



# Report

Date: 4 February 2014 Security Level: IN CONFIDENCE  
To: Hon Paula Bennett, Minister for Social Development

## Historic Claims of Abuse - Completion Strategy and Funding Implications

### Purpose of the report

- 1 This report is an update on the progress made with implementation of the two-path strategy for settling all historic claims of abuse by December 2020, along with reducing the current backlog of claims as soon as possible, and the engagement with Cooper Legal on the process of implementation which was authorised by you, in consultation with the Attorney General in September 2013 (REP/13/09/811 refers).
- 2 This report also delivers on the Ministry's undertaking to provide you with a detailed assessment of the funding requirements for implementing the process through to December 2020 so that this could feed into the budget planning process for 2014 (para 52 of REP/13/09/811 refers).
- 3 The costs of developing the strategy and investments made in speeding up the resolution of existing historic claims have resulted in a forecast overspend of \$0.7 million against the budget allocation for 2013/14. Your approval is sought for this to be brought forward from 2014/15.

### Recommended actions

It is recommended that you:

- 1 **Note** good progress has been made with in discussions with Cooper Legal such that we are confident the two path approach you agreed in principle can be implemented for both claimants represented by Cooper Legal and claimants who come direct to the Ministry

Noted

- 2 **Agree** to make a bid in Budget 2014 for additional funding of \$26 million through to 30 June 2018 for resolving all historic claims by 31 December 2020 and clearing the current backlog of claims waiting more than one year by 30 June 2016

*Delay for 12 mths*

Agree / Disagree

3 Agree to seek approval to establish a new Multi-Year appropriation for the historic claims funding from 2014/15 to allow for greater flexibility and transparency

Agree/Disagree

4 Agree to seek approval from Cabinet to bring forward \$0.7 million already appropriated for the years 2014/17 through into 2013/14 to address a forecast deficit in the 2013/2014 financial year

Agree / Disagree

5 Note a final bid will need to be made in Budget 2019 for the period from 2019/2020 after which no further funding will be required for resolving historic claims.

Noted

OR

6 Agree to continue to resolve claims as current annual funding of \$4 million allows through to 2016/17, at which time a final bid will be made for increased funding to resolve all remaining historic claims by 31 December 2020.

Agree / Disagree

OR

7 Agree to continue to resolve claims as current annual funding of \$4 million allows until all claims have been resolved by 2027.

*Just delay bid for a year.*

Agree / Disagree

  
Nadine Kilmister  
Deputy Chief Executive  
Corporate and Governance

*4 February 2014.*  
Date

  
Hon Paula Bennett  
Minister for Social Development

*19 Feb 14*  
Date

## Background

- 4 When the current budget allocation of \$4m a year to 2017 was made back in Budget 2013 the Ministry had no means to predict how many historic claims were likely to be received into the future. The budget allocation was based on the funding that had been received to that point, being a reasonable estimate of the requirement going forward. The figure is based on an average settlement payment being \$20,000 and the average total costs of settling being \$20,000 making \$4 million to settle 100 claims each year.
- 5 The Ministry was asked to report back in 2013, with a proposed strategy to bring all historic claims to an end by 2020 and also to address the building backlog of claims which were presenting increasing risks to Government, around 40 per cent of which were over three years old and some over nine years old.
- 6 In preparation for developing the strategy, the Ministry engaged Economics and Strategy Group to provide a robust estimate of historic claims likely to be received and to model the pattern of receipt. The model indicated that it was entirely feasible to aim to resolve all historic claims by December 2020. With this information it became possible for the Ministry to develop the "two path" strategy which would allow those claimants, whose claims had been lodged by 31 December 2013, and whose claims, on the basis of minimal investigation, fit into a set of pre-defined categories to be offered the choice of taking a pre-determined payment immediately to resolve the claim or to remain in the queue for the traditional process.
- 7 While the modelling suggests that most claims will be able to be resolved by the end of 2020, the backlog will not show any significant depletion until after 2017 when the numbers of new claims received will be significantly less than the numbers being resolved. This added impetus to the need for a strategy that also dealt with the backlog.
- 8 The resulting proposal for a two-path approach gives eligible claimants the choice to opt for an Accelerated Settlement process. This "one off" process will apply only to the existing backlog of claimants who already have claims in the system as at 31 December 2013.
- 9 After talking with the Attorney General, you agreed this strategy in principle. (REP/13/09/611) of 30 September 2013 refers. You also authorised the Ministry to consult with Cooper Legal, the legal representatives of just under half of the claims on hand, on the proposal and the Ministry undertook to report back to you on this and with the financial implications of the proposal by 6 December 2013.

## Comment

- 10 The two path approach gives claimants the choice to opt for an Accelerated Settlement process with a pre-determined payment based on the category into which their claim is assessed to fall. This approach will mean that a greater number of claims are settled faster thereby meeting the objectives of the timely resolution of claims some of which are now up to nine years old, and completing all claims by December 2020.
- 11 Without any intervention to deal with the backlog or complete all claims by 2020, we can now estimate that work on historic claims will need to continue for a further thirteen years (to 2027) if work proceeds at the pace defined by currently appropriated funding of \$4 million to 2017 and out years. The total funding to complete the approximately 1300 claims includes 800 already received, is estimated at \$50.6m in total (including the \$16 million already appropriated) and does not change.

## Discussions with Cooper Legal

- 12 All indications we have after four meetings on the proposed strategy with Cooper Legal are that the strategy does offer significant opportunity to address the backlog of claims that has developed. Cooper Legal's preliminary indication was it is likely to see around 35 per cent of it's clients take up an offer of an Accelerated Settlement.
- 13 Discussions are continuing around the implementation detail with a cut-off date for having lodged claims at 31 December 2013 and a proposed implementation date of 1 July 2014 with the backlog largely dealt with by 30 June 2016.

## Implementation

- 14 Contingent on additional budget funding being available from 1 July 2014, the Ministry will implement the process from 1 July 2014 for those claims brought direct to the Ministry and as discussed above, to those identified claims represented by Cooper Legal. Our aim is to have the backlog of claims waiting more than one year, whether filed, legally represented or direct, resolved by 30 June 2016. Currently 669 claims have been waiting more than one year and 307 of those claims have been waiting more than three years with the oldest claims waiting up to nine years.
- 15 The process is necessarily "one off" and designed to address the backlog of claims already received. At this stage it is not envisaged applying the process to claims yet to be received because of the risk of generating opportunistic claims attracted by the idea of minimal assessment. What is also essentially a major moderation exercise is also required to ensure that settlements remain within an established envelope of funding.
- 16 Once the backlog of claims has been dealt with it is anticipated that the efficiencies made should enable new claims received to be resolved within a year and, as previously indicated, all historic claims resolved by 31 December 2020.

## Funding Implications

- 17 Budget 2013 approved \$16 million for the continued resolution of historic claims over the four years to 30 June 2017. This was premised on an average total spend, including settlement payments, of \$4 million per year, but recognised that any significant increase in the number of settlements made would require additional funding. It was forecast in our September report that the cost of closing all existing and forecast claims would total no more than \$50.6 million. That remains the case regardless of whether the claims are resolved by 2020 or whether the programme just keeps running at the current rate until around 2027.
- 18 To implement the Accelerated Settlement process from 1 July 2014, \$26 million additional funding is required over four years. A final bid for \$8.6 million will be made in 2018 to complete the programme.
- 19 To enable greater transparency and flexibility, it is proposed that a Multi-Year appropriation be established for any new funding and transfer of existing funding from 2014/15.
- 20 A revised forecast incorporating all the remaining and expected claims which can be resolved by 31 December 2020 and including reducing the wait times to no longer than one year by 30 June 2016 is:

Financial Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	TOTAL
Approximate costs	\$4.7m	\$14.3m	\$12m	\$6m	\$5m	\$4.6m	\$4m	\$50.6m
Already appropriated	\$4.7m <sup>1</sup>	\$3.3m	\$4m	\$4m	0 <sup>2</sup>	0	0	\$16m
Additional funding required to 30.6.2018		\$11m	\$8m	\$2m	\$5m			\$26m
Additional funding to complete						\$4.6m	\$4m	\$8.6m
Total funding	\$4.7m	\$14.3m	\$12m	\$6m	\$5m	\$4.6m	\$4m	\$50.6m

21 The Ministry is forecasting an overspend of \$0.7million against the \$4 million budget allocation for the 2013/14 financial year. This has occurred primarily through more claims being processed than anticipated, as well as through additional expenses incurred to develop and test the two-path strategy and undertake additional work and resources to improve information management and timely provision of client files to Cooper Legal. Your approval is sought for \$0.7 million to be brought forward from the 2014/15 funding already appropriated. Treasury has advised that Cabinet approval is required for this.

### Alternative Options

22 Given the significant changes to the historic claims budget two alternative options have been considered if you would prefer not to seek the additional funding required at this time to implement the two path strategy.

23 These options include:

23.1 continuing with the status quo until budget 2016 and revisiting the issue with a view to increasing funding to allow for resolution of all claims by 2020 if budget constraints are easier at that time; or

23.2 continuing with the status quo. This will involve resolving historic claims up to the limits of the annual funding of \$4 million each year with further bids being made at the end of each four year budget planning period until all claims have been completed. Currently estimated at 2027.

24 If funding is available implementation of the proposed two-path strategy remains our preferred option given it best addresses the risks presented by the developing backlog. These include client frustration; a loss of confidence and trust in the process; the potential of a renewed call for a public enquiry into historic claims; claimants looking to the Court for resolution, albeit costs and time consuming; or an alternative process being called for either by the Courts or through public opinion and pressure.

25 The two path strategy also recognises that people who suffered abuse and neglect as children while in State care, almost invariably become the most disadvantaged and most

<sup>1</sup> It is proposed that \$0.7m of the already allocated funding of \$4m for 2014/15 will be brought forward to 2013/14 to address a projected overspend.

<sup>2</sup> While the \$4m appropriated was also indicated for "outyears" beyond 2017 it is not possible to include this as appropriated funding to be brought forward.

vulnerable people. These people need to achieve some level of resolution if this disadvantage and vulnerability is to be addressed and not passed on down through future generations. The faster resolution can be achieved, the better the long term outcomes are. Finally, of course, particularly if resolution continues at the current rate increasing numbers of claimants will die while waiting for their claim to be resolved.

### **Confidential Listening and Assistance Service**

- 26 You will recall that the Confidential Listening and Assistance Service closes on 30 June 2015. In preparation for that and to enable the Service to meet with all outstanding participants, the Service ceased taking registrations on 31 October 2013.
- 27 Arrangements have been made for any people who might have wished to register with the Service to make contact with the relevant agency directly for their concerns to be heard. The Department of Internal Affairs and the Ministry will report to you and the Minister for Internal Affairs in detail by 31 March 2014 on how agencies propose to work with clients once the Service does close.

### **Next steps**

- 28 Contingent on your approval, the next steps to advance this approach will be:
  - 28.1 Completing arrangements to seek an additional \$26 million in Budget 2014
  - 28.2 Completing arrangements to bring forward \$0.7 million from the 2014/15 financial year to the current financial year
  - 28.3 Completing arrangements to seek a Multi-Year appropriation for Historic Claims funding
  - 28.4 Finalising the implementation details in consultation with Cooper Legal, and
  - 28.5 Commence implementation from 1 July 2014.

File ref: REP/14/01/009