ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
STATE REDRESS INQUIRY HEARING

Under	The Inquiries Act 2013
In the matter	**of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions**
Royal Commission:	Judge Coral Shaw (Chair) Dr Andrew Erueti Ms Sandra Alofivae
Counsel:	Mr Simon Mount, Ms Hanne Janes, Mr Andrew Molloy, Mr Tom Powell and Ms Danielle Kelly
Venue:	Level 2 Abuse in Care Royal Commission of Inquiry 414 Khyber Pass Road AUCKLAND
Date:	5 November 2020

TRANSCRIPT OF PROCEEDINGS

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(Opening waiata and karakia)

CHAIR: Tēnā tatou anō, nau mai hoki mai. Tēnā koe, Ms Aldred, looking forward to hearing your closing submissions.

CLOSING SUBMISSIONS BY MS ALDRED

MS ALDRED: Tēnā koutou katoa E te rau rangatira, e te mano roimata.
E arahi ana i tēnei kaupapa nui whakaharahara
Tēnā koutou katoa.

The submissions that I am about to deliver or summarise are intended to assist this Commission by responding to the issues that the Commission itself set out in its own scoping paper for the public redress hearing. And the scoping paper basically lists the issues in two categories and the following submissions will largely address the Crown's response to the over-arching issue for it, which is expressed by the Commission as how did the Crown receive process, manage, conduct and resolve civil claims involving abuse in State care alleged to have occurred during the relevant timeframe. That timeframe of course is 1950-1999 but of course it's acknowledged, I'll slow down, but of course, my apologies, but of course it's acknowledged that the Commission's scope is somewhat broader than that and also looks at processes up to the present date.

The first issue which is broadly framed relates to the policies, procedures, processes and strategies of the Crown in relation to civil claims for redress and the reasons for changes made.

The claims, of course, were initially notified to the Crown by way of proceedings filed in the High Court and

those, as you heard from Ms Jagose QC, were generally received by Crown Law. And Crown Law would be responsible for the conduct of that litigation.

The Solicitor-General's evidence was, of course, that the initial stages of the claims in the early 2000s and working through to the end of the White High Court litigation in 2007, the Crown took an orthodox approach to the litigation, largely undifferentiated from any other litigation defended by the Crown.

And, as the Commissioners heard, and will know of course, an exception to that approach was made in the case of the Lake Alice Child and Adolescent Unit claimants, which responded to a CLAS action filed in the High Court on behalf of 88 claimants.

A Cabinet decision was taken in the early 2000s to provide compensation and apologies to the recipients of that abusive treatment or abusive mistreatment, I should say, in Lake Alice. And the Commission, of course, well knows about the settlement process which involved Sir Rodney Gallen making assessments of how the funds provided by the Crown ought to be divided between people who made claims.

That, of course, has been the only CLAS action brought against the Crown and other litigation has been brought by individual survivor claimants.

In this context, I think is a good point to talk about the issue that has been spoken about from time-to-time during this hearing of systemic abuse. And that question of course is relevant to considering the scale and nature of abuse in State care and a failure by the Crown or its agencies or personnel to prevent it. But it's also been used in a more I suppose specific way in relation to this redress hearing. Of course, the Commissioners will appreciate that abuse has been - abuse being characterised as systemic or not has generally been the basis on which the Crown has justified or explained different approaches being

taken between the survivors of Lake Alice and the survivor claimants in other categories in relation to the residences and educational settings, for example.

So, systemic has been used and I think this was explained very clearly by the Solicitor-General to mean abuse that was so uniformly experienced in the institution and clear from its own record, as in the case of Lake Alice, that the Crown was prepared not to investigate individual claims but rather, to proceed on the basis that if a person was in that institution at the relevant period, that would be an adequate basis for redress.

And, of course, the flipside of that I suppose, has been that abuse occurring outside that very specific Lake Alice context has generally been described as not being systemic or endemic.

Now, the Commission, of course, is probably uniquely positioned, in terms of the work it has done and will continue to do over the forthcoming years, to form its own view of whether abuse has been systemic and the ramifications of that finding or those findings for redress.

As the Solicitor-General said, it isn't clear, in fact, whether the Crown has considered what systemic abuse would look like outside of the specific Lake Alice category.

And the differences in exactly what was meant by systemic at various points in time may have clouded those issues.

The proper question may be, and I suggest is likely to be, whether the absence of safeguards and systems that properly worked to prevent abuse and/or the failure of agencies to act promptly and properly on allegations of abuse or reports or when abuse was discovered is a systemic failure.

CHAIR: Ms Aldred, that was something I was going to put to you until I actually saw it, and I think it's quite clear that while there was one particular use of the term systemic in relation to Lake Alice and

subsequent consequences, there is very much open another interpretation, isn't there?

MS ALDRED: Absolutely.

CHAIR: Thank you for clarifying that.

MS ALDRED: Yes, and that of course, I should add I think, that will have to be a multi-layered question.

CHAIR: Yes.

MS ALDRED: Because it necessarily spans different agencies, different legislative settings and even needs to be considered in terms of perhaps its national, regional and even institutional meanings. So, it's not a simple matter, I suppose, but it's certainly one where I think we can accept that there has been perhaps an overly narrow or focus on the meaning of that term.

At this point, I just move on to the next section of my submissions which respond to largely the question about the agencies' individual redress systems. And that raises issues of criteria for eligibility and the receipt of monetary redress and how that was calculated and the publicity around these or information around these processes, as well as non-monetary outcomes.

So, as I say in the written submissions, survivors of course, as I've already said, initially proceeded by filing claims in Courts and the availability of that redress was dependent on first establishing liability on a legal basis against the Crown.

The considerable barriers to establishing liability in that way have been dealt with in a lot of detail before the Commission and Ms Cooper's own evidence quite properly was primarily concerned, at least the first part of her evidence, with these legal obstacles and she properly acknowledged the very narrow scope for legal claims succeeding in Court, which of course is one of the - which

is probably the underlying problem that brings us to the issues that we are confronting in this hearing.

As the Commission has heard though, over time agencies in receipt of Historic Claims developed their Resolution Processes to provide claimants with an alternative to Court proceedings. And that moves away from this litigation focus lens, or it certainly should do, that would typically focus on the likely outcome if a matter proceeds to Court.

And, of course, the turning point in that regard was the change in the Crown's Litigation Strategy in 2008 and the movement away from that litigation focus and perhaps - and the shift in the meaning, as the Solicitor-General explained the word meritorious from the Crown's point of view, in terms of when it would regard a claim as meritorious and deserve of some redress.

We do note that the way the Crown engages in litigation has also changed, and I will come to that particular point at a later issue, at a later point in these submissions, but it is relevant to note that here because we have the development of the Alternative Dispute Resolution Processes, we also have evidence, both from the Crown and also from Cooper Legal, that the way that the Crown engages in the litigation process has changed in some material respects. And the way the Courts have engaged in the litigation process and managed these claims has changed.

And I say that partly because, of course, a focus, and I think a very proper focus, of the evidence in this hearing has been on the claims up to and around the time of the White litigation. That litigation concluded 12 years ago in the Court of Appeal. There has been a lot of change since then, certainly in terms of the way that litigation would be approached now, specifically the Alternative Dispute Resolution Process would have been open and I suppose in full swing, one might say.

Secondly, for the reasons that I think have come out in the evidence, the litigation might well have been addressed in a different way as well in some regards.

So, while I do not at all, and I mean I think the same probably could be said of Ms McInroe's case, as the Commissioner's appreciate, was concluded by 2002, that again is a case which would have proceeded in some regards differently, at least in terms of the tone of the Crown's communications, had it proceeded in the current era of litigation.

So, the redress processes themselves, in terms of the Resolution Processes run by the agencies, have changed over time but they have some common features, including a lower standard of evidence. So, I say that meaning less than the civil standard of the balance of probabilities. And also the use of categories of abuse, where quantum is assessed broadly based on the seriousness of the allegations, and that's split up, as you know, generally into categories.

I should say here that all of the agencies or most of the agencies in their evidence acknowledged that the concept of applying categories in this context feels an inadequate or somehow inapt response to these individual claims of pain and trauma. That point was made by Ms Hill in her evidence as well, that effectively Cooper Legal have engaged with the Crown in relation to the development of these categories. And I think it's fair to say that both of the parties involved in that discussion saw this as a sort of necessary evil, in terms of how do we respond in a way that's consistent but does recognise an increasing scale of harm. So, I do think it's important to point that out.

Criticism that the quantum of redress in the Dispute Resolution Process is insufficient has been a feature of the evidence from the witnesses other than Crown witnesses, and I have to add perhaps understandably so because of course it's understandable that people will somehow try to equate

the amount that they're receiving with the seriousness of what they have been through and the effect that that has had on their lives. And I don't in any way diminish that perspective. I understand it and the Crown understands it.

But the following points need to be made in this context. The first one, which is really important, is the Accident Compensation legislation. And so this, as the Commission knows, is a legislative manifestation of a social contract which followed the work of the Woodhouse report in 1972 leading to legislation first enacted in 1974 or first came into force in 1974.

The purpose, of course, of that legislation is to replace personal injury litigation which was subject, of course, to all the problems, delays and issues and costs and personal costs for plaintiffs that we've heard about in the present context.

CHAIR: And litigation risk and all of those other -

MS ALDRED: Litigation risk, lack of certainty, and all those awful things that we know litigation generally necessarily entails.

So, the government made a choice, and it was a very brave choice, I suppose, in that it's unique in relation to New Zealand Aotearoa, in a global context to replace that right to sue, which is a significant right, with access to a no fault compensation scheme aimed at providing people who suffered accidents and injuries and also including sexual abuse or criminal assaults with access to compensation which was not dependent of establishing fault on the part of any other party.

So, that is the legislative context and unique policy framework in which agencies are operating. And, I suppose, the sharp end of that is starkly illustrated in the White litigation. We're notwithstanding positive findings of sexual assault against Mr White, the Court made no finding of liability and awarded nothing to the plaintiffs, and that

finding was based, as you've heard, in part on limitation but also the ACC bar applied.

The agencies, therefore, they've been forced with the issue - sorry, they've been faced with the issue of what should be provided when confronting claims that face legal barriers recognised by the Courts, which therefore prevent or preclude generally findings of Crown liability, but where it is recognised that children and other vulnerable people have been harmed while in State care.

The question in relation to payment levels must be viewed against this background. So, what is the appropriate level of payment by an Agency disbursing public funds where legal liability is unable to be established or unlikely to be established?

And I just noted that while in some earlier - there may be cases that can overcome these obstacles, although, as we've seen, and the examples I give in the written submissions are the W and S cases in the early 2000s where liability was found in relation to abuse in those cases and they were held to be able to overcome both limitation and the ACC bar. But, again, the consequence of that was a legislative amendment to retrospectively, to amend the ACC legislation to have further retrospective reach in relation to allegations of sexual abuse occurring before the enactment of the ACC scheme.

So, again, the reflection here of this very strong and unusual policy in relation to the provision of an alternative to litigation being the ACC scheme.

So, a consistent approach across the agencies, in view of these issues, has been to treat payments as payments to recognise harm that has been suffered, rather than as compensation or an entitlement.

And I don't seek to make submissions about the appropriate level of those payments or whether the payments that have been made are appropriate. The Commission will,

in due course, form its own view about the level of those payments but it is important to place them in that context.

CHAIR: Can I test you a little bit on that proposition? It's about harm that's been suffered rather than compensation. It's quite difficult from where I'm sitting to really see much difference between those two things. If you're paying somebody for the harm they've suffered, then you're compensating for the harm?

MS ALDRED: I accept that. I think perhaps I could put it in a more basic or colloquial way. I would say it is agencies recognising people ought to be given something in recognition of what they have gone through, based on generally the seriousness of the allegations.

I think it was clear probably Mr Opie's helpful questioning, I think, of Ms Hurst on this point brought out that issue around, you know, agencies not seeking to assess the effect of abuse on survivors for the purposes of calculating quantum.

CHAIR: And that's where the problem is, isn't it? Because if you say it's for harm, there has to be an assessment of the harm before you can fix a figure? And if there's been no assessment, then how do you fix it?

MS ALDRED: How do you fix it, yes, I understand that and I don't - I think probably the better categorisation is that these are payments in recognition of - trying to recognise trauma without attempting to quantify it or except beyond that relatively broad initial categorisation.

CHAIR: That's what leads to all the problems in a way, doesn't it?

MS ALDRED: It does.

CHAIR: If you don't identify it and name it, then you can see from a survivor's perspective, that it doesn't feel as though what you're getting somehow matches what happened to them?

MS ALDRED: I absolutely understand that and that raises, I suppose, the related issue of survivors feeling that they want to have - some survivors, not all survivors, as we've heard, but some survivors having a preference for specific allegations being recognised and specific offenders being named in their apology letters.

These are all facets of what essentially is a complex issue, I suppose, which is how do you repair or seek to repair without the sort of broad legal framework that you have where liability is clear? And we have, for example, judicial awards which clearly set out quantum expectations in the way, for example, that the English Courts have the Judicial Guidelines.

CHAIR: I was just going to say that's the great conundrum we have, as you have quite rightly said, that the ACC structure is so unique to Aotearoa New Zealand that international comparisons, are going to be really difficult and may be just too problematic. We have to devise our own way of grappling with this, don't we?

MS ALDRED: Yes, yes, I think so.

CHAIR: Thank you for putting the issue so squarely in front of us, thank you.

MS ALDRED: I set out next a summary of each of the agencies' systems and I'm going to skip through this briefly because the Commission has heard clearly and in considerable detail from the Agency witnesses who have given evidence about the processes that each of them have implemented to try and, as I say, recognise without compensating.

The Ministry of Health first, just as a very brief statement, I think it's fair, I've tried to or I will try to hone in a little bit on areas of concern, rather than simply bland descriptions but the timing, the criticism generally of the Ministry's redress process has been addressed to quantum, I think it's fair to say. Its timing hasn't been an issue. That has been a fast process, it takes around 4-6 weeks from the receipt of records to result in an offer to claimants under that process, as Mr Knipe explained.

And it has a low standard of proof, so that generally once a person is established that they were in care in an institution, records will be looked at and if they stack up on a very rudimentary basis, then the Ministry's approach will be it will make a payment and an apology, if it is reasonable to believe that the abuse may have taken place for the purpose of making an offer.

So, that is the Ministry of Health's approach. And the way that monetary amounts are arrived at is broadly described in paragraphs 22-24 of the submissions. There is a maximum payment under the current Historic Claims Process of $9,000, with a possibility of settlement up to $18,000 in some cases where limitation is unlikely to be an issue.

And you can see why that might be applied in that health context, where specifically, without commenting at all on other contexts, where survivors will have been generally patients in psychiatric institutions.

CHAIR: Ms Aldred, you can see, I'm sure it's starkly made obvious by these submissions really, that there is an inherent unfairness on the face of this submission, isn't there, about the Lake Alice and the others? Take out the systemic issues which we've already discussed where you have a patient in a Psychiatric Hospital other than Lake Alice who may have received similar treatment, like behavioural

modification or punishment through the use of ECT, to put it at the highest level, but because it wasn't Lake Alice they are subject to a different quantum regime?

MS ALDRED: Yes.

CHAIR: That does seem to have an inherent unfairness about it or at least a lack of consistency, to put it politely?

MS ALDRED: Yes, and I think it's reasonable in view of that question to express for those who don't have a copy of the written submissions, that the average payment in the Lake Alice settlements was about $70,000. So, yes, I have to - of course I acknowledge there's a significant disparity.

COMMISSIONER ERUETI: There is also the matter of independence, the degree of independence I suppose, of the earlier two rounds, so you had an independent adjudicator in Justice Gallen and then even in the 2011 CHFA settlement where at least you had Cooper Legal come in to help assess the amount that was going to be paid, compared to the HARS process we have now which is managed within the Agency.

MS ALDRED: Yes, I accept there was an independent process. Sir Rodney Gallen was a retired High Court Judge who was instructed by the Crown but conducted that process himself, rather than being done in-house. That's absolutely the case.

So, in terms of another issue, I suppose, of criticism for the Ministry was around the provision of information about its redress process. And it's accepted generally that information is available or has been available from the Confidential Forum through CLAS and more recently and currently, of course, this Royal Commission, that information, of course, should be put on the Ministry's own website, noting of course there will always be people who

don't access websites but that is accepted, and that isn't in dispute.

The non-monetary outcome in the HARS process, as Mr Knipe explained, are simply the provision of an apology and that can be adapted if it's needed to suit individual claims, although it has generally been by way of template.

Just moving on to MSD [Ministry of Social Development]. Now, of course, the Ministry of Social Development receives by far the largest number of claims, it's a massive number of claims compared to the other agencies. And probably for that reason, it has undergone the most evolution, in terms of changing processes.

Delays need to be spoken about upfront because they have been a significant feature of survivor evidence and MSD has acknowledged that the delays in its process are unacceptable, they need to change. And there are, as you heard particularly from Ms Hrstich-Meyer, initiatives on foot to change this. There has been a very significant injection of further staffing into this area but I think she very frankly explained to the Commission that it has taken some time, for obvious reasons, to upskill and train those staff and have them working with claims at full tilt.

And on top of that, of course, there is a rising tide of claims or a continuing wave of claims perhaps that are coming in. So, those are very real challenges and I think it's clear that the Ministry is trying to grapple with them and accepts that the present state of affairs can't continue.

In terms of eligibility for engagement in the redress process, I set that out at paragraph 28. The point I want to make is that generally, the turning point there for MSD, as Mr MacPherson explained, was the Crown Litigation Strategy being revised in 2008 to provide for the Ministry really to engage in settlement with claimants where they might not have a legal claim against the Crown because of

the barriers we've heard about but they certainly are accepted to have a moral claim or a moral case for redress.

Mr Wiffin's case, which we have heard a lot about, is a case that spanned really the two areas of the Crown litigation, sorry the two eras of the Crown Litigation Strategy. It wasn't properly assessed on the basis of setting aside legal defences until the claim had already been discontinued. And even after the adoption of the 2008 Crown Litigation Strategy, with its focus on assessing claims that were factually meritorious, Mr Wiffin was not treated in that way.

MSD acknowledged the inadequacies in the way the claim was handled and it acknowledged that at the time that Mr Wiffin's claim was reviewed in 2010 and ex gratia payment made.

And, at this hearing, MSD witnesses and the Solicitor-General apologised again to Mr Wiffin, including for delays in assessing his claim and failures to take into account and disclose to Mr Wiffin relevant information the Crown held about his allegations, including specifically information relating to Alan Moncreif-Wright's sexual abuse conviction history.

It is clear that Mr Wiffin's evidence and what has been drawn out in this context about the handling of his claims has raised very significant concerns for the agencies concerned.

So, in relation to monetary amounts, again there have been some variation through processes that the Ministry has adopted. The latest iteration of that is the November 2018 handbook which includes changes to the ADR process, including seven categories, ranging from payments of around $3,000 at the bottom end to above $55,000, and higher payments have been made for serious or prolonged abuse.

MSD has endeavoured to achieve consistency between payments across its different systems and of course that is a matter that you've heard quite a bit of evidence about.

In terms of the availability of information about redress, that is readily available online and there is a brochure and Historic Claims business process and guidance on the Ministry's website intended to provide greater transparency around the process, and that was developed as part of the post 2018 changes.

And further work is even being done in that regard.

In terms of the way claims are resolved in non-monetary outcomes, resolution is typically by settlement payment, although there have been some payments made on an ex gratia basis before 2018. And there is an apology letter which Ms Hrstich-Meyer explained is now developed through a process of consultation about what claimants would like to receive as part of their policy. But, again, I think it's only fair to say that, as Ms Hrstich-Meyer acknowledged, there are limitations on that from the Ministry's point of view which I think - which related, she accepted, to risk in relation to accepting allegations, for example, about offenders when the Ministry has applied that lower standard of proof.

Another potentially significant change to the redress available, still in a pilot phase, is providing wraparound services by way of a community provider, using a navigation delivery model. The focus of that support will be tailored to each claimant based on their own identified goals, for example employment, accommodation, education, therapeutic support or whanau reconnection support and Ms Hrstich-Meyer gave the example of one of the current pilots being in relation to a man who had said that his goal in this process was to achieve employment, he wanted a job.

This, I expect, is likely to be of interest to the Royal Commission as the pilot develops, and the Ministry of course

will be prepared to provide updates in relation to that process.

I note at 33 just other forms of redress that MSD has been able to provide, including counselling or linking up with appropriate support, such as counselling through ACC, also the provision of, I think I should also add there the provision of some money to pay for legal costs, and also including non-represented claimants are given a payment to assist them in relation to the settlement agreement, so that they can be informed before they enter into that waiver of their rights.

Wellness payments were also developed as a means by which claimants who weren't eligible for a settlement payment by MSD might still receive some funding for services, and that was covered in the evidence of Mr Young.

The Ministry of Education, its processes were covered in the evidence of Ms Hurst. And at the outset she accepted that that process has been affected by very significant delays. She acknowledged that those are frustrating for claimants and MOE [Ministry of Education] are endeavouring to take steps to address that.

A major recent step, of course, has been the appointment of five additional assessors for these claims. Previously there were two, there are now seven. But properly, Ms Hurst recognised that even then a large part of the delay is likely or does in fact arise from the record gathering process and the making available of Ministry records and school records to claimants.

So, even with that increase in staff, she acknowledged that really there needs to be a focus on working out how that can be streamlined or expedited so that people aren't waiting for too long before they can see their records and understand their care journey through the Ministry.

In terms of eligibility, I set out at paragraph 35 that a claim will be eligible for assessment if the Ministry is the

correct defendant. And, of course, the Commission has heard about the issue in relation to post-1989 liability where schools, Boards of Trustees, of course since that date have had liability, have had full legal personality and therefore liability for claims against those schools.

The claims, therefore, are about events at any closed school or an open primary school before 1989 and that includes residential special schools.

The information about MOE's redress process is on its website and there are various ways of making contract with the Ministry, including I think Ms Hurst referred to an 0800 line.

The approach to quantum of the Ministry was based on MSD's quantum payments, and that was taken on board or that process was gone through when MOE established its process.

CHAIR: Ms Aldred, one of the things that struck me about the Ministry of Education evidence was it really only came to me as we heard it through, really the focus of Ministry of Education is the residential special schools.

MS ALDRED: Yes, I think that's right.

CHAIR: So, saying it like that doesn't sound very unusual but in fact these are our disabled -

MS ALDRED: Disabled claimants.

CHAIR: And most vulnerable claimants.

MS ALDRED: Absolutely.

CHAIR: I think the challenge there is to make certain that the redress available for that special cohort of people is tailored with enough expertise, not just general counselling experience but people who truly understand the disability world. I think that's something that struck me personally, I must say, throughout that evidence. Putting aside all the other educational issues, this is a very special group that needs special treatment.

MS ALDRED: Yes, absolutely. I don't think - certainly that would be the Ministry's view of these issues that confront it.

CHAIR: Yes.

MS ALDRED: I can't recall precisely Ms Hurst's response but I do know when she was giving her evidence, she referred to the provision of assistance for people with disabilities navigating or going through the Ministry's redress process.

CHAIR: I just think it's fair to flag that that's something we are particularly interested in looking at developments for the future.

MS ALDRED: Thank you.

CHAIR: And it's something, as we did with the Solicitor-General, pointed out some things that we felt needed addressing.

MS ALDRED: Thank you, I am sure that the Ministry will take that on board.

COMMISSIONER ALOFIVAE: There's an invisibility there in the disability space that has been hidden for far too long and I think that's one of the issues that the Ministry grapples with, it came through in the evidence, it's certainly evidence that we're hearing in other circles that are coming to the Commission. So, it would be really important for this community to see that they're actually being heard and understood by the Ministry. So, by the same people that are meant to deliver these services, that they're actually being informed by those that are most greatly impacted.

MS ALDRED: Yes.

COMMISSIONER ALOFIVAE: So, the ripple out effect into their families and the communities in which they actually congregate in.

MS ALDRED: Yes, thank you. I think it's really important for those points to be drawn out and I appreciate that the Commission, the Chair and Commissioner Alofivae have made that so clear.

COMMISSIONER ERUETI: I just want to add that beyond the special residential schools, when we take the point about Board of Trustees and separate legal personality and so forth, but there are all these schools and it just seems like there is this blind spot for us so far about the processes that are being used by Boards of Trustees to address issues of claims of abuse and neglect, they don't seem to have quite got there yet on this evidence.

MS ALDRED: The Ministry, I suppose, and the Crown generally aren't in a position to address the processes that boards take. They have responsibility for schools. No doubt that will be something that the Commission engages with, in terms of engagement with boards directly. But, yes, I accept that is a blind spot at this point.

COMMISSIONER ERUETI: There are some degrees of responsibility through the Teaching Council and through other means, right, which means that, I mean, it's not completely divorced. I don't want to get into the detail of this but definitely it's - it's for us to learn more about what is happening in that space and how it's co-ordinated and made consistent across all the different Boards of Trustees.

MS ALDRED: The two things I can say in response to that properly made point, I suppose, are that, an acknowledged point. Firstly, the Ministry's evidence was that when it recognises that a claim needs to be brought against a board of trustees, rather than the Ministry, it will endeavour to, it will offer to and

will facilitate transfer of that case to a board. And Ms Hurst gave that evidence.

The other point I would make, just in relation to the Teaching Council, is yes, of course again that is an independent body setup by legislation and the Ministry, I think, sorry the Ministry's evidence was that where appropriate it will of course refer matters that come to its attention to the Teaching Council which is of course the regulator of the teaching profession and disciplinary body for teachers.

So, I accept that's a small part of the picture.

COMMISSIONER ERUETI: Yes.

MS ALDRED: So, I just want to note very briefly here because it was an issue that arose in questioning and I think there needs to be a loop closed, and perhaps it shows one of the - it illustrates a point that the Solicitor-General discussed a bit yesterday, which was the broad provision of information by the agencies and Crown Law to this Inquiry.

So, something was made in questioning, and properly I think by Mr Opie, the draft piece of advice by Crown Law which referred to potential legal risk arising for inconsistencies between the Ministry of Education's process and that of MSD. And as the Solicitor-General, I think, quite clearly explained, that advice was prepared effectively on an interim basis. Once it was supplied in draft MOE and MSD both agreed and instructed Crown Law that in fact there was broad consistency between those processes, and so the advice was never finalised because it simply wasn't required.

So, I simply point that out as I think a matter of I think it needed to be as a matter of fairness to the Ministry. As I say, I think it's one of those things that has arisen through the provision of very full records,

including quite unusually the provision of draft legal advice.

CHAIR: Yes, thank you.

MS ALDRED: So, the resolution, non-monetary outcomes will generally include an apology letter, although Ms Hurst made it clear that the Ministry was open to other non-monetary redress, and apologies she said have at times within made in person, and you've heard her evidence that she's been able to deal with a couple of those apologies herself.

Oranga Tamariki is the next Agency and the last I need to deal with individually, and it of course only came into being in April 2017 and is at an earlier stage in its claims history. Mr Groom acknowledged the need to complete its work on a proper documented Historic Claims Process, saying that to date Oranga Tamariki has relied on good people but needs now to underpin their mahi with process and clarity.

And you heard about the detail of that work that's currently going on.

There's very clear information about the redress process on Oranga Tamariki's website and you were taken to that I think by Mr Merrick. Mr Groom explained how that worked, including a very child-friendly part of the website to allow for children to make claims.

COMMISSIONER ERUETI: I think from memory, I don't know if it was clearly accessible that information. We had to scroll to the bottom of the page to find the link to feedback which didn't actually refer to complaints processes. It didn't seem to me to be that accessible.

MS ALDRED: My recollection is that the front page item was complaints and compliments or something of that kind. I stand to be corrected but if there are, I mean I would obviously invite the Commissioners to look at that. If there are any concerns about

accessibility, I think it is clear from the way the website has been setup that it is, intended at least, to encourage engagement. And if the Commission has any concerns about that, I am sure that that is feedback that would be very valuable for Oranga Tamariki. So, thank you, Commissioner Erueti.

In terms of apologies, these have been tailored, as you heard from Mr Groom, and have included in person apologies. I found it, I think the Commission will have found it interesting to hear from Mr Groom, his perspective was, for example, when this takes place in a claimant's home at their option, that could be quite, he said I think, an uncomfortable experience for the officials involved and he appropriately recognised that that was a positive in the process in turning that relationship around and reflecting a survivor focus.

So, the next part of the scoping paper relates to the extent to which the Crown's policies, processes, procedures or strategies have regard to Te Tiriti o Waitangi and tikanga Maori. All agencies have recognised the work of this Commission will inform and assist their work in this important respect. Specifically giving better express recognition to Treaty principles and the incorporation of tikanga Maori into their processes.

I think it's also fair for me to say at this point that this is an area where agencies generally have recognised a lack of engagement and certainly a lack of timely engagement, and have not sought to excuse that in this context.

MSD's evidence is perhaps the most, I suppose, interesting in this context because it did go through eventually a substantial consultation process with Maori in 2017, and that fed into its new process which was implemented, as we heard, in November 2018 but there are

still evolving, but that process of course is still evolving.

Feedback such as resolution requires more than just money from that consultation, has helped shape the Ministry's commitment to its development of wraparound services and considering the possibility of including redress, like whanau reconnection support, as part of the package offered to claimants.

The consultation has led to some practical changes in the Ministry's process and that has been I think fair to summarise as a focus on increased diversity and cultural competence of staff, including - and introducing more choice for direct claimants, like offering whanau group interviews where that's appropriate. And Ms Hrstich-Meyer accepted, I think, you know, said that that's happened at this stage in only about three cases but obviously one would anticipate many more now that that is a process that is up and running.

MOE's evidence was that its process was largely based on MSD's and to date that Ministry had not itself worked in partnership with Maori and the work she said was scheduled to be done in the first half of next year.

Ms Hurst made it clear, and that followed of course the external result, the consultant's review of the Ministry which we anticipate will shortly be made available to the Commission. It has been in draft but I understand is substantially complete.

Ms Hurst was clear that the advice received from those external consultants was that the consultation process needed to be done properly and assured the Commission that the Ministry would engage in that process properly.

And there have been other acknowledgments by Ministries, including the Ministry of Health, that they have not to date engaged in an express way with Te Tiriti and its principles and essentially the input from this Commission, including I

anticipate in its interim report, shortly to be available, will be welcomed.

COMMISSIONER ERUETI: I am just trying to recall from Mr Knipe, I don't think, there's no concrete plan to actually engage with iwi in his brief. There's nothing on the horizon.

MS ALDRED: I think Mr Knipe's comment to the Royal Commission was that he would welcome the input of the Commission to inform that work but, no, I think that's correct, there was nothing specific.

CHAIR: I hope they're not going to wait for the Commission's report to do that.

MS ALDRED: Well, I'm sure that the Ministry of Health will be listening to the Commissioners today. Certainly, I know that it will be interested and informed by that work.

CHAIR: The reality is, the commitment of the Crown in general, there have been enough statements by government and of the day Cabinet Papers and the like, that just indicate a clear requirement for the adherence to the principles and to operationalise those. Just from what you've submitted here in relation to other departments, it's not as though there is a baron earth that somebody can't just get up and find out what's going on and get started.

MS ALDRED: Yes.

CHAIR: Even a consultation programme, you know, as a start. So, all I'm saying is, they should get on with it.

MS ALDRED: Thank you.

CHAIR: Don't wait around.

MS ALDRED: I wanted to touch on the feedback of Maori claimants in the MSD process in one quite important respect, and that was that the 2017 MSD consultation with Maori made it clear that represented Maori

claimants were generally less satisfied with the existing process than those who took their claims to the Ministry themselves, referred to in the hearing generally as direct claimants or unrepresented claimants.

I think it needs to be noted in this regard that, without in any way diminishing the value and meaning of the evidence of those survivors you heard from in phase 1, those survivors were, I suppose, a sub-set of all survivor claimants that experienced these redress processes. They were all individuals who have been represented by lawyers on their claims and all but one of those, Ms McInroe, were represented by the Wellington law firm Cooper Legal, probably because as you heard from Cooper Legal they do by far the greatest amount of work in this area as lawyers.

All of those survivor claimants have filed their claims in the Court. MSD's evidence was that, as at 30 June this year, 59% of claims were registered with the Ministry by claimants with no lawyer. So, something that I think really needs to be observed, is that at least in the context of this public redress hearing, there hasn't been evidence of survivors who have come forward directly to the agencies to advance their claims. And this means that the Commission only has Crown evidence in relation to the experience of survivors under Agency Resolution Processes, which is obviously not ideal.

In the absence of that survivor perspective from the large number of survivors who are not clients of a private law firm, the agencies have not attempted to speak for them and do not, they cannot, but they anticipate that the Commission, with its broad access to survivors from all backgrounds and its reach, will take its own steps to obtain that - I said valuable but not just valuable, I think critical, it's critical to have that perspective. And without that perspective, I really - I think it's fair to

say the Inquiry may have a somewhat incomplete picture of the state redress system.

So, the next subject that I need to turn to is this issue around the involvement of Crown Law in litigation, the conduct of Crown litigation and specifically, this section requires me to discuss the Crown Litigation Strategy and the model litigant values or Attorney-General's values that Crown Law has adopted.

So, the Solicitor-General's evidence dealt in detail with the Crown Litigation Strategy in relation to claims of historical abuse and the evolution of that strategy since early claims were filed. And Mr MacPherson explained clearly that the strategy applies to litigation conducted for departments, for all departments of the Crown by the Crown Law Office.

So, initially, as you've heard, the strategy proceeded on the basis of an approach that required claims to be filed in Court if they were to be dealt with by the Crown. But there were advantages that the Crown recognised of settling meritorious claims and testing legal frameworks.

Meritorious in this case of course, at this stage of the process, has meant generally legally meritorious. So, if one of the bars to liability or barriers to liability applied, settlement generally would not be offered. So, specifically, there's a reference in one of the Cabinet Papers to the early stage settlement generally not being offered for claims that were barred by virtue of the Accident Compensation legislation.

And that approach was reflected in the White litigation, of course. Settlement offers made by the Crown followed an assessment by the Crown of litigation risk. Offers were not made on the basis that the White brothers' claims were factually meritorious.

Significant changes were made to the Crown Litigation Strategy in 2008 and the result of that was a revised

strategy with elements including, I suppose, more of a concentration on the advantage of early settlement and a shift in the way that the word meritorious was understood, so that settlement would be considered now for claims that were meritorious in terms of being likely to be established factually, putting aside those legal barriers or available defences.

But claims that proceeded to Court were to be defended and conducted according to the Crown's Litigation Strategy.

And I just noted what I think I've already covered, which is that shift in the Crown's understanding of what a meritorious claim might look like.

Mr MacPherson for MSD explained clearly as an example, that MSD took the Cabinet Paper with the revised 2008 strategy to direct settlement where there was a moral value in settling the claim.

And, again, I think it's proper here to refer to Mr Wiffin's case which was a case where that didn't occur through error or in fact I think properly more fairly, a series of errors. And as the Solicitor-General said, appears to have been a case in which the two processes, litigation and informal resolution, should have come together but did not.

The general shift away from reliance on legal defences when considering resolution of claims outside the Court process doesn't seem to have happened at a particular point in time but certainly, and may have been I think as Mr Young explained, a little earlier than that but certainly from 2008 that was a feature of the way the Crown viewed these claims.

Having said that, I think I need to acknowledge that whilst saying the Crown would approach these claims through a non-litigation lens, in the sense of assessing or looking at whether they're meritorious on I think a moral basis or the basis that something needed to be provided for

allegations of abuse that were likely to be well-founded, it still needs to be recognised, and it's accepted by the Crown, that the availability of defences of course still has relevance. It has relevance in the sense that the fact that those defences, particularly the ACC bar but also limitation and other defences, are the reason for offering access to an ADR process that proceeds on the basis of no legal liability.

And, as I've explained and I think we need to be clear about, that is the basis on which payments have been made that, as the Chair recognised and spoke to me about, don't proceed on the basis of compensation for harm.

So, whilst there's, once a person opts to go down that resolution route with an Agency, the fact that their claim might be limitation or ACC barred will not generally be, I say generally because there's a slight exception in the health context, as I've explained, but will not otherwise be relevant to the Agency's assessment of their claim for settlement purposes. Of course it's still there in the background as the reason why these settlement processes are structured in the way they are and have the outcomes they offer, as opposed to settlement of litigation where the parties, as in the White litigation, might make settlement offers based on their respective assessment of litigation risk.

CHAIR: We did hear evidence though, didn't we, I get it, you put the defences aside and then you're into the system, but some of those categorisations included categories where Limitation Act, ACC availability, seemed to be still relevant to the quantum? I don't know if my colleagues have a better memory of that point.

COMMISSIONER ERUETI: I think Mr Opie raised that, that it was in effect factored into the assessment process.

CHAIR: Yes, factored into the assessment process.
MS ALDRED: I think Mr Opie raised it in the sense, and I did make that last submission for the purpose of responding -
CHAIR: That's what you were referring to?
MS ALDRED: - to Mr Opie's suggestion. I can certainly check over the break if I haven't finished by then but I certainly think that the relevance of those defences is only, you know, it is the Crown's position that they are relevant with that one exception, only in the sense that they, I suppose, underpin the way the system is developed. There's no - certainly in the categories, I'm not aware of any reference to limitation or ACC bars and I wouldn't expect there to be. In fact, I'm sure that's not the case.
CHAIR: It may be a misunderstanding on my point. We need to check that.
COMMISSIONER ALOFIVAE: In some of categories, not all of the categories, they would refer to particular types of offences in which, like use of seclusion or the non-use of seclusion, that would impact on whether or not the defences were available. And if they were, what happened in terms of how the quantum was assessed.

It came through quite subtly, certainly it's open to an inference.
MS ALDRED: Yeah, I think the position of the Crown is certainly that there is only that indirect relevance of legal defences. That's certainly something we can check.
CHAIR: Shall we leave it on the basis that we flag it as something that we've got in the back of our mind that perhaps needs looking at? Just double check the categories they don't refer to or if they do refer to

the defences available as part of the categorisation of quantum. That's the concern that we've got. If it does, then quite frankly I think we would agree that it shouldn't.

MS ALDRED: Yes. I can certainly just double check that.

So, a further review of the Crown Litigation Strategy took place in 2011 which referred to that operating in broadly the same way.

And with also a direction to settle the CHFA claims on a global basis and the consideration of broader options for redress, including apologies, contributions to legal costs and payment for services or ex gratia payments.

The most recent iteration though, and I think significant shift since 2008, is the Crown Resolution Strategy that was adopted by Cabinet in December last year.

And I set out the principles in my submissions but I won't read them for the Commission but I think I need to just say that in terms of the experiences of survivor claimants, the aspiration of the Crown Resolution Strategy is to ensure the fullest opportunity to resolve grievances early and in accordance with survivor needs, and that includes specific references to including in the process where the claimant wishes the individual's whanau, hapu, iwi and community, and I think we can see that is reflected in the way that, for example, MSD has given evidence of the way that it will seek to engage with survivors.

The Solicitor-General, however, appropriately acknowledged that in the event that a matter does proceed down the litigation route, the Court process, with its function of testing the evidence and putting plaintiffs to the proof of disputed matters in an adversarial setting will still apply.

And, of course, as I think she also said, we haven't had any litigation since the White case and that concluded in 2008. There is some forecast for mid-2021.

The next topic addressed primarily by the Solicitor-General, Ms Jagose, was the model litigant concept. In short, she described that concept as fair play in action, being a set of principles that the Crown holds itself to and can be expected to abide by in the conduct of litigation.

That expectation has been shaped to recognise the resources of the Crown and the power imbalance that that creates.

Ms Jagose readily accepted that this approach required the Crown to be held to the highest professional standards.

She explained that while the model litigant policy has long been a part of Crown conduct of litigation, it hadn't, until 2013, been encapsulated in any formal document and that was done following an external report published in 2012 and, as a result of that, the Attorney-General's Values were produced.

As Ms Jagose made clear, the absence of the term "model litigant" in that document isn't intended to indicate a shift away from this broad concept of fair play, and there are some very clear expectations in relation to - set out in those values about what the Crown will and won't do in litigation.

Now, the Solicitor-General acknowledged in her evidence that there have been times, and particularly in that litigation around the time of the White trial, in that period, that model litigant principles haven't been adhered to in line with the expectations of the Attorney's values. And I've given some examples in the written submissions which I'll briefly summarise.

The first is the acknowledgment by Crown Law that its instructions to private investigators in the White

litigation have been over-broad. In this Inquiry, Ms Jagose acknowledged again, as she had done to the State Services Commission during its Inquiry and investigation, that this fell well short of the standards expected of the Crown Law Office.

The Crown's early approach to name suppression applications for survivors of sexual abuse, including in White, was accepted as incorrect.

The apparent suggestion by a Crown lawyer that name suppression should be opposed, at least partly with the objective of discouraging claimants to come forward, was appropriately characterised by Ms Jagose as appalling.

The current approach is that the Crown will generally abide these applications.

Delays and the wholly inadequate "apology", or so-called apology in Ms McInroe's case, along with the lack of care taken in relation to custody of her personal journals, while the Crown had a different view of liability to Ms McInroe and her legal representatives, the manner in which those things were dealt with were indefensible.

And I'd just like to note there that there has been recent correspondence outside of this hearing with Ms McInroe and Crown Law anticipates some further engagement with her in that regard.

The opposition by the Crown to applications for reasonable adjournments by plaintiffs' counsel in circumstances where they were waiting for decisions of, for example, the Legal Aid Review Panel in relation to funding, and when, as Ms Jagose recognised, there was no apparent prejudice to the Crown in not opposing those adjournments, that again fell short of model litigant standards.

In addition to these specific steps in litigation that have been dealt with above, other issues have been identified in this Inquiry that have demonstrated

shortcomings in Crown process and failures to meet model litigant standards.

The Solicitor-General accepted that in Mr Wiffin's case there had been poor practice in a number of respects, including that there had been a failure to connect vital information and, therefore, properly to engage with settlement of the claim when it ought to have been seen as meritorious.

Crown Law had said it would interview Moncreif-Wright, it did not, and nor did it advise Mr Wiffin of that, even though he had abandoned his complaint to the Police to allow this to occur.

That the settlement offer made to Mr Wiffin was a missed opportunity to resolve his claim appropriately.

However, as the Solicitor-General also explained, some of the steps taken by the Crown in litigation, and criticised by Cooper Legal as tactical or conduct not in line with model litigant principles, were in reality the Crown acting appropriately to defend cases brought against it in a necessarily adversarial context. And examples included the pleading of limitation defences; reliance on the ACC bar for claims for personal injuries; and the seeking of costs orders where appropriate. For example, the costs order sought against the plaintiff in the Navy case who was not legally aided in circumstances where those costs related only to a single application and an appeal from that, which was effectively an application for leave to appeal to the Court of Appeal in relation to a timetabling direction of the High Court which the Crown regarded as inappropriate and wasteful.

Another example of that is "but for" orders sought in respect of unsuccessful legally aided plaintiffs. The order does not affect the plaintiff personally but these orders indicate that but for the ground of funding, costs would follow the event in the usual way. And they provide an

avenue for the successful defendant to approach legal aid, as Mr Howden explained, to recover some of their costs.

I should add here also another thing that would fall into this category would be the testing of the admissibility of evidence which Ms Cooper also was critical of.

The Crown of course is entitled to question admissibility of evidence, as any other litigant is. And the High Court Rules require applications in relation to admissibility of evidence to be made pre-trial.

It also needs to be said in this regard, I think it's appropriate under this heading, to point out, as the Solicitor-General was very clear about, that notwithstanding the Crown's conduct in accordance with the standards of fair play, it's accepted when it does conduct its litigation in that way, the litigation process will still be a challenging and difficult process for vulnerable plaintiffs. The Crown recognises and accepts that access to the Courts is an aspect of - is an important aspect of civil justice but Aotearoa New Zealand's system of civil litigation will always be based on opposing parties putting the other party to the proof of facts in dispute and seeking to persuade a Judge of the rightness of their case.

There may well be room, of course, for change in terms of the way that, for example, evidence is given in historical abuse claims as there have been advances in that respect in the criminal law. Ms Jagose noted that the civil litigation system may not have adapted to advances in learning about the effects of sexual abuse as a result of the ACC scheme.

And I think I would like to add there that neither, for example, are there any tailored rules of Court to deal with these claims. I think the Chair is probably nodding because she is aware of, for example, the personal injury litigation protocol that applies in the White book to the English rules of Court.

So, we don't have, you know, probably because of - it's probably fair to say there is a delay in responding to these kinds of claims because of their rarity since the inception of the ACC scheme. And I think at this point we should probably break. I don't anticipate being much longer but I do have some more material.

CHAIR: Yes, I think we should take the morning adjournment, thank you.

Hearing adjourned from 11.30 a.m. until 11.50 a.m.

CHAIR: Pick up from when you finished, I think probably about the bottom of page 12 is that right, Ms Aldred?

MS ALDRED: Yes. I just wanted to say we have had a chance to check the point that arose in discussion with the Commissioners, and my submission effectively stands. We haven't been able to identify anything that suggests, sort of, an infection, if you like, of the categories of defences.

CHAIR: As I said, it was a hazy memory and if it's not there, I'm very happy to hear that it's not there.

MS ALDRED: Thank you. I'm moving now to the next topic, which is the approach to use or application of legislative provisions and whether those hindered or precluded the ability of individuals to bring or pursue claims.

And the first topic I wanted to talk to broadly was information release and I have set out some written submissions on that point. I won't read them but essentially, of course, this refers to the Official Information and Privacy Acts and particularly I think it's fair to say in this context the Privacy Act has been a feature. That Act applies, of course, to people's requests for information to their records that reflect their care

journeys. And the consequences, of course, of breach of privacy are the potential for complaints to the Privacy Commissioner and proceedings to be brought against an Agency.

The requirement to comply with the legislation for Agencies means that in many cases claimants will receive their records, which may be voluminous, as you've heard, and those records may be affected by very significant and widespread redactions.

Those redactions are generally made where other people are referred to in the records and Ms Hrstich-Meyer gave particular evidence about the difficulties that can arise in relation to family files where MSD can't release information about other family members without their express consent.

The agencies acknowledge and understand the frustration this can cause. They do, however, need to ensure compliance with their legal obligations to protect privacy.

The evidence that Ms Hrstich-Meyer again gave, was that MSD was considering how this might be approached in a more flexible way or whether there were any improvements that might be made to adopt a different approach, so that to avoid that result of a person seeking their records and being confronted with masses of information, sort of hedged about with redactions. And she talked, for example, about the possibility of providing timelines or summaries of records at a claimant's option which might assist them to understand their care journey, or ought to assist them, without the difficulties associated with a release of the, if you like, raw material.

I don't want to talk in detail about that, except -

CHAIR: Just one thing, sorry to interrupt you but while it occurs to me. One of the safeguards that the survivors have when they're in litigation, one of the few, is in discovery, as we've heard, that a Judge may order full disclosure to counsel so that it can be

checked, and that's something that's absolutely lacking, isn't it, in the Privacy Act, Official Information Act, unless you go back to the Ombudsman to have it double checked?

MS ALDRED: Yes, I mean, I don't think I can give an absolute answer to that, and the reason for that is there may be other options that can be explored, including some kinds of conditional release.

CHAIR: What I'm really thinking about is the future. I mean, I think the present is difficult, as we've heard so many times, especially those survivors who receive documents where whole pages, you know, page after page, and they have to say, well, good heavens, why can't I see that? To have maybe an independent person who's able to check it through as part of whatever new process we come up with might be something worth considering.

MS ALDRED: Yes, I anticipate that it might. The Office of the Privacy Commissioner obviously will be across all of the potential.

CHAIR: Yes, I'm not expecting you to agree with anything that I say at the moment. I'm really simply flagging it as something that I think the Commission must look at quite closely.

COMMISSIONER ERUETI: We've also heard a lot about how difficult it is to receive and read all these records alone without any support or if you're in prison how to do that in a private way.

MS ALDRED: Yes. And I think that's one way in which, for example, the provision of counselling services or the provision of someone with appropriate qualifications or skills or even just attributes to assist a person understanding those records which can be very hard, in terms of you know the potential for seeing this sometimes pretty traumatic material.

CHAIR: We note it as an area that really needs work to be done.

MS ALDRED: Yes.

CHAIR: And we welcome anybody who's got some good ideas about that in the future to help us.

MS ALDRED: Thank you. The only other two very short points I want to make about that, and one which I feel bound to comment on, is the delay that this all causes. I have already touched on Ms Hurst's evidence in that regard.

There has been work going on to try and clear the backlogs of these kind of delays with processing Privacy Act requests and I think it's fair to say that the agencies have acknowledged the need to speed things up.

The final point I just make very briefly in the submissions, is that of course underscoring all this are very important rights to privacy. So, you know, I have no doubt this Commission will be fully aware of that, particularly in this context where we're talking about possibly the most personal kind of information or certainly one of the categories of the most personal information we can imagine.

And I make the point simply next, which I think the Chair has already made, about discovery, providing a more complete - an ability to see a more complete record because of that exception in the Privacy Act.

The next hurdle that is being discussed is limitation. I don't want to spend too long on this because it was discussed recently, most recently and pretty clearly, with you Commissioners by the Solicitor-General. But the approach of the Solicitor-General is that limitation is a proper defence, able to be pleaded and relied upon in terms of the Crown Litigation Strategy or the Crown Resolution Strategy. And it can't simply - it's too easy to characterise it as simply a technical defence.

I don't want to take you to case law, I don't think that's particularly helpful in this category, but I do know that a case I deal with later in the submissions in relation to Legal Aid, which is the Ashton case and the citation is in the Legal Aid section of the submissions, does talk about - that is a case where limitation is discussed by the Court and the very real policy underpinnings, I suppose, of that defence are brought out, and they are the underpinnings that Ms Jagose took you to.

I've referred in that section of the submissions to the stop the clock agreements that have been either negotiated or attempted to be negotiated. And all I'll say there is, there is a limitation policy in draft which is intended, as you know, to apply to both MSD and MOE claims, with the Ministry of Health saying that if that's a matter it does need to consider it would look at an approach in line with other Crown Agencies. There is also, as the Solicitor-General explained, some policy work going on in relation to potential reform of the Limitation Act. Although I do note in that regard, that the Limitation Act 2010 does provide some judicial discretion to grant relief in the cases of abuse of a minor, both sexual and non-sexual, under sections 17 and 18 of that Act.

And I just note there that there has been no relevant exploration of the scope and meaning of those provisions by the Courts at this point. So, the Commission no doubt will want to consider the extent to which - well no doubt officials in their policy work and potentially the Commission will be wanting to look at those provisions as well.

And, of course, the point I make at paragraph 87, I think, which does need to be made, is that if this Commission - if a view is reached that limitation defences shouldn't be available to defendants in this kind of context or their availability should be limited, any

recommendations, in my submission, should be directed to legislative amendment because while the defences are available under statute, they will be reasonably available to the Crown and may be pleaded under the Crown Resolution Strategy.

CHAIR: It is not something you can change by policy.

MS ALDRED: No.

CHAIR: It's rooted firmly in the statute and should be subject to amendment rather than tinkering around the edges.

MS ALDRED: Yes. And so, the next thing I turn to is the ACC bar, if you like, referred to as the bar but of course, as I said, that's effectively the flipside or the other side of this no fault compensation scheme that the government has adopted since 1974.

I don't probably need to return to that because we've already discussed it, except to say two things. The first - well, the three points I briefly make are, firstly, just to reflect Ms Jagose's evidence that the application of that bar is not a choice for the Crown. It is the law.

The second point is that, there has been some limited evidence, I say limited not in a critical way, it's just that it's not a matter that has been a real focus in this hearing, there has been some limited evidence primarily from Cooper Legal about the inadequacy or perceived inadequacy of the entitlement regime under the ACC scheme to meet the needs of these claimant groups.

And the question for the Commission is whether if these criticisms are borne out, how should that be addressed? And does that require any change in ACC legislation or policy? And I really say nothing about this, other than to say that the Crown of course welcomes that exploration by this Commission.

And finally, there are, as I briefly touch on, the historic mental health legislation immunities that have applied that Mr Knipe addressed in his evidence.

So, finally, in terms of substantive topics that I want to talk about today, we come to Legal Aid. I have set out there some submissions responding to the issues that have arisen in this hearing. The grant of Legal Aid and conditions of a grant of Legal Aid, of course, are entirely - they are entirely governed by statute. It was the Legal Services Act 2000 that applied at the time of the White litigation and the review undertaken by Legal Aid, and we now have the Legal Services Act 2011.

So, Legal Aid has necessarily been responsive to the decisions of the High Court and the Court of Appeal, and that is because, as the Commission has heard, it has an ongoing obligation to continually satisfy itself of the prospects of success of a claim. And, as you heard from Mr Howden, that isn't a high threshold but it does require that Legal Aid be satisfied that there be prospects that the claim will succeed.

And Mr Howden's evidence was that, as well as looking at the chances of success in Court which that requires, Legal Aid shouldn't set people up to fail by funding cases that are highly unlikely to succeed. And also create debt for those individuals.

This is where I refer to the case I just touched on before which is a case of Ashton. In that case, His Honour Justice Simon France in the High Court said, "Where there is no real prospect of success it serves no-one's interests to allow false hope or to subject defendants to what is an inevitably doomed claim against them".

And so, it was in that context that Legal Aid's review of 1151 claims took place following the decision in the White case.

Just in terms of the figures, of course, the Royal Commission heard that of those cases, aid was withdrawn in 200 but reinstated in approximately half of those. So, 900 of the 1151 cases continued to have funding following the outcome of that process by Legal Services Agency.

CHAIR: I think it's fair to say, however, that stating it that way, it could perhaps be seen as skimming over some of the pain that was caused by the withdrawal. And the evidence was that it took place over some time, maybe years, to lose the Legal Aid grant and then appeal it and go through all the levels to get it reinstated again, would you agree with that?

MS ALDRED: Yes, I absolutely acknowledge the difficulties and work that this created for claimant counsel and, of course, though I do need to add that that work was funded.

CHAIR: Yes.

MS ALDRED: In terms of the reinstatement of aid. And more importantly, perhaps, I think it's fair to say the uncertainty that that would have created for survivors who no doubt, you know, who didn't have, who wouldn't have had that understanding of a lawyer about prospects of success or potentially the difficulties that their claim faced.

So, I don't mean to skim over that.

CHAIR: No, it's just that it's got to be seen in the context in which it took place.

MS ALDRED: Yes, I accept that and I think that's a very important point.

Obviously, the change to Crown Resolution processes meant that Legal Aid was able to look at funding this much cases without these hurdles because the Crown, as I've said, would not be relying on these legal defences which otherwise would stand in the way of establishing any reasonable merit.

And claimants, of course, receive funding for Legal Aid to participate in those.

There has been, I'll probably skip over the next two paragraphs, the next paragraph, but I should say that Legal Aid's approach to the Historic Claims has evolved since the early claims. You will have heard, you have heard that significant initiatives have been put in place to manage the relationship with Cooper Legal as majority provider. Examples including regular meetings with Cooper Legal and the provision for a period of a relationship manager and the availability of global billing.

Ms Cooper and Mr Howden both gave evidence of the relationship improving as a result of private mediation arranged by Legal Aid. And I think it's fair to say that Ms Cooper's evidence before this Commission is of a Legal Aid system that is currently working well for her and her clients.

There was a lot of discussion in the evidence relating to Cooper Legal's criticism of Legal Aid communicating directly with agencies. Mr Howden confirmed this communication was confined to providing information about the processes - sorry, confirmed that Legal Aid communicated with agencies only in relation to certain appropriate areas. They were the forgiveness of Legal Aid debt, which of course was a significant benefit to claimants; ensuring that offers of settlement to claimants were being passed on by claimants' lawyers; and liaising with agencies in relation to the 'but for' orders under section 41 of the Legal Services Act, where agencies sought some funding from Legal Aid as a result of those orders.

There was also quite a lot of discussion about Legal Aid communicating directly with claimants and providing them with material relating to the availability of MSD's ADR process and the Commission has, of course, the very detailed advice that Francis Cooke QC prepared for Legal Aid, which

cleared the way for that, and heard Mr Howden's evidence and has seen the material which showed that that was limited to advising of the availability of that process in circumstances where Ms Cooper had not been able to reassure Legal Services Agency that that was taking place through her firm.

The documents demonstrated that claimants were told their Legal Aid would not be changed if they entered the ADR process.

So, in terms of criticisms of the independence of Legal Aid generally, and in particular since Legal Aid Services has become a part of the Ministry of Justice, that is covered in the brief of evidence of the Commissioner at paragraphs 2.1 and 2.3 and 4.1-4.6 of his reply brief, and I won't go over those detailed provisions, except to say that, again, I suggest there's no evidence of Legal Aid ever or the independent role of the Commissioner ever being compromised in relation to a claim before the Commissioner. And certainly the evidence is that the system appears to be working well and for the benefit of both Legal Aid providers and claimants at present.

In relation to costs, which is the next subject, the total cost, the cost to the Crown of settlements versus litigation costs are set out in an appendix that has been provided to the Commission. That has been provided because we realised upon preparation of these submissions that there have been perhaps not - we just wanted to make sure that the Commission was receiving consistent information, other than the extent to which this has been addressed in the briefs of evidence. So, this is new, in the sense that it's a different collation of this evidence in a format that we hope will assist the Commission.

CHAIR: Yes, it will because it's part of the economic cost of the historic abuse to the country.

MS ALDRED: Yes.

CHAIR: So, it is a very valuable document, thank you very much.

MS ALDRED: Yes. So, just in summary, since 2000 the Crown Agencies involved in State care redress have paid approximately $47.8 million in settlement payments, $30.6 million in Legal Aid or legal fees for assistance to claimants, and $3.5 million in litigation related costs, and a more detailed breakdown is provided in the appendix.

I won't touch on the international human rights obligations point which were addressed in the evidence of the Solicitor-General and of course delivered very recently, and there's no point in my repeating that evidence before you.

But I set out from paragraph 103 some of the observations that we thought it would be useful to collect together from Crown witnesses for considerations, I suppose, that will no doubt inform the Royal Commission in its ponderance of potential ways forward in this difficult area.

Mr MacPherson, of course, described some of the considerations that can arise under the broad topic of independence, asking independence from whom and for what purpose, from the agencies who have historically had responsibility for the abuse, from Ministers.

Mr Young's observation was future redress processes needed to be designed on the basis that one size doesn't fit all. He gave some example; delays, those have been hugely unacceptable and understandable so for many people. But some claimants have welcomed the time to process their journey through redress.

He said that, so for that reason future processes need to be adaptable to the wants and needs of individuals, and survivors of course need to have input into that process which is of course one of the tasks of the Royal Commission.

The need for a trauma-informed approach, of course, was advocated by Mr Young and also by the Solicitor-General in her evidence yesterday.

And then the challenge of quantum was discussed by Mr Young, how should financial payments be classified? Should they be regarded as compensation or an acknowledgment of some kind? And what is an appropriate level of payment? And other related questions, how is a claim tested? What level of evidence is required? What checks and tests will be utilised?

The question of independence I address at paragraphs 108-109 of my submissions. Ms Jagose acknowledged there has long been a call from survivors for a separate entity to provide redress on the basis that it might well be repugnant for survivors to go to the same institution for redress that housed or employed their abusers. Although, again, there is nothing - there is some refinements in the legal sense in relation to the need for structural independence, which I don't need to tease out today, but certainly, nothing to prevent independence in this context.

So, those points in very broad terms summarise the Crown's response to the Royal Commission's issues for this hearing. However, I'd like to reiterate what has been said by Crown witnesses, most recently the Solicitor-General. The Crown is listening to the survivors and others who have given their evidence before this Royal Commission. It is anxious to inform and assist the Royal Commission in its work and it will continue to be transparent with the Royal Commission in terms of access to information as it has been so far in the Inquiry's process. But, as the Solicitor-General said, the Crown can't wait for this Commission to finish its work. It must continue and intensify its own response, essentially now that it has heard perhaps more clearly than ever how survivors have been let down and what they need.

To conclude, I have some acknowledgments. I would like to acknowledge the Commissioners for listening to the Crown's evidence and the work of Commission staff and Counsel Assisting. Their input, of course, has made this hearing possible. It has also made it, from the perspective of Crown Counsel, I think, fair to say that it has been positive and collegial.

Behind the scenes staff at the Commission, I would really like to thank. They have looked after survivors, they have made it possible for these people to share their experiences.

We have also enormously appreciated the waiata and karakia led by Matua Tem with Ngaire and others from Ngati Whātua which I think it is fair to say has significantly improved the quality of the singing in the room over the course of the two phases.

And finally, of course, I need to again acknowledge survivors and their supporters and whānau who have attended or watched on the livestream. Some survivors will have had the challenge of hearing things about their own cases that they hadn't previously been aware of or fully known during this phase of the evidence and we acknowledge that that will have caused difficulties and we understand that.

[] Te Reo Maori ck Otira, tenei te mihi a te taringa areare ki ngā tāonga o te kaupapa nei. Rau rangatira mā, tēnā koutou, tēnā koutou, kia ora tātou katoa.

COMMISSIONER ERUETI: Tena koe.

CHAIR: Tena koe, Ms Aldred, and thank you to you and your team who I know have been working fastidiously during this time.

Ms Joychild, I think you should be allowed to come forward. Oh, Ms Janes, we will start with you first.

MS JANES: If the Commission pleases, we will take a short adjournment while we just do a little reshuffle and allow Ms Joychild to -

CHAIR: Thank you, we will do that.

Hearing adjourned from 12.20 p.m. until 12.25 p.m.

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CLOSING SUBMISSIONS BY MS JOYCHILD

CHAIR: Tēnā koe, Ms Joychild.

MS JOYCHILD: Tēnā koutou e ngā Kai Kōmihana. Ko Francis Joychild taku ingoa, ko ahau te Rōia o Leonie McInroe me ngā tamariki o mua, ngā mōrehu o Lake Alice. Counsel are making these submissions on behalf of Leonie McInroe and on behalf of the group of Lake Alice survivors.

At the beginning it's important to clarify that many of the Lake Alice survivors were also residents in child welfare homes, either before or after Lake Alice, where they also suffered abuse. Many were and are now represented by Cooper Legal in relation to their claims of abuse, other than at Lake Alice. So, this hearing has been highly relevant to them as well as to Leonie.

CHAIR: Before you go on, do take note of your speed, thank you.

MS JOYCHILD: There are issues relating to redress for the group of Lake Alice survivors that were part of the settlement process that the government undertook with Grant Cameron's clients and later survivors. There are major concerns in this group about the process, which include issues of inconsistency, particularly in relation to costs and quantum. And I appreciate the quantum issues are more severe elsewhere but there are real concerns about quantum from this group and they will be spelt out in their statements to the Lake Alice investigation.

Now, I want Leonie McInroe's evidence disclosed and to begin with it's acknowledged the concession that was made this morning that the way things were dealt with were

indefensible. Nevertheless, it's important to make comment on this because it's submitted that the evidence by Leonie given during this Commission redress hearing, including the documents she provided the Commission, revealed deeply disturbing litigation behaviour, and it is submitted, abdication of duty by senior Crown lawyers towards a person who sought justice for the abuse that happened to her while in the care of the State as a young person.

At the end of the evidence of the Crown this past week, that level of concern must remain very high, it is submitted.

It is important to note that the abuse suffered by Leonie constitutes major breaches of rights guaranteed by the New Zealand State to its citizens. And I have set these out at footnote 1.

The International Covenant on Civil and Political Rights which New Zealand ratified in 1978 was obviously in operation when Leonie failed her claim in 1994. The Convention Against Torture, which was ratified by New Zealand in 1989, was also in place by the time Leonie failed her claim.

Now, so, the rights here were the rights not to be subject to torture or to cruel, inhuman or degrading treatment or punishment are Article 7, in particular "No-one shall be subjected without his free consent to medical or scientific experimentation, a right not to be deprived of liberty except in accordance with procedures established by law".

CHAIR: Ms Joychild, please, it might be regarded as torture if you're not too careful, Ms Joychild. [Referring to speed.]

MS JOYCHILD: I apologise. And under Article 10, "The right to be treated with humanity and respect for the inherent dignity of the human person".

So, alongside rights under any Convention, there are obligations and duties on the State party, so on the New Zealand Government.

Under the ICCPR, the government had a duty provide an effective remedy for violations of those rights. And under the Convention Against Torture, it went further, the government had an obligation to ensure within its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including a means for as full rehabilitation as possible. That's the wording.

I have set out in a footnote statements made by the Committee Against Torture on what that means in practice. So, those obligations were in place a good 16 years under ICCPR and 5 years under CAT before Leonie filed her proceedings.

Contrary to what the State was legally bound in international human rights law to provide to Leonie, she faced from the State's own lawyers what she describes and what the evidence supports as additional ongoing sustained abuse to what she'd already suffered in Lake Alice at the hands of Dr Leeks and his staff.

Her evidence reveals an attitude from Crown lawyers of disinterest, extreme carelessness and at times callousness towards both the sufferings and indignities vested upon her as a young adolescent at the Lake Alice Child and Adolescent Unit and towards the impact of the litigation process on her.

The impact of that behaviour was cruel. What is most ironic, is that the suffering she endured was while she was in the care of the client of the Crown Law Office.

Further, it was Crown lawyers' client who had legal obligations towards her at the time she suffered the abuse and then when she started the process of seeking redress.

This point has entirely escaped the Crown Law Office for most of its three decades of handling historic abuse cases. And, with respect, it appears still not to have been fully registered with the Office, and I say that having listened to the Solicitor-General for the last three days.

There was absolutely zero attempt by the Crown Law Office to mitigate the impact of the litigation process on her attempts to seek an effective remedy to the violation of her rights.

Now, the evidence of Cooper Legal about its two plus decades of experience acting for survivors, and the Crown's evidence, strengthens the concerns shown in Leonie's case tenfold. Leonie's experience cannot be written-off as one case with a couple of aberrant lawyers. It synergises with other evidence before the Inquiry.

Certainly, in her case, and apparently in others, there was not one iota of concern shown for the impact on the victim of the process, the litigation process that the Crown were adopting.

The protective role that the Courts are meant to play in constitutional arrangements to keep the Crown in check, has not been effective or nearly as effective enough to enable complaints to be resolved with speed, fairly, compassionately and consistently.

Leonie McInroe's lawyer, Phillipa Cunningham, backed by Robert Chambers QC, used every rule in the High Court Rules they could to keep the litigation moving forward. It helped but it still took 8 years and 7 months before the case had settled and settlement terms effected. As we all know, Leonie was badly battered and bruised at the end of it.

Without a doubt, a new independent body needs to be appointed, well away from the Crown Law Office and government departments, to guide the mediation, evidence collection, fact determination and rehabilitation components of the duty to provide an effective remedy. It also needs

to arbitrate on monetary payments that need to be made to survivors of abuse in State care.

At best, the Crown Law Office and government departments are and have been hopelessly conflicted in their duty to the Crown as a body that holds the purse strings of the country and the Crown as protector of its citizens. The Crown Law Office has abdicated - entirely abdicated responsibility to advise on the human rights and Treaty duties of the Crown in this sphere for decades. It has shown itself incapable, it is submitted, of being able to develop a process with government agencies that meets its clients' obligations under Committee Against Torture, ICCPR and Te Tiriti. It's time of driving the response and it is acknowledged that now particularly in MSD there are some creative matters happening, although when one reads about someone wanting a pair of walking boots, one does think about blankets that were given in 1840 onwards to obtain land off people. I mean, all my clients would love a cellphone, possibly if they were offered a cellphone they might take one, a Smart cellphone. We are talking about real redress for the real damage that was suffered their whole lives and the lives of their whānau.

It is submitted the Crown and government departments shouldn't be given any more opportunities.

And it's submitted that one of the most important factors to come out of this redress hearing must be a tectonic shift in the Crown Law Office and its own approach to claims from vulnerable persons alleging breaches by government of their human rights and Treaty guarantees. The tunnel vision that has guided the Crown Law Office for almost three decades, that its only duty is to protect almost at all costs its client's purse strings, has got to be thrown to the winds.

I just want to recap briefly on Leonie's evidence. She was an orphan by the age of 4 years old and sent to live with a foster family. There she was subjected to neglect

and abuse. Her mother, foster mother, did seem to have serious mental health problems and she kept taking Leonie to medical people saying there was something wrong with her. Unfortunately for Leonie, Dr Selwyn Leeks, a paediatric psychiatrist came across her at the Palmerston North Adolescent Clinic when her foster mother had brought her there at age 12 and the rest is history.

At the age of 14 she was detained in the Adolescent Unit during the day and evenings and weekends in the adult unit with seriously unwell adult patients. In all, she was there for 18 months. There was absolutely nothing clinically wrong with her or that justified such detention and her ACC expert psychiatric reports are beyond doubt on this. Yet, she was routinely given painful strong antipsychotic medication Paraldehyde, with no clinical justification. She was given it for being naughty, such as being disobedient and running over a scoria bed, and that's written in the notes. That drug had many unpleasant side effects that impacted on herself esteem, physical and mental functioning and ability to learn. She was given electric shock. In fact, it wasn't treatment, a number of survivors call it electrocutions because she was electrocuted for answering back to Dr Leeks on the first instance and then two other cases.

She spent her evenings with deeply unwell adult patients, one of who attacked her on the head with an ashtray while she was sleeping, causing permanent nerve damage affecting how she positions her head to this day.

So, looking at her claim, importantly she claimed against Selwyn Leeks personally, as well as the Attorney-General. And she may have been the only person to have done this. It was very - plus the other person who Phillipa later picked up and he also claimed against her.

It was very important to Leonie that Dr Leeks be held accountable personally. That was utmost in her interests.

She assumed his accountability would be central to the Crown's interests as well and just as she had taken civil proceedings against him, she expected to ensure there were criminal proceedings and the Crown would be facilitating and ensuring that they happened.

She also expected and specifically went back to Crown Law during the settlement process to ask for Dr Leeks to contribute to the settlement. In the end, there were huge pressures to settle. She regretfully and reluctantly did without ever being told what the contribution was.

Now, some litigation documents arrived in unredacted form, the first lot counsel got, some of them were redacted. We challenged that and the unredacted ones arrived after Leonie gave her evidence. But there's one that discloses, that's why I'm referring to it here, that Dr Leeks, through his insurance company lawyer, refused to make a monetary contribution but required this fact to be kept hidden from Leonie, and the Crown acquiesced.

Her claim was amended following her successful ACC claim. So, here's someone who has ACC cover but there was not a problem, as Dr Robert Chambers saw it, in her continuing. The primary claim became false imprisonment. In her case, she was detained without any authority.

Injury caused by false imprisonment is not covered by the ACC bar. There is a Supreme Court matter hearing in the Taylor v Roper case which we will look at one aspect of that. In that case, it was the fact that Mr Roper locked the doors of the car, detained her in there while he groped and sexually assaulted her. In this case, and the case of all the other psychiatric patients, there is no connection with the sexual assault. The detention was just the detention. So, I cannot see that ACC would have prevented any of the Lake Alice people from taking their claims, for there being a bar for them. And certainly, it was pleaded

in a way, Leonie's claim was pleaded in a way that the bar was not there. She survived the strike-out.

Hence, the claim was justifiably a large one and, as she has explained, included loss of opportunity in relation to education and income earning potential. And it was never limited to an exemplary damages claim alone.

And it's noted that the Legal Services Agency had to approve the funding of it, so it passed them in terms of prospects of success.

When Leonie filed her High Court claim against Selwyn Leeks and the Attorney-General, it was not as if the Crown could have been blindsided by the allegations. There had been well publicised serious complaints about the operation of that unit, even at the time Leonie was a resident. Now, there was the first Inquiry, the Mitchell Inquiry all but exonerated the ECT practices in relation to one person, one young boy, Hake Halo, but then I think the very next year the Chief Ombudsman did a confidential inquiry after complaints from another group of parents I think who didn't even know he was at Lake Alice and the Ombudsman there, I have put the quote there said, that there was considerable evidence, both medical and psychiatric procedures were imposed on the boy against his will, without his consent and without either the knowledge or consent of his parents or the social workers responsible.

And his own feeling was that the use of treatment in all but the most exceptional circumstances ought to be eschewed if, for nothing else, but the difficulties for obtaining consent of young people.

Very early in the litigation, Leonie, in the discovery, all the ACC expert reports were given to the Crown, including ACC's own expert. So, the Crown knew very early on that she had cover for medical misadventure and that that was on the basis of inaccurate diagnosis, inaccurate diagnostic and progress procedures, grossly inadequate

documentation by Dr Leeks of his reason for treatments, type of treatments, the reason given. Essentially, ACC accepted there was nothing that had warranted her place in an adolescent psychiatric unit or her treatment.

As said at the beginning, those claims raised extraordinarily serious human rights abuses that had happened only 19 years previously. If they were true, then for 18 months a young teenager, 14 year old, had been locked up without any justification, given electric shocks, painful antipsychotic drugs, held in seclusion, I think she says 21 days, the notes say 19 days, and shared a night ward with seriously disturbed adult patients. Clearly, she would have suffered extreme trauma and had lasting impacts from it. Yet, as indicated earlier, there was no recognition of this in the response of the Crown Law Office in all of the 8 years and 7 months that she was engaged with them.

Setting out some of the concerns about the Crown behaviour. It took 7 months for the Crown to file a Statement of Defence and the High Court Rules allow one month. The file was lost in the Crown Law Office for a while and Phillipa Cunningham had to resend it. Then Crown Counsel took 22 months to provide discovery. Typically, this would be provided in 3 months or less. Discovery was only provided after Phillipa had gone to the High Court twice. The first time she gave them 14 months because she accepted they might have to get the records from other places. 14 months later, when Leonie's records were still not there, she took an application to the Court seeking a Discovery Order and costs and she was given both.

Five months later, still no documents from the Crown. This time, Phillipa sought an order to strike-out the Attorney General's defence and the High Court gave that order and said it would be struck out unless the Crown had filed its documents in the next 8 days. And Leonie got costs on that as well.

It was only then, after two Court orders and two costs awards against the Crown, did they engage in the process.

Seven years later, the Crown Counsel advised it had 64, it was either 60 or 64, I might be wrong, further files to discover. Now, discovery is an ongoing obligation. It's inconceivable it would have only received 64 files 7 years 7 months later.

And I won't talk about Leonie's diaries because they have been well covered by her.

The Crown's mediation strategies. Just after Phillipa asked the Crown to sign a praecipe to set the case down for hearing, in those days unfortunately there was no case management conference and you had to get the consent of counsel before you could get a hearing date allocated, Crown Law proposes a mediation. It was to be in person and Dr Leeks would attend.

However, the mediation was to be secret, so as to protect Dr Leeks. She was not allowed to tell anyone that he was coming back to New Zealand for it. Nor was she even allowed to tell them the time and place of the mediation. This all came about because the Citizens Commission of Human Rights had rung up the Crown Law Office and asked whether the Minister had planned any action against Dr Leeks on his return to New Zealand. So, the Crown became aware that people were interested in Dr Leeks, so what did they do? They forced a secrecy provision and said the mediation wouldn't proceed unless she committed to this.

In contrast to the Citizens Commissions' anticipated Ministerial action, Crown Counsel made sure he could get in and out of the country without being held to account by the media, the Police or anyone else. That was in 1994 or it was later than that. This is despite knowing that he'd been acting outside all proper therapeutic processes, so had been breaching the young residents' rights in a massive way. One

has to ask whether it was protecting Dr Leeks so as to protect its own pockets.

And then there was the trauma of her attending the mediation, how hard it was to be in the same room as Dr Leeks, but she believed at the end of it, though it had physically and mentally exhausted her, that there would be actions straight away because they will have heard the terrible things that had happened to her.

There was no acknowledgment at the mediation or apology or even kind word. As weeks, months and years passed, no attempts were taken to settle her claim. She became debilitated, broken and humiliated at the Crown behaviour. And she found it very hard to raise her children during that time. She was in constant state of stress and trauma.

At the mediation, Crown Counsel had offered $15,000 plus costs to settle.

CHAIR: Can I stop you there? Is there any issue here about the confidentiality of the mediation process?

MS JOYCHILD: No, it's been waived.

CHAIR: Thank you.

MS JOYCHILD: That was their top offer. First was $2,500 plus costs. Clearly, this wasn't a serious attempt to settle her claim, particularly given the much higher amounts Grant Cameron's clients received.

18 months since the mediation, the full betrayal of her by Crown lawyers became evident. And this became evident to her when her lawyer read in the paper that the Crown were aiming to settle 88 other claims that had been made later than hers. And they were to be settled by an independent arbitrator, Sir Rodney Gallen without them even needing to be filed in Court. This was the very process that Robert Chambers had recommended that be taken for Leonie and the other man and all of Grant Cameron's clients. Stealthily without any advice, notice or consultation with her counsel,

Crown lawyers setup and settled the claims through Sir Rodney, leaving her out in the cold.

When she first saw in the media that the Crown were planning to settle with Grant Cameron's clients, Phillipa asked why Leonie was being left out, and he said it was because she had the chance to settle and it had failed. This was a cynical response at most. There had been no real effort to settle with Leonie.

It's strategy is very clear; it was to keep Leonie out until monetary figures that were much less than what Leonie and her counsel believed were owing, had already been set as the benchmark. And, in fact, further documents that, unredacted documents that arrived post evidence and are not before the Commission, but I am happy to put them in, that is all acknowledged that there were issues around benchmarking and that sort of stuff.

CHAIR: These are documents from the Crown?

MS JOYCHILD: From the Crown, Crown litigation file.

Worst still for Leonie and all claimants then and now, the Crown had settled at very low amounts. And I have discussed the reason why and the fact that it had always been her counsel's advice that was important that they settled first to ensure a fair level of compensation for everyone.

And it's obvious to avoid the bar being set too high, she was cut out.

Sir Rodney's approach to distribution is set out there. It was based on a number of factors but it was all within the modest sum he had be given to work with and allocated. There is no criticism of the job he did. It is noted his own horror at what had happened meant he provided an unsolicited report which, as I understand it, litigation had to be taken to have it released but there will be more on that at the Lake Alice Inquiry.

And then the final great indignity after it was already well, it had settled with Grant Cameron, requiring Leonie to go through a psychiatric assessment which is something you have to do under the Limitation Act. 19 months earlier, Crown Counsel had indicated shortly after the mediation to Phillipa that they might require a psychiatric examination and they would get back to Phillipa in a month. 19 months later they asked for it and this was 6 years 6 months since she had filed her claim.

And then I've talked about the further discovery files.

Looking at what a different approach would have looked like, unlike the Solicitor-General, it's submitted that there is plenty of room within a traditional adversarial process to take much more account of the needs of a claimant, when the Crown has a conflicted duty, than what happened.

Paragraph 45, things that could have been done differently. If the Crown was aware of its human rights duties, a priority would have been placed on progressing the litigation without delay.

An offer of immediate counselling to support the plaintiff through the process of reliving memories and enduring the litigation process could have been made.

A waiver of the limitation defence, given it was beyond doubt that the allegations were true. And I comment further on that later.

However, even if the Crown didn't waive the limitation defence, they could have made decisions very early on as to whether an expert psychiatric report was needed and this be advised to her and actioned as soon as possible.

There could have been provision of regular updates, perhaps monthly, of progress the steps the Crown were taking such as locating documents for discovery, particularly after the mediation.

Honesty and transparency in the Litigation Strategy and advice of steps being taken, including when Ministers are involved.

CHAIR: What do you mean by that?

MS JOYCHILD: Apparently some of these steps had to go up in Cabinet Papers to the Minister to get approval, so there were delays in that process, approval for the settlements.

CHAIR: But these were unknown to -

MS JOYCHILD: Unknown. There was just this big silence.

And a protocol in relation to handling of intimate items could have easily been done and should be done, and I have set out there what that would involve, a register where anyone who has handled that item has to write it down. And it also be returned as - copies can be taken of the items, the original returned as soon as possible. Advise we've taken 18 pages from your diary, they have been held securely for the purposes of litigation, they will be destroyed afterwards. It's not hard to come up with a protocol like that.

When it was evident that criminal activity had taken place, as in Dr Leeks' detention and drug and ECT treatment of adolescents without medical justification and often directly as punishment, the Crown would have immediately handed the file to the Police and fully co-operated and supported the Police Inquiry, including providing documentation freely into whether he should have been charged.

And that will come out later as well but it's understood that the Crown withheld a number of documents from the Police when they were investigating whether to charge.

CHAIR: When you say later you mean?

MS JOYCHILD: In the June Inquiry. Crown Counsel would and should have told the plaintiff what part of

the monies came from Dr Leeks and if none of them came, she should have known that and had the chance to reject the settlement.

There was another issue relating to Dr Brinded's report. After she had her psychiatric assessment, it was done under section 100 of the Evidence Act and should have been filed in Court because it was actually the property of the Court - five months later Phillipa had asked about four times, and you can see it in the documentation, it still hadn't been sent to Leonie who was most anxious about that report.

So, looking -

CHAIR: I am receiving messages that the speed is just too great.

MS JOYCHILD: Thank you. Just discussing the Crown evidence now. So, there's only two witnesses that counsel has -

CHAIR: This is the Crown evidence given in this hearing?

MS JOYCHILD: In this hearing by Mr Knipe and Ms Jagose.

It was disconcerting to hear Mr Knipe, Ministry of Health Chief Legal Adviser, explain that he had written something up for the website three years previously but had not got through communications at the Ministry of Health.

This was advice as to how Lake Alice survivors could make a claim to the Ministry about their treatment. This appeared to be a sufficient explanation for him as to why there was no publicity on the Ministry of Health website. And he didn't seem to think there was anything to worry about. He did undertake to try again to get that information up there.

It was also disconcerting to learn there had been no attempt within the Ministry ever to actually make a list of the children and adolescents who had been in the Lake Alice

Child and Adolescent Unit to contact them to see if they were okay and to offer them compensation.

Mr Knipe had not seen the need, noted it would take up too much clerical time.

Given the horrors of what went on, that was public knowledge within the Ministry since the Gallen report, it's disturbing that this was not done two decades ago and has still not been done.

In relation to the Solicitor-General's evidence, she has still not seemed to properly grasp that her office has failed abysmally in its duty to advise its client, the government, about its human right and Te Tiriti duties to the survivors and to work proactively to develop appropriate redress systems. Instead, it allowed itself to become locked into an aggressive, punitive, heartless Litigation Strategy, to block claimants from any monetary compensation at all. That they had a solid provable case was irrelevant. Mr White and Mr Wiffin were the immediate victims. The tactics were clearly intended to threaten and intimidate other survivors and their counsel, Cooper Legal. Those waiting in the queue were the later victims, now forced into alternative settlements with pathetic amounts of money on offer.

It was suggested by the Solicitor-General that if you go down the litigation path you have to know what you're in for and it's tough and rough. With respect, that is certainly not an inevitable consequence of adversarial litigation. It is a basic duty of all litigation lawyers to continually review whether the matter can be resolved without going to court. There's not two totally separate streams. You constantly are looking at should this case settle? Is it in the client's interests? You are constantly balancing up the pros and cons. And it's certainly a duty to be polite and respectful towards your opponent and opponent's client.

But all legal means were available and adopted to bar genuine claims.

A discretionary legal defence, the Limitation Act, was used routinely with vigour to stop victims of major rights abuses from gaining any traction in the courts. The irony of this being that the reason the claimants were out of time was because of the nature of the impact of the abuse upon them. Abuse that happened to them while their client was caring for them in loco parentis. It's regrettable to say that the behaviour of Crown Counsel in using all it's available defences against these vulnerable people fits the description of shameful.

CHAIR: Ms Joychild, what do you say to the proposition that knowing that the irony, as you pointed out, but that at that time, back in the early 2000s, the myths and the knowledge of the myths about survivors, their responses to sexual abuse, wasn't so great and that what was happening was just done out of ignorance? I mean, you're saying here that there was a deliberateness about this?

MS JOYCHILD: There was a deliberateness about it. The Crown, in the general community there may have been that ignorance but the Crown is the client of the government and advises the government. It had a number of human rights commitments at that stage. The Convention of Elimination Against Women talks about sexual matters.

CHAIR: I don't think it's Elimination Against Women. CEDAW.

MS JOYCHILD: CEDAW, Elimination of Discrimination, CEDAW, UNCROC, Children's Convention, DRIP, that came later, the Declaration of Indigenous Persons. The Crown should have been the people who were the least ignorant of all of these myths, and they also saw the evidence. There was a lot of information around, well

certainly in the '90s, let alone the 2000s, it was public knowledge that - I can't off the top of my head talk about criminal law rape case law, but certainly the recent complaint evidence was being criticised for 30 years. I recall it being criticised when I was at law school. The Crown should have known, should have known, it was its duty to know.

At paragraph 51, it's submitted the default position of the Crown Law Office should have been to waive the limitation defence with a discretion to use it in appropriate cases. Of course there's good policy reasons for a Limitation Act. No-one has got any issue with that. But they don't apply well in this case when the reason for your disability is the very act of which you're complaining.

And another point, why did Crown Law Office not see the blindingly obvious truth that if hundreds of complaints were coming in, there must have been major systemic failings in the care and protection of children and young people in care. They should have had the wider view. Once again, this tunnel vision, oh well, there's some in Kohitere and there's some here but there's none of them everywhere. That's just beyond belief. There was a systemic problem and there was a lot of violence but a major part of that problem was paedophilia. My clients have told me that in every institution there would have been two or three, and while a lot of staff were great, you've got two or three preying on young boys in the evenings when the lights are out routinely, nightly, preying on boys. There was a massive misunderstanding or even where it was known, not dealing with the issue of paedophilia and of course there are lots of things you can do around that to protect children now.

If the Solicitor-General thought the litigation process was inappropriate for historic abuse cases, as she's now saying, why did she fight so hard to retain it over years and years? Why did her office resist the 2004

Attorney-General's request and Cooper Legal's request, which I understand was 2010, to discuss and develop an alternative process?

The evidence also disclosed many extraordinarily unfair attitudes towards Cooper Legal. For goodness sake, where else could they take the claims of their clients if not to Court? Under our constitution, the Court deals with breaches of rights. That was the place to go. Unless she is saying Crown Counsel believed those clients did not have rights to seek redress for abuse while in State care. This does seem to have been the attitude. Crown Counsel were going to drive the cases out of the Courts and into oblivion because there was no plan B.

Plan B developed after the White case and because of persistence of the lawyers articulating for their clients, the survivor clients.

CHAIR: Plan B being the ADR process?

MS JOYCHILD: ADR process. There was no thinking 'this the inappropriate place'. The whole strategy was to make these defences work, so that we had limitation working against them, ACC working against them, proof - factual proof working against them. And then they're gone, then there's 1100 cases we don't have to worry about.

Cooper Legal were criticised for filing cookie cutter documents. With respect, if you're in receipt of Legal Aid as a lawyer and you have hundreds of cases to file suddenly after discussions on an alternative process have again broken down, then so as to protect your clients against litigation claims, you will use templates for some of the claim. You have no other choice.

Also, you'd be heavily criticised by Legal Aid for spending inordinate hours at that stage on highly specific claims. That can come later but you need to get your claim

into Court to stop the clock ticking on their limitation point.

The aspersions about Cooper Legal being motivated to seek a settlement for a client so as to gain another income stream are completely unfair. Cooper Legal were doing the right thing trying to resolve the case outside of Court.

The comments also show ignorance on the part of Crown civil servants as to how money is earned if one is not on a salary. For the record, there are staff to pay, Cooper Legal have staff, taxes to pay, experts expenses to pay, travel costs to pay, office rent, other office expenses, ACC payments. Senior counsel undertaking Legal Aid earn $149 an hour with caps on the number of hours. The reason why Cooper Legal seems to have so much of the market in historic abuse cases which appears to be very irritating to the Crown, that reason seems to have escaped the Crown Law Office. In fact, the vast majority of civil lawyers will not do Civil Legal Aid as they consider it not possible to make a living out of it. And, once again speaking in my role as Access to Justice in the Bar Association, I think there are 35 practising Civil Legal Aid lawyers out of 16,000 in New Zealand. It is a major crisis providing representation for people.

So, the solution, the obvious solution is in the hands of the Crown Law Office if it wants to open up the market, it needs to tell the Government, it has the Government's ear more than anyone, to increase the Legal Aid rate.

The big question is why the Crown missed so many opportunities to do it differently. Why have they missed the mark so widely and created so much suffering in the process?

It's submitted that the answer lies in the fact there is a complete lack of a human rights culture or a Te Tiriti culture within the Crown Law Office and consequently within government departments.

There is a severe deficit in this area within the Office, at least when Crown Law Office is outward looking. And I'm not saying anything about their employment policies and I am sure they're very good and supportive in all sorts of ways when they're looking at their own staff. I am talking about the outward approach to claimants and other people.

When the Attorney-General enacted part 1A of the Human Rights Act in 2001, it was with the intention of developing a human rights culture within the New Zealand civil service, so that human rights would no longer just be used as an ambulance at the bottom of the cliff model. Rather, it would infuse and infiltrate thinking at the policy development stage onwards. The former Human Rights Commissioner who gave evidence at the first hearing demonstrates there's been a hostility to human rights claims emanating from the Crown Law Office, just as the evidence has shown there has been a hostility to historic abuse claims from the Crown Law Office.

In conclusion, the evidence shows that it was the Crown Law Office all along that's been the problem with historic abuse cases. Many today are still suffering huge negative impacts from taking claims against the Crown and those people who have received the walking boots or whatever else they've got from the Ministry of Social Development, they have not been rehabilitated, even if their cases have settled. And I am sure, and I believe, that the personal meetings that people have and what the Solicitor-General said about how impressed she was, I believe that they have been very helpful to people to finally have an official hear what you say, believe you and say that was really wrong. That is a hugely healing process. But they have not been rehabilitated, as is the Crown's duty under its international human rights obligations.

The Crown Law Office owes a fulsome apology to survivors on abuse for the strategy and tactics it has developed, it had developed until recently.

The final part of my submission is on the future, providing an effective remedy to all survivors. It's submitted there has not been fair or adequate rehabilitation or compensation for State survivors of abuse. There appear to be signs of it developing within the MSD, some signs. The levels of compensation are mostly shamefully inadequate, inconsistent and unaligned with the massive losses suffered by most, for example, lack of education, vocational training opportunities, earning potential, loss of enjoyment of life, diminishing enjoyment of relationships and family life, diminished mental, emotional and psychological wellbeing.

Until now, there's been no public Inquiry or full government understanding of the systemic nature of the suffering of children and young persons in its care and it's possibly the lack of full exposure to this which has meant empathy has been lacking in government responses to them.

As I said, it's only through Sir Rodney's unsolicited report that the details of Lake Alice became public knowledge.

Dr Leeks has never been held to account in the criminal courts. The CLAS has provided some rehabilitation for persons through listening and linking them up with support services. However, it was tied to what it could provide and it was not its role and did not consider or make provision of what was needed to actually rehabilitate the individual survivor to improve their quality of life.

A most vexing factor for compensation process for survivors, other than Lake Alice to this point, is that the Crown Law Office and its client government departments have been fact finder, then determinative of the quantum while at the same time employed by and answerable to and representing the interests of the government which failed to protect the

child. It's all hopelessly conflicted. Essentially the Crown Law Office cannot meet the government's human rights obligations to the survivors while defending the government from liability for breaches of those human rights obligations to the survivors.

In Leonie's case and others, there has been no contest. The primary, if not sole, duty is perceived to be to protect the government purse strings. I thought that came through very strongly. Even though the Solicitor-General got what the claimants were saying, understood it, understood their trauma very well, she still did not see that actually it was a responsibility of the Crown itself to look at ways of making redress for that trauma.

Now, this may seem a strong submission to make but it is one of the instructions. It's submitted that no-one who has acted as Crown Counsel in the area of Historic Claims in the past should be able to be appointed to any leadership or decision-making positions within a new body. Likewise, and maybe this has to be softened but no public servants in government departments who have worked in the area of compensation for claimants should be so employed.

Unfortunately, there's such a level of distrust and anger towards the Crown Law Office and government officers around many survivors, not all but many, that the credibility of the body would be seriously compromised were such persons to be appointed. There would be real concerns as to whether formal loyalties and ways of thinking could be altered.

I just move on now to the final point. The request for the Commission to make an interim report. The group of Lake Alice survivors urge the Royal Commission to forward an interim report to government recommending the establishment of a properly funded independent body entirely separate from the Crown Law Office to take over the work of assessing claims and providing appropriate rehabilitation and

allocating compensation for survivors of abuse in State care with a sizeable increase in monies available for allocation.

I note there the Australian Royal Commission had recommended $200,000. I haven't looked at it in detail but I understand about an average figure. The government legislated it down to $150,000 and also from that would be deducted monies already received.

CHAIR: Do you think in that regard, and you will have heard the discussion that I had with Crown Counsel today, it should be mitigated in any way by the ACC regime?

MS JOYCHILD: Thank you for raising that, Ma'am. I mean, ACC for survivors of abuse, it's good on the counselling. It's absolutely pathetic on anything else. To get earnings related compensation is extremely difficult because these people cannot show that they were ever able to be employed well. The only person I am aware of who has got earnings related compensation for sexual abuse is a woman who was working in a job, a respectable job in television, and one day her boss' husband came in and he was the man who had raped her as a young adolescent and she just could not work anymore. That took a long time but she got it. She could show that she had been capable of earning a high amount of living. These poor people have never been capable of often holding down sustained employment even, if they have got severe post-traumatic distress disorder they can't take orders from people, they can't take instructions from bosses, they're so super sensitive to being told off and they suffer claustrophobia. So, they don't have any chance.

And I know, we're happy to provide evidence on this if the Tribunal could, I appreciate this is just evidence from the bar, but I completely support what

Cooper Legal say about - ACC does not work, in my experience, in the vast majority of cases.

Lump sum compensation has gone. If you do get, I sat in on one person, it got determined that he did have permanent Post Traumatic Stress Disorder and he no longer had to be on the WINZ Job Seeker allowance but he gets for a family of five living in extreme poverty in a series of shacks north of Auckland, he gets $570 a quarter as compensation for what he suffered, which was sexual abuse in the Catholic Church.

CHAIR: We can't hear too much evidence from the bar obviously, although we're not in a truly adversarial situation. But encapsulating this, is it your submission that if ACC is to be taken into account when settling the quantum, what you submit is a realistic level, there has to be a reassessment of the compensation that ACC gives before that can happen?

MS JOYCHILD: Definitely. I mean, ACC was a scheme setup for people in work and people who had had car accidents. Suddenly, when this huge discovery of how widespread sexual abuse has been in the community came out, they covered it, the government covered it, but it doesn't fit all that comfortably in there. A lot of people think, you know it was just put in really probably to stop a whole lot of claims. And then it was very much related to sexual abuse only and then it was retrospectively impacted on everyone.

CHAIR: Then we have the issues about mental, compensation for mental trauma etc.?

MS JOYCHILD: Yes.

CHAIR: Which I believe is problematic as well?

MS JOYCHILD: It is problematic. There are a lot of issues in the ACC field but frankly, it's a joke to say that it provides proper rehabilitation and compensation for someone whose life has been blighted by the abuse that they suffered as a child.

COMMISSIONER ERUETI: Sometimes we hear that ACC - because we're so sui generis with our ACC scheme, that looking at comparative models in other common law jurisdictions may not be as useful because they are not a direct comparison?

MS JOYCHILD: No, they're not. Who wants to go back to litigation all the time? That is a terrible process to resolve, the no fault thing. But it was for motorcar accidents, other accidents, workplace accidents, and it has been broken into by workplace health and safety, that's one piece of legislation where you can now get compensation if you're killed, for example, a forestry worker, you can actually seek compensation from the courts under that legislation, even though there's ACC.

So, there are, you know, ways you can go and I would definitely suggest if there could be some way that people who have been subject to the type of abuse that we see here, could have their claims looked at, particularly the earnings related aspect of them, because they're left with almost nothing, apart from caps on counselling and this, I forget what it's called, but this tiny payment to make up for the fact that you can never work again.

COMMISSIONER ALOFIVAE: Ms Joychild, ACC is one component of support that's really required. Was there any other thoughts from your clientele around the overall package and around lifelong support?

MS JOYCHILD: One client who suffered very severe reactions to the ECT, he has pains through his whole body. He said to me, "I would just love to have a physiotherapy treatment every 2 weeks. My body is just aching all over". He's in his 60s. So, rehabilitation, each person will have a different need for rehabilitation. And it's very commendable, I

forwarded his thing on to the Wellbeing Team and they have arranged for him to have massages.

CHAIR: That's through the Royal Commission?

MS JOYCHILD: Yes, through the Royal Commission and really the Royal Commission is the model in lots of ways for what this new body would look like. It's made just a tremendous improvement already for a lot of people who have engaged with it, in terms of being heard and in terms of the counselling and massage, the kindness, Leonie spoke of her tremendous feeling of being welcomed and it's the opposite of what happened to her as a child. When she came in and she had her separate room as a witness to be in and cups of tea and food, all that was tremendously important.

On the subject of Leonie, there's one point she wanted me to say. She wanted to make it very clear when my friend spoke to you this morning about further communications outside the Commission. This is at Leonie's instigation, she has asked to speak personally with the two Crown lawyers to let them know personally the impact of their treatment on her. It is an initiative that she has taken.

I am aware it's very late.

CHAIR: We will go until the end because it's important that we hear from you without interruption and you've not got too much further to go?

MS JOYCHILD: No, no. So, this new body, which would take over the work, it would operate in a Treaty partnership model in terms of representation of kawa and tikanga Māori. That's particularly in recognition of the very large number of Māori children. I believe it's about 50% who were in Lake Alice.

The body be authorised to reopen past settlements.

The government accept the systemic nature of the abuse of children in care and provide realistic compensation that will have a meaningful positive impact on the present day

life of the survivor and whānau and acknowledge the grave wrong that has been done to them.

And finally, it's submitted the Commission call for a public process or event for the making of a national apology from the Crown to the survivors of abuse in State care that can be witnessed and understood by the nation. Among other matters, the apology would recognise the abuse was disproportionately done to Māori children and young persons, that invokes breaches of the Crown's obligations under the Treaty, in addition to the breaches that had already been done to Māori that caused a lot of these children to end up in care in the first place.

That the wrong that was done to these young people not only damaged their lives but the lives of their whānau. And it sometimes became a wrong done to others that has criminal justice ramifications.

It would also recognise the losses that many survivors live with today in their mental and emotional health, ability to earn a good living and loss of ability to enjoy the human rights that were guaranteed to them as citizens and residents of Aotearoa New Zealand.

In this way, the government would make an opportunity for the nation to gain some wider understanding of the extreme hurt and damage that was done to many in State care, including all of those at the Lake Alice Adolescent Unit and to understand much more of the context of broken families, crime and dysfunction, in recent decades and now.

CHAIR: And those three elements that you've just referred to, broken families, crime and dysfunction, you say are as a consequence in part, at least in part, of the abuse suffered by people?

MS JOYCHILD: Most definitely and that has been said time and again. One of the men who joined the Mongrel Mob said to me, "We had to. We came out of State care terrified of authority, terrified of the Police. We

got together to protect ourselves, to look after each other and protect ourselves from the State." That was his reason why he ended up in the Mongrel Mob.

CHAIR: I think we heard evidence to that effect at the Contextual Hearing as well.

MS JOYCHILD: But, of course, for Māori the crime dysfunction has a much longer history.

CHAIR: Thank you, Ms Joychild. I'm going to ask my colleagues if they have anything to ask you, and then because of the nature of your submissions, and that's not meant to be critical, but I think even you accept that you strayed into areas of evidence from the bar and the like, which is permissible, I'm going to ask Ms Aldred if she would like to in any way make any comments on that. First, I'll invite my colleagues, Ms Alofivae, do you wish to ask any questions of Ms Joychild?

COMMISSIONER ALOFIVAE: No.

COMMISSIONER ERUETI: Can I ask quickly the process that you recommend we establish? You don't mention any process leading up to that in terms of engagement with affected people, including survivors, would that be part of that?

MS JOYCHILD: Most definitely, most definitely. How they want the apology given is critical.

CHAIR: I have no other questions. Thank you very much, Ms Joychild.

Ms Aldred, I give you this opportunity, as I've said, because of many of the things said in these submissions which I think you may wish to comment on or reserve your position, I am not sure what you want to do about that?

MS ALDRED: I think I would probably like to reserve the Crown's position, possibly to file something brief in writing. There were a couple of things that I

picked up as we have gone. One of them, just because it surprised me, was the suggestion there are only 35 civil Lead Aid providers. We just checked and there are substantially more than that.

MS JOYCHILD: Who do more than I think it's four cases a year. There was a number, sorry I didn't make that clear.

CHAIR: Let's not have a discussion about it. I think Ms Aldred's idea is a good one. If you wish to answer any of those matters, put them in writing, show them to Ms Joychild and then submit them and that - I am not asking you to reach agreement but I think that might be a process that would at least give the Crown an opportunity to answer some of those matters.

MS ALDRED: Yes, we may or may not take the opportunity but I will certainly confirm with Counsel Assisting.

CHAIR: And you will need time to consider that.

MS ALDRED: Thank you.

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CLOSING REMARKS BY COMMISSIONERS

CHAIR: And that brings us to the close of the proceedings. I am going to invite my colleagues to address the gathering and the people who are watching.

COMMISSIONER ALOFIVAE: Ms Joychild, it was very fitting that actually we ended with your submissions because you spoke very powerfully on behalf of the survivors that you represent but we have a saying at the Commission, that n doesn't equal 1. Although you might have just referred to 1 and a few others, in actual fact, what we have come to really appreciate and understand, is that there are significantly hundreds, thousands of more, that sit behind, that have had the courage to come forward. So, in that respect, I really want to mihi in particular to our survivors, Ms McInroe, I see you here, Mr Wiffin, the White brothers and the others, I don't want to get into naming all of them but I see that we've had Lake Alice survivors as well here, Mr Zentveld, for the courage because really in many ways you are the forerunners, you're coming forward, and you're being prepared to stand before the Commission, before the public, in a very open and naked way, to see - for the world really, to see what happened to you and the processes that you had to endure and go through.

It's really on that note I want to also then turn to counsel, Ms Aldred and your team, Mr Clarke-Parker and Ms White and of course to our own stellar team, for the humane way in which you really took care in presenting and leading your witnesses and cross-examining-. And in Samoan, in my own language, we have a saying, it's a phrase, Fa’afetai mo le

fa'atamali'i, ou uiga ma tu. What it means is we really want to thank you for the honour that you brought to the processes, in the way you held yourselves and you conducted yourselves and the honour that you extended to each other both in the witness box, in our hearing space, because it's such a room filled with tension. Emotions run very, very high in this room. And it takes me back to when our building was blessed by Ngati Whatua some months ago and it's a real privilege for us that they are our anchor, they are our stronghold. Because one of the taonga they left with us was in the words they blessed the building with, and they said that they wanted everyone who came into this space, irrespective of whatever title you hold, to bring your whole self into this space because, in actual fact, you impact the wairua of the room. And that the wairua that you are bringing would hopefully be a healing balm for someone else who was in the room.

And so, there is a measure that always goes on in this space but the overriding prayer for us was that this would indeed be a healing space.

So, a space where we might see redemption. A space where we would hear and be able to take on board hard things. And I think I say on behalf of my colleagues that even though you see the three of us here today, our other two Commissioners and the team that sit behind our Executive Director really want to work in an open and transparent way because we're actually aiming to achieve our own mission statement; how do we transform how we care for our young people and be able to influence our nation?

It's really on that note that I want to thank you all. It's been a long, hard three weeks but I think it's one in which you will all agree that, notwithstanding how gruelling it has been and painstaking, and for some I hope that they

would have found a measure of joy and peace in what was said, but the responsibility of course will fall back to the Commission in terms of the gift that we're able to give back to the nation in terms of what we've heard.

So, the weight of that work is not lost on us. And our gratitude is extended to all of you because what we're sensing is a genuine offering of wanting to pull together in a new direction for what's gone on, for our claimants, for our survivors, in historical claims. But, more importantly, actually how does this impact the wider work of our State and our nation going forward. So, thank you for that.

COMMISSIONER ERUETI: Tēnā koe, Kua tāe mai mātou ki te mutunga o tō tatou hui, tēnei tē……anei mātou I te wānanga tuatahi, tēnei tē pūtake ka piki atu mātou ki te tihi o te maunga, ki te kimihia mātou te whakapono, te tikanga,te mana me te kaha te mihi ki ā koutou katoa. Ko te mihi tuatahi ki te tangata whenua o tēnei rohe Ngāti Whātua Ōrākei e mihi ana ki ā koutou, ngā mihi nui ki ngā rōia. Te karauna o te Kōmihana ko Miss McInroe, Miss Joychild, ngā mōrehu, ngā kai whakahaere o te Kōmihana me ngā kai whakaatu. Nō reira tēnā koutou katoa. Kia ora koutou i just want to say some thank yous. I want to acknowledge, mihi the survivors first for their patience in waiting for this Inquiry. I know it's been a difficult time for many and I want to acknowledge that and their support for our mahi.

I was heartened too to hear from Ms Aldred about her experience in working with counsel. A sense of mutual respect in working together I think is very critical for this work because of the difficult material that we're working with. As my colleague just mentioned, it's important for the mana of this Inquiry and all attached to it that we work together and respect one another and recognise one another’s mana.

I also want to just acknowledge too that - recognise too that the kaupapa here is redress and it's the redress offered by the State. And the reason why we've had this hearing is because, clearly, it was a high priority for survivors that we address this issue, a longstanding issue. It's also for us, redress, State redress, is a matter of the honour of the Crown and the mana of the Crown. It's essential that the Crown be here and speak to its experiences and acknowledge its wrongs and shortcomings as we've heard and that more can be done. We've seen parallels drawn between the redress schemes that have been offered to date and the historical claims process through the Waitangi Tribunal, and I think that's a good comparison to make.

While not perfect, the Waitangi Tribunal process has allowed us to grow as a nation, it's played an important part of healing, not just for Māori but for all of us as citizens of this country. And I think also, with what we've been hearing about over the last three or five weeks, and we'll hear more next year, a lot of it is hard, it goes to your core, it will rock us but it's so essential, I think, as New Zealanders, for us to move forward as a nation, to heal and to grow, to go through this process.

So, I want to thank you all for your participation and particularly the survivors and those who gave evidence over the past five weeks and I look forward to working with you all as we move forward with our further hearings, private sessions and wānanga. Kia ora koutou katoa.

CHAIR: Kia ora, I do no more than adopt the sentiments of my colleagues.

On a more prosaic note and maybe one that people are anxious to know about, where do we go to as a result of this hearing? We are in the middle of finalising the interim report that is required under our Terms of Reference to be delivered by the end of the year. We have held that interim report so that we

can include in it a chapter which records at least on a preliminary basis this hearing. That will be a summary of what we've heard. It will be a pointer to future directions. It will not be the full case study or full report with full recommendations because we simply can't do that in the number of days that we have. But there will be reference in our interim report to this hearing and some preliminary findings.

In the New Year, we will be embarking on a series of round tables and consultations to discuss and learn from our stakeholders and experts about the issues that have been raised in this hearing. And you will have heard many times people saying, well, this is a matter that we will discuss later and it's that process that we will undertake.

As a result of that process, with further research and consultation, we will then be in a position to write a full report of this hearing, with full conclusions, full findings, and with recommendations for the future.

I can't give any promises, it would be unwise of me to make any predictions about when. I can say that we are all as anxious as anybody that it is not delayed but it has got to be a full and thorough report because it will be an important report on what has happened over the last four months.

So, that is where we're going. I just end on this note, which I will state in English and then repeat in Māori. If we right the wrongs of the past, we can go well into the future. Ki te tika ā muri, kā pai ki mua. Nō reira, huri noa I tō tatou nei whare, tēnā koutou katoa.

(Closing waiata and karakia)

Hearing concluded at 1.45 p.m.