



11 May 2023

Tēnā koe

On 19 December 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), information regarding payments made by the Ministry that reflect breaches of the NZ Bill of Rights Act (BORA).

At the outset I wish to apologise for the considerable delay in providing you with this response. The Ministry takes seriously its obligation to provide timely and accurate responses to official information requests. Regrettably in this instance, we identified that additional information and consultations were required before we could make our decision. That took much longer than expected. I trust the fulsome response we are now able to provide is to your satisfaction.

As you will be aware, the Ministry's approach to how it considers potential breaches under the BORA and how it has incorporated this approach into its alternative dispute resolution historic claims process has evolved over the length of its claims process.

Prior to mid-2020, claims that included allegations taken into account for the purposes of settlement that may be potential BORA breaches were considered on an individual basis, with bespoke payments to recognise these potential breaches being calculated where warranted. For an allegation to be taken into account under the full case assessment model that was in place at the time, the Ministry needed to have a reasonable belief that the allegation occurred and that it was reasonable for the Ministry to take responsibility for it.

From mid 2020 until July 2022, all claims that contained potential BORA breaches were put on hold while the Ministry designed and implemented a new approach to BORA. During this period, considerable policy work, privileged legal advice and operational testing was carried out.

In July 2022, the Historic Claims team implemented a new policy based BORA payment framework that is standardised across settings (care residences and NGO bush programmes) that are most likely to have a claimant's BORA rights

breached. This framework was developed in order to enable equitable and prompt resolution to claims that may include potential BORA breaches. For a claim to receive an additional payment under the framework, it only needs to come within the framework terms and for the relevant allegation(s) to meet the evidential standard required under our current assessment process. This evidential standard is a much lesser standard than the previous full case assessment model.

Full details of the current approach are set out in the Ministry's Historic Claims Business Process and Guidance dated July 2022.

I will now answer your questions, set out in italics, in turn.

- *Please provide information about any payments Ministry of Social Development has made to reflect breaches of the NZ Bill of Rights Act damages since 1 January 2018, excluding any \$4000 or \$8,000 payments made under the BORA policy framework*

We expect such payments would include – but not necessarily be limited to – payments made under the 'bespoke' process referred to in paragraph 5.14 of the MSD Historic Claims Business Process and Guidance July 2022

- *Facts of allegations covered by each BORA payment, including a description of the alleged breaches, year of acts/omissions in question, and whether the breaches occurred while a person was on a specific programme or placement.*
- *Any other information about these allegations that might provide useful context*

From 1 January 2018 to mid 2020, the Ministry made 16 payments for claims that included recognition for potential BORA breaches. These payments were calculated in accordance with the assessment model in place at the time. This was the Ministry's full case assessment process which considered individual allegations in detail and used comparator claims, rather than payment categories or frameworks, to arrive at an appropriate settlement payment.

Below is a table setting out the settlement payments made within the relevant time period that included recognition of potential BORA breaches. Also included are the amounts incorporated into each of those settlement payments in order to recognise those potential BORA breaches, along with an overview of the allegations that were included when considering an appropriate amount (including the dates and locations they allegedly occurred).

It is important to note that the figures provided within the table below do not convey the full context regarding how the total remedy was determined as each amount was determined having regard to the specific facts of each claim.

It may also be helpful to understand that although specific BORA components were determined, it is the combined total settlement payment, coupled with other aspects of the Ministry's settlement offer (e.g. an apology) which provide the Ministry's total BORA remedy.

Finally, the BORA reasons have been summarised in a way to protect the privacy of the claimant (sections 16(1)(e) and (2)(c) of the Act refer).

Claimant	BORA component	Total settlement payment	BORA reasons	Year of event	Placement
1	\$5,000	\$35,000	Subjected to gunfire.	2003	Hokianga Care programme
2	\$5,000	\$25,000	Unlawfully strip searched.	1997	Whakapakari Youth Trust
3	\$5,000	\$15,000	Unlawfully strip searched.	2004	Residential placement
4	\$5,000	\$40,000	Unlawfully strip searched.	1996	Whakapakari Youth Trust
5	\$5,000	\$12,000	Placed in isolation with inadequate food and shelter.	2003	Whakapakari Youth Trust
6	\$5,000	\$25,000	Placed in isolation with inadequate food and shelter.	1995	Tarawera Trust
7	\$6,000	\$60,000	Placed in isolation with inadequate food and shelter.	1995	Whakapakari Youth Trust
8	\$7,000	\$47,000	Unlawfully strip searched.	1993	Residential placement
9	\$10,000	\$40,000	Not removed from placement after disclosing abuse by another resident which contributed to ongoing abuse.	1991	Caregiver placement
10	\$10,000	\$30,000	Placed in isolation with inadequate food and shelter; subjected to unhygienic practices.	1993	Whakapakari Youth Trust
11	\$10,000	\$55,000	Unlawfully strip searched; subjected to gun fire; witnessed gun fire.	1996, 1998, 1999	Eastland Youth Rescue Trust, Whakapakari Youth Trust, Moerangi Treks
12	\$10,000	\$30,000	Unlawfully strip searched; placed in isolation with	1991 and 1994	Whakapakari Youth Trust

			inadequate food and shelter.		
13	\$10,000	\$45,000	Unlawfully strip searched; placed in isolation with inadequate food and shelter.	1994	Whakapakari Youth Trust
14	\$15,000	\$40,000	Three allegations, including being searched for drugs; subjected to gunfire.	2003	Tarawera Trust/Caregiver
15	\$20,000	\$90,000	Multiple allegations including subjected to gun fire; assaulted; subjected to punishment by other residents.	1999	Eastland Youth Rescue Trust
16	Unspecified	\$22,000	Placed in isolation with inadequate food and shelter.	2003	Whakapakari Youth Trust

As noted above, from mid 2020 until 1 July 2022, all potentially impacted claims were put on hold while the Ministry designed its new approach. No claims received payments that recognised potential BORA breaches during this period except for three claimants, represented by your firm, whose claims were filed in Court and tracking to trial. The final settlement payments for these claims were arrived at using an alternative method of calculation which considered a wider range of factors, including a desire to bring the proceedings to an end. Given the uniqueness of how these payments were arrived at, we have not included these payments in the above chart.

Since the new BORA framework has been in place, nearly all payments made to date under this framework have been the \$4,000 and \$8,000 payments for which you have advised that you do not require information.

However, there is one claim (the person is not represented by your firm) where a payment has been made which contains a bespoke BORA calculation as referenced in section 5.14 of the process guidance.

This claim received a bespoke payment as when the payment category amount coupled with the BORA framework amount and any inappropriate detention amount were considered, the Ministry decided that the total proposed payment was not sufficient to adequately remedy the potential BORA breaches for the claim. Details of this claim are as follows:

Claimant	Total settlement payment	BORA reasons	Year of event	Placement
17	\$40,000	Serious psychological and physical abuse causing injuries.	1994	Whakapakari Youth Trust

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui



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