

Under the Inquiries Act 2013
In the matter of the Royal Commission into Historical Abuse in State Care and in
the Care of Faith-based Institutions

Brief of Evidence of Brett Anthony Dooley for the Ministry of Justice – Redress

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1 Introduction

- 1.1 My full name is Brett Anthony Dooley. I am the Group Manager, National Service Delivery at the Ministry of Justice (the Ministry), and hold the office of Legal Services Commissioner. I have held these roles since October 2018. Prior to this, I held senior leadership roles in several government agencies.
- 1.2 To the extent that I was not involved in events (ie those occurring before October 2018), I have relied on relevant information held by the Ministry.

2 Overview

- 2.1 The Legal Services Commissioner (the **Commissioner**) is appointed under the State Sector Act and is an employee of the Ministry of Justice.¹ In my capacity as Commissioner, when performing the functions specified in sections 71(1)(a)-(d) of the Legal Services Act 2011, I am required to act independently.²
- 2.2 In other respects, I act under the direction of the Minister and the Secretary for Justice.³ I am also delegated some of the functions and powers of the Secretary for Justice under s 68 of the Legal Services Act 2011. In addition, my role as Group Manager extends to oversight of some other areas of the Ministry's activities not directly related to legal aid.
- 2.3 The statutorily independent functions of the Commissioner are:⁴
- (a) granting legal aid in accordance with the Act and regulations;
 - (b) determining legal aid repayments where legal aid is granted;
 - (c) assigning a provider of legal aid services or specified legal services to an aided person; and
 - (d) deciding the allocation of cases among salaried lawyers, overseeing their conduct and managing their performance.
- 2.4 This brief addresses the policies, practices, procedures and frameworks for civil legal aid in respect of historic abuse claims and how these have impacted on the ability of claimants and their counsel to make, file, and pursue civil claims.
- 2.5 In this brief I will cover the history of legal aid as it applies to historic abuse claimants, and the relevant legislative, regulatory, and operational policy changes that have occurred.

¹ Legal Services Act 2011, ss 71(1) and 71(2).

² Legal Services Act 2011, s 71(2).

³ Legal Services Act 2011, s 70(3).

⁴ Legal Services Act 2011, s 71(1).

3 Background

- 3.1 Legal aid is government funding to pay for a lawyer for people who cannot afford one and need one in the interests of justice. People who get legal aid may have to repay part or all of their legal aid costs, as it is considered a loan.
- 3.2 Legally aided persons can apply for a write-off under certain circumstances, such as serious financial hardship, or other reasons (“just and equitable” grounds⁵).
- 3.3 Legal aid has been administered by several agencies across its history. Under the Legal Aid Act 1969, legal aid was administered by the Legal Aid Board. On 14 October 2000 the Legal Services Act 2000 was enacted, and the Legal Aid Board was re-established as the Legal Services Agency (**LSA**) (a Crown entity), which took over responsibility for decisions on legal aid.⁶
- 3.4 At that time the Legal Aid Review Panel (**LARP**) was the reviewing body for legal aid grant decisions.
- 3.5 The LSA was disestablished by the Legal Services Act 2011⁷ and its function was transferred into the Ministry. Legal aid is now administered by the Ministry’s Legal Aid Services team.
- 3.6 The LARP was also disestablished under the 2011 Act, and was replaced by the Legal Aid Tribunal.⁸
- 3.7 Legal aid continues to be governed by the 2011 Act and associated regulations. In practice, the Commissioner’s authority is delegated to grants officers, who are guided in their decisions by operational policy based on the Act and relevant regulations,⁹ and the advice of Senior Advisers (Legal Aid) as needed.¹⁰
- 3.8 The Legal Services Advisory Board is a separate non-statutory board established in 2013 by the Secretary for Justice to provide high-level, non-binding strategic advice and consideration of issues and proposals relating to legal aid and community legal services, and the Public Defence Service. Members (appointed by the Secretary for Justice) provide independent advice and meet twice a year, or more frequently if required.

General principles of legal aid

- 3.9 The purpose of civil legal aid is to promote access to justice by providing legal services to people with insufficient means. It aims to ensure people are not denied access to justice due to their financial circumstances. Administering civil legal aid involves a balance between ensuring access to justice and the responsible use of public funds.

⁵ Legal Services Act 2011, ss 42 and 43.

⁶ Legal Services Act 2000, s 91.

⁷ Legal Services Act 2011, s 117.

⁸ Legal Services Act 2011, s 62.

⁹ For example, see the Legal Aid Services Grants handbook at <https://www.justice.govt.nz/assets/Documents/Publications/Grants-handbook-v4.28.pdf>

¹⁰ Previously known as National Specialist Advisors.

- 3.10 Key considerations in determining whether an applicant is eligible for civil legal aid include:
- (a) whether the applicant meets financial eligibility thresholds;
 - (b) whether the applicant is a natural person in respect of civil proceedings in a New Zealand court or certain administrative tribunals and judicial authorities;
 - (c) the applicant's prospect of success;
 - (d) the applicant's interests in the proceedings in proportion to the likely costs of the proceedings.
- 3.11 Unless there are special circumstances, the Commissioner must refuse to grant legal aid to an applicant whose income or disposable capital exceeds the eligibility thresholds,¹¹ or when the applicant's prospects of success are not sufficient to justify the grant of legal aid.¹²
- 3.12 Since the 2004 High Court decision of *Legal Services Agency v New Zealand Law Society* legal aid has also been provided for settlement negotiations.¹³

4 History of legal aid for historic abuse claimants

- 4.1 An overview of the history of legal aid for historic abuse claims is set out below. Ministry records categorise cases by type of legal proceeding which do not always refer to relevant applications as being for "historic abuse". Often, historical abuse claims have instead been categorised as claims for "exemplary damages".
- 4.2 As a result, a precise determination of the number of applications for legal aid for historic abuse claims is not possible. However, through searching by proceeding type and provider names,¹⁴ and cross-referencing with other sources, the Ministry has provided in Schedule 1 of this brief of evidence the approximate number of applications for legal aid for historic abuse claims that have been received between 2000 and 2019.
- 4.3 The Ministry is confident that the figures supplied are within a reasonable degree of accuracy.

¹¹ Legal Services Act 2011, s 10(2).

¹² Legal Services Act 2011, s 10(4)(d)(i).

¹³ *Legal Services Agency v New Zealand Law Society* [2004] 3 NZLR 63. The High Court held at [24] that the appropriate test is "whether, if a consensual resolution of the dispute were not achieved, and if the claimant were to pursue the legal remedies available for resolution, there is a real likelihood that the forum for resolution would be one of the prescribed forms of proceeding".

¹⁴ As discussed below, two law firms have represented most historic abuse claimants.

2000-2006: Legal aid applications for historic abuse claims increase

- 4.4 There were three legal aid applications for historic abuse received in 2000 and 2001, all of which were approved.¹⁵
- 4.5 From 2002, the LSA began receiving increasing numbers of applications for legal aid for historic abuse claims filed against the Crown Health Financing Agency (CHFA) in regard to psychiatric institutions.
- 4.6 In 2003, many legal aid applications were received for claims against the Ministry of Education (MOE) by former attendees of residential special schools or special programmes, and against the Department of Social Welfare by former wards of the state, with responsibility for such claims later taken over by the Ministry of Social Development (MSD). Applications rose steeply in 2004, from 67 in 2003 to 382 in 2004.
- 4.7 Claimants, or their solicitors, made applications through the usual process for civil matters. The applications were assessed and funded on the same basis as other applications for civil legal aid.
- 4.8 While in the 2000 to 2006 period many legal aid providers acted for historic abuse claimants, Wellington solicitors Sonja Cooper of Cooper Legal and Roger Chapman of Johnston Lawrence became counsel for most represented claimants by 2008. From April 2012, Cooper Legal represented almost all historic abuse claimants due to Roger Chapman's retirement and the transfer of his historic abuse files to Cooper Legal.

2007-2008: Significant judgments affected legal aid decisions

- 4.9 Key judgments were issued in 2007 and 2008, in which claims for historic abuse were unsuccessful.¹⁶ The judgments identified substantial obstacles to claims succeeding under the Limitation Act 1950, the Mental Health Act 1969, and accident compensation legislation. The claimants also faced evidential deficiencies and difficulties in establishing causation.
- 4.10 The impact of these decisions on the application of s 9 of the Legal Services Act 2000 called into question the continued funding of legal aid for historic abuse claims. In the *K v Crown Health Financial Agency* costs decision, when fixing

¹⁵ Report to Joint Ministers of Justice, Health, Education, Social Development and Employment, and to the Attorney-General *Historic Claims – Update on Review* (15 December 2009). **Crown Bundle - Tab 47**

¹⁶ *White v Attorney-General* HC Wellington CIV-1999-485-85, CIV-2001-485-864, 28 November 2007; *K v Crown Health Financing Agency* HC Wellington CIV-2005-485-2678, 16 November 2007; *J v Crown Health Financing Agency* HC Wellington CIV-2000-485-876, 8 February 2008.

Crown Bundle - Tabs 29 - 31

costs in favour of the Crown Health Financing Agency (CHFA), Justice Gendall was critical of the LSA in its funding of legal aid for the case:¹⁷

“...the Legal Services Agency ought to be accountable for funding litigation of dubious merit, either on the facts or by reason of the Limitation Act provisions.”

- 4.11 The LSA anticipated that the obstacles faced in the 2007 litigation would be likely to arise in a large number of historic abuse claims. In February 2008, LSA therefore sent a letter to all providers representing historic abuse claimants, requesting they provide an analysis of each individual client file.¹⁸
- 4.12 The primary purpose of this analysis was to assess each claim’s prospects of success in light of the 2007 and 2008 judgments. The reassessment affected hundreds of historic abuse-related applications for legal aid at that time.
- 4.13 The files were then assessed in groups, with priority given to claims already filed in the courts. National Specialist Advisers¹⁹ (who provided expert advice on complex legal aid files) assessed the prospects of success of the claims in light of the obstacles noted above.
- 4.14 The LSA then issued individual decision letters to each client and their counsel indicating whether they would continue to be legally aided. LSA determined that most cases would not overcome the obstacles noted in the judgments discussed above, and so those letters included an intention to withdraw legal aid.
- 4.15 This process resulted in the withdrawal of legal aid for most historic abuse claimants. This led to providers applying to the LARP to review many of these decisions.
- 4.16 In early 2009, the LARP overturned some of the withdrawal decisions.²⁰ The LSA subsequently appealed to the High Court, which resulted in both the LARP and the LSA being directed to reconsider some of their approaches to these cases.²¹
- 4.17 Throughout 2009, Cooper Legal continued to submit a large number of requests for review to the LARP. These ranged from decisions such as the withdrawal of legal aid for the entirety of a claim to the amount payable for specific invoices.
- 4.18 The volume of reviews, and ongoing uncertainty about definitive findings on an appropriate approach to historic abuse cases,²² placed strain on the LSA’s resources and led to processing delays on both existing and new files.

¹⁷ *K v Crown Health Financing Agency* HC Wellington CIV-2005-485-2678, 13 February 2008, at [19]. I understand the role of CHFA is described in the evidence of Philip Knipe on behalf of the Ministry of Health. **Crown Bundle - Tab 32**

¹⁸ See for example Letter from LSA to Roger Chapman (Chapman Lawrence) regarding Psychiatric Hospital and Social Welfare Claims (21 February 2008). **Crown Bundle - Tab 33**

¹⁹ Now called Senior Advisers (Legal Aid).

²⁰ Letter from LSA to Minister of Justice regarding Outcome of LARP Decision on Historic Abuse Cases (20 May 2009). **Crown Bundle - Tab 43**

²¹ *Legal Services Agency v R* (2009) 20 PRNZ 423. **Crown Bundle - Tab 44**

²² For example, in *Legal Services Agency v R* Dobson J noted, at [174], “I acknowledge the consequences of these decisions are haphazard as between the various applicants for legal aid.”

- 4.19 The review process was then overtaken by subsequent events as outlined below, with the result that the granting process for legal aid resumed and continued to be made in respect of historic abuse cases.

2009: Legal Aid Review

- 4.20 In April 2009, a full review of legal aid was initiated by the then Minister of Justice, Hon Simon Power.
- 4.21 In November 2009, the final report of the review (*Transforming the Legal Aid System*²³) was released. The recommendations included:
- (a) the government should give urgent consideration to alternative ways of resolving the claims of historic abuse of people who were in the care of government agencies; and
 - (b) the LSA should be disestablished as a Crown entity and its functions moved into the Ministry of Justice.
- 4.22 The report also provided commentary on the status of historic abuse claims at that time:

There is a large volume of these applications, and the cost of administering them has been substantial. These claims have the potential to be very costly and complex. Legal aid to date on four cases alone has cost \$1.4 million.²⁴ Lack of success in those four cases prompted the withdrawal of legal aid in many of the remaining cases (approximately 900), based on reconsideration of their prospects of success. This led to a review by the Legal Aid Review Panel (LARP), and an appeal to the High Court, which resulted in the LSA and LARP being directed to reconsider various decisions. That has now been done. LARP has overturned the LSA's decisions on new grounds and the matter is returning to the High Court on a fresh appeal.²⁵

[...] The historic abuse claims in particular have the potential to place enormous pressure on the LSA's granting process and on legal aid expenditure, both because of the large number of claims and the high costs involved. Urgent consideration should be given to alternative ways of resolving these claims: the Crown's strategy of addressing these cases through the courts places pressure on the courts and benefits lawyers rather than claimants. It also leaves the problem to fester: the claimants are likely to consider that the Crown has won on a legal technicality. They will be left feeling aggrieved and that the Crown is not prepared to treat them or their claims with respect and compassion.²⁶

[...] a significant stress has been placed on the LSA-LARP relationship by the deluge of historic abuse claims, which has caused congestion in the decision-making processes of both bodies. This has not been helped by

²³ Legal Aid Review Chairperson Dame Margaret Bazley *Transforming the Legal Aid System: Final Report and Recommendations* (Ministry of Justice, November 2009). **Crown Bundle - Tab 45**

²⁴ The total Legal Aid appropriation for 2007 was \$1.375 million.

²⁵ At [102].

²⁶ At [103].

*difficult relationships between the providers and the LSA in relation to these cases.*²⁷

- 4.23 In terms of historic abuse claims, the legal aid system had for several years been reacting and responding to wider developments (such as the High Court rulings, and the increase in volumes of claims) as they occurred, within the statutory parameters governing legal aid, whilst ensuring an equitable approach to all legal aid users.
- 4.24 Following this period, as Crown agencies developed their redress systems, LSA (and later the Ministry) began to work closely with the agencies on improved approaches. The volume of historic abuse claims drove efforts to find new ways to improve outcomes for all parties.

Post-legal aid review developments in approach to historic claims

- 4.25 In April 2011, the LSA issued letters to all open historic abuse claimants with claims against MSD to ensure they were aware of MSD's alternative dispute resolution process. The LSA also advised legal aid providers that it was writing to all relevant clients regarding MSD's new process and the possibility of claims being able to be resolved without recourse to litigation.
- 4.26 From 1 July 2011 the LSA was disestablished and responsibility for legal aid was taken over by the Ministry of Justice under the Legal Services Act 2011.²⁸

Agency contributions to legal aid debt

- 4.27 If a claimant opted to accept an out of court settlement, the usual process was that they might be liable to pay back legal aid costs out of settlement monies. Claimants were able to apply individually for consideration of legal aid debt write-off. The Commissioner has a general discretion under the Act to write off legal aid debt under certain circumstances, including where it would be "just and equitable to write off the debt".²⁹
- 4.28 Rising legal aid debts had been identified as an obstacle to claimants settling claims. In December 2009 the Ministers of Justice, Health, Education, Social Development and Employment, and the Attorney-General, directed Crown Law Office, the Ministry, CHFA, MOE and MSD to continue to follow the current strategy of offering to forgive legal aid debts and reimburse certain wellness-related costs to claimants.³⁰
- 4.29 In October 2011 the Commissioner wrote to MSD, supporting a continuation of the existing practice whereby MSD would contribute two thirds of claimants' legal costs and the remaining third would be written off by Legal Aid Services. The Commissioner noted that debt write off decisions were made on a case by case basis and so the statutory discretion remained unfettered.

²⁷ At [150]. **Crown Bundle - Tab 45**

²⁸ Legal Services Act 2011, s 119.

²⁹ Legal Services Act 2011, s 43(1)(c).

³⁰ Report to Joint Ministers of Justice, Health, Education, Social Development and Employment, and to the Attorney-General *Historic Claims – Update on Review* (15 December 2009). **Crown Bundle - Tab 47**

- 4.30 An agreement was also entered into with CHFA in October 2011, ahead of CHFA's disestablishment, whereby CHFA would contribute half of the legal aid debt and the remainder would be written off by the Ministry.
- 4.31 In 2012 approximately 330 claims were settled by CHFA, of which 264 were subject to a legal aid settlement. Legal aid debts were paid for and written off according to the Ministry's 2011 agreement.³¹
- 4.32 In July 2013 the Ministry entered into an agreement with MOH whereby MOH would also pay half of the outstanding legal aid debt, with the Ministry writing off the remainder. In December 2013, the same agreement was made with MOE.
- 4.33 Where the claim is settled with no settlement money offered, the same principle applies (ie the claimant's legal aid debts may still be part-repaid by the relevant agency, with the remainder written off by the Ministry).
- 4.34 If a claimant pulls out of the process before settlement (which is rare), as for any legal aid client, the Ministry would have identified the claimant's assets at the time of the initial grant of legal aid, and whether there is liability for legal aid debt will be decided in the usual way.³²
- 4.35 Where filed claims are settled, or if a matter proceeds to a court hearing, then the question of whether the relevant agency will contribute to any legal aid debts is at the discretion of the respective agencies. The Commissioner's discretion to write off legal aid debts remains in force today in accordance with the Legal Services Act 2011.³³

2011: Limitation Act agreement

- 4.36 On 11 May 2011, MSD entered into an agreement with Cooper Legal whereby it agreed that it would not rely on the Limitation Act 1950 in particular circumstances, both in its out of court settlement process and in litigation, as detailed in the brief of evidence of Simon MacPherson for MSD. This agreement had positive impacts on eligibility for legal aid as in some cases it could remove one of the possible obstacles to a successful claim.

2014: Waiver of initial application user charge

- 4.37 In March 2014, Cabinet agreed to exempt historic abuse claimants from paying the initial application user charge required by the Legal Services Act 2011,³⁴ if the claims pre-dated 1993.³⁵
- 4.38 The user charge is a fee of \$50, designed to encourage people to think carefully about whether to engage in litigation, and to contribute towards funding the legal aid scheme. However, in some cases the vulnerability of the applicant is such that any upfront fee, however small, is not considered appropriate, and so applicants will not be required to pay the user charge. Cabinet agreed that

³¹ I understand the disestablishment of CHFA is discussed in the evidence of Philip Knipe on behalf of the Ministry of Health.

³² Legal Services Act 2011, s 43.

³³ Legal Services Act 2011, s 43.

³⁴ Legal Services Act 2011 s 18A and Legal Services Regulations 2011 reg 9B.

³⁵ Cabinet Social Policy Committee "Legal Aid: User Charge Exemption and Quality Assurance Improvements" (19 March 2014) SOC Min (14) 5/2. **Crown Bundle - Tab 67**

historic abuse claimants fit this category and that it was therefore appropriate they be exempted from paying the user charge.

5 Legal aid for historic abuse claims represented by Cooper Legal

- 5.1 Cooper Legal has been significantly involved in historical abuse claims and, since April 2012, have represented almost all legally aided historic abuse claimants.
- 5.2 LSA operational policy allowed for legal aid lead providers to receive a higher hourly rate under certain circumstances.³⁶ Between 2004 and 2008, the LSA agreed to pay a higher negotiated rate for certain historic abuse claims worked on by Sonja Cooper (and Roger Chapman, prior to the handover of historic abuse files from Johnston Lawrence to Cooper Legal).
- 5.3 The higher payments reflected the additional work required to develop systems and templates, carry out research, and deal with the complexities and large volume of these cases.
- 5.4 It was subsequently determined that new applications after 24 November 2008 no longer met the higher rate criteria, as the additional foundation work had been completed. Accordingly, the standard rate is paid on all applications for historic abuse claims made since this date. Pre-24 November 2008 files that have remained open continue to receive the higher rate.
- 5.5 Cooper Legal has significantly more legal aid files than any other provider apart from the Public Defence Service. The Ministry generally expects to recover more than half the legal aid debt from the Cooper Legal files due to the various legal aid repayment agreements with other agencies as noted in the previous section.
- 5.6 For a period of time, most of the decisions relating to the grant of legal aid were challenged by Cooper Legal, resulting in increasing numbers of file reconsiderations and subsequent referrals to the Legal Aid Tribunal. This placed an additional burden on the administration of legal aid, which resulted in delays to the processing of all legal aid files. While difficult to quantify specifically, the work on hand for the team was unprecedented and did take time to work through. This was especially the case in regard to finding appropriate ways to improve processes wherever possible within the boundaries in which the granting of legal aid operates.
- 5.7 In 2014, a relationship manager role was created within the Ministry to work with Cooper Legal. The Ministry's relationship manager met with representatives of the firm regularly with objectives of identifying common ground in relation to particular applications that had been submitted, Cooper

³⁶ The policy was continued by the Ministry of Justice. The current standard rates are publicly available on the Ministry's website at: <https://www.justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/provider-rates-and-special-rates/family-or-civil-fee-rates/>. Grants handbook information is also published at: <https://www.justice.govt.nz/assets/Documents/Publications/Grants-handbook-v4.28.pdf>. Operational policy allows for a provider to request a higher hourly rate "in complex cases where a special set of skills or experience is required."

Legal gaining a better understanding of legal aid decision making, and ultimately achieving outcomes for both parties in a more effective and efficient way.

- 5.8 The relationship manager remained in place until June 2017. At that point it was considered the relationship had strengthened enough that it could be adequately managed by the Ministry's usual stakeholder management processes.
- 5.9 Where a claimant represented by Cooper Legal has specific reasons to file a claim in Court, reasons for filing are considered by the Ministry in the usual way. The main reasons for filing are disputes over the allegations or factual aspects of the allegations, or because the Limitation Act agreement does not or may not apply (for example for claims against MOE where no agreement on the limitation period is in place, or for younger MSD claimants). In many instances Cooper Legal files claims in a pro forma way that the Ministry understands is principally for the purpose of safeguarding the claim against a Limitation Act defence.

Variations of the standard legal aid process since 2013

Application process

- 5.10 It was agreed with Cooper Legal in 2013 that when an existing historic abuse client initiated a claim against a second government agency, they would not be required to complete and submit a separate application form (although two separate legal aid files would be maintained). This was to reduce any potential stress a new application could cause.
- 5.11 Further, the letters of grant sent to historic abuse clients had references to future legal aid debt removed (which appear in the standard template), due to the agreements in place with CHFA, MSD, and MOE. From 2014, the reference to the \$50 user charge was also removed.

Invoicing and global billing

- 5.12 Also in 2013, it was agreed with Cooper Legal that the work done for groups of claimants would be allocated at the time files were closed, ie in calculating the final cost of each individual file, a portion is allocated to that file. Cooper Legal now bills monthly for work completed which progresses all files through what is known as the "global" file by submitting a generic invoice. This approach is to streamline the invoicing process for both parties, and is unique to the claims from Cooper Legal. Until 2013 the cost of the work was allocated over all files monthly.
- 5.13 The work billed on the global file includes meetings with the Crown Law Office, MSD, MOH, and MOE as well as the gathering of information on different state residences, liaison with agencies such as the Human Rights Commission, Privacy Commission, and various Church organisations. Where the time cannot specifically be allocated to one file or a small group, it is allocated to the global file. Global billing does not enable Cooper Legal to claim for work that would otherwise not be paid for by legal aid, but it does save considerable administrative time for both Cooper Legal and the Ministry.

Settlements

- 5.14 Cooper Legal seeks an indication of debt write-off for claims that are not subject to a repayment agreement with one of the agencies, so that their client can make an informed decision about settlement knowing what the final financial outcome will be. They then usually indicate if a fast decision on the total amount of the Crown charge (the repayment of costs of services) is required from the Ministry (with reasons) and the Ministry assists with this whenever possible.
- 5.15 The Ministry has agreed with Cooper Legal that if a claimant has multiple legal aid historic abuse files and one claim settles, the settlement money will not be taken into account in assessing financial eligibility for the remaining file(s).

6 Total Legal Aid Funding attributed to historic abuse claimants

- 6.1 Schedule 2 of this brief of evidence sets out the total legal aid expenditure per calendar year.
- 6.2 Based on analysis of the available information, the median legal aid expenditure for finalised historic abuse cases is \$8,575. This figure is based on data from 2002 to the present,³⁷ and relates to 1477 finalised cases.
- 6.3 As well as providing legal aid for claims against the agencies for historic abuse claims, legal aid has also been provided for peripheral matters such as claims in the Human Rights Review Tribunal relating to the disclosure of information by agencies for the purpose of advancing historical abuse claims.

7 Future opportunities

- 7.1 The Ministry took over responsibility for the provision of legal aid in 2011 and acknowledges that there have been challenges in the past with processes in enabling access to legal aid quickly and efficiently for historic abuse claims. In response the Ministry has continually reviewed and updated procedures, and will do so as part of continuous improvement.
- 7.2 Some recent changes to our processes include updating application forms in order to make them more customer-centric, which has made the application process quicker. We have also introduced improvements to our granting processes (such as creating a triage system) to enable more timely determinations to be made.
- 7.3 We are committed to the principles of the Crown response to the Royal Commission, including meeting our obligations under Te Tiriti o Waitangi, and

³⁷ Analysis completed on 7 January 2020.

look forward to the findings where it may relate to any recommendations for improvements to legal aid provision for historic abuse claimants.

GRO-C

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Brett Anthony Dooley

Schedule 1 – Estimated total applications received and granted for historic abuse claims per calendar year*

Year	Applications received	Applications granted
2000	2	2
2001	1	1
2002	58	57
2003	67	66
2004	382	374
2005	178	176
2006	99	99
2007	149	146
2008	42	41
2009	38	11
2010	75	68
2011	73	68
2012	68	63
2013	140	140
2014	126	125
2015	240	240
2016	222	222
2017	394	394
2018	336	336
2019	276	276
Total	2,966	2,905

* Years 2000-2009 sourced from Report to Joint Ministers of Justice, Health, Education, Social Development and Employment, and to the Attorney-General *Historic Claims – Update on Review* (15 December 2009); subsequent years from Ministry records. As noted at paragraphs 4.1-4.3, Ministry records mean a precise total number of legal aid files for historic abuse is not readily available. Where relying on Ministry records, this list (created for the purpose of this evidence brief) shows cases of the relevant proceeding types that have been assigned to the two firms that have handled nearly all of the historic abuse claims and whose legal aid cases were almost exclusively these types of claims. The Ministry is confident that the figures supplied are within a reasonable degree of accuracy.

Schedule 2 – Historic abuse legal aid expenditure (invoices approved) per calendar year**

Calendar Year	Total Amount Paid (Inc. GST)
2002	\$32,285.61
2003	\$182,548.02
2004	\$433,662.88
2005	\$622,181.96
2006	\$1,625,291.53
2007	\$1,375,402.52
2008	\$1,848,641.58
2009	\$1,708,392.56
2010	\$1,577,444.56
2011	\$1,382,622.87
2012	\$1,470,528.46
2013	\$1,344,437.08
2014	\$1,338,177.81
2015	\$1,404,464.84
2016	\$1,452,584.36
2017	\$1,731,053.35
2018	\$1,794,852.35
2019	\$1,738,888.33
Total	\$23,063,460.67

** The amounts of approved invoices for those cases that can be identified electronically as most likely to be historic abuse cases.