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 and Ms Danielle Kelly for the Royal Commission Ms Wendy Aldred for the Crown
Venue:	Level 2 Abuse in Care Royal Commission of Inquiry 414 Khyber Pass Road AUCKLAND
Date:	2 October 2020

TRANSCRIPT OF PROCEEDINGS

Hearing opens with waiata and karakia tīmatanga by Ngāti Whātua Ōrākei

(10.00 am)

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

CHAIR: Ata mārie- ki a koutou katoa. Welcome back to everybody for the last day of the first part of our hearing. Morning Ms Janes.

MS JANES: Tēnā koutou. We again have Amanda Hill and Sonja Cooper on their previous affirmation.

CHAIR: Yes, thank you, welcome back to you both.

MS JANES: Before we start, yesterday there were two documents that were mentioned that we felt it would be useful to produce to the Inquiry as exhibits, so the first one you heard there had been a wrap-around support service pilot, and we have the e-mail dated 1 October 2020 that outlines what that entails. We would like to produce it as an Exhibit 1 but subject to the general restriction order as it does name two claimants, and they should not be publicised.

CHAIR: Are you going to put that up or are you just producing it as a document?

MS JANES: I'm just going to produce it, so I have copies.

CHAIR: Thank you, for the Commissioners. Just so that we're very clear, I see there are some brackets around two areas and they were the ones that are to be covered by the general restriction order.

MS JANES: They are.

CHAIR: So we will keep these close.

MS JANES: Thank you very much, then they will be redacted and can be produced as the exhibit.

CHAIR: Thank you.

MS JANES: And the second exhibit, Ms Hill mentioned the latest complaint to the Chief Ombudsman and that is dated 16 September 2020 and again we will produce that as Exhibit 2, but it also requires a redaction.

CHAIR: Yes.

MS JANES: That is a name that appears, in fact it's a sentence that appears at paragraph 68. So it's a name and a statement of allegation, and that should be —

CHAIR: Paragraph 68?

MS JANES: 68.

CHAIR: It's just it's not marked on this.

MS JANES: No, so at line 12 you'll see a name.

CHAIR: Oh, I see towards the end.

MS JANES: Towards the end.

CHAIR: Third line up from the bottom. Thank you, I'll just put a note. And that's the only?

MS JANES: Yes, there is an appendix but they're all anonymised, so subject to that one redaction, that should also be able to be produced as an exhibit.

CHAIR: Thank you very much. That's Exhibit 2.

QUESTIONING BY MS JANES CONTINUED: With that, we will go to the Ministry of Health and Sonja Cooper is going to be dealing with this topic.

MS COOPER: I want to deal with this in two parts, so first of all the resolution of the 320-odd claims against the Crown Health Financing Agency and then stepping through to the current Ministry of Health process. Because we did a lot of the detail of the litigation process in the contextual hearing, I won't repeat that, except to say that we had to go all the way through to the Supreme Court to defend, I suppose, the Crown's application to strike out all of these claims on the basis of the immunity provisions in the Mental Health Act 1969.

And yes, that was a four-year process starting in 2005 and, as I've already said, it was two levels of argument in the High Court. At that very first level we were also arguing about the Limitation Act 1950 as well, but the Crown left that to one side after the initial ruling and it was just the immunity that then went through to the Court of Appeal and on to the Supreme Court.

It still interests me that the Crown presents that as a decision that actually was in its favour, because it actually was substantially in our favour and in fact the appellants had a costs award made, so there was a costs award made against the Crown. And the effect of that decision was to say that the 1969 Mental Health Act did not apply to any informal patient, only to those who were committed patients.

That was important because most of the clients in this group had been children, teenagers — well, in fact, our youngest client was eight when he was taken to Porirua Hospital. And so that was a really important outcome, because for the vast majority of clients, their claims were not covered at all by the immunity.

Where we also had got to by the time of the Supreme Court decision, the Crown's arguments about pretty much everything being an act which was in pursuance of the legislation and therefore covered by that immunity, that had also been mostly knocked out by the Court of Appeal decision, which said you had to take the pleadings as they were, and if they were pleaded as assaults or threats of assaults or punishment, that was all outside of the immunity provision and the burden then shifted to the Crown to prove that they were

acts of treatment. So again, that meant that there were actually only very few claims that had to be discontinued or stopped in the High Court process at that stage. My memory is it was only about six.

So that ended in 2009, but as you'll be aware, we were right in the middle of the withdrawal of aid process at that time and so Legal Aid continued to ruthlessly withdraw funding for this client group as well, so we were still embroiled in the litigation around the withdrawal of aid.

CHAIR: Just to be quite clear about this, the case that went to the Supreme Court was all argued on the papers argued on the pleadings and assessed according to the pleadings, so although you got rulings in terms of the immunity provisions of the Mental Health Act, you didn't get any rulings in terms of the merits of the case?

MS COOPER: No, that was —

CHAIR: That was entirely procedural.

MS COOPER: It was entirely procedural, it was all about whether the claims were to be struck out.

CHAIR: Yes.

MS COOPER: So, in a sense we were back to the beginning again.

CHAIR: Yes. It meant you could proceed with the civil claims if you needed to.

MS COOPER: Absolutely. We still obviously had all the Limitation Act issues there, but with this group, in a sense, many of the clients were still in the mental health system and we certainly thought that for a lot of them the barriers in terms of getting through the Mental Health Act were going to be less difficult to surmount. But as I say, we were still embroiled in the withdrawal of aid process.

We had one judicial settlement conference and this was after Miller J in 2010 brought all of the parties into court and I think I've explained that where he said, "Look, there may be legal difficulties but the Crown has a moral obligation at least in terms of these claims, and you should be looking to try and settle, you know, the stronger claims."

So, we had one judicial settlement conference and I have to say it was not successful. The Ministry of Health or the Crown Health Financing people were not prepared to budge at all from a very low offer. And it was a frustrating experience, I think, for us and for the judge, from my recollection. So judicial settlement conferences were not going to be an option.

What happened then was on 20 June 2011 we got a letter out of the blue from Crown Law on behalf of the Crown Health Financing Agency saying that they were in the

process of making settlement offers to each plaintiff and that was going to be a modest ex gratia payment along with a written apology and also payment of the Legal Aid debt. So, as you can imagine, after — well, from 2002 through to 2011 now this process had been going, we were ~~wrapped~~rapt.

We told Legal Aid this in a letter on 30 June, and, as I said, I think it was yesterday, unbeknown to us Legal Aid was already aware that these offers were going to be coming because there had been two conversations between the Chief Financial Officer with David Howden of Legal Aid in November 2010 and again in December 2010. So, six, well, six, seven months before we were told that the offers were coming, Legal Aid already knew that approval was in the wings for that.

We then arranged to meet with the Chief Executive and the finance — the Chief Financial Officer of Crown Health Financing Agency to discuss what those offers would look like and to see again how we might help with the settlement process. At that meeting we were told initially that everyone was going to receive the same offer, and it was not going to — there was going to be no offer made to those very small number of clients whose claims we'd had to discontinue.

We proposed that actually there be bands of payments to reflect that different people had different experiences, some of which were much more serious, and the impact had been considerably greater, and also too that a number of our clients had been incredibly vulnerable because of their age. As I say, we had clients as young as eight~~s~~ being admitted to the psychiatric hospitals where they were for a long time. And our teams were also there for a long time. You heard me read the evidence of Beverly Wardle-Jackson who was there for some years on and off, so you know what that experience was like for teen~~ams~~s.

So, the Crown Health Financing Agency agreed to revise its original decision to provide bands of offers and what we agreed was that Cooper Legal and Johnston Lawrence, which was the other firm doing this work, would work through our client claims and help the Crown Health Financing Agency with that.

As we explained in our evidence throughout this process, there were funding issues, but anyway, we boxed on regardless of that, continuing to work quite extensively with the Crown Health Financing Agency to get this settlement process and, ultimately, we were able to agree on four bands of payments, that had to be fit, again, within a budget.

So, the top payment was $1~~8~~8,000, the middle band — I'm getting a bit rusty now and I can't remember whether it's 12, I think it was 12 and then the next band down was ~~8~~ and the lowest band was $2,500. And that band was for the clients whose claims had had to

be discontinued, so we could bring them back in.

Also, as part of that agreement, the Legal Aid debt was paid, and we had a small handful of clients who were privately funded and it was agreed that their debt would be paid, and that each person would receive a letter of apology. And so we were actually able to work through and get all those settlements done I think by about July 2012.

And it's important to say, I think, with the length of time it had taken to get to that, which, you know, I mean, you've heard about other settlements, that was still a very modest settlement bracket, but most people were actually really pleased to have got some compensation. And, actually, it was a very lengthy apology, I remember that the apology letter was almost two pages. It was a templated apology, but it was actually a long apology letter, and most clients were actually really thrilled with the apology letter. And, of course, all of the debt was taken care of as well. And that was significant not to have that burden of the Legal Aid debt or the private debt on top of that.

I have to say that there were some clients who were deeply disappointed with that and this was particularly clients who'd already had a settlement through the Lake Alice process, where those payments were obviously substantially higher. I mean the bottom figure there, from recollection, was $20,000 through to $140,000. And I know that there were some clients in that group who felt that their experiences in other psychiatric hospitals had been profoundly more traumatic. And so, for them, the difference in the compensation was really difficult to explain, and they found that very difficult. And I know, and I still recall this, that we had to attend the funeral of one of those clients who actually just could never accept that settlement who later took his own life.

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But for the majority, this was a good outcome, they felt satisfied and we were able to settle 320 claims. By that time Roger Chapman, who was the partner at Johnston Lawrence, had retired and we also took over settlement of the Johnston Lawrence claims as well.

MS JANES: Can I just clarify a point there, Mr Knipe in his evidence thought it was 330 claims. Are you able to comment on that?

MS COOPER: There were some — a very small handful of people, I think Joan Bellingham was one, who were not represented by either Cooper Legal or Johnston Lawrence, so that probably makes up the 10. And I remember we were placed in the invidious position of having to categorise those claims as well, even though we didn't — and we actually said, "Wwell, we actually can't do that because we don't know about these people, we've got no details about their claims, you can't really put us in that position of having to do that

job."

So yeah, as I say, I know were categorised because we got all the workings, but I think we were very clear we couldn't do that with any integrity.

COMMISSIONER ERUETI: Can I also seek a point of clarification about, so compared to the Lake Alice settlement there was an arbiter independent, a judge who assessed each claim.

MS COOPER: Yes.

COMMISSIONER ERUETI: And made an award, whereas in this case you don't have a third party, it's actually you and the Ministry negotiating over the bands?

MS COOPER: That's right, well, I mean, what we had was very much like the Fast Track processes, we had a pot of money and I mean, as I say, initially it was just everybody was going to get the same and we said, "Wwell, that's not really fair". So yeah, we negotiated the bands and we knew that we had to fit, you know, like we had, say, 70 claims that we could put in — it wasn't that many but say we had a certain number that could be paid $18,000, so actually very much like the Fast Track process, except here we, knowing our clients and knowing the claims intimately, we got the job of, you know, having to do that difficult task. And I acknowledge, as we talked about the Fast Track yesterday, it's not a great task to have to do, but at least we felt that we had some control over that more, and were able to reflect that in terms of our knowledge of the clients and their claims rather than Crown Health Financing Agency doing it, for example. But I agree with you, it would have been, you know, preferable if somebody independent could do it. But we felt we were at least a better option than the Crown Health Financing Agency doing it.

MS JANES: So, you'd finished, you'd settled your 320 claims and if you could pick up from there.

MS COOPER: So, we know there were some that did not settle, there were a number of clients from Johnston Lawrence who had come to us who didn't accept their offers. And I still don't know what happened to them. I still don't know whether they ever received some sort of settlement.

And I also mention *J*, because you'll remember that her claim was dismissed on the basis of the Limitation Act. But the High Court Judge was very clear in his decision that but for the Limitation Act, she would have got a modest award of damages. And we just could not persuade the Crown Health Financing Agency to give her anything. All they were persuaded to do was contribute to her Legal Aid debt, but she did not get anything in her hand.

So, we then, of course, had to move then to — so we settled that, we had a period of

calm, but — and then the Crown Health Financing Agency transferred all of its residual liabilities, because it wound up at that stage, so all of its residual liabilities then were transferred to the Ministry of Health.

MS JANES: And before we move to the Ministry of Health, in the settlement of the Crown Health Financing, apart from the compensation, the settlement of legal debt and the apology, were there any other non-monetary or wellness services offered?

MS COOPER: No, and I think that's because the Crown Health Financing Agency had a finite time, so it was wanting to wind up, and, in any event, I think it's important to say that the sole purpose of the Crown Health Financing Agency was to settle any residual liability of the old Ministry. So that was its sole purpose for being. It certainly was just to deal with distributing money, so — but no, there was no wellness component. So yes, so we then, of course, started to have people come through to us who had psychiatric hospital claims up until the new Mental Health Act came into being, and so we then went to the Ministry of Health and said, "We've got new claims coming forward, what are we going to do about them?".

So we were told in August 2012 that the Ministry of Health was developing its own process for investigating and assessing these outstanding claims, and it was made very clear to us that the Crown Health Financing Agency process was done and dusted, so it would be different from that, and we were also told very clearly that the Lake Alice settlement process would not apply. So, this was going to be a stand-alone settlement process.

So, in January 2013 we were told that the Ministry would review allegations made by a claimant, that had to be based on written material about their experiences in psychiatric care, and they would review any available records. And if the Ministry were satisfied there was a legitimate basis for a claim, it would then offer an apology and a settlement payment up to $9,000, so we're half the maximum payment of the Crown Health Financing Agency process.

And it was interesting for us, because what was made very clear was that the purpose was to acknowledge a person's experiences as well as being available to meet the costs of wellness-related services, so counselling or therapy. But this again was going to be a full and final settlement of any claim.

It's fair to say that we were unhappy about that and we endeavoured to persuade the Ministry to make it at least comparable with the Crown Health Financing Agency process which was already modest but we were told essentially, and I think that's confirmed in Mr Knipe's evidence, that there was no budget anymore, this would have to come out of, I

think from recall, the legal budget. And so that was what was on offer.

And I have to say, we were pretty worn out by that stage. We also still obviously had Legal Aid funding issues, but by then we had the Court of Appeal decision in terms of Legal Aid saying that we could be granted funding for alternative dispute resolution processes, so, you know, our clients had been channelled through that Ministry of Health process since.

What I also should say is that we did reach agreement with the Ministry that if we were able to provide evidence that a client was able to get through the Limitation Act, that then the Ministry would consider making the payments more in line with the Crown Health Financing Agency process. But again, that required the cost of a psychiatric report and, in my recollection, we've only had funding for maybe three of those reports. And we — they were only in cases where we were pretty confident that we could get the client through the Limitation Act, because otherwise we knew Legal Aid wouldn't fund it. So, there's all that additional cost.

CHAIR: Do you mind if I ask a question here. You started your evidence this morning by relying on Miller J's observation.

MS COOPER: Yes.

CHAIR: If the Crown didn't have a legal claim it certainly had a moral claim.

MS COOPER: Yes.

CHAIR: To what extent the processes you've been describing, the Crown funding agency, Ministry of Health, were based upon moral responsibility as opposed to legal responsibility? Of course, I'm asking that —

MS COOPER: Yes.

CHAIR: — because you're now saying that in the Ministry of Health they're raising, you know, you only get through if you pass the limitation hurdle.

MS COOPER: Well, yeah, I mean, I think as we've highlighted throughout our evidence, this moral liability has really been relied on to bludgeon offers down to their bare minimum, in our view, and I think it distorts the reality that for many of these claimants there would also be a legal liability. You know, there are claimants who would get through the legal barriers. There are claimants who would get through the limitation bar, there are claimants who would have got through the Mental Health Act bar. There are claimants whose claims would have been pre-ACC, or some of their — the components of their claims were not covered by ACC.

But, you know, so as you know, we're caught in that funding hurdle, we're caught in

that very litigious process where if we'd wanted to challenge any of that we would have forced these really vulnerable, damaged people into a litigation process that probably would have gone for years. So yeah.

CHAIR: But the reason for my question really is to say if that was based on the moral obligation, and it's interesting that you say that of course that may have had negative implications in terms of quantum.

MS COOPER: Yeah.

CHAIR: But nonetheless, the Limitation Act was still being relied on to establish, A, whether they were going to get any moral compensation, or B, whether or not — the limit of that. So in some cases you've said that people who would have been — that discontinued because of the Limitation Act got something but they only got a little bit.

MS COOPER: That's right.

CHAIR: Was that regardless of the merits of the claim, regardless of the substance of the claim?

MS COOPER: Well, they were all people who'd filed claims, so yeah, yes, you're right, that was regardless of the substance of the claim. But they were all people who'd made reasonable allegations. I think under the new process certainly the Ministry of Health had reserved itself the right to say, "No, nothing, you don't get anything."

CHAIR: Because of the Limitation Act?

MS COOPER: No, on the basis that it felt that the allegations didn't merit any compensation, yeah. So, and again, just to clarify, the Limitation Act kicked in if we were arguing for above the $9,000. So Limitation Act not applied if it's $9,000 and below. But if you wanted the Crown Health Financing Agency top payment of 18, then you had to provide evidence to show that you could get through —

CHAIR: You then had to cross the legal threshold.

MS COOPER: That's right.

CHAIR: It wasn't a moral matter, it was a legal matter.

MS COOPER: That's right.

CHAIR: That's really the point I was trying to get to.

MS COOPER: Yes, sorry.

CHAIR: Thank you.

MS COOPER: Yeah, and again, you know, when you compare that with Lake Alice, at the end of the day, that was a moral liability, completely comparable. All of those claimants would have been limitation--barred potentially, ~~ACC~~ ACC-barred clearly because it only applied during the period that ACC was in force from my memory. I think it started from 1974. So

they had the same legal hurdles, the same mental health legislation applied. So that was a moral decision as well in terms of liability. But as we've seen repeatedly, for every other claimant in this group, a different standard has applied.

MS JANES: So just on that point, given that there is a consistent Crown litigation strategy that applies to all of the agencies, and that includes settling meritorious cases earlier on the basis of the moral liability that the Chair has discussed with you, how would you say in terms of consistency and equity and transparency the Ministry of Health process lines up with that?

MS COOPER: Well, in terms of consistency it's right at the bottom, like this is literally the bottom of the barrel in terms of ex gratia payments. In terms of — so there's no consistency with the other agencies. And indeed, it sort of sits out on its own as an island almost. I mean one of the things that we raise, or we've been focused on in terms of this limitation policy, Ministry of Health's never been part of this discussion. And if it's an all-of-Government approach, where's the Ministry of Health in this, why is the Ministry of Health not required to engage in a stop-the-clock process? Particularly given, you know, the very real vulnerability of those who've been in psychiatric hospitals. Many of whom are still in psychiatric hospital care. So where's the Ministry of Health in that?

So yes, it fails on a number of grounds. I think where it is different from all of the other agencies, it has a low threshold in terms of the quality of evidence that you need to provide before it will accept, and I mean one of the realities is records are often really hard to obtain. Oakley Hospital, for example, you're lucky to get any records. Records for the South Island, the lower South Island psychiatric hospitals have been inaccessible for now about two years because they were stored in a basement that's ~~asbestos~~ asbestos-contaminated, so we've not been able to get Sunnyside or Cherry Farm records for about the last two years, we still can't get them.

And even Lake Alice or Kimberley records, I mean the Kimberley records all seem to have disappeared. And we're just lucky that with Paul Beale that we actually had got them earlier, because for other people that we are asking for their Kimberley records, and indeed when we re-requested a copy of his records, we're told there are none in existence. So thank goodness we've got some, not all of them by any means, but we've got some. So what's happened to all the Kimberley records?

So what we are forced to do there, and I feel sorry for unrepresented clients, but what we're forced to do there is we're forced to collect in Corrections records and ACC records and other medical records and hope to goodness that somewhere in those huge, you know, files of records that the client will have mentioned that they were in a psychiatric

hospital, or there will be a report, you know, criminal justice report showing that they have been in a psychiatric hospital.

But imagine an unrepresented person trying to do that. Because there has to be some record somewhere that says, you know, at least on a — again I use that term a sniff test, that they've been where they say they have been. And, you know, for clients who've been in multiple psychiatric hospitals it's an ordeal collecting in all those records. We sometimes have to request records from up to seven DHBs [District Health Boards] because the DHBs still hold the records, they're not centralised anywhere.

But as I say, you know, once we have collected in the records and then you set out the claimant's story of the narrative of what happened to them and then reference any helpful records which we also provide to the Ministry of Health, we typically get a response within a couple of months. And indeed, the only time when — we've only had two times when we've had a longer delay and once was when the Ministry was involved in litigation which was going through to the Court of Appeal or Supreme Court. And that slowed it down, and they were also preparing evidence for the Waitangi Tribunal, from memory.

And that's the only time, we waited about six or seven months, and then the only other time is obviously during Covid. But those are the only two times that we've had delays of more than six or seven months, otherwise we get responses very quickly. I mean the team is very small, it's just Phil Knipe and he's got a — I should remember his name, my apologies I don't — another person who's helping and then his personal assistant and that's the three in the team that we deal with. So those ones, you know, are quickly done and we get quick responses.

There's no formal settlement documentation either. They sent a letter with the offer in it and the client just has to sign that letter. It does say it is a full and final settlement, so there are legal consequences there. But once they've returned that letter and sent it off then away we go and the process is done very quickly.

All of the ministries have agreements, separate agreements with Legal Aid about contribution to the Legal Aid debt, so the Ministry of Health has an agreement with Legal Aid that it pays half of the debt and Legal Aid writes off the rest. We have to do submissions about that. But that's the agreement that there is.

COMMISSIONER ERUETI: Can I just ask a quick question about coming back to the stop-the-clock agreement. So you have one with MSD [Ministry of Social Development], you're trying to negotiate one with Ministry of Education and you've also tried to negotiate one with the Ministry of Health.

MS COOPER: Well, initially, when we first re-engaged with the Ministry of Health in relation to these claims, we discuss a ~~stop the clock~~stop-the-clock agreement and they basically said no. We've been through the litigation, there are lots of legal problems with these claims and they just wouldn't contemplate it. As I say, you know, I'd like to say, you know, we — maybe we could have been a bit more forceful, but as I say we were pretty worn down by then. And it was important to ask that there be a process that the clients could engage in.

But I think since we're back, you know, since the issue of a Government ~~stop the clock~~stop-the-clock is back on the table, it should really cover all Government agencies that do these processes, it shouldn't just be the Ministry of Education and the Ministry of Social Development. It says it's a Government policy, so it needs to be ~~all of Government~~all-of-Government, because as we said, Oranga Tamariki is also sitting outside it at the moment too. So we're very clear about needs to be ~~all of Government~~all-of-Government.

CHAIR: I think we should move on Ms Janes.

MS JANES: Absolutely, I just wanted to clarify just quickly your thoughts. You've described a process at least up to the $9,000 threshold of a quick process, low level of requirement to have an evidential burden. Have you had any thoughts about whether that is because of the low level of the compensation and that type of process is able to be much faster and less investigative?

MS COOPER: Well, it's hard to say, because the Lake Alice process, I mean, we still have clients making Lake Alice claims. That's not much slower, and the amount of information we provide for those claims is not much more detailed. So, I mean, you know, if you compare apples with apples, the processes are not — there's not demonstrably any different process that we can see and there's not demonstrably longer timeframes that seem to be applied. So I can't say that there's any transparency around that.

MS JANES: And then unless there was anything more about the processes you wanted to say, were there any comments that you just wanted to pick up about Mr Knipe's evidence before we move on to the Ministry of Education?

MS COOPER: Yes, there was one point which I wanted to pick up and that's his argument that the reason why it started at this half the Crown Health Financing Agency payments was because of this application of this notional Legal Aid debt. So what I think the argument there is that the people who went through the Crown Health Financing Agency had much higher legal costs, so that justified their higher payment. But they didn't have to pay their legal costs. That was a separate part of the settlement process. And it's the same argument that the Ministry of Health applied to the second group of Lake Alice claimants, they again

deducted this notional Legal Aid, or legal cost. And Mr Zentveld, one of the claimants in that group challenged it at the District Court, and the District Court said that the Ministry of Health was wrong to do that, and so they're still topping up that second group because they deducted like 40% of the settlement. So to be still relying on that as a legitimate basis for this claimant group getting half just doesn't wash.

So that's the only comment I wanted to make. I hadn't realised that until I read his brief and I was quite incensed, to be honest, because there's been litigation about this very issue and the Ministry of Health has been criticised and told that's not a legitimate argument. So that's the last one comment I wanted to make.

MS JANES: Thank you. And unless the Commissioners have any questions we'll move to the Ministry of Education.

CHAIR: Thank you.

MS JANES: So Amanda Hill will take over for the Ministry of Education processes and effectively that evidence is paragraph 677 to around 745. Before we actually start into what the process looks like, can you just briefly explain the eligibility.

MS HILL: So the — our understanding of the Ministry of Education process is set out in our brief, and it addresses incidents of abuse that happened in residential special schools after 1993, and that quite arbitrary date is also in Helen Hurst's evidence for the Ministry of Education. That's an extension of where the process started.

But when I went to the Ministry of Education website this morning, the eligibility criteria is different, it's the old process. And so on the Ministry of Education website the information that it gives about the eligibility criteria is that it only deals with abuse in residential special schools before 1989, which is the earlier criteria, and primary schools before 1989 and any State school which is closed.

So that extension to the eligibility criteria mentioned by Ms Hurst to incidents after 1993 is not on the Ministry of Education website. So any non-represented person who was looking to engage with the Ministry of Education would not get the correct information, and I am concerned that people who rely on that information would believe that they were not eligible. So that's just a concern I wanted to highlight, and it really shows that the level of information publicly available about settlement processes is insufficient. So I just wanted to address that as an initial issue.

I spent a lot of time yesterday talking to you about the Ministry of Social Development process, and the key thing I need to say about Education is that it is worse than the Ministry of Social Development process.

And one of the interesting things that we can see from the Education evidence, is that the MOE [Ministry of Education] process was modelled on MSD's processes in 2010. So those identified issues that we talked about yesterday of the MSD process are copied over into the MOE process, but I don't believe — MSD has had many iterations of its process since 2010, MOE's process appears largely unchanged. So it might have been consistent in 2010, but it's certainly not consistent now.

MS JANES: If we call up document witness 94-316, Cooper Legal had sought an OIA [Official Information Act 1982] about information on claims resolutions with the Ministry of Education. If we can just orient ourselves with the document. So it's the Ministry of Education reply to Cooper Legal, it's date stamped 7 August 2017. Just take us through quickly, we're not going to spend much time on the front page, but just one comment about table 1.

MS HILL: So table 1 shows the claims received by the Ministry of Education up to 30 June 2017. The total at the bottom there shows 75 claims received, 31 resolved and 22 of those, of 31 claims, are ones where some compensation's been paid. So roughly a third, if my maths is correct.

MS JANES: And just going to the highlighted paragraph above, it caveats —

MS HILL: There is a big caveat there, we'll just call that out. "The information provided does not include claims received by the Ministry of Social Development that include education elements which MSD resolves in consultation with the Ministry of Education. Any information concerning those claims should be sought directly from MSD".

MS JANES: And then go to page 2.

MS HILL: So there's just the key issue there is the initial step required to start a claim, so we'll just pull that up. "The initial step requires an extensive search for historical records held about the claimant and any information relating to the allegations made. The historic nature and sensitivity of the claims means that the time taken to resolve a claim can be lengthy, however we endeavour to resolve claims as quickly as possible".

MS JANES: Just a quick question, is the complexity of Ministry of Education claims better, worse, same as any other historical abuse claims?

MS HILL: The complexity comes from who's responsible, and I'll come back to the vexed issue of the legal landscape and only briefly. But the actual claims itself, there's usually only one school, so like Chassy Duncan, for example, was in Waimokoia, Kerry Johnson in Campbell Park. There's usually only one institution, sometimes two, and usually for a period of some years. The younger clients usually only there for — Waimokoia or

MacKenzie for a year, Campbell Park could be five or six years. But factually not overly complex, certainly not at the level of, say, the Chassy Duncan's MSD claim which was immensely complex.

MS JANES: Thank you, if we can move over the page.

MS HILL: We'll come back to compensation, but if we just highlight that bit there. So MSD at that stage had paid a total of $293,000 to claimants and if we can just bring that table up. That's the range of payments made to claimants at that stage. You'll see it's very bottom heavy. So the bulk of the claims are in that bottom range of between zero and $10,000. And the top level payment there of between 25 and $30,000, usually that is only when abuse is substantiated by a staff member who's been convicted.

MS JANES: If we can move to the next document number 52 witness 94-295. As that's coming up, this was the letter that Cooper Legal received from Crown Law Office dated 28 September 2015. I'll call out paragraph 2, but then we will go through the others as you briefly move through the document.

MS HILL: So by way of background, we had written a lengthy letter to Legal Aid extensively and quite bluntly setting out our concerns about the Ministry of Education process and then quite awkwardly sent it to Crown Law in error, and then we received a response from Crown Law. It's not an ideal way to communicate, but here we are.

And so the writer is from Crown Law, and she says, "You have indicated to Legal Aid that you intend to file claims for all your clients with a claim against the Ministry. You say that this is a necessary step as the Ministry's approach and processes adopted under its ADR [alternative dispute resolution] have been extremely unsatisfactory. You refer to the following matters as an example of this".

And the reason we are stepping through this letter from 2015 is that very little has changed. So every concern I address in this letter is still a concern now. So, 2.1, "That the assessment findings in recent cases appear to have been watered down to justify low monetary amounts". And what we see, we talked a little about this yesterday, is the aggregation and minimisation of complaints, often reducing things to acceptable corporal punishment or "standards of the day". And when you can bring an allegation down to that level, of course, then you compensate at a very low level as well.

2.2, "The delays in receiving offers from the Ministry have forced some clients to accept the unsatisfactory offers received". And at that stage there had been only a handful of settlement offers, by and large they had been $5,000 or less, and the clients had been waiting so long, a bit like the Fast Track process really, that they took it because they could

not see any resolution in sight otherwise.

MS JANES: We talk about how they have been waiting so long, what timeframe are we looking at?

MS HILL: It varies, so in 2015 some of these claims had been raised a number of years earlier, from memory, I couldn't give you an average time, but most of the claims we filed that year in 2015 remain outstanding. So and as we've explained in our evidence, we filed a lot of claims against the Ministry of Education that year because of the Limitation Act concern. Most of them are outstanding still.

MS COOPER: And you'll remember that Kerry Johnson, I highlighted that letter which we did send formally to complain to Crown Law about all the delays. So Kerry Johnson was somebody who was in that group who'd been waiting for, oh, I think already by then, I can't even think now, I think it would have been 13 years perhaps. So that's how long he'd been waiting.

MS JANES: I don't want to jump you ahead but this does seem an opportune time to talk about the legal landscape and defendants.

MS HILL: Yes, and Ms Hurst and I are in agreement that the legal liability issues around residential schools are complex and we have all addressed that in our briefs. And it comes down to the fact that prior to April 1972 schools like Campbell Park had a mixture of staff, MSD's predecessors employed the hostel staff, the matrons, the housemasters, the gardeners and then there were the teachers who were employed by the Department of Education. And to be honest, no one really has a very clear idea of the line between those two entities.

And then after 1972 there was the split, the Department of Education separated from what became known as the Department of Social Welfare. So the liability changed, so pre-72, post-72, for responsibility in the institutions and then the liability is also affected by how a person came to be in the school. State wards were just dropped in there really. If you were a State ward you could just be admitted by who was known as the superintendent of the Child Welfare division. But some children were admitted to places like Campbell Park under the Education Act. That was usually through a referral from the psychological services group at the time. And that, the status of the child, affected the level of responsibility as well.

Now I could talk for a very long time about the complexities of that, but actually at paragraph 691 of our brief there's a matrix there which helps, in a probably simplified form, just sets out the different outcomes.

And when we first started the claims, we understood that Campbell Park, in particular, because that's where the bulk of the claims came from, had been managed by the Ministry of Social Development, and so claims were directed to MSD. And MSD accepted those claims and settled a number of them.

And as time went on it became clear that there was a more complicated issue around liability and both Crown Law and ourselves, we had an evolving understanding of how that affected the claims.

And the most useful way to demonstrate this is in our evidence we have a case study of a man called GGH and he was in Campbell Park, claim was filled in 2004. It was only in 2016 that Crown Law said to us, "You need to join the Ministry of Education in relation to Campbell Park." So there was a change in the way those claims were dealt with.

For most of our clients, that has resulted either through evolution or our newer clients we have start out with joint claims, Ministry of Education and Ministry of Social Development. And they are complex and mired in delays because the two processes between MSD and MOE are so different, and the MOE process is far slower, even compared to the Ministry of Social Development. And there is, and of course, we've got no visibility over the discussions between the two departments.

We understand now that back prior to 2015 or so the Ministry of Social Development settled claims and may have recouped some money from MOE, but like I say, we have no visibility over that, but we know that there were discussions. We were never party to those discussions. And MSD did not say you need to go to MOE, they accepted responsibility for a long time.

And if you're in commercial litigation a defendant would say there is another party who should be before the court and they would go to join them and that didn't happen, although, as I say, in 2016 in relation to Campbell Park, MOE was joined to litigation that had been in the courts for 16 years for the oldest claim.

So I could talk a long time about joint claims and I won't, except to say that they are in their own area, they have their own problems and so any problems in one process are doubled. And then the aggravating factor is that there is — there appears to be an argument at times between MSD and MOE over who contributes what, who does the work and who pays the costs. And that seems to be an on-going problem there.

MS JANES: And you've referred yesterday even to a development, a very recent development about carving out teachers.

MS HILL: Yes, we talked late yesterday about carving out even single allegations against a single

teacher. So just think about how that would work when we've talked about these processes, we extract one allegation, we don't have a limitation agreement so we might have to file that, and to be honest for a single allegation against a single staff member, you have to think proportionately is that a good use of resource? Probably not.

MS COOPER: And time.

MS HILL: And time and that goes into the MOE process. So we might hear back, five, six, seven years about that single aspect. It's not workable, but this is what we're in right now.

COMMISSION ERUETI: So can I just ask about, so that's the MSD and MOE, but Ministry of Health, is that — do you have cases that overlap all three, or is that because you settle substantially?

MS HILL: MOHE is its own beast, Sonja's explained that's got a very different processes so it doesn't ever interact with these. Although many State wards were placed there, usually MSD's response to our allegations "These are State wards, you had an obligation to monitor them and visit them"; the response is, "We might not have visited them so that's a practise failure", or "They were under the care of the hospital and so we didn't have the obligation at that point". There isn't the cross-over problems that we have here.

MS COOPER: I think you've had that really illustrated really well in the cases of both Chassy Duncan and Kerry Johnson, we're just still waiting.

COMMISSIONER ALOFIVAE: Because they're relying on the legal status of which the young person was placed in that particular institution under a 101 or mental health order?

MS COOPER: It's more that — so with Kerry it's Campbell Park so that's now fallen to the Ministry of Education, and initially of course that claim was brought against the Ministry of Social Development, but that's now been handed over to the Ministry of Education, so he's waiting. With Chassy, the Ministry of Social Development has made an offer and that's been accepted but he's still waiting for the Ministry of Education to settle in respect of what happened to him at Waimokoia.

MS HILL: The delay isn't really about the legal complexity so much as MOE's process is just mired in delay because it's under-resourced which I'll come to.

MS JANES: Just before we move on, Amanda spoke about the GGH case study. I just wanted to point that it's paragraph 533 to 561 so unless you want to very quickly talk — otherwise we'll just orient the Commissioners in the transcript.

MS HILL: I think it's probably more useful to move on. It does demonstrate how these joint claims are dealt with.

MS COOPER: He's one of our most elderly clients who's been a client since 2002 and still

waiting for those two claims to be dealt with, well, to be resolved.

MS HILL: There have been, it's protracted. If we go back to the issues set out in this letter and we get to.

MS JANES: 2.3.

MS HILL: 2.3. "The standard of proof required by the Ministry to justify a payment exceeds both a civil and a criminal standard". And we say that the standard of proof that Ministry of Education require is somewhere near almost beyond reasonable doubt. It isn't just a balance of probabilities as you should have in a civil proceeding, or that, sort of, is it reasonable to accept it, it's a very high standard which most historic claims struggle to meet.

MS JANES: Have they ever articulated why they apply that particular standard?

MS COOPER: No. And I think —

CHAIR: A question before that I think, Ms Janes, how do you know, I mean is it something you sense, or have they actually said it?

MS HILL: It's something we sense from the way the offers are responded to, so the ones that we've had responses to, even with evidence supporting an allegation, it will not be accepted.

MS COOPER: Again, I think Cheryl Munro's evidence on behalf of James was a really good example of that. What was very clear in that judicial settlement conference and other conferences we attend is that the Ministry gives absolutely no weight to propensity or similar fact evidence. They were very clear they do not take that into account.

CHAIR: No, we've heard all that evidence.

MS COOPER: Yeah.

CHAIR: I just wanted to know if they actually said it.

MS COOPER: It's based on that.

CHAIR: But it's based on all of that.

MS COOPER: Yes.

CHAIR: Now Ms Janes, your next question.

MS JANES: Yes, so 2.4.

MS HILL: The process employed by MSD and the Ministry to resolve filed claims. That's about the allegations against both agencies being unclear and lacking consistency and I think I've dealt with that.

MS JANES: And you've probably dealt with the ~~stop the clock~~stop-the-clock.

MS HILL: ~~Stop the clock~~Stop-the-clock.

MS JANES: So we'll move on.

MS HILL: That was our list of issues from 2015, I think. I think there were more over the page. There is the Crown response. It's lengthy, so I'm not sure we need to go into that. No, we're going to look at those paragraphs.

MS JANES: Just very briefly, so if you just pick out the things that you think are pertinent for the moment.

MS HILL: So Crown Law did not agree with our list of issues. And there's material in there about the proposal to ~~stop the clock~~stop-the-clock and we've covered the limitation agreement issue.

At paragraph 4, Crown Law says, the Ministry's been working hard to resolve its historic claims through its ADR processes and addresses in particular the Roxburgh cases, that's Roxburgh Health Camp where there was claims about the school at Roxburgh, and when we look at compensation we'll see that the resolution was in that $5,000 bracket.

And at paragraph 5 it addresses, because that's where we see that they were watering down the allegations, it denied the allegation that we had made about that. And the Ministry's assessment the abuse complained of in the Roxburgh complaints can be classified as ~~low~~ low-level abuse that the education board investigated at the time. And further, aside from the broad allegations made, there were insufficient particulars to assess the gravity of abuse.

MS JANES: In 6 it talks about delays, it's really the second part of that paragraph.

MS HILL: And Crown Law said, "Invariably there is delay because of the large number of claims, the complex nature of these claims and the difficulty in locating, researching, collating the information and managing these claims in conjunction with the relevant parties within the Ministry's available resources".

MS JANES: So if one accepted that that was the case, is that why you now are proposing that effectively there should be a single agency outside of the Crown that would be able to resolve end-to-end.

MS HILL: Yes. The Ministry's process is so severely under-resourced that it cannot possibly cope. ~~,~~ There are two assessors and, as Sonja has said yesterday, they are both — they both have relationships with the Ministry of Education which means that they cannot be considered objective or independent. Very few of our clients have met with the MOE assessors and there's quite a long delay once they have. And Chassy Duncan described meeting with Murray Witheford in October 2019 and we're still waiting to have a response to Mr Duncan's claim. And Kerry Johnson has not met with the assessor.

While that meeting is optional, I'm going to take a slight digression here to say that it became apparent to us that people who did not meet the assessor didn't have a credibility assessment and so what we saw is that people who met with the assessor, credibility came into play for the Ministry of Education claims, and remarks were made about a client being considered credible and that seemed to have increased the likelihood of their claim being accepted. But for people who hadn't met with the assessor, that element is missing. So there is — and it's not a mandatory meeting, so there's some inconsistencies there.

COMMISSIONER ERUETI: Could I, in the gap, just ask about, we talked about MSD and there's consistency with tikanga and ~~t~~Te ~~r~~Reo Māori about the MOE process?

MS HILL: We have not seen anything to suggest any reflection of Te Tiriti in the MOE processes at all.

MS COOPER: That would also be the same for the Ministry of Health.

COMMISSIONER ERUETI: Thank you.

MS JANES: You've effectively said in your evidence this morning that from your perspective the MOE process is modelled on the 2010, it has not evolved.

MS HILL: Mmm.

MS JANES: What would you please say was happening in latter years, say 2016 and onwards?

MS HILL: We know joint claims have been taking up a lot of space for MOE, I think there's been a lot of negotiation with the Ministry of Social Development about that but largely it's unchanged. It's the same process but just so overwhelmed that it's just mired. So we see very few responses. Even when someone is terminally ill, we have one person who was terminally ill that we got a settlement for in time but there's still one outstanding, a woman that Sonja mentioned earlier in her evidence. So even when there is a really tight timeframe it's exceptionally slow.

MS COOPER: And I note that response was to offer no compensation on the grounds that her allegations were not accepted as reaching sufficient standard to be accepted. So all was — just her Legal Aid debt was the offer to contribute to that.

MS JANES: We know the Waitangi Tribunal claim was against the Ministry of Social Development processes, but one would assume that could reverberate through the other agencies and cause them to take a look at their processes. Has there been any indication of change reflection?

MS HILL: We understand, although again we've limited visibility, that MOE commissioned a review by Allen & Clarke. We only know that because we had a consultation session with them about MOE's process, and told them much the same as we're telling you now.

MS JANES: When was that?

MS HILL: That was during the Covid lockdown in March or April. We don't know whether a report has been made, we haven't heard anything since.

MS JANES: And you sought information, at paragraph 752 of your brief you talk about seeking information under the OIA about the number of claims resolved, but I think we've looked at that at the 293,000.

MS HILL: That's the definition in the tables, yes.

MS JANES: So unless there's anything else that you wanted to say?

MS HILL: No, we can have — we can look at some compensation issues, but one thing I do want to address is the issue of boards of trustees. And I think perhaps before we go on to compensation it's an issue. And, of course, the 1989 Education Act brought in the governance model of boards of trustees being responsible for schools and that's why the Ministry of Education process cuts off at that date for State schools unless the State school is closed. And we're on the same page as Helen Hurst with that.

There's been a slight misunderstanding about evidence on this point. So where we are instructed to bring a claim that relates to abuse post-1989, we approach a school's board of trustees. I have to say that boards of trustees are ill-equipped to deal with these claims. As everyone knows, boards of trustees are made up of people who are elected, they have a range of skills, some schools will have, and dare I say it, high higher decile schools will have lawyers and accountants and people like that, some schools will have concerned and interested parents, but the skill sets could be quite different. Some boards are insured, some are not, it's patchy. And the responses are patchy as well. So I think there is an issue there about how we deal with that situation.

One issue that Helen Hurst picks up in her reply evidence, and it's at her reply brief in 3.3, is that slight misunderstanding where we've said that boards of trustees are agents of the Ministry of Education. That comment related to special residential schools. So because even after 1989 the boards of trustees, even of the schools that are still open now, they're largely appointed by the Ministry, they're a different beast. And so when you see a board of trustees that's largely ~~Ministry~~ Ministry-appointed, the Ministry of Education shouldn't be able to say it's the board of trustees' issue. And so there are still residential special schools open today and that's just something to be aware of as well.

MS JANES: Before we go to compensation, and taking you to the morning adjournment, in terms of, because we're going to talk about the financial compensation aspect, can we cover off in the time that you have dealt with these claims either under the MSD and/or the Ministry of

Education processes, what has been available to claimants either from the beginning of filing a claim or at the end in terms of non-monetary wellness or other?

MS HILL: Nothing. The Ministry of Education offers an apology at the end of a process, but there is nothing offered in terms of well-being, counselling or support. There is a suggestion that in — and perhaps for self-represented people that something may be available, but we have never seen anything like that.

MS COOPER: Again, just the Legal Aid debt is paid for as well, so the Ministry of Education also has an agreement with Legal Aid. And it pays half the debt, and the rest is written off by Legal Aid.

MS JANES: We have 10 minutes, so we can launch into compensation or you could take a slightly earlier adjournment, entirely in your hands.

CHAIR: I think we should rock on until 11.30. Let's see if we can get it done by 11.30.

MS JANES: Yes.

MS HILL: Did you want to bring up that table?

MS JANES: Yes.

MS HILL: What we have in our brief, and I'll take you to it and we're going to put it up on the screen, I understand, as well, is appendix B to the MOE chapter. And it's on page 193 of our brief of evidence. It's probably the easiest way to talk about compensation in a short period of time.

CHAIR: Appreciate that.

MS HILL: While we're seeing if we can bring up the document.

CHAIR: Ms Janes, have I made life difficulty for you?

MS JANES: No, unfortunately it looks like the wrong document has been loaded, so if we do go to the briefs of evidence and we look at our briefs of evidence rather than bringing it up.

MS HILL: Yes, so page 193 of the Cooper Legal brief. That's a table of settlements by MOE up to January 2020. It covers off a number of different factual circumstances. On that first page I talked earlier about the Roxburgh Health Camp claims, there's three people there, PJB, HC and MP. And as a cluster they were all offered $5,000 each. And that's August 2015.

Now two settled, one didn't. In the table there it sets out the — there we go, up on the screen, it sets out the allegations by three of those claimants of physical abuse, verbal abuse and being locked in a cupboard and all these of the claimants made those allegations. There were additional allegations by MP of a sexual assault and witnessing the same person sexually assaulting another boy. And, just under that, MOE's assessment found that

between 1975 and 1979 there were a series of complaints about Mr and Mrs R at the health camp school., Tthese complaints did not relate to those three people but did raise similar issues concerning the use of harsh behaviour management practices such as smacking children, placing children in the storeroom and shouting at children. These practices did not comply with standards at the time, the allegations received media attention, and we'll just scroll down a little more, it was reported that 50 children were withdrawn.

MS JANES: And over the next page.

MS HILL: While the investigation was carried out. So the Education Board had investigated Mr and Mrs R and they left the school in 1979. And there was no evidence found by MOE of complaints being investigated about the sexual misconduct, there were no personal files for a claimant and there were very few records recovered from the school. So the Ministry described the $5,000 offer as a gesture of good faith and to settle the claims. The Ministry was prepared to accept the possibility that these three clients were subjected to behaviour management practices that were not consistent with policies and practises of the time.

This response is not unusual for health camp claims. We almost, when we get an offer from MOE, and it's very rare, almost all of them have been $5,000. It's a tariff but with no sort of transparency about how we get there.

So if we could keep that table up, if we can. I'm not going to go through every box, I just want to highlight a couple of things. So the next box down, GB, a Campbell Park claim from 1971. Now this is one where MSD settled the claim for $14,000 in July 2017. And although Ministry of Education was employing half the staff there, it wasn't involved in the assessment. And as I've said before, there's no visibility over what contribution in a monetary sense MOE may have made.

As we move down, the next box is relating to a claim about Mt Wellington residential school in the 60s. That's a $7,000 offer. It relates to allegations about sexual assaults by named housemaster. MOE's response was that it had been unable to find any records for a staff member of that name, there were no allegations made or notes on the records of the other children involved. But MOE had found the complainant credible. That, coupled with the fact that the Ministry was aware of concerns that there were low levels of staff at Mt Wellington, and there were concerns about the capability of the staff, led MOE to accept the claim.

So this is one person who had met with the assessor, so credibility is clearly really important here. And we've just noted there this offer is on the low side given the nature of the abuse accepted. But we think that was deflated because of the lack of documentary

evidence. I'll skip over SH. You'll see at the bottom of that page there's another Roxburgh Health Camp claim, another $5,000 offer relating to the same staff members. And again, if we go over to the third page.

MS JANES: There's another Campbell Park one of a similar —

MS HILL: Yes. So just noting there, again an allegation about sexual assault. So that will be disconnected from the first allegations of sexual assault, they won't have taken those allegations into account at the same time. But similar allegations, so locked in a classroom, physical assaults, but the other allegations not accepted.

Just note there that last bullet point before we come on to the Campbell Park claim, "Given the number of children who attended the school each year it is thought likely that there would have been some disclosure either on the residential side or upon a child returning home if Mr R was sexually abusing children". Someone would have complained about it and somebody would have written it down, but because those things did not happen, we're not going to accept that allegation.

At the bottom of that page, MLA, and I've noted there there's another case study in our brief about MLA. And so there is a more fulsome description of his claim. That's a Campbell Park claim where it was settled for $14,000. And interestingly, $12,000 of that was for the allegations being accepted, $2,000 for being mucked around with a claim going to MSD first and then later being told to take it against MOE.

This is one of the very few times that we see an additional amount to acknowledge delay. This has happened on one other occasion that I can recall, they got an additional $3,000 for delay. But when we point out that our other claims have been waiting as long, we're met with silence about whether this will become a regular occurrence. We do seek it now just to see if we can get it.

MS COOPER: Actually, it was expressly refused in the case of another client who'd been waiting a similar period of time.

MS HILL: So we don't know why there is that approach. In terms of the other claims I wanted to highlight, we'll skip over to page 198. And I just wanted to note there the claim of RP. So again this is a Campbell Park claim directed to MSD, so an earlier one. And they received an offer of $6,000 in February 2018. That was rejected and the offer — and the claim hasn't settled yet. But just noting there, MOE doesn't appear to have been involved in the assessment. So even though it's a defendant, it's got no involvement, it's relied on MSD to do the work and it's not clear whether they've made a financial contribution.

And the last one I want to talk to is SP. Waimokoia. This is a Waimokoia claim.

You'll see a sudden spike here, it's $35,000. And it's terrible when you're so used to seeing $5,000 that you're a little bit thrilled when you get an offer like that for a claimant because you think finally someone's having their experiences recognised. And you'll see that we've got a named staff member in there, Mr McCardle and Mr Wallis. Now they're named because there was a trial and a conviction and the only reason SP got $35,000 is that that staff member has been convicted in relation to him. That's the standard that you need to meet to get what we say is an appropriate settlement.

But to be honest, even that amount for being sexually and physically assaulted by two different staff members is still very low. And I also note there the allegations of the time-out room Waimokoia and there's been publicity about the time-out room at Waimokoia, the time-out room was horrendous.

I think that probably is as much as we want to go over there. The only other one — I'll leave you to read over those in your own time, I think.

CHAIR: You can be assured, of course, we are taking account of all of this.

MS HILL: Absolutely. I think that table really highlights the real inconsistencies there.

CHAIR: It's very helpful to have it in tabulated form, I must say, it really assists us, so thank you for doing that particular work. I think it's time we took a break.

Adjournment from 11.31 am to 11.49 am

CHAIR: Thank you Ms Janes.

MS JANES: We're actually now going to move to — we've been looking at the processes and we're now going to look at compensation levels generally, and also with a slight contrast, obviously not comprehensive, but what's available in redress schemes internationally.

MS COOPER: So I'm going to deal with this section. I have to say it's reasonably difficult finding material and we've tracked through, for example, with the Ministry of Social Development, old media articles that we had and information we had received under the Official Information Act requests for that kind of information. But I just wanted to do this in a very broad ~~but~~ brush way.

So obviously starting with the Ministry of Health, you have the Lake Alice claimant group, there the payments ranged from $10,000 to $120,000 with an average of $68,000. So that's the first round. And then the second round received payments ranging from $20,000 to 124,000 with an average payment of $49,000. I'm not sure whether that includes the top-up that the Ministry of Health had to make. I suspect that would have made that range higher again.

So then you compare that with the settlement processes, the psychiatric claims that

we've been involved with, so that looks, as I understand it, it considers the Crown Health Financing Agency settlements as well as the Ministry of Health settlements. So the average payment there is $9,607 dollars excluding legal costs. And we think that with on-going settlement claims in the new process the average will have lowered since then. Because this was material dating back to 2011, so — no, sorry, 2015, so it will have probably changed by then.

We don't actually have any comparable information about Ministry of Education data at all. There isn't anything that — and it was very interesting in New Zealand's reporting on settlement processes, I think it was either to the Human Rights Committee or the committee against — the Ministry of Education was just not there at all, so whereas there was a lot of focus on the settlement processes and settlement payments by the Ministry Social Development.

But it's been interesting monitoring that through the various bits of information we collected over the years. So, for example, in May 2014 the information we had was that there were settlement payments ranging from $1,100 to $80,000. I just note that's in the timeframe that should have included the *S* and *W* settlements which, of course, were in the $140,000 range, so they just seem to have dropped out of any stats here.

So at that stage the average payment was close to $20,500 excluding legal costs. And then we had other media reports in November 2014 which said that there had been — the average was $16,500 and that the reported payments had varied between $4,500 and $45,000, so within a reasonably short timeframe quite disparate information.

Then there was another Stuff report in May 2015 where MSD said it had paid $8.4 million in 583 cases it had resolved then, averaging just under $14,500, so that's tracked down again. And then we have another media report to 31 March 2015 which said that the average payment was $20,221, but I note that that report was silent about whether it included the contribution to legal costs, so we don't know that.

And then Dr Winter prepared a good, you know, a really useful report in 2018. So the information provided to him was that MSD had settled 1,632 claims and it had paid 1,315 settlements. And at that stage the mean average was $19,124. And then just a short time later, as I said, the Ministry was reporting to the United Nations Committee Against Torture. So it said as at June 2018 MSD had resolved 1,727 claims and it had made apologies and payments to 1,398 people, totalling over $26 million. So we calculated that then the average was about $18,598. So again, that's different information again.

And then in the final report of the Government to the United Nations Committee

Against Torture in September 2019 the figures had changed again. So then MSD reported it had resolved 1,794 claims, it had paid $27.6 million to 1,450 people ranging from $1,150 to $80,000, said that the most common payment was between 10 and $25,000. So we calculated that being an average of just over $19,000, but again, completely silent as to whether that included any contribution to legal costs. So that information's quite difficult, I think, to work out the accuracy of it.

One of the things that we referred to is the Social Services Committee report. And I highly, you know, ask that you read through that because that actually sets out a range of Crown payments made by various Government agencies and in respect of various settlement schemes and that's where I got the Lake Alice data from. But one of the things I highlighted is that the people who had contracted Hep C through contaminated blood each got $69,620 each.

And if you look through that paper, what really struck me is that other than Police claims, and they will be typically for wrongful arrests or wrongful detentions, which will typically be for quite discrete periods of time, so short periods of time, our claimant group, so those abused in care, the figures were significantly lower. Significantly lower. So, well, you've heard the figures that I've been talking about.

MS HILL: If I can just make one addition to that. So after that report was written obviously in August this year there was publicity about an ex gratia payment to a former soldier who was harmed during a training exercise and suffered a long-term physical injury, and while the actual amount is confidential, it's recorded to be what struck me as probably over $100,000, but I have to speculate there, but a very, very high amount. And interestingly the Minister dealing with it referred to the Government's moral obligation to make that response. So that may be another interesting comparator.

MS JANES: You've said you've speculated, but was there a basis on which you were able to band where it was likely sitting?

MS HILL: Media reports suggested it was a six figure settlement, but you need Cabinet approval for anything over $75,000, and it had been approved by Cabinet, so it's a bit of a guess within those parameters.

CHAIR: Probably at least $75,000.

MS HILL: At least, yes.

MS COOPER: And if it was six figures then we assume it was over $100,000. So then I know that you're interested in the international comparison. Again the data is a little bit hit-and-miss. I did my best because I'm studying this obviously at the moment, so I have got some

data and also again Stephen Winter's done some really, really helpful comparative work here. So he compared particularly Ireland and New Zealand. And he noted that the bands and awards in Ireland range from — this is converted to New Zealand dollars — $87,000, that's the bottom, through to a maximum of $522,000, and that's, as I say, converted to New Zealand dollars.

And he said that the average payment in Ireland is over $108,000. Interestingly he makes the point there is it reasonable to assume that abuse suffered by New Zealand care leavers is 555% less serious than that suffered by those in Ireland, you know, taking into account that our average is 19, just over $19,000 for Ministry of Social Development.

CHAIR: Was Ireland limited to sexual abuse or did it cover all forms of abuse?

MS COOPER: It's quite comprehensive, yeah. So my recollection of reading it, it is a very comprehensive scheme covering all forms. Because I think the work of the English Royal Commission is still underway, we haven't seen any statistics yet, and I was only able to find quite historic Canadian settlement figures. So in Canada, as at 2014 the payments under settlement schemes had ranged from $10,000 to $100,000, just over $100,000. I did get information in relation to the Australian redress scheme, which you'll recall was introduced in June 2018, so that's under the national redress scheme which sets — I'm pretty sure the maximum there is $150,000. So as at 1 November 2019 that scheme had paid — sorry, it had made 716 decisions, it had paid 700 claimants about $56.9 million, and under that redress scheme the average payment was just over $80,000, 80,000 Australian dollars.

So again, you can see generally looking New Zealand — at New Zealand compensation, it is well below, well below what our neighbours are paying for similar abuse.

MS JANES: Just to orientate the Commissioners, the information relating to the Dr Stephen Winter comparison with New Zealand and Ireland is in his submission part A and it's an appendix to that document.

MS COOPER: And I'm sure the Commission can collect in other resources as well. I would really think there's probably more up-to-date Canadian information, for example, and clearly the Australian scheme will continue to produce, I think, six-monthly reports about what it's paying under its redress scheme.

MS JANES: While this is a hearing into redress against State, abuse in State care, Cooper Legal has also been involved in settling claims against faith-based institutions. So for comparative purposes, what would you say in that regard?

MS COOPER: Well, I think that's had a significant shift, the faith-based payments, I think under

the watchful eye of the Royal Commission. We had, with some — and I'm going, with one Anglican organisation we just had no traction at all, and it was very ~~legally~~ legally-based. And as a result of the Royal Commission that's now — it's actually set up a whole process that Amanda's just been taking through — a number of our clients through, they want to model the way for the Anglican Church in terms of leading process issues making it more claimant-~~-~~friendly, and also model what are appropriate levels of compensation, and we've been very pleasantly surprised with the first round offers.

St John of God is one that I've had extensive dealings with and obviously you heard something about that with Kerry Johnson's evidence. They're Australian, so — and we deal with Australian lawyers, so they're certainly used to paying high levels of compensation. We know that the New Zealand survivors get less than their Australian counterparts do, and that's — there is a discounting factor for our Accident Compensation, we know that. But even still, compensation for that client group is considerably higher. You know, you're almost — I think Kerry's actually the lowest, in the recent rounds of settlement he is the lowest at $50,000, and indeed one we've just negotiated settlement for $110,000, and legal fees are paid on top of that separately.

Other agencies, one of the things that we've been really pushing with the Catholic diocese is that the process is quite laborious and slow, it involves being interviewed by a former police officer, often. And the settlements have been some okay, but often very modest. And where we've been in prolonged discussions has been about the contribution to the legal fees. And we've just, just I think, set a precedent very recently to get them to contribute separately to legal fees.

And I have to say about my gratitude, or our firm's gratitude to the Royal Commission because it is certainly having an impact, same with the Salvation Army, the settlement payments have risen significantly. But yes, they are getting better.

MS JANES: We're going to move away from this topic and start scene-setting for recommendations for solutions. So if there are any questions from the Commissioners about compensation? No, excellent.

So we just want to touch on four topics very briefly. You will have already heard about it through the evidence. But just to really set a little bit of ground work, I'm conscious of the time, so we'll do that relatively speedily. We're going to talk about, firstly, independence. Sonja, you were going to talk about that, accountability; Amanda, I'll actually let you just run, transparency and delays, briefly.

MS COOPER: I mean, I think, obviously you've heard a lot about the issues that we say about the

lack of independence and how that compromises the settlement processes. One thing I just wanted to highlight more with the Ministry of Social Development processes, the handbook says where an allegation is a staff member, the allegations are put to that staff member, they get the opportunity to comment, they get shown a draft of any response to that, so they get to comment on that as well.

And I just think that reflects a lack of independence where you give staff members, who obviously have a vested interest in maintaining their positions and their employment. And as we saw in the *White* trial, it is common to deny allegations of abuse, of course because of the potential criminal consequences as well. So to give that opportunity and, again, we have no transparency around that, we don't know it's happened, but I suspect that where we get very blunt denials of allegations in relation to current staff members, that will be because they've been questioned and they've denied the allegations. And their word will typically always be accepted is our experience.

Just another comment, I just did want to comment on — you've heard about the selective, selectivity of whether we're going to accept even things that are proven. We've heard about whether we're going to accept aspects of the *White* decision even if the person was there at the same time making allegations against the same staff members.

And I think another point we just wanted to emphasise here is, you know, in terms Te Tiriti. You know, I think there if there is partnership you can't have one party running the process, it has to be a true partnership. And that means that you cannot have the alleged abuser or the organisation responsible for abuse investigating itself, making findings and also then deciding about compensation. It needs to be independent and safe.

And I think the other thing just to highlight again the Ombudsman's description of the process is take it or leave it, there isn't a negotiation. And that applies across the State processes.

Again, I just want one short comment about where Legal Aid sits in this. I know Mr Dooley says the Commissioner is independent, and that's correct in terms of the statute, but as you will have heard, that's not been our experience of Legal Aid. And even the fact that it sits within the Crown Secretariat for the purpose of this Commission, is intriguing. If it was truly independent, you would have thought it would have insisted that it sits outside the Crown Secretariat.

But I think the reality is it sits within the Ministry of Justice and it is within that — a Crown agency and certainly our experience of these claims really throughout has been that it is — it very much identifies as an arm of the State.

MS JANES: Just before you move on, if one talks about trust and confidence of claimants and processes, how would you say that could be best achieved or built on?

MS COOPER: Well, I think for this claimant group it needs to sit outside, it needs to be funded outside of Legal Aid. I think if we're going to build a body that actually deals with these claims, then I think the funding for that needs to sit as part of that. Was that your — what you're wanting?

MS JANES: Is it just funding that the —

MS COOPER: No, no. An appointment.

MS HILL: If I can add to that. When you have — most of our clients have a deep suspicion of the Government, particularly if you're a prison inmate you're currently at — you're at the behest of the Government, you're in prison. And so engaging with the Government to be able to take the claim, it feels like you're going back to the abuser, in all facets of this. And there is deep suspicion about the motives of the Crown and particularly in their responses. And so there is little trust in the integrity of the process from a claimant's perspective.

MS COOPER: And I think because we're funded by the Crown sometimes that suspicion comes to us as well and we do get people, some of our clients who are suspicious of us because our funding comes through Legal Aid.

CHAIR: Was that not raised — a very broad issue that we're going to have to grapple with in terms of the independence of any body that has to be set up, it's got to get the money from the Crown.

MS COOPER: Yes.

CHAIR: Unless there's some other unknown source. And so always there's going to be this conflict, isn't there, so it's about how it's managed, how it's set up, how it's perceived by survivors is going to be very important. Of course we will deal with this at a later stage, but I think is there anything else you'd like to say shortly about that issue?

MS COOPER: Just that we agree, I think that's entirely right. It obviously has to be resourced from State resources. But then you look at the Waitangi Tribunal, that's resourced by the State but it's got that integrity and mana of being an independent Tribunal, to me it's — and it also resolves historic grievances. I mean to me it's all about, as you say, the way it's set up.

CHAIR: And the way it operates and the confidence it instils.

MS COOPER: Exactly.

CHAIR: Thank you.

MS JANES: Because we are at that discussion I am going to jump you forward slightly, that we

may do a bit of a moving feast because I think it's useful it addresses topics as they come up. So in terms of the Legal Aid or the legal assistance, when you get to a blueprint that you have been thinking about, where would you see those aspects sitting within your independent body?

MS HILL: I think it would have to be separated out and funded as part of the independent body, and actually the legal assistance programme that runs for this Royal Commission could provide a model for that.

MS COOPER: Exactly. And I think it could be part of the auxiliary or the ancillary services that are provided to survivors coming into the process. So it could be, for example, you know, you'd like to think there would be separate therapeutic services, I mean obviously one of the things that we've heard from survivors throughout this is the need to have access to those therapeutic or well-being services from the point of entry to well after the point of departure.

And also too, those wrap-around services, so to make sure that as part of that that lives are more fulfilling moving forward. So, you know, those wrap-around services that we've seen in that e-mail, so housing, education, linking with ~~whanau~~whānau, you know, small things like removing tattoos, all of those things that can help bring up the quality of life for survivors. And that fits well with our international obligations which are about compensation, so that's the kind of legal side of it, and that needs, in my view, legal support, but then you've got the rehabilitation. And so I think those parts can be auxiliary parts that sit under whatever this body is that we create, but as part of the ancillary services that it has.

MS JANES: And Amanda, you talked about the possibility of the Commission's legal assistance panel being a possible model to look. Why would you advise that or recommend it, and what do you see as the benefits?

MS HILL: I think the benefits are that it's attached to the body, so it's part of that view of independence and so there would be — I would hope there would be an increased level of trust. And you could also ensure that the people providing the services had the appropriate skills. So we've talked about trauma-informed training and things like that. So you could have to go through some training or do modules around trauma or something like that, so that all the people who were involved in providing advice had the appropriate skills and knowledge to do it.

MS COOPER: And I think too, in addition to that, you could provide on-going training, so as knowledge increases, and I agree, I think it's very much like the legal assistance panel for

this Commission, you have to demonstrate that you have specific basic skills, it's just like for those of us who are youth advocates and counsel, you know, lawyer for child, we have to demonstrate that we've got experience and we understand cultural issues and, you know, even some language issues. So I think that's really essential, and could be part of that specialty knowledge.

MS HILL: ~~Also~~Also, if I can be ambitious, I would love to see the sort of, in this blueprint, having a separate, or having this sort of model would enable other lawyers to be developed in this area.

MS COOPER: Yes.

MS HILL: I want more Māori lawyers in this area, more Pasifika lawyers in this area working in the communities who have been impacted by State care, and it wouldn't just be us, it would be wonderful.

MS COOPER: Exactly, and part of that I think is at the moment it's really difficult for other lawyers to get into this area because there are so much that's unknown. And it's so difficult, it's very complex legally, it's complex factually, you have to understand so much about the history and the legislative framework and all the potential barriers. So actually if there was an independent body where everything was transparent about, you know, what hurdles you have to get through to establish compensation and also too there's access to a body of information, that just immediately assists other lawyers and other professionals to be able to work in this area, whereas right now there are so many barriers to actually getting the basic knowledge and skills to be able to go down that. And of course there are also the barriers with Legal Aid.

COMMISSIONER ERUETI: So the assumption is that for clients that use the system that they're likely to always need legal advice?

MS COOPER: Look I think one of the things we were talking through is, you know, there may be somebody who wants to do a short process because they want to have a quick settlement. I think at the very least there should be somebody, even if it's just an hour or two, to say look these are the pros and cons of this, because there are ramifications. I just think even that ability to give some quick advice about what it might look like if you go this way, or if you accept this process. I do think it's important, and again, I just emphasise that at the end of this we are dealing with very difficult legal issues, all the way through this process, these processes.

MS JANES: So you're overlaying very complex legal principles which are somewhat unsettled, and we will come to that aspect with very vulnerable groups of people.

MS COOPER: Yes.

MS JANES: So I'm hearing you say even some access to legal advice, minimal or otherwise, would be an advantage.

MS COOPER: Absolutely, even, as I say, if it's just for a couple of hours, yeah.

MS HILL: It would also ensure that there's integrity in the process, because we don't want to replicate this idea of a quick and dirty direct settlement with no advice, we want to be — we've got to have a robust process that's got integrity and I think that's an important aspect of it.

MS JANES: So an informed consent.

MS HILL: Absolutely.

MS JANES: I did jump you around, sorry for that, but you had raised that and thought we may as well deal with that. And was there anything else, Sonja, you were wanting to say about independence before?

MS COOPER: No, no, I think that's — I mean we've certainly talked a lot about it and I think that's enough I need to say. Transparency again, we've talked a lot about transparency and I think that must be very clear through the evidence that we've given about just how murky all these processes are.

I didn't note actually when I was talking before about the Ministry of Health that there's actually nothing on its website about its settlement process at all. And I know that Phil Knipe's evidence is that the process is so well-known, well by who? How? I suspect there is still a very, very large unmet need. This is, as I said before, this is a particularly vulnerable group, there may be many, many people still in psychiatric care. I mean people like Paul who've never had anybody advocate for them to bring a claim.

So I think this is a hugely unmet area and it's not advertised, and again it would be greatly assisted by there being an independent body where, you know, just like the Royal Commission itself has got good advertising, it's got good visibility, you know, then again there may be more support to bring so many of these people who no doubt are still in the community who have never known enough to bring a claim.

And I mean maybe even these hearings will bring a lot more of that group out from the woodwork and hope — that's what we can hope. But I think if there was a body that could make that easier and more transparent it would help.

MS JANES: One of the issues that we have been talking about now is the fact that it is, and we've heard from the survivors, so hard to know where to go to complain.

MS COOPER: Yes.

MS JANES: Just talk about that, and also we've heard about the incorrect information on the Ministry of Education. So accessibility issues and how they could be resolved within the framework, blueprint you're thinking of.

MS HILL: I think Sonja's mentioned this idea of the sort of therapeutic or well-being function or the wrap-around services. That has to include sign language interpreters, because there are two closed — two deaf schools where we have claims arising from Kelston and Van Asch, and those people need a lot of support. And then they need to understand that they can make a claim, so again, that's not just the websites, that's proactively going and saying to people, what was your experience like, because again, if we want to learn, we can't just wait for people to come to us.

And I was thinking and talking about, when I read Patrick Stevens' evidence, it was right at the end of his life and he had to go and try and resolve these things. If we know so much about, say, Lake Alice, why didn't they go and look for them? Why didn't they say "Here's the patient list, tell me what Lake Alice was like for you"? Rather than say to people you need to find your way through this maze, isn't there a way, and if we're going to learn, we go and talk to people instead of making it so hard for them to come to us.

So I just thought there's something to work on there around flipping over that expectation that people will come to a body, then sometimes, particularly for those very vulnerable people like Paul Beale, if it wasn't for Gay Rowe he wouldn't have had any redress. There are so many people who will be like him.

MS COOPER: Yeah.

MS HILL: So one of those other options you could have in that suite of things, are communication assistance, people who work in the disability sector, let's be proactive and pull down those barriers and actually help people move forward, rather than say you've got to jump all these hurdles to come to us.

MS JANES: So in terms of that pro-activity, would you envisage that within an independent agency there could be a section that takes, say, a *White* finding, the judge found that they didn't go out, and once Mr Ansell had been convicted, they didn't go out and find out who may be in that cohort?

MS HILL: Mmm.

MS JANES: So is what you're saying that this would be something that this body could do to actually proactively go out and engage and find?

MS HILL: I think it would be difficult for some, depending on time pastsed and individual experiences, the Social Welfare issues might be harder. But if you're talking about, say, the

Child and Adolescent Unit at Lake Alice or, say, ward 27, is it 27? Ward 12 in Auckland.

MS COOPER: Ward 12.

MS HILL: The child psychiatric ward. So I think — and I think that proactive approach, it may not be for the entire cohort because that's a big group of people, but if we think about who are the most vulnerable, who are the least likely to come to us, the deaf schools, Kimberley, the disability institutions, the people who have had the least access, start there and see what that looks like, because it's a smaller group of people but they're the most vulnerable, the ones who can't speak.

MS COOPER: And we have a lot of information in New Zealand, I mean Dr Brigit Mirfin-Veitch, you know that's her expertise, she's done reports for the Human Rights Commission. You know, so we have a lot of expertise in New Zealand about the themes in those in places and it includes Campbell Park of course. And there will be lots of organisations, IHC is one, you know, that could be proactively contracted, for example, to help locate those people, help them tell their stories, because a lot of them will still obviously be connected to services.

So I agree, I think there would be some groups where we'd want to see proactively supported to come forward, because they just — their ability to do so themselves is really difficult and we saw that graphically with Paul.

MS JANES: And that leads us to the body of knowledge, and we've heard a lot about that as well. Where and how would you envisage that playing its part?

MS COOPER: I think we're very clear that there needs to be — the body or some arm of the body needs to be able to hold all of the relevant information. I mean we talked about whether that could be archives, but we know that archives in its current iteration, there are very, you know, difficult obstacles to actually obtaining large numbers of records, but we know, you know, there are some models, for example, from Australia that we could look at, and I think there is a — one of the archivists from New Zealand is doing some research on that.

I think there needs to be a records store that is separate from the Ministries, from the State. And from that then this independent body can start building up this body of knowledge, because there is a huge amount, and I think while it remains within the ministries, it's easy to get lost. Well, also too the ministries can still, if they've got control of it, ask for it to be destroyed, and it's really important that these records are maintained. That would extend then to things like NGOs [non-governmental organisation] where others are cared for. Because at the moment their records, once they close up, their records are

destroyed. So again, really, really significant sources of information for survivors, documenting punishments or incidents, all gone.

COMMISSIONER ALOFIVAE: So that would require a really clear line of accountability and at what point the power transfers.

MS COOPER: Yes.

COMMISSIONER ALOFIVAE: To be able to follow that all the way through, right?

MS COOPER: Yes.

COMMISSIONER ALOFIVAE: In terms of contractual obligations, in terms of responsibilities and accountabilities.

CHAIR: Also there's two factors, I think, tell me if I've got this right, that you're really thinking about. One is the holding of the records.

MS COOPER: Yes.

CHAIR: So which could be a way of overcoming what is currently a chronic problem of obtaining records, so it holds and safeguards in an archival way.

MS COOPER: Yep.

CHAIR: Then there's a second aspect, and that's of a research-type way.

MS COOPER: Yes.

CHAIR: So using the information from that to build the body of knowledge.

MS COOPER: Yes, that's exactly right. I mean they could be tweo separate entities.

CHAIR: Yes.

MS COOPER: So you may have the archivists who hold the information and then you may —

CHAIR: Hold and manage that, yes.

MS COOPER: Exactly. They manage the disclosure of that information then to survivors and those who are working within the — this body. And that means it's completely independent, there isn't any contrary interest dictating oh we might want to redact that. So I think there'd be that, but yes you're right, then that information can be used to build up this body of knowledge from which you're able to say well we now know this about Epuni for this period, or Kohitere. So we can be confident that if you were there during that period you're likely to have had these experiences.

And I just — it also means, as I say, records can't be destroyed and that's really important too. I think one of the things that we know from the Australian research is, and also too listening to survivors here, destruction of records is devastating, because often that's the sole narrative of their lives. And so even if the records are inaccurate or partly lost, at least it helps them understand who made decisions, why decisions were made, even

where they went, why they went, which often is ~~unclear~~unclear, and they've forgotten and they don't know. And I think that's actually quite healing in and of itself to kind of understand that narrative of your life.

MS HILL: If I can add and answer sort of the accountability question, the way I think about this, and I sort of think of it as a records mother ship, because it gathers up everything from DHBs, from Ministry of Health, from, as Sonja said, NGOs; but especially if they're contracted to CYFS [Child, Youth and Family Services] or MSD at any stage, MOE, it gathers in all these things so then we don't have to do requests to seven DHBs and two different ministries, a claimant could come to this body and receive all information about themselves, and the way I see that happening is that it's a — I'd say it's a bit like your tax records, after a certain number of years you can do something with them, but it would be an obligation to pass them to the Tribunal.

And an absolute moratorium on destruction. In our evidence we haven't talked about it, but there were general destruction orders at least twice that impacted on MSD records in particular. And so there must be an absolute moratorium on destruction.

And that accountability, obviously there are issues around the Privacy Act and things like that, but none of them are insurmountable at all.

CHAIR: In the digital world it becomes, I mean the thought of dusty warehouses filled with old yellowey pages —

MS JANES: In asbestos buildings.

CHAIR: In asbestos buildings.

MS HILL: Asbestos building in particular is a chronic problem. But if you think about the possibility, so one thing that has always bothered me is a staff member can work at an incorporated society.

MS COOPER: Yes.

MS HILL: I can think of one person in particular — but I won't go into detail because it will identify them — worked there for several years and left under a cloud but without a Police investigation. They went on to work at a Care and Protection residence for years, a number of disciplinaries later they leave. Now if we — and there's a massive disconnect, because it was never sort of —

MS COOPER: Pulled together.

CHAIR: No- one joined the dots.

MS HILL: No- one joined the dots and staff members who moved around institutions like Moncreif-Wright, like a number of others were shifted and you would have so much

visibility. And some of these people, they go off, particular Libra the sexual abusers, they've gone off to work in youth groups and other — if they're not allowed to be CYFS caregivers they go and be caregivers for another institution. And you need to be able to track through this, and the — I'm really excited by the possibilities of this.

MS COOPER: I would add there we seriously need to think about adding in faith-based records there, particularly historical faith-based records. But also too, there are other Government agencies that, you know, might be affected. I mean Police, they routinely destroy records after seven years, but again, there's massively useful information that the Police hold about, you know, people going to complain about assaults, even if there hasn't been a prosecution, it could still be helpful, if that information comes in.

DHBs as we know, we've talked about that. Corrections, need to think about Corrections because again, that's, as we said, you know, we've not been able to help that group, but it is covered by the terms of reference, I think borstals, again we know there are lots of clients who complained about terrible abuse of borstals. So again Corrections records, you know, again you might want to timeframe that, but again, Corrections records should come in as well.

CHAIR: I think, these are — you are now mind mapping the way it goes.

MS COOPER: Yep.

CHAIR: Can I just say for your satisfaction and for our comfort, that we're going to be looking at all this in terms of round tables where we can go into the granular detail.

MS COOPER: Good.

CHAIR: But I think we've got the message, you want records ~~well kept~~well-kept and accessible.

MS JANES: Centralised.

COMMISSIONER ERUETI: Not destroyed.

CHAIR: And not destroyed.

MS COOPER: Not destroyed.

MS JANES: Just going to a point that you've talked about the complexities of the legal landscape, and you've talked about you have tried on occasions to do rule 1015 hearings. But to try and actually —

CHAIR: Would you like to try and translate that for the lesser mortals in room?~~.~~

MS JANES: Mini trials, effectively case stated.

CHAIR: In the civil proceeding?

MS JANES: In a civil proceeding, and it relates to a particular plaintiff or plaintiffs. So the question really is, has there ever been consideration of trying to get certainty on legal

principles without involving a plaintiff individually to get, say, a declaratory judgment, and if not, why not?

MS HILL: So the point of the 1015 hearings or the mini trials was to try and resolve stuck claims on issues of fact. But you could take a similar approach to an issue of law. And we thought about, you know, what are the outstanding issues, they're largely around the Bill of Rights Act. And some issues around both quantum and what detention means in terms of the current legislation.

And we thought about, you know, could we ask the High Court to determine these things without putting a plaintiff through these gruelling processes? Our challenging — the challenge with that is that there are so many different factual circumstances underlying that and we think a court will be reluctant to issue a declaration or answer a question without reference to some evidence.

So if you think about some of the things we've canvassed, that potential changes if someone's under youth justice status as opposed to Care and Protection, you know, what are the conditions when you're on Alcatraz, do you have a supervisor there, do you have a tarp for shelter because sometimes they did and sometimes they didn't, sometimes you're on Alcatraz for punishment, sometimes you're a flying squad member and you were there to supervise. So these changes of the factual circumstances —

CHAIR: Even if you were to get agreed statement of facts, for example, you think it might — the number of and the variety of the iterations of facts would be too great to get any real certainty?

MS HILL: Yes, and also previously we've had issues with Legal Aid agreeing to fund what are effectively declaratory issues and when Legal Aid is often based on monetary redress.

CHAIR: And linked to plaintiffs.

MS HILL: And linked to plaintiffs. We've certainly done generic things before, the *XY* judicial review is an example. We find a volunteer plaintiff to be the named plaintiff, but it's understood and agreed by Legal Aid that the work is spread over the whole group so that one plaintiff doesn't carry the can, if you like. But there are so many different factual circumstances that it wouldn't be workable.

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My major concern would also be how to do up bind the Crown agencies to abide those decisions and not find ways around them. We've seen the treatment of the *White* decision, it would be too easy for a Ministry to say oh the facts are slightly different so that doesn't apply. So I think I'd like the idea, but the realities of it are fraught.

MS COOPER: We've only ever once done a case stated and that was a Legal Aid case, it was

whether a lawyer could get funding to formally withdraw as a lawyer once the Legal Aid had been terminated. And so we did agree to do that by way of a case stated, and that's the only case stated I can think. That actually worked really well, but it was a very discrete legal issue. We had a nominal claimant again, and both sides presented argument and a decision was made. And so it may be that in very discrete areas of law we might be able to do something like a case stated, but again, as Amanda's saying, when we're dealing with the factual — when you add in the factual matrices, they're so complex, each client is so different.

MS JANES: So in your blueprint we've heard about the record aspect, we've heard about the rehabilitation wrap-around service, we've heard about a research body of knowledge potential. Let's then come to how would complaints be dealt with and what are the principles that you would be advising taking into account that there will be round tables and all of that granular detail can be teased out by not calling you not experts in this field but who have spent more time thinking about these things.

MS HILL: It's one of those — that line from the Ombudsman case note about how a claimant needs to understand what the rules and, you know, what the rules and policies are that apply to them, that's probably a key thing.

MS COOPER: Yeah.

MS HILL: And having very clear what is your balance, you know, what is your onus of proof, you know, what information are you relying on, those sorts of things.

MS COOPER: If there's to be any questioning at all I think it should be an inquisitorial model, so led by whoever the Chair is, and I think with a body like this, ideally you would have a combination of somebody with legal knowledge, but also somebody with therapeutic background as well, so you'd have that joint discipline.

I think it would be important here always to have the ability to review any compensation that's paid. So, as I say, as the body of knowledge increases you may want to review and top up. Or if somebody's not been able to fully disclose and, as we know, it's often incremental that there is the ability to actually provide top-ups. And I mean that's already models in some of the outside of, you know, the ADR processes.

MS JANES: So Dr Winter talks about there are different ways that you can devise compensation, and a starting very simple one is rules, so common experience, if you can prove that you were in a particular place at a time. Would that help in terms of the disclosures, "I've been in Epuni, I can only cope with talking about that, but then actually I've also been at Hokio or Kohitere"; how would you envisage that incremental disclosure being dealt with?

MS COOPER: Well, if there are clear rules, I mean say, for example, I think in one of the — I think it's the Irish settlement process, you know, if you've been in certain placements there's an assumption about what experiences you've had and that attracts a set, you know, dollar figure. So again, if those sort of very transparent rules, and that's all somebody's prepared to disclose at this, you know, the point that they first come, then that's an amount they get. But that's why I'm saying there should be the ability then to come back and say "~~w~~Well, I'm now ready to talk about what happened to me at Hokio and Kohitere" where there'll be presumably similar bodies of information.

MS HILL: If I can add to that quickly, when you look at that, when you think about, you know, if you're going to have effectively a default setting, it must take into account the things that make up the whole of that experience. So what we know is that things like the hierarchy and the kingpin hierarchy in the boys' homes aren't necessarily accounted for in settlement processes, but it was an enormously difficult factor because that was where so many of the physical assaults came from. Things like the no narking culture, that sort of thing. That needs to be recognised in the settlement. And things like Epuni, there's a finding in the *White* decision about if you are placed in secure on your arrival there for three days as a matter of course, that would be a breach of duty. So if you went into secure when you got to Epuni, and there's an underlying assumption because that was done with pretty much everyone, then that is taken into account in that amount.

MS COOPER: Something that we obviously need to highlight here too is the issue to take into account culture, our Te Tiriti obligations and that's absolutely essential. So that's one thing I actually had on my list, but didn't mention, is there needs to be cultural advisors as well, and appropriate cultural support. So, for example, there shouldn't be just one access point. So if a ~~whanau~~whānau wants to come or even, you know, generations, if they want to come and present a ~~whanau~~whānau claim of some sort, there should be — shouldn't be just one point, it shouldn't just necessarily be for individuals, it should recognise that there in different cultural morays it's appropriate to accept different ways of coming to the process.

And I think that's got to be — if we are going to recognise partnership, then we have to recognise that, and in that context as well, it's probably very important that there are translators available. So we've talked about deaf, but other translators, so it's possible for somebody to come and speak in Māori.

MS HILL: The idea of a ~~whanau~~whānau claim I think is it the Canadian —

MS COOPER: Yeah.

MS HILL: The Canadian process provides for a group claim or family claim, so there could be

something to look at there as a model.

MS COOPER: One thing I also wanted to say is with the research and policy body, one of the things I mentioned yesterday was if we've got this independent body it might be easier for former staff who felt too uncomfortable to come forward because they're worrying about their reputation or their jobs currently, it just may provide a way in which they can come forward and talk. I mean, as I said, I've just been surprised by the number of e-mails we've received over the last week by people saying "Oh look we can tell you all about", you know, and I'm encouraging them to come and speak to the Commission.

MS JANES: Almost a whistleblower avenue.

MS COOPER: Exactly, and that could be current, if they've got current concerns. Because if part of the purpose of this body is to inform current practice, then they can come and raise current concerns. That again can be massively helpful if we are to have a body that is going to inform and comment on and make current practice better.

MS HILL: Can I — the last thing that I would say is vital is to be clear about timeframes and not replicate the delays and problems that we currently see. Because one of the hardest things for a claimant to do is to have that uncertainty, or to be given a timeframe and it not to be met. So being realistic about the resources and how long this might take, and helping a claimant be sure about what is happening and when things are going to happen and meeting those undertakings, because delay is such a damaging part of this process that it sucks out anything good that you get — that the claimants get from going to these meetings, from telling their story, from working through it all and then it drains away during the wait.

MS COOPER: Yeah, one thing we haven't really thought about and that will be for the Commission to think about is apologies.

CHAIR: I was going to raise that.

MS COOPER: Yeah, because apologies are really important in this process, and I mean you've heard some people say, you know, they would like their apology from the Prime Minister. The Lake Alice claimants still get their apology from the Prime Minister.

So that's just something I think needs very careful consideration about because that is such an essential part of this process. And again, just who's going to be giving that apology. But the one thing I think that you would have heard very clearly from the survivors is any apology needs to be meaningful. It cannot be templated, it needs to be individualised and it needs to be meaningful. And if we are, in a sense, going to be saying well look, at some point the agencies themselves have to show some responsibility, I mean yes, they'll obviously have to contribute, one assumes, from their budget to this.

But there, I think, the apology process there is something that needs to build potentially, you know, with the agency that is the one that's caused, or the one of several that's caused the harm. Because that may be — again it needs to be survivor-focused, so who does the survivor want the apology from, do they want to meet somebody face-to-face.?

MS HILL: There have to be options there. It's interesting because that's one thing that has been developed with one of the faith-based institutions —

MS COOPER: Yeah.

MS HILL: — I've been working with, is that the offer of settlement is an apology in whatever form the claimant would like, whether that's written or in person or both. And you have to remember, that a written apology isn't very useful to someone who cannot read. So you need to respond to the claimant in front of you and I think giving them that ownership over the decision is really important.

MS COOPER: Although I note that the apologies are increasingly used now to inform sentencing, Parole Board, cultural reports, they are actually very significant. One thing I also wanted to say that I think should also be part of the kind of adjunct services supporting survivorses ~~or~~ who want to complain to the Police. That is important for some survivors, the ability to actually be supported to make a Police complaint and have their perpetrator prosecuted is really important.

And again, I think if there is an independent body that is actually there to support survivors to do that and can also then, because of its body of knowledge, potentially be able to support that survivor with other willing survivors who may be able to support that prosecution, which is effectively, you know, we helped with that with the *Chambers* prosecution, you know, then again you've got an independent body with no self-interest and that has the therapeutic support then to support survivors to also bring prosecutions. And that, again, is a great benefit more generally because it protects others who may be victims, but again, it contributes to that body of knowledge.

MS HILL: Also it can be forward-looking, like if you've got young people, you know, who feel able to make those complaints and also feel able to alert Oranga Tamariki willingly without it being done to them, and I think you will get more uptakes, you will get more people willing to engage because they've got assistance to do it. That can only be a good thing and contribute to keeping kids who are in care now safe.

MS JANES: And you talked also about the need for a purpose-built independent piece of legislation.

MS COOPER: Yes.

MS JANES: And you wanted the model litigant, some of the good parts that we looked at about the Limitation Act, settling within two years, going to your point. Is there anything that you quickly want to just reinforce about the legislative framework or other things you may have thought about?

MS COOPER: I think, I mean as I say we've got a very long wish list there, but it is — I mean the Limitation Act is critical, but I think there are also those things that we can take from the Australian approach, like reversing some of those difficult onuses, causation, proving breach. Building in a statutory vicarious or non-delegable, I'll just call it strict liability, I think that's really important. With the churches, some of the obstacles have been around actually finding a defendant. We haven't really grappled with that here, so it's statutorily imposing a defendant where bodies might have shut down, so it's making sure that there is always somebody who's going to be liable.

That's obviously to look at civil litigation. I mean obviously if we have this really well-functioning body, the need for this becomes far less, you know, prevalent really. But no, I think civil litigation and everybody would say civil litigation is still really important, it still has a very significant role to play. So if we can actually remove some of those barriers that in the — at the moment are either stopping claims dead in the water or at least stopping any remedy, then that will be hugely helpful.

COMMISSIONER ERUETI: But ideally if the Tribunal is —

MS COOPER: Does all this stuff.

COMMISSIONER ERUETI: With your vision, yeah, then that process, you wouldn't need to pursue that process. Is that the aspiration?

MS COOPER: Look I think for the vast majority of people, that's the situation we are in now, the vast majority of claimants would settle outside of court. But as you've seen, I mean there are still — there's still so many legal issues that are not defined yet that we may still want a court to clarify. And again, if we can use the Tribunal to state cases, or this new body to state cases, that would be fantastic.

But I still think with all claimants, survivors, if we are being truly survivor-focused again we have to let survivors choose their forum, and if court is their chosen forum then we should limit all those additional barriers, particularly ones that are choice barriers anyway, like the Limitation Act, and we should put rules around how defendants have to behave and the training of everybody involved in the process.

MS HILL: Can I just add, I do think the legislative change is important regardless, because of

course there are victims of abuse outside of the State care context, and they should have the benefit of those changes. There are people who will take civil claims against individual abusers, like *J v J* and *Taylor v Roper*.

MS COOPER: Yes.

MS HILL: And I think for the general good, those changes still need to be made because there will be people who will not come within the bounds of State care or faith-based care and they should not suffer the consequences of that. And also I'd add to Sonja's points, reform the ACC system in the ways that we've talked about. ACC is currently not fit for purpose.

MS JANES: So just on that, scattered through the Cooper Legal evidence there are a large number of sections about possible solutions. We don't want to go to those specifically, but we thought what might be helpful for the Commissioners is to aggregate them into one document. You may have heard some changes, because when they prepared their evidence the thinking may have evolved, but at least you will have one document, we can produce it as an exhibit and it's then available. So we should now —

CHAIR: I think we should. Just in terms of timing, do we have an indication of how much longer you will be with these witnesses?

MS JANES: I have concluded, so it would be turning it over to the Commissioners and also to —

CHAIR: I think we would value the opportunity of thinking about this over the lunch about how much we would like to ask beyond what has already been asked. In terms of the Crown response, do you have a sense, Ms Aldred, of how long you are likely to be with these witnesses?

MS ALDRED: Yes, I do Your Honour. I'd be surprised if we — thank you ma'am, I think it's probably safe to say we wouldn't be more than about 45 minutes.

CHAIR: Thank you very much for that indication. I won't hold you to it, though, but if you can do it that would be appreciated. Let's take the lunch adjournment. Should we — I'm just thinking whether we should come back at 2 or whether we should — no you all need your time, we won't.

MS JANES: Would you be comfortable to come back at 2?

MS COOPER: Yes.

MS JANES: 2.15 I'm hearing.

CHAIR: I'm conscious a lot goes on during the lunch, and I will accept that overruling.

MS JANES: Absolutely, so will I.

CHAIR: 2.15, thank you.

Lunch adjournment from 1.02 pm to 2.18 pm

CHAIR: Thank you. We have just a very few questions before we call upon you if that's all right, Ms Aldred.

MS ALDRED: Yes of course.

CHAIR: So we'll start with Commissioner Erueti.

COMMISSIONER ERUETI: Thank you Madam Chair. So quick question, for the blueprint, just to be clear, that includes the faith-based institutions as well? I wasn't sure about that.

MS COOPER: Yes, I think that should be as broad as possible and we also think it should, if we're going to make it a proper scheme, it needs to include the District Health Boards, for example, and it needs to include the NGOs, yeah.

MS HILL: I mean you have to remember that lots of State wards were placed into faith-based institutions, so that if you don't have them in there you don't have a complete picture.

COMMISSIONER ERUETI: Absolutely, thank you for that. You spoke about the Treaty partnership and the way in which these redress schemes currently offered by the State operate, so I just had a question about your views on the process that would lead up to the creation of this Tribunal that you speak of and how would the Treaty partnership be reflected in that.

MS HILL: I think there would have to be a great deal of consultation prior to landing on what this would look like. Because you can't just impose these things, and so I think it would be a process of building. There are people far more qualified than I am to talk to you about what a good Treaty process would look like.

I'm certainly not suggesting I've got any particular expertise, but consultation with iwi, because different parts of the country are probably going to want different things and different iwi, Māori are not homogenous, and I think that would be an interesting conversation to have about how to reflect those differences.

COMMISSIONER ERUETI: Ka pai, thank you so much. I've got many more questions, we all have, but just in the interests of time we're just staying more focused and appreciate that later we will have round tables and other opportunities to get into the fine detail, so thank you very much.

MS COOPER: I think too just to add to that, it's really important to add in survivors obviously is a really significant voice there, so yeah.

COMMISSIONER ERUETI: Thank you, good point.

COMMISSIONER ALOFIVAE: Thank you, like Commissioner Erueti said, there's lots of stuff I think we can canvass really well in terms of the granular detail. I really appreciated you outlining your ~~high level~~high-level thinking. I just had one question around timeframes and

whether or not you'd, just in your thinking and thought maybe that it might be a time-bound institution.

MS COOPER: Well, I would like to think that it continues to be honest. I mean I think, because from our perspective State claims are not going away, and if it is the body that we're envisaging which actually covers Corrections claims potentially and Police claims, I mean they're still continuing. But the fact that there is a complaints model at Oranga Tamariki and what we already know about of children, tamariki being abused in care, to me would suggest that the body needs to be a continuing one.

As I think I said yesterday, it could get smaller, so it could contract as it clears this big backlog of historic claims. But I mean I think what we would be suggesting is there is a large amount of work still to do. There are all these groups really that have not yet been touched, so those particularly vulnerable people within the intellectual disability community, I really think we've barely touched, the deaf community. I think there's still probably a lot of people to come through who've been in care generally. So I think there's still a lot of work, but from my perspective if we're going to set up this Tribunal it should be enduring, it should continue, even, as I say, if we contract it at some point.

MS HILL: Can I add to that to say if there's going to be a function where it learns from information and continues to gather information, then there might just be a change in the proportion of work that it does over time, that historic claims could contract, but that research and recommendatory function, which I think would be really important, could endure and, as I say, a change in proportion of what it was doing.

COMMISSIONER ALOFIVAE: Which is the influential component of what would come out of the research in terms of projecting forward.

MS HILL: Yes.

MS COOPER: I think just the other thing, just bearing in mind about that, is that 22-year lag. So when we take that into account it is a body that, you know, probably will need to be in perpetuity just because there is that very big lag between abuse occurring and the average survivor of that to be able to report it.

So I mean one of the things I've really seen now is I think there is very little visibility, for example, over what's happening now, because most people won't have reported it, which is why we're now seeing lots of claims coming through for people who are in their late 20s to early 30s, and a lot of those claims are very serious indeed. And, you know, as a youth advocate now I always pause and think well, what are the experiences of my clients going into these justice or Care and Protection residences, particularly in a

culture that we know still prevailing of snitches get stitches. And I think, you know, those of us who have been youth advocates know our clients didn't tell us about these terrible things they endured at the Whakapakari programme and Moerangi Treks, and it's like, you know, so they've held that really tight. So I just think that's something that is why this body will need to be enduring, because of that very long lag.

COMMISSIONER ALOFIVAE: Thank you. No further questions, thanks very much.

CHAIR: I just have two areas I'd like to cover again at a highish level. The first is, and this will take a lot of teasing out eventually, but could you envisage this, we'll call it institution, operating in a way, you've already mentioned the word inquisitorial which has the idea of somebody sitting up the front and asking questions. But could you see it acting, having alternative ways of dealing with various claims, for example, restorative justice processes.

MS COOPER: Yes.

CHAIR: Mediation processes, ~~whanau~~whānau-based, hui, that sort of thing, is that something that was in your contemplation?

MS HILL: Yes, and as we have these conversations we sort of go that's a really good idea, so that shows how much this has travelled since we wrote our brief I think. But when you think sometimes even when people were in care abuse happened within a ~~whanau~~whānau, so even with State oversight people were placed with ~~whanau~~whānau and abuse happened in those contexts. So and a ~~whanau~~whānau may elect to deal with it in a different way and a healthier or a restorative way, and as long as everyone understands what that means and there's no sort of compulsion to do it. And the thing I keep coming back to, people should leave this process better than when they arrived to it. And if there is a restorative element that helps with that, then we should embrace that.

MS COOPER: Again, I think it's something we couldn't have contemplated probably even five years ago, because we just, you know, yes, there's been that culture within the Youth Court and the Family Court for a long time, but actually extending it to adults is still something that's very much being developed. But I think we know a lot more now, we have more practice with that, more skill with that. And I mean I guess we see that healing that can happen, I mean I'm thinking of our faith-based people, where, you know, it's been for some of them, and again very survivor-focused, it's been really important to have like the Bishop or the Cardinal or, you know, to actually say sorry. So yeah.

CHAIR: It fits in, doesn't it, with this notion of tino rangatiratanga, of the survivor having a range of options from which they can choose their direction of travel, so yes.

MS COOPER: And also took I guess when the body of knowledge is, you know, at a particular

level it may be that actually lots of claims can be dealt with without ever really needing to speak to the survivor at all. There'll be a sufficient body of knowledge that you can see their claim and you can assess it on the basis of the papers and their account, written account of what's happened. And I mean that's in essence how the claims are dealt with now. But I think it would be, you know, where there are any questions, where there are question marks or areas that there may be a contest about, I think they should always have the option of being able to come and present their case in person to someone. But, as I say, most of it could probably just be done on papers.

CHAIR: And the second area which I ask, because you two are the people with probably the most experience, if we imagine a new institution that started tomorrow, and that it dealt with claims that came in from tomorrow, tell me about all of those people for whom you've previously acted who have settled already. Do you have any idea about how you — do you think there's a place for those people to come, and if so how would that work? And ~~again~~again, at a high level.

MS HILL: At a high level, I think, as we talk about this institution, I know that its different parts are growing quite rapidly, but part of that I think, they can come with their experiences and that may be their documentation, and have someone review it and look at what the current standards are, whatever standards the institution has developed, and review it. And there perhaps is a recommendation, it's reopened, or that elements are looked at again, or that the knowledge that was applied to that person, that's now been updated. So we need to bring that into line. So rather than trying to be consistent with past processes, you're trying to bring people in line with what your guidelines and standards are at that point. So I think there is a reviewing function in there.

MS COOPER: I think the other really important aspect, and that's one that's certainly been reflected in other processes, is that ability to provide a top-up. So typically, of course, these processes will have compensation levels, and there has been a general acknowledgment that past settlements may be very much out of kilter, so it shouldn't be that people coming, you know, at the point of go, start go from the institution are able to benefit from increased compensation levels, I think other processes would recognise that they should — that those who've already settled and had to for whatever reason should be able to come back and say well look, this was my settlement when you now look at the bands, whatever they might be, clearly mine's out of kilter.

CHAIR: The bands that existed at that time.

MS COOPER: Quite.

CHAIR: Yes, so you're talking about these ones where you pointed out anomalies or apparent anomalies.

MS COOPER: Even if the new bands, you know, say if this sets up, like the Australian model, so it sets a top of, say, $150 and then whatever the bands are. And I think then if you look at a past settlement and say okay, well, assessed under the new criteria this is where you would fall, there's clearly a $60,000 disparity, I think the ability to top up to that $60,000 disparity to put them in line with where they would fall under the new criteria.

And I mean it's really interesting, the St John of God settlements that we're entering into now, they specifically contract for the ability to have that top-up if as a result of this Commission new tariffs or new compensation levels are fixed. So that's already being recognised in some faith-based, and I think another one, yeah.

MS HILL: The recent — so Sonja talked earlier about a part of the Anglican Church which had changed its ways and their settlement documents say that, you know, if as a result of the Royal Commission recommendations are made, we'll review this, it will not go ~~down~~down, but it may go up.

CHAIR: That's very interesting.

MS COOPER: Yeah.

CHAIR: Thank you very much indeed. I'll now invite Ms Aldred to ask her questions, at last.

QUESTIONING BY MS ALDRED: Thank you. Just before I begin, I just have a brief few words. I just wanted to proffer a few further words in explanation, I suppose, of our approach which is, as I sort of touched on I think in my brief opening at the beginning of this hearing, the Crown's approach to this hearing generally, of course, has been to provide information to the Royal Commission primarily through the evidence of its own witnesses, and the documents that they refer to and have provided.

Given the nature and the context of the Inquiry, we've taken the approach that it's not — sorry, slow down. Given the nature and context of the Inquiry, we have taken the approach that it's not necessary nor desirable to be putting the substance of any particular differences to the Cooper Legal witnesses. And obviously we have — we probably don't have time to traverse everything either.

We do acknowledge that some of these differences will come down to differences in perspective and, of course, some of the evidence you've heard is really in the nature of submission, which we will, in due course, respond to in kind.

That approach, of course, means that there are only a few matters that I'm left with that I need to deal with today, and as I previously said, these really will just relate to

matters of context or provision of further context or a couple of issues in relation to fairness.

So just with those comments behind me, I've got a few matters that I'd like to address to Ms Cooper around Ms Hill. So thank you for your very arduous evidence before the Commission and I've just got a few areas I'd like to explore. So first of ~~all~~all, turning to the Ministry of Education.

In your evidence, I think both in your brief, your written briefs of evidence or brief of evidence and in your evidence for the Commissioners, you have referred to the Ministry requiring, before it will accept an allegation, something like proof beyond a reasonable doubt or higher, or I think you said certainly higher than the civil standard and possibly higher than the criminal standard.

The Ministry's evidence will be that this isn't a correct classification and that it applies a lower threshold to accepting allegations and being made out. And really in this regard I just wanted to refer you to a document that's been — that's in the Inquiry's bundle that you may or may not specifically have read, but this is a document that C~~c~~ounsel ~~a~~Assisting have placed before the Commission and which I'd like to now take you to. It's a document witness — no, sorry, what is the — we don't have a witness number, we just have MOE 269.

And this is a — you'll see the first document is an e-mail and it is from a policy advisor to the two assessors that the Ministry uses copied to one of the senior solicitors in the Ministry's legal team. And it starts with saying that it attaches a sample report to help us all with assessment reports, it will need amendment as required by particular ~~case~~cases, but reports should generally cover similar ground and follow the format. And it also attaches a copy of a sample legal advice memo which Jyotika uses for her memorandum on the legal aspects of each case, and that's said to give the assessors a steer on the things that the legal team will then take into account when recommending settlements or decisions.

So if we could turn over to the next page please and you'll see that this is the memorandum. Now you may not have had a chance to read this and I don't —

MS HILL: I have not seen this document before.

MS ALDRED: It is in the Inquiry's bundle rather than the Crown's and I don't — I'm conscious of issues of asking you to address the whole of the document, so I won't do that. But what I will do is just take you to briefly show you what's in it. And the first page is, this page is the first page of the template assessment report and the Ministry will say that this template was taken from an assessment actually conducted, but with all identifying features

removed. So you'll see that it's been redacted so that it doesn't show the name of the person or the institution.

And then, so if you turn over to — I'll just find the right page — so that document which then follows, and there's about another six pages long, is the assessment report itself. And I'm not going to take you through that, but what I'd like to take you to is page ~~8~~ of that document, which is the template legal advice memo relating to settlements. And the —

CHAIR: I don't think we have page ~~8~~ yet do we?

MS ALDRED: Sorry, that's page ~~8~~.

CHAIR: Thank you, it looks similar to the second one. ~~No~~No, I'm with you.

MS ALDRED: Yes, it just looks a bit like the assessor's report, they're both in the form of a memorandum and they're all written in template so they're largely the same format. So the subject is "Legal advice on historic abuse claim and possible payment" and this is the recommendation that the Legal Services team have made to the Chief Legal Advisor about payment in this case and which is said to be a template for consideration of further claims.

Now just briefly if you could turn over the page to page 9, you will see — I don't want to go into the details of the claim, but at paragraph ~~8~~, as an example claim, this is a complaint that an assistant housemaster had attempted to sexually abuse the claimant on two separate instances.

And then — and so the memorandum goes on to consider the case, but then if you go over to paragraph 14, which is on page 10, just by way of summary, there's an explanation that in this case the Ministry has undertaken a full assessment of the claim, it says the Ministry did not find any direct evidence to support the allegations and goes on to say more specifically at 14.1, that~~,~~ the Ministry hadn't been able to find records of the teacher's name employed at the school during the relevant time.

It also goes on to say that there weren't any other records of an incident or claims by any other children of the school at the time and there were no records of the person making a complaint at the time.

And so if you could then just pick out paragraph 15 please, the writer goes on to say the assessment findings indicate there was some staffing difficulties at the time in that the staff to child ratios were considered by some to be insufficient, it goes on to say there were general concerns about the suitability of staff, and later down that paragraph the assessment report also finds that the claimant was a credible witness.

So it goes on to say, "therefore notwithstanding the evidential difficulties, after a careful balancing exercise, the assessment finds that it is more likely than not that these

events occurred and that it is reasonable to accept there had been suitable and adequate staff, the incidents complained of would not have occurred".

So and then just to conclude or wrap up this report, if I could go to please page 12, and you'll see at the bottom of that page a section called "Payment Advice". If I could just pick out — yeah, that's fine, paragraph 27 records that the Crown will resolve claims based on the facts and won't use the Limitation Act to avoid making a fair offer. It goes on to repeat what was said at earlier paragraph 15, that in spite of evidential difficulties the investigator's report supports the claimant in terms of the allegations because of the general indications as well.

And then if you could turn over the page please, and, sorry, at paragraph 29 makes a recommendation that a settlement be offered in those terms. And further down, and I don't need to take you to this, there's also the offer to effectively write off the Legal Aid debt in addition to those terms.

So putting aside questions of quantum or degree, just, I need, I suppose, to put it to you that this does at least reveal that it's a little inaccurate to suggest that allegations won't be accepted unless they meet a criminal standard of proof.

MS HILL: You need to remember that that's probably the most information I've ever seen about how the Ministry of Education conducts its assessments. And so all we have to go on is the outcomes that we see at the end of that process, because we don't see the assessment reports either. So the only thing we can give evidence about is what we see and what — without any internal working.

There are times when ones like this occur, and actually we dealt with this when we looked at the MOE settlement amounts, this client is in that table in the appendix B.

On this specific incident, credibility was the factor. So he met with the MOE assessor, a lot of our clients don't have that opportunity. So I wonder what would have happened with him if they hadn't meant the assessor.

But if I was, in fairness, to say, can I be sure that a blanket approach of a very high burden is taken, then in fairness to the Crown I'd probably have to say I couldn't say that. But on what we see it's certainly higher than the civil burden of proof. And I don't think it's consistent in the way that allegations are treated either.

So while this might be an example of a lower standard, I'm not convinced that it's always this approach. But I'm happy to concede that there might be some fluctuations in there, but should there be fluctuations? I'd probably say not.

MS ALDRED: Thank you, I appreciate that. The other — the Ministry's evidence, of course, will

be that this was circulated as a template and as the proper method of assessing claims, and that that is the method that is applied. But I understand your evidence, so thank you for that.

The next point, I wanted to ask a few questions about the Ministry of Social Development next. And the first point I just wanted to very briefly touch on was just really a point of, I suppose, correction, which is at — in relation to your brief of evidence. And at paragraph 323 of your primary brief of evidence.

MS HILL: Just give us a minute to find that. Yes, thank you.

MS ALDRED: So you are talking about the CCRRT [Care Claims and Resolution Team] system and you say — you refer to a five-step process in the previous paragraph and you say that not long after the process was introduced, meetings were phased out altogether. By 2013 virtually all claims were being dealt with by exchange of documents with no face-to-face contact between our clients and MSD and then go on to say in the next paragraph; "Of course MSD continued to meet with unrepresented clients".

CHAIR: Slow down Ms Aldred.

MS ALDRED: Sorry. "So MSD continued to meet with unrepresented clients". Really just a brief point in relation to that. MSD's perspective, which is reflected in its evidence, is that it had reached an agreement with Cooper Legal that it wouldn't offer to meet with your clients unless that was expressly requested. And that that was an agreed position between yourself and the Ministry.

MS HILL: I'll have to let Sonja answer that as I had left by that point.

MS COOPER: Well, I distinctly remember reading a document authored by Garth Young only a few days ago in which he said that the Ministry had decided that they were no longer going to meet with Cooper Legal clients and that had been communicated to us. I think — so whether that's an agreement, I guess that was what was the position we reached. I would acknowledge it was very difficult to arrange the meetings, because it had to suit not only the client but the Cooper Legal team and the Ministry of Social Development team, which meant it was — the logistics were always extremely difficult.

But I'm not sure that I would agree entirely about it being a mutual agreement. I think it certainly got to the point where that's what happened, but as I say, I read a document only last week in which Garth Young communicated that we — our clients were not going to be offered meetings and we would instead be invited to provide letters, which is what happened.

MS HILL: It was an internal communication with MSD, not a communication to Cooper Legal,

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just to clarify.

MS ALDRED: Can I just take you please to just a document that was filed in relation to the *XY* proceedings, which is an affidavit of Carolyn Risk? That is Crown bundle tab 74. So that was sworn in 2015. And if I could just please have paragraph 39 of that brought up, which is at — good, thank you.

So that records Ms Risk's evidence before the High Court that "In August 2012 the Ministry agreed with Cooper Legal that the Ministry would not meet with Cooper Legal clients unless expressly requested to do so. This was to reduce duplication for claimants telling their story and also resulted in speeding up the process". And went on to say that the Ministry based its assessment on written material.

I really just point that out because, and I accept that this is all a while back, Ms Cooper, as well, but the Ministry's perspective is that there was never any intention to refuse Cooper Legal clients an interview, and that this was really a matter that was effectively by arrangement.

MS COOPER: I'm not disagreeing that we would have reached an agreement about that, but what I'm saying is that this had already been an internal decision made by the Ministry in any event. And so I'm not disagreeing that we would have acknowledged, given those practical difficulties that I was talking about, that we couldn't continue with them. I'm just saying that the Ministry had already reached that view anyway.

MS ALDRED: Perhaps we'll be able to see that document and talk about it at a later stage. So the next thing I just wanted to talk to you about is the introduction of the two path approach. And in your brief of evidence, and I think again in your evidence before the Commissioners, you have said that ultimately it was announced without notice to you and you heard it being publicly announced on the radio. But you have accepted that there had been, up to a point, quite significant consultation with Cooper Legal?

MS COOPER: Absolutely. I mean we were wanting to reach an agreement, I mean that was the whole purpose and I think that was why we were so stunned that after months of consultation and work to try and reach an agreement about a process, when it was ultimately announced we heard it on the radio, and then after the broadcast by Anne Tolley we then got a letter from the Ministry of Social Development.

So that was the point we were making, that, you know, we had in good faith embarked on this long process to try and create a good settlement process which, as we've explained, that fell down, and then at the end of the day we don't even get any advance warning it's being announced, we hear it on the radio.

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MS HILL: I do think that letter arrived very shortly after the radio show.

MS COOPER: After the radio, yeah.

MS HILL: Perhaps there was an intention we receive it beforehand, I couldn't tell, but I think the letter arrived in our inboxes after the publicity.

MS ALDRED: The morning report.

MS COOPER: Yes.

MS HILL: So there might have been good intention to let us know beforehand, but the — as it turned out, it didn't work that way.

MS ALDRED: But in fact too, it was ultimately your decision, was it not, to finish talking to the Ministry about the two path approach?

MS COOPER: Well, I think, I certainly acknowledge that and that's because the fiscal envelope was not sufficient to achieve what the Ministry said it wanted to achieve through the accelerated process. So we withdrew at that point, because we didn't think it was a process with integrity.

MS ALDRED: And that was reflected in Gendall J's decision in the *XY* case, wasn't it?

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MS COOPER: Yeah.

MS ALDRED: That he refers to a letter you wrote to MSD saying that you were effectively withdrawing from any further consultation?

MS COOPER: Absolutely.

MS ALDRED: Yes, and he also refers, doesn't he, to the Ministry having given you notice that it wouldn't necessarily expect to agree every aspect of the settlement.

MS COOPER: That's — I mean that was something that we were discussing all the way through, and I mean in any process we're not going to expect to agree everything. But when the fundamental premise of the process is broken from the start, and that is there wasn't sufficient money to achieve what the Fast Track process was intended to achieve, and so it had this inbuilt lowering of every offer to fit within a bell curve, that was not something we were prepared to sign up to.

MS ALDRED: But ultimately it was your decision to withdraw from the negotiation about it.

MS COOPER: Oh, yes, yes.

MS ALDRED: Just again, on the two path approach, once it was implemented, you've expressed some concern, I think, in your evidence relating to those groups of claimants who were excluded from it. You refer specifically to initially the exclusion of siblings of people with assessed claims.

MS COOPER: Yes, I think that was something we learned once we got served with the court

documents.

MS ALDRED: ~~Also~~Also, the high tariff offenders you spoke about yesterday I think saying that they were, until the change of Government and your letter, shut out of that process, or their claims were put on hold?

MS HILL: Yes, so when we got the letter advising about who would be made a Fast Track offer, there was schedule 1 with who was going to get an offer, and schedule 2 the people who were not — that included high tariff offenders, people who had litigation against an NGO at that time, and —

MS COOPER: The stuck claims.

MS HILL: Yeah, although they weren't on the list of —

MS COOPER: No, that's right, they just didn't get an offer.

MS HILL: Has that changed? Sorry, I think I see what your point is, that the exclusion of people who had siblings who had received an offer, that was a proposed exclusion, but I think in the end it may not have been implemented.

MS ALDRED: No, yeah, that was my point thank you.

MS HILL: Sorry to jump ahead.

MS ALDRED: No that's helpful, I just wanted to clarify, I think that you in fact — I think you in fact do touch on this in your evidence at paragraph — I've noted paragraph 408 but I don't think we need to go there.

MS COOPER: No.

MS ALDRED: But you accept that ultimately the sibling claims were brought in into —

MS HILL: The particular one didn't survive into the final process, that's right.

MS ALDRED: Yeah. So — and the reason I raise that is just because the sibling exclusion, I think, was touched on in your evidence, but I just wanted to clarify that in fact those people weren't ultimately excluded from the final version of the process. And similarly with high tariff offenders, whilst they were another excluded group, that was actually against the Ministry's recommendation, and I think that you acknowledge that in your evidence yesterday, Ms Hill.

MS HILL: Yes, and we didn't know this at the time, of course. Only subsequent OIAs, when we could see the advice from MSD saying that it was unworkable. There was clearly reluctance on MSD's part to implement it and I do acknowledge that, although in the end a policy was formulated, it was only the change of Government that brought it to a halt.

MS ALDRED: Thank you, so just one other matter in relation to MSD, that is in relation to Mr Young. Yesterday in your evidence you made some remarks to the effect that Garth

Young, who was the former manager of MSD's historic claims team, was, in your words, inherently conflicted. And you referred specifically to his formal work as a social worker.

MS HILL: Yes.

MS ALDRED: I need to raise this with you because that, in my view, is quite a serious allegation to make about Mr Young, and you gave as an example that he was conflicted on the claim by the Sammons sisters.

MS HILL: Just to clarify my comment, that Mr Young had been open about that conflict in relation to Georgina Sammons and had — there was a line somewhere where he had acknowledged that conflict in correspondence and said he had not been involved. I don't know the position in relation to Tanya and Alva. I know that he had less involvement with them as a social worker. I'm not sure of his involvement with the settlement — the lack of settlement of their claims.

MS ALDRED: Thank you, so Mr Young's evidence for the Commissioners will be that his involvement with Georgina Sammons was not as her social worker but as a team leader or supervisor in that — in relation to the care provided to her. And that, in his words, once the claim reached MSD he immediately removed himself from it and had nothing further to do with it.

MS HILL: I'm certainly not suggesting he had any improper involvement in the claim, it was demonstrative of the fact that ~~any~~ anybody in Mr Young's position who used to be a social worker who is now involved in historic claims, there has to be a conflict there. So when I talk about inherent conflict, the situation rather than any specific allegation of anything in relation to Ms Sammons.

MS ALDRED: Mr Young will give some further evidence, though, to the effect that actually this hasn't been a problem for him in his work and what he will be able to tell the Commissioners is that the Sammons' claim was the exception, and that aside from that claim he has never seen a claim that has included allegations against an ex-colleague of his.

And he will also be giving evidence that he's rarely been in a position of conflict. I think a couple of occasions he will tell the Commissioners he's — allegations have been made by someone who may have been in his care — not about him I hasten to add — and that similarly with the Sammons case he's immediately removed himself.

But his evidence will be that in spite of the high volume of matters that have come across his desk, in this capacity, conflict has not been an issue. So I just needed to raise that really, I think out of fairness to Mr Young.

MS HILL: We have no visibility over those matters, so his involvement with Gina Sammons was really demonstrative of a problem that can arise. As I say, I don't make any particular comment, I don't want to cast aspersions on Mr Young, that wasn't the intention.

MS ALDRED: Thank you, that's appreciated. And finally, just turning to Legal Aid briefly, so I think there's — it's fair to say there's been a suggestion in your evidence that Legal Aid has met with other agencies and the words you use in your brief of evidence, which I won't take you to because I don't think there'll be a problem with this, is to negotiate a financial strategy for dealing with the historic abuse claims.

And the reason I raise this is simply because in effect this allegation challenges the independence of the Legal Services Agency and latterly Legal Aid as it sits within the Ministry of Justice. And from the Agency's and Legal Aid's point of view quite a significant allegation. And I simply want to put it to you that witnesses for Legal Aid will give evidence that any meetings that they've had with other Crown agencies have only ever been for proper purposes.

MS COOPER: Look, I accept that that's what Legal Aid will say and all we can say is our experience, so that's very much the evidence from our experience of that. And I think, look, we have a very, very good working relationship with Legal Aid and I want to say that, that since we went into mediation with them in 2012 and we had an independent consultant who was appointed to work with us and other — Treaty firms, that relationship has been really good. We have been able to work with Legal Aid constructively to resolve funding issues.

And it's been really good because we have been able to communicate where our practice has had to change to respond to changing ADR processes, so they've been part of that discussion. And it's been such a different dynamic to work with where they meet with us, like we still meet once a month as much as we can. We tell them about the files that we're working on, generally what's happening, we copy them in on important, you know, correspondence that we receive from the various agencies that we are working with. It is a very constructive relationship and I think that's important to highlight, we said that in the contextual hearing and I say that again now.

But I do think that there was a period in the withdrawal of aid process where that independence was compromised and I don't resile from that. I think that independence was compromised. I think that there were communications occurring that should not have occurred, and when I refer to the Solicitor-General's evidence about the *Martin* case, which was in 2007, saying that Crown Law should not be communicating directly with Legal Aid

and yet there is clear evidence of those kind of direct communications, even in the Solicitor-General's own evidence from 2009, so that's after that decision. And we know from our own — the Official Information Act material we collected in that Legal Aid was part of joint meetings with Crown Law, and the agencies that we were engaged in litigation with. And it just raises questions, particularly given that we were in the middle of this withdrawal of aid process. So that's, you know, I think that's the inference that we've drawn.

MS ALDRED: You will have seen that in the brief of evidence filed on behalf of the Ministry of Justice it acknowledges the positive relationship with Cooper Legal now and also acknowledges that that has perhaps not been so positive in the past. And I think it's appreciated, your acknowledgment of the current positive working relationship is appreciated.

The issue of independence is a matter that the witnesses for Legal Aid will be giving quite significant and detailed evidence on, including evidence in relation to the meetings that you have spoken about and we'll be able to refer to documents, all documented minutes of those meetings.

MS COOPER: And again, they may be documents we've not seen, because there may have been legal professional privilege claimed for them. I don't know. I mean we did our Official Information Act requests and we got whatever was deemed to be released to us under the Official Information Act. So again, there may be material that we haven't seen.

MS ALDRED: I think the main thing I was thinking of is a reference to minutes of a meeting sent to you as well, so — which I can take you to if I need to.

MS COOPER: No, I think I know which one, one of a number you're talking about.

MS ALDRED: Yeah, so I really just put that because I need to really conclude this, I suppose, by saying that the Ministry's evidence will be that it's maintained its independence and that it's only consulted with the Government agencies where it's been appropriate. So that really was all I needed to put to you on that, Ms Cooper.

MS COOPER: Thank you, just perhaps if I can just also say that when the relationship was working, Legal Aid actually came along with meetings to us(sic) with the Ministry of Social Development. So it was all completely transparent, we were all at the same meetings, we all were aware of what was being discussed. And, you know, that was again a really good working relationship. And so I think the issue here is transparency, and where there isn't transparency I think that just raises issues, particularly within the context of a very aggressive withdrawal of aid process. So that's just my response there, and I

emphasise again the landscape is very, very different now and we have a very solid, good working relationship.

MS ALDRED: Thank you Ms Cooper. I don't have any more questions for you both, thank you very much.

CHAIR: Thank you Ms Aldred. Is there anything arising?

MS JANES: No thank you, Madam Chair, no issues arising.

CHAIR: With great happiness I can say that we have not only concluded for the day but we have concluded early and I'm sure that's a great relief to both of you. On behalf of the Commissioners, can I please thank you both, we acknowledge the vast amount of work that you've done over decades for survivors and we have heard, I think it's fair to say, both in this hearing and in private sessions with survivors, the extraordinary debt that they owe to you for your work.

The Commission also owes a debt to you for sharing so generously both your oral evidence today and I know vast documentation that you have provided to us behind the scenes without which we would be put to enormous amount of trouble. So please accept our thanks, our appreciation for the work that you've done and we hope the continuing work that you will do with the Royal Commission so that we can advance this very important cause. So thank you both very much indeed.

MS COOPER: Thank you.

MS JANES: Madam Chair, before you conclude, prior to the break I had mentioned we would have one more exhibit which was going to be a collation of all the — and we now produce that exhibit.

CHAIR: That was very fast work, thank you. This is the — these are the proposed solutions which are now taken out of your brief of evidence and compiled into one document?

MS HILL: I think, as we said in our conversations over the last few days and since that was written, because that was written in November or December last year, so I think we've developed quite a lot on some of those concepts.

CHAIR: But this is at least a basic thing, we will read this in light of the evidence that you've given today, so thank you. Is that Exhibit 3?

MS JANES: That's Exhibit 3.

CHAIR: Thank you. Is there anything else arising from anybody else in the courtroom apart from mana whenua? No more, then we conclude the session today.

Hearing closes with waiata and karakia mutunga by Ngāti Whātua Ōrākei

Hearing concludes at 3.14 pm