



- 5 JUL 2019



Tēnā koe 

Thank you for your email of 6 March 2019, in which you requested, under the Official Information Act 1982, the following information:

*The total amount paid out in compensation, broken down by month, for the last five financial years. -The reasons for the payments.*

You further clarified that your interest is in:

*Money paid out to someone who has raised a grievance and/or has suffered hardship, could be internal ie. an employee who was wrongly dismissed or it could be a breach of someone's privacy (like a member of the public) and compensation has been paid out for the harm done.*

The Ministry of Social Development provides a wide range of support services to over one million New Zealanders. We interact with more than 28,000 people a day and we want this to be a positive interaction every time. It is important that in all our dealings, New Zealanders, including our staff, are confident in what we do and know that we act with integrity within our legislated mandate. Where we get it wrong, we will own up to it and correct it appropriately. In a small number of instances, this will result in a payment of compensation.

Over the last five years the Ministry has experienced some significant organisational changes that impact on its reporting of compensation payments, most notably, on 1 April 2017 Oranga Tamariki was established. However, given the nature of compensation, the Ministry may be liable for compensation payments beyond this date. For example, if a grievance taken by an Oranga Tamariki staff member was resolved with a compensation payment on 1 June 2017 but the grievance arose from an action prior to 1 April 2017, the Ministry may have to make the compensation payment.

The Ministry also has a team that specifically helps find a resolution for former state wards who believe they were subjected to abuse or neglect while in state care or were not protected as they should have been. The Historic Claims team helps people who feel they have been unjustly treated while in the care of Child, Youth and Family, the Department of Social Welfare or Child Welfare. Further information about the work of this team is available on the Ministry's website at:

<https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/historic-claims/index.html>. These cases may be resolved through an ex gratia or settlement payment from the Ministry

## **Ex gratia payments**

Ex gratia payments are made in respect of claims that are, for government departments, not actionable by law but for which there exists a moral obligation to pay. A moral obligation may arise where the Ministry's actions or performance have been deficient to a degree that the individual has suffered loss or harm as a result and a payment is justified. I have understood your question about money offered as goodwill with no conditions attached to be about ex gratia payments.

Whether an ex gratia payment should be made and how much should be paid will depend on the level of service received and the extent of the loss or harm suffered by the individual.

The Ministry or the Minister cannot be compelled to make an ex gratia payment, though the Social Security Appeal Authority, Student Allowance Appeal Authority, or Ombudsman may recommend it.

Having established that an ex gratia payment is an appropriate way to respond to a client's grievance, consideration is given to the amount of the payment. Factors which are considered include:

- the level of harm suffered by the client as a result of the actions of the Ministry
- the nature of the actions – for example, whether the situation complained of was an ongoing one, or a one-off error
- any steps taken by the Ministry to mitigate the harm to the client
- the degree to which the Ministry's actions have contributed to the loss
- any actions taken by the client that may have contributed to the harm suffered
- the level of ex gratia payment that has been made in other comparable cases.

## **Other types of payment**

Settlement payments are made in respect of a claim that is actionable at law. For example:

- a breach of the Privacy Act, where the claimant could take the case to the Human Rights Review Tribunal, who in turn, could award damages against the Ministry
- employment disputes
- civil claims arising from negligence or breaches of the New Zealand Bill of Rights Act 1990.

An award of "damages" or compensation by the High Court or Human Rights Review Tribunal is also not an ex gratia payment. While payment for damages or compensation is made from operating budgets, the Ministry is legally required to make the payment. These payments can only be approved by the Chief Executive (or their delegate), Minister or Cabinet.

The Cabinet Office sets out the external parameters for making ex gratia and settlement payments and this is available on the Cabinet Office website at:

<https://dpmc.govt.nz/publications/co-18-2-proposals-financial-implications-and-financial-authorities>

## Amount of payments

The following table sets out the amount of ex gratia and settlement payments approved in each of the last five financial years. I have split out those that relate to historic abuse claims due to the volume of claims.

Type	2013/14	2014/15	2015/16	2016/17	2017/18
<b>Historic Claims</b>	\$1,807,000	\$3,018,500	\$7,194,000	\$6,934,500	\$2,497,500
<b>Payments to staff (HR)</b>	\$9,000	\$15,000	\$49,688	\$10,500	\$10,000
<b>Other</b>	\$75,280	\$97,250	\$138,000	\$124,000	\$5,304

The Ministry is unable to break this down further, including by month, as to do so would likely result in individuals being identifiable. A further breakdown is withheld under section 9(2)(a) of the Act in order to protect the privacy of the individuals concerned. The need to protect the privacy of these individuals is greater than the public interest in making the information available.

If you wish to discuss this response with us, including how we have broken down the information, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

I hope that you find this information helpful.

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 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 are not satisfied with this response regarding compensation paid by the Ministry, 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](http://www.ombudsman.parliament.nz) or 0800 802 602.

Nga mihi nui



Nadine Kilmister  
**Director Office of the Chief Executive**