



9(2)(a)



On 13 November 2017, you emailed the Ministry requesting, under the Official Information Act 1982, the following information:

- *It is our understanding that MSD is unable to make settlement offers to "High Tariff Offenders" who make claims for historic claims. Can you please provide us with an definition of High Tariff Offenders and guide us to the policy or legislation where this is defined.*

On 28 November 2017, you called a Ministry advisor in response to an email seeking clarification about your request and whether it was in relation to the current situation or that under the previous Government. It was discussed that you were interested in the following:

- *The definition of 'high tariff offender'*
- *Information about the previous Government's approach to high tariff offenders.*

Former Ministers under the previous Government directed the Ministry to provide advice on how the Crown could make offers of settlement to high tariff offenders on terms that reflect the special characteristics of the group and the interests of the victims of their offending and the wider community.

The Crown strategy regarding high tariff offenders was a policy agreed in principle by the previous Government but had not been implemented. A decision is now required by the new Government about whether or not they wish to proceed with implementing this policy. The Ministry will be discussing this issue with the new Minister as soon as practicable and will be seeking direction from her about the approach she wishes to take.

Please find enclosed a copy of the report titled '*Historic Claims: proposed approach to terms of settlement payments to claimants who have committed high-end criminal offences*', dated 24 August 2016. This report defines high tariff offenders and outlines the the previous Government's approach to settlement offers to high tariff offenders. As discussed on the phone, the redactions in this document are those applied at the time it was previously released. In the interests of providing a timely response, they have not been reviewed as the information you seek is not redacted in this version.

You will note that some information is withheld under section 9(2)(h) of the Act in order to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

Some information is also withheld under section 9(2)(f)(iv) of the Official Information Act as the release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served. This largely represents advice and information that had not been fully considered or acted on by the previous Government that may now be considered by the new Government.

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 shortly. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development'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.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Merv Dacre', with a horizontal line underneath.

Merv Dacre
Deputy Chief Executive, Corporate Solutions



Report

Date: 24 August 2016

Security Level: IN CONFIDENCE

To: Hon Anne Tolley, Minister for Social Development

Historic Claims: proposed approach to terms of settlement payments to claimants who have committed high-end criminal offences

Purpose of the report

- 1 This report updates you on the Ministry's work to develop options to implement your approach to the terms of settlement offers to high tariff offenders, as you discussed with the Attorney-General on 7 June 2016.

Executive Summary

- 2 The claims resolution process is a mechanism by which the Ministry is implementing the Crown Litigation Strategy and seeking to resolve claims directly with claimants.
- 3 Ministers have previously identified a distinct and discrete category of claimants, high tariff offenders, where it may be appropriate to have a consistent approach to settlement offers that takes into consideration the particular characteristics of the group, including the interests of victims and the community.
- 4 In December 2013 the Minister for Social Development agreed for the Ministry to "...use the same investigation process for all [historic abuse] claimants, but to apply conditions or restrictions to any lump sum payment for claimants sentenced to greater than ten [10] years (including life imprisonment), or to preventive detention (Report REP/13/12/1069 refers). The Attorney-General, Hon Chris Finlayson was consulted s 9(2)(h) OIA Legal professional privilege

s 9(2)(iv) Active Consideration, s 9(2)(h) OIA Legal professional privilege

8 This report seeks your direction for the Ministry to either continue its work on a Ministry-specific approach or contribute to multi-agency work to develop a Crown approach.

Recommended actions

It is recommended that you:

s 9(2)(f)(iv) Active Consideration

[Empty box for comments]

3 **Direct** that the Ministry focuses on implementation options:

3.1 for a Ministry-specific approach to the terms of settlement payments for high tariff offenders

YES / NO AT

OR

3.2 for a whole-of-government approach to payments to offenders, which includes high tariff offenders (preferred option)

YES / NO AT

s 9(2)(f)(iv) Active Consideration

[Empty box for comments]

5 **Endorse** that until directed otherwise, the Ministry will not make offers to high tariff offenders, those claimants who have been sentenced to greater than 10 years imprisonment or preventive detention, including under the fast track process

YES / NO

6 **Note** that the Ministry has received a final opinion from the Office of the Ombudsman, which is critical of the delays in making settlement payments to high tariff offenders

YES / NO

7 **Refer** a copy of this report to the Attorney-General.

YES / NO

Elisabeth Brunt
Programme Manager Claims Resolution

24/8/2016
Date

Hon Anne Tolley
Minister for Social Development

5-9-16.
Date

Background

- 9 The claims resolution process is a mechanism by which the Ministry is implementing the Crown Litigation Strategy and seeking to resolve claims directly with claimants. The Ministry is committed to negotiating settlements out of Court.
- 10 As part of the settlement process the Ministry can put certain conditions on any payment made to a person. The Ministry had previously identified a distinct and discrete category of claimants for whom it may be appropriate that conditions are placed on the payments that relate to claims of historic abuse. That category being high tariff offenders, who have been sentenced to greater than ten years imprisonment or to preventive detention.
- 11 Based on the current body of claims, the Ministry is aware of approximately 30 offenders in this category. The proposed approach focuses offers being made to claimants to be used for specified purposes including meeting their therapeutic needs and helping them to meet their social contract by payment of outstanding fines such as Court ordered payments.

s 9(2)(f)(iv) Active Consideration, s 9(2)(h) OIA Legal professional privilege

- 14 In accordance with your decision and the Attorney-General's comments, the Ministry is not making offers to high tariff offenders under full assessment or fast track approaches.
- 15 The Office of the Ombudsman's final report on a complaint made by three high tariff offenders was critical of the approach and the delay in resolving claims by high tariff offenders. It is open to this group to actively pursue their claims in Court. The risk of this occurring increases as the time taken to implement an approach increases.

Other agencies – policy development

- 16 Since the decision in 2013, the Ministry has worked to establish this approach including consulting with other entities such as the Department of Corrections, Crown Law and Public Trust.

s 9(2)(f)(iv) Active Consideration

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- 21 In the meantime, in accordance with your previous direction, the Ministry is not making offers to high tariff offenders under full assessment or fast track approaches.
- 22 You are attending the international examination of New Zealand by the United Nations in relation to the United Nations Convention on the Rights of the Child on 16 September 2016. It is likely that this issue will have been raised in a submission by Cooper Legal with reference made to the final opinion of the Ombudsman referred to above. You will receive supporting information from the Ministry on this matter as part of a wider briefing pack.

File ref: REP/16/8/1033

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Responsible manager: Carolyn Risk, Deputy Chief Executive