

memo

To: Carolyn Murphy Acting Deputy Secretary, Regional Operations
Cc: Jyotika Sharma, Senior Solicitor
From: Murray Witheford, Investigator
Beau Reweti, Manager, Māori Provision, Regional Operations
Date: 31 May 2011 **File:**
Subject **Complaints of Historic Abuse - Assessment of Complaint from:**

1.0 Executive Summary

- 1.1 The purpose of this report is to assess ----- complaint that he was sexually abused by a staff member when he attended Mt Wellington Special Residential School which at that time was administered by the Department of Education.
- 1.2 This complaint falls within the scope of the alternative dispute process approved by Cabinet for resolving historic abuse claims. The process allows departments to investigate and resolve claims by making individualized offers in cases that have merit.
- 1.3 This investigation finds that ---- was subjected to sexual and physical abuse when he was at Mt Wellington and that there is a moral responsibility to acknowledge that.
- 1.4 It is therefore recommended that you forward this report to the Secretary for Education recommending that she:
 - a) Consider the contents of this report;
 - b) Approve an ex gratia payment of NZ \$30,000 to ----, and
 - c) Sign the attached letter of apology to ----- for the harm he suffered when he was a student at Mt Wellington Special Residential School.

2.0 Background

- 2.1 ----- contacted Garth Young of the Ministry of Social Development (MSD) Care Claims and Resolution Team claiming he had been sexually abused while a student at Mt Wellington Residential School for Maladjusted Children.¹ Prior to this EDIT had instructed Cooper Legal² to prepare a claim on his behalf against the Crown. Mr EDIT had also made application for legal aid to fund this process which was declined.

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- 2.2 As this claim relates to allegations against a former Department of Education employee, Garth Young referred Mr ----- to the Ministry and Mr ---- made direct contact with the Ministry's Legal Services.³
- 2.3 Mr ----- attended Mt Wellington Residential School from February 1978 to August 1978. Mt Wellington Residential School for Maladjusted Children was established in Auckland in 1960 for the "educational treatment of children who have become so disturbed emotionally that they are not able to profit from attending an ordinary school and not likely to improve in behaviour while they remain at home"⁴ A new school (Waimokoia School) on a different site was established in 1980.
- 2.4 Mr ---- has complained that whilst a student at Mt Wellington Residential School he was sexually assaulted by a Gavin Mitchell, an assistant housemaster at the school. Mr - also contends that subsequent to the arrest of Gavin Mitchell, the school did not contact him or provide him with any support.
- 2.5 Mr ---- also alleges that when he complained about being abused by Mr Mitchell to Mr Down, a housemaster at the school, he was physically assaulted and punished by this person.
- 2.6 Mr ---- claims that the sexual abuse he suffered has adversely affected his subsequent schooling and psychological adjustment and has led to ongoing and longstanding substance abuse.
- 2.7 Mr ---- has lived overseas for significant periods of his life mostly in Australia but in recent years in Europe and Asia including France, Philippines, and Thailand. He currently resides in Bali.

3.0 Scope of Investigation

- 3.1 The investigation of this complaint comes within the alternative dispute resolution processes agreed by Ministers under the litigation strategy for dealing with historic claims of abuse and neglect at psychiatric institutions, child welfare institutions and residential special schools prior to 1992.

4.0 The Investigation Process

- 4.1 Because of Mr ----- overseas location communication has been initially via email. The usual investigation process includes a face-to-face interview. This was not possible because Mr ---- has been transient and a video conferencing arrangement proved to be very difficult to arrange. However the Ministry IT service was able to facilitate an interview between the parties through Skype.

- 4.2 Mr ---- expressed some scepticism as to the independence and integrity of the Ministry investigation process intimating that in his experience government departments are more likely to “white wash” complaints.
- 4.3 Mr ---- is Māori and requested that the investigation be conducted by a Māori official. Mr ----- rationale for this request was that he had “no time for Aotearoa pakeha trash” as everything bad which happened to him in New Zealand was the responsibility of “white trash”.⁵ After further discussions, Mr ---- agreed for the investigation to be undertaken by Beau Rewiti and Murray Witheford.
- 4.4 Clearly Mr ---- is distrustful of Government Departments and systems.
- 4.5 A number of sources of information have been taken into account including:
- a) Mr ---- Mt Wellington school file;
 - b) A Skype interview with Mr -----;
 - c) Phone interview with an ex Mt Wellington Residential school teacher
 - d) Phone interview of Mrs ----, mother of Mr -----
 - e) Department of Education circulars relating to Mt Wellington Residential School
 - f) Police file of the investigation of Gavin Mitchell
 - g) Medical, psychiatric and psychological records provided by Mr -----
 - h) Email correspondence with Mr -----

5.0 Findings

- 5.1 Mr ----- was admitted to Mt Wellington School on 02 February 1977 as a boarder. This enrolment followed a Department of Education Psychological Service report of 05 December 1977 which noted that although he was functioning intellectually at average levels, he encountered social and emotional difficulties in adjusting to ordinary class situations. It was considered that Mr ----- social and emotional maladjustment had primarily arisen from his relationship with his mother. Mrs ---- had consented to the Mt Wellington Residential School placement. Moreover Mr ---- had visited the school and expressed a positive interest in the attending.⁶
- 5.2 According to Mr ---- school records he progressed very well during his time at Mt Wellington. A marked improvement in his behaviour was noted and in the classroom he was observed to be constantly on task. Even in the early stages of his residency there were queries as to whether he should even be at such a school.⁷ By the time of his discharge in August 1978 after just two terms at the school he was described as showing no major evidence of emotional interference in his learning and social behaviour. His last school report states that he was a boy with sympathetic leadership qualities who takes his responsibilities as a model to his peers seriously”.⁸ All academic areas were recorded as age appropriate or better.
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- 5.3 Mr ---- was discharged from the residential section of Mt Wellington Residential School in April 1978 and continued to attend as a day pupil until August 1978.⁹ This was unusual and was probably actioned because of the progress he had made as well as the relative proximity of his home to the school. Also relevant is the comparatively short duration of his enrolment at the school. Most students would have attended for at least 12 months and often up to two years.
- 5.4 In November 1978 as a result of allegations of indecencies against young children the police searched the home of a Gavin Mitchell. Amongst the material retrieved were photographs of young children naked and depicting sexual activity. The children were identified and interviewed including Mr -----. Gavin Mitchell was subsequently arrested and charged.
- 5.5 Gavin Mitchell had been employed, as an Assistant Housemaster at Mt Wellington Residential School including the period Mr ----- was a student there. According to the Principal of Mt Wellington School Gavin Mitchell resigned on or about 15/08/1978 at the principal's request.¹⁰ This request followed a report by a student of Gavin Mitchell kissing him. The Principal claimed that irrespective of this incident Gavin Mitchell's work and performance was unsatisfactory and if he had not resigned, Mr Mitchell's employment would have been terminated. At this time the Principal took no further reported action in relation to Gavin Mitchell and the students at Mt Wellington.
- 5.6 The Crown prosecutor's notes states that Gavin Mitchell met Mr ----- at Mt Wellington School and invited him to join a soccer team he was responsible for. This occurred on or about 19/06/1978. From that time until 28/10/1978 Mr ---- visited and stayed at Gavin Mitchell's home most weekends.¹¹ During these visits Gavin Mitchell sexually abused Mr ----- including:¹²
- a) Showing Mr ---- nude photographs
 - b) Masturbating in front of Mr ----
 - c) Masturbating Mr ----- and taking nude photographs of him
 - d) Sodomising Mr ----.
- 5.7 On at least one occasion Mr ----- younger brother and sister also stayed with Gavin Mitchell along with Mr ----. Gavin Mitchell provided alcohol to the boys.¹³ Mr ---- claims that during these stays with Gavin Mitchell he was regularly provided with alcohol, marijuana and cigarettes.¹⁴
- 5.8 Moreover when Mr ---- claims he expressed concern about Gavin Mitchell to a housemaster (Mr Downs) he was physically assaulted and punished. There are no records of this alleged incident although from Mr ----- perspective it clearly had a significant impact and his retelling of it is convincing.¹⁵
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- 5.9 Gavin Mitchell's offending included photographing the children he abused. Somewhat ironically Gavin Mitchell used the photography developing resources available at Mt Wellington School to produce these images. He had received tuition in how to do this from the School Principal.
- 5.10 Gavin Mitchell pleaded guilty to 23 charges of indecent assaults and acts against seven boys and girls of which Mr ---- was one. Gavin Mitchell was sentenced on all 23 charges to three years imprisonment on 23/03/1979.^{16 17} Mr ---- advises that Gavin Mitchell is deceased.¹⁸
- 5.11 Mr ---- subsequently attended Glendowie Primary School before moving on to secondary schooling at Tamaki College. He said he was requested to leave Tamaki College and transferred to Penrose College which he left as soon as he was 15 years of age. Mr ---- estimates he would have attended this last school for no more than 10 days in total.¹⁹ This is confirmed by his mother.²⁰
- 5.12 Mr ---- claims that Gavin Mitchell introduced him to marijuana (aged 12 years) and that by 14 years of age he was "stoned everyday until now".²¹ Certainly Mr ---- developed polysubstance abuse including amphetamine, cannabis, ecstasy and alcohol.²² He has been actively involved in advocating for the legalisation of cannabis in -----
- 5.13 On leaving school Mr ---- worked in a nursery and then as a car painter. His employment record is very sketchy with periods of long-term unemployment in New Zealand and Australia. Mr ----- went to Australia in 1989 and was unemployed for long periods. He eventually attended university on an adult entry basis intending to study youth work but instead completed a BA in Photomedia/Media.²³ His current plans include a possible return to Australia and studying for an -----.
- 5.14 Mr ----- has had behavioral and psychological issues for which he has sought some assistance in the past without significant positive outcomes.²⁴
- 5.15 He believes that if he had not been sexual abused by Gavin Mitchell he would probably have been an "OK person".²⁵ Many of Mr ---- psychological and behavioral issues over the years strongly indicate that he had been traumatised by the experience. His avoidance behaviour and efforts to numb his trauma through self-medication, his anxiety and at times highly emotional arousal along with overt irritability and at time dangerous outbursts of anger are strong and consistent
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indicators of being traumatised and as such are indicators of post traumatic stress disorder.

6.0 Practice Review

- 6.1 The purpose of the Mt Wellington School for Maladjusted Children was stated in 1960 as being to provide the child with a temporary substitute for his own home in which they can feel emotionally secure and establish a satisfactory relationship both with adults and other children and in which every aspect of the child's life is made to contribute to treatment aimed at helping them take their place again in a normal family setting.
- 6.2 The Department of Education as the entity responsible for all the special residential schools including Mt Wellington School had clearly stated aims for them which included:
- a) To provide a stable home environment and to foster a sense of self esteem and happiness in each pupil
 - b) To develop social skills, independence and encourage physical fitness and healthy living habits
 - c) To create opportunities for pupils to integrate into the community.
- 6.3 Guidelines were also provided to assist in the management of:
- a) Responsibilities to parents by staff
 - b) Discipline and personal relationships including a focus on a positive approach to behaviour management and for staff to provide a model of responding to difficult situations maintaining self control.
- 6.4 The systems at Mt Wellington School were avoided by a staff member or not followed in a consistent manner which may have better protected Mr ---- from harm.
- 6.5 Staff in both the residential and school were organised and rostered to ensure that children were safe and to also minimise risks for staff. This included the provision of a school and hostel system to prevent abuse of children and that where approvals had been given for off-site visits there would be safe adult oversight of the children. If there was suspicion or allegations of abuse it was expected that these would be appropriately responded to. While the incidents involving Mr ----- occurred away from the school, it is clear that Mr Mitchell used the opportunity provided by his job at the school to contact and abuse students.
- 6.6 There was an expectation that students knew how to complain if they were unhappy with how they were being treated at school by staff member and to feel safe that any complaint would be listened to and acted on. This included the requirement that all significant incidents concerning the protection of children within the school would be notified to school management through the known systems. As detailed in paragraph 5.8 when Mr ----- did express concern regarding Mr Mitchell to a staff member he was more likely than not assaulted and punished. Not surprisingly Mr ---- was reluctant to make any further disclosures.
- 6.7 While Mr ---- was at the lower level of need for enrolment at Mt Wellington School he had real behavioural needs that needed to be met. However, there is sufficient

evidence to support a finding that the abuse that he was subjected to added further detriment. Once he left the school there was no further recorded follow-up of any kind. Mrs //// advises that no contact of any kind was made by Mt Wellington School subsequent to the arrest of Gavin Mitchell.²⁶ Even if one allows for the more limited understandings and awareness of the psychological ramifications of sexual abuse in the late 1970's compared to now that there was not even some informally supportive contact for Mr //// and his family seems at the very least to be a lapse in standards by the Mt Wellington School leadership. It could be assumed that the school priority was to distance itself from what had been a shocking event.

7.0 Basis for Ex Gratia Payment

7.1 It is recommended that an ex gratia payment be made. The advice acknowledges the appropriateness of an ex gratia payment to respond to circumstances that give rise to a moral obligation rather than legal liability.

7.2 Accordingly I recommend that:

- a) An ex gratia payment of \$ 30,000 be made to Mr //// in recognition of the harm that Mr //// has suffered. The amount recommended for payment is consistent with an amount paid in cases with similar fact situations
- b) The Secretary sign the attached letter of apology to ////