



Safety Checking and Referral Process in Historic Claims

Last Review date: 13 January 2025 (new guidance)

Approved by: Linda Hrstich-Meyer, General Manager Historic Claims

Introduction

1. During the assessment of an Historic Claim, it may become apparent that claimants have raised concerns about the care or treatment provided to them by a staff member or caregiver who may currently work with a government agency or Non-Government Organisation (NGO). It may be appropriate to share this information with that agency if there is a genuine cause for concern regarding the health or safety of an individual or individuals.¹
2. Information about the use of claims information in safety checking is provided to claimants in the Historic Claims Privacy Fact Sheet – Your Information is Important.² This is on the Ministry of Social Development (MSD) website and provided to claimants when registration of their claim is confirmed.
3. The purpose of these guidelines is to provide guidance on how to identify when a safety check should be completed and the process that should be followed to do this.

Identifying the need for a safety check

4. A safety check is completed when information provided by a claimant suggests that alleged perpetrators of abuse could pose a current risk to the health and safety of an individual or individuals.
5. The Privacy Act 2020 places strict limits on disclosure of information but does allow an exemption if there are reasonable grounds to believe that the disclosure of the information to the agency concerned is necessary to prevent or lessen a serious threat to the health or safety of an individual.
6. Where the concerns relate to the wellbeing of children, young people or family violence, the threshold for sharing is lower than that established under the Privacy Act. There is a legal framework which encourages such concerns to be shared.

¹ See also section 3 of the Historic Claims Business Process and Guidance (version 3.1 – May 2023)

² <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/historic-claims/historic-claims-privacy-fact-sheet-your-information-is-important.pdf>

More information on this can be found on this internal MSD page here:
<https://doogie.ssi.govt.nz/helping-you/information-hub/managing-ministry-information/disclosing-transferring-sharing-information/information-sharing-guidance-key-messages.html>

7. If there is sufficient information that raises enough of a concern, then we may be able to provide minimal information to enable a search to see if the alleged perpetrator is currently in a position where they could cause a potential threat.
8. This process is not intended to limit situations where (subject to the section below on 'Court orders prohibiting disclosures of information – filed claims'):
 - 8.1. it is believed that a person is in imminent danger, in which case staff should report to the Police via 111.
 - 8.2. there are concerns about actual or suspected abuse and/or neglect, which should be addressed in accordance with MSD's Child Protection Policy.
9. The need for a safety check may be identified at any point of the Historic Claim process. Typical examples could be:
 - during the claim registration
 - on reviewing a Letter of Offer or Statement of Claim from a claimant's lawyer
 - at interview or during discussions with the claimant
 - during an assessment, if previously unknown information is found on the claimant's file
 - at any other point that details of alleged perpetrators are established.
10. Safety checks should be considered, having regard to the historical nature of many allegations, when an alleged perpetrator is alleged³ to have:
 - committed sexual abuse
 - committed moderate or serious physical abuse
 - a pattern of lower-level abuse that showed a potential for escalation
 - committed any other abuse where it may pose current safety concerns for an individual or individuals.
 - 10.1. A check is not needed if the alleged perpetrator's status or current age would clearly mean they are not likely to be in a position to represent a current threat to an individual or individuals e.g. deceased or retired.
 - 10.2. Examples of alleged perpetrators who might need a safety check include, but are not limited to:
 - staff members, including volunteer social workers and trackers
 - identified staff who:
 - were aware of others committing:
 - moderate physical abuse
 - serious physical abuse, or

³ The definitions for abuse are taken from Appendix 3 of the Historic Claims Business Process and Guidance (version 3.1 – May 2023).

- sexual abuse; and
- did nothing about or encouraged the abuse against children or young people.
- foster parents
- Family Home or NGO caregivers
- family members of caregivers who assisted with care, such as the caregiver's partner or children.

10.3. Examples of alleged perpetrators who are unlikely to need a safety check include:

- the claimant's parents and whānau members, unless there is evidence of them being responsible for children or young people other than their own (i.e. as approved caregivers)
- other young people in care with the claimant
- those whose age or circumstances indicate that they are deceased.

11. Alleged perpetrators that may require safety checking are referred to the Lead Claims Advisor (or delegate) for consideration. The referral should include only as much identifying information as is necessary about the alleged perpetrator to demonstrate where the concern arises from, and a link to the claimant on the Historic Claims Application (HCA).
12. The safety check can only proceed if there is sufficient information to enable it to be carried out. However, a full name may not be needed if the location and date range combined with information held by MSD (in accordance with paragraph thirteen below) suggest that a first name would be sufficient to identify someone. For example, if it is determined that there is not enough information to enable the alleged perpetrator to be identified, then no information will be provided to other agencies. This decision can be revisited if further information is found, for example, during the assessment process.
13. The HCA, Master staff list,⁴ and the files in the claimant's Historic Claims Objective folder may be checked if the claimant has not fully identified the alleged perpetrator and the concern is sufficient to warrant such a check and there are no other ways of identifying the individual. For example, records may show that a particular staff member was generally known by the nickname used by the claimant.

Requesting an employment check

14. The alleged perpetrator needs to be confirmed as currently posing a current risk to the health and safety of one or more individuals before we can progress a safety referral. Accordingly, where considered appropriate, we do an employment check with the relevant professional registers and/or with the alleged perpetrator's former or current agency to understand whether there is likely to be a current risk. It is usually appropriate to do this check when the information held by MSD (e.g. past employment history) suggests they may be working with

⁴ <https://objective.ssi.govt.nz/documents/A4930058/details>

children or young people or another vulnerable group. If the evidence supports this, we check this with the relevant professional registers and/or with the alleged perpetrator's former or current agency.

15. If relevant, there are three initial checks which can be done without contacting other agencies:
 - Current MSD staff can be checked in the MyHR database.
 - Registered social workers can be checked on their online register.⁵
 - Registered teachers can be checked on their online register.⁶
16. If these checks are inconclusive, consideration can then be given to contacting the current version of the agency (if appropriate) where the alleged perpetrator was last known to be working or providing care. For example, Oranga Tamariki, the Ministry of Education (MoE) and/or the NGO. If the NGO is not currently providing services to children or young people (for example, it is not an approved provider under s396 Oranga Tamariki Act 1989) and the safety concern is in relation to a threat posed to children or young people, then there is no need to contact the NGO as they cannot address current concerns. As indicated earlier the principles of data minimisation should be followed, i.e. only the least amount of information necessary to enable the initial check on employment to take place should be shared.
17. A safety check record should be created in the HCA for each employment check. This record should be updated as information is provided and decisions about escalation are made. Additional information about the progress of the safety check can be added through the tags.
18. Communication about the safety check, including the result of any MyHR and registration searches, should be stored in the claimant's Objective folder, unless they are part of the monthly updates to Oranga Tamariki (see below).

Contacting another agency

19. Information on the contact details for various agencies is stored in the Safety Checks folder on Objective.⁷ If current information is not available then contact can be made through the agency's equivalent to the Historic Claims team if there is one. Social Services Accreditation | Te Kāhui Kāhu may be able to help with contact details.⁸
20. If the agency is unfamiliar with the safety checking process, this will need to be explained and a method for securely sending information about the alleged perpetrator agreed. Restrict the communication and information shared at this

⁵ <https://swrb.govt.nz/search-the-register/>

⁶ <https://teachingcouncil.nz/find-a-registered-teacher/>

⁷ <https://objective.ssi.govt.nz/documents/qA583863>

⁸ <https://doogle.ssi.govt.nz/business-groups/helping-clients/social-services-accreditation/index.html>

initial check to the minimum necessary i.e. there may be a potential concern towards an individual's health and safety as per principle 11 of the Privacy Act, and we are requesting only confirmation of whether or not the alleged perpetrator is currently employed at this stage. We must request that agencies destroy the employment check information after responding to MSD if there is a negative result.⁹ If current staff or caregivers have been identified, then further communications may be necessary, and guidance sought including from the Information, Security and Identity Group (ISI) or MSD Legal.

21. The employment check should not include any details of the allegation or the claimant as this is not usually relevant to the purpose of identification of the alleged perpetrator. If the claimant's name and date of birth will assist in identifying the alleged perpetrator and the claim has **not** been filed in court, this information can be provided. This will depend upon how useful the claimant's identity could be in identifying the alleged perpetrator. If it is reasonably practicable, the claimant should be consulted to let them know what personal information about them will be shared and why before releasing identifying information about them as part of the employment check.
22. We have a standing agreement with Oranga Tamariki to send employment checks grouped in monthly spreadsheets via secure CITRIX file sharing. The Safety Check Spreadsheet Template¹⁰ is stored in Objective.
 - 22.1. Cells are left blank if there is no relevant information that can be released under that heading.
 - 22.2. To receive information through CITRIX, the recipient will need to set up an account – there is a standard set of instructions that can be sent to them.¹¹ The email address used by the recipient to set up their CITRIX account is needed to send information to them.
 - 22.3. Oranga Tamariki spreadsheets and related emails are stored on Objective in the "Referrals to Oranga Tamariki from January 2023" folder.¹² If the result is positive, it should also be stored in the claimant's Objective folder.
23. For teachers and non-teaching staff members of a school, where the employment check should be sent to depends on the type of school and when the alleged abuse occurred:
 - If the alleged abuse occurred at a Primary School pre-1989 or the school is closed, refer the employment check to the Ministry of Education.
 - If the alleged abuse occurred at a Primary School post-1989 and the school is still open, refer the employment check to the school's Board of Trustees.

⁹ Destruction has been agreed with Oranga Tamariki.

¹⁰ <https://objective.ssi.govt.nz/documents/A14626307/details>

¹¹ <https://objective.ssi.govt.nz/documents/fA1471967>

¹² <https://objective.ssi.govt.nz/documents/fA1848882>

- If the allegation abuse occurred at a Secondary School, regardless of the time period, and the school is still open, refer the employment check to the school's Board of Trustees.

Responses from agencies

24. There are four possible responses to the request for an employment check:
- The alleged perpetrator is employed by the agency or is a current caregiver on their behalf.
 - The alleged perpetrator is not employed by the agency and is not a current caregiver on their behalf.
 - The alleged perpetrator is not employed by the agency and is not a current caregiver on their behalf but the agency informs us that the alleged perpetrator is currently or were recently working with children or young people in another agency.
 - There is insufficient information in the spreadsheet for the agency to properly identify the alleged perpetrator.
25. Ensure the response is recorded on the HCA, including updating tags, and store it on Objective. Then act depending on the response, which may include seeking guidance and advice from the ISI Group or MSD Legal.
- 25.1. If the alleged perpetrator is currently working with the agency, then further information about the concerns may appropriately be shared, particularly if the agency then requests details of the allegation and there is sufficient concern. This will allow the agency to assess any risks to the children or others they are working with. The further information which may be provided is set out in paragraph 26 below.
- 25.2. If the alleged perpetrator is not employed by the agency, is not known to be working with children or young people, and there is no other concern of them being a threat to an individual then nothing further needs to be done.
- 25.3. If the agency informs us that the alleged perpetrator is currently or was recently employed by another agency, then sending an employment check to that agency should be considered.
- 25.4. If the agency informs us that the information provided is insufficient to check the employment status of the alleged perpetrator, then the safety check cannot be progressed. If additional information is identified in the assessment process, then a further employment check can be made.

Making a safety referral (providing further information about the allegation)

26. Further information, if considered appropriate, is shared with agencies using a safety referral form to support the agency's investigation and employment process.¹³ The form is filled out with the details of the allegation and any further safety concerns, along with other relevant information held by Historic Claims that

¹³ Form for MSD Safety Referral: <https://objective.ssi.govt.nz/documents/A14510999/details>

may not have been previously provided and that is considered relevant and necessary to share. This may include the claimant's name and date of birth and any previous allegations against this alleged perpetrator, but only if they are deemed necessary to meet the purpose of sharing. The referral form is provided to the agency through secure CITRIX file sharing, see paragraph 22.2 above. Communications with the agency, claimant or their lawyer are stored in the claimant's Objective folder.

27. In most situations, prior to sending the referral form, the claimant or their lawyer (where represented) will need to be contacted to advise of the intended referral and give them an opportunity to provide their view on the referral, including any safety concerns which they would like passed on to the agency. In some circumstances, there may be situations where there are immediate safety concerns which necessitate providing the information to the agency prior to hearing back from the claimant. However, as stated earlier, if there are clear and immediate and pressing concerns about a threat to the health and safety of an individual, a call to the Police or a Report of Concern is an established process in such situations, and should be considered in consultation with a Lead Advisor and/or ISI Group (and subject to the section below on 'Court orders prohibiting disclosures of information – filed claims').
28. Most safety checks will take place during the claims process. In rare cases the information required for a check will not be found until after the claim has been closed. In this case, care should be taken if contacting the claimant directly as they may consider the matter to have been dealt with and find discussing the matter again to be stressful.
29. In most situations, the referral form is sent to the agency that the alleged perpetrator is working for on the basis that they are best placed to reduce or remove the risk of harm.
30. Please note that if the allegations are included in a claim filed in court, then the process below must be followed.
31. Nothing prevents MSD from making a referral to the Police if a claimant has asked for assistance in doing this.

Court orders prohibiting disclosures of information – filed claims

32. Court Orders may prohibit some disclosures of information contained in claims that are filed with the Court (a 'filed claim'). Breach of such orders would likely constitute contempt of Court by MSD. Essentially the High Court¹⁴ has ordered that information in filed claims of historic abuse can only be disclosed without either leave of the Court or the consent of the claimant in limited circumstances, including between MSD, MoE and Oranga Tamariki or shared within these organisations for the purposes of ensuring the safety of children.

¹⁴ *J v Attorney-General* [2018] NZHC 1331

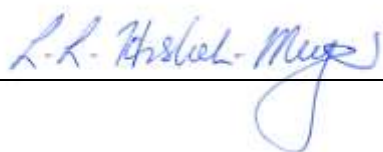
33. This means that if the intention is for MSD to send a referral form to MoE or Oranga Tamariki in relation to a filed claim, the claimant’s lawyer can be contacted to advise of the intended referral and to give them an opportunity to pass on any safety concerns that their client may have. The referral form can then be sent to the relevant agency. However, if any information is to be sent to an NGO or agency using the referral form that is not part of the above Court order in respect of a filed claim, we should attempt to first seek consent from the claimant (via their lawyer, if they have one) to pass on any information about their claim. If consent cannot be obtained, we will need to consider next steps (which may include whether an application to the court for leave may be required). However, MSD Legal should be consulted in each and every case where there is an intention to make a safety referral in relation to an allegation raised in a filed claim, before any steps are taken.

Referring care and protection concerns

34. During the claims process other information may be gathered that raises concerns about the health and safety of an individual, which may include care and protection for a child or young person outside of the usual safety check process. Where a staff member has concerns about the safety of a child identified outside of the Historic Claims safety checking process, these concerns should be reported to Oranga Tamariki as a report of concern in accordance with the MSD’s Child Protection Policy¹⁵. If there is a more immediate threat to the health and safety of an individual beyond this, occasionally it may be appropriate to refer the matter directly to the Police. An example of this is where there are multiple allegations relating to an employee of an NGO that has recently ceased to operate. The referral should normally be discussed with the Lead Claims Advisor, their Manager and MSD Legal (if appropriate) prior to any referral being made. Again, if the allegations are included in a claim filed in court, then the process above relating to filed claims must be followed.

Approve Safety Checking and Referral Process in Historic Claims

Approve / Decline



13 January 2025

Date

Linda Hrstich-Meyer,
General Manager Historic Claims

¹⁵ <https://doogle.ssi.govt.nz/resources/helping-staff/policies-standards/hr/hr-policies/child-protection-policy/child-protection-policy.html>

Appendix: Recording a safety check on the Historic Claims Application

Information on safety checks should be stored on the claim page of the claimant who is alleging abuse. The Safety Checks panel is the eighth panel, between Interviews and Legal Advice and Tasks.

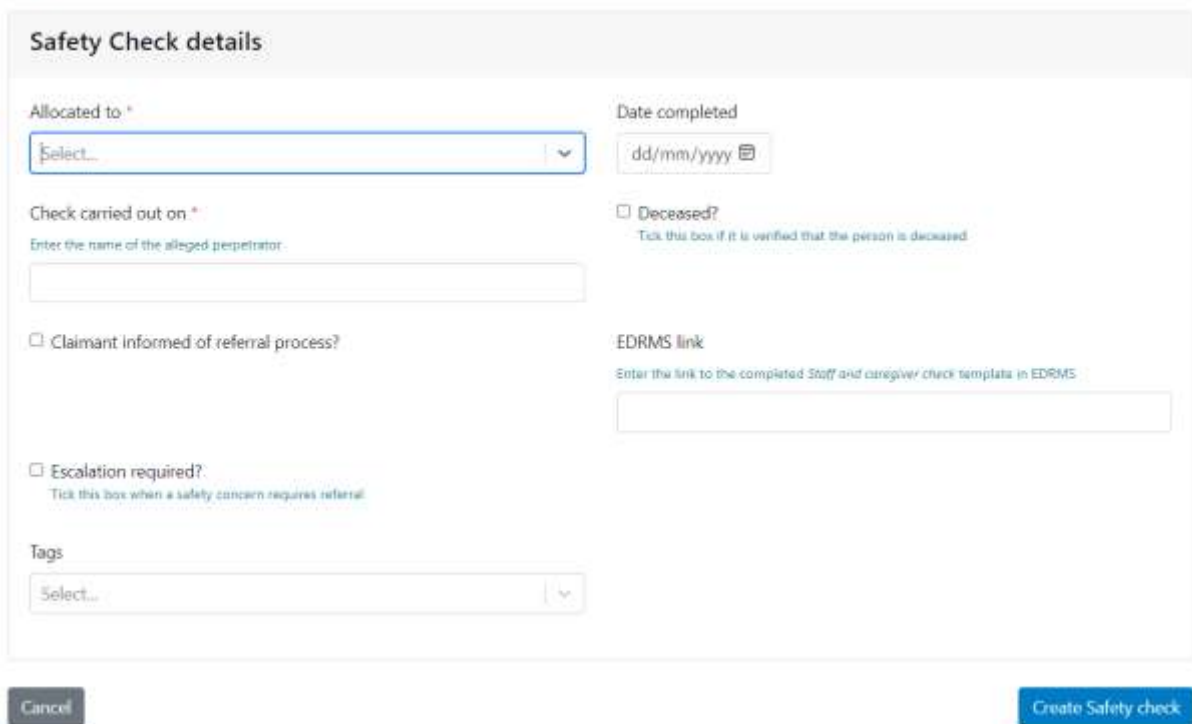


| ID | Allocated to | Date completed | Escalation required? | Referral count | Actions |
|------|-----------------|----------------|----------------------|----------------|----------------------|
| 0000 | Lead Claims Adv | 19/02/2024 | No | 0 | Edit |
| 0000 | Lead Claims Adv | 19/02/2024 | No | 0 | Edit |

[+ Add new safety check](#)

To create a new Safety Check record, go to the Safety Checks panel and select '+ Add new safety check'.

New Safety Check



Safety Check details

Allocated to*

Date completed

Check carried out on*
Enter the name of the alleged perpetrator.

Deceased?
Tick this box if it is verified that the person is deceased.

Claimant informed of referral process?

EDRMS link
Enter the link to the completed Staff and caregiver check template in EDRMS

Escalation required?
Tick this box when a safety concern requires referral.

Tags

The required fields are:

- Allocate to = checker.
- Check carried out on = if the name is not known, add the key identifying information about the alleged perpetrator.

Also add:

- Date completed – this can be updated later if further steps are required.
- EDRMS link = link to the employment check in the claimant's Objective folder or spreadsheet if an Oranga Tamariki monthly check.
- Tags = Referred to [agency] for checking – agency will normally be Oranga Tamariki.

The rest of the panel can be left blank at this point. Click "Create Safety check" to complete creating the record.

The record of the safety check should be updated by editing it from the claim page as information is provided and decisions about escalation are made. Additional information about the progress of the safety check can be added through the Tags.

Searching for safety checks on the HCA

The safety checks stored on the HCA can be accessed through the "More▼" dropdown menu at the top of the page. Selecting "Safety Checks" takes you to the Safety Checks List. This list can be filtered or downloaded as a CSV spreadsheet in order to search for other safety checks concerning an alleged perpetrator.