

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
STATE REDRESS INQUIRY HEARING**

Under The Inquiries Act 2013

**In the matter of the Royal Commission of
Inquiry into Historical Abuse in
State Care and in the Care of
Faith-based Institutions**

Royal Commission: Judge Coral Shaw (Chair)
Dr Andrew Erueti
Ms Sandra Alofivae

Counsel: Mr Simon Mount, Ms Hanne Janes,
Mr Chris Merrick, Mr Andrew Molloy,
Mr Tom Powell and Ms Danielle Kelly

Venue: Level 2
Abuse in Care Royal Commission
of Inquiry
414 Khyber Pass Road
AUCKLAND

Date: 27 October 2020

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1 (Opening waiata and karakia)

2

3

4 **CHAIR:** Tēnā koutou katoa, nau mai kake mai ki te wiki
5 tuawhā o tēnei nohoanga. Nō reira tēnā koutou, tēnā
6 koutou, tēnā rā koutou katoa.

7 **MS JANES:** Tēnā koutou katoa. Would we like to repeat
8 the affirmation?

9 **CHAIR:** I think we can assume that you remain on the
10 affirmation that you took last week.

11 A. Yes, I do.

12 **CHAIR:** Thank you, welcome back.

13 A. Thank you.

14

15 **LINDA LJUBICA HRSTICH-MEYER - FORMER AFFIRMATION**

16 **CROSS-EXAMINED BY MS JANES**

17

18

19 Q. Good morning, Ms Hrstich-Meyer.

20 A. Mōrena.

21 Q. Just a couple of quick clarifications. We heard on Friday
22 that you became the Principal Solicitor around 2015, we
23 looked at the handover from Mr Taylor to you, June 2015?

24 A. I think that's approximately right.

25 Q. You mentioned in your evidence that you had been in various
26 roles at MSD [Ministry of Social Development] for 20 years?

27 A. That's right.

28 Q. Were they primarily in the MSD Legal Team?

29 A. Yes, they were all in the Legal Team.

30 Q. And you talked about filed claims being managed by the MSD
31 Legal Team?

32 A. Yes, they were, bearing in mind that I wasn't within the
33 Historic Claims Team during that previous period.

1 Q. But I recalled your evidence saying that the Historic Claims
2 Team effectively looked after the unfiled claims with Legal
3 Team providing advice?

4 A. Yes, that's correct.

5 Q. But the filed claims were managed by the MSD Legal Team
6 social work practice reviews prepared by the social workers?

7 A. Yes, in the early days.

8 Q. So, I just really wanted to clarify, the White case would
9 have come been the filed claims and the Wiffin claim would
10 have come within the filed claims?

11 A. Yes.

12 Q. So, would the advice and decisions in relation to those and
13 other filed claims have come from the team in which you were
14 employed?

15 A. It would have come from the Legal Team, the Historic Claims
16 Legal Team. I was working in the Operational Service
17 Delivery Team.

18 Q. I may not be able to help us but it just occurred to me
19 Mr Garth Young appeared, he was not part of the Legal Team
20 but he sat in on a lot of the Litigation Strategy meetings
21 in Crown Law in the White case and was involved in the
22 Wiffin case. Are you able to help us in the capacity in
23 which he would have been holding those roles?

24 A. No, I can't, sorry.

25 Q. And you talked about the MSD Legal Team providing advice on
26 liability and quantum and also specialist advice as
27 required. And I assume that would involve vicarious
28 liability and BORA advice?

29 A. Yes, any legal issue that needed legal advice.

30 Q. Thank you. If we can go to MSC368. We saw in Mr Young's
31 evidence that he did provide some guidance internally on
32 vicarious liability but if we can have a look at this
33 particular document which is Christy Corlett, who is Crown
34 Law, it is sent to -

35 A. It's actually MSD.

1 Q. MSD, thank you for the clarification.

2 A. Yes.

3 Q. It is to Garth Young but it's actually the bottom email that
4 I'm wanting to look at. If we can call out the three
5 paragraphs and we see it is from Leith Townshend who's MSD
6 Legal?

7 A. That's right.

8 Q. Can I have you read these three paragraphs, please?

9 A. "We have been accepting vicarious liability for third party
10 providers as part of a tactical decision to avoid the courts
11 considering the non-delegable duty of care cause of action.
12 There may also be moral arguments for accepting these
13 allegations as part of our ADR [Alternative Dispute
14 Resolution] process.

15 As part of this we have accepted responsibility for
16 physical assaults by staff members at third party providers.
17 I think that is consistent with this approach to accept
18 responsibility for those third party providers failing to
19 act on reports of concern.

20 I note that this approach only applies to the ADR
21 process. Should we ever be in a position where we are
22 heading to trial then this approach will need to be
23 reconsidered, especially in light of overseas developments
24 in the application of vicarious liability."

25 Q. So, it appears from that email, Ms Hrstich-Meyer, that there
26 is a distinction drawn between accepting vicarious liability
27 for ADR process and a different application on those that
28 are on the trial track?

29 A. Yes.

30 Q. Would you accept that that would likely lead to disparity in
31 terms of claims and the outcomes?

32 A. I think the difficulty is that it is still a grey area of
33 law and so, potentially it could lead to disparity but
34 certainly our view is that the trial track is very traumatic
35 for survivors and it's actually very hard for the Crown as

1 well to go through that. So, we try to resolve them through
2 the ADR process and that's why - but obviously they're in
3 full and final settlement.

4 Q. And if we can go to MSC ending in 442. And just as that's
5 coming up, Mr Young spoke very briefly about vicarious
6 liability and the need for particularly unrepresented
7 claimants, for MSD to take the responsibility for
8 identifying BORA [Bill of Rights Act] breaches?

9 A. Yes.

10 Q. As they would be unlikely to know one existed. So, looking
11 at this particular document, which is from again Leith
12 Townshend solicitor, internal MSD, but you'll see in the
13 first few lines that you were an attendee at this particular
14 meeting?

15 A. I am familiar with this document.

16 Q. Looking at paragraphs 2-4, if we can call those out, sorry
17 the highlighted ones, and if we can just have you read those
18 two paragraphs?

19 A. "That we would begin to recognise potential BORA breaches in
20 the ADR process but that we need to be careful about how we
21 word it in the settlement letters and memorandums.

22 That the standard templates wouldn't include a
23 consideration of BORA or tort law and the wording of the
24 letters would make that clear".

25 Q. And if we can go over the page, please?

26 A. "The comprehensive assessment would include a consideration
27 of BORA as the lawyers will be working closely with the
28 Senior Social Work Advisers. There will be some checklist
29 for legal signoff which will include whether BORA has been
30 considered.

31 A Practice Note will be drafted for solicitors to refer
32 to as part of the comprehensive assessment which will
33 outline the law and approach to BORA issues.

34 The current contemporary claims being undertaken will be
35 sent to Legal for them to provide a view on whether BORA

1 issues should be considered. This will be done via email
2 and not require a full assessment."

3 Q. So, again, Ms Hrstich-Meyer, we see that under the standard
4 evaluation, there is no consideration of BORA breaches but
5 on the comprehensive assessment there is. Again, would you
6 accept that disparity is likely an outcome in those
7 circumstances?

8 A. I think we need to remember that this is a snapshot in time
9 on the 8th of November 2016 as we were starting to develop
10 the 2018 claims process.

11 What you will actually find with the new November 2018
12 claims process, we will consider BORA for both the standard
13 and the other assessment.

14 Q. We'll look at disparity of settlements a little bit because
15 I'd like to look at them all in one particular aspect, if I
16 may.

17 So, just carrying on from here, your evidence on Friday
18 was that presently the guidance on BORA is not totally
19 clarified?

20 A. No, we're seeking legal advice.

21 Q. And I am assuming that that legal advice needs to come from
22 Crown Law or can MSD give its own guidance about BORA
23 breaches in assessing its claims?

24 A. It will come from Crown Law.

25 Q. So, in the absence of definitive Crown Law advice on how to
26 treat BORA breaches, MSD is currently still making offers of
27 settlement to claimants; correct?

28 A. Yes but I need to put a proviso with that. My understanding
29 is that any that have a BORA component, which we identify
30 for represented and unrepresented claims, we park so that
31 they can - park is probably the wrong word but they go into
32 another route so they can get legal advice.

33 Q. What happens to the prioritisation? Do they lose their line
34 in the queue as they get parked?

1 A. No because they will have been assessed in relation to the
2 particular circumstances of the case but the person, the
3 assessor, the claims assessor, either with or - discussing
4 with the leads claim assessor, will determine that there's
5 BORA areas that need to be dealt with.

6 So, often the claim is 90%, assessment is completed and
7 it's just the legal component where we need to resolve.

8 Q. Because we have seen a number of claims where there has been
9 a mixture of State care abuse and also abuse in facilities
10 that likely constitute BORA breaches, such as strip
11 searches, time on something called Alcatraz, and those
12 claimants have had to sign full and final settlements.

13 So, the question really is, for all those that have gone
14 before, where they have fully and finally resolved their
15 claims with MSD but there are BORA breaches that could or
16 should have been considered, what is available to them to be
17 able to have the BORA breaches considered and an effective
18 remedy given for those breaches?

19 A. If I can just clarify that the Two Path Approach was the
20 one-off process where we didn't consider BORA breaches
21 because we felt the quick fact assessment was not
22 appropriate for BORA breaches. So, my understanding is it
23 will be those cases that potentially don't have a
24 consideration of BORA.

25 In relation to those, claimants had the option of a
26 standard assessment. So, it's made very clear to them that
27 if they wanted a fuller assessment, they could have that
28 made, and some did.

29 **COMMISSIONER ERUETI:** I'm sorry, I'm just trying to
30 follow this.

31 A. Sorry.

32 **COMMISSIONER ERUETI:** Can I just ask about, so in 2019
33 the decision was made to consider BORA claims in two
34 groups; is that right, both represented and
35 unrepresented claimants?

1 A. So, 2016.

2 **COMMISSIONER ERUETI:** Yep, okay. But then you said in
3 2019 in your answer?

4 A. So, in 2018, when we developed the new model, we continued
5 with that. Sorry, that may have been confusing.

6 **COMMISSIONER ERUETI:** Yep.

7 A. So, unlike the Two Path Approach where that was a very basic
8 fact assessment, we didn't factor in Bill of Rights issues.

9 **COMMISSIONER ERUETI:** Yeah, good, thanks. And when
10 you say you parked up to get legal advice, you're
11 talking about both direct claimants and represented?

12 A. Yes.

13 **COMMISSIONER ERUETI:** So, did you direct the direct
14 claimants to get legal advice from a particular - what
15 was that process?

16 A. Sorry, I may have confused you. So, when we're doing the
17 assessment and if there's a Bill of Rights issue, then we
18 actually, we need to get legal advice from in-house or Crown
19 Law on those. So, it will only be at the end when we make
20 the offer of settlement that we will recommend that a
21 claimant seeks legal advice. If they're represented, then
22 generally Legal Aid will cover that but we also pay
23 reasonable costs for non-represented. Sorry.

24 **MS JANES:**

25 Q. Just picking up a point from Commissioner Erueti, if we go
26 to the Two Path Approach process where the BORA breaches
27 were not included.

28 A. Yes.

29 Q. How will MSD go back and rectify or provide an effective
30 remedy for the people who had BORA breaches also within
31 those claims?

32 A. That's a very difficult question because, and I think the
33 KMPG report and even the Allen + Clarke report talked about
34 with delays in order to speed up the process there are a

1 number of trade-offs you need to make in order to assess
2 claims faster. So, that was one portion.

3 So, as I said before, certainly that offer didn't need to
4 be accepted. In those letters, we suggested that
5 unrepresented claimants get legal advice. Obviously, those
6 that were represented by Cooper Legal would have had legal
7 advice. So, that's what we did in relation to that.

8 It also brings up the chestnut of revisiting claims which
9 I think I spoke about on Friday and how there's that tension
10 of finalising a claim as opposed to an 'in full and final
11 settlement'.

12 So, I think, I can't recall if some of those payments
13 were in fact ex gratias or whether they were all
14 settlements. Obviously, with an ex gratia that can be
15 reconsidered.

16 Q. I suppose the troubling thing for claimants in signing their
17 rights away, if you take the Whakapakari claims where there
18 are a large number who settled at \$5,000 and right up to the
19 trial settlement of \$85,000 per claimant and figures
20 in-between. So, even if they go and get legal advice, it's
21 very hard without guidance and transparency for them to know
22 whether they should actually opt in or opt out. Would you
23 accept that it's a very widespread and you don't know what
24 you're giving up?

25 A. Well, I think the first comment is factually not all
26 claimants that went to Whakapakari got \$5,000 and that would
27 have been based on the severity of the abuse which it
28 appears that Cooper Legal and MSD have some various views on
29 what the payment was for.

30 But we have had some examples under Two Path Approach
31 where, and I was in Legal at that stage, where the lawyer,
32 where someone went to get legal advice would ask us for
33 further information.

1 Q. Just looking at those two cases that you and Cooper Legal
2 have a very different view on, and we won't mention the
3 names.

4 A. Yes.

5 Q. But they were I think BSN and WM. But the facts of the case
6 were they got \$5,000 offers. You said that the reasons for
7 the low payments were not issues of third party providers
8 but because there was no serious abuse; do you recall that
9 evidence?

10 A. Yes, I do. That's what I was advised.

11 Q. But when you actually look at the abuse in those cases, they
12 included being strip searched, frequent physical assaults,
13 denial of medication and placement on Alcatraz for several
14 weeks without food; and that's at paragraph 1058 of the
15 Cooper Legal brief of evidence.

16 When you look at the documents that also support that
17 there was no clothes other than what they were wearing, no
18 mattress, they effectively felt they were being abused as
19 slaves by the supervisors. So, even on category 1 which is
20 \$5,000, do you still maintain that three weeks on Alcatraz
21 with no food and no clothing and strip searching is not
22 serious abuse and not warranting an effective remedy under a
23 Bill of Right breach?

24 A. That's very difficult to comment on without looking
25 at - there would have been a Statement of Claim, without
26 going through that and looking at it in its entirety.

27 Q. So, would the \$5,000 have been your determination of very
28 low level abuse and it is also missing out practice failures
29 and Bill of Right breaches?

30 A. I would need to pull up the Two Path Approach categories.
31 Did you want me to do that?

32 Q. I think that's probably something that will take a bit of
33 time.

34 A. Yes.

35 Q. So, we may do that outside of the public hearing -

1 A. Yes, of course.

2 Q. - to examine, so you can look at the documents.

3 A. Yes.

4 Q. But it's really just to looking at the disparity between
5 that level of abuse, \$5,000 versus \$85,000, and the facts
6 being -

7 A. I think, in fairness though, I think it's \$80,000 was our
8 highest with a top up for wellness, for other support.

9 From memory, that matter was nearly tracking to trial,
10 well it was tracking to trial and it got very close from
11 memory. I don't think you can compare an assessment under a
12 Two Path approach and a matter that is nearly - that is
13 ready to go to trial.

14 Q. Do you accept a claimant doesn't actually understand there
15 is such a dramatic distinction that is something that they
16 should be aware of, it should be transparent, they should
17 know what they are choosing in terms of the process they
18 elect to go on?

19 A. I think in relation to the two cases you refer to and the
20 \$80,000-\$90,000 one, they were all legally represented.

21 Q. And just quickly, you mentioned there was one, my
22 understanding is the actual payment was \$67,000, this was in
23 the Cooper Legal evidence, and they got a \$20,000 wellness
24 payment. And again just going back to the evidence that
25 Mr Garth Young gave about wellness payments, we saw that
26 only 18 had been offered, 9 had been made. What would
27 have - 0,000 in the context of the number offered and the
28 amount paid seems like a very high wellness payment when
29 we've seen that many others weren't even able to access
30 counselling.

31 So, again in terms of that disparity element, how can one
32 be certain that like is being treated as with like?

33 A. Okay. So, my understanding is that the wellness payment
34 policy was the one that Mr Young previously spoke of, which

1 was a one-off to get out of litigation without having a
2 debt.

3 The later wellness payments, to my understanding, and
4 what I have looked at, relates to the cases that were close
5 to trial and in that way, it was - so, it was part of that
6 settlement package.

7 Q. And then if we look at the Sammons sisters in terms of
8 almost identical circumstances, same placement, similar
9 types of abuse, we have one on the Fast Track Process who's
10 offered \$20,000?

11 A. Yes.

12 Q. We have one on the trial track, initially offered \$28,000
13 but a final settlement of \$32,000. Again, how can a
14 claimant feel not aggrieved, that they go through exactly
15 the same circumstance but the outcome, the offer, the
16 assessment is completely different?

17 A. Well in that particular case, we made an offer which was not
18 accepted, so we're currently going through the comprehensive
19 process and it is possible that there potentially could be
20 an uplift in relation to that, so that it could be similar
21 to her sister. I can't determine that without the full
22 assessment occurring but I think that would be more telling
23 what that settlement offer is, given that the original
24 assessment under the new process was not accepted.

25 Q. And are you able to say why there has been such a
26 significant delay between the rejection of the \$20,000 fast
27 track offer and the full assessment? It seems to have taken
28 a very long time when the facts are completely known?

29 A. Yes, it has taken a long time but bearing in mind that it
30 goes from the basic fact test to a much further in-depth
31 assessment. And it's one of those really difficult things,
32 is managing older claims coming in as opposed to claims that
33 have been assessed but have been rejected. Now, I can
34 confirm that approximately a month ago I have taken a couple
35 senior assessors out of the standard assessments and they

1 will be doing those, they're not reassessment but the new
2 assessments, and I'm hoping, I don't want to put a timeframe
3 for Ms Sammons because I don't want to disappoint her but
4 it's certainly being worked on, I can give you that
5 assurance.

6 **CHAIR:** Can I just put a proposition to you? It seems
7 that in endeavouring to deal with the backlog,
8 frontlog, the new cases, the old cases, that MSD has
9 setup processes trying desperately to get them
10 up-to-date etc.

11 The result of that, is that the redress that individual
12 claimants are getting is determined by the process that they
13 go through, rather than by the level of abuse that they
14 suffered. Is it fair to say that?

15 A. Potentially say that, yes.

16 **CHAIR:** Potentially or actually?

17 A. Yes, yes.

18 **CHAIR:** Or actually?

19 A. Yes.

20 **CHAIR:** Actually. Yes, thank you.

21 **MS JANES:** Madam Chair, the Chair has very neatly cut
22 to the dilemma that really I am proposing to you.

23 Q. As we go through all of the processes from the early 2000s
24 up until 2018, which is what we're looking at, there are so
25 many examples of different processes, different outcomes for
26 individual claimants, where if you look at the type of
27 abuse, the claimant will go, "Well, why am I being treated
28 so differently because the process has resulted in an
29 outcome that cannot easily be translated into similar set of
30 facts and outcomes". And you've accepted that that has
31 happened over the period?

32 A. Yes, it has. I think if I go back to one of our principles
33 though, under any of those processes there's
34 generally - there is a principle of consistency. So, on
35 average - so, as I mentioned on Friday, on average, the

1 average claim amount is just under \$20,000 from when
2 Historic Claims started until today.

3 Q. It's probably too hard in this process to unpack that but
4 would you accept and understand that it's very hard on the
5 basis of the evidence that the Commission has heard, to
6 accept at face value that there has been consistency because
7 we have so many examples of inconsistent outcomes in
8 relatively consistent sets of facts relating to abuse or
9 BORA breaches?

10 A. Yes.

11 Q. And then overlaid with that, we also have the
12 incomprehensible fact that a privacy breach leads to an
13 \$11,000 payout, whereas the abuse suffered is a \$5,000
14 payment. How is it explained that a privacy breach is worth
15 double what the abuse is compensated for?

16 A. I can't really explain that because it's a different regime
17 for a privacy breach and the awards under that regime.

18 Q. So, again, in an era where the BORA breaches or the privacy
19 breaches are in a state of being quantified, what advice are
20 claimants getting about how that may or may not affect their
21 entitlements or the process that they choose? Are they
22 getting that from MSD?

23 A. Sorry, what was your question?

24 Q. So, given that there can be quite a wide variation in terms
25 of maybe additional payments that could come from Bill of
26 Rights breaches or privacy breaches, how does a claimant who
27 is not legally represented learn that that is something they
28 need to factor into the process they choose and the
29 settlement they accept?

30 A. Well, under the process, we do take into account BORA
31 breaches for everyone. In relation to privacy breaches,
32 that's probably something that sits potentially with - well,
33 putting it another way, our aim is to get 75% of all privacy
34 requests out within three months, so that the aim is that we

1 don't get into that position of people waiting a long, long
2 time.

3 That's complicated by the fact there have been some cases
4 on Court document disclosure etc. So, for example, Cooper
5 Legal are reviewing all the previous, my understanding,
6 privacy releases, so that we can - so that they can be
7 relooked at. So, that's another complicating factor; when
8 the law changes or there's clarification in the law, in the
9 privacy area, we go back and look at those.

10 **CHAIR:** Can I clarify again, in the previous document,
11 I think it was a letter you were at, it was about
12 discussion, what to do with BORA claims.

13 A. Yes.

14 **CHAIR:** It seemed to me that amongst your Legal Team
15 and the Claims Team, you were saying, look, where
16 there's a BORA breach we'd better check it out and get
17 information from our legal people and get a
18 clarification?

19 A. Yes.

20 **CHAIR:** So, you're clarifying internally but the
21 question that Ms Janes asked you was how do you let
22 the claimants know about that? Number one, do you let
23 the claimants know that this is a potential issue that
24 you're waiting to get legal advice on?

25 A. No, so we don't specifically say that particular cases have
26 been - we're waiting for legal advice.

27 **CHAIR:** So, what's a claimant to make of that?

28 A. So, our assessors, sorry not our assessors, our support
29 staff regularly talk to claimants who have rang or if
30 they've asked for a phonecall but I can't be 100% sure that
31 they discuss that, so in that sense -

32 **CHAIR:** So, there's something going on in the process
33 potentially affecting their rights but they don't know
34 it's happening? They just know there's delay going
35 on?

1 A. Yes, that's right. That's tough, I appreciate that.

2 **CHAIR:** It's really tough?

3 A. It's really tough and I apologise for that.

4 **MS JANES:**

5 Q. And what's the reason that they're not communicated with?

6 A. Well, we do communicate with them. We talk to them,
7 certainly I'm talking about non-represented claimants. We
8 ask them how often they want to be contacted. We are
9 proactive in relation to our contact. As to the extent of
10 our discussions, I can't really confirm that.

11 I think to bear in mind is that when someone rings, the
12 support staff can actually bring up their particular case,
13 so they will know where it's at. They will be able to, in
14 that sense, explain where it's up, what's happening and that
15 type of thing.

16 Q. So, in terms of the Two Path Approach process where BORA
17 breaches were explicitly excluded.

18 A. Yes.

19 Q. Did the unrepresented claimants have that information that
20 they could settle for this but there may be an additional
21 amount they may be entitled to but that was not yet
22 determined?

23 A. Not from memory because the letter was reasonably standard.
24 The comment I would make about BORA breaches, is that even
25 when a BORA breach is found, it doesn't necessarily mean a
26 top-up. In a number of cases it will but it doesn't always
27 mean that there will be a top-up. I know that Cooper Legal
28 and MSD or the Crown have quite a different view on BORA
29 quantum and that's probably more appropriate for the
30 Solicitor-General to comment on.

31 Q. And we also had the disparity, not just under the BORA but
32 also Cooper Legal gave examples of two at Epuni. They were
33 TW and WW. And under the Two Path Approach they also got
34 \$5,000 but they were there at the very same timeframe as
35 Mr White and Mr Wiffin. The allegations of abuse had been

1 accepted by the High Court. So, how can there be such
2 disparity of \$5,000 under the two path process with \$20,000
3 to \$25,000 as we know Mr White and Mr Wiffin received?

4 A. I think you're comparing apples with oranges because
5 Mr White and Mr Wiffin were on the trial track and where the
6 Two Path Approach was a basic fact check.

7 My understanding with TW, if I've got the correct
8 claimant or survivor, is one that we revisited and increased
9 the payment by \$1,000. Now, that may seem very low but we
10 don't actually look at each individual aspect, we look at
11 the severity as a whole. So, that may mean that will depend
12 on where it sits.

13 Q. So, what I'm hearing, is that to actually receive what a
14 claimant may think of as a reasonable compensation for
15 abuse, they have to go down the trial track. But we've seen
16 how brutal the trial track is, particularly when defences
17 such as the Limitation Act are used. Ms Hrstich-Meyer,
18 would you accept that the Crown actually holds all the
19 cards?

20 A. That's a difficult one and I think - I don't think you can
21 compare a standard or a Two Path Approach assessment with
22 the fuller assessment where, you know, we look at the whole
23 file and Mr Young talked about the various files. There may
24 be a perception that the Crown holds all the cards.
25 Ultimately though, the Crown is a defendant in this, as
26 opposed to - the plaintiff determines whether they will
27 continue to trial track but I accept that for some claimants
28 they feel they have no other option.

29 Q. And we certainly heard from Keith Wiffin that he said filing
30 was not his first option but there was no other choice at
31 that time and that for him, and I'm sure for other
32 claimants, the Crown held all the power, all the resources.
33 Would it not be preferable, in terms of equity, fairness, to
34 make an ADR system that was comparable in terms of assessing
35 the abuse, fairly looking at what occurred under its own

1 principles using guidance from other cases and making
2 equitable payments that do not diverge as widely as we have
3 seen from \$5,000 to \$85,000?

4 A. I feel saddened every time Mr Wiffin's claim was mentioned
5 because it was in that straddling period, I think, from
6 moving out of the litigation forum or being dealt with in
7 that way to an ADR process.

8 It's a really tricky question that you've asked because
9 the content is really hard. We've tried, we feel that we've
10 been consistent in quantum. That may not - I accept that
11 many claimants feel that that's not enough or appropriate.

12 But one thing I've thought about quite a bit through the
13 consultation, is that money seems to be the last thing.
14 There are some people that are really, you know, interested
15 in the money but the therapeutic part, the wraparound
16 services, and the apology are sometimes more important. And
17 Dr Inkpen made an interesting comment, that whilst they have
18 very limited funds, in the sense of I think it's \$10,000 or
19 \$11,000, I could be wrong on the amount, there's never an
20 issue about wanting more money. And that's certainly
21 something that we see certainly came out through
22 consultation. And I feel a bit sad that when CLAS
23 [Confidential Listening and Assistance Service] closed,
24 sorry when it finished, we lost that therapeutic arm and I
25 think certainly this process that we've brought in, we've
26 tried to bring that back because for us that's really
27 important.

28 Q. I accept that the feedback may be that money is not a sole
29 determinant in terms of redress, but we certainly know it is
30 one element. And would you accept that a claimant ends up
31 actually feeling retraumatized and very aggrieved to find
32 that there is such a divergence of payment? And it's about
33 informed choice. I should let you answer my first question.
34 Would you accept that if money is not the sole determinant,

1 fairness is a really important element for somebody seeking
2 redress?

3 A. Yes.

4 Q. And an element of fairness is treating like with like in a
5 way that actually is supportable and that does come down to
6 monetary equivalence?

7 A. Yes.

8 Q. And for claimants who have felt very powerless in all of
9 their other dealings and going through the process, would
10 you accept that clear, well articulated information about
11 what the eligibility is, what the criteria are, what the
12 outcomes could be, is critical for them to make decisions
13 about what they will and won't accept?

14 A. Yes, I understand that.

15 Q. Just quickly going back to the Two Path Approach. I
16 understood your evidence to say the first tranche were
17 represented claimants?

18 A. Yes.

19 Q. Tranche one? And tranche two is direct claimants?

20 A. That's my recollection. I hope I haven't got that wrong but
21 I'm pretty sure, yes, it is because we had the judicial
22 review from Cooper Legal from the claimants. I think that's
23 right.

24 Q. Just quickly on the fiscal envelope, I won't take you there
25 because the Commissioners have heard the evidence about the
26 amount of money, I think it was \$9 million for the first
27 tranche. I just wanted to check, was that for the first
28 tranche or for both tranches?

29 A. My understanding is we got \$26 million in total brought
30 forward. From memory, it's in my brief of evidence.

31 Q. Because just looking at the first tranche then, which
32 Mr Rupert Ablett-Hampson had talked about with Cooper Legal,
33 that the amount, I think it was \$9 million, we can quickly
34 look at the document later. In terms of that, my
35 understanding was that all of the represented claimants

1 would be opted into that process and they were then
2 moderated under the bell curve and the categories?

3 A. So, they were - so, initially, so, they were opted in - I'll
4 try not to confuse you.

5 So, we used that group to do the assessment so that we
6 had - because the advice we had from Insights etc., is that
7 you needed a certain size. So, we used that whole group
8 which was moderated but only those claimants that wanted
9 offers from Cooper Legal received them. So, in that sense,
10 they opted out.

11 Q. So, my understanding is that a decision was made that if
12 Cooper Legal advised that a client did not wish to receive
13 an offer, they were still included in the moderation process
14 but they didn't receive an offer?

15 A. That's right.

16 Q. Would that have had the effect of diminishing the fiscal
17 envelope that was available for those who did want to accept
18 the Two Path Approach offers?

19 A. No because while it was talked about as being the fiscal
20 envelope, we always had the ability to ask for more money
21 and the average payments, again, did equate to what was
22 average at that time.

23 Q. And do you recall that at the time, and if we can go to
24 document MSD1916, Assurance Services had a look at the
25 process before it was rolled out?

26 A. They did.

27 Q. And the probably easiest thing is to look at what we found,
28 which is on the second two-thirds of the page. It says,
29 "The brief assessment process has not been fully designed
30 but the development process used to date has been thorough".

31 It talks about the design and implementation has been
32 managed apart from one risk to date. It talks about policy
33 assured review 50 direct claims which showed wide variations
34 in how the categories have been applied.

1 If you can just quickly go through the highlighted parts
2 in the report, rather than the highlighted parts that we
3 have, and read out what the recommendations were from this
4 process?

5 A. Do you want me to answer that question about the 50 direct
6 claimants?

7 Q. We'll do that afterwards.

8 A. Okay. So, I'll read -

9 Q. Really, just what is blacked out on the actual report.

10 A. "Finalise how the moderation will be conducted to manage the
11 risk of inconsistent moderation and ensure transparency.

12 Develop clear, unbiased and comprehensive communications
13 that inform claimants of their options under the Approach to
14 reduce the risk of misunderstandings.

15 Make it as easy as possible to process accelerated
16 settlement offers that have been accepted, to decrease the
17 overall time taken to resolve the claims.

18 The Ministry, not Cooper Legal, should assess the
19 represented claims, to ensure consistency with the way the
20 direct claimants are treated."

21 Q. And so, there were concerns about the moderation process
22 that needed to be resolved before this was rolled out?

23 A. (Nods).

24 Q. And what changes occurred following this advice?

25 A. Okay. So, there is a document in the bundle which explains,
26 there's a moderation document which explains all the steps
27 that we took post this. The other thing too, I think, which
28 was really important, is the quality assurance review of the
29 50 direct claimants which showed wide variations.

30 So, what occurred is that the whole group was moderated
31 by three or four people, so that that inconsistency was
32 removed. So, they redid the group.

33 Q. So, we'll look at what happened with the 50 but just before
34 we do that, and in the interests -

35 A. Sorry, that was the whole group, sorry, yep.

1 Q. And in the lead-up to this process, my understanding was
2 that an analytical exercise had been undertaken using data
3 from 2011 to 2016 payments; correct?

4 A. That's my understanding.

5 Q. And it was on the analysis of that payment data that these
6 particular bands were put in place and then you did your 50
7 case review against those categories?

8 A. Yes, I think so. Sorry, I'm not familiar with the real
9 detail, bearing in mind though I think that when they looked
10 at the period, and this was part of determining payment
11 categories, is they determined that the abuse would have
12 been for the same period that the previous claims had been
13 assessed for, so that helped in that overall picture in
14 relation to thinking that there would be similar cases but
15 bearing in mind that if it did come out and we found that
16 there was a real problem there, we could always go back for
17 more money or ask for more money.

18 **CHAIR:** Can I just check the date of this document?
19 When was the assurance report done?

20 **MS JANES:** It was 2015, March. Can you take that
21 down? That's 26th of March 2015.

22 **CHAIR:** Thank you.

23 **MS JANES:**

24 Q. And then if we can go to MSD1950? This is a document from
25 the 14th of April 2019 and it's from you to Merve Dacre?

26 A. Yes, I am familiar with that document.

27 Q. I thought you were. So, very briefly for the Commissioners,
28 probably if we call up paragraph 3 would be the simplest.
29 Perhaps if you could read that, Ms Hrstich-Meyer?

30 A. Certainly. "Now that a sizeable number of claims has been
31 assessed using our new approach (just over 50) we have
32 completed further analysis to compare these recommendations
33 to past payments made. This analysis has found that the
34 resulting median and mode for recommendations made under the
35 new process is slightly less (by \$5,000) than payments made

1 under our old approach. Further analysis has identified
2 that with minor adjustments to the amounts attributed to
3 each category this discrepancy can be rectified and
4 consistency achieved. Appendix one details the proposed
5 changes we wish to make to remedy this issue."

6 Q. And if we can jump to page 2, paragraph 3?

7 A. "This will address concerns about consistency it will also
8 impact the Ministry's risk to fraudulent claims as it will
9 mean claimants will be able to get payments up to \$25,000
10 with limited testing of the validity of their claims. Given
11 the importance of ensuring fairness to all claimants we
12 recommend that you accept this increased risk".

13 Q. And at paragraph 5, it just records that on the 8th of
14 November it was agreed that all payments made through the
15 Historic Claims Process would be full and final settlements?

16 A. Yes.

17 Q. And then if we can go through to the appendices, Appendix 2,
18 it actually looks at the uplift that you are recommending is
19 approved. So, in the lower categories they are about \$2,000
20 and \$3,000, but for all of - pretty much from the fifth line
21 down, they're all \$5,000 increments; can you see that?

22 A. Yes.

23 Q. Two questions. If this data had originally been done on
24 2011 to 2016 payments but we now find that the median is
25 \$5,000 less than it should have been, that's good news for
26 these particular claimants because I assume they receive the
27 uplift that was recommended, did they?

28 A. We hadn't made the payments and we had always decided that
29 there would be touchpoints where we would keep checking.
30 So, in this case, we amended the amounts which are shown in
31 Appendix 1 and then made those payments.

32 We also did the same exercise a number of months later
33 and the figures matched.

34 Q. So, in terms of the 2011 to 2016 full and final settlements,
35 were they gone back and reviewed?

1 A. I'm not sure.

2 Q. Would you accept that it's challenging for the Commission to
3 consider if there is a flawed starting premise about payment
4 data, then as each iterative process proceeds it's hard to
5 satisfy yourself that treating like with like is actually
6 equitable or fair?

7 A. Yes, if there is a flawed process, yes.

8 Q. We need to very quickly, unless the Commissioners have
9 any - I just want to very quickly look at one document and
10 then we'll turn to joint claims.

11 **CHAIR:** I have no questions about this. Do you have
12 anything?

13 **COMMISSIONER ERUETI:** No.

14 **COMMISSIONER ALOFIVAE:** I just have one question,
15 Ms Hrstich-Meyer, thank you. So, over time you've
16 been increasing the scope of what can be considered in
17 terms of payments. Reflecting back, it was really the
18 process. So, there were systems issues that were
19 emerging?

20 A. Yes.

21 **COMMISSIONER ALOFIVAE:** That were highlighting some
22 endemic failures within the system?

23 A. Potentially, yes.

24 **COMMISSIONER ALOFIVAE:** Potentially or it was because
25 every time something cropped up you had to get more
26 legal advice? Just reflecting back in terms of the
27 delay that Ms Janes raised.

28 A. Yes.

29 **COMMISSIONER ALOFIVAE:** And the significant added
30 trauma to the survivor.

31 A. Yes.

32 **COMMISSIONER ALOFIVAE:** In terms of processes, did you
33 have a legal counsel, I mean apart from yourself of
34 course, on tap, exclusively at the Historical Claims
35 Unit's disposal to be able to speed the process up?

1 A. So, Historic Claims is a separate appropriation. So, I
2 actually fund some Historic Claims lawyers and I think
3 currently we have five but I'd need to confirm that. So,
4 from the Historic Claims budget, we actually pay for
5 dedicated Historic Claims solicitors.

6 **COMMISSIONER ALOFIVAE:** But in terms of resourcing,
7 you would have benefitted from more in hindsight?

8 A. I think - potentially, yes, yes.

9 **COMMISSIONER ALOFIVAE:** Potentially or you would have?

10 A. Yes, sorry.

11 **COMMISSIONER ALOFIVAE:** So, you would have picked up
12 these endemic failures, dealt with them much quicker
13 in terms of your process?

14 A. Yes. I think we went from basically a legal process where
15 we have some social workers where we changed to a process
16 where non-legal, so we're 130 plus me is 131, and we have a
17 smaller legal group. So, we've changed over time in order
18 to reflect, you know, the Alternative Dispute Resolution
19 Process but there's always those complex issues and the
20 legal mix never really leaves because 50% of those claimants
21 are represented. So, those letters are legalistic, raise
22 legal issues and certainly our staff are required to
23 recognise Bill of Rights issues, they get support from
24 technical advisers, plus legal.

25 **COMMISSIONER ALOFIVAE:** No further questions.

26 A. Thank you.

27 **MS JANES:**

28 Q. So, we're very quickly going to look at MSC ending in 457.
29 So, you've gone through the Two Path Approach process and
30 you've recalibrated your claims in terms of the \$5,000.
31 Just quickly before we look at this, you said on Friday that
32 the Two PA process had had, I think, an 89% uplift in
33 tranche one and 79 in two. On its face, that could look
34 successful but we have also heard a lot of evidence,
35 particularly that people just gave up, they got sick of

1 waiting, they just wanted it over and done with. Kerry
2 Johnson was one in particular who said that - Gina Sammons
3 also, hers was trial but she gave up because she just got
4 tired of waiting.

5 What is MSD able to do about the fact that it's just a
6 war of attrition? That the process goes on for so long, it
7 is so dehumanising, retraumatising and they just want it
8 over and done with. We've heard evidence they're our most
9 vulnerable and often our most impoverished population, so
10 they just accept anything. How can we look at a process to
11 make sure that we are not just that war of attrition, that
12 it is actually fair, it is reasonable and it is appropriate?

13 A. My recollection, that causes me some concern, in the sense
14 that the evidence that we've heard from those courageous
15 survivors were all legally represented and the evidence was
16 from Cooper Legal, where 50% of our claimants aren't
17 actually represented and I presume that they had a voice in
18 relation to the closed survivor sessions.

19 So, in that sense, I think I could comment - in answering
20 your question, yes, I can comment to those particular
21 survivors but I am not sure that that is the case with every
22 claimant.

23 Q. Would you accept that even legally represented and a lawyer
24 says "don't accept", there is still a large number of
25 claimants who just actually want it over and done with?

26 A. I'm sure there are claimants that want it over and done
27 with, yes. I don't know the numbers though.

28 Q. And just looking at this document, it's before you finalise
29 the 2018 process. There's some Crown Law advice.

30 A. I am familiar with that.

31 Q. So, if we can look at the bottom email, call it out, thank
32 you, "In the meantime" down would be good. So, again, in
33 the interests of time, this is Crown Law -

34 A. Yes.

1 Q. - providing some comments on the new process? In
2 particular, if we look at the circled comments, the issue is
3 raised "Will there be an opportunity for claimants to
4 correct factual mistakes in the standard offer? That is, if
5 the Ministry makes a mistake in its basic fact check and a
6 claimant is able to correct that, will MSD reconsider the
7 standard offer?"

8 A. My understanding is, yes, if we've made a mistake.

9 Q. And we've seen from Keith Wiffin's case that that took a
10 very long time, despite MSD knowing that they had made a
11 mistake.

12 So, how can you assure claimants that this will happen in
13 a timely way?

14 A. So, what we've put in place with the 2018 process, is that
15 we have a Consistency Panel which is not a moderation Panel.
16 And that is a group of experts who meet once a week to look
17 at the assessments and they go through them and we have
18 people like Mr Young and Legal etc.

19 So, issues can be picked up there, so they will go back
20 to the assessor to fix before they come back. So, one would
21 hope that some of those things will hopefully be picked up
22 at that stage.

23 Q. And what would happen to, say, the Ngatai claimants, they
24 are not aware that a mistake has been made or that new
25 allegations have been accepted that may impact on their full
26 and final settlements; how do they get rectified in this
27 process?

28 A. I think you need to define what a mistake is because we
29 would say that the John Ngatai claims were, we assessed them
30 at a time based on the information we had where we changed
31 our position as we got to a point where we had enough
32 information, similar information to determine that we should
33 accept them. So, I don't think that is necessary what but I
34 can't be sure because I'm not the writer of that, what that

1 meant, but certainly that's not my understanding of the
2 mistake.

3 Q. Looking at the second circle, "How will the moderation
4 process work? The overview of the process gives the
5 impression claims will be categorised simply on the basis of
6 the allegations in them and the basic fact check but the
7 flowchart indicates moderation will be undertaken if the
8 spread of payments is not within allowable margins."

9 A. That's not my understanding, that we don't - we don't
10 moderate them, in the sense that if we found over time that
11 the average payment was going up, we would look at that. We
12 have employed a Principal analyst in the past and we
13 now - we will shortly have a lead analyst who will be
14 looking at those things on a regular basis, so that we can
15 do similar things if need be to what we did with the uplift
16 of the categories.

17 Q. So, this is not a case where there's a bell curve, as we saw
18 in the Two Path Approach process they must fit within?

19 A. No, not at all, no, no.

20 Q. And then at the bottom it says, "In terms of the categories
21 and payment levels for the standard evaluation" and if we
22 pop over the page, if I can have you read the top circle?

23 A. "The structure of the payment categories, and the level of
24 payment, reflect the approach MSD has taken over time (as
25 endorsed by previous Governments). Has the Ministry tested
26 the assumptions behind the approach with the current
27 government? For instance", do you want me to continue?

28 Q. Yes, thank you.

29 A. "The payment levels reflect past payments. They could be
30 perceived as low. Is the government comfortable with the
31 payment levels? If not, does it consider consistency should
32 be the over-arching principle here, or would it prefer for
33 the payment levels to be increased?".

34 Q. And so, just on that, do you know if any discussion was had
35 with government about whether they were comfortable with

1 what were perceived as low levels of payment or whether
2 there should be some calibration at this point in time?

3 A. Certainly, we didn't specifically say low levels of payment
4 because that is a perception from the writer. What I
5 recall, from memory, is that when we prepared a number of
6 reports to the Minister, we talked about the principle of
7 consistency. And I just think in the context of this email,
8 there were so many issues that what we did over quite a long
9 period, is we met regularly with Crown Law as an informal
10 Working Group and we actually worked through all these
11 issues, which also related to the handbook that we have
12 released. So, we fundamentally worked through the issues
13 that Crown Law had raised.

14 Q. And we won't go into it because it will take a bit more time
15 than we have but in the next circle there are potential
16 issues of consistency coherence between the categories and
17 concepts could be clarified. And, in some respects, they
18 error the concerns that Cooper Legal had about the Two Path
19 Approach categories about definitions, and are you saying
20 that they were also taken on board and were, to your mind at
21 least, resolved in the handbooks and the new categories?

22 A. I think what I am saying is we worked through all the issues
23 and we worked through to a position that we were comfortable
24 with, bearing in - that the Crown was comfortable with,
25 bearing in mind that there are trade-offs.

26 Q. Just very quickly on the handbook. I note that there have
27 been several iterations in a very short space of time and
28 you mentioned on Friday that there was discretion for the
29 Consistency Panel to look at things like BORA breaches or
30 litigation risk?

31 A. That has always been there.

32 Q. But I noted in the latest handbook that litigation risk has
33 been removed as a factor; what is the reason?

34 A. The reason it was removed is it is an assessment tool for
35 the assessors and it was determined that that probably

1 wasn't the appropriate level to determine litigation risk
2 and Bill of Rights breaches. So, whilst it does talk about
3 Bill of Rights breaches, the Consistency Panel, which is
4 where we have our experts and our more senior people, will
5 actually look at those factors. So, it hasn't been taken
6 out, that was just to take something out so that assessors
7 focused on what they needed to do as their role.

8 Q. So, it hasn't been removed?

9 A. Not at all, no, I can assure you it hasn't.

10 Q. Thank you. We will jump to joint claims processes, if we
11 can look at MSC ending in 493. This has a long history.

12 A. It does.

13 Q. I am going to do it in very short order, if you'll help me.
14 In that, this is a Document 22 August 2017. You have
15 described in your evidence at paragraph 3.55 and in your
16 supplementary brief at 3.1 about joint claims. So, this
17 really is a snapshot in time for the Commissioners, in terms
18 of the background being that effectively MSD for a long
19 period was the main defendant, albeit that they involved
20 Ministry of Education claims as well; correct?

21 A. That's my understanding.

22 Q. And then in this particular document, page 4, emails always
23 go backwards so we'll go to the bottom email and it starts
24 off with - yes, this is the one. So, if you can call out
25 the first paragraph?

26 A. "I understand that you briefly discussed at a discovery
27 meeting a few weeks ago with Sue and Leith about the
28 assessment of MOE [Ministry of Education] elements of joint
29 claims. This is an issue that has been on our mind lately
30 given the group of Campbell Park cases that Cooper Legal
31 have placed on trial track. We are mindful that MOE are
32 likely to be better placed from a knowledge perspective to
33 be assessing Campbell Park elements and it makes more sense
34 for the agency who has the legal responsibility for the
35 staff members to be assessing those allegations, especially

1 when you will be instructing Crown Law on that portion of
2 the claim and funding it".

3 Q. And then if we jump to page 2, paragraph 5. So, the
4 catalyst for this is there are a number of Campbell Park
5 claims which also have MSD elements?

6 A. Yes.

7 Q. And discussion about how the process should be going
8 forward. This is actually now Ministry of Education
9 responding to MSD. Second paragraph it says, "Our proposal
10 that we are keen to explore with you", and if I could have
11 you read that?

12 A. "Both MSD and MOE advise each other when they receive a
13 claim that has any allegations that would more appropriately
14 sit with the other agency.

15 Agree - each agency to advise the other of all claims
16 with allegations covering the other's jurisdiction. For
17 example, until recently we were not aware that [] had
18 a claim about Campbell Park with MSD. Mr [] complaint
19 to MOE was only in relation to Roxburgh health cam school.
20 The minutes's offer to settle this part of the claim has
21 been rejected and Mr [] has filed a SOC", Statement of
22 Claim.

23 Q. So, MSD on page 1, paragraph 1, then replies. So, Ministry
24 of education is wanting each agency to assess the elements
25 of their own claim. MSD on page 1, paragraph 1, it talks,
26 actually if we go to paragraph 3 - actually, let's look at
27 paragraphs 2 and 3 very quickly. So, if I may summarise it,
28 and if you want to read it, I'll just very quickly summarise
29 it.

30 So, it talks particularly about the special schools with
31 their roles and responsibilities. This is a special case,
32 so will often need contributions from both agencies. "In
33 the past we've do this by consulting and collaborating". It
34 talks about each Ministry holding files that are relevant to
35 the claim.

1 And, Ms Hrstich-Meyer, my understanding is that following
2 these discussions, MSD put together a spreadsheet of the
3 claims that were joint claims, so the Ministry of Education
4 was fully aware of those that came within their liability
5 for possible contribution; do you recall that?

6 A. It's not attached.

7 Q. No, the spreadsheet isn't.

8 A. No.

9 Q. It's in discussion and that follows after this particular.

10 A. I'm not sure about that, sorry, without seeing it.

11 Q. Do you have any independent recollection that that is what
12 the Ministry did?

13 A. There was a spreadsheet put together. I can't recall the
14 details.

15 Q. So, at that point they were going to collaborate and my
16 understanding was that MSD was going to do the assessment
17 and then there would be contributions apportioned between
18 MSD and MOE for the claim?

19 A. I think there is a bit in the middle that you have missed,
20 which is after we do the assessment we have a detailed
21 discussion with the Ministry of Education and then that next
22 step occurs. So, there's actually a significant discussion
23 that occurred before that's finalised.

24 Q. So, there's the consultation. Who conducts the assessment?
25 MSD does the MSD part and Ministry of Education does the
26 education part?

27 A. Now, yes, now in 2020, yes.

28 Q. So, what was the change because at that point it was going
29 to be MSD effectively undertaking the assessment using its
30 processes. What led to the change which is now reflected in
31 the 2020 letter where each, it's entirely separate?

32 A. So, we had a number of workshops with the Ministry of
33 Education because we put a new process into place. So, we
34 just wanted to work through how that would occur, whether
35 the Ministry of Education wanted to use a similar process or

1 so forth. So, there were a number of, I think two or three
2 workshops from memory, and correspondence as well where we
3 got to the place where they would be separate, bearing in
4 mind that the Ministry of Education follows - doesn't do
5 a - I shouldn't call it a quick assessment but the first
6 part but a standard assessment. My understanding is that
7 MOE uses the same process but you'd need to confirm that
8 with them.

9 Q. And are you aware of documents in which it records concern
10 about inconsistency of the processes, the fact that the
11 levels of compensation are different between MSD and the
12 Ministry of Education and that the fact of the new process
13 and MSD would make that more stark than it previously had
14 been? For the record, the document is MSC609 but it's not
15 in the bundle.

16 So, really, are you aware that those were concerns
17 between the departments about -

18 A. Yes, we did have discussions in relation to those aspects.

19 Q. And, very quickly, if we can go to MSC ending in 437, and
20 while that's coming up, do you accept that under the new
21 process between MSD and the Ministry of Education, as Cooper
22 Legal noted, if the predominant claims were against MSD but
23 there might be elements of abuse in a school, it is an
24 impediment and perhaps prohibitive for a claimant to feel
25 they either have the will or the emotional ability to do two
26 claims separately which they will now be required to do?

27 A. I accept that will be an issue in some cases.

28 Q. And looking at this document, we're really now, in terms of
29 joint claims, jumping very briefly to the transition between
30 MSD and Oranga Tamariki. This is a memorandum from the 1st
31 of July 2006 from Child, Youth and Family to Kay Read.

32 **CHAIR:** That's 2016?

33 **MS JANES:** 2016, yes, it is.

34 Q. We won't go into the detail?

35 A. I am familiar with that document.

1 Q. Originally there was going to be a transition from 1 January
2 2008 but then because Oranga Tamariki was not statutorily
3 established until 1st April 2017, the cut-off date became
4 1 April 2017; can you confirm I am correct?

5 A. Yes, we did pick up claims from that date but bear in mind
6 it was after Oranga Tamariki came into being. So, the
7 document you are referring to still related, my
8 understanding and Mr Groom might be able to provide more
9 information, is this related to a case that still sat with
10 Oranga Tamariki because they hadn't, in fact, transferred
11 over to MSD.

12 Q. And the particular area that I want to take you to is
13 page 1, bullet 2, probably for context let's look at the
14 first two bullet points.

15 Ms Hrstich-Meyer, can I have you quickly read?

16 A. Certainly. "Complaints about abuse that happened while in
17 care pre 2007 are either dealt with via historic or
18 contemporary claims; complaints post 2007 are dealt with via
19 the Child, Youth and Family complaints process.

20 There is an inconsistent approach from
21 historic/contemporary claims and the complaints process;
22 particularly with regard to abuse that occurred while in the
23 care of none Child, Youth and Family contracted care
24 providers".

25 Q. And then the next two bullet points, please?

26 A. "Claimants are often paid compensation for abuse when
27 assessed by historic contemporary claims and not when
28 assessed via the complaints process."

29 Q. And it says, "This situation places the organisation at risk
30 because of the inequitable way our ex children in care are
31 treated and there is considerable litigation risk should any
32 of the complainants take us to Court".

33 So, in terms of the MSD part of this particular equation,
34 what is being done to ensure that there is consistency in
35 equity between historic and contemporary claims, as I

1 understand MSD is responsible for both of those processes on
2 behalf of itself and Oranga Tamariki?

3 A. Sorry, I can just clarify that at this point, we only dealt
4 with pre 2007 and then - so, now we pick up everything from
5 1st of April 2017. With Oranga Tamariki, we work very
6 closely together and we talk. And certainly if there's a
7 cross-over claim, we will talk through how we deal with
8 that. I understand Oranga Tamariki can probably - their
9 witness would be better placed to talk about their process.
10 But certainly, we aim to work together in relation to where
11 there is a cross-over claim but I can't really give evidence
12 for Oranga Tamariki as to what their claims process is or
13 complaints process.

14 Q. No. And it's really an MSC370, in that particular document
15 it talks about a proposal that MSD will take responsibility
16 for Oranga Tamariki's recent claims?

17 A. Yes.

18 Q. And this is an MSD memorandum dated the 9th of April 2019
19 and it talks about Oranga Tamariki to establish a complaints
20 process for people who have been or are in their care. But
21 a note from you, Ms Hrstich-Meyer, currently under
22 development is a proposal that MSD take a significant role
23 in monitoring OT's delivery of services. Can you just very
24 quickly give us is summary of what is occurring within that
25 space?

26 A. I'm sorry, I can't because that sits within the MSD, within
27 a different area which is not the Historic Claims area, it's
28 the Independent Monitor, and I think Mr MacPherson provided
29 some information in his brief of evidence.

30 **MS JANES:** I am probably going to leave it there,
31 apart from one issue which I think in fairness needs
32 to be raised with Ms Hrstich-Meyer but hopefully it's
33 relatively short.

34 Q. Ms Hrstich-Meyer, I spoke with you on Friday in relation to
35 the article that had been published by Mr Aaron Smale the

1 night before. Briefly by way of context, it raises issues
2 about Crown Law and MSD knowledge of use of private
3 investigators, particularly relating to the White trial.
4 And it effectively makes the criticism that involves you
5 being aware of misleading information being provided to
6 Mr Smale and also initially to the State Services
7 Commission, that's MSD.

8 In fairness, I thought you should be invited to comment.

9 A. Thank you for that. I recall that request. I was in the
10 Legal Group and we had a media request. With media
11 requests, they usually have a very tight timeframe, so it's
12 often the same day or the following day. I was quite
13 concerned about this because it was asking a very wide
14 issue.

15 Two things I've learnt from that, and something that I do
16 regularly, is that when we get a complicated question that
17 we actually need to look at the files, I tend to pushback
18 and say it's in fact an Official Information Act request, so
19 that we can actually take the time to get the correct - to
20 get all the information to be able to answer that question.

21 I took that question as being do we surveil ADR clients
22 which I knew we do not. I then made the assumption, which
23 in hindsight I think was wrong, that we were - that instead
24 of - so, I knew we had used private investigators for the
25 White trial. I wasn't familiar with the details.

26 So, given the timeframes, I made a number of calls to - I
27 spoke to Mr Young, to Crown Law, to the QC. In responding,
28 I realise that I took the word "claimants" to mean
29 witnesses, not claimants, so the answer I provided may not
30 have been accurate but that was based on the flawed
31 presumption I made at the time.

32 **MS JANES:** I have no further questions and I don't
33 know whether there's any re-examination.

34 **CHAIR:** Let's find out. Will there be any
35 re-examination?

1 **MS ALDRED:** Just one very short point.

2 **CHAIR:** We will do some timing issues here.

3 (Commissioners consult). And I have one area that I
4 would like to cover which is important. The question
5 is, shall we take a morning adjournment now or do we
6 continue on to the end? What would you prefer to do?

7 **MS JANES:** I'm in your hands but maybe if we could
8 finish this witness and then we could do a setup.

9 **CHAIR:** Exactly, all right.

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1
2 **LINDA LJUBICA HRSTICH-MEYER**
3 **QUESTIONED BY THE COMMISSIONERS**
4
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6 **COMMISSIONER ERUETI:** Can I ask about the Independent
7 Children's Monitor? Am I right in thinking this
8 process is going to monitor, wrong other things, the
9 redress schemes monitored by MSD?

10 A. That's not my understanding. The Independent Children's
11 Monitor is a group that sits within MSD but my understanding
12 is it monitors Oranga Tamariki but I'm not familiar with the
13 detail in relation to that monitor because it is a different
14 group. But I do understand that the monitoring will
15 transfer over to, and I can't -

16 **COMMISSIONER ERUETI:** The children's?

17 A. Yes.

18 **COMMISSIONER ERUETI:** In time it's going to be
19 transferred to the Office of the Children's
20 Commissioner?

21 A. That's right.

22 **COMMISSIONER ERUETI:** To your knowledge, it's not
23 going to be involved in the historic contemporary
24 MSD -

25 A. Not the MSD claims.

26 **COMMISSIONER ERUETI:** Okay, good, thank you. This
27 question about the overlap, if you have someone in
28 care who's been in care, I think the question is where
29 they spent their majority of time in care between you
30 and the new agency, Oranga Tamariki, about who will
31 assess the claim. About how you go about determining
32 these matters. Like, is there - what's the process
33 for -

34 A. Okay. So, we talk regularly and have very good
35 relationships with Oranga Tamariki people in a similar area

1 and we're working through a Memorandum of Understanding so
2 that we can work through that, so that there is transparency
3 over what that process will be. So, there have been
4 discussions and we're just working through the issues, so
5 there will be, I'd hope, a Memorandum of Understanding at
6 the end of those discussions.

7 **COMMISSIONER ERUETI:** Okay, thank you. And just one
8 last question about the collective sessions for Maori
9 claimants. When we discussed this the other day, I
10 think you said there had been three of those cases to
11 date; is that right or something like that?

12 A. Yes, where we had siblings or family members present for
13 those.

14 **COMMISSIONER ERUETI:** Had they raised -

15 A. They raised, they actually asked, so we - we would hope to
16 be at a stage as we develop, and it's one of those issues
17 that we put on our 3-4 year plan, that it's something that
18 we would hope to offer up, as opposed to claimants asking.

19 **COMMISSIONER ERUETI:** Yes, that's the question I have
20 about your plans here. Is there a budget, for
21 example, for exploring how these operate and
22 implementing them?

23 A. Yes.

24 **COMMISSIONER ERUETI:** It's been allocated for this
25 financial year?

26 A. Yes. So, we made a very detailed budget bid in 2019 and it
27 took us a long, long time because we wanted to factor in all
28 the aspects. So, we spoke to people that perhaps could
29 provide us with potential details but I think, as
30 Mr MacPherson said, we can always go back. But at the
31 moment, yeah, we're okay. Money-wise, that was certainly
32 budgeted in and the wraparound, the connectors and so forth.

33 **COMMISSIONER ERUETI:** Good, okay, thank you.

34 A. Thank you.

1 **CHAIR:** Ms Hrstich-Meyer, I just want to return to
2 something that you gave evidence what seemed like an
3 age ago, and it related to the question of disabled
4 people.

5 A. Yes.

6 **CHAIR:** The Royal Commission's Research Department
7 have been working on looking at the cohort numbers,
8 the numbers of people, etc.?

9 A. Yes.

10 **CHAIR:** One of the findings that is coming out, is
11 that people with a learning disability, here we're
12 talking about not just physical disability but
13 learning disabilities, are more likely to have been in
14 care and for longer than non-disabled people. And
15 that these people are proportionately
16 over-represented, particularly in Oranga Tamariki at
17 the moment.

18 So, we have high percentages of disabled children, young
19 people, young adults, and they are over-represented in terms
20 of their numbers in care.

21 So, my question to you, and I don't know if you can tell
22 us now and it may be something that you can advise us later,
23 and that is the question, what percentage of your claimants
24 do you know have an identified disability?

25 A. I can't tell you off the top of my head but we can certainly
26 have a look at it.

27 **CHAIR:** It is a number that you would be able to
28 provide us?

29 A. Well, I hope so. We will do our best.

30 **CHAIR:** Okay. That's the first question, so we've got
31 to get a sense of the numbers of people.

32 A. Yes.

33 **CHAIR:** And that includes neurodisabilities etc.?

34 A. Yes.

1 **CHAIR:** My second part of that is, do you have any
2 protocols or training for your people to assist with
3 dealing with claims from people with learning
4 disabilities?

5 A. I would say that the people that we recruit to talk
6 face-to-face or who are the contacts are our support team
7 which have various backgrounds which I would hope, social
8 work, psychology, counselling etc., would be able to assist
9 with that but it's probably something that we need to think
10 about further.

11 **CHAIR:** But there are specialists - people with
12 specialist knowledge, special abilities, who really
13 should be engaged to assess these claims and to manage
14 the people who are coming with their claims in perhaps
15 a different way than ordinary claimants? When I say
16 ordinary, non-disabled claims I mean.

17 A. Yes, yes, that's something I think we need to look further
18 at and I think, like you say, the numbers will assist with
19 that.

20 **CHAIR:** Thank you.

21 A. Thank you.

22 **CHAIR:** I have no further questions. Do you have
23 anything arising?

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1
2 **LINDA LJUBICA HRSTICH-MEYER**
3 **QUESTIONS ARISING FROM MS ALDRED**
4
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6 Q. I just have a very short point before we finish. The
7 question was put to you, Ms Hrstich-Meyer, by Ms Janes and
8 the way the particular question I want to talk to you about
9 was put was very much a compound question where a series of
10 things were stated before a question was asked and I just
11 want to break it down because I think it's just important to
12 get some clarity around your response.

13 The question I'm talking about put to you that the
14 outcome of a claim is dependent on the process that MSD
15 applied to the particular claim. And, as I understand it,
16 you agreed that the process would influence the monetary
17 outcome of the claim; is that correct?

18 A. I probably said yes in relation to the whole question but,
19 in fact, no because whatever process we use, there should be
20 a consistent payment based on all the work we've done.

21 Q. And I just want to be really clear about this. So, while
22 each process, so for example the Two Path Approach versus
23 the current system of categories, provided for particular
24 categories of payment; that's correct?

25 A. Yes, it is.

26 Q. But the other part of the question, which I also just wanted
27 to put to you separately, I suppose, was that the outcome of
28 a claim Ms Janes said wouldn't be affected by the
29 allegations of abuse themselves; now what's your response to
30 that?

31 A. Well, we do, I mean we look at all allegations and then we
32 determine where they sit in those categories. So, we
33 identify all the allegations and then we look at the
34 severity of abuse from there.

35 **MS ALDRED:** Thank you, that's all, no more questions.

1 **CHAIR:** Thank you.

2 A. Thank you.

3 **CHAIR:** On that note, I think we will, I was going to
4 say dispense with Ms Hrstich-Meyer but I do not mean
5 that.

6 **MS JANES:** I'm sure MSD would like her back.

7 **CHAIR:** I am sure they would. And to thank you, thank
8 you very much for your evidence. And I just say a
9 general acknowledgment to MSD and to the other
10 departments for the vast amount of work they have put
11 into supplying the Royal Commission with a huge amount
12 of documentation, only the tip of the iceberg of which
13 has been released today but we are very grateful for
14 the fact that a lot of work has been put in to comply
15 with the orders that have been sent out and we do
16 appreciate that, thank you very much.

17 We will take the adjournment.

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20 **Hearing adjourned from 11.50 a.m. until 12.05 p.m.**

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STEVEN MICHAEL GROOM - AFFIRMED**EXAMINED BY MR CLARKE-PARKER**

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CHAIR: Good morning, Mr Clarke-Parker.

MR CLARKE-PARKER: Good afternoon.

CHAIR: Yes, you got me, thank you, good afternoon.

MR CLARKE-PARKER: Mr Groom is the next witness for the Commission.

CHAIR: Mr Groom, good afternoon to you, welcome to the Commission. (Witness affirmed).

MR CLARKE-PARKER:

Q. Tēnā koe, Mr Groom, can you please introduce yourself?

A. Tēnā koutou katoa

Nō Ingārangi ōku tipuna

I tae mai ōku tipuna ki Aotearoa i te tau kotahi mano, e waru rau, e tekau mā iwa

I tipu ake au ki Tauranga Moana

E noho ana au ki Te Whanganui-ā-tara

Ko Steven Michael Groom

Ko tēnei taku mihi ki ngā tāngata whenua o te rohe nei

Ka mihi hoki au ki ngā tohu o te rohe nei

Nō reira, tēnā koutou katoa.

CHAIR: Tēnā koe.

MR CLARKE-PARKER:

Q. Thank you, Mr Groom. And you have prepared two briefs of evidence for this hearing; one the primary brief of evidence dated 27 January 2020 and the reply brief dated 6 March 2020; that's right?

A. That's right.

Q. And you have those in front of you?

A. I do.

Q. Thank you. Can I have you begin reading from paragraph 1.1 of your primary brief?

1 A. I am the General Manager of Public Ministerial and Executive
2 Services at Oranga Tamariki. I have worked in the
3 New Zealand Public Service since 2002 and have held my
4 current role since October 2017.

5 Q. Thank you. And do you have some further background on your
6 work history prior to that as well, I understand?

7 A. Yes. So, I first started as a Case Manager for Work and
8 Income in the Bay of Plenty. I think this role was my first
9 real insight into the vicariousness of wellbeing for some in
10 our society and the impact of childhood impact on a person's
11 life course and indeed on the generations that come after
12 them. I remember my Chief Executive at the time talking
13 about going beyond treating the symptoms to addressing the
14 cause in terms of making meaningful change. And I heard
15 that reflected in Dr Inkpen's evidence when she drew on the
16 metaphor, I guess, that Dr William Bell uses around pēpi
17 coming down the stream and that the natural instinct is to
18 pull those babies out of the stream and that's absolutely
19 the right thing to do.

20 So, yes, you absolutely have to pull the babies out of
21 the stream but at some point you need to go up the stream to
22 see where these pēpi are coming from.

23 And, yeah, I guess that's why, you know, a role that I
24 started some 20 years ago, to be frank, because they
25 employed the 22 year old version of myself, is the one
26 that's led into the role I am in today and a commitment to
27 the public service.

28 Following my case management role, I spent a number of
29 years with the Ministry of Social Development working in a
30 range of roles, including on a disability project,
31 operational policy roles and operational management roles.
32 I then spent two years at Ministry of Education in a general
33 management role. And then in 2017 was drawn to Oranga
34 Tamariki for the reasons that I've outlined earlier.

1 Q. Thank you. Can I have you continue reading from
2 paragraph 1.2 of your primary brief, please?

3 A. The Public Ministerial and Executive Services Group includes
4 the Feedback and Complaints team which has responsibility
5 for overseeing the processing by Oranga Tamariki of claims
6 relating to abuse in care. Among other things, the Public
7 Ministerial and Executive Services group also has
8 responsibility for providing information in response some
9 9,000 to 10,000 requests annually for information under the
10 Privacy Act 1993.

11 I just add, I also have responsibility for the
12 Ministerial Services team which responds to requests under
13 the Official Information Act, correspondence from members of
14 the public and also various other public and Parliamentary
15 accountability processes.

16 Q. Thank you. And the rest of section 1 will be taken as read
17 but I understand you have some further contextual comments
18 on your brief of evidence?

19 A. Yes. I thought it might be useful if I talked a little bit
20 about the broader context of Oranga Tamariki, the
21 organisational purpose; partly because I think it is within
22 the remit of the Commission's wider work and partly because
23 one of the driving aims of this work is to reduce the harm
24 in care which in time, over time, should reduce the need for
25 processes such as the ones we are discussing today.

26 So, Oranga Tamariki was established with a very strong
27 focus on the future. And one of the overriding aims is to
28 shift the weight of effort and intervention from the high
29 intensity end of social work practice, so essentially the
30 bringing of children into care, towards intervening with
31 families and whānau much earlier in the process and
32 supporting them to provide loving and safe homes for their
33 children.

1 There's broadly been three areas of focus in this work
2 during the first three years of Oranga Tamariki's existence.
3 Those are partnerships, practice and safe loving homes.

4 On partnerships, I guess I would say we strongly
5 recognise as an agency that we don't hold all of the
6 answers. And further to that, you know, for a range of
7 reasons, and some of them being the very reason that we are
8 all here today, there can be, I guess there's a lack of
9 trust in the relationship and there's some work to do to
10 rebuild that trust.

11 So, in that context, partnerships are critically
12 important if we want to intervene families and be a
13 constructive and supportive presence. In some cases, it's
14 not going to be our faces that people want to see.

15 So, partnerships are hugely important. We've made
16 progress in this area. So, we have a range of strategic
17 partnerships and relationships agreements with iwi and Maori
18 organisations. And I think these agreements are a very good
19 Statement of Intent and I'll probably talk later in my
20 evidence about the real practical impact that they're
21 having. But I think as an organisation, we recognise that
22 it's a good Statement of Intent but the rebuilding of trust
23 and relationships will occur in our day-to-day interactions
24 with people.

25 So, from partnerships we move to practise. I think to
26 enable an environment in which there is genuine partnership
27 and general devolution of responsibility, the way we
28 practice needs to shift and it needs to be a practice that
29 is focused on open, reflective and collaborative engagement.
30 And alongside that, I think there was a general acceptance
31 that the quality of social work practice needed to be more
32 formally defined and monitored and opportunities taken to
33 improve.

34 And then from practice, we move to safe and loving
35 places. So, I talked about one of the driving purposes of

1 Oranga Tamariki being to prevent the need to bring people
2 into care. I think that it's always likely there will need
3 to be some statutory intervention and children being brought
4 into care. In that context, it's imperative that that care
5 is safe and loving.

6 So, there's been some work around that. So, the Practice
7 Standards is one area of that, where we kind of set out and
8 define what people can expect from social work practice. We
9 have established a Safety of Children in Care Unit, so this
10 is a unit which is set up to monitor and report on any
11 instances of harm occurring in care. This is the first time
12 that there has been regular, consistent public reporting of
13 harm that occurs in care in New Zealand's history.

14 We believe from talking to colleagues in other
15 jurisdictions that it's possibly unique in the world.

16 And it's incredibly important; if you want to address a
17 problem, you need to know what the problem is.

18 Finally on this, I want to acknowledge that 60% of
19 kaitiaki in care are Māori. So, I mean, in effect all of
20 what I talked about only works if it works for Māori.
21 Section 7AA of the Oranga Tamariki Act sets out our
22 responsibilities as an agency in terms of how we work with
23 tamaiti Māori, how we have regard to Te Tiriti, how we work
24 to reduce disparities. And I think, you know, that's
25 something that I've seen genuine change on in this
26 organisation that goes beyond words on a page. There are a
27 couple of practical examples that spring to mind, are the
28 Kairāranga-ā-whānau roles which are roles within the
29 organisation whose purpose is to connect the tamaiti in our
30 care with their whānau, iwi, hapū and their whakapapa.

31 There's also been an effort to increase the number of how
32 social workers and over the last year the number of Māori
33 social workers have increased by 7%.

1 And I talked earlier about our strategic
2 partnerships with iwi and Māori organisations and we're
3 seeing benefits from those partnerships.

4 So, for example, there's a programme in Waikato Tainui
5 where the programme intervenes early, you know,
6 pre-statutory intervention, and has prevented 253 tamaiti
7 coming into Oranga Tamariki's care.

8 So, I mean I hope I haven't given the impression that we
9 see there as job done. This is a good start and the hard
10 mahi lays ahead of us in this area.

11 I just wanted to close this section by saying Oranga
12 Tamariki fully supports the work of this Commission. We are
13 an agency that's focused on change and focused on the future
14 but at the most fundamental level, that change needs to be
15 informed by the past. Kia whakatōmuri te haere whakamua - I
16 walk backwards into the future with my eyes fixed on the
17 past.

18 Q. Thank you, Mr Groom. I will now take you to paragraph 2.1
19 of your primary brief, please.

20 A. Oranga Tamariki was established on 1 April 2017. Under the
21 Oranga Tamariki Act 1989 it has responsibility for the care
22 and protection of children and young persons and the
23 provision of Youth Justice services for children and young
24 persons.

25 In October 2018, the Minister for Social Development and
26 the Minister for Children agreed that all claims relating to
27 the abuse or neglect of children in care should be managed
28 by MSD.

29 Just adding to that, prior to this, the default had been
30 that Oranga Tamariki would take responsibility for events
31 from 1 January 2008.

32 Q. Thank you, Mr Groom. Can I please remind you to speak
33 slowly as you go through.

34 A. Yes.

1 Q. I'm now going to take you down to paragraph 2.5 where you
2 discuss the current position, which is an amendment of the
3 position reached in October 2018 following a further
4 decision in August 2019 about the allocation of
5 responsibility for claims between MSD and Oranga Tamariki.

6 A. The current position is that, other than discussed in
7 paragraph 2.6 below, if a claim is received about abuse in
8 care relates to events prior to 1 April 2017, responsibility
9 for investigating/considering the claim, and for any
10 outcomes will sit with MSD; and if a claim is received about
11 abuse in care relates to events from 1 April 2017 onwards,
12 responsibility for investigating/considering the claim, and
13 for any outcomes will sit with Oranga Tamariki.

14 Q. And you noted that paragraph 2.6 was an exception to that,
15 and 2.6 relates to 19 claims that Oranga Tamariki has
16 addressed or has responsibility for addressing rather, even
17 though they date to events before 1 April 2017. Can you
18 please provide some further explanation of the approach
19 taken for those claims?

20 A. Yes. So, as I noted in 2.6, there were 19 claims at the
21 time where we had done a significant amount of work with the
22 survivor and it seemed reasonable that they should continue
23 in the current process that they were in. So, we agreed
24 that we would retain responsibility for those.

25 I should just say for all but three of those, three of
26 those are transferred back to MSD, so we offered the choice
27 to the survivor whether they would like to continue in our
28 process or transfer back to MSD.

29 **CHAIR:** Did you say all but three of them have been
30 transferred back?

31 A. No, sorry. Three have been transferred back.

32 **CHAIR:** Three have been transferred, the rest remain?

33 A. 16 remain, that's right. So, I noted in my brief of
34 evidence that at the time we had resolved five of those
35 claims. We've now resolved a further six of those claims,

1 so we've resolved 11 claims in total, three transferred to
2 MSD, leaving five claims that we're close to resolving.

3 And I would just like to note that we have received one
4 complaint from an individual about other individuals which
5 we are in the process of resolving as a claim.

6 **MR CLARKE-PARKER:**

7 Q. And I understand, given that, this is the only claim that
8 the Ministry doesn't wish to discuss any of the details of
9 that in the public setting?

10 A. That's right.

11 Q. For clarity's sake, I note that that claim you've just
12 referred to relates to post 1 April 2017 events?

13 A. Yes, it does.

14 Q. Thank you. Can I please get you to continue your
15 explanation now of how those other 19 claims have been
16 progressed?

17 A. So, I think that approach that we've taken could be
18 described as relationship based. The benefits of a
19 relatively small number of claims is that we could operate
20 essentially on a one-to-one basis, with one worker assigned
21 to the claimant throughout the whole process.

22 The staff who worked with them are all qualified social
23 workers who have experience of working in a trauma-informed
24 setting and they've all received training on resolution
25 through a tikanga Te Ao Māori lens.

26 I think they've prioritised the relationship with the
27 survivor and I've seen through some of the conversations
28 that I've had with survivors, that for at least some of the
29 survivors that's been something they've valued about going
30 through the process.

31 I wanted to note extremely useful advice that we got from
32 Cooper Legal in the early stages, we met with them I think
33 it was in mid-2018. The advice they provided to us has
34 helped inform the process that we have at the moment and the

1 more enduring process that we're in the process of
2 establishing.

3 They highlighted to us, amongst many other things, the
4 importance of a respectful and personal process, the
5 importance of establishing and re-establishing familial
6 intergenerational links, the importance of access to
7 education outcomes.

8 So, I think we've got a process that on the whole is
9 working well but it is working well because of the people
10 operating within it. I think it's important that we support
11 that work by putting in place the systems and the clarity to
12 support the work that's happening.

13 I have provided some information on how we're going about
14 this in a document which I believe is in the bundle dated
15 20 August 2020. I would note that since this document was
16 produced, the work has progressed even further, into the
17 build of our more enduring claims process. We expect to
18 have that work completed in the first half of next year,
19 2021.

20 I would reflect that I guess our agency has a relatively
21 unique opportunity. The fact that we're responsible for
22 events that occurred after 1 April 2017 means that we are
23 likely to be dealing with people who are in closer proximity
24 to the harm that's occurred and we're likely to be dealing
25 with people who are earlier on in their life's journey and
26 perhaps that provides us with an opportunity to make a
27 meaningful change earlier in their life.

28 So, I think - and an important feature of the process
29 that we're designing will be, I guess, the non-monetary
30 supports that we can provide. I think they've been referred
31 to previously as wraparound services, access to vocational
32 training, to education, to therapeutic support, support with
33 housing, support with job searching.

34 And I'd also note that alongside our responsibility for
35 developing this claims process, we're also obviously

1 responsible for the care that our tamariki and our rangatahi
2 currently in our care receive and there is an onus on us to
3 use the information that we receive from the claims that we
4 consider to improve those services.

5 Q. Thank you. So, we were at paragraph 2.5 of your brief.
6 We'll skip forward now to section 3 where you just set out
7 at a high level the steps taken so far in addressing the
8 claims that have been resolved, so I'll get you to read from
9 paragraph 3.1, please.

10 A. As noted above, Oranga Tamariki is responsible for
11 considering a claim received about abuse in care if the
12 claim relates to an event or events that occurred after
13 1 April 2017.

14 At present, Oranga Tamariki receives claims about abuse
15 in care through our complaints team using our complaints
16 process. If a claim is received, the Oranga Tamariki
17 complaints team would:

18 Request to meet with the claimant to talk to them. The
19 focus of this step is on the understanding what occurred,
20 ensuring that the claimant is heard, and understanding what
21 resolution would look like for them.

22 Undertake a records check to see whether key details of
23 the claim can be corroborated by the information available
24 on our databases. This step would also be used to establish
25 whether there are safety concerns that need to be addressed
26 for children and young people in care.

27 Where appropriate, seek additional information from
28 relevant Oranga Tamariki staff, caregivers, or employees of
29 NGO service providers.

30 And finally, make claimants aware of their right to
31 request information about themselves under the Privacy Act.

32 Q. Thank you. Now, rather than reading 3.3, which relates to
33 the complaints process, I understand you have some further
34 comments on Oranga Tamariki's complaints process?

1 A. Yes. I think in reviewing my brief in preparation for this
2 hearing, it struck me that I possibly wasn't clear enough
3 that we don't treat claims as complaints.

4 I think there are core elements of the process that are
5 consistent across complaints and claims. So, for example,
6 every claim we receive there will be an effort to understand
7 from the complainant's perspective the nature of their
8 complaint. There will be an assessment of, based on what we
9 know, what is likely to have happened. This is for
10 complaints.

11 There will be a discussion about resolution and what
12 would resolve the complaint. And there will be the
13 opportunity taken to see what can be learnt from the
14 complaint and what can be applied to current settings. And
15 I think that is true of a claim as well. So, those steps
16 are consistent, the way we conduct those steps might differ.
17 So, for example, a claim will always be handled, will always
18 be triaged off at the front end and handled by my team which
19 exists independently of, I guess, the social work
20 decision-making arm of the organisation. Whereas,
21 complaints in our organisation are often dealt with by that
22 harm in the first instance, so they will always come
23 through, I guess, an internally, structurally independent
24 process.

25 The nature of the conversations we have with the claimant
26 will be different. They're more likely to be face-to-face.
27 They are more likely to be iterative, if that's the right
28 thing to do go the claimant's perspective.

29 And the way in which we look into what has been raised by
30 the claimant will likely differ as well.

31 Yeah, so, it's a process that has similar steps to a
32 complaint but exists separately from a complaint, if that
33 makes sense.

34 Q. Thank you. And while we're on this point -

1 **COMMISSIONER ERUETI:** Just following up on that. For
2 complaints, they are operated by - no, claims go to a
3 centralised complaints team; is that correct?

4 A. Yes.

5 **COMMISSIONER ERUETI:** I am trying to work out. At the
6 start you make a decision about whether you're dealing
7 with a complaint or a claim and then they go down
8 different paths; right?

9 A. Yes. So, we have a team that triages complaints as they
10 come in and they might identify, for example, that something
11 that has come in as a complaint is actually more in the
12 nature of a claim, so their job, amongst a myriad of other
13 things, is to pick that up at the entry point.

14 The team, the complaints team that I talk about, deals
15 with more complex or sensitive complaints or complaints
16 where the local site has been unable to resolve the
17 complaint or where a conflict of interest exists in the
18 local site.

19 So, the team does a combination of managing those more
20 serious complaints and managing claims.

21 **COMMISSIONER ERUETI:** What's the difference between a
22 claim and a complaint?

23 A. It's a good question. I think, I mean, it's syntax really
24 but I think a claim is really a subset of complaints. And I
25 don't mean to diminish the seriousness of a claim by saying
26 that and we get some very serious complaints that aren't
27 claims as well. But I guess if you define a complaint as
28 someone expressing dissatisfaction or hurt on an impact of a
29 situation and asking for you to fix that, then I think you
30 can argue that a claim is a subset of complaints, albeit at
31 the very extreme serious end. Does that -

32 **COMMISSIONER ERUETI:** Basically, more serious issues
33 have been raised by the child or vulnerable person in
34 care?

1 A. Yes. So, if we receive, you know, people who write to us
2 won't necessarily label it as a complaint or a claim because
3 that's our terminology, not theirs. They'll write to us
4 about the experience they had and the impact it's had on
5 them and then it's up to my team to make sure that they're
6 identifying through the information that's provided to us
7 whether that basically is a claim, as distinct from a
8 complaint.

9 **COMMISSIONER ALOFIVAE:** Mr Groom, can I ask, do you
10 classify a claim as something that has a dollar value
11 attached to it?

12 A. Not necessarily. I mean, every claim that we've dealt with
13 has had a dollar value attached to it but I think, I mean,
14 you've heard from multiple witnesses that for some people
15 the primary motivation isn't a financial one. So, I could
16 envisage that you might receive a claim where the person
17 says, "My motivation in doing this is so that no-one else
18 experiences what I did" or, "My motivation in doing this is,
19 you know, for me because I want an acknowledgment of what I
20 experienced. My motivation in doing this is not financial".

21 Having said that, that's not something we've, you know,
22 every claim that we've dealt with has ended up with a
23 monetary offer as part of the package.

24 I don't know if that makes sense. I think I'm trying to
25 say that's probably largely driven by the claimant and their
26 motivation in making the claim. Yeah, is that -

27 **COMMISSIONER ALOFIVAE:** I'm just trying to understand
28 whether you're working almost to a continuum? So,
29 someone can make a complaint. Your Claims Team will
30 look at it, if they're able to deal with it, it's
31 opened, you close it. If the claimant isn't
32 satisfied, then progresses along the continuum until
33 you can get to a satisfactory position?

34 A. No, I'm sorry if I've given that impression. I think we
35 would be making the distinction at the front door that this

1 is a claim and they would go into that process. They
2 definitely wouldn't need to go through a complaints process
3 and then tell us that, actually, I want, you know - yeah,
4 that would be picked up at the front door and would be put
5 straight into a claims process.

6 **CHAIR:** Thank you Mr Clarke-Parker.

7 **MR CLARKE-PARKER:** Thank you.

8 **CHAIR:** We are up to you again.

9 **MR CLARKE-PARKER:**

10 Q. I was now going to turn, Mr Groom, to a matter raised during
11 phase 1 of the hearing, which was during Ms Cooper and
12 Ms Hill's evidence where there was a reference to 20% of
13 tamariki in care having been abused, and I just note that's
14 at page 469 of the transcript. What's your comment on that
15 figure?

16 A. It wasn't obvious where that figure had come from, so it's
17 hard, I guess it's hard to respond to the accuracy or
18 otherwise of that figure but I would say, I talked earlier
19 about the fact that we'd established a Safety of Children in
20 Care Unit and that unit provides comprehensive and broader
21 information on instances of harm in care.

22 It takes a very broad definition of harm. So, for
23 instance, it will include if a child is walking home from
24 school and is assaulted by a member of the public, that
25 would be counted as an instance of harm to a child in care
26 because our interests in that information is the harm, you
27 know, that we're responsible for the children in our care
28 and their wellbeing, and any harm that they experience is of
29 deep concern to us, you know.

30 So, that information is publicly reported, it's available
31 on our website and it doesn't support an assertion that 20%
32 of children in care receive harm. It certainly does
33 identify that some children in care are harmed and that any
34 instance of a child being harmed in care is not acceptable

1 but part of the idea of reporting publicly on it is a step
2 in reducing the instance of harm in care.

3 Q. Thank you. Can I now turn you back to 3.4 of your primary
4 brief where you continue describing the Complaints Policy?

5 A. The Complaints Policy that is currently in place expressly
6 acknowledges the importance of taking into account the
7 cultural needs of complainants when addressing complaints.

8 The feedback system is based on a set of principles that
9 have been designed with our obligations under Te Tiriti o
10 Waitangi and section 7AA of the Oranga Tamariki Act 1989 in
11 mind.

12 Oranga Tamariki has invested significant effort in
13 talking to young people about what they expect from a
14 complaints system, and in ensuring that young people in our
15 care understand their right to complain and seek remedies.

16 Several outcomes may be available to a claimant as part
17 of the claim resolution process, including an apology or
18 acknowledgment, provision of counselling or other
19 therapeutic support services and other options, including
20 financial payments. Many of these outcomes may also be
21 available following the resolution of a complaint, although
22 the outcome of a complaint is likely to be focused on
23 addressing an existing issue, rather than on addressing past
24 harm.

25 Q. So, in paragraph 3.6, Mr Groom, you refer to meetings with
26 claimants as one of the possible outcomes from the claims
27 process, and I understand that you have attended several of
28 those?

29 A. Yes.

30 Q. Can you describe how those meetings have gone and what your
31 experience of them has been?

32 A. Yes. So, I've travelled to meet with claimants, I've met in
33 their homes. I offer to meet with all claimants at the
34 point that we approach resolution. It's fair to say not
35 everyone takes me up on that offer, and that's completely

1 understandable and I respect that. And there are a few
2 instances, particularly of people who are in prison and the
3 impact of Covid meant that we weren't able to arrange the
4 visits but we believed it was important to progress the
5 resolution of the claim, so we did that and made an offer to
6 meet at a time in the future that would work for them.

7 I guess, talking broadly about the experience of going to
8 meet with claimants, so I intentionally do it at a place of
9 their choosing and it's something that I've found deeply
10 uncomfortable at times and I think that's the point. I
11 think that, you know, there's non-tangibles of this process.
12 There's tangibles like the financial payment, an apology.
13 There's non-tangibles and one of those is in some small way,
14 in whatever way you can, redressing the power balance that
15 was taken advantage of at the point that the harm occurred.

16 So, yeah, I think it's important that these meetings
17 occur in a way and in a place that prioritises the comfort
18 of the survivor over the comfort of the apologiser.

19 If I can digress slightly, one meeting that happened in a
20 claimant's home, it was in her lounge and myself and the
21 adviser who had worked with her were seated on a very
22 slouchy couch and the claimant was seated on a very upright
23 dining chair. I don't know whether that was intentional on
24 her part but I kind of hope it was because to me that would
25 be, you know, a sign that they were taking some power back,
26 I guess.

27 My reflections on meeting with survivors, and bearing in
28 mind that I have met with a very small handful of survivors,
29 so I certainly don't proclaim to have any great insights
30 into every survivor, I think every survivor has slightly
31 different motivations or things that they want the process
32 to achieve. But, in my experience, there's some common
33 themes, I think. There's a real courage in addressing these
34 extremely painful experiences. There's a sense of ambition.
35 And that ambition, it usually attaches to their sense of

1 wanting to improve themselves or improve their lot but it's
2 almost always for the benefit of the people around them as
3 well.

4 And finally, a lot of empathy. So, I think every
5 survivor I've met with has talked about part of their
6 motivation in going through this process being making sure
7 that tamariki Rangitahi don't experience the experiences
8 they had, yeah.

9 Q. Thank you. The process that you've outlined in section 3, I
10 understand that the personnel who assess and process these
11 claims are social workers?

12 A. Yes.

13 Q. And during phase 1 and indeed phase 2 of this hearing, we've
14 heard discussion of whether there may be a conflict of
15 interest in social workers addressing claims about social
16 worker practice; what's your comment on that issue?

17 A. I think I can appreciate that point of view. I understand
18 that point of view, that on the face of it, you know,
19 there's potential for conflict there.

20 I guess I would say it's not my lived experience. I've
21 therefore come across a group of people like social workers
22 for independence of thought and independence of motivation.
23 They are motivated by the wellbeing of children.

24 I think it's possibly instructive, although it's a very
25 small sample size, that of the 19 claims that we've dealt
26 with, every element of every one of those claims has been
27 accepted as true. And that perhaps you might not get that
28 in an environment where there was a conflict influencing the
29 outcome.

30 Having said all that, I personally don't think it has to
31 be a social worker who does this process. I think it has to
32 be somebody who has experience in working with trauma, that
33 skillset often comes with a social work skillset but there's
34 other professions where you would also get that skillset.

1 I would also note that there's kind of some professional
2 insider knowledge that comes with being a social worker.
3 And by that, I mean they, for want of a better term, know
4 where to go looking. They understand social work systems
5 and practices and, therefore, possibly have a better
6 instinct for getting to the bottom of things.

7 And I think, mean at the risk of just spending my time on
8 the stand repeating the evidence of Dr Fiona Inkpen, she
9 talked about the process, you know, the important thing in
10 the process is good people, good people who have empathy,
11 good people who are driven by motivation to do the right
12 thing. And to me, you know, that's one of the most
13 important things when thinking about staffing this work.

14 Q. Thank you. And you noted there, the extent to which
15 allegations have been accepted for the claims that Oranga
16 Tamariki has processed. Can you please outline the amount
17 of information or evidence that's required for accepting
18 allegations in this process?

19 A. So, our process is essentially to listen to the survivor, to
20 allow them to share their story at a level of depth and at a
21 pace which works for them. And then we'll take that
22 information and corroborate it to the extent that we can.
23 So, that is done through a systems and document check. So,
24 that's looking to verify periods in care, that kind of
25 thing.

26 I've heard other witnesses talk about the fact that it's
27 unlikely that a clear record of abuse having occurred will
28 be found on the file. I mean, that's true, that stands to
29 reason.

30 I would note that in the claims that we have addressed,
31 we've been able to find, you know, supporting corroborative
32 evidence that goes beyond just were they in care for this
33 period of time. So, one example relates to a situation from
34 about a decade ago, and I'll try and talk about it without
35 providing too much identifying information, but it related

1 to an allegation that abuse had occurred in care and at that
2 point in time that allegation was not substantiated, so
3 essentially that means social workers had considered the
4 allegation and determined that they couldn't verify that
5 allegation as being true.

6 And one of my team found on the file a filenote that was
7 from a third party and the filenote talked about overhearing
8 the young person on the phone to his mother in a distressed
9 state talking about the experience of abuse and the team was
10 able to use that, one, as corroborating evidence, I guess;
11 and two, as the trigger to consider whether we should
12 increase the payment to account for a practice failure, in
13 that the social worker didn't, you know, didn't take all of
14 the evidence into account in making their determination at
15 that point in time.

16 **MR CLARKE-PARKER:** Thank you. I am mindful of time,
17 of course. I suspect we only have about 10 or perhaps
18 15 minutes to go and I am happy to continue or -

19 **CHAIR:** I think we should take the lunch adjournment.
20 You take that time and 10-15 questions can sometimes
21 be refined over luncheon adjournments, in my
22 experience, but we don't want to rush you, so I think
23 we'll take the lunch adjournment and resume at 2.15.

24 **MR CLARKE-PARKER:** Thank you.

25

26 **Hearing adjourned from 1.00 p.m. until 2.15 p.m.**

27

28 **CHAIR:** Mr Clarke-Parker, do you have some further
29 questions?

30 **MR CLARKE-PARKER:** Thank you, yes.

31 Q. Mr Groom, before the lunch adjournment you gave evidence
32 about the distinction between a claim and a complaint. Can
33 you please expand on the range of issues that might be
34 raised in a complaint?

1 A. Yes, I can. So, I think it might be useful if I kind of
2 illustrate with a couple of examples.

3 So, our complaint service deals with things without
4 wanting to diminish them, that you might describe as at the
5 lower end of the complaint spectrum. Examples of that might
6 be a person who has not had a reply to an email or reply to
7 a phonecall from a social worker. It could be a failed
8 access arrangement, so we arranged an access visit and it
9 fell through for some reason. So those, you know, and then
10 we get complaints of much, much more serious situations, for
11 example the decision to bring a child into care without
12 proper consultation with whanau or that. So, there's a
13 broad spectrum of the types of complaints we deal with and I
14 thought it might be helpful to illustrate that with a couple
15 of examples.

16 Q. Just on the question about the distinction between a claim
17 or complaint or the difference between them, is there any
18 further clarity you can provide on that?

19 A. Yeah, I think the distinguishing feature, and perhaps the
20 sole distinguishing feature, is that a claim relates to
21 abuse that occurred while the child was in the care of
22 Oranga Tamariki. To me, that's kind of the sole
23 distinguishing feature that differentiates a claim from a
24 complaint.

25 Q. Thank you. Prior to the adjournment, we had just come to
26 the end of paragraph 3.6 of your primary brief of evidence
27 and you are there talking about the claim and complaint
28 process.

29 Can you please explained how Oranga Tamariki's process
30 for assessing claims has been underpinned by tikanga,
31 considerations of Te Ao Māori and acknowledgment of the
32 number of children in Oranga Tamariki care who are Māori?

33 A. Yes, so there's around 6,000 children in the custody of the
34 Chief Executive. And, as I mentioned earlier in my
35 evidence, about 60% of those are tamariki Māori.

1 I think it's important to return to the point that Oranga
2 Tamariki is not just responsible for our redress process,
3 it's responsible for the care that both tamariki and
4 rangitahi experience. And Oranga Tamariki has put a
5 significant amount of work into our Māori-centered practice.

6 I think when it comes to the claims process, so we're
7 guided in our work by a document called the section 7AA
8 quality standards, Quality Assurance Standards. And those
9 set out, I talked about section 7AA of the Oranga Tamariki
10 Act briefly before. Those quality standards give a
11 practical direction to the organisation on how those parts
12 of the Oranga Tamariki Act should be put into practice.

13 So, I guess, a couple of illustrative examples, the
14 standards set out the right for tamariki and rangatahi to be
15 connected to their whānau, hapū, iwi and their whakapapa.
16 And that's something that we will give effect to through our
17 claims process that we're developing at the moment through a
18 means of them having access to a service that will help do
19 that.

20 Another standard relates to having regard to mana
21 tamaiti, which we plan to deliver in part through a
22 continued practice of the relationship based model that I
23 outlined earlier on and ensuring that survivors are able to
24 be heard and that their views on what is important to them,
25 in terms of outcome, are listened to and are part of our
26 decision-making process.

27 I think there's more that we can do beyond this to make
28 sure that our system is based on a Te Ao Māori lens.

29 I talked briefly about my team having been through a
30 resolution through a Te Ao Māori lens. We're considering,
31 you know, whether we can draw on some of that to help us in
32 designing our service.

33 **COMMISSIONER ERUETI:** Mr Groom, may I ask, are you
34 going to take these broadly stated standards and come

1 up with something that's targeted and specific to the
2 redress scheme, complaints and claims process?

3 A. Yes, yeah. So, I think we need to hold ourselves
4 accountable to - we've got a clear document that sets out
5 how we give effect to section 7AA of the Oranga Tamariki Act
6 and we need to hold ourselves accountable to be able to
7 point to each of those quality standards and say, you know,
8 how has this contributed to that? Are there any standards
9 that we're a bite light on?

10 **COMMISSIONER ERUETI:** And you're still working through
11 that process now?

12 A. Yes, yeah.

13 **COMMISSIONER ERUETI:** When do you hope to have that
14 completed?

15 A. First half of 2021, hopefully early 2021.

16 **COMMISSIONER ERUETI:** Thank you.

17 A. I think I'd like to make a brief comment on the front end of
18 our system. So, we've talked about how complaints and
19 claims differ but I think we can learn quite a lot about how
20 we manage claims through what we experience from our
21 complaints system. Our complaints system is a much higher
22 volume one. We get somewhere between 1500 and 2000
23 complaints annually. And what we know from that, is I've
24 set out that tamaiti Māori make up the majority of the
25 people in our care but they are less likely to make
26 complaints proportionately, so we know that our complaints
27 system isn't meeting the needs of Māori.

28 So, we have a piece of work on our work programme around
29 how can we make the system more accessible to Māori.

30 **COMMISSIONER ERUETI:** And are you able to elaborate on
31 that? We hear about the Office of the Children's
32 Commissioner reports on Child Protection, Youth and
33 Youth Residences and it just gets stitches as you
34 would have heard of before?

35 A. Yes.

1 **COMMISSIONER ERUETI:** This process you're talking
2 about is to encourage young people and children to
3 make complaints, is that right?

4 A. Yes. So, I think in the context of the complaints system,
5 most of the complaints we get are from adults. So, it's
6 both really but we have a distinct piece of work underway
7 around encouraging complaints from young people. We
8 don't - we get a very small number of complaints from young
9 people. We possibly under-report it because we did some
10 research, you know quite a focused bit of research, with
11 tamariki rangitahi, and that very clearly showed us that
12 young people are unlikely to complain directly to the agency
13 responsible for what they're complaining about. They're
14 much more likely to complain to a trusted adult. Quite
15 often that trusted adult is in the education sector, so
16 we've done some work with the Ministry of Education about
17 providing information for them to give to people in the
18 education sector so that they know how to get complaints
19 through to us.

20 So, I haven't really answered your question, but the
21 answer is really there is a bit of work around encouraging
22 complaints from young people and there is a bit of work
23 about encouraging complaints from Māori.

24 **COMMISSIONER ERUETI:** I'll pick this up later when we
25 talk about advocacy support and so forth in these
26 contexts but thank you for that.

27 **COMMISSIONER ALOFIVAE:** What is a young person, up to
28 18 or up to 25?

29 A. I guess I use the term young person probably predominantly
30 to mean could potentially be in our care, so that has
31 shifted. It was previously up to 17, it's now up to 18.
32 Having said that, I would note the youth transition service,
33 so an important element of the work that we're doing is the
34 recognition that you can't dump a young person out of care

1 and expect them to be successful. So, we have a youth
2 transition service that supports people up to the age of 25.

3 **COMMISSIONER ALOFIVAE:** Thank you.

4 **MR CLARKE-PARKER:**

5 Q. Thank you, Mr Groom. I am now going to turn you to your
6 reply brief which really focuses on one issue. Can I get
7 you to read from paragraph 6 through to the end of that,
8 please?

9 A. Yes. At paragraph 909, the Cooper Legal brief discusses
10 issues relating to the disclosure of claimant information to
11 third parties. In that paragraph, the Cooper Legal brief
12 states:

13 "Although MSD and Oranga Tamariki ... will refute the
14 interpretation of their conduct as "tactical", it is a fact
15 that MSD (and more recently Oranga Tamariki) have adversely
16 affected the willingness of our younger clients,
17 particularly, to disclose what happened to them in care,
18 because of the fact that such information will be disclosed
19 to third parties ...".

20 Our primary purpose in all that we do is to ensure that,
21 where a care and protection concern is raised, responding to
22 the wellbeing and safety of the child or children in our
23 care is our absolute priority. We do put tamariki at the
24 heart of everything that we do.

25 Sometimes care and protection concerns arise when
26 claimant information includes details about current staff
27 and caregivers who are in contact with children. The
28 principles Oranga Tamariki applies when managing these
29 situations are:

30 The safety of children and young people is paramount.

31 Our good employer obligations to our employees and the
32 need to follow a fair process and treat our people fairly
33 and to ensure natural justice for employees and caregivers
34 is maintained.

1 Sensitivity and safety of the person providing the
2 information is respected.

3 Information will go to the right people at the right time
4 to manage potential risk.

5 Timeliness is essential.

6 The process is robust and is able to be scrutinised and
7 withstand scrutiny.

8 Q. Thank you. I'll now turn you back to your primary brief,
9 please, and have you read through section 4.

10 A. Our process for resolving claims relating to abuse in care
11 is evolving. Oranga Tamariki is currently developing a
12 specific process for addressing claims which will be
13 considered by Oranga Tamariki senior leadership in the
14 coming months. My expectation is that the process that
15 Oranga Tamariki adopts will be on an interim basis, pending
16 the receipt of recommendations from this Royal Commission,
17 and that further changes to our processes are likely to be
18 based on those recommendations.

19 Oranga Tamariki has taken note of the outcomes of the
20 consultation process undertaken by MSD on its Historic
21 Claims Resolution Process in the first part of 2018 and we
22 are working to ensure that the guidance developed through
23 that process is reflected in our claims process. The
24 interim claims process we implement in the first part of
25 this year will be focused on ensuring (where appropriate)
26 consistency of outcomes with MSD. We are also working on
27 the preparation of an MoU [memorandum of understanding] with
28 a view to seeking out how the two agencies will work
29 together.

30 I would like to close by restating my acknowledgment of
31 the importance of meaningful redress for those who have
32 experienced harm in State care, and my commitment to
33 supporting the work of this Royal Commission in the area of
34 redress.

1 **MR CLARKE-PARKER:** Thank you, Mr Groom, that is the
2 end of the Crown's evidence-in-chief. I will now turn
3 you over to Mr Merrick.

4 **CHAIR:** Thank you. Tēnā koe, Mr Merrick.

5

6

7

- 1 Q. In that report, which is a report of the Chief Science
2 Adviser, it's talking about those in Youth Justice. There's
3 quite a number of stats around those with mental illness,
4 brain injury and learning problems, psychiatric disorders?
- 5 A. (Nods).
- 6 Q. And the existence of trauma. You would accept, wouldn't
7 you, that these are some of the complexities and challenges
8 in engaging children and young people in our Care and
9 Protection system?
- 10 A. Absolutely, I would accept that. I think I've seen, I
11 haven't seen that report myself, but I've certainly seen
12 data that is on a similar theme with similar findings.
- 13 Q. Foetal Alcohol Spectrum Disorder, ADHD [attention deficit
14 hyperactivity disorder], PTSD [post-traumatic stress
15 disorder], are all matters which will need to be considered
16 carefully when shaping a programme, redress, or providing
17 some other service for that matter, for these children and
18 young people?
- 19 A. Yeah, that's right and I think, as you are beginning to
20 identify there, that applies to all of the children and
21 young people we work with, you know, in care as well as in
22 the redress programme.
- 23 Q. So, we have those vulnerabilities, if I can for the case of
24 clarity put those under the heading of vulnerabilities. We
25 also have that dynamic, don't we, where for many of these
26 children and young people they will be subject to existing
27 orders that tie them back to Oranga Tamariki? I'm talking
28 section 101 orders?
- 29 A. (Nods).
- 30 Q. Section 110 orders?
- 31 A. (Nods).
- 32 Q. Orders in Youth Justice such as supervision with activity,
33 residents and the like?
- 34 A. (Nods).

1 Q. We have that extra dynamic which also needs to be taken into
2 account, doesn't it?

3 A. Absolutely, that is a dynamic that our organisation deals
4 with every day.

5 Q. And so, once those orders are wound up or discharged, there
6 is provision, you've touched on this earlier, for Oranga
7 Tamariki and actually Oranga Tamariki are statutorily
8 required, aren't they, to have some involvement up until the
9 age of 25, depending on -

10 A. Yes. I'm straying outside an area of my expertise but I
11 believe that the legislation enables, for want of a better
12 term, the youth transition provisions.

13 Q. Yes. So, we've got section 386(a), which is moving to
14 independence, and then I think the other section is section
15 386(c) which is about maintaining contact.

16 And really, the point that I'm wanting to make, is that
17 it's really important, isn't it, because if the cohort of
18 potential claimants that Oranga Tamariki are dealing with
19 might be anywhere between say 14 and 25, to identify what
20 the power dynamics are between a group of vulnerable young
21 people and the State through Oranga Tamariki; right?

22 A. Yes. I might be wrong here and I am commenting outside my
23 area. The power dynamic in the youth transition service
24 might be slightly different, in that I don't believe it's a
25 compulsory service. It's a service that's offered but I
26 don't believe there's an element of compulsion to it. I
27 could stand to be corrected on that.

28 Q. We'll move on slightly. If we can talk about Māori in State
29 care. I think earlier in your evidence you refer to the
30 fact that there were some 60% of Māori in State care?

31 A. Yes.

32 Q. In preparing for this hearing, I read the - and I have a
33 copy here if you need to be referred to it - Quarterly
34 Report to 30 June 2020?

35 A. I am not familiar with that document, sorry.

1 Q. I am just wanting to ask you some questions about the
2 definitions, so far as ethnicity is concerned. When you say
3 60% Māori in State care, there's somewhat of an issue in
4 that, isn't there, in the sense that at least, in this
5 quarterly report we have ethnicity groupings by Māori, Māori
6 and Pacific, Pacific and then New Zealand European and
7 other?

8 A. Yep.

9 Q. You'd accept those are the ethnicity groupings which you use
10 for the statistics?

11 A. Generally speaking. I believe they're based on Statistics
12 New Zealand's standards around identifying ethnicity.

13 Q. And so, when you say it's 60% Māori in State care, are you
14 referring to the group under the Māori only?

15 A. I believe so, yes.

16 Q. Because from this quarterly report to 30 June 2020, if we go
17 through those headings of those in Care and Protection
18 custody, just because I want to be clear on when we're
19 talking about statistics exactly what that means.

20 A. I appreciate that.

21 Q. Those in Care and Protection custody of the Chief Executive,
22 those under the Māori ethnicity is 58%?

23 A. Yes.

24 Q. And then those under the Māori and Pacific heading are 10%?

25 A. Yes.

26 Q. So, I know that Oranga Tamariki values whakapapa, it's one
27 of the values that we often see in the offices and on
28 documents associated with Oranga Tamariki; right? It's in
29 the banner?

30 A. Yes, absolutely.

31 Q. So, would you accept that categorising the number of Māori
32 in State care at 60% discounts those who have Māori and
33 Pacific whakapapa?

34 A. No. I think we identify those that whakapapa Māori and
35 those that whakapapa Pacific Island Māori, and the fact that

1 you're able to source that information from a publicly
2 available document I think indicates that we're quite open
3 about that. I certainly through my evidence haven't wanted
4 to diminish the proportion of Māori in our system. It's
5 just purely that these people identify their ethnicity that
6 they whakapapa Māori and yeah.

7 Q. And so, if we were working off whakapapa, those with
8 whakapapa Māori would equate to 68%, if we took into account
9 the two groupings?

10 A. I suspect we're splitting hairs. I would say those who
11 whakapapa Māori represent 60% and those who whakapapa Māori
12 Pacific Island represent 10%.

13 Q. I mean you might think we're splitting hairs but you'd
14 accept whakapapa Māori is distinct from Tongan whakapapa or
15 Samoan whakapapa?

16 A. Yes.

17 Q. To the extent that we can apply the term whakapapa to the
18 Tongan framework or the Samoan framework, they of course
19 have their own way of expressing that in Tongan and Samoan
20 languages, right?

21 A. Yes.

22 Q. It's incorrect then to combine the whakapapa and say you
23 have whakapapa Māori and whakapapa Pasifika, therefore we
24 separate you off from those who only whakapapa Māori; is
25 that -

26 A. I think I'd disagree. I think we're representing them in
27 the way they have chosen to identify themselves. So, they
28 identify themselves to an ethnicity and what we are
29 representing is the way that they have identified
30 themselves.

31 Q. We can just agree to disagree for the moment on that point
32 and move on.

33 **CHAIR:** Can I just ask a clarification question then?

34 Your 60% Māori in State care, does that include those,

1 60% does that include those who identify as Māori
2 Pacific?

3 A. No, so it's 60% identify solely Māori and then an additional
4 10%.

5 **CHAIR:** I think that's the point we've reached at this
6 stage.

7 **MR MERRICK:** Yes, thank you, Madam Chair.

8 Q. You've talked a little bit more about the compliments,
9 complaints and suggestions service for which claims fall
10 underneath at this stage; is that right? Am I right there?

11 A. Administered by the team that also administers that process.

12 Q. Am I correct that those terms compliments, complaints and
13 suggestions are what are on the publicly available
14 information to people who might want to find information on?

15 A. I have not looked at that section of our website in a while.
16 I think it possibly is. It will either be that or feedback
17 and complaints is another term that we use for the same
18 concept.

19 Q. So, just so I'm clear on what each of those things are,
20 compliments, positive feedback?

21 A. Yep.

22 Q. Complains you've talked to us a little bit about?

23 A. Yes.

24 Q. The range of those, so it can be from the minor end through
25 to something quite serious around the way your practice has
26 been applied, social work practice?

27 A. Yeah and I possibly should have talked about that point, if
28 I can expand very slightly, that you know some of those
29 complaints from adults about their experience of, you know,
30 a social work practice that hasn't been done right, in their
31 own right cause trauma as well, yeah. So, I guess I just
32 want to make the point that there can be trauma in some of
33 those complaints as well.

1 Q. You spoke to us in your evidence in chief about research
2 that has been done by Oranga Tamariki around the complaints
3 process?

4 A. Yes.

5 Q. And I think you said that the research found, this is your
6 research, that children and young people are less likely to
7 complain directly to the agency; is that correct?

8 A. That's correct.

9 Q. So, I mean, you'd accept that if we take the tamaiti as the
10 focal point, that their perception of how a process works is
11 critical, isn't it, in terms of engagement?

12 A. Yes.

13 Q. And do you think that the lack of engagement by children and
14 young people which was found in your research direct with
15 the agency comes about because of the perceived lack of
16 transparency or independence?

17 A. I don't think it would be those factors for children. To
18 me, those would be factors that would attach more to adults
19 making complaints. I suspect, and I have absolutely no
20 evidence to back this up, but I suspect that it's driven by
21 the power imbalance, you know, between a child and any
22 adults but in particular adults in a government service
23 setting.

24 Q. Do complaints have attached to them, some of them, some form
25 of financial redress?

26 A. Some complaints do, yes.

27 Q. Claims are quite separate, aren't they? I think you said
28 earlier that complaints can be a number of things, but
29 claims are making a claim for abuse in care?

30 A. Yeah, and I think I clarified just after the lunch
31 adjournment, that I guess the distinction is there was abuse
32 in care.

33 Q. What avenues do children, young people and their whānau have
34 to find out information about how to make a claim?

1 A. There is admittedly just recently information on our website
2 about how to make a claim. That information should have
3 been up a lot sooner, so we've put it up quite recently on
4 our website. And also, we've got a how to make a complaint
5 and we have had online, I think for probably approaching a
6 year, a section written for children about how to make a
7 complaint, so there's a dedicated section on our website
8 that's written with children as the audience about how to
9 make a complaint.

10 Q. Just so we can recap those avenues. We've got the website?

11 A. Yes.

12 Q. Then I think is there a brochure or a form?

13 A. There's a brochure and form about how to make a complaint.

14 Q. I think I've seen them in reception offices, I think?

15 A. Yes, yeah.

16 Q. A blue form?

17 A. Yeah.

18 Q. And then you've said there's a child friendly, my words,
19 version of it on your website somewhere?

20 A. Yes.

21 Q. How might a young person go about making a complaint, a
22 child or young person?

23 A. A child or young person in particular?

24 Q. Yes.

25 A. Like I said, that research which was more qualitative than
26 quantitative but that indicated that a child or young person
27 will more likely make a complaint through a trusted adult.
28 Quite often an educator but, you know, there's other trusted
29 adults in the child's life who they might make a complaint
30 through. We do have a phone line but I do not think that's
31 an avenue that children would use to make contact with us
32 about a complaint.

33 Q. So, if we go down the trusted adult route just briefly.

34 A. Yeah.

- 1 Q. You said the research has found more likely than not to be
2 an educator or someone like an educator, is that right?
- 3 A. Yeah, I don't know that it's a plurality. I don't know that
4 it's more likely than not but it's the largest grouping from
5 memory, educators, I don't know if that's over 50%.
- 6 Q. What about those who aren't in any schooling?
- 7 A. So a child aged under 5?
- 8 Q. No, for those in the age bracket, say 5-18, who aren't
9 regularly attending formal schooling? Let's take as an
10 example those who may be in a community residence under a
11 section 238(1)(d) order. So, those who aren't in the
12 community, let's just take a community residence where they
13 are under the care of Oranga Tamariki?
- 14 A. I'm not entirely sure of the process for that. If there's
15 not an existing process, and I'm not entirely sure whether
16 there is or not, I'm sorry, if there's not, then that will
17 be something that we will need to include in our -
- 18 Q. What about Youth Justice residences, somewhere like Korowai
19 Manaaki?
- 20 A. Youth Justice residences have a separate process called
21 Residential Grievance Panels, which are panels of people
22 assigned who are independent of the organisation and it's
23 quite a well-established process. It operates outside of
24 the complaints system that I am responsible for, so if I get
25 into too much detail then I run the risk of misleading you.
- 26 Q. Is that Whāia Te Māramatanga is the name of that grievance
27 service, do you know or not?
- 28 A. I don't know, sorry.
- 29 Q. So, Youth Justice residences have a separate process again,
30 whether it be some form of complaint or whether there's some
31 claim of abuse in care; is that right?
- 32 A. Yeah, I think a claim of abuse would come to us, I think
33 that process is for resolving complaints and a claim of
34 abuse would come to my team.

1 Q. Okay. But the entry point for that would be the Youth
2 Justice Residence Grievance Process, you called it that?

3 A. Yes.

4 Q. And those who aren't in a residence, whether it be a secure
5 residence or community residence, those who are in the
6 community, do they just have the avenues of information that
7 we talked about earlier, the website, the brochures and the
8 like?

9 A. Yes, yes, and they might have trusted adults who aren't
10 educators, of course, whether that's somebody in the medical
11 profession, whether it's an aunty or an uncle or caregiver.

12 Q. But for that reliance, if we can call it that, to work on a
13 trusted adult, the trusted adults have got to understand
14 themselves what the process is and what rights the young
15 person has or child or young person has; right?

16 A. Yes.

17 Q. Would you accept that the conversation that we've had today
18 around terms like compliments, complaints and suggestions,
19 claims, is quite confusing?

20 A. I'd imagine it would be, yeah.

21 Q. Certainly, it's taken a bit of discussion amongst us all
22 this morning and this afternoon to try and isolate what the
23 issues and the terms are and what they mean, right?

24 A. Yeah.

25 Q. And that's amongst a group of lawyers, Commissioners and
26 witnesses; right?

27 A. Yep.

28 Q. You'd accept in terms of accessibility for the general
29 public, that that might be an issue?

30 A. I would. I guess the counterfactual is you have - you try
31 and make one size fit all and in the process of doing that,
32 you diminish the support that is given to the people who
33 need it. I guess, it's a trade-off, you could call it one
34 thing and make it simple to understand but, in a sense, that
35 would be an artifice because calling it one thing doesn't

1 change the fact that it is different things. I take your
2 point, I do take your point, I just am not sure what the
3 answer is.

4 Q. Well, I suppose it's about messaging and information, isn't
5 it, that people - the people who are going to need to take
6 action to make a claim, whether that be on their own behalf
7 as a child or young person or as a whanau member, a trusted
8 adult or some other trusted adult, need to have access to
9 that information, so they know exactly what the process is
10 and how they go about it, right? That's what this point is
11 about, isn't it?

12 A. Yes.

13 Q. I do, with the use of technology, just want to go to Oranga
14 Tamariki's website, just so that we can, for the purpose of
15 this hearing -

16 A. A live demonstration.

17 Q. - just look at the accessibility through the website. And
18 hopefully Emma will be able to - here we go. So, could you
19 confirm, Mr Groom, that this is the Oranga Tamariki website?

20 A. It is.

21 Q. Thank you. I will ask you some questions about accessing
22 information around compliments, complaints, suggestions and
23 claims.

24 A. Yes.

25 Q. Those four terms. You said you hadn't looked at this for a
26 while so forgive me, but would you be able to navigate us
27 where that information would be?

28 A. Scroll to the bottom of the page. It's quite a long page.
29 And in the middle column, second one down, "Compliments,
30 complaints and suggestions" and below that, "Feedback form
31 for children".

32 Q. If we go to "Compliments, complaints and suggestions" first,
33 the page that we land on is entitled "Feedback", isn't it?

34 A. Yes.

1 Q. If we can bring that up so it's readable for Mr Groom, can
2 we just scroll down. I'm not going to ask you to read the
3 content but what is this directed at, this aspect of the -

4 A. This is directed to a person who wants to give us feedback
5 about the service they've received from us.

6 Q. So, to take those examples, a complaint about no reply to an
7 email or a complaint about social work practice at quite a
8 high level?

9 A. Yes.

10 Q. Could be within that -

11 A. Yes.

12 Q. - broad range? This isn't the content which directs you
13 about claims, is it?

14 A. The claims, if you look on the left-hand side of the page,
15 right at the bottom of where you are now directs you to
16 claims.

17 Q. So, if we click through to "claims", this is the claims page
18 which reads, "If you feel you have been mistreated while in
19 the care of Oranga Tamariki, you can make a claim"?

20 A. Yes.

21 Q. And then there's some information there about how to do
22 that, if we scroll down. It says, "You can start the claim
23 process by emailing us at claims@ot or calling us".

24 Earlier, you referenced some child friendly or young
25 person friendly material to explain the process on the
26 website?

27 A. Yes.

28 Q. Do you know where that is?

29 A. Yes, I pointed it out when you first came to the website.

30 So, it's below the access to the page we were on just prior.

31 Q. Okay.

32 A. Yes, a "Feedback form for children" or words to that effect.

33 Q. Okay. "Feedback form for children", thank you. So, this is
34 the version that you've told us about?

35 A. Yes.

- 1 Q. And the child and young person friendly version?
- 2 A. It was written for an audience of children and young people.
- 3 Q. And so, they're required to fill out an online form?
- 4 A. Not necessarily required to, they can choose to.
- 5 Q. They can?
- 6 A. They can choose to, that's one option they can use, yes.
- 7 Q. What are the other options they have?
- 8 A. So, they can ask an adult to fill out the form on their
- 9 behalf. And I'm not sure whether this page outlines that
- 10 that's an option. We've got our Contact Centre, we've got
- 11 our complaint form and I accept it's unlikely children are
- 12 going to call an 0800 number to make a complaint or fill out
- 13 a handwritten form.
- 14 Q. You'd accept there would be some real difficulties for a
- 15 child or young person with literacy problems, a learning
- 16 disability, in accessing this form of complaint; right?
- 17 A. Yes, there could be.
- 18 Q. Is it available in New Zealand Sign Language, this
- 19 information?
- 20 A. I don't believe so.
- 21 Q. So, you would accept then that there's a lot of work to be
- 22 done around the accessibility of the online information?
- 23 A. I mean, I've talked quite openly about the fact that I
- 24 believe we have more to do in terms of accessibility of the
- 25 system. And, yeah, anything that's pointed out to us re the
- 26 accessibility could be improved, I'm up for it.
- 27 Q. One place to start might be to pull the claims heading out
- 28 of the second or third layer of the website and put it right
- 29 up the front on the home page alongside the other banners,
- 30 right?
- 31 A. Yeah, fair point, yep.
- 32 Q. Do you think also explaining the difference between
- 33 complaints and claims on the website might be a good idea?
- 34 A. I mean, I think that we've tried to explain quite clearly
- 35 that the feedback is about telling us about anything good or

1 bad that you've experienced and the claims quite clearly
2 says if you've experienced mistreatment. Yeah, if there's a
3 way we can improve the clarity of that, then absolutely.
4 Also mindful of your earlier point around the more content,
5 I guess the more content you have, the larger risk you run
6 that it will be fragmented and a confusing picture for
7 people. So, I guess there's a trade-off between simplicity
8 and fulsomeness.

9 Q. Do you know when this page was published?

10 A. Not off the top of my head, sorry, no.

11 Q. But you said it was only very recently?

12 A. No, the feedback page was published quite some time ago, so
13 we're talking months, possibly like 12 months. The claims
14 material was very, very recent, so in the past couple of
15 weeks.

16 Q. Past couple of weeks?

17 A. Yep.

18 Q. Can we turn now to the claims process? You've told us that
19 you've had, there's 19 claims where effectively you had some
20 involvement with MSD?

21 A. (Nods).

22 Q. I think 11 of those have been resolved?

23 A. (Nods).

24 Q. And you've got one active claim on foot which is technically
25 within your remit?

26 A. Yes.

27 Q. Post 1 April 2017?

28 A. Yes.

29 Q. Can you explain to us, step-by-step, if a claim was made
30 what would happen? What the process is? I know at a very
31 high level you've described it in your brief of evidence.

32 A. Yeah.

33 Q. You know, those three or four bullet points that are there.

34 A. Yeah.

1 Q. But could you talk to us step-by-step about what that claims
2 process involves?

3 A. Yeah. So, the first step is application, I guess. And in
4 that step, I would include information that informs somebody
5 how they can go about making a claim. It will include the
6 initial approach from the individual, so whether that's
7 through our phone line, through any of the other mechanisms
8 that we've just been talking about. It would include an
9 initial meeting with the claimant to discuss, as much as
10 they're willing to share with us, what they've experienced
11 and what their claim relates to.

12 So, that would be the first part. I would say, where I
13 think our gap is at the moment, is that that process isn't
14 formally described to somebody at the start. So, it is
15 explained to them verbally by the adviser who works on it.
16 What we need is something that basically, I guess, is a
17 consistent piece of information that everyone has access to
18 that says here's what you can expect from the process.

19 Q. I'm talking about the initial process that is currently
20 live, if I can put it that way.

21 A. Yeah, sure.

22 Q. Is there a written piece of policy to do with that, that
23 you're working from, that OT [Oranga Tamariki] are working
24 from?

25 A. Yes, yes, again only recently created.

26 Q. How recent?

27 A. Oh, um, I think it's been in draft for a while and kind of
28 nearly finalisation now. So, yeah, it's recent, yeah.

29 Q. And so, finalisation as an interim process, is that right?

30 A. That's right.

31 Q. Which is different from the process you've talked about,
32 which is to be finalised in the first six months of next
33 year; is that right?

34 A. Yes.

35 Q. Have I got that right?

1 A. You've got that right.

2 Q. It strikes me, it's a good idea to finalise something before
3 working on it; you'd agree with that?

4 A. Yes, I think there was a process that we followed and
5 ideally that process would have been underpinned by a formal
6 document that set out that process.

7 We didn't have that. I think the priority for us was
8 addressing claims that had already, you know, been waiting
9 for a little while, so we wanted to actually address the
10 claims as a priority.

11 Q. So, your staff that are working through the claims process,
12 what do they work off in terms of directing them through the
13 process?

14 A. It's a really small team. That's where we are in, I guess,
15 for want of a better term, a fortunate position. That
16 essentially at the peak we had three people working on this
17 and at that scale you can all get together, we can get
18 together with the Safety of Children in Care Unit, we can
19 get together with whoever we need to, to work through those
20 claims.

21 So, I guess maybe not having a formally documented
22 process, although I concede that we should have, in that
23 context that's indifferent to running something at scale
24 where a documented formal process would exist with
25 consistency. We can organically manage the consistency
26 because it's a small team constantly talking to each other
27 and who have access to advise.

28 Q. Have I got this right, it's three people in the team or tell
29 me how many?

30 A. So, basically, so when we were in the process of resolving
31 the 19, we ringfenced three staff to work on both claims at
32 their peak. Now we're at a point where we have fewer claims
33 than that and it doesn't require three staff to manage.

34 Q. How many Māori within that group of three staff?

35 A. One, and one Pasifika.

1 Q. Have I also got it correct that the Oranga Tamariki position
2 is that no additional resource is required to manage that
3 process at this stage, in terms of people?

4 A. Yes.

5 Q. So, the next step really is if there's no formally
6 documented available policy to the staff member whose
7 facilitating the redress claim process, then there wouldn't
8 be formally, you know, Official Information around what that
9 person can expect from the process? They're relying solely
10 on the delivery orally of that staff member?

11 A. That's true.

12 Q. You would accept, wouldn't you, that in the context of the
13 conversation we had about the cohort of people that you
14 might expect to hear from, that that's pretty problematic,
15 isn't it?

16 A. To a point. I mean, I've conceded the point that, you know,
17 ideally we would have had a written documented policy in
18 place as we worked through those claims. I've explained
19 that we prioritised resolving the claims and I've explained
20 that the context for this team is that they are a very small
21 unit who are in constant contact with each other and with
22 expertise across the organisation who can support in
23 resolving the claims but I concede the point that, ideally,
24 there would have been a written documentation or policy
25 supporting that process and that's - sorry I'm talking very
26 fast - that's something we are seeking to address through
27 the enduring process that I outlined.

28 Q. Because it's quite high risk, isn't it? You're relying
29 solely on the delivery of the individual in a process which
30 can, with I've heard, be retraumatising and bring a whole
31 number of other issues with it if done badly?

32 A. I don't know if I'd categorise it at high risk, as high
33 risk. I think that the aspects you've described, that the
34 risk attaches to around the risk of retraumatisation and the
35 care and welfare of those individuals. That risk in my

1 experience has been largely mitigated through the people
2 managing the system and the care they take with those
3 individuals.

4 Q. But if you take those people out of it, those particular
5 individuals out of it, systemically there lies a problem;
6 right?

7 A. Absolutely and I said that in my opening evidence. I made
8 that very point, that what we are operating at the moment
9 relies on the people operating it and that the onus is on us
10 to underpin the mahi of those people with processes and
11 clarity.

12 Q. Is there room within the current process for advocacy for
13 these individuals who are making claims?

14 A. So, I guess a couple of points on that. If the individual
15 is a young person, then they will have access to Oranga
16 Tamariki's contracted advocacy services through VOYCE
17 Whakarongo Mai.

18 The second point is that though it doesn't directly
19 address the advocacy point for each of the claimants we've
20 worked with, we've offered support for them to get support
21 that they need, whether that be legal or on the therapeutic
22 side, which I know doesn't directly address your advocacy
23 point.

24 Q. So, there is provision for legal assistance in some form?

25 A. It's offered.

26 Q. It's offered?

27 A. Yep.

28 Q. What about communication assistance for those who have
29 difficulty with processing oral language or reading; do you
30 offer that service?

31 A. To be honest, it's not something that I have considered but
32 I think it is something that we should consider as we design
33 our process going forward. I would say, although I would
34 never pretend that our current process is perfect or even
35 best practice at this stage, one of its strengths, as far as

1 I can tell from talking to survivors, is that it is
2 relationship based and that there is ongoing communication
3 between the people working in my team and the survivors,
4 which I say just to I guess make the point that I don't feel
5 that communication has been a difficulty in this space for
6 us, at this point.

7 Q. That issue can be a silent one at times though, can't it?
8 Issues to do with what people understand and what they don't
9 understand?

10 A. Yes.

11 Q. We know that, for example, people with Foetal Alcohol
12 Spectrum Disorder may agree to things, not quite
13 understanding what's going on; right?

14 A. Yes, I mean, that's not an area of expertise for me but I
15 certainly can accept the point on that.

16 Q. Is there anything in addition to what you've told us about
17 the interim claims process that you wanted to add to your
18 evidence before we move on?

19 A. It's a very open question. Nothing that springs immediately
20 to mind but it might be a situation that as we walk through
21 the rest of the evidence, other relevant thoughts might
22 arise.

23 Q. Very well.

24 **COMMISSIONER ERUETI:** Mr Merrick, can I ask her, these
25 questions about advocacy, are we just talking about
26 the claims process, independent of the complaints
27 process?

28 **MR MERRICK:** Yes, complaints is a separate optic.

29 **COMMISSIONER ERUETI:** Ka pai, thank you.

30 **MR MERRICK:** We thought we would separate them for the
31 purpose of that.

32 **COMMISSIONER ERUETI:** Thank you.

33 **MR MERRICK:**

34 Q. Earlier in the evidence of Linda Hrstich-Meyer, a document
35 was referred to which alluded to some issues of 2016, a

1 memorandum about the inconsistency of approach between
2 complaints and claims, and the reference is MSR04137.

3 A. I have it.

4 Q. Isn't there an issue here, in that the claims process, if we
5 adopt the terminology you used earlier, was a subset of the
6 complaints process formally? If we take the syntax out of
7 it, just in terms of the OT process?

8 A. Can I just correct that? I didn't say the claims process is
9 a subset of the complaints process. I was effectively
10 saying the nature of a claim can be a subset of a - or is a
11 subset of a complaint.

12 Q. So, conceptually, a claim falls under initiating a complaint
13 about something?

14 A. Yeah, I guess by definition a claim is a complaint. You
15 know, if you define a complaint as an expression of
16 dissatisfaction or hurt, then a claim is a complaint.

17 Q. If I can direct you to this memo, and we're really looking
18 at the four points that are highlighted there, and maybe
19 those could be zoomed in on. I understand this predates
20 your -

21 A. Yes.

22 Q. - time in your role?

23 A. Yeah.

24 Q. So, I appreciate that. It's 1 July 2016.

25 A. It doesn't just pre-date my time in the role, it pre-dates
26 the existence of Oranga Tamariki.

27 Q. You were here earlier for the evidence but those four points
28 raise an issue around the treatment of claimants via the
29 complaints process, compared to the claims process; is that
30 right? Have I got that right?

31 A. You're asking me if this memo is basically highlighting a
32 risk of the treatment of claims within a complaints process?

33 Q. No, those who go down the complaints route can end up with a
34 different outcome than those who go through the claims
35 route; is that what this memo is saying?

1 A. Can I take a moment to read it? It's not a document I'm
2 particularly familiar with. (Short pause).

3 **MR CLARKE-PARKER:** I just thought I'd confirm with
4 Mr Groom that he does have the full document in front
5 of him as well as the -

6 A. I do, yes.

7 **MR MERRICK:** By all means, if you need time to read
8 the full document, then do.

9 A. I am just cautious about agreeing to a premise in a document
10 that I don't understand or had no part in producing.

11 **CHAIR:** We are coming up to the afternoon adjournment,
12 so maybe you could look at it through that time and
13 come back to that, Mr Merrick, would that suit you?

14 **MR MERRICK:** More than happy with that, thank you.
15 We'll come back to that.

16 A. Excellent.

17 Q. Earlier you talked about safety of children in care
18 reporting?

19 A. Yes.

20 Q. In the biannual report of Safety of Children in Care Unit
21 for the 6 months July to December 2019, that report recorded
22 207 children suffered 357 findings of harm. And obviously
23 bear in mind the interpretation of harm.

24 A. Yeah.

25 Q. And you talked about that earlier. Are there any processes
26 in place, redress processes in place, which Oranga Tamariki
27 to take a proactive response to redress, for example for
28 those group of children and young people?

29 A. Not at this stage. That is a question that we're working
30 through as part of that more enduring claims process. I
31 would - no, I'll leave that thought there, thank you.

32 Q. The short point is that, in order to trigger a claims
33 process, those children and young people or their whanau
34 would have to enter into the process we've just talked

1 about? They'd have to go through and make that claim?

2 They'd have to take the step, is that right?

3 A. Yes.

4 Q. Has Oranga Tamariki considered that in the context of their
5 obligations in the Oranga Tamariki Act, the statutory
6 obligations, bearing in mind that some of these children and
7 young people are currently subject to orders?

8 A. We're certainly considering the point. I talked about the
9 work programme that we have to develop our more enduring
10 process and that's one of the questions that's called out as
11 part of that work programme, and I'm sure in doing that, we
12 will be looking at statutory obligations as part of that.

13 Q. Because it would be an issue, wouldn't it, for you in terms
14 of resourcing if quite a number of young people who are
15 under that group made claims shortly?

16 A. I don't think it's the issue of resourcing. I mean, it's
17 about doing the right thing. So, those young children
18 all - the process around harm in care is that they will be
19 getting, they will be assessed for the impact of that harm
20 and they will be receiving therapeutic support that's
21 appropriate to the harm that they've experienced. I think
22 there is an absolute onus on Oranga Tamariki when a child is
23 harmed in care to act immediately to reduce the lifelong
24 impact of that harm. Returning to your point about, I
25 guess, a financial liability arising from that, I just think
26 that's - it's just about doing the right thing and, you
27 know, the financial liability is a secondary concern. The
28 first, the primary concern is making sure that the impact of
29 that harm is minimised to the greatest extent possible. The
30 secondary concern is when the time is right and appropriate,
31 is it right to have a conversation with them about beyond
32 the therapeutic support, what else should happen to put it
33 right. Yeah, to me that's just the right thing to do.

34 Q. So, in essence, restoring the mana of those involved?

35 A. Yeah.

1 Q. In terms of that reporting, the safety of children in care
2 reporting, in terms of Māori, I just read those statistics,
3 58% Māori, 12% Māori Pacific?

4 A. (Nods).

5 Q. Not to reopen the whakapapa argument earlier.

6 A. Kia ora.

7 Q. And for Pacific people, similarly 12% Māori Pacific and 8%
8 Pacific. Given the limitations that we've identified with
9 access to complaints and claims in the course of your
10 evidence today for this current process, there's a
11 disproportionately unfair impact, isn't there, on Māori and
12 Pacific young people?

13 A. Are the numbers you read to me, I have to admit I'm not too
14 familiar with them, seem at first blush to be consistent
15 with the proportion of children in care by ethnicity.

16 Q. Yeah, I suppose, what I'm asking you is just that, in terms
17 of an ability to access a claims process, that if you're
18 disproportionately in care in the first place and then those
19 figures are broadly represented in the harm figures, you are
20 in that group of people who are entitled to enter into a
21 claims process, it's an uphill exercise, isn't it, for a
22 young vulnerable Māori Pacific person?

23 A. I'm not sure I entirely agree with the assertion around the
24 difficulty of access. I have kind of conceded a couple of
25 points around particularly those in residential settings
26 without access, you know not in the traditional school
27 setting.

28 Yeah, I mean, I guess we've - I talked a bit in my
29 introductory evidence around we don't receive complaints
30 from Māori at the rate that the proportion of Māori in care
31 suggests that we should. So, it's certainly something we
32 are alive to, yeah. I am not sure that's addressed your
33 question exactly.

1 Q. I will put it another way. It could do much better,
2 couldn't it, the claims system for Māori and Pacific people,
3 based on what we've talked about today?

4 A. It could do much better for everyone and 60% of those
5 everyone are Māori and 10% of those everyone are Māori and
6 Pacific.

7 **MR MERRICK:** I wonder if that's a good time?

8 **CHAIR:** It is a suitable time. We will take the
9 afternoon adjournment.

10

11

12 **Hearing adjourned from 3.30 p.m. until 3.50 p.m.**

13

14

15 **CHAIR:** Tēnā koe, Mr Merrick.

16 **MR MERRICK:** Kia ora, Madam Chair.

17 Q. Mr Groom, in your evidence in chief you talked about the
18 front end process of receiving a complaint and then
19 effectively, if I've got it right, someone might receive
20 that complaint and then try and triage whether it's a
21 complaint or a claim?

22 A. Yes.

23 Q. Can you explain to us a little bit more about what that
24 process involves?

25 A. So, I've got a small team, although we've recently increased
26 the resource to it, and their role is to, so all complaints
27 are received by the organisation and all claims received by
28 the organisation come to this team. They man the phone
29 line, they man the email. And we increased the team so it
30 could take a larger upfront triage function,
31 recognising - so, that is both to triage claims but also
32 within the claims, you know I talked about the broad
33 spectrum of complaints, and there's some complaints that,
34 you know, our default is that the complaint is dealt with as

1 close to the source of what gave rise to the complaint as
2 possible.

3 So, most complaints will go to the site to respond to
4 initially. There's some complaints, particularly around
5 social work decisions to bring a child into care,
6 appropriateness of care placements, which we have determined
7 as an organisation, they're the use of relatively imposing
8 statutory powers and they should be subjected to an
9 additional level of scrutiny. So, those are triaged off.

10 And claims are similar, so that team will triage off
11 claims.

12 Q. So, is it possible then that someone might have been
13 thinking they need to make a complaint or been unsure what
14 the process is and then get told by the team what direction
15 they need to go in?

16 A. Yes, that's the purpose of the team. You know, you
17 highlighted earlier on in your questioning that there are a
18 range of terms at play here and we can't expect someone who
19 is not intimately familiar with the system to know which is
20 the correct term to use. So, we have committed resource to
21 ensuring that the right decisions are made at the point that
22 we receive the complaint or the claim.

23 Q. And is there a policy document that that team works off in
24 order to have some transparent guidelines around which
25 direction to send people if they're unsure?

26 A. There's a range of directions the team has received. In
27 particular, I talked about the complaints that we triage off
28 and deal with centrally, so there's a document that sets
29 that out.

30 In terms of claims, I think there might have been a
31 direction to the team, although I don't want to - I'm not
32 100% sure. But the team knows that if the complaint is from
33 somebody who are saying that they experienced abuse while in
34 care, the team very clearly knows that that becomes a claim.

1 Q. And when you say a direction, is that some form of internal
2 communication to those people who are working in that area?

3 A. Yes.

4 Q. When you say direction? And who would that come from?

5 A. It would come from me or from the team manager.

6 **CHAIR:** I don't want to deflect but can you tell us
7 how many claims, in the sense that you're using it,
8 have actually come through OT since 2017?

9 A. I can't, I would be happy to get that for you. There is
10 obviously the one that I mentioned in -

11 **CHAIR:** There are the 19 that you had already?

12 A. Yes.

13 **CHAIR:** Apart from those because they preceded 2017,
14 didn't they?

15 A. Yes.

16 **CHAIR:** So, since then, are you able to say roughly,
17 have there been 3 or 30 or 400? Do you have any sense
18 at all of how many claims?

19 A. One.

20 **CHAIR:** One?

21 A. Yes.

22 **COMMISSIONER ERUETI:** Can we also clarify the numbers
23 of complaints you've received annually, is it 150-200
24 or 1500?

25 A. No, no, it's between 1500 and 2000, I think it might have
26 been about 1800 last year, and that I guess emphasising that
27 is the full gambit that I talked about and a lot of those
28 complaints might relate to communication issues or things
29 like that.

30 **MR MERRICK:**

31 Q. Can we return to MSC0347. Now you have had an opportunity
32 to review it?

33 A. I have.

1 Q. In those four bullet points there, what is being said is
2 there's an issue around the treatment of complaints versus
3 claims?

4 A. Yes.

5 Q. And so, my question for you, for someone who's involved in
6 the initial, and is now OT initial process and the longer
7 term process, what's being done by Oranga Tamariki to
8 mitigate the risk talked about in that memorandum?

9 A. Well, what happens in this memorandum does not happen
10 anymore, so from my perspective that is fully mitigated.

11 Q. Can you explain to us why it doesn't happen anymore, the
12 practicality of that?

13 A. Yeah, there's a couple of points. This basically indicates
14 that claims were being treated as complaints. That doesn't
15 happen anymore. And this indicates that claimants are often
16 paid compensation for abuse when assessed by historic
17 contemporary claims and not when assessed by the complaints
18 process. I mean, that's a moot point now because nothing
19 constituting a claim goes through a complaints process.

20 Q. Apart from the entry point, right?

21 A. Yeah, yeah.

22 Q. So, your introduction to the system, if you like, if you're
23 making a claim, is to the complaints process? I think we've
24 established that, right?

25 A. It's to an intake team that basically intakes both claims
26 and complaints.

27 Q. Do you think it would be cleaner to sever the claims off and
28 have a direct route into claims, given the claims are about,
29 quite clearly about abuse in care, as opposed to complaints
30 of the range we've talked about?

31 A. No, I can't off the top of my head think of any reason that
32 that would be any cleaner than the process that we have at
33 the moment.

34 Q. We've finished with that document now, thank you. You've
35 spoken about Te Tiriti o Waitangi in your evidence in chief?

1 A. Yes.

2 Q. And you'd accept that prior to the advent of section 7AA,
3 that those obligations under Te Tiriti o Waitangi have
4 always been there; right?

5 A. Yes.

6 Q. And that one of the critical issues under Te Tiriti o
7 Waitangi is under Article Two, tino rangatiratanga and you'd
8 accept, wouldn't you, that children, tamariki, it's in the
9 word itself really, are a taonga?

10 A. Yes.

11 Q. And so it's against really the essence of that, that Oranga
12 Tamariki need to respond to instances of abuse in care in a
13 global redress sense? If we talk about, if we take it not
14 just in the financial sense?

15 A. I may have lost track of you there for a second.

16 Q. That holistic view of redress, informed by Te Tiriti o
17 Waitangi, if we take that point of tamariki being taonga
18 requires a really wide view of what's required for redress?

19 A. Yes.

20 Q. Added to that fundamental Te Tiriti underpinning Article
21 Two, we've got now legislation sections in the Oranga
22 Tamariki Act which specifically referred to Te Tiriti o
23 Waitangi; right?

24 A. Yep.

25 Q. And so, the redress processes that we're talking about, both
26 the initial process and the longer term one, need to be
27 informed by Oranga Tamariki's obligations in the Oranga
28 Tamariki Act?

29 A. Yes.

30 Q. I'll save everyone the pain of quoting the sections and
31 what's in them but if we start with section 4, which is the
32 purposes of the Act, Oranga Tamariki are required under
33 those purposes to promote and coordinate services to mana
34 tamaiti and to ensure that those processes are centered on
35 the young person's rights; correct?

1 A. Yeah.

2 Q. They're also required to assist families, whānau, hapū and
3 iwi groups under those purposes?

4 A. (Nods).

5 Q. Under section 4, there's quite a few obligations on Oranga
6 Tamariki to ensure that whanau, hapu and iwi fulfil the
7 needs of their tamariki and rangitahi. The question is,
8 what steps have Oranga Tamariki taken in setting up this
9 initial redress process that we've talked about, in terms of
10 working with Māori to set that up?

11 A. We are definitely taking steps in terms of the enduring
12 process that we are developing now. I couldn't point you
13 directly to any steps in relation to the 19 or 16 claims
14 that we've responded to date.

15 Q. So, you haven't engaged with Māori in this initial process
16 which has been established?

17 A. We have internally. We could have done more externally.
18 So, we've sought advice internally from, for example, the
19 team with responsibility for the 7AA quality assurance
20 standards.

21 Q. But nothing externally?

22 A. No, not to the best of my recollection. Although I did, I
23 mean I did talk about the training that all of the staff
24 have been through with regards to resolution through Te Ao
25 Māori lens.

26 Q. You've talked about partnerships under section 7AA?

27 A. Yes.

28 Q. Have any of your conversations around strategic partnerships
29 included a partnership about your initial redress process?

30 A. I'm operating probably quite outside the field of my
31 expertise on this. I haven't been involved in the
32 establishment of those partnerships.

33 Q. Is it fair to say though that if there were redress
34 conversations to be had, you would have been included in
35 those being the person responsible for the claims process?

1 A. Yes, I would expect so.

2 Q. So, in terms of this - well, let's move to the future
3 process.

4 A. Yep.

5 Q. What's happening in that space, vis-a-vis Oranga Tamariki's
6 obligations under sections 4 and 7AA?

7 A. So, I think a key part of the development of our process
8 will be an engagement plan which is specifically called out
9 in the work programme that we've developed, and that
10 engagement plan will obviously have a focus on accessing
11 feedback and advice from various Māori stakeholders.

12 I think another phase of our work programme is focusing
13 on resolution, so what does meaningful resolution look like?
14 You know, how can we offer a package of resolution that
15 supports people to achieve their aims? And we will most
16 likely incorporate some advice into that. I think there's a
17 richening for us to tap in terms of resolution from a Te Ao
18 Māori perspective. And I talked in my evidence-in-chief
19 about the work that we're doing around making the access to
20 the complaints process but, you know, any benefits from that
21 will accrue to the claims process, improving access for
22 Māori to that process.

23 Q. Have Māori been involved in designing the process which you
24 said will be finalised in the first half of next year?

25 A. They will be.

26 Q. How long has the design process been in train?

27 A. Oh, it's relatively early, so it's basically at a planning
28 and work programme design phase. The second phase of that
29 programme is engagement. So, the engagement will happen, so
30 out of six phases, the engagement will happen at a second
31 phase.

32 Q. Could one possible step to bridge the gap for Māori
33 complaint rates be to establish an independent Māori body
34 which can help bridge that gap?

1 A. Yes, absolutely. And I think on the complaints side, that's
2 a conversation that I think we've had a very early
3 conversation with an iwi about whether they could act
4 as - agent isn't the right phrase but as a kind of
5 facilitator to support people who want to make complaints to
6 us but don't want to come directly to us. And I talked in
7 my evidence-in-chief about the fact that in a lot of cases
8 we're not the agency to work directly with whānau, you know,
9 for various reasons the trust has gone in the relationship
10 and I think it's important for us to look at ways that we
11 can support people to engage with us in a way that is not
12 engaging with us or to them doesn't feel like they're
13 engaging with us, if that makes sense.

14 Having said that, I think, so there's something about
15 getting into the system. There's something about us being
16 accountable. So, I would like to think that we would always
17 be involved at the end of the system where accountability
18 becomes important, fronting up and saying sorry, fronting up
19 and explaining how you'll fix things. I would hate to
20 accidentally design a system that meant that our
21 accountability was contracted out where that accountability
22 should accrue to us.

23 Q. When you said you were in discussions with iwi to be an
24 agent for that, is that with people from that iwi?

25 A. I don't know that we'd got to the point of defining that.

26 Q. Would those conversations also include conversations with
27 funding and budget, if it were to head in that direction?

28 A. Yeah, I'm sure they would.

29 Q. One of the components of section 7AA is about reducing
30 disparities?

31 A. Yes.

32 Q. What does that look like, in terms of an Oranga Tamariki
33 redress process?

34 A. Well, it would look like receiving claims in the proportion
35 that you would expect to receive them. So, you know, if

1 there's a disparity where it looks as if Māori are not
2 coming forward to talk about their experiences and to seek
3 redress for them, then that would be a disparity that we
4 would want to address.

5 The outcome of the process, so taking into account, you
6 know, personal and cultural preferences, setting those
7 aside, are the outcomes that are received of a similar
8 nature?

9 And then the findings. So, you know, we haven't declined
10 or rejected a claim yet but if we get to the point where we
11 do, then I would expect that that rate of declined claims or
12 rejected claims would not show a bias based on ethnicity.

13 Q. What about the factors that you take into account in
14 assessing the harm and the underlying causes of the harm
15 done?

16 A. Yeah.

17 Q. And what I'm talking about here is the ongoing impacts of
18 colonisation, for example, does that factor into a process?

19 A. I would think, and we haven't had a claim to mind where this
20 has been a factor, but if the claim made it obvious that
21 there had been the act of harm or the act of practice in the
22 instance had meant that there was disconnection from whānau,
23 hapū, iwi, whakapapa, that whatever we offer to seek to
24 resolve that claim would include something to put that
25 right.

26 Q. Can we turn to talk now about the complaints system for the
27 moment? So, you've mentioned that effectively there's one
28 gate to go through in terms of complaints and claims, and if
29 you were going to go down the complaints route can you tell
30 us a little bit about that process, please?

31 A. Yeah. I mean, there's a lot more variety in that process
32 because the spectrum, I guess the spectrum of complaints is
33 a lot wider from what could be a relatively simple
34 administrative issue that has a relatively simple fix, to

1 much more complex questions of, you know, social work
2 practice.

3 So, I'll speak generally about it but kind of making the
4 point that there is variety within the system because
5 there's variety within the complaints.

6 So, speaking generally, most complaints, I think it's
7 around 80%, will be received by my team but referred to the
8 local site to deal with. And the reason that we do that is,
9 I guess there's a school of thought that a response to a
10 complaint is best made as close to where the complaint arose
11 from as possible. There are very obvious exceptions to that
12 where there's, you know, deterioration of trust in the
13 relationship, where there's a conflict of interest, but for
14 most complaints, the most meaningful resolution will come
15 from it can be resolved close to the source of the
16 complaint.

17 So, most of our complaints will go to a site to respond
18 to. We have a system that tracks all of those complaints.
19 We've recently at the start of this year implemented an
20 improved system and the main thing about that system is it
21 captures and holds people to account for remedial action.

22 So, it doesn't close off the complaint at the point that
23 we respond to the complainant. It closes off the complaint
24 at the point that we have actioned all of the
25 recommendations that arose from the complaint.

26 So, yeah, and the site will look into it and, I guess,
27 make an assessment and take action as appropriate, whether
28 that's meeting with the individual to apologise, explaining
29 how they're going to fix a training issue within the site,
30 those kind of things.

31 It's not uncommon for the complaint to complete that
32 process and for there to be dissatisfaction with the outcome
33 of the complaint and at that point they would come to my
34 team to respond to and then my team would basically take a

1 look at the complaint and make a determination based on what
2 they can see.

3 And then, the more serious end of the complaints, I think
4 I've probably described in a fair amount of detail earlier
5 on about that we triage those off and they get dealt with
6 centrally by my team.

7 Q. And it's the complaint system that's independently monitored
8 by the MSD and Children's Monitor?

9 A. No, no, the complaints system is independently monitored by
10 the Office of the Ombudsman.

11 Q. Ombudsman?

12 A. Yeah.

13 Q. So, if they're unhappy with the complaint review, it can go
14 up as high as the Ombudsman?

15 A. Yes.

16 **COMMISSIONER ERUETI:** Excuse me, if I may. Paragraph
17 3.8 you say "MSD (via the Children's Monitor), and the
18 Ombudsman have been given roles in monitoring the
19 Oranga Tamariki complaints system"?

20 A. Sorry, is that?

21 **COMMISSIONER ERUETI:** 3.8 of your brief of evidence.

22 A. Yes, the Ombudsman has essentially a dual role in relation
23 to our complaints system. One is basically managing what I
24 guess you could describe as escalated complaints where
25 there's dissatisfaction with the outcome. The other is
26 system monitoring, so looking for thematic issues that the
27 complaints arise, making sure that our complaints system is
28 fit for purpose.

29 MSD, I am slightly outside my area of expertise when
30 talking about the interim Children's Monitor but theirs is a
31 more systemic responsibility for the complaints system.
32 They don't have responsibility for responding to escalated
33 complaints, but they've got systemic responsibility for
34 monitoring all of Oranga Tamariki, including the complaints
35 process.

1 **COMMISSIONER ERUETI:** Thank you.

2 **MR MERRICK:**

3 Q. Earlier you said proportion of children making complaints as
4 adults is quite low?

5 A. Yes.

6 Q. Is that right?

7 A. Yes.

8 Q. One of the - last year, the Commission heard from the
9 Children's Commissioner at the Contextual Hearing and one of
10 the issues pointed out was that perhaps children and young
11 people don't have confidence because of the power dynamic
12 you talked about earlier?

13 A. Yeah.

14 Q. In engaging that process?

15 A. Yeah.

16 Q. You touched on this earlier but what do Oranga Tamariki do
17 to resolve that issue?

18 A. I mean, our approach to date has been to support the adults
19 in their life. So, I talked about the information that
20 we've provided through the Ministry of Education so
21 educators know how to support tamariki and rangitahi to make
22 a complaint.

23 And similarly, caregivers have received information about
24 how they can support the tamaiti in their care in making the
25 complaint.

26 Yeah, I think, I mean, it was a very small piece of
27 research but it did demonstrate that that was probably the
28 area to go if we wanted to increase the complaints that we
29 received from children.

30 Q. Would having an independent body to receive complaints
31 address that issue?

32 A. Well, I think, I mean, there is an independent advocacy
33 service for children in VOYCE Whakarongo Mai, so I think
34 that exists. So, I think, clearly, there's a benefit in
35 having that service existing, so yeah.

1 Q. That is an independent advocacy service for the existing
2 internal complaints procedure, right?

3 A. Yeah, it's an advocacy service for children and part of
4 their role might be to support children to make a complaint.

5 Q. And I suppose my question is, having a separate complaints
6 body independent of the place in which the complaint arises,
7 might address the power dynamic, mightn't it?

8 A. It might but it already exists. The so, you know, the
9 Office of the Ombudsman fulfils that role. So, maybe that
10 suggests the answer isn't a structural one but a presental
11 one perhaps, I don't know.

12 Q. Am I correct though that the Ombudsman's Office exists
13 effectively at the top of the complaints chain? You have to
14 enter the process -

15 A. No, the Ombudsman will accept complaints and investigate
16 them directly from people.

17 **COMMISSIONER ERUETI:** Excuse me if I may. The
18 difference there is the function that the Ombudsman
19 serves is different from a complaints or claims
20 process which has a range of different aspects,
21 including the apology, financial compensation,
22 wellbeing payments?

23 A. Yeah, that's correct. I guess the Ombudsman's role, as I
24 experience it, is to make findings and make the agency
25 accountable for putting it right. I don't think that's
26 inherently wrong. I think the agency should be accountable
27 for putting it right.

28 **MR MERRICK:**

29 Q. In terms of the investigation and assessment process that
30 you talked about earlier, is there a risk that children and
31 young people might see that social workers investigating a
32 claims process as akin to the system investigating itself?

33 A. Yes. I think, yeah, so when - I mean, I guess we're talking
34 about independence and the level of independence that's
35 appropriate in the system. And my thoughts on that, and to

1 kind of steal a concept from I think the legal world, that a
2 process needs to be fair and it needs to be seen to be fair.
3 I would argue quite strongly that our process is fair. So,
4 I talked about the fact that we haven't declined or rejected
5 a claim. In fact, we've accepted every element of every
6 claim that's been brought to us. There's escalation and
7 external avenues. The people who review these issues are
8 structurally independent from - admittedly still internal to
9 Oranga Tamariki but structurally independent from the people
10 making the initial social work decisions. So, that's kind
11 of the first condition. I would argue that the process as
12 I'm experiencing it, is there.

13 On the second condition, seen to be fair, that's just not
14 something as a person who's responsible for administering
15 the process really deserves to have a view on. I think that
16 the process needs to be seen to be fair by the people who
17 are using that process. There's no point in me viewing it
18 as fair and, in fact, if my view of fairness carries too
19 much weight in the process of deciding what fairness looks
20 like, it almost becomes unfair by the fact that, yeah -

21 Q. And if one of the issues in entering into this initial
22 process post 1 April 2017 is accessibility, being able to
23 get into it and at this stage you only have one active claim
24 for that time period, then there's a fairness issue there,
25 isn't there, at the outset, if that's causing - if that is a
26 cause of a lack of claims?

27 A. Yeah, yeah, on the basis of that condition that you've
28 established, that that is the cause of a lower number of
29 claims, then obviously that is impacting on the perception
30 of fairness and the willingness to engage with the process.

31 Q. And the potential cohort of potential claimants are
32 disproportionately Māori, aren't they?

33 A. Yes, 60%.

34 Q. For claims after 1 July 2019, can you explain to us the
35 specific process for those particular claims because the

1 Oranga Tamariki Act in section 445 provides some limits on
2 proceedings before Court?

3 A. Yes.

4 Q. 445(b) and you've touched on it, I think, in your brief of
5 evidence but can you explain that particular category of
6 claim?

7 A. Can you just put the question to me again? I am conscious I
8 might be sailing close to information that may be subject to
9 legal privilege.

10 Q. Okay. For claims post 1 July 2019, section 445(e)(1) says,
11 "No proceedings may be brought in any Court" basically
12 unless you go through the Oranga Tamariki complaints
13 process; is that your understanding of it? Have I got that
14 right?

15 A. That's certainly what section 445(e) says.

16 Q. The interim process that we've talked about today, how does
17 that work with that provision?

18 A. The interim process that we have discussed today hasn't
19 applied to any of the claims that we've dealt with.

20 Q. Were you to get one, a claim for an event post 1 July 2019,
21 how would that work?

22 A. It would work the same way that any other claim would or the
23 claims that we've dealt with would.

24 Q. And how is that accounted for or have you considered in
25 terms of the planning for the longer-term process that I've
26 talked about today?

27 A. The impact of section 445(e), I think that's something that
28 we have noted that we need to bring some clarity to in
29 respect of designing that process.

30 Q. Have you any idea of how long the claims process under the
31 interim process may take from start to finish?

32 A. I mean, obviously we'll be aiming for as quickly as
33 possible. I guess, as an indication from the point that
34 our - from the point that there was clarity about the claims
35 that we're responsible for, our average time to resolution

1 was five months. I'd like to think that we can do better
2 than that. I guess, it's evident that there's various
3 factors that influence that, the complexity or legal
4 questions surrounding a claim, the volume of claims that you
5 receive, all of those kind of things. But I would certainly
6 be aiming for less than what it's taken us through the
7 claims that we've dealt with to date.

8 Q. The Limitation Act, what's the current position of Oranga
9 Tamariki in respect of Limitation Act defences?

10 A. Talking to Cooper Legal.

11 Q. As I understand it, Oranga Tamariki currently aren't
12 included in the draft policy which has been recently
13 circulated to Cooper Legal; is that right?

14 A. Yes. I would make the point that the Limitation Act I
15 believe applies to six years after turning 20 and that is
16 not something that applies to any claimants that we
17 anticipate dealing with in at least the next few years.

18 Having said that, we are - you're right in what you say
19 but we are in contact with Cooper Legal, through Crown Law,
20 about the limitation, about the Limitation Act.

21 Q. Because it is an issue when you consider the delay sometimes
22 in reporting or making a claim of abuse?

23 A. Yeah, yeah. Like I say, I mean, it's not going to be
24 something that applies to any claims that we receive in the
25 next at least three years/four years and we'll be working
26 with Cooper Legal so we can arrive at an agreed position
27 with them.

28 Q. Wouldn't it be a good statement of intention, if it's not
29 going to apply in the immediate future, according to you, to
30 adopt a position which means you don't take those defences?

31 A. Yeah. I mean, my experience in working at Oranga Tamariki
32 is the focus is on doing what is right, rather than relying
33 on technical defences to avoid doing that.

34 Q. Your office also deals with requests for information
35 records?

1 A. We do under the Privacy and Official Information Acts.

2 Q. As part of the process as you've described it, the claims
3 process, I think in your evidence you've said that
4 facilitation, access to records, is part of that process; is
5 that right?

6 A. Yes.

7 Q. There have been a number of examples in the phase 1 evidence
8 and on the material provided in the section 20 response by
9 Oranga Tamariki of heavy redactions to information sought
10 under the Privacy Act?

11 A. (Nods).

12 Q. For quite a younger group of people we've talked about today
13 with vulnerabilities, what is Oranga Tamariki going to do to
14 ensure that doesn't become an issue for that group of
15 people?

16 A. Yeah, it's very difficult. It's something that I've put a
17 lot of focus on in my time in the role and I think
18 Ms Hrstich-Meyer during her evidence talked about a process
19 that they're initiating to strip down Privacy Act request
20 processes and build them back up. My team went through that
21 process in 2017 and completed I think so in late 2018, maybe
22 early 2019, which resulted in a much more customer-focused
23 approach, which focuses on having a conversation with
24 somebody at the start about what information it is they're
25 seeking and understanding what's driving their request and
26 seeing if we can provide them with information that's
27 specific to that.

28 It is really difficult, it's a really difficult area.
29 So, you know, you make a Privacy Act request to your doctor
30 and the information is likely to be pretty recent because
31 you know it's probably relating to a procedure that happened
32 quite recently and the information is likely to contain
33 information about you and maybe the professionals involved
34 in your care. The challenge for us in this space, I guess,
35 is that the information is quite often quite historic, it's

1 quite often a mix of archived paper files and electronic
2 files, and it invariably includes a tangled web of
3 relationships. And the challenge for the staff working on
4 it is, you know, understanding what those relationships
5 mean.

6 So, you know, is this sibling group a sibling group who
7 will know that this happened to their sibling in their
8 childhood or has the relationship broken down and they've
9 got no idea about that and you're just going to throw an
10 absolute can of gasoline into the situation by releasing
11 information that talks about what happened to that person.
12 And then overlaid on that is the volume. So, the files are,
13 you know, about 1,000, I think we average about 500 pages
14 each. So we're releasing 5 million pages of information
15 every year. You know, it's basically like a novel being
16 released every hour from this place. And that novel has to
17 have been carefully curated to ensure that it releases only
18 information that person has access to. It's very
19 challenging and I'm sure there are ways we can do it better.
20 And, you know, I heard in earlier evidence, I heard talk
21 about the crashing of the timeline, which is fantastic,
22 given a summary I think that's a really good idea. But for
23 some people, providing them with a timeline will rob them of
24 detail that they feel they should be entitled to because the
25 timeline probably isn't going to provide the same amount of
26 detail.

27 And I think, you know, there's a letter in the document
28 pack, I think there's about three complaints or so in total
29 in the document pack, and one of the letters from the
30 Privacy Commissioner is actually really useful because he
31 talks about section, I always get confused, 29BA or 27, the
32 unwarranted disclosure of other people's affairs. And in
33 his ruling, he makes the point that the passage of time
34 potentially reduces the application of redacting under
35 unwarranted disclosure of other people's affairs and the

1 interests pertaining to the person requesting also impact.
2 And I think through that process we were able to give
3 revised, you know, go through that process and change our
4 application of that section of the Act. So, it was actually
5 a really useful process for us.

6 Sorry, I went on a very long time then.

7 Q. Out of the total number of Privacy Act requests received by
8 Oranga Tamariki, a significant portion were made on behalf
9 of the applicant by their lawyer; is that correct?

10 A. So a significant portion, I think over 50% by lawyers for
11 child, this is lawyers acting on behalf of the children
12 making requests for information.

13 Q. But in terms of claimants, a significant proportion of
14 claimants who made Privacy Act requests have those requests
15 made by lawyers on their behalf; is that the evidence?

16 A. No, I mean, the claims we've dealt with, none have been
17 represented. So, for us zero, as far as I'm aware zero
18 Privacy Act requests have been made by a lawyer on behalf of
19 the claimant.

20 Q. If there becomes more occasion for people to be
21 unrepresented by lawyers or have some form of advocacy
22 available to them, how might they go about the process of
23 obtaining and understanding what you've said is quite a
24 complex area of accessing records?

25 A. Yeah. So, our plan for that is it would be based on the
26 adviser who's working alongside them on their claim. So,
27 part of the role of the adviser would be to sit down with
28 them when they receive - would be to facilitate their
29 request and then sit down with them when they receive that
30 information to talk through it.

31 You know, it's something the team, I'm talking about the
32 team that does Privacy Act requests here, has to deal with
33 from time to time. You know, they work on a request and
34 it's evident that it will be very upsetting for the person
35 to read that information. So, one of the things they

1 currently do is where that's obvious, you know, whether a
2 local social worker or somebody else can be arranged to
3 support them as they read the information.

4 Q. Isn't it another case where an independent set of eyes would
5 assist the person making that application?

6 A. Again, I don't - there's no kind of benefits that spring
7 immediately, there's nothing immediately that springs to
8 mind that would advantage that person through having
9 somebody independent do it. Yeah, just my first thoughts on
10 it.

11 Q. Well, you've just discussed some of the internal
12 difficulties in processing those applications. Wouldn't
13 having an independent and the fact that the Privacy
14 Commissioner from time to time intervenes in that process,
15 wouldn't having an independent advocate or someone to work
16 through that process for the request be of benefit; do you
17 think?

18 A. I guess I would say an independent advocate already exists
19 in the Office of the Privacy Commissioner.

20 Q. Following a complaint about information received, right?

21 A. Yes, that's true.

22 Q. What supports get put in place once the information has been
23 discussed with the claimant as part of the process you've
24 talked about today?

25 A. I think part of the process we're designing will have, you
26 know, the intent is to provide a very clear outline of what
27 supports are available to that person, you know, in terms of
28 therapeutic and other supports, and that would be part of
29 that.

30 Q. In your reply brief, you've addressed the issue of
31 disclosure to third parties?

32 A. Mm.

33 Q. Again, a complex area, isn't it?

34 A. It is.

1 Q. In your view, is it possible that disclosure to third
2 parties is a potential barrier for people wanting to make a
3 claim or complaint?

4 A. I can see that it could be, if you've been through a deeply
5 traumatic experience and you believe that the information
6 you've been provided would be shared with a person who
7 perpetrated that traumatic experience, I can absolutely see
8 that that would make you think twice about going through a
9 process. But, of course, that's based on the condition
10 that, you know, that's not me saying that we would go around
11 sharing information without consent. That's just observing
12 that for someone who's been through a traumatic experience,
13 yeah, I can see how that would make it very daunting.

14 Q. Are there improvements that can be made in the way that
15 that's addressed, in your view?

16 A. I don't know. Like, I don't think a process is an answer to
17 this one. It's so case-dependent and it's weighing up two
18 competing and very valid rights, I guess. The right of
19 children who are currently in a care placement, that it
20 becomes evident may be placing them at risk of harm, and the
21 right of a person to have their experiences redressed
22 without fear that that will result in repercussions to them.
23 They're two very important rights to weigh up and I think we
24 make case by case decisions based on a set of, I guess,
25 principles, for want of a better term but, yeah, it's really
26 difficult.

27 Q. We've had reference to Stand Tu Maia's evidence -

28 A. Yes.

29 Q. - from Dr Fiona Inkpen. What's really helpful about that
30 evidence is the process in which it was outlined, have you
31 had a chance to review that?

32 A. The?

33 Q. The redress process that Stand Tu Maia adopting, which is
34 outlined in the brief of evidence?

1 A. Oh, I think I read it while I was watching Dr Inkpen's
2 evidence but I'd need to be refreshed on it to comment in
3 detail.

4 Q. Would Oranga Tamariki make available to the Commission, at
5 least as a start, the policy that you've referred to for the
6 initial process?

7 A. Yes.

8 Q. Is that a possibility?

9 A. Yep.

10 Q. That hasn't been made available yet?

11 A. No.

12 Q. We've heard from Cooper Legal earlier in the hearing about
13 redress processes lacking references to Te Tiriti o Waitangi
14 about 2014 and there's reference also to 2018 where
15 practical Te Tiriti based considerations have been put in
16 place and I'm asking for your information on a system which
17 operates like that. Is that an example for Māori who are
18 over-represented in that system -

19 A. Operates like what, sorry, the Stand Tu Maia?

20 Q. No, sorry.

21 A. That's all right.

22 Q. We heard from Cooper Legal about a lack of Te Tiriti based
23 considerations in redress basis earlier on in the hearing.

24 A. Yep.

25 Q. And I think it was their evidence that it's not until about
26 2018 that we see a little bit more substance in that area.
27 My question for you, as Oranga Tamariki as you're entering a
28 design phase for a new process?

29 A. Yes.

30 Q. Is a system which doesn't reference Te Tiriti considerations
31 and deals disproportionately with Māori, in the context of
32 Aotearoa New Zealand, is that an example of institutional
33 racism against Māori in that process?

34 A. Um, I think, I mean, the process that we will design will
35 have reference to Te Tiriti through section 7AA of the

1 Oranga Tamariki Act. I guess, I don't have, I've been
2 working in this space for about 3 years, I just don't have
3 the detailed view of the history that I would need to agree
4 with the assertion that you've put.

5 Q. The reason I ask is in your evidence you reference kia
6 whakatōmuri te haere whakamua?

7 A. Yes.

8 Q. In a way what I'm asking is what has Oranga Tamariki, as you
9 enter a planning and design phase of something new, what
10 have Oranga Tamariki learnt from what has gone before?

11 A. Yeah, absolutely, I can -

12 Q. And I suppose everyone is keen not to replicate a system
13 which could be seen to be institutionally racist and that's
14 why I ask that question of you; what has been learnt in
15 particular in respect of that?

16 A. Yeah, so I mean, obviously I've read the consultation that
17 the Ministry of Social Development did the Māori claimants
18 and that provides a lot of quite useful information. I
19 guess the things that struck me were the importance of the
20 opportunity to connect with whakapapa and whānau and hapū
21 and iwi. The importance of a process that respects the
22 person, that builds the mana of the person, yeah, were
23 probably my key reflections from that. And I talked about
24 as we design our process going forward, it will be designed
25 with, you know, specific engagement with Māori. Partly that
26 will be through our Māori design group which Oranga Tamariki
27 has had in place I think since its inception, partly it
28 might be through returning to the training that we had which
29 I talked about a couple of times throughout my evidence.

30 Q. Is there a risk that in respect of this initial process,
31 which there has been no external consultation with Māori,
32 what has stood up has replicated formal processes in the
33 absence of Māori involvement?

34 A. There's a risk. I don't think it was an actuality. I think
35 the relationship based model that ran, the fact that at

1 least some claimants were engaging with a Māori staff
2 member, you know, I think, yeah, I agree that was a risk. I
3 don't think it's a risk that eventuated.

4 Q. But it's far from the obligations under the 7AA and section
5 4?

6 A. Yep.

7 **MR MERRICK:** I think I've come to the end of the
8 questions that I have. If I could just confer?

9 **CHAIR:** Certainly.

10 **MR MERRICK:** To the extent that some of your evidence
11 canvasses some of the wider issues to be considered by
12 the Inquiry, I'll leave those for the moment, probably
13 a kōrero for another day. So, those are my questions,
14 thank you.

15 A. Yes.

16

17

1
2 **STEVEN MICHAEL GROOM**
3 **QUESTIONED BY COMMISSIONERS**
4
5

6 **COMMISSIONER ALOFIVAE:** Mr Groom, thank you for your
7 evidence this afternoon. Just reconfirming, Oranga
8 Tamariki was established in 1 April 2017?

9 A. That's correct.

10 **COMMISSIONER ALOFIVAE:** And your Claims Unit or your
11 claims process was really only established since
12 August 2019?

13 A. Um, no, I wouldn't say that. I'd say we had staff who had
14 responsibility for claims, although there was a long period
15 of time where it didn't appear that we were going to need to
16 develop a claims process because there was a period of about
17 a year, I think, where MSD was going to manage all claims.

18 **COMMISSIONER ALOFIVAE:** But now it's clear you need a
19 claims process?

20 A. Now it's clear, it's very clear.

21 **COMMISSIONER ALOFIVAE:** So, August 2019 and you've got
22 one case on the books so far?

23 A. Yes.

24 **COMMISSIONER ALOFIVAE:** So, in some respects, that's
25 going to be the test case for your processes?

26 A. Yes.

27 **COMMISSIONER ALOFIVAE:** Right, okay. So, I want to
28 talk, I'd like to ask some questions around your
29 internal processes and I'm really just wanting to get
30 clarity around your business as usual processes.

31 A. Yep.

32 **COMMISSIONER ALOFIVAE:** Okay. So, you referred to
33 your Official Information Act requests?

34 A. Yes.

1 **COMMISSIONER ALOFIVAE:** Over 50% are made by lawyer
2 for child?

3 A. Sorry, that's Privacy Act requests.

4 **COMMISSIONER ALOFIVAE:** But that's obviously of the
5 entire file that's on your system?

6 A. Yes. Sorry, I described that we've done some work on that
7 process to see if we can be more helpful to the requester by
8 providing a more limited set of information, if they're only
9 interested in a particular thing. But in a lot of cases,
10 that is a request for the entire file.

11 **COMMISSIONER ALOFIVAE:** That is a business as usual
12 process? That's typical of what happens?

13 A. Yes, it's business as usual.

14 **COMMISSIONER ALOFIVAE:** And the 19 claims prior, they
15 were all unrepresented, no lawyer requests?

16 A. That's right, all unrepresented.

17 **COMMISSIONER ALOFIVAE:** So, in your brief of evidence,
18 you've set out very helpfully for us what happens at
19 para 3.2, you give us (a)-(d)?

20 A. Yes.

21 **COMMISSIONER ALOFIVAE:** This is your first affidavit?

22 A. Yes.

23 **COMMISSIONER ALOFIVAE:** So, I want to take you to
24 3.2(b), you talk about you undertake a records check?

25 A. Yes.

26 **COMMISSIONER ALOFIVAE:** So, you would have heard
27 evidence or the Commission has certainly heard
28 evidence that you may be familiar with over the past
29 week about records not being complete?

30 A. Yes.

31 **COMMISSIONER ALOFIVAE:** Misfiled in some instances and
32 sometimes actually just not there?

33 A. Yes.

34 **COMMISSIONER ALOFIVAE:** So, what -

1 A. I would - sorry, if I can, I would note that I talked about
2 practice standards at the outset of the evidence and one of
3 those practice standards is specifically around
4 record-keeping.

5 **COMMISSIONER ALOFIVAE:** Yes. So, is that applicable
6 now today?

7 A. Yes, since the practice standards came into effect, which I
8 think was 2018, I might be wrong.

9 **COMMISSIONER ALOFIVAE:** So, what has physically
10 changed in your systems? It's one thing to have a set
11 of standards which is very good. What has physically
12 changed in terms of the record-keeping?

13 A. The system record-keeping? This is well outside my area of
14 expertise, sorry, I'm not sure if anything has or not.

15 **COMMISSIONER ALOFIVAE:** Do you know if in your system,
16 so one of the complaints is often there's information
17 on your files, on Oranga Tamariki files, that can
18 substantiate or can corroborate claims that have
19 previously been made that were unsubstantiated.

20 A. Claims that have previously been made that were
21 unsubstantiated, yes.

22 **COMMISSIONER ALOFIVAE:** And then someone finds
23 something and says, "Oh my gosh, that really did
24 happen to this person or it's very likely to have
25 happened"?

26 A. Yes, that would be part of the process we would be looking
27 for, you know.

28 **COMMISSIONER ALOFIVAE:** Is your current system, is it
29 simple enough or is there a place or repository within
30 the system where all individual complaints go? So,
31 every - so, all of your 6,000 clients on your books
32 will all have individual files, irrespective of
33 whether they're siblings; would that be a fair
34 assumption?

1 A. I believe the files are structured around families, although
2 I might be wrong on that. Again, it's not an area I'm
3 intimately familiar with.

4 **COMMISSIONER ALOFIVAE:** In your current system, do you
5 have a system where if external stakeholders are
6 making complaints, or even the young person has made a
7 complaint, are they all held in one place?

8 A. All complaints are held in one place, yes, in one system.

9 **COMMISSIONER ALOFIVAE:** In one system?

10 A. Yeah.

11 **COMMISSIONER ALOFIVAE:** But in the system, is it
12 simplified to the point where if you wanted to just
13 push a tab, that would then bring up the litany of
14 complaints? There might be no complaints, there might
15 be a whole heap of good things, but if there were a
16 number of complaints that had been made, you would be
17 able to track them without having to trawl through the
18 entire file?

19 A. Yeah, are you talking about complaints that one individual
20 has made and being able to view all of the complaints of
21 that individual? Yes, yes, there is a system where the
22 complaints are ordered around the individual and you can go
23 in and see all of the complaints that they've made. It is a
24 new system. It's the one I talked about us introducing in
25 February.

26 **COMMISSIONER ALOFIVAE:** February of this year that was
27 introduced?

28 A. Yes.

29 **COMMISSIONER ALOFIVAE:** That's one of the learnings
30 from the past Historical Claims Unit?

31 A. Yeah, yes, I don't think we introduced that system because
32 of that. It was introduced because our previous complaint
33 management system had neared the end of its life and because
34 we were looking for a system that supported resolution. Our

1 previous system didn't support resolution. It supported
2 closing complaints but not resolution.

3 **COMMISSIONER ALOFIVAE:** And how do you - there are
4 multiple entry points for people or external
5 stakeholders to make complaints, would that be fair?
6 Teachers, social worker, other legislative provisions,
7 mandatory sections?

8 A. Yes, the legislative provisions would probably relate more
9 to reports of concern which we deal with very distinctly
10 from complaints.

11 **COMMISSIONER ALOFIVAE:** So, in your system, I'm
12 just - Mr Merrick asked you earlier on this afternoon,
13 was there any merit in actually dividing out or
14 separating actual claims, like the one case that
15 you've got on your books, from the whole host of
16 complaints that kind of fall along a continuum of
17 severity?

18 A. Yeah, and I believe my response to that, hopefully my
19 response to that was they are separated out. So, I think
20 Mr Merrick identified that the entry point can be the same
21 but at that entry point they're triaged and separated out.

22 **COMMISSIONER ALOFIVAE:** And people making complaints
23 or reports of concern, as you've referred to that, is
24 there a closing off loop?

25 A. Can I clarify? Reports of concern are quite different from
26 complaints. You may know this, a Report of Concern.

27 **COMMISSIONER ALOFIVAE:** A Report of Concern is made,
28 often an investigation will follow?

29 A. Yes, a Report of Concern is made and we get somewhere
30 between 80,000 and 90,000 of those a year. An assessment is
31 made at the point of receipt about whether a further
32 investigation is needed and that gets to about 40,000 to
33 45,000 that are called FARs, further assessment needed, and
34 those are then referred to a social worker to assess and
35 determine. It might result in a hui whānau or Family Group

1 Conference being setup. It might result in invoking
2 statutory powers, it depends on the situation.

3 **COMMISSIONER ALOFIVAE:** So, there's lots of points of
4 subjectivity along the way?

5 A. I mean, social work is the art of trying to predict future
6 human behaviour. It is a system that is inherently
7 subjective, I guess. Yeah, you're trying to predict human
8 behaviours, yeah.

9 **COMMISSIONER ALOFIVAE:** So, coming back to your
10 complaints system. You just told us that they're all
11 found or located in a particular folder within a young
12 person's notes?

13 A. So, we have a complaint system where there's a record about
14 the individual and every complaint that they've made is
15 attached to that record, is with that record, yeah.

16 **COMMISSIONER ALOFIVAE:** And so, in terms of being able
17 to improve your processes, which I think you spoke
18 about earlier on, is there an analysis that takes
19 place so that you're able to get to see any emerging
20 patterns or themes?

21 A. Yes. Yes, so we produce regular reporting which includes
22 who we are receiving complaints from, the areas of the
23 country, the types of complaints they're making. And from
24 time to time we will do a deep dive. We've done a deep dive
25 on complaints from children and young people and looking for
26 thematic things from that. And Oranga Tamariki has
27 established what we've called a System Enhancement Board, so
28 it's a body within Oranga Tamariki that is charged with
29 taking, I mean we're information rich, we have a lot of
30 information about how we're going. So, they're charged with
31 taking that information, synthesising it and turning it into
32 action and improvement.

33 So, yes, that's a very long answer to quite a simple
34 question, sorry, but yeah.

1 **COMMISSIONER ALOFIVAE:** And is it your end point that
2 actually, there wouldn't be any further Court cases
3 unnecessarily if your complaints process worked well?

4 A. Yeah, I mean, we'd always want to resolve an issue as soon
5 and as close to the source of the issue as possible, and I
6 guess that means that there would be less Court cases. And
7 beyond that, I mean, I think I talked quite a bit in my
8 evidence-in-chief, you know, part of our agency's
9 responsibility is reducing future claims. Yeah, that's what
10 we've got to be aiming for.

11 **COMMISSIONER ALOFIVAE:** Thank you.

12 **COMMISSIONER ERUETI:** Tena koe, Mr Groom. I have a
13 few questions, not many, just to clarify some things
14 for me.

15 So, you note there's a Grievance Panel, is that right,
16 for the Youth Justice residences?

17 A. Yes, for residences, yeah, that's right.

18 **COMMISSIONER ERUETI:** And for the Care and Protection
19 residences, is there a similar type of Grievance
20 Panel?

21 A. I think so but I am operating outside, I'd be willing to
22 find that out and give that information to the Commission.

23 **COMMISSIONER ERUETI:** I'm just wondering, I think that
24 is the case, that there is such a Panel, how is that
25 all co-ordinated and how do we ensure consistency?
26 And also, who is looking at this, who has oversight of
27 these different processes because that means we've got
28 Youth Justice, Care and Protection and then your
29 internal complaint process and claims process, so four
30 complaint models effectively?

31 A. Yes, that's right. I mean, yes, ultimately the
32 co-ordination point is at the leadership team of the
33 organisation, yeah.

34 **COMMISSIONER ERUETI:** And earlier you were talking
35 about, when Mr Merrick asked about an independent

1 Māori body, an iwi facilitator. This came up in the
2 evidence of Ms Hrstich-Meyer as well, about it
3 seemed - I just wanted to clarify, this is like an
4 advocate, an independent advocate to act for a child
5 and young person?

6 A. Is this in the context of us talking about working within
7 iwi around whether they could be part of supporting
8 complainants and, you know, a sense of increasing people's
9 willingness to engage with the complaints process; have I
10 got that right?

11 **COMMISSIONER ERUETI:** That's right, and the broader
12 context of the question of independence of the redress
13 scheme.

14 A. Sorry, in clarifying that, I've totally forgotten what your
15 question is.

16 **COMMISSIONER ERUETI:** It seems this iwi facilitator
17 role is to act as an advocate for the child or young
18 person; is that correct?

19 A. Yes. I more had in mind just to act, yeah, I guess advocate
20 is a way of looking at it. Someone who's trusted to work
21 with us to resolve the issue, yeah.

22 **COMMISSIONER ERUETI:** Ka pai. The last question is
23 about, and you can't comment on the current claim but
24 the prior claims, I think 19 about wellbeing, was
25 there somebody, when you have your interview with
26 these claimants, is it book-ended by a wellbeing
27 counselling service? To what extent is someone
28 provided with -

29 A. I mean, in all cases we made the offer of support but I
30 think, you know, this is something that we need to improve
31 through our enduring process. It's one thing to make the
32 offer without a kind of clear path of how that offer would
33 be fulfilled and what it might look like. So, I think we
34 made the offer, what we need to do better is, I guess,

1 having the substance behind that, having something ready to
2 go and we can explain to people what that might look like.

3 **COMMISSIONER ERUETI:** Okay. And you did mention also
4 about legal assistance that you advised them they can
5 get legal advice?

6 A. Yeah.

7 **COMMISSIONER ERUETI:** Is that independent advice?

8 A. Yes.

9 **COMMISSIONER ERUETI:** That's provided for through
10 Oranga Tamariki?

11 A. Yeah, so, it's basically an offer that we would pay for them
12 to source independent legal advice, both throughout the
13 process and to consider the offer that we propose at the
14 end.

15 **COMMISSIONER ERUETI:** Thank you.

16 A. It's a pleasure.

17 **CHAIR:** And I have no questions, you will be pleased
18 to know, Mr Groom. I just want to know, is there
19 anything that you would like to follow-up on?

20 **MR CLARKE-PARKER:** No, thank you.

21 **CHAIR:** Nothing arising, Mr Merrick?

22 **MR MERRICK:** No.

23 **CHAIR:** In that case, we thank you very much for come
24 along and subjecting yourself to this difficult
25 process and we much appreciate it, so thank you very
26 much for your evidence.

27 A. I was very glad to be here, thank you for having me.

28 **CHAIR:** We will now conclude for the day with a
29 karakia.

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1 (Closing waiata and karakia)

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4 **Hearing adjourned at 5.10 p.m.**

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