The 2017 Conflict Resolution Conference

Cooper Legal

Speakers: Sonja Cooper & Esther Kim
WHAT IS A HISTORIC ABUSE CLAIM?

• Victims of historic child abuse
• Under care and protection of:
  – MSD, MOE, MOH, Church, Other caregivers
• Sexual abuse, physical abuse, psychological abuse, emotional abuse, and neglect
• Typically time-barred by statutory limitations
• Increasing prevalence and recognition from 1980’s – 1990’s onwards
UNIQUE FEATURES OF HISTORIC ABUSE CLAIMANTS

Various common short and long-term effects:
• Post-Traumatic Stress Disorder ("PTSD")
• Low self-esteem
• Isolation/Alienation
• Depression
• Inability to relate to others
• Difficulty with interpersonal relationships
• Impairment of sexual pleasure, or sexual promiscuity
• Drug and alcohol abuse
• Psychological disorders
ORIGINS OF NZ’S HISTORIC CLAIMS PROCESS (MSD)

• Government recognised widespread historic claims in 2004
• Claims of abuse date back to as early as the 1930’s – and every decade since
• Majority against MSD
• 2004: Cooper Legal started filing claims for psychiatric hospital patients → Went to SC → 320 settled by 2012
• 2006: Cooper Legal started filing claims for children in care. To date, around 200 claims settled
• 2007: MSD set up internal claims resolution process
• 2008-2015: Confidential Listening Assistance Service (CLAS) – pre-1992
• 2015-2016: Two-Path Process (“Fast-Track”)
WHAT SHOULD AN ADR PROCESS LOOK LIKE?
The right to an effective remedy for victims of historic abuse requires at least a mechanism for establishing any liability of state officials or bodies for acts or omissions involving a breach of their rights under the Convention, prosecution of the perpetrators where appropriate, and effective compensation and rehabilitation
REDRESS PRINCIPLES

• Survivor-focused
• No “wrong-door” approach
• All offered, assessed, and provided with regard to nature/impact of abuse, vulnerable victims, and cultural needs
• Standard of proof: “Reasonable likelihood”
• Transparency and accountability e.g. annual reporting and publication of data
1. DIRECT PERSONAL RESPONSE

At a minimum – should offer/provide on request:

• An effective apology
• Opportunity to meet with a senior representative of the institution
• Assurance as to steps taken to protect against further abuse
An **effective** apology?

- Recognition
- Responsibility
- Reasons
- Regret
- Redress
- Release

#SORRYNOTSORRY
2. REHABILITATION

Should:
• Be given throughout survivor’s life
• Offer flexibility and choice
• Have no fixed limits
• Be offered to survivor’s family members
3. MONETARY COMPENSATION

PURPOSE:
To provide a tangible recognition of the seriousness of the hurt and injury suffered by a survivor

Appropriate compensation – AUSTRALIA:
• A minimum payment of $10,000
• A maximum payment of $200,000 for the most severe cases
• An average payment of $65,000

NEW ZEALAND:
• Lowest offer we know of: $1,125
• Highest published offer: $85,000
# THE IDEAL ADR PROCESS

<table>
<thead>
<tr>
<th>SHOULD NOT</th>
<th>SHOULD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Re-victimise/Re-traumatise</td>
<td>Be respectful</td>
</tr>
<tr>
<td>Have an imbalance of power or impose heavy burdens on victims</td>
<td>Be flexible and responsive to independent interests and needs – not a ‘one size fits all’ in its outcomes</td>
</tr>
<tr>
<td>Be arbitrary</td>
<td>Be transparent</td>
</tr>
<tr>
<td>Discriminate whether victim is legally represented or not</td>
<td>Be (equally) accessible</td>
</tr>
<tr>
<td>Be too limited in time and funding</td>
<td>Be time and cost-efficient</td>
</tr>
<tr>
<td>Be positional</td>
<td>Be interest-based, favouring victims’ interests</td>
</tr>
</tbody>
</table>
OVERVIEW OF THE MSD ‘HCT’ PROCESS
NON-REPRESENTED CLAIMANTS

1. Claimant approaches MSD with complaint about their time in care
2. Meeting with members of MSD’s Historic Claims Team
3. MSD appoints a Senior Social Work Advisor to assess the claimant’s allegations
4. Senior Social Work Advisor prepares a Case Assessment report
5. Feedback meeting with members of the Historic Claims Team
6. If claim accepted, letter of apology and *ex gratia* payment
1. Client instructs Cooper Legal

2. Cooper Legal requests client’s files from MSD

3. Cooper Legal interviews client

4. (In some cases) Cooper Legal files a Statement of Claim in court

5. Settlement offer letter sent to MSD/Crown Law

6. MSD assesses client’s claim

7. MSD responds to settlement offer letter

8. If client accepts, letter of apology and *ex gratia* payment
COOPER LEGAL
REPRESENTED CLAIMANTS

1. Client instructs Cooper Legal
2. Cooper Legal requests client’s files from MSD
3. Cooper Legal interviews client
4. (In some cases) Cooper Legal files a Statement of Claim in court
5. Settlement offer letter sent to MSD/Crown Law
6. MSD assesses client’s claim
7. MSD responds to settlement offer letter
8. If client accepts, letter of apology and ex gratia payment

9. If client does not accept, or inadequate offer, or no offer is made, Cooper Legal may:

Make a counter-offer

For filed clients, propose a Judicial Settlement Conference, chaired by a HC Judge

Ask for a formal court hearing
GROUP DISCUSSION
What issues/concerns/conflicts can you see with MSD’s current HCT process?

- Delays
- Lack of independence
- High burdens of proof
- Imbalance of power
- Limitation Act issues
- Some legal rights not taken into account
- Lack of alternative processes other than court
- Low quantum of settlement payments
- No direct repercussions for perpetrators
- No global/systemic findings
- Different goals, motivations, concerns
- MSD is conflicted – duties to claimants and perpetrators
PROFILE EXERCISE

1) What is my ultimate goal/motivation in being involved in this historic claims process?

2) What are some barriers (internal or external) that might prevent me from achieving that goal?

3) What is the greatest disadvantage (in regards to my situation) of MSD’s historic claims process as it currently is?

4) What would be a good outcome for me?

5) What would be a bad outcome for me?
Historic abuse claimant
Member of MSD’s Historic Claims Team
Lawyer representing claimant

Denny Crane

NAME ON THE DOOR
Minister of MSD
Claimant’s counsellor
Relate – Resolve - Restore

- Acknowledgement
- Apology
- Compensation
- Rehabilitation
What are some ADR solutions or strategies that might improve New Zealand’s current approach to historic abuse claims?

Relate – Resolve - Restore