

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
STATE REDRESS INQUIRY HEARING**

Under The Inquiries Act 2013

**In the matter of the Royal Commission of
Inquiry into Historical Abuse in
State Care and in the Care of
Faith-based Institutions**

Royal Commission: Judge Coral Shaw (Chair)
Dr Andrew Erueti
Ms Sandra Alofivae

Counsel: Mr Simon Mount, Ms Hanne Janes,
Mr Andrew Molloy, Mr Tom Powell
and Ms Danielle Kelly

Venue: Level 2
Abuse in Care Royal Commission
of Inquiry
414 Khyber Pass Road
AUCKLAND

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1 (Opening waiata and karakia)

2

3

4 **CHAIR:** Ata mārie ki a koutou katoa, nau mai haere mai
5 tēnā koutou. Tēnā koe, Ms Janes.

6 **MS JANES:** Tēnā koutou katoa. We have the first witness
7 for today is Ms Linda Hrstich-Meyer and she will be
8 read by Ms Aldred.

9 **CHAIR:** Thank you. Good morning, Ms Hrstich-Meyer. You
10 have been waiting a long time for this morning.

11 A. Morena.

12 **CHAIR:** Morena.

13

14

15 **LINDA LJUBICA HRSTICH-MEYER - AFFIRMED**

16 **QUESTIONED BY MS ALDRED**

17

18

19 **CHAIR:** Good morning, Ms Aldred. You are a little
20 further back from before.

21 **MS ALDRED:** Yes, I am.

22 **CHAIR:** I hope you stay dry in your endeavours.

23 **MS ALDRED:** Thank you very much. Ms Hrstich-Meyer will
24 be giving her evidence and I should just explain for
25 the benefit really of anyone watching, rather than the
26 Commissioners who are aware of this, that she has
27 filed three briefs of evidence in this matter and a
28 very large amount of very detailed material but
29 because of time constraints, I will be leading her
30 through her evidence in a fairly truncated way, with a
31 focus on current systems in particular and we will be
32 endeavouring to get through the evidence somewhat more
33 speedily than we were proposing but I won't hold up
34 any further and we will make a start.

1 **CHAIR:** Can I just assure, Ms Hrstich-Meyer and
2 everybody else, that the Commissioners have read all
3 the briefs of evidence and are familiar with them.

4 **MS ALDRED:** Thank you, Madam Chair.

5 Q. Could you please confirm your full name is Linda Ljubica
6 Hrstich-Meyer?

7 A. Yes.

8 Q. Ms Hrstich-Meyer, you have provided three briefs of evidence
9 for the Commission and can I take you to your primary brief
10 of evidence dated 27 January 2020 and have you read
11 paragraphs 1.2 and 1.3 of your brief?

12 A. I am the General Manager (previously Director) of Historic
13 Claims at the Ministry of Social Development. I have held
14 that position since 2017. I have been employed by the
15 Ministry in various roles for over 20 years.

16 Prior to this, I had legal roles which included the
17 Acting Deputy Chief Legal Adviser and Principal Solicitor.

18 In my role as General Manager of Historic Claims, I am
19 responsible for the strategic oversight and management of
20 the Ministry's claims resolution work, being the assessment
21 and resolution of claims of abuse and neglect of children
22 and young people while in the care of the Ministry (or its
23 predecessors) prior to 1 April 2017.

24 Q. Thank you. Now, we're going to skip over much of your
25 evidence in relation to an overview of the evolution of the
26 historic claims system. But there was a question I wanted to
27 ask you just arising from some of the questioning,
28 particularly of Mr Young. And that really was, your evidence
29 is concerned with the Historic Claims Process?

30 A. Yes.

31 Q. And that is an out of Court process that you describe in
32 your evidence?

33 A. Yes.

34 Q. And could you just explain, that is separate from the
35 litigation process, Ms Hrstich-Meyer?

1 A. Yes, it is.

2 Q. And when you talk about settling claims in the Historic
3 Claims Process or the ADR (Alternative Disputes Resolution)
4 process, is that the same or different from settlement of
5 litigated claims?

6 A. It is different.

7 Q. And so, just turning briefly to the experience of Mr Earl
8 White who received an offer of settlement of his litigation
9 or there were various offers, I think, between the parties.
10 Was that part of the Historic Claims Process?

11 A. It was the litigation track, so no.

12 Q. Thank you. Now, I want to just take you right through to
13 page 6 of your brief of evidence where you describe the
14 Historic Claims Process, starting with the philosophy of
15 that process at paragraph 3.6. Can you please read from
16 paragraph 3.6?

17 A. The Historic Claims Process is an alternative dispute
18 resolution process aimed at providing an opportunity for
19 claimants to have their concerns heard and for the Ministry
20 to acknowledge any harm or failure that occurred to that
21 person to assist their efforts to heal.

22 Irrespective of whether a claimant elects to file
23 proceedings in Court, gain representation or engage directly
24 with the Ministry, the approach to assessing claims under
25 the Historic Claims Process is underpinned by the same
26 principles, though the process may be different in some
27 respects.

28 Q. So, at 3.7, you then summarise the principles underpinning
29 the Historic Claims Process?

30 A. Yes.

31 Q. As they were articulated. I'm just going to get you to just
32 quickly read those principles out, please?

33 A. (a) natural justice; (b) taking a moral rather than a
34 legalistic approach; (c) looking beyond legal defences and
35 the Court's views of causation when deciding whether to make

1 a settlement; (d) working with claimants to acknowledge
2 wrongdoing; and (e) focussing on facts and acting on what is
3 probable and credible.

4 Q. And if you could continue at 3.8, please.

5 A. The Ministry recognises that it has two main defences to
6 claims available to it being the limitation defence in the
7 Limitation Act 1950 and the bar in the Accident Compensation
8 Act. The combined effect of these provisions is that most
9 claims do not have strong prospects of success in the
10 Courts. However, for the purposes of the Historic Claims
11 Process, the Ministry has committed to doing what is right
12 for claimants and puts these defences to one side and will
13 consider the alleged events without these barriers in place.

14 The Ministry's payments to claimants are generally based
15 on a moral responsibility, rather than a legal liability.

16 Q. And if you could just go to 3.10?

17 A. Claimants are free to pursue their claim directly through
18 Court without engaging in the Historic Claims Process. Court
19 proceedings provide an option for claimants seeking factual
20 findings about allegations of abuse, though can have
21 disadvantages for claimants who may find this process
22 traumatic and be challenged during Court proceedings about
23 abuse they have been subjected to.

24 Q. Thank you. And you set out then underneath that steps that
25 have existed in the process since its implementation?

26 A. Yes.

27 Q. Which you say is the same broad structure since 2008. Can
28 you please read from 3.12?

29 A. The process for registering a claim has remained largely
30 consistent since the commencement of the Historic Claims
31 Process. Claimants can register a claim in several ways; by
32 contacting the Historic Claims Team directly (by phone,
33 email or letter), by a solicitor contacting the Ministry on
34 their behalf or by filing Court proceedings.

1 Q. And you then go on to explain what happens next, which you
2 say is generally to gather details of the claimant's
3 experience in care, which is typically a face-to-face
4 meeting?

5 A. Yes, it is.

6 Q. Yes. And you explain at 3.14 of your brief of evidence that
7 historic claims staff regularly travel to meet claimants
8 close to their home and some details about the meetings?

9 A. Yes.

10 Q. And if you could just read from 3.15, please?

11 A. Meetings are always attended by two historic claims staff
12 members, and claimants are encouraged to bring one or more
13 support people. Staff are mindful of the significance of
14 this conversation, which at times will be the first time
15 that a person has shared their experience. The interview is
16 not forensic in nature but rather aims to ensure that
17 claimants can share their story at a pace and level of
18 detail which feels comfortable and allows staff to gather
19 sufficient information to enable a claim to be assessed.

20 Q. Now, if you could just pause there. You explain at paragraph
21 3.16 of your brief of evidence that generally claimants
22 would be invited to take place in these meetings, regardless
23 of whether they were represented by a lawyer or not?

24 A. Yes.

25 Q. But that following an agreement with Cooper Legal, the
26 Ministry doesn't meet with Cooper Legal clients unless
27 that's expressly requested?

28 A. That's correct.

29 Q. And you go on to explain that that is partly because that
30 would reduce the duplication for the claimant of sharing
31 their experience.

32 If I could just have you read from about the fifth line
33 up from the bottom of that paragraph beginning, "Today"?

34 A. Today all claimants regardless of whether they are direct or
35 represented are invited to meet with Ministry staff to share

1 their experience. It remains the claimant's choice as to
2 whether they elect to meet with representatives of the
3 Ministry or where they prefer all communication to be
4 managed via their representative.

5 Q. Thank you. Now, during phase 1 of this redress hearing, we
6 heard the evidence from 11 survivors of abuse in State care,
7 10 of whom were represented by the law firm Cooper Legal?

8 A. Yes.

9 Q. And one of whom was represented or had been represented by
10 another law firm?

11 A. Yes.

12 Q. So, we haven't heard the evidence of an unrepresented
13 survivor, that is anyone who has dealt directly with the
14 Ministry in relation to their claim.

15 A. That's right.

16 Q. What proportion of claimants, broadly, are not represented
17 by lawyers that come to you?

18 A. Over 50 per cent are unrepresented. We call those survivors
19 direct claimants.

20 Q. And what does that mean, in terms of their experience, I
21 suppose, of the Historic Claims Process?

22 A. From my perspective, it's very different because generally
23 with represented claimants we have no contact with them
24 throughout the process. With direct claimants and survivors,
25 we build a relationship, in the sense that we talk to them
26 initially when they make their claim. And I don't like the
27 word "interview" because it's not really an interview, it's
28 to understand what they've been through.

29 So, there's a number of points where we will talk to them
30 as to where they would like to meet, which won't be in their
31 home because we feel that's a safe place. And two staff who
32 have backgrounds in various things, such as social work,
33 counselling, psychology, so we have people that are trained
34 or experts in relation to dealing with these vulnerable
35 people. So, they are that conversation and there are a

1 number of other touchpoints based on how often they want to
2 be contacted. Some might a period where they don't want to
3 be contacted and then, again, we will touch base in the
4 feedback.

5 Q. Thank you. If I could just take you over the page to
6 paragraph 3.17 and if you could read that, please?

7 A. Understanding and responding to claimant's support needs has
8 been a consistent component of the Historic Claims Process.
9 Historic claims assist claimants to access counselling and
10 link them in with other services where necessary, such as
11 Work and Income. Where ACC or community support options are
12 not appropriate for the claimant to assess, historic claims
13 will fund counselling or therapy costs for a specific number
14 of sessions. This funding support does not rely on a claim
15 having been assessed.

16 Q. Thank you. And then if you could just - so, in terms of the
17 counselling that historic claims will fund, can you just
18 provide any further information about the demand for an
19 uptake of that?

20 A. Right. We offer it to all claimants and also to legally
21 represented claimants through Cooper Legal. In relation
22 to - there was some conflicting figures, I think, in Garth
23 Young and Mr MacPherson's brief and I can confirm that we
24 have checked and Mr Young's evidence is the most accurate.
25 The confusion was that the periods were slightly different,
26 so that's why we had different numbers.

27 Q. Thank you. Does MSD -

28 **COMMISSIONER ERUETI:** Sorry, what was the point of
29 clarification there of the numbers?

30 **MS ALDRED:** If I could quickly summarise.

31 A. I'm sorry.

32 **MS ALDRED:** No, no, no. So, you might recall a pie
33 chart in Mr MacPherson's evidence.

34 **COMMISSIONER ERUETI:** Yes.

1 **MS ALDRED:** Which I think had a number of approximately
2 \$79,000 over a period of years. Mr Young's evidence
3 was that it was \$110,000 worth of paid for counselling
4 and about \$182,000 of approved counselling. And there
5 was a question about why they were different, and it
6 turns out when we made inquiries that, as I understand
7 it, the period to which Mr Young's evidence should be
8 taken is correct, I think, is the short point.

9 A. Yes.

10 **CHAIR:** The important point I think for us is, what
11 proportion of the claimants take up the offers of
12 counselling, regardless of the money; are you able to
13 give us that?

14 A. We do, and it's quite sad in the sense really that a lot ask
15 us and the counselling is approved but for the last year,
16 only 30-40 claimants actually went to counselling and we
17 were invoiced back.

18 **CHAIR:** So, is that 30 per cent of those who asked for
19 it or just 30 per cent of the total number?

20 A. Of the total number - sorry, 30-40 claimants. So, that's
21 low, even though, you know, we have offered it and we've
22 agreed to pay for it but sometimes -

23 **CHAIR:** There's a low uptake of it?

24 A. There is a low uptake.

25 **COMMISSIONER ALOFIVAE:** Do you follow that through as
26 to why there's a low uptake?

27 A. I'm not sure but I would suspect that there will be, and I
28 would be pretty sure that there would be a discussion at the
29 initial meeting and during the telephone calls. There have
30 been a few examples where someone has said, for example,
31 "counselling is not my thing" and we had one courageous
32 claimant that said "actually, I want to see my Māori healer"
33 so, we supported him by paying koha for the food and also
34 petrol vouchers because for him that was more - that helped
35 him more than seeing a counsellor.

1 **COMMISSIONER ERUETI:** Can I clarify too, so the
2 counselling is done off-site, if you like? So, when
3 this, and they will be largely unrepresented
4 claimants?

5 A. Unrepresented.

6 **COMMISSIONER ERUETI:** Who come for that interview to
7 give their account. There's no in-house counselling?
8 There's that counselling there to book and the
9 interview process during the interview process?

10 A. You're right. So, we don't actually do the counselling. So,
11 we will connect them with and provide them information, we
12 will talk to them about ACC, if that's not possible, if it's
13 prohibitive in relation to cost, we generally approve six
14 but then people can come back.

15 **CHAIR:** Just slow down when we're off script, please.

16 A. My apologies.

17 **MS ALDRED:**

18 Q. Thank you. You go on to talk next about - sorry, just one
19 other questioning following up on that. Does MSD agree to
20 pay for counselling for claimants who are in prison?

21 A. Yes, we will. I understand the difficulty is the logistics
22 of getting a counsellor for prisoners.

23 Q. Thanks. And then at 3.19, you begin, you talk about
24 supporting claimants who have disabilities through the
25 claims process, and could you just read 3.20, please?

26 A. When claimants meet with Historic Claims staff to share the
27 details of their claim, staff work with the claimant to
28 ensure that the meeting is held with appropriate people
29 present who know the claimant and can assess their comfort
30 level, as well as building in additional time for meetings
31 so that the discussion can proceed at a pace suited to the
32 claimant. While this is not exclusive to those with
33 disabilities, particular care and consideration is placed on
34 this in these circumstances.

1 Q. Thank you. And you go on to talk about some of the specific
2 supports or facilities that can be provided for disabled or
3 claimants with a disability. And then you turn to the
4 release of information and the fact that claimants' social
5 work files are provided. You then go on at 3.24 and
6 following to deal with the assessment of the claim itself,
7 and I think I will have you read, please, from 3.24,
8 Ms Hrstich-Meyer?

9 A. Once the Ministry has obtained the relevant information and
10 met with the claimant (if this has occurred), the next step
11 is to assess the allegations made by the claimant. Those
12 allegations that the Ministry accepts for the purpose of the
13 claim are factored into the settlement payment offered as
14 part of the outcome.

15 Shall I continue?

16 Q. Yes, sorry, please keep reading this section.

17 A. Previously, in determining whether a particular allegation
18 was able to be taken into account in the outcome of a claim,
19 the Ministry needed to have a reasonable belief that the
20 event occurred and it was reasonable for the Ministry to
21 take responsibility for it.

22 3.26?

23 Q. Yes.

24 A. Consideration of the information gathered from the following
25 sources assists staff in determining what information there
26 is to support particular allegations. (a) the reported
27 experience of the claimant; (b) written records about the
28 claimant (e.g. the claimant's personal and family files);
29 (c) staff/HR files/caregiver records of any staff
30 member/caregiver implicated in the claim; (d) other relevant
31 claims (i.e. where another claimant has made allegations
32 against the same alleged perpetrator); and (e) any relevant
33 information about the institutions or care facilities
34 involved.

35 Q. And if you could go on and read 3.27, please.

1 A. As well as considering the specific allegations raised by
2 the claimant about their time in care, the Ministry also
3 considers any failures in the provision of care to the
4 claimant. The Ministry recognises that claimants will not
5 necessarily have an understanding about the standard of care
6 they should expect to have received and so assesses the
7 general social work practice of the case regardless of
8 whether the issue has been raised by the claimant.

9 The focus for this part of the claim has generally
10 been on social work practice that has adversely impacted on
11 the claimant's care experience. Where appropriate, any
12 failures not raised as concerns by the claimant will be
13 acknowledged in the outcome of the claim.

14 In determination whether practice standards of the day
15 were met, the assessment focuses on care legislation,
16 handbooks and policy relevant to the time the claimant was
17 in care.

18 Q. Thank you. Then we will skip over the next couple of
19 paragraphs and if you could read, please, from 3.30?

20 A. The process for assessment of claim is the same whether a
21 claimant is represented or not. In the early stages of the
22 Historic Claims Process, filed claims were managed by the
23 Ministry's Legal Team, with social work practice reviews
24 prepared by historic claims social work staff. This changed
25 around 2014 where the Legal Team began to base its advice on
26 an assessment prepared by the Historic Claims Team. Unfiled
27 claims have largely been driven by the Historic Claims Team
28 with a Legal Team providing advice in relation to liability
29 issues and quantum or where a particular issue requires
30 specialist legal advice.

31 Q. And continue, please, at 3.31?

32 A. Claims have generally been assessed in the order that they
33 have been received, with the Ministry prioritising claims in
34 some circumstances, i.e. when the claimant has a terminal
35 illness.

1 Further, there have been claims prioritised with the
2 agreement of their lawyer. In 2013, the Ministry set out a
3 policy on prioritisation of claims which noted that for each
4 claim represented by Cooper Legal that is allocated for
5 assessment, one direct claim would be allocated. In January
6 2018, the Ministry discontinued this policy after
7 recognising that it unfairly impacted represented claimants.
8 Claims were then allocated in order of when they had been
9 received, with a continued ability to give priority in a
10 small number of circumstances such as terminal illness.

11 Q. Thank you. And then I'll just skip over the next couple of
12 paragraphs where you point out that following that
13 description of the process, following that where you point
14 out that efforts were later made to shorten the assessment
15 period, and I'll take you to the Two Path Approach later.

16 **CHAIR:** Can I just ask a quick question? Just a
17 clarification? Ms Hrstich-Meyer, you talk about filed
18 claims and unfiled claims. Could you, for the record,
19 just explain the difference between the two?

20 A. My apologies. So, a filed claim is where, and I think in
21 every instance the claim is actually filed in the
22 High Court.

23 **CHAIR:** Right.

24 A. And the person I think in virtually every case is legally
25 represented. Unfiled claims can be from direct claimants and
26 also from those legally represented but they're not filed in
27 the High Court.

28 **CHAIR:** And that's the difference?

29 A. Yes, my apologies.

30 **CHAIR:** Thank you, that clears that up.

31 **MS ALDRED:**

32 Q. So, I want to just turn next to the issue of quantum of
33 payments. Can you read from 3.34, please?

34 A. Acknowledging a person's experience in care through a
35 monetary payment is challenging. Initially, the Ministry

1 sought Crown Law advice on quantum of settlement offers on a
2 case-by-case basis. Crown Law assessed quantum based on what
3 facts would likely be established if the matter was decided
4 by a court.

5 Q. Thank you. Now, if I could just stop you there, please. I
6 want to just ask you to clarify something because Ms Janes
7 in a question to Mr MacPherson said, "Linda Hrstich-Meyer's
8 evidence is that quantum is very much on what a court would
9 award"; what do you say about that, Ms Hrstich-Meyer?

10 A. I would say that that's not quite what I meant. What I meant
11 in that paragraph is that what a court would find in terms
12 of the factual findings and a whole lot of other things, and
13 I refer to those later in my brief in relation to comparator
14 cases etc claims.

15 Q. Yes, I think you go on in the rest of this paragraph to talk
16 about some of the factors that were brought to bear in
17 considering -

18 A. Yes.

19 Q. - considering the amount of settlement offers?

20 A. Yes, and I think too in relation to the S and W cases, while
21 they weren't court ordered, they were agreed between the
22 parties, the law changed after that.

23 Q. So, if we could then please - I think I'll just have you
24 read from 3.35.

25 A. As the Claims Team adapted its process and moved away from a
26 full assessment model, it has used this database of
27 assessments to keep settlement payments consistent by
28 comparing like claims with like to ensure payments are
29 similar. Although every person's experience is unique, this
30 enables the Ministry to make payments that are broadly fair
31 and consistent over time.

32 Q. Thank you. Now, just a couple of additional questions. Could
33 you please explain for the Commissioners the basis on which
34 payments are made?

1 A. They were never intended to be a payment for full
2 compensation. We don't use the word "compensation" because
3 they're not rigorously tested in a Court. They're, in fact,
4 an acknowledgment of harm.

5 Q. And Ms Hill and Ms Cooper gave evidence that payments they
6 have recently been receiving they say are particularly low
7 when judged against previous standards and there was a
8 reference to claims previously paid at around \$20,000, now
9 only receiving \$12,000 to \$18,000; do you have a comment in
10 response to that?

11 A. Yes. So, I went back and checked. So, for the period pre 1st
12 of November 2018, which was prior to our new process, the
13 average payment for legally represented claimants was
14 \$19,561. The average payment for direct claimants was
15 \$18,852. The difference is approximately \$700 to those that
16 are legally represented.

17 Q. What about the suggestion that payments have dropped since
18 implementation of the new process?

19 A. I've also checked that. From the 1st of November 2018
20 onwards, the average payment for legally represented
21 claimants is \$20,083. The average payment for direct
22 claimants is \$19,276. So, there's a difference of
23 approximately \$807 for those that are legally represented.

24 Q. But that's on average larger payment since the new system?

25 A. Yes. So, the difference was \$807 and previously it was \$700.

26 Q. Great. Oh, so, there's a very slight difference?

27 A. Yes.

28 Q. In the difference between?

29 A. Yes.

30 Q. And then you deal from paragraph - you talk about the Two
31 Path Approach?

32 **COMMISSIONER ERUETI:** Ms Aldred, before you go on, can
33 I ask a quick question about the compensation? You
34 said earlier that it's not for compensation because

1 it's not tested in a court; is that right? So, when
2 you say - is that correct?

3 A. So, what we're saying is we're not paying you for the
4 damages that you would get in a court. What we're looking at
5 is really, we're acknowledging your experience and harm. So,
6 I think that potentially it will be the difference between
7 some of those S and W, for example, cases which were
8 reasonably high but, as I mentioned before, the Court
9 changed the law in relation to the ACC bar.

10 **COMMISSIONER ERUETI:** When you say not tested in the
11 bar, are you talking about the testing of the facts?

12 A. The facts, yes.

13 **MS ALDRED:**

14 Q. You then turn to the Two Path Approach and if I could just
15 have you just clarify, I mean the Commissioners will be
16 aware of this, this was a measure put in place to address a
17 backlog of claims; that's correct?

18 A. Yes, it was.

19 Q. And you explain at 3.37 of your brief that the Ministry
20 would make an assessment that placed a claimant into one of
21 six payment categories?

22 A. Yes.

23 Q. And for the highest payment category, which was for claims
24 that would be over \$50,000, a full assessment was carried
25 out?

26 A. Yes, there is the potential with that to receive a higher
27 payment, yes, than the \$50,000.

28 Q. And you go on at 3.38 to talk about the implementation of
29 the Ministry's new process, and can I just confirm that
30 you're talking there about the process developed in 2018?

31 A. November 2018, yes.

32 Q. Yes. And you have, likewise, developed payment categories?
33 And if you could just clarify, are those made on the basis
34 of previous claims?

1 A. Yes, they are. The other aspect too, is that there is a
2 discretion for the consistency Panel and for managers to be
3 able, there is a discretion and we refer prior to the
4 categories about litigation risk, Bill of Rights issues, so
5 forth.

6 Q. Oh, so, can I just have you clarify there, you're speaking
7 about the Handbook that lists the categories?

8 A. My apologies, yes. In the Handbook, there are categories
9 1-7, and above those categories there is a note that says
10 that there is a discretion and there are other elements that
11 can be taken into account.

12 Q. So, that means that the categories aren't absolutely fixed;
13 is that what you mean or -

14 A. They are fixed but you can pay more.

15 Q. Right.

16 A. In relation to, just an example that they use is litigation
17 risk.

18 Q. Thank you. And if you just go to paragraph 3.39 of your
19 brief of evidence, could you briefly explain how those
20 categories were arrived at?

21 A. Right. So, they were arrived at grouping earlier case
22 assessments together based on the severity of allegations.

23 And there is actually the ability within each of those
24 categories, what we call a high and a low category, six, for
25 example, which goes from \$46,000 to \$55,000. And the
26 percentages reflected in the Handbook relate to payments
27 made over time but they're certainly not subject to
28 budgetary constraint.

29 Q. Thank you. Just for the benefit of those who don't have the
30 chart in your evidence in front of them, that is a chart
31 which lists seven payment categories?

32 A. Yes, it does.

33 Q. Yes. And the top category is category seven which is for
34 payments of above \$55,000; is that correct?

35 A. Yes.

1 Q. And the lowest category is \$3,000, \$1,000 to \$5,000, sorry?

2 A. Yes, it is.

3 Q. And if you could just confirm that the table in your
4 evidence provides details of each category, in terms of
5 amount paid, and the percentage of all paid claims?

6 A. Yes.

7 Q. And then gives examples?

8 A. Yes.

9 Q. Of payments that might fall into that category?

10 A. Yes, it does.

11 Q. But the actual descriptions of the categories are contained
12 in the Handbook?

13 A. Yes, it is.

14 Q. Thank you, which is referred to in your evidence. Ms Hill in
15 her evidence told the Commissioners that she felt a bit, I
16 think her words were, conflicted about categories, noting
17 that it felt impersonal and difficult. But this was how MSD
18 wanted to clear the backlog of claims when the Two Path
19 Approach was implemented and obviously categories continue
20 in the new process. Do you have any comment on
21 categorisation?

22 A. I totally accept that it can be - it's a very difficult
23 issue but it was a way for us to ensure consistency and it's
24 that trade-off but I certainly do understand her comment.

25 Q. Thank you. And then - sorry?

26 A. Sorry.

27 Q. Then I'll just take you over the page, please, and go and
28 read from paragraph 3.43.

29 A. To date, the Ministry's payments have ranged from \$1,000 to
30 \$90,000 with the most common payment sitting in the \$10,000
31 to \$25,000 range. The average payment is approximately
32 \$20,000.

33 Q. Thank you. And then can you just, then you turn to feedback
34 on claims and explain that following assessment there will

1 be a meeting with a claimant to provide feedback on the
2 outcome of the claim, that is for -

3 A. Yes.

4 Q. That is for direct claimants?

5 A. Yes, it is. We do offer it to all legally represented
6 claimants as well, and I can't recall when we had the last
7 meeting with a legally represented claimant. It's not very
8 often.

9 Q. Do represented claimants - sorry, do unrepresented claimants
10 tend to take you up on that offer?

11 A. Yes, yes. It would be very unusual for them not to, which is
12 not a problem with our process but I can't think off the top
13 of my head of someone that hasn't wanted a meeting. It may
14 be that they want to defer it because they're not ready but
15 they will take them up generally.

16 Q. And if they want to defer it, is the Ministry open to that?

17 A. Absolutely no problem at all. The whole idea is that we need
18 to work at the pace of the claimant, so it's not an issue.

19 Q. Thank you. And then if you could just turn over, please, to
20 the page with the heading "Outcomes". That provides some
21 statistics, noting that at the end of 2019, 1677 claims had
22 been closed and some further information. If I could just
23 have you read from paragraph 3.48, please?

24 A. Claimants are not compelled to make a quick decision in
25 relation to the Ministry's offer and are encouraged to take
26 time to consider their position. If the claimant is not
27 satisfied with the outcome, Historic Claims staff will
28 outline the claimant's options which may include an internal
29 review of their claim, seeking legal advice or approaching
30 the Ombudsman.

31 Q. And if you could just keep reading, please?

32 A. Okay. Historically the majority of payments made to direct
33 claimants have been done on an ex gratia basis. Ex gratia
34 payments were made where the Ministry considered abuse or
35 neglect occurred and the Ministry accepted a moral duty to

1 address the claim, but did not consider it gave rise to
2 liability. Such payments were sometimes made conditional on
3 full and final settlement of the claim.

4 Q. Now, you go on to talk about some rules?

5 A. Yes.

6 Q. Some issues around ex gratia or settlement, can you just
7 read from paragraph 3.52, please?

8 A. Under the Ministry's new process, that's November 2018, all
9 claims are settled by way of a settlement agreement which is
10 full and final.

11 Q. And you've heard Mr Young's evidence, you will have heard it
12 yesterday?

13 A. Yes.

14 Q. That the purpose, from the Ministry's point of view, of
15 moving to a settlement agreement or a Deed of Settlement,
16 that the purpose of this change was finality; do you agree
17 with Mr Young's assessment?

18 A. Yes, I do.

19 Q. Yes. And then just -

20 **CHAIR:** Can I ask a question arising quickly out of
21 that one? And I meant to ask Mr Young and I didn't, so
22 I'll ask you, if you can answer. Prior to this
23 happening, there were ex gratia payments. How many
24 people do you know or can you tell me how many people
25 who received an ex gratia payment came back for
26 another go, if you like?

27 A. I can't give you specific numbers but some did come back. I
28 could locate, I could find that information for you.

29 **CHAIR:** It would be helpful to have it.

30 A. Yes.

31 **CHAIR:** Can you give us just a general idea of some
32 percentages or numbers? Was it in the hundreds or
33 thousands?

34 A. No, it wouldn't have been in the hundreds but we would have
35 had a number. And, off the top of my head -

1 **CHAIR:** Which we won't hold you no.

2 A. No, no. I'm thinking in relation, maybe 50. I make the
3 comment that a number of the revisit, the ones where they've
4 revisited, they come more than once. So, I can think of one
5 example where a gentleman has come back three or four times
6 and I think, to the best of my recollection, I think we
7 revisited it three times. I do note that it's a really
8 difficult situation, so we have actually, in light of the
9 new Cabinet redress principles, we have looked at that area.

10 One area we've - so, there are two areas that we've dealt
11 with. One is where people come back with new allegations
12 that have never been put to us. And the second is new
13 information. It's a really difficult issue and I know that
14 the Commission discussed it yesterday about where you find
15 more information about perpetrators over time. Now, that's
16 something that we are really struggling with and we
17 certainly haven't landed a policy on that but it's something
18 that the Crown does need to look at and we're hoping that we
19 might keep, you know, some direction or some recommendations
20 from the Commission because we have really struggled.

21 **CHAIR:** It's a difficult area and it's not only
22 claimants coming back with new information/new
23 allegations?

24 A. Yes.

25 **CHAIR:** It may be that the Ministry finds out new
26 information which they realise could have affected the
27 claim in the first place, so it goes both ways?

28 A. Yes, I totally agree.

29 **CHAIR:** Thank you for that and if you can provide the
30 numbers, we would be grateful?

31 A. We will do that in writing, if that's okay?

32 **CHAIR:** Yes, of course.

33 A. It may take a few days.

34 **CHAIR:** There's no rush.

35 **MS ALDRED:**

1 Q. So, the next topic is contribution to legal costs. I don't
2 want you to read that through but if the Commission doesn't
3 mind, if I can just summarise and have you confirm there are
4 three categories that you deal with. The first is the
5 Ministry's contribution to Legal Aid debt?

6 A. Yes.

7 Q. The second to ensure that a person can move on without Legal
8 Aid debt?

9 A. (Nods).

10 Q. The second one is for a person who is represented but not
11 legally aided?

12 A. Yes.

13 Q. To obtain a contribution, sorry to have their reasonable
14 legal cost met?

15 A. Yes.

16 Q. And the third one is the Ministry will pay unrepresented
17 claimants to go and see a lawyer about their Settlement
18 Deed?

19 A. Yes.

20 Q. Or offer them independent legal advice?

21 A. Yes, we do. That is in the letter and whilst we have a
22 figure which from memory is \$400-\$450, we will certainly
23 revisit that in any case where someone needs to spend more
24 money on that issue, so it is not capped at \$450.

25 **COMMISSIONER ERUETI:** Can I just ask on that point
26 about the Legal Aid, particularly for unrepresented
27 claimants. So, it's for the deed in particular that
28 they are able to get legal advice on it. I wondered,
29 where do they go to for advice on things like, say if
30 the BORA applies or if there's a false imprisonment
31 issue with their claim, how do you ensure that their
32 legal rights are protected in those instances?

33 A. So, we indicate to them that they feel free to seek legal
34 advice. I suspect our support team that are on the telephone
35 lines will perhaps suggest that they can go to the

1 Law Society for names or the Citizens Advice Bureau. We try
2 not to direct them to a particular place because we don't
3 think it's appropriate but we reiterate that, you know,
4 they're signing legal rights away, so we really encourage
5 them to get legal advice. And some of them do.

6 **COMMISSIONER ERUETI:** At what point do you say that
7 you're potentially signing away legal rights, is that
8 at the very beginning?

9 A. It's in the Settlement Deed.

10 **COMMISSIONER ERUETI:** I see.

11 A. We've done the feedback face-to-face, if it's a direct
12 claimant, and then we will give them a Settlement Deed and
13 letter and encourage them to get legal advice.

14 **COMMISSIONER ERUETI:** It's usually at that point that
15 they've said your rights are affected?

16 A. Yes, if they get a Settlement Deed they will also get a
17 letter advising them, plus we will orally advise them in the
18 meeting.

19 **COMMISSIONER ERUETI:** Okay, thank you.

20 A. Thank you.

21 **MS ALDRED:** Thank you.

22 Q. Now, Ms Hrstich-Meyer, you go on, the next section of your
23 evidence deals with the Ministry's approach to working with
24 other government agencies and I'm not going to get you to
25 read that, we'll have it taken as read. So, I'd like to take
26 you to the structure and staffing of the Historic Claims
27 Team which you deal with from page 15, and that is at
28 paragraph 3.64, if I could just have you read that
29 paragraph, please?

30 A. The staffing structure has naturally grown to align with the
31 development of historic claims. The structure has been
32 adapted over time to meet the needs of differing processes
33 developed at various stages, with efforts made to increase
34 staff as well as establishing new initiatives like the

1 previous Two Path Approach to respond to increasing numbers
2 of claims.

3 Q. And so, you are evidence after that describes the
4 establishment - sorry, the changes in structure and the
5 increased capability of the team?

6 A. Yes, it does.

7 Q. Yes. And I won't take you to that detail today but we'll
8 then turn to section 4 of your evidence which deals with
9 access to personal information. And you note that this part
10 basically is about processing information requests from
11 claimants?

12 A. Yes.

13 Q. In relation to their files. Can you just read 4.2 and 4.3,
14 please?

15 A. As at 31 October 2019, the Ministry has provided information
16 for 3925 claimants. They are made out of 1261 releases to
17 direct claimants and 2664 releases to their lawyer or a
18 third party.

19 And I actually have 27 information co-ordinators that do
20 that work with administrative staff, so it's a big job.

21 Q. Thank you. And if you just go on, I don't think we need to
22 read 4.3 but if you could then please read 4.6 and 4.7?

23 A. For information requests that come from claimants' lawyers,
24 the Ministry understands claimants' files assist their
25 lawyers with formulating their claim. However, to clarify, a
26 claimant does not need a copy of their files to make a
27 claim. What is important is that they have the opportunity
28 to share their memories and concerns with the Ministry.

29 Q. And I don't think I need to actually get you to read the
30 next paragraph but we'll talk now a bit about balancing
31 privacy interests or Crown interests against a claimant's
32 request for their whole unredacted files.

33 So, what you talk about at 4.8, is the Ministry's
34 obligations under the Privacy Act and the Official
35 Information Act.

1 In relation to those Acts, could you just explain what
2 the Privacy Act, what broadly the Privacy Act obligation is
3 for the Ministry?

4 A. Under the Privacy Act, there are a number of exceptions but
5 the most frequent one is the redaction of personal
6 information about other individuals. For example, family
7 members, there will be situations where families sadly have
8 lost touch or don't speak to each other etc., that claimants
9 may not know about the experiences that their siblings have
10 had and they may not want their siblings to know. So,
11 without a privacy waiver, a written privacy waiver, we will
12 not provide that information to a third party, sorry to the
13 person that's made the request.

14 Q. You're referring there to information about, say, another
15 family member?

16 A. Yes.

17 Q. And if you could actually read paragraph 4.9, please?
18 Actually, I don't think I'll get you to read that, except
19 just to confirm that that paragraph details the issues with
20 the interweaving of the claimant's records with reference to
21 other people; is that correct?

22 A. Yes and we absolutely understand survivors' and claimants'
23 comments that when they see redactions, that it can be
24 disheartening.

25 Q. Yes. And you also, I will just get you to confirm, at 4.9
26 you also add that, you know, a lot of this information is
27 highly sensitive?

28 A. Yes, it is.

29 Q. So, with a high privacy interest?

30 A. Yes.

31 Q. Yes. And then I just want to have you briefly clarify some
32 things. So, I think it was suggested to you at some
33 point - sorry, I think it was suggested at some point during
34 phase 1 of the hearing that there was a reference to a case

1 called N v Attorney-General, where Ellis J had approved a
2 protocol or approach to deal with discovery applications?

3 A. That's right.

4 Q. That's in the context of litigation?

5 A. Yes.

6 Q. Just to quickly paraphrase it for you, what Ellis J
7 recommended was that redacted and unredacted versions of
8 files be made available?

9 A. Yes.

10 Q. To claimants' counsel only?

11 A. Yes.

12 Q. So that, they could have a look at what information would
13 actually be relevant that they ought to have?

14 A. Yes.

15 Q. And there may have been a suggestion, I think, that the
16 Ministry could take a similar approach to Privacy Act
17 requests; what's your comment on that?

18 A. My comment would be that if we didn't have a Court Discovery
19 Order, that we wouldn't have the ability to provide a clean
20 copy, even to a lawyer because, in effect, we would be
21 breaching the Privacy Act.

22 Q. Thank you. The next section you go on to deal with is delays
23 in the process and legislative compliance. I won't have you
24 read through that but largely it's about the time that it
25 takes to deal with the records requests.

26 And you then go on at paragraph 4.18 to talk about the
27 initiatives the Ministry has taken over time to basically
28 speed the process up and to try and respond in a better and
29 more timely way to requests for information, including you
30 deal with the Allen + Clarke report that you -

31 A. Yes.

32 Q. So, we'll let the Commissioners take that as read. And then
33 if we could, please, just go to paragraph 4.20 and have you
34 read - I wonder if you could summarise please,

1 Ms Hrstich-Meyer, the plans the Ministry has to continue to
2 improve information releases for claimants?

3 A. Well, I think we have started, it was very - sorry, I'll
4 start again.

5 The consultation feedback made it really clear that
6 claimants were unhappy in relation to redactions etc. in
7 relation to their files. So, what we've done is we have
8 changed our letters to make them more user friendly. We've
9 changed the way that we describe why we've redacted
10 information. And if I can recall, I think we even put that
11 at the side of the redacted information.

12 And one thing, and part of the work we're doing is we
13 know that we don't always get it right and we know that with
14 the new process we haven't got everything right. So, we're
15 talking to claimants, plus we're doing systems improvement
16 work. So, what that means is that we are - the first step is
17 the understand phase where we look at every step of our
18 process to actually understand what those steps are. And the
19 next step will be what parts have we added in that are just
20 barriers to claimants. It's all from a claimant's
21 perspective. And then from there you go to a test and
22 understand phase, which is what bits have we put in there
23 that are just more for us, rather than the claimant?

24 And I think through some of that, we have got some - and
25 that's quite a big lot of work but I think it's totally
26 appropriate at this point, is that we need to do better with
27 our Privacy Act requests, and that may be - and some of the
28 things, and I'm jumping to the test and learn phase, but,
29 you know, is a timeline more beneficial? Actually, when you
30 ask a claimant, "Do you want your file?", what are they
31 going to say? "Yes".

32 Is it that we need to be thinking about what is it that
33 you need from us? Is it to understand where you were, why
34 you were taken away from your parents etc. So, it's really
35 thinking about rather than normal and I think most

1 government Department's Privacy Act request processes,
2 actually asking the claimant what they need.

3 Q. Are you suggesting there that it might be what you could
4 look at would be rather than the provision of thousands of
5 pages of material -

6 A. Yes.

7 Q. - some sort of summary or timeline, as you said?

8 A. Yes, sorry I think I said it in a very convoluted way but it
9 was just trying to get something to claimants that is
10 actually meaningful and understandable.

11 **COMMISSIONER ERUETI:** Can I ask, are you also, through
12 this process, looking at support for survivors when
13 they receive their records and ensuring they receive
14 them -

15 A. Yes, that is something in relation to 3-4 year programme
16 with the wraparound services but one thing that we have
17 suggested to survivors at this point because we've only
18 got - the pilot started in October, is would it help to get
19 counselling and talk through that with your counsellor
20 because we're very aware, you know, some of these people
21 can't read, they can't write. You know, so getting this, I
22 must admit some of those records are very hard to understand
23 because they talk about, you know, various family members,
24 they go backwards and forwards, so someone looking at that
25 fresh, it's just so hard.

26 **MS ALDRED:**

27 Q. So, the next section of your evidence deals with the
28 development of the Historic Claims Process through to 2018
29 and I'm going to largely get you to skip over that,
30 Ms Hrstich-Meyer, because the Commissioners have it.

31 A. Yes.

32 Q. But I will take you briefly to the Two Path Approach which
33 we've already heard a little about. And just to summarise
34 really or to - so, in your evidence at 5.9 and 5.10, you
35 explain that this was an initiative that started to be

1 developed in 2013 as an effort to deal with the backlog by
2 the Ministry?

3 A. Yes.

4 Q. And it obtained Cabinet approval in December 2014?

5 A. Yes, it did.

6 Q. The point of that was to be a one-off mechanism to reduce
7 the backlog?

8 A. Yes, it was.

9 Q. And I think you set out in your evidence some of the numbers
10 that you were confronting at the time but if I could just
11 have you read 5.11, please, Ms Hrstich-Meyer?

12 A. The Two Path Approach added a fast track option, under which
13 the Ministry aimed to resolve the claim more efficiently.
14 Under the fast track, the Ministry assessed the key elements
15 of the claim that then enabled it to be placed into one of
16 six payment categories developed for the fast track option
17 separate to those developed for the new process.

18 Allegations were accepted at face value with only a basic
19 fact check to ensure that the Ministry had some legal
20 responsibility for the claimant at the time of the alleged
21 abuse and that they were placed at the residence or
22 placement where the alleged abuse occurred and at the
23 relevant time and where a staff or caregiver was named, that
24 the person was working at that location at the time.

25 There were six payment categories, \$5,000, \$12,000,
26 \$20,000, \$30,000, \$40,000 and \$50,000. Where the details of
27 a claim were such that a payment higher than \$50,000 may
28 have been warranted, a full assessment was carried out. No
29 claim received a nil payment unless the fact check was
30 unsuccessful.

31 Q. Thank you. And if you could just read paragraph 5.13?

32 A. Claimants were entitled to reject their offer and elect to
33 have their claim fully assessed by the Ministry using its
34 usual assessment process detailed above. Some claimants
35 represented by Cooper Legal chose to opt out of the process

1 before receiving a fast track offer and continue with a full
2 assessment of their claim.

3 Q. So, there was some discussion in phase 1 about this?

4 A. Yes.

5 Q. With, I think, a suggestion that claimants were opted in
6 perhaps against their or their lawyer's wishes; what's your
7 comment on that?

8 A. No, they weren't.

9 Q. What was the situation? Was an offer calculated for those
10 people?

11 A. Well, in order to get consistency and to be able to get the
12 right number in a group, and I am not an insights numbers
13 person but we actually calculated offers for all those
14 people within that group and two tranches, which was the
15 legally represented and the non-legally represented.

16 Q. Thank you. And then I think we'll skip through to 5.19, so
17 there's more detail there about the Two Path Approach but if
18 you could read from 5.19-5.20, please?

19 A. The Two Path Approach was very successful for the Ministry
20 in both providing more timely resolution for claimants who
21 accepted their offer in reducing the backlog of claims. As
22 at 27 October 2017, 379 of the 424 offers made to claimants
23 under tranche 1 were accepted. This was an 89 per cent
24 uptake.

25 221 of the 281 offers made to claimants under tranche 2
26 were accepted. This was a 79 per cent uptake.

27 So, tranche A was the legally represented, tranche B was
28 the direct claimants.

29 Q. And if you could confirm that tranche 2 finished in
30 September 2016?

31 A. Yes, it was a one-off. Yes, it was always intended to be a
32 one-off.

33 Q. And then you go on to talk about lessons learned from the
34 Two Path Approach and a KMPG report that the Ministry

1 commissioned and then recommendations that were made by
2 KMPG?

3 A. Yes.

4 Q. And you note at paragraph 5.26 of your evidence, that the
5 Ministry paused the implementation of a revised process due
6 to Waitangi Tribunal claims; is that correct?

7 A. That's correct.

8 Q. And then you go on to talk about the Waitangi Tribunal
9 claims in the next section of your evidence. And those
10 claims, you say, were seven claims filed in the Waitangi
11 Tribunal in 2017 relating to the abuse of young Māori in
12 State care?

13 A. Yes.

14 Q. And if you could just, and that was a request for an urgent
15 Inquiry?

16 A. It was.

17 Q. If you could just read from 5.30, please?

18 A. Shortly after the claims were filed, the Ministry stopped
19 the rollout of the updates to its claims process while
20 consideration was given to the claims filed in the Waitangi
21 Tribunal. The Ministry recognised that more focused
22 consultation with claimants, particularly with Māori
23 claimants, was required to help the Ministry better
24 understand how the claimants' process could meet claimants'
25 needs and address the issues raised in these claims.

26 Q. And so, at 5.31 you explain that the Waitangi Tribunal
27 didn't grant urgency but said that the concerns would be
28 addressed as part of a future kaupapa inquiry?

29 A. Yes, that - sorry.

30 Q. Sorry, go on.

31 A. Certainly, the Waitangi Tribunal proceedings were actually
32 very important and significant to the changes that have been
33 made and actually, I would just like to acknowledge that
34 that has been one of the catalysts for actually doing this

1 work, which I think we've done a bit late, I mean, but it is
2 something that we are really focused on.

3 Q. Now, you deal next with consultation with the Māori
4 claimants and the timing of that?

5 A. Yes.

6 Q. How it came about and the detailed consultation process that
7 you undertook and say that included the Senior Māori
8 Leadership Group?

9 A. Yes.

10 Q. If I could just have you - and then you deal with, at 5.36,
11 I think we'll go straight to the feedback from Māori
12 claimants, and can you just read from 5.36, thank you.

13 A. Sorry, this is -

14 Q. 5.36.

15 A. Yes, sorry, just give me a minute. The general feedback from
16 Māori claimants was that the process was clinical, detached,
17 and at times lacking empathy and understanding of their
18 experiences while in State care. All claimants reported that
19 they had not encountered any Māori during the process nor
20 did they feel that their cultural needs were recognised or
21 catered for. Claimants did not believe that the Ministry was
22 meeting its aim of providing a claimant-centered process.
23 They also felt that the process should be based on tikanga
24 and the principles of mana, aroha, whakapapa,
25 whanaungatanga, manaakitanga and pono. Claimants also wanted
26 the process to accommodate a collective and inclusive
27 approach.

28 Q. I would like to take you to the report from the consultation
29 process with Māori claimants, and that is at tab 86 of the
30 Crown bundle. It is dated July 2018 and could I take you,
31 please, to page 10. If I could just have the middle
32 paragraph called out, please, and if you could please read
33 that paragraph out, Ms Hrstich-Meyer?

34 A. It's easier to read it off the hard copy. "The represented
35 claimants were more critical, frustrated and dissatisfied

1 with the process. We believe this is in part attributable to
2 the arm's length approach inevitable in a represented claim
3 scenario. It was evident that it generally took much longer
4 for represented claimants to access information as all
5 communications were conducted exclusively between their
6 legal counsel and the Ministry. Once legal counsel had
7 completed inquiries, acquired information, lodged a claim
8 and communicated the outcome to the claimant, years had
9 passed. The claimants felt uninformed and isolated from the
10 process and were left with a fait accompli - accept the
11 offer or wait a few more years. The sense of inevitability
12 and duress the claimants felt undermines any potential for
13 trust or good faith in the process and the Ministry in
14 completing their claims".

15 Q. Thank you. That can go. If you then turn to general
16 consultation in relation to the process as a whole?

17 A. Yes.

18 Q. Which you said was being done in train with the consultation
19 with Māori claims and describe a report received from Allen
20 + Clarke as a result of that wider consultation on 13 June
21 2018. I won't take you to that but you go on to detail the,
22 I suppose, recommendations from that process?

23 A. Yes.

24 Q. And I think now we probably need to finish at this point and
25 take the morning adjournment.

26 **CHAIR:** I was just going to ask you, the choices are
27 for you to continue to the end but I don't know how
28 long that's going to take or to take a break now, so
29 it's up to you.

30 **MS ALDRED:** I think we could continue because we don't
31 have very much more to do.

32 **CHAIR:** Yes.

33 **MS ALDRED:** And it would be good -

34 **CHAIR:** I would prefer to have, and I'm sure you two
35 would prefer to conclude your evidence, then we will

1 take a break and then continue with the questions from
2 Ms Janes; would that suit you?

3 **MS ALDRED:** Yes, that would be fine, thank you.

4 A. Yes.

5 Q. So, the next thing I want to take you to, just before we
6 turn to your discussion of the current processes, to your
7 reply brief of evidence, Ms Hrstich-Meyer, and this is dated
8 13 March 2020 and it was filed in response to the evidence
9 that we heard in phase 1.

10 I am going to, for the purposes of this hearing, skip
11 over much of this and invite the Commissioners to take it as
12 read but there are several points that I would like you to
13 pick out from it or deal with. And I just have some
14 supplementary questions really arising from it and from
15 evidence in phase 1.

16 So, if you could please turn to page 5 of the reply brief
17 of evidence. This is broadly part of the discussion of the
18 Two Path Approach so that one-off process for quick
19 resolution. As part of the discussion of that, you at
20 paragraph 3.12 speak about the Cooper Legal brief of
21 evidence?

22 A. Yes.

23 Q. And its suggestion that the Ministry's legal position, that
24 it was not liable for contracted providers, also called the
25 section 396 providers, meant some people who had been placed
26 with such providers only received \$5,000. And so,
27 effectively, because of the Ministry's view of its legal
28 liability, they received less.

29 Can I ask you to comment on that, please?

30 A. Certainly. So, the first thing I would say is that, for the
31 purposes of the Two Path Approach, as opposed to litigation,
32 we accepted liability for third party providers. Now,
33 Ms Cooper, I think, referred to a couple of cases, now I'm
34 mindful I don't want to go into any details about those

1 cases, other than to make a general comment, in that I
2 recall Cooper Legal said those payments were around \$5,000.

3 I have made inquiries and I can confirm that the reason
4 for the amounts being low was not the issue of third party
5 providers but the fact that there was no serious abuse. And
6 I don't mean that to sound how it does because all abuse is
7 serious but there was no sexual abuse in those particular
8 cases.

9 There was also reference to some really high payments,
10 and one of those was \$80,000. I would just like to say, that
11 wasn't under the Two Path Approach. That was a case that got
12 pretty close to being heard at trial and it was quite
13 different, in the sense that it wasn't part of Two PA and
14 secondly by this stage that the parties had settled
15 discovery, you know evidence, we'd had briefs of evidence,
16 it was in a different place to the others.

17 Q. Were the allegations in that higher payment case similar or
18 more serious?

19 A. More serious, more serious.

20 Q. Right.

21 A. Could I just take the opportunity because we're referring to
22 my reply brief of evidence, to just acknowledge that I have
23 read the survivors' briefs and watched their courageous
24 evidence of those survivors that are in my brief. I'd also
25 like to orally acknowledge to the family of Patrick Stevens,
26 his passing.

27 **CHAIR:** Thank you.

28 **MS ALDRED:** Thank you.

29 Q. So, the next thing I would like to take you to in your reply
30 brief is, broadly responding to Cooper Legal's expressed
31 concerns about the Ministry's assessment process. You deal
32 with this in some detail but I would like to have you read
33 out paragraph 3.24 of your brief of evidence, please?

34 A. As discussed at paragraph 3.26 of my primary brief of
35 evidence, when we carry out a full assessment of a claim,

1 the Historic Claims Team consider a change of relevant
2 information from different sources. Many allegations are not
3 referenced on a claimant's social work file and so other
4 sources have to be considered. Although considerable focus
5 is given to the claimant's social work records, one of the
6 other sources considered is institutional records, such as
7 diaries from the residents. From the relevant time period
8 where these could assist, for some residences these records
9 are extensive. There are often different ways that these
10 records can be interpreted and sometimes they do not tell a
11 clear story. As the Historic Claims Team assesses each
12 allegation it weighs information that points towards an
13 allegation and information that points against an allegation
14 to come to a conclusion as to whether it is reasonable to
15 accept an allegation for the purposes of settlement.

16 And if I could just add a couple of examples. One could
17 be a reported behaviour change or, for example, a young
18 person running away from a residence.

19 Q. So, that would be the kind of thing you would take into
20 account?

21 A. Yes.

22 Q. And just if you could continue reading, please?

23 A. This is an art, not a science. There is often not one
24 particular document that is used to reach a conclusion but
25 rather, a range of different documents and factors. These
26 are some of the reasons as to why Cooper Legal and the
27 Ministry might have a different perspective on a claim.

28 Q. Thank you. And then you go on, I won't take you to the next
29 part of that but if you could please read 3.27?

30 A. Court judgements are a useful resource. For instance, the
31 factual findings set out in White are helpful when assessing
32 claims where the claimant attended a placement that the
33 White brothers attended, as long as it was a similar time
34 period. Each case has a different set of facts and must be
35 considered on its own merits. Just because the Court reached

1 a factual finding in White about a particular issue, does
2 not mean that it will be appropriate to adopt that finding
3 for every claimant that attended the residence.

4 Q. What do you say to Ms Cooper Legal's description of the
5 Ministry's picking and choosing from the White judgement?

6 A. I wouldn't agree with that. The Ministry's position is that
7 it will look at whether that particular case is within the
8 same period and what the facts are to consider that.

9 Q. Thank you. I want to next just take you to your description
10 of how outcomes are treated by the Ministry and, again,
11 there's some quite detailed information there but bearing in
12 mind one of the points that I think came up yesterday during
13 questioning of Mr Young, there were issues raised around the
14 extent to which allegations against specific staff members
15 could be acknowledged in final letters received by
16 claimants. Could I have you read 3.34 and 3.35, please?

17 A. The consequence for a former staff member or caregiver, if
18 information reached a public domain, could result in
19 significant distress to that individual, as well as
20 reputational damage. If the Ministry made statements or
21 released information that could damage a person's reputation
22 that has not been factually proven, this individual may have
23 a claim of defamation against the Ministry and the Ministry
24 may not have acted fairly to all involved. Settlement offers
25 need to be carefully managed in order to recognise the
26 experience of the claimant in a meaningful way while not
27 breaching the rights of another individual or purporting to
28 reach findings of fact which are not possible or appropriate
29 for a non-judicial mechanism.

30 Taking an allegation into account for the purpose of
31 settlement, but not accepting the outcome, as a fact allows
32 the Ministry to balance these issues in an out of Court
33 setting. While I acknowledge that this may be dissatisfying
34 for some claimants, for those individuals who wish to

1 receive factual findings in relation to their allegations,
2 the Court process remains open to them.

3 Q. Thank you. Now, I just want to take you briefly to paragraph
4 3.50, purely for the purposes I believe you have a
5 correction to make to your evidence at that paragraph?

6 A. I do. So, shall I read it as the correction should be?

7 Q. Yes, I think if you read out the paragraph as corrected.

8 A. Okay.

9 Q. Sorry, just to give context, this relates to a group of 559
10 specific Cooper Legal clients and it talks to how the
11 Ministry treats their claims in terms of dates registered
12 for the purposes of limitation.

13 Could you just read the corrected version?

14 A. Okay. The Ministry agreed that although the claim
15 registration form would be required going forward for new
16 claimants to register their claim, in fairness to this group
17 of 559, we're talking about Cooper Legal clients, upon
18 receiving a claim registration form for them, the Ministry
19 would register their claims as at the date of receiving the
20 claim's registration form but the clock will stop for
21 Limitation Act purposes from the date the Privacy Act
22 request was received.

23 Can I just, can I add a comment in relation to that? Part
24 of the reason for that, is that we have never accepted that
25 a Privacy Act request is a claim but we did not want to
26 disadvantage the Cooper Legal clients, so we stopped the
27 clock from that original date.

28 Secondly, not everyone that lodges a Privacy Act actually
29 goes on to make a claim.

30 And the other thing was that we didn't want to
31 disadvantage those claimants that had lodged claims.

32 So, that was a rationale. I just thought that was
33 helpful.

1 Q. Thank you. Now, turning to - you then address survivor
2 evidence and that's at section 4 of your reply brief. I,
3 again, won't have you deal with all of this in detail.

4 The first survivor you speak about is Mr Keith Wiffin and
5 we heard quite a lot of detail about that from Mr Young.

6 A. Yes.

7 Q. So, I won't take you to that. Although I believe it's
8 probably useful for you to record your acceptance at
9 paragraph 4.11 that the Ministry should have taken a more
10 generous approach in its original response to Mr Wiffin's
11 claim?

12 A. Yes.

13 Q. I do want to take you briefly to the case of Georgina and
14 Tanya and Alva Sammons and Georgina and Tanya Sammons claim
15 you deal with in some detail in your evidence. But if I
16 could just have you read, please, paragraph 4.15 of your
17 response?

18 A. Paragraphs 65 to 68 of the Sammons sisters' statement relate
19 largely to the nature of the Ministry's assessment model,
20 including that insufficient evidence existed to accept a
21 component of Georgina's claim in 2013, and the fact that
22 evidence was not sought by speaking with people who may have
23 been able to corroborate Georgina's account. My primary
24 brief, paragraphs 3.24-3.33, outlines the Ministry's
25 assessment process at the time which has shifted to a
26 largely document-based model by the time the assessment of
27 Georgina's claim was completed. I wish to clarify that a
28 claim outcome of insufficient evidence is exactly that; the
29 level of information available is insufficient to reach a
30 conclusion for the purpose of settlement. In no way was this
31 outcome intended to indicate that the Ministry queried
32 Georgina's integrity.

33 Q. Thank you. Now, I just wanted to ask you briefly if you
34 could comment on the suggestion or the evidence given, that

1 there was a perception of an inconsistency between the
2 offers made to Georgina and Tanya?

3 A. I think the important point to recognise is that Georgina
4 went through a process where she did not accept her offer.
5 The matter went into a litigation space where a judicial
6 settlement conference occurred. Further evidence was
7 received and we made a higher offer.

8 In relation to Tanya, who made a later claim, was
9 eligible for the Two Path Approach and received an offer
10 under that which she rejected. So, now we're in the process
11 of assessing her claim under that more comprehensive
12 process.

13 So, in that sense, while there have been issues about the
14 quantum for the Two PA, a standard assessment may, and I say
15 may, potentially be similar to her sister if the facts are
16 the same.

17 Q. Thank you. Now, you speak about the case of Alva Sammons in
18 your evidence at 4.18-4.20, and I just wondered if you could
19 explain, please, the Ministry's view in relation to
20 provision of the Historic Claims Process to deceased
21 claimants or their families?

22 A. This is a particularly sad and difficult case, I'd just like
23 to acknowledge that. So, the Ministry's position in relation
24 to deceased claimants is that if you have not lodged a claim
25 prior to death, then at this point we don't accept a claim,
26 which is similar to the legal position.

27 Part of the reason for that, and I certainly acknowledge
28 that this is not perfect and I apologise for the grief that
29 the Sammons family have endured and hope as well, as well as
30 the sisters, is that the whole aim of the process and when
31 you actually look at the early handbook, is that it's there
32 to hear the person's story, to acknowledge what they've been
33 through and to acknowledge that harm. And the difficulty is
34 that when a person has died, that has gone. But I certainly
35 do appreciate that this hasn't brought closure for the

1 family, so what we have offered to the Sammons sisters, who
2 I think are particularly courageous women and her whanau, is
3 after talking to the Ombudsman, is that we were prepared to
4 talk through Alva's experience and to provide that apology
5 in relation to that.

6 It's a really hard area and the Crown have struggled to
7 grapple with it.

8 Q. Thank you. And then -

9 **CHAIR:** Ms Aldred, when I invited you to go, I thought
10 we might not go as long.

11 A. Sorry, it's my fault.

12 **CHAIR:** No, it's not your fault at all, I don't want
13 you to be constrained. I thought you might just be a
14 few minutes.

15 **MS ALDRED:** We don't have very much more to go, if you
16 would like to take an adjournment now.

17 **CHAIR:** I am concerned about people's comfort. I think
18 we should take the adjournment.

19 **MS ALDRED:** Yes, I think we probably have 10-15 more
20 minutes.

21 **CHAIR:** In that case, we will take a break.

22 **MS ALDRED:** My apologies.

23 **CHAIR:** That's all right. These things are difficult to
24 estimate. We will take the break now and come back in
25 15 minutes.

26 **Hearing adjourned from 11.50 p.m. until 12.05 p.m.**

27 **MS ALDRED:** I confirm we don't have very much to get through
28 at all.

29 Q. So, just still in your reply brief of evidence,
30 Ms Hrstich-Meyer, if you could turn to page 19, please.
31 Really, you will see the top of that page deals with Patrick
32 Stevens. This concludes the section of your evidence that
33 responds to the survivor evidence that you have told the
34 Commission that you watched and also obviously read the
35 briefs.

1 Just as a general question, a theme or something that had
2 come up in some of those survivor testimonies, was the issue
3 of the impact of delay in the process on survivor claimants.

4 I just really wanted to ask you if you could comment on
5 that and have you considered whether further resourcing or
6 process changes would enable the claims to be assessed more
7 efficiently?

8 A. So, my first comment would be that the timeframes and the
9 delay are not acceptable. For a survivor to currently wait 4
10 years is not acceptable and part of the 2018 process was to
11 speed things up. The difficulty is when you - the money we
12 have is actually to clear the backlog, not even the full
13 backlog, and we will be going back for more money.

14 But just some general comments about delay, is that we've
15 made some significant changes to our process which we hope
16 over time will mean that claims are assessed faster. But not
17 just faster, but also with that therapeutic part, but we
18 still need to deal with that delay.

19 As I mentioned before, I talked about the systems,
20 improvement work. We're actually looking at the new system
21 and how we can actually change it so that we can be more
22 efficient but, more importantly, more claimant focused. And
23 some of the questions we ask are, actually are we doing this
24 for us or are we doing it for the claimant because that's
25 what we've always got to come back to.

26 The other thing too, and I make this comment given
27 Dr Inkpen's comments about being able to scale up quite
28 quickly. We scaled from 30 to 130 and -

29 Q. Sorry, 30 to 130 people?

30 A. Staff in the Historic Claims area. A couple of comments to
31 make is that it actually takes time to recruit, it takes
32 time to train. It takes a longer than you actually
33 anticipate, so that would be my one comment.

34 The other thing in relation to delays, is MSD in its new
35 process have included consideration of Bill of Rights

1 breaches and that is so complex and that in itself has
2 caused delays, in the sense that we need to get support from
3 legal advice and we are still working, we're working through
4 the issues with our legal services and Crown Law.

5 So, there are lots of things that do - it's a really
6 complex area and I'm not trying to make excuses but I'm just
7 maybe acknowledging that it's really hard but we need to
8 find a way to get better.

9 Q. Thank you. And then I just want to touch briefly on the loss
10 or destruction of records which was a point that was dealt
11 with in Cooper Legal's evidence. I won't get you to read but
12 if you could just look at paragraphs 5.1 and 5.2 of your
13 reply brief of evidence, they deal with two issues. Firstly,
14 the destruction of records and whether that took place in
15 accordance with a general disposal authority; and the second
16 issue is, and that was in relation to staff files, as well
17 as other records. And the other issue that you dealt with
18 was the things that might contribute to an inability to
19 locate files?

20 A. Yes.

21 Q. And you list those issues at paragraph 5.2. And, again,
22 while I won't get you to read that out, what I would like to
23 ask you, Ms Hrstich-Meyer, is have you seen any document or
24 come across any information at all that could lead you to
25 suspect that any files could have been deliberately
26 destroyed for the purposes of defeating a claim?

27 A. No, I have not.

28 Q. Thank you. And then I'd like now to take you back to your
29 primary brief of evidence, please, and if you could turn to
30 page 27. At the foot of page 27, at section 6, you describe
31 the current process for historic abuse claims from November
32 2018?

33 A. Yes, I do.

1 Q. And you note at paragraph 6.1, that the feedback provided by
2 KMPG and the consultation motivated by the Waitangi Tribunal
3 claims resulted in the implementation of a new process.

4 And if I could just have you, please, you then set out
5 the purposes of that process at paragraph 6.2 of your
6 evidence, some of which I think you've already shared?

7 A. Yes.

8 Q. If I could just have you please read from paragraph 6.6 of
9 your evidence?

10 A. The new approach is anticipated to take three to four years
11 to fully implement. While some changes have already been put
12 into place, others will occur over a longer period of time
13 with further testing to ensure that the proposed changes are
14 aligned with claimants' needs and views.

15 Shall I continue?

16 Q. Yes, you talk now about changes made to the claims process
17 to date, so if you could just read from (a), please?

18 A. The assessment process has been streamlined. Where possible,
19 claims are assessed without fully investigating each
20 concern. The new claims process looks to acknowledge
21 claimants' reported experience, with some more serious
22 allegations requiring additional checks to be completed.
23 These changes have significantly decreased the length of
24 time needed to complete an assessment.

25 (b) the Ministry has increased staff numbers in the
26 Historic Claims Team. And this is going off brief, so to
27 update the current numbers, I have 130 staff in Auckland and
28 Wellington, 44 are assessors or technical experts for
29 assessment, 22 support, claimant support staff, and 27
30 information co-ordinators as well as admin staff and
31 managers will make up the 130.

32 Q. Thank you.

33 A. Keep going?

34 Q. Yes, read from (c) please.

1 A. Significant steps have been taken to identify the Historic
2 Claims workforce from both a cultural and skills based
3 perspective in order to support claimants to have more
4 choice in who they engage with through the claims process.

5 And I'd just like to add a couple of comments there.
6 Certainly, that was something that really came through in
7 the consultation. So, when I recruited, we used a Māori
8 Pasifika recruitment company. Obviously we employed the best
9 people but it's interesting because now in my direct
10 reports, the management team, four out of six are Māori. And
11 I just thought I'd give you an example of our Auckland unit
12 which is made up of claimant support specialists, who are
13 the day-to-day contacts with people, and then our assessors,
14 and a couple of admin staff. 21 per cent are Māori, Pasifika
15 are 21 per cent, European is 28 per cent, Asian 15 per cent,
16 African Middle East Latin American, sorry about the - sorry,
17 African, yes sorry, is 5 per cent and there's another 10 per
18 cent. They're actually self, that's what people regard
19 themselves as. So, they might actually sit under, so it
20 probably won't come to 100 per cent.

21 The other thing too that was really important for us,
22 support staff, and we changed, rewrote all the job
23 descriptions.

24 So, for our support staff that are the day-to-day, so
25 they are the people that talk to the claimants and
26 survivors. As I think I mentioned before, we look for people
27 with empathy, a counselling/psychology background, social
28 work etc., so that they can understand trauma and how to
29 deal with these vulnerable people. In relation to our
30 assessors that don't have that day-to-day contact with the
31 claimants, they generally have an analytical background, in
32 the sense of they're good at analysing documents and
33 information.

34 So, we've worked really hard. The other thing that all
35 our job descriptions have, and I actually had to, and I

1 actually scribbled a note because for me this is really
2 important, is that one area of our job description, and it's
3 in every one of my staff's job description and managers, is
4 to build Māori capability and responsibility. We need to be
5 a culturally responsible service, work in partnership with
6 our claimants, understand tikanga and Te Reo, support
7 develop of Māori capability and contribute to the principles
8 of the Treaty. And I think that's factored into the fact
9 that when we do things we're always talking about
10 partnership protection and participation. It's about
11 protecting, making sure that when claimants are interviewed,
12 that it's a safe space. Do they want a karakia? You know,
13 talking through what is right for them. Do they want other
14 family members there?

15 One of my support staff, who is Pasifika and Māori, told
16 me about a situation where we had siblings and they asked if
17 they could actually have their meeting together and we said
18 yes, and they said it took quite a lot of work because they
19 had to - and I don't mean work in the sense of it being
20 difficult but they had to make sure that each sibling was
21 actually supported because there could be information coming
22 out that the other sibling didn't know.

23 As they were starting that, the Dad turned up and he was
24 very angry and upset, understandably, of what the siblings
25 had - which you will be hearing more of. There was a
26 discussion about whether the siblings were comfortable with
27 their father being there and it went ahead and there were a
28 number of stops and there were a number of safeguards put
29 in. And at the end the family members said thank you, that
30 was actually really healing for them and the support staff
31 actually were very emotional about that because it actually,
32 they said to me it's all about the respect and just being
33 able to work with that family and feeling they made a
34 difference was actually very emotional. Sorry, I've - sorry,
35 I have a tendency to go on a bit so my apologies.

1 Q. That's all right. So, you deal, just going through this new
2 process, you go through steps you take to reduce wait time
3 for claimants, noting a change in the number of assessors
4 which we've already talked about?

5 A. Yes.

6 Q. You talk about a lead partnerships adviser who is
7 responsible for partnerships with other government agencies
8 and you say that person focuses on the development of
9 wraparound services the claimants have a need for?

10 A. Yes.

11 Q. Presumably, they deal with other agencies that might be able
12 to provide support?

13 A. Yes, they do.

14 Q. Would that include ACC or -

15 A. Yes, it will relate to connecting with other government
16 departments and agencies. The focus more recently has been
17 on those connector services which I'll talk about and the
18 pilot.

19 Q. Yes. And you then talk about the Principal Analyst position,
20 I won't take you to that specifically but there's a focus
21 there on sharing experiences with providers such as Oranga
22 Tamariki. You then go on to talk about the Ministry's new
23 communication material directed to ensuring transparency?

24 A. Yes.

25 Q. And if you could just read, please, from paragraph (i)?

26 A. On page?

27 Q. Page 29.

28 A. Sorry. In November 2019 the Ministry began using a knowledge
29 management database which provides a range of significant
30 benefits. The database stores analysis about claimants' past
31 experience in care, which can be anonymously shared with
32 agencies such as Oranga Tamariki to improve the current care
33 system. Providing input back from the experience of people
34 who suffered abuse and negligence in care to frontline
35 processes, such as those run by Oranga Tamariki was a key

1 recommendation identified in claimant consultation. The
2 database also provides a secure facility to store structured
3 information about residences, care facilities, and other
4 claimants' experiences to support the assessment of claims.
5 The database also supports Historic Claims work with
6 claimants by providing easy access to information for staff
7 about specific claimant needs, i.e. literacy issues,
8 identified barriers to service, preferred communication
9 approaches, helping Historic Claims to engage with claimants
10 and take their individual needs into account.

11 Q. Thank you. And then at (j) you go on to talk about a
12 continual improvement approach based on feedback from
13 claimants?

14 A. Yes.

15 Q. And that includes, you say, a survey seeking feedback?

16 A. Yes.

17 Q. That was introduced in July 2019?

18 A. Yes.

19 Q. And then if you could, you then go on to say at - actually,
20 I'll stop you there and I'll just ask you a couple of
21 questions following up from some evidence in phase 1.

22 Cooper Legal, I think, made some comments regarding the
23 new process and they specifically refer to the step 2
24 analysis of claims.

25 Just to quickly cut through that, can I just get you to
26 confirm that you spoke earlier about additional checks being
27 made?

28 A. Yes.

29 Q. In the case of very serious allegations that would justify
30 higher payments?

31 A. Yes.

32 Q. Does that refer to the step 2 analysis?

33 A. It does generally, yes.

34 Q. Yes. And does it involve, as Cooper Legal said, a reversal
35 of the onus of proof?

1 A. No, it doesn't because what a step 2 does is actually, the
2 work is actually done by the Ministry. It's actually the
3 Ministry that looks at the records. So, there's actually no
4 requirement for the claimant or the survivor to actually
5 provide further information. And I think - my other comment
6 would be we have been criticised for that step 2 and I think
7 that something that we need to be mindful of, is that, you
8 know, this is government money and we have to be fiscally
9 responsible and this is a way of doing that but not putting
10 the burden on the claimant.

11 Q. Thank you. And you also spoke briefly before about the
12 Consistency Panel?

13 A. Yes.

14 Q. What do they do?

15 A. Okay, so the Consistency Panel is new under the 2018
16 process. It is not a moderation Panel like the Two Path
17 Approach. This is a Panel where when the claims are
18 assessed, a group of, I call them experts, will sit and look
19 through those claims. So, they will include a number of
20 managers, someone from Legal Services, a lawyer, Garth who
21 is the Lead Claims Adviser who is an expert in social work
22 practice, and a couple of other people. And what they do, is
23 they look at them and look at them for consistency and they
24 read the summaries, just to make sure that they kind of fit
25 in the right place.

26 So, it may be that they say a little bit more work needs
27 to be done in order to understand why this fits within this
28 category or they might think, actually, this is a higher
29 category 4 or a lower category 4. So, that's what the
30 Consistency Panel does.

31 Q. Thank you. And then you deal at 6.7 with the Ministry's
32 commitment to ensuring that the principles of the Treaty of
33 Waitangi are incorporated into the new model; can you speak
34 briefly to that, please?

1 A. Okay. So, Mr MacPherson talked about the higher level
2 Ministry strategy, and we have Te Pae Tata which is the
3 Māori strategy and then we have the Pacific prosperity
4 strategy which deals with Pasifika people.

5 As part of that, any paper that goes to the leadership
6 team, and when I talk about the leadership team I'm talking
7 about the Chief Executive and Deputy Chief Executives, has
8 an aspect which relates to the Māori, the impact on Māori.

9 I refer to that because there will be times that I will
10 provide a paper to that team, to that leadership team, so we
11 will have looked at that.

12 The way we do that, is that we actually work with a
13 particular group and we have like a two or three hour
14 discussion and we just work through the issues, so that we
15 can provide a fully informed paper.

16 So, that's kind of at the very high level but I think
17 it's important, as the Ministry, to understand that.

18 The biggest thing for us is, it's bigger than just
19 tikanga or staff being able to, you know, speak in Te Reo,
20 and I mean that is all very good. It's also just making sure
21 we think about those principles, the partnership that - I'm
22 sure this certainly won't be the only time that we consult
23 with claimants and, for example, when we wrote our
24 brochures, we had a group of claimants have a look at them
25 and say, "What do you think?" So, we instead to be getting
26 that feedback.

27 And the active protection part I think is making sure
28 that we recognise tikanga. And it's interesting because we
29 had a Samoan claimant who said, "Actually, I do want a
30 karakia, actually I do" and I know there was a comment in
31 earlier evidence that that wasn't appropriate perhaps for a
32 Samoan person but we go with what that person wants, yeah.

33 And I think just that participation is, we've got to have
34 these people involved in decision-making and certainly the
35 biggest learning for me and probably the most significant

1 thing in my career, was actually going through that process
2 and it was hard, it will really difficult for staff.

3 Q. Are you talking about the Waitangi Tribunal process or the
4 consultation following that?

5 A. No, the consultation. So, I would say that I think we're on
6 a journey, we are part of the way there but we have a long
7 way to go.

8 **COMMISSIONER ERUETI:** I just want to explore the
9 strategies, are they on the website?

10 A. Yes, they are but I can certainly provide copies for you of
11 those.

12 **COMMISSIONER ERUETI:** That would be great. And just the
13 dates for when they finalised?

14 A. I think they were last year for the Pacific prosperity, I
15 could be wrong, and the earlier one was earlier, I'd say at
16 least 8 months earlier.

17 **COMMISSIONER ERUETI:** Okay.

18 A. But there is actually a lot of information on our website,
19 sorry on our Google pages, but we can certainly get that for
20 the Commission.

21 **COMMISSIONER ERUETI:** And that contained things like
22 the relevant Treaty principles that you describe?

23 A. It talks about the principles under each of those
24 strategies.

25 **COMMISSIONER ERUETI:** Okay, thank you.

26 **MS ALDRED:** Thank you.

27 Q. And then finally, I just wanted to, if I can just take you
28 to the final section of your brief of evidence,
29 Ms Hrstich-Meyer, which starts at 6.8 and it's regarding
30 changes still to come.

31 A. Yes.

32 Q. Or to occur, can I have you read, please, from paragraph 6.8
33 to the end of your brief of evidence?

34 A. Okay. The development of wraparound servicing delivered by a
35 single point of contact responsible for supporting the

1 claimant through the process as well as acting as a
2 co-ordination access to the support the claimant needs, i.e.
3 such as Kāinga Ora, Work and Income, health services. Access
4 to the service would not be contingent on a claim having
5 been assessed and will be available after the claim is
6 formally closed by the Ministry.

7 And I'm thrilled to say, and this is not in our brief, we
8 started a pilot on the 1st of October it will include 15
9 claimants, we have 5 already on that pilot, two are Cooper
10 Legal claimants, the remainder are direct claimants. One
11 claimant who came to that pilot, it was actually quite
12 moving. The number of issues that he had was really
13 substantial and quite sad. He had accommodation issues. He
14 had five children but only one of them was actually with
15 him. He had health issues. He didn't have a GP. He was
16 struggling to know what support he could get for that child
17 with him. He experienced high levels of anxiety and there
18 were just so many other things, it was so sad. And that
19 service is working through that with him.

20 Part of the work that that pilot is doing is working with
21 those claimants to see what they need but also, to help us
22 understand for when we go further what else we need because
23 I think there might be - we always envisaged that there
24 would be a time when people didn't want to work directly
25 with us, could actually work through that, you know, a
26 connector, so that was something that we had thought about
27 when we developed process.

28 Q. Great. If you could just keep reading, please.

29 A. So (b) talks about the independent local facilitator.

30 (c) investigating the possibility of including whanau
31 reconnection support as part of that package, and I will
32 just add that that is something we have asked the current
33 provider to look at.

34 (d) investigating existing support networks for survivors of
35 abuse in State care to understand whether there are gaps in

1 the current supports available and to gain advice on the
2 Ministry's role in addressing any identified gaps.

3 (e) talks about new options for how a claimant may
4 receive an apology. We have sought feedback from claimants
5 about what they would like to receive as part of the apology
6 and are considering ways to further implement that.

7 I can say that we have made some changes, and this
8 relates to direct claimants because we don't actually speak
9 to our legally represented claimants.

10 When we meet them and provide the feedback, we actually
11 ask them what would they like in their apology letter. Now,
12 we are constrained but it's amazing at the variety of
13 things. And I just give you a few examples because I see
14 every apology letter before it goes to the Chief Executive.

15 Some people actually don't want anything about their
16 abuse in the letter. Others want detail and acknowledgment,
17 and what we do, or try to do, is say that you have talked to
18 us about sexual abuse, physical abuse etc., and we apologise
19 for that. We don't name alleged perpetrators. But some
20 claimants actually say, one example "Look, I've been through
21 this and yet I've got a job, I'm working. Can you just, can
22 you acknowledge that?", so we will actually make sure that
23 we've actually put that into the letter.

24 So, yes we have a template that has a few things at the
25 top and bottom but what you will find is that the letter
26 will change for every direct claimant where they've asked
27 for something. And it might be, and sometimes they don't
28 want very much. And most of the times we can manage what
29 they want.

30 Q. Thank you. And then if you could, at (f) you talk about
31 improvements in terms of provision of information to Oranga
32 Tamariki to help support improvements to the current care
33 system?

34 A. Yes, that's a bit of a work in progress because the
35 application is up and running now but yes.

1 Q. I think you've already dealt with (g)?

2 A. Yes.

3 Q. Which is about potential whanau involvement or group
4 approaches?

5 A. Yes.

6 Q. And, again, also probably you've dealt with (h), at least in
7 relation to the initial material provided?

8 A. Yes.

9 Q. And if you could - and you've said also, I think, that
10 you're still doing work on how to assist people?

11 A. Yes.

12 Q. In relation to going through their records?

13 A. Yes.

14 Q. Once they are available. And if you could just finally, just
15 talk through (j) and (k) or read those?

16 A. Okay. So, one thing that our support team does is actually
17 ask the claimant how often do they want to be contacted. For
18 some claimants, they want to pause things, so there's that
19 proactive contact.

20 Second thing is that ongoing continuous improvement,
21 which is we know we haven't got everything right. So, we
22 want to keep talking to claimants. Part of that is the
23 surveys that we send at various steps and we send surveys
24 at - yeah, so at the various steps so we can get feedback.

25 Lastly, as I mentioned before, is the systems improvement
26 work where we're actually looking at our process.

27 **COMMISSIONER ERUETI:** Can I just ask, Ms Aldred, just
28 briefly about the surveys, about - it's good to see
29 you're getting that feedback directly from claimants,
30 whether you have an external evaluation process of how
31 the ADR process operates?

32 A. No, we haven't but my recollection in the budget, I could be
33 wrong but I'm pretty sure there's something in there that
34 says that we need to have that process looked at because

1 we've received a lot of money for this area which is really
2 great.

3 **COMMISSIONER ERUETI:** Mm-Mmm. Also on the 6.8 (c)
4 investigating the possibility of including whanau
5 reconnection, and paragraph (g) Historic Claims will
6 investigate the possibility of using the group
7 approach. It sounds tentative to me about
8 investigating the possibility, you gave an account of
9 your personal experience, how - yeah, tentative is the
10 question, why is it so tentative?

11 A. Well, I think we have redesigned our process so differently
12 and I think the things we are trying to add in are those
13 therapeutic supports because claimants say it's not about
14 money.

15 So, when we went to our Minister and to Cabinet, to
16 Treasury, we wanted to make it really clear we can't do
17 everything from day one. So, we're working through that.

18 We've had three cases now where whanau have been involved
19 and we're trying to incorporate as much as we can but we
20 didn't, when we made that budget bid we wanted to make it
21 really clear that it was going to take time to do these
22 things because we want to do them properly.

23 **MS ALDRED:**

24 Q. Just on that point, it might help to clarify, I mean you
25 obviously wrote this brief of evidence?

26 A. Yes.

27 Q. Some months ago?

28 A. Yes, I did.

29 Q. And it sounds like you've been putting these things,
30 particularly in relation to (g) which is whanau or group
31 settings for meetings, into - so, rather than necessarily
32 being something that's envisaged, it's now something that's
33 happening; is that correct?

34 A. Yes, thank you.

35 **COMMISSIONER ERUETI:** There are three cases so far?

1 A. My understanding is there are definitely three, there could
2 be more but I've heard of three.

3 **COMMISSIONER ERUETI:** Ka pai, thank you.

4 **MS ALDRED:** Thank you. Thank you, Ms Hrstich-Meyer, if
5 you could just remain for further questions.

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LINDA LJUBICA HRSTICH-MEYER
QUESTIONED BY MS JANES

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CHAIR: We have 10 minutes before 1.00. Can we clarify what the proposal is for the lunch break? There was some talk about shortening it, is that right?

MS JANES: If it is acceptable to the Commissioners, half an hour.

CHAIR: This is in the interests of enabling our witness to be concluded today?

MS JANES: Yes, we are trying to not bring her back next week, if it was possible to have half an hour for the lunch adjournment and come back at 1.30.

CHAIR: 1.30, all right. Would you like to start now?

MS JANES: If I may. There's probably a couple of very quick topics that I can deal with.

Q. One is there's some high level macro issues. As I've been listening to evidence over the last three or four days, the Department provides policy advice to their Ministers; correct?

A. Yes.

Q. And I'm assuming it's correct that that goes up with recommendations and Ministers either agree with those recommendations or disagree with those recommendations?

A. That's right. I think, as Mr MacPherson explained, there are some things which the Ministry can determine but for those bigger policy issues, yes, they will go with recommendations normally.

Q. And so, when it comes back down either agreed or disagreed, my sense from the evidence I've heard is that the Department is then bound by those particular decisions?

A. Generally, yes, that would be the practice.

1 Q. And then, apart from those more formal channels, there is
2 internal discretion as to what the Ministry can do about
3 policies or process settings? So, policy on the one side but
4 you can determine your 2018 process without Ministerial
5 approval?

6 A. In this particular case where we wanted to make significant
7 changes, we alerted the Minister as to our intention and
8 explained what our process would look like, to ensure that
9 the Minister was comfortable with that approach, policy
10 approach.

11 Q. What's exercising me slightly, is teasing out particularly
12 the civil litigation part at which your evidence has been
13 that that was entirely separate from the Historic Claims
14 Process, but it's trying to find that line of accountability
15 and where MSD can make a decision in its own right versus
16 where it is bound by the views of Crown Law or bound by
17 Cabinet decisions.

18 It seems a little bit of a catch 22, in terms of policy
19 advice goes up, decision comes down, but it is very
20 dependent on that process working and who's accountable?

21 A. And I think, I could confirm Mr MacPherson, that if there is
22 a Cabinet direction, then we will follow that, and I think
23 that has been apparent throughout, that we have the Crown
24 Litigation Strategy, so all government departments that deal
25 with abuse would be bound by that.

26 Certainly, I think what was reflected yesterday and the
27 day before in the evidence, is meritorious over time has
28 changed from that initial, you know, that pre, you know that
29 early 2006 or before, it was legally meritorious, where I
30 think as we've started to go through the ADR process that it
31 refers to meritorious in that model sense. So, I think we
32 have seen, certainly through the evidence, that there has
33 been a change of thinking over time as the ADR process has
34 developed as an alternative.

1 Q. Would you accept that the Cabinet directive was very much
2 the Crown Litigation Strategy but that includes settling
3 meritorious cases early where you could and the suggestion
4 was not to use the Limitation Act, particularly in the Lake
5 Alice.

6 But where does the interpretation of those principles and
7 those strategies lie within the Department, in terms of how
8 you then implement and design your processes?

9 A. Well, I think it was probably reflected in some of the
10 evidence yesterday of the various working groups and
11 governance groups, and also while it is an alternative
12 disputes resolution process, there are a number of legal
13 issues involved.

14 So, if we do need interpretation on various aspects, we
15 will talk to Crown Law as part of one of the government
16 agencies to determine is what that means and I think
17 certainly there has been a change, certainly from my
18 perspective, about what meritorious means, which was that
19 legally to more of a moral one.

20 Q. It's going to come to a much bigger one than for now but
21 another big topic that it feeds into is disparity, so after
22 lunch we will be looking at the areas of disparity because,
23 just very briefly, you've told us that the litigation path
24 is very separate or at least it was up until, is it still
25 have separate from historically?

26 A. It is very separate in the sense that we will make, and I
27 can only think of one exception, is that we will always make
28 an offer under the ADR process. Certainly while I've been
29 running the area, is that we will always start with that,
30 even if it's a old claim. And it's only when it gets to the
31 point that we can't settle it under the ADR process, if
32 someone decides they want to continue through that process.

33 Q. So, would you be saying that the process has changed because
34 we've certainly heard in the White process that they

1 repeatedly requested an ADR process, they got no answer to
2 that?

3 A. Yes, the process has changed. I think that was a period of
4 time which was quite different. I think 2014 was perhaps
5 where the change occurred.

6 Q. Okay.

7 A. From my view.

8 Q. So, Mr Wiffin would fall within that category as well
9 because he also requested ADR and a meeting was held but it
10 was -

11 A. He almost like, he kind of straddled some of that period,
12 it's unfortunate. I think he did get caught in that.

13 Q. We've seen documents?

14 A. Yes.

15 Q. It was very clear, by all means hold a meeting but it's not
16 going to affect the litigation pathway. So, you're saying in
17 2014, approximately, people -

18 A. In my view, yes.

19 Q. - people were able to more seamlessly transition across one
20 pathway to the other?

21 A. Well, I think that's certainly a reflection that we don't
22 actually - well I don't think that litigation, we would
23 prefer not to get into litigation because it's traumatic. I
24 mean, we've heard the experience of survivors, it's just
25 awful. And so, I mean, if we could, for us success would be
26 if we could have everyone go through an alternative dispute
27 resolution process, if that was their choice.

28 Q. And we've seen a lot of documents and looking at the Māori
29 consultation page that you went to this morning. So there's
30 that view expressed by the feedback about the reality of
31 where legal representation is interposed in the system, it
32 brings some complexity. And I've seen documents where MSD is
33 very much trying to move to dealing with claimants without
34 that legal representation element; would that be correct?

1 A. Yes, but just bearing in mind that if someone wants to see a
2 lawyer, that's totally appropriate.

3 Q. Because that's really part of that whole complexity?

4 A. Yes.

5 Q. Is that if you're doing full and final settlement and there
6 are a range of process options, you'd accept that it's
7 important that a claimant is fully informed, understands
8 what process they're opting in or out of, what the
9 consequences of that will be for them, and they may not
10 trust that information to be impartially provided to them by
11 the agency they're dealing with?

12 A. I totally endorse that point.

13 Q. So, they're not saying that the claimants should somehow be
14 precluded from obtaining -

15 A. Not at all, no, no.

16 Q. And particularly in terms of the BORA claims and some of the
17 other more complex areas, you'd accept also that those were
18 areas that either advocacy or independent or legal advice
19 would be important for a claimant to feel confident about
20 the decisions they're making?

21 A. Yes.

22 Q. And then just very quickly, resources. I'll just very
23 quickly deal with resources because we heard from
24 Mr MacPherson that, albeit you had received \$95 versus
25 \$125 million in the budget bid, that he felt reassured that
26 that did not mean there were budget constraints, that there
27 was the option to go more. You would confirm no sense of
28 budget constraints?

29 A. Not at all. I'm pretty sure that that was actually reflected
30 at the time, that this was to setup the new process and we
31 could go back. It was very clear, and particularly when we
32 picked up the pre Oranga Tamariki claims during this
33 process, that you know our claims are going to go for much
34 longer because we've got a younger cohort of potential
35 claimants.

1 Q. And I saw from paragraph 3.72 of your primary brief, it
2 talked about the human resources that you had and I got a
3 sense from your evidence, that you also didn't feel
4 constrained in terms of now the body count that you have to
5 be able to process claims?

6 A. I have actually gone over my body count in relation to how
7 many staff I needed. For example, in the area of information
8 requests, we have had, for June and July, over 100 requests.
9 And so, yeah, I've had people come in on fixed term
10 contracts and so forth. So, I don't feel constrained and I'm
11 being supported by the leadership team and my Deputy
12 Chief Executive to increase my numbers if I need to.

13 Q. So, I suppose what puzzles me, is that for two years there's
14 been no budget constraints, there's been no resource
15 constraints, but we still have less than 50 per cent of the
16 claims unresolved. Clearly, timelines are a major issue. How
17 can we have budget and human resources and still there is
18 this major backlog and lack of ability to move them through
19 and get them resolved?

20 A. The difficulty, I think, is that when we went and made our
21 budget bid, that it was actually to get rid of the backlog.
22 So, the backlog is so big that actually, to move forward we
23 need to be able to remove that.

24 Last year, from memory, I think we, and bearing in mind
25 that this was over a period that we had to recruit new
26 staff, we had Covid, we couldn't do interviews etc. I think
27 we actually assessed 277 claims and we're hoping that those
28 numbers over time will increase. But we have been challenged
29 by this as a really - as you're saying, at the moment, you
30 know, Bill of Rights issues etc. So, it is something that
31 keeps me awake at night as to how we will deal with that.

32 Q. But if you've only been able to assess 270 claims and you've
33 got well over 2000 still outstanding, that doesn't all go
34 well for timings, does it?

1 A. Well, we were never going to complete over 2000. The money
2 we received was to complete up to 1864. And, bearing in mind
3 that last year we started with 30 and we've been recruiting,
4 so you can't speed up those things when you're going through
5 that process.

6 Q. So, at any point does one take a step back from that
7 individual by individual settlement and say the problem in
8 the size and the nature of what we're dealing with is
9 something that we actually don't just modify our current
10 process, we look at a wholesale change? And I might leave
11 that question with our witness to think about over lunch.

12 **CHAIR:** Yes, over lunch. I would like counsel to
13 confer, please, about timing. I think it's important
14 that no witness feels rushed and no counsel feels
15 rushed, and we must give every opportunity for
16 everybody to fully explain their position. So, I'm
17 anxious that we're not rushing too fast. So, we did
18 indicate before we might take half an hour for lunch,
19 I think that is also something up for grabs. What I
20 would like is for counsel to confer/consult, and if
21 anybody wants to know how long lunch is going to be,
22 if they could wait until we've had the discussions and
23 that will be publicly advised because I don't want to
24 start quickly and leave people out, otherwise I don't
25 want other people to come rushing in, only to find
26 they still have to wait for half an hour. If everybody
27 could be a little patient and we will get this right.
28 And the most important thing is that nobody feels
29 rushed or constrained by time.

30 **MS JANES:** Thank you.

31 **CHAIR:** We will take the lunch adjournment for however
32 long it is deemed eventually to be.

33 **MS JANES:** I am very grateful to the Royal Commission.

34 **Hearing adjourned from 1.05 p.m. until 1.45 p.m.**

35

1 **CHAIR:** We seem to have had dimming of the lighting. Is
2 this mood lighting? It's all right, as well as we can
3 see you, Ms Janes, all is well.

4 **MS JANES:** We'll take the afternoon as it progresses.

5 **CHAIR:** As it happens, through storm and flood and all
6 the rest of it.

7 **MS JANES:** Thank you. Commissioners, if I may just give
8 you a very brief update of where we are at in terms of
9 the proposal for Ms Hrstich-Meyer's evidence.

10 **CHAIR:** Yes.

11 **MS JANES:** I think it's important that we explore the
12 processes. The Commission has been given a good
13 outline of the 2008 processes in place now, and
14 obviously the Inquiry will over time examine and look
15 at those further. But for today's purposes, I think we
16 will look at the processes up to that 2018 timeframe
17 and then it's open to the Inquiry, there are a lot of
18 other processes that can take place outside of the
19 public hearing forum.

20 **CHAIR:** You are referring to round tables and other
21 more informal settings?

22 **MS JANES:** Yes, and interviews and correspondence, so
23 we will take a range of options to explore further.

24 **CHAIR:** We are going to concentrate up to?

25 **MS JANES:** 2018.

26 **CHAIR:** 2018 system I shall assume?

27 **MS JANES:** Yes.

28 Q. Ms Hrstich-Meyer, with that bit of background, you talk in
29 your evidence that processes were largely the same between
30 2007 and 2018, apart from the fast track?

31 A. Yes.

32 Q. I may call it the Two PA process?

33 A. Either is fine, I know it as both.

34 Q. Excellent, thank you. And so just taking a step back, my
35 understanding is that consistently over the period through

1 various consultations and feedback processes, it's very
2 clear what claimants expect or want from a redress process
3 and it's set out helpfully in Mr MacPherson's evidence at
4 paragraphs 5.28-5.31. But if I may summarise and correct me
5 if I've got anything wrong.

6 There are six primary principles or outcomes that are
7 important to claimants. One is compensation, another is to
8 tell their story. Third, acknowledgment of harm, A service
9 response, public awareness raising to prevent recurrence and
10 an apology. Does that accord with your understanding of
11 effectively what claimants are looking for you to deliver
12 through the MSD ADR process?

13 A. Yes, it is, with one comment, that certainly in relation to
14 the consultation process, compensation didn't seem to be as
15 big a factor as some of the others.

16 Q. Just very quickly on the apology part of that equation,
17 we've certainly heard evidence that there are concerns about
18 occasionally naming particular perpetrators or abusers?

19 A. Yes.

20 Q. But did you also hear the questions to Mr Young about -
21 there are claimants, such as Mr Wiffin, who seeing just the
22 word "abuse" with no acknowledgment of the fact that it was
23 physical abuse, sexual abuse, so a real acknowledgment of
24 their experience. How do you, when you give that apology,
25 because you've said many people have different expectations
26 or desires, how do you actually find out what they need and
27 then deliver a tailored apology to them?

28 A. So, as I explained before, and I can only speak for direct
29 claimants because we don't talk to Cooper Legal or
30 represented claimants, we ask them. Now, there will be some
31 things that we cannot put in an apology. For example, an
32 alleged perpetrator's name in most cases, for the reasons
33 outlined in my brief. But we will really try to actually
34 accommodate what they need.

1 Q. And in terms of the Cooper Legal clients, is there any
2 impediment that you couldn't find out through that channel
3 what those particular claimants needed or wanted in their
4 apology letters?

5 A. Yes, we could.

6 Q. Would that be something that you would consider doing in
7 future, so that it is a meaningful apology for all
8 claimants, no matter where they sit?

9 A. Yes, we could consider that and have a talk to Cooper Legal
10 in relation to that.

11 Q. And you may not have seen it but Dr Steven Winter provided a
12 submission to the Inquiry that was part of our bundle.

13 A. Yes.

14 Q. I don't want to go particularly to it, except to the fact
15 that he did look at nine issues that he evaluated, just to
16 give you the background, he evaluated the MSD processes from
17 2004 through to 2018. Just for the transcript, the reference
18 is MSC ending in 593. He had five concerns that came out of
19 his evaluation process. If it's helpful we could pull the
20 document out.

21 A. Yes, please.

22 Q. So, if we can pull that out and while it's coming up, if I
23 could just talk to them and then it should be up by the time
24 I get through it?

25 A. Thank you.

26 Q. So, the nine in order were lack of appropriate regulation,
27 non-transparency - it's on page three.

28 A. I don't think this is the right document.

29 Q. No, ending in 593. So, we have non-transparency, lack of
30 impartiality, lack of consistency, limited and uncertain
31 range of redressible injuries, slow speed, lack of Māori
32 engagement, insufficient provisions for records access, and
33 insufficient provision of survivor's support.

1 I take it, looking at those, probably none of them are a
2 surprise, in that they were also common themes that MSD has
3 heard from other evaluations or feedback processes?

4 A. Yes. We also spoke to - Dr Winter was actually part of the
5 expert group that we consulted with, so certainly he did
6 provide feedback there.

7 In relation to those nine factors, I think a significant
8 number of those we've actually dealt with in a - or are
9 starting to deal with in a new process.

10 Q. And in terms of the timeframe that you think they will be
11 remedied, you've talked about a three to four-year process.
12 Are you confident that each of these nine criticisms have
13 been either fully understood, in terms of engagement and
14 consultation, and therefore are transferred into the new
15 process or are there still some outstanding and, if so,
16 which ones and what is happening?

17 A. I suspect that some of them we haven't completely dealt with
18 but will over time and I think the recommendations from the
19 Royal Commission will assist. I mean, lack of appropriate
20 resolution is a tricky one because Historic Claims is what
21 it is and to change that would require some changes.

22 The transparency one we are certainly working on and I think
23 you will see that there's a lot more information provided on
24 our website. And I also note that when we do write policy,
25 that we do advise Cooper Legal and send them copies of that
26 information.

27 Consistency, I think we would say, yes, there are different
28 processes but that, in relation to quantum, and I know
29 Cooper Legal would disagree with it, that we are consistent.
30 The think the range of redress we are dealing with.

31 Slow speed is certainly something I acknowledge.

32 Sorry, the Māori engagement, lack of it, I think we are
33 working on that. I don't think we've landed is the wrong
34 word, but I think it is a continuing process.

1 Insufficient provision for records access, well I think
2 that's something we're continuing with.

3 And I certainly think the survivor support work is
4 something that we have approached in this new process.

5 Q. So, if I may just touch briefly on the survivor support in a
6 slightly lateral way.

7 A. Yes.

8 Q. You've talked about, you keep a register of people with
9 disabilities and it records which disabilities they have
10 communicated to MSD.

11 A. So, yes, we do keep a record of that type of thing, if a
12 claimant has told us, we do ask them and yes.

13 Q. What is the avenue that you achieve that information? Do
14 they fill in a form or do they self-report or do you
15 actively seek that information from them?

16 A. To be completely honest, I can't remember the exact
17 scripting for some of those discussions which do go off
18 script but I am pretty sure that they are asked when they
19 make their initial claim and at various other times, so yes,
20 that's my understanding.

21 Q. And do you have any sense of numbers that may come within
22 that category? You very helpfully provided the ethnicity
23 statistics this morning. I don't know if you have it at your
24 fingertips?

25 A. Sorry, I don't. But certainly, if the Royal Commission
26 wanted it, we could source that information.

27 Q. And in terms of the supports that may be available, if
28 you're holding an interview with a claimant who may have
29 some form of disability, whether it be deaf or mental health
30 or whatever, would they have to ask for particular support
31 services to be available or would they be offered because
32 they are noted in the register as requiring it?

33 A. It was actually a question I asked, indirectly asked one of
34 our support staff, and they used the example of a deaf
35 person and said that they would offer to arrange a sign

1 language person to be there, or alternatively, that and also
2 whether they wanted an agent or someone to act on their
3 behalf in relation, so, yes, that would be what we would do.
4 We're not constrained, in the sense of any particular
5 things. We can work out what a claimant needs, we will offer
6 suggestions but if there is something a claimant thinks will
7 help them, we will try to accommodate.

8 Q. And in terms of further support, you've talked about
9 counselling being available, irrespective of whether the
10 claim is being assessed or not. Can you tell us whether or
11 when that changed because we've certainly had evidence from
12 Earl White that very early on in a request for ADR and offer
13 of settlement, he wanted and needed indefinite counselling
14 and never received any counselling. How can the Commission
15 be confident that people who request and need counselling
16 actually are receiving the counselling because we've heard
17 that so little has been spent on it and we heard your
18 evidence this morning about numbers not taking - but it did
19 strike me that 18 offers over a 5 year period seemed very
20 small?

21 A. A couple of things, I couldn't tell you when counselling
22 began to be offered and we could check on that but I'm
23 pretty sure it was in the 2014 handbook, I'd need to check.
24 In relation to, yes, we do offer counselling. I'm not sure
25 how, and we approve it and go through that process with
26 them, but if someone decides not to take up counselling, I'm
27 not quite sure what we can do. But I appreciate the uptake
28 numbers are low.

29 Q. And would you accept, in the past, MSD appears not to
30 perhaps have responded to all requests for counselling that
31 were made to it?

32 A. I'd accept that in relation to Mr White's evidence, but,
33 yeah, I would need to see other examples to say it was more
34 than that.

1 Q. Has that type of analysis, in terms of looking back at what
2 has occurred in other claims, occurred?

3 A. Not that I'm aware.

4 Q. Because redress is monetary and non-monetary?

5 A. It is, I agree.

6 Q. And we've certainly seen references to the intention to
7 provide non-monetary services but very little actual
8 delivery of those. Now, those may not have appeared in
9 documents. So, the question is, in terms of access to other
10 non-monetary redress, whether it be housing, education,
11 financial, litany, there is a whole range that claimants may
12 need. What can you tell us about how that was dealt with,
13 what was provided, up to 2018?

14 A. So, certainly I can talk to you about certainly the period
15 2017 and slightly earlier in relation to the process after
16 Two PA, perhaps beforehand.

17 Sorry, I've just completely forgotten the question. Can you
18 repeat it?

19 Q. Non-monetary redress and what happened up to 2018?

20 A. I've just completely lost my train of thought, I'm so sorry.

21 **CHAIR:** Take a deep breath.

22 A. Sorry.

23 **CHAIR:** As I understand it, we've heard the evidence
24 about the extra steps that are now being taken to
25 provide assistance to claimants.

26 A. Yes, I've got my thought.

27 **CHAIR:** And the question is before that, before that
28 started, I think.

29 A. Yes. My apologies, I got distracted by trying to think how
30 long I had been involved in the process. But certainly,
31 prior to the 2018 process, we had senior social work
32 advisers that were talking to claimants and it would be
33 quite common that they would talk to them about what
34 supports they needed and often if there was an issue in
35 relation to Income Support, Work and Income benefits. Being

1 part of MSD, they would actually talk to the regional office
2 and so forth to connect someone with that person.

3 I think the nature of being social workers, is they were
4 actually particularly helpful in connecting people in
5 relation to various things. And, for example, they also, I
6 know some examples of where people wanted to connect with
7 ACC and our staff supported them to do that or find
8 information for them.

9 So, I would say that they were doing it well beforehand.

10 **COMMISSIONER ALOFIVAE:** Can I ask a question there,
11 Ms Hrstich-Meyer? When a referral was made, was there
12 a system in place that that would then be actioned or
13 does the person just go into the queue? If there was a
14 Work and Income issue or request or there was a
15 Housing request or an ACC request, it's one thing to
16 make the referral but how soon was that actioned?

17 A. I think that it was at the time that they had those
18 discussions over the phone, and the reason I say that is,
19 from time to time we have claimants that are quite unwell
20 and they would talk to senior social worker advisers, and
21 I'm talking about the process beforehand, with some very
22 serious health issues, where there are things that you have
23 to deal with immediately. And I don't want to go into the
24 detail but I can if you need me to, where we connect with
25 the Police or the CAT (Crisis Assessment and Treatment)
26 team. So, I think in that sense, it's dependent on what the
27 issue is but I certainly think if someone was saying they
28 were having trouble with money, we wouldn't be waiting for
29 years to help them. We would be looking at, you know,
30 dealing with what we could at the time.

31 **COMMISSIONER ALOFIVAE:** I guess, what I'm really trying
32 to get at, did it rely on the relationships between
33 the person in your office and the other agency, or
34 were the systems actually in place to support it so
35 that there was a pathway for referrals?

1 A. I think in fairness it was more the relationships pre-2018.

2 **COMMISSIONER ALOFIVAE:** Okay, thank you.

3 **MS JANES:**

4 Q. Has that changed?

5 A. I think it has been changing and is changing, in the sense
6 that, with the employment of so many staff, we have
7 connections with all the places that they worked before,
8 ACC, Corrections, etc. but that Lead Partnerships Adviser,
9 that's one of the key roles for those connections.

10 So, we talk a lot to Corrections about a really hard
11 issue, which is how do you pay prisoners money when it's
12 over \$200 into their bank account?

13 Q. I suppose, the problem that arises is, again that word
14 "disparity" comes to my mind, in that if you have a
15 particular claimant who has a particular person they're
16 dealing with at MSD, who has a particularly good or bad
17 relationship or traction with other agencies, that
18 consistency and equity and disparity can become problematic.

19 Would you accept it would be preferable to have a more
20 formal arrangement that was responsive, irrespective of who
21 the actual referrer individually is?

22 A. That's certainly one option, it certainly is.

23 Q. Moving on to the range of evaluations. As I understand it,
24 there has really only been the one independent evaluation by
25 Justice Gallen. I suppose, one could put the CLAS
26 (Confidential Listening and Assistance Service)
27 recommendations in a semi-independent -

28 A. Yes, I agree, yes.

29 Q. And so, we've looked at the Gallen Report and I don't think
30 we need to look at that further, apart from Dr Winter's,
31 that delay was a feature in pretty much all of those cases?

32 A. Yes, it was, yes, I appreciate that.

33 Q. So, going then chronologically, the next evaluation was by
34 the Centre for Social Research in 2012, and again you don't
35 need to look at it in great detail but effectively that was

1 dissatisfaction with apology letters, communication through
2 the process and delays were sort of the three common themes
3 that, as I read that, popped out?

4 A. I would agree with that. There were also some positive
5 comments as well.

6 Q. Absolutely. And then, again chronologically, CLAS in 2015, a
7 lot of their recommendations. And I think this one and the
8 Allen + Clarke are particularly important because of the
9 timing. They were sort of around the 2015 when you were
10 starting to think about your processes?

11 A. Yes.

12 Q. So, for the record, the CLAS Report is at Crown tab 72, the
13 recommendations are on page 37. I don't know if we have that
14 loaded, we may not have. No, we don't.

15 So, if I can just talk -

16 A. I am reasonably familiar with them but if you can talk
17 through them, then I can respond.

18 Q. Absolutely. And we may just take them one by one.

19 A. Okay.

20 Q. It's not a memory test.

21 A. Thank you.

22 **CHAIR:** Can you give us the number again, I think some
23 of us may be able to access them.

24 **MS JANES:** Excellent. It's Crown tab 72.

25 **CHAIR:** Thank you.

26 **COMMISSIONER ERUETI:** This is the CLAS Report?

27 **MS JANES:** This is the CLAS report.

28 Q. And we're going to be turning to the recommendations which
29 is part six on page 37 of the Report.

30 So, one of the recommendations, and I have just picked
31 out the ones that are -

32 A. More relevant?

33 Q. Yes. So, the suggestion or the recommendation was to take
34 urgent steps to complete the resolution of claims for those
35 in care before 1992, including the claims in the High Court.

1 So, just taking that one, when that was received in 2015,
2 and that recommendation was read, and you will recall that
3 this is 1103 claimants, the combined knowledge that came
4 from those interviews. One of the overwhelming and first
5 recommendations was that they need to be dealt with. What
6 are you able to tell us about the status of implementing
7 that recommendation, in terms of those complaints before
8 1992?

9 A. So, my recollection in the report back to the Minister, was
10 that there was a reference to the agreement of Cabinet to
11 carry out the Two Path Approach, so that was a way of
12 settling a large number of claims.

13 Q. And in terms of the claims in the High Court?

14 A. From memory, I can't recall any specific comment in relation
15 to that. The focus was on the ADR process in relation to
16 that response.

17 Q. Are you able to help us at all about what the status of the
18 filed claims are in terms of resolution? Are they still
19 sitting -

20 A. I couldn't tell you without doing some work, sorry.

21 Q. And then the second recommendation of relevance was
22 "acknowledge the need for accountability by designing an
23 independent authority like the Independent Police Complaints
24 Authority, to resolve historic and contemporary claims and
25 hold the sector to account".

26 This just raised, there are touchpoints in every process
27 where one steps back and evaluates the past and looks to the
28 future.

29 It would seem that 2015 was one of those pivotal
30 touchpoints. So, given that very clear recommendation based
31 on very broad and probably the most relevant material that
32 was available to MSD.

33 A. Yes.

34 Q. Was consideration given at that point to really be quite
35 brave and courageous and go, let's actually look at an

1 independent agency? It had come through the Human Rights
2 Commission Draft Report, CLAS Report; can you talk us
3 through why that does not seem to have been something that
4 was given any credence?

5 A. I think, from memory, that the government or Minister at
6 that time was comfortable as to where to the claims process
7 and I can confirm that there wasn't a lot of - there wasn't
8 any work done in relation to what an independent authority
9 would look like but certainly it was one of those
10 recommendations that, so to speak, was parked.

11 Q. I suppose it comes back to my first discussion this morning
12 though, Ms Hrstich-Meyer, in that if there's falsely
13 reassuring information going up to the powers making these
14 decisions, if the hearing of the size and problem is
15 manageable, there's no systemic abuse or endemic failure,
16 would you accept that decisions are made based on the
17 information that is provided?

18 A. Yes, decisions are made on the information provided but my
19 experience is that sometimes decisions can be made the
20 opposite of what you recommend or the information you
21 provide.

22 Q. Again, going back to our discussion this morning, if that
23 decision is made, the Department is bound by those
24 decisions?

25 A. Yes, in effect.

26 Q. So, if one's trying to, in the round, look at accountability
27 and where it lies - because this Commission is going to be
28 having to look at redress processes.

29 A. Yes.

30 Q. And what accountability measures and decision-making powers
31 would be appropriate. What, if anything, would you say on
32 that topic to guide us?

33 A. That's quite a difficult question and I'd need to reflect on
34 that for some time. But potentially, I think part of
35 Mr MacPherson's comments about that if you want to change a

1 system and you want to regulate it and, you know, provide
2 legislation, then that actually will take time but that
3 potentially could provide more, what's the word, certainty.
4 And the type of things I'm thinking about is if you wanted
5 to change, and I know you're talking about independence, but
6 also things like the Limitation Act or so forth. Sorry, I
7 don't know if I answered your question.

8 **COMMISSIONER ERUETI:** Can I just clarify the time that
9 we're talking about here? Are we talking about after
10 CLAS, the recommendations were made?

11 **MS JANES:** Yes.

12 **COMMISSIONER ERUETI:** Can you remind me when the Report
13 came out?

14 **MS JANES:** In 2011, the Human Rights Commission
15 effectively recommended an independent agency, 2015
16 the CLAS Report recommended an independent agency.

17 **COMMISSIONER ERUETI:** Thank you.

18 **MS JANES:**

19 Q. And then the third one that I wanted to discuss with you, is
20 the recommendation to urgently and independently review the
21 data from CLAS and the Historic Claims Team to ensure
22 lessons are learnt.

23 And you will have heard the discussion with Mr Young
24 about the body of knowledge and did MSD at any point take
25 the time to step back and evaluate all of the information it
26 had available to it, from a range of sources on its
27 databases, in terms of its filed claims, and take a macro
28 look about what the size and nature of the problem was.

29 So, the question really is, did this recommendation get
30 picked up? And what action was taken? And, if not, why not?

31 A. I think my understanding was that we had
32 transcripts - sorry, we had a number of interviews from the
33 CLAS meetings because we had the consent. Plus, we also had
34 the - and we had the Historic Claims information. And I
35 would say, my understanding was that we used that

1 information that we received from assessing claims through
2 those processes to provide I think it's monthly or
3 fortnightly feedback to the then Child, Youth and Family in
4 relation to what we had learnt. In relation to that bigger
5 picture, no, I don't think we did but we were certainly
6 providing themes and details of what type of things were
7 coming through in our claims, which would have included the
8 CLAS ones we were assessing.

9 Q. And I noted earlier your comment that it was difficult to
10 provide counselling for prisoners?

11 A. Yes.

12 Q. And CLAS also recommended that -

13 A. Yes, they did.

14 Q. - that there should be an independent listening and
15 assistance service for prisoners to reduce recidivism and
16 lower risk to the community; was that put in place?

17 A. At the time when MSD looked at that, from memory they didn't
18 comment because they thought that was something that
19 actually sat with Corrections.

20 Q. I suppose, something that has puzzled me, from all sides of
21 the equation I've heard how supportive people are of the
22 CLAS process?

23 A. Yes.

24 Q. And the benefits and healing and assistance they provided to
25 claimants but it was time limited for 2008-2015. Why has
26 that not ever been considered to keep that service going
27 forward?

28 A. My recollection is that the original timeframe, that it was
29 extended. In relation to that, my reflection on that, not my
30 personal view, is that I think at the time, and
31 certainly - and I've thought about this a lot - we didn't
32 recognise that, in fact, what CLAS was, which I think is
33 something that we've incorporated in our current process,
34 which was that the therapeutic, the wraparound part. And I
35 recognised one day that actually, that's the bit that with

1 CLAS going, that's the bit that we lost. And so, I know
2 we're not talking about 2018 but that was certainly an area
3 that we felt that was really important to our new process.

4 So, I think in a way I'm agreeing with you, that they
5 provided a very important service or a support to our
6 claimants.

7 Q. Because my understanding of that process, was the value to
8 claimants certainly was that therapeutic part?

9 A. Yes.

10 Q. But also, the independence part? That for claimants at least
11 it was sufficiently removed from MSD to not be an
12 organisation directly linked, associated with where the
13 abuse occurred? So, it was the independence, it was the
14 therapeutic, it helped them access their records, understand
15 their records, it helped them access WINZ and ACC. So, it
16 was very much a process that was a wraparound service for
17 them at the time? And that, it just seems puzzling that that
18 might not be an adjunct that goes side by side with the
19 monetary compensation assessment process?

20 A. So, I'm not sure whether you're asking me to agree with you
21 or what that question is.

22 Q. And, I suppose, you've talked, I know we're not going into
23 2018.

24 A. No.

25 Q. But we are talking about the independent facilitator type
26 role, is that going to be as broad as the CLAS was?

27 A. Yes, well, certainly the - and I mean we're still designing
28 it, so I can't confirm what that will finally be. But
29 certainly the idea was, actually, that person doesn't have
30 to actually have any touchpoints with us, with the Ministry,
31 if they don't want to. That person can connect with us to
32 get the files, to provide details of their claim, to go
33 through their claim with them. So, yes, I think it's a very
34 similar thing that we have proposed and I think perhaps at

1 the time we didn't realise the significance of that which
2 has become very apparent with the consultation.

3 Q. Next in time was the KMPG Report 2016?

4 A. Yes.

5 Q. For the record, that's at Crown tab 78. I don't particularly
6 want to spend a lot of time on this report, apart from two
7 matters.

8 One is, it recognised that MSD, as I think we all
9 recognise, that there is a trade-off between the robustness
10 of the process and the timeliness of a process. And I will
11 ask you a bit later about full assessments and Two PA and
12 the challenges of those.

13 The point I did want to pick up in the KMPG Report, was
14 were there recommendations that there be a standard
15 assessment within six months, so resolved within six months?
16 So, if you went on a standard assessment process, it would
17 be resolved within six months, including - (music playing).

18 **CHAIR:** That was exciting. Maybe somebody was falling
19 asleep and needed to be reminded. Is that okay?

20 **MS JANES:** Do we need to adjourn?

21 **EXECUTIVE OFFICER:** No.

22 **MS JANES:**

23 Q. Moving along.

24 **CHAIR:** You had better repeat, we were talking about -

25 **MS JANES:** I'll start right back where I was.

26 **CHAIR:** Standard assessment of six months.

27 **MS JANES:**

28 Q. Standard assessment, within six months it was going to be
29 assessed, it would include a fact check, incorporation of
30 knowledge gained through previous gained assessments, and
31 then there was going to be a comprehensive assessment which
32 would take up to two years involving a comprehensive review
33 of the claimant's file, including assessment of practice
34 failings.

1 In terms of those recommendations, and again this was
2 leading into the new process development and design, was
3 that picked up? And, if not, why not?

4 A. I think it certainly has been picked up in relation to the
5 development of the new process. I do make the comment
6 because I'm very familiar with that report, is that I'm
7 pretty sure there were footnotes that indicated that the
8 six-month period and up to two years was actually just an
9 example, it wasn't actually a definitive -

10 Q. I think the word it used was indicative?

11 A. Indicative, sorry. Because we had a number of discussions
12 with KMPG about backlogs and so forth.

13 So, it was really, well, this would be, you know, a good
14 best practice but it would be dependent on numbers and so
15 forth.

16 Q. And in context, the Commission has looked at the New South
17 Wales model litigant rules?

18 A. Yes.

19 Q. Which also sets a two year horizon?

20 A. Yes.

21 Q. So, they may well have picked up from international -

22 A. Yes.

23 Q. Obviously, from a claimant's perspective, the ability to
24 have a claim filed, assessed, resolved within either
25 six months or two years, would seem to be a very valuable
26 option. Is that ever going to be feasible under our current
27 system?

28 A. As I mentioned before, the funding we have at the moment,
29 and we can go back and get new funding, is actually to
30 remove that backlog. So, until we actually clear that
31 backlog, it's going to be very hard to be able to do that.

32 So, I would hope in the future that we could get to that
33 stage because the delays are too long at present.

34 Q. And do you need to look at innovative ways to clear that
35 backlog?

- 1 A. Potentially, yes, and in hindsight, one of the things that
2 is slowing us, I know we're not talking about the 2018
3 process but I think it's a good example, is to include Bill
4 of Rights issues is slowing us down significantly because
5 you need to look at each case individually. So, that's where
6 there are trade-offs and I think the KMPG Report talked a
7 lot about trade-offs. People were very critical of - sorry,
8 Cooper Legal were very critical of Two PA and took the
9 judicial review. And you're always going to, and where the
10 previous assessment took up to six to eight weeks just to
11 do, you know, for one Senior Social Work Adviser to actually
12 assess a claim, now that would mean that you wouldn't do,
13 you know in the past you wouldn't be able to assess more
14 than 100 claims. And while it was very thorough and there
15 was a memo, a very detailed memo etc. for it, those
16 trade-offs are really important. But when you do those
17 trade-offs, you're giving away something, and that's
18 something that is always a challenge for the Crown because
19 we have to - we're looking at those trade-offs all the time.
- 20 Q. Just to paraphrase, Ms Hill in her evidence, she accepted
21 that there could and should be a range of options available
22 for claimants but a fundamental important element was
23 informed consent. So, proper information about what those
24 trade-offs were?
- 25 A. Yes.
- 26 Q. Access to advice to make that decision in an informed way.
27 Would you agree with Ms Hill that if one is looking at
28 implementing a range of different options, those as a
29 minimum are certainly the critical elements?
- 30 A. I agree and I'll just use the example of Two PA. In the
31 offer letters, it did actually suggest that claimants seek
32 legal advice and we actually funded that.
- 33 Q. And just because this may complicate your life rather than
34 make it easier but looking at the BORA claims, I assume that

1 MSD is keeping an eye on international human rights law;
2 would that be fair?

3 A. Yes, that's something we tend to defer to Crown Law.

4 Q. So, just then a question, in terms of - because there was a
5 case in 2014, the European Court of Human Rights of Keith v
6 Ireland, which looked at the equivalent of our section 9,
7 Article 3, which accepted that sexual abuse is cruel and
8 degrading treatment. So, if one is keeping up with
9 international human rights and Bill of Rights developments,
10 has MSD, since 2014, looked at reframing what might fall
11 into the BORA breaches?

12 A. Probably - I'm just mindful of privilege, legal privilege.
13 My answer would be that the issues around BORA are being
14 discussed between MSD and Crown Law and the wider agencies
15 involved.

16 Q. So, at the moment, those types of inclusions or exclusions
17 are currently under discussion, yet to be resolved?

18 A. Yes, that's been an ongoing discussion. I feel a bit, it's
19 like -

20 **MS ALDRED:** That discussion really isn't one that I
21 think can be had in this forum, thank you.

22 **MS JANES:**

23 Q. Because the question that just arises out of that, by way of
24 example, was that disparity issue. So, I keep returning to
25 it. As you have iterative processes and landscape change,
26 albeit for very sensible reasons on their face, in terms of
27 trying to clear backlogs or whatever, but if one accepted an
28 international human right extension, what then happens to
29 all the claims that have gone before where there was not an
30 effective remedy, in terms of a BORA damage?

31 A. I don't think I can answer that question, I'm sorry.

32 **MS ALDRED:** Sorry, I would just like to, because this
33 is a matter, one of the rare matters that is subject
34 to an ongoing claim of privilege by the Crown, I

1 really think those questions around that area can't
2 proceed with the witness.

3 **MS JANES:** It's really about the disparity issue, so
4 that's fine, I'll use other examples of disparity.

5 **CHAIR:** It is enough to point out that there may be a
6 disparity in that area, we won't go into it, but you
7 can cover the point of disparity in other areas.

8 **MS JANES:** Exactly, thank you.

9 Q. So, carrying on, just looking at the reports because we'll
10 try and do disparity in a more consolidated way. So, after
11 the KMPG Report, we then went to the Allen + Clarke Report
12 in 2018?

13 A. Yes.

14 Q. And, for the record, that's at Crown tab 85 and there were a
15 large number of recommendations made, so I will just point
16 out the ones that may be of particular interest to talk
17 about today.

18 The first one being, providing appropriate mental health
19 support as soon as they lodge a claim and maintain support
20 throughout the process for as long as needed.

21 Obviously, that's a prospective one, in terms of 2018.
22 But, just in terms of the processes up to 2018, can you
23 clarify if support was available from the inception and
24 through the lifetime of the claimant or just was it time
25 limited, in terms of the assessment process or the
26 litigation process?

27 A. Well, we certainly offered support when a claimant connected
28 with us. I'm not 100 per cent sure whether it stopped when
29 the claim finished but that's something that the new model
30 recognises that, actually, redress doesn't necessarily or
31 resolution - resolution may never happen but a claimant may
32 need support afterwards. I can't answer the whole period,
33 I'm sorry.

34 Q. But the intention, as I understand it, is that something in
35 future will be able to -

1 A. We will be looking at that, yes.

2 Q. We won't labour the reduced timeframes for resolving because
3 you've certainly conceded that.

4 One recommendation that they did make was to develop a
5 single claims resolution process for all abuse, regardless
6 of the entity involved.

7 And this is something that has also been talked about by
8 Cooper Legal and others, in terms of looking at the Donna
9 Matahaere-Atariki statement, the trauma, you know, you can't
10 separate out what happened in the MSD residence if you then
11 also were in Ministry of Education.

12 Was there any consideration at that point, again while
13 you were changing processes, to take a step back and say,
14 "Actually, if it's about claimants and not about
15 departments, should we actually look at putting together one
16 organisation that treats the claimant to end"?

17 A. We certainly, when we were designing the process we were
18 very aware that it would be beneficial for the Crown to have
19 one process. There are perhaps, and I certainly know when we
20 spoke to Oranga Tamariki, and I think Mr Groom will be able
21 to speak to this, that he certainly made the comment that in
22 their process, they would look at what they had done.

23 Certainly, in relation to the Ministry of Education, I think
24 when you look at the standard of process, which is the
25 longer one, if you reject your initial assessment, I would
26 say those two are very similar. And I certainly know that
27 MOE, the Ministry of Education, but it's more appropriate
28 for them to confirm that, is that they used similar quantum
29 to us but that's a question for them.

30 So, I think certainly there was consideration about how
31 you could fit this altogether but I think the Royal
32 Commission has been particularly timely because that is a
33 question I am sure that you will be - the Commission will be
34 spending many hours on.

1 **COMMISSIONER ERUETI:** Can I make a point there? The
2 Cabinet Paper from December last year, also one of
3 their recommendations was a unitary system. Has
4 anything been done to respond to that?

5 A. My understanding, I'm not directly involved with that but
6 there has been a number of discussions at Crown level as to
7 that work and who needs to be involved in it etc. So,
8 certainly, yes, my understanding is there is some work
9 underway. I don't know the extent of that at this point but
10 yes.

11 **COMMISSIONER ALOFIVAE:** Ms Hrstich-Meyer, just in terms
12 of the claims that have gone on before with the
13 multiple entry points, there's a sense that it's more
14 agency focused than it was survivor focused, in terms
15 of following the narrative of the claimant; would that
16 be fair?

17 A. Certainly in relation to my Ministry, I think we always try
18 to be claimant focused but I think over time we are becoming
19 more claimant focused and I certainly think our 2018 process
20 is more claimant focused. But I accept at times it looks
21 like, and I suppose it's only natural that at times you will
22 do things that suit the government. But certainly the aim is
23 that we are claimant focused and that's certainly what we
24 try and reflect going forward.

25 **COMMISSIONER ALOFIVAE:** Certainly going forward but
26 reflecting back, the agency focus is just on their
27 particular involvement, so being able to - so, all of
28 the intentions of the officials was not enough to kind
29 of bridge whatever the practical operational blocks,
30 for want of a better word, to bridge that, to be able
31 to bring a whole package, which sounds like was the
32 intent of certainly MSD?

33 A. I think it was the intention. Certainly in relation to joint
34 claims with the Ministry of Education, we did work together
35 on those quite closely. We intend - and that's the intention

1 certainly with Oranga Tamariki, is to work together. And,
2 again, I'm talking about going forward, we don't want there
3 to be a wrong door but -

4 **COMMISSIONER ALOFIVAE:** And does that come back to the
5 fiscal responsibilities and in terms of -

6 A. Yes.

7 **COMMISSIONER ALOFIVAE:** - what your reporting
8 mechanisms are, that you are always having to report
9 up line?

10 A. Potentially it could, yes.

11 **COMMISSIONER ALOFIVAE:** Thank you.

12 **MS JANES:**

13 Q. At the risk of leading us astray, can I just pick up a point
14 on those particular answers because you've talked about it
15 being about the claimant and not the agencies, and we
16 certainly have this recommendation in 2018 about the
17 necessity to have a single claims resolution process but we
18 did see, when Cooper Legal were giving evidence, I think it
19 was the letter from the 24th of August this year, in fact,
20 where now they do have to go through two doors, so it almost
21 looks like the system is regressing in terms of the claimant
22 experience. And they talked, in particular, about you may
23 have a range of abuse experiences within MSD. You might also
24 have had one in school but you would have to carve out one
25 teacher allegation and so, it would never - there was not
26 much utility in terms of the grief and time involved in
27 pursuing that, so that would never be acknowledged or
28 addressed.

29 Can you just explain for us why it looks like we're
30 actually going backwards in that particular area?

31 A. So, in relation to the Ministry of Education and MSD, we did
32 put into place a new process which differed to the one we
33 had before which the Ministry of Education used as well. So,
34 we've had a number of discussions in relation to that and,
35 whilst we have different positions and it's probably

1 appropriate for the Ministry of Education to give that
2 advice, while that may look like going backwards, I
3 certainly think the Crown are working together in relation
4 to there is no wrong door and that we would always try to
5 make that as seamless as possible, so that if MSD or the
6 working was working with Oranga Tamariki or there was a path
7 that was Ministry of Education, that we would try and make
8 that as seamless as possible. But I accept that that may not
9 be 100 per cent possible if you don't have a one claim
10 process or one stop shop.

11 Q. Just going back, Commissioner Erueti asked you about the
12 2019 Crown Resolution Strategy. One of the principles was
13 being joined up?

14 A. Yes.

15 Q. Can you explain to us what that means and how that is being
16 interpreted or going to be implemented, as far as you're
17 able?

18 A. Well, certainly, I think the idea of being joined up is, I
19 think has always been around. We've had the Chief Legal
20 Advisers Forum in relation to the areas that deal with
21 historic claims, we meet regularly to discuss legal issues.
22 We have various governance groups where various agencies
23 would discuss issues. We have the Royal Commission group.

24 So, in that sense, I think we are joined up but various
25 agencies, while we have similar issues, there are probably
26 different pressures or risks in relation to those. So, I
27 think certainly the important thing, from my perspective, is
28 that we keep talking about those things.

29 Q. I suppose, from the claimant's perspective, they would
30 rather see action?

31 A. Yes, well, from talking there can be action.

32 Q. Thank you. And then back to the Allen + Clarke Report, it
33 was a recommendation for an independent process from MSD. It
34 also went on to talk about "determine payment levels by the
35 impact of abuse rather than the type of abuse experienced".

1 Before we look at that, can you just clarify for us, in
2 terms of the ADR processes running up to 2018, and you've
3 said that payment quantum is based on an acknowledgment, it
4 can't compensate?

5 A. That's right.

6 Q. But is the starting point the act of abuse or the impact of
7 abuse?

8 A. The act. So, the comparators would look for claims that were
9 very similar and with the Two Path Approach there were
10 categories of abuse, so yes, so that's my response.

11 Q. So, for all of the period that we're talking about, it was
12 the act of abuse?

13 A. I would say that, yes.

14 Q. Was any consideration given to this recommendation about
15 looking at changing that paradigm to effects of abuse
16 because you have some very resilient -

17 A. Yes, and certainly the Principal Analyst that I employed
18 certainly did a lot of work on the categories and, as you
19 can see from the categories from 2018 and the Two PA, they
20 are different. So, there was quite a lot of analysing a
21 number of things in order to - and you'll see that with the
22 categories under 2018, that there's factors like
23 vulnerability, like if it's a child and they can't speak and
24 so forth. So, there were some changes.

25 Q. And then, the time I wanted to take you to, it talked about
26 considering a handwritten apology, rather than a written
27 letter, as it seemed more genuine. Is that something that's
28 ever been considered by the Department?

29 A. I think certainly apologies is something we have been
30 considering and is still a work in progress. Certainly, I
31 think if I proposed to my Chief Executive someone
32 particularly wanted a handwritten apology, I suspect she
33 could probably do it, in the sense that it is very, the
34 apology is very important. And certainly, it's something I
35 think we still need to do some more work on, apologies. I

1 think we've moved in the right direction but I think because
2 one of the comments in consultation was what about a group
3 approach? You know, that the Chief Executive or the
4 Minister, you know, they meet, they have some kai and
5 there's apologies. So, there could be a lot more work and
6 there will be work done but, yeah, we haven't done it yet.

7 Q. And recognising that every claimant is going to respond and
8 need different things?

9 A. That's right.

10 Q. Certainly, Mr Earl White still does not believe he's had
11 resolution because the apology, he believes, is not what he
12 needs from an MSD official?

13 A. Yes, and I think certainly I would say that I think we have
14 moved on in relation to what we include in our apologies and
15 that we do talk to our claimants.

16 Q. So, moving on to quantum and categories, in terms of how
17 they've involved over this particular period. We did hear in
18 the Cooper Legal evidence and looked at documents between
19 Cooper Legal and Mr Young, that no categories were developed
20 until the Two PA process?

21 A. Right, yes.

22 Q. So, I take it that in terms of devising that Two PA process,
23 that was the first time it became, sort of, a burning
24 platform to be able to devise categories to be able to
25 classify and get a backlog to modify in-between those?

26 A. That was my understanding. Mr Garth probably would have more
27 knowledge but that's my understanding. Sorry, Mr Young, not
28 Mr Garth.

29 Q. Were you involved at all in looking at those categories? You
30 would have been in a legal position at that time?

31 A. I was in a legal position, so my role related more to legal
32 issues than the work that related to how the categories came
33 about. I know there was, and I've seen the memos, as to the
34 work done by the people that do that number crunching and

1 that type of thing, and I know Mr Young spent quite a lot of
2 time with them working through that.

3 Q. And you'll recognise that the recent Ombudsman casenote -

4 A. Yes.

5 Q. We have seen it, so unless you need us to we won't go to it.

6 A. No.

7 Q. I take it, you would accept the Ombudsman's opinion that it
8 is important for claimants to absolutely understand what the
9 guidelines are, what the likely outcomes are, and that
10 should be readily available to them?

11 A. Yes, yes.

12 Q. We also noted in Cooper Legal evidence that there was a
13 letter from you that effectively for a 12 month period now
14 that is publicly available, there will be additional
15 scrutiny on any new allegations that are made subsequent to
16 that publication. Can you just talk us through -

17 A. So, what that means, is that - so, from the date that we
18 published that document on our website, any new allegations
19 after that date will potentially require a step two, bearing
20 in mind that that will be very few claims at this point
21 because of the backlog and that we made it very clear that
22 that was an interim position that we would be looking at
23 reviewing that.

24 So, at this point, we don't anticipate that it will
25 actually affect very many people at all, if any.

26 Q. Just going back to a period when you were - I think the
27 first-hand book is around 2014?

28 A. Yes, I think it was. Yes, it was, sorry.

29 Q. And I noted a document which is not in our bundle so I can't
30 show you but I can put for the record, CRL41893. The short
31 point really is, it talks about the Handbook not yet being
32 signed off but some 50 claims are in the process of being
33 assessed. It goes to that consistency and transparency
34 issue. Are you able to advise which process?

- 1 A. Sorry, I'm just a little bit - was that the document in the
2 Inquiry bundle?
- 3 Q. No.
- 4 A. Sorry, could you just -
- 5 Q. It is not in our Trial Director bundle.
- 6 A. Could you just repeat what document that is?
- 7 Q. It's CRL0041893.
- 8 A. Can you describe?
- 9 Q. It's a May 2014 Claim Strategy Group minutes. So, it's
10 really just, what process would be used while the Handbook
11 was in the process of development; the old process or the
12 new process, or did it not change? Did the 2014 Handbook
13 just document the process?
- 14 A. I don't know if I can answer that question. I'd have to look
15 at the document.
- 16 Q. Let me simplify the question. The 2014 Handbook, was that a
17 new process or was it just formally documenting what had
18 happened up until that point?
- 19 A. I suspect it was formally documenting that but Mr Young
20 would be able to confirm that.
- 21 Q. And then just looking at going back to the processes. I
22 understand that in 2015 you took over from Peter Taylor as
23 Chief Legal Adviser?
- 24 A. No, Peter Taylor was the Acting Chief Legal Adviser. At that
25 time, I had been appointed to the Principal Solicitor
26 Historic Claims. So, he was there for a period of, I think,
27 three to six months probably.
- 28 Q. We all have this document MSC428. Just as it's coming up,
29 I'll give you some context.
- 30 A. I am familiar with that.
- 31 Q. You are familiar with that one?
- 32 A. Yes.
- 33 Q. It's a 29 January 2015 email from Peter Taylor to yourself,
34 handing over his position as said, which is why I had -
- 35 A. That's completely understandable.

1 Q. Oh, that's not in the Trial Director. That's okay.

2 **CHAIR:** You recall the document, do you?

3 A. I recall the general comments, legal comments, from the
4 Chief Legal Adviser in that to me.

5 **MS JANES:**

6 Q. And do you recall that he raised a number of concerns about
7 the 2015 process, that in the handover there were his
8 reflections and observations about the process?

9 A. Yes. I think my recollection is that he had a number of
10 concerns in relation to this - he thought we needed to step
11 back a bit and he was looking at it - any case that was
12 going towards -

13 **MS ALDRED:** Excuse me, I have located the document. May
14 I provide it to the witness?

15 **MS JANES:** What I thought I might do, is actually move
16 that topic down and, in the break, I can get some
17 copies made.

18 **CHAIR:** It is an important document obviously. Thank
19 you for the offer, Ms Aldred. You are going to stop
20 that line of questioning now and resume when you have
21 the document ready for everybody?

22 **MS JANES:** Yes, but I am very grateful to my learned
23 friend for finding it.

24 A. Certainly, my comment to that document, but I can certainly
25 look at it, is that a lot of his concerns were dealt with in
26 our new process and I recall that that email was just
27 "here's some thoughts to think about" but I'm happy to look
28 at it again in detail.

29 Q. From the Inquiry's perspective, there seemed to be some
30 quite important thoughts and so I would quite like to go
31 through them and just get your reflections on what may or
32 may not have been done subsequently with those observations.

33 So, I may actually just very quickly deal, at this point,
34 with what is required to file a claim. And it's really in
35 the context of the Alva Sammons matter.

1 So, just highlighting the topic, it's deceased claimants.
2 You gave evidence that while sympathetic to the Sammons
3 sisters and to Alva Sammons, it was a firm view that she had
4 not filed a claim and, therefore, was not able to receive
5 any compensation?

6 A. Yes, in relation - well, we don't use the word
7 "compensation" because we're not actually paying
8 compensation. But certainly, that is our view and I think I
9 mentioned previously, obviously as you will be aware there
10 was an Ombudsman complaint and we talked through that with
11 the Deputy Chief Executive at the time, we talked through
12 what the Ombudsman had recommended and got to a place that
13 what they were expecting from the Ministry is that when we
14 dealt with the other two sisters' claims, that we could
15 provide some information about Alva and an apology. But, in
16 that sense, my understanding was that they were agreeable
17 that it wouldn't go through the claims process and I
18 understand there was a letter, which I think might be in the
19 bundle, that was sent to the Ombudsman in relation to that.

20 Q. You will know Cooper Legal's evidence to the Commission?

21 A. Yes.

22 Q. That in effect information was provided in 1992. So, just
23 talk me through, what was required in 1992 to note because
24 that's something that's changed over time as well, in terms
25 of what is required. So, 1992, what would have constituted
26 advice to MSD about a complaint?

27 A. Well, I think in 1992, my understanding, and I wasn't there
28 at the time, was there wasn't a claims process, so I think
29 the option would have been filing in Court, litigation.
30 Because my understanding is that the discussion that Ms Alva
31 Sammons had related to a claim by her sister.

32 Q. The information the Commission has, is that Alva Sammons
33 filed the complaint. Her sister later filed a claim and then
34 the other sister. So, perhaps if I read from the transcript.
35 Cooper Legal's evidence transcript, page 556, starting at

1 line 1, talks about the Alva Sammons case. "Nothing
2 demonstrates that more than Alva Sammons where she took the
3 details of her claim to MSD in 1992. She told her story to
4 the Ministry and when she found out that Georgina and Tanya
5 were suffering, had suffered the same abuse, she died and
6 the Ombudsman recommended that the Ministry engage with her
7 claim and MSD declined. That was in June 2016".

8 A. Well -

9 Q. Just to finish, and then they went on to say, when asked,
10 that the information that Alva had provided in 1992 was, in
11 fact, more than was required to lodge a claim currently.

12 So, on that basis, why has MSD not been able to look at
13 the morality and the merits of the case and deal with this
14 particular case?

15 A. I think, as I mentioned earlier, we had that discussion with
16 the Ombudsman that we came to agreement. And I make that
17 comment from the records we have because I wasn't involved
18 with that, that we could talk through her claim and we could
19 acknowledge what happened. And we have offered that to
20 Cooper Legal, which my understanding hasn't been accepted.

21 The bigger picture, and I think I raised this comment
22 before, is it's actually a really hard issue that the Crown
23 is grappling with and my understanding is that none of the
24 agencies, and they may correct me if I'm wrong, accept a
25 claim from an estate.

26 Q. In fact, there are two cases where they have. And so really,
27 again, the question is why the disparity in two cases and
28 not in the Alva Sammons case? So, the two documents, I won't
29 say the names, but there is a Mr A case where MSD paid the
30 reasonable costs of obtaining letters of administration to
31 finalise the claim at the time of death a claim had been
32 filed, the investigation was complete.

33 So, in those cases, it was said to be a reasonable but
34 exceptional circumstance.

35 **CHAIR:** What day was that?

1 **MS JANES:** This is 16 September 2013. The document is
2 MSC416.

3 **CHAIR:** Is that the date of the claim?

4 **MS JANES:** That is the date of the letter. Actually,
5 that's an interesting point. I'll check that.

6 **CHAIR:** The question is, when did the man/person
7 actually file his claim.

8 **MS JANES:** Yes.

9 **CHAIR:** Or make -

10 **MS JANES:** And the date may actually be in relation to
11 communicating about deceased claims generally, so let
12 me check that point in the break.

13 A. Maybe I could answer that?

14 Q. Yes.

15 A. It sounds to me and without seeing the document if it is a
16 MSD one, if someone has filed a claim before they died then
17 we will continue to deal with it. It's when they haven't
18 lodged a claim before death. For me, from the limited
19 information you gave me, it actually sounds like they have
20 and we will continue through that process with some
21 difficulty but I could be wrong because I don't know what
22 particular case you're talking about but I just wanted to
23 clarify that we do that. That if someone has lodged a claim
24 and dies, that we will continue to assess it.

25 Q. And hopefully this document is available, MSD2164. It's
26 dated 30 May 2018. It is a letter to you from Christy
27 Corlett and it is advice on claims after the death of a
28 claimant.

29 A. I can't actually read this copy.

30 Q. It's not very clear, apologies. One of them is Alva Sammons.

31 A. What you have provided, sorry now I know what the document
32 is, it's policy options when someone has died and a claim
33 has not been lodged before their death. And my understanding
34 is that -

1 Q. Perhaps I can help you and if we go to page two,
2 paragraph nine. It talks about "While the death of the
3 plaintiff does not preclude the continuation of the claim,
4 it does present significant practical difficulties".

5 So, the first question is, would it be reasonable, given
6 the amount of information that MSD had about Alva Sammons
7 from 1992, to consider that that was a claim? But then it
8 goes on to say, "Proving a claim without the evidence of a
9 plaintiff would be very difficult, though there may be
10 circumstances where proof is not an issue (such as an
11 offender being convicted)". And so, in that perspective, one
12 would think that the hurdle was overcome because you had not
13 only the information from Alva Sammons, but also her two
14 sisters who were in the exact same placement.

15 So, taking those two together, and in that document there
16 is the example at page 3, para 13, I might need to go over
17 the page - can you just take that down so I can see the
18 document? Go to the next page. There's a particular example,
19 yes, this is the one I'm after, thank you.

20 So, if we look at 14b), if you can just read that,
21 Ms Hrstich-Meyer?

22 A. "Mr [] instructed Cooper Legal in 2012 who obtained his
23 records and nearly completed a letter of offer before Mr []
24] died in 2013. The Ministry initially refused to process
25 the estate's claim but later agreed on the basis that Mr []
26] had set out his claim to Cooper Legal before his death,
27 that the Ministry could progress a claim. This is
28 inconsistent with the Ministry's current policy as we do not
29 consider a request for records to be a claim lodged with the
30 Ministry".

31 Q. My understanding is that an exception was made in relation
32 to that particular claim?

33 A. Yes, from what it says here, that seems to be the case.

34 Q. So, in terms of disparity and exceptions, would you consider
35 that Alva Sammons would be consistent with this particular

1 resolution and fairness of equity should recommend a similar
2 outcome?

3 A. Well, I think in this particular case, and it's now coming
4 to me, I think the difference was that this person had
5 instructed Cooper Legal - had gone to Cooper Legal wanting
6 to make a claim and that he died before that occurred.

7 My understanding with Alva Sammons is while she talked
8 about the issues, she didn't specifically say she wanted to
9 take this further. I know that seems a bit of a cop out but
10 I think this is an issue I think the whole Crown are
11 grappling with and, I accept, we need to get to the bottom
12 of it and determine, and I think what the Crown's position
13 is on deceased claimants estates, and whanau that want to
14 make a claim. And I know that's probably not particularly
15 acceptable but I think it's actually, it's a wider than MSD
16 issue to determine.

17 Q. And obviously, it's not for you to make decisions about
18 particular claims on the spot and in the public spotlight
19 but a complaint was made to the Ombudsman. The Ombudsman was
20 very firm in his recommendations to MSD to relook at Alva
21 Sammons case because he felt that a claim could be found to
22 have been made in 1992 on the information that was made
23 available. But the wider point is that earlier in your
24 evidence you did talk about complaints to the Ombudsman as
25 being one channel of review; do you recall that?

26 A. Yes and I think I mentioned earlier in my evidence, and it's
27 also in my brief of evidence, that the Ombudsman did make a
28 finding and we actually went back to the Ombudsman for
29 clarification. A discussion was between the Deputy
30 Chief Executive at the time and the Ombudsman Office and
31 they came to an agreement on what the intention of that
32 decision was, and that was confirmed in a letter sent by the
33 Ministry back to the Ombudsman's office.

34 And I think that certainly if it's not in the bundles, we
35 can certainly make it available because it's very relevant.

1 Q. Because what concerns me, if we go to pages six to seven,
2 paragraphs 45-49, and the main paragraph there, so this is -

3 A. Sorry, which paragraph, sorry?

4 Q. 45-49, they relate to Alva Sammons' case. And so, in 46,
5 further line down, "The Ombudsman was of the view that
6 Ms Sammons' complaint in 1992 constituted a claim for the
7 purposes of the then Historic Claims Process and therefore
8 should be processed like other claims received before the
9 claimant's death."

10 The advice then:

11 "It is open to you to accept the Ombudsman's view. It may
12 have some precedential effect that the Ministry accepts that
13 a claim is sufficient to establish a claim in an ADR
14 process. Historical complaints are not uncommon and this
15 situation could arise again."

16 But then if we skip to paragraph 49, this is in the
17 context of your advice that the Ombudsman is an avenue but
18 this actually records, "Unlike Official Information request
19 complaints, the Ombudsman's recommendations on other matters
20 do not impose a public duty to observe the recommendations
21 on the subject Ministry or Department. Accordingly, the
22 Ministry is entitled to disregard the recommendations and
23 its legal risk will not increase"?

24 A. So, that is what the legal adviser has provided. My view, in
25 relation to reading the documentation, is that the
26 discussions with the Ombudsman's office clarified what in
27 fact the Ombudsman was suggesting that we do. So, I think,
28 I'm coming from a factually different position to this legal
29 advice.

30 Q. I suppose, the question I'm really asking is, if one is
31 suggesting the Ombudsman is an avenue for review or
32 complaint, but the legal advice is that one department may
33 disregard any recommendation or opinion unless it relates to
34 information requests, it's a very unsatisfactory channel to
35 pursue?

1 A. And my view is, I'm not actually disregarding the
2 Ombudsman's recommendations because I think - I don't
3 necessarily agree with the advice here to me in relation to
4 what was determined because the information I have seen is
5 that the Ombudsman's office clarified what they meant. So,
6 certainly, my view would be that they wouldn't generally not
7 accept a recommendation from the Ombudsman.

8 Q. Am I hearing you say that after some clarification, it
9 wasn't disregarded because the advice was different to what
10 we've seen in this document?

11 A. Yes.

12 **MS JANES:** That finishes that topic, so a good time for
13 a break.

14 **CHAIR:** Shall we take a break? All right.

15

16 **Hearing adjourned from 3.27 p.m. until 3.45 p.m.**

17

18

19

20 **MS JANES:** Just confirmation the investigations over
21 the adjournment, didn't reveal a date for the actual
22 claim we were seeking, so we will just let that lie
23 and move on.

24 **CHAIR:** And move on, thank you.

25 **MS JANES:**

26 Q. And so, we have located the other document, it has now
27 magically appeared on our Trial Director and we will go to
28 MSC428.

29 **CHAIR:** This was the Peter Taylor memo?

30 **MS JANES:** This is the Peter Taylor memo.

31 Q. So, it is dated the 29th of January 2015 and it's from Peter
32 Taylor to Ms Hrstich-Meyer. Just looking at this because
33 there were a number of matters. He talks about - so, if we
34 go to the fourth paragraph, can we just go to the third one,

1 I know you're not really in the filed claim area but this
2 was communicated to you so you may want to comment.

3 "A substantive issue for MSD and Crown Law is the age of
4 the cases."

5 And the intent is to resolve the backlog of cases. It
6 identifies there are significant risks and MSD needs to
7 consider how it makes offers to unrepresented claimants
8 before it has resolved its differences with Cooper Legal.

9 Can you just briefly outline your understanding of what
10 the issues were with the filed claims and the unrepresented
11 claimants?

12 A. I'm not sure, to be honest.

13 Q. If you can't answer, I don't want to waste time.

14 A. I don't recall what that issue was about.

15 Q. All right, we will then move to the next paragraph. It's
16 really just, again, about "the real issue for the delays is
17 resourcing". It would appear from your evidence that that
18 was resolved for but the period up to 2018, were there
19 specific periods where resourcing was an impediment?

20 A. So, I think bearing in mind that I was in the Legal Team and
21 my end standing is that this memo was talking about
22 resourcing in the Historic Claims Team, and I think, from
23 memory, this observation is that in order to get through
24 claims they need more resources, that was my understanding.

25 Q. And then if we call out all of the other observations under
26 the next, just up to "criminal investigations".

27 A. "Overall leadership and accountability.

28 - Crown Law or MSD?

29 - CAR and legal - overlaps with filed claims and unfiled
30 claims;

31 - over-arching strategy to address overall resolution;

32 - need greater programme management and clarity or roles
33 for the various aspects of the programme;

1 - current split between file claims and unfiled claims
2 and unclear responsibilities in terms of leadership and
3 approach creates risk - e.g. Whakapakari;

4 - need better management of resourcing, fact gathering
5 and pressure on CAR".

6 Q. Just taking some of those by way of examples, what was the
7 issue at that point in time about leadership and
8 accountability between Crown Law and MSD?

9 A. I recall that there was an issue of where things sit and
10 that was at a time when we were tracking to trial on a
11 number of cases.

12 Q. And just clarifying your answer, did that mean that, as we
13 saw yesterday, there were differences of views or perhaps
14 policy confusion in MSD that Crown Law wanted clarified or
15 had different advice about?

16 A. I think perhaps differing views on some things. That's all
17 probably I can add there.

18 Q. And in terms of the current split between filed claims and
19 unfiled claims and unclear responsibilities, and
20 particularly Whakapakari, what were the issues there; can
21 you just expand on those for us?

22 A. I think, but I'm not sure, that perhaps he was talking about
23 who was doing what in relation to, I think we went through
24 an issue where the Historic Claims Team was doing one direct
25 and one filed. I'm thinking that's what that relates to.

26 **CHAIR:** Do you mean one was being dealt with as a trial
27 case and one was being dealt with as -

28 A. My apologies, when they were picking claims from the
29 backlog, they would do them in date order but one filed and
30 one unfiled, and that changed later down the track to solely
31 date order.

32 **CHAIR:** Oh, I see.

33 A. Sorry, it was a bit confusing, my apologies.

34 **MS JANES:**

1 Q. Just while we're on that, why did that change the process of
2 prioritisation from one filed/one unfiled?

3 A. It became clear to me that file claims were taking a lot
4 longer and that it was disadvantaging Cooper Legal
5 claimants, so I changed that to date order.

6 Q. And so, had another change at that time being, you've talked
7 earlier about the filed claims not being in the Historic
8 Claims Team and having access to ADR, that had changed by
9 this point so that you could do that change in the date
10 order?

11 A. Yes, yes. So, by - yes, sorry.

12 Q. That's all right. Carry on if you need to.

13 A. No, I don't, thank you.

14 Q. If we go down to the ACC block.

15 A. "Are claimants getting ACC payments? If not, why not?

16 - Agreed approach with ACC over entitlements.

17 - has Cooper Legal advised their clients about this? If
18 not, why not?

19 - is there a conscious decision to accept
20 double-dipping?"

21 Q. Just in your evidence you were very clear that ACC had an
22 entirely different function?

23 A. Yes.

24 Q. And we will talk about ACC a bit later but just in terms of
25 this particular document, what was the sense at this time of
26 MSD's obligation in terms of providing advice to claimants
27 about the additional potential compensation or financial
28 entitlement?

29 A. So, I think, in relation to this particular email, certainly
30 Peter had the view that Cooper Legal should be doing this.
31 Where, in fact, the Ministry would assist someone if they
32 wanted assistance to talk to ACC and so forth.

33 So, I recall the position was that Peter, at the time,
34 did not think double dipping was appropriate.

1 Q. If they were entirely different processes, where did the
2 concept of double dipping come in?

3 A. I agree, I agree, and the Ministry didn't implement, didn't
4 look at that double dipping aspect as reflected in my
5 evidence.

6 Q. In terms of fairness and transparency, would you agree that
7 the obligation, if there is one, lies with MSD to navigate
8 claimants to other entitlements, such as ACC?

9 A. Potentially. But I also think that if someone is advising a
10 claimant, that they should be able to suggest that there are
11 other supports or options available.

12 Q. As a fail-safe, would it not be perhaps good practice for
13 MSD, just as a matter of course, to make itself the person
14 that does that so it's aware that every claimant has the
15 same information?

16 A. Yes, yes.

17 Q. If we then go over the page and if we look at ex gratia
18 payments, request you call that out?

19 A. "All claims can be and I think should be
20 settlements - advantages - greater flexibility in financial
21 thresholds - better meets requirements of the Cabinet
22 Circular.
23 - avoids need to do any legal analysis as to whether there
24 is a moral or legal obligation - adds little value - can
25 assume with old cases likely time-barred/all likely face ACC
26 bar - complex to determine in some cases whether time-barred
27 due to the nuances of the law in this area.
28 - consider removing requirement for a Settlement
29 Deed - really low risk if paid money to a claimant - can
30 make payment full and final and that is binding if payment
31 accepted.
32 - note also that does not need CLA (that means Chief Legal
33 Adviser) sign off - only required by MSD policy and
34 delegation - Cabinet Circular states only that a
35 departmental solicitor needs to sign off.

1 - can develop a straightforward financial threshold for
2 approvals - e.g. payments under \$10,000 don't need any sign
3 off - \$10,000 to \$20,000 needs GM (General Manager) sign off
4 and over \$30,000 needs Panel approval and CLA sign off."

5 Q. Just very quickly, what was Panel approval at this point in
6 time?

7 A. At that stage, a detailed memo would be prepared in relation
8 to the assessment. It would refer to comparator cases as to
9 what should be paid and that Panel, which included the
10 Deputy Chief Executive, the Chief Legal Adviser, the Manager
11 of the area and maybe some others, would meet. It changed
12 after a time where it was no longer a Panel, it just went
13 through from the General Manager to the Chief Legal Adviser
14 to the Deputy Chief Executive.

15 Q. Just trying to understand, in the early phases, ex gratia
16 payments were made where there was moral liability but there
17 may have been legal impediments such as the Limitation Act
18 or the ACC.

19 This now seems to be moving in the direction that you
20 currently are at, where everything is done by way of
21 settlements,

22 Just in terms of the internal thinking about that dilemma
23 between moral and legal liability, do settlement deeds now
24 cover both moral liability and also where facts have been
25 proven?

26 A. Yes, everything is - every person that gets an offer and who
27 accepts it, completes a settlement deed.

28 Q. And was there consideration to not requiring the Settlement
29 Deed as referred to in this particular one, given the view
30 it would be low risk if the money is paid and accepted?

31 A. There was a discussion in relation to that issue prior to
32 2018 with the Legal Team and Crown Law.

33 Q. And in terms of the settlement deeds and full and final, and
34 the Chair talked to you about the fact it was more
35 perception than real, that people did come back for multiple

1 claims and that was something up going to check on and come
2 back to us but this seems to be the genesis of the move
3 towards the settlements, rather than remaining with ex
4 gratia and settlements as a joint -

5 A. I don't necessarily think this is what made - this is not
6 where the change occurred. The thinking, we revisited or we
7 thought about that with the new 2018 process.

8 Q. Moving on to quantum. Read that through for us, please.

9 A. "Quantum. Use ASP approach - caveat, not clear the approach
10 is based on a considered legal view as to
11 reasonableness - ASP categories based on awards we have
12 settled. If those awards are flawed and not based on any
13 analysis, then the ASP categories are not reliable.

14 Ensure there is a clear record as to levels of quantum and
15 why we take the approach we do - CLO (that's Crown Law)
16 advice on awards from other Commonwealth
17 jurisdictions - comparability with ACC awards (if there is
18 any data for this) - relationship with ACC - i.e.
19 New Zealand position is unique as loss of earnings is
20 covered by ACC and we are not paying for loss of
21 earnings - NOTE there is no clear statement that is the case
22 so I am assuming this. - clarity as to what we are paying
23 for - acknowledge or recompense - objectively is for
24 liability for physical harm/emotional harm/neglect/failure
25 to ensure happy childhood etc. - distinguished by what we
26 are not paying for - can be okay to say not compensatory as
27 long as we are clear about what we are paying for and how we
28 assess the quantum. Currently the position is unclear."

29 Q. So, the important point is that your determining, your
30 starting line needs to be accurately defined. MSD talks
31 consistently about benchmarking to past payments.

32 A. (Nods)

33 Q. This appears to be questioning what the legal view of how
34 those categories actually came into being. And if they are
35 flawed, then the analysis is not reliable. Did this give

1 pause to take a step back and look at quantum in the past,
2 assess them against other benchmarks, as has been referred
3 to and really recalibrate before you then move on setting up
4 categories that were going to be based on either an accurate
5 or a flawed foundation?

6 A. My understanding, and I think I've previously said in my
7 evidence, we started from a point of looking at New Zealand
8 case law and then a whole lot of other factors. You know,
9 whether you'd be successful or not and then a number of
10 other things which I mention too in my Brief of Evidence.

11 I do recall there was some work done by Historic Claims
12 in relation to various payments in various forums such as
13 the Human Rights Review Tribunal and other places. I don't
14 know exactly when that time was but I understand that was
15 done in the Historic Claims Team.

16 Q. So, to the best of your recollection, was there any
17 recalibration at this point, in terms of the levels of
18 payment, had they been too low in the past, adequate?

19 A. Well no because I think it needs to be put in context that
20 we were just heading, Cabinet had approved the Two Path
21 Approach and we were heading towards that - to the Two Path
22 Approach. I mean, Cabinet approved it in 2013-2014, from
23 memory, but 2015 was when we in fact made those - assessed
24 and made those payments.

25 Q. Going over the page, call out just up to "Wrongdoers". This
26 talks about the relationship between unfiled cases, filed
27 cases, queries whether there's consistency between Crown Law
28 assessment and ours, "Do we align? What factors influence
29 Crown Law? And are they the same for unfiled?"

30 Can you just give us your perspective on the answers or
31 your thoughts on those particular matters?

32 A. Well, I think at this time, we talk unfiled and filed cases,
33 all those cases would have received an assessment by the
34 Historic Claims Team. If the matter hadn't resolved, then
35 they would, if the plaintiff wanted to continue on trial

1 track, if they were filed they would. And if they were
2 tracking towards trial over time, Crown Law would give us
3 advice in relation to quantum based on the further evidence
4 we'd collected to date and so forth.

5 How do we account for different levels of liability? I'm
6 not quite sure why that is commented on because the Courts
7 tend to be reluctant to - I'm not quite sure where that
8 comment has come from because we didn't, during that period
9 we didn't have any cases determined by the Court, which is
10 where exemplary and punitive damages, we didn't have any
11 cases, sorry, going to full trial.

12 Q. So, just quickly, would you say that there was consistency
13 between Crown Law assessments and yours? Or if you diverged,
14 what were the points of divergence?

15 A. Well, I think you could say there was consistency, in the
16 fact that by the time they were tracking to trial, we had so
17 much more information, so we were probably in a better
18 position to perhaps uplift or offer the same amount again in
19 relation to cases.

20 Q. And just the third bullet point, if you could read that and
21 then really talk to us about the concern that MSD could be
22 paying too little? If you could read it aloud?

23 A. Oh, my apologies. "Concern that we could be paying too
24 little as much as a consistency issue - difficult to know if
25 basis for assessment not clear - again not necessarily
26 saying we have to do the assessments with these aspects in
27 mind but we do need a clear statement as to our
28 approach - NOTE Carolyn Risk is concerned that the basis for
29 assessment is unclear and is based solely on what we have
30 paid in other cases - we can't explain the approach other
31 than by reference to previous cases - can't be certain we
32 are doing the right thing for New Zealanders."

33 Q. So, in light of that concern about assessments perhaps not
34 being or the basis for assessment not clear, were steps
35 taken to remedy that, look at it, review it, make changes?

1 A. Well, I think the position going forward, and I think I
2 mentioned earlier, is that we paid for acknowledged harm and
3 I think that's been clarified because there have been a
4 number of questions about what are we paying for, and I
5 think that's a reflection of that concern.

6 Q. And so, would you accept that if there is uncertainty about
7 what you're paying for, and there is uncertainty about the
8 process of assessment, and then that leads to uncertainty
9 about payment levels, it doesn't give a sense of a really
10 principled basis on which claims are being dealt with at
11 that particular point in time?

12 A. Possibly. But I think, reading this issues email, it's
13 actually a bit of a brain dump of every -

14 Q. I think it almost says that at the beginning, if I recall.

15 A. Sorry, these are all the issues that, over that short time,
16 that he was Chief Legal Adviser. And some of the things I
17 think we can answer quite easily and I think a lot of them
18 we have actually resolved. And I think some of them perhaps
19 with being in the Ministry for a short time, it may be that
20 if he didn't know the answers to all those questions,
21 perhaps we could have explained the answer to some of those
22 questions.

23 Q. If one is doing that very candid handover of the things that
24 are keeping you awake at night, this is clearly the list of
25 things that are uppermost in his mind that he wanted the
26 next person to be aware we're burning platforms, at least in
27 his mind, about what the process needed to relook at because
28 he clearly has concerns about lack of consistency, lack of
29 principled approaches to assessments. So, would you agree
30 that, at least in his mind, these were the things that he
31 thought MSD should look at and could do better at?

32 **MS ALDRED:** I am sorry, I really have to say I can't
33 think how this witness can possibly give the
34 Commission an answer about what was in Mr Taylor's

1 mind at the time. The Commission may take the document
2 as it finds it.

3 **CHAIR:** Yes, I've got another way of asking the
4 question, which I've been thinking about.

5 The Commission is having to build a picture -

6 A. Yes.

7 **CHAIR:** - of what the state of the various forms of
8 redress were for the payments over a long history.

9 A. Yes.

10 **CHAIR:** To the extent that we've got this document from
11 2015, obviously you can't say what was in Mr Taylor's
12 mind, other than what he's put down.

13 A. No.

14 **CHAIR:** But are you able to give us a view whether you
15 think, in your mind, that letter reflects the reality
16 at that time? And it's not to say that you haven't
17 addressed things because you've already talked about
18 what you've done since but really, we're trying to
19 take a snapshot of how things were in 2015.

20 A. So, my view is this is a snapshot of the legal issues that
21 Mr Taylor wanted us to think about. So, yes, it probably was
22 the issues that he saw from a legal perspective.

23 **CHAIR:** But are you able to say whether you think that
24 there are some matters there that you agree with,
25 matters that needed to be addressed, like
26 inconsistency and things like that?

27 A. I think there are some issues that I would agree with.
28 Others perhaps I wouldn't. But, yes, I think there were some
29 issues that needed to be dealt with.

30 **MS JANES:**

31 Q. Can you clarify, just so that we understand, which ones in
32 your perspective you would have agreed with at that point in
33 time and those that you felt may have had different answers?

34 A. I certainly think the issue of resourcing, criminal
35 investigations needed to be worked through and it was.

1 There's a whole lot of things on the second page about
2 templates and so forth that we worked through and a lot of
3 the things at that time ex gratia verses settlements
4 probably needed to be looked at, and we worked through that.
5 The issue of - they would probably be the ones that I would
6 pull out, without having more time to consider this.

7 Q. So, just to be clear, his concerns about consistency of
8 assessments and the level of quantum perhaps being flawed
9 because of lack of clarity, you don't believe were fair
10 reflections of the time?

11 A. In my view, they weren't. Perhaps my reason for saying that
12 is it my personal opinion is that I probably had more
13 knowledge of the processes, systems, and how we got to
14 various things in relation to that.

15 Q. I'm leaving that document. I don't know if Commissioners
16 have any quick questions, otherwise I will leave the
17 evidence there until Tuesday morning.

18 **CHAIR:** The one question I have, and it's not on that
19 page. It's about the layers of accountability between
20 the Crown Law Office and MSD.

21 A. Yes.

22 **CHAIR:** Do you have any views that you would like to
23 share with us about that? He had perceptions, there
24 was some confusion in the - I may have used the
25 wrong - overall leadership and accountability, Crown
26 Law, MSD. Do you share the fact that there was - was
27 there a question in your mind at that time?

28 A. Not necessarily, and the reason I say that is Crown Law was
29 the legal adviser to the Crown, so we would defer to their
30 view in most cases.

31 **CHAIR:** Yes, thank you for that. Is there anything you
32 want to ask?

33 **COMMISSIONER ERUETI:** Just to clarify your answer to
34 the question which Mr Taylor raises about how the

1 basis for assessment is unclear. I think you said you
2 pay to acknowledge harm, can you unpack that for me?

3 A. So, we make it, so we are not paying compensation as would
4 be defined in a Court because we don't test the evidence as
5 you would in the Court.

6 **COMMISSIONER ERUETI:** Yes.

7 A. What we are paying for, for the purpose of a settlement, is
8 to just acknowledge the harm and wrongdoing that has
9 occurred.

10 **COMMISSIONER ERUETI:** That's right, okay. So, if it did
11 go to Court on the facts and was accepted and a
12 payment was made, in this case it's discounted, if you
13 like, because there's no agreements on the facts fully
14 as would be proven in the Court?

15 A. I don't like the word "discounted". But I certainly think
16 that is a reflection, in that we are accepting it for the
17 purposes of settlement. So, I think the - it's quite
18 different to if you go to Court and it's that high
19 evidential burden.

20 **COMMISSIONER ERUETI:** The threshold is lower?

21 A. Yes, thank you.

22 **CHAIR:** Can I ask, just going back to the 2015
23 question, that's certainly - you've well described
24 that that is the approach you're taking now. Was that
25 the approach taken 2015 or before, that it was an
26 acknowledgment of harm?

27 A. I think it was. I don't think it's ever been referred to as
28 "compensation" in the way that a lawyer would understand
29 compensation.

30 **CHAIR:** Yes, sure, thank you.

31 **COMMISSIONER ALOFIVAE:** Just following on from that,
32 Peter Taylor was handing over the legal role to
33 yourself?

1 A. He was actually my boss. So, as he left, and I think - it
2 went to me but it also went to the Chief Legal Adviser as
3 well.

4 **COMMISSIONER ALOFIVAE:** So, he was exiting, you were
5 coming in but you'd been in the Department, so you
6 were donkey deep, my phrase, already in the work?
7 There were about 1,000 claims in the system at this
8 point, would that be right, based on some evidence
9 that we've heard over the last couple of days?

10 A. I'd have to check but certainly I was in the Legal Team for
11 many years before that.

12 **COMMISSIONER ALOFIVAE:** Okay. Were you getting a sense
13 that there was some real systemic issues that were
14 coming through, given the iterative process that
15 you've been describing for most of the day? Almost
16 like you're building the plane and you were flying it?

17 A. My reflection would be that this is probably one of the
18 hardest areas that I've ever worked in and the issues that
19 tend to pop up, and they pop up regularly and they're really
20 difficult, is something that I haven't actually experienced
21 in other areas. I don't quite know if I'm answering your
22 question, but I think the nature of this work and the fact
23 that while we have an alternative dispute resolution
24 process, it's also - the nature of it, it has all these
25 legal bits hanging that we try and remove from the ADR
26 process but, in effect, you can't. If that makes sense?

27 **COMMISSIONER ALOFIVAE:** But they were systemic issues
28 that were arising because of a whole range of
29 different allegations that were coming. You were
30 having to consider a suite of not options but a whole
31 suite of different circumstances and you were having
32 to build something around it to be able to meet the
33 needs and to be able to settle what MSD's position was
34 in terms of how to handle these claims.

1 So, would you accept that there was some real systems
2 failures or there were just bits in the system that didn't
3 connect, that didn't work, that was now actually being
4 brought to light because you were having to look at this in
5 some depth?

6 A. I think potentially that was the case throughout. And I
7 think, even though we designed a current process, I think
8 you will find, and from the evidence given by Cooper Legal
9 etc, that people have views that we haven't got things
10 right. And, as I mentioned before, that we don't always do.

11 And so, when we find something that's not right, we try
12 and fix it. And one example, if I could give you, is Cooper
13 Legal talked about there was a period where there was a
14 delay in providing files to claimants and Cooper Legal took
15 a number of claimants to the Human Rights Review Tribunal
16 and we made payments in those cases.

17 But what I did, what we did afterwards, was actually
18 we've got such a backlog, let's bring a taskforce in, let's
19 fix it. So, I did that, we brought a taskforce in and then
20 we got some advice from I think it was Allen + Clark from
21 memory, to assist us. So, I think the nature of the work is
22 when you find something you want to fix it and the balance,
23 and I'm learning that from the systems improvement work.
24 Sometimes fixing it immediately is actually not the answer.
25 It actually ends up in other bits of the system and that's
26 what I'm learning through this work, actually causes huge
27 problems. And so, what we're trying to do, is look at the
28 process as a whole and not make these changes here and
29 there, so that we can be considered and understand.

30 Now, that's quite a hard thing to do and it's - I'm
31 guilty of wanting to make changes when I see something go
32 wrong but - I hope that's answered. I don't know if it has
33 but -

34 **COMMISSIONER ALOFIVAE:** What I'm hearing, and you
35 correct me if I'm wrong, that actually you have a

1 system that the agility isn't necessarily there to
2 respond to a whole raft of circumstances and it's
3 coming down to the decision-making and the different
4 levels to be able to pull particular levers. That's
5 what I think I'm hearing you say?

6 A. I think that was occurring over time, is my reflection, but
7 I hope we're getting better at that.

8 **COMMISSIONER ALOFIVAE:** It's very ambitious to think
9 that you could get all the claims sorted by 2020?

10 A. Now, I can explain that date. When I look back at that, I
11 notice that the Webber Report related to claims up to 1992.
12 Then we picked up contemporary claims, and they weren't
13 included in that assessment. And then further down the
14 track, we picked up the pre-Oranga Tamariki claims. So, we
15 keep picking up claims along the line, so the 2020 wouldn't
16 be reflective of those later dates but I still think
17 hindsight has shown, sorry, looking back now, the numbers
18 were too low, which is very sad that - you know, we would
19 love them to be low because that would mean there's less,
20 you know, less abuse happening in the past.

21 **COMMISSIONER ALOFIVAE:** Thank you. No further
22 questions.

23 **CHAIR:** Thank you, Ms Janes.

24 **MS JANES:** That concludes our evidence for the week and
25 we will resume at 10.00 on Tuesday morning.

26 **CHAIR:** I am sorry to tell you, I think you already
27 know, you are going to have to return but we are very
28 grateful for that because it's important that we hear
29 you fully and we didn't want to rush your opportunity
30 to explain fully, so thank you for being willing to
31 come back.

32 A. You are very welcome.

33 **CHAIR:** Thank you for coming back, whether you're
34 willing or not.

35 A. You're very welcome.

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
STATE REDRESS INQUIRY HEARING**

Under The Inquiries Act 2013

**In the matter of the Royal Commission of
Inquiry into Historical Abuse in
State Care and in the Care of
Faith-based Institutions**

Royal Commission: Judge Coral Shaw (Chair)
Dr Andrew Erueti
Ms Sandra Alofivae

Counsel: Mr Simon Mount, Ms Hanne Janes,
Mr Chris Merrick, Mr Andrew Molloy,
Mr Tom Powell and Ms Danielle Kelly

Venue: Level 2
Abuse in Care Royal Commission
of Inquiry
414 Khyber Pass Road
AUCKLAND

Date: 27 October 2020

TRANSCRIPT OF PROCEEDINGS

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1 (Opening waiata and karakia)

2

3

4 **CHAIR:** Tēnā koutou katoa, nau mai kake mai ki te wiki
5 tuawhā o tēnei nohoanga. Nō reira tēnā koutou, tēnā
6 koutou, tēnā rā koutou katoa.

7 **MS JANES:** Tēnā koutou katoa. Would we like to repeat
8 the affirmation?

9 **CHAIR:** I think we can assume that you remain on the
10 affirmation that you took last week.

11 A. Yes, I do.

12 **CHAIR:** Thank you, welcome back.

13 A. Thank you.

14

15 **LINDA LJUBICA HRSTICH-MEYER - FORMER AFFIRMATION**

16 **QUESTIONED BY MS JANES**

17

18

19 Q. Good morning, Ms Hrstich-Meyer.

20 A. Mōrena.

21 Q. Just a couple of quick clarifications. We heard on Friday
22 that you became the Principal Solicitor around 2015, we
23 looked at the handover from Mr Taylor to you, June 2015?

24 A. I think that's approximately right.

25 Q. You mentioned in your evidence that you had been in various
26 roles at MSD [Ministry of Social Development] for 20 years?

27 A. That's right.

28 Q. Were they primarily in the MSD Legal Team?

29 A. Yes, they were all in the Legal Team.

30 Q. And you talked about filed claims being managed by the MSD
31 Legal Team?

32 A. Yes, they were, bearing in mind that I wasn't within the
33 Historic Claims Team during that previous period.

1 Q. But I recalled your evidence saying that the Historic Claims
2 Team effectively looked after the unfiled claims with Legal
3 Team providing advice?

4 A. Yes, that's correct.

5 Q. But the filed claims were managed by the MSD Legal Team
6 social work practice reviews prepared by the social workers?

7 A. Yes, in the early days.

8 Q. So, I just really wanted to clarify, the White case would
9 have come been the filed claims and the Wiffin claim would
10 have come within the filed claims?

11 A. Yes.

12 Q. So, would the advice and decisions in relation to those and
13 other filed claims have come from the team in which you were
14 employed?

15 A. It would have come from the Legal Team, the Historic Claims
16 Legal Team. I was working in the Operational Service
17 Delivery Team.

18 Q. I may not be able to help us but it just occurred to me
19 Mr Garth Young appeared, he was not part of the Legal Team
20 but he sat in on a lot of the Litigation Strategy meetings
21 in Crown Law in the White case and was involved in the
22 Wiffin case. Are you able to help us in the capacity in
23 which he would have been holding those roles?

24 A. No, I can't, sorry.

25 Q. And you talked about the MSD Legal Team providing advice on
26 liability and quantum and also specialist advice as
27 required. And I assume that would involve vicarious
28 liability and BORA advice?

29 A. Yes, any legal issue that needed legal advice.

30 Q. Thank you. If we can go to MSC368. We saw in Mr Young's
31 evidence that he did provide some guidance internally on
32 vicarious liability but if we can have a look at this
33 particular document which is Christy Corlett, who is Crown
34 Law, it is sent to -

35 A. It's actually MSD.

1 Q. MSD, thank you for the clarification.

2 A. Yes.

3 Q. It is to Garth Young but it's actually the bottom email that
4 I'm wanting to look at. If we can call out the three
5 paragraphs and we see it is from Leith Townshend who's MSD
6 Legal?

7 A. That's right.

8 Q. Can I have you read these three paragraphs, please?

9 A. "We have been accepting vicarious liability for third party
10 providers as part of a tactical decision to avoid the courts
11 considering the non-delegable duty of care cause of action.
12 There may also be moral arguments for accepting these
13 allegations as part of our ADR [Alternative Dispute
14 Resolution] process.

15 As part of this we have accepted responsibility for
16 physical assaults by staff members at third party providers.
17 I think that is consistent with this approach to accept
18 responsibility for those third party providers failing to
19 act on reports of concern.

20 I note that this approach only applies to the ADR
21 process. Should we ever be in a position where we are
22 heading to trial then this approach will need to be
23 reconsidered, especially in light of overseas developments
24 in the application of vicarious liability."

25 Q. So, it appears from that email, Ms Hrstich-Meyer, that there
26 is a distinction drawn between accepting vicarious liability
27 for ADR process and a different application on those that
28 are on the trial track?

29 A. Yes.

30 Q. Would you accept that that would likely lead to disparity in
31 terms of claims and the outcomes?

32 A. I think the difficulty is that it is still a grey area of
33 law and so, potentially it could lead to disparity but
34 certainly our view is that the trial track is very traumatic
35 for survivors and it's actually very hard for the Crown as

1 well to go through that. So, we try to resolve them through
2 the ADR process and that's why - but obviously they're in
3 full and final settlement.

4 Q. And if we can go to MSC ending in 442. And just as that's
5 coming up, Mr Young spoke very briefly about vicarious
6 liability and the need for particularly unrepresented
7 claimants, for MSD to take the responsibility for
8 identifying BORA [Bill of Rights Act] breaches?

9 A. Yes.

10 Q. As they would be unlikely to know one existed. So, looking
11 at this particular document, which is from again Leith
12 Townshend solicitor, internal MSD, but you'll see in the
13 first few lines that you were an attendee at this particular
14 meeting?

15 A. I am familiar with this document.

16 Q. Looking at paragraphs 2-4, if we can call those out, sorry
17 the highlighted ones, and if we can just have you read those
18 two paragraphs?

19 A. "That we would begin to recognise potential BORA breaches in
20 the ADR process but that we need to be careful about how we
21 word it in the settlement letters and memorandums.

22 That the standard templates wouldn't include a
23 consideration of BORA or tort law and the wording of the
24 letters would make that clear".

25 Q. And if we can go over the page, please?

26 A. "The comprehensive assessment would include a consideration
27 of BORA as the lawyers will be working closely with the
28 Senior Social Work Advisers. There will be some checklist
29 for legal signoff which will include whether BORA has been
30 considered.

31 A Practice Note will be drafted for solicitors to refer
32 to as part of the comprehensive assessment which will
33 outline the law and approach to BORA issues.

34 The current contemporary claims being undertaken will be
35 sent to Legal for them to provide a view on whether BORA

1 issues should be considered. This will be done via email
2 and not require a full assessment."

3 Q. So, again, Ms Hrstich-Meyer, we see that under the standard
4 evaluation, there is no consideration of BORA breaches but
5 on the comprehensive assessment there is. Again, would you
6 accept that disparity is likely an outcome in those
7 circumstances?

8 A. I think we need to remember that this is a snapshot in time
9 on the 8th of November 2016 as we were starting to develop
10 the 2018 claims process.

11 What you will actually find with the new November 2018
12 claims process, we will consider BORA for both the standard
13 and the other assessment.

14 Q. We'll look at disparity of settlements a little bit because
15 I'd like to look at them all in one particular aspect, if I
16 may.

17 So, just carrying on from here, your evidence on Friday
18 was that presently the guidance on BORA is not totally
19 clarified?

20 A. No, we're seeking legal advice.

21 Q. And I am assuming that that legal advice needs to come from
22 Crown Law or can MSD give its own guidance about BORA
23 breaches in assessing its claims?

24 A. It will come from Crown Law.

25 Q. So, in the absence of definitive Crown Law advice on how to
26 treat BORA breaches, MSD is currently still making offers of
27 settlement to claimants; correct?

28 A. Yes but I need to put a proviso with that. My understanding
29 is that any that have a BORA component, which we identify
30 for represented and unrepresented claims, we park so that
31 they can - park is probably the wrong word but they go into
32 another route so they can get legal advice.

33 Q. What happens to the prioritisation? Do they lose their line
34 in the queue as they get parked?

1 A. No because they will have been assessed in relation to the
2 particular circumstances of the case but the person, the
3 assessor, the claims assessor, either with or - discussing
4 with the leads claim assessor, will determine that there's
5 BORA areas that need to be dealt with.

6 So, often the claim is 90%, assessment is completed and
7 it's just the legal component where we need to resolve.

8 Q. Because we have seen a number of claims where there has been
9 a mixture of State care abuse and also abuse in facilities
10 that likely constitute BORA breaches, such as strip
11 searches, time on something called Alcatraz, and those
12 claimants have had to sign full and final settlements.

13 So, the question really is, for all those that have gone
14 before, where they have fully and finally resolved their
15 claims with MSD but there are BORA breaches that could or
16 should have been considered, what is available to them to be
17 able to have the BORA breaches considered and an effective
18 remedy given for those breaches?

19 A. If I can just clarify that the Two Path Approach was the
20 one-off process where we didn't consider BORA breaches
21 because we felt the quick fact assessment was not
22 appropriate for BORA breaches. So, my understanding is it
23 will be those cases that potentially don't have a
24 consideration of BORA.

25 In relation to those, claimants had the option of a
26 standard assessment. So, it's made very clear to them that
27 if they wanted a fuller assessment, they could have that
28 made, and some did.

29 **COMMISSIONER ERUETI:** I'm sorry, I'm just trying to
30 follow this.

31 A. Sorry.

32 **COMMISSIONER ERUETI:** Can I just ask about, so in 2019
33 the decision was made to consider BORA claims in two
34 groups; is that right, both represented and
35 unrepresented claimants?

1 A. So, 2016.

2 **COMMISSIONER ERUETI:** Yep, okay. But then you said in
3 2019 in your answer?

4 A. So, in 2018, when we developed the new model, we continued
5 with that. Sorry, that may have been confusing.

6 **COMMISSIONER ERUETI:** Yep.

7 A. So, unlike the Two Path Approach where that was a very basic
8 fact assessment, we didn't factor in Bill of Rights issues.

9 **COMMISSIONER ERUETI:** Yeah, good, thanks. And when
10 you say you parked up to get legal advice, you're
11 talking about both direct claimants and represented?

12 A. Yes.

13 **COMMISSIONER ERUETI:** So, did you direct the direct
14 claimants to get legal advice from a particular - what
15 was that process?

16 A. Sorry, I may have confused you. So, when we're doing the
17 assessment and if there's a Bill of Rights issue, then we
18 actually, we need to get legal advice from in-house or Crown
19 Law on those. So, it will only be at the end when we make
20 the offer of settlement that we will recommend that a
21 claimant seeks legal advice. If they're represented, then
22 generally Legal Aid will cover that but we also pay
23 reasonable costs for non-represented. Sorry.

24 **MS JANES:**

25 Q. Just picking up a point from Commissioner Erueti, if we go
26 to the Two Path Approach process where the BORA breaches
27 were not included.

28 A. Yes.

29 Q. How will MSD go back and rectify or provide an effective
30 remedy for the people who had BORA breaches also within
31 those claims?

32 A. That's a very difficult question because, and I think the
33 KMPG report and even the Allen + Clarke report talked about
34 with delays in order to speed up the process there are a

1 number of trade-offs you need to make in order to assess
2 claims faster. So, that was one portion.

3 So, as I said before, certainly that offer didn't need to
4 be accepted. In those letters, we suggested that
5 unrepresented claimants get legal advice. Obviously, those
6 that were represented by Cooper Legal would have had legal
7 advice. So, that's what we did in relation to that.

8 It also brings up the chestnut of revisiting claims which
9 I think I spoke about on Friday and how there's that tension
10 of finalising a claim as opposed to an 'in full and final
11 settlement'.

12 So, I think, I can't recall if some of those payments
13 were in fact ex gratias or whether they were all
14 settlements. Obviously, with an ex gratia that can be
15 reconsidered.

16 Q. I suppose the troubling thing for claimants in signing their
17 rights away, if you take the Whakapakari claims where there
18 are a large number who settled at \$5,000 and right up to the
19 trial settlement of \$85,000 per claimant and figures
20 in-between. So, even if they go and get legal advice, it's
21 very hard without guidance and transparency for them to know
22 whether they should actually opt in or opt out. Would you
23 accept that it's a very widespread and you don't know what
24 you're giving up?

25 A. Well, I think the first comment is factually not all
26 claimants that went to Whakapakari got \$5,000 and that would
27 have been based on the severity of the abuse which it
28 appears that Cooper Legal and MSD have some various views on
29 what the payment was for.

30 But we have had some examples under Two Path Approach
31 where, and I was in Legal at that stage, where the lawyer,
32 where someone went to get legal advice would ask us for
33 further information.

1 Q. Just looking at those two cases that you and Cooper Legal
2 have a very different view on, and we won't mention the
3 names.

4 A. Yes.

5 Q. But they were I think BSN and WM. But the facts of the case
6 were they got \$5,000 offers. You said that the reasons for
7 the low payments were not issues of third party providers
8 but because there was no serious abuse; do you recall that
9 evidence?

10 A. Yes, I do. That's what I was advised.

11 Q. But when you actually look at the abuse in those cases, they
12 included being strip searched, frequent physical assaults,
13 denial of medication and placement on Alcatraz for several
14 weeks without food; and that's at paragraph 1058 of the
15 Cooper Legal brief of evidence.

16 When you look at the documents that also support that
17 there was no clothes other than what they were wearing, no
18 mattress, they effectively felt they were being abused as
19 slaves by the supervisors. So, even on category 1 which is
20 \$5,000, do you still maintain that three weeks on Alcatraz
21 with no food and no clothing and strip searching is not
22 serious abuse and not warranting an effective remedy under a
23 Bill of Right breach?

24 A. That's very difficult to comment on without looking
25 at - there would have been a Statement of Claim, without
26 going through that and looking at it in its entirety.

27 Q. So, would the \$5,000 have been your determination of very
28 low level abuse and it is also missing out practice failures
29 and Bill of Right breaches?

30 A. I would need to pull up the Two Path Approach categories.
31 Did you want me to do that?

32 Q. I think that's probably something that will take a bit of
33 time.

34 A. Yes.

35 Q. So, we may do that outside of the public hearing -

1 A. Yes, of course.

2 Q. - to examine, so you can look at the documents.

3 A. Yes.

4 Q. But it's really just to looking at the disparity between
5 that level of abuse, \$5,000 versus \$85,000, and the facts
6 being -

7 A. I think, in fairness though, I think it's \$80,000 was our
8 highest with a top up for wellness, for other support.

9 From memory, that matter was nearly tracking to trial,
10 well it was tracking to trial and it got very close from
11 memory. I don't think you can compare an assessment under a
12 Two Path approach and a matter that is nearly - that is
13 ready to go to trial.

14 Q. Do you accept a claimant doesn't actually understand there
15 is such a dramatic distinction that is something that they
16 should be aware of, it should be transparent, they should
17 know what they are choosing in terms of the process they
18 elect to go on?

19 A. I think in relation to the two cases you refer to and the
20 \$80,000-\$90,000 one, they were all legally represented.

21 Q. And just quickly, you mentioned there was one, my
22 understanding is the actual payment was \$67,000, this was in
23 the Cooper Legal evidence, and they got a \$20,000 wellness
24 payment. And again just going back to the evidence that
25 Mr Garth Young gave about wellness payments, we saw that
26 only 18 had been offered, 9 had been made. What would
27 have - 0,000 in the context of the number offered and the
28 amount paid seems like a very high wellness payment when
29 we've seen that many others weren't even able to access
30 counselling.

31 So, again in terms of that disparity element, how can one
32 be certain that like is being treated as with like?

33 A. Okay. So, my understanding is that the wellness payment
34 policy was the one that Mr Young previously spoke of, which

1 was a one-off to get out of litigation without having a
2 debt.

3 The later wellness payments, to my understanding, and
4 what I have looked at, relates to the cases that were close
5 to trial and in that way, it was - so, it was part of that
6 settlement package.

7 Q. And then if we look at the Sammons sisters in terms of
8 almost identical circumstances, same placement, similar
9 types of abuse, we have one on the Fast Track Process who's
10 offered \$20,000?

11 A. Yes.

12 Q. We have one on the trial track, initially offered \$28,000
13 but a final settlement of \$32,000. Again, how can a
14 claimant feel not aggrieved, that they go through exactly
15 the same circumstance but the outcome, the offer, the
16 assessment is completely different?

17 A. Well in that particular case, we made an offer which was not
18 accepted, so we're currently going through the comprehensive
19 process and it is possible that there potentially could be
20 an uplift in relation to that, so that it could be similar
21 to her sister. I can't determine that without the full
22 assessment occurring but I think that would be more telling
23 what that settlement offer is, given that the original
24 assessment under the new process was not accepted.

25 Q. And are you able to say why there has been such a
26 significant delay between the rejection of the \$20,000 fast
27 track offer and the full assessment? It seems to have taken
28 a very long time when the facts are completely known?

29 A. Yes, it has taken a long time but bearing in mind that it
30 goes from the basic fact test to a much further in-depth
31 assessment. And it's one of those really difficult things,
32 is managing older claims coming in as opposed to claims that
33 have been assessed but have been rejected. Now, I can
34 confirm that approximately a month ago I have taken a couple
35 senior assessors out of the standard assessments and they

1 will be doing those, they're not reassessment but the new
2 assessments, and I'm hoping, I don't want to put a timeframe
3 for Ms Sammons because I don't want to disappoint her but
4 it's certainly being worked on, I can give you that
5 assurance.

6 **CHAIR:** Can I just put a proposition to you? It seems
7 that in endeavouring to deal with the backlog,
8 frontlog, the new cases, the old cases, that MSD has
9 setup processes trying desperately to get them
10 up-to-date etc.

11 The result of that, is that the redress that individual
12 claimants are getting is determined by the process that they
13 go through, rather than by the level of abuse that they
14 suffered. Is it fair to say that?

15 A. Potentially say that, yes.

16 **CHAIR:** Potentially or actually?

17 A. Yes, yes.

18 **CHAIR:** Or actually?

19 A. Yes.

20 **CHAIR:** Actually. Yes, thank you.

21 **MS JANES:** Madam Chair, the Chair has very neatly cut
22 to the dilemma that really I am proposing to you.

23 Q. As we go through all of the processes from the early 2000s
24 up until 2018, which is what we're looking at, there are so
25 many examples of different processes, different outcomes for
26 individual claimants, where if you look at the type of
27 abuse, the claimant will go, "Well, why am I being treated
28 so differently because the process has resulted in an
29 outcome that cannot easily be translated into similar set of
30 facts and outcomes". And you've accepted that that has
31 happened over the period?

32 A. Yes, it has. I think if I go back to one of our principles
33 though, under any of those processes there's
34 generally - there is a principle of consistency. So, on
35 average - so, as I mentioned on Friday, on average, the

1 average claim amount is just under \$20,000 from when
2 Historic Claims started until today.

3 Q. It's probably too hard in this process to unpack that but
4 would you accept and understand that it's very hard on the
5 basis of the evidence that the Commission has heard, to
6 accept at face value that there has been consistency because
7 we have so many examples of inconsistent outcomes in
8 relatively consistent sets of facts relating to abuse or
9 BORA breaches?

10 A. Yes.

11 Q. And then overlaid with that, we also have the
12 incomprehensible fact that a privacy breach leads to an
13 \$11,000 payout, whereas the abuse suffered is a \$5,000
14 payment. How is it explained that a privacy breach is worth
15 double what the abuse is compensated for?

16 A. I can't really explain that because it's a different regime
17 for a privacy breach and the awards under that regime.

18 Q. So, again, in an era where the BORA breaches or the privacy
19 breaches are in a state of being quantified, what advice are
20 claimants getting about how that may or may not affect their
21 entitlements or the process that they choose? Are they
22 getting that from MSD?

23 A. Sorry, what was your question?

24 Q. So, given that there can be quite a wide variation in terms
25 of maybe additional payments that could come from Bill of
26 Rights breaches or privacy breaches, how does a claimant who
27 is not legally represented learn that that is something they
28 need to factor into the process they choose and the
29 settlement they accept?

30 A. Well, under the process, we do take into account BORA
31 breaches for everyone. In relation to privacy breaches,
32 that's probably something that sits potentially with - well,
33 putting it another way, our aim is to get 75% of all privacy
34 requests out within three months, so that the aim is that we

1 don't get into that position of people waiting a long, long
2 time.

3 That's complicated by the fact there have been some cases
4 on Court document disclosure etc. So, for example, Cooper
5 Legal are reviewing all the previous, my understanding,
6 privacy releases, so that we can - so that they can be
7 relooked at. So, that's another complicating factor; when
8 the law changes or there's clarification in the law, in the
9 privacy area, we go back and look at those.

10 **CHAIR:** Can I clarify again, in the previous document,
11 I think it was a letter you were at, it was about
12 discussion, what to do with BORA claims.

13 A. Yes.

14 **CHAIR:** It seemed to me that amongst your Legal Team
15 and the Claims Team, you were saying, look, where
16 there's a BORA breach we'd better check it out and get
17 information from our legal people and get a
18 clarification?

19 A. Yes.

20 **CHAIR:** So, you're clarifying internally but the
21 question that Ms Janes asked you was how do you let
22 the claimants know about that? Number one, do you let
23 the claimants know that this is a potential issue that
24 you're waiting to get legal advice on?

25 A. No, so we don't specifically say that particular cases have
26 been - we're waiting for legal advice.

27 **CHAIR:** So, what's a claimant to make of that?

28 A. So, our assessors, sorry not our assessors, our support
29 staff regularly talk to claimants who have rang or if
30 they've asked for a phonecall but I can't be 100% sure that
31 they discuss that, so in that sense -

32 **CHAIR:** So, there's something going on in the process
33 potentially affecting their rights but they don't know
34 it's happening? They just know there's delay going
35 on?

1 A. Yes, that's right. That's tough, I appreciate that.

2 **CHAIR:** It's really tough?

3 A. It's really tough and I apologise for that.

4 **MS JANES:**

5 Q. And what's the reason that they're not communicated with?

6 A. Well, we do communicate with them. We talk to them,
7 certainly I'm talking about non-represented claimants. We
8 ask them how often they want to be contacted. We are
9 proactive in relation to our contact. As to the extent of
10 our discussions, I can't really confirm that.

11 I think to bear in mind is that when someone rings, the
12 support staff can actually bring up their particular case,
13 so they will know where it's at. They will be able to, in
14 that sense, explain where it's up, what's happening and that
15 type of thing.

16 Q. So, in terms of the Two Path Approach process where BORA
17 breaches were explicitly excluded.

18 A. Yes.

19 Q. Did the unrepresented claimants have that information that
20 they could settle for this but there may be an additional
21 amount they may be entitled to but that was not yet
22 determined?

23 A. Not from memory because the letter was reasonably standard.
24 The comment I would make about BORA breaches, is that even
25 when a BORA breach is found, it doesn't necessarily mean a
26 top-up. In a number of cases it will but it doesn't always
27 mean that there will be a top-up. I know that Cooper Legal
28 and MSD or the Crown have quite a different view on BORA
29 quantum and that's probably more appropriate for the
30 Solicitor-General to comment on.

31 Q. And we also had the disparity, not just under the BORA but
32 also Cooper Legal gave examples of two at Epuni. They were
33 TW and WW. And under the Two Path Approach they also got
34 \$5,000 but they were there at the very same timeframe as
35 Mr White and Mr Wiffin. The allegations of abuse had been

1 accepted by the High Court. So, how can there be such
2 disparity of \$5,000 under the two path process with \$20,000
3 to \$25,000 as we know Mr White and Mr Wiffin received?

4 A. I think you're comparing apples with oranges because
5 Mr White and Mr Wiffin were on the trial track and where the
6 Two Path Approach was a basic fact check.

7 My understanding with TW, if I've got the correct
8 claimant or survivor, is one that we revisited and increased
9 the payment by \$1,000. Now, that may seem very low but we
10 don't actually look at each individual aspect, we look at
11 the severity as a whole. So, that may mean that will depend
12 on where it sits.

13 Q. So, what I'm hearing, is that to actually receive what a
14 claimant may think of as a reasonable compensation for
15 abuse, they have to go down the trial track. But we've seen
16 how brutal the trial track is, particularly when defences
17 such as the Limitation Act are used. Ms Hrstich-Meyer,
18 would you accept that the Crown actually holds all the
19 cards?

20 A. That's a difficult one and I think - I don't think you can
21 compare a standard or a Two Path Approach assessment with
22 the fuller assessment where, you know, we look at the whole
23 file and Mr Young talked about the various files. There may
24 be a perception that the Crown holds all the cards.
25 Ultimately though, the Crown is a defendant in this, as
26 opposed to - the plaintiff determines whether they will
27 continue to trial track but I accept that for some claimants
28 they feel they have no other option.

29 Q. And we certainly heard from Keith Wiffin that he said filing
30 was not his first option but there was no other choice at
31 that time and that for him, and I'm sure for other
32 claimants, the Crown held all the power, all the resources.
33 Would it not be preferable, in terms of equity, fairness, to
34 make an ADR system that was comparable in terms of assessing
35 the abuse, fairly looking at what occurred under its own

1 principles using guidance from other cases and making
2 equitable payments that do not diverge as widely as we have
3 seen from \$5,000 to \$85,000?

4 A. I feel saddened every time Mr Wiffin's claim was mentioned
5 because it was in that straddling period, I think, from
6 moving out of the litigation forum or being dealt with in
7 that way to an ADR process.

8 It's a really tricky question that you've asked because
9 the content is really hard. We've tried, we feel that we've
10 been consistent in quantum. That may not - I accept that
11 many claimants feel that that's not enough or appropriate.

12 But one thing I've thought about quite a bit through the
13 consultation, is that money seems to be the last thing.
14 There are some people that are really, you know, interested
15 in the money but the therapeutic part, the wraparound
16 services, and the apology are sometimes more important. And
17 Dr Inkpen made an interesting comment, that whilst they have
18 very limited funds, in the sense of I think it's \$10,000 or
19 \$11,000, I could be wrong on the amount, there's never an
20 issue about wanting more money. And that's certainly
21 something that we see certainly came out through
22 consultation. And I feel a bit sad that when CLAS
23 [Confidential Listening and Assistance Service] closed,
24 sorry when it finished, we lost that therapeutic arm and I
25 think certainly this process that we've brought in, we've
26 tried to bring that back because for us that's really
27 important.

28 Q. I accept that the feedback may be that money is not a sole
29 determinant in terms of redress, but we certainly know it is
30 one element. And would you accept that a claimant ends up
31 actually feeling retraumatized and very aggrieved to find
32 that there is such a divergence of payment? And it's about
33 informed choice. I should let you answer my first question.
34 Would you accept that if money is not the sole determinant,

1 fairness is a really important element for somebody seeking
2 redress?

3 A. Yes.

4 Q. And an element of fairness is treating like with like in a
5 way that actually is supportable and that does come down to
6 monetary equivalence?

7 A. Yes.

8 Q. And for claimants who have felt very powerless in all of
9 their other dealings and going through the process, would
10 you accept that clear, well articulated information about
11 what the eligibility is, what the criteria are, what the
12 outcomes could be, is critical for them to make decisions
13 about what they will and won't accept?

14 A. Yes, I understand that.

15 Q. Just quickly going back to the Two Path Approach. I
16 understood your evidence to say the first tranche were
17 represented claimants?

18 A. Yes.

19 Q. Tranche one? And tranche two is direct claimants?

20 A. That's my recollection. I hope I haven't got that wrong but
21 I'm pretty sure, yes, it is because we had the judicial
22 review from Cooper Legal from the claimants. I think that's
23 right.

24 Q. Just quickly on the fiscal envelope, I won't take you there
25 because the Commissioners have heard the evidence about the
26 amount of money, I think it was \$9 million for the first
27 tranche. I just wanted to check, was that for the first
28 tranche or for both tranches?

29 A. My understanding is we got \$26 million in total brought
30 forward. From memory, it's in my brief of evidence.

31 Q. Because just looking at the first tranche then, which
32 Mr Rupert Ablett-Hampson had talked about with Cooper Legal,
33 that the amount, I think it was \$9 million, we can quickly
34 look at the document later. In terms of that, my
35 understanding was that all of the represented claimants

1 would be opted into that process and they were then
2 moderated under the bell curve and the categories?

3 A. So, they were - so, initially, so, they were opted in - I'll
4 try not to confuse you.

5 So, we used that group to do the assessment so that we
6 had - because the advice we had from Insights etc., is that
7 you needed a certain size. So, we used that whole group
8 which was moderated but only those claimants that wanted
9 offers from Cooper Legal received them. So, in that sense,
10 they opted out.

11 Q. So, my understanding is that a decision was made that if
12 Cooper Legal advised that a client did not wish to receive
13 an offer, they were still included in the moderation process
14 but they didn't receive an offer?

15 A. That's right.

16 Q. Would that have had the effect of diminishing the fiscal
17 envelope that was available for those who did want to accept
18 the Two Path Approach offers?

19 A. No because while it was talked about as being the fiscal
20 envelope, we always had the ability to ask for more money
21 and the average payments, again, did equate to what was
22 average at that time.

23 Q. And do you recall that at the time, and if we can go to
24 document MSD1916, Assurance Services had a look at the
25 process before it was rolled out?

26 A. They did.

27 Q. And the probably easiest thing is to look at what we found,
28 which is on the second two-thirds of the page. It says,
29 "The brief assessment process has not been fully designed
30 but the development process used to date has been thorough".

31 It talks about the design and implementation has been
32 managed apart from one risk to date. It talks about policy
33 assured review 50 direct claims which showed wide variations
34 in how the categories have been applied.

1 If you can just quickly go through the highlighted parts
2 in the report, rather than the highlighted parts that we
3 have, and read out what the recommendations were from this
4 process?

5 A. Do you want me to answer that question about the 50 direct
6 claimants?

7 Q. We'll do that afterwards.

8 A. Okay. So, I'll read -

9 Q. Really, just what is blacked out on the actual report.

10 A. "Finalise how the moderation will be conducted to manage the
11 risk of inconsistent moderation and ensure transparency.

12 Develop clear, unbiased and comprehensive communications
13 that inform claimants of their options under the Approach to
14 reduce the risk of misunderstandings.

15 Make it as easy as possible to process accelerated
16 settlement offers that have been accepted, to decrease the
17 overall time taken to resolve the claims.

18 The Ministry, not Cooper Legal, should assess the
19 represented claims, to ensure consistency with the way the
20 direct claimants are treated."

21 Q. And so, there were concerns about the moderation process
22 that needed to be resolved before this was rolled out?

23 A. (Nods).

24 Q. And what changes occurred following this advice?

25 A. Okay. So, there is a document in the bundle which explains,
26 there's a moderation document which explains all the steps
27 that we took post this. The other thing too, I think, which
28 was really important, is the quality assurance review of the
29 50 direct claimants which showed wide variations.

30 So, what occurred is that the whole group was moderated
31 by three or four people, so that that inconsistency was
32 removed. So, they redid the group.

33 Q. So, we'll look at what happened with the 50 but just before
34 we do that, and in the interests -

35 A. Sorry, that was the whole group, sorry, yep.

1 Q. And in the lead-up to this process, my understanding was
2 that an analytical exercise had been undertaken using data
3 from 2011 to 2016 payments; correct?

4 A. That's my understanding.

5 Q. And it was on the analysis of that payment data that these
6 particular bands were put in place and then you did your 50
7 case review against those categories?

8 A. Yes, I think so. Sorry, I'm not familiar with the real
9 detail, bearing in mind though I think that when they looked
10 at the period, and this was part of determining payment
11 categories, is they determined that the abuse would have
12 been for the same period that the previous claims had been
13 assessed for, so that helped in that overall picture in
14 relation to thinking that there would be similar cases but
15 bearing in mind that if it did come out and we found that
16 there was a real problem there, we could always go back for
17 more money or ask for more money.

18 **CHAIR:** Can I just check the date of this document?
19 When was the assurance report done?

20 **MS JANES:** It was 2015, March. Can you take that
21 down? That's 26th of March 2015.

22 **CHAIR:** Thank you.

23 **MS JANES:**

24 Q. And then if we can go to MSD1950? This is a document from
25 the 14th of April 2019 and it's from you to Merve Dacre?

26 A. Yes, I am familiar with that document.

27 Q. I thought you were. So, very briefly for the Commissioners,
28 probably if we call up paragraph 3 would be the simplest.
29 Perhaps if you could read that, Ms Hrstich-Meyer?

30 A. Certainly. "Now that a sizeable number of claims has been
31 assessed using our new approach (just over 50) we have
32 completed further analysis to compare these recommendations
33 to past payments made. This analysis has found that the
34 resulting median and mode for recommendations made under the
35 new process is slightly less (by \$5,000) than payments made

1 under our old approach. Further analysis has identified
2 that with minor adjustments to the amounts attributed to
3 each category this discrepancy can be rectified and
4 consistency achieved. Appendix one details the proposed
5 changes we wish to make to remedy this issue."

6 Q. And if we can jump to page 2, paragraph 3?

7 A. "This will address concerns about consistency it will also
8 impact the Ministry's risk to fraudulent claims as it will
9 mean claimants will be able to get payments up to \$25,000
10 with limited testing of the validity of their claims. Given
11 the importance of ensuring fairness to all claimants we
12 recommend that you accept this increased risk".

13 Q. And at paragraph 5, it just records that on the 8th of
14 November it was agreed that all payments made through the
15 Historic Claims Process would be full and final settlements?

16 A. Yes.

17 Q. And then if we can go through to the appendices, Appendix 2,
18 it actually looks at the uplift that you are recommending is
19 approved. So, in the lower categories they are about \$2,000
20 and \$3,000, but for all of - pretty much from the fifth line
21 down, they're all \$5,000 increments; can you see that?

22 A. Yes.

23 Q. Two questions. If this data had originally been done on
24 2011 to 2016 payments but we now find that the median is
25 \$5,000 less than it should have been, that's good news for
26 these particular claimants because I assume they receive the
27 uplift that was recommended, did they?

28 A. We hadn't made the payments and we had always decided that
29 there would be touchpoints where we would keep checking.
30 So, in this case, we amended the amounts which are shown in
31 Appendix 1 and then made those payments.

32 We also did the same exercise a number of months later
33 and the figures matched.

34 Q. So, in terms of the 2011 to 2016 full and final settlements,
35 were they gone back and reviewed?

1 A. I'm not sure.

2 Q. Would you accept that it's challenging for the Commission to
3 consider if there is a flawed starting premise about payment
4 data, then as each iterative process proceeds it's hard to
5 satisfy yourself that treating like with like is actually
6 equitable or fair?

7 A. Yes, if there is a flawed process, yes.

8 Q. We need to very quickly, unless the Commissioners have
9 any - I just want to very quickly look at one document and
10 then we'll turn to joint claims.

11 **CHAIR:** I have no questions about this. Do you have
12 anything?

13 **COMMISSIONER ERUETI:** No.

14 **COMMISSIONER ALOFIVAE:** I just have one question,
15 Ms Hrstich-Meyer, thank you. So, over time you've
16 been increasing the scope of what can be considered in
17 terms of payments. Reflecting back, it was really the
18 process. So, there were systems issues that were
19 emerging?

20 A. Yes.

21 **COMMISSIONER ALOFIVAE:** That were highlighting some
22 endemic failures within the system?

23 A. Potentially, yes.

24 **COMMISSIONER ALOFIVAE:** Potentially or it was because
25 every time something cropped up you had to get more
26 legal advice? Just reflecting back in terms of the
27 delay that Ms Janes raised.

28 A. Yes.

29 **COMMISSIONER ALOFIVAE:** And the significant added
30 trauma to the survivor.

31 A. Yes.

32 **COMMISSIONER ALOFIVAE:** In terms of processes, did you
33 have a legal counsel, I mean apart from yourself of
34 course, on tap, exclusively at the Historical Claims
35 Unit's disposal to be able to speed the process up?

1 A. So, Historic Claims is a separate appropriation. So, I
2 actually fund some Historic Claims lawyers and I think
3 currently we have five but I'd need to confirm that. So,
4 from the Historic Claims budget, we actually pay for
5 dedicated Historic Claims solicitors.

6 **COMMISSIONER ALOFIVAE:** But in terms of resourcing,
7 you would have benefitted from more in hindsight?

8 A. I think - potentially, yes, yes.

9 **COMMISSIONER ALOFIVAE:** Potentially or you would have?

10 A. Yes, sorry.

11 **COMMISSIONER ALOFIVAE:** So, you would have picked up
12 these endemic failures, dealt with them much quicker
13 in terms of your process?

14 A. Yes. I think we went from basically a legal process where
15 we have some social workers where we changed to a process
16 where non-legal, so we're 130 plus me is 131, and we have a
17 smaller legal group. So, we've changed over time in order
18 to reflect, you know, the Alternative Dispute Resolution
19 Process but there's always those complex issues and the
20 legal mix never really leaves because 50% of those claimants
21 are represented. So, those letters are legalistic, raise
22 legal issues and certainly our staff are required to
23 recognise Bill of Rights issues, they get support from
24 technical advisers, plus legal.

25 **COMMISSIONER ALOFIVAE:** No further questions.

26 A. Thank you.

27 **MS JANES:**

28 Q. So, we're very quickly going to look at MSC ending in 457.
29 So, you've gone through the Two Path Approach process and
30 you've recalibrated your claims in terms of the \$5,000.
31 Just quickly before we look at this, you said on Friday that
32 the Two PA process had had, I think, an 89% uplift in
33 tranche one and 79 in two. On its face, that could look
34 successful but we have also heard a lot of evidence,
35 particularly that people just gave up, they got sick of

1 waiting, they just wanted it over and done with. Kerry
2 Johnson was one in particular who said that - Gina Sammons
3 also, hers was trial but she gave up because she just got
4 tired of waiting.

5 What is MSD able to do about the fact that it's just a
6 war of attrition? That the process goes on for so long, it
7 is so dehumanising, retraumatising and they just want it
8 over and done with. We've heard evidence they're our most
9 vulnerable and often our most impoverished population, so
10 they just accept anything. How can we look at a process to
11 make sure that we are not just that war of attrition, that
12 it is actually fair, it is reasonable and it is appropriate?

13 A. My recollection, that causes me some concern, in the sense
14 that the evidence that we've heard from those courageous
15 survivors were all legally represented and the evidence was
16 from Cooper Legal, where 50% of our claimants aren't
17 actually represented and I presume that they had a voice in
18 relation to the closed survivor sessions.

19 So, in that sense, I think I could comment - in answering
20 your question, yes, I can comment to those particular
21 survivors but I am not sure that that is the case with every
22 claimant.

23 Q. Would you accept that even legally represented and a lawyer
24 says "don't accept", there is still a large number of
25 claimants who just actually want it over and done with?

26 A. I'm sure there are claimants that want it over and done
27 with, yes. I don't know the numbers though.

28 Q. And just looking at this document, it's before you finalise
29 the 2018 process. There's some Crown Law advice.

30 A. I am familiar with that.

31 Q. So, if we can look at the bottom email, call it out, thank
32 you, "In the meantime" down would be good. So, again, in
33 the interests of time, this is Crown Law -

34 A. Yes.

1 Q. - providing some comments on the new process? In
2 particular, if we look at the circled comments, the issue is
3 raised "Will there be an opportunity for claimants to
4 correct factual mistakes in the standard offer? That is, if
5 the Ministry makes a mistake in its basic fact check and a
6 claimant is able to correct that, will MSD reconsider the
7 standard offer?"

8 A. My understanding is, yes, if we've made a mistake.

9 Q. And we've seen from Keith Wiffin's case that that took a
10 very long time, despite MSD knowing that they had made a
11 mistake.

12 So, how can you assure claimants that this will happen in
13 a timely way?

14 A. So, what we've put in place with the 2018 process, is that
15 we have a Consistency Panel which is not a moderation Panel.
16 And that is a group of experts who meet once a week to look
17 at the assessments and they go through them and we have
18 people like Mr Young and Legal etc.

19 So, issues can be picked up there, so they will go back
20 to the assessor to fix before they come back. So, one would
21 hope that some of those things will hopefully be picked up
22 at that stage.

23 Q. And what would happen to, say, the Ngatai claimants, they
24 are not aware that a mistake has been made or that new
25 allegations have been accepted that may impact on their full
26 and final settlements; how do they get rectified in this
27 process?

28 A. I think you need to define what a mistake is because we
29 would say that the John Ngatai claims were, we assessed them
30 at a time based on the information we had where we changed
31 our position as we got to a point where we had enough
32 information, similar information to determine that we should
33 accept them. So, I don't think that is necessary what but I
34 can't be sure because I'm not the writer of that, what that

1 meant, but certainly that's not my understanding of the
2 mistake.

3 Q. Looking at the second circle, "How will the moderation
4 process work? The overview of the process gives the
5 impression claims will be categorised simply on the basis of
6 the allegations in them and the basic fact check but the
7 flowchart indicates moderation will be undertaken if the
8 spread of payments is not within allowable margins."

9 A. That's not my understanding, that we don't - we don't
10 moderate them, in the sense that if we found over time that
11 the average payment was going up, we would look at that. We
12 have employed a Principal analyst in the past and we
13 now - we will shortly have a lead analyst who will be
14 looking at those things on a regular basis, so that we can
15 do similar things if need be to what we did with the uplift
16 of the categories.

17 Q. So, this is not a case where there's a bell curve, as we saw
18 in the Two Path Approach process they must fit within?

19 A. No, not at all, no, no.

20 Q. And then at the bottom it says, "In terms of the categories
21 and payment levels for the standard evaluation" and if we
22 pop over the page, if I can have you read the top circle?

23 A. "The structure of the payment categories, and the level of
24 payment, reflect the approach MSD has taken over time (as
25 endorsed by previous Governments). Has the Ministry tested
26 the assumptions behind the approach with the current
27 government? For instance", do you want me to continue?

28 Q. Yes, thank you.

29 A. "The payment levels reflect past payments. They could be
30 perceived as low. Is the government comfortable with the
31 payment levels? If not, does it consider consistency should
32 be the over-arching principle here, or would it prefer for
33 the payment levels to be increased?".

34 Q. And so, just on that, do you know if any discussion was had
35 with government about whether they were comfortable with

1 what were perceived as low levels of payment or whether
2 there should be some calibration at this point in time?

3 A. Certainly, we didn't specifically say low levels of payment
4 because that is a perception from the writer. What I
5 recall, from memory, is that when we prepared a number of
6 reports to the Minister, we talked about the principle of
7 consistency. And I just think in the context of this email,
8 there were so many issues that what we did over quite a long
9 period, is we met regularly with Crown Law as an informal
10 Working Group and we actually worked through all these
11 issues, which also related to the handbook that we have
12 released. So, we fundamentally worked through the issues
13 that Crown Law had raised.

14 Q. And we won't go into it because it will take a bit more time
15 than we have but in the next circle there are potential
16 issues of consistency coherence between the categories and
17 concepts could be clarified. And, in some respects, they
18 error the concerns that Cooper Legal had about the Two Path
19 Approach categories about definitions, and are you saying
20 that they were also taken on board and were, to your mind at
21 least, resolved in the handbooks and the new categories?

22 A. I think what I am saying is we worked through all the issues
23 and we worked through to a position that we were comfortable
24 with, bearing in - that the Crown was comfortable with,
25 bearing in mind that there are trade-offs.

26 Q. Just very quickly on the handbook. I note that there have
27 been several iterations in a very short space of time and
28 you mentioned on Friday that there was discretion for the
29 Consistency Panel to look at things like BORA breaches or
30 litigation risk?

31 A. That has always been there.

32 Q. But I noted in the latest handbook that litigation risk has
33 been removed as a factor; what is the reason?

34 A. The reason it was removed is it is an assessment tool for
35 the assessors and it was determined that that probably

1 wasn't the appropriate level to determine litigation risk
2 and Bill of Rights breaches. So, whilst it does talk about
3 Bill of Rights breaches, the Consistency Panel, which is
4 where we have our experts and our more senior people, will
5 actually look at those factors. So, it hasn't been taken
6 out, that was just to take something out so that assessors
7 focused on what they needed to do as their role.

8 Q. So, it hasn't been removed?

9 A. Not at all, no, I can assure you it hasn't.

10 Q. Thank you. We will jump to joint claims processes, if we
11 can look at MSC ending in 493. This has a long history.

12 A. It does.

13 Q. I am going to do it in very short order, if you'll help me.
14 In that, this is a Document 22 August 2017. You have
15 described in your evidence at paragraph 3.55 and in your
16 supplementary brief at 3.1 about joint claims. So, this
17 really is a snapshot in time for the Commissioners, in terms
18 of the background being that effectively MSD for a long
19 period was the main defendant, albeit that they involved
20 Ministry of Education claims as well; correct?

21 A. That's my understanding.

22 Q. And then in this particular document, page 4, emails always
23 go backwards so we'll go to the bottom email and it starts
24 off with - yes, this is the one. So, if you can call out
25 the first paragraph?

26 A. "I understand that you briefly discussed at a discovery
27 meeting a few weeks ago with Sue and Leith about the
28 assessment of MOE [Ministry of Education] elements of joint
29 claims. This is an issue that has been on our mind lately
30 given the group of Campbell Park cases that Cooper Legal
31 have placed on trial track. We are mindful that MOE are
32 likely to be better placed from a knowledge perspective to
33 be assessing Campbell Park elements and it makes more sense
34 for the agency who has the legal responsibility for the
35 staff members to be assessing those allegations, especially

1 when you will be instructing Crown Law on that portion of
2 the claim and funding it".

3 Q. And then if we jump to page 2, paragraph 5. So, the
4 catalyst for this is there are a number of Campbell Park
5 claims which also have MSD elements?

6 A. Yes.

7 Q. And discussion about how the process should be going
8 forward. This is actually now Ministry of Education
9 responding to MSD. Second paragraph it says, "Our proposal
10 that we are keen to explore with you", and if I could have
11 you read that?

12 A. "Both MSD and MOE advise each other when they receive a
13 claim that has any allegations that would more appropriately
14 sit with the other agency.

15 Agree - each agency to advise the other of all claims
16 with allegations covering the other's jurisdiction. For
17 example, until recently we were not aware that [] had
18 a claim about Campbell Park with MSD. Mr [] complaint
19 to MOE was only in relation to Roxburgh health cam school.
20 The minutes's offer to settle this part of the claim has
21 been rejected and Mr [] has filed a SOC", Statement of
22 Claim.

23 Q. So, MSD on page 1, paragraph 1, then replies. So, Ministry
24 of education is wanting each agency to assess the elements
25 of their own claim. MSD on page 1, paragraph 1, it talks,
26 actually if we go to paragraph 3 - actually, let's look at
27 paragraphs 2 and 3 very quickly. So, if I may summarise it,
28 and if you want to read it, I'll just very quickly summarise
29 it.

30 So, it talks particularly about the special schools with
31 their roles and responsibilities. This is a special case,
32 so will often need contributions from both agencies. "In
33 the past we've do this by consulting and collaborating". It
34 talks about each Ministry holding files that are relevant to
35 the claim.

1 And, Ms Hrstich-Meyer, my understanding is that following
2 these discussions, MSD put together a spreadsheet of the
3 claims that were joint claims, so the Ministry of Education
4 was fully aware of those that came within their liability
5 for possible contribution; do you recall that?

6 A. It's not attached.

7 Q. No, the spreadsheet isn't.

8 A. No.

9 Q. It's in discussion and that follows after this particular.

10 A. I'm not sure about that, sorry, without seeing it.

11 Q. Do you have any independent recollection that that is what
12 the Ministry did?

13 A. There was a spreadsheet put together. I can't recall the
14 details.

15 Q. So, at that point they were going to collaborate and my
16 understanding was that MSD was going to do the assessment
17 and then there would be contributions apportioned between
18 MSD and MOE for the claim?

19 A. I think there is a bit in the middle that you have missed,
20 which is after we do the assessment we have a detailed
21 discussion with the Ministry of Education and then that next
22 step occurs. So, there's actually a significant discussion
23 that occurred before that's finalised.

24 Q. So, there's the consultation. Who conducts the assessment?
25 MSD does the MSD part and Ministry of Education does the
26 education part?

27 A. Now, yes, now in 2020, yes.

28 Q. So, what was the change because at that point it was going
29 to be MSD effectively undertaking the assessment using its
30 processes. What led to the change which is now reflected in
31 the 2020 letter where each, it's entirely separate?

32 A. So, we had a number of workshops with the Ministry of
33 Education because we put a new process into place. So, we
34 just wanted to work through how that would occur, whether
35 the Ministry of Education wanted to use a similar process or

1 so forth. So, there were a number of, I think two or three
2 workshops from memory, and correspondence as well where we
3 got to the place where they would be separate, bearing in
4 mind that the Ministry of Education follows - doesn't do
5 a - I shouldn't call it a quick assessment but the first
6 part but a standard assessment. My understanding is that
7 MOE uses the same process but you'd need to confirm that
8 with them.

9 Q. And are you aware of documents in which it records concern
10 about inconsistency of the processes, the fact that the
11 levels of compensation are different between MSD and the
12 Ministry of Education and that the fact of the new process
13 and MSD would make that more stark than it previously had
14 been? For the record, the document is MSC609 but it's not
15 in the bundle.

16 So, really, are you aware that those were concerns
17 between the departments about -

18 A. Yes, we did have discussions in relation to those aspects.

19 Q. And, very quickly, if we can go to MSC ending in 437, and
20 while that's coming up, do you accept that under the new
21 process between MSD and the Ministry of Education, as Cooper
22 Legal noted, if the predominant claims were against MSD but
23 there might be elements of abuse in a school, it is an
24 impediment and perhaps prohibitive for a claimant to feel
25 they either have the will or the emotional ability to do two
26 claims separately which they will now be required to do?

27 A. I accept that will be an issue in some cases.

28 Q. And looking at this document, we're really now, in terms of
29 joint claims, jumping very briefly to the transition between
30 MSD and Oranga Tamariki. This is a memorandum from the 1st
31 of July 2006 from Child, Youth and Family to Kay Read.

32 **CHAIR:** That's 2016?

33 **MS JANES:** 2016, yes, it is.

34 Q. We won't go into the detail?

35 A. I am familiar with that document.

1 Q. Originally there was going to be a transition from 1 January
2 2008 but then because Oranga Tamariki was not statutorily
3 established until 1st April 2017, the cut-off date became
4 1 April 2017; can you confirm I am correct?

5 A. Yes, we did pick up claims from that date but bear in mind
6 it was after Oranga Tamariki came into being. So, the
7 document you are referring to still related, my
8 understanding and Mr Groom might be able to provide more
9 information, is this related to a case that still sat with
10 Oranga Tamariki because they hadn't, in fact, transferred
11 over to MSD.

12 Q. And the particular area that I want to take you to is
13 page 1, bullet 2, probably for context let's look at the
14 first two bullet points.

15 Ms Hrstich-Meyer, can I have you quickly read?

16 A. Certainly. "Complaints about abuse that happened while in
17 care pre 2007 are either dealt with via historic or
18 contemporary claims; complaints post 2007 are dealt with via
19 the Child, Youth and Family complaints process.

20 There is an inconsistent approach from
21 historic/contemporary claims and the complaints process;
22 particularly with regard to abuse that occurred while in the
23 care of none Child, Youth and Family contracted care
24 providers".

25 Q. And then the next two bullet points, please?

26 A. "Claimants are often paid compensation for abuse when
27 assessed by historic contemporary claims and not when
28 assessed via the complaints process."

29 Q. And it says, "This situation places the organisation at risk
30 because of the inequitable way our ex children in care are
31 treated and there is considerable litigation risk should any
32 of the complainants take us to Court".

33 So, in terms of the MSD part of this particular equation,
34 what is being done to ensure that there is consistency in
35 equity between historic and contemporary claims, as I

1 understand MSD is responsible for both of those processes on
2 behalf of itself and Oranga Tamariki?

3 A. Sorry, I can just clarify that at this point, we only dealt
4 with pre 2007 and then - so, now we pick up everything from
5 1st of April 2017. With Oranga Tamariki, we work very
6 closely together and we talk. And certainly if there's a
7 cross-over claim, we will talk through how we deal with
8 that. I understand Oranga Tamariki can probably - their
9 witness would be better placed to talk about their process.
10 But certainly, we aim to work together in relation to where
11 there is a cross-over claim but I can't really give evidence
12 for Oranga Tamariki as to what their claims process is or
13 complaints process.

14 Q. No. And it's really an MSC370, in that particular document
15 it talks about a proposal that MSD will take responsibility
16 for Oranga Tamariki's recent claims?

17 A. Yes.

18 Q. And this is an MSD memorandum dated the 9th of April 2019
19 and it talks about Oranga Tamariki to establish a complaints
20 process for people who have been or are in their care. But
21 a note from you, Ms Hrstich-Meyer, currently under
22 development is a proposal that MSD take a significant role
23 in monitoring OT's delivery of services. Can you just very
24 quickly give us is summary of what is occurring within that
25 space?

26 A. I'm sorry, I can't because that sits within the MSD, within
27 a different area which is not the Historic Claims area, it's
28 the Independent Monitor, and I think Mr MacPherson provided
29 some information in his brief of evidence.

30 **MS JANES:** I am probably going to leave it there,
31 apart from one issue which I think in fairness needs
32 to be raised with Ms Hrstich-Meyer but hopefully it's
33 relatively short.

34 Q. Ms Hrstich-Meyer, I spoke with you on Friday in relation to
35 the article that had been published by Mr Aaron Smale the

1 night before. Briefly by way of context, it raises issues
2 about Crown Law and MSD knowledge of use of private
3 investigators, particularly relating to the White trial.
4 And it effectively makes the criticism that involves you
5 being aware of misleading information being provided to
6 Mr Smale and also initially to the State Services
7 Commission, that's MSD.

8 In fairness, I thought you should be invited to comment.

9 A. Thank you for that. I recall that request. I was in the
10 Legal Group and we had a media request. With media
11 requests, they usually have a very tight timeframe, so it's
12 often the same day or the following day. I was quite
13 concerned about this because it was asking a very wide
14 issue.

15 Two things I've learnt from that, and something that I do
16 regularly, is that when we get a complicated question that
17 we actually need to look at the files, I tend to pushback
18 and say it's in fact an Official Information Act request, so
19 that we can actually take the time to get the correct - to
20 get all the information to be able to answer that question.

21 I took that question as being do we surveil ADR clients
22 which I knew we do not. I then made the assumption, which
23 in hindsight I think was wrong, that we were - that instead
24 of - so, I knew we had used private investigators for the
25 White trial. I wasn't familiar with the details.

26 So, given the timeframes, I made a number of calls to - I
27 spoke to Mr Young, to Crown Law, to the QC. In responding,
28 I realise that I took the word "claimants" to mean
29 witnesses, not claimants, so the answer I provided may not
30 have been accurate but that was based on the flawed
31 presumption I made at the time.

32 **MS JANES:** I have no further questions and I don't
33 know whether there's any re-examination.

34 **CHAIR:** Let's find out. Will there be any
35 re-examination?

1 **MS ALDRED:** Just one very short point.

2 **CHAIR:** We will do some timing issues here.

3 (Commissioners consult). And I have one area that I
4 would like to cover which is important. The question
5 is, shall we take a morning adjournment now or do we
6 continue on to the end? What would you prefer to do?

7 **MS JANES:** I'm in your hands but maybe if we could
8 finish this witness and then we could do a setup.

9 **CHAIR:** Exactly, all right.

10

11

12

13

1
2 **LINDA LJUBICA HRSTICH-MEYER**
3 **QUESTIONED BY THE COMMISSIONERS**
4
5

6 **COMMISSIONER ERUETI:** Can I ask about the Independent
7 Children's Monitor? Am I right in thinking this
8 process is going to monitor, wrong other things, the
9 redress schemes monitored by MSD?

10 A. That's not my understanding. The Independent Children's
11 Monitor is a group that sits within MSD but my understanding
12 is it monitors Oranga Tamariki but I'm not familiar with the
13 detail in relation to that monitor because it is a different
14 group. But I do understand that the monitoring will
15 transfer over to, and I can't -

16 **COMMISSIONER ERUETI:** The children's?

17 A. Yes.

18 **COMMISSIONER ERUETI:** In time it's going to be
19 transferred to the Office of the Children's
20 Commissioner?

21 A. That's right.

22 **COMMISSIONER ERUETI:** To your knowledge, it's not
23 going to be involved in the historic contemporary
24 MSD -

25 A. Not the MSD claims.

26 **COMMISSIONER ERUETI:** Okay, good, thank you. This
27 question about the overlap, if you have someone in
28 care who's been in care, I think the question is where
29 they spent their majority of time in care between you
30 and the new agency, Oranga Tamariki, about who will
31 assess the claim. About how you go about determining
32 these matters. Like, is there - what's the process
33 for -

34 A. Okay. So, we talk regularly and have very good
35 relationships with Oranga Tamariki people in a similar area

1 and we're working through a Memorandum of Understanding so
2 that we can work through that, so that there is transparency
3 over what that process will be. So, there have been
4 discussions and we're just working through the issues, so
5 there will be, I'd hope, a Memorandum of Understanding at
6 the end of those discussions.

7 **COMMISSIONER ERUETI:** Okay, thank you. And just one
8 last question about the collective sessions for Maori
9 claimants. When we discussed this the other day, I
10 think you said there had been three of those cases to
11 date; is that right or something like that?

12 A. Yes, where we had siblings or family members present for
13 those.

14 **COMMISSIONER ERUETI:** Had they raised -

15 A. They raised, they actually asked, so we - we would hope to
16 be at a stage as we develop, and it's one of those issues
17 that we put on our 3-4 year plan, that it's something that
18 we would hope to offer up, as opposed to claimants asking.

19 **COMMISSIONER ERUETI:** Yes, that's the question I have
20 about your plans here. Is there a budget, for
21 example, for exploring how these operate and
22 implementing them?

23 A. Yes.

24 **COMMISSIONER ERUETI:** It's been allocated for this
25 financial year?

26 A. Yes. So, we made a very detailed budget bid in 2019 and it
27 took us a long, long time because we wanted to factor in all
28 the aspects. So, we spoke to people that perhaps could
29 provide us with potential details but I think, as
30 Mr MacPherson said, we can always go back. But at the
31 moment, yeah, we're okay. Money-wise, that was certainly
32 budgeted in and the wraparound, the connectors and so forth.

33 **COMMISSIONER ERUETI:** Good, okay, thank you.

34 A. Thank you.

1 **CHAIR:** Ms Hrstich-Meyer, I just want to return to
2 something that you gave evidence what seemed like an
3 age ago, and it related to the question of disabled
4 people.

5 A. Yes.

6 **CHAIR:** The Royal Commission's Research Department
7 have been working on looking at the cohort numbers,
8 the numbers of people, etc.?

9 A. Yes.

10 **CHAIR:** One of the findings that is coming out, is
11 that people with a learning disability, here we're
12 talking about not just physical disability but
13 learning disabilities, are more likely to have been in
14 care and for longer than non-disabled people. And
15 that these people are proportionately
16 over-represented, particularly in Oranga Tamariki at
17 the moment.

18 So, we have high percentages of disabled children, young
19 people, young adults, and they are over-represented in terms
20 of their numbers in care.

21 So, my question to you, and I don't know if you can tell
22 us now and it may be something that you can advise us later,
23 and that is the question, what percentage of your claimants
24 do you know have an identified disability?

25 A. I can't tell you off the top of my head but we can certainly
26 have a look at it.

27 **CHAIR:** It is a number that you would be able to
28 provide us?

29 A. Well, I hope so. We will do our best.

30 **CHAIR:** Okay. That's the first question, so we've got
31 to get a sense of the numbers of people.

32 A. Yes.

33 **CHAIR:** And that includes neurodisabilities etc.?

34 A. Yes.

1 **CHAIR:** My second part of that is, do you have any
2 protocols or training for your people to assist with
3 dealing with claims from people with learning
4 disabilities?

5 A. I would say that the people that we recruit to talk
6 face-to-face or who are the contacts are our support team
7 which have various backgrounds which I would hope, social
8 work, psychology, counselling etc., would be able to assist
9 with that but it's probably something that we need to think
10 about further.

11 **CHAIR:** But there are specialists - people with
12 specialist knowledge, special abilities, who really
13 should be engaged to assess these claims and to manage
14 the people who are coming with their claims in perhaps
15 a different way than ordinary claimants? When I say
16 ordinary, non-disabled claims I mean.

17 A. Yes, yes, that's something I think we need to look further
18 at and I think, like you say, the numbers will assist with
19 that.

20 **CHAIR:** Thank you.

21 A. Thank you.

22 **CHAIR:** I have no further questions. Do you have
23 anything arising?

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2 **LINDA LJUBICA HRSTICH-MEYER**
3 **QUESTIONS ARISING FROM MS ALDRED**
4
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6 Q. I just have a very short point before we finish. The
7 question was put to you, Ms Hrstich-Meyer, by Ms Janes and
8 the way the particular question I want to talk to you about
9 was put was very much a compound question where a series of
10 things were stated before a question was asked and I just
11 want to break it down because I think it's just important to
12 get some clarity around your response.

13 The question I'm talking about put to you that the
14 outcome of a claim is dependent on the process that MSD
15 applied to the particular claim. And, as I understand it,
16 you agreed that the process would influence the monetary
17 outcome of the claim; is that correct?

18 A. I probably said yes in relation to the whole question but,
19 in fact, no because whatever process we use, there should be
20 a consistent payment based on all the work we've done.

21 Q. And I just want to be really clear about this. So, while
22 each process, so for example the Two Path Approach versus
23 the current system of categories, provided for particular
24 categories of payment; that's correct?

25 A. Yes, it is.

26 Q. But the other part of the question, which I also just wanted
27 to put to you separately, I suppose, was that the outcome of
28 a claim Ms Janes said wouldn't be affected by the
29 allegations of abuse themselves; now what's your response to
30 that?

31 A. Well, we do, I mean we look at all allegations and then we
32 determine where they sit in those categories. So, we
33 identify all the allegations and then we look at the
34 severity of abuse from there.

35 **MS ALDRED:** Thank you, that's all, no more questions.

1 **CHAIR:** Thank you.

2 A. Thank you.

3 **CHAIR:** On that note, I think we will, I was going to
4 say dispense with Ms Hrstich-Meyer but I do not mean
5 that.

6 **MS JANES:** I'm sure MSD would like her back.

7 **CHAIR:** I am sure they would. And to thank you, thank
8 you very much for your evidence. And I just say a
9 general acknowledgment to MSD and to the other
10 departments for the vast amount of work they have put
11 into supplying the Royal Commission with a huge amount
12 of documentation, only the tip of the iceberg of which
13 has been released today but we are very grateful for
14 the fact that a lot of work has been put in to comply
15 with the orders that have been sent out and we do
16 appreciate that, thank you very much.

17 We will take the adjournment.

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20 **Hearing adjourned from 11.50 a.m. until 12.05 p.m.**

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