of abuse or greater frequency. Our average payment is $15,300.

5.37 Our payments are intended as an acknowledgement of a claimant's experiences and to assist them to move forward. We do not compensate for loss suffered due to the difficulties in ascertaining this because of evidential and other difficulties (discussed at 5.28 above) associated with claims of a historical nature. From time to time we have included in the payment a small increase to acknowledge there was a delay in responding to a claim within an agreed timeframe.

Statutory Defences

5.38 Offers to resolve claims are made notwithstanding legislative restrictions that might apply if the claim was heard in court, such as those set out in the Limitation Act 1950 or the Accident Compensation Act 1972.

Joint claims

5.39 We have had a number of joint claims with MSD. Historically, these have been claims lodged solely with MSD, but included allegations about a residential special school. The majority of these claims have been about Campbell Park.

5.40 Resolution of joint claims has been achieved in consultation with MSD. For a number of years these claims were managed and assessed under MSD's process, with the Ministry contributing to the final settlement. Over time, we have become more involved in the assessment of these claims.

5.41 To date, no claims have been progressed as a joint claim with a school board of trustees.

Te Tiriti o Waitangi and Tikanga Māori

5.42 The Ministry of Education's commitment to Te Tiriti o Waitangi is set out in our policy statement.[24] The Ministry expects its staff to give active expression to the principles of the Treaty as they carry out their day to day professional duties.

5.43 Our claims process can be tailored to the needs of individual Māori claimants and cater for any cultural or spiritual practices they would like observed. Discussions with a claimant throughout the process can assist to determine how they would like to engage with us.

5.44 For example, claimants are welcome to bring whānau and other support people to meetings with the Ministry. A meeting can be held at any suitable venue, including a marae if requested. Translation services are also able to be provided if this is required.

5.45 In practice, we have had one claimant request that the process accommodates their cultural needs. This person requested that their claim was dealt with by a Māori assessor, who also spoke Te Reo. In that instance, we arranged for the then National Manager of Māori Service Provision in Group Special Education to form part of the assessment team. This individual attended the meeting with the claimant and assessor and was available to provide input into the process and work with the claimant as they required. The substantive assessment was completed by an assessor who does not identify as Māori, but has experience working with Māori clients.

5.46 We do not have records about how many of our claimants identify as Māori, as claimants are not obliged to disclose this information to us.

5.47 We accept that more could be done to proactively and explicitly incorporate tikanga into our process and we will consider how to do this as part of any future process improvements. We are currently considering commissioning an external review of our process. This review will likely consider how we can strengthen our process for Māori.

6 Concluding Comments

6.1 Our claims process has been operational for 10 years. During that time our work has substantially changed, from being focussed on a small number of claims about a reasonably narrow scope of allegations, to encompassing a growing range of concerns about a number of schools. The last three years in particular has seen an increase in the scope, volume and complexity of claims and a growth of wider demands that have put pressure on the claims process.

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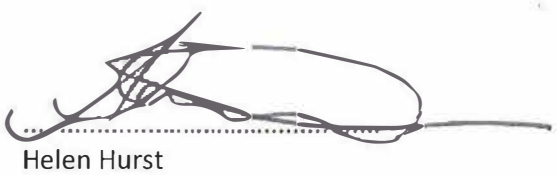
[24] See the Ministry's internal policy documents, *Ministry of Education and the Treaty of Waitangi* and *Commitment to the Treaty of Waitangi*.

6.2 The resolution of abuse claims is not easy. We are committed to providing a robust and fair process that is appropriate in our claims environment, but remains responsive to recommendations that will be provided through the Royal Commission. It is therefore timely for us commission an external review of our process to ensure we are best placed to respond to this growing area of work going forward. We are in the very early stages of initiating this work. Our intention is that this review is an interim step, pending any decisions made following the feedback and recommendations of the Royal Commission.



Helen Hurst

27.1.2020