



# MINISTRY OF SOCIAL DEVELOPMENT

*Te Manatū Whakahiato Ora*

Ministry of Social Development, Bowen State Building, Bowen Street, Wellington 6011, PO Box 1556, Wellington 6140  
• Telephone: 0-4-916 3300 • Facsimile: 0-4-918 0099

**15 DEC 2011**

Mr Bob McCoskrie JP  
National Director Family First NZ  
P O Box 276-133  
MANUKAU CITY 2241

Dear Mr McCoskrie

Thank you for your email of 2 November 2011, requesting, under the Official Information Act 1982, information about ex gratia payments and compensation paid by the Ministry of Social Development.

Your request was transferred to the Ministry of Social Development on 15 November 2011 as it is more in line with the functions of the Ministry.

## **Ex gratia payments**

Ex gratia payments are made in respect of claims that are, for government departments, not actionable by law but for which there exists a moral obligation to pay. A moral obligation may arise where the Ministry's actions or performance have been deficient to a degree that the individual has suffered loss or harm as a result and a payment is justified. I have understood your question about money offered as goodwill with no conditions attached to be about ex gratia payments.

Whether an ex gratia payment should be made and how much should be paid will depend on the level of service received and the extent of the loss or harm suffered by the individual.

The Ministry or the Minister cannot be compelled to make an ex gratia payment, though the Social Security Appeal Authority, Student Allowance Appeal Authority, or Ombudsman may recommend it. The Child, Youth and Family Complaints Panel may also recommend to the Chief Executive that an ex gratia payment is made following its consideration of a complaint.

The Ministry also has a team that specifically helps find a resolution for former state wards who believe they were subjected to abuse or neglect while in state care or were not protected as they should have been. The Care, Claims and Resolution team helps people who are not current clients of Child, Youth and Family but who have in the past been in the care, custody or guardianship of Child, Youth and Family, the Department of Social Welfare or Child Welfare.

These cases may be resolved through a ex gratia or settlement payment from the Ministry, or, where the claim is resolved without payment, a range of other help and assistance may be provided. This can reflect what the person was seeking help for, the

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seriousness of what happened to them, or the availability of facts to substantiate their story. This help can be very important. In some cases the simple fact of understanding why they were taken into care, or finding people or things they thought they had lost, are what helps the person to put events behind them and feel able to get on in their life.

Having established that an ex gratia payment is an appropriate way to respond to a client's grievance, consideration is given to the amount of the payment. Factors which are considered include:

- the level of harm suffered by the client as a result of the actions of the Ministry;
- the nature of the actions – for example, whether the situation complained of was an ongoing one, or a one-off error;
- any steps taken by the Ministry to mitigate the harm to the client;
- the degree to which the Ministry's actions have contributed to the loss;
- any actions taken by the client that may have contributed to the harm suffered; and
- the level of ex gratia payment that has been made in other comparable cases.

Ex gratia payments are offered to individuals after consideration and approval by the Chief Executive and on the recommendation of a relevant Deputy Chief Executive and with the approval by the Chief Legal Adviser of the Ministry.

The exception is payments made, mainly to caregivers, for deliberate damage to property by a person in Child, Youth and Family care, in which case the Child, Youth and Family General Manager Operations can approve payments up to a level of \$10,000 subject to Chief Legal Advisor certification, or the Child, Youth and Family Executive Manager Operations can approve payments up to \$5,000.

Ex gratia payments up to \$30,000 can be approved by the Chief Executive. Ex gratia payments between \$30,000 and \$75,000 must be approved by the Minister. Ex gratia payments over \$75,000 must be approved by Cabinet.

The ex gratia payments made by the Ministry come with no conditions attached.

### **Other types of payment**

Settlement payments are made in respect of a claim that is actionable at law. For example:

- a breach of the Privacy Act, where the claimant could take the case to the Human Rights Review Tribunal, who in turn, could award damages against the Ministry;
- employment disputes;
- civil claims arising from negligence or breaches of the New Zealand Bill of Rights Act 1990.

An award of "damages" or compensation by the High Court or Human Rights Review Tribunal is also not an ex gratia payment. While payment for damages or compensation is made from operating budgets, the Ministry is legally required to make the payment. These payments can only be approved by the Chief Executive, Minister or Cabinet.

Cabinet Office Circular CO (11) 6 sets out the external parameters for making ex gratia and settlement payments and is available on the Cabinet Office website.

### **Amount of payments**

Every year, the Ministry provides services and assistance to more than one million New Zealanders. In 2009/10, the Chief Executive approved \$334,912 in ex gratia payments in 31 instances to former and current clients of all service lines of the Ministry, both past and present, including StudyLink, Work and Income and Child, Youth and Family. In the 2010/11 financial year, \$836,375 was offered in 55 cases. Please note that in some cases more than one individual received a payment.

Nearly half of these ex gratia payments relate to historic abuse while in state care. Claims alleging historic abuse are being resolved at an accelerating rate. We estimate that currently known claims will be resolved within the next 5 years.

A number of offers have been made so far in 2011/12, but as the financial year is not yet complete, the amount has yet to be finalised and cannot be provided to you at this time.

Prior to 2009, information on ex gratia payments was not collated in a way that allows us to provide this information in a consistent way. I am refusing the bulk of your request, including numbers of settlement payments or other compensation paid, and information for previous years, under section 18(f) of the Official Information Act 1982 on the grounds that substantial manual collation would be required to gather the information and cross check it against various stages of the sign out process to ensure its accuracy.

I hope you find this information helpful. You have the right to seek an investigation and review of my response by the Ombudsman, whose address for contact purposes is:

The Ombudsman  
Office of the Ombudsmen  
PO Box 10-152  
WELLINGTON 6143

Yours sincerely



Iona Holsted  
Deputy Chief Executive Corporate and Governance