

Review of Historical Claims Resolution Process

**Report on the Consultation Process with
Māori Claimants, July 2018**

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
INTRODUCTION	3
BACKGROUND	4
<i>Senior Māori Leaders' Group</i>	4
<i>Workshop Participants – Claimants and Professional Supports</i>	5
CONSULTATION WORKSHOPS	6
CLAIMANTS SPEAK	7
CONSULTATION FEEDBACK	9
<i>Overall perceptions</i>	9
THEMES – feedback from consultation workshops	11
<i>Promotion of the claims process</i>	11
<i>Length of time</i>	11
<i>Interview and Assessment Process</i>	12
<i>Access to services including counselling</i>	13
<i>Receiving files and records</i>	13
<i>Whole whānau approach</i>	14
<i>Claimants in prison or transient</i>	15
<i>Offer</i>	15
<i>Follow up post settlement</i>	16
WIDER SYSTEMIC ISSUES FOR CONSIDERATION	17
<i>Inconsistency and changes</i>	17
<i>Independent Claims Body</i>	17
<i>Government's responsibility for loss of opportunity</i>	17
<i>Narrow scope of settlement</i>	18
<i>Claimants' role in designing the process</i>	18
<i>Lodging Claim Posthumously</i>	18
<i>Number of claims</i>	18
<i>Children Currently in Care</i>	19
<i>Implications for the wider issue of abuse</i>	19
<i>A Reasonable Standard</i>	19
LEARNINGS FROM THE IRISH EXPERIENCE	20
CONCLUSION	22
ACKNOWLEDGEMENTS	23
FURTHER READING	23

Report on the Consultation Process on the Historic Claims Resolution Process with Māori Claimants - 20 July 2018

EXECUTIVE SUMMARY

The Ministry of Social Development has recognised that the deficiencies in the Historic Claims Resolution Process (HCRP) is creating a backlog of claims. Increasing numbers of people have been making claims and despite best efforts, the Ministry has not been able to accurately forecast demand. Increased demand combined with the length of time it takes to assess a claim, means that people have to wait excessively long periods to resolve their claims. To mitigate these issues, the Ministry proposes streamlining the process and making it more responsive to claimants. This will make the process faster for claimants while maintaining the core elements and integrity of the original process.

The scope of this report is limited to developing an improved process for Māori in the HCRP that reflects tikanga Māori and is consistent with the Treaty of Waitangi. While the focus of this report is on Māori, the learnings are applicable to Claimants in general.

Feedback from Claimants indicates that the HCRP has not served them well. Overall they found the HCRP clinical and detached and at times lacking empathy or understanding of their experiences while in state care. They all reported that they had not encountered any Māori at any time during the process nor did they feel their cultural needs were recognised or catered for. The claimants felt that the values underpinning the process are more important than the process itself. They believed that tikanga and the principles of mana, aroha, whakapapa, whanaungatanga, manaakitanga and pono should underpin a process where people feel valued and heard. Furthermore the claimants need to feel empowered and supported throughout the process, and where appropriate, it needs to accommodate a collective and inclusive approach.

Several suggestions for improving the claims process are presented below and will go some way to producing policies and practices that reflect the needs of Claimants and their whānau in the short term. The wider systemic issues raised in this report highlight areas requiring further work and whole of government response to ensure that there is a more comprehensive and responsive claims process.

INTRODUCTION

The Ministry of Social Development (the Ministry) is responsible for the Historic Claims Resolution Process (HCRP). This process allows people who were in state care prior to 1 January 2008 to lodge claims if they believed they were harmed as a result of abuse and neglect while in care. The Ministry has experienced an increasing number of people making claims to the HCRP and

forecasting demand has been difficult. This increase in demand along with the length of time it takes to complete a claim means Claimants are currently waiting for over three years for settlement, which is recognised and accepted as being far too long.

The Ministry sought independent advice on how to improve the claims resolution process and reduce the time it takes to resolve a claim, while still following best practice and addressing claims in a timely way. Recommendations were made to streamline the process and make it more responsive to claimants, making the process faster for claimants while maintaining the core elements and integrity of the original process.

In March 2017 historical and contemporary claims were lodged with the Waitangi Tribunal to highlight the systemic abuse of Māori in state care, lack of appropriate attention given to this issue and to call for an Inquiry. One of the contemporary breaches was about the alleged failure to provide a Treaty-compliant, tikanga-based and independent process for settling historic and contemporary claims. The Ministry signaled in its Affidavit that this work was already being planned to address these issues. The Ministry wants to ensure that the new process, when implemented, reflects tikanga Māori and the principles of the Treaty of Waitangi. The Ministry therefore undertook consultation with Māori on the new proposed process to seek their feedback prior to confirming and implementing the final process.

The consultation process the Ministry employed is outlined below along with findings from the hui with Māori Claimants

BACKGROUND

The Ministry wanted to ensure the consultation process was robust and culturally appropriate and wished to employ the advice and support of an appropriately qualified and skilled independent facilitator. The facilitator's initial task was to provide advice and support to the Ministry to develop a consultation plan and then lead and document the outcome of the consultation workshops.

The Ministry contracted Donna Matahaere-Atariki and Hera Douglas to facilitate, record and report back on the consultation workshops held with Māori claimants regarding changes to the Historical Claims Resolution Process (HCRP). The process encompassed a tikanga Māori approach and was developed in conjunction with the Ministry. The oversight of Kaumatua and Māori leadership over this process was agreed and also served to recognise and maintain the mana of the claimants.

Senior Māori Leaders' Group

A Senior Māori Leader's Group was subsequently appointed to support the Ministry to undertake a culturally appropriate consultation process that would lead to a carefully designed, respected and culturally appropriate claims

resolution process. The members appointed to this Group were Dame Tariana Turia (Chair), Tā Mark Solomon and Whaea Druis Barrett. Whaea Druis attended all but one of the consultation workshops with claimants and provided a degree of cultural comfort for all participants.

Workshop Participants – Claimants and Professional Group

Ministry staff randomly selected Claimants who engaged directly in the Claims process and invited them to attend the workshops. The Senior Māori Leader's Group advised the Ministry to also include Claimants currently in Prison. A total of eight consultation workshops were held in Auckland, Hamilton, Wellington and Christchurch. Six of the workshops comprised male and female Claimants currently in the Claims process or who had completed their claims. One workshop was held with legally represented Claimants who had completed their claims and included some of the earliest claims. Legal counsel selected these claimants. Some Claimants brought along support people who contributed valuable insights into the HCRP. The last workshop was held with a group of professionals working with the claimants as legal representatives, advocates or service providers or who have an academic or human rights interest in this area.

CONSULTATION WORKSHOPS

All workshops began with a short mihi and karakia and Claimants were given the opportunity to offer up any words where they felt comfortable to do so. This was followed by whanaungatanga, an opportunity for everyone to introduce themselves, make connections with others and say something about themselves. A shared kai followed and at the end of this the workshop began.

██████████ and ██████████ from the Ministry's Historical Claims Unit gave a brief history of the claims process. They acknowledged a need to construct a process that was both claimant-centric and culturally relevant for Māori. Participants were given a paper that outlined how the claims process might be streamlined prior to Ministry staff withdrawing from the workshops. The Ministry's absence from the discussion was designed to encourage Claimants to speak openly and fully with the facilitators. At the end of each workshop ██████████ and ██████████ returned to answer any pressing questions and to acknowledge the Claimants.

The workshop method worked well and the Claimants valued the opportunity to share their views. Claimants expressed their gratitude that there were Māori facilitators and appreciated that Ministry staff were not present during the discussions. The Claimants have been open, honest and generous in sharing their personal stories and their experiences of the HCRP. Likewise, the professional group welcomed the opportunity to contribute their observations, views and experience of the HCRP.

Table 1: List of Workshops and Participants

Location	Number of Participants & Supporters	Official Attendees
Workshop 1: Auckland Women's Correctional Facility, South Auckland	Female Participants - 5	Druis Barrett ██████████ ██████████ Donna Matahaere-Atariki Hera Douglas
Workshop 2: Sudima Hotel, South Auckland	Female participants: 5 Supporters: 3	Druis Barrett ██████████ ██████████ Donna Matahaere-Atariki Hera Douglas
Workshop 3: Novotel Tainui Hotel, Hamilton.	Male Participants: 5 Supporters: 2	Druis Barrett ██████████ ██████████ Donna Matahaere-Atariki Hera Douglas
Workshop 4: Rydges Hotel, Wellington	Female Participants: 5 Supporters: 2	Druis Barrett ██████████ ██████████ Donna Matahaere-Atariki Hera Douglas
Workshop 5: Quality Hotel Elmers, Christchurch	Male Participants: 5 Supporters: 2	Druis Barrett ██████████ ██████████ Donna Matahaere-Atariki Hera Douglas
Workshop 6: Auckland Correctional Facility, South Auckland.	Male Participants: 4 Staff member: ██████████ (Cultural Advisor)	Mark Solomon ██████████ ██████████ Hera Douglas
Workshop 7: Brentwood Motel, Kilbirnie. Wellington	Female & Male Participants: 5 Supporters: 2	██████████ ██████████ Donna Matahaere-Atariki Hera Douglas
Workshop 8: West Plaza Hotel, Wellington	Professional Group Participants: 8 ██████████ – Auckland University ██████████ – Lawyer, Cooper Legal ██████████ – Lawyer, Cooper Legal ██████████ – University of Otago ██████████ – Counsellor/Psychotherapist ██████████ - Human Rights Commission ██████████ – Trustee, MSSAT ██████████ – President, MWWL	Tariana Turia Druis Barrett Linda Hrstich-Meyer ██████████ ██████████ Donna Matahaere-Atariki Hera Douglas

CLAIMANTS SPEAK

It is important to recount some of the stories the Claimants generously and bravely shared with us as a reminder of why this process exists and whom it serves.

Claimants were taken from their whānau as young children and placed in residential homes or with foster families. Being young, they were unclear of the reasons why or the decisions leading up to their removal until reading their records. For the most part it was because of home circumstances such as a parent becoming ill or dying; parents unable to cope with or manage large families in an urban environment without whānau support; alcoholism and abuse or minor offences such as truancy, to name a few.

Many of us went into state care in the 1960s and 1970s and it felt like an annihilation of things Māori. Some of us didn't even realise we were Māori as we were brought up in Pākehā foster homes.

I cared for my siblings because our parents were neglectful or unable to cope. We were put into foster care a number of times. We were split up because there were too many of us for one household. I eventually became pregnant as a result of my foster father sexually abusing me between the ages of 13 -15. I was pregnant at the same time as my foster mother.
(Excerpt from Hui)

Individuals revealed that they endured much harsher treatment and abuse at the hands of strangers than they had experienced at home. When they tried to report abuse they were not believed or were punished for 'telling lies'. Attempts to escape from the abuse were met with further punishment and in some cases, transferral to mental health institutions for shock or deep sleep therapy.

Claimants revealed how certain social workers, Police and others involved in decisions about them had treated some complaints of sexual assault incredibly badly and let them down in the worst possible way. It revealed some questionable behaviours, attitudes, standards and practices that have been minimised through a mix of historical legislation, privacy concerns and a tacit acceptance that some actions were 'appropriate and reasonable to that specific historical context'. One claimant revealed that she had informed her social worker that her foster brother was sexually abusing her and when she was ignored, she ran away and reported it to the Police. The Police informed her the social worker had told them it was consensual. This occurred even though she was underage at that time.

Most were disconnected and disengaged from their Iwi, hapū and whānau from a young age, and remain so. They have lost their personal and/or cultural identity. Some learnt that they were Māori as adults so that gave them a sense of belonging. But it has been hard trying to establish a connection

with whānau. Others were lucky to be able to maintain their connection with their whānau but not everyone has been that lucky. Others found an alternative form of whānau with gangs.

My mother abused me so I was taken and put into two boys' homes, twice in Cherry Farm and a boarding school. I was abused in all of these institutions. I ran away and then I was returned after telling Police I was abused. I played up and so at the age of 13 I was sent to Cherry Farm where I was given shock treatment and deep sleep therapy

Many of us in gangs were in state care as young children. We were in Kohitere, Epuni and other Residential Homes where we were abused and ill-treated. We wound up in gangs because we were disconnected from our whānau and had nowhere else to go.

We have feelings of disconnection, detachment and abandonment and this has had a trickle down effect on our children and mokopuna. For those of us who are able to return to our whānau we are not able to easily reintegrate as we have no history together.

The children that went into care in the 1970s and 1980s are the lost generation and became street kids, ended up in prison or dead. Many are still on the streets with no purpose and no resources.
(Excerpt from Hui)

Life after care has been difficult for Claimants. They were released from state care with no transition plan nor the means or knowledge of how to take care of themselves. Others were sent back to the same violent family environments and had to manage the best way they could. Many often ended up in trouble because they were stealing to provide food and other necessities for themselves and/or younger siblings. Many have fought drug and alcohol addictions and constantly exist in survival mode. This lifestyle has often led to one or more terms of incarceration.

Ill-equipped with the fundamental life-skills and cultural values that provide for whānau support in times of crisis means that some Claimants remain engaged with Oranga Tamariki because their children and grandchildren are considered to have care and protection risks. The Claimants' own experience of care has heightened their fear of dealing with Oranga Tamariki. The collective impact of systemic failures by several agencies to care for children and prepare them for life has produced a 'second class citizen'. Claimants strongly felt labeled as second-class and talked about how systems continued to stigmatise them and perceived them as less deserving.

Claimants voiced their disappointment at the loss of opportunities because of their time in care. None of the Claimants spoken to had received a formal education during their time in care and their experience at school was disrupted because of their status as 'welfare kids' or because of constant movement between care placements and state institutions.

The Claimants often wonder what their lives might have been like had they not been in state care and suffered abuse. They lament lost potential and lost

opportunities regarding education, jobs, enduring relationships and healthy, happy, healthy, successful lives because of the toll their experiences have taken on them, their children and grandchildren.

Many of our children have gone down the same pathway and are collateral damage. We have not been able to show our kids love and affection, as we do not know how. We were deprived ourselves as children. It has been challenging to be good parents given our own lack of good parenting role models.

There is now third generation dysfunction where whānau are experiencing increased levels of domestic/family violence, they are angry because they are not able to provide for their families and they have no support. They are tarred with the welfare brush and others have low expectations and are judgmental of them.

We are ashamed and lonely because we cannot make a reconnection with our whānau, so we are a whānau in theory but not in practice, that therefore makes it an academic exercise. Such dysfunction leads to destabilisation. (Excerpt from Hui)

The excerpts from the workshops make for sober reading and convey the sense of grievance and harm Claimants feel and still experience. We would like to acknowledge and thank everyone who shared their time and experiences during the hui. It was a privilege to share this time with you.

E kore e mutu te mihi aroha ki a koutou katoa. Kia tau iho ngā manaakitanga i runga i ā koutou me o koutou whānau i ngā wā katoa.

CONSULTATION FEEDBACK

Overall perceptions

Overall the Claimants found the HCRP clinical and detached and at times lacking empathy or understanding of their experiences while in state care. They all reported that they had not encountered any Māori at any time during the process nor did they feel their cultural needs were recognised or catered for. Their earlier treatment by the Ministry and its predecessors was not conducive to building trust. Claimants voiced their concern and perception that the current process repositioned them in an ongoing relationship where the Ministry continued to exercise undue influence over their lives.

The Claimants felt that the values underpinning the process are more important than the process itself. Therefore they believed that tikanga and the principles of mana, aroha, whakapapa, whanaungatanga, manaakitanga and pono should underpin a process where people feel valued and heard. Furthermore the claimants need to feel empowered and supported throughout the process, and where appropriate it needs to accommodate a collective and inclusive approach. The individualised nature of the process where Claimants' files redacted any mention of their whānau, reinforced their sense of isolation, helplessness, loss of identity and loss of connection that occurred as a result of being in care.

There was strong agreement with the Ministry's stated aim that the process be claimant-centered however Claimants did not think this was evident in the workshop information they received. Claimant's agreed that the process should be accelerated to ensure redress is achieved in a timely manner, however they felt that the process still did not address or resolve the impact of dislocation and loss of identity. The process needs to include a package of redress that enables access to unredacted files that includes information concerning their whānau and addresses the broader issues of wellbeing and opportunities lost through access to education and other social and health services.

The Claimants felt that the HCRP was driven by the Ministry's needs and the outcomes it seeks, rather than being aligned with their priorities or needs. A simple approach would be to ask Claimants at the beginning of the claim process what they want rather than having a preconceived idea about what the Ministry thinks they need. The Claimants and their whānau (in an all-encompassing sense of the word) need to have input in guiding the outcome of the process.

The represented Claimants were more critical, frustrated and dissatisfied with the process. We believe this is in part attributable to the arm's length approach inevitable in a represented claim scenario. It was evident that it generally took much longer for represented claimants to access information as all communications were conducted exclusively between their legal counsel and the Ministry. Once legal counsel had completed enquiries, acquired information, lodged a claim and communicated the outcome to the Claimant, years had passed. The Claimants felt uninformed and isolated from the process and were left with a *fait accompli* – accept the offer or wait a few more years. This sense of inevitability and duress the Claimants felt undermines any potential for trust or good faith in the process and the Ministry in completing their claims.

All claimants have an over-riding concern for children currently in care and want to ensure that they do not suffer the same abuse, neglect and ill treatment they experienced while in state care. However they remain highly skeptical that processes have improved despite recent reviews. Their own experience is that children are still being needlessly removed from their whānau when what is required is more support for the whānau to cope in increasingly difficult circumstances.

The professional participants thought that any change to the current process would be an improvement. However, changes needed to ensure the process was claimant-centred, transparent and consistent. Their experience was that the rules kept changing and goal posts kept shifting and there were inconsistencies in interpretations of the rules within the Ministry. They were critical of a process that aims to accelerate the claims process without reflecting the fundamental needs of the Claimants. Like Claimants, the professional group felt that the suggested changes did not go far enough.

It is evident from the workshop feedback that the abuse the Claimants experienced is still keenly felt and is all-encompassing undermining their capacity to experience full and productive lives. This is despite attempts by Claimants to forge a different pathway for themselves and their whānau. Principally, all workshop participants strongly supported the idea of an independent claims body to mitigate any perception of ongoing procedural injustice.

THEMES – feedback from consultation workshops

The main themes that emerged from the workshops are as follows:

Promotion of the claims process

Most claimants said they learned about the process mainly through word of mouth, from whānau or friends, through television or a poster in a doctor's waiting room. The Confidential Listening and Assistance Panel (CLAP) referred others. Claimants believed there was a need for active promotion of the claims process.

Suggested ideas

- Develop a comprehensive communications strategy
- Develop a website that contains information about how to lodge a claim, what is involved in the process, likely timeframes, any available support or assistance and a FAQ section.
- Make information pamphlets available in outlets such doctors' surgeries, libraries, WINZ offices and other accessible places.

Communication during the process and Claims status updates

Many claimants said that they had no idea what the status of their claim was once lodged and in some cases it was many months and sometimes more than a year before they heard anything. Many felt they were left completely in the dark about the status of their claims once lodged. They thought that their claim had not been accepted or they had been forgotten. They felt regular updates would be helpful in keeping them in the loop even if their claim's status was the same. Also an explanation of what to expect out of the whole claims process from beginning to end would be helpful.

Suggested ideas

- Investigate the process used by ACC where claimants are regularly updated on the progress of their claim. They also have a unique identifier number that is linked to all their information so they do not have to give the details of their claims each time they make enquiries.

Length of time

The claims process takes far too long with some claimants waiting up to five years or more for completion. On average most said it took two years before hearing anything about the status of their claim. For many the wait was stressful and traumatising particularly following the interview process where support or counselling was provided it was perceived by them as inadequate to help them deal with the effects of disclosing their experiences.

Suggested ideas

See below (Wraparound services, facilitation or support services)

Interview and Assessment Process

Most Claimants found it a clinical and impersonal process. They perceived it as an information gathering process and that the assessors were not interested in their story. For many of the Claimants it was the first time they had told their story to anyone and they believed that the Assessors did not appreciate the difficulty they experienced in telling their stories. They felt vulnerable and exposed after the assessment and left to deal with the aftermath themselves.

The process needs to be a more inviting and comfortable environment and carried out with more empathy and understanding of them, their cultural identity and their circumstances.

Claimants felt that there should be options about where and how an assessment might take place. Also some felt there might be a conflict of interest for example if an assessor worked in the residential facility at the same time as the claimant was there or the abuser may have been a former colleague. They felt strongly that there should be Māori involved in the interview and assessment process and questioned whether the assessors had to be Social Workers.

It is unlikely that there is enough time to grow a workforce of social workers to deal with the influx of claims, let alone the backlog. The workforce therefore needs to include people who are competent, culturally responsive and possess the necessary skills to work with claimants. A high level of empathy, claimant-centred and the constitution to deal with what may be a harrowing role is required. With adequate training, this group could include Claimants who had concluded the process. Their roles could be as interviewers and assessors as appropriate or as support people or facilitators to provide pastoral care, access to social services and professional health service.

Suggested ideas

- Investigate a recruitment and training programme that enables MSD to build a lay workforce to carry out appropriate aspects of the claims process. This could also include Identifying and properly resourcing former claimants, independent service providers and community

organisations to provide culturally responsive support to claimants during the process.

- Investigate pastoral care roles that encompasses support workers or facilitators to assist with application process, accessing and reading files, preparation for interviews; navigation to access counselling and other services. This may include reviewing the assistance model used by CLAP as well as models developed by other sectors.
- Investigate the wraparound service/one stop shop model.
- Investigate options for carrying out interviews and assessments in settings that meet the claimants' preferences including a group interview mechanism.

Access to services including counselling, education and training

Many of the Claimants said that it would have been helpful to have access to counselling services that were culturally attuned to their predicament during and after the interview and assessment components of the process. Having access to other services regarding employment, training, housing at the onset of the claims process would have been helpful. These services would assist Claimants to begin engaging in experiences positive to their rehabilitation and allow them to move forward with their lives. Providing such services would enhance the claims process so that it was more claimant-centred and responsive to their circumstances.

Suggested ideas

See above (Wraparound services, facilitation or support services)

Receiving files and records

The current practice of assessing Claimants is based on what can be retrieved by records held by the Ministry. Claimants noted that their individual files had failed to record the reality of their lives. Files tended to reflect the values of the social worker and at times, illustrated a lack of care towards the child. In addition, Claimants' files were often incomplete, irretrievable and in some cases, missing. Some Claimants said it took some time to receive their files particularly if they were inmates and had moved from one part of the Correction facility to another (e.g. from the block to the residence) or had been transferred to another facility.

Many were unsure why their files had redacted areas and why there were no reports about the abuse they had experienced especially if they had reported it. For some, this may be the only source of information that will help them reconstruct family connections and give them a more complete picture of their early lives.

Large tracts of redacted information only reinforced the claimants' mistrust of government departments and reinforced the notion that information was being withheld from them.

Other claimants who were one of many siblings taken into care did not see the point in redacting siblings' information when they had all been through the same experiences together and treated as one group with one file. They also thought that they should be able to make a group application if more than one sibling wanted to lodge a claim.

The professional group said that large redacted areas often made it difficult to make sense of what had happened to their claimant. Very rarely are there recorded incidences of abuse or complaints against staff on a claimant's personal file as that information is held elsewhere. These records are more than likely archived or have been destroyed. Not having access to these records to build a complete picture of the claimant's experience has an impact on lawyers' and advocates' ability to present good evidence or a good case and this may have an impact on the quantum of the settlement. This is when evidential information becomes crucial.

They also thought accessing the records and database were a significant problem as was the information held on those records, if they still existed. They thought that the Ministry was collecting the wrong information and disaggregation of the data was needed.

They also thought that they needed to have a memorandum with the Ministry allowing them to share information similar the MOU they currently have with the Ministries of Justice and Health.

Suggested ideas

- Provide support services to Claimant when they receive their files
- Move to digitising hard copy records and making information more easily accessible
- Look at the possibility of a MOU with the Ministry for information sharing purposes
- Investigate data collection to see if the right data is being collected and if it can be disaggregated to make it more useful.
- Investigate, review and seek an opinion from the Privacy Commission on the basis for withholding information based on privacy issues and if it is justifiable in these circumstances.

Whole whānau approach

Some claimants felt that the process should accommodate a whole of whānau approach particularly in circumstances where more than one whānau member was taken into care and where they wish to take a group approach to lodging and settling claims. Although these issues are raised under other themes it is important that this approach be broached as a standalone item.

There was a suggestion that the Family Group Conference model may be worth investigating as that may work for some, but not all. It is also important to recognise Claimants right to not participate. It should not however, prevent whānau from utilising this approach if requested. This model may give

Assessors a better appreciation and understanding of a claimant's wider environment and circumstances that impact on their daily lives. This model takes an inclusive rather exclusive and individualistic approach and is recognised internationally as an exemplary in addressing the needs of children and their whānau.

Another suggestion was a Hui-a-whānau approach that can be used before the actual interview and assessment where the claimant chooses who attends the hui. Attendees may be whānau members and/or other claimants who have been through the process. Fellow claimants can lend support based on their own experience of the HCRP and their shared understanding of each other's experiences. They felt this option held mana and was consistent with tikanga. It provides the claimant the space to tell their story and not feel their experience has been diminished or discredited. A one-size fits all approach is not appropriate.

Suggested ideas

- Investigate the idea of a group application model as used in Canada.
- Investigate the alert system used by the Māori Land Court where if one whānau member lodges a succession application, other members are automatically notified.
- Investigate options for carrying out interviews and assessments in settings that meet the claimants' preferences including a group interview mechanism.

Claimants in prison or transient

Claimants who are imprisoned several times over the duration of their claims experienced longer delays with completion of their claims. These claimants are also likely to be more transient on release particularly if they have no place to go. They acknowledged that this makes concluding their claim more difficult if they are not easily contactable.

Suggested ideas

- Investigate a tracking or alert system that reminds the claimants to inform of MSD of their whereabouts as well as for MSD to actively keep track of the claimants.

Offer

For many the financial recognition component was not the most important factor. Claimants felt the offer was inadequate considering the abuse and neglect they suffered and the life-long consequences they continue to endure. Telling their story and being genuinely heard was very important, as was the Government's acknowledgement that they had suffered while in state care.

Some thought the apology was just a standard letter sent to everyone. They felt it did not acknowledge their own personal experience and therefore did

not feel genuine. For others, having an official apology vindicated them and validated their experiences while in care. They felt the apology letter was proof of what happened to them and also a document they could use to assist them in other areas of their lives such as reclaiming their children from state care. Others thought that a face-to-face apology was more meaningful.

Claimants felt the apology letter should come early in the process such as during or after the assessment as this was seen as contributing to their healing process.

Some ideas for additions to the offer might include counselling services, empowerment courses for women in a therapeutic community, access to employment, training, housing and other social services. Of particular importance was access to services that could help them reconnect with their whakapapa, whānau, hapū and Iwi.

The represented claimants voiced their concern that they felt they had to settle under duress because they believed there was a finite settlement fund. They were told that if you did not settle on the first offer it would take much longer or you might end up with less or no financial recognition. Most accepted settlement at the time because they had little financial means to support themselves or their families.

The claimants felt the offer process in the new proposed fast track route should not put any undue pressure on the claimant to accept the offer on the spot.

Claimants and the professionals thought that there should be more transparency about how the settlement quantum is reached. There was concern for the discounted rate approach where a sliding scale is applied for the number of times the abuse occurred and the perceived level of abuse suffered. They proposed the idea of a relativity clause approach to settlement that ensured consistency for Claimants.

Suggested ideas

- Investigate incorporating a whānau reconnection service into the settlement process
- Ensure there is support and ongoing pastoral care
- Investigate other services that can be included in the settlement package – e.g. empowerment courses, open therapy sessions, education, training and employment
- Ensure there is a more transparency around the method used to quantify financial recognition
- Ensure that the fast track process does not exert undue pressure to settle
- Investigate a relativity clause with the offer.

Follow up post settlement

For many claimants there maybe closure but there is never resolution because their experience is always with them. Redress rather than resolution was noted as a more appropriate term. They felt that there should be some follow-up after settlement to see how they are getting on or if there is any further assistance they might require.

Suggested ideas

Investigate a wraparound service approach that helps them access other social services so that they can secure decent housing, job or training opportunities, further education opportunities, financial or budgeting services to help manage the financial component of their claim.

- Consider the use of the term *redress* rather than resolution
- Provide opportunities for a review of the claims process and continuous Claimant feedback

WIDER SYSTEMIC ISSUES FOR CONSIDERATION

While it is beyond of scope this report to look at wider systemic issues it is important to include and highlight our findings to help set the Claimants' experiences in a greater context.

Inconsistency and changes

The professional group thought the process needed to be transparent and more consistent. They felt that the rules were always changing and that there was inconsistency when interpreting the rules. There was therefore a need to publish a rulebook so everyone is working off the same page and knows what to expect.

Independent Claims Body

Some claimants and particularly the professional group strongly supported a move to an Independent claims body model, an idea some have promoted during the recent Royal Commission on Historical Abuse in State Care's draft Terms of Reference hui. They strongly believed it was totally inappropriate for the government to be both judge and jury with no built in accountability or review mechanism of the process. There is also no ability for the claimant to seek a review or to enter into negotiations if dissatisfied with the outcome of their claim assessment.

As long as the process is part of the government infrastructure, many potential claimants will be discouraged from engaging in the HCRP. They lack trust in a government agency that did not protect them as children and are viewed as being responsible for the life they now have.

They will undoubtedly take the opportunity to further promote this model when the Royal Commission's inquiry is underway.

Government's responsibility for loss of opportunity

Most Claimants have led lives plagued by drug and alcohol addiction, mental health issues, family violence, unemployment, homelessness, low educational achievement, mental health issues and disconnection from their whānau, hapū and iwi. They believe that the government's responsibility extends beyond what happened to them as children. The Claimants' feel strongly that Government should also accept a level of responsibility for the adults they have become. For many the cost of lost opportunities as a result of their experiences is profound and a constant reminder of a life they have been denied.

Narrow scope of settlement

The Claimants and professional group believe that the scope of the settlement is too narrow and should factor in emotional abuse, cultural disconnection and the consequences of injury. For all Claimants (including claimants referred to counselling services from the CLAS) cultural disconnection from whānau, hapū and iwi and being denied access to healthy whānau structures resulted in a loss of identity and was a hugely significant issue.

Claimants' role in designing the process

The Claimants believed that they should be an integral part of designing a claims system as they have been through the system and are best placed to know what would work for current or future claimants. Others thought they should be leading the process in line with the concept of mana motuhake (self-determination). Being active participants in an ongoing review and application of the claims process rather than passive recipients would ameliorate any ongoing sense of helplessness Claimants felt. It would also encourage the development of healthy and informed relationships between Claimants and the Ministry.

Lodging Claims Posthumously

The issue of deceased clients was raised and there was strong support for accepting a posthumous claim if there was sufficient evidence. Some participants in the professional group hui made reference to the Ombudsman's report on this matter and deserves further consideration. The notion of *inherited trauma* as a barrier to developmental factors for children who have experienced a significant negative event, continues to be argued in the literature. The ongoing research into epigenetics and cellular disturbance is changing our understanding of resilience in children and has yet to be recognised as valid in the HRCP. The implications of this research to ongoing claims is signaled here as a potential complicating factor in redressing historical claims in the future.

Number of claims

Claimants believed that the current number of claims were just the tip of the iceberg as they knew many people, either whānau or friends who had experienced abuse while in care. They actively encouraged many of them to lodge claims. Many potential claimants are unlikely to lodge claims because they: mistrust the government or authority; suffer ill health; are not prepared to go through the ordeal of digging up the past or will maintain an ingrained code of silence (adopted while in care to counteract the consequences of narking).

However, there is the potential for a sharp, or at the least steady rise, in lodged claims once Royal Commission on Historical Abuse in State Care begins its inquiry.

Children Currently in Care

While state care of Māori children is seen to belong to a different era, recent data highlights that the volume of Māori children in care has not diminished. Māori children are over-represented across the continuum of welfare and constitute more than half of all those placed in care. The value of the Claimants' experience is that it has contemporary application for the protection of vulnerable children in care.

Implications for the wider issue of abuse

The HCRP as it currently stands does not deal with the issue of *why* the abuse occurred in such high numbers, neither does it deal effectively with the fact that Māori children and their whānau have been at the sharp end of historical and contemporary injustice. The opportunity for the Ministry and other relevant agencies to learn from this process and understand why children in their care were harmed may not be fully explored or may even be lost in this process. The risk remains that Māori will continue to experience harm.

Similarly, a focus on a single or series of events of abuse runs the risk of masking the systemic and far-reaching harm experienced by large numbers of children in state care. Allegations of systemic racism or institutional bias continue to plague those systems intended to protect our most vulnerable. Claimants believe it is extremely unfair that there is no redress for or acknowledgement of the ongoing effects of abuse unless it is clearly evidenced that the state failed to protect them. It is already evident that files and records are not fit for purpose and were often too sketchy to provide adequate testimony.

A Reasonable Standard

Many Claimants suffered injuries that have been described by some as permissible in its historical context. Obvious examples include, physical abuse and secure confinement used as widely accepted disciplinary techniques during much of the twentieth century in New Zealand. However some Claimants endured abuse that was not legal or reasonable in any time period.

One Claimant gave an example where a social worker described sexual connection as complicit even though the Claimant was underage at the time.

Claimants will only receive compensation for physical abuse or wrongful confinement if it exceeded what was thought permissible at the time of the offense. Therefore, the notion of historical context and the degree of reasonableness becomes important in determining what is deemed permissible for a specific set of circumstances.

The abuse in all its forms is a case in point. The claimants felt the claims process glossed over the deep trauma they suffer by only recognising physical and sexual abuse and questioned why mental, and psychological abuse was not included. The process does not make sense to people because they cannot compartmentalise their abuse.

LEARNINGS FROM THE IRISH EXPERIENCE

The 2014 - 2016 Northern Ireland Historical Institutional Abuse Inquiry (HIA) is the largest inquiry into historical institutional sexual and physical abuse of children in the United Kingdom's legal history. Its remit covered residential care institutions in Northern Ireland that cared for children from 1922 to 1995. The system of large-scale institutionalisation was a response to a nineteenth century social problem, which was outdated and incapable of meeting the needs of individual children. This led to the institutional abuse of children where their developmental, emotional and educational needs were not met.

The Irish response to abuse of children in care is relevant insofar as our jurisdictions are similar and the abuse occurred within a similar timeframe. However as in New Zealand's case, Ireland's support services did not include specific engagement with, or services for, Irish Travellers. Although the total population of Irish Travellers is relatively small (around 31 000 at present) it is extremely likely that they would have been over-represented in the industrial schools. The experience of the abuse of children in state care in Australia and Canada mirrors New Zealand's experience given residential and industrial schools were set up specifically for their indigenous populations.

The Inquiry issued a long list of recommendations which are applicable to New Zealand's circumstances and a few of the issues have already been canvassed earlier in this report. It is worth repeating these issues in the context of what other jurisdictions have learnt. The following recommendations are relevant to the claims process and particularly Māori claimants:

The lessons of the past should be learned. It is important to acknowledge that abuse of children occurred because of failures of systems and policy, management and administration, and the actions of senior personnel who were involved in the care of children. This admission is, however, the beginning of a process. Further steps require internal departmental analysis and understanding of how these failures came about so as to reduce the risk of repeating them. State acknowledgement of the systemic failings of children

is an important factor because the abuse cannot then be dismissed as an occasional individual lapse.

Counselling and educational services should be made available.

Counselling and mental health services have a significant role in alleviating the effects of childhood abuse and its legacy for successive generations. Survivor-Support groups are an important addition, as claimants will often avoid engaging with agencies because of long-held feelings of distrust borne through their experiences of care. Receiving support from other survivors who are more articulate and resilient and are able to help navigate government processes including the claims process, is invaluable.

Family tracing services. Family tracing services to assist individuals deprived of their family identities while in care is important in facilitating lost family connections. In the New Zealand context, this should include right of access to personal documents and information about their whānau. Whānau are the core of Māori society and extends to hapū and iwi. The report documents the impact on claimants of these losses and the importance of reclaiming them. Privacy issues that have prevented whānau reconnection deserve special consideration along with the development of protocols across government agencies to facilitate this. The Māori Land Court employs a mechanism whereby all siblings are notified if an individual applies for succession and may be a useful starting point.

The full personal records of children in care must be maintained.

Reports, files and records essential in validating a child's identity and their social, family and educational history, must be retained. These records need to be kept secure and up to date.

Rules and regulations be enforced, breaches be reported, and sanctions applied.

The failure of care that claimants experienced was not due to the absence of rules or any difficulty in interpreting what they meant when reporting instances of abuse or neglect. The problem lay with implementation and administration of a regulatory framework designed to keep children safe. The rules of care expected were ignored and treated as though they set some aspirational and unachievable standards that had no application in the care context. Standards could be interpreted by what was considered 'normal' in a particular context. Applying a "standards of the day" measure affects the quantum of settlement, as 'normalised' abuse, while not in accord with regulations, was accepted. The outcome is that such application may attract lower settlement values. Not only did the Ministry and individual carers disregard the rules and precepts about punishment, but neither did social workers or their superiors enforce or impose any disciplinary measures for breaches.

Loss of Opportunity. This form of damage was added as a percentage of the redress made to claimants in Ireland and covered the State's failure to provide claimants with the legal minimum level of education. A loss of opportunity is described as any chronic inability to gain or retain employment, or if claimants were employed, their inability to progress in a career because

of a lack of educational achievement or training. This category also included claimants who assumed a false identity to 'cover up' their history in industrial schools. In New Zealand the Ministry of Education is responsible for ensuring that all children participate in the compulsory education sector. Education never occurred for most of the claimants. The review provides an opportunity for a whole of government response to the needs and aspirations of claimants.

CONCLUSION

The Claimants' stories speak most clearly to ongoing perceptions of injustice perpetrated against them by the state. If Claimants experienced an overwhelming sense of helplessness and lack of control over their lives while under care, contemporary efforts to provide a mechanism for making a claim have reproduced feelings of helplessness and despair. The Claimants' lives were irrevocably altered because of their experiences while in care, their views were not considered, and their voices were effectively silenced. As adults, Claimants reported that the process forced them to deal with systems that both disempower and invalidate their complaints. The unequal balance of power they experienced as children is perpetuated through policies and processes that favour the Ministry and place an unequal burden on claimants to provide evidence. That evidence, in most cases, was under the Ministry's control and was often not recorded on their files thus making it difficult to prove their claims.

The issues that Claimants have raised are consistent across the hui and are reflected in the Themes section above. The professional body had a more reflective contribution based on their experiences of working with claimants as advocates, service providers and legal representatives. While they acknowledged that short-term changes were needed to improve the HCRP, the Ministry should be looking to the medium to long-term future of the process. There is the likelihood for claims applications to increase rather than decrease and so attention needs to be given to how the current system will cope with this.

It is therefore timely for the Ministry to look beyond the immediate future and contemplate what is required to mitigate an increased workload and manage any adverse effects to its reputation if the HCRP does not adequately address the concerns raised in this consultation process.

It may be timely to look at the type of assistance mechanism used by the Confidential Listening and Assistance Panel as well as explore models in overseas jurisdictions, particularly Ireland's Residential Institutions Redress Board model, Canada's Independent Assessment Process (in particular their Group Application process) or Australia's National Redress Scheme which commenced on 1 July 2018.

The suggestions for improving the current HCRP range from practical and easily implementable changes to those that might take more time and work to

implement. Some suggestions may not be achievable in the short to medium timeframe and may need to be addressed within a whole of government approach as they lay outside the parameters of the HCRP. The opportunity also exists to take a wider strategic approach and in preparation for any relevant recommendations about redress the Royal Commission may make.

ACKNOWLEDGEMENTS

The authors would like to acknowledge the courage and faith of Claimants who welcomed the opportunity to share intimate details of their experiences in care. Despite an overwhelming sense of distrust in the system they felt compelled to speak their truth in the hope that no child currently in care is hurt. They also wanted to ensure these children are at the centre of any decisions made and that their voices are heard. The Claimants appreciated and valued the openness with which [REDACTED] and [REDACTED] from the Ministry's Historical Claims Unit approached the review of the HCRP. There were times when what they heard has been emotionally and professionally challenging. We would not have been able to complete this work without their generous support and encouragement.

The Senior Māori Leaders' Group provided all involved in the review process a sense of reassurance and security with their guidance and advice on tikanga and the appropriate approach with which to proceed in this work. We appreciate that they have busy lives, hold numerous roles and carry many responsibilities both nationally and within their communities. This all meant that they were not always available to attend all the workshops. A special mention of gratitude to Whaea Druis Barrett who attended all but one of the workshops. The workshop at the Auckland Regional Correctional Facility for Men was appropriately attended by Tā Mark Solomon. Dame Tariana Turia gave us sound advice and great insight from her recent experience attending at family violence hui at the Professional Group hui. We sincerely and profoundly thank them for giving their time to this work.

*He waka eke noa
"A canoe which we are all in with no exception"*

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