

Ex Gratia Payments Policy Relating to Abuse in State Care Claims Processes

This policy sets out guidance for state redress agencies considering making ex gratia payments in recognition of a moral obligation, or need for goodwill to help put matters right, to a survivor who is engaging with that redress agency on their abuse in state care claim. This will usually arise from an agency process failure which has resulted in harm to that survivor.

Date: 27 February 2026

Introduction

1. Purpose and Scope

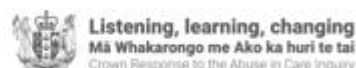
Ex gratia payments in this context are payments made where a redress agency does not consider the complainant has a legitimate legal claim, but the agency does consider it has some kind of moral obligation to the complainant or where some need for goodwill exists to put the situation right. Ex gratia payments usually help to recognise and remedy harm caused when a redress agency fails to meet reasonable service delivery expectations.

Ex gratia payments for the purposes of this policy are separate to and do not relate to a payment received for a person's abuse in care experience.

This policy should be read in conjunction with each agency's respective Ex Gratia Policy (or similar title), and within the Cabinet Circular CO18(2) which defines an ex gratia payment. In the case of conflict, the agency's policy prevails.

2. Policy Principles for determining ex gratia payments

- **Fairness and Transparency:** All decisions regarding ex gratia payments will be made fairly, consistently, and transparently.
- **Case by Case, Information-based Assessment:** Each case will be assessed on its individual merits, supported by documentation and evidence.
- **Discretionary Nature:** Payments are made when considered appropriate by an agency (i.e. an agency cannot be compelled to make an ex gratia payment), without



admission of liability and whilst the process and payment should be consistent across agencies, individual cases do not constitute a precedent that must be followed in future due to the case by case assessment and agency discretion.

- **Consistency across Agencies:** This policy provides general guidance for redress agencies regarding making ex gratia payments in relation to abuse in care redress processes to help ensure consistency.

3. Eligibility Criteria

An ex gratia payment may be considered where:

- There is a moral obligation or need for goodwill to help put matters right, arising from a process failure by a redress agency while a survivor is engaging with a redress agency on their abuse in state care claim.
- The process failure has resulted in harm to the claimant, such as distress, humiliation, significant inconvenience or other hardship.
- No legal obligation arises and the redress agency does not consider it could be legally liable to make a monetary payment.
- After considering the wider implications, the redress agency considers the situation warrants an ex gratia payment.

There are a wide range of situations where a redress agency may recognise a moral obligation or need for goodwill justifying an ex gratia payment for causing harm to the survivor. The below are examples where an ex gratia payment might be considered:

- An administrative error resulting in an unreasonable delay while processing the claim such as circumstances where a claim is mistakenly overlooked or de-prioritised after the claim had been prioritised.
- A communication error where incorrect information was given about the outcome of a claim, causing the survivor harm.
- Where a commitment was made to provide a response to the survivor within a specified timeframe and that commitment was not met nor was there a justifiable reason for not meeting the commitment, causing the survivor harm.

- A survivor experienced distress due to repeated administrative mishandling of their claim.
- Where there has been an unreasonable and unjustifiable delay in a redress agency communicating an outcome of a claim to a survivor in a timeframe that far exceeds the anticipated timeframe for doing so.¹

Payment Guidelines

4. Considerations

Overarching principles for redress agencies when considering making an ex gratia payment:

- The intention of a payment is to acknowledge a moral obligation or need for goodwill and help remedy harm where the agency's process failure adversely impacted the person in a manner that warrants payment. However, if a payment is made in these circumstances, it may not be necessary for the person to prove that they were harmed by the redress agency's actions or omissions as it may be self-evident or could be inferred.
- In some cases, an ex gratia payment may not be required (such as where the impact is minimal or negligible) and other actions may be sufficient such as rectifying the agency's process failure and/or providing an apology.
- Like cases should generally be treated consistently in terms of payment, as far as reasonably possible, given each case is different.
- The payment range in section 5 below is a guideline only. There may be situations where it is appropriate to make a different payment depending on the individual circumstances of the situation. For example, a different payment amount may be warranted if there was harm to the claimant from both an unreasonable delay in progressing the claim and also from a communication error, to recognise that two errors were involved.

¹ When considering delays in processing claims, there are many matters that are outside of an agency's control and would not be reasonable to offer a payment for these types of delays. Examples could include where a claim is paused while a Police investigation is conducted, where the survivor can not be located or their conduct has contributed to the delay, where other claims are prioritised for health reasons and so the claim takes longer to reach the top of the assessment queue, where the claim is particularly complex and matters outside the agency's control such as the Covid pandemic.

5. Amounts

- **Amount:** Based on nature and extent of harm, including if the agency did anything to mitigate harm. Typically ranges from NZ\$500 to NZ\$6,000 but may vary (see section 4 above). Factors for an agency to consider may include:
 - The nature and severity of the agency's process failure;
 - Whether the process failure was a one-off event or whether it was regularly repeated;
 - Steps taken by the redress agency to mitigate harm;
 - The level of impact of any harm on the survivor (if known);
 - Payments made for other similar acts or omissions made by that redress agency or other redress agencies.
- **What the payment is for**
 - To address the Crown's moral obligation or sense of goodwill in circumstances where there has been harm (actual or inferred) such as distress, humiliation, significant inconvenience, or other hardship, as a result of an agency's process failure.
- **Individualised assessment:** Each case is assessed individually. Where possible, like cases should be treated alike, including in terms of quantum.

6. Consultation and approval

Where an agency is considering making an ex gratia payment, the agency will engage with the other redress agencies to consult on the proposed payment. This is to help ensure that a reasonably consistent approach can be taken for ex gratia payments by redress agencies. This consultation will generally occur through the Operational Leaders group².

² This is a cross-agency leadership group made up of operational leaders from each redress agency who regularly meet to discuss operational matters that impact all agencies.

To enable redress agencies to consider what may have been paid for other similar situations, a cross-agency anonymised ex-gratia register is to be kept which records a high-level summary of the situation along with the approved payment. The agency who is making the payment is responsible for updating the register. Details as to where this register will be housed and how to access it will be confirmed at the time of publication to all redress agencies.

The aim of consultation is to canvas the views of other redress agencies and ideally to obtain their support. If the proposing redress agency is unable to obtain the support of the other redress agencies, it will likely be appropriate for a discussion to be had with the Senior Officials Group³ about the proposed payment. This discussion may be helpful to inform the final decision, but ultimately, it is the decision of the proposing agency's decision-maker (who will have the delegation to approve ex gratia payments) as to whether the ex gratia payment is approved.

All redress agencies must operate within the delegation framework established by Cabinet Circular CO18(2) and in accordance with any internal processes relating to the assessment and recording of ex gratia payments. In the event of any inadvertent conflict, each agency's internal policy should be applied. Redress agency legal teams should also have regard to Crown Law's *Ex gratia Payments – A Guide for Government Lawyers* document.

³ The Senior Officials Group is a cross-agency group made up of representatives from all redress agencies who provide governance for the redress implementation work programme.