He Purapura Ora, he Māra Tipu

From Redress to Puretumu Torowhānui

VOLUME TWO
DECEMBER 2021

Abuse in Care
Royal Commission of Inquiry

Pānui whakatūpato

Ka nui tā mātou tiaki me te hāpai ake i te mana o ngā purapura ora i māia rawa atu nei ki te whāriki i ā rātou kōrero ki konei. Kei te mōhio mātou ka oho pea te mauri i ētahi wāhanga o ngā kōrero nei e pā ana ki te tūkino, te whakatūroro me te pāmamae, ā, tērā pea ka tākirikirihia ngā tauwharewarenga o te ngākau tangata i te kaha o te tumeke. Ahakoa kāore pea tēnei urupare e tau pai ki te wairua o te tangata, e pai ana te rongo i te pōuri. Heoi, mehemea ka whakataumaha tēnei i ētahi o tō whānau, me whakapā atu ki tō tākuta, ki tō ratonga hauora rānei.

Whakautetia ngā kōrero a ētahi, kia tau te mauri, tiakina te wairua, ā, kia māmā te ngākau.

Distressing content warning

We honour and uphold the dignity of survivors who have so bravely shared their stories here. We acknowledge that some content contains explicit descriptions of tūkino - abuse, harm and trauma - and may evoke strong negative emotional responses for readers. Although this response may be unpleasant and difficult to tolerate, it is also appropriate to feel upset. However, if you or someone in your close circle needs support, please contact your GP or healthcare provider.

Respect others' truths, breathe deeply, take care of your spirit and be gentle with your heart.

Presented to the Governor-General by the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

ISBN 978-0-473-60727-2

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Leoni McInroe:

He pakanga iwa-tau me tētahi whakapāha manakore
A nine-year battle and a woefully inadequate apology

Leoni McInroe was one of the many individuals abused by doctors and staff while at the Child and Adolescent Unit at Lake Alice, the government-run psychiatric hospital near Whanganui.[1] Leoni brought a claim against the Crown and the hospital's lead psychiatrist, Selwyn Leeks, over the abuse she suffered while there as a teenager. The Solicitor-General has accepted the allegations of abuse by Leoni, and others, have all the features of torture. The battle for compensation took nine years and both compounded and prolonged her trauma. But Leoni's struggle to put the life-changing abuse behind her is not yet over because Dr Leeks, and those who aided him, have yet to be held accountable through the criminal justice or professional discipline systems.

"Instead of compassion, justice, validation and an apology, I received nine grueling years of emotional battering, abuse and bullying from the Crown."

Tau tōmua me te tūkino - Early years and abuse

Leoni was adopted shortly after birth. Her adoptive parents both died before she was four. She was placed in the Methodist Mission Orphanage in Auckland and then in foster care in Whanganui when she was five. Leoni's foster mother physically and emotionally abused her for the next decade. She took Leoni to many medical professionals, saying there was something wrong with her. When Leoni was 12, her foster mother took her to Palmerston North Hospital where Dr Leeks was a psychiatrist. In 1975, Dr Leeks had Leoni, then 14, admitted to Lake Alice's Child and Adolescent Unit twice for a total of 18 months. This was longer than most survivors spent at Lake Alice. Dr Leeks diagnosed her with borderline schizophrenia – his standard diagnosis for many of those sent to the unit. Several psychiatrists assessed Leoni during her legal action and as part of her ACC claim. Not one agreed with the diagnosis Dr Leeks used to justify her admission to the unit, or the treatment given to her. Leoni's ACC claim was successful. It rested on an opinion by Professor John Werry, a child psychiatrist, whom Crown Law recognised as the leading expert on child psychiatry in the 1970s. Professor Werry said Dr Leeks' treatment of Leoni was unacceptable and a form of medical misadventure. By any measure, Leoni had been admitted and treated without medical justification.

At Lake Alice, Leoni was heavily medicated and subjected to shocks from an electro-convulsive treatment machine, without anaesthetic, as a form of punishment. She was put in seclusion for long periods of time. In addition to her daily medication, she was given sedatives as punishment for minor infractions. So great was the sedation that she felt continually "drugged up" and struggled to function, particularly

with schooling and sitting exams. Leoni also suffered uncontrollable dribbling and eye problems. Her self-esteem plummeted. Despite being a young teenager, she was housed in a ward with adult psychiatric patients suffering from serious mental illnesses. Some patients assaulted her. One attacked her with an ashtray while she slept, causing permanent nerve damage to her head. Leoni still feels the impact of this abuse today. She said, "no matter how hard I work on proving that I'm normal, the impact of years of trauma is never far away ... as far as I have come in healing from my history, there are still things that cause me distress."

Pakanga ture - Legal battle

In August 1994, at the age of 33, Leoni filed her claim in the High Court. She was the first Lake Alice survivor to make a claim against the Crown. What followed was to reignite the trauma suffered all those years ago.

She expected her story might be treated "respectfully, with integrity, sensitivity and care" and might evoke compassion and result in justice.

"Instead of compassion, justice, validation and an apology, I received nine grueling years of emotional battering, abuse and bullying from the Crown."

The Crown's response to Leoni's claim was led by Crown Law and the Ministry of Health's legal section. Crown Law made no attempt to conduct a meaningful assessment of her claim to determine whether it had merit. The merits were plain to see, as Solicitor-General Una Jagose later acknowledged:

"The Government of the day could see readily that the record showed ... Dr Leeks was using treatment methods to punish and attempt to modify behaviour in a way that the Crown then, and still, thought was unacceptable ... The proof was right there in the file, in the very systems that the hospital and Dr Leeks ran."2

Instead of a meaningful assessment of her claim, Crown Law caused avoidable and unjustified delays, and missed deadlines for reasons never adequately explained. It also failed to communicate promptly with Leoni.

Leoni told us the Crown was entirely focused on defending itself and Dr Leeks against the financial implications of her litigation.

> *"There was not one point in the entire process the Crown acted with any genuine care or respect to the actual harm I had suffered in Lake Alice, not one, not ever."*

Discussing her expectations of how the Crown would act, Leoni said: "I had hoped that after they saw what unlawful things had happened to me while I was in the care of the State they might immediately approach me with an apology and a settlement."

She added:

> *"I expected fairness and justice from the Crown. I expected an objective, considered view of the truth as presented by myself and my evidence. I expected fairness and justice. The irony was that over the nine years my advocate for justice, the Crown, became the perpetrator."*

Solicitor-General Una Jagose told us the Crown's focus when it received Leoni's claim was on defending the claims on the basis of available legal defences and "there was no attention to the facts".[3] She said the Crown "didn't treat [Leoni] in a way that she mattered".[4]

Long and frequent delays began from the outset. Six months after Leoni filed her claim, Dr Leeks had still not followed Court rules that said he had to provide a list of documents. The Crown had still not filed its statement of defence. The Crown finally filed its statement of defence in April 1995 – nearly eight months after Leoni began legal action and seven months after the deadline in the rules of the High Court.

Solicitor-General Una Jagose said Crown Law was responsible for "unjustified delays" in conducting the proceeding, adding that there were "some specific delays filing the defences, providing the documents, the common courtesy of replying to counsel's correspondence".[5]

In June 1995, the Crown and Dr Leeks applied to strike out Leoni's claim – not on account of any apparent lack of merit, but rather on defences available under the Limitation Act 1950, which barred any claim brought more than six years after the time period defined in the Act; section 124 of the Mental Health Act 1969, which provided a legal immunity for acts done in pursuance of the Act, in good faith and with reasonable care; and accident compensation legislation. The High Court disagreed with the Crown in August 1996 and allowed Leoni's claim to continue. By that time, nearly two years had passed.

Two more years of delays and missed deadlines followed the Crown's loss in the High Court. At various points, the High Court had to order the Crown to comply with deadlines and court rules. In June 1995, for example, Leoni's lawyer served a notice requiring the Crown to provide a list of documents relevant to the claim. The 28-day deadline came and went without the Crown explaining its failure to meet the deadline or seeking an extension of time. When the Crown had still not met its obligation six months later, Leoni's lawyer had to apply to the High Court for an order that the Crown comply. The court made the order in December 1996, almost a year and a half after Leoni's lawyer had sought the list of documents.

Despite this court order, the Crown still failed to comply. In February 1997, the High Court made a ruling in favour of Leoni on the basis that Crown Law had not

complied with the order despite repeated reminders. Despite that ruling, and with no explanation, the Crown still did not provide the list of documents. Months passed. Leoni's lawyer asked about the list of documents but got no response. In May 1997, Crown Law finally provided the list of documents after being ordered yet again to do so by the High Court or risk having its statement of defence struck out.

In the end, it took almost two years, two court orders and an application to strike out the Crown's defence to get the list of documents from Crown Law. It was only after the Court said it would strike out the Crown's defence that Crown Law provided the list. Una Jagose told us she found it "remarkable and not good enough that it wasn't until the court threatened to throw out the Crown's defence … that the list of documents was filed".[6] She said she found it "terrible" and "disgraceful" that the Crown was conducting itself in that way, adding that "delays without excuse are not good enough".[7] No adequate explanation was ever provided.

She also acknowledged to the inquiry that Leoni had not been treated with the dignity she deserved – especially in relation to her personal journals, which Crown Law had requested she provide in August 1997. Leoni's understanding was that the Crown wanted the diaries to see whether her current state of mind showed any signs of mental illness.[8] The journals contained her most private thoughts and feelings, and Leoni said she felt extremely vulnerable, exposed and anxious while waiting for their return. She requested the return of the diaries every year, but they were not returned until six years later in 2003, when they came back covered in yellow post-it notes. Leoni said it made her nauseous to think of strangers reading her most intimate thoughts, searching for evidence to hold against her. She has not kept a diary or journal since.[9]

Leoni had always hoped to settle with the Crown to avoid going to trial. In October 1997, and with more Lake Alice survivors coming forward with claims, Leoni's lawyer wrote to Crown Law and proposed using mediation or arbitration to resolve Leoni's claim, along with those of all the other survivors. This proposal was met with silence.

In December 1997, however, Crown Law proposed mediation with Leoni and one other Lake Alice survivor (who was unknown to her). Mediation was conditional on Leoni agreeing not to tell anyone Dr Leeks was returning to New Zealand from Australia, where he lived, and that he would be meeting her in person. Leoni agreed to this condition.

Mediation finally took place in June 1998. Three representatives of the Crown attended, along with officials from the Ministry of Health. Dr Leeks was present with his lawyer, and Leoni with her two lawyers. The other nominated survivor was also present.

"When I turned up on the day, I was taken through three sets of doors, each of which were locked after me. Memories of being back in Lake Alice, the trauma, the anxiety, the fear, the smell, the sounds, the keys and locks and the powerlessness was overbearing and overwhelming."

Leoni, who had been experiencing diarrhoea and vomiting for three days beforehand, said she was "alarmed at the overwhelming number of Crown representatives present. I felt just as intimidated and vulnerable as I had experienced being in Lake Alice. I was absolutely petrified of being in the same room as Dr Leeks again." The mediator sat Dr Leeks and his lawyer directly opposite Leoni. Her lawyers demanded a change to this seating arrangement.

Leoni was hoping she could settle with the Crown at the mediation. This was not to be. The Crown's offer was extremely low – the Crown's records say it offered $7,500 plus costs of $20,000. When Leoni rejected this, the Crown made no further offers at the mediation.

Reflecting on the outcome, Leoni said: "I felt our stories were unbeatable and insurmountable … There was no denying the intentional, debilitating, ongoing abuse of children and young people at Lake Alice. I believed that the evidence and facts were so strongly in favour of all survivors that finally Dr Leeks, and the people who put him in power, would be exposed and criminal justice and fair compensation would be realised for all us plaintiffs. How could there not be justice with so much evidence?"

The case dragged on for another four years. According to Leoni: "Nothing happened. Just silence. It felt like torture again. The Crown is a formidable opponent. As the years went on, I constantly felt as though the plan was to wear me down using multiple tactics and strategies. Long periods of time doing nothing and creating long delays was one such tactic. Eliminating my resources (I had a massive legal aid debt that had to be reapplied for frequently) against the Crown's unlimited funds."

Ms Jagose told us: "the delays were symptomatic of … a lack of empathy for consideration that there was a person in this file, that there was a person's life."[10]

Meanwhile, the years passed by. The Crown requested more documents. Leoni requested a trial by jury, which was opposed by Dr Leeks and the Crown. The High Court and Court of Appeal agreed with the Crown.

In December 2000, Leoni's lawyer applied to have the case set down for a hearing. More delays followed. Crown Law opposed pre-trial directions on the basis that it now intended to provide thousands of documents about Lake Alice. This was six years after Leoni's lawyer first requested a list of documents.

In the same month, Leoni's lawyer read a news article saying Crown Law intended to settle with a group of Lake Alice survivors who had filed their claims after Leoni and whose claims were being handled by Christchurch law firm Grant Cameron Associates. Her lawyer wrote to Crown Law, and asked whether the Crown wished

to propose a settlement with Leoni, in light of its position with those claimants. In January 2001, having received no response, her lawyer wrote to Crown Law again to ask the same question. More than a month later, Crown Law replied, merely stating that Leoni had already attempted to mediate, and this had not led to settlement.

In February 2001, more than six and a half years after Leoni lodged her claim, the Crown said it intended applying under the Judicature Act 1908 to have Leoni examined by a psychiatrist to verify what she had said about her past and present mental health, and whether she could have made her claim earlier. The Crown had first signalled the possibility of a psychiatric examination in July 1998 and had undertaken to let Leoni know within a month whether it would be taking such a step. Instead, it let almost three years go by before responding.

The examination took place in April 2001 at the Mason Clinic, a forensic psychiatric hospital – a location Leoni believed was an intentional act of punishment for challenging the Crown.

"When I turned up on the day, I was taken through three sets of doors, each of which were locked after me. Memories of being back in Lake Alice, the trauma, the anxiety, the fear, the smell, the sounds, the keys and locks and the powerlessness was overbearing and overwhelming."

The examining psychiatrist concluded Leoni's account was credible, and it was clear from the files that she received ECT and painful injections of drugs in circumstances that fell outside accepted medical practice at the time. Leoni's lawyer received a copy of the psychiatrist's report four months later.

Meanwhile, the Crown settled with the group of more than 80 Lake Alice claimants using a process similar to the one that Leoni had suggested many years earlier. The claimants settled through an independent arbitrator, Sir Rodney Gallen, without needing to file their claims in court. Leoni was not included in this process – and continued to incur legal costs in preparation for her hearing. It was now more than seven years since Leoni made her claim.

Leoni's lawyer wrote to Crown Law pointing out the disparity in treatment between Leoni and the other Lake Alice claimants. The sum offered to the other Lake Alice claimants was on average more than four times higher than that offered to Leoni after her mediation. Unlike the other claimants, Leoni had to disclose her medical records and personal journals and be examined by a psychiatrist. In short, she had not been believed.

Leoni said she believed the Crown wished to settle with the Grant Cameron clients first – and delay her own settlement – in order to set the bar low for future settlements including hers:

> *"It is my absolute belief, that making me be assessed at the Mason Clinic was a stalling tactic used by the Crown while finalising a low threshold of compensation with Grant Cameron ... In any event, the end result was that that settlement effectively reduced the amount of compensation to be paid to all Lake Alice survivors."*

Whakataunga me te whakapāha - Settlement and apology

In November 2001, Leoni's lawyer again asked for a settlement offer. In February 2002, an offer arrived. The amount offered was significantly lower than Leoni had sought.

> *"I remember the shock and outrage of what I was offered. By then I had been put through a living hell by the Crown."*

Leoni did not have the funds to fight her claim any further. She had relied on legal aid to fund the case and doubted any more money would be forthcoming if she declined the settlement offer and continued with court proceedings. She felt completely defeated.

She reluctantly settled with the Crown in July 2002. However, her ordeal was still not over. Three months later Leoni had still not received the apologies from the Prime Minister, the Minister of Health and Crown Law, that she had been promised. Leoni sought an apology from Crown Law because of the way it had frequently delayed the case and missed deadlines. At the end of October that year, Leoni's lawyer contacted the Crown to ask when Leoni could expect her apologies from the Ministers and Crown Law. A reply did not arrive for two months. The apologies came in March the following year.

The apology from Crown Law read: "It was agreed, outside the terms of Ms McInroe's settlement agreement with the Crown, that I would write to you to convey to Ms McInroe our sincere apologies and regrets for avoidable delays in progressing her case. Please accept this letter as an expression of regret. The time taken for some steps was longer than might in other circumstances have been needed. In particular, there was delay in providing discovery. This should not have occurred. Please accept our apologies. We take this opportunity to wish Ms McInroe well now, and for the future." It expressed no empathy for what Leoni had gone through. Its tone was begrudging and insincere, and Leoni felt insulted. The Solicitor-General later described the apology as "woefully inadequate".[11]

Leoni's only remaining hope was that Dr Leeks and other staff at Lake Alice would be charged with criminal offences and made publicly accountable for their actions. Leoni said she regretted accepting the settlement offer and wished she had taken the case to court so this could happen. She said she had no confidence in the Crown:

> *"I do not believe the Crown operates in integrity and fairness. I do not believe that in our justice system we are protected when the Crown is the accused. This has now become an intergenerational belief."*

Leoni also said the way the Crown had defended itself against her claim had harmed not just her, but also her children:

> *"The years of trying to seek justice stole much from my innocent children. They witnessed and lived through their mother being unbelieved, violated, humiliated, belittled, ignored, manipulated and bullied by the Crown ... They witnessed their mother in tears, they witnessed their mother overcome with fear and anxiety during the ongoing investigations, evaluations, unfathomable demands and violations of the Crown. They lived with a mother full of guilt and shame for bringing this toxic story into their lives."*

Kāore i ketuketuhia - Failure to investigate

The Crown has an international law obligation to ensure a prompt, independent and impartial investigation into allegations of torture. Leoni's allegations amounted to a claim of torture, although the case was brought under domestic law rather than being described in terms of the State's international law obligations. The Solicitor-General acknowledged that the information available in relation to Lake Alice during the time of Leoni's claim provided a reasonable basis to suspect torture had been committed.[12] In 2019, another Lake Alice survivor, Paul Zentveld, took a complaint to the United Nations Committee Against Torture. The Committee found New Zealand State authorities had made no consistent efforts to establish the facts of alleged torture at Lake Alice despite police investigations that had occurred, such as they were. The Committee found New Zealand in breach of the Torture Convention for failing to conduct a prompt, impartial and independent investigation into the allegations. We will address these issues in more detail in our report on Lake Alice.

Ngā ngoikoretanga o te Tari Ture o te Karauna
Failings of Crown Law

Even allowing for the adversarial nature of litigation, in our view Crown Law should have:

- made an early assessment of Leoni's claim – and of the relevant files – and reached the conclusion that the claim was meritorious because:
  - serious and systemic defects at Lake Alice had been identified since the 1970s
  - Dr Leeks' conduct had been documented at the time, including the improper use of an electro convulsive treatment machine to administer shocks as punishment
  - it would have been clear to any impartial expert reviewing the files that Dr Leeks' conduct was wrong, even by the standards of the day (as was clear to the Crown's own expert in 2001)
  - Leoni's claim was credible and corroborated
- treated Leoni with dignity and sensitivity
- considered an offer of immediate counselling
- waived the defence available through the Limitation Act 1950 once it identified her claim as meritorious and immediately considered alternative dispute resolution options
- made an early decision about whether an expert psychiatric report was warranted, and advised Leoni immediately of its decision
- arranged for a psychiatric assessment – if indeed one was necessary – to take place in a neutral setting, not in a psychiatric hospital, and provided a copy of any resulting report to Leoni immediately
- given regular, timely updates of progress on steps Crown Law was taking, such as locating documents for discovery
- dealt sensitively and transparently with personal intimate items, such as diaries provided during discovery
- recognised the human rights dimension of Leoni's case and prioritised the claim, especially given that the allegations potentially involved torture
- ensured Leoni was aware of her rights to go to Police and the Medical Council, and the support that would be available to her if she wished to do so
- provided information from Leoni's claim to Police if she consented to the disclosure of her personal information

- considered how it could track down and provide support to other victims of Dr Leeks.

Once concerns were raised about Crown Law's handling of the case, it should have conducted a review to identify any deficiencies. Such a review would inevitably have found failings. This should have led to a proper apology, steps to make amends, and measures to ensure that no similar mistakes would occur again.

Whakarāpopototanga me ngā kitenga
Summary and findings

Crown Law's handling of Leoni's claim fell far short of the high standards expected of the Crown.

Specifically, Crown Law:

- took an unacceptably long time to assess and respond to Leoni's claim
- failed to meet deadlines, explain delays and provide regular updates
- failed to recognise the claim as meritorious and seek early settlement, despite the clear evidence of abuse at the Lake Alice Child and Adolescent Unit
- focused unduly on legal defences and minimising the Crown's liability
- dealt with claims by other Lake Alice survivors first with a group settlement process led by Sir Rodney Gallen as an independent person, to Leoni's detriment
- failed to adopt a trauma-informed approach to the psychiatric assessment of Leoni, which took place in a secure psychiatric unit causing additional trauma
- failed to treat her with empathy, dignity and respect, thereby compounding her trauma
- failed to treat the claim with appropriate recognition of the human rights aspects it raised, including New Zealand's obligations under the Convention against Torture
- failed to conduct an internal review of the way it handled her claim to understand what went wrong
- offered a delayed and inadequate apology to Leoni for its own failings.

For its part the Ministry of Health, which was responsible for Lake Alice claims, should have taken steps to avoid these failings. Our Lake Alice report will examine the conduct of both Crown Law and the Ministry of Health in more detail.

PAUL AND EARL WHITE

CASE STUDY

Paul and Earl White:

He kēhi whakamātau me mātua eke ahakoa te aha
A test case to be won at all costs

Brothers Paul and Earl White (not their real names) brought a claim in the High Court against the Crown for physical and sexual abuse they suffered while in State care at boys' homes in the 1970s.[13] Their case reached the High Court in 2007 and the Court of Appeal in 2010.[14] The case had profound consequences for other survivors contemplating court action against the Crown.

Tau tōmua me te tūkino - Early years and abuse

Paul was born in 1959 and Earl in 1961. They had eight other siblings. Both were subjected to physical violence, emotional abuse and neglect at home. Child welfare officers made at least 37 visits to their home, schools and relatives. Their father taught them to steal. After their mother left the family in 1965, Paul and Earl were twice briefly put in a Presbyterian boys' home. In 1972, they went to stay with their mother where her partner abused them. In October of that year, Paul was sent to Epuni Boys' Home in Lower Hutt where he remained until May 1973. In April 1974, Earl, aged 13, was committed to the care of the Director-General of Child Welfare and

Earl said he was put through "12 years of what felt like torture, and in some ways, it was worse than the abuse I suffered ... it just kept going on and on. It was hugely stressful, and the depression and anxiety were inevitable".

also sent to Epuni Boys' Home. Both boys were placed in solitary confinement on admission and suffered physical abuse from staff and other residents.

A psychological report later in 1974 recommended Earl be placed in a family-type home, but instead he was taken to Hokio Beach Training School in Levin. It was no different to Epuni Boys' Home and he endured physical violence from staff and other residents. Earl was also sexually abused by the cook, Michael Ansell. Court records show Ansell sexually abused him at least 13 times. Ansell was convicted in 1976 on six charges of indecency against three boys, at the same time Earl was at Hokio Beach Training School, but authorities made no attempt to identify any other victims. At the time of the abuse, and for many years afterwards, Earl thought what had happened to him was normal.

Earl left Hokio Beach Training School in May 1976, aged 15. He tried to join the armed forces but was rejected because of his lack of education. He was unable to keep steady employment. He said he became "trapped in a cycle of crime and drugs", which, in combination with a cigarette addiction from the age of seven and alcohol misuse, severely affected his health and led to periods in prison. His long-lasting regret is that having never had a chance to make anything of himself, he has not been able to afford to provide the things he desires for his children and grandchildren, such as nutritious food and proper housing.

Pakanga ture - Legal battle

In early 1999, Paul and Earl requested their records from Child, Youth and Family Services. Earl was shocked by what Child Welfare knew about the abuse he had suffered at home. He was also distressed to learn his mother had warned the agency

Earl said the Crown knew abuse took place, "but during the trial they tried to make it look like it was my fault the abuse had happened, and they used every available excuse and technicality in court to 'win'".

that the boys should not be left with their father. The hours Earl spent trying to make sense of his records added to his distress.

In December 1999, Earl White filed civil proceedings through Sonja Cooper of law firm Cooper Legal. Paul White filed proceedings in 2001. Both brothers wanted to resolve their matters as quickly as possible through alternative dispute resolution, rather than go through an adversarial court process. From June 2001 Ms Cooper made numerous attempts to settle with the Crown. However, there were no settlement offers from the Crown until 2005, when it made two settlement offers. The first one was an offer of $40,000 to Paul and $20,000 to Earl, each including legal costs, and the second was an offer of $50,000 to Paul and $30,000 to Earl, again including legal costs. These offers were significantly less than Child Youth and Family Services had authorised. Both brothers were prepared to accept the offers if their legal costs of about $20,000 were additional, so they could personally receive the amounts offered.

Negotiations ended inconclusively, in part because Crown Law considered Ms Cooper's approach in pursuing broad and novel claims had "to a very large extent tied the Crown's hands on settlement".[15] In a letter to Ms Cooper, it noted "if the Crown settles on the basis of the claims as pleaded in the [White] proceedings you will undoubtedly look to the Crown to do the same for your hundreds of other clients."[16] It told Ms Cooper the Crown couldn't budge on the settlement offer. Ms Cooper asked why Paul and Earl were being forced to go to court when the government was about to start an out-of-court process that meant the relevance of establishing legal precedents in these cases was limited. Documents show the Crown considered at the time it was "not an option" to settle the case because of the precedent it would establish.[17] In practical terms, this meant the only option for Paul and Earl was litigation.

The case was finally heard in the High Court in a six-week trial from June 2007. The High Court issued its 155-page judgment in November 2007. It found the brothers had suffered abuse, including sexual abuse in Earl's case, and that the State had breached its duties to the pair. However, it accepted the Crown's defence under the Limitation Act 1950, namely that the lawsuit had been brought more than six years after the time period allowed by law. The court also largely attributed the brothers' psychological and other difficulties to their childhood experiences at home, and possibly to a genetic predisposition, too. It said Earl's sexual abuse at Hokio Beach Training School had not made a material contribution to his difficulties, adding that any mental injury suffered as a result of the sexual abuse was covered by the Accident Compensation Act 2001 or predecessor Acts. The court did not award the brothers damages.

The brothers appealed. The Legal Services Agency refused to fund the appeal, and the Crown required security for costs. The brothers had no means to pay that security, and their lawyer Sonja Cooper's firm made the payment. The appeal was heard in August 2009, but the outcome was the same.

In June 2009, while awaiting the outcome of the appeal, the Crown discussed offering an ex-gratia payment and apology to the brothers, on the basis that the out-of-court process run by the Ministry of Social Development would have delivered them something based on what was now accepted as fact. Crown Law and the ministry reached the view that there were significant problems with such an approach at that stage of the proceedings, both for the Crown's overall broader litigation strategy in relation to abuse in care claims, and because what happens on appeal is an unknown factor.[18]

In June 2010, following the Court of Appeal judgment, the Ministry of Social Development wanted to settle with Paul and Earl. Crown Law opposed the ministry's proposal to make an ex-gratia payment to the brothers, because it felt that making a payment now would be inconsistent with the arguments the Crown had made during litigation, including that the claims lacked merit and would not succeed because of the Limitation Act and causation principles. It also thought it would be inconsistent with the Crown strategy to encourage informal resolution, as to make an ex-gratia offer after litigation would "work against the incentives operating to encourage people out of litigation, contrary to the strategy, by showing that if you stick with the litigation long enough, get minor factual findings, but lose the ultimate claim, you may still get money".[19] It is surprising that Crown Law described the findings as "minor". The High Court had found 13 incidents of sexual abuse against Earl as well as physical and psychological abuse against both brothers.

Despite Crown Law's objections, the ministry went ahead with ex-gratia payments of $25,000 to Earl, and $10,000 to Paul. As part of each settlement, the Legal Services Agency also contributed to their legal costs, which amounted to $10,000 for Earl. He later described the payment as a "joke and an insult against the repeated sexual and physical abuse that the court found happened". Both brothers also received an apology, which Earl considered neither genuine nor appropriate.

Ngā tauhohe - Reactions

Earl said he and his brother felt they had "got caught in the legal crossfire" of the first case to go to trial about abuse in social welfare homes.

> *"I feel we were dragged through the courts so the Crown could use our case to test things like the Limitation Act and the ACC bar, so they could stop future claims being made, and limit what they paid other victims of abuse who came forward."*

Records show that Earl's belief was in many ways justified – a ministry report shows it believed both Crown Law and Cooper Legal would approach the White trial as a "test case"[20] to determine the courts' view on legal and factual matters that would be relevant to many other similar claims, including how the defences of the Limitation Act 1950 and ACC legislation apply to such claims. Another report and Crown Law correspondence also show that Crown Law believed the result in the White case would help the Crown decide how to deal with a large number of other abuse claims.[21]

Earl said the Crown knew abuse took place, "but during the trial they tried to make it look like it was my fault the abuse had happened, and they used every available excuse and technicality in court to 'win'". He said the Crown treated him like a defendant in a criminal trial, rather than a victim of abuse, and in this his view was also justified. Notes from a meeting of lawyers and ministry staff on the case record the view that, in preparing for other witnesses, the team should "approach it like a criminal trial".[22]

Earl said he was put through "12 years of what felt like torture, and in some ways, it was worse than the abuse I suffered ... it just kept going on and on. It was hugely stressful, and the depression and anxiety were inevitable".

An official from the Ministry of Social Development told us the case "was a perfect example of the fact that litigation doesn't work and doesn't achieve the outcomes that you would hope for, for the claimant".[23] Two other witnesses at the hearing made the same point.

Mahi a te Karauna - The Crown's actions

Kāore i tika te whakahoki ki ngā whaitake o te kerēme
Failure to respond appropriately to the merits of the case

The Crown's first failure was to assess and respond adequately to the merits of the case. As early as 2002, draft advice from Crown Law to the Ministry of Social Development stated that "the circumstances [of Earl's case] are relatively compelling: the plaintiff attended the school at the same time as Mr Ansell who all but admitted to sexually abusing other boys in circumstances similar to those alleged by the plaintiff. In my opinion, it is likely the plaintiff would be able to prove on the balance of probabilities that he did suffer the abuse that he alleges."[24] The Crown knew about Ansell's convictions for sexual abuse of three boys in 1976, at the same time Earl was at Hokio Beach Training School. The draft Crown Law opinion above also noted that the school's investigation seemed unacceptable and the failure to inform Police inexcusable.[25] And the Ministry of Social Development learned Ansell had also come to the attention of Police in 1969 for alleged indecent acts on a boy.[26] The ministry conceded during the inquiry's State redress hearing that its database should have

held at least two concerns about an employee at Epuni Boys' Home who was there at the same time as Earl and who was later convicted of physically abusing him, and that this information should have been available in making an assessment about the brothers' claim.[27] Even more information would have been available if the ministry had not destroyed numerous human resources and staff files – only six of 28 staff files relating to the brothers' claim could be found.[28]

The information available to the Crown included a research paper from Cooper Legal summarising information about physical and sexual abuse suffered by its clients between 1960 and the early 2000s at 16 institutions, including Epuni Boys' Home and Hokio Beach Training School.29 By the time the brothers' trial began in June 2007, Crown Law had been served with 54 proceedings relating to abuse at Epuni Boys' Home, and 41 proceedings relating to abuse at Hokio Beach Training School. All involved abuse between 1950 and 1990. It also had Ansell's conviction history.

Crown Law and the ministry should have treated the brothers' claims as meritorious from at least 2002, given the amount of information available suggesting physical and sexual abuse probably took place. By 2008, the Crown's litigation strategy explicitly said that settlements would be considered for any meritorious claims. That year, the Ministry of Social Development said it was keen to settle some cases involving an alleged perpetrator with a conviction for a similar offence because it had assessed such cases as having "high legal risk".[30] Earl's case fell into this category on account of Ansell. Despite the extent of its knowledge about the abuse, Crown Law adopted the approach that Paul and Earl were lying or exaggerating, and other witnesses who gave evidence of abuse happening at Epuni Boys' Home and Hokio Beach Training School should not be believed because they might have spoken to each other or colluded in their evidence. It decided to force Ms Cooper to apply to have "similar fact" evidence admitted and to oppose her application. The High Court found the witnesses had not colluded and it would be speculative to find their evidence had been otherwise contaminated. The High Court also found a number of the witnesses for the White brothers to be impressive and reliable, and preferred their evidence over the evidence of three of the former staff members of Epuni Boys' Home.

The Crown, far from behaving like a model litigant, was, in Earl's words, "uncooperative and strategic" and "wanted to win at all costs" despite the harm he and his brother had suffered and the distress the legal proceedings were causing. Crown Law was well aware that abuse survivors, particularly sexual abuse survivors, were vulnerable individuals, and that litigation was emotionally difficult for them, as well as for witnesses – not to mention the demands on their time and drain on their funds. It was therefore disturbing to view Crown correspondence suggesting possible lines of cross examination for the witnesses, including that it would have been easy enough

for the boys to avoid the sex offender had they wanted to – a sentiment Solicitor-General Una Jagose described as "an absolute failing to understand the nature of sexual abuse of children".[31]

When asked, the Solicitor-General also acknowledged that the adversarial litigation process leaves lawyers open to the danger of tunnel vision.[32] She said the Crown had processes to try and make sure it didn't fall into that trap, but in our view, evidence of this loss of perspective can be seen in the decision to instruct private investigators to dig into the brothers' lives and the lives of other witnesses from the homes. The investigators' work was both extensive and intrusive. They sought out information from Work and Income New Zealand, ACC, Housing New Zealand, the Department of Internal Affairs, the Department of Corrections, Police and Baycorp. They also unearthed banking, medical and employment records, and they approached the brothers' older sister and Earl's daughter to see if they would be witnesses for the Crown. In 2018, a government inquiry looked at the use of surveillance in this case. It found there were indications in the file that the investigators used techniques involving low-level surveillance, or something close to it, together with a covert approach for at least one person of interest. Solicitor-General Una Jagose accepted that Crown Law's instructions to the investigators in the White case were "too broad", and as a result "they were not properly bounded in a way that meant that the Crown could be confident that its agents were doing not only what it could by law, but what it should".[33]

Hēmanawa ana nā ngā mahi whai i ngā tikanga
Procedural actions caused unnecessary distress

The Crown's procedural actions caused significant – and unnecessary – distress. Crown Law, for example, opposed name suppression applications for Paul and Earl and their witnesses, a move that caused enormous distress and that Solicitor-General Una Jagose described as "improper" and "not able to be justified".[34] We were concerned to see documented advice to the Ministry of Social Development that opposing name suppression "may also discourage other persons in the same position". Ms Jagose said "that is not a good basis to oppose name suppression" and called it "remarkable and improper" if that was the intention.[35]

In December 2006, the Crown and its lead counsel Kristy McDonald QC discussed raising "abuse of process" as a defence, decided against it, but later did just that, only to have the application dismissed by the High Court.[36]

The Crown, for the first time, used its statutory powers to require both Paul and Earl to undertake psychiatric assessments, despite having been previously assessed by a psychiatrist.

Kāore i whāki i ngā kōrero e tika ana
Failed to disclose relevant information

In addition to initially claiming legal privilege over Ansell's criminal conviction history, to avoid disclosure to Earl and his lawyers,[37] the Crown was late in disclosing relevant documents. On 12 March 2007, with only three months before the trial date, Crown Law located 407 Hokio Beach Training School files, of which 90 were relevant to Earl's case; and 17 Epuni Boys' Home files, of which four were relevant to the brothers' case. This put their lawyers at a serious disadvantage in preparing for trial because they had to review a large amount of material, consider new information, assess whether it presented new issues, and seek further information all within a very short time. They had already largely prepared their case and briefed witnesses. The Crown also formally admitted to very little about the brothers' claim, prompting the Judge to remark that this was "somewhat surprising" given "much of their case is squarely based on the contemporary records of the Child Welfare Branch".

Te noho a ngā purapura ora hei herehere
Treating survivors as criminal defendants

Once the hearing began, the Crown cross-examined Paul and Earl, and their witnesses, like criminal defendants. Earl said he was cross-examined for two days, at times very aggressively and always in great detail, about each incident of violence and sexual abuse, with much made of the fact his memory was patchy and he had a criminal history. The judge intervened at least twice out of concern about fairness. All witnesses were cross-examined to test for collusion. The Crown also omitted to call at least one witness because it believed he would provide factual evidence unhelpful to its case.[38] Finally, lawyers from Cooper Legal told us the Crown refused to tell them which witnesses it would call until the last minute, which placed unnecessary burdens on Cooper Legal.[39] Ms Jagose told us witness lists were agreed between the parties and that those who argued the case for the Crown could not recall a failure to advise who would be giving evidence.

Te whai utu i ngā kaitono purapura ora
Seeking costs against survivor plaintiffs

The Crown sought costs of $42,917.94 against Paul personally, but the judge rejected the application. Such a step is rare against a plaintiff relying on legal aid, and the Legal Services Agency expressed surprise at this attempt.[40] The agency required Earl to repay just under $3,000, which he did in $5 weekly instalments deducted from his benefit. The Crown also sought a costs order against Paul and Earl, and the judge granted $811,631. The Crown took no formal steps to recover this sum, although it did consider doing so at one time.[41]

In responding to a question at our hearing, the Solicitor-General agreed that the overall impression of the White case was of a piece of litigation conducted aggressively by the Crown, with a strong sense of how that would be experienced and what the effect of that would be, not only on the White plaintiffs, but on other potential claimants."[42]

Whakarāpopototanga me ngā kitenga
Summary and findings

We find that Crown Law and the Ministry of Social Development:

- did not comply with the Crown litigation strategy that required them to settle meritorious cases, because it wanted this to be a test case for future similar claims
- did not behave as a model litigant
- approached and conducted the case in a "win at all costs" manner, which was unnecessarily adversarial, legalistic and aggressive
- instructed private investigators to seek personal information about the White brothers and other survivor witnesses in an overly broad way, which did not rule out surveillance
- lost sight of the human beings involved in the claim and caused them further harm and distress
- failed to disclose an abusive staff member's conviction history, claiming legal privilege
- was late to disclose numerous relevant documents, disadvantaging the White brothers
- adopted flawed thinking about sexual abuse victims and survivors in cross-examining witnesses and assessing the case
- continued to minimise the Crown's moral responsibility and delayed making an ex-gratia payment to the Whites even after the High Court found that abuse had occurred
- sought court costs orders against the plaintiffs personally, despite the plaintiffs having no money to pay costs and despite this being a test case.

KEITH WIFFIN

CASE STUDY

Keith Wiffin:

He ātetenga Karauna ahakoa te nui o ngā taunakitanga tūkinotanga
Crown resistance despite strong evidence of abuse

Keith Wiffin was eight when his father died suddenly in the late 1960s.[43] Keith struggled with grief in the years that followed, as did his mother and three siblings, and in November 1970 Keith was placed in State care and taken to Epuni Boys' Home.

There had been no abuse in his own home, but at Epuni Boys' Home Keith walked into a deeply troubled institution with an entrenched culture of abuse. One of the housemasters, Alan Moncreif-Wright, repeatedly sexually assaulted him. Other staff physically assaulted him and psychologically abused him. So, too, did some of the other children – right under the nose of staff, and sometimes with their encouragement. The abuse continued in different forms in subsequent State institutions.

Keith described the abuse as having a devastating effect on him – not only as an 11-year-old boy in an unwelcome environment away from his family, but also in later years and indeed throughout his life. For many years he struggled with alcohol,

"How are you supposed to trust an organisation that can look you right in the eye and lie?"

depression and nightmares. Despite his undoubted ability, he never received a full education. His income, financial security, personal relationships and health all suffered as he struggled with the effects of the abuse.

Kerēme Kōti Matua - High Court claim

Keith had no real means of getting redress directly from the State, and certainly not from the government agencies he saw as representing his abusers – initially the Department of Social Welfare and later the Ministry of Social Development. Besides, he had scarcely any trust in government agencies and no interest in going anywhere near them. Then in the early 2000s, he read a newspaper story about an abuse case taken by the lawyer Sonja Cooper. He decided she could be someone he could trust and got in touch with her.

Ms Cooper's office obtained his files and worked through them with him. He met with lawyers and psychologists in what he described as a long and difficult discovery process. He said he doubted any false claimants could make it through this "rigorous and searching" background check.

At this time, the Ministry of Social Development had no organised out-of-court scheme for historic abuse cases. The courts were the only avenue open to abuse survivors. Keith filed a claim in the High Court in April 2006. He was 46.

In January 2007, the Ministry of Social Development's chief executive, Peter Hughes, wrote to Keith in response to an Official Information Act request. He assured Keith the ministry took all claims of abuse and neglect seriously. He said it investigated each claim and settled it fairly. He assured Keith the ministry and Crown Law were bound to behave as model litigants in any claims taken to court.[44] Keith took his assurances seriously and believed the ministry would investigate his claim thoroughly.

"For me, the Crown reduced the issue to one of money, paying very little or no consideration to morality, ethics and humanity, and without any real genuine compassion for the victims."

He momo whakahoki mā te Tari Ture o te Karauna me te Manatū Whakahiato Ora
How Crown Law and the Ministry of Social Development could have responded

A fair and thorough response by the Crown would have involved some relatively straightforward steps that would have quickly led to the conclusion that Keith's claim was meritorious – that is, that the core elements of his claim were likely to be true.

The Crown's files would have soon enough corroborated some basic details of the claim:

- Keith had been admitted to Epuni Boys' Home in 1970 aged 11.
- Moncreif-Wright worked at Epuni Boys' Home at the time Keith was there.
- Moncreif-Wright, a former scoutmaster, was a convicted child-sex offender, something known to government agencies since the 1970s.
- Moncreif-Wright had accumulated seven convictions for child-sex abuse by the time Keith lodged his claim in 2006, and five of those convictions were for sexually abusing four boys at Epuni Boys' Home in 1971, very close to Keith's time at Epuni – possibly within weeks. A simple criminal history check through the Ministry of Justice would have revealed these convictions.

Some further basic investigation would have it made it clear this was a credible claim involving a convicted child-sex offender whose victims were from the same institution Keith had attended, during the same time period. An obvious first step would have been to contact former Epuni Boys' Home staff to see whether they could corroborate Keith's allegations. As it happens, when the Ministry of Social Development and Crown Law spoke to two former Epuni Boys' Home managers in 2006 to 2009, they both provided information that supported Keith's claim that Moncreif-Wright had abused him. One of the managers, Peter Scahill, also told Crown Law in 2007 that he remembered Police talking to Moncreif-Wright about sexual offending against Epuni Boys' Home residents in the early 1970s. He remembered that Moncreif-Wright was later convicted on sexual assault charges. The former manager of Epuni Boys' Home, Maurice Howe, told ministry officials in 2007 that Moncreif-Wright had been transferred to Epuni Boys' Home from Hamilton Boys' Home in the early 1970s after "something happen[ed]" there – the inference being misconduct involving boys. Mr Howe's account also suggested the Department of Social Welfare had either been extremely lax in its vetting of Moncreif-Wright or might have actually enabled his continuing offending by moving him to another boys' home rather than investigating his behaviour. It is entirely possible other former staff would have had relevant information, too.

Armed with this information, the ministry should have tried to get in touch with Moncreif-Wright himself. It knew he was alive and in New Zealand, and it should not have been difficult to find him. A few years later, the media, even without the resources of the State, tracked him down. Police eventually spoke to Moncreif-Wright. He confessed to abusing Keith and pleaded guilty to sexual assault charges. If he was willing to confess to a crime that meant possible prison time, there is good reason to think he would have been open with Crown investigators enquiring about Keith's civil claim. When brought face to face with Keith at a restorative justice conference in 2011, Moncreif-Wright said it was in his nature to own up when confronted: "When I was caught, I wasn't going to deny it. I had done it."[45]

It would also not have been difficult to look into Keith's allegations of physical abuse by other staff, in particular by two individuals he identified: Clive Chandler and Tony Weinberg. Both had been the subject of numerous allegations by other boys at Epuni Boys' Home about the same time Keith was there. The High Court later accepted evidence that both had physically abused the White brothers at Epuni Boys' Home.

The amount of corroborative information potentially at the Crown's fingertips was, by 2007, enough for the Crown to reasonably conclude Keith's claim was meritorious. The Solicitor-General accepted that with due diligence, Keith's claim could and should have been identified as meritorious early on in the process.[46]

In short, it is almost inevitable that a basic investigation would have revealed Keith's claim to be meritorious. At this point, the Crown should have:

- met Keith in good faith to acknowledge the merits of his claim and seek a resolution
- arranged for a suitably senior representative to offer a personal apology
- made sure Keith knew of his right to make a police complaint and/or initiate a restorative justice process with Moncreif-Wright and the support that would be available to him if he wished to do so
- supported a police process, to the extent Keith wished
- offered financial and other forms of redress.

The ministry should also have conducted a more thorough investigation into Moncreif-Wright and his potential victims. His history at, and transfer from, Hamilton Boys' Home clearly deserved further examination. He was a prolific child-sex offender, and his position gave him unfettered access to vulnerable young boys. It was possible, even likely, he had sexually abused more boys. Recently, Keith has learned Moncreif-Wright may have prostituted boys from Epuni Boys' Home to a nearby Catholic Church institution.[47] A full investigation into Moncreif-Wright's activities should, in our view, have looked into this very serious matter.[48]

Te whakahoki a te Tari Ture o te Karauna me te Manatū Whakahiato Ora
How Crown Law and the Ministry of Social Development did respond

The actual response to Keith's claim was a world away from the possible response described above. Despite Mr Hughes' assurance that the ministry and Crown Law would behave as model litigants in any claims taken to court, the actions of both agencies, summarised below, are difficult to reconcile with that standard. Keith's claim was meritorious.[49] The Cabinet-approved litigation strategy that applied from 2008 said agencies should settle claims if they considered them meritorious, or if there was a realistic prospect of establishing liability. However, the Crown's chief focus was on its legal liability. Rather than settle, the Crown fought.

Kāore i tino ketuketuhia - Undertook no proper investigation

Keith took Mr Hughes at his word that the Crown would investigate his claim, and he – quite justifiably – assumed this would include making contact with Moncreif-Wright. However, for reasons never explained, neither the Ministry of Social Development, nor Crown Law took any steps to talk to Moncreif-Wright as part of the investigation into the claim.[50] There was no obvious impediment to them doing so. Keith had spoken to Police about Moncreif-Wright, but from a Police perspective, the ministry or Crown Law were free to interview Moncreif-Wright. For his part, Keith told Crown Law he would not pursue a police complaint. Crown Law had prompted this by writing to Keith in 2008 to say it would not want to speak to Moncreif-Wright if there was going to be a police investigation.

Keith said he felt shattered when he eventually learned how "fundamentally flawed and completely disrespectful" the ministry's investigation had been. He said he could only speculate about its motive for failing to speak to Moncreif-Wright, particularly when it knew he had convictions for sexually abusing young boys in the same period as the abuse against him. He said both organisations had given him the clear impression they had done a thorough investigation of the claim.

> *"As it turns out, the 'investigation' was anything but thorough because they had failed to ask questions of Alan Moncreif-Wright, my principal perpetrator."*

Neither organisation has given any satisfactory explanation for its failure to contact Moncreif-Wright as part of the investigation of Keith's claim, nor indeed for failing to respond appropriately to his allegations against former Epuni Boys' Home staff members Chandler and Weinberg. When asked at our redress hearing to explain the ministry's inaction in relation to Chandler and Weinberg, lead claims advisor for its historic claims team, Garth Young, replied: "I simply don't have a good explanation".[51] This inaction not only affected the course of Keith's claim but also wasted an opportunity to identify and help other survivors.

Instead of offering to help Keith make a police complaint, the Crown used a potential police investigation as a justification for putting off his civil case.

I taraweti, i tautauāmoa, i taikaha hoki te karawhiu
Adopted adversarial, legalistic and aggressive approach

The Crown's conduct of Keith's case was often unnecessarily adversarial, legalistic and aggressive. The ultimate responsibility for this must lie with Crown Law. Crown Law acts on the instructions of the client ministry – here the Ministry of Social Development. But in reality, its recommendations on the strategy and conduct of litigation tend to prevail. Mr Young, from the ministry's historic claims team, told the redress hearing he considered himself a mere "passenger" in the litigation involving Paul and Earl White, although he accepted this did not abrogate his responsibility.[52] He said the senior social worker assessing Keith's claim believed it was likely Keith suffered the abuse he described.[53] Mr Young added that he would have approved the claim immediately if it had come to him. And yet Keith's file did come to him. Asked why he, and more generally the ministry, hadn't accepted Keith's claim, he said: "If I am brutally honest, the legal impediments got in the way of my or our team's moral judgment and acceptance of Mr Wiffin's claim."[54]

What is clear is that the focus of Crown Law and the ministry's own lawyers on legal liability overrode the strong moral case for accepting Keith's claim, although in fairness to Crown Law, ministry staff failed to communicate their view that Keith's claim was meritorious. This was a dereliction of duty: if ministry staff considered Keith's claim meritorious, they should have said so in unambiguous terms, regardless of hierarchical considerations or professional sensitivities.

The examples of aggressive, adversarial conduct that follow come mainly from privileged documents the Crown disclosed in the interests of complete transparency. These communications would not ordinarily be seen publicly. Some are internal emails between lawyers, while others contain privileged client advice. We acknowledge the Crown's openness here.

The first example was a letter of advice from Crown Law to the ministry in January 2009 that advised it should take "more proactive and aggressive steps" on claims by Keith and two other survivors with a view to having them dismissed on limitation grounds without going to trial – something it had previously told the court it wouldn't do.[55] The letter noted that this approach would have the "strategic advantage" of delaying or preventing a trial in another case involving Kohitere Boys' Home, and so avoid "an extremely lengthy, difficult, costly, and public examination" of issues relating to that institution. This contrasts with the more humane approach suggested about the same time by Sir Rodney Gallen in a review of historic abuse files for the ministry. A Cabinet policy document had noted justice might prevail over legalities in historic abuse cases. Sir Rodney had picked up on this and proposed taking a broader view of limitation issues. As he said, the victims of child sexual abuse in decades past were arguably unable to make claims because of the community attitudes prevailing at the time. On that view, the Crown would not have raised the limitation point at all – much less for strategic reasons before trial. No such sentiment found its way into Crown Law's advice on Keith's claim.

The second example was an internal Crown Law email in March 2009 in which the author suggested a course of action she said "would fall into the 'robust' camp of model litigant but might be worth a consideration in any event".[56] The author was considering former Epuni Boys' Home residents who could be witnesses in support of Keith's claim. She suggested some of these witnesses could be "good candidates" for leave challenges under the Limitation Act 1950, observing that "we don't need to lie down and allow her to call good witnesses that we know will damage us when their own cases are weak".[57] The "her" in this email was Sonja Cooper from Cooper Legal, who represents many survivors seeking redress from the State. The Solicitor-General told us this was an email from a junior lawyer floating some ideas with more senior lawyers in the team, and she said that it was an indication that Crown Law staff understood the model litigant values. Still, we think the email illustrates overly adversarial thinking – seeing the cases as almost a fight with counsel for the claimants.

Another internal Crown Law email, also in March 2009, described a potential strategy for Keith's case in terms of "forcing Sonja to prove her allegations and then slamming her on our defences". Again, the focus was very much on battling opposing counsel, without any apparent thought for the claimant or the merits of the case.

Another email in March 2009, this time from Crown Law to the ministry, noted a deterioration in Keith's mental health "on account of having to give evidence" and wondered how tenaciously he was pursuing his claim and whether, if offered psychological services, "he would settle or give up?".[58] Crown Law's cool appraisal of


"I don't remember another point in my entire life where I have been that angry."

what a plaintiff under psychological stress might accept as settlement mirrored its calculation in an email to the ministry in 2006 that "some plaintiffs may give up along the way … if they see another plaintiff having to go through the litigation process, face cross-examination etc".[59] The Crown, which was not lacking in time, resources or tenacity, had no compunction in trying to exert advantage over vulnerable claimants running short of all three. It all seemed like an "interesting game" for the Crown and its legal team, as Keith observed of similar tactics in the case of Paul and Earl White, two other survivors of abuse at Epuni Boys' Home.[60] What was lost in all this was an 11-year-old boy in the care of the State abused by a convicted sex offender.

Kāore i whāki i ngā kōrero e tika ana - Failed to disclose relevant information

In November 2007, Keith's lawyer wrote to Crown Law asking for staff records and any other information held by the ministry about Moncreif-Wright. The ministry's Mr Young responded a few months later that it held no information about any allegations of physical or sexual abuse by Moncreif-Wright.[61] This was false. At that time, the ministry and Crown Law knew about his child-sex convictions and that they related to boys at Epuni Boys' Home, and that former managers of Epuni Boys' Home were aware that Moncreif-Wright had sexually abused boys there. Only five days after responding to Keith, an internal ministry memorandum noted that Moncreif-Wright was "convicted of sexual abuse of a boy in care in 1972 and dismissed from Epuni".[62] At the time, Keith did not know Moncreif-Wright had been convicted of sexual abuse – information that was clearly of great relevance to his claim and should have been disclosed.

Pressed for an explanation, Mr Young said: "I simply can't give a good explanation of why it wasn't identified and provided".[63] He speculated it might have had something to do with the way the information had been filed, or that it wasn't "picked up" during a search for the response. But he said: "I simply can't give an explanation that I would like to be able to give, both for myself and also for Mr Wiffin and for the [royal] commission."[64] The Solicitor-General said the information should have been disclosed, but also could offer no explanation. "I don't know, I can't answer. It should have been. The information was available, and the request was for that material. So as an answer, it is wrong or at least incomplete in a significant way."[65]

It was not until more than a year later that Crown Law eventually disclosed Moncreif-Wright's convictions to Keith.[66] Even then, it offered no apology for the earlier failure to disclose the information. On the contrary, it said information about Moncreif-Wright's criminal conviction was publicly available, so it was unnecessary for the Crown to disclose it. This justification is perverse: the simple fact is the Crown held information crucial to Keith's claim and should have provided it.

Kāore i ngana ki te whakaea kerēme i runga i te ngākaunui
Did not try to resolve claim in good faith

In May 2008, Keith wrote to the ministry asking for a meeting to try to resolve his claim. The correspondence was entitled "ADR meeting" – ADR standing for alternative dispute resolution, that is, resolution outside the court process. Any model litigant would take part in such a process with an open mind and a willingness to reach a resolution if at all possible. But Crown Law's reaction, in an email to the ministry, was, in the words of its author, cynical: "I think that, as a matter of strategy, we should wonder about what Sonja Cooper Law is doing in having these meetings. Is there any real suggestion that they work? Or are the meetings a way to continue some funding stream (I know it's cynical)."[67] Crown Law said the ministry could participate in such a meeting but should only do so on the basis that "the meeting will not be with a view to settling the claim".[68]

Mr Young, a lawyer from Crown Law and a lawyer from the ministry met Keith several months later. Keith said neither Crown Law representative said anything at the meeting, and it was "clear they didn't want to be there". One said they were only there because their colleague was sick. Despite that, Keith felt optimistic about the meeting at the time although in hindsight he realised it lacked substance and was thoroughly disrespectful.

He tawhito, he pōhēhē ngā whakaaro - Had outdated, ill-informed thinking

Both the ministry and Crown Law demonstrated a lack of understanding of sexual abuse and why victims did not report abuse sooner. A ministry memorandum to a deputy chief executive in 2010 setting out factors for and against Keith's claim showed the outdated thinking in the organisation. It said Keith had had opportunities to disclose the abuse at the time but did not, adding that "while this does not contradict Mr Wiffin's allegations, it could be considered to mitigate against them".[69] The inference was obvious: genuine survivors complain promptly, while those with dubious claims complain later. This is simply not true. Research shows delayed reporting is a typical feature of child sexual abuse.[70] The Australian Royal Commission into Institutional Responses to Child Sexual Abuse referred to a study that found only about a third of victims disclosed the abuse during childhood. Male victims were less likely to disclose child sexual abuse at the time. Victims whose abuser was in a position of authority or trust were also less likely to report abuse at the time. Nearly half of the men in one study took at least 20 years to discuss their abuse. That the ministry questioned why Keith did not disclose the abuse at age 11 displayed profound ignorance of the nature of sexual abuse.

The Solicitor-General told us that the legal profession, judiciary and government agencies were now taking steps to understand the nature and impact of sexual abuse. She said social science research about reporting sexual abuse was well known at the time the ministry wrote the memorandum, but the legal profession had not yet grappled with the implications of the research. It is regrettable public servants dealing with abuse cases had not taken active steps to understand the subject area they were working in, especially given the consequences of their decisions on the lives of survivors.

I tuku kōwhiringa kāore i hāngai ki te rautaki whakaea nawe
Made offer that was inconsistent with litigation strategy

In April 2009, the Crown made an offer to Keith to settle his claim. It was, in substance, no offer at all. As Keith recalled: "I don't remember another point in my entire life where I have been that angry."

There was no financial compensation and no offer of an apology, but only limited "acknowledgements" and an offer to fund counselling up to a maximum of $4,000. The letter also stated that Keith's physical assault allegations would be "denied and defended" and that his sexual assault allegations would face "considerable hurdles". It also emphasised that he had not complained earlier about the alleged physical and sexual assault. An internal Crown email described the terms of the offer as "paltry".[71]

Crown Law's letter of offer acknowledged he did "face difficulties" while at Epuni Boys' Home and said it was anxious he was able to continue to receive counselling. The letter proposed the following settlement terms:

- The Ministry will acknowledge that Mr Wiffin's time in State care was difficult and that he may not have received the care and attention he needed at that time in his life.
- The Ministry will acknowledge that it has learned lessons from the past and provide reassurance to Mr Wiffin that young people in care are the recipients of the lessons learned.
- The Ministry will agree to pay any contribution that Mr Wiffin has to pay to attend counselling ... and, in the event that the ACC funding is withdrawn or ceases, further pay the costs of counselling ... up to a maximum of $4,000.
- If Mr Wiffin wishes it, the Ministry will make available to him his file and a senior member of staff to discuss aspects of the file with Mr Wiffin.
- If Mr Wiffin wishes it, the Ministry will make available to him the two social workers very involved in his care.

Mr Young told us he had "very mixed feelings about the proposed settlement offer, if you can call it that".[72] He said the senior advisor at the ministry who had looked at the claim did not dispute Keith's account, but he could not explain why the advisor's positive view had not translated into a substantive offer.[73] Nor could Solicitor-General Una Jagose explain how senior ministry staff could hold such different views to those expressed in the offer. She said if she were to write the letter today, she would be more careful to think how the person feels when they receive the letter from the Crown, and to appreciate that a focus on the legal language of liability can sometimes be taken as not believing a survivor, when that is not intended.[74]

For reasons already explained, it should have been clear to the Crown by this time that Keith's claim was meritorious, and the "offer" was not therefore consistent with the Crown litigation strategy to settle meritorious claims. It was also a moral failure. The Solicitor-General explained that the Crown litigation strategy at the time required "settlement to be considered for any meritorious claims (i.e. putting to one side available defences and investigating allegations to a standard less than absolute proof)".[75] This offer did not comply with that approach. The Crown did not put to one side potential defences – to the contrary it said that Keith's allegations would be "denied and defended" and emphasised the "considerable hurdles" that Keith would face. The offer also did not acknowledge the sexual and physical abuse Keith had suffered, or its effect on him.

Utterly dejected, Keith rejected the offer and discontinued his claim. Correspondence from Child, Youth and Family to Crown Law described this as "a good result".[76]

Kāore i tino whakaae ki ngā tūkino
Failed to directly acknowledge or take responsibility for abuse

Later that year, Keith took part in a 60 Minutes television documentary, along with Moncreif-Wright and Mr Young. The interviewer asked Mr Young whether the ministry had spoken to Moncreif-Wright. The question drew no response. Not long afterwards, Sir Rodney Gallen came across Keith's claim as part of his review of historic abuse files for the ministry. He expressed "some reservations" about the outcome of the claim.[77] Keith contacted the Confidential Listening and Assistance Service the following year, and the head of the service, Judge Henwood, told Keith she would write to the ministry about his case. Some combination of these factors led the ministry to take another look at Keith's claim.

The following month, Mr Young sought approval to make an ex-gratia payment of $20,000 in acknowledgement of the likely abuse Keith suffered while in State care. Mr Young said he reviewed Keith's case and considered on balance that the ministry should accept Keith's allegations. He said the ministry had a moral – but not legal – obligation to compensate him.[78] The $20,000 was accompanied by letters of apology from Mr Young and Mr Hughes, the ministry's chief executive. The letters included apologies for "what happened to you while you were in care", "for the abuse you suffered", and for the handling of the claim.[79]

However, the letters still fell short of directly acknowledging what Moncreif-Wright and other Epuni Boys' Home staff had done to Keith and did not take responsibility for the harm he had suffered. The payment was also far lower than what his lawyer had assessed as reasonable. Keith said he would not have accepted the offer if he had known about the extent of Moncreif-Wright's offending, and in particular the possibility that the Department of Social Welfare had transferred him from Hamilton Boys' Home to Epuni Boys' Home despite knowing about his earlier misconduct. Keith said he continues to regard his claim as unresolved.

Tā Keith aromatawai i te hātepe kerēme
Keith's assessment of claim process

Keith said the ministry was, in essence, investigating itself and so lacked the necessary independence to look with integrity and objectivity at his claim. Its starting point was disbelief and suspicion, and it seemed protective of its own staff, even a staff member with child-sex convictions. He had tried to give the claim process the benefit of the doubt, but found his distrust was justified. He said he continued to struggle with the fact that no one from the Crown contacted Moncreif-Wright at any point in the process. He could only conclude officials were worried about what Moncreif-Wright might say. The Crown's conduct of his claim had added to the trauma of his abuse.

He considered the Crown was "dodging [its] responsibility" by relying on the limitation defence because it was "completely unreasonable" to think he could have filed a lawsuit against the Crown by the time he turned 22. He was still grappling with the effect of the abuse. The attitudes of the community at the time were also a considerable disincentive, he said. It took him until he was in his mid-40s before he could begin to properly understand and address the effects of the abuse.

He said the Crown's utter determination to avoid liability and resist meaningful payment to victims shone through all his dealings with Crown Law and the ministry. Everything came down to one thing: money. Morality, ethics or humanity did not figure. He said the sad irony was that the Crown's "thoroughly disrespectful and

contemptuous" conduct ran up huge and needless bills at the taxpayer's expense – money that might have gone directly to compensating victims. A royal commission might have been unnecessary if the Crown had acknowledged the abuse, shown respect to victims and adopted a reasonable approach to redress.

Te hāmenetanga o Moncreif-Wright - Prosecution of Moncreif-Wright

In 2011, Police contacted Keith to ask whether he would be a witness in a criminal prosecution of Moncreif-Wright. He agreed and provided a statement. Police believed Keith's account and charged Moncreif-Wright, who pleaded guilty to five sexual offences against Keith from his time at Epuni Boys' Home. Keith said Police showed respect and handled their investigation very professionally. He was less complimentary about the Crown prosecutor.

The prosecutor, it appears, accepted an arbitrary reduction in the amount of reparation to be paid to Moncreif-Wright's victims without consulting the victims. He also failed to seek a restorative justice conference. Keith understood such a conference was supposed to be part of the prosecution process, and he was very angry at this failing. Police helped him arrange a conference himself – something he should not have had to do. The conference lasted about two and a half hours. A 28-page document recorded the key points. From Keith's perspective, it was a significant document.[80] It detailed admissions from Moncreif-Wright about the violent and abusive culture at Epuni Boys' Home, the lack of staff training and oversight, the State's willingness to allow Moncreif-Wright to resign rather than be dismissed so he could keep a clean employment record, and sexual offending by other staff members.

Tūteitanga - Surveillance

A final example of Keith's mistrust in government agencies relates to surveillance. In the lead-up to the White trial, the Ministry of Social Development spent more than $90,000 on private investigators to assist with trial preparation, including briefing Crown witnesses and seeking information to cross-examine similar fact witnesses. The instructions to the investigators were broad. At one point the investigators and lawyers on the case discussed surveillance and did not rule out low level surveillance in the lead up to trial. In 2018, a government inquiry found there were indications in the file that the investigators did use techniques involving low level surveillance, or something close to it, together with a covert approach for at least one person of interest. The inquiry found it was not possible to make a definitive finding in relation to a specific allegation of surveillance of one of the claimants' witnesses, although the inquiry could not rule out some form of close observation having occurred. Keith gave evidence on oath to the 2018 inquiry and said he saw two people who looked

like detectives sitting outside his house in a car watching him over about two weeks in the lead up to the trial. The lead private investigator denied surveillance of Keith, but the inquiry found Keith's evidence to be credible.

Keith asked a senior manager at the ministry around the time whether the ministry had ever placed anyone connected to the White trial or State abuse cases under surveillance. The senior official denied it, with words to the effect, "definitely not – we would never do a thing like that". Keith told us, "How are you supposed to trust an organisation that can look you right in the eye and lie?"

Whakarāpopototanga me ngā kitenga
Summary and findings

Taking the above into account, we find that Crown Law and the Ministry of Social Development:

- should have promptly concluded that Keith's claim was meritorious
- were overwhelmingly focused on minimising the Crown's legal liability and lost sight of the human being at the heart of the claim
- were frequently adversarial, legalistic and aggressive in defending the claim
- did not follow the Crown litigation strategy by failing to settle a meritorious claim
- made a completely inadequate settlement offer
- failed to disclose Moncreif-Wright's criminal convictions to Keith
- should have investigated the circumstances of Moncreif-Wright's transfer from Hamilton Boys' Home to Epuni Boys' Home, and also Moncreif-Wright's potential involvement in offending at a local Catholic Church institution
- merely went through the motions of trying to resolve the claim through an alternative dispute resolution process
- had outdated ideas about sexual abuse, especially about the reporting of sexual abuse
- should have helped Keith make a police complaint and sought a restorative justice conference
- did not behave as model litigants
- caused Keith additional trauma through the handling of his claim.

ROY TAKIAHO

CASE STUDY

Roy Takiaho:

He puretumu i te whare herehere
Redress from behind prison bars

Roy Takiaho, of Ngāpuhi descent, was born in Auckland in 1972.[81] He was two when made a ward of the State and placed in foster care. Roy's parents fought to get him back, but the Department of Social Welfare was determined he should go into foster care. The department placed him with a Pākehā family in West Auckland where he lived until he was 12. Roy said he was separated from his whānau and so alienated from his culture he didn't even know for a long time that he was Māori.

His older foster brothers physically abused him. His foster parents took Roy to the local sports clubrooms where different perpetrators sexually abused him numerous times over the space of 10 years. Roy never told his social workers about the physical and sexual abuse because he did not feel comfortable talking to them, and his foster parents would maintain a front that everything was going well. However, Roy said: "In my mind, I was being a child. There was things I wanted to say to them, but I wasn't allowed to. I was told to be present and quiet. I was told that they're not here to see me."

"As a result of the abuse I suffered, I became the abuser. I used physical abuse. I wanted to hurt people. I became a person who wanted to administer pain. At the boys' homes, gang colours were introduced to us, and you chose which one you wanted to be part of."

"When I started to realise I was a Māori in this Pākehā family, I started to rebel against the rules of my foster parents... I was seen to be erratic and out of control, so DSW started bouncing me off to boys' homes."

At 12, Roy was moved to two other foster homes and eventually to the State-run Ōwairaka Boys' Home in Auckland where he remained for around six months. Roy was in and out of Ōwairaka Boys' Home for the remainder of his years in care. At the boys' home, he was subjected to sexual, physical and psychological abuse by staff and other boys. He was frequently put in locked cells for long periods. "Boys homes introduced me to hate, violence and hate against the system. Which later on introduced me to the borstals."

After Ōwairaka Boys' Home, Roy was moved between multiple State foster care homes, but none of these placements lasted for very long. At 13, the department moved him to The Salvation Army's Hodderville Boys' Home in the Waikato where he remained for a year. There he suffered more physical, sexual and psychological abuse. Allan Galley, who was employed by The Salvation Army as a staff member to work at Hodderville Boys' Home, raped him repeatedly throughout his entire time at the home. Galley told Roy not to speak about the abuse to anyone, for example, by telling him, "Jesus also says that those with a quiet mouth are seen as good children."

Roy described his time at Hodderville Boys' Home as the darkest of the many already dark chapters in his short life. "Compared to the abuse I'd already suffered, Hodderville was the worst place I'd ever been ... the worst and ugliest place I'd ever seen."

The impact of the abuse on Roy was profound, as he readily acknowledged. "As a result of the abuse I suffered, I became the abuser. I used physical abuse. I wanted to hurt people. I became a person who wanted to administer pain. At the boys' homes, gang colours were introduced to us, and you chose which one you wanted to be part of."

It was not surprising, therefore, that Roy ended up in prison. He spent a total of 12 years behind bars, and in that time he saw many old faces from Ōwairaka Boys' Home and Hodderville Boys' Home.

The impact of his time in care and prison has seeped into every aspect of his life, including his relationships with his tamariki and mokopuna. He struggles being in crowds or around people he doesn't know. "Every day I think about what happened to me. I'll never be the same, regardless of counselling. I am living with what happened to me."

Roy is in his second year studying psychology at Waikato University. He chose psychology so he could help rangatahi Māori and ensure those in care do not suffer as he did.

He kerēme i te whare herehere - Claim lodged from prison

In 2004, while in prison, Roy heard about individuals who had gone to law firm Cooper Legal for help in making a claim for abuse suffered during their time in care. His initial motivation was mainly financial, as he was in prison and the money would make a big difference. He also wanted answers to why he had been put in care and why he had been physically and sexually abused.

When Roy talked to a lawyer from Cooper Legal, it was the first time he had ever disclosed the abuse to anyone, and he remembered the relief he felt. The lawyer was sincere and listened to his story carefully. It began to dawn on him how serious the abuse had been.

Roy's lawyer approached The Salvation Army and on 9 December 2004, the pair met Murray Houston at Rangipo Prison in Tūrangi. Since 2000, Mr Houston has been responsible for handling abuse claims involving Salvation Army children's homes. He has also headed its redress process for these claims, which has been in place since 2003. He made it clear to Roy that he worked for, but wasn't an officer or soldier of, The Salvation Army. Mr Houston's independence was an important kaupapa for Roy.

Roy found the meeting intense. He said Mr Houston wanted "straight facts, he wanted to know exactly what happened". He also wanted Roy to go into a lot of detail about the abuse. Roy found recounting those incidents very tough. He was unable to recall all details of the abuse "because I was a kid at the time". He managed to contain his

feelings during the meeting, knowing he had to describe what happened and wanting to get it over with. However, it opened a "can of worms" for him. "It was the first time I had properly told someone about the abuse I suffered as a child. I can cover up the feelings for a short time, but that doesn't mean they don't exist ... The feeling of what happened to me as a child was fresh after that."

Roy thought the interview went on for hours, but the recording of the meeting was only 88 minutes. The topic of access to counselling was raised by Mr Houston, but ultimately Roy returned to his cell without any counselling or support. He remembered feeling very negative and frustrated after the meeting, and those feelings "continued to build up until I acted out". He knew a convicted paedophile was in his unit, and later that month he stabbed him. Roy received six years for the assault.

On 1 February 2005, Roy accepted a settlement offer of $25,000. The Salvation Army requires claimants who accept an offer to sign a document agreeing that the offer constitutes "full and final settlement" of their claim. There is no confidentiality clause.

Tā rātou kawe i tā Roy kerēme - How Roy's claim was handled

Within six months of the first approach from Roy's lawyer, The Salvation Army had Roy's agreed offer ready for signing. The Salvation Army's policy is to prioritise the resolution of claims, knowing that delays can cause undue stress to survivors.

The Salvation Army did not offer Roy any cultural support or advise him this was an option. It did not have a process whereby it sought to tailor the claims process to Roy's cultural values or tikanga, unless specifically requested. Generally, The Salvation Army did not involve Māori when creating its redress process or at any subsequent point. Its process has not been formally reviewed, and it does not generally incorporate tikanga Māori – a point Mr Houston acknowledged.[82]

The Salvation Army's original offer was $15,000, plus $2,500 toward counselling costs. Roy's lawyer negotiated this up to $25,000 plus legal fees.[83] The Salvation Army has given Mr Houston broad authority to settle claims, allowing him to use his knowledge and experience to gauge, with guidance from legal advisors and senior leadership members, what an appropriate settlement amount should be.[84]

Mr Houston does not use a matrix in calculating financial offers and instead takes into account a number of factors, including the individual circumstance of the survivor type and severity of abuse, some legal considerations and equality between survivors. He is also guided by lawyers acting for survivors who frequently make recommendations on settlements for their clients.[85] Mr Houston acknowledged during the inquiry's redress hearing that it would be possible to form a matrix of some sort today, based on his experience, and this may allow for a consistency of process, but it would not have been possible to do in 2003.[86] Mr Houston stated at

the redress hearing that while he is clear in his own mind as to how and why each redress sum was reached with an individual survivor, he also acknowledged that some errors of judgment or assessment may be expected.[87] He accepted that the lack of any publicly available settlement criteria meant survivors could be more likely to settle for what he first offered them in some cases, especially those without legal representation.[88]

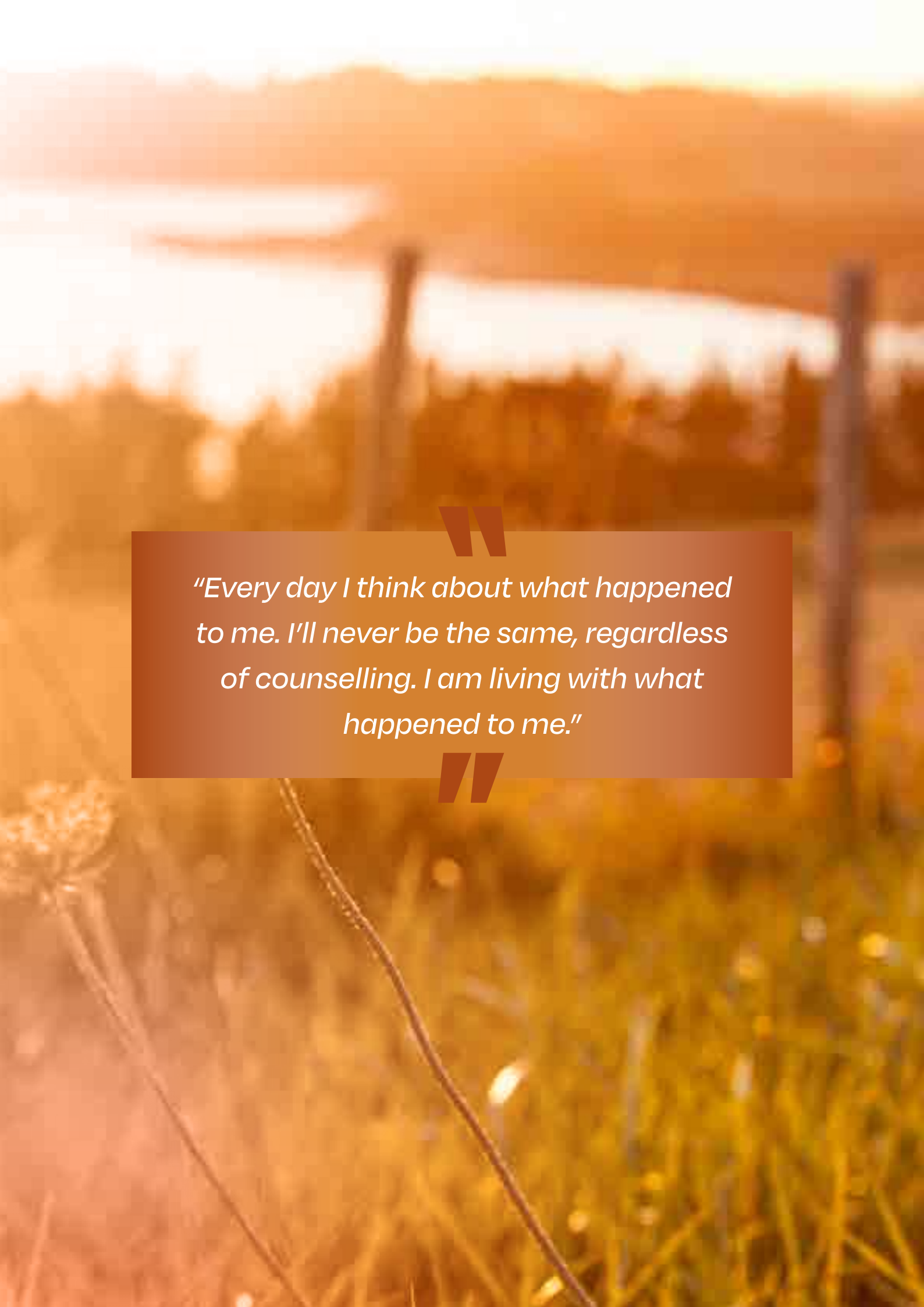
Mr Houston told the redress hearing The Salvation Army decided in early 2004 against adopting a legalistic approach to out-of-court claims. It did not rely on any legal defences and did not require survivors to prove allegations. Rather, its approach was to "largely accept the allegations at face value, but to seek to verify or corroborate what was said".[89] Even so, Mr Houston acknowledged during the redress hearing that correspondence with survivors continued to contain references to legal defences and a lack of legal liability until around 2014.[90] The use of legal language is at odds with the empathetic style of communication that should be employed with survivors.

Roy, quite rightly, thought The Salvation Army had failed to acknowledge its responsibility for the abuse he suffered, and this was evident in its settlement offer letter, in which Mr Houston extended his deepest regrets "if any misconduct by anyone for whom the Army was responsible has caused Roy to be mistreated".[91]

Roy said he was looking for his various abusers "to be held accountable properly". Mr Houston made inquiries into Roy's main perpetrator, Allen Galley. He found out that he was deceased and told Roy. Given this, and the fact Galley had only been a staff member and not an officer or soldier of The Salvation Army, the organisation did not take any further steps.

A better approach, and one that might have been more meaningful and supportive of Roy's needs, would have been for The Salvation Army to tell Roy it believed and acknowledged the harm done to him and that it was willing to hold itself fully accountable for the harm he suffered. While The Salvation Army sought to show this acknowledgment with a letter of apology and payment of redress, it was not sufficient for Roy. His recollection of the process was:

> *"I remember Murray kept asking, 'how can we make this better?' I said I want someone to be held accountable. That never happened ...[t]he financial part of the process meant nothing to me; it was something to help my family."*



"Every day I think about what happened to me. I'll never be the same, regardless of counselling. I am living with what happened to me."

Roy was in prison when he met with Mr Houston and was unable to process his experiences. The Salvation Army was unable to approach Roy without his lawyer's consent, or to provide any other support either before or after the interview. As explained above, Roy stabbed a convicted paedophile in prison. Roy said:

> *"I hadn't been given the material or skills to deal with my feelings. The only way I knew was to act out, so I stabbed someone. I didn't know how to deal with what happened to me in my childhood, I had opened the can of worms during that interview. And I was just sent back to the violent prison environment afterwards."*

The Salvation Army offered counselling to Roy but was told it was not available while he was in prison.[92] It likely would have required an arrangement through the Department of Corrections, with assistance from his lawyers. The Salvation Army was wholly unaware that Roy felt the level of distress reported and was shocked to hear of this during the inquiry's redress hearing.

A trauma-informed approach includes proactive access to psychological and emotional support, as well as an empathetic approach with a wholehearted belief in survivors' claims. While Roy's engagements with The Salvation Army occurred approximately 17 years ago, when knowledge of a trauma-informed approach to survivors was less developed, it is not clear The Salvation Army actively considered this approach.

Murray Houston did not have any experience or training in dealing with abuse and trauma before beginning his role in the redress process.[93] He has acknowledged it would have been valuable to have proper training. The Salvation Army has since recognised the need for personnel involved in redress processes to undertake training to ensure an empathetic and trauma-informed process.[94]

Roy didn't receive the answers he wanted from the redress process: "I still don't know why I wasn't placed back with my family when clearly they wanted me back." He now better understands the cycle of abuse, how the abused becomes the abuser, but this doesn't take away the trauma he carries with him each day.

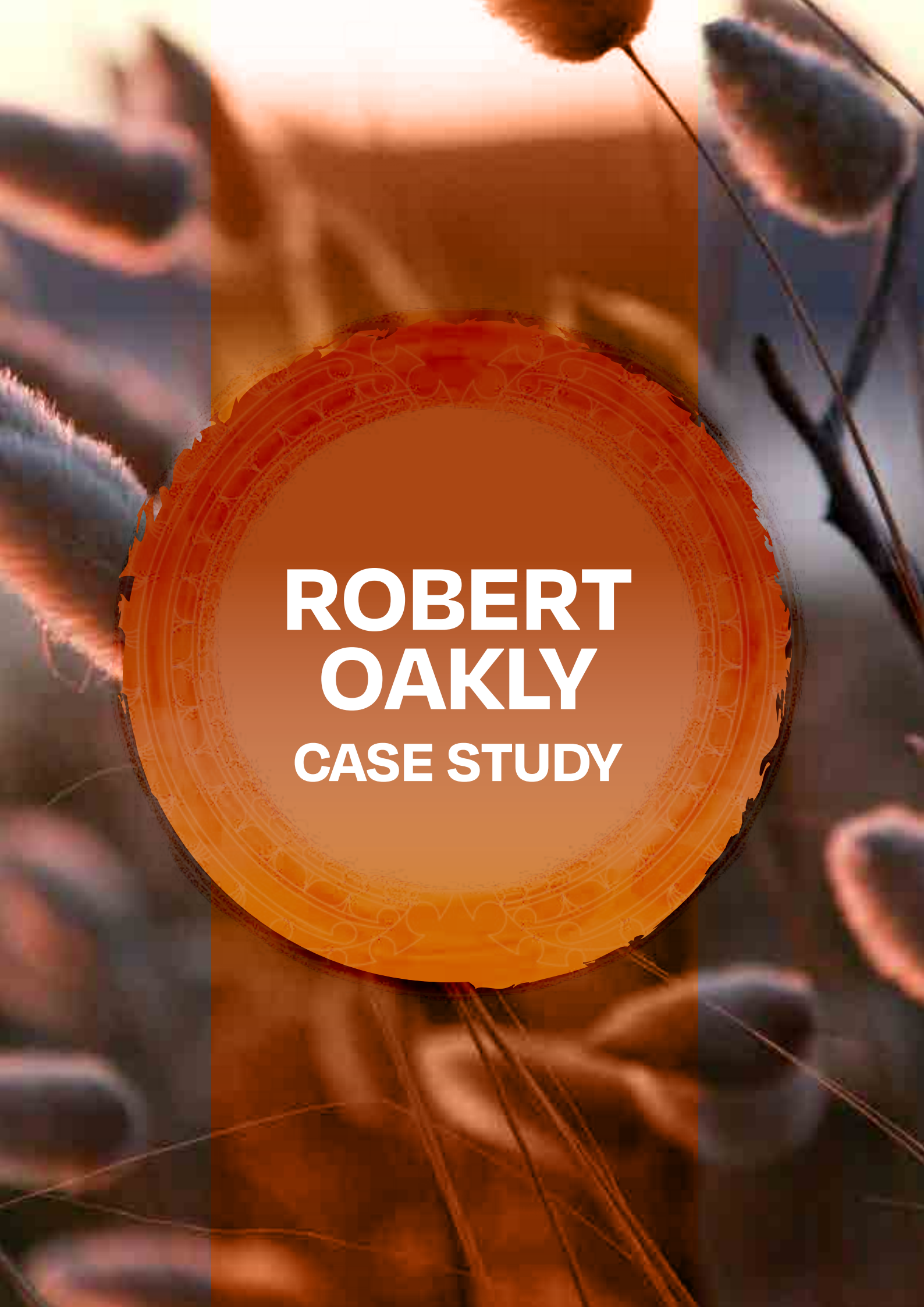
In the redress hearing, Roy spoke about his desire to close the book on his time in care. He said:

> *"Yeah, I don't want to be repeating this again and again, yes. This is, to me now this is the final chapter, this is the book I'm going to close now at this time. The only way I want to open the chapter of this again, is to be helping our rangatahi later on down the track. That's about it. But, as far as my abuse in care is concerned, this is the place now that it's going to be staying."*

Whakarāpopototanga me ngā kitenga
Summary and findings

Taking the above into account, we find:

- The Salvation Army failed to provide appropriate acknowledgement of harm suffered by Roy in relation to the abuse he suffered in their care, or to provide a meaningful apology
- The Salvation Army process failed to take into account te Tiriti o Waitangi or incorporate te ao Māori or tikanga Māori principles and values, resulting in a failure to ask Roy whether there were cultural arrangements he wished them to include in his redress process
- while accepting that a timely outcome is beneficial for many survivors, The Salvation Army redress process failed Roy as there were insufficient checks as to what he required in his specific circumstances in terms of timing and process
- The Salvation Army failed to adopt a trauma-informed approach in the conduct of the interview with Roy, demonstrated in the way questions were asked and the details sought, despite knowing the events happened when he was a young child many years prior and that he had been moved between multiple institutions
- overall, the redress process caused Roy additional trauma.



ROBERT OAKLY

CASE STUDY

Robert Oakly:

E kore e mutu ngā pānga o ngā taitōkaitanga a te Ātirīkona
Archdeacon's sexual abuse has lifelong impacts

Robert Oakly was about 15 or 16 when he was sexually abused by Bert Jameson.[95] At the time, Jameson was an archdeacon of the Brightwater parish in the Anglican Church's Nelson diocese, and a scout leader in the wider Nelson area. Jameson began grooming Robert in his early teenage years. This then escalated to sexual assault and rape.

Robert, now 64, was born in the Rai Valley in Marlborough. His mother left his father when Robert was about two or three. Robert and his brother went with his mother to Tutaki where they lived with a new stepfather and four half-brothers. In 1967, when Robert was 10, the family moved to Hope, Nelson. In Hope, Robert took part in scout activities, including camps where Jameson was present. This is where the grooming began. When Robert was 15, Jameson sexually assaulted and raped him. "It was horrible … he forced anal sex on me. I couldn't handle it. I was screaming. He was getting angry that I was screaming."

"It makes me really anxious and it screws my head that I have to pay legal aid to get redress. It plays on my mind all the time ... I worry that I am going to lose again, and that everyone else is winning out of this and I've got to suffer it."

Jameson's abuse has had a profound effect on the course of Robert's life. Robert has made five suicide attempts and has been diagnosed with post-traumatic stress disorder (PTSD). The lifelong effects of the abuse, including poor mental health, low self-esteem and at times extreme anxiety, mean Robert has found it hard to stay in employment for any length of time, have a steady stream of income, be financially stable or have loving relationships. Religion has not been a possible source of comfort or guidance as Robert does not feel he could believe in God after being abused by a man of the cloth. However, Robert finds spiritual guidance and comfort in connecting with nature and his surroundings. People do not always understand why Robert finds some things hard and he has found getting help difficult as "society as a whole actually punishes you for being abused."

Ētahi whakapāhotanga tūkinotanga ki te Karauna me te whai āwhina
Report of abuse to the State and request for help

In 2017, Robert made a complaint to Police at the suggestion of his counsellor. He found it difficult to tell his experiences to the male police officer he spoke to. Police later told him there was nothing they could do because Jameson was dead. That same year, following a suicide attempt, Robert's doctor asked him if he was a victim of sexual abuse. When Robert said yes, his doctor arranged ACC counselling for him. Robert tried to get weekly compensation for lost income through ACC. He found the process with ACC deeply distressing, describing dealing with ACC as horrific: "it's like being raped".

Robert undertook both psychiatric and psychological assessments as part of his ACC application. Both assessments required meeting with an assessor. Robert's meeting

with the psychologist was split over two days with each meeting taking many hours. Robert said the assessments were not easy: "You've got to bring it all up again, don't you? And then also, what is written about you sometimes is not quite correct … I don't even read them … because it's hard work." Robert said the assessment reports found his mental impairment as a result of the abuse was 15 percent. As a result, Robert receives $20 per week from ACC for mental impairment resulting from the abuse he suffered.

ACC told Robert he was not entitled to weekly compensation for lost income because he wasn't employed at the time, he applied to ACC. Robert said: "I went into the process hoping for weekly compensation at 80 percent of my wages but then they said I wasn't an earner at the time, and I'd be better off on the dole because I haven't worked much anyway. But I hadn't worked because of the PTSD." Robert appealed ACC's decision to not pay him weekly lost income compensation and to pay him only $20 per week for his mental impairment. Robert represented himself because he couldn't afford a lawyer. He found the review process scary and difficult to work through alone.

His appeal was denied.

Robert said that throughout his experience with ACC, no one explained to him what types of assistance he might be entitled to receive. He had three different ACC case managers and had to repeat his story to each of them, which was upsetting each time. He said ACC did not think about an applicant's mental health or disabilities, and he found the way ACC worked only made things harder for applicants who were trying to get help. Robert was grateful for the counselling, the psychiatrist and the psychologist reports, "but that doesn't put food on the table. To live on $250 a week and to have to sell your assets is demeaning".

Ētahi whakapāhotanga tūkinotanga ki te Hāhi Mihingare
Report of abuse to the Anglican Church

In September 2017, Robert reached out to the Anglican Church through the Waimea parish's website. He told them he had been abused by Jameson and was receiving counselling for the trauma he was experiencing. Robert also told the parish he was making a complaint to Police. Robert did not know exactly what he was expecting from the church when he first contacted them – possibly an apology or medical care for his health problems, which he blames on the abuse. There was no public information available to help him know who to contact or understand from the beginning what help he might be able to get from the church including forms of redress, like an apology or financial assistance with medical bills.

"I went into the process hoping for weekly compensation at 80 percent of my wages but then they said I wasn't an earner at the time, and I'd be better off on the dole because I haven't worked much anyway. But I hadn't worked because of the PTSD."

The Nelson diocese's executive secretary, acting on instructions, replied by email to Robert.[96] Robert was told the church was appalled by Jameson's behaviour and that he had been prosecuted for similar offences in 1978. The secretary wished Robert well and said the church would support him in their prayers. There was no enquiry about what help the church could offer, nor any acknowledgement of the church's responsibility for the abuse and its long-term effects. The transactional reply by email also failed to treat Robert's sensitive disclosure of abuse with the necessary consideration, respect and dignity Robert was entitled to receive.

At the inquiry's redress hearing in 2021, the church explained that at the time Robert contacted the diocese, there were no formal redress processes or policies (or even training) in place that the secretary could have followed.[97] The only formal process available for dealing with reports of abuse by clergy was the church's Title D process. Title D is a disciplinary process that focuses on the actions of the abuser and does not provide help or redress for survivors other than the possibility of accountability of the abuser. At the redress hearing, Archbishop Richardson said: "[T]here is no overarching Anglican Church policy or procedure for [abuse claims]. The focus of Title D has always been on discipline and fitness to minister. It is with regret that I have to say the focus of the Anglican Church has often been on those issues rather than on the needs of the complainant." [98]

Robert found the secretary's email response unacceptable. The church had taken no responsibility for Jameson's actions and had offered Robert nothing beyond prayers, which, as a non-believer, meant little to him. Robert said he "imagined them all standing around together saying, 'today we're going to pray for Robert Oakly, who was raped by Archdeacon Jameson'". After Robert gave evidence at the inquiry's public hearing in late 2020 about how the secretary's response made him feel, the secretary made attempts to reach out to Robert to apologise.

The church's failure to respond in any meaningful way to Robert when he reached out to them acted as a further barrier to him seeking redress from those responsible for his abuse.

Ka whai puretumu i te Hāhi Mihingare me te āwhinatanga a tētahi rōia
Request for redress from the Anglican Church with the help of a lawyer

Unsure of what he could do next, but wanting help to do something, Robert cautiously sought legal help. Robert found having legal help in order to access the redress he was entitled to was traumatic and stressful. He said, "the process to get redress is almost actually worse than the event itself, and I wonder if it is even worth it."

Robert contacted Sonja Cooper of Cooper Legal to act for him. Cooper Legal had been recommended to him by support group Care Leavers Australia Network New Zealand. Cooper Legal acted for Robert through legal aid. Robert found getting into legal debt to try and get redress from the church stressful:

"It makes me really anxious and it screws my head that I have to pay legal aid to get redress. It plays on my mind all the time ... I worry that I am going to lose again, and that everyone else is winning out of this and I've got to suffer it."

The stress of the potential size of the legal aid debt he might owe, up to $91,000, was at times overwhelming despite knowing it could be written off.

> *"That stressed, maxed me right out. Like, that's all I've got. It's like if I'm fighting for justice and I was told that the Anglican Church were crap at getting anything out of, and that it might just cover costs ... it made my head stir. I couldn't think. Actually, at some stage, [I] stopped, put it on hold, I couldn't handle the thought. You know, it's like am I going to go and spend all my money and everything that I won for justice, come out with nothing, worse off at the end?"*

Robert found the delays with the church confusing, and they added to his stress about the escalating costs of using a lawyer over years, rather than months.

> *"I was very confused because someone told me it would be 3-4 months then it was 3-4 years."*

In August 2019, Cooper Legal wrote to Bishop Elect Steve Maina of the Nelson diocese. Cooper Legal asked for an ex-gratia payment to Robert of $100,000, a contribution to his legal aid costs, and an apology from the church.[99] In October, Bishop Maina responded relying on legal advice to deny any responsibility, but said the Church was considering what form of support or redress might be appropriate.[100] The bishop said the church would look to the inquiry as to how it should respond to survivors such as Robert. He offered to meet Robert to discuss practical ways to help with Robert's recovery. Cooper Legal wrote back to Bishop Maina the same month expressing concern the church was not accepting responsibility for Robert's abuse. Cooper Legal asked if the church would consider an alternative dispute resolution.[101]

Around this time, Cooper Legal asked Robert if there was anything the church could buy him, like a cheap car or some furniture.[102] Robert found this suggestion insensitive and upsetting, particularly as the rape had occurred in a car.

"I felt offering to buy me a car or furniture was demeaning, and it was like they were treating me like a drug addict low life."

In March 2020, the church accepted that it was responsible, or vicariously liable, for Robert's abuse by Jameson. The church asked for Cooper Legal's guidance about an appropriate process for meeting with Robert to hear his experience and develop a response. In October, Cooper Legal wrote to the church about their lack of contact and the long delays in dealing with Robert's case.[103] In December, shortly before Robert gave evidence at the inquiry's public hearing on faith-based redress, the church offered Robert $60,000 to settle his claim. Robert accepted the church's offer despite feeling it did not adequately reflect the lifelong impacts of the abuse. Bishop Maina also wrote to Robert to apologise for the abuse he had suffered, for the fact Robert had been forced to approach the diocese several times to get a genuine acknowledgment of his abuse, and for the church having taken so long to deal with his claim.[104]

Part of the church's delay in providing redress to Robert was because the church spent from August 2019 to March 2020 denying any responsibility. In 2021, Bishop Carrell explained to the inquiry the church's possible denial of responsibility or legal liability was a tactic to deny compensation. Bishop Carrell said:

"It may have been in the past in the sense that maybe a fear that a claim would lead to monetary compensation has led to a how can we get away with paying as little as possible approach; or are we legally liable to monetary compensation, no, we're not so that's good."105

At the same hearing in 2021, Archbishop Richardson acknowledged that the church's concerns around its liability and its recourse to lawyers, rather than relying on an established redress process, made it hard for survivors:

"When you read the evidence it has been really hard [for a survivor to get anything from the church other than an apology], and the recourse to concerns around liability, recourse to lawyers … [W]hen you look at it evidentially in the story of people's lives, it's pretty hard to see that as a tenable approach."[106]

Once the church accepted it was responsible for Robert's abuse, it then took from March to December 2020 to decide what to offer Robert as a settlement. The process for offering Robert compensation would have been much shorter if the church had a redress process that started as soon as Robert made contact. Having this redress conversation in 2017 would have prevented unnecessary stress and harm to Robert. He may not have needed to use lawyers and access legal aid to achieve an outcome. As Archbishop Richardson told us in 2021: "The redress conversation … is kind of almost brand new for us [as a church]."[107]

Robert's legal costs were eventually written off by Legal Aid. Cooper Legal continues to work with Robert on other aspects of his experience.

Ngā hiahia o Robert e pā ana ki te Hāhi Mihingare
What Robert would have liked to have happened with the Anglican Church

Robert told the inquiry in late 2020 that he would have liked a public apology from the Anglican Church, such as in the Evening Mail, to all of Jameson's victims. Robert did not want a confidential apology, but rather one that was public and open, so as to be fair to all those abused. Robert also wanted the church to reveal how much it knew about Jameson's other offending as he felt sure there were others.

In March 2021, Archbishop Philip Richardson delivered a public apology to Robert at the faith-based redress hearing:

"I want to speak to the evidence of Robert Oakly ... I simply don't believe that the Church did not know. I don't understand why following conviction Archdeacon Jameson wasn't deposed from Holy Orders and was able to continue to represent himself as a priest of the Church ... for the fact that we failed you, we failed to believe you and we failed to act against your abuser, I do apologise."[108]

Archbishop Philip Richardson also met Robert in his hometown to offer a personal apology. Robert found the Archbishop's public and personal apologies genuine and helpful in his acceptance of what had happened to him. In May 2021, the Church shared with Robert the records held by the Nelson diocese about Jameson.

Robert hopes that through the actions of the inquiry there will be more awareness that men can be victims of sexual abuse, and that the Church will be exposed. He told us:

> *"There is not enough awareness that men can be victims of sexual abuse too. It would definitely be worthwhile to have investment in a public awareness campaign."*

Robert now wishes to put this all behind him, and to try and enjoy his retirement years knowing that the abuse by Jameson forever changed the trajectory of his life.

> *"There will never be closure ... it's acceptance."*

Whakarāpopototanga me ngā kitenga
Summary and findings

In summary, we find:

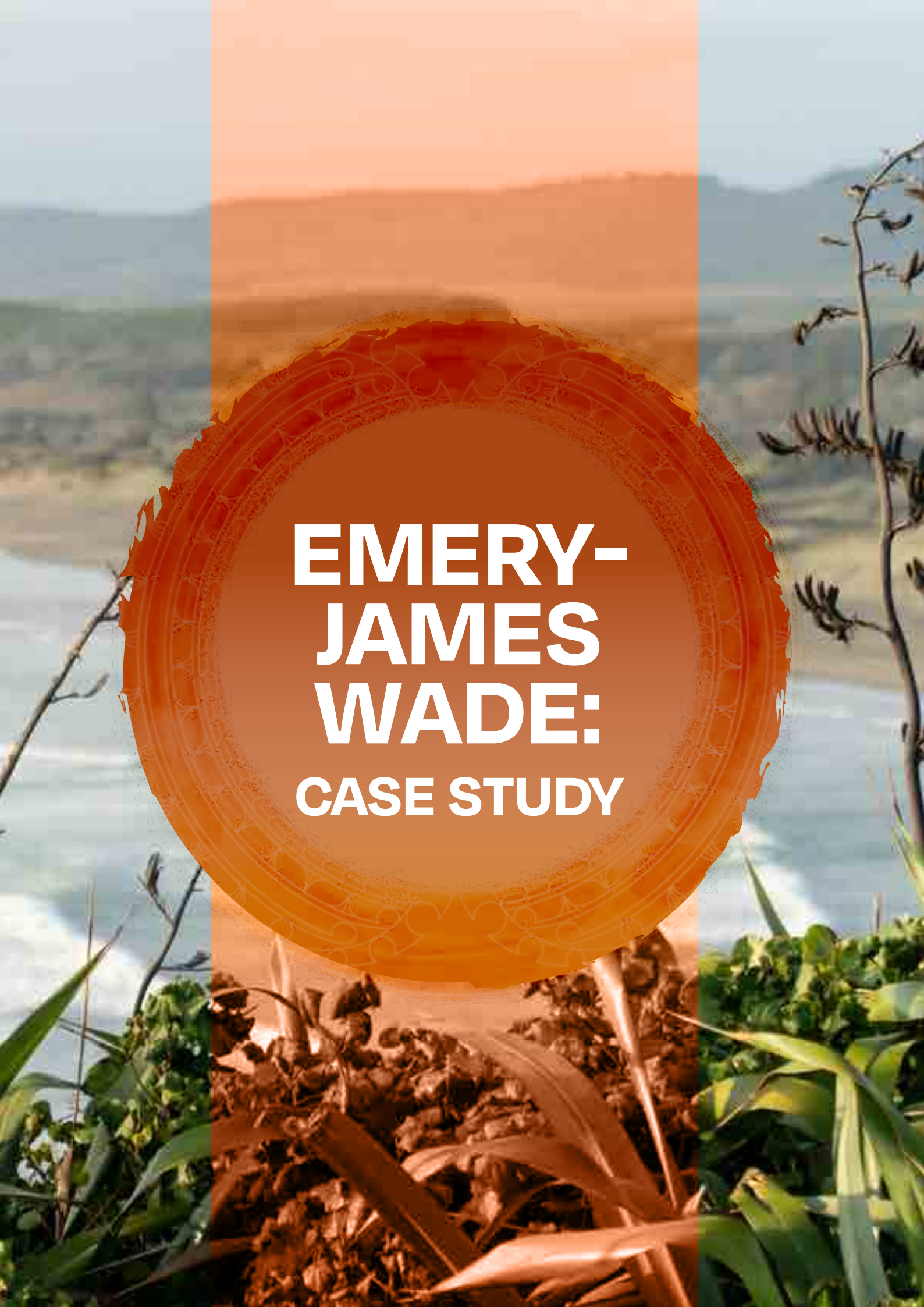
- The State failed to respond adequately to Robert's report of abuse. In particular, the Accident Compensation Corporation:
  - failed to work with Robert in a trauma-informed way
  - failed to provide Robert with easily accessible information about the range of entitlements he may have access to
  - used processes that were difficult for Robert to work through on his own
  - changed Robert's case manager multiple times which was stressful
  - has not provided Robert with meaningful financial support.
- The Anglican Church failed to respond adequately to Robert's report of abuse. In particular, the church:
  - failed to respond seriously enough or in a trauma-informed way when Robert first contacted them in 2017 including offering wellbeing support
  - failed to train the diocesan executive secretary in how to respond to disclosures of abuse in a trauma-informed way
  - failed to implement, and make publicly accessible, redress policies or processes that empowered Robert to know who to contact and what he may be entitled to as redress
  - failed to understand, and mitigate, the barriers for Robert in seeking redress from the church

- unduly delayed and attempted to avoid responsibility for Robert's abuse
- should have readily accepted that Robert would be entitled to redress, including monetary redress, on the basis of similar sexual abuse for which Archdeacon Jameson was prosecuted and the church was aware of
- should have proactively sought out the victims of Jameson, including Robert, and proactively offered them access to support and redress
- should have offered Robert an apology earlier in the form of his choosing rather than following his evidence to the inquiry
- should have worked with Robert to try and provide him records on Archdeacon Jameson much earlier.

› Both the State and the Anglican Church used processes that were unduly long, intimidating and difficult for Robert to follow, and relied on Robert hiring lawyers to access his full entitlements.

› All of Robert's attempts to receive the redress he was entitled to, and the support he needed, were unnecessarily traumatising and exacerbated Robert's difficulties with mental health and outlook on life, which he feels were derailed as a result of the abuse.

"There is not enough awareness that men can be victims of sexual abuse too. It would definitely be worthwhile to have investment in a public awareness campaign."



EMERY-JAMES WADE:

CASE STUDY

Emery-James Wade:

I takaroa te hāhi i te āhua ki tētahi pirihi i mōhiotia whānuitia hei tangata hara ai
Church dragged feet on priest who was known sex offender

Tau tōmua me ngā wheako tūkinotanga
Early years and abuse experience

Emery-James Wade, of Ngāi Tahu and Waikato Tainui descent, grew up in Hamilton, the second eldest of eight children, and attended St Mary's Cathedral School.[109] He and his siblings regularly went to St Mary's Church and occasionally his parents and Nan went to Hui Te Rangiora marae at St Joseph's Catholic Māori Mission where the Diocese of Hamilton performed a Māori Catholic service each month.

Between 1982 and 1985, Emery-James served as an altar boy at St Mary's Church for Father Mark Brown, who sexually abused him first when he was aged nine and several times after that until he was aged ten. He spent time with Brown during Sunday

"I kept following them up and they kept fobbing me off. There was one excuse after the other. I didn't feel like I had been taken seriously."

services and would also help him during the week. Brown would pick up Emery-James from his home to take part in parish events and retreats, often as frequently as every weekend. Emery-James also participated in various Catholic community events arranged by Brown. He travelled to Auckland for the visit of Pope John Paul XI and watched Brown serve as an altar server to the pope. Emery-James was an altar server in Tokoroa at the ordination of Max Mariu, the first Māori bishop, a ceremony Brown organised.

The first time Emery-James was abused was during a Sunday service when he began to feel ill and went to the back of the church, vomiting repeatedly. Another boy filled in for the service, while Brown took Emery-James upstairs to an area where he lived. Emery-James was vomiting into the toilet. Brown started to caress him and rub his back under his shirt. Brown's hands went under Emery-James' pants and started to rub his penis. Emery-James froze. He does not remember how long it went on, nor does he remember leaving the church or returning home that day.

Father Brown continued to abuse Emery-James. The abuse occurred multiple times from age nine to ten.

Pānga tūkinotanga - The impacts of the abuse

Before the abuse, Emery-James was a very good and popular student and leader in his classes. He enjoyed scouts and rugby. After the abuse, his behaviour changed dramatically. He did not want to leave his house and would behave badly to avoid having to spend time with Brown. He told his parents he did not want to be around Brown, but they still sent him on trips with Brown. Emery-James said Brown was everywhere in his life: at school, at church and at home. Emery-James stopped being

Brown's altar server and stopped going to church when he was ten. He began running away and getting into trouble.

Several years later, Brown was imprisoned for sexually abusing another altar boy. Emery-James' parents learned of this through the media, but Emery-James was too scared to tell them about his own abuse. His father was a violent and unpredictable alcoholic. Once, while drunk, he asked Emery-James if Brown had done anything to him. Emery-James lied because he was scared of his father when he was drunk.

The impact of the abuse soon made itself felt in a variety of ways. Emery-James left school early, began taking drugs and alcohol, engaged in criminal behaviour, became a gang prospect, was imprisoned and ended up in transient jobs and housing. He attempted suicide while in prison. He grew apart from his whānau.

While in prison in 2010, Emery-James participated in the Department of Corrections' Tūranga Māori Focus Programme. He learnt to speak fluent reo Māori and learnt about tikanga Māori and Māori religion. He enjoyed developing his understanding of his culture and felt it was an important part of his healing.

Puretumu - Redress

At one stage, Emery-James returned to live in the Waikato region and visited the grounds of St Mary's Church for free community meals, which were held on Monday evenings. But, he couldn't bring himself to enter the church itself. A caring stranger noticed his behaviour and asked about it. Eventually, over several meals, they discussed the abuse. Emery-James credits this person with helping him begin his real journey to wholeness.

Later, while living in Nelson, Emery-James made contact with the Male Survivors of Sexual Assault Trust and was introduced to Bernard Smith, a counsellor, who helped him get assistance from Work and Income and ACC, and also gave him information about reporting his abuse to the Catholic Church and Police.

With the Trust's help, Emery-James approached the Waikato Diocese in 2014. In November of that year, Emery-James and his father met Bill Kilgallon from the National Office for Professional Standards, which was set up by the church to receive reports of sexual abuse. Mr Kilgallon took notes detailing what Emery-James reported, and Emery-James later approved them as accurate. Emery-James reported the first instance of abuse that occurred when he was nine in his complaint. Later, through counselling, he was able to recall other incidents of sexual assault and acknowledge his coping mechanism of blocking out the memories. This was something he had done naturally throughout his life to protect his wairua.

Mr Kilgallon passed on all the information he had gathered to the Sexual Abuse Protocol Committee that had been established by the Diocese of Hamilton to respond to reports of abuse. After that, matters stalled. In December 2014, the chair told Emery-James the committee would make inquiries and then forward a recommendation to the bishop. In March 2015, Emery-James emailed the committee to ask about progress. Mr Kilgallon also expressed concern at the "unacceptable delay".[110] Nothing happened until April 2015 when investigators were assigned to look into the report of sexual abuse by the Sexual Abuse Protocol Committee.[111] The person who compiled the investigators' Terms of Reference was the Bishop of Hamilton's Sexual Abuse Protocol Committee delegate under the church's then current policy for dealing with sexual abuse reports.[112]

Emery-James met the investigators, Monsignor David Tonks[113] and Patsy Gordon, in Hamilton in May 2015.[114] Although Emery-James had shared everything he knew with Mr Kilgallon five months earlier, the investigators said he had to repeat it. The church now acknowledges that this practice was inappropriate and it has now changed. The Director of the National Office of Professional Standards does not carry out investigative interviews.

Emery-James told us he knew Monsignor Tonks was from the same parish as Brown and felt that Monsignor Tonks did not believe his allegations. The investigators recorded, however, that they found Emery-James to be a gentle, respectful man, who told his story with apparent deep sincerity.[115] At the interview, Emery-James also gave permission for his counsellor to release any relevant information to the investigators.[116]

The Sexual Assault Protocol Committee considered the investigators' report at its meeting in June 2015 but felt there were still many unanswered questions. Later that month, Monsignor Tonks sent Emery-James an email asking further questions, including:

- What counselling had Emery-James had, where, when and with whom?
- Was any of the counselling in prison?
- In the course of that counselling, did Emery-James reveal he had been sexually abused by Brown or anyone else?
- Had he ever made a complaint to anyone that he was sexually abused before he told his father about the abuse on 3 November 2014? If he made such a complaint, details about the circumstances were to be provided.[117]

Emery-James answered these questions in a phone call on 10 July 2015. Following the phone call, there was a process to record the details of the call. Emery-James tried to follow up on what was happening but felt he was being fobbed off. Monsignor Tonks

and Emery-James approved the written record of their phone call in August 2015. Later in August 2015, Emery-James hired a lawyer to try to force some progress, as he felt disbelieved and that the process was taking a long time. The lawyer wrote to Monsignor Tonks on 28 August 2015 asking for an update.[118]

On 10 September 2015, the Sexual Assault Protocol Committee delegate emailed back to say that he was not happy with the "messy" record the investigators had compiled, and he wanted to rewrite it into a single document.[119] He said he hoped to get the document to Emery-James' lawyer by 28 September 2015, despite Emery-James' lawyer saying he was not happy with further delay.[120]

On 7 October 2015, 10 months after Emery-James' complaint, the Sexual Assault Protocol Committee delegate emailed Emery-James' lawyer to say he had now merged the various documents into a single document. However, he said that he still considered the investigation incomplete, and noted that Emery-James had produced no "corroborative evidence".[121] He said that in the absence of corroborative evidence he needed more information, such as:

- Was Brown the only person who had ever abused him or attacked him sexually?
- Had Emery-James been sexually abused by any other person, such as his father or any of his siblings?
- Had Brown groomed Emery-James before he attacked him?
- Was Emery-James part of Brown's "special group"?
- Was Emery-James still vomiting when Brown put his hands into his pants during the first assault, and did Brown do this through the front or back of his pants?
- What was Emery-James doing while this was happening?[122]

These questions reflected the church's criminal investigation mindset. The church also sought corroboration against a person known by the church to have been convicted of sexually abusing another altar boy.

On 15 April 2016, 16 months after Emery-James disclosed his abuse, the Sexual Assault Protocol Committee delegate wrote to his counsellor, Mr Smith, saying it would be helpful if he could obtain copies of all the reports from the various counsellors Emery-James had seen. The delegate asked Emery-James' counsellor to get that information, or, if that was not possible, to provide Emery-James' authorisation for the counsellors to release those reports.[123] The delegate indicated in a later email that it was likely new investigators would be appointed to review what had already been done and carry out further inquiries.[124]

They said the committee was concerned that the delegate seemed intent on appointing new investigators when the real problem was that ACC had not provided the reports the committee had asked for and so it could not make a decision.[125]

On 30 June 2016 Emery-James made a formal complaint to Police. Police were already investigating Brown's sexual abuse of other boys. The church also had three other reports of sexual abuse against Brown at various stages of investigation.[126]

On 11 July 2016, Emery-James gave a detailed account of Brown's sexual abuse of him to Police in an interview lasting nearly two hours.[127] Police suspected Emery-James had been subjected to more sexual abuse than he had disclosed at the time.[128]

On 15 July 2016, Mr Kilgallon advised Emery-James the church always suspended any investigation once a report had been made to Police.[129]

On 30 May 2017, Brown appeared in Hamilton District Court where he pleaded guilty to four charges relating to three victims, one of them Emery-James.

The three victims were offered restorative justice meetings. Only Emery-James accepted the offer, and the sentencing hearing was postponed until 21 August 2017 to allow that to happen.

Emery-James attended a restorative justice meeting with Brown in July 2017. Brown told Emery-James he tried to raise the issue of his "difficulty" during his training as a priest, but the church did not want to hear about it.[130] He also told Emery-James he chose him because he was Māori, and although he was not Māori himself, he had been brought up in Te Mata in a family similar to Emery-James.

Brown was sentenced to 26 months' imprisonment following the restorative justice meeting. The sentencing judge applied discounts for Brown's apparent remorse, age and early guilty plea, together with his participation in the restorative justice process.[131]

In December 2017, three years after disclosing the abuse he experienced to the church, Emery-James met Mr Kilgallon and Bishop Stephen Lowe at a restorative justice conference, organised by Project Restore.

Project Restore hosted a preparation meeting with Bishop Lowe prior to the restorative justice conference. Emery-James prepared questions, which were answered by Bishop Lowe in a letter as well as during the conference. Emery-James talked about a range of redress options at the meeting.[132] This appeared to mark a turning point in the case where Emery-James' redress needs were able to be considered by Bishop Lowe directly. Bishop Lowe later acknowledged that the "investigation" phase of Emery-James' redress process was "a fiasco".[133]

Emery-James said that, as part of his healing process, he wanted to go back into St Mary's Church where the offending took place. They discussed a hīkoi that could start at Hui te Rangiora, followed by a walk to the church. Emery-James wanted to try to go inside St Mary's Church, although trying to enter any church made him physically ill.

Emery-James talked about Bishop Lowe and Mr Kilgallon meeting his father and telling him about the abuse and what steps the church had taken. He said it would mean more to his father, and he would take it in better, if the message came from the bishop. They talked about Bishop Lowe visiting Emery-James' mother's grave to tell her what had happened.[134] This request was not detailed in the summary of agreed outcomes from the restorative justice conference, although it was outlined in the full transcript, which was retained by the church. Bishop Lowe regrets that it was overlooked.

Bishop Lowe offered Emery-James $10,000 to cover some of his immediate debts. He also said the diocese would contribute $20,000 towards the construction of a house on whānau land.[135]

Bishop Lowe would get a copy of the restorative justice report and place it in the church's files so Emery-James could, if he wished at any time in the future, share it with his whānau.[136]

The first payment of $10,000 was made immediately. Of the $20,000 earmarked as a contribution toward the future building of a house for Emery-James, $10,000 was advanced so Emery-James could purchase a car he needed for a new job. The remaining $10,000 was advanced, at Emery-James' request, in April 2018 at a time when Emery-James was suffering financial hardship and plans to build a house on his whānau land no longer seemed viable. Emery-James told us of his experience of having to chase Bishop Lowe for the money. He said he had to beg for it and the bishop "came up with all the excuses under the sun not to give it to me. He told me it wasn't a good idea to give it to me cause I'd waste it".

In March 2018, Emery-James met with Bishop Lowe to try and find closure by returning to St Mary's Church (now the cathedral). Bishop Lowe told us that he spoke to a local kaumātua and with the priest who celebrated the Miha Māori, mass in Māori, at Hui te Rangiora marae, in preparation for this meeting. Bishop Lowe asked for information about the form and function of a simple pōwhiri for Emery-James' return to the church. Emery-James did manage to walk back into the cathedral. Later that afternoon, with the support of his whānau, he went to the cathedral to receive Bishop Lowe's apology. Bishop Lowe told us he welcomed the whānau with a mihi.[137]

Bishop Lowe apologised to Emery-James' father and whānau, and the group went into the cathedral for karakia and to acknowledge the abuse that had occurred. They did

not share a meal together to lift the rāhui, which Emery-James said had been agreed. Bishop Lowe said that going to dinner was not suggested or agreed to, but that he would have been happy to do this.[138]

Brown had two previous convictions in 1990 for indecent assault.[139] At the time of those earlier convictions, the church's response was focused much more on supporting Brown and avoiding scandal than on supporting the people he had abused.

Bishop Edward Gaines was the Bishop of the Diocese of Hamilton at the time of Brown's convictions in 1990. Local bishops like Bishop Gaines had the power to limit a priest's ministry, but not to remove them from the priesthood. As well as limiting Brown's ministry, Bishop Gaines could have applied to the pope for Brown's dismissal from celibacy, which is the process of removing a priest from the clerical state.

There is no indication that Bishop Gaines, or his successor Bishop Dennis, ever considered initiating a canonical process to have Brown dismissed from the priesthood, despite his conviction (including assessing whether the five-year limitation period under Canon law would be an obstacle).

After Brown's release from prison, he sought support from Bishop Gaines and his successor Bishop Dennis, who continued to try to find alternative positions for Brown, including in church roles overseas, by supporting his visa application and agreeing to pay his travel expenses and costs while overseas.[140] The Bishops did not support Brown taking on an overseas position without disclosing his offending. Ultimately, the church became concerned the media might track Brown down even if he left the country, so the overseas positions were not pursued.[141]

Ultimately Bishop Gaines and Bishop Dennis did encourage Brown to voluntarily give up the priesthood, but he refused, despite the church offering to pay his university fees and living expenses during retraining.[142]

As of 2017, Brown was not engaged in any ministry but was still receiving a regular stipend (payment from the church) and medical claims coverage. Because he was still formally listed as a priest of the diocese, he was receiving the same benefits as other retired priests, plus some government superannuation payments.[143]

In December 2017, Bishop Lowe wrote to the Apostolic Nuncio to say Brown was the diocese's most prolific and high-profile sex offender, but his case had never been referred to the Holy See (pope).[144] He recommended that Brown be dismissed from the priesthood. In relation to another survivor, he highlighted difficulties obtaining relevant documents from the protocol committee, which had made strenuous efforts to keep them confidential, even in the face of court orders.[145] He also said it was a "scandal that he is still a priest. I am deeply distressed that no significant action has been taken against him to date".[146]

Whakarāpopototanga me ngā kitenga
Summary and findings

Ngākaurua, takaroa, rangirua - Uncertainty, delay, confusion

In summary, we find:

- The delays by the church in responding to Emery-James' disclosure of abuse were unacceptable. This is fully acknowledged by the church.
- Further and additional delay arose when the church suspended investigation of Emery-James' disclosure during the police investigation.
- Even with the assistance of a lawyer and no objection to extensive and irrelevant questions, a final decision was not made until 18 months after Emery-James disclosed his abuse to the Church.
- Although the restorative justice meeting was helpful, as was the ongoing engagement with Emery-James, some agreements made in principle were not acted on by the Church. Emery-James felt he needed to "chase" Bishop Lowe for full payment, which resulted in delay and caused him unnecessary distress. (Bishop Lowe says that he would have loved Emery-James to use the money to build a home, and he was worried about it being used for short-term measures.)
- We acknowledge the approach and initiative taken by Emery-James and Project Restore and the church response in attending. It is clear that Bishop Lowe for the Hamilton Diocese and Bill Kilgallon for the National Office of Professional Standards participating in a survivor needs-led and trauma-informed restorative justice conference hosted by a neutral party was of assistance in this case.

He taikaha rawa ngā whanonga ketuketu
Overly invasive investigative behaviour

In summary, we find:

- Emery-James' report of abuse could have been upheld on the information he initially provided to Bill Kilgallon and the interviewers appointed by the Sexual Abuse Protocol Committee. It appears to have been materially similar information to that provided to Police, and which led to Father Brown's criminal conviction. The Diocese of Hamilton acknowledges there were issues with how investigations were conducted by the Sexual Abuse Protocol Committee at the time. Changes have since been made, including that the Director of the National Office for Professional Standards does not undertake investigation work, there is one national process for dealing with complaints, and there is a policy to encourage survivors to make a complaint with Police when the alleged perpetrator is still alive.
- The series of questions relating to Emery-James' counselling history, whether he had reported his abuse to anyone else, whether he had been abused by anyone else, information from ACC claims or other corroboration were unnecessary. The material obtained from answers to those questions was not relevant in the assessment required by the Protocol Committee to uphold the report of abuse.
- An undue focus on "truth seeking" and a survivor needing to be able to corroborate a claim is evident in the approach taken by the Sexual Abuse Protocol Committee.

Tikanga Māori me ngā hiahia o te katoa - Tikanga Māori and collective needs

In summary, we find:

- The church should have inquired after, and been led by, not only Emery-James' needs as an individual but any whānau, hapū or iwi needs identified in redressing the abuse. The church gave insufficient consideration to Emery-James' cultural background and the importance of his whānau, hapū and iwi to him and to Māori generally, and reo Māori me ōna tikanga for Emery-James' healing. Emery-James' 2017 requests to the church expressed a clear need for redress to include not just his living whānau, but also his deceased mother, in a collective response to the abuse and its redress. It is also clear that Emery-James highly valued his relationship with reo Māori and tikanga Māori and this was an important part of his healing journey.

- It was appropriate to seek tikanga Māori expertise about what might be meaningful to offer as a part of the redress process and apology, or how to support Emery-James in the requests that he made. Bishop Lowe sought advice of this nature in his preparation for the planned meeting at the cathedral and the delivery of his apology to Emery-James and his whānau. It is recommended that the National Office of Professional Standards, as a matter of routine, engage cultural expertise and monitors ahead of any meeting with a survivor what a culturally-informed practice of apology-making or redress needs might look like in the specific case. This would support church leaders in being able to offer culturally-informed options in engagements with survivors. We acknowledge that tikanga Māori varies, as does a survivor's experience of their culture, in any given context.
- Proactivity in discussing whānau involvement with a survivor prior to undertaking the apology would have been best practice. Difficulties may arise given privacy constraints and that the National Office of Professional Standards or church leaders cannot overreach into disclosure to whānau members. This does not preclude the offer being made to survivors privately of the ability to involve wider whānau in any process, and the ability of institution leaders to be flexible to suggest or include cultural norms within a formal apology event. Whānau involvement earlier in the process may also have contributed to certainty around the agreements made, next steps and likely timeframes.
- It is impossible to meet the cultural needs of survivors in redress without proactive measures to understand, from the survivor's perspective, how they view themselves, their relationship to their culture and their cultural needs. In addition, when considering redress for survivors from collective cultures within a faith community, it should be incumbent on the institution to take expert advice on how the redress of the specific case might be assisted by cultural precepts.

Whakapāha me te hiki i te rāhui - Apology and lifting of the rāhui

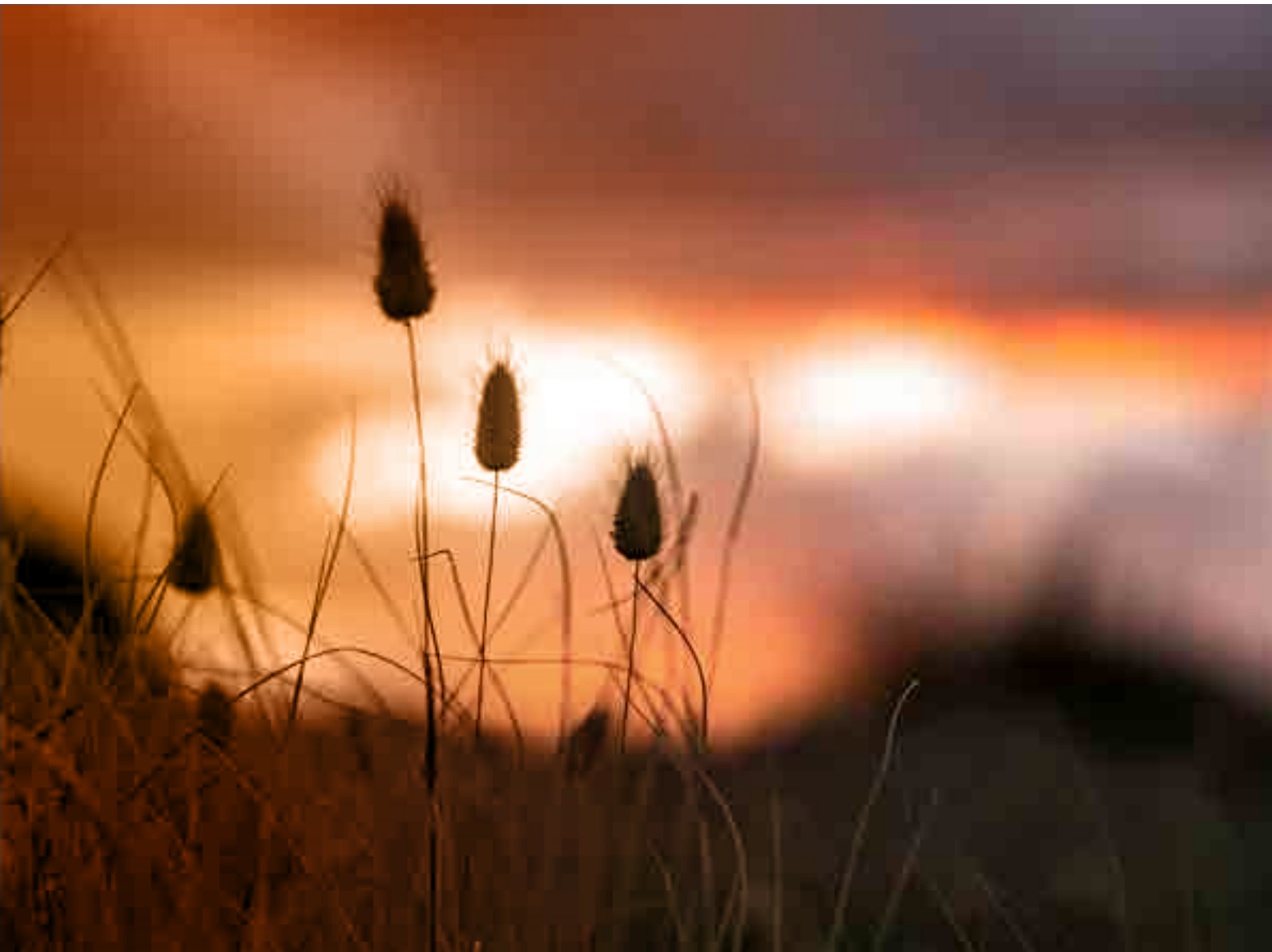
In summary, we find:

- Emery-James' requests around how the apologies should take place were only partly met:
  - Lifting of rāhui**:** This concept indicates the restrictions Emery-James felt applied to him around the location where he was abused and churches generally. To whakanoa in the sharing of kai together following Emery-James' re-entering of St Mary's Church was appropriate and would ordinarily be expected in any process involving lifting tapu or rāhui in te ao Māori. In addition to completing the process from a tikanga Māori perspective, the Church would have displayed respect and acknowledgement for his whānau in doing so, and contrition and accountability in a tikanga Māori context.
  - We acknowledge that this was not discussed previously at the Project Restore conference and Bishop Lowe's recollection that this wasn't discussed on the day he met with Emery-James and his whānau. Regardless of whānau direction, the offer could have been made if Bishop Lowe had been supported with additional cultural expertise, rather than being led by survivor self-advocacy during the apology event. With additional cultural training and support, church leaders should be in a ready position to offer to share in the experience and reciprocal exchange of cultural norms.
  - Apology to Emery-James' parents: Emery-James' father received an in-person apology from Bishop Lowe, however the visit to Emery-James' mother's grave and apology to her was not completed. We note Bishop Lowe's regret that this was overlooked.
- Virginia Noonan from the National Office of Professional Standards gave evidence to us that where survivors identify specific needs, these needs would be able to be met. Yet, Emery-James was able to articulate his needs of both a cultural and pastoral nature, and these were neither given due consideration nor met.

Whakatika me te iti o ngā mahi e pā ana ki a Brown
Discipline and lack of action around Brown

In summary, we find:

- Brown refused to seek voluntary laicisation (removal from being a member of the clergy). The church should have acted swiftly to discipline and sanction Father Brown. They failed to do so.
- After Brown's conviction in the 1990s, Bishop Gaines should have immediately restricted any further ministry of Brown to ensure that the risk of further sexual abuse was minimised.
- Immediately after Pope John Paul II issued the decree Sacramentorum Sanctitatis Tutela in 2001, the Diocese of Hamilton should have referred all the information relating to Brown to the Congregation for the Doctrine of the Faith and sought Father Brown's dismissal.



DAVID CRICHTON

CASE STUDY

David Crichton:

He "whakarihariha" te mahitahi ki te manatū
Dealing with ministry an "appalling" experience

David was placed into care at the age of one, by his mother. David's mother was unable to care for him because she had serious mental health difficulties and an unstable financial position.[147] His mother first placed him in St Barnabas Babies' Home in Wellington. Over the next four months David was placed under the guardianship of the Director of Presbyterian Social Services Association (now known as Presbyterian Support Central) and had two different foster placements, before ending up in The Salvation Army Residential Nursery at 18 months old. He went on to spend the rest of his childhood in the care of various foster families, State and faith-based institutions.

The Department of Social Welfare was involved in his care throughout most of his childhood, and at the age of 14 he became a ward of the State. He was moved constantly between different homes and institutions – at least 40 times by his reckoning, although the exact number will never be known because of a lack of records. Most placements were in foster care homes, arranged by the Presbyterian

"There have been delays and extensions sought by organisations and some places replied that they just hold no information about me. Permission had to be received for some documents to be shown to me. That is unfair. This is my life. Everyone else knows my life except me."

Support Services Association and the Department of Social Welfare. David also spent time in "family homes", a nursery run by The Salvation Army and at the State-run Epuni Boys' Home in Lower Hutt.

David's father, who was Samoan, was not around when he was born. David's records suggest his mother and her family held disparaging views about Samoans. He grew up believing he was Māori. His mother gave him the last name Mohi, the surname of his mother's husband at the time. Records held by State agencies and Presbyterian Support Central show they knew who his father was, but they never tried to contact him, or David's extended paternal and maternal family about providing care for him. Some of his extended family members lived 20 minutes away from him while he was at Epuni Boys' Home. David has no recollection of meeting his father or connecting with his Samoan aiga, or family, and culture. At 14, he was allowed to briefly attend his father's funeral.

David suffered physical, emotional and psychological abuse, as well as cultural neglect while in care. Staff physically and psychologically abused him. Other children in care physically abused him. He also suffered sexual abuse at Epuni Boys' Home and at a foster home. At 14, he was placed in a foster home with John (not his real name), who was responsible for his care. John regularly gave him drugs and sexually abused him. John was later convicted of sexual offending against other boys – offending that took place just a few years before David lived with him.

With almost no photographs and family to help piece together his past, David's care records are valuable to him. They are all he has to try to make sense of what happened in the first 18 years of his life, and why. It was from these records, some of which he did not receive until he was 30, that he discovered he was Samoan, not Māori.

Pānga tūkinotanga - Impact of abuse

The consequences of his time in care have been profound and enduring. In his early 20s, he was convicted of firearm and cannabis offences and theft. He spent time in prison for this. He said his offending was a direct result of his abuse and the substance addiction he developed after being given alcohol and drugs as a child. His convictions make it very difficult for him to find work. He said he found it belittling and embarrassing to have to explain his convictions and absence from the workforce when applying for jobs. The clean slate scheme does not apply to him because he was given a jail sentence. His convictions also prevent him from travelling overseas with his family.

Of all the abuse he suffered, David said the erasing of his Samoan identity had had the most damaging impact on him and his aiga. He spent all his childhood, youth and early adult life believing he was Māori. He covered himself in Māori tattoos in the belief he was Māori. Discovering his Samoan heritage sent his life into a spin. His whole life had, he felt, been a lie. It took him 15 years to fully accept his true ethnicity, and as part of that acceptance he changed his last name to Crichton, his father's surname. David's partner and children have had to learn to cope with the "dark cloud" that would descend on David from time to time – an adjustment he said they should never have had to make.

Putanga koretake - Unsatisfactory results

David has spent more than 25 years trying to get redress of one sort or another. His first priority was to get copies of his records so he could piece together his childhood. The vast number of placements and lack of records made this a challenging task. David has come to accept that some periods in his life, including who was responsible for his care and what happened to him and why, will forever remain beyond his reach. For this reason, any scraps of information about his childhood and original family are precious to him. He has also sought redress from some of the institutions responsible for his care and has found the results nowhere near good enough, particularly his experience with the Ministry of Social Development. What he really wants is genuine and unreserved apologies from the institutions concerned, a financial payment that recognises the actual costs of trying to overcome the trauma inflicted on him, counselling and wellbeing services – including for his partner and children, who have themselves suffered trauma as a result of who he had become – and the quashing of his criminal convictions, which he describes as a continuing punishment 30 years on.

Ngā tono pārongo - Record requests

Trying to piece together the records from his time in care has been complicated, distressing and exhausting. David's records are inadequate, redacted, missing or

destroyed. Those he has been able to locate often do not match his experience, forcing him to the dispiriting conclusion that so much about his life will remain forever hidden.

In November 1996, aged 29, David asked the Department of Social Welfare for his complete file and any information held on any possible brothers or sisters who might have also been placed in foster care. In February 1997, David received a handful of documents, most heavily redacted. In March 2002, he made a further request for his complete file and this time received a larger portion of documents.

He went on to make more requests, and every time portions of his file would arrive, heavily redacted or with the word "deleted" sprawled across many pages. Those records not redacted often did not match with David's experience or left out significant events in his life, such as two attempted suicides while living with John. David said the redactions left him with a feeling that everyone knew more about his life than he did. The Ministry of Social Development, the department's successor, told us it couldn't find his original unredacted files, and that one of David's files was listed as missing.

Between 2016 and 2020, David asked Presbyterian Support Central three times for his files on his time at Berhampore Children's Home in Wellington. At first it denied he had been in its care, but when he supplied documentary proof, it replied that a fire in its file storage office on 30 December 1989 may have destroyed information it held about him.

In response to this inquiry, Presbyterian Support Central was able to locate seven documents that made passing references to David. We physically inspected Presbyterian Support Central's files and found five more, but there was no detailed record of his time in their care. Presbyterian Support Central said a fire in 1989, lit by an arsonist, at the Berhampore Children's Home had destroyed some of the home's records, including some of the children's files. It said David's files could have been among those lost in the fire, but it had no way of knowing what was lost. As a result, most of David's information about his time with Presbyterian Support Central was via his State records.

At the time of writing, David had yet to seek records from other places because there were so many periods in his life where he did not know who was responsible for his care or for how long. As part of our inquiry, we requested David's files from other institutions and organisations that were responsible for his care, including The Salvation Army and Open Home Foundation, each of which was involved in David's care for periods of his childhood.

The Salvation Army gave us two documents recording when David entered its residential nurseries (where David had been placed) and some other admission information but was otherwise unable to find a file specific to David's time in its care. It said this was "unfortunately, not surprising" because files at its residential nurseries were generally less detailed than those kept by its children's homes.[148] It also said its record-keeping practices had not always been as thorough as they are now, and that there are gaps in the historical documentation held, although The Salvation Army said it uses its best endeavours to find any relevant information about survivors when requested.[149] The Open Home Foundation said it did not hold any information about David. It told us that, despite digitising all files it held about persons in its care, a search resulted in no results for David's file. According to the Open Home Foundation, this suggested he was unlikely to have been in its care.[150] However, records held by the State and Presbyterian Support Central suggest David was in Open Home Foundation care between 1979 and 1980.

Manawanuitanga puretumu - Redress efforts

David decided to concentrate his redress efforts on the two institutions responsible for his care for the longest periods – Presbyterian Support Central and Child, Youth and Family Services (a division of the Department of Social Welfare, later the Ministry of Social Development). He made a claim to the Child, Youth and Family Services in April 2001 and more than 20 years later is still pursuing it. In that first approach in 2001, he wrote asking for guidance on how to make a claim because no formal claims process existed at that time.[151] In his letter, David said he considered he had grounds for making a financial claim against the department for the abuse he suffered while a ward of the State. He said he had been deprived of knowledge about his true identity, the root cause of many of the problems in his life. David also told them John had sexually abused him and other boys, and that he understood John had spent time in prison for sexual offending against children. He expressed his concern about John continuing to work with children in the community.

Later that month, the department replied, acknowledging his letter, but pointing out that it was not in a position to respond until it had received a "formal statement of claim" setting out his "allegations in detail, together with any causes of action in tort that you believe you may have against the [d]epartment".[152] It ended by suggesting he seek legal advice, and noted that the department would be able to assess his claim once it had been "formulated".[153] The letter's legal terminology made him feel intimidated and anxious, so he sought legal advice. However, the estimated fee was so big he was put off using a lawyer or making a claim.

It was not until 14 years later, in 2015, that he made a fresh attempt at a claim, this time to the department's successor, the Ministry of Social Development. David put

together a table detailing some of the placements where he had suffered serious abuse, details of the abuse suffered, by whom and the impact of the it had on him.

In June 2016, David attended an interview with two ministry staff members to go through the details of his claim. He found them to be empathetic, supportive and considerate. The ministry later gave him approximate dates by which it would reach certain milestones in the assessment process. However, the dates came and went without contact from the ministry. David chased up the ministry for information. It offered new dates but again failed to deliver anything. This became the pattern for the next four years. The ministry never initiated contact. David said this continual and fruitless pursuit of information left him feeling anxious, frustrated and angry. He said he often had emotional outbursts and was short-tempered at the times he was expecting updates from the ministry – updates that never materialised. He felt like his life was on hold.

Kōwhiringa whakataunga - Settlement offer

In June 2020, four years after his first meeting and five years after making his claim, the ministry asked for a meeting to explain the outcome of his claim. The ministry asked him to come to its offices, but David insisted on meeting at his local marae. Two staff turned up. A taxi waited outside for them. David said this small detail spoke volumes. David's partner opened the meeting with a karakia to acknowledge the sensitive discussions about to happen and to place protection around those involved.

David began the meeting by reading aloud an essay written by his daughter Brooke. The essay was about the effect her father's abuse and cultural neglect in care had had on her and their family. It contained a passing reference to the family's belief that some of David's documents had been falsified – a point one staff member immediately disputed once he had finished reading the essay. To David's mind, this showed they had come to dispute, not listen to, his account of his experience.

The two staff members went on to tell him he had not been placed in the care of his extended Samoan family because they did not want him – a distressing claim that had no basis in fact because his Department of Social Welfare files contained no record of any attempt by it to contact his wider family about the possibility of caring for him. The ministry's view appeared to be based only on information collected by the department from David's mother, who, as stated, was mentally unwell and prejudiced against Samoans. As it turned out, when David later connected with his aunt as an adult, she told him that she would have taken him in if she knew he was in care and not with his mother. The staff members also said David's father did not contribute to his upbringing because he was paying maintenance for his other children when, in fact, David was his only child. Again, the ministry appeared to have relied only on information gathered by the department, which itself had relied only on information gathered from David's mother.

The two ministry staff also relied on David's incomplete department files to dispute David's account of his experience in care, most notably his allegation of having been sexually abused by John. They said his files recorded he had been happy while living with John and so they would have to accept that as there was no information to the contrary. David found it extremely distressing to hear this, given he had told the ministry he had twice attempted to take his own life while living with John. But the staff members gave little weight to this information because there was no record of it in his department files.

David told them John was a convicted child-sex offender. However, they disputed this claim, saying the ministry had contacted Police to see if John was known to them, but the ministry had not yet received any response. Instead of trying to find out more, they spoke of John's good standing and the positive character references provided as part of his application to become a "caregiver". They told David the ministry had disregarded the part of his claim relating to John's sexual abuse on the basis there was insufficient information and would reconsider this decision only if David provided more information. In a later complaint to the ministry, David's partner described this part of the kōrero with the ministry staff as "nothing short of unacceptable".[154] In the five years since David had made his claim of sexual abuse by John (and 19 years since he first told the ministry), the ministry had not found out anything about John's conviction history. If it had, it would have uncovered convictions for sexual offending against other boys.

The staff also told David the ministry would accept responsibility for his abuse in care only from the date he became a ward of the State at 14, even though he had been in State care before that time. They suggested making a claim to Presbyterian Support Central for any abuse suffered before that age and gave him the organisation's contact details, which turned out to be incorrect.

The ministry staff produced a settlement letter that, in effect, rejected many of the most important elements of his claims.[155] He could not understand why the ministry accepted some allegations and not others, although he felt his incomplete – and inaccurate – department files provided the ministry with a convenient basis for rejecting David's own memory of events. The letter said the ministry had not tested the evidence or reached any conclusion about whether the allegations were proven but had "taken into account" some of them and not others in coming up with a settlement sum.[156] Those it had taken into account were grouped in appendix A of the document. Those it had not taken into account were listed in appendix B. More than half of David's allegations were put in appendix B, including all his claims before the age of 14. Appendix B also included his claim that the department, and then the ministry, had fostered and failed to correct the belief that he was Māori (since he

had readily identified as Māori at the time, and the ministry said it therefore had no responsibility for this incorrect belief or undoing it); his claim of having been sexually abused by John (because there was "not sufficient information"); and his claim that the Department of Social Welfare had failed to record his two suicide attempts (which the ministry said would not have amounted to a practice failure). It also placed in this appendix his claim that he had been put in secure confinement for many weeks as punishment for running away from Epuni Boys' Home. It said information on his file suggested he had been elsewhere at the time he alleged this confinement took place.

The letter said the ministry agreed to settle his claim on the basis that it did not accept any legal liability for "what has happened".[157] It was prepared to offer, in full and final settlement of his claim, a letter of apology from the ministry's chief executive, a payment of $15,000 and $400 towards consulting a lawyer about the offer. The offer letter appeared to require David to agree to the settlement before he received any apology and David understood from discussion with the ministry staff that this was true.

After explaining the settlement offer, the two ministry staff abruptly left without following any of the marae protocol, such as a karakia or sharing food to bring the meeting to a close. David considered the way they delivered the offer, the culmination of five years of waiting, to be highly insensitive. It was also, to his mind, a rushed formality so they could return to their waiting taxi. The ministry told us it had been improving its claims process since 2018, and now required staff to run a "culturally responsible service".[158] However, its representatives on the marae that day in 2020 did not provide such a service.

David considered $15,000 fell far short of reflecting the loss and trauma he had suffered, the impact the abuse had had on his life, and the expense of trying to rebuild his life. He also objected to the fact that the apology was conditional on signing the settlement offer. He did not accept it.

Spurred on by the failed meeting, and in preparation for asking for a review of his claim, David made requests under the Official Information Act 1982 and the Privacy Act 1993 for all information about how the ministry had assessed his claim. The 20-working-day deadline to produce this information passed without a response. David called the ministry and arranged a phone call with a member of its historic claims team. During that phone call, the staff member repeatedly told him she did not understand why he had made the requests or what he wanted. She spoke over him, interrupted him and repeated herself. David found her so rude and insensitive, and the whole phone call so distressing, that he later made a complaint to the ministry.

In the meantime, David and his partner contacted Police to try to get further information about John's convictions themselves. A senior police officer contacted the ministry in July 2020 to say Police had received a request from David, and although they could not provide information directly to him, they did have information about John's criminal history that they could provide if the ministry required it.[159] The ministry staff member replied saying she would add the email to the file and that "we may need to come back to you to request this information in the future."[160] The ministry did eventually request the information almost a month later, and Police informed it of John's conviction.

He whakapāha, engari kāore anō kia ea
Eventual apologies but no resolution yet

Six years have passed since making the claim in 2015 and it remains unresolved. In June 2021, the ministry told David certain "high level" legal issues were delaying some claims, including his, and these would need to be resolved before it could finalise his claim.[161] It could not say what these matters were because they were legally privileged. It apologised for the delay, but could give no further details, including any estimate of when it might resolve these matters. David said he felt the ministry used delay tactics to draw out the redress process and consistently failed to do as it promised.

In July 2021, the day after David gave evidence to one of this inquiry's public hearings, the ministry contacted David asking whether he would like an apology in advance of the outcome of the review of his claim, and if so, whether he had any thoughts about what it should contain. He replied suggesting the ministry look at the evidence he had given during the public hearing for ideas.

In August 2021, the ministry came back to David to say senior managers were working on the approach it should take to his apology letter. It also said senior officials and other government departments were still grappling with the legal issues mentioned in its June correspondence that were holding up his claim.[162]

In September 2021, David received a letter of apology from the general manager of the ministry's historic claims unit[163] as well as one from the ministry's chief executive.[164] The general manager's letter related to his experience of the historic claims process. She apologised for a miscommunication by staff who said the ministry's offer of an apology in June 2020 was conditional on his signing the settlement documentation first. This was not the case. She said his evidence had prompted the ministry to revise how it presented settlement documents, so it was clear an apology was not contingent on acceptance of an offer. She expressed appreciation for bringing the matter to the ministry's attention so it could avoid this confusion with other survivors in future. She acknowledged David's experience of

the claims process, assured him it took claimants' feedback seriously, and vowed to continue to improve how it dealt with claimants. She also apologised for the delay in reviewing his claim but assured him the ministry was doing everything it could and would give him an answer as quickly as possible.

The chief executive's letter related to his experiences of care. In her letter, she said many people had stressed to the ministry the importance of being heard, of receiving an apology, and of knowing that the organisation had learned from its mistakes. She acknowledged the information he had given the ministry's historic claims team and noted that he had "described experiencing abuse and mistreatment at a number of placements". The chief executive also noted that he described abuse by a "caregiver", a term David is particularly upset about, because to him, he did not provide care at all. The letter also acknowledged the evidence he had given about the impact of discovering he was Samoan. She said: "I want to apologise to you. You had a right to be well cared for and kept safe as a young person in the care of the State. It was our responsibility to take steps to ensure that this was your experience."[165]

David said both letters were disingenuous, wooden and lacking in the basic elements of a personal apology. They sounded like apologies but said nothing meaningful. Neither letter took any responsibility for any of the abuse, and neither gave any indication whether the ministry accepted the abuse happened. Prevention was unquestionably important, but what he was looking for was an apology that referred specifically to his abuse and its impact on him and his family. The chief executive's letter showed she had listened to what he was saying, but the whole thing boiled down to just a three-line apology and was without substance, genuineness or humanity. To have waited so long for such paltry apologies was, he said, deeply disappointing – and in marked contrast to the letter he received from Presbyterian Support Central.

Overall, he found the experience of dealing with the ministry "appalling". At the time of writing, he had still not received an answer on the ministry's review of his claim. He said he has abandoned any hope of a meaningful apology and is now concentrating on getting a meaningful financial payment.

He tautoko Perehipitīriana Waenga - Presbyterian Support Central

Presbyterian Support Central, or the Presbyterian Support Services Association as it then was, took David into its care for at least eight years. On three occasions, David contacted it but was never told he could make a complaint. In June 2021, after we tried to obtain David's records, Presbyterian Support Central asked us to pass on a message to David, addressed to "Mr Mohi", containing an apology for failing to respond satisfactorily on the three occasions he made contact. It invited him to make contact again, if he wished to make a complaint.[166]

"While David found this apology genuine, many are more cynical about institutional apologies, particularly coming only at or after inquiry hearings."

David considered this message a brief, transactional exchange and definitely not an apology. Presbyterian Support Central later wrote to us to say the message was never intended as an apology for any abuse David had suffered, but rather for its failure to be able to locate any of his records.[167]

After David gave evidence at one of our public hearings, Presbyterian Support Central's chief executive wrote to him to apologise for the abuse he suffered while in its care and to acknowledge his evidence, as well as to invite him to make contact when he was ready. The chief executive said both he and the former chief executive were present at the hearing when David and his daughter gave evidence and that they were deeply moved and saddened by what he heard. He acknowledged the terrible treatment David suffered as a child and his separation from his Samoan heritage and family. He also acknowledged the lasting damage this had had on him and members of his family. He offered a "deep and profound apology" for the harm he had suffered and expressed the hope that the courage he had shown in speaking publicly would help him on his path to healing.

The chief executive said Presbyterian Support Central wanted to understand what it could do to help David and his family. He suggested counselling services and other supports. He said they did not expect to find any specific file on David but would conduct a fresh search for any documents that might help him piece together the early years of his life.

The chief executive said his organisation was committed to working with him to help him on his journey to wholeness and wanted to ensure it was done on David's terms at a time that suited him. He welcomed the possibility of meeting David at a time and place of his choosing and suggested perhaps David's local marae. He ended the letter thanking David for his bravery in speaking out.

David and his family found this to be a genuine apology because it showed thoughtfulness and insight and, importantly, addressed the matters that were most important to him.

After receiving the apology from the chief executive, David and his family arranged to meet with the chief executive, the former chief executive and a general manager. David and his family chose to meet with them at home. Presbyterian Support Central brought along a photo of David they had found. It was an opportunity for them to again see in person the impacts the abuse had on David and his family, and to apologise face-to-face. Presbyterian Support Central showed cultural awareness and sensitivity in their approach to the meeting. David and his family were appreciative of the kindness and proactivity shown by Presbyterian Support Central. He is continuing his discussions with Presbyterian Support Central.

Whakarāpopototanga me ngā kitenga
Summary and findings

David's claim was complicated by his many placements and the scantiness of his records, but by far the biggest hurdle to prompt and meaningful redress was the obstructive and insensitive approach taken by the Ministry of Social Development.

The Ministry of Social Development and its predecessor the Department of Social Welfare:

- gave inconsistent and inadequate responses to David's requests for records
- had poor record-keeping processes, resulting in the loss of David's full unredacted records
- responded to David's attempted claim in a legalistic and obstructive manner
- did not act on David's concerns for children still under John's care
- took too long to consider David's claim and make a settlement offer, and has still not finalised the claim
- failed to investigate John's conviction history, until David went to Police directly for this information
- failed to keep David updated on the progress of his claim
- failed to understand or incorporate cultural values that were important to David into the redress process
- demonstrated a lack of understanding of the impact of the cultural neglect David experienced
- placed too much reliance on David's inadequate files and too little on his account of the abuse in rejecting parts of his claim
- failed to offer a meaningful apology
- failed to recognise cultural neglect as part of the abuse David suffered
- offered a financial payment that did not adequately reflect the impact of the abuse on David or his family
- interacted with David in a way that did not uphold his mana, recognise his trauma or respond to his cultural needs.

Presbyterian Support Central:

- failed to adequately respond to David's initial request for records
- caused needless distress to David by denying he was in its care
- failed to offer David the opportunity to make a complaint on any of the three occasions he made contact to ask for his records
- has since taken significant steps to remedy these past failings, including
  - made an apology that was comprehensive and genuine
  - rechecked all its records for any additional information about David
  - showed cultural awareness and sensitivity in its interactions with David and his family
  - undertook to work with David to provide redress that would address his and his family's needs.

We will cover David's experiences in more detail in a report summarising our inquiry into abuse of Pacific people in care.

Endnotes

1 *Witness Statement of Leoni McInroe, WITN0096001 (Royal Commission of Inquiry into Abuse in Care, 31 July 2020); Witness Statement of Leoni McInroe, WITN0096002 (Royal Commission of Inquiry into Abuse in Care, 21 March 2021)*; *Transcript of evidence of Leoni McInroe from State Redress Hearing Phase I, TRN0000001 (Royal Commission of Inquiry into Abuse in Care, 24 September 2020).*

2 The Solicitor-General made this statement to distinguish the approach the Crown took in offering a group settlement to Lake Alice claimants from the approach taken to later historic claims of abuse. However, in evidence to our public hearing into the Lake Alice Hospital's Child and Adolescent Unit, she clarified that the proof referred to in the file was that paraldehyde was administered, and ECT equipment used. Whether they were used for punishment was a question of fact that has not been tested, but the Solicitor-General acknowledged that there was, from the information contained in Leoni's claim, a reasonable basis to suspect that was the case. See: *Transcript of evidence of Solicitor-General Una Jagose QC for Crown Law Office from State Redress Hearing Phase II*, TRN0000022 (Royal Commission of Inquiry into Abuse in Care, 2 November 2020), p. 962; *Transcript of evidence of Solicitor-General Una Jagose QC for Crown Law Office from Lake Alice Child and Adolescent Unit Hearing,* TRN0000397 (Royal Commission of Inquiry into Abuse in Care, 28 June 2021), pp. 856, 878.

3 *Transcript of evidence of Solicitor-General Una Jagose QC from Lake Alice Child and Adolescent Unit Hearing*, p. 957.

4 Ibid., p. 856.

5 Ibid., p. 860.

6 Ibid., p. 855.

7 Ibid.

8 *Transcript of evidence of Leoni McInroe from State Redress Hearing Phase I,* pp. 170-172.

9 Ibid., pp. 171-173.

10 *Transcript of evidence of Solicitor-General Una Jagose QC from Lake Alice Child and Adolescent Unit Hearing,* p. 856.

11 *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II, 3 November 2020, p. 1069.*

12 Ibid., p. 878.

13 *Witness Statement of Earl White*, WITN0009001 (Royal Commission of Inquiry into Abuse in Care, 15 July 2020); *Transcript of evidence of Earl White from State Redress Hearing Phase I,* TRN0000001 (Royal Commission of Inquiry into Abuse in Care, 24 September 2020).

14 *White v Attorney-General* HC Wellington CIV-1999-485-85 (28 November 2007); *White v Attorney-General* [2010] NZCA 139.

15 Letter from Chris Mathieson, Crown Law to Sonja Cooper, Cooper Legal, regarding letter of 22 September 2006, CRL0028381 (25 September 2006), p. 2.

16 Ibid.

17 Minutes by Debra Harris of White litigation team meeting on 7 December 2006 between Crown Law and Ministry of Social Development, CRL0040575 (8 December 2006), p. 52.

18 Email from Una Jagose, Crown Law to Garth Young, Ministry of Social Development, regarding letter edits, CRL0025722 (5 June 2009).

19 *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II,* 4 November 2020, pp. 1163-1164; Email from Una Jagose, Crown Law to David Shanks, Ministry of Social Development, regarding Crown Law's opposition to the proposed ex gratia payment, CRL0025885 (14 June 2010).

20 Internal report from Zoe Griffiths to Hon Ruth Dyson, Associate Minister for Social Development and Employment, *Departmental Report: Update on historic claims against Child, Youth and Family*, MSD0002007 (2006), pp. 3-4.

21 Letter from Chris Mathieson, Crown Law to Dr Michael Cullen, Attorney-General, regarding the Whites' historic physical and sexual abuse claim, CRL0022719 (24 January 2007); Internal Ministry of Social Development memorandum from Deputy Chief Executive, Corporate and Governance to the Leadership Team, *Historical claims by former wards of the state, MSD0002030* (26 February 2007), pp. 2-3.

22 Handwritten notes of meeting regarding White litigation attended by Kristy McDonald QC, Crown Law and Ministry of Social Development, CRL0040575 (28 November 2006), p. 46.

23 *Transcript of evidence of Garth Young for Ministry of Social Development from State Redress Hearing Phase II,* TRN0000018 (Royal Commission of Inquiry into Abuse in Care, 22 October 2020), p. 373.

24 Draft opinion from Andrew Irwin, Crown Law to Zoe Griffiths, Department of Child, Youth and Family Services, regarding an offer of settlement, CRL0026754 (10 December 2002), p. 2.

25 Ibid.

26 Internal report from Garth Young to Anne Tolley, Minister of Social Development, *Historic claims update,* MSD0001056 (21 September 2017), p. 4.

27 *Transcript of evidence of Garth Young from State Redress Hearing Phase II,* 21 October 2020, p. 308.

28 Ibid., pp. 292-294.

29 Cooper, S., *Culture of abuse and perpetrators of abuse at Department of Social Welfare Institutions: A paper based on the civil litigation proceedings of clients represented by Sonja M Cooper*, MSC0000650.

30 File note by Lynn Martin, Crown Health Financing Agency, regarding Historic Claims Working Party Meeting on 12 February 2008, MOH0000032 (13 February 2008), p. 1.

31 *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II*, 3 November 2020, p. 1141.

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36 Minutes by Debra Harris of White litigation team meeting on 7 December 2006 between Crown Law and Ministry of Social Development, p. 52.

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38 Email from Michael Hodge, Crown Law to Ministry of Social Development and Crown Law regarding Brian Manchester's statement on departmental systems, CRL0026158 (24 April 2007).

39 *Transcript of evidence of Sonja Cooper and Amanda Hill from State Redress Hearing Phase I,* 1 October 2020, p. 481.

40 *Transcript of evidence of Brett Dooley and David Howden for Ministry of Justice from State Redress Hearing Phase II,* TRN0000026 (Royal Commission of Inquiry into Abuse in Care, 29 October 2020), p. 990.

41 Email from Una Jagose, Crown Law to Jacinda Lean, Department of Child, Youth and Family Services, regarding White costs, CRL0024070 (13 October 2008).

42 *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II,* 4 November 2020, p. 1160; Minutes from meeting of Claims Strategy Group, MSC0000512 (12 October 2009).

43 *Witness Statement of Keith Wiffin, WITN0080001 (Royal Commission of Inquiry into Abuse in Care, 12 February 2020); Witness Statement of Keith Wiffin*, WITN0080030 (Royal Commission of Inquiry into Abuse in Care, 19 April 2021); *Transcript of evidence of Keith Wiffin from State Redress Hearing Phase I,* TRN0000001 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020).

44 Letter from Peter Hughes, Ministry of Social Development to Keith Wiffin, regarding official information request, REL0000001917 (31 January 2007), p. 1.

45 Excerpt from restorative justice conference between Keith Wiffin and Alan Moncrief-Wright, EXT0016710 (23 November 2011), p. 4.

46 *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II,* 3 November 2020, p. 1078.

47 *Witness Statement of Keith Wiffin*, 19 April 2021, p. 2.

48 The Catholic Church's National Office for Professional Standards is currently working alongside a person who has reported this abuse to undertake an extensive investigation. To date, it has not been able to identify which Catholic institution this allegation could have been referred to.

49 The Solicitor-General told us that what was considered to be a 'meritorious' claim changed over time, and initially a meritorious claim was one that would survive the ACC and limitation barriers. See: *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II,* 2 November 2020, p. 950.

50 The ministry did eventually try to contact Moncreif-Wright in 2010 when the case was reopened.

51 *Transcript of evidence of Garth Young from State Redress Hearing Phase II,* 221 October 2020, p. 301.

52 Ibid., 392.

53 Ibid., p. 318.

54 Ibid.

55 Letter from Una Jagose, Crown Law to Jacinda Lean and Debra Mury, Ministry of Social Development, regarding next steps for various historic claims, CRL0046017 (29 January 2009), p. 2.

56 Email between Sally McKechnie and Una Jagose, Crown Law, regarding witnesses, MSC0000336 (17 March 2009).

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59 Letter from Una Jagose, Crown Law to Ministry of Social Development, Jacinda Lean, regarding advice on child welfare historic claims strategy, CRL0016524 (13 September 2006), p. 2.

60 *Transcript of evidence of Keith Wiffin from State Redress Hearing Phase I,* 21 September 2020, p. 27.

61 Letter from Garth Young, Ministry of Social Development to Sonja Cooper, Cooper Legal, regarding an Official Information Act request on staff information, EXT0000071 (20 February 2008), p. 3.

62 Memorandum from Susan Tarrant, Solicitor for Historic Claims and Litigation, to Garth Young regarding Keith Wiffin's civil claim, MSD0002382 (25 February 2008), p. 9.

63 *Transcript of evidence of Garth Young from State Redress Hearing Phase II,* 22 October 2020, p. 425.

64 Ibid.

65 *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II,* 3 November 2020, p. 1093.

66 Letter from Una Jagose, Crown Law to Sarah Mitchell, Cooper Legal, regarding discovery with attached criminal conviction information of Alan Moncrief Wright, MSC0000634 (1 April 2009).

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68 Internal email in Child, Youth and Family Services, regarding a meeting with Crown Law on Keith Wiffin (26 May 2008).

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71 Email from Una Jagose to Edrick Child, Crown Law, regarding Keith Wiffin's settlement offer, CRL0045838 (7 April 2009).

72 *Transcript of evidence of Garth Young from State Redress Hearing Phase II*, 21 October 2020, p. 301.

73 Ibid.

74 *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II,* 2 November 2020, pp. 1013-1014.

75 *Witness Statement of Solicitor-General Una Jagose QC for Crown Law Office,* WITN0104001 (Royal Commission of Inquiry into Abuse in Care, 28 February 2020), p. 18.

76 Emails from Susan Hillda, Department of Child Youth and Family Services to Una Jagose, Crown Law, regarding Keith Wiffin's rejection of settlement offer and potential criminal complaint, CRL0046413 (13 May 2009), p. 1.

77 Sir Rodney Gallen, *Assessment of MSD's Processes on Historic Claims*, CAB0000014 (27 November 2009), p. 18.

78 Internal Ministry of Social Development memorandum from Garth Young to Iona Holsted, DCE Corporate & Governance regarding approval of ex-gratia payment, p. 4.

79 Letter from Garth Young, Ministry of Social Development to Keith Wiffin regarding the handling of his claim, WITN0080027 (6 August 2010); Letter from Peter Hughes, Ministry of Social Development to Keith Wiffin, WITN0080026 (4 August 2010).

80 *Witness Statement of Keith Wiffin, 19 April 2021, pp. 6-7.*

81 *Witness Statement of Roy Takiaho*, WITN0071001 (Royal Commission of Inquiry into Abuse in Care, 10 September 2020); *Witness Statement of Roy Takiaho*, WITN0071002 (Royal Commission of Inquiry into Abuse in Care, 10 November 2020); *Transcript of evidence of Roy Takiaho from Faith-based Redress Hearing Phase I*, TRN0000337 (Royal Commission of Inquiry into Abuse, 11 December 2020).

82 *Witness Statement of Murray Houston for The Salvation Army*, WITN0250022 (Royal Commission of Inquiry into Abuse in Care, 29 January 2021), pp. 11-12.

83 *File note by Murray Houston regarding counter-offer for Roy Takiaho's claim*, SAL0001670 (28 January 2005).

84 *Witness Statement of Colonel Gerry Walker for The Salvation Army*, WITN0249001 (Royal Commission of Inquiry in Abuse in Care, 18 September 2020), p. 6.

85 *Witness Statement of Murray Houston for The Salvation Army*, WITN0250001 (Royal Commission of Inquiry into Abuse in Care, 18 September 2020), pp. 36-37. See also: table of settlement sums reached with survivors represented by Grant Cameron as compared to the sums sought by Mr Cameron on behalf of those survivors: *Witness Statement of Murray Houston*, 29 January 2021, Appendix, pp. 29-30.

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