

CLAIMS ABOUT ABUSE IN STATE CARE — APPROACH OF THE MINISTRY OF SOCIAL DEVELOPMENT, MINISTRY OF EDUCATION AND ORANGA TAMARIKI TO COUNTING TIME FOR LIMITATION DEFENCES

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Information about this policy

This policy sets out the approach taken by the Ministry of Social Development (**MSD**), the Ministry of Education (**MOE**) and Oranga Tamariki to the counting of time under the Limitation Act 1950 and the Limitation Act 2010 for specified claims by people who allege abuse or neglect or have concerns about their time in State care.

Background

The Limitation Act 1950 and the Limitation Act 2010 can provide a legal defence to a claim if certain periods of time have passed since the events that the claim is about (**limitation defence**). A claimant can stop the counting of time for limitation purposes by filing their claim in court.

MSD, MOE and Oranga Tamariki have out-of-court claims resolution processes for people who have concerns about their time in State care as tamariki or rangatahi/children or young people. The intention of this policy is to ensure claimants are not disadvantaged by engaging with the ministries' claims resolution processes before filing their claim in court.

Under this policy, the Crown will suspend the counting of time for the purposes of any defence under the Limitation Act 1950 and the Limitation Act 2010¹ (in the manner set out in this policy) while a claimant engages with the out-of-court claims resolution processes of MSD, MOE and/or Oranga Tamariki.² If a claimant then decides to progress their claim before the courts, the Crown will not count the suspended time for the purposes of the limitation defence. This suspended time is referred to in this policy as the **Suspension Period**.

This policy does not prevent the Crown from raising a limitation defence to a claim that, taking account of the suspension of time under this policy, has still been brought out of time. If the Crown raises a limitation defence to a claim that is progressed before the courts, the Crown's position before the courts will be that the Suspension Period will not be counted for the purposes of the limitation defence.

Points to note about this policy

- i. This policy contains transitional provisions applying to claims lodged before this policy was published (on 27 October 2022): see **Appendix 1**.
- ii. **Appendix 2** contains a list of defined terms.
- iii. **Appendix 3** contains contact details for MSD, MOE and Oranga Tamariki.

¹ Including the longstop period in s 23B of the Limitation Act 1950, and the late knowledge and longstop periods in section 11(3) of the Limitation Act 2010.

² The policy applies only to the Crown, not to any other defendants to a claim.

- iv. This policy is most relevant for claimants who engage with relevant ministries' out-of-court claims resolution processes without first filing a claim in court. However, this policy may also be relevant for claimants who have already filed their claim in court. Under this policy, a claimant can lodge a fresh cause of action or additional factual allegations giving rise to a fresh cause of action in order to suspend the time for that part of their claim. It is important to note that legal rules may still prevent a person from expanding their filed claim in court (see, in particular, rule 7.77(2)(a) of the High Court Rules 2016).
- v. In the particular circumstances of a claim, the Crown may exercise its discretion to take a more favourable approach for the claimant, including:
 - o to extend the timeframes provided for in this policy;
 - o to apply the Suspension Period to new allegations made by a claimant after the timeframes provided for in this policy; and
 - o to apply the policy to a Resolved Claim (as defined in this policy) where a claimant has sought a reassessment.
- vi. This policy is drafted on the basis a claim is brought directly by the individual concerned. However, it also applies where a claim is brought *on behalf* of a claimant by their representative(s) — for example, a member of the claimant's whānau or family, or a lawyer.
- vii. The term "date" is used throughout this policy. It refers to a working day (as defined in the High Court Rules 2016). If an event occurs on a non-working day, "date" means the next working day from the date the event occurs.
- viii. The phrase "six calendar months" is also used throughout this policy, meaning the period from a day of one month to the corresponding day of the month six months in the future (e.g. six calendar months from 9 March is 9 September). If six calendar months does not fall on a working day (as defined in the High Court Rules 2016), then "six calendar months" means the next working day after six calendar months.
- ix. For clarity, the fact that this policy applies to a claim does not mean the Crown accepts that it is liable for the claim.

The Crown may review this policy at any time, including after receipt of the final report of the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions. Any amendments that detrimentally affect the position of claimants will not apply for at least six months after the date the amendments are published on relevant ministries' websites. At the date of publication, these websites are:

- MSD: <https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/historic-claims/>
- MOE: <https://www.education.govt.nz/our-work/contact-us/historic-claims-for-abuse-or-neglect-at-a-residential-special-school/>
- Oranga Tamariki: <https://www.orangatamariki.govt.nz/about-us/contact-us/feedback/claims>

WHAT CLAIMS DOES THIS POLICY APPLY TO?

1. This policy applies to a claim if it:
 - 1.1 meets the definition of **Claim** in paragraph [2]; and
 - 1.2 is not a **Resolved Claim**, as defined in paragraph [7].

Definition of Claim

2. **Claim** means a claim that is:
 - 2.1 against the **Crown**; and
 - 2.2 alleges that the claimant suffered abuse, mistreatment, neglect or practice failures as a **Tamaiti or Rangatahi/Child or Young Person** in one or more of the following situations:
 - 2.2.1 before 1 April 2017, while the claimant was in the care, custody or guardianship, or came to the notice of, the Child Welfare Division, the Department of Social Welfare, Child, Youth and Family, or New Zealand Children and Young Persons Service; or
 - 2.2.2 during a time the claimant was in the care, custody or guardianship, came to the notice of, or was receiving support or services (including “moving to independence” services)³ from, **Oranga Tamariki**; or
 - 2.2.3 before 1 October 1989, while the claimant attended:
 - (a) a **Special School**; or
 - (b) a **State Primary School**; or
 - 2.2.4 during a time the claimant attended a school attached to a **Health Camp**; or
 - 2.2.5 during a time the claimant attended a **State School** that has closed;⁴ or
 - 2.2.6 during a time the claimant attended any other **State School**, if the claim alleges that the **Crown** is liable on the basis of the statutory powers or functions of:
 - (a) the Ministry of Education or its predecessor government department (the Department of Education); or

³ Pursuant to ss 368AAA—386C of the Oranga Tamariki Act 1989.

⁴ Refer to the definition of “State School” in Appendix 2, which includes a **Special School** (now referred to as Specialist Schools in the Education and Training Act 2020) and a **State Primary School**.

- (b) the Minister of Education, except where the statutory powers or functions of the Minister of Education relate to a government department or body other than the Ministry of Education.⁵
3. Allegations of abuse, mistreatment, neglect or practice failures in relation to the situations described in paragraph [2.2.1] are referred to in this policy as **MSD Allegations**.⁶
4. Allegations of abuse, mistreatment, neglect or practice failures in relation to the situations described in paragraph [2.2.2] are referred to in this policy as **Oranga Tamariki Allegations**.
5. Allegations of abuse, mistreatment, neglect or practice failures in relation to the situations described in paragraphs [2.2.3] to [2.2.6] are referred to in this policy as **MOE Allegations**.
6. For clarity, please note that the Crown is not the appropriate defendant to all claims relating to the situations described in paragraphs [2.2.1] to [2.2.6]. For example, school boards are sometimes the appropriate defendant to claims relating to schools. This policy does not apply to school boards, so lodging a **Claim** with **MOE** does not suspend the counting of time for claims against school boards.

Definition of Resolved Claim

7. **Resolved Claim** means a **Claim** that:
- 7.1 has been determined by a court; or
 - 7.2 has been resolved in full and final settlement; or
 - 7.3 a claimant has received an **Ex Gratia Payment** for;⁷ or
 - 7.4 has otherwise been resolved or closed by agreement.

⁵ For instance, this policy does not apply to claims that allege the Crown is responsible for a claimant's allegations on the basis of the Minister's statutory powers or functions in relation to the Education Review Office (a separate government department to the Ministry of Education) or the Teaching Council (a body corporate), as provided for in Part 5, subparts 3 and 4 of the Education and Training Act 2020.

⁶ For clarity, the allegations must relate to the situations described in [2.2.1] in order to be **MSD Allegations**. If a claimant's allegations are about other matters (for example, if they relate to the education-related situations addressed in [2.2.3] to [2.2.6]), the fact that a claimant was in the care, custody or guardianship, or had come to the notice of, Child Youth and Family (or its predecessors) at the time of the events at issue does not make the allegations **MSD Allegations**.

⁷ Unless otherwise agreed at the time the **Ex Gratia Payment** is made or the relevant Ministry has otherwise advised that an **Ex Gratia Payment** is not being made for the purpose of resolving a claim.

SUSPENSION PERIOD FOR CLAIMS LODGED ON OR AFTER 27 OCTOBER 2022**When is a Claim lodged?**

8. A **Claim** is lodged on the date a **Claimant Tells MSD, MOE or Oranga Tamariki**:⁸
 - 8.1 that the **Claimant** wants to make a **Claim**;⁹ and
 - 8.2 the following details:
 - 8.2.1 the **Claimant's** full name or names and (if different) their full name or names at the time to which their **Claim** relates, given to the best of their knowledge and sufficient to identify the **Claimant**; and
 - 8.2.2 the **Claimant's** date of birth if known; and
 - 8.2.3 if the **Claim** (at the time of lodging) relates to a type of school listed in the definition of **Claim**, the name of that school (unless the **Claimant** does not know the school's name); and
 - 8.2.4 the approximate time period to which the **Claim** relates; and
 - 8.2.5 any further information that **MSD, MOE or Oranga Tamariki** ask the **Claimant** to provide so they can confirm the information provided meets the definition of **Claim**.

What is the Suspension Period?

9. The **Suspension Period**:
 - 9.1 starts on the date a **Claim** is lodged; and
 - 9.2 ends six calendar months after the date the **Response** to a **Claim** is **Sent**, except if the **Claimant** seeks a **Review** before that date (see paragraph [12]).
10. **Claimants** do not need to make all their allegations when they lodge their **Claim**. The **Suspension Period** applies to any allegations (within the definition of **Claim**) made by a **Claimant** as part of their **Claim** from the date the **Claim** is lodged up until six calendar months after the date the **Response** is **Sent**.
11. Paragraphs [13] and [14] below clarify how the **Suspension Period** applies to **Claims** that involve a combination of **MSD Allegations, MOE Allegations** and/or **Oranga Tamariki Allegations**. Paragraphs [9], [10] and [12] are subject to paragraphs [13] and [14].

⁸ MSD, MOE and Oranga Tamariki's contact details are set out in Appendix 3.

⁹ A claimant may also be required to complete a ministry's claim registration form.

What if a Claimant seeks a Review of the Response?

12. If a **Claimant** seeks a **Review** of the **Response** to their **Claim** within six calendar months from the date the **Response** is **Sent**, the **Suspension Period** is extended until:
- 12.1 six calendar months after the date the **Review** results are **Sent**; or
 - 12.2 if the **Crown** declines to do a **Review**, six calendar months after the date that decision is **Sent**.

What if a Claim relates to more than one ministry?

13. **Claimants** can make a combination of **MSD Allegations**, **MOE Allegations** and/or **Oranga Tamariki Allegations** either by making their allegations as part of a single **Claim** (lodged with one of the ministries to which the **Claim** relates), or by lodging a separate **Claim** with each ministry. Either way:
- 13.1 The **Suspension Period** starts from the date a **Claimant** lodges their **Claim** with any of the three ministries (**MSD**, **MOE** or **Oranga Tamariki**).
 - 13.2 The allegations to which the **Suspension Period** applies (in accordance with paragraph [10]) include **MSD Allegations**, **MOE Allegations** and **Oranga Tamariki Allegations**. It does not matter which ministry a **Claim** was lodged with, or if a **Claim** was lodged with more than one ministry. However, this paragraph is subject to paragraph [14] (concerning situations where a **Separate Response** is **Sent**).
14. The **Crown** may respond to a **Claimant** who has made allegations relating to more than one ministry in one **Response** or in **Separate Responses**. If a **Separate MSD Response**, **Separate MOE Response** or **Separate Oranga Tamariki Response** is **Sent**:
- 14.1 The **Suspension Period** ends for the allegations to which the **Separate Response** relates six calendar months after the date the **Separate Response** is **Sent**, except if the **Claimant** seeks a **Review** before that date (see paragraph [14.3]).¹⁰
 - 14.2 The **Suspension Period** does not apply to any allegations of the type to which the **Separate Response** relates that the **Claimant** makes six calendar months after the date the **Separate Response** is **Sent**.¹¹
 - 14.3 If the **Claimant** seeks a **Review** of the **Separate Response** within six calendar months from the date the **Separate Response** is **Sent**, the

¹⁰ For example, if a **Separate MSD Response** is **Sent** to a **Claimant**, the **Suspension Period** for the **Claimant's MSD Allegations** ends six calendar months after the date the **Separate MSD Response** is **Sent**, except if the **Claimant** seeks a **Review** before that date.

¹¹ For example, the **Suspension Period** does not apply to any **MSD Allegations** that a **Claimant** makes after six calendar months from the date the **Separate MSD Response** is **Sent**.

Suspension Period is extended for the allegations to which the **Separate Response** relates until:

14.3.1 six calendar months after the date the **Review** results are **Sent**;
or

14.3.2 if the **Crown** declines to do a **Review**, six calendar months after the date that decision is **Sent**.

14.4 The **Suspension Period** for any allegations to which the **Separate Response** does not relate is not affected.

14.5 To avoid doubt, if a **Claimant** has not made any allegations relating to a ministry (the “first ministry”) by six calendar months after the date a **Response** from another ministry is **Sent**, the **Suspension Period** does not apply to any allegations relating to the first ministry that the **Claimant** makes after that.¹²

¹² For example, if a **Claimant** has not made any **MOE Allegations** by six calendar months after the date a **Separate MSD Response** is **Sent**, the **Suspension Period** does not apply to any **MOE Allegations** the **Claimant** makes after that.

APPENDIX 1: TRANSITIONAL PROVISIONS FOR CLAIMS LODGED BEFORE 27 OCTOBER 2022

These transitional provisions set out how the **Suspension Period** is calculated for and applies to **Claims** lodged before 27 October 2022 (which is the date this policy was published).

When is a Claim lodged?

T1 If a **Claimant** made a **Claim** to **MSD**, **MOE**, or **Oranga Tamariki** before 27 October 2022, it was lodged with that ministry on the earliest of the following dates:

T1.1 the date the **Claimant Told** that ministry:

T1.1.1 that the **Claimant** wanted to make a **Claim**; and

T1.1.2 the **Claimant's** name and date of birth; and

T1.1.3 any further information that ministry asked the **Claimant** to provide so the ministry could confirm the information provided met the definition of **Claim**; or

T1.2 the date that ministry has otherwise accepted that the **Claimant** engaged with that ministry's claims resolution process, as advised to the **Claimant** by that ministry.

What is the Suspension Period?

T2 The **Suspension Period**:

T2.1 starts on the date the **Claim** was lodged; and

T2.2 ends six calendar months after the date the **Response** is **Sent**, unless the **Claimant** seeks a **Review** before that date (see paragraph [T7]).

What allegations does the Suspension Period apply to?

T3 The **Suspension Period** applies to any allegations (within the definition of **Claim**) made by a **Claimant** as part of their **Claim** from the date their **Claim** was lodged up until six calendar months after the date the **Response** is **Sent**, so long as:¹³

T3.1 if the allegations are **MSD Allegations**, the **Claim** was lodged with **MSD** or **Oranga Tamariki**; or

T3.2 if the allegations are **MOE Allegations**, the **Claim** was lodged with **MOE** (unless paragraph T6 applies — see paragraph T5); or

¹³ For clarity, paragraph [T3] is subject to paragraph [T6].

T3.3 if the allegations are **Oranga Tamariki Allegations**, the **Claim** was lodged with **Oranga Tamariki** or **MSD**.

T4 If a **Claimant** has made a combination of **MSD Allegations**, **MOE Allegations** and/or **Oranga Tamariki Allegations**, each category of allegations¹⁴ is treated as a separate **Claim** for the purposes of this policy. This means that a separate **Suspension Period** applies to each **Claim**.¹⁵

Separate Suspension Period applies in some situations where MOE Allegations made in Claims lodged with MSD

T5 Paragraph [T6] applies if:

T5.1 a **Claimant**:

T5.1.1 lodged their **Claim** with **MSD**; and

T5.1.2 made an **MOE Allegation** as part of that **Claim**; and

T5.3 **MSD** does not advise the **Claimant** within three months of receiving that **MOE Allegation** that it is not within the scope of **MSD**'s claims resolution process.

T6 If this paragraph applies, the **Suspension Period** for any **MOE Allegation** starts on the date the **Claimant** first made an **MOE Allegation** as part of the **Claim** they lodged with **MSD**, and ends on:

T6.2.1 the date the **Response** to the **Claimant's MOE Allegation(s)** is **Sent**;¹⁶ or

T6.2.2 if the **Claimant** seeks a **Review** of that **Response**, the date the **Suspension Period** is extended to in accordance with paragraph [T7].

What if a Claimant seeks a Review of the Response?

T7 If a **Claimant** seeks a **Review** of the **Response** to their **Claim** within six calendar months from the date the **Response** is **Sent**, the **Suspension Period** is extended until:

T7.1 six calendar months after the date the **Review** results are **Sent**; or

T7.2 if the **Crown** declines to do a **Review**, six calendar months after that decision is **Sent**.

¹⁴ **MSD Allegations**, **MOE Allegations** and/or **Oranga Tamariki Allegations**, as applicable.

¹⁵ If a **Claimant** has lodged separate **Claims** with **MSD**, **MOE** and/or **Oranga Tamariki**, the **Crown** may respond to those claims either in one **Response** or in **Separate Responses**.

¹⁶ The **Response** may be from (or on behalf of) either **MSD** or **MOE**.

APPENDIX 2: DEFINITIONS

This policy uses a number of defined terms. The meanings of these defined terms are set out below:

Claim has the meaning provided in paragraph [2], and references to the “definition of **Claim**” are to paragraph [2].

Claimant means a person who has made a **Claim**.

Crown means the Sovereign in right of their Government in New Zealand but does not include any Crown employee, agent of the Crown, or Crown entity (as that term is defined in the Crown Entities Act 2004).

Ex Gratia Payment means a payment made by the **Crown** without the **Crown** recognising any liability or legal obligation.

Health Camp means one of the following Health Camps:

- (a) Glenelg Children’s Health Camp;
- (b) Northland Children’s Health Camp;
- (c) Otago-Southland Children’s Health Camp;
- (d) Otaki Children’s Health Camp;
- (e) Pakuranga Children’s Health Camp;
- (f) Te Kainga Whaiora Children’s Health Camp;
- (g) Te Kura Hauora; or
- (h) the Health Camps identified at (a) – (g) when known by any other alternative name, if applicable.

MOE means the Ministry of Education.

MOE Allegation has the meaning provided in paragraph [5].

MSD means the Ministry of Social Development.

MSD Allegation has the meaning provided in paragraph [3].

Oranga Tamariki means Oranga Tamariki—Ministry for Children.

Oranga Tamariki Allegation has the meaning provided in paragraph [4].

Resolved Claim has the meaning provided in paragraph [7].

Response means a written communication from (or on behalf of) **MSD**, **MOE** and/or **Oranga Tamariki** advising the **Crown’s** decision on a lodged **Claim** and includes a **Separate MSD Response**, a **Separate MOE Response** and a **Separate**

Oranga Tamariki Response. A “fast track” offer made under MSD’s “Two Path Approach” does *not* constitute a **Response**.

Review means an internal review by the relevant government department (or departments) of the **Response**. A request for an internal review includes a counter-offer.

Sent means sent to the contact address or email address provided most recently by a **Claimant** to **MSD, MOE or Oranga Tamariki** (as relevant) for the purposes of correspondence about their **Claim**, or otherwise provided to a **Claimant** or their representative.

Separate MOE Response means a written communication from (or on behalf of) **MOE** advising the **Crown’s** decision on **MOE Allegations** in a lodged **Claim**.

Separate MSD Response means a written communication from (or on behalf of) **MSD** advising the **Crown’s** decision on **MSD Allegations** in a lodged **Claim**.

Separate Oranga Tamariki Response means a written communication from (or on behalf of) **Oranga Tamariki** advising the **Crown’s** decision on **Oranga Tamariki Allegations** in a lodged **Claim**.

Separate Response means a **Separate MSD Response**, a **Separate MOE Response** or a **Separate Oranga Tamariki Response**.

Special School means a residential special school or a day school established under section 98(1)(a) of the Education Act 1964 (repealed) or under s 197 of the Education and Training Act 2020 (referred to as “Specialist Schools” in that Act) and includes:

- (a) Campbell Park School/Otekaieke (Otekaieke) Special School for Boys;
- (b) Hogben School/Halswell Residential College;
- (c) Kelston Deaf Education Centre/Kelston School for the Deaf;
- (d) McKenzie Residential School;
- (e) Salisbury School;
- (f) van Asch Deaf Education Centre/van Asch College;
- (g) Mt Wellington Residential School/Bucklands Beach Residential School/Waimokoia Residential School;
- (h) Glenburn Centre School/Westbridge Residential School;
- (i) Blind and Low Vision Education Network New Zealand/Homai Vision Education Centre Auckland;
- (j) Felix Donnelly College; and

- (l) The residential special schools and day schools identified at (a)–(j), when known by any alternative name, if applicable.

State Primary School means:

- (a) a State primary school as defined in section 2 of the Education Act 1964 (repealed), as amended from time to time; or
- (b) a special school established under s 98(1) of the Education Act 1964 (repealed, as amended from time to time) that is deemed to be a State primary school pursuant to the proviso to s 98(1); or
- (c) a public school providing primary education established or constituted under Part V of the Education Act 1914 (repealed), as amended from time to time.

State School means:

- (a) a State school as defined in section 2 of the Education Act 1989 (repealed) or section 10 of the Education and Training Act 2020, as amended from time to time; or
- (b) a State primary school, secondary school, district high school or Māori school, as defined in section 2 of the Education Act 1964 (repealed), as amended from time to time; or
- (c) a special school established under s 98 of the Education Act 1964 (repealed), as amended from time to time; or
- (d) a composite school established under s 86 of the Education Act 1964 (repealed), as amended from time to time; or
- (e) a public school as defined in section 2 of the Education Act 1914 (repealed), as amended from time to time.

Suspension Period means the period of time that the **Crown** will not include when counting time for the purposes of any defence under the Limitation Act 1950 and the Limitation Act 2010.

Tamaiti or Rangatahi/Child or Young Person means a person who, at the time of the events (the alleged **Abuse and/or Neglect**) to which a **Claim** relates, was:

- (a) under the age of 18 years; or
- (b) under the age of 20 years and under the guardianship of the Chief Executive of Oranga Tamariki, the Chief Executive of the Ministry of Social Development, their predecessors (namely, the Chief Executive of the Department of Child, Youth and Family Services, the Director-General of the New Zealand Children and Young Persons Services, and the Director General of the Department of Social Welfare), or the Superintendent of Child Welfare; or

- (c) under the age of 25 years and receiving support, advice, assistance or services pursuant to ss 368AAA—386C of the Oranga Tamariki Act 1989; or
- (d) under the age of 21 years and receiving special education pursuant to s 127 of the Education Act 1914 (repealed), s 9 of the Education Amendment Act 1932-33 (repealed), ss 114 or 115 of the Education Act 1964 (repealed), s 9 of the Education Act 1989 (repealed), or s 37 of the Education and Training Act 2020, as amended from time to time; or
- (e) under the age of 20 years and receiving free primary or secondary education pursuant to ss 56 or 97 of the Education Act 1914, ss 75 or 85 of the Education Act 1964, s 3 of the Education Act 1989, or s 33 of the Education and Training Act 2020, as amended from time to time.

Tell means to inform orally (for instance, on the phone or in person), or in writing (for instance, by email, by post or in person). **Told** has the same meaning.

APPENDIX 3: CONTACT DETAILS

Ministry of Social Development

In writing: Ministry of Social Development
Historic Claims
PO Box 1556
Wellington 6140

Telephone: 0800 631 127

Email: historicclaims@msd.govt.nz

Ministry of Education

In writing: Ministry of Education
Sensitive Claims Team
Sector Enablement and Support
PO Box 1666
Wellington 6140

Telephone: 0800 663 252

Email: Sensitive.Claims@education.govt.nz

Oranga Tamariki

In writing: Oranga Tamariki National Office
Feedback and Complaints Team
PO Box 546
Wellington
New Zealand

Telephone: 0508 326 459

Email: claims@ot.govt.nz