

Hon Andrew Little
Minister for the Public Service

Proposed rapid payment approach for use by agencies operating claims processes for abuse in State care

Date of Issue: 21 July 2023

This document has been proactively released:

- Crown Response briefing CRACI 22/004 to the Minister for the Public Service, Minister for Children, Minister for Social Development and Employment, Minister of Health, and the Associate Minister of Education, Proposed rapid payment approach for use by agencies operating claims processes for abuse in State care, 2 September 2022.

The following information has been withheld:

- one sentence in paragraph 14 of the briefing, under section 9(2)(h) of the Official Information Act 1982, to maintain legal professional privilege.



Briefing

Proposed rapid payment approach for use by agencies operating claims processes for abuse in State care

Date:	2 September 2022	Security level:	In Confidence
Priority:	High	Report number:	CRACI 22/004

Actions sought

Hon Chris Hipkins
Minister for the Public Service

Hon Kelvin Davis
Minister for Children

Hon Carmel Sepuloni
**Minister for Social Development and
 Employment**

Hon Andrew Little
Minister of Health

Hon Jan Tinetti
Associate Minister of Education

Agree the proposed overall approach for implementing a rapid payments option as part of existing claims processes for abuse in State care.

Agree individual Ministers will approve the specific rapid payment process to be used in their portfolio.

Contact for discussion

Name	Position	Telephone	1 st contact
Alana Ruakere	Director, Crown Response Unit	027 304 0344	✓
Brian McMillan	Chief Advisor, Secretariat	027 304 6605	

Agencies consulted

Crown Law, Ministry of Education, Ministry of Health, Ministry of Social Development, Oranga Tamariki

Minister's office to complete

- Noted
- Seen
- See Minister's notes
- Needs change
- Overtaken by events
- Declined
- Referred to (specify)

Comments



Briefing

Proposed rapid payment approach for use by agencies operating claims processes for abuse in State care

For: Hon Chris Hipkins, Minister for the Public Service
 Hon Kelvin Davis, Minister for Children
 Hon Carmel Sepuloni, Minister for Social Development and Employment
 Hon Andrew Little, Minister of Health
 Hon Jan Tinetti, Associate Minister of Education

Date: 2 September 2022 **Security level:** In Confidence

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Purpose

1. This paper outlines a proposed approach for a phased roll out of rapid payments within existing abuse claim processes run by the Ministry of Education and the Ministry of Social Development (MSD), with the Ministry of Health and Oranga Tamariki to monitor the roll out to identify future options for their claim processes. A “rapid payment” would be a payment determined in response to a historic abuse claim within a faster timeframe than is possible under current settings, as it does not require assessment of the individual claim.
2. Agreement is sought to the overall approach, with its focus on rapid payments as an option that can be provided by claims agencies to help prevent further trauma to abuse survivors due to long claim wait times. Separate briefings will be provided for the Minister of Social Development and the Associate Minister of Education to consider and approve their portfolio-specific options.

Legal privilege

3. Paragraph 14 includes reference to legal advice and should be reviewed for legal privilege before this paper is publicly released.

The Abuse in Care Royal Commission of Inquiry made recommendations about current abuse claims processes

4. The Abuse in Care Royal Commission of Inquiry (the Royal Commission) released its report on redress for abuse survivors in December 2021. The report included a number of findings about existing State and faith-based redress approaches and recommended the establishment of a new independent, trauma-informed redress system. Cabinet agreed the intent to develop such a system [SWC-21-MIN-0204 refers].
5. The Royal Commission made the following recommendations about current processes:
 - a. “Institutions should use their best endeavours to resolve claims in the lead-up to the establishment of the [new system] and should offer settlements that do not prejudice survivors’ rights under the new [system] or under any legislation enacted in response to our recommendations on civil litigation.” [Recommendation 91]

- b. “The Crown should immediately set up and fund a mechanism to make advance payments to survivors who, because of serious ill health or age, are at significant risk of not being able to make a claim to the [new system]. The mechanism should stop when the [system] starts.” [Recommendation 93]

Cabinet agreed to an immediate project to develop rapid payments under existing claims processes

6. Work responding to the Royal Commission’s findings is being coordinated by the cross-agency Crown Response to the Abuse in Care Inquiry (the Crown Response). The Minister for the Public Service is responsible for the Crown Response.
7. In July 2022, Cabinet agreed three immediate projects be progressed at pace by the Crown Response. One of the projects was “developing rapid payments under existing historic claims processes, particularly for ill and elderly claimants, to address long wait times for the settlement of claims” [CBC-22-MIN-0035 refers].
8. As part of the immediate project, it was noted there might be an opportunity to look at expanding the Royal Commission’s recommended advance payment for elderly and ill claimants to some form of rapid payment that would be available to a significant number of claimants handled by some or all of the four agencies. There are approximately 3,200 active claims, concentrated in MSD and the Ministry of Education. Agencies have acknowledged that wait-times for a person to receive an outcome from their claim are too long.
9. It has been noted that urgent action is required to reduce the time claimants must wait to receive an outcome to their claim, reducing both the ongoing stress associated with a lengthy claim resolution process and the risk that claimants pass away before an offer is made. There is a body of research highlighting the serious, long-term effects of abuse on people and the retraumatising impacts of having to retell their experiences and then having a delayed response or intervention.
10. The project does not include claims processes operated by district health boards, school boards of trustees, or non-State organisations (for example, faith-based institutions). Each of these bodies operate their own processes that reflect their degree of legal independence. It is understood that a large proportion of these bodies have no current claims or only a small number of active claims. Reflecting the degree of control, ability to implement rapid change, and number of claims, the project has focused on the claims processes operated by the Ministry of Education, Ministry of Health, MSD, and Oranga Tamariki.
11. It was agreed the rapid payments project’s proposals be jointly reported to the Minister of Education, Minister for Children, Minister of Social Development, and Minister of Health in August 2022, for decisions on implementation. Responsibility for the Ministry of Education’s historic claims has been allocated to the Associate Minister of Education.
12. A cross-agency working group, consisting of the claims’ agencies, Crown Law, and the Crown Response Unit, has been leading consideration of rapid payments. Analysis by each agency on its own process was tested with the wider group to identify commonalities and new aspects that could be considered by other agencies.
13. The project has been informed by the evidence presented by survivors and experts to the Royal Commission both directly in hearings and through the Commission’s redress report. The project has also made use of information from agencies’ own previous consultations, including with Māori claimants and senior Māori leaders, on the development of their current

claims processes. As a potential option within existing claims processes, detailed new consultation was not undertaken as part of considering the approach.

14. **Withheld under s9(2)(h) of the OIA**

Following the Crown Law advice, on behalf of the working group MSD led discussion, through its Māori Reference Group, with a small number of senior Māori leaders on whether further engagement with Māori was recommended prior to seeking Ministerial decisions on rapid payments. From among those leaders, the strong message was that there had already been sufficient consultation with survivors through the Royal Commission’s investigation and agencies’ past consultations, and the Crown needs to take prompt action to progress the claims on hand.

15. An overall approach, with tailoring for each agency, has been identified and is set out in this briefing.
16. As an option within existing claims processes, the proposed rapid payments represent an interim change while a new redress system is designed and implemented. Work on developing the new redress system is proceeding in parallel with the immediate projects. There will be a report back to Cabinet in September 2022 on options for collaborative arrangements to design the new redress system.

Agencies’ claims processes have different contexts, which need to be reflected in any rapid payments approach

17. Each agency’s current process reflects its own evolution and the agency’s particular operating environment and body of knowledge. The different claims processes cover various care settings, different time periods and handle differing numbers of claims. Table 1 illustrates the different natures of the agencies’ processes.

Table 1. Summary of key aspects of agencies’ abuse claims processes as at 30 June 2022.

Agency	Ministry of Education	Ministry of Health	Ministry of Social Development	Oranga Tamariki
Care setting covered	Residential special schools and primary schools before 1989, any closed State school	Public health institutions before 1993 (the period after 1993 covered by DHBs, now Health New Zealand)	Child welfare settings prior to April 2017	Child welfare settings since April 2017
Average claim payment	\$15,000	\$6,000 (excluding Lake Alice Child and Adolescent Unit, which has an average payment of \$68,000)	\$20,000	Total paid to date of \$20,000 (for a small number of claims being managed by Oranga Tamariki before decisions were finalised on the time period covered by MSD versus Oranga Tamariki, of pre and post April 2017)
Current claim queue (approx.)	250	Nil	3,000	Nil
Average time to resolve a claim	2.7 years	6 weeks	4.9 years	–

18. Current claims processes are primarily based on an individualised assessment of each claim, based on information provided by the claimant and a review of the files available for the care setting involved. Depending on that setting, the files available can vary in size, typically being hundreds of pages for child welfare agencies, and very brief for historic health settings. The assessment processes for each claim agency are therefore quite different.
19. Claims agencies already prioritise the claims of those who have advised they are seriously ill. The Ministry of Education also prioritises those aged 70 years and over. However, under an individualised assessment approach processing times for priority claimants can still take many months.
20. Being joined up on rapid payments is therefore about having a common intent, and sharing knowledge and insights that support agency-specific approaches that offer claimants a faster remedy. Reflecting their different contexts, agencies' approaches will not be totally uniform.

It is proposed that a phased and agency-specific approach is taken to rapid payments

21. In essence, it is proposed that:
 - a. rapid payments would involve a standardised claim review approach that is based on readily identifiable metrics for the particular care setting covered by the agency (such as length of time in State care for MSD claims or placement at a specified residential school for Ministry of Education claims), to respond to claims in a shorter timeframe – there would be no individualised assessment of allegations made by a claimant and therefore no testing of the veracity of such allegations;
 - b. the standardised review approach would be applied to the claim queues in a prioritised way that puts ill, elderly and those who have been waiting the longest first;
 - c. rapid payments levels are kept broadly on par with existing payment levels to maintain consistency with claimants who chose to go through individualised assessment processes and those who have already settled their claims;
 - d. rapid payments are offered by agencies as an option within their existing claims processes, with claimants continuing to have the choice of an individualised assessment if they wish;
 - e. rapid payments are implemented in a phased way by MSD and the Ministry of Education, as the agencies with claim queues;
 - f. lessons from the phased implementation are shared with the Ministry of Health and Oranga Tamariki, which do not currently have claim queues, so those agencies can tweak their processes as needed or look to implement a rapid payment approach if a queue arises; and
 - g. there is close monitoring of the rapid payments to ensure there are no unintended negative consequences for survivors, with reporting to Ministers on roll out progress and any further changes that need to be made.
22. Further information on the key elements within this overall framework are set out in the following sections.

It is proposed rapid payments are based on standardised review approaches that reflect the care setting covered by each agency

23. Rapid payments would require the introduction of a simplified, standardised review approach for each agency. This contrasts with the often time-intensive individualised assessment processes currently used that generally consider whether there is any information in records that would support an allegation. Each eligible claim would be assessed against a set of metrics (rather than considering individual allegations) to rapidly produce a proposed payment for offer to the claimant, alongside an apology and supports (per paragraph 37).
24. The metrics for MSD and the Ministry of Education have been identified based on being:
 - a. easy and efficient to apply – including being straightforward to define; and
 - b. broadly aligned with the likely level of harm experienced – that is, they appropriately recognise those who are likely to have experienced the greatest harm.
25. Claimant statements and records would only need to be reviewed against the particular metrics, significantly reducing the time taken to consider the claim and calculate the rapid payment. There would be no testing of individual allegations, and the allegations would be acknowledged but not accepted.
26. A faster assessment process will assist in helping agencies to provide responses to claimants in a timelier way, but also enable staff more time to be engaging directly with claimants to understand and assist them with any support needs they may have.
27. The specific metrics and their overall consideration approach would be set out in the proposed individual Ministerial briefings. For the Ministry of Education, the proposed metrics are based on the specific residential school a claimant attended. For MSD, the proposed primary metric is based on the length of time in care with claimants who were in care for a longer period receiving a higher payment. MSD’s operational testing of a sample of assessed claims has shown that the longer a person has been involved with the State, the more likely they will have experienced repeated harm and received a higher payment under the individually assessment process. In addition, there are additional metrics relating to placements in particular programmes where more serious abuse occurred and in situations where a person’s legal rights may have been potentially breached (where a person has been ‘detained’ or in settings where a person’s rights under the New Zealand Bill of Rights Act may have been breached).

It is proposed that rapid payments for the ill, elderly and those that have been waiting the longest are prioritised, depending on the specific agency

28. It is proposed ill (including those with significant health issues) and elderly claimants are prioritised under the rapid payments approach, that is, such claimants would be placed high in the claims queue for prompt review of their claim. The Ministry of Education and MSD already prioritise those who are seriously ill, and the Ministry of Education also prioritises claimants who are aged 70 and over. To align the two current prioritisation policies, MSD proposes introducing the same age criterion to its process.
29. It is proposed to retain 70 years as the age-based criterion to allow MSD to balance prioritising between claimant age and the time a person has waited since first lodging their claim. Claimant age is important, given research shows repeated traumatic events in childhood can reduce life expectancy by 5-20 years. However, research and survivor feedback also highlight the significant trauma impact that prolonged waiting involves. Being able to also prioritise those who, while younger, have waited many years for their claim is therefore vital.

30. Illness and significant health issues would continue to act as the most urgent prioritisation criteria, since they signal the people with the most pressing need for a prompt remedy (and health issues reflect the major driver of reduced life expectancy). As agencies learn from the roll-out of rapid payments and begin to reduce claim backlogs, the prioritisation criteria could be amended as appropriate to reflect a different balance between age and time waiting. In particular, a lower age criterion for Māori and Pacific claimants could be introduced, reflecting the existing lower life expectancy for Māori and Pacific people.

It is proposed overall rapid payment levels are kept on par to maintain equity across current claims processes

31. It is proposed to keep rapid payments as a whole on a par with existing payment levels to maintain consistency with the payments made through individualised assessment processes, and with previously settled claims. Current payments, and therefore the proposed rapid payments, reflect an acknowledgement of the harm the claimant experienced. The payments are not designed to reflect potential legal liability and do not explicitly take into account potential legal defences such as the ACC bar or the restriction on filing civil proceedings under limitation law.
32. The rapid payment offered to an individual may be different to what they would have been offered under an individualised assessment, reflecting the nature of the standardised approach for rapid payments. For example, the rapid payment approaches are modelled to produce a similar payment average, but MSD's proposed approach would see a tighter spread of payments so that there are fewer extremes at either end of the scale.
33. There may be a risk that some claimants may be unhappy with payment levels being kept on a par with existing levels, reflecting some of the broader dissatisfaction with current claims processes. As an option within the current processes, it is important to maintain rapid payments' general equity with individualised payments. Communications about the rapid payment approach can help address this point. Payment levels and structuring will need to be considered as part of the development of the new redress system.

It is proposed to offer rapid payments as an option within current claims processes, to give survivors the choice to take it up as they wish

34. It is important that rapid payments are offered as a choice within the existing claims processes rather than as the sole avenue a claimant can pursue. Providing survivors with choices in the processes they are involved with is an important part of developing a more trauma informed system – as children and vulnerable adults they had choices and control taken away from them, and providing choice can be part of broader restoration and healing.
35. Maintaining a choice will also help mitigate any risk that a claimant could be (or feel) disadvantaged by taking up a rapid payment and enables claimants to decide what is more important to them; for some claimants it will be important to have their concerns individually considered, but for others this will not be as important.
36. It is proposed that in addition to rapid payments being offered as an option, claimants can also elect to have a more individualised assessment undertaken if they are unhappy with the rapid payment offered. To help make sure survivors understand the different processes as fully as possible, so they can make informed choices, agencies will need to outline in plain English the different options that will be available.

37. Irrespective of the process option selected by a claimant, agencies will continue to provide key aspects of their current approaches, including acknowledgement and apology for people's experiences in care, access to their personal information and records about their time in care, the opportunity to share their experience, and assistance accessing different supports. Agencies will also continue to operate referral processes to the Police and other appropriate agencies to investigate allegations of abuse and torture. Due care will need to be taken so the rapid payments' standardised approach does not create a risk that safety and legal obligations are not met.
38. Since the proposed rapid payments approach does not include an individualised investigation of allegations, someone may wish to challenge the approach by way of judicial review. For example, a person who considers that their individual allegations have not been appropriately considered and followed up, or an accused person objecting to an implicit acceptance of an allegation without fair process. In terms of considering individual allegations, since it is proposed rapid payments are offered as an option within the current processes a risk of review is low. In terms of an accused person, it is proposed the agencies continue to acknowledge the allegations, but do not accept the allegations as part of the payment offered.

It is proposed there is phased implementation of rapid payments, starting with the Ministry of Social Development

39. As illustrated in Table 1, there are different contexts for each agency. For example:
- a. MSD has the largest number of claims (approximately 3,000), the Ministry of Education has a much smaller queue (approximately 250), the Ministry of Health does not have a current claims queue, and Oranga Tamariki has only a small number of claims;
 - b. the Ministry of Education's claims process is heavily focussed on claims related to residential special schools – three closed residential special schools (Waimokoia, McKenzie, and Campbell Park) make up more than half of the Ministry's claims, with the other half related to a small number of other State schools – while MSD claims cover a wide range of different environments, such as care residences, NGO-contracted programmes, and individual caregivers; and
 - c. Oranga Tamariki is responsible for claims of abuse in State care after 1 April 2017 and so its claimant group is young, with allegations that are contemporary in nature. Oranga Tamariki's process therefore needs to consider the unique vulnerability of this group and consider individual needs and circumstances, its legal obligations, and the role of the whānau or family and guardians.
40. Given these different contexts, it is proposed a phased approach is taken with rapid payments, so each agency can roll out the approach at an appropriate time. Given its large number of claimants, MSD would start first, with the approach rolled out with small numbers of claims initially to be able to rapidly test and refine the process. The Ministry of Education would follow shortly after that, when research to further inform its proposed rapid payment approach is completed. The Ministry of Health and Oranga Tamariki would watch and learn from the MSD and Ministry of Education experiences and look at implementing a rapid payment if their claim numbers increased, or there are improvements that could be applied to their existing processes. Agencies would also be able to refine their rapid payment approaches as they proceed, subject to further Ministerial agreement.

It is proposed that decisions on the individual approach for each agency are made by the relevant portfolio Minister

41. It is proposed that separate detailed briefings are provided to each Minister on the proposed rapid payment approach to be used by their agency, subject to the overall approach agreed in this briefing. The detailed proposals would be provided to each Minister at an appropriate point, in line with the phasing outlined above. First would be a briefing to the Minister of Social Development, followed by one to the Associate Minister of Education. There would not be briefings immediately to the Minister for Children and the Minister of Health.
42. It is proposed you continue to be jointly updated on the roll out of the rapid payments approach, and lessons that are learnt. There would be specific briefings if tweaks to the approach are identified during roll out or early operation.

Clear communications around the rapid payments approach will be essential

43. It is vital claimants, and survivors contemplating making a claim, understand the nature of what is being offered as part of claims processes, and what their options are. Subject to your agreement to the overall and individual agency approaches, communication material and process guidance will be prepared by the agencies as part of the implementation of rapid payments, so staff are well-equipped to have these discussions with claimants.
44. There will also need to be high-level Crown messages for the broader survivor communities that put the rapid payments in their wider context. For example, as the proposed rapid payment approach involves a standardised review process, it could be seen by some as arbitrary and insensitive. Since the Ministry of Education's proposed approach is focused on the residential special schools that have emerged as major locations of abuse, education-related claimants from other schools may feel they are not being appropriately recognised.
45. Subject to your agreement to the proposals, appropriate high-level communications will be prepared that set out the specific needs the rapid payments are seeking to address, that they represent an option within established claims processes, and that a new integrated redress system is being developed. Specific queries could then be directed to the Crown Response Unit or agencies, as needed. The timing of specific announcements would be worked through with your offices as they will need to align with the approval and implementation of the individual detailed processes.

There may need to be a bid as part of Budget 2023 to cover unfunded claims

46. Agencies either have existing appropriations or make funding available through their baselines to cover their existing claims processes. The appropriations or baseline contributions cover a certain number of claims for each agency. Specific funding implications arising from the proposed rapid payment approach will be outlined in the detailed briefings provided to each portfolio Minister. However, it should be noted some form of Budget 2023 proposal may need to be sought to help cover the significant number of claims that MSD, in particular, has to process.
47. The introduction of rapid payments may see increased numbers of claims being submitted, if survivors have previously held back from making a claim due to the timeframes involved. It is difficult to forecast how survivors will respond to the proposed rapid payments, so uptake of the option may be highly variable across time and the agencies. This makes it difficult to assess financial impact with any accuracy.

48. Increased demand would add pressure to MSD and the Ministry of Education in resolving their current queues, could create queues for the other agencies, and create significant financial pressure. A further joint briefing would be provided if numbers of claims start to dramatically increase, and a collective response is needed.

Recommendations

49. It is recommended that you:

- a) **agree** that, in general, the State agencies providing abuse claims processes should offer a rapid payment option, in line with the overall approach set out in paragraph 21 of this briefing; and **Yes / No**

- b) **agree** that each Minister approves the detailed rapid payment process for use by the agency in their portfolio. **Yes / No**

Alana Ruakere
Alana Ruakere
Director, Crown Response Unit

Hon Chris Hipkins
Minister for the Public Service

_____/_____/_____

Hon Kelvin Davis
Minister for Children

_____/_____/_____

Hon Carmel Sepuloni
Minister for Social Development and Employment

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Hon Andrew Little
Minister of Health

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