

Chair
Cabinet Social Policy Committee

GOVERNMENT RESPONSE TO THE FINAL REPORT OF THE CONFIDENTIAL LISTENING AND ASSISTANCE SERVICE

Proposal

- 1 This paper confirms the Government's response to the Confidential Listening and Assistance Service's final report *Some Memories Never Fade*. This includes a consolidation of the actions taken by agencies to address the recommendations made.

Executive summary

- 2 The Crown has recognised the underlying problems still experienced by historic abuse claimants since as early as 2004. It recognised that people needed an alternative avenue of redress to the judicial process that was compassionate and provided a whole-of-government response. Accordingly, the Crown has responded to historic abuse claims by providing a range of assistance including establishing the Confidential Listening and Assistance Service (the Service), which operated from 2008 until 2015.
- 3 The Service provided a confidential and supportive forum in which people who had been in care within the residential special education, health and welfare sectors before 1993 could voice their concerns about the abuse or neglect they experienced while in care.
- 4 The Service was chaired by Judge Carolyn Henwood, and panellists were appointed on the basis of their expertise and standing in the community. Their role was to listen, and where appropriate, to assist people to get further help. The Service was not mandated to determine liability, reach a conclusion about what might or might not have happened, or recommend a particular course of action to address the issues raised. Rather, the Service assisted people to access existing avenues of assistance provided by the Crown as appropriate.
- 5 *Some Memories Never Fade* is the Service's final report which summarises the themes arising from the care experiences of the 1100 people who met with the Service.
- 6 In addition to reporting as required under the Terms of Reference, the Service made seven recommendations as to the Crown's response to historic claims of abuse and to improve services for children and young people in State care in the future (refer Appendix 1).
- 7 The Service recommends that the report *Some Memories Never Fade* is publicly released, along with Government's response to it. I support this recommendation.
- 8 Concerns raised regarding the delays in the Ministry of Social Development's historic claims process have to some extent been addressed through the fast track process approved by Cabinet in December 2014 (ref CAB Min (14) 38/12), although resolution for eligible legally represented claimants has been delayed due to a judicial review of the litigation process. The Ministry is also reviewing their internal processes to ensure claims are resolved as quickly as possible.

- 9 Many of the issues raised will be addressed by the recommendations of the Modernising Child, Youth and Family Expert Advisory Panel (the Panel) currently being considered by Cabinet. The recommendations made by the Service about the future of State care for children were made available to the Panel prior to their report to Cabinet.
- 10 The Service recommends a public statement to the people of New Zealand acknowledging those who suffered abuse in care. This recommendation is not supported on the basis that the Government considers that the majority of children in care did not suffer abuse, so a universal apology is not warranted. However, apologies are made to individual claimants whose claims are accepted.
- 11 The Service recommended the creation of a new Independent Listening and Assistance Service for prisoners who have concerns over abuse and neglect while in State care. I have written to the Minister of Corrections inviting her to consider the viability of this proposal.
- 12 The Government confirms its commitment to the Crown Litigation Strategy for historic claims of abuse. That approach obligates agencies to work directly with claimants to resolve grievances early and to try to settle meritorious claims. The Crown recognises that the impact on claimants of their abusive care experience, coupled with the circumstances that led them to come into care as children, mean that many of these people are continuing to deal with the consequences of their experiences within State care and some will have poor life outcomes and limited personal resources. Responding to claimants in a timely and appropriate way is therefore very important.

Background

- 13 The Crown recognised the underlying problems experienced by historic abuse claimants as early as 2004 and established a Confidential Forum as a means for former psychiatric patients to discuss their experiences. As the spread of claims across government agencies grew, the Government recognised the need for a similar service that provided assistance to people who alleged abuse or neglect while in State care.
- 14 It was recognised that people needed an alternative avenue of redress, other than the judicial process, that was compassionate and provided a whole-of-government response. Accordingly, it established the Service which was chaired by Judge Carolyn Henwood and operated from 2008 until 2015.
- 15 The Service provided a confidential and supportive forum in which people who had been in care within the residential special education, health and welfare sectors before 1993 could voice their concerns about the abuse or neglect they experienced while in care. The Service was not mandated to determine liability, reach a conclusion about what might or might not have happened, or recommend a particular course of action to address the issues raised. Rather, the Service assisted people to access personal information and information that would inform decisions about redress options available and assistance that could be provided by other Crown agencies. It also referred people to the appropriate agency if they wished to pursue a formal claim.
- 16 The Chair and Panel members were appointed on the basis of their expertise and standing in the community. Judge Carolyn Henwood was appointed Chair of the Service and members included Dr Ian Hassall, former Children's Commissioner.
- 17 The Terms of Reference for the Service (attached at Appendix 2) gave it a life span of five years, closing in 2013. However the Government recognised the demand for the Service and

extended it until 30 June 2015 to provide the opportunity for the remaining registered and potential participants to have their stories heard.

- 18 The Terms of Reference allowed for it to report to Ministers and agencies annually on themes arising from the accounts of people who met with the Service, but it was not tasked with making recommendations on sector reform.
- 19 In July 2015 Judge Henwood provided the final report of the Service, *Some Memories Never Fade*, to Ministers. The report summarises the care experiences of the 1100 people who met with the Service and concludes by making seven recommendations to improve Governments support of people who have made historic claims of abuse, and to improve services for children and young people in State care in the future. The final report is written from the experience and knowledge of the Service. The Service did not undertake any consultation with agencies to validate the report's findings or provide an opportunity to correct any inaccuracies.

Recommendations of the Service and Government Response

- 20 The Service's final report makes seven recommendations. Those recommendations and the Governments response to each are outlined as follows.

Note this report and consider releasing it to the public with a response from the Government

- 21 It is recommended that Cabinet agree to make the report *Some Memories Never Fade* publicly available, along with this report in response, via the Department of Internal Affairs website with links to the relevant agencies, the Ministries of Education, Health and Social Development.

Take urgent steps to complete the task of resolving claims of abuse and neglect of people who were in care before 1992 including the claims in the High Court

- 22 The Service referred a total of 629 people to agencies for the purpose of making a claim – 514 to the Ministry of Social Development, 87 to the Ministry of Health and 28 to the Ministry of Education. The report noted that referrals to the Ministry of Health were responded to promptly. This reflects the fact that the Ministry of Health has been proactive in addressing claims of historic abuse in psychiatric facilities and has processes in place for the continued assessment of such claims. Most claims have been settled and there is no backlog of claims to be resolved.
- 23 Similarly, while the Ministry of Education continues to receive historic abuse claims from people who attended residential special schools, it has made steady progress on the settlement of its claims. Of the 28 referrals from the Service, three claims are yet to be resolved but progress is being made to that end.
- 24 The Service's final report was unable to say with certainty how many of the cases referred to the Ministry of Social Development had been resolved – including those claims also before the High Court.
- 25 In the context of the Crown's Historic Claims Litigation Strategy, the Ministry of Social Development is committed to providing an equitable, enduring and effective process that is consistent and transparent for claimants. Due to the increasing number of claims the Ministry

is receiving, it is refining its approach in order to provide people with timely resolution of their claims in a way that is restorative and continues to allow claimants to share their story.

- 26 In 2013 the Government announced its commitment to, where possible, resolve all historic abuse claims by 2020. For the Ministry of Social Development a key component to achieving that goal was the one-off optional Fast Track process for resolving historic claims which was implemented during 2015 and which was endorsed by the Service.
- 27 Fast Track offers were made to all eligible claimants who were not legally represented and 85 per cent of those offers were accepted. The Ministry had expected that by November 2015 it would have been ready to make fast track offers of settlement to eligible legally represented claimants. This process was put on hold because counsel acting for many of those claimants lodged on their behalf, an application for judicial review challenging the lawfulness of the process. The Ministry agreed that, in view of the court action that it would not make offers to these claimants using this process until the proceedings were resolved.
- 28 The High Court dismissed the judicial review application in its entirety in June 2016. Work has recommenced on preparing fast track offers for those legally represented claimants affected by the review and settlement offers will be made by the end of September 2016.

Acknowledge the need for accountability in the social services sector by designing and implementing an independent body (such as the IPCA) to resolve historic and current complaints to hold the sector to account

- 29 The report summarises people's perspectives of their care experience and usefully reflects on particular points in time when people were impacted by the practices of the day. I am committed to ensure that changes to the model of State care in the future do not make the same mistakes of the past.
- 30 It was therefore important that the learnings of the Service were considered in the work of the Modernising Child, Youth and Family Expert Advisory Panel. Accordingly, I facilitated an opportunity for Judge Henwood to meet with Paula Rebstock, the Panel Chair, and the Panel received a copy of the Service's full report to consider.
- 31 Cabinet has received the report of the Panel and has approved a new operating model for the provision of social work services to children, young people and their families. I am confident that the model will ensure that the child is at the centre of every decision made about them and that there will be robust monitoring and accountability mechanisms in place to ensure that is the case. This will address many of the concerns raised by the report.

Lift the veil of secrecy and use the data from the Confidential Listening and Assistance Service and the Historic Claims Team, the Confidential Forum and the Ministries of Health and Education as a basis to offer a public statement to the people of New Zealand about what happened to those who suffered abuse and neglect in State care and acknowledge the wrongs of the past

- 32 The Crown's Historic Claims Litigation Strategy directs agencies to resolve grievances early and directly with an individual claimant, to attempt to settle any meritorious claims but to defend any claims unable to be resolved by agreement as is necessary to manage the Crown litigation risk. As part of that process, the Crown apologises personally to anyone who was abused in care. This has proved to be an important dimension of the resolution process and is of real and significant meaning to the individual claimants.

- 33 Across the sectors, there is no evidence that the care systems were universally broken. Some people who have made claims had periods of positive caregiving environments as well as abusive experiences. The majority of children and young people in care had positive experiences with no abuse or neglect. The number of claims received by the Ministry of Social Development compared with the total number of children placed in State care suggests that approximately 3.5% of children in care may have been abused or neglected in some way. That has occurred across all types of care – residential, foster, family/whanau and community provider.
- 34 A universal apology is therefore not recommended.

Develop a Duty of Care for children and a new independent Care Service by:

- a) *Clarifying social policy around the care of children by the State and articulate the Duty of Care*
 - b) *Designing and implementing an independent specialist care service as set out in Part 4 of this report incorporating the Duty of Care*
 - c) *Making a commitment to ensure practice follows policy by ensuring that there is accountability at all levels within the system*
- 35 As noted in paragraphs 29 to 31, the report of the Panel and consequent decisions by Cabinet on a new operating model for Child, Youth and Family will address this recommendation.

Urgently and independently review the data from the Confidential Listening Service and Historic Claims team to ensure that lessons of the past are learnt. When this data is reviewed, locate key touch points in child, Youth and Family for immediate improvements to practice

- 36 As noted in paragraphs 29 to 31, the report of the Panel and consequent decisions by Cabinet on a new operating model for Child, Youth and Family will address this recommendation.

Create an independent Listening and Assistance Service for prisoners who have concerns over abuse and neglect of them as children in State care to reduce recidivism and lower risk to the community

- 37 Notwithstanding that there are processes in place for meeting the needs of prisoners to have their claims responded to, I have written to the Minister of Corrections inviting her to consider the merit and viability of this proposal.

Consultation

- 38 This paper was prepared by the Ministry of Social Development. The Department of Internal Affairs, the Department of Corrections, the Ministry of Health, the Ministry of Education, and the Crown Law Office were consulted.

Financial implications

- 39 None.

Human rights implications

40 The Government Response to the Final Report of the Confidential Listening and Assistance Service is consistent with the Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

41 None.

Regulatory impact and compliance cost statement

42 None.

Gender implications

43 None.

Disability perspective

44 None.

Publicity

45 It is proposed that this paper will be released alongside the report *Some Memories Never Fade*. In addition, I will write to Judge Henwood, the former Chair of the Confidential Listening and Assistance Service advising her of the Government's response to the report.

Recommendations

46 It is recommended that the Committee:

- 1 **Note** the recommendations of the Confidential Listening and Assistance Service's final report attached as Appendix 1
- 2 **Note** that the recommendations made by the Service make proposals as to the Crown's response to claims of historic abuse and the future oversight of the Crown's care arrangements for children and young people
- 3 **Note** Government's commitment to the Historic Claims Litigation Strategy for resolving claims early and directly with claimants including acknowledging the Crown's actions of the past and apologising to individuals
- 4 **Note** that work is currently underway by the Ministry of Social Development to review its claims resolution process to ensure the speedy resolution of outstanding claims
- 5 **Note** that the Service's recommendations relating to future oversight of the Crown's care arrangements for children and young people have been considered and are responded to by the the Modernising Child, Youth and Family Expert Advisory Panel, and the decisions made by Cabinet on 21 March 2016

- 6 **Note** that the Confidential Listening and Assistance Service's final report *Some Memories Never Fade* will be made publicly available
- 7 **Note** that this Cabinet paper will be made publicly available as the Government's response to the Service's final report
- 8 **Note** that I will write to Judge Henwood, the former Chair of the Confidential Listening and Assistance Service advising her of the Government's response to the report
- 9 **Endorse** this response to the recommendations made by the final report of the Confidential Listening and Assistance Service.



Hon Anne Tolley
Minister for Social Development

8 / 9 / 16.



Confidential Listening and Assistance Service Ratonga Matatapu mō te Rongo me te Āwhina

25 June 2015

Hon Anne Tolley
Minister for Social Development
Parliament Buildings
WELLINGTON

Dear Minister,

The Confidential Listening and Assistance Service will close on 30 June 2015. Meeting face to face with people who had suffered so much in their lives as wards of the State or as psychiatric patients has been intense and very personal for all those involved. The challenge now will be for future Governments to get some cut through to improve services for future generations.

The Terms of Reference for the Confidential Listening and Assistance Service requires me to report annually to the Ministers of Health, Justice, Education, Social Development and Internal Affairs. I am pleased to enclose my report on the operation of the seventh and final year of Service.

In the last seven years we have met with over 1100 participants. The report details the process used to meet our Terms of Reference, what we heard in the stories of those who met with the Panel and the types of assistance provided by the Service. Our Participants told us that they want systemic change and a public acknowledgement of the wrongs of the past. They remain hopeful that closure can finally come.

This report considers what has been learned by the Service and makes some recommendations on a way forward.

I ask that you note the contents of this report and consider how the recommendations can be actioned.

Yours sincerely

Judge Carolyn Henwood CNZM

**Chair
Confidential Listening and Assistance Service**