



Sensitive Claims Business Process and Guidelines

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Sensitive Claims Business Process and Guidelines

This document outlines the Ministry of Education's Sensitive Claims Process. It should be referred to by the Sensitive Claims team as necessary. It is a guideline document only. Some claims may require an individualised approach where unanticipated issues arise. This document will continue to be updated as appropriate and in response to ongoing process improvements and changes.

1. Provision of a Redress Process

1.1 Sensitive Claims Lodged with the Ministry of Education

Sensitive claims are where someone believes they were abused or neglected in an eligible state school and would like some form of redress from the Ministry. The allegations we receive are very wide ranging and include physical abuse, sexual abuse, emotional / psychological abuse and neglect.

1.2 Crown Resolution Strategy 2019

The [Crown Resolution Strategy](#) guides agencies that provide processes to resolve claims of historic abuse out of court.

The Strategy provides the following principles:

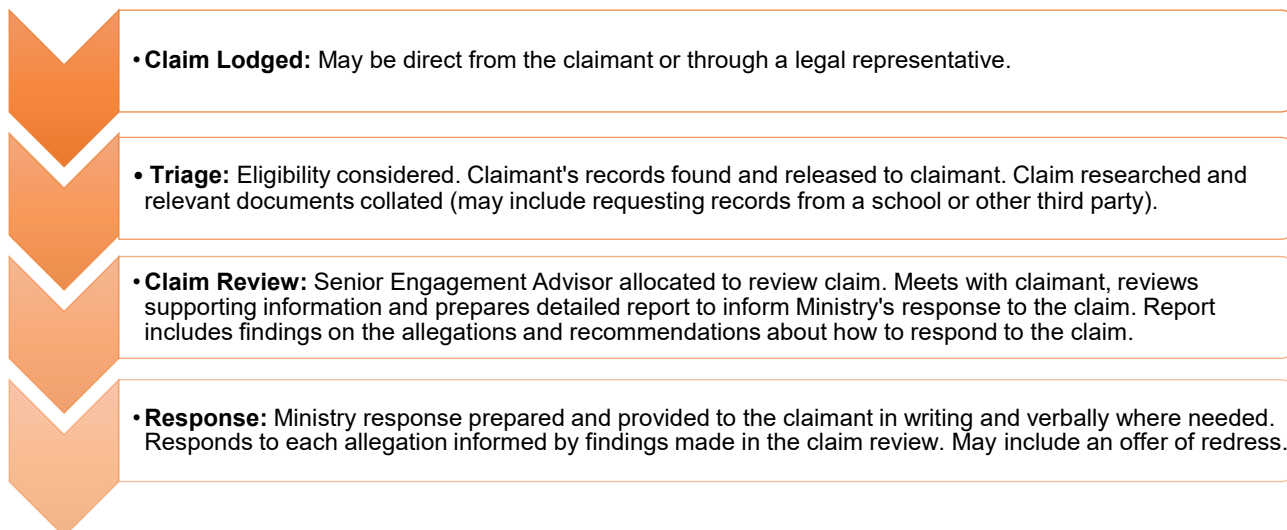
- Agencies will resolve grievances early and directly with the individuals (involving their whānau, hapu, iwi and community where requested) (Principle 1).
- Consider settlement for all meritorious claims. Settlement will generally be full and final without admission of liability (Principle 2).
- If a claimant provides further information to the Crown after having received a response to their claim, the Crown will consider this new information and whether an additional response to that claimant is required (Principle 3).
- Where a claim progresses to court, the Crown will concede any factual matters it does not dispute and rely on appropriate factual and legal defences (Principle 4).
- Ensure its approach to ADR is guided by the principles of manaakitanga, openness, transparency, learning, being joined up and meeting the Crown's obligations under Te Tiriti o Waitangi (Principle 5).

The Ministry of Education has operated an ADR claims process based on the Crown Resolution Strategy (or its predecessor the Crown Litigation Strategy) since 2010.

1.3 Sensitive Claims Full Review

The Ministry operates different pathways for resolving claims. These are rapid payments, prioritised payments and full individualised review. This document focuses on the full review pathway. Information about rapid and prioritised payments is available on the Ministry's [Rapid payment options](#) webpage.

The full review pathway generally includes the following elements, which are discussed in more detail throughout this document:



1.4 Rapid and Prioritised Payments

Our **rapid payment pathway** enables a faster settlement pathway for claimants who attended a rapid payment school. The pathway offers a simplified approach to resolving claims because research has been undertaken to enable standard findings about the school. The claimant's allegations are not collected or reviewed as the financial redress offer is based on a standard parameter. For example, for Waimokoia Residential School the payment amount is based on when the claimant attended the school.

Our **prioritised payment pathway** enables the Ministry to make a settlement payment very quickly to any claimant with an eligible claim who is terminally ill, with a diagnosis of less than 12 months to live.

More information is available on the Ministry's [Rapid payment options](#) webpage.

1.5 Claim Prioritisation and Allocation

Generally, claims under the **full review** process are processed and allocated for review in the order in which they are received. We may adjust the order at times to support efficiencies in processing claims. For example, we may cluster similar claims together for review at the same time by one Senior Engagement Advisor.

Claimants who are experiencing ill health or who are over 70 can have their claim prioritised for processing. This can occur at the Triage stage (below).

We will consider any other request made by a claimant or their representative to have a claim prioritised on a case-by-case basis.

More information is available in the Prioritisation and Allocation of Claims policy.

1.6 Privacy Act Requests

Sometimes an individual or their legal representative will make a Privacy Act request prior to any claim being lodged.

If an eligible claim is lodged without a prior Privacy Act request, we will search for the claimant's records as part of our Information-gathering stage (refer section 3.4.1). We will provide these to the claimant if requested under the Privacy Act.

2. Claim Lodgement

• Claim Lodged

- Legally represented: Claim usually received in writing.
- Direct: Email, letter or phone call from claimant.

• Record Keeping

- Claim Added to Jira workflow
- Case file created in Sharepoint and Claim Analysis Table populated

• Acknowledgement

- Legally Represented: Receipt to claim acknowledged.
- Direct: Acknowledgement Letter sent to claimant, with information about our process.

- Triage: See section 3

Sensitive claims can be lodged with us by an individual or their support person (direct) or by a lawyer representing the individual (legally represented).

All claims lodged, regardless of pathway, will follow these steps.

2.1 Legally Represented Claims

There are two types of legally represented claims:

- **Filed:** A Statement of Claim is filed in the High Court. Crown Law will forward this document and any other associated material to the Ministry's Legal team. A letter setting out the details of the claim may be received for these claims as well.
- **Unfiled:** The claim is lodged directly with the Ministry and is not filed in court. The claim is often set out in a letter from the legal representative that provides the claimant's personal details, information about the school(s) they attended and details about their allegations. It may also include a request for the claimant's records if these haven't already been released under a Privacy Act request. This letter may also include an offer of settlement. These letters are usually sent to the Ministry's Legal team, who will forward the claim to the Sensitive Claims team.

All correspondence for Legally Represented claims should be referred to the claimant's lawyer, via Crown Law and the Ministry's Legal team, as appropriate.

2.2 Direct Claims

These are claims where an individual lodges their claim directly with the Ministry and is not legally represented. Claims may also be lodged for a claimant by a support person or advocate (like a family member), with the claimant's consent.

In this instance, we will ask the claimant to sign an Authority to Act form to confirm we have their permission to share their information with the person supporting them.

2.2.1 Initial Contact with Direct Claimants

When a claimant first approaches the Ministry, a member of the Triage team will engage with them to explain our process and gather the information needed for a claim to be lodged. The [Claim Lodgement Form](#) will be used to guide this conversation. This form can also be emailed or posted to the claimant for them to complete and return to us when they are ready to lodge their claim.

Triage team will undertake the following steps:

- **Explain the process:** Provide the claimant with information about our process, explain what they can expect and answer any questions they have. Depending on what information is shared, explain the different pathways (i.e., rapid payment, prioritised payment, full review) and outline the Claim Allocation and Prioritisation policy.
- **Information gathering:** Ensure that there is sufficient information to lodge the claim and determine if it is eligible for our process. The information to be gathered includes:
 - Name of school/s that the claimant has concerns about.
 - The time period the claimant attended the school/s.
 - A general description of the matters they want to lodge a claim about.
- **Contact details:** Confirm the claimant's contact details and establish their preferred method of contact (e.g. email, mail, text, telephone).
- **Confirm ID:** Verify the claimant's identity and request a copy of identification (a photo of it can be emailed to the Senior Advisor). If a claimant is in prison, a Corrections Officer can provide the necessary information to verify a claimant's identity.
- **Support the completion of the consent and declaration forms:** A new process is proposed for redress agencies regarding financial redress for claimants with certain serious violent and/or sexual offending and who have been sentenced to five or more years in prison for that offence. The process would be overseen by an independent decision maker. This approach requires legislation and while this process is underway, an interim process is in place in which claimants are asked (from 9 May 2025 onwards) to complete a form consenting to a criminal conviction history check which is made by an independent redress assessment unit. Also see [Redress NZ - Make a new redress claim](#).
- **Records:** Check whether the claimant would like to receive a copy of any information the Ministry holds about them under the Privacy Act 2020..
- **Additional support:** Establish whether the claimant has the support they need at this point in the process (e.g. counselling support or other wellbeing services) and explain other assistance they could access throughout the process (e.g. seeking legal advice, contacting ACC or Police).
- **Confirm the claimant's needs:** Ascertain whether there are any needs the claimant has that will determine how the team work with them through the process. This may include taking into account any disabilities the claimant has cultural or spiritual practices to be reflected in the process such as particular tikanga practices.

If Triage is not able to have an initial call with the claimant, the claimant is welcome to provide their information through a completed Claim Lodgement Form or by email or letter. The Ministry will work to accommodate the claimant's needs so that they can fully engage in the process.

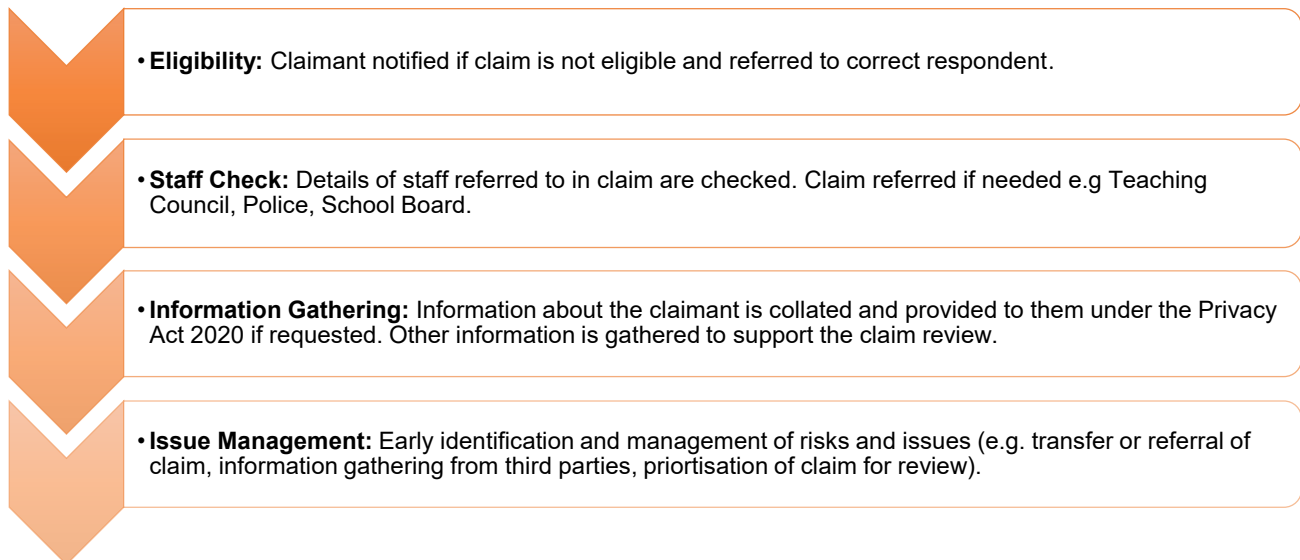
2.3 Wellbeing Services

The Ministry operates a wellbeing support service for eligible claimants. Information about the service is on the Ministry's [Wellbeing support service](#) webpage.

3. Triage

Triage is not a linear process and some tasks may occur simultaneously. Some tasks may need to be repeated as a claim moves through the process and further information becomes available.

The Triage team, supported by the leadership team, are responsible for this part of the process.



3.1 Eligibility Criteria

When a claim is lodged, the first step is to confirm that it is eligible for the Sensitive Claims process.

We are likely the correct respondent to claims about:

- Any closed state school, including specialist schools
- An open state primary school or specialist school with allegations before 1 October 1989.

We may **not** be the correct respondent to a claim if it is about:

- An open state secondary school (during any time period)
- An open state primary school with allegations after 1 October 1989
- A private school (e.g. a catholic school before it was State Integrated).

We cannot consider claims if a school Board is the correct respondent to it or if it should sit with another agency (e.g. the Ministry of Social Development).

Claim processes operated by other agencies

Claimants may raise concerns they have about their time in care in an institution relating to another agency that has a redress process. These agencies include:

- Ministry of Health: claims regarding state-run psychiatric facilities and psychopaedic hospitals before 1 July 1993.
- Ministry of Social Development: historic abuse claims from people who were in state care prior to 1 April 2017.
- Oranga Tamariki: claims regarding abuse in state care after 1 April 2017.

Claimants with concerns about these other institutions should be referred to the relevant agency. Claimants may also be referred to us from other agencies. Each of these actions will require the claimant to consent for information or their claim to be transferred.

Claims of deceased individuals

Occasionally someone may seek to lodge a claim on behalf of an individual who is deceased. We are unable to accept these claims.

If a claimant passes away before their claim is resolved, we can continue to process and respond to their claim with the authorised representative of their estate, based on the information they shared with us.

3.1.1 Acknowledgement of eligible claim

Direct claimants

If the claim is eligible for our process, the claimant will receive a letter of acknowledgement. Acknowledgement letters can be tailored to the claimant and should respond to any queries the claimant has made when lodging their claim.

The Sensitive Claims Information Sheet will be enclosed with the letter. Relevant consent forms will be included, where:

- A support person, such as a family member, is acting on the claimant's behalf. The claimant will need to confirm this arrangement and consent to us sharing their information with their support person.
- The school complained about is open and the Ministry requires the claimant's consent to request and receive their records from that school.

Legally represented claimants

If a claim is received via a claimant's legal representative, a short, written acknowledgement confirming receipt of the claim is provided. Any further information about the process and the next steps with the claim are provided to the legal representative, as required.

Any concerns about eligibility should be considered prior to an Acknowledgement Letter being sent. If there is not enough information available to ascertain whether the claim is eligible, research may be undertaken or further information sought from the claimant or their legal representative.

3.1.2 Notifying the claimant that their claim is ineligible

Direct claimants

We will contact the claimant to notify them that their claim is not eligible for our process and to discuss their options. This information will also be provided to them in writing. We can give them contact details of the correct respondent if they are happy to lodge their claim directly with that party. If the claim correctly sits with a school Board, the relevant regional office may support the claimant to contact the school.

If a claimant would prefer, we can transfer their claim on their behalf, provided we have their written consent to do so.

Legally represented claimants

The approach to take to an ineligible legally represented claimant is discussed with the legal representative.

3.2 Transferring Claims

We can transfer a claim to the correct respondent on behalf of the claimant if they would like us to do that for them. They will need to sign and return a Consent Form, which will confirm their permission for us to share their information. The information we would like to share should be explained on the form.

When we have received the signed consent form, we will prepare a Claim Transfer Letter to the correct respondent that sets out the details of the claim. This is signed out by the Manager.

If the claim is being transferred to a school Board, we will contact the relevant regional office for advice about approaching the school. In some cases, the letter may be delivered to the school by regional office staff.

When the Claim Transfer Letter is sent to the correct respondent, a copy is also provided to the claimant, for their information.

3.3 Staff Checks and Referrals to manage possible safety risks

The names and details of school staff complained about in claims are checked to ascertain whether there could be a current risk to the safety of children in schools.

This includes checking whether the individual is listed on the Teachers' Register and/or is currently working in a school. If either of these factors apply, we may need to refer the claim to the appropriate authorities so they can manage any possible safety risks.

The name and details (including date of birth, if available) of those individuals complained about will need to be confirmed to ensure we are considering referrals about the correct person. These details can be checked and confirmed with the Ministry's School Payroll team. School records from the time may also need to be checked (for example, staff files or other records to confirm the individual's details).

3.3.1 Individuals listed on the Teachers' Register

The Teaching Council is responsible for investigating complaints about the conduct of teachers.

To check whether an individual complained about is listed on the Teachers' Register, their name can be entered into the online search function on the Teaching Council's website at <https://teachingcouncil.nz/find-a-registered-teacher/>.

If an individual is listed on the Register, the relevant details of the claim relating to this person should be referred to the Teaching Council, with the claimant's consent. They do not need to have a current certification or be working in a school for a referral to be made. The referral process below must be followed.

The information to be shared with the Teaching Council includes:

- The claimant's full name and date of birth. If the claimant does not want their personal details shared, we can refer the claim on the basis that the claimant would like to remain anonymous.
- The relevant allegations set out in full.

3.3.2 Individuals working in schools

The Ministry's School Payroll team can check and confirm the employment details of an individual named in a claim, including whether that person is currently working in a school. This includes teaching and non-teaching staff (e.g., teacher's aide).

The information to be provided to School Payroll includes the following:

- The name of the individual complained about.
- The school named in the claim and the relevant time period (this can be estimate).

If we do not have the individual's full name, it may still be possible for School Payroll to check and confirm their details, based on the information we do have (such as a surname).

If an individual complained about is still working at a school, the complaint should be referred to that school's Board, with the claimant's consent. This is so it can take any action necessary to ensure the health and safety of its students. We do not need to disclose the claimant's name to the school Board in this situation. The referral process at [3.3.4] below must be followed.

3.3.3 Referrals to Police

In some cases, we may consider it appropriate to refer the claim to the Police. This may occur where the claimant has made allegations of a criminal nature about an individual that is currently working in a school. A referral to Police can also be considered for claims where we are not clear on the identity of the alleged abuser, but we think it is possible that the allegations are about someone currently working in a school.

We can also support any claimant who wishes to discuss their claim with Police, at any time throughout the process.

3.3.4 Referral process

Any referrals of claims to the abovementioned authorities as a result of the staff check will need to be made in accordance with the Privacy Act 2020 and relevant court orders. The claimant's consent to share their information should be sought before any referral is made.

Court orders prevent us from sharing any information contained in a claim that has been filed in court without the claimant's consent or leave of the court. For any referrals of filed claims, the claimant's consent must be sought via their legal representative.

For Direct claims, we will liaise with the claimant to ensure they understand what information we would like to share and why. The claimant will be provided with a Consent Form to review and sign, which will set out the information we want to share. If the claimant is comfortable with the proposed referral, they will need to sign and return the form.

We will prepare referral letters to the relevant third party/ties.

If the claimant does not consent to a referral but we consider referral is necessary due to the nature of the allegations made, further advice on possible next steps may be sought.

3.4 Information Gathering

3.4.1 Claimant records

Once a claim has been lodged, we will search our records for any information relating to the claimant. A copy of any records found relating to the claimant can be released to them under the Privacy Act 2020.

If the claim is about a school that is still open, we can request a copy of the claimant's records from a school. The claimant will need to sign a Consent Form confirming that the school can share their information with us.

3.4.2 Claim review research

We will review the information received from the claimant or their legal representative about their claim and locate relevant documents. A wide range of documents are sourced to support the claim review, including:

- Any information relating to the claimant, such as their enrolment information and school file (if available)
- Records about the school, including Annual Reports, review reports prepared by the Education Review Office, inspection reports and punishment logs
- Policy and procedure documents
- Staff files
- Court documents, including conviction material, where available
- Files about other students (if relevant to the claim, such as being named in an allegation).

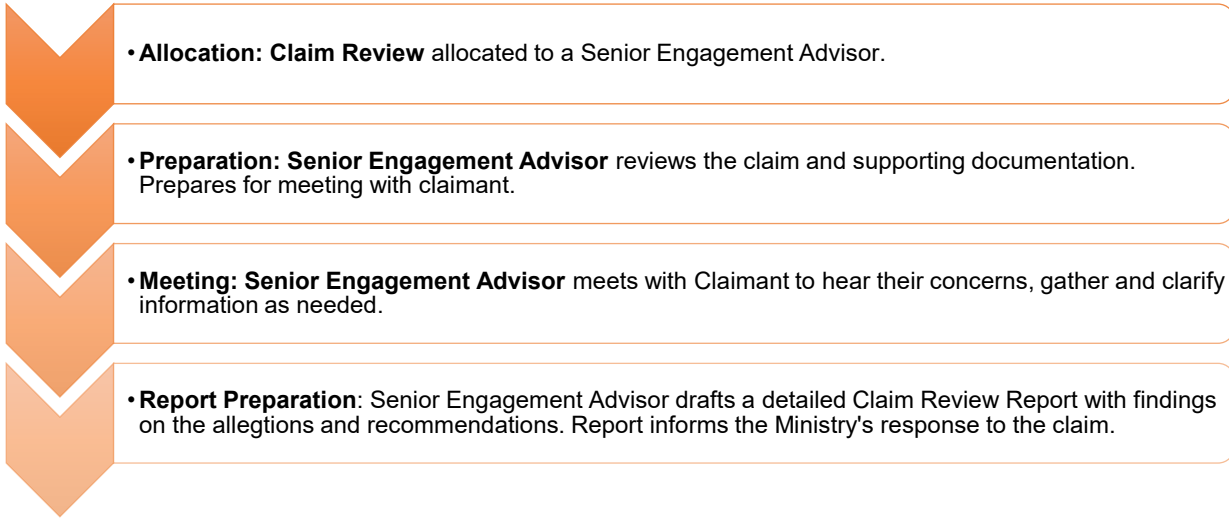
The Senior Engagement Advisor will also consider relevant and comparable claims with similar allegations.

If the claim relates to an open school (about matters occurring before 1 October 1989), we will also contact the school and request any relevant records it holds, with the claimant's consent. There may also be other third parties who hold relevant information, such as libraries.

The amount of information we have received from claimants by this stage can vary. Legal representatives often provide detailed information about the claimant's allegations. Direct claimants may provide very little information about what happened. In these cases, often the claim review stage is the main way we gather information from the claimant about their concerns. When that happens, the Senior Engagement Advisor may need to request further research after meeting with a claimant.

If more information becomes available as the claim moves through the process, Triage steps set out above may need to be repeated, depending on the information.

4. Claim Review



4.1 Purpose of Claim Review

Claim Reviews are an opportunity for a claimant to share their experience and for their allegations to be carefully considered. Claim Reviews also ensure the Ministry has detailed findings about how to respond to a claim.

Senior Engagement Advisors will carefully consider the allegations made, review all relevant information and recommend if the allegations should be supported for the purpose of settling the claim. As part of this process, they will prepare a report for consideration. The information in this report will be used to inform the Ministry's response to the claim.

More information is available in the Claim Review Guidelines.

4.2 Allocation of Claim Review

A Senior Engagement Advisor in the Sensitive Claims team is allocated to the claim. They are now the claimant's contact person at the Ministry. The information already collated is provided to them , along with any material provided by the claimant or their legal representative.

4.3 Claimant Notified of Claim Review

The claimant or their legal representative will be informed that their claim has been allocated to a Senior Engagement Advisor.

All claimants, including those based overseas, are offered the opportunity to talk to the Senior Engagement Advisor and share their experience.

4.4 Engaging with Claimants through the Claim Review Process

4.4.1 Methods of sharing information

Senior Engagement Advisors will talk to claimants about how they would like to engage through the claim review process.

Not all claimants accept our offer to meet. Claimants can share information and engage about their experience in a variety of ways, depending on their individual preferences. Options include:

-
- Conversation/s between the claimant and Senior Engagement Advisor via phone or online (e.g., Zoom).
- In-person meetings with the Senior Engagement Advisor.
- Providing information in writing, for example a letter.
- Providing information shared with other sources, such as a counsellor or Police. This might include written statements and recordings.
- Correspondence from their lawyer.

The claimant may choose to share information through a combination of these options. Claimants can be given the time and space to share their information as they see fit and at a pace that is comfortable for them.

If a claimant does not want to talk to a Senior Engagement Advisor, the claim review can be completed based on the documentary information available via the Ministry's information-gathering and any provided by the claimant.

4.4.2 Meeting arrangements

Where a claimant wants to talk to the Senior Engagement Advisor, we will make all efforts to accommodate their preferences. Meetings can be online, by phone or in-person.

Meetings are usually arranged by the Senior Engagement Advisor, liaising with the claimant, or their lawyer (if they are legally represented).

Claimants are welcome to bring whānau and other support people to the meeting.

With the claimant's permission, meetings are often recorded, and a copy of the recording can be shared with them. Otherwise, the Senior Engagement Advisor will take notes.

Meetings are generally one to two hours but can be longer as required. Sometimes it may be appropriate to have more than one meeting. This could happen where the claimant later makes further allegations or recalls further information relevant to their claim.

4.5 Preparation of Report by Senior Engagement Advisor

The Senior Engagement Advisor will prepare a detailed Claim Review Report which will inform the Ministry's response to the claim.

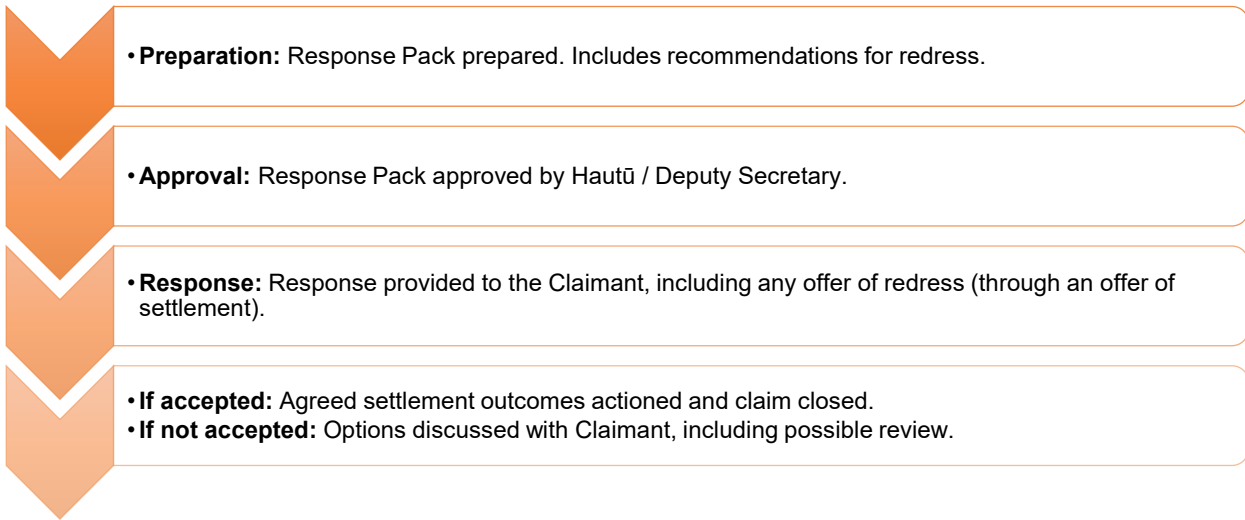
The Senior Engagement Advisor will consider the claimant's allegations alongside all relevant, available information and make findings in their report on whether the claimant's allegations are supported and should therefore be included by the Ministry in a settlement offer.

More information is available in the Claim Review Guidelines.

4.5.1 Review of report by the Ministry

The Senior Engagement Advisor's draft report will undergo a review process and be approved by the Claims Manager. The finalised report will then be provided to a Senior Advisor Claims who will use the report to draft the Ministry's response to the claim.

5. Response to Claim



5.1 Preparation of Response Pack

Once the Claim Review report has been finalised, a Response Pack will be prepared by a Senior Advisor Claims for approval by the Hautū / Deputy Secretary.

The Response Pack includes:

- A response memo to the Hautū / Deputy Secretary, with advice about how to respond to the claim. If appropriate, this will include a proposed settlement offer to the claimant.
- The amount of any proposed financial redress is determined by applying the Common Payment Framework. Payments under \$75,000 must be endorsed by the Ministry's Chief Legal Advisor.
- The Claim Review Report is provided to the Hautū / Deputy Secretary with the response memo.
- A response letter to the claimant. This letter sets out the Ministry's response to each of the claimant's allegations, based on the findings made in the claim review, and any settlement offer. Response letters should be as fulsome and clear as possible to ensure claimants understand the reasoning for the response.

5.2 Redress and Offers of Settlement

If the Ministry makes an offer of settlement, the redress offer may include:

- A payment to acknowledge the claimant's experiences
- A letter of apology, usually from the Secretary for Education
- Payment of the claimant's legal aid debt or reasonable legal fees.

Settlement offers are made without prejudice and without an admission of legal liability.

5.3 Release of Claim Review Documents

Copies of the documents relied on by the Senior Engagement Advisor and footnoted to their report may be released to claimants or their legal counsel under the Official Information Act (OIA).

5.4 Providing the Ministry's Response to Claimant

When providing a response to a Direct claimant, the Senior Engagement Advisor should have an initial telephone discussion with them.

This initial discussion is to:

- notify the claimant about the outcome of the claim review
- provide a general explanation of the Ministry's response and answer any initial queries the claimant has about it, and
- advise the claimant they can seek independent legal advice about our response and its implications.

A hard copy of the response should be couriered to the claimant, and an electronic copy emailed where the claimant has access to email. A cover letter explaining the next steps and what we need the claimant to do can be included with this material.

Responses to legally represented claimants, if their claim is filed, are provided via their legal counsel (and via the Ministry's legal counsel).

If a claimant accepts an offer of settlement, they will need to sign and return a Memorandum of Settlement. The Ministry seeks to provide settlement documentation to a claimant within 15 working days of them accepting a settlement offer.

5.5 Where Claimants do not accept Responses and Settlement Offers

Claimants who are not satisfied with the outcome of their claim may reject our response and any offer of settlement.

In this instance, the next steps we take with the claim will be based on the claimant's reasons for rejecting the response. This may result in a review of all or part of their claim.

A claimant may:

- Reject our offer of settlement and make a counteroffer. We consider any information provided in the counteroffer, including whether it supports a change of findings and/or an increase to the payment amount that was determined under the Common Payment Framework.
- Provide further information to support their existing claim. For example, a claimant may have new information that wasn't available earlier. The allegation(s) any such information relates to will be reviewed, which may involve referral to the Senior Engagement Advisor to consider whether any changes to the findings are justified. If allegations are supported that weren't previously supported, an updated response letter and settlement offer will be prepared.
- Add new allegations to their claim. Sometimes a claimant may not have been able to set out all their allegations in the initial claim. Any new allegations will be reviewed by the Senior Engagement Advisor. Any findings made on these allegations will be incorporated into an updated response and, as applicable, an updated settlement offer.

A response is drafted to explain the outcome of any review of a claim.

If an increase to the financial payment offer is proposed (e.g., because new allegations are supported and this increases the payment amount under the Common Payment Framework), approval is sought in the usual way. If a claimant remains dissatisfied with our response, they should be advised to seek legal advice about their options.

5.6 Closure of Claim

If our offer of settlement is accepted, the claim is then settled.

If there is no response to our offer of settlement within the timeframe given for responding to it, the claim may be closed. If a claimant contacts us after that timeframe wishing to re-consider the offer, we will re-issue it.

If we did not provide a settlement offer and there is no further correspondence from the claimant regarding our response, the claim can be closed.

Any agreed settlement outcomes will be followed and the claim then closed.