

**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 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: 19 October 2020

TRANSCRIPT OF PROCEEDINGS

INDEX

	Page No.
Opening Remarks	3
Opening Submissions on behalf of the Crown by Ms Aldred	5
Philip Blair Knipe	
XD by Mr Clarke-Parker	12
XXD by Mr Molloy	59
QD by Commissioners	108
Simon Charles MacPherson	
XD By Mr Clarke-Parker	121

OPENING REMARKS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

(Opening Waiata and karakia)

THE REGISTRAR: The sitting of the Royal Commission is now in session.

CHAIR: Good morning, Ms Janes.

MS JANES: We are resuming part 2 of the hearing. I don't have a long opening statement, it is really to acknowledge and thank mana whenua and all those who have tirelessly worked to bring this public hearing. A very warm welcome to those listening on the livestream. They are front and centre of the work that the inquiry is doing. We owe a debt of gratitude to the survivors and victims who gave evidence in phase 1 and we acknowledge the courage that it took for them to come forward. The Registrar has already gone through all of the housekeeping and I note that we don't have, as yet, public in the gallery, so we don't need to go through those aspects again. They are Inquiry people. So, this phase 2 is to hear from the Crown witnesses as to what redress processes have been and are currently in place. We will hear from eight Crown witnesses. They will be Philip Knipe from the Ministry of Health. From the Ministry of Social Development, Simon MacPherson, Garth Young and Linda Hrstich-Meyer, Steven Groom on behalf of Oranga Tamariki, Helen Hurst from the Ministry of Education, and we have two witnesses from the Ministry of Justice Brett Dooley and David Howden. And then for Crown Law we have the Solicitor-General Una Jagose QC.

1 On the final day, which we expect to be the 4th of November,
2 we will have short closing submissions from the Crown and
3 also counsel for Leonie McInroe.

4 I don't need to go through the livestream issues, but they
5 are as phase 1, that there is a 5 minute delay on the
6 livestream for anyone who is listening, they have that
7 delay.

8 So, without further ado, we will invite Wendy Aldred from
9 the Crown to give a short opening statement and then call
10 her first witness.

11 **CHAIR:** I understand Mr Molloy will be examining the
12 witnesses on behalf of the Crown and Wendy Aldred will
13 be counsel assisting. Good morning, Ms Aldred.

14

15

16

17

OPENING SUBMISSIONS ON BEHALF OF THE CROWN**BY MS ALDRED**

1
2
3
4
5 **MS ALDRED:** Good morning, tena koutou katoa. Thank you,
6 Ms Janes. On behalf of the Crown, I would like to
7 acknowledge mana whenua, the survivors, survivors'
8 groups, whanau and supporters of survivors and all the
9 public who are watching or following this hearing.
10 The Crown Agencies engaged in the Royal Commission,
11 their witnesses and other staff have listened
12 carefully to the evidence of survivors in phase 1 of
13 this hearing and have asked me to convey their
14 appreciation for the remarkable courage and strength
15 each witness has demonstrated in coming forward to
16 share their devastating experiences of abuse in State
17 care.
18 Their contribution to the important work of the Commission,
19 along with the many survivors who will be participating in
20 the Commission in other ways, cannot be overstated.
21 I also acknowledge those who have passed away, but whose
22 experiences of abuse in care will nevertheless have formed
23 the work of the Commission, including Patrick Stevens whose
24 evidence was able to be shared by his counsel Ms Hill and
25 Alva Sammons whose sisters were able to tell some of her
26 story.
27 The purpose of this opening statement is to set the scene
28 for the evidence given on behalf of the Crown for this
29 public redress hearing and briefly introduce our witnesses
30 who have been given a very brief introduction by Ms Janes.
31 The Crown's evidence is directed to the issues set out in
32 the Royal Commission's scoping paper for the public redress
33 hearing. In summary, the purpose of the hearing is
34 described by the Commission is to examine civil claims and

1 civil litigation relating to abuse in State care and the
2 response of the Crown to those claims and proceedings.
3 For those watching this hearing, you may notice that some
4 matters that arose in phase 1 will not be the subject of
5 detailed evidence from Crown witnesses. These matters
6 include the circumstances of abuse in care. While the abuse
7 itself, and the conditions that have allowed it to occur,
8 will be a central concern of this Inquiry as a whole, the
9 Crown's evidence in this hearing describes its responses to
10 claims for redress, rather than the events that gave rise to
11 the claims.

12 Likewise, the investigation and prosecution of offences by
13 Police and the availability of ACC entitlements to abuse
14 survivors will, we understand, be the focus of more targeted
15 investigations by the Commission at later stages. Again,
16 these are not matters that will be addressed in any detail
17 by our witnesses over the next two weeks.

18 In accordance with the Commission's scoping paper, Crown
19 witnesses will explain the Crown's response to claims for
20 redress, dealing with civil litigation and out of Court
21 alternative dispute resolution processes and the
22 availability of Legal Aid for those avenues of redress.
23 Crown evidence will be given by witnesses from the Ministry
24 of Health, Social Development, Oranga Tamariki, the Ministry
25 of Education, the Ministry of Justice in respect of Legal
26 Aid and the Crown Law Office.

27 The relevant timeframe in relation to redress is broadly the
28 last two decades. Some of the first civil claims made by
29 survivors related to abuse in psychiatric institutions and
30 of course in particular Lake Alice. The claims were filed
31 in Court and then settled in the early 2000s as part of a
32 global redress process that set aside legal barriers to
33 claims. At the same time, Crown Agencies were receiving
34 claims of abuse in other psychiatric institutions and claims

1 relating to children's time in the care of the Department of
2 Social Welfare and Child, Youth and Family.

3 From the mid-2000s, the number of claims continued to
4 increase. Claimants brought civil claims against the Crown
5 in the High Court. Significant obstacles to those claims
6 succeeding in Court were identified, including, in
7 particular, the Accident Compensation bar and the Limitation
8 Act. Additionally, it could be difficult for claimants to
9 prove historical abuse and to establish causation.

10 These difficulties for claimants were exemplified by the
11 2007 White trial which the Commission heard about during
12 phase 1.

13 Following White and several other 2007 decisions, all of
14 which had been funded by Legal Aid, the Legal Services
15 Agency reviewed whether the historical abuse claims
16 continued to be eligible for Legal Aid.

17 The Crown's success in Court, including in White,
18 illustrated that there were significant impediments for some
19 of these claims that affected their prospects of success.
20 As the Commission heard during phase 1, this resulted in
21 Legal Aid for many historical abuse claims being reviewed
22 and withdrawn, with some then being reinstated following
23 legal challenge to those funding decisions.

24 At the same time, the Crown became increasingly open to
25 agreeing to resolving claims out of Court through the
26 development of alternative dispute resolution processes.
27 Legal Aid was, and continues to be, available for these
28 processes, as well as for proceedings in Court.

29 The Ministry of Social Development has been the Crown agency
30 that has dealt with the largest number of abuse in care
31 claims, although the Ministry of Health continued to receive
32 claims, as did the Ministry of Education. Each agency has
33 operated its own alternative dispute resolution process.

34 The processes have tended to evolve over time, particularly
35 in the case of the Ministry of Social Development. The

1 establishment of Oranga Tamariki in April 2017 has brought a
2 fourth agency with a redress system into existence, although
3 Oranga Tamariki is still at an early stage in its experience
4 of receiving and dealing with claims of abuse in care.

5 In summary, the Crown's redress systems originally responded
6 to claims made against it and filed in Court. There has
7 been a shift in focus from the Crown defending all claims it
8 considered were unlikely to succeed in Court, to settling
9 claims notwithstanding legal difficulties. At all times of
10 course the approach taken by Crown Agencies to redress has
11 been subject to the policy of the current government.

12 So, having briefly summarised, I suppose, the evolution of
13 these claims, I turn now to the witnesses that the Crown
14 will call.

15 As you heard from Ms Janes, Philip Knipe is the Chief Legal
16 Adviser at the Ministry of Health and will give evidence
17 first. He will discuss the Ministry's involvement in
18 redress, including in particular, the Lake Alice settlement,
19 the Crown Health Financing Agency claims and the Ministry's
20 process for assessing the comparatively low number of claims
21 it continues to receive.

22 Mr Knipe continues to be directly involved in assessing
23 claims received by the Ministry.

24 Simon MacPherson is the first of three witnesses who will
25 give evidence for the Ministry of Social Development. He is
26 the Deputy Chief Executive for the policy branch of that
27 Ministry. His evidence will include information about the
28 early development of the Historic Claims Team and its
29 processes under the Crown litigation strategy, litigation of
30 claims and how the system has changed. In addition, he will
31 outline expenditure on historical abuse claims.

32 The second witness for MSD is Garth Young who has been
33 employed by the Ministry or its predecessors since 1984. He
34 is the lead claims adviser with the Historic Claims Team.

35 Mr Young has been involved in the assessment of claims and

1 his evidence was filed at the Commission's request and
2 addresses particular topics identified by the Commission.
3 Linda Hrstich-Meyer is the final witness for MSD.
4 Ms Hrstich-Meyer is the General Manager of historic claims.
5 Her evidence will include the development and implementation
6 of MSD's claims assessment processes from 2007 onwards,
7 including the development and implementation of what was
8 called the Two Path Approach. And the work the Ministry has
9 done to change its process over the last several years,
10 culminating in a new process that was rolled out in November
11 2018.

12 Steven Groom is the General Manager of Public Ministerial
13 and Executive Services at Oranga Tamariki. Mr Groom will
14 discuss the process that Oranga Tamariki has used in
15 assessing the comparatively small number of claims it has
16 resolved to date and the ongoing work on developing its
17 claims assessment process.

18 After Mr Groom, Helen Hurst will give evidence. Ms Hurst is
19 the Associate Deputy Secretary Operational Delivery in the
20 Ministry of Education Sector Enablement and Support Group.
21 Ms Hurst discusses some of the complexities around
22 establishing liability in the education setting, as
23 discussed in phase 1, and the Ministry of Education's
24 current processes for receiving and resolving claims of
25 abuse in State care.

26 Two witnesses will give evidence for the Ministry of Justice
27 in respect of Legal Aid. Brett Dooley is the Legal Services
28 Commissioner and the Group Manager of National Service
29 Delivery. Mr Dooley will provide evidence on the principles
30 covering eligibility for Legal Aid and the history of Legal
31 Aid for historical abuse claimants. Mr Dooley will be
32 joined by David Howden. Mr Howden previously held the role
33 of national specialist adviser in the legal services agency
34 and then the Ministry of Justice and his work included the
35 historical abuse claims. He will draw upon this knowledge

1 and experience of the funding of abuse claims to supplement
2 Mr Dooley's evidence.

3 The final Crown witness is the Solicitor-General, Una Jagose
4 QC who's also the head of the Crown Law Office. The
5 Solicitor-General, along with the senior law officer, the
6 Attorney-General, has constitutional responsibility for
7 determining the Crown's view of what the law is and ensuring
8 that the Crown's litigation is properly conducted.

9 Crown Law assists that function by providing legal advice
10 and representation to the government, including in relation
11 to historical abuse claims.

12 Ms Jagose will discuss the development, application and
13 amendment of the Crown litigation strategy, as well as Crown
14 Law's role in the White litigation and other significant
15 civil proceedings.

16 And those will be the witnesses that will be called over the
17 course of the next two weeks.

18 And now to begin, I would like to call upon the Crown's
19 first witness, Mr Phil Knipe of the Ministry of Health. His
20 evidence will be led by Mr Clarke-Parker.

21

22

23

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

PHILIP BLAIR KNIPE - AFFIRMED
EXAMINED BY MR CLARKE-PARKER

CHAIR: Good morning, Mr Clarke-Parker. Before we begin, Mr Knipe, may I ask you to take the affirmation?

A.Yes. (Witness affirmed).

CHAIR: Welcome to the Commission. You are our very first Crown witness, so thank you for coming.

A.Thank you.

MR CLARKE-PARKER:

Q.Good morning. Mr Knipe, can you please begin by confirming your full name?

A.My full name is Philip Blair Knipe.

Q.Thank you. You are the Chief Legal Adviser at the Ministry of Health?

A.Correct.

Q.And you have prepared two briefs of evidence for this hearing; one dated 27 January 2020, which I will refer to as your primary brief, and a second reply brief dated 6 March 2020?

A.That's correct.

Q.Just to the Commissioners, I note that we will, on a couple of occasions, jump between those two briefs when that suits.

CHAIR: Yes.

MR CLARKE-PARKER:

Q.Mr Knipe, you have both of those briefs before you and I understand that you will also have a bundle that looks like this one?

A.Correct.

Q.As well as your brief of evidence, it also has the documents that you may be referred to in the course of today's evidence.

1 If I can have you now begin reading, please, from your
2 primary brief at paragraph 1.2.

3 A.I am employed as the Chief Legal Adviser at the Ministry of
4 Health and I've held this role since joining the Ministry in
5 January 2008.

6 I am responsible for the provision of legal services to the
7 Ministry and the management of Health Legal, the Ministry's
8 in-house legal team. I am also responsible for the
9 Ministry's knowledge services team, that's the library and
10 records areas.

11 As part of my role, I am responsible for overseeing and
12 processing claims of abuse received by the Ministry relating
13 to events occurring in public healthcare prior to 1993.

14 This has largely involved claims of physical and sexual
15 abuse in the context of treatment in State run psychiatric
16 hospitals but it has also involved claims arising in the
17 course of attendance at psychopaedic facilities such as
18 Mangere, Kimberley and Templeton.

19 I have been responsible for processing these types of claims
20 since the Ministry assumed responsibility for them in July
21 2012.

22 Prior to that, I was the Ministry's representative on
23 Historic Claims Inter-Agency Working Group.

24 At this point, I have advised that I have watched the
25 evidence as read for Mr Stevens, Ms Munro for Mr Parker and
26 also for Leonie McInroe. Unfortunately because of Covid
27 responsibilities, I have not been able to view all of the
28 evidence but I have also read the evidence of Ms Bellingham,
29 the evidence provided by Ms Munro on behalf of Mr Beale and
30 I have read the evidence of Cooper Legal as it relates to
31 psychiatric claims, in particular I'd like to acknowledge Mr
32 Stevens who unfortunately passed before the hearing, but I
33 was involved with his claim to the Ministry and appreciate
34 the courage, his courage as a survivor in terms of the
35 process that he went through.

1 Q.Thank you, Mr Knipe. At paragraph 1.5, you have a brief
2 summary of what your evidence covers. We'll have that taken
3 as read. Can I have you move to paragraph 1.6, please.

4 A.So, I do not propose to address the process for managing
5 claims made concerning abuse occurring in the context of
6 public healthcare after 1993 because liability for these
7 claims primarily lies with District Health Boards or the
8 relevant provider and not the Ministry.

9 Q.Thank you, Mr Knipe, if you can continue from there and I
10 have the sense that perhaps if you were to read slightly
11 slower, that would be appreciated.

12 A.Will do. In my view, the history of the process for
13 addressing claims of abuse arising in the context of public
14 healthcare is divided into four distinct periods of time.
15 So, we'll start with regional service providers. So, prior
16 to 1993, there were various iterations of regional service
17 providers who followed their own practices and processes
18 when receiving complaints or claims of abuse but there is
19 very limited information available to the Ministry about
20 these processes because the entities that dealt with these
21 matters were separate from the Ministry and its predecessor,
22 the Department of Health.
23 Next, between 1992-1996 there was a philosophical system
24 change. Between 1992 and 1996, the public healthcare system
25 significantly changed its structure and care philosophy in a
26 way that shifted the previous practice of bringing patients
27 into State residential care or custody for treatment towards
28 greater community based care options with greater
29 recognition of patient rights.

30 Q.Thank you, Mr Knipe. Apologies for interrupting you again.
31 Can I please can you to again speak slower.

32 **CHAIR:** If you keep your eye on the signer, that might
33 help you.

34 A.Great, thank you. Next there were the growing number of
35 claims against the State. From the late 1990s onwards, the

1 central health government agency, known as the Crown Health
2 Financing Agency, also known as CHFA started to receive
3 increasing numbers of historic claims of abuse in public
4 health care which were dealt with by litigation or
5 settlement processes. This resulted in the setup of various
6 forums to hear claims and offer assistance. In mid-2012, a
7 large-scale settlement of Court proceedings that had been
8 lodged and foreshadowed occurred.

9 From July 2012 until present, the Ministry assumed
10 responsibility from CHFA for historic abuse claims relating
11 to Area Health Boards and their predecessors and established
12 a Historic Abuse Resolution Service administered by the
13 Ministry.

14 This remains the current mechanism for receipt and redress
15 of historic claims of abuse occurring before 1993 in public
16 healthcare.

17 Q.Thank you. And sections 2 and 3 of your brief of evidence
18 discuss the first two of those time periods. I'll have most
19 of that taken as read, but if I can turn you to page 6,
20 please. At paragraph 3.12, you note again that complaints
21 about events after 1993 are dealt with by individual
22 District Health Boards and can I now have you resume at
23 paragraph 3.13?

24 A.This provides the context for why the Ministry has
25 subsequently focused on policies and processes in regards to
26 claims of abuse occurring prior to 1993. The historic
27 claims made have largely arisen out of abuse in psychiatric
28 institutions. However, there have also been claims of abuse
29 within general hospitals, although these are rare.
30 To the extent that fresh complaints continue to be made
31 about events occurring before 1993, these are now managed
32 systematically by the Ministry in a structured and
33 well-established process, which I will discuss later in this
34 brief.

1 Q.Thank you. And you turn here to the third time period from
2 1996 onwards, so can I have you continue reading from
3 paragraph 4.1 which relates to the Lake Alice Hospital
4 claims.

5 A.The Lake Alice Psychiatric Hospital, Lake Alice, was
6 situated in Marton. It housed a national high security unit
7 for mentally ill patients. The Child and Adolescent Unit
8 was setup in 1972. It treated children and adolescents with
9 psychiatric and behavioural problems. It ceased operations
10 in 1977.

11 Complaints began to emerge in or about 1976/1977 concerning
12 the Child and Adolescent Unit. Former patients of the Child
13 and Adolescent Unit began to make claims of abuse, including
14 use of unmodified electro-convulsive therapy, ECT, and
15 paraldehyde injections, as well as claims of sexual abuse
16 while under the care of this hospital.

17 In 1977, a Commission of Inquiry investigated the treatment
18 of an adolescent boy who had been a patient at Lake Alice.
19 In the same year, the Chief Ombudsman released a report into
20 practices at Lake Alice.

21 During the 1990s, there was increased publicity around
22 former patients of the Child and Adolescent Unit who claimed
23 that they had received ECT, aversion therapy and paraldehyde
24 injections as punishment while at the Child and Adolescent
25 Unit. A number of former patients sought compensation from
26 the New Zealand Government. A joint Statement of Claim was
27 filed in the High Court in April 1999 on behalf of 88 former
28 patients. They were represented by Grant Cameron &
29 Associates.

30 In the early 2000s, the New Zealand Government determined
31 that it would compensate and apologise to former patients of
32 the Child and Adolescent Unit at Lake Alice. Two rounds of
33 settlement followed.

34 The round 1 settlement, which was approved in October 2000,
35 was for the 88 claimants who had filed Court proceedings and

1 for another 7 former patients, so that was 95 former
2 patients in total.

3 The settlement was approved up to a maximum amount of
4 \$6.5 million.

5 The Crown appointed retired High Court Judge Sir Rodney
6 Gallen to determine how the settlement monies should be
7 divided among the claimants.

8 Q.Thank you, and you note at 4.8 some further comments on Sir
9 Rodney Gallen's consideration. If we can have that taken as
10 read and move to paragraph 4.9.

11 A.Following the settlement, the then Prime Minister and
12 Minister of Health wrote to each of the complainants and
13 apologised on behalf of the government for their treatment
14 in the Child and Adolescent Unit.

15 The government decided subsequently to take steps to settle
16 any outstanding or potential claims by former patients in
17 the Child and Adolescent Unit at Lake Alice. This was
18 referred to as the "second round" of Lake Alice settlements.
19 The process for settling these claims was as follows:

20 A confidential settlement process, broadly similar to the
21 settlement of this class action, would be used for all
22 second round claimants.

23 Sir Rodney Gallen would be instructed by the Crown again,
24 acting by and through the Ministry, to determine the quantum
25 of the award to be made to applicants.

26 There would be Crown funded representation of all applicants
27 or claimants for settlement by Dr David Collins QC.

28 Sir Rodney Gallen would be instructed to award individual
29 payments to applicants on an equitable basis on broadly
30 similar principles and criteria as in the class action
31 settlement. Sir Rodney was instructed to take into account
32 the absence of substantial legal costs to new applicants.

33 In the second round, 90 former Lake Alice patients received
34 compensation. They collectively received \$5.7 million, with
35 the average settlement of approximately \$70,000. Claimants

1 were also sent a personal written apology signed by the
2 Prime Minister and the Minister of Health at the time.

3 I understand that the Crown decided not to rely on the
4 absolute litigation bar for claims relating to events at
5 Lake Alice prior to 1972 found in the Mental Health Act
6 1969, or the limitation defences for events after that date,
7 when settling these claims.

8 While the formal cut-off date for claims from Lake Alice
9 patients was 1 July 2002, claimants continued to come
10 forward past that date and they continue to this day.

11 The Ministry has maintained a separate claims process for
12 any new claims arising out of care provided at Lake Alice.
13 On average, the Ministry continues to receive approximately
14 one new claim a year about the care provided in Lake Alice
15 in the Child and Adolescent Unit.

16 As a result, the Crown has now paid out a total of \$12.6
17 million for claims made in respect of abuse occurring before
18 1993 at Lake Alice, made up of \$6.5 million to 95 round 1
19 claimants; \$5.7 million paid to 90 round 2 claimants; and
20 \$400,000 paid to claimants who presented their claims after
21 round 2 had closed.

22 Q.Thank you. You move on here, having concluded the
23 discussion of the Lake Alice settlements, to discuss other
24 psychiatric hospital claims. So, can I have you continue
25 reading from paragraph 4.15?

26 A.By 2004, it had become apparent that many other former
27 patients of psychiatric hospitals had grievances about their
28 treatment and care while in hospital (not only those who had
29 received treatment at Lake Alice).

30 A number of former patients had commenced litigation against
31 the Crown alleging mistreatment and abuse in psychiatric
32 hospitals throughout New Zealand occurring in the 1960s and
33 1970s. There were also stories of mistreatment and abuse in
34 psychiatric institutions reported in the media, particularly
35 about practices at Porirua Hospital.

1 Q.And I just interrupt you here, Mr Knipe, to note, as
2 discussed shortly before the hearing, that one of the cases
3 you refer to in the next paragraph is K v Crown Health
4 Financing Agency.

5 A.Cool. Between 2004 and 2008, claimants continued to come
6 forward, generally represented by one of two law firms,
7 Johnston Lawrence or Cooper Legal. By 31 December 2007, 181
8 claims had been filed against CHFA in the High Court in
9 respect of psychiatric institutions, with two key decisions,
10 K v Crown Health Financing Agency and J v Crown Health
11 Financing Agency.

12 While CHFA was a Crown agency in its own right, the Ministry
13 was its monitoring agency and so had dealings with CHFA in
14 that regard.

15 Those dealings involved monitoring CHFA's performance,
16 including its progress on activity relating to historic
17 claims. The Crown Law Office represented CHFA and also
18 investigated the claims.

19 Over this period of four years, between 2004 and 2008, the
20 Crown developed a litigation strategy to respond to these
21 claims. This involved two elements:

22 If claimants wanted to speak to a non-critical forum and
23 obtain services that promoted wellness and assisted them to
24 move on from historic grievances, they could attend the
25 Confidential Forum or the Confidential Listening and
26 Assistance Service which I will discuss in more detail later
27 in this evidence.

28 If claimants wanted a factual inquiry and to seek
29 compensation, then they could do so through the Courts.

30 Arising out of this Crown strategy came two independent
31 forums.

32 So, the first was the Confidential Forum for former
33 inpatients of psychiatric hospitals, the Confidential Forum.
34 And the Confidential Listening and Assistance Service, also
35 known as CLAS.

1 Q.And from paragraph 4.20, you discuss the Confidential Forum,
2 can I have you continue reading from there, please.

3 A.The Confidential Forum was announced by the government in
4 2004 and established in 2005. The Ministry's involvement in
5 this forum was limited because the process operated
6 autonomously and was funded by Vote Internal Affairs and
7 administered by the Department of Internal Affairs.
8 The Māori name for the Confidential Forum was Wānanga (Te
9 Āiotanga) Noho Tapu mō ngā Tūroro i noho ki ngā Hōhipera
10 Mate Hinengaro. Te Āiotanga means tranquillity, calm and
11 peace in English.

12 The Confidential Forum had a listening, informing and
13 reporting mandate and operated between July 2005 and April
14 2007. It met with former inpatients, family members of
15 former inpatients and former staff members of psychiatric
16 institutions to allow them to describe their experiences of
17 those institutions before November 1992.

18 Hearings were held throughout New Zealand. There were 154
19 days of meetings in 22 different locations between 11 July
20 2005 and 12 April 2007. By the completion of the hearing
21 process, 493 people had attended a meeting with the
22 confidential form rum.

23 Q.Thank you. And I'll have those next two paragraphs taken as
24 read and move on to paragraph 4.26, please.

25 A.The Confidential Forum's processes were designed to be as
26 user friendly and as flexible as possible so as to be able
27 to take into account people's emotional, physical, cultural,
28 spiritual and financial considerations. The letter to
29 participants sent by the Confidential Forum invited
30 participants to advise of any cultural or spiritual
31 protocols or practices they would like observed. It also
32 asked participants to let the Confidential Forum know if
33 they wished to speak to the Panel in Te Reo Māori so that an
34 interpreter could be arranged.

1 Q.And, again, we'll have 4.27 taken as read and I'll move you
2 to 4.28, please.

3 A.The Confidential Forum was explicitly designed to be
4 non-adversarial and to concentrate on the issues affecting
5 those who attended, rather than to determine the truth of
6 the stories told or to consider compensation.

7 It was designed to accord participants respect and
8 acknowledgment, to assist them to make sense of their
9 experience and to assist them with access to support and
10 complaint resolution services.

11 Q.And in the following several paragraphs, you describe the
12 Confidential Forum process and some of the outcomes from it.
13 You note at 4.33 some of the positive feedback received and
14 at 4.34 you refer to the Confidential Forum issuing its
15 final report.

16 Can I have you resume reading now at 4.38.

17 A.Because of the success of the Confidential Forum, the
18 government of the time decided to extend the listening and
19 Assistance Service to all forms of residential State
20 care - psychiatric hospitals and wards, health camps, Child
21 Welfare care and special education homes before 1992. The
22 Confidential Listening Assistance Service, CLAS, was
23 established in 2008 to provide that service.

24 Q.And you now move on to discuss the review of the Crown
25 litigation strategy from 4.39, can you please continue
26 reading there?

27 A.In the wake of the closure of the Confidential Forum, it was
28 apparent that there were a significant number of people who
29 had suffered abuse in State care more generally, over and
30 above those who had been in-patients at psychiatric
31 institutions and other health service providers. The Crown
32 wanted to continue to provide alternative routes for these
33 people to resolve their concerns, rather than turning to the
34 Courts.

1 Following the issue of Te Āiotanga in June 2007, the Crown
2 reviewed its litigation strategy. The Crown Law Office
3 originally chaired the group which comprised of chief legal
4 advisers from the Ministry (myself) and the Ministries of
5 Social Development and Education, as well as a
6 representative of CHFA.

7 The Crown agreed that the current strategy should be
8 continued, meaning that:

9 Officials would attempt to settle claims where there was a
10 good evidential basis to do so, even if there were legal
11 impediments to a claim being brought, such as the Limitation
12 Act or Accident Compensation legislation, which bars many
13 claims for personal injury because of the scheme offering 24
14 hour, no fault insurance of personal injury that the
15 government has run since 1974.

16 Claims would not be settled simply because it was more
17 economic to do so.

18 And claims that could not be settled would be defended in
19 Court.

20 The work done by the Confidential Forum process should be
21 expanded to anybody who had been abused in State care before
22 1992, rather than limited to specifically psychiatric
23 institutions. This is one of the factors that resulted in
24 the establishment of the Confidential Listening and
25 Assistance Service addressed below.

26 This agreement will be referred to as the Crown Litigation
27 Strategy.

28 Q.Thank you, if you can now please move to paragraph 4.43
29 where you discuss the Confidential Listening and Assistance
30 Service.

31 A.Cool. In 2008, the Confidential Listening and Assistance
32 Service was established by the government as an independent
33 agency to provide assistance for people who had suffered
34 abuse and neglect in State care before 1992. The service
35 was originally intended to have a life span of five years,

1 however in April 2012 Cabinet approved an extension until
2 30 June 2015.

3 Q.And we'll have 4.44 taken as read and move to 4.45.

4 A.Throughout the seven years it operated, 1103 people
5 participated in the listening service, including many Māori.
6 670 people identified as European/Pakeha, 411 identified as
7 Māori, 21 identified as Pacific and one as Asian.

8 Q.And at paragraph 4.46, you touch on the make-up of the
9 Panel. We'll have that paragraph taken as read and again
10 move to 4.47.

11 A.The Listening Service noted that it had a backlog of claims
12 throughout its operation. However, it managed to see
13 approximately 200 people every year. The service met with
14 101 people in 2009, 206 people in 2010, 189 in 2011, 206
15 people in 2012, 206 people in 2013, 186 in 2014 and a
16 further 9 in 2015.

17 20% of those who were heard by the listening service had
18 been in psychiatric care and in health camps. The stories
19 told by these people echoed those heard by the Confidential
20 Forum.

21 Participants were given the opportunity to meet with the
22 listening service Panel, have their story recorded and
23 identify the assistance that they required. The broad range
24 of assistance offered fell largely into the following
25 categories:

26 Listening; access to, and talking people through, their
27 personal files; counselling, the listening service funded up
28 to 12 sessions of counselling to support a participant
29 afterwards; and referrals to government agencies.

30 Q.Thank you. And, again, we'll have the following two
31 paragraphs taken as read and move to the disestablishment of
32 the Crown Health Financing Agency in paragraph 4.52, please.

33 A.In August 2011, a decision was made by Cabinet to
34 disestablish CHFA and transfer its functions as part of a
35 process of reducing the number of State agencies. That

1 agency had been the main recipient and defendant of historic
2 claims, including claims against Lake Alice.

3 In early 2012, prior to its disestablishment on 1 July 2012,
4 CHFA, in conjunction with Crown Law and the Ministry,
5 undertook a process approved by the Minister of Health and
6 the Attorney-General seeking to settle claims that had been
7 filed with the Court against CHFA relating to treatment of
8 patients at psychiatric facilities operated by former Area
9 Health Boards.

10 In the lead-up to the disestablishment of CHFA, \$5 million
11 was available for the settlement of these claims and it was
12 decided that these funds would be used by CHFA to achieve
13 settlement of existing claims.

14 As of December 2011, approximately 300 claimants had filed
15 proceedings against CHFA in relation to historic claims.

16 The claims process had been setup because it had become
17 apparent that litigation was an unsuccessful and
18 inappropriate avenue for redress of historic claims. That
19 was because the Mental Health Act 1911 and its successor,
20 the Mental Health Act 1969, contained very restrictive
21 provisions in respect of claims up until the enactment of
22 the 1992 Mental Health Act.

23 Even if plaintiffs were not caught by these statutory
24 restrictions, they faced significant difficulties proving
25 their claims to the standard of proof required due to the
26 passage of time since the alleged abuse had occurred. And
27 the delays of going through the Justice System resulted in
28 plaintiffs incurring substantial Legal Aid liabilities.

29 The Ministry [and] CHFA considered that a global settlement
30 of claims outside of Court was the best approach to resolve
31 these filed claims and any claims received up until then
32 because they represented a finite pool of old claims about
33 events largely in the 1960s and 1970s.

34 In 1992, the law relating to the treatment and care of
35 mental health patients changed considerably. Therefore,

1 there are now options for resolution of disputes within the
2 new legislative framework.

3 It enabled CHFA to efficiently settle a large number of
4 claims.

5 And it provided claimants with a means to exit litigation
6 with dignity, and without a debt, and to move forward in
7 their lives by providing some assistance for meeting their
8 wellness related costs.

9 The settlement was negotiated between the Crown Law Office
10 and Cooper Legal who by that time had assumed responsibility
11 for the claimants previously represented by Johnston
12 Lawrence.

13 The settlement offer to claimants included a letter of
14 apology from CHFA, payment of a settlement sum ranging from
15 \$4,000 to \$18,000, depending on the level of abuse and the
16 quality of supporting evidence. This was in acknowledgment
17 of a patient's experiences in psychiatric hospital care and
18 of the costs the claimant had incurred in seeking wellness
19 in the period since the claimant's treatment.

20 Settlement of outstanding Legal Aid liabilities with CHFA
21 paying half of the outstanding amount and the Legal Services
22 Agency, now part of the Ministry of Justice, writing off the
23 remaining amount, and payment of legal costs associated with
24 the settlement.

25 To the best of my understanding, it was agreed with CHFA
26 that Cooper Legal, on behalf of the claimants they
27 represented, would assess the claims on the basis of
28 seriousness, the nature of the abuse that took place, how
29 they compared against each other and the funding available,
30 including to settle Legal Aid liabilities, and categorise
31 them as follows:

32 Q. And you've set out the five categories in your brief of
33 evidence there. Are you able to just cover those briefly,
34 please?

35 A. Yeah, I'll walk you through them.

1 So, the categories that were used, category 1, that
2 typically involved allegations of repeated serious sexual
3 abuse and physical abuse or where plaintiffs were young and
4 therefore regarded as being more vulnerable. So, the amount
5 paid there was a maximum or was \$18,000.

6 The next category was 2A which typically involved claims
7 that alleged physical abuse and or some sexual abuse of a
8 less serious nature than group 1. May also include
9 allegations of seclusion or ECT as punishment, with the
10 amount paid being \$12,000.

11 Then there was category 2B, that was typically claims that
12 alleged physical abuse and/or some sexual abuse of a less
13 serious nature than group 1, may also include allegations of
14 seclusion and ECT as punishment, with an amount paid plus an
15 apology of \$8,000.

16 Then it was category 3, which involved less serious claims
17 of alleged fewer physical assaults, relatively short
18 admissions and typically no sexual abuse, with an amount
19 paid and plus an apology of \$4,000.

20 And category 4, where there was no corroborating information
21 supporting claims of abuse, only the claimant's account of
22 events, which was usually with an apology only.

23 Q.And I'll now take you to 4.61 where you talk of the progress
24 that CHFA made in reaching those settlements.

25 A.By 30 June 2020, 330 of the 336 claims included in the CHFA
26 settlement process had been resolved. Of the remaining 6
27 claims, 3 offers were declined by the claimant and a further
28 3 claimants could not be located.

29 These 330 claimants were paid a total of \$4.96 million by
30 CHFA, including payments to Legal Aid in settlement of Legal
31 Aid liabilities of claimants.

32 Q.That's the end of the section which discusses the CHFA
33 claims, Mr Knipe. There was evidence during phase 1 that
34 related to claims against CHFA.

1 Firstly, Mr Packer's case, whose evidence was given by
2 Ms Munro, was a claim against CHFA, and in that case the
3 issue of confidentiality was raised, whether the
4 confidentiality provision in the agreement might risk
5 sweeping issues under the rug or hiding the abuse away.
6 What's your comment on that?

7 A. Not at all. The nature of these claims is that they are
8 sensitive to the individuals involved. Confidentiality
9 respects the privacy of the claimants and in the Ministry's
10 process is one way. So the confidentiality falls upon the
11 Ministry and does not prevent claimants from talking about
12 their claims in working with the Royal Commission, other
13 agencies, talking with the media or other persons.

14 Q. And that's the case for the Ministry's current process. Was
15 that also the case for the CHFA settlements?

16 A. I understand the confidentiality provisions in the
17 Ministry's process also reflects those from the CHFA
18 process.

19 Q. Thank you. And I also understand you have a comment on one
20 aspect of Ms Bellingham's evidence from phase 1?

21 A. So, Ms Bellingham's claims was one of those claims that was
22 assessed under the CHFA process. I acknowledge her evidence
23 and obviously she had feedback about what she would like to
24 have seen in subsequent processes.

25 I noted in reading the evidence that the current process
26 operated by the Ministry contains several of the features
27 Ms Bellingham sought. It's quick, it has a lower burden of
28 proof, it's clear and it provides compensation. It does not
29 start from a place of denial and it takes claims at face
30 value.

31 Q. Thank you. And I will now take you to 4.63 of your brief,
32 please.

33 A. This is talking about the Ministry's current Historic Abuse
34 Resolution Service. On the 1st of July 2012, CHFA was
35 officially disestablished and all liabilities for historic

1 claims were assumed by the Ministry from that date,
2 including responsibility for dealing with all remaining and
3 new historic claims, as well as the administration
4 associated with the settling of existing claims.

5 Following that, the Ministry's Historic Abuse Resolution
6 Service has dealt with claims of abuse and neglect by
7 persons who were receiving care in a state psychiatric
8 hospital before 1993, the service was approved by the
9 Minister of Health in 2012.

10 The Ministry has adopted this process as a way of resolving
11 historic claims in a timely and accessible manner and it was
12 established in line with the Crown Litigation Strategy.

13 The process deals with historic claims which are those
14 dating before 1993. I should just briefly explain here,
15 when we say before 1993, it feeds into 1993 itself, so we
16 actually use 30 June 2013 as the cut-off date.

17 The reason for that cut-off date is that from 1993 onwards,
18 legislation, in the form of the Mental Health (Compulsory
19 Assessment and Treatment) Act 1992 and an independent
20 statutory Commissioner, the Health and Disability
21 Commissioner, established in 1996, provided for the
22 upholding of rights of those who were in psychiatric care
23 and avenues for people to make complaints about contemporary
24 care.

25 Q.I'll now move you to section 5, please, which discusses the
26 proposal to establish the Ministry's historic claims
27 process.

28 A.After 1st of July 2012, the Ministry continued to receive
29 new historic claims relating to events prior to 1993 after
30 the CHFA settlement. These were in addition to the 336
31 claims that had been settled.

32 These further claims concerned complaints of sexual and
33 physical mistreatment occurring whilst in the care of
34 publicly funded health institutions, primarily in connection
35 with psychiatric hospitals. In addition, there were also

1 complaints relating to treatment as punishment, including
2 arising from the use of medication, isolation and
3 electro-convulsive treatment.

4 By 16 October 2012, 22 new claimants had come forward
5 seeking an apology and compensation from the Crown in light
6 of the publicity associated with the CHFA settlement
7 process.

8 18 new claimants were referred by the listening service for
9 consideration. And 6 new claims were advanced by Cooper
10 Legal.

11 The Ministry assessed that this trend of further claims was
12 likely to continue, identifying that more referrals were
13 likely to be made through CLAS because the forum continued
14 to hear from new individuals until 2015.

15 The Ministry considered that, although there was a low risk
16 of legal liability in relation to the claims, the Crown had
17 a moral obligation to acknowledge the claimants' experiences
18 through a settlement process.

19 On 25 October 2012, in my role as Chief Legal Adviser,
20 myself and another solicitor in the Ministry's Health Legal
21 team submitted a proposal to the Minister of Health to
22 establish a dedicated process for dealing with historic
23 claims, being claims related to events occurring before 1993
24 which was to be modelled on the CHFA settlement process.

25 We proposed setting up a historic resolution service which
26 was based on the settlement process undertaken by CHFA and
27 Cooper Legal but with the assessment of claims to be
28 conducted by the Ministry rather than by an external law
29 firm.

30 The process was as follows:

31 A claimant writes to the Ministry providing supporting
32 information, such as medical records, dates, hospitals,
33 staff names and allegations of wrongdoing when they can.

1 The Ministry assesses the allegations based on the evidence
2 available and categorises the claim as follows. So, I'll
3 walk you through the categorisation we use.

4 For category 1, it involves reasonable evidence of severe
5 sexual and/or physical assaults and/or significant period of
6 solitary confinement and/or not authorised by mental health
7 legislation at the time. So, that was an apology and a
8 payment of \$9,000.

9 Category 2 was reasonable evidence of low level sexual
10 assault. That is an apology and \$6,000.

11 Category 3, reasonable evidence of low level physical
12 assault and/or less credible claim. That was an apology and
13 \$4,000.

14 Category 4 was low evidence of abuse or improper treatment.
15 That would be an apology and offer of \$2,000.

16 And category 5 was no reasonable evidence of abuse or
17 improper treatment, where there would be no apology for a
18 wellness payment but there may be a letter acknowledging the
19 claimant's concerns and changes that have been made to the
20 Mental Health System.

21 Q.And I'll now move you to paragraph (d) on that page, please.

22 A.So, the Ministry makes an offer of a letter of apology
23 and/or a wellness payment based on the category of the
24 claim.

25 The wellness payment offer was to be in similar terms as the
26 CHFA settlement offer, in that the Crown would not make an
27 admission of legal liability and the claimant must undertake
28 that upon receipt of the wellness payment and letter of
29 apology, they will not bring any future proceedings in any
30 Court against the Crown relating to any act or omission that
31 occurred prior to 1993.

32 If a claimant accepts the wellness payment offer, the
33 Ministry issues the letter of apology and processes the
34 payment on receipt of the claimant's undertaking.

1 If a claimant challenges the wellness payment offer, then
2 the Ministry considers submissions from the claimant which
3 may include additional information that they wish the
4 Ministry to consider or where the claimant has concerns that
5 the Ministry may not have given sufficient weight to the
6 concerns raised or is inconsistent with other offers made.
7 The wellness payment figures in the table were based on
8 previous offers made by CHFA for similar unfiled claims in
9 recognition of the experiences and contribution towards
10 rehabilitation, but discounted to reflect the fact that no
11 legal proceedings or costs had been incurred by the
12 claimant. The wellness payment is intended to be in full
13 and final settlement of any claim.

14 Q.And we'll have 5.10 taken as read and move on to 5.11,
15 please.

16 A.The Ministry intended the process to be as efficient as
17 possible, so as to avoid retraumatizing survivors of abuse
18 and to enable claimants to have prompt resolution of their
19 claims.

20 On the 25th of October 2012, the Minister of Health approved
21 our proposal.

22 Q.Thank you. And I'll now move you to section 6 and at
23 paragraph 6.1 you begin to describe the current historic
24 abuse process and practice.

25 A.It was in late 2012 when the first claims were processed by
26 the Ministry using the Resolution Service. By that time,
27 there was a backlog of claims, approximately 30, that had
28 been made in the interim between the CHFA settlement and
29 establishing the resolution service process.

30 Q.I'll have the next several paragraphs taken as read and move
31 you to 6.6, please.

32 The Ministry consideration that the resolution process has
33 been administratively efficient. We aim to issue claimants
34 with a decision on their claim within 4-6 weeks from receipt
35 of their personal information from the relevant DHB and have

1 generally achieved that turn around period. As at
2 30 November 2019 we identified that 60% of claims were
3 settled within 3 months of the Ministry receiving the claim
4 and 86% of claims were settled within 6 months.

5 Q.And now to paragraph 6.8.

6 A.Cool. Offers to resolve any claim are made notwithstanding
7 any legislative restrictions, such as the Mental Health
8 (Compulsory Assessment and Treatment) Act 1992, Limitation
9 Act 1950 or the Accident Compensation Act 1972 which might
10 otherwise restrict a claim if it was made to the Courts. On
11 occasions where individuals request copies of records
12 provided to the Ministry by the DHB, these are provided in
13 accordance with the Privacy Act without redactions unless
14 there is concern about health and safety.

15 Q.Thank you, Mr Knipe. Can I now have you continue at 7.1,
16 please.

17 A.Since establishing the resolution service in late 2012, the
18 Ministry has continued with the same practice for receiving
19 and processing historic claims. As the Ministry's Chief
20 Legal Adviser, I have overseen this process since its
21 inception.

22 The process for managing these claims today is
23 straightforward. The process ran largely in terms of the
24 original proposal as outlined above and it can be summarised
25 as follows:

26 First, entry into the Ministry's process. A person or their
27 representative, and that does not need to be a lawyer, must
28 notify the Ministry that they wish to make a claim.

29 Notification can be by letter, telephone or email.

30 There are a number of avenues through which the Resolution
31 Service can be accessed. Initially, the majority of the
32 referrals were through the Listening Service. And referral
33 details are available through the still functions website of
34 the disestablished listening service.

1 In addition, contact with the resolution service can be made
2 directly to the Ministry through its Call Center or by
3 correspondence.

4 Contact is also sometimes made by referral from Ministers or
5 Members of Parliament on behalf of the constituents or on
6 referral by other agencies.

7 On receipt of the claim, the Ministry will send a letter to
8 the claimant explaining the process and requesting the
9 claimant's written authorisation allowing the Ministry to
10 access their medical records from the psychiatric hospital
11 where they allege abuse took place.

12 The Ministry does not request specific demographic data,
13 such as age, gender, ethnicity or disability as part of the
14 process, or design its process based on such demographics.

15 The letter also asks the claimant to record their
16 recollection of the details of the alleged abuse suffered
17 and send that to the Ministry. The record can be by letter
18 or email and where information cannot be provided in
19 writing, this is usually managed through information being
20 provided in phone or by the person's representative. There
21 is no face-to-face interview.

22 Q.I might have you continue to the end of that paragraph and
23 then I will take you to a section in your reply brief,
24 please.

25 A.Cool. This allows claims to be processed as efficiently as
26 possible, assists the Ministry to process claims within the
27 limited resources that it has available to operate the
28 resolution service and takes into account health and safety
29 considerations.

30 Q.Thank you. And can I now please turn you to your reply
31 brief on page 3 at paragraph 2.15?

32 A.Paragraph 825 of Cooper Legal's brief of evidence claims the
33 process for unrepresented survivors involves meeting with
34 the Ministry. As set out in the paragraphs I've just read
35 in my primary brief of evidence, there is no face-to-face

1 meeting as part of the resolution service settlement
2 process, contact with survivors is by telephone or by
3 writing.

4 So, one of the things that happens is that where individuals
5 can't participate or provide written information, I will
6 talk with them personally, obtain information and have
7 survivors tell me as much of their story they're willing to
8 tell, noting that can vary quite a bit based on the
9 experience of the survivors. But over the phone providing
10 as much information as they're willing to provide and feel
11 comfortable to provide to enable us to assess the claim.

12 Q.And what has your experience been of those telephone
13 conversations, Mr Knipe?

14 A.The experience has been primarily positive. That the
15 individuals concerned look to speak with someone senior in
16 the Ministry. That they tend to be reflective of their
17 experiences and we work with them so to give them the
18 maximum level of comfort to tell what they're willing to
19 tell about their experiences and care and to enable us to
20 assess the claim.

21 Q.Great, thank you. I will now take you back to your primary
22 brief, please, back to page 21, paragraph (f).

23 A.So, the assessment process is that a Senior Investigator at
24 the Ministry reviews the written record and the relevant
25 medical records, after which I, as Chief Legal Adviser of
26 the Ministry, assess the claim.

27 I then hold a meeting with the Senior Investigator to
28 consider the claim.

29 The investigator will give an oral summary of the claim. We
30 discuss the documentation, setting out the basis of the
31 claim in whatever form provided, whether written or notes
32 taken from oral discussion with the claimant. And we assess
33 the available records for any information which supports the
34 claim.

1 I then assess whether the claim is sufficiently made out and
2 which of the five categories it falls into. As noted above,
3 the categories range in seriousness depending on the level
4 of abuse alleged.

5 I base the assessment on the circumstances, as a whole, the
6 gravity of the alleged abuse and the supporting evidence
7 available.

8 There is no hard and fast yardstick against which claims are
9 assessed. In practice, I would describe it as whether it is
10 reasonable to believe that abuse may have taken place for
11 the purpose of making a settlement offer.

12 Q. And I will now take you to paragraph (j) where you talk
13 about the findings and offers that the Ministry makes?

14 A. The Ministry's response to the claim is typically given to
15 the claimant within 4-6 weeks after relevant medical records
16 are received.

17 If the claim is made out, the response will involve an offer
18 of an apology and usually a wellness payment of up to \$9,000
19 that can be used for any purpose.

20 Q. Thank you. And again here, I will turn you to your reply
21 brief, please, to page 2 and to paragraphs 2.8 and 2.9, can
22 you read those please?

23 A. Paragraph 302 of Cooper Legal's brief of evidence makes the
24 point that some clients of the firm, particularly those who
25 had received settlement payments under other processes,
26 including the Lake Alice process, felt that the payment made
27 by the Crown Health Financing Agency, CHFA, in 2012 did not
28 reflect the severity of the abuse they had suffered. Cooper
29 Legal explains that these clients felt forced to accept the
30 offers made to them because of time and cost considerations.
31 The Ministry acknowledges that many survivors feel that the
32 payments they received are insufficient and that no amount
33 of money can address their experiences in care. The
34 wellbeing payment made by the Ministry to survivors under
35 its resolution service settlement process is designed to

1 provide some support for them to use as they see fit.
2 Although payments made under the Resolution Service had been
3 variously referred to as compensation, including by me in
4 evidence, this payment is better characterised as a
5 wellbeing settlement amount, rather than compensation for
6 all losses suffered by survivors.

7 Q.And I will now turn you back to your primary brief, back
8 again on page 22, can you resume reading at 7.3?

9 A.The levels of compensation offered under the resolution
10 service are broadly consistent with the settlement amounts
11 that were offered by CHFA prior to its disestablishment in
12 2012 to people who had not filed claims with the Courts.
13 Current compensation levels maintain overall consistency
14 with claimants who settled under previous resolution
15 schemes.

16 Q.And once more I will turn you now to your reply brief,
17 please, at page 4. In paragraph 2.22 you respond to several
18 matters raised by Ms Cooper and Ms Hill in their joint brief
19 of evidence. Can I please have you read from paragraph (a)
20 of 2.22?

21 A.At paragraph 1097 of its brief of evidence, Cooper Legal
22 states that a very low level of compensation is paid by the
23 Ministry and by the Ministry of Education to survivors. At
24 paragraph 1099, Cooper Legal states that it's difficult to
25 understand why their claimants are paid significantly less
26 compensation than others paid compensation by the State in
27 other contexts.

28 I understand that settlements were agreed to by Cooper Legal
29 on behalf of their clients. The negotiated settlement
30 process reflected factors such as the amounts were paid in
31 lieu of litigation and in the context of poor outcomes for
32 the survivors before the Courts and previous litigated
33 cases.

34 Each redress process reflects the specific context
35 underlying it. In health, these processes have usually been

1 the product of a negotiated settlement process. Funding
2 limitations have been relevant considerations for the
3 Ministry within the context of both its resolution service
4 and for CHFA as part of its settlement process where it had
5 a fixed budget available for settlements. No additional
6 funding was provided to the Ministry for the resolution of
7 claims and the settlements are paid from the Ministry's
8 legal non-departmental other expenditure which is a fixed
9 amount appropriated each year from which litigation costs
10 such as Crown Law and other historic settlement payments
11 such as Lake Alice and Hepatitis C settlements are met.
12 Cooper Legal has made the point at paragraph 1098 of its
13 brief of evidence that payments for those who suffer abuse
14 is lower than those made in other State contexts, such as
15 the Hepatitis C and Lake Alice claims.

16 As noted earlier, these cases relate to a different set of
17 facts and notably, they were in response to clearly
18 established systemic failure by the State and involved the
19 government arriving at a general settlement in cases of
20 recognised systemic abuse or failings on a broad scale which
21 was able to be applied to an identifiable group of
22 individuals.

23 Q.I will now, once again, turn you back to your primary brief,
24 back to page 22 at paragraph 7.5.

25 A.The Ministry considers that the Resolution Service
26 accommodates tikanga Māori to a certain extent by way of its
27 ability to respond flexibly to specific cultural or tikanga
28 based requests when they were raised by a claimant.

29 The Ministry does not keep records of how many Māori
30 individuals have used the resolution service. However,
31 issues of cultural appropriateness and tikanga have not been
32 raised with the Ministry in relation to the service. The
33 Ministry recognises though that the Resolution Service does
34 not explicitly incorporate tikanga into its design and we
35 acknowledge that this is a shortcoming. Even though it has

1 not been raised in the administration of claims to date, the
2 Ministry is prepared to consider how tikanga could be
3 recognised and implemented more explicitly and proactively
4 within the process going forward.

5 Please continue at 7.8 where you go on to discuss limitation
6 issues.

7 A.Offers to resolve any claim are made notwithstanding any
8 legislative restrictions, such as the Mental Health
9 (Compulsory Assessment and Treatment) Act 1992, Limitation
10 Act 1950 and 2010 or the ACC act 1972 which might otherwise
11 restrict a claim if it was made to the Courts.

12 In terms of costs to date, the Ministry has paid out a total
13 of \$12.6 million for claims made in respect of abuse that
14 occurred before 1993 at Lake Alice. That was \$6.5 million
15 to the round 1 claimants; 5.7 million to the round 2
16 claimants and \$400,000 paid out to claimants who presented
17 their claims after round 2 had closed.

18 Between 1 July 2012 and 30 November 2019, 223 claims have
19 been settled by the Ministry through the resolution service
20 without Court proceedings. As at 30 November 2019, the
21 Ministry had paid out a total of \$1,338,000 to claimants,
22 that amounted to an average payment of \$6,000 per claim.

23 Q.Thank you. And just in relation to those payments,
24 Mr Knipe, Ms Cooper was critical of the Ministry's reason in
25 making payments for current claims at a lower rate than
26 historically to account for notional Legal Aid debt paid in
27 previous settlements. I note for reference, that's at 579
28 of the transcript from phase 1.

29 Are you able to comment on that point, Mr Knipe?

30 A.So, the reasons for that were discussed with Ms Cooper at
31 the time or Ms Cooper's firm at the time and set out in my
32 evidence.

33 While it was recognised there was no Legal Aid debt being
34 taken on board for claimants, it also included that

1 claimants did not have the stress, anxiety and risks
2 associated with litigation.

3 These rates were also set on the basis that I understood was
4 consistent with how Crown Health Financing Agency were
5 dealing with new non-filed claims.

6 Ms Cooper has noted in her brief that there may be some
7 misunderstanding there. CHFA thought many claims was paying
8 \$2,500 but my understanding is in terms of distinction it
9 was for discontinued claims, rather than claims that had
10 been raised with CHFA but which hadn't been the subject of
11 Court proceedings.

12 Q.Thank you. At this point, I was going to turn to Mr Knipe's
13 reply brief but this might be a convenient point to stop.

14 **CHAIR:** Can you give us an indication of how much longer
15 you are likely to be with the reply brief?

16 **MR CLARKE-PARKER:** Perhaps 20 minutes or so.

17 **CHAIR:** Then we will take the morning adjournment and
18 resume again at 11.45.

19

20 **Hearing adjourned from 11.30 a.m. until 11.45 a.m.**

21

22 **CHAIR:** Thank you, Mr Clarke-Parker.

23 **MR CLARKE-PARKER:** Thank you. Before the adjournment,
24 we had just finished paragraph 7.10 of the primary
25 brief and we will now turn to the reply brief and more
26 or less work through it in order. The reply brief is
27 separated into two sections, the first in response to
28 the evidence from Cooper Legal, and much of that will
29 be taken as read but a few sections are selected out.
30 And then we will go through also the Ministry's
31 response to Ms Rowe's affidavit.

32 Q.Mr Knipe, if I can have you turn to your reply brief at
33 paragraphs 2.2 and 2.3 and read those.

34 A.Cool. The discussion in chapter three of the Cooper Legal
35 brief of evidence focused on events prior to 1st July 2012,

1 being the date when the Ministry assumed responsibility for
2 historic claims, including responsibility for dealing with
3 remaining and new historic claims. In the circumstances, my
4 ability to respond is limited.

5 I accept that there have been statutory barriers for
6 survivors wishing to bring claims of historic abuse and I
7 also acknowledge that survivors continue to face practical
8 issues when seeking to advance claims.

9 Q.Thank you. I'll turn you now to paragraph 2.6 please.

10 A.In addition to statutory issues discussed by Cooper Legal, I
11 understand that survivors also faced practical problems
12 arising out of the passage of time when seeking to formulate
13 their claims of historic abuse.

14 Q.And over the page, on page 3, paragraph 2.14, please.

15 A.Paragraph 824 of Cooper Legal's brief of evidence explains
16 that the Ministry's Resolution Service review process for
17 offers, that a challenge had resulted in improved offers for
18 several survivors but not in more recent months. Although
19 Cooper Legal was concerned about recent offers made to
20 survivors, on review the Ministry is satisfied that all
21 offers are made in a consistent manner.

22 Q.And we've covered 2.15 already, so can I have you continue
23 at 2.16, please.

24 A.Paragraph 826 of Cooper Legal's brief of evidence states
25 that the Ministry will pay up to \$18,000 if a survivor
26 produces certain medical reports showing that they would be
27 able to overcome the Limitation Act defence and establish
28 causation. I wish to clarify the position with respect to
29 these claims.

30 Cooper Legal has had a small number of claims where they
31 advised the Ministry that they did not intend to participate
32 in the Resolution Service settlement process and were
33 preparing to file claims with the Court. The Ministry took
34 a pragmatic approach to these claims.

1 It was concerned to avoid unnecessary proceedings and to
2 enable the matters to be resolved without undue stress to
3 survivors, minimise legal costs and avoid unnecessarily
4 reopening the cycle of new litigation.

5 With these claims, the Ministry agreed to consider settling
6 them at a maximum amount set by the former CHFA, if there
7 was an appropriate level of evidence available to support
8 the claim. That standard was met in a couple of cases. In
9 respect of the remainder, the Ministry was not satisfied
10 that the standard was met and accordingly, offered to reach
11 settlement with those survivors on the standard Resolution
12 Service basis.

13 Cooper Legal is correct when they state at paragraph 828 of
14 its brief of evidence that the Ministry has recently
15 confirmed that it will deal with claims of abuse suffered in
16 general medical surgical wards of public hospitals prior to
17 1993. The Ministry occasionally received such claims and
18 has considered them on an ad hoc basis. These claims often
19 relate to concerns about treatment and are usually more
20 appropriately raised with the Accident Compensation
21 Corporation or the Health and Disability Commissioner.

22 Where they concern claims of abuse, consistent with the
23 types of abuse considered as part of the Resolution Service
24 settlement process, such claims can be considered on a
25 similar basis as the Resolution Service process, with ex
26 gratia payments available in line with payments under the
27 existing procedure. I am aware there has been one such
28 claim from Cooper Legal at the time of preparing this brief,
29 an offer has been recently made and the claim largely
30 concerned the standard of care received, rather than abuse
31 whilst in care.

32 Cooper Legal has stated at paragraph 829 of its brief of
33 evidence that the Ministry will not consider claims made on
34 behalf of deceased claimants, even if the claims are made
35 before the client dies. This is not correct. In

1 circumstances where claims are made before a claimant dies,
2 these are usually able to proceed and considered on the
3 basis that the claim had commenced before the claimant's
4 death and should be completed.

5 It is correct that a fresh claim cannot be made on behalf of
6 a claimant who is already deceased. This is because the
7 claim is personal to the individual, with the remedies of an
8 apology and a wellbeing payment being intended for the
9 benefit of the individual. This approach to deceased
10 claimants is consistent with that taken for other health
11 redress processes, such as Lake Alice, and also by the
12 Auckland Area Health Board in relation to patients involved
13 in the settlement process following the Cartwright Inquiry.

14 Q.Thank you. And the remainder of that section will be taken
15 as read and I'll now turn to page 6 and to section 3, which
16 is the Ministry's response to Ms Rowe's affidavit.

17 Mr Knipe, can you please begin at paragraph 1.

18 A.The Ministry has limited comment to take in response to Ms
19 Rowe's affidavit. Her factual account of the procedural
20 history of Mr Beale's claim against the Ministry and
21 settlement of that proceeding is largely accurate, although
22 we differ as to points of emphasis.

23 The Ministry is unable to comment on the accuracy of the
24 substantive allegations relating to Mr Beale's time at
25 Kimberley Hospital or Parklands. To that end, it does not
26 dispute Ms Rowe's account of events relating to those
27 matters. The purpose of this reply evidence is to provide
28 the Royal Commission with the Ministry's perspective on
29 relevant context and the underlying reasons for the conduct
30 of its defence to Mr Beale's proceedings and its approach to
31 settlement.

32 In providing the supplementary information, the Ministry
33 does not intend to detract from the difficulties of
34 Mr Beale's experiences while in private care or undermine

1 the challenges of MS Rowe's experience of the litigation and
2 settlement process.

3 At the outset, the Ministry wishes to note that Mr Beale's
4 case is an example of what we call a contemporary claim,
5 being a claim relating to events occurring between 2005 and
6 2012 arising in a private care facility as distinct from a
7 State care facility. I understand that Mr Beale's concerns
8 are outside the scope of the direct focus of this hearing
9 which concerns Crown redress processes for historic claims
10 arising out of State care. However, I have provided the
11 Ministry's comments in response to Ms Rowe's affidavits to
12 assist the Commission and out of respect to the individuals
13 concerned.

14 In early 2014, a claim for damages in the sum of \$500,000
15 was filed in the High Court against the Attorney-General for
16 the Ministry on behalf of Mr Beale and his
17 welfare/litigation guardian, Ms Rowe.

18 Crown Law represented the Attorney-General. The claim was
19 for a breach by the Ministry of a duty of care in not
20 opposing Mr Beale's placement at Parklands, despite this
21 being the strong preference of his sister, Ms Rowe, and the
22 Ministry being directly and vicariously liable for alleged
23 failures of the service delivery, including poor standards
24 of food, financial misconduct, poor lifestyle planning and
25 policy management and for bullying, neglect and abuse that
26 Mr Beale suffered from the owner, managers, staff and
27 residents.

28 Ms Rowe explained at paragraph 96 of her affidavit that
29 Cooper Legal was of the view that the approach taken by the
30 Ministry seemed to be driven almost entirely by policy
31 considerations. This is not correct.

32 The Ministry's approach to Mr Beale's claim as assessed at
33 key stages of the proceedings was based on a view of its
34 legal position and responsibilities as informed by the
35 information available to it at any particular point in time.

1 Ms Rowe is right when she states at paragraph 74 of her
2 affidavit that the Ministry denied responsibility for events
3 occurring at Parklands in relation to Mr Beale and that it
4 took the position that, while it funded Parklands, the
5 proprietors were not employees or agents of the Ministry.
6 The Ministry would like to further explain the reasons for
7 its position.

8 On receiving the proceedings, the Ministry carefully
9 considered its legal position. The Ministry was satisfied
10 that there was a low risk that it will be found to have
11 legal liability arising out of a breach of duty of care in
12 relation to a voluntary residential placement, i.e. a
13 placement where a person resided by choice, at a private
14 facility. The Ministry was not aware of any legal
15 precedents supporting the view that it owed such residents a
16 duty of care and is still not aware of any such precedent.
17 As Ms Rowe has pointed out at paragraph 108 of her
18 affidavit, Crown Law gave Cooper Legal the opportunity to
19 supply examples of cases where the Crown had settled claims
20 in similar situations to that involving the Ministry and
21 Parklands. However, to my knowledge, Cooper Legal did not
22 do so.

23 Parklands was a private facility, operated by a privately
24 held company. It was not owned or run by the State. The
25 Ministry's position was that the persons responsible for the
26 care and safety of the residents were the facility and its
27 owners.

28 In respect of community residential support services, unless
29 a disabled person is in compulsory care, the Ministry does
30 not decide where a disabled person will live, as that is a
31 decision for the person and their families and/or
32 representatives.

33 Families are free to withdraw a disabled person from a
34 residence and the funding follows the individual.

1 The Ministry funded private facilities, such as Parklands,
2 to provide residential care for intellectually disabled
3 persons by entering into disability funding contracts with
4 those facilities. As part of the contractual arrangements
5 for Parklands, the Ministry imposed conditions which were
6 directed at ensuring the safety and proper care of the
7 residents.

8 The Ministry could audit Parklands' performance.
9 Further, the Ministry had a right to take appropriate action
10 for breach of its contractual obligations to provide
11 adequate care for residents, such as appointing temporary
12 managers and closing a service if needed. Be that as it
13 may, responsibility for residents' care and safety
14 ultimately rested with the owners of the facility and not
15 with the Ministry.

16 Mr Beale's placement at Parklands in 2005 was fully
17 considered by the Ministry and a balance was struck between
18 the Ministry's long-standing operational concerns about the
19 facility, where the facility had previously failed a
20 Ministry certification audit in March 2004 which I address
21 below, and Mrs Rowe's strong preference for Parklands due to
22 her location near her and her own assessment that it would
23 suit Mr Beale. Mrs Rowe wanted Mr Beale to reside at
24 Parklands and this was a significant factor in the Ministry
25 agreeing that he reside at the facility.

26 The Ministry had reservations about the suitability of the
27 facility for Mr Beale, which were relayed to Ms Rowe.
28 Parklands was not identified as a preferred provider for the
29 Kimberley Hospital deinstitution project and, as a result of
30 the findings of the Ministry's March 2004 audit report, the
31 request for Mr Beale to reside at Parklands was initially
32 declined.

33 Both the operator of Parklands and Ms Rowe sought an appeal
34 of that decision. On 12 October 2004, the Ministry
35 undertook a further quality audit of Parklands. As a

1 consequence of Parklands' improved performance, on 29
2 October 2004, the Ministry advised the provider that it
3 approved Mr Beale's placement at Parklands in accordance
4 with Ms Rowe's wishes.

5 To address the Ministry's remaining concerns about
6 Parklands, the Ministry imposed a series of conditions on
7 Mr Beale's placement to ensure that it had closer oversight
8 of Mr Beale than would usually be the case. The conditions
9 involved:

10 One-on-one support, a detailed risk management plan,
11 detailed behaviour support plan, a lifestyle plan with
12 regular community engagement, visits by the Ministry to
13 ensure that the placement was functioning and that the
14 conditions were being complied with, and a follow-up audit
15 after placement.

16 As explained above, the Ministry undertook targeted auditing
17 processes of Parklands. I understand Ms Rowe was provided
18 with a copy of the 12th of October 2004 audit report and
19 shared the fact of those with Ms Rowe before agreeing to
20 allow the placement.

21 Q.Thank you, Mr Knipe, and I'm going to take you to a document
22 here which is MSC 660. Just while that's coming up on the
23 screen, this is in relation to Ms Rowe's comment in the
24 transcript and I note this is at page 326 that she did not
25 see the audit that is referred to. Can you comment on that?

26 A.Yep. So, my comment was based on a 14th of December 2004
27 letter from the Ministry to Ms Rowe which states an enclosed
28 letter from the Ministry to Parklands detailing the
29 continues Paul's relocation there and a copy of the audit
30 report.

31 This is not a letter from my team, but was identified from
32 Ministry records.

33 It is an unsigned copy, but it does indicate that Ms Rowe
34 was provided with a copy of the audit report. And I

1 understand this was part of a wider discussion about
2 Mr Beale's placement at Parklands.

3 Q.Thank you, Mr Knipe. Just to clarify, that final paragraph
4 there, the redacted name there, that's in reference to the
5 manager and owner of Parklands, isn't it?

6 A.That's correct.

7 Q.And, in this letter, it appears that the audit was attached
8 and the letter to Mrs Rowe?

9 A.That's correct.

10 Q.Thank you. I'll now take you back to paragraph 3.16 of your
11 reply brief, you are in the middle of that paragraph, with
12 the sentence beginning, "In addition"?

13 A.In addition, the Family Court at Levin had established a
14 system of monitoring the placement of residents like
15 Mr Beale following the Kimberley Hospital
16 deinstitutionalisation involving appointment of counsel for
17 Mr Beale, in addition to his welfare guardian.
18 Consequently, Mr Beale was under closer supervision by the
19 Ministry and received more assistance at Parklands than
20 would routinely have been the case with disability
21 facilities.

22 After receiving the proceedings, the Ministry advised Cooper
23 Legal that it would raise Ms Rowe's desire for Mr Beale to
24 reside at Parklands in part of its defence of Mr Beale's
25 claim if the matter proceeded to trial. As Ms Rowe explains
26 at paragraph 105 of her affidavit, Cooper Legal expressed
27 concern about that point being raised against her. Whilst
28 acknowledging the human effect of such a legal argument on
29 Mr Beale's family as being construed as blaming his row for
30 the decision to place him there and remaining there, this
31 was an argument responsibly available to the Ministry as
32 part of its defence to the claim brought against it.

33 As a result of its ongoing monitoring of Parklands following
34 Mr Beale's placement, the Ministry later became aware of

1 concerns with the management of Parklands, including some
2 limited issues identified in 2005 and 2008.

3 A range of audits were undertaken, including routine audits,
4 issues-based audits and developmental audits. When service
5 failures with Parklands were identified in audits, the
6 Ministry took appropriate action to have those failures
7 rectified. Actions taken by the Ministry included, for
8 example, the following steps:

9 In 2006, the Ministry engaged a disability support services
10 contracted auditing agency to work with Parklands to improve
11 the quality of services.

12 In 2008, the Ministry engaged consultancies to provide staff
13 training and assist with the development of quality systems.
14 After problems were identified in 2008, Mr Beale's needs
15 were reassessed and alternative residential options
16 explored, but after consultation with his family were
17 considered unnecessary.

18 By 2012, there were problems at Parklands with over-
19 crowding, understaffing, under-reporting of serious
20 incidents, allegedly due to a fear culture at Parklands,
21 gaps in records and inadequate staff training. In response,
22 the Ministry took appropriate action in accordance with its
23 rights under its disability funding contract with Parklands
24 by appointing temporary managers who identified further
25 issues with the care provided to the residents. This
26 process resulted in the Ministry terminating its contract
27 with the owners of Parklands and the closure of the facility
28 in 2012, with residents transferring to other facilities for
29 their ongoing care.

30 As Ms Rowe has explained at paragraph 106 of her affidavit,
31 based on the Ministry's view of its legal position, it was
32 indeed concerned about the precedent effect of settling
33 Mr Beale's claim. The Ministry was conscious that entering
34 into a settlement agreement in this case could be construed
35 as accepting liability in situations where there was no

1 legal precedent for finding that the Ministry had a duty of
2 care towards residents in private care facilities, like
3 Mr Beale. Such a settlement would likely have encouraged
4 further claims from Cooper Legal and others when the
5 Ministry did not consider it had breached any legal duty to
6 Mr Beale.

7 The Ministry largely agrees with Ms Rowe's detailed account
8 of the procedural events in this litigation and the time it
9 took to settle this proceeding. Whilst it is true that the
10 case did not settle until 3 years after the proceedings were
11 commenced, and some four years after the matter was first
12 raised with the Ministry by Cooper Legal, there were valid
13 reasons for that, including those listed below.

14 The Ministry assessed its position and the merits of
15 Mr Beale's claim at key milestones in the proceeding with a
16 view to considering the information available to it at each
17 juncture.

18 At the outset, the Ministry did not consider that it had
19 sufficient information to enable it to have a meaningful
20 discussion about the claim. As Ms Rowe has explained at
21 paragraph 84 of her affidavit, Cooper Legal was advised by
22 Crown Law that the Ministry was not prepared to participate
23 in any meeting concerning the settlement unless it fully
24 understood the arguments advanced on Mr Beale's behalf. The
25 Ministry took the view that the Statement of Claim lacked
26 some detail and accordingly there were challenges responding
27 to it.

28 At the conclusion of the discovery and inspection process,
29 the Ministry's litigation risk was assessed at being low.
30 At the time of the judicial settlement conference in March
31 2015, approximately a year after the proceedings commenced,
32 the Ministry was still not satisfied that there was merit to
33 the claim, for the reasons I have explained earlier in this
34 statement. Hence, the matter could not be settled at the

1 time because of the distance between the parties' respective
2 positions.

3 In December 2016, there was a significant turn of events.

4 Cooper Legal filed a Second Amended Statement of Claim, and
5 around that time additional information, including
6 statements of evidence became available to the Ministry.

7 This amended claim and supporting witness statements raised
8 new allegations of serious sexual and physical assault.

9 In light of the further claims and additional evidence,
10 including the location of additional Ministry records around
11 that time, the Ministry carefully reviewed its position,
12 rather than progress towards a trial which is scheduled to
13 start on 1 May 2017 for six weeks.

14 As a consequence, the Ministry engaged in further settlement
15 discussions with Cooper Legal in early February 2017.

16 Although the Ministry still considered that it had a good
17 defence to the claim, it recognised with the benefit of
18 additional information that had come to light relating to
19 the serious sexual and physical abuse that its litigation
20 risk had increased. The Ministry was mindful of the fact
21 that a Court was likely to be sympathetic towards Mr Beale,
22 making a finding in his favour more likely at trial. The
23 Ministry was conscious that an unfavourable outcome at trial
24 could have significant precedent effects for the Ministry
25 and the Crown moving forward.

26 Q.Thank you, Mr Knipe. If we can have 3.24 taken as read and
27 I'll take you to 3.25 of your reply brief.

28 A.Cool. The allegations made in the second amended claim
29 filed in December 2016 included allegations of a criminal
30 nature involving persons who may still have been employed at
31 similar roles at facilities, such as Parklands.

32 The Ministry understood and took into account Ms Rowe's
33 concerns about a criminal investigation into the allegations
34 of sexual and physical abuse, including the potential impact
35 and delay on the civil claim. In the public interest, the

1 Ministry formed the view that it was necessary to prioritise
2 the safety of other residents whose safety may have been at
3 risk at the time. For that reason, the Ministry decided to
4 refer the matter to the Police for investigation, despite
5 Cooper Legal's opposition to that occurring.

6 Q.Thank you. That concludes the section on Mr Beale's claim.
7 I just have some more general questions around the
8 Ministry's process now relating to matters that arose in
9 phase 1.

10 And the first of those is, why doesn't the Ministry of
11 Health process take breaches of the Bill of Rights Act into
12 account?

13 A.So, the Ministry's process, it's a claims process for claims
14 of abuse while in care. With very few exceptions, the
15 changes relate to events that pre-date the commencement of
16 the New Zealand Bill of Rights Act and no claim would be
17 available.

18 Where there are alleged claims of breaches of the Bill of
19 rights, other processes are available, such as by way of
20 complaints to the Human Rights Commission or to raise the
21 matter with a District Inspector.

22 Q.Thank you. And moving on to the next subject, Limitation
23 Act agreements to stop the clock were discussed during phase
24 1; why hasn't the Ministry of Health engaged in discussions
25 to enter into such an agreement?

26 A.There are no currently active claims against the Ministry
27 where this has come up and for the purposes of our
28 Resolution Service, we have not applied a limitation bar.
29 The matter has not been raised with me until last week where
30 it's come up in discussions. If it is to be considered, it
31 will be looked at in line with the Crown's overall approach
32 to its litigation strategy but it's also unlikely to be
33 specifically relevant to psychiatric claims, given the
34 restrictions on claims arising out of historic mental health
35 litigation or legislation, as covered in my evidence.

1 Q.And now moving on to apology letters, Mr Knipe. You will
2 have heard some criticism around apology letters during
3 phase 1, do you have any comment on that in respect of the
4 Ministry's letters?

5 A.We do seek to have consistency across the apologies that we
6 offer and this reflects the form of the current apology as
7 it is mostly based on what which was agreed as part of the
8 Crown Health Financing Agency settlement process.

9 However, if requested, the Ministry is open to adapting the
10 apology it provides to claimants, such as was done in the
11 case of Mr Beale, based on feedback that came through from
12 Mr Beale's solicitors.

13 The apology question has come up, why is it always addressed
14 to the individual? Just because it's always for the
15 individual, even when they're represented by family members
16 or another individual. I can't recall another case where
17 anyone has come back and complained directly about the
18 apology letter to us.

19 Q.Thank you. I'll now turn to section 8 of your primary
20 brief, which is your concluding remarks. If you could read
21 through from paragraph 8.1, please.

22 A.By way of concluding comments, I wish to highlight some of
23 the key features arising from the history addressing claims
24 of abuse arising in the context of public healthcare,
25 particularly since the early 1990s.

26 Since 1993, there has been substantial change in mental
27 health and psychopaedic care which means that current public
28 healthcare systems have substantially improved.

29 The government's acknowledgment of concerns with the care
30 provided in the Lake Alice Child and Adolescent Unit,
31 together with the apologies and settlements made, were the
32 start of a formalised approach of redress for abuse in
33 public healthcare.

34 Following settlement of the Lake Alice claims, government
35 funded listening processes were put in place and these

1 provided a forum for people to be heard to tell their story
2 and for learnings to be taken on board to further reduce the
3 risk of similar abuse occurring in future.

4 The settlements achieved by CHFA in 2012 and the subsequent
5 resolution process adopted by the Ministry since then have
6 pragmatic origins designed to address claims and abuse in
7 public healthcare in a fair and respectful manner.

8 While the processes may not be as tailored to individual
9 needs in comparison to other redress processes, in practice
10 the design of the processes has had significant benefits.
11 They are efficient, accessible for claimants and minimise
12 the evidential burden on claimants. Importantly, they have
13 taken into account the need to minimise the risk of
14 re-traumatising claimants.

15 I'm available to answer any further questions that might
16 assist the Royal Commission.

17 **CHAIR:** Thank you.

18 **MR CLARKE-PARKER:** Thank you, that concludes the
19 evidence.

20 **CHAIR:** Thank you very much, Mr Clarke-Parker.
21 Questions by Mr Molloy.

22

23

24

25

26

27

PHILIP BLAIR KNIPE
CROSS-EXAMINED BY MR MOLLOY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Q.Mr Knipe, good afternoon. Prior to taking up your current position as Head Solicitor at the Ministry, what was your previous career?

A.So, I was previously, from 2005-2008 I was a Policy Manager at the Ministry of Justice. And prior to that, I worked in the Ministry for Economic Development as a solicitor, then senior solicitor. And before that, I worked for the Official Assignee administering bankruptcies, liquidations and proceeds of estates.

Q.Thank you. In a very broad sense, is it broad to say that the primary objective of the Ministry of Health is really to promote the highest standard of health for the people of New Zealand?

A.So, we operate in accordance with the purposes and the New Zealand Public Health and Disability Act, so that's to promote good healthcare outcomes for New Zealand. So, while it's to high standards, it's still within the resources available.

Q.Highest attainable?

A.Yes.

Q.I just want to talk briefly about the nature of the people who are the subject of this Inquiry. Would you agree they are people who were inherently vulnerable, simply by virtue of the fact that they were admitted into a psychiatric institution or a psychopaedic institution or have in some way been receiving healthcare?

A.People's circumstances obviously vary but I would agree, there's an inherent, you know in terms of vulnerability, by virtue of the fact that they were in care.

1 Q.They have a psychiatric illness or disability of some sort
2 or perceived illness or disability?

3 A.Which should have been the basis on which they were placed
4 in care.

5 Q.And I think you've referred helpfully to the report which
6 was published in 2007, and I think that as part of that
7 report the authors outlined a number of the sentiments that
8 were common for the people who came before them. They
9 expressed things such as feelings of shame and loss of
10 dignity, vivid memories of things they'd seen. Sorry, this
11 is from page 27 of that report.

12 A.Yep.

13 Q.We don't have it in front of us but I'm sure it's familiar
14 to you.

15 A.Mm-Mmm.

16 Q.Grief, anger and sadness at the loss of personal
17 aspirations, often a fear of people in positions of power or
18 authority. They refer to stigmatisation and feelings of
19 abandonment and often stigmatisation by social agencies,
20 legal processes, that kind of thing?

21 A.Mm.

22 Q.The difficulties of not being believed. Low self-esteem and
23 confidence. Financial struggles, loss of income and
24 opportunities. And often ongoing physical health conditions
25 arising perhaps out of mental health conditions.

26 And those are some of the common experiences of people. So
27 that, sort of augmenting the initial vulnerability that led
28 them into the care of the State, their experiences have
29 perhaps, in many cases, given rise to these additional
30 elements of vulnerability.

31 I am not asking about specific individuals.

32 A.Yep.

33 Q.But these were the common kinds of themes that emerged from
34 that listening assistance process.

35 A.Okay.

1 Q.None of those would take you by surprise?

2 A.(Shakes heads).

3 Q.That's kind of by way of setting the scene for the kinds of
4 people that we are talking about.

5 A.Mm-Mmm.

6 Q.Who are subject to these processes. And I think you've
7 helpfully kind of compartmentalised, in a sense, I'm sure
8 they're not absolutely bright lines, but the kind of
9 different periods of time in which there have been varying
10 attitudes to dealing with these claims.

11 There's Lake Alice round 1?

12 A.Mm-Mmm.

13 Q.The second round, what came subsequent to that with the
14 broader psychiatric care claims and the CHFA, and then I
15 think the most recent, the contemporary HARS process?

16 A.Mm-Mmm.

17 Q.Just as a matter of interest, if someone wanted to make a
18 claim under the HARS process, how would they find out about
19 it?

20 A.There's a arrange of different ways. So, one is through,
21 obviously, in terms of those who engage lawyers, so we get a
22 number of claims that come through by way of Cooper Legal or
23 there's a couple of other law firms who bring claims from
24 time to time.

25 There are people who are aware of other people who have made
26 claims, so there's referrals.

27 You've got referrals from other agencies. You have
28 referrals, for example, that come through previously,
29 through the Confidential Listening and Assistance Service
30 and they currently come through the Royal Commission in
31 terms of its Listening Service and we get individuals
32 referred to us through that process.

33 We have information where it's available on the website.

34 Q.Where could I find it on the website?

1 A. So, at the moment you've got a couple of references. So,
2 one is in the old Confidential Listening Assistance Service
3 website and the other is on the Abuse in Care website,
4 there's a reference through to the Ministry and to contact
5 through the Call Centre.

6 Q. What about the Ministry of Health website itself?

7 A. There's nothing currently there specifically about it.

8 Q. Why not?

9 A. In terms of I've drafted material to go up there in the
10 past, it hasn't got through our formal approval process, so
11 there's been a couple of opportunities where I've drafted
12 material but unfortunately it hasn't been posted there. I
13 haven't got a specific reason why it wasn't posted the last
14 time and again that's something to follow-up.

15 Q. You were I think asked to respond to a criticism about that
16 to a claim to the Waitangi Tribunal in 2017 and you said
17 much the same thing. And you said that something would be
18 done about it. So, I'm just wondering why nothing has been
19 done about it?

20 A. The material has been drafted. It hasn't been posted though
21 and I need to follow-up in terms of why that wasn't done.
22 In the immediate, certainly last year or so, but
23 particularly over the last 9 months in terms of other
24 priorities, it means that a lot of our focus in this space
25 have been around other health concerns but also in terms of
26 our support for the Royal Commission itself in terms of
27 preparation of information. So, we haven't been able to do
28 everything that we would like to.

29 Q. But the material is there and waiting to go?

30 A. There is material that is drafted but -

31 Q. I think in the affidavit you lodged with the Waitangi
32 Tribunal, you said that there needed to be some consistency
33 of approach across ministries; was that right?

34 A. That would have been at that time.

1 Q.Yep. But doing a simple Google search takes me immediately
2 to both the Ministry of Social Development or the Ministry
3 of Education's process systems. So, it seems like a rather
4 gaping hole for the Ministry of Health not to have
5 equivalent information; would you agree with that?

6 A.Because of the number of other sources by which people can
7 approach the Ministry, it is a gap but I wouldn't say it's a
8 huge gap in the process but it's something we can rectify.

9 Q.One of the things you mentioned before, you did specifically
10 refer to concerns expressed by Joan Bellingham in her
11 evidence?

12 A.Mm-Mmm.

13 Q.And you helpfully pointed out some of the changes that have
14 been made that reflect some of the concerns that she
15 expressed over her experience back in 2010 or perhaps
16 earlier than that.

17 One of the problems she identified was that it was really
18 hard to find out information about where you go. She said
19 she'd spent most of her inheritance trying to fight to have
20 her complaint heard. And so, it was helpful to her that
21 once she finally got some traction through her lawyers, it
22 was dealt with reasonably quickly.

23 Nonetheless, that's been an ongoing problem that hasn't yet
24 been addressed.

25 A.I disagree with that one, Andrew. When the government has
26 setup its redress processes, particularly through the
27 Confidential Forum and then subsequently through the
28 Confidential Listening and Assistance Service, and now
29 latterly through the Royal Commission itself, that's
30 provided useful gateways by which people can access those
31 redress processes in addition to what the agencies
32 themselves have in place. When we established the
33 Resolution Service, one of the big parts of its operation
34 was working alongside the Confidential Listening and
35 Assistance Service. So, for the needs of survivors, as you

1 fully appreciate and as you've heard, are very different
2 between the survivors. They're looking for and needing
3 different things.

4 So, one of the good ways has been through the Listening
5 Services, however they're provided, because it's helped in
6 terms of some of those discussions about where to go and how
7 to access the services that are required. At the end of the
8 day, in terms of what we run in the Ministry, as I've said
9 in my evidence, it's a claims process. So, it's only one
10 component of what's available.

11 So, I agree in terms of we can do more around promotion but
12 actually, there's plenty of ways in to access services and
13 actually through the Listening Services I'd say they are
14 more advantageous for individuals to be able to identify or
15 for the survivors to identify what might be more appropriate
16 and useful for them.

17 Q.Well, that's fine if that's what they're able to do. But it
18 does seem a rather gaping hole that you've got a website,
19 which is an obvious point of entry for anyone seeking
20 information, you've got equivalent Ministries who have
21 exactly that information available publicly, and it would, I
22 think, I would have assumed to be a reasonably simple fix
23 just to have it up there?

24 A.As I said, Andrew, I've drafted the material, I think we've
25 identified it as part of here, and in terms of, yeah, it
26 would be a matter of posting it. I'd have to still get it
27 through our communications people but, yep, that's something
28 that we can do.

29 Q.Because, again, if you look at, for example, the Community
30 Law Office website, which is a series of offices around the
31 country to deal with unmet legal need for people who don't
32 qualify for Legal Aid or that sort of thing, all around the
33 country they've got a good website and again they refer
34 directly to the processes operated by the Ministry of
35 Education?

1 A.Mm-Mmm.

2 Q.And the MSD. But, again, no reference to the Ministry of
3 Health. So, I leave it with you but I do note you made
4 similar comments about three years ago, so it's perhaps
5 something you might put a little bit of priority on for the
6 Ministry if it's appropriate?

7 A.Yep, and as I acknowledge in terms of material that has been
8 drafted, I agree it hasn't been posted but there are lots of
9 other avenues by which it's brought to individuals'
10 attention. It is something we can improve but I disagree
11 with your statement that it's a gaping hole in the process.

12 Q.Okay, a hole?

13 A.Yep.

14 Q.Now, I think you've also mentioned that there is a separate
15 process for dealing with claims for Lake Alice survivors who
16 may still not have come forward?

17 A.Mm-Mmm.

18 Q.Again, is there any reference to that publicly anywhere?

19 A.In terms of, as I say, there's nothing on our website. I
20 haven't done a Google search myself to identify but the
21 expectation was that all the claims would have within dealt
22 with many years ago. As it turns out, we do still have
23 individuals who come forward and we deal with those claims
24 on a case-by-case basis when they do.

25 Q.I think you've mentioned there's probably one a year still
26 coming out of the woodwork?

27 A.I think there's usually one a year. There are two currently
28 with us to review which we should do shortly.

29 Q.Yep. One of those recently of course was Patrick Stevens?

30 A.Yep.

31 Q.Who you referred to. Now, Patrick's evidence was read by
32 his lawyer in the first phase of this hearing a couple of
33 weeks ago and he experienced neglect in the family home?

34 A.Mm-Mmm.

1 Q.Then again through Social Welfare. I think he developed
2 difficulties with petrol sniffing and that kind of thing and
3 that led him to the attention of the Police?

4 A.Mm-Mmm.

5 Q.And then onto the Manawaroa Unit at Palmerston North
6 hospital. I think from there, he made his way to Lake
7 Alice. Now, again, Patrick had no idea that this process
8 existed until 2017, so 40 odd years after his experiences.
9 And I think he found out through a health worker that he
10 could make a claim against the Ministry of Social
11 Development. And through that lens, I think it eventually
12 became apparent to him that he also had a claim in respect
13 of his times both at the Palmerston North Hospital and at
14 Lake Alice. We'll come back to that in a moment but it's
15 probably worth looking at the cohort at Lake Alice and what
16 it was. We've talked about it but it's probably worth
17 spending a little bit of time on it.

18 I think this was, to contextualise the issue, this was a
19 Child and Adolescent Unit which was open within the Lake
20 Alice psychiatric institution, is that right?

21 A.Yes.

22 Q.And I think the greater institution had been opened in about
23 1950?

24 A.Mm-Mmm.

25 Q.And why do you think there was a need for a Child and
26 Adolescent Unit at that time? Why do you think they
27 developed that need?

28 A.Well, Andrew, I think one of the things that we need to be
29 conscious of here, is that we are going to be going into the
30 wider psychiatric hearing, including looking at the Lake
31 Alice child and adolescent and the reasons for it.

32 Q.Indeed.

33 A.Now, while I have some knowledge around Lake Alice, in terms
34 of we're dealing with events that did take place now nearly
35 50 years ago, so I'm not in a position to talk about, you

1 know, the reasons for the establishment of the unit, and
2 these are something that the Royal Commission's
3 investigation or inquiry into psychiatric facilities
4 including Lake Alice are looking at.

5 Q.It's really a broader question than that. It's not really a
6 specific question about the specific reasons for that time.
7 But, in a broad sense, why do you think that they would have
8 created a separate unit for children and adolescents?

9 A.I can't answer that one for you, Andrew.

10 Q.Do you think it simply, it's as simple as the fact that
11 perhaps it's more appropriate to have children and
12 adolescents treated separately from adults? Could it be as
13 simple as that?

14 A.I don't think it was likely as simple as that, from the
15 limited information that I've got.

16 Q.Okay. Nonetheless, they were children and adolescents. My
17 understanding is they ranged in age from certainly below
18 10 years of age to perhaps late teens?

19 A.Mm-Mmm.

20 Q.So, inherently a fairly vulnerable group? And we know from
21 the Gallen report and various other sources, again a number
22 of the broad and general allegations. And I'm not going to
23 go into any of the specifics with particular individuals
24 but, in broad terms, we've heard in various reports about
25 children being secluded as punishment, being injected with
26 various medications, again in a context which indicates it
27 was probably punishment rather than therapeutic. The use of
28 ECT, sometimes unmodified, so without anaesthetic, in
29 children. Again, allegedly sometimes in a punitive way.
30 The use of the ECT machine, other than for ECT, so the
31 application of electric shocks. We've heard children, in
32 fact Patrick Stevens is one of them, who remembers the
33 screams of kids who were receiving ECT which I suspect
34 created that kind of Russian roulette atmosphere among the
35 kids, that maybe it's today, maybe not, you never quite

1 knew, which I think is again probably part of the abusive
2 context for that institution.

3 We've also heard from Leonie McInroe who was one of the
4 survivors, that 25 years later her GP of 25 years said that
5 she had never manifested any sign of psychiatric or mental
6 illness at all in his knowledge, as far as he was concerned
7 the diagnosis probably couldn't have been sustained. And
8 she had a number of other reports to the same effect.
9 That's just the background and, in your statements, I think
10 you've conceded that this was treated as an instance of
11 systemic abuse, a particular instance that could be dealt
12 with in that way.

13 **CHAIR:** Can I just ask you, rather than nodding your
14 head, if you give a verbal answer so that it can be
15 recorded?

16 A. At such point the question is finished, then I can do that.

17 **MR MOLLOY:**

18 Q. That's all information which is broadly familiar to you?

19 A. Yes.

20 Q. In your capacity as someone who administers the current
21 process for dealing with these claims?

22 A. Correct.

23 Q. And the abuse was within ostensibly a therapeutic
24 environment, psychiatric unit, is that correct?

25 A. Correct.

26 Q. It was at the hands of health clinicians paid by the State?

27 A. Correct.

28 Q. And it was in an environment, in fact I think the settlement
29 agreements for Lake Alice actually explicitly state that the
30 Crown accepts that it was responsible for the running of
31 that institution throughout this period?

32 A. Correct.

33 Q. And I think in the first round of the Gallen process, there
34 were I think you said was it 95 or 97 children, 95,
35 something like that?

1 A.95 settlements included in my briefing.

2 Q.And then another 80 or so in the second round?

3 A.88.

4 Q.And then there's been another 15 or 20 since then?

5 A.A smaller number than that but we're probably looking in the
6 region of about 200 settlements in total.

7 Q.Okay. So, 200 children acknowledged by the State to have
8 been abused within a State institution by State employees?

9 A.Correct.

10 Q.Are you able to identify the names of all the children who
11 went through the Child and Adolescent Unit?

12 A.No, we have not been able to, either as part of the original
13 process or we have not identified records subsequently.

14 Q.Why not?

15 A.In terms of through the records that we can't identify, we
16 haven't been able to identify a list of all the children
17 that went through there. We haven't identified a register
18 of them. If one existed, then hopefully that will be able
19 to be identified as part of the subsequent processes, but to
20 date we haven't been able to do so.

21 Q.But have you, and by "you" I mean anyone in the Ministry,
22 asked or allocated the task to someone of going through the
23 records and identifying as many of the children as can be
24 identified?

25 A.So, we've got obviously those people who were involved in
26 round 1. We've got obviously those people who have
27 subsequently come through. And one of the things as part of
28 the round 2 process, so back in 2002, there was a large
29 amount of publicity at that time to identify persons who
30 were in the care in the Child and Adolescent Unit between
31 1972 and 1977 as part of that process to come forward. So,
32 that was, if you like, the large substantial piece of work
33 that was done as part of that.

34 Now, the other thing which I am unaware of, is the extent to
35 which, as part of the preparation for the litigation back in

1 1999, that the work through in terms of to identify those
2 individual children, there was a lot of work done at the
3 time and obviously those records have been made available in
4 terms of the Commission in terms of those efforts that were
5 made.

6 Q.Because as comprehensive as the first and second rounds
7 might have been, clearly it didn't catch everyone, did it,
8 that process?

9 A.No, in terms of, again as we say, in the absence of a
10 register, there was substantial publicity but, no, we can't
11 guarantee that everyone has come forward.

12 Q.So, I wonder why no-one has ever proactively thought that
13 we, the State, ought to make sure we can identify everyone
14 who was there?

15 A.So, the first thing, as I think we'll go back to the
16 psychiatric claims hearing when it happens we will be able
17 to look at in terms of what were the events that took place
18 at earlier times because this goes all the way back
19 obviously to the 1977 Commission of Inquiry and what work
20 was done there. We will look at what work was done in the
21 lead-up, as part of the litigation in 1999. But also, the
22 2002 work, in terms of the advertising about the operation
23 the campaign gave the big opportunity to enable individuals
24 to come forward. So, that will be able to capture in terms
25 of what actions were taking place.

26 Q.Did the Ministry ever proactively seek anyone or seek to
27 identify anyone who had fallen through the cracks of this
28 process to ensure that if they were entitled to compensation
29 they would be able to access it?

30 A.I mean, the main thing, as I've talked about, is the 2002
31 actions that were taken to promote the existence of the
32 round 2 claims process and to invite people to come forward
33 and that is where we could capture those people that hadn't
34 participated in previous litigations or where there were
35 concerns they may have fallen through the cracks.

1 Q.But again, you had someone like Patrick who had no idea
2 about any of this?

3 A.Again, in terms of it was largely promoted back in 2002 but
4 we appreciate that it may not have captured everyone and for
5 that reason, the process has been kept open and I am come
6 forward from time to time.

7 Q.But it does seem rather passive on the part of the State, to
8 simply sit back and say, "We're here if you need us.
9 There's no information on our website, but if you do find
10 out about us, come and talk to us"?

11 A.It is quite a well-known process and it was one that was
12 designed, you know, for claims to come in by a certain date.
13 And, again, it's not something that we've got a lot of
14 additional resource, if any additional resource for us to
15 run a communications campaign, but it is something that we
16 could make greater reference to, I agree.

17 Q.It would be a time consuming but largely clerical task for
18 someone to go through the records, wouldn't it, and identify
19 as many as possible of the children who went through that
20 unit?

21 A.So, that will be one of the things that is coming up or
22 likely to come up as part of any hearing into Lake Alice
23 which will explore, even with the records that are
24 available, can you identify all the people who may have been
25 in the Child and Adolescent Unit.

26 Q.Again, I understand that. I'm just thinking about the last
27 20 years because we've had compensation paid as part of a
28 litigation risk process of something like \$13 million to a
29 cohort of children who were systemically abused within State
30 care. So, again, I'm just drawing to your attention and
31 asking you why it should be the case that there might be
32 other people who were directly implicated or treated within
33 that unit but who have not been proactively sought out and
34 identified?

1 A.I think the situation, Andrew, through both round 1 and
2 round 2, there's been a large amount of people who have come
3 forward. As part of round 2, it was quite widely promoted
4 for people to come forward, and we have had others who have
5 come forward subsequently. So, a lot has been undertaken,
6 in the Crown's view, to enable people to come forward and
7 continue to deal with new claims where they cover. But,
8 given the wide coverage around round 1 and round 2, we
9 consider it's likely that the majority of children who are
10 eligible to participate in the claim have but we can't
11 guarantee that they all have.

12 Q.Well, that's I guess precisely my concern. You can't
13 guarantee that and I wonder whether, given that we as the
14 State have been responsible for this action and these
15 actions and this abuse, whether we perhaps could quite
16 easily have taken a slightly more proactive approach to
17 identifying potential victims who, as we know from that
18 process, may be inherently vulnerable, may be suspicious of
19 dealing with the State, may simply lack the personal
20 resource to come forward and seek you out?

21 A.I think that's a good point to mention there, Andrew, which
22 is through both the Listening Service and through the Royal
23 Commission, is actually providing yet another avenue for
24 individuals to either come forward or come forward now and
25 do it in a safe place. But always more could be done, but
26 looking in terms of what has been undertaken, there have
27 been lots of avenues for people to come forward.

28 Q.The United Nations Committee Against Torture made a finding
29 last year that the experiences of one of the children in
30 that unit was akin to torture. Not torture in a colloquial
31 sense but torture as defined under an International
32 Convention. And that's the kind of context we're talking
33 about, isn't it, which is quite remarkable in the context of
34 this country?

1 A.Yes, and that informs the processes that were put in place
2 for the settlement of the Lake Alice claims.

3 Q.Indeed. Patrick fell through that crack, didn't he?

4 A.Patrick, in terms of his claim, came through much later.

5 When it was identified, it was processed.

6 Q.Patrick, who was possibly illiterate, certainly in his
7 witness statement he says he has difficulty reading and
8 writing. You may have been in the -

9 A.Mm-Mmm.

10 Q.As I said before, he said he came across this whole process
11 entirely by accident in 2017.

12 A.Mm-Mmm.

13 Q.So, someone who was in a State institution as a 14-year-old
14 in 1975, was subjected to abuse. And the letter of apology,
15 I think the Prime Minister referred to last year to shameful
16 practices.

17 A.Mm-Mmm.

18 Q.He doesn't find out about this process for another 42 years.
19 I think he said it then took another 12 months for his Lake
20 Alice claim to be processed. And he received a considerable
21 sum for most people of \$80,000?

22 A.Mm-Mmm.

23 Q.Two months before he died, which I suppose is a remarkable
24 and terrible example of someone having fallen through the
25 processes.

26 A.Mm-Mmm.

27 Q.And I just wonder what he might have done with that \$80,000
28 10 or 12 years earlier. But, in any event, taking that
29 example, do you think we did enough for Patrick?

30 A.I think that the government, that we did a lot to enable
31 people to come forward. I acknowledge in Patrick's case,
32 that he wasn't identified and he did come forward at a later
33 date and, look, that is, you know, it's terrible that he
34 never got the benefit to enjoy it. But it wasn't an
35 underground process. Again, he had a lot of publicity

1 around the claimants that came forward as part of the
2 original litigation, as part of round 2 and those that have
3 subsequently come forward as well. It's one of these spaces
4 in terms of you look at it and you go you always could do
5 more but in the case of Lake Alice, there is a lot that has
6 been done and also should be considered in the context of
7 the wider services that have been offered and redress.

8 Q.Can you think of another similar example in New Zealand's
9 post colonial history anyway, that we could point to like
10 Lake Alice?

11 A.So -

12 Q.200 kids abused in State care at the same time, not over a
13 continuum.

14 A.I probably think more in the health setting. When I think
15 about concerns about treatment, for example the Cartwright
16 Inquiry is one more that comes to mind and that covers a
17 different cohort.

18 Q.But it's at that sort of level, isn't it?

19 A.Yes.

20 **MR MOLLOY:** Ma'am, I wonder, rather than getting onto
21 another subject, can we take the break now?

22 **CHAIR:** Yes, can I just ask a question that? Mr Knipe,
23 you have told us you have not yet been able to
24 identify the people. Do you have a sense of the
25 numbers of children and adolescents who went through
26 that unit during its lifetime, the total number?

27 A.So, early on about 20 years ago, I've seen figures they
28 thought it might be an estimate of something like 140.
29 Through the settlement processes, we've got about 200 people
30 who have been through the round 1 and round 2 settlement
31 processes. We've had a small group, you know, a couple more
32 claims that we're dealing with at the moment. So, it's very
33 difficult to say, actually, in terms of this is the total
34 cohort.

1 So, that's what, you know, in terms of looking at the
2 purpose of the unit, you might say, look, is it a 230-240
3 figure? But it's a question, based on the information
4 available, it's actually quite difficult to answer because
5 the other part is the information that's not available about
6 were there individuals who went into the Child and
7 Adolescent Unit for a very short period of time and may not
8 have been recorded amongst their group, you know, say for 3
9 weeks or 6 weeks or things like that, were those there who
10 were on a day to day basis.

11 **CHAIR:** The point being, we know that there were 200 who
12 were abused and I'm wondering if you have any sense of
13 the proportion, what proportion of the total number of
14 children do you think, given the difficulties you're
15 facing, the proportion of children who were abused as
16 against the total number of children who were probably
17 there or possibly there?

18 A. Okay. So, one of the key things with the Lake Alice
19 resolution or redress process, is that the default is taken
20 that in terms of if people meet the basic criteria, so they
21 were aged under the age of 17, in the Child and Adolescent
22 Unit, between 1972 and 1977, they may or may not have been
23 subject to ECT. Taking the systemic approach, is that we
24 work on the basis that everyone in some way was treated as a
25 survivor as part of that process and that reflects that it's
26 been done - it was being done as a systemic redress.

27 **CHAIR:** So, put simply, you are assuming that every
28 child and adolescent who went through that unit
29 received abusive treatment?

30 A. Yes, in terms of the scheme that was setup, that's the
31 assumption, if those criteria were met, then they were
32 offered an apology and a compensation payment.

33 **CHAIR:** Thank you, Mr Molloy.

34 **MR MOLLOY:**

1 Q. Just one following out of that. Mr Knipe, there are records
2 available, aren't there, they may not be perfect but there
3 are records available?

4 A. Records of what, Andrew?

5 Q. Of the children who went through the unit?

6 A. Yes, so the files are maintained.

7 Q. Clinical reports?

8 A. In the relevant DHBs.

9 Q. Someone could look through them and compile as comprehensive
10 a list as could be compiled?

11 A. It's a very large undertaking but it would be possible.

12 Q. It's possible?

13 A. Oh, I should say though, it would be making a distinction
14 between people who were in Lake Alice more generally and
15 those who were in the Child and Adolescent Unit. So, that's
16 the bigger challenge with that, is that you've got the
17 records available around Lake Alice but then, in terms of
18 that ability, you know, in terms of which you go through and
19 identify those specifically that were in the Child and
20 Adolescent Unit.

21 Q. Inside, it's a challenge?

22 A. Yes.

23 Q. But it could be undertaken? And despite the systemic abuse
24 we are talking about and the scale of it, to date, as far as
25 you know, we haven't done it?

26 A. That will be something that, again, I'm not aware of it
27 being undertaken but, that being said, it's events well
28 before my time, so it's one of the things that is likely to
29 come up as part of the Lake Alice hearing.

30 Q. Well, it's - I accept it's well before your time.

31 Nonetheless, you have been Chief Legal Adviser at the
32 Ministry for over a decade now, 12 years?

33 A. 12 years.

34 Q. For much of that time, you were monitoring the CHFA and
35 you've had an ongoing role for the last 12 years?

1 A. Correct.

2 Q. So, if it had been done, there's a strong chance you'd know
3 about it?

4 A. If it had been done in that time, yes.

5 **MR MOLLOY:** Okay, thank you.

6 **CHAIR:** Thank you, Mr Molloy. We will take the lunch
7 adjournment.

8

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

10

11

12 **CHAIR:** Good afternoon, everybody. We recommence with
13 you, Mr Molloy, thank you, and Mr Knipe again.

14 **MR MOLLOY:**

15 Q. Mr Knipe, I'm going to change focus now onto the period
16 after the Lake Alice settlement rounds. I think in your
17 statement you referred to the period sort of around about
18 2004-2008 where there was a change or at least a means of
19 dealing with claims that sort of emerged from that?

20 A. That's correct.

21 Q. And I think also, that was the period during which the
22 Listening Service was initiated and put into place?

23 A. Yes.

24 Q. So, in a broad sense, was the option, you could either
25 pursue your grievance in Court or there was another option
26 available to you through the -

27 A. Yes. So, at that time, there were discussions that took
28 place in terms of the options available and, yeah, as set
29 out in my evidence, it ended up being the choices available
30 or you could do both, of course, go to the Listening Service
31 and the Court.

32 Q. Okay. And so, was there any other service or means of
33 informal mediation through the minutes at that time or was
34 it really through the Listening Service?

1 A. Not through the Ministry at that time because the other
2 thing is the legal liability for psychiatric care sat with
3 the Crown Health Financing Agency. So, at that point, you
4 had the Listening Service and obviously then the Crown in
5 terms of its litigation strategy.

6 Q. Right. But, at that point, was it part of your
7 responsibility to oversee the CHFA?

8 A. The Ministry had monitoring responsibility for the CHFA.

9 Q. And so, what did that involve, in a broad sense, at that
10 time?

11 A. So, key things that are involved were keeping abreast of the
12 CHFA, in terms of its management of historic claims,
13 overseeing CHFA in terms of how it conducts its financial
14 responsibilities, compliance with the Crown Entities Act
15 and, to the extent there are provisions in there, under the
16 New Zealand public health and disability act as well.

17 Q. So, the resolution of historic claims was obviously just a
18 part of that? It was just a small part of that approach?

19 A. So, it was a significant part of the operations of CHFA. It
20 was a smaller part, in terms of the operation of the
21 Ministry as a whole.

22 Q. Yep. And so, what was the difference, when that moved into
23 the next iteration, when I think you talk about the Crown
24 litigation strategies from about 2008 on, what were the main
25 differences at that point? What changed?

26 A. There probably weren't substantial changes at that point but
27 at that stage we had the Historic Abuse Inter-Agency Working
28 Group formally established, which had representatives from
29 various agencies involved. You had the work that went on
30 that point around the more formal, probably overhaul of the
31 Crown's Litigation Strategy. But plus, you also had the
32 advice that the Crown Health Financing Agency would be
33 putting out to the Ministry of Health on matters and any
34 Ministry comment on advice.

1 Q.And was that was- there any change as a result of the Te
2 Āiotanga report and the recommendations made in that report?

3 A.Given the timing, with the Te Āiotanga report that came out
4 at the end of 2007, you got a natural transition from that
5 report coming out to the government around Crown litigation
6 strategy from 2008, from memory, as well as the
7 establishment of the historic abuse inter-agency Working
8 Group.

9 Q.And so, was that the consulting group which Crown Law
10 chaired?

11 A.Correct.

12 Q.And you were there in your capacity as?

13 A.Ministry of Health.

14 Q.Chief Minister adviser?

15 A.Yes.

16 Q.And your counterparts at Ministry of Social Development?

17 A.Correct.

18 Q.And Ministry of Education?

19 A.Yes.

20 Q.And then someone from the CHFA as well?

21 A.That's correct.

22 Q.So, I think in your statement you said one of the objectives
23 was sort of to aim for a consistency of approach across the
24 various different ministries?

25 A.Yes, broadly to look at what agencies were doing.

26 Q.And do you think you achieved that?

27 A.In the end, in terms of because of the circumstances that
28 played out, you had some difference in approach taken
29 between agencies. We were certainly more informed, as in
30 terms of the approach that we'd taken but ultimately, there
31 were other factors that meant there were differences in each
32 of the redress processes that are in place and some of that
33 sort of starts from that time.

34 Q.What were the primary differences? What were the factors
35 that led to differences, rather?

1 A.Key things probably arise out of the progress of the
2 litigation in the different areas. So, for the psychiatric
3 area with CHFA, you have those cases in terms of K, J and
4 then subsequently B. For Social Development at that time
5 you've obviously got in terms of White. And for education,
6 you have in terms of, I am not sure whether there were any
7 particular cases at that point which then led to different
8 features of different regimes based on particular
9 circumstances they faced.

10 Q.So, what were some of those different features and why were
11 they in existence?

12 A.Well, I think the key thing, and that point, that feeds into
13 the evidence I've given as to why there was a settlement
14 process in place in relation to the claims against CHFA.
15 And then how that informed the subsequent redress process
16 versus the redress process for claims relating to MSD and
17 then Ministry of Education. So, I would say the litigation
18 is a significant part or factor in that.

19 Q.Was the settlement of the litigation, are you talking about
20 the global settlement in around about 2011-2012?

21 A.That's correct.

22 Q.I think there were something like 330 claims, I think?

23 A.So, there were 330 claims resolved as part of that process.

24 Q.6 or so that weren't?

25 A.Yes.

26 Q.For whatever reason. Okay. And I think there was a
27 fundraising of approximately \$5 million available for that
28 purpose, is that right?

29 A.That's correct.

30 Q.And where did that come from?

31 A.So, it was a combination, so the Crown Health Financing
32 Agency was being disestablished. At that time, as I recall,
33 they had probably about \$1.7 million in surplus funds
34 available. A proposal went up to Ministers, I think
35 particularly the Minister of Health and the Minister of

1 Finance, for additional \$3.3 million to make the fundraising
2 to \$5 million available for settlement.

3 Q.How was that sum arrived at?

4 A.In terms of, part of it has been discussions that I wasn't a
5 part of involving Crown Law, CHFA and Cooper Legal as well I
6 think to determine in terms of what level of amount might be
7 appropriate to enable the settlement of the claims but also
8 enable the discharge of Legal Aid liabilities in relation to
9 them.

10 Q.Okay. So, it was really just a fund, a sum that was picked
11 in order to facilitate the settlement of those claims?

12 A.Less picked but it had a commercial element to it in terms
13 of how the amount was determined, rather than a straight
14 policy-based approach.

15 Q.And I think you've set out a range of categories for broadly
16 enabling people's differing circumstances to be attributed
17 to one or other of those categories?

18 A.Correct.

19 Q.I think you said that sort of broadly carried into the next,
20 the HARS process?

21 A.Correct.

22 Q.From 2012 on, which existed up until now, I think?

23 A.Yes.

24 Q.So, it's a contemporary process as well?

25 A.Correct, ah, it's a contemporary process dealing with
26 historic claims.

27 Q.Indeed, indeed.

28 A.If I can be as pedantic as that.

29 Q.No, that clarifies it, thank you. But I think the highest
30 payment under the current process is \$9,000 in general, as
31 opposed to \$18,000?

32 A.Correct.

33 Q.So, what's the reason for that, for that reduction?

34 A.So, this is set out in the health report or mainly set out
35 in the health report to the Minister of Health of 25

1 October. But as at 1 July, I set out in my evidence, we
2 faced a conundrum which was there had been like broader
3 global settlement claims that had been reached. However,
4 the Ministry still had further claims that were being noted
5 as for possible further litigation. But also, further
6 referrals coming in from the Confidential Listening and
7 Assistance Service and also direct inquiries. So, I can't
8 quite recall the timing but there was on TVNZ a Close Up
9 item either in 2012 or 2013 that generated quite a bit of
10 interest as well.

11 So, the Ministry was in a situation where CHFA had been
12 disestablished. All the funding had been expired or spent
13 as part of that process. There might have been a small hold
14 over that was carried through to deal with any remaining
15 claims, there was still administration going on. And we
16 were looking at how do we setup a process to go forward
17 where there was no anticipation of the government
18 appropriating further funds for settlement.

19 So, for that reason, we put the advice up to the Minister of
20 Health, in terms of here's an approach broadly based on the
21 CHFA process that we could apply going forward and looking
22 at a source of funding, we identified the legal services
23 non-departmental other expenditure fund. It gets into the
24 finer points of the Public Finance Act but it's funding that
25 we use for, as I said, settlement of remaining Lake Alice
26 claims where the original appropriation is long since spent.
27 Hep C claims as part of the long running Hep C settlement
28 process. And other claims in there. So, we looked at that
29 and that's when we setup the advice for the Minister of
30 Health in terms of how we thought we could manage it and
31 work within funding that was available through there.

32 Q. Again, was there effectively a commercial imperative that
33 there were limited funds available and you had to work with
34 that?

1 A.As a public servant, as Chief Legal Adviser for the Minister
2 of Health, is ensuring compliance with the Public Finance
3 Act and working within the resources we have available to us
4 and complying with the law.

5 So, this has been identified as a way we could provide a
6 Resolution Service, provide payments for individuals,
7 broadly take the experience from CHFA and still comply with
8 our statutory requirement or legislative requirements in
9 terms of the Public Finance Act, and be able to run a
10 process on an ongoing basis, where we had no expectation of
11 ongoing further funds being made available.

12 Q.So, within that framework, can you point to an example where
13 the question of compensating someone who has been abused in
14 State psychiatric care or disability care, has been
15 approached in a principled way?

16 A.Well, our view, of course, is that all of them have been
17 approached in a principled way.

18 Q.Yes, but with financial constraints that you're under?

19 A.Yes.

20 Q.So, here's the pot, how can we divide it?

21 A.Yes.

22 Q.Yep. So, what I'm asking is, can you think of any time when
23 someone has sat down and thought, well actually, this is
24 what we've potentially done to these people, not only have
25 we taken vulnerable people that we purport to care for,
26 we've made their circumstances worse, what do we need to do
27 to make it right? Has that ever played into this?

28 A.Well, this is something that features actually throughout
29 governance overall redress processes going from, and this is
30 the, I suppose, thread going through the evidence that I've
31 provided from Lake Alice to the Listening Service,
32 Confidential Forum in there, through the CHFA settlements to
33 the Ministry settlements. We're always, one thing in our
34 mind is in terms of for some people or for many people, no
35 amount that is offered will address the experiences they

1 have suffered as a result of their time in care and actually
2 wider circumstances. But it is about making an amount of
3 redress available that will provide benefits, in that they
4 can use for their own purposes.

5 So, it's always had in mind, in terms of, it's always a
6 principled approach but we accept it's always constrained
7 about what resources are available to the government and to
8 agencies at the time.

9 Q. So, I suppose that's really the flipside of my question. My
10 question really is, can you think of a circumstance where
11 anyone at the Ministry, in the context of the claims we're
12 talking about, has been able to sit down and say, "This is
13 what - if this is what's happened, what do we need to
14 spend?", rather than, "These are the parameters within which
15 we can work, how do we divide that up?"

16 A. Not in the context of the current Resolution Service.

17 Q. So, when we've talked about Lake Alice, I mean there was the
18 two rounds, and that was - I don't mean this pejoratively
19 but effectively it came to a settlement through a litigation
20 process? There was a commercial decision reached and
21 accommodations arrived at. And then you had CHFA with its
22 financial constraints?

23 A. Mm-Mmm.

24 Q. And then there's the HARS process, again with financial
25 constraints?

26 A. (Nods).

27 Q. It seems to me that there's not really any sense in any of
28 that where someone has sat down and said, "Well, on a
29 principled basis this is how we would make it right. There
30 would be a compensation package", as you say for some people
31 you can't put money on it, but that's not really the point
32 because you could say that about any circumstances where
33 damages are paid.

34 So, there might be a number of different components for it.
35 But I can't see in the processes that you've outlined

1 anything as principled as that and perhaps there couldn't
2 be?

3 A.Yeah, and that's why I've explained in terms of looking, and
4 this is something for the Commission, looking across
5 different redress processes. Because of the different
6 history that sits behind them, you've had some different
7 thinking and that's why you've got the differences in the
8 processes and what underpins them.

9 Q.We were talking a little bit before about some of the
10 different outcomes in the different ministries, and I recall
11 seeing the minutes of some of those meetings.

12 A.Mm-Mmm.

13 Q.Where some concern was expressed about the levels of
14 payments that were being made in the MSD and MOE, as
15 compared to the Ministry of Health. But it didn't seem to
16 me just to be funding. For example, the Ministry of Social
17 Development at one point seemed to have a staff of about 8
18 or 9 people involved, social workers, privacy officers,
19 dealing with these claims.
20 So, there seemed to be a greater focus around teams actually
21 dealing with the substance of the claims. Is that fair?
22 Would that compare differently to what was available through
23 the Ministry?

24 A.Yes, quite differently. Again, with the disestablishment of
25 CHFA, there was no additional resource that was available.
26 So, what we had to do was establish a Resolution Service
27 with what resource we had. So, it didn't lend itself to
28 being able to have a significant sized team. For example,
29 you might have CYPS development where there has been money
30 appropriated in place, we didn't have that as part of the
31 disestablishment of CHFA there was no additional funding
32 appropriated to the Ministry to carry out this work.

33 Q.Did you ever ask for it?

34 A.No, it was never asked for.

35 Q.Why not?

1 A. One of the key things was that as part of the
2 disestablishment of CHFA, it was just looking at a straight
3 transfer of the functions over to the Ministry.

4 So, in terms of when they're doing their planning for CHFA,
5 there was no planning for additional funding.

6 And the other thing we came up with, was with some of the
7 issues that arose were sort of beyond the end of where it
8 would be in the budget process for that.

9 Q. But again, if there was discussion among this group, this
10 cohesive group that was meeting for a specific purpose to
11 ensure some kind of consistency, why was thought never given
12 to actually developing processes and resource, human
13 resource within your department, and applying for the
14 funding that would enable that?

15 A. Well, again, one of the challenges in this space is that,
16 another process would be done on an agency by agency
17 process, so it was never setup as a combined redress
18 process, and that is around - we ended up with specific
19 features for the Ministry of Health process that we didn't
20 have for the others.

21 Q. I understand that, but you still had inequality of resource
22 being allocated and inequality or inconsistency of financial
23 outcome for people making claims in a circumstance where
24 you're looking for consistency?

25 A. There was consistency overall and what we ended up with the
26 Ministry of Health process was a quite different process
27 itself in terms of how claims were administered and run,
28 which meant it may not lend itself to having at same process
29 as MSD, at least in terms of resourcing.

30 Q. Are you familiar with the McInroe litigation?

31 A. Yes, I am.

32 Q. I think in 1994?

33 A. Correct.

34 Q. And I think that was probably the first Court claim brought
35 by a Lake Alice Child and Adolescent Unit survivor?

1 A. Correct.

2 Q. It probably predated the Gallen Group by maybe 4 years?

3 A. 4-5 years.

4 Q. 4-5 years?

5 A. Yep.

6 Q. And I was talking before about the apparent lack of any kind
7 of principled approach to any determination of
8 compensation/redress. It was certainly a point of, I don't
9 know that I can find the right word, it was certainly a
10 point which has deeply affected Ms McInroe?

11 A. Mm-Mmm.

12 Q. That having commenced this litigation, it then dragged out
13 for something like 9 years. And then within that timeframe,
14 this other CLAS action comes in and effectively sets the bar
15 for compensation levels. Are you aware of the
16 circumstances, what was you causing the delays in the
17 McInroe litigation, why it took so long?

18 A. Only pretty much as set out in Ms McInroe's evidence herself
19 where she talks about a number of barriers, the legal
20 process itself, as I understand, there was a judicial
21 settlement conference during that time which didn't seem to
22 achieve an outcome. And then we have come 1999, there's a
23 couple of things. One, obviously there's the further
24 progress of the litigation as taken by Grant Cameron. But
25 also, what you have in 1999 is the situation where you have
26 a new government that comes in, takes positive decisions
27 around addressing the litigation relating to Lake Alice and
28 looking to put in place a settlement process.
29 So, in addition to the litigation, and acknowledging the
30 barriers that Ms McInroe faced, when we get to 1999 and into
31 2000, there's also a range of other political considerations
32 coming into play at that point towards resolution.

33 Q. But the Ministry would have been involved in the
34 negotiations, both in terms of the Grant Cameron group, but
35 also in terms of the McInroe litigation as well?

1 A.From what I've seen, a lot around the litigation taken by
2 Grant Cameron on behalf of his plaintiffs - and we were
3 involved with the litigation relating to Ms McInroe - it
4 seems to be ups and downs in terms of the timing, so I can't
5 say for sure how much we were involved at any one time.

6 Q.Well, it's almost inevitable, isn't it, given that the
7 subject matter was Lake Alice, it was a psychiatric
8 institution, it's almost inevitable that the Ministry would
9 have been deeply involved, is that right?

10 A.Correct.

11 Q.And are you aware of the evolution of the strategy of that
12 litigation and the Gallen litigation?

13 A.I have more familiarity with the litigation as taken by
14 Mr Cameron on behalf of the plaintiffs, than the McInroe
15 litigation where I haven't seen too much. I've seen some
16 material but not a huge amount about it. But, again, we
17 have the benefit of Ms McInroe's evidence as to the
18 progress.

19 Q.Because looking back, I suppose with the wisdom of
20 hindsight, you had a case lodged in the High Court where a
21 plaintiff was represented by a future Supreme Court Judge
22 instructed by a future District Court Judge and seeking
23 exemplary damages in connection with important and difficult
24 issues. And I think she certainly has her own views about
25 why that litigation was dragged on for so long. Do you have
26 any observations about that, that you might be able to give
27 to here?

28 A.In terms of the progress of the litigation, the main thing I
29 can see is in terms of, while it may have dragged for some
30 time, once it got to the period of 1999/2000, new incoming
31 government, there was a large degree of momentum to resolve
32 the situation. Now, recognising that everything that
33 Ms McInroe has experienced, I fully appreciate why she may
34 be dissatisfied with the outcome, given everything that was
35 going on.

1 But in respect of the, you know, wider group of plaintiffs,
2 in terms of the 95 and others, in the end it was dealt with,
3 considered on a wider group basis to achieve some
4 resolution. And for the government to be able to put
5 processes in place to benefit claimants as a whole.

6 **CHAIR:** Mr Knipe, the question was, do you know why the
7 delays took place?

8 A.I don't know why the delays took place in respect of the
9 McInroe litigation up to 1998 or early 1999, other than it
10 seemed to progress a slower process but there was a judicial
11 settlement conference, as I understand, in the middle but I
12 can't say in terms of a particular block.

13 **CHAIR:** And after that?

14 A.After that, then it really becomes subsumed within the wider
15 process that the government established for a settlement
16 process for Lake Alice claimants.

17 **CHAIR:** So, it got lost?

18 A.So, come say 2000, then you have the negotiations and
19 consideration that's underway for settlement of Lake Alice
20 claims. You still have the McInroe claim that's still
21 before the Court at that time but that claim did not proceed
22 to a hearing, as I understand, at that time because the
23 government was establishing a Lake Alice settlement process.
24 So, for whatever reason, the claim did not appear to proceed
25 at that time and, in the end, there was the wider Lake Alice
26 settlement process that was put in place. That would be
27 obviously a matter for the Court in terms of timetabling and
28 what happened at that stage.

29 **CHAIR:** Thank you.

30 **MR MOLLOY:**

31 Q.I just want to jump forward again a little to something a
32 little more contemporary.

33 I think in your statement at paragraph 5.5 you talk about a
34 moral obligation. Not a legal obligation, but there is a

1 moral obligation. You acknowledge the experience of
2 claimants through a settlement process?

3 A. Correct.

4 Q. So, what do you mean by that?

5 A. One of the biggest problems that really came out of the
6 litigation, and particularly the Courts, I'm trying to
7 remember the particular decision, whether it was K or J,
8 where they highlighted that the - and came up in B as well -
9 where the claims were going through the Courts there were
10 defences that were available. And if I can put it, you
11 know, in terms of if you're looking to prove a claim, you
12 might have, you know, your criminal standard obviously of
13 beyond reasonable doubt, your civil standard of balance of
14 probabilities. From the claims that did go to Court, there
15 were inherent problems with being able to establish evidence
16 to that level.

17 However, behind that there's a recognition in terms of
18 despite those evidential challenges, it wasn't to deny, or
19 in terms of the challenges, in terms of to look at there
20 should be recognition where abuse may have taken place and
21 it was acknowledged and that the Court processes, I think it
22 was in K where this was raised, is there needed to be some
23 way to step aside from that in order to acknowledge the
24 claims and the survivors which then led to looking to put
25 settlement processes in place through more of an ADR type
26 approach.

27 Q. And then who was in charge of that process?

28 A. So, with that process, you had originally CHFA leading the
29 work around the negotiations for the settlement process.
30 You had decisions being made by the Minister of Health and
31 the Minister of Finance in that. And then when it came to
32 establishing the process within the Ministry, that ended up
33 with myself, in terms of picking up the responsibility to
34 prepare the advice to the Minister of Health in terms of the
35 option going forward.

1 Q.And then what outcomes were you looking for?

2 A.The outcomes that I was looking for was to build upon, in
3 terms of what had been achieved through the CHFA process, to
4 have an ongoing process for there was recognition that
5 claimants were able to come forward, have an acknowledgment
6 of their claim, have a wellbeing payment made and manage
7 within the financial parameters that were available.

8 Q.And how were you measuring your outcomes?

9 A.I mean, in terms of ultimately our outcomes were in terms of
10 going forward, managing the claim and being able to, yeah,
11 resolve them and make an offer back to the individuals.

12 Q.But how were you measuring the outcome from the individuals'
13 perspective?

14 A.So, from the individuals' perspective, I mean it's not
15 something that we had measurements in place for how that was
16 achieved. It's generally relying on feedback from the
17 individuals as to any experience of the progress but also,
18 in terms of looking at it when we designed the process it
19 was a combination in terms of this was a claims component
20 and it was part of the wider Listening Assistance Service
21 available.

22 Q.How were you measuring the wellbeing of someone going
23 through that process or were you measuring it?

24 A.We didn't have measurements in place in terms of the
25 wellbeing.

26 Q.Right. So, the outcome from the Ministry's perspective was
27 that a case was dealt with in as humane a way as you thought
28 you could?

29 A.Yes.

30 Q.And you have no idea what the outcome of any individual
31 involved in that process, how they would regard the outcome
32 of that?

33 A.What we get is obviously feedback from time to time from
34 individuals concerned.

35 Q.Did you seek it or does it just come in sometimes?

1 A.It comes in sometimes and it's from a variety of routes.
2 But also from individuals who, you know, get back in contact
3 with us, just from time to time.

4 Q.And again, was there any evaluation of what best practice
5 counselling might be helpful to particular people?

6 A.So, the Ministry was not running a counselling process. So,
7 in terms of when the process, when the service was
8 originally established, counselling where it was available
9 was through the Listening Service and going through that
10 process.

11 Where individuals, you know, if they talk to me about in
12 terms of can you recommend a counsellor, then that's
13 something where I've advised them it's probably best to talk
14 to their GP or someone who can provide better assistance.
15 One of the things about the claims process, and here I'm
16 reflecting on the evidence that Fiona Inkpen gave in
17 relation to Stand and the process that they run, which is
18 when you're running a claims process she has that specific
19 experience of being a psychotherapist and supports that she
20 can provide. With the Ministry, in terms of we don't
21 purport to act as counsellors in there and there are health
22 practitioners out there who can do that much better.
23 That's, when the question comes up, where we're likely to
24 refer them to.

25 Q.Your Ministry by now, there's quite a substantial amount of
26 information about the kinds of claims, the kinds of
27 experiences people have had and you are, after all, the
28 Ministry of Health. Was any work ever done or commissioned
29 around positive outcomes or interventions or the types of
30 services that might benefit from those large groups of
31 people coming through?

32 A.Not by the Ministry but what you had was obviously, well
33 before this time you had the Confidential Forum report in
34 terms of looking at claims which was for psychiatric care,
35 and then you had the Listening Service and their final

1 report as well. So, you had those services who were
2 operating in that space for the claimants' claims they were
3 dealing with which were often the claims that were feeding
4 into the Ministry.

5 Q.The whole process seems to be in the control of the
6 Ministry. In a sense, certainly from a claimants'
7 perspective, you can bring a Court case, there's validity to
8 your background and you are, as we've already discussed,
9 someone who started off vulnerable given your health profile
10 and have been made more vulnerable by the experiences you've
11 had in the care of the State. And you can find a lawyer,
12 lodge a claim if you are able to fund it, in Ms Bellingham's
13 case spend your inheritance, or lodge a claim if you can get
14 through Legal Services Agency, and then you can go through
15 that process.

16 And up against you are effectively the State, the Crown,
17 with its resource and without any skin in the game, if you
18 like, nothing personal. So, that's one possibility.

19 And you've mentioned that there are processes that have
20 developed over time. As you say, you're looking to offer an
21 alternative which is a sensible step to take.

22 But even then, often there will be no question of
23 compensation or, if there is, it's not principled
24 compensation evaluation. It's an arbitrary figure that's
25 dictated by budgets.

26 And I guess you get to the point where you as the Ministry
27 say you can engage with us or you can take your chances in
28 Court.

29 Really, would you agree that all the aces really, from an
30 applicant's point of view, seem to be on the other side of
31 the fence? It all seems to be with the Ministry? All the
32 power and all of the decisions is with the Ministry?

33 A.In terms of the process itself, yes, in terms of the schemes
34 we have up, that does sit with the Ministry.

1 Q. So, when you're looking at what is offered for the wellbeing
2 of these people, and by you I mean the Ministry, I don't
3 mean you alone, you know, you're a lawyer by training?

4 A. (Nods).

5 Q. You're in-house counsel, so the interest of your client,
6 your Ministry, are by definition highly important to you.
7 Where is the - where do you go to get the human perspective,
8 to get the outside perspective on what you're offering?

9 A. So, in terms of the outside perspective, there's a couple of
10 things there. So, one is in terms of the legacy in terms of
11 what's setup through the previous CHFA process that's formed
12 what we're doing here.

13 The second thing is from the claimants themselves, in terms
14 of, so, through their experiences, whether it's those I talk
15 to on the phone, is put together by lawyers or say
16 representatives acting on their behalf or they've put their
17 claim together themselves. That's the other perspective and
18 it's a big perspective, it's brought to bear in dealing with
19 the claims, in taking those personal matters into account.
20 One of the things there, is that you know you talk about my
21 role in terms of as a lawyer but with the operation of the
22 service, with the way that we've put it together, that's one
23 thing, is actually to put that aside when you're dealing
24 with the claims. So, with the criteria that had been
25 established and to be considering them, that's where you're
26 working within those parameters and it's not thinking about
27 it from the perspective of exactly, you know, specifically
28 as a lawyer, in terms of, you know, what's the legal risk
29 etc. associated with that.

30 It's looking in terms of, you know, what can we do with the
31 claim that's before us? Inherently, looking to offer at
32 least empathy to the claimants and, you know, look at it as
33 open-mindedly as we can.

1 Q.But the reality is, you don't really have a lot of risk, do
2 you? Your risk is notional because you can say to them, you
3 can always take your chances in Court?

4 A.Risk comes in a range of different forms and particularly
5 for the Ministry, and for the government more generally,
6 it's a reputational risk if we act unfairly, if we act
7 capriciously, if we don't treat the claimants with respect,
8 then you know there's a lot of risk that we have there to
9 our reputation.

10 So, financial risk obviously is one consideration, but it's
11 not the only consideration and it's just part of being a
12 public servant that you look at that wider consideration in
13 terms of things that you're dealing with when you're
14 operating, you know, a redress scheme.

15 Q.But, again, you're still holding all the aces aren't you?
16 You're still controlling the process?

17 A.In terms of inherently, it's a process that's operated by
18 the Ministry of Health.

19 Q.If someone has an employment related dispute, they can go to
20 an agency where someone independent evaluates the merits and
21 tries to arrive at a result between the two parties?

22 A.Correct.

23 Q.But you're the mediator and the party, if you like? You're
24 the assessor and the party?

25 A.We're less the party, I think because except for Lake Alice
26 itself, none of the facilities were operated or under the
27 control of the Ministry of Health. So, from our
28 perspective, in terms of what we consider, there is a degree
29 of impartiality because it's not the Ministry, again with
30 that one exception, that was operating the facility. As you
31 said before which was around skin in the game, that's the
32 other thing in terms of we don't have a skin in the game, in
33 terms of taking on blame for that facility itself and
34 feeling that we have anything to defend as part of that.
35 That's where -

1 Q.That's true, but you have liability?

2 A.Yeah.

3 Q.You have liability potentially?

4 A.You're correct and that comes to the important distinction
5 between impartiality and independence. Where the Ministry
6 would say, look, in terms of - we have a process that we
7 think has a reasonable degree of impartiality associated
8 with it but we would acknowledge it's not an independent
9 process of the type that you've described there.

10 Q.So, how impartial can you actually be if you're not
11 independent because impartiality is not just about
12 substance, is it? It's about perception?

13 A.I think you can be very impartial and part of that is
14 knowing what your responsibility is, operating the process
15 with consistency, looking to always work with the claimant
16 survivors with respect and with care and acknowledging the
17 experiences that they've gone through. But I acknowledge,
18 if you were starting a scheme with a fresh scrap of paper
19 and using, you know, first principles on a policy basis,
20 this is probably not the scheme that you would design.
21 There's a fair degree of it which is an artefact of the
22 history behind it, which is how we've come to what we've
23 got, which flows through from the evidence that you get from
24 all the witnesses appearing before the Commission in this
25 phase to, I suppose, assist the Commission with its thinking
26 in terms of what's good, what's bad, what should be done
27 differently.

28 Q.So, how would you design it?

29 A.Well, I wouldn't design it. Ultimately, and I think that's
30 the advantage of the Commission and others to put such a
31 scheme together.

32 Q.Sure. I'm not asking you to provide a template, but you've
33 been involved in this for a long time, you've seen some of
34 the performance and some of the difficulties, what are your

1 observations? What would you do differently if you had the
2 opportunity?

3 A.Well, what I'd start with is in terms of you might go back
4 to obviously you've got starting with survivors, and in
5 terms of looking at what are the various considerations
6 coming through there. And what you've had, certainly
7 through the phase 1 evidence, but also what you'll get
8 talking with the individuals through your Listening Service,
9 is about what are some of the things that they're looking
10 for in redress and help to use that to build a first
11 principles approach.

12 But very much taking that approach in terms of what is it
13 that survivors are looking for, what's effective. But also,
14 across the different areas of the State where abuse has
15 taken place, do you go with consistent approach or are there
16 differences based on what's going on? Because if I take the
17 mental health sector, we are extremely far removed from, and
18 thankfully very far removed, from the institutions that
19 we're seeing in place, in terms of the evidence of the 60s
20 and the 70s. We've gone through the process of
21 deinstitutionalisation, we've gone through greater community
22 care and, also, we're going further with mental health.

23 Q.I'm going to pause you there because my question isn't
24 really about contemporary. I appreciate the differences
25 there have been since the 1992 Act came in and the steps
26 that have been taken. I guess really, the question is, if
27 you were designing a process to adequately, appropriately,
28 sensitively and comprehensively deal with historic abuse
29 issues, what are some of the things you might insert into
30 the process or take away from the process that currently
31 exists? And if you can't think of any, that's fine.

32 A.Oh, it's not a matter of not thinking of anything. It's
33 probably putting it in the scheme, in terms of not holding
34 myself actually out as an expert in that. I have got
35 knowledge in terms of the Ministry scheme, I have knowledge

1 from my experience working with survivors and I've got some
2 from lawyers. But taking it back to first principles, you
3 know, in terms of looking at something in terms of take
4 lessons, learnings, feed in from survivors, what are
5 survivors looking to get from a redress process? You can
6 look at the different elements, which we have at the moment
7 in terms of we've got hearings, we've got in terms of access
8 to counselling I think through the Listening Service and
9 we've got redress, should you have more, should you have
10 less?

11 Cultural considerations. So, greater consideration of
12 tikanga but also for Pacific persons, for Asian people,
13 others, other people who have been through the care
14 experience.

15 Q.Tikanga is a good example. Take tikanga, I think you've
16 referred in your affidavit to that. It hasn't really
17 featured as part of your processes, but you're open to
18 suggestions or feedback.

19 Have you taken any proactive steps to actually find out what
20 might be appropriate?

21 A.So, in terms of - we haven't done first steps in that regard
22 and I think that's one of the things in terms of wherever we
23 head with the Commission, we recognise that we need to do
24 more.

25 Q.I'll just take you back to your affidavit in 2017 because I
26 think you said almost exactly the same thing.

27 A.Yeah.

28 Q.There was a couple of paragraphs in that affidavit that
29 you've almost literally word-for-word transposed into your
30 current witness statement?

31 A.Yep.

32 Q.That's obviously been an issue that you could have been
33 proactive about, but it hasn't been a priority for the
34 Ministry?

1 A.So, with the resource in the historic abuse space that's
2 been available over the last 2-3 years, a large focus of
3 that has been on administering current claims, but also in
4 terms of providing support and addressing matters coming out
5 of the Commission hearing.

6 Q.I suggest to you, the Ministry would have within it, within
7 its expertise and its resource, people who could promptly
8 provide sound culturally appropriate advice about how you
9 might incorporate tikanga into your processes - would that
10 be fair?

11 A.With incorporation of tikanga, while there's access to some
12 resource in the Ministry, it's the sort of thing you would
13 actually usually go external for, in terms of there
14 are - while there are good people in the Ministry, I think
15 when you're dealing with matters of tikanga it's often
16 better to go wider and draw from a wider resource.

17 Q.I'll put it differently. The Ministry has it within its
18 easy reach appropriate expertise to obtain that kind of
19 advice, should it seek it?

20 A.Yes.

21 Q.But you haven't sought it?

22 A.No.

23 Q.Mr Knipe, I just want to come back to one of the matters we
24 were talking about before lunch and just suggest to you,
25 using your own words in a different context, there actually
26 is a moral obligation to identify everybody who might have
27 been in that unit, every 9, 10, 15, 16 year old kid who was
28 in that unit and who might have actually been overtly
29 mistreated or might have fallen witness to others and been
30 left wondering, will that be me? That's something that
31 could be done? It wouldn't be an easy or simple task, but
32 it's just a matter of finding the appropriate files and
33 going through them. It might not be able to be perfect, but
34 I suggest there's that obligation, because of the
35 exceptional nature of that particular cohort. It's not me

1 saying that, it's been treated as such, it's been
2 acknowledged as such?

3 A.Yep.

4 Q.I suggest to you, that's something that could be and should
5 be undertaken in case there is still anyone like Patrick
6 Stevens or any of the other people that could come through
7 who we haven't yet got. And also because it's a matter of
8 public record if someone has passed away, we should
9 nonetheless be aware that they were there and, as the
10 Ministry and as a legal adviser within the Ministry, I just
11 put that proposition to you.

12 **CHAIR:** Do you wish to comment on that, Mr Knipe?

13 A.I've got no further comments on that beyond the comments
14 that I made this morning on that proposal.

15 **CHAIR:** Thank you.

16 **MR MOLLOY:** Okay.

17 Q.And as to the hardest process, and look you made the point
18 there will be people for whom nothing will ever be enough,
19 and I understand what you mean by that. There will also be
20 people for whom any kind of acknowledgment is a good thing,
21 and I acknowledge the good thing has been done for those
22 people.

23 But I suggest there's a group in the middle and that, at the
24 moment, it seems to me the process is run by the Ministry.
25 It's not publicised on its own website. And it is offering
26 an opportunity for people to resolve a claim but in kind of
27 a quasi-litigation sense really. You can take what we're
28 offering or you can go to the Court. I suggest to you,
29 that's not necessarily a therapeutic outcome for all of the
30 people who would fall into that category. Do you want to
31 comment on that?

32 A.As I've advised in terms of people's needs are quite
33 different, so you've got those who want to be heard, those
34 who want acknowledgment, those who want compensation, those
35 who are angry, and it's actually a very low number of ones I

1 deal with who want vengeance. So, we can't offer everything
2 to everyone.

3 Q.No.

4 A.We offer a lot, but also wrapping around it when we designed
5 the scheme, it was very much in conjunction with what was
6 being operated through the Listening and Assistance Service.
7 That service was disestablished, which is a challenge, but
8 with now what's in place with the Royal Commission is what's
9 some of the work that the Royal Commission is doing that
10 could then inform what forms part of any new redress process
11 in addition, because I still think there will always be a
12 place for some form of wellbeing payments or acknowledgment
13 to individuals and it's put in that overall setting. But a
14 claims process is a pretty difficult way to come up with a
15 resolution that has fully therapeutic value. But I've just
16 got one anecdote, sorry, because I always thought it was an
17 interesting one. Years ago I was travelling and I was in
18 quite a remote country just doing a city tour and got
19 talking to a fellow Kiwi, we were on a bus tour. And it
20 must have come up in terms of where I worked. And he says,
21 "Oh, do you know Phil Knipe" and I hadn't mentioned my name
22 at that point. I sort of looked at him and went, "Yep,
23 that's me". What it turned out was that he'd been a
24 claimant who I'd made a decision in relation to his claim,
25 and he'd used it to do some sort of rural travel. And taken
26 for himself in terms of what was on offer, to apply it for a
27 therapeutic benefit. The story around that is really in
28 terms of individuals put themselves because the individuals
29 we deal with generally have capacity, are in the best
30 position to really make, nearly always make the best
31 decisions in terms of what works for them and that's, you
32 know look at how that informs what's in place going forward.

33 Q.What works for them within the parameters of what's on
34 offer, I suppose?

1 A.That's a challenge in terms of certainly what we can offer
2 as public servants as a process as agreed by Ministers.

3 Q.Would it be fair for you to say if the process was outside
4 of the Ministry or any Ministry, there may be fewer or
5 different constraints upon it?

6 A.Oh, definitely because - well, in terms of the process that
7 would be agreed with Ministers, would be obviously
8 established in quite a different way with different
9 considerations, although still subject to whatever
10 considerations or constraints that are agreed.

11 **MR MOLLOY:** I wonder if we might take a break now?

12 **CHAIR:** Yes, we will take the afternoon adjournment at
13 this stage and we will return.

14

15 **Hearing adjourned from 3.15 p.m. until 3.30 p.m.**

16 **CHAIR:** Yes, Mr Molloy.

17 **MR MOLLOY:** Mr Knipe, thank you for answering my
18 questions, I have nothing further.

19

20

21

22

PHILIP BLAIR KNIPE
QUESTIONED BY COMMISSIONERS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

COMMISSIONER ALOFIVAE: Thank you, Mr Knipe, you have answered a number of questions that I had through counsel, but I did have one outstanding question around the Historical Claims Inter-Agency Working Group. So, you were on it and presumably your equivalents were on it from the other ministries?

A. That's correct.

COMMISSIONER ALOFIVAE: So, you all [had] the discretion to make high level decisions?

A. Probably less decisions because ultimately things of significance would have to go up to Ministers or would feed into the Crown Litigation Strategy. So, in terms of we could make decisions, but they were probably smaller level decisions.

COMMISSIONER ALOFIVAE: Okay. So, did you agree on anything then?

A. One of the key things around the inter-agency process was keeping the agencies informed about what was happening with the different claims, so they were aware of what was going on and then in terms of making sure they didn't act too inconsistently with each other, unless there was a good reason to do so. And also, of course, it was where litigation was underway, so it would get into how is the Crown's overall litigation strategy operating.

COMMISSIONER ALOFIVAE: But that would have also been an opportunity then for the inter-agency group to agree on what another process could look like?

A. Less so, it was more an opportunity for discussion, in terms of operating, but it wasn't a policy group that would be designing a new process.

1 **COMMISSIONER ALOFIVAE:** So, you were just agreeing on
2 broad consistency around staying within your vote
3 budget allocations, is that correct?

4 A.It's how the Working Group worked was more around
5 co-ordination, being aware of what was going on and
6 operating accordingly and also, being informed of anything
7 more broadly that was happening, say for example, with the
8 Crown Litigation Strategy.

9 **COMMISSIONER ALOFIVAE:** So, what happened to the group
10 then in the end? Is it still there or has it
11 disbanded?

12 A.The group, as it was, is disestablished. There is some
13 connection now with the, certainly between the Chief Legal
14 Advisers, we all catch up together probably about once every
15 3 months. But now in terms of as part of that process, also
16 in terms of how our Agency is engaging in the Royal
17 Commission process.

18 **COMMISSIONER ALOFIVAE:** You don't have to answer this,
19 but do you think that, together with your colleagues,
20 it might have been a really opportune working party to
21 actually have done more than what your parameters
22 were?

23 A.The working party we fulfilled at purpose. I think one of
24 the things in terms of a lot of us in the working party
25 were, you know, lawyers or trained as lawyers. If you're
26 going to have, you know, in terms of going forward or
27 certainly you would want to bring in other perspectives on
28 board.

29 **COMMISSIONER ALOFIVAE:** But did you feel like you could
30 actually go that bit further, I guess is what I'm
31 really asking? So, you're a bunch of lawyers, you're
32 all hearing very similar issues and the pains and the
33 trauma that were coming through from your respective
34 agencies, did you feel like actually, as a group of
35 individuals in a really high level position, that you

1 could have actually done more and perhaps suggested
2 some other alternatives, apart from what you were
3 legally obliged in actual fact to do carrying out that
4 purpose?

5 A. In terms of we can inform discussions, but it was something
6 that was outside the broad scope of that group.

7 **COMMISSIONER ALOFIVAE:** Thank you, no further questions,
8 thank you, Mr Knipe.

9 **COMMISSIONER ERUETI:** Tena koe, I have a couple of
10 questions. One is about the Treaty and, as I
11 understand it, you don't have a sense of the number
12 gone through the government redress schemes, a number
13 that are Māori or Pasifika or any other ethnic group?

14 A. It's probably a bit bigger than that. One of the things I
15 reflected on, in terms of even preparing my evidence, was
16 how many Māori had been through psychiatric institutions.
17 So, looking at the Confidential Forum report, there's a
18 discussion of Māori there but there's no indication of how
19 many might have gone through. And, again, that's I think
20 some of the wider work that the Royal Commission is doing,
21 is around the cohort through some of the information we're
22 providing into that, we don't get a good sense from that as
23 well, unless I've missed it somewhere, but we'll see that in
24 terms of the results. So, it's a bigger challenge in terms
25 of what information is out there about how many people
26 because it also changes over time would identify the Māori
27 who went through psychiatric care.

28 **COMMISSIONER ERUETI:** Yeah. Would you at least have a
29 sense that through the Te Āiotanga report, CLAS and
30 with your direct face-to-face contact or telephone
31 conversations you're making when you're engaging
32 through the HARS process, that there's a sizeable
33 number of Māori who are claimants?

34 A. Through our process and those that I've talked to, there's
35 been probably a relatively low number who have identified or

1 obviously identify as Māori in their discussions. Look,
2 rough, ballpark, I'd say 10-20% maximum.

3 **COMMISSIONER ERUETI:** Okay. I want to know in the past
4 history, like going right back to early 2000s, the
5 post 2002 redress scheme specifically targeted at Lake
6 Alice, 2011 global settlement, the 2012 HARS, at any
7 point was there engagement with Māori to get feedback
8 or advice about how to structure the redress schemes?

9 A. I haven't seen any specific engagement and in the context
10 of, for example, the CHFA scheme quite commercial. In terms
11 of the Lake Alice process, political/commercial. The way
12 those schemes have been designed and developed, I haven't
13 seen much if any of anything in terms of specific engagement
14 with Māori as part of those.

15 **COMMISSIONER ERUETI:** From your brief, as I understand
16 it, a person has to, as you say, self-identify as
17 Māori before you can put it on notice or hasn't raised
18 their hand up to say they want a tikanga Māori
19 process, so you wait for that indication from the
20 claimant before you initiate a process that might be
21 consistent with the Treaty of Tikanga Māori?

22 A. We have some things that are consistent with probably the
23 principles but in terms of tikanga, no there's nothing
24 specific that we sort of initiate straight from the start.

25 **COMMISSIONER ERUETI:** Can I take you back to the Gallen
26 settlements, rounds 1 and 2 in early 2000? As I
27 understand it, that process, it was Sir Rodney Gallen
28 managed that process once a global sum had been
29 arrived at, is that right, would allocate it?

30 A. For round 1 it was Sir Rodney Gallen. For round 2 it was
31 also Sir Rodney Gallen with the individuals supported
32 originally by David Collins QC and then for later claimants
33 John Edwards stepped into that role.

1 **COMMISSIONER ERUETI:** Do you know for the second round
2 say, which I think is that the Gallen report based on
3 the second round?

4 A.Round 1 for the Gallen report.

5 **COMMISSIONER ERUETI:** Okay. What did Gallen do in
6 determining quantum?

7 A.So, at the end of the Gallen report, he has a final
8 paragraph. So, as I understand, he used a score system. At
9 the end of the Gallen report, he has a paragraph where he
10 steps through the considerations that he took into account.
11 What you'll see is it's more, if you like, an art than a
12 science but it sort of informs in terms of how he worked
13 through dealing with the claim and determining how much
14 would be offered.

15 **COMMISSIONER ERUETI:** Did he talk to any of the
16 survivors, the claimants?

17 A.So, with round 1, he obviously had a lot of information from
18 claimants which you'd have to go back through the report to
19 what extent he got that individually through interviews or
20 through the paperwork. For round 2, it was through David
21 Collins, then David Collins QC acting as the intermediary,
22 gathering the information and providing it for Justice
23 Gallen.

24 **COMMISSIONER ERUETI:** With those two rounds, Justice
25 Gallen was brought in, was he contracted by the
26 Ministry of Health to negotiate what would happen?

27 A.I don't recall who held the ultimate contract but he was
28 engaged by the Crown to undertake that process, but it was a
29 very high level, in terms of Ministerial decision.

30 **COMMISSIONER ERUETI:** If I can take you to the 2011
31 global settlement, that process about determining how
32 to allocate settlement sums. It seems from your brief
33 that that involved bringing in an external lawyer,
34 Cooper Legal, is that right, to work with the Ministry

1 to determine categories and also quantum for
2 individual payments?

3 A. My understanding is a bit different. So, what you had is,
4 if you like, you had the sort of overall envelope. Then in
5 terms of how that money was divided up, to my knowledge
6 primarily sat with probably Cooper Legal. The Crown didn't
7 have, apart from what it was aware of in Statements of
8 Claim, necessarily a huge amount of information at that
9 stage to probably make that assessment, so Cooper Legal were
10 in the better position to between this body of clients that
11 they represented, work out how the money should be best
12 divided or appropriately divided, I should say.

13 **COMMISSIONER ERUETI:** And then going forward to the HARS
14 settlement process, if you like, rather than bringing
15 in an external counsel as you did with the 2011
16 settlements, you decided not to do that in that case
17 and I just wondered why you decided not to?

18 A. A couple of big considerations. The first was we'd worked
19 through, in terms of the categorisations, I think, from CHFA
20 to be able to apply that.

21 The second is the practical consideration that we had no
22 additional resource to engage external counsel for that
23 process. So, again, informed the process that we developed
24 was within the means that we had.

25 **COMMISSIONER ERUETI:** Thank you. My final question is
26 about the Confidential Forum. So, I understand a
27 number of survivors approached and gave their
28 testimony and I wondered what happened to that
29 testimony? And also, was there a process whereby the
30 testimony or the accounts given to the members of the
31 Confidential Forum fed back into CHFA, was it at that
32 time, or the Ministry of Health?

33 A. I am not aware that they were. With the Confidential
34 Listening Assistance Service, my understanding is that the
35 records were, individual records were destroyed on the

1 completion of the service, so I anticipate something similar
2 had previously happened with the Confidential Forum.

3 **COMMISSIONER ERUETI:** Those are my questions, thank you
4 very much.

5 A.Cool.

6 **CHAIR:** Mr Knipe, my first question goes back into your
7 brief of evidence where you refer at, it's your first
8 brief of evidence, where you refer to the Health and
9 Disability Commissioner. It's just a light referral
10 but we heard evidence from Cooper Legal, the lawyers,
11 when it was put to them, well couldn't people have
12 gone to other agencies to get some sort of
13 compensation or redress, and they - and you've said
14 people could go to the Health and Disability
15 Commissioner. We were told by Cooper Legal lawyers
16 that that in fact wasn't a very viable option because
17 the Health and Disability Commissioner only takes note
18 of contemporary complaints; is that your
19 understanding?

20 A.My understanding obviously, the Health and Disability
21 Commissioner's jurisdiction is very broad. So, it's
22 certainly focused on contemporary complaints, but it is
23 within their jurisdiction to look at more historic
24 complaints. And, again, if something was significant
25 enough, then it is within their jurisdiction.

26 **CHAIR:** But do you know if they do actually? Whether
27 it's in their jurisdiction, do they actually hear
28 cases of significance that are historic?

29 A.If they do, they're not ones that come to the attention of
30 the Ministry because they would be dealt with through the
31 Commission's process. As you acknowledge in terms of in my
32 brief of evidence it's fairly light touch in terms of the
33 reference to the Health and Disability Commissioner. So, we
34 know it's an option but it's not one with individuals that

1 we say you should go to the Commissioner, unless it was a
2 much more, unless it was a contemporary claim.

3 **CHAIR:** You couldn't disagree with the evidence that
4 we've heard that it really isn't a viable option for
5 people with historic claims as a form of taking a
6 complaint and obtaining redress?

7 A.I wouldn't go as far as to say it's not viable but, in most
8 cases, it's probably not a realistic approach for the
9 redress that is sought.

10 **CHAIR:** Okay, thank you. Just a point that Dr Erueti
11 raised, and that's about information that you have or
12 have gathered. You say in your brief at paragraph 7.2
13 that you don't collect any demographic information at
14 all on the claims that come your way; is that right?

15 A.I suppose part of our process is not really a data gathering
16 process but what we have done, and this is part of the
17 Commission's process, in terms of request for information is
18 provide a very high level summary of here are the claims
19 we've received, here is how they've been processed and
20 certainly by gender, by facility that persons were placed
21 in. But we don't have a significant, I suppose,
22 administrative component to our process.

23 **CHAIR:** So, the information you can provide to the
24 Commission would be limited to the information that
25 you gathered at the time you dealt with the claims,
26 would that be right?

27 A.That's correct.

28 **CHAIR:** And I think it seems to be clear from your
29 evidence that that information is rather limited and
30 it doesn't go into things like race or other forms of
31 identity that people might have?

32 A.No, and one of the things that we are sort of conscious of,
33 is because we haven't collected it, making too many
34 assumptions from the information we have as to things like
35 race.

1 **CHAIR:** Certainly. And then, finally, and this comes
2 from the opening of Ms Aldred, where in her opening
3 she said that, she described various parts of the
4 whole system of redress and something of the history
5 but she said that all of it was subject to the policy
6 of the current government.

7 Now, you haven't said anything about that at this stage and
8 maybe other witnesses will be talking about it later but do
9 you want to say anything or do you feel you're able to say
10 anything to us about how different governments' policies
11 have affected the claims process or have had some influence
12 on them?

13 A. Ultimately, these are - the big decisions are obviously ones
14 for Ministers over time but we've run redress processes
15 under, you know, if you think of the original Lake Alice
16 litigation it was under the National Government 1999, then
17 we've had 9 years of a Labour-led government, another
18 9 years of a National-led government and 3 years so far plus
19 of a Labour-led government. So, there is a stream that both
20 National-led governments and Labour-led governments have,
21 you know, they have grappled with the challenges around
22 redress processes and grappled with them in different ways
23 on advice from officials but also having, you know, quite a
24 few considerations into account as well.

25 **CHAIR:** Have you noticed any particular differences
26 depending on which government happens to be in power
27 at any one time?

28 A. My experience, in terms of with Ministers, there's a wide
29 range of considerations that they need to take into account,
30 but they do ultimately look to have regard to the wellbeing
31 of survivors concerned, and that they expect advice to be
32 given in that regard. And obviously, with the current
33 government we have, one of their first actions announced as
34 part of their work was the establishment of the Royal

1 Commission, so there's probably not much more I can add than
2 that.

3 **CHAIR:** It appears to us that you place great store on
4 the establishment of the Royal Commission solving lots
5 of problems and we are feeling the weight of your
6 expectations. For example, you're saying that you
7 believe that the establishment of a new form of
8 redress system should wait until we've made our
9 recommendations perhaps. Do you have any particular
10 view though on - this is blue sky stuff and perhaps if
11 you can take off your public servant hat and even your
12 lawyer's hat - one of the ideas that's really floated
13 very strongly to date has been the idea of a single
14 independent agency that hears all claims. Are you
15 prepared or able to give us a view, your view of
16 whether that would be a good idea or not, or do you
17 still think that the individual departments need to
18 take responsibility for their own historic abuse
19 claims?

20 A. If there was to be a move towards a single agency, obviously
21 that would benefit from, you know, consistency. We've had a
22 bit of discussion today in terms of impartiality versus
23 independence, so with it separate agencies. A single agency
24 you would get that independence. You would have to look at,
25 you know, one of the considerations obviously there was a
26 host of claims that have been settled to date under the
27 various different redress schemes, how would that be dealt
28 with going forward? And obviously, whatever solution is
29 looked at for governments, at the end of the day they do
30 grapple with the financial considerations, while looking for
31 approaches that provide the best outcomes that they can for
32 survivors.

33 The other thing I'm conscious of, is that the different
34 levels of maturity of the different schemes. So, with
35 claims relating to psychiatric care, it very much, and you

1 see it through the claims and the nature, the accounts that
2 are told by survivors, it very much focuses on events in the
3 60s and the 70s, records near on indecipherable where they
4 exist and the survivors are now themselves, where many have
5 been children are now getting quite old, compared I think
6 with some of the other redress schemes where it relates to
7 events that might be or are often or recent and where
8 individuals, you know where you have individuals where
9 allegations have been made against them, are still in care.
10 And I think that then sort of goes, well, a single agency
11 would have to grapple perhaps with those different
12 challenges that would be faced and where its focus would be
13 best applied for the benefit of survivors.

14 **CHAIR:** That's certainly major issues to be considered
15 but I think the word that you've used that is probably
16 the word that's uniformly used by those who suggest it
17 to us is the word "independence". Do you agree that
18 independence, something that's independent, is
19 something that could give survivors much more
20 confidence that they were getting something that was
21 separate from the perpetrators and something more
22 likely to give them the redress that comes from their
23 own individual requirements, rather than the
24 requirements of an individual government department?

25 A. I'm probably not the best person to ask in terms of the
26 process that we run and we try to look for the process to be
27 impartial and fair for survivors but we acknowledge, in
28 terms of independence, we would be more likely to give a
29 greater sense of security to survivors.

30 **CHAIR:** Thank you very much, Mr Knipe.

31 Mr Clarke-Parker, do you have any questions arising?

32 **MR CLARKE-PARKER:** No, Your Honour.

33 **CHAIR:** It remains for me to thank you very much,
34 Mr Knipe. As I said, you are our very first Crown
35 witness, so you are the one who's borne the first

1 fire. We thank you for that, we know it's not easy
2 and we appreciate the fact that you have come along
3 and been prepared to come.

4 A.Thank you and sorry for the expectations I have now placed
5 upon you.

6 **CHAIR:** That's all right. You're not the only one,
7 Ms Janes?

8 **MS JANES:** With the leave of the Commissioners, the
9 Crown will call their second witness, Mr Simon
10 MacPherson.

11 **MR CLARKE-PARKER:** We may just need a moment just to
12 locate the witness.

13 **CHAIR:** We will certainly give you some time.
14

15 **Hearing adjourned from 3.57 p.m. until 4.05 p.m.**
16

17

18

1
2 **SIMON CHARLES MACPHERSON - AFFIRMED**
3 **EXAMINED BY MR CLARKE-PARKER**
4

5 **CHAIR:** You found your witness, Mr Clarke-Parker?

6 **MR CLARKE-PARKER:** Yes, safely installed. (Witness
7 affirmed).

8 **CHAIR:** Thank you very much.
9
10

11 **MR CLARKE-PARKER:**

12 Q.Thank you, can you please begin just by giving your full
13 name?

14 A.My full name is Simon Charles MacPherson.

15 Q.Thank you, Mr MacPherson, and you have prepared a brief of
16 evidence dated 27 January 2020, do you have that before you?

17 A.Yes, I do.

18 Q.And you are also going to refer to your supplementary brief
19 of evidence prepared by your colleague, Ms Hrstich-Meyer,
20 dated 31 July 2020; do you have that with you as well?

21 A.Yes.

22 **MR CLARKE-PARKER:** As with the previous witness, we will
23 be selecting particular paragraphs of the brief of
24 evidence to refer to, but I just note that, of course,
25 there is a full brief of evidence.

26 **CHAIR:** Yes, and you can take it we have read the brief
27 of evidence, so we are familiar with it, thank you.

28 **MR CLARKE-PARKER:**

29 Q.Thank you, Mr MacPherson, if you can please begin reading at
30 paragraph 1.1 of your brief?

31 A.Kia ora tatou, my name is Simon MacPherson. I joined the
32 Ministry of Social Development in December 2015 as Chief
33 Policy Adviser and am currently the Deputy Chief Executive
34 for the Policy Branch and a member of the Senior Leadership
35 Team. I am also on the Official's Social Wellbeing

1 Committee that supports the Chair of the Cabinet Social
2 Wellbeing Committee.

3 **CHAIR:** Your evidence is being translated into sign
4 language and is being taken down verbatim, so if you
5 could keep an eye on the signer, thank you.

6 A.Sure.

7 **CHAIR:** Sorry to have stopped you, I am not sure where
8 you were.

9 **MR CLARKE-PARKER:**

10 Q.Thank you, Mr MacPherson, I think you've finished
11 paragraph 1.1 and then had some further comments to make in
12 relation to phase 1?

13 A.Yep. I would like first to acknowledge the courage and
14 strength of the survivors in giving their evidence in the
15 first half of this hearing in the Royal Commission. I am
16 the first of three witnesses for the Ministry of Social
17 Development covering topics. The brief of evidence explains
18 some of the high-level policy developments in the historic
19 claims area. The next witnesses for MSD will be more
20 focused on a more granular level of the previous and current
21 processes for assessing claims.

22 Q.Thank you, Mr MacPherson. Can I now please take you to
23 paragraph 1.5?

24 A.To the extent I was not involved in an event referred to in
25 this brief of evidence, I have relied on the relevant
26 material held by the Ministry, in particular, I note that
27 much of the discussion of events prior to 1 July 2006
28 relates to the Department of Child, Youth and Family prior
29 to it being incorporated into the Ministry.

30 Q.Thank you. And then at section 2, you give a description of
31 the overview of how the system has changed, so can I get you
32 to begin reading from paragraph 2.1, please?

33 A.The Ministry's current redress system for responding to
34 historic claims has evolved directly out of litigation
35 brought against the Crown in the early 2000s.

1 Q.Sorry to interrupt, if I can ask you to slow down, thank
2 you.

3 **CHAIR:** The odd breath helps.

4 A.I'll try. The Ministry's current redress system for
5 responding to historic claims has evolved directly out of
6 litigation brought against the Crown in the early 2000s.
7 The system started as a set of ad hoc responses to
8 litigation with an emphasis on successfully defending the
9 Crown's legal position and moved to a system by 2005 that
10 placed more emphasis on potential resolution out of Court
11 but still placed a heavy reliance by the Crown on available
12 legal defences both in Court and out of Court settlements.
13 With the greater flexibility implicit in the Crown
14 Litigation Strategy from 2008, the Ministry established an
15 out of Court alternative dispute resolution process which
16 evolved towards a more claimant focused and less legalistic
17 approach which accepted that the Crown was morally obliged
18 to respond to claims, despite the existence of legal
19 defences, while still being conscious of the interests of
20 the Crown. This process was highly personalised and focused
21 on engaging directly with claimants, hearing the claimant's
22 story, reviewing the claimant's social work records to
23 determine whether it was reasonable to accept the
24 allegations so that a settlement offer could be made,
25 acknowledging any wrongdoing and taking steps to try and put
26 the harm right.

27 The system is now very different to that in place in 2005.
28 Some of this change has been a result of deliberate review,
29 but some of it has been more evolutionary or in response to
30 ad hoc issues that have arisen. Over time, it became
31 apparent that claims were increasing at a significant rate
32 and through engaging with claimants it was evident that
33 litigation was not the best way to resolve these
34 claims - either for claimants or the Crown. The system as

1 it has evolved has been heavily shaped by the Crown's
2 Litigation Strategy.

3 Along the way, we have gone from:

4 (a) A small team geared around supporting legal process and
5 the defence of legal claims against the Crown, to a much
6 larger dedicated team focused on set Ling claims directly.

7 (b) A function that was integrated into the legal team of
8 the department responsible for children's care system, to
9 (from 2006) one set up on a more arm's length basis in the
10 Ministry of Social Development but still in the same
11 department, to one located from 2017 in a Ministry separate
12 to Oranga Tamariki.

13 (c) An approach that relied implicitly on the social work
14 professionals to take into account the cultural needs and
15 context of claimants to where cultural competency and a
16 commitment to the principles of the Treaty of Waitangi has
17 been more explicitly factored into the approach and makeup
18 of the Historic Claims Team.

19 (d) Ad hoc funding arrangements, sometimes based on
20 underspends in other areas of activity, to more regular
21 multi year funding arrangements culminating in the recent
22 injection by the government in 2019 of \$95.2 million over
23 3 years.

24 **2008 to present**

25 Although the alternative disputes resolution process
26 established from 2008 was effective in responding to the
27 needs of many claimants, the time intensive nature of the
28 assessment process and increasing claim numbers meant that
29 the Ministry needed to reconsider the way in which it
30 assessed claims.

31 To attempt to address growing delays for claimants, the
32 Ministry implemented the Two Path Approach in 2015. The Two
33 Path Approach was a one-off accelerated assessment approach
34 which was a less personalised approach to each claim,
35 trading off detailed investigations of claims against

1 increased timeliness. At that time, forecasting indicated
2 that claims could be resolved by 2020, which was not borne
3 out in fact as time progressed.

4 This approach was successful in settling a high number of
5 claims but did not resolve the problem of delays because
6 claim numbers did not significantly reduce. Instead,
7 numbers of claims were increasing at levels that were
8 unexpected and unplanned for.

9 To be more effective in addressing delays, the Ministry
10 embarked on further review and reform of its redress system,
11 driven by consultation with claimants that eventually led to
12 a new process implemented in November 2018. These new
13 processes retained important parts of listening and engaging
14 with claimants but included a more streamlined assessment
15 than the original process. The changes are also a
16 significant improvement to the extent to which the Ministry
17 is actively taking steps to ensure its commitment to the Te
18 Tiriti o Waitangi is reflected in its process and meet the
19 needs of individual claimants.

20 It is clear that the Ministry has not always got it right.
21 However, the Ministry has always been committed to
22 improvement, and considers that commitment is reflected in
23 the evolving nature of its processes over time.

24 Throughout the development of claims processes, the
25 Ministry's aim has been to provide a redress system that
26 meets the needs of claimants while necessarily having to
27 balance the interests and resources of the Crown. We have
28 listened to claimant feedback and that of their
29 representatives and adapted our processes to be responsive
30 to that feedback.

31 The Ministry's current redress system seeks to focus on what
32 claimants have shared is important to them and has been
33 developed out of many years experience. The Ministry is
34 committed to continued improvements to the process and will
35 be guided in its work by claimants' voices wherever

1 possible. The Ministry values the work of the Royal
2 Commission as an opportunity to reflect on and improve its
3 processes in order to best meet the needs of the claimants.
4 My brief will provide an overview of the Ministry's story
5 and discuss events prior to the implementation of the 2008
6 process, along with a number of discrete issues that are
7 relevant to the Ministry's response to historic claims over
8 the years. My colleague Linda Hrstich-Meyer's brief will
9 pick up the narrative with the development of the 2008
10 process through to current practice.

11 Q.Thank you, Mr MacPherson, I will have you continue reading
12 from section 3, please, and again, a plea for a slightly
13 slower pace.

14 A.The Child Welfare Division of the Department of Education
15 had responsibility for the provision of child welfare
16 services until it was transferred to the Department of
17 Social Welfare which was established in April 1972. In May
18 1992, the Department of Social Welfare was restructured into
19 business units including the New Zealand Children and Young
20 Persons Service which continued to carry out the child
21 welfare functions.

22 In October 1999, the Department of Child, Youth and Family
23 Services was established as the government agency
24 responsible for the care and protection of children in
25 New Zealand.

26 The Ministry of Social Development was established in 2001
27 as a result of merging the Department of Work and Income
28 with the Ministry of Social Policy to become the
29 government's primary adviser on strategic and cross-sectoral
30 social policy, as well as delivering operational support and
31 services particularly around employment and income support.
32 On 1 July 2006, CYF was disestablished as a separate
33 department and became part of the Ministry. The purpose of
34 the merger was to back CYF with MSD's organisation and
35 support following a period in which CYF had struggled to

1 deal with demand and budget pressures. The merger did
2 however have a significant impact on the historic claims
3 process.

4 Q.Thank you, Mr MacPherson. We will now have the next several
5 paragraphs taken as read and I'll take you to paragraph
6 3.10, please.

7 A.In April 2015, the Minister for Social Development
8 established the Expert Advisory Panel to review the extent
9 to which CYF and related agencies in the care system were
10 providing positive outcomes for children and young people
11 and any changes required to improve those outcomes. As part
12 of a wide ranging final report the Panel recommended
13 establishing a separate department responsible for the
14 children's care system, which was accepted by the
15 government.

16 On 1 April 2017 Oranga Tamariki Ministry- for Children was
17 established to replace CYF in the provision of child welfare
18 services, and so this function separated from the Ministry.
19 Initially, the Ministry retained responsibility for historic
20 claims - that is, all claims relating to events prior to 1
21 January 2008; more recently, on the direction of Ministers,
22 the Ministry has taken responsibility for all claims prior
23 to 1 April 2017.

24 Today, the Ministry plays a key role in the social sector,
25 working directly with New Zealanders of all ages to improve
26 social wellbeing. It provides policy advice and delivers
27 social services and assistance to young people, working age
28 people, older people, and families, whanau and communities.
29 It does not have a direct role in child welfare or child
30 protection, with the two specific exceptions below.

31 The Ministry is currently responsible for setting up the
32 Independent Children's Monitor as well as progressing the
33 policy and legislation changes needed to give full effect to
34 the monitor's role. The Independent Children's Monitor
35 function is intended to transfer to the Office of the

1 Children's Commissioner once it is fully functional and
2 running effectively.

3 The Independent Children's Monitor is a key part of the
4 government's drive to strengthen independent oversight of
5 the Oranga Tamariki system and ultimately will help ensure
6 that the wellbeing of children is protected.

7 The Ministry also hosts the Social Services Accreditation
8 function which reviews organisations wishing to provide
9 community services to ensure they have both the capacity and
10 ability to provide effective services, including
11 organisations that deal with children.

12 Q.Thank you. And I now move to section 4 where you talk about
13 the next period of time from 2000 to July 2004, so please
14 can I have you read from paragraph 4.1?

15 A.Prior to 2003 the Crown had only received a small number of
16 child welfare-related historic abuse claims and agencies did
17 not have dedicated internal policies or processes to address
18 historic claims.

19 By December 2003, CYF had received 31 complaints from former
20 State wards alleging various forms of abuse and inadequate
21 care in Salvation Army homes, 30-60 years prior. These
22 claims, and the uncertainty about the number of future
23 claims, led to the establishment of the Salvation Army
24 project team within CYF in February 2004.

25 The Salvation Army project team was setup initially for a
26 period of 6 months, with the primary aim being to address
27 the inquiries and concerns from this group, which had by
28 then increased to 34 people. The Salvation Army team's role
29 was to provide information about the process, explain the
30 contents of files to claimants, assess what assistance might
31 be available to claimants through other government agencies,
32 and listen to and record claimants' stories.

33 CYF recognised that it was almost certain that a number of
34 complaints about historical abuse would be brought against
35 the government in the coming decade, and therefore the

1 response to the Salvation Army claimants would have
2 implications for other departments.

3 As well as this group of claims against the Salvation Army,
4 claims against the Crown began to be filed in relation to
5 psychiatric institutions. CYF had been named as a defendant
6 in approximately 20 of these civil claims, with 22 more
7 pending but not yet filed at that point. CYF was a
8 defendant because some of the claimants were in State care
9 as well as being placed in psychiatric institutions.

10 Accordingly, CYF worked with officials from the Department
11 of the Prime Minister and Cabinet, Crown Law and the
12 Ministry of Health to discuss a consistent approach across
13 the government to historical abuse claims. The agencies
14 supported an inter-agency project team to scope the size of
15 the problem, examine the issues, look at the overseas
16 models, and suggest a way forward.

17 Sonja Cooper and Roger Chapman were the primary solicitors
18 representing claimants. They signalled that they
19 anticipated filing in excess of 250 claims against CYF. It
20 was clear that CYF would need to respond to claims in the
21 future.

22 On 21 July 2004 the Executive Committee of CYF approved the
23 establishment of a Historic Claims Team to manage civil
24 claims that were anticipated to be filed against the
25 Department. It was to be part of the Legal Services team,
26 with the Chief Social Worker the instructing client.

27 Q.Thank you. Again, we will have paragraph 4.8 taken as read
28 and move to 4.9, please.

29 A.In 2004 and 2005 the team was small, comprising a project
30 co-ordinator, a solicitor and in 2005 a senior social work
31 adviser and administrator.

32 Q.At paragraph 4.10, you note some issues relating to the
33 naming of that team and we will have that taken as read and
34 move on to section 5 please where you talk about the
35 development of the team from 2004 onwards.

1 A. Historic Claims Team was initially established to support
2 CYF's response to litigation and worked very closely with
3 CYF's and then the Ministry's legal team. Prior to 2007,
4 most claims were filed in Court and actively managed by the
5 legal team at Crown Law.

6 The Historic Claims Team managed all of the non-legal
7 aspects of historic claims. By the time CYF was integrated
8 into the Ministry on 1 July 2006, the Historic Claims Team
9 performed the following functions:

10 (a) processing information requests from lawyers, primarily
11 Cooper Legal, and individuals who had been in care;

12 (b) undertaking research into policy and practice standards
13 for residences and time periods mentioned in historical
14 claims;

15 (c) providing support for the Ministry's legal team, for
16 example file searching and providing advice on social work;
17 and

18 (d) and dealing with general phone inquiries - often from
19 people who did not want to lodge a claim but wanted access
20 to their files and/or advice on any services that could
21 assist them with issues arising out of claimed abuse.

22 In these early years, there was not a dedicated claims
23 resolution function. Rather, the focus was on responding to
24 litigation. As detailed in Ms Hrstich-Meyer's brief claims
25 did not start coming to the Ministry directly until mid 2006
26 and then more regularly in 2007.

27 The legal team managed claims in consultation with Crown Law
28 and in accordance with a detailed set of principles that
29 were approved by Ministers in 2005 to assist Crown law and
30 other agencies responding to claims. The general principles
31 involved the Crown:

32 (a) acting as a model litigant;

33 (b) meeting liability if established but not paying public
34 money without good cause;

1 (c) seeking to avoid establishing ad hoc mechanisms that
2 would constitute an undesirable precedent for future claims;
3 and

4 (d) using public resources efficiently in responding to
5 claims.

6 Q.Thank you. And, again, we'll have 5.5 taken as read and
7 move to 5.6, please.

8 A.Following these principles meant the claims would generally
9 have had to be able to overcome obstacles to establishing
10 liability under the Limitation Act 1950 and Accident
11 Compensation legislation. As well as legal obstacles, many
12 of the claims faced significant evidential difficulties.
13 Many Statements of Claim did not have much information about
14 the substantive allegations, and some did not even specify
15 the time period in which they were abused, the institution
16 in which the abuse occurred, or the alleged perpetrator.
17 The lack of a clear evidential basis for claims made it
18 difficult to properly assess claims to determine their
19 credibility and the legal risk they posed. Given the above,
20 only a small number of claims were resolved during this
21 early period.

22 At the direction of Ministers, the Crown Litigation Strategy
23 was reviewed in 2007/2008. On 21 May 2008, a new Litigation
24 Strategy was adopted by the Cabinet. It was a three-pronged
25 approach:

26 (a) first, agencies were to seek to resolve grievances early
27 and directly with the particular individual where this was
28 practicable;

29 (b) second, settlement was to be considered for any
30 meritorious claims; and

31 (c) third, claims that did not proceed to a Court hearing
32 because they could not be resolved were to be defended.

33 With this new strategy around attempting to resolve
34 grievances directly with individuals and with the
35 establishment of the Historic Claims ADR process in 2008,

1 there began to be a move away from relying upon limitation
2 and Accident Compensation legislation defences if the matter
3 was resolved out of Court, though there still needed to be
4 sufficient information to support the claim.

5 Q.Thank you and again we will have 5.9 taken as read, please
6 and move to 5.10.

7 A.I understand details of the development of the Crown
8 Litigation Strategy will be provided in the
9 Solicitor-General' evidence.

10 Q.And then in the following section you discuss Child, Youth
11 and Family's investigation into previous practices and some
12 of this material will also be covered in the brief of
13 evidence for Mr Young, as the Commissioners will no doubt be
14 aware.

15 **CHAIR:** Yes.

16 **MR CLARKE-PARKER:**

17 Q.Mr MacPherson, if I could have you read from paragraph 5.12
18 please.

19 A.In January 2006, Ms Cooper presented CYF with a paper
20 prepared by Cooper Legal entitled "Culture of Abuse and
21 Perpetrators of Abuse at Department of Social Welfare
22 Institutions". Ms Cooper described the nature of her
23 clients' allegations arising out of their time in
24 residential care between 1960s and 1990s and named
25 approximately 235 alleged abusers.

26 Ms Cooper's paper made allegations of a culture of physical
27 and sexual abuse within state child welfare institutions.

28 Q.Thank you. The rest of that paragraph is matters covered
29 also in Mr Young's brief, so we'll move to paragraph 5.14.

30 A.This paper was used to inform various pieces of work. As
31 part of that, the Historic Claims Team investigated and
32 identified that 9 staff named in Ms Cooper's paper were
33 still currently employed by the Department.

34 Q.And again, we will move to 5.15.

1 A. Based on the information provided, for 8 of the 9 staff
2 members, it was determined that employment investigations
3 were not possible based on the brief anonymous summary
4 information provided in the report. Further information was
5 provided for one staff member which allowed an employment
6 investigation to be completed.

7 The Ministry took these allegations seriously and met with
8 Police to discuss possible investigations of criminal
9 offending. No Police investigations were completed as
10 Cooper Legal clients did not wish to lay criminal
11 complaints.

12 Q. Thank you, Mr MacPherson. I believe you have an
13 acknowledgment that you would like to make here in relation
14 to a document discussed during phase 1 of the redress
15 hearing?

16 A. Yes. So, this is a different document, I think in the
17 Redress Hearing Phase 1 there was an MSD memo from 2007
18 which used the language of Ms Cooper's behaviour being
19 unethical and inappropriate. I was quite taken aback to see
20 that in a formal document going to the leadership team, the
21 language was inappropriate and regrettable. I just want to
22 say that.

23 Q. Thank you. And I just note for all of our records, that the
24 document is MSD 2030. I don't propose to take you to that
25 document.

26 **CHAIR:** Thank you for that, Mr MacPherson.

27 **MR CLARKE-PARKER:**

28 Q. Turning to the next section, Mr MacPherson, you talk about
29 the ongoing development of the term of dispute resolution
30 process, can I have you begin reading from 5.18 under the
31 sub heading "Research into past practices"?

32 A. The Historic Claims Team in CYF undertook research into past
33 child welfare practices in New Zealand. This was to assist
34 in understanding abuse that had occurred and growing the
35 team's knowledge about events that had taken place in child

1 welfare residences. The team interviewed current CYF staff
2 who had previously worked in some of the residences
3 identified in the claims in order to obtain their accounts
4 of the practices and cultures within them. The team also
5 performed searches of administrative and personal files to
6 look for evidence of abuse or inappropriate behaviour by
7 staff.

8 It was clear to the Historic Claims Team at the time that
9 the past standards of care did not meet modern standards and
10 that abuse had occurred in some institutions.

11 Q.Thank you. And the next three paragraphs will be taken as
12 read and so we'll move to 5.23 under the heading, "The
13 number of claims continues to increase".

14 A.By 2006, it became apparent that the number of claims of
15 abuse of people in its care was increasing. Prior to the
16 disestablishment of CYF on 1 July 2006, CYF regularly
17 updated the Minister and Cabinet on the number and status of
18 claims filed in the Courts. At 23 March 2006, CYF had been
19 named as a defendant in 55 civil claims in Court, by the end
20 of the year this had increased to 127.

21 Information from Cooper Legal, together with increases in
22 the number of relevant Privacy Act requests and Legal Aid
23 applications, all indicated that the number of claims was
24 increasing. Cooper Legal advised that approximately 300
25 potential claims were anticipated in June 2005. This
26 increased to 600 potential claims by the end of December
27 2006.

28 Q.I will now take you down to 5.26, please.

29 A.With the rising number of claims, it was clear that an
30 alternative approach to litigation needed to be developed.
31 In September 2006 the Historic Claims Team, now in the
32 Corporate and Governance Group MSD, met with members of the
33 Confidential Forum, Ms Cooper and nine of her clients. The
34 Ministry carried out interviews with claimants in order to
35 consider what a positive process for assessing and managing

1 the claims would look like. Interviews were carried out
2 confidentially and on the basis that the information
3 provided would be kept separate from Court proceedings
4 brought by those persons.

5 The claimants said they believed that the time they spent in
6 State care negatively affected their life outcomes. The
7 claimants identified a range of needs in response to their
8 claims. All identified compensation, but some said this was
9 only a secondary concern. Claimants wanted to tell their
10 story and be heard, to have an acknowledgment of harm done,
11 a service response, a commitment to raising public awareness
12 of child abuse and preventing its recurrence and an apology.
13 The Ministry considered the need for a fair process
14 supported by evidence and acknowledged that where children
15 were wards of the State, the State or Crown owed them a duty
16 of care and had a moral obligation to provide remedies where
17 it had failed that duty. As well as accounting for the
18 needs of the claimants, the Historic Claims Team considered
19 that any potential options would need to account for the
20 following factors:

- 21 (a) the rights of alleged perpetrators to defend themselves
- 22 against allegations and not suffer unnecessary trauma;
- 23 (b) the need to protect the reputation, where deserved, of
- 24 staff and the Ministry/CYF;
- 25 (c) providing a timely response;
- 26 (d) financial cost and value for money;
- 27 (e) accessibility, both emotional and physical to claimants;
- 28 (f) public and political credibility; and
- 29 (g) administrative feasibility and impacts on other
- 30 government agencies.

31 The Historic Claims Team also carried out research into
32 international approaches to inform policy development.
33 Having received this feedback from claimants, by 15 December
34 2006 the Ministry was considering ways that claims could be
35 resolved out of Court while achieving a fair result for all

1 parties. The alternative process would likely include the
2 following features:

3 (a) an apology and acknowledgment of harm done;

4 (b) strengthened services for people who may have been abused
5 in care - this would require work across the Ministry and
6 other agencies to establish what services would be delivered
7 and how;

8 (c) the ability for any person who had questions regarding
9 their care to work with the Ministry, in a supported
10 environment, to look at their care, ask questions, and where
11 appropriate receive a personal apology; and

12 (d) a visible commitment to ensuring that the current system
13 prevents and detects abuse to the extent possible, and that
14 an environment is provided where children and young people
15 are able to report any issues with their care.

16 The possibility of an out of Court payment was also being
17 considered but the Ministry was very mindful that it was
18 bound by the existing Crown policy on settling such claims,
19 (that is, it would meet liability if established or where an
20 assessment indicated that there was a reasonable prospect of
21 liability but would not pay money without good cause). This
22 meant applying the Limitation Act and the Accident
23 Compensation and legislation defences. The Ministry's
24 application of the new Crown Litigation Strategy from 2008
25 provided for out of Court financial payments in cases where
26 the Ministry considered there was a moral imperative to make
27 them, and without relying on the Limitation Act and Accident
28 Compensation legislation defences.

29 Q.Thank you, Mr MacPherson. And again, I just please ask you
30 to read slowly where possible. If I can have you resume at
31 paragraph 5.33, please.

32 A.These features, along with settlement payments became key
33 components of the Ministry's alternative dispute resolution
34 process and continue to this day, as discussed in
35 Ms Hrstich-Meyer's evidence.

1 Q.Thank you. And the final two paragraphs of that section
2 will be taken as read and we will now move on to section 6
3 which is referrals of claims from CLAS to the Ministry which
4 of course is also a topic that we've heard some discussion
5 of this morning from Mr Knipe.

6 A.On 20 June 2007 Cabinet agreed to the establishment of what
7 would become CLAS. This was at the same time that Cabinet
8 decided to review the Crown Litigation Strategy. CLAS was
9 officially established in 2008 and met with participants
10 between April 2009 and 2015. CLAS provided a listening
11 service for people who had experienced harm in welfare,
12 health and/or education care.
13 The role of CLAS was to provide an opportunity for
14 participants to talk about their care experience, provide
15 assistance for participants to access existing services,
16 i.e. referrals to other support services, and entitlements
17 based on their needs and to enable participants to access
18 information held by state agencies, which CLAS would request
19 on the person's behalf. CLAS made 424 requests to the
20 Ministry for social work files on behalf of participants.
21 The standard approach was for the Ministry to process these
22 and provide the files to CLAS who took responsibility for
23 providing these to participants and where needed, additional
24 supports around reading these files.

25 Q.Thank you, Mr MacPherson. If we could turn over the page
26 now to section 7, litigation of the claims from 2007
27 onwards.

28 A.A number of significant cases proceeded through the Courts
29 in this period, addressed in the brief filed on behalf of
30 Crown Law Office. *White v Attorney-General* was an extremely
31 important case for both the Ministry and the Crown as it is
32 the only historic abuse claim for a person in State welfare
33 care that proceeded through a full trial since the inception
34 of the Historic Claims Team in 2004. Although the
35 Ministry's preference was not to progress to trial, and

1 attempts were made to settle the claims of the two
2 plaintiffs, the High Court decision provided important legal
3 findings around the Crown's liability. These findings
4 helped shape aspects of the Ministry's assessment process
5 around duties that the Ministry owed to children in State
6 care. The Court also made factual findings relating to the
7 plaintiff's concerns about the residential institutions of
8 Epuni Boys' Home and Hokio in the 1960s and 1970s which has
9 assisted in the Ministry's understanding of these residences
10 and assessment of other similar claims.

11 The case was conducted having regard to the Crown strategy
12 at the time which included acting as a model litigant and
13 meeting liability if established, but not paying public
14 money without good cause. The Crown took an orthodox
15 approach to responding to the litigation which included
16 pleading and relying upon applicable defences.

17 The two plaintiffs had their claims for abuse in care
18 dismissed, despite factual findings against the Crown being
19 made, including that one brother had been sexually assaulted
20 at the institution.

21 Despite this decision that the Ministry was not legally
22 liable for the abuse, it still considered it appropriate to
23 offer a payment to the plaintiffs in the White case as they
24 had come to harm while in the care of the State and the
25 Ministry wanted to acknowledge this and try and put right
26 some of the harm. A payment was offered and paid to the
27 plaintiffs. This payment included an ex gratia payment
28 along with a contribution to their Legal Aid debts. An
29 amount was agreed with the Legal Services Agency which
30 enabled the plaintiffs to retain their ex gratia payments in
31 full.

32 Q.Thank you. And you go on to discuss some of the other
33 litigation in the three paragraphs that follow but I will
34 take you now to paragraph 7.8 where you discuss what is
35 termed the "stopping the clock" agreement with Cooper Legal.

1 A. On 21 May 2011 the Ministry entered into an agreement with
2 Cooper Legal that it would not use the Limitation Act 1950
3 to avoid making a fair offer to resolve the claim out of
4 Court, and that it would "stop the clock" where claimants
5 were engaging directly in the out of Court process. This
6 would ensure claimants were not disadvantaged by engaging
7 fully in the Ministry's processes for resolving claims out
8 of Court. An addendum to the agreement was entered into in
9 early 2015 under which the Ministry agreed not to rely on
10 the long stop periods in the section 23B(1) of the
11 Limitation Act 1950.

12 This agreement gave Cooper Legal claimants some surety that
13 they did not need to file proceedings in Court to preserve
14 any Limitation Act defence they might have. This agreement
15 led to a reduction in claims being filed in Court and this
16 continues today. Most claims from Cooper Legal are no
17 longer filed in Court.

18 The Crown's approach to the use of statutory defences is
19 discussed in more detail in the Solicitor-General's
20 evidence.

21 Q. Thank you, I will now take you to section 8, which is the
22 Ministry's commitment to Te Tiriti o Waitangi and have you
23 read from 8.1, please?

24 A. As previously mentioned, the majority of claimants have
25 Māori whakapapa, reflecting the general care population.
26 From the origins of Historic Claims Team within the Ministry
27 in 2006, the Ministry has sought to place a strong emphasis
28 on the historic claims process responding to a claimant's
29 individual needs in accordance with social work principles.
30 The Ministry considered that these principles allowed for
31 the expression of tikanga Māori where it was raised by the
32 individual claimants.

33 The historic claims processes were originally based on
34 social work practices which emphasised te ao Māori. The
35 Historic Claims Team were always encouraged to be sensitive

1 to cultural concerns. Staff at times attended relevant
2 training to support their ability to work cross-culturally.
3 Ongoing evidence of cultural competency was a professional
4 requirement for many staff who were registered social
5 workers.

6 The Ministry also gave consideration to the needs of Māori
7 claimants in its original development of the historic claims
8 process. During the 2006 consultation with Ms Cooper and
9 nine of her clients, six of whom were Māori, the Ministry
10 discussed the claimants' expectations and possible concerns
11 about an out of Court resolution process. These were used
12 to inform the design of historic claims process. For
13 example, the Ministry incorporated an option for providing
14 counselling services in response to a concern that
15 claimants' issues could affect their families and put them
16 at risk.

17 This was, however, relatively informal and implicit, and the
18 Ministry accepts that the historic claims process and its
19 underpinning principles could have more consciously and
20 explicitly embraced and reflected the values and principles
21 of te ao Māori. To address this issue highlighted by the
22 Waitangi Tribunal claims filed in 2017, the Ministry
23 undertook significant consultation with Māori claimants.
24 The Ministry relied on this consultation when designing the
25 changes to the processes implemented from November 2018
26 which have specifically incorporated issues raised by Māori
27 claimants. The Ministry considers that this process was
28 undertaken in the spirit of the Treaty principle of
29 partnership with Māori.

30 A number of the changes or intended changes to the historic
31 claims operating model have been implemented as part of the
32 Ministry's commitment to ensure that the principles of the
33 Te Tiriti o Waitangi have been incorporated. These are
34 discussed in detail in Ms Hrstich-Meyer's brief of evidence
35 but include diversification of staff working on claims,

1 trialling initiatives to incorporate greater whanau
2 involvement in the claims process and ongoing work to ensure
3 continuous improvement based on feedback received from
4 claimants.

5 Q.Thank you. The next section 9 relates to changes to the
6 definition of historic claims over time. We will have that
7 section taken as read. Now I'll take you to 10 which is the
8 high tariff offenders question. Can you read from 10.1?

9 A.In 2010 Ministers expressed an interest in exploring whether
10 a policy was needed for managing compensation payments made
11 to claimants who had been convicted of very serious crimes
12 such as murder, child molestation and rape. This group
13 became known as "High Tariff Offenders".
14 Between 2010 and 2017, Crown Agencies and Ministers explored
15 various options to determine whether it may be appropriate
16 to put conditions on how this group of offenders receive and
17 use their settlement payments which would take into
18 consideration the particular characteristics of the group,
19 including the interests of victims and the community. These
20 conditions included this group being able to use their
21 payments only for rehabilitative and reintegration purposes
22 and various trust legislative mechanisms were considered to
23 manage the funds. It would only apply to claimants who were
24 to receive in excess of \$10,000. This policy initiative was
25 complex with difficult administrative, legal and financial
26 issues to be worked through and there were a variety of
27 Crown Agencies involved. There were also different
28 Ministerial views as to what this policy should look like
29 throughout the development period.
30 Assessment of claims by high tariff offenders was put on
31 hold while policies were considered. Approximately 43
32 claimants fell into this group, some of whom had their
33 settlement offers delayed but not denied while this work
34 progressed.

1 In December 2017, the newly elected government decided not
2 to progress the introduction of legislation that would have
3 enabled the Crown to manage payments to high tariff
4 offenders through a statutory management scheme. In
5 February 2018, the Ministry began making offers to this
6 group of claimants with many receiving an offer under the
7 fast track of the Two Path Approach.

8 Q.Thank you, Mr MacPherson. I'd like to now take you to a
9 document from December 2017 which is Crown bundle tab 82.
10 This is the decision that you've just been referring to in
11 paragraph 10.4, is that right?

12 A.Yes.

13 Q.And can I take you, please, to paragraph 9, which is a
14 couple of pages further on. If paragraph 9 can be called
15 out, please?

16 A."In 2016 the Ministry of Social Development recommended that
17 the approach be abandoned. Crown Law advice was that all
18 options explored posed legal risk due to the differential
19 treatment of a group of claimants. The options also
20 involved an administrative burden for the State that could
21 continue for the lifetime of the claimant. Ministers then
22 told officials to design a regime to be set out in primary
23 legislation so it could not be deemed unlawful as a result
24 of a successful human rights challenge?

25 Q.Thank you. This section comes within a summary of the
26 advice previously given, I suppose. The document is from
27 December 2017.

28 And so, now if I can move to paragraphs 15-24, please. I
29 won't take you through all of it but I just note that,
30 again, the Ministry was here advising against this policy on
31 a number of bases, including on human rights grounds; that's
32 right, isn't it?

33 A.Yes, it is.

34 Q.Thank you. That's all that I needed to take you through
35 with that document, thank you.

1 If we can now move on to section 11 of your brief, please,
2 and have you read from 11.1.

3 A.It is not the Ministry's usual practice to use private
4 investigators in the context of responding to filed claims
5 of historic abuse and it is not part of the Historic Claims
6 Team's out of Court claims process at all. However, from
7 time to time, as cases have progressed towards trial, the
8 Ministry has used private investigators to assist in
9 locating witnesses and preparing for trial (for example,
10 analysing documents). In these cases, the engagement has
11 typically been through Crown Law who engaged these services
12 on the Ministry's behalf.

13 In December 2018 the State Services Commission released
14 their report into the use of external security consultants.
15 The Inquiry found that in the White case that Crown Law had
16 breached the State Service Code of Conduct by providing
17 broad instructions to a private investigator without
18 explicit controls to protect privacy interests. There were
19 indications on file that the investigators used techniques
20 involving low-level surveillance or something close to it
21 for one person, though a definitive finding could not be
22 made.

23 Q.Thank you. I now take you to section 12 which is the
24 Ministry's referrals to other agencies and have you read
25 from 12.1.

26 A.The Ministry is committed to ensuring that children in State
27 care and in the community are kept safe through sharing
28 information where appropriate with relevant agencies.
29 Although the mechanisms for how the Ministry shares
30 information with other agencies have changed over the years,
31 the intention in sharing information has always been to
32 prevent similar events alleged by claimants from happening
33 to children today and in the future.

34 Upon receiving a claim, and through the claims process where
35 further information is identified, a safety check is

1 completed to understand whether alleged perpetrators of
2 abuse are current staff members or caregivers with Oranga
3 Tamariki or the Ministry, or who may still be employed by an
4 operating NGO. The outcome of these safety checks may
5 result in referrals to Oranga Tamariki, the Police, NGOs or
6 other government agencies.

7 When CYF was a service line of the Ministry, arrangements
8 were in place to ensure that safety risks were assessed for
9 staff members or caregivers who had allegations made against
10 them. For example, as at 4 May 2007, the Ministry agencies
11 process for addressing claims that made allegations against
12 current Ministry staff included advising the staff member of
13 the allegation and ensuring that the staff member was not
14 allowed in a position where children in their care could be
15 at risk. Staff were informed that the Ministry would
16 support them and provided financial assistance for
17 independent legal advice until the allegations could be
18 proved one way or the other. This process was challenging
19 to manage because most claims did not provide detailed
20 information or refer to underlying evidence, especially in
21 the early stages of a claim. The Ministry could not
22 undertake a formal employment investigation without clear
23 evidence and had to be mindful of its obligations as an
24 employer.

25 In May 2016, the Ministry entered into an agreement with
26 Police to refer allegations of physical or sexual abuse to
27 Police, to assist Police in their prevention, detection and
28 investigation of criminal offences, including for reasons of
29 public safety. Some claimants of Cooper Legal objected to
30 this practice and litigation was filed to prevent the
31 Ministry from making these referrals. In June 2018, the
32 High Court decided that information in Court documents
33 relating to a collection of cases involving the Ministry and
34 the Ministry of Health that are being managed together,

1 known as the DSW Litigation Group, cannot be provided to
2 non-parties unless:

3 (a) leave is granted by the Court;

4 (b) the documents are shared for the conduct of litigation
5 and any settlement purposes; or

6 (c) the documents are shared between the Ministry, Oranga
7 Tamariki and the Ministry of Education for the purposes of
8 ensuring the safety of children presently in care.

9 On 16 October 2019 the Court of Appeal confirmed the
10 High Court decision.

11 Q.I will move to paragraph 12.6 now, thank you.

12 A.As the Ministry no longer provides care and protection
13 services through Child, Youth and Family, Oranga Tamariki is
14 responsible for addressing allegations made against their
15 staff and caregivers. Similarly, NGOs are responsible for
16 addressing allegations made against their staff and
17 caregivers. Historic Claims' role is to ensure that
18 information is shared with these agencies to ensure that
19 they take the necessary step to maintain the safety of
20 children in their care.

21 Q.And then I'll take you to 12.8 please.

22 A.Current practice for referring allegations to Police is that
23 such referrals are only made with the claimants' consent.

24 Q.Thank you. Commissioners, I note the time and of course we
25 are making quite good progress through this brief.

26 **CHAIR:** Yes, we are.

27 **MR CLARKE-PARKER:** However, as well as a few pages that
28 are left to go, there's a further exhibit that
29 Mr MacPherson has prepared and so I wonder if this
30 might be a convenient place to adjourn?

31 **CHAIR:** We can finish first thing in the morning and
32 then you can produce anything further and then we will
33 proceed with Ms Janes.

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

1 **CHAIR:** We will adjourn for the evening and resume again
2 at 10.00 tomorrow morning. Thank you.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

(Closing karakia and waiata)

Hearing adjourned at 4.57 p.m.