Under The Inquiries Act 2013

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

Reply brief of evidence of Philip Blair Knipe for the Ministry of Health – Redress

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1 Introduction

1.1 My full name is Philip Blair Knipe.

1.2 I am employed as the Chief Legal Advisor at the Ministry of Health (the **Ministry**). I have held this role since joining the Ministry in January 2008.

1.3 I have provided this inquiry with a brief of evidence dated 27 January 2020 (my **primary brief of evidence**).

1.4 This second brief of evidence contains the Ministry's response to:

(a) the amended brief of evidence of Sonja Cooper and Amanda Hill dated 31 January 2020 (the **Cooper Legal brief of evidence**), in relation to issues arising in Chapters three (psychiatric hospital claims – pre-Ministry of Health), seven (Ministry settlements) and ten (compensation); and

(b) the affidavit of Raewyn Gay Rowe dated 12 February 2020, the sister and welfare guardian of survivor Paul Owen Beale.

1.5 I note that this brief of evidence is written in both the first and third person. This reflects the fact that I have sometimes had direct, personal involvement in the matters discussed in the brief. At other times I am expressing an opinion on behalf of the Ministry (which I am authorised to do).

2 The Ministry's response to the Cooper Legal brief of evidence

2.1 I have limited comments by way of reply to the Cooper Legal brief of evidence and continue to rely on my primary brief of evidence, unless corrected below.

Pre-Ministry psychiatric hospital claims

2.2 The discussion in chapter three of the Cooper Legal brief of evidence focuses on events prior to 1 July 2012, being the date when the Ministry assumed responsibility for historic claims (including responsibility for dealing with remaining and new historic claims). In the circumstances, my ability to respond is limited.

2.3 I accept that there have been statutory barriers for survivors wishing to bring claims for historical abuse. I also acknowledge that survivors continue to face practical issues when seeking to advance claims.

2.4 As part of Chapter three, Cooper Legal has outlined key case law developments relevant to limitation and immunity issues in the context of mental health legislation, explaining how they have impacted on survivors' access to justice. Cooper Legal correctly highlights the difficulties that such claimants faced under earlier mental health legislation, which significantly restricted a patient's ability to raise complaints about abuse in state care.

2.5 At times, the summaries provided by Cooper Legal place a different emphasis on elements of the judgments, when compared to their full text. However, I do not intend to fully narrate the relevant case law because it would serve no useful purpose.

2.6 In addition to statutory issues discussed by Cooper Legal, I understand that survivors also faced practical problems arising out of the passage of time when seeking to formulate their claims of historical abuse.

2.7 As I have outlined at paragraph three of my primary brief of evidence, against this legislative backdrop, Parliament made improvements to address survivors' difficulties accessing justice with the enactment of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the **Mental Health Act**). This statutory development represented a significant move away from earlier mental health legislation towards a greater recognition of patient rights.

2.8 Paragraph 302 of Cooper Legal's brief of evidence makes the point that some clients of the firm, particularly those who had received settlement payments under other processes (including under the Lake Alice process), felt that the payment made by the Crown Health Funding Agency (**CHFA**) in 2012 did not reflect the severity of the abuse they had suffered. Cooper Legal explains that these clients felt forced to accept the offers made to them because of time and cost considerations.

2.9 The Ministry acknowledges that many survivors feel that the payments they receive are insufficient, and that no amount of money can address their experiences in care. The wellbeing payment made by the Ministry to survivors under its Historic Abuse Resolution Service (**HARS**) settlement process is designed to provide some support for them to use as they see fit. Although payments made under the HARS process have been variously referred to as "compensation" (including by me in my evidence), this payment is better characterised as a wellbeing settlement amount, rather than compensation for all losses suffered by survivors.

2.10 There is one minor point I wish to address arising out of paragraph 303 of Cooper Legal's brief of evidence in which they explain that 320 claims were settled as part of the CFHA settlement process. My evidence is that there were *330* claims settled by June 2012 (refer to paragraph 4.61 of my primary brief of evidence). I have checked the Ministry's records and confirm my view that 330 claims were settled by this time. I am unclear of the reason for the discrepancy between our evidence but do not consider it to be a significant point of difference between us.

Ministry settlements

2.11 Chapter seven of Cooper Legal's brief of evidence narrates the Ministry's HARS settlement process, much of which is accurate. I have only limited comments to make in response.

2.12 I would like to briefly address key points made by Cooper Legal which relate to the Ministry in chapter seven of their evidence.

(a) Cooper Legal has made the point at paragraph 831 of its evidence that there is a significant disparity between settlements for abuse in the Lake Alice process and other psychiatric hospitals. However, settlements in the Lake Alice situation involved the government arriving at a general settlement in cases of recognised systemic abuse on a broad scale which was able to be applied to an identifiable group of individuals. A similar approach was taken as part of the Hepatitis B settlement process,

the post Cartwright inquiry settlements and the Greenlane School of Anatomy case involving retention of dead babies' hearts and organs without consent, but has not been present as part of the CHFA and HARS settlement processes.

(b) At paragraph 832 of its brief of evidence, Cooper Legal has raised that there is a disparity between the top payment under the Ministry process and the Ministry of Social Development or Ministry of Education payments. Be that disparity as it may, it is important to understand that these agencies' processes and funding availability differ (which usually reflect the specific circumstances in which the processes were developed, particularly after litigation and negotiation in the case of the health redress processes).

(c) I note and understand Cooper Legal's concerns that many potential survivors may not be aware of their rights or may not have the appropriate supports to make a claim because of their circumstances. The Ministry agrees that this is an important issue and I have explained at paragraph 7.4 of my primary brief of evidence the avenues and supports available to potential claimants. There have been official and well-publicised channels for making complaints since at least 2003 when the first claims for redress were filed in the courts, and through the Confidential Forum and CLAS processes, and then for the HARS settlement process.

2.13 There are some other discrete points that I would like to take this opportunity to comment on as part of the Ministry's response to Cooper Legal's brief of evidence.

2.14 Paragraph 824 of Cooper Legal's brief of evidence explains that the Ministry's HARS review process for offers that are challenged has resulted in improved offers for several survivors, but not in more recent months. Although Cooper Legal is concerned about recent offers made to survivors, on review, the Ministry is satisfied that all offers are made in a consistent manner.

2.15 Paragraph 825 of Cooper Legal's brief of evidence claims that the process for unrepresented survivors involves meeting with the Ministry. As set out in paragraphs 7.2(d) and (i) of my primary brief of evidence, there is no face to face meeting as part of the HARS settlement process. Contact with survivors is by telephone or writing (including email).

2.16 Paragraph 826 of Cooper Legal's brief of evidence states that the Ministry will pay up to $18,000 if a survivor produces certain medical reports showing that they would be able to overcome the Limitation Act defence and establish causation. I wish to clarify the position with respect to these claims.

(a) Cooper Legal has had a small number of claims where they advised the Ministry that they did not intend to participate in the HARS settlement process and were preparing to file claims with the Court. The Ministry took a pragmatic approach to these cases. It was concerned to avoid unnecessary proceedings and enable the matters to be resolved without undue stress to survivors, minimise legal costs and avoid unnecessarily reopening the cycle of new litigation.

(b) With these claims, the Ministry agreed to consider settling them at the maximum amount set by the former CHFA, if there was an appropriate level of evidence available to support the claim. That standard was met in a couple of cases. In respect of the remainder, the Ministry was not satisfied that the standard was met and accordingly offered to reach settlement with those survivors on the standard HARS basis.

2.17 Cooper Legal is correct when they state at paragraph 828 of its brief of evidence that the Ministry has recently confirmed that it will deal with claims of abuse suffered in general medical surgical wards of public hospitals prior to 1993. The Ministry occasionally receives such claims and has considered them on an *ad-hoc* basis. These claims often relate to concerns about treatment, and are usually more appropriately raised with the Accident Compensation Corporation or the Health and Disability Commissioner.

2.18 Where they concern claims of abuse (consistent with the types of abuse considered as part of the HARS settlement process), such claims can be considered on a similar basis as the HARS process, with ex gratia payments available in line with payments made under the existing procedure. I am aware that there has been one such claim from Cooper Legal. An offer has recently been made and the claim largely concerned the standard of care received, rather than abuse whilst in care.

2.19 Cooper Legal has stated at paragraph 829 of its brief of evidence that the Ministry will not consider claims made on behalf of deceased claimants, even if the claims are made before the client dies. This is not correct. In circumstances where claims are made *before* a claimant dies these are usually able to proceed and considered on the basis that the claim had commenced before the claimant's death and should be completed.

2.20 It is correct that a *fresh* claim cannot be made on behalf of a claimant who is already deceased. That is because the claim is personal to the individual, with the remedies of an apology and a wellbeing payment being intended for the benefit of the individual. This approach to deceased claimants is consistent with that taken for other health redress processes (such as Lake Alice) and also by the Auckland Area Health Board in relation to patients involved in the settlement process following the Cartwright inquiry.

Compensation

2.21 Chapter ten of Cooper Legal's brief of evidence narrates the Ministry's HARS settlement process and the compensation available under this scheme, much of which is accurate. I have only limited comments to make in response at a high level.

2.22 I would like to briefly address key points made by Cooper Legal in chapter seven of its brief of evidence which relate to the Ministry.

(a) At paragraph 1097 of its brief of evidence, Cooper Legal states that a very low level of compensation is paid by the Ministry (and by the Ministry of Education) to survivors. At paragraph 1099, Cooper Legal states that it is difficult to understand why their claimants are paid significantly less compensation than others paid compensation by the State in other contexts. Be that as it may, I understand that the

settlement amounts were agreed to by Cooper Legal on behalf of their clients. The negotiated settlement process reflected factors such as that amounts were paid in lieu of litigation and in the context of poor outcomes for survivors before the courts in previous litigated cases. Each redress process reflects the specific context underlying it. In health, these processes have usually been the product of a negotiated settlement process.

(b) Funding limitations have been relevant considerations for the Ministry within the context of its HARS process and for CHFA as part of its settlement process, where it had a fixed budget available for settlements. No additional funding was provided to the Ministry for the resolution of claims, and the settlements are paid from the Ministry's Legal Non-Departmental Other Expenditure, which is a fixed amount appropriated each year from which litigation costs (such as Crown Law) and other historic settlement payments (such as Lake Alice and Hepatitis C settlements) are met.

(c) Cooper Legal has made the point at paragraph 1098 of its brief of evidence that payments for those who suffer abuse is lower than those made in other State contexts such as with the Hepatitis C and Lake Alice claims. As noted earlier, these cases related to a different set of facts, notably they were in response to one clearly established systemic failure by the State and involved the government arriving at a general settlement in cases of recognised systemic abuse/failings on a broad scale which was able to be applied to an identifiable group of individuals.

2.23 There are a limited number of discrepancies about financial data between my evidence and that provided by Cooper Legal. I have taken this opportunity to confirm the position.

(a) Paragraph 1083 of Cooper Legal's brief of evidence explains that:

(i) Round 1 Lake Alice payments ranged from $10,000 to $120,000 and that the average payment was $68,000.

(ii) Round 2 Lake Alice payments ranged from $20,000 to $124,000, with an average payment of $49,500 (excluding legal costs). In my primary brief of evidence at paragraph 4.11, I noted that the average payment for round 2 Lake Alice settlements was approximately $70,000. I can confirm that round 2 payments were consistent with those payments in round 1. It appears that the figures referred to by Cooper Legal exclude further "top up" payments made to round 2 claimants in the period mainly between about 2006 and 2008.

(b) Paragraph 1084 of Cooper Legal's brief of evidence explains that they expect that the average payment for HARS settlements will be lower than those reached by CHFA, taking into the lower cap of $9,000. I can confirm that, currently, the average payment made for HARS settlements is approximately $6,000.

3 The Ministry's response to Ms Rowe's affidavit

3.1 The Ministry has limited comment to make in response to Ms Rowe's affidavit. Her factual account of the procedural history of Mr Beale's claim against the Ministry (and the settlement of that proceeding) is largely accurate (although we differ as to points of emphasis). The Ministry is unable to comment on the accuracy of the substantive allegations relating to Mr Beale's time at Kimberly Hospital or Parklands. To that end, it does not dispute Ms Rowe's account of events relating to those matters.

3.2 The purpose of this reply evidence is to provide the Royal Commission with the Ministry's perspective on relevant context, and the underlying reasons for the conduct of its defence to Mr Beale's proceedings and its approach to settlement. In providing this supplementary information, the Ministry does not intend to detract from the difficulties of Mr Beale's experiences whilst in private care, or undermine the challenges of Ms Rowe's experience of the litigation and settlement processes.

3.3 At the outset, the Ministry wishes to note that Mr Beale's case is an example of a *contemporary* claim (i.e. a claim relating to events occurring between 2005 and 2012) arising in a *private* care facility (as distinct from a state care facility). I understand that Mr Beale's experiences are outside the scope of the direct focus of this hearing, which concerns Crown redress processes for historical claims arising out of state care. However, I have provided the Ministry's comments in response to Ms Rowe's affidavit to assist the Commission, and out of respect to the individuals concerned.

The Ministry's position in response to Mr Beale's claim

Overview of the claim

3.4 In early 2014, a claim for damages in the sum of $500,000 was filed in the High Court against the Attorney-General (for the Ministry) on behalf of Mr Beale and his welfare/litigation guardian (Ms Rowe). Crown Law represented the Attorney-General. The claim was for:

(a) a breach by the Ministry of a duty of care in not opposing Mr Beale's placement at Parklands (despite this being the strong preference of his sister, Ms Rowe); and

(b) the Ministry being directly and vicariously liable for alleged failures of service delivery (including poor standards of food, financial misconduct, poor lifestyle planning and policy management), and for bullying, neglect and abuse that Mr Beale suffered from the owner/managers, staff and residents.

Summary of Ministry's defence to the claim

3.5 Ms Rowe has explained at paragraph 96 of her affidavit that Cooper Legal was of the view that the approach taken by the Ministry seemed to be driven almost entirely by policy considerations. That is not correct. The Ministry's approach to Mr Beale's claim, as assessed at key stages of the proceeding, was based on a

view of its legal position and responsibilities as informed by the information available to it at any particular point in time.

3.6 Ms Rowe is right when she states at paragraph 74 of her affidavit that the Ministry denied responsibility for events occurring at Parklands in relation to Mr Beale and that it took the position that, whilst it funded Parklands, the proprietors were not employees or agents of the Ministry.

3.7 The Ministry would like to further explain the reasons for its position.

3.8 On receiving the proceedings, the Ministry carefully considered its legal position. The Ministry was satisfied that there was a low risk that it would be found to have legal liability arising out of a breach of duty of care in relation to a voluntary resident placement (i.e. a placement where a person resided by choice) in a private facility. The Ministry was not aware of any legal precedent supporting the view that it owed such residents a duty of care (and is still not aware of any such precedent). As Ms Rowe has pointed at paragraph 108 of her affidavit, Crown Law gave Cooper Legal the opportunity to supply examples of cases where the Crown had settled claims in similar situations to that involving the Ministry and Parklands. However, to my knowledge, Cooper Legal did not do so.

3.9 Parklands was a private facility, operated by a privately held company. It was not owned or run by the State. The Ministry's position was that the persons responsible for the care and safety of the residents were the facility and its owners.

3.10 In respect of community residential support services (unless the disabled person is in compulsory care) the Ministry does not decide where a disabled person will live, as that is a decision for the person and their families. Families are free to withdraw a disabled person from a residence and the funding follows the individual.

3.11 The Ministry funded private facilities, such as Parklands, to provide residential care for intellectually disabled persons by entering into disability funding contracts with those facilities. As part of the contractual arrangements for Parklands, the Ministry imposed conditions which were directed at ensuring the safety and proper care of residents. The Ministry could audit Parklands' performance. Further, the Ministry had a right to take appropriate action for breach of its contractual obligations to provide adequate care for residents (such as appointing temporary managers and closing a service, if needed). Be that as it may, responsibility for residents' care and safety ultimately rested with the owners of the facility and not with the Ministry.

3.12 Mr Beale's placement at Parklands in 2005 was fully considered by the Ministry and a balance was struck between the Ministry's longstanding operational concerns about the facility (the facility had previously failed a Ministry certification audit in March 2004, which I address below) and Mrs Rowe's strong preference for Parklands due to its location near her, and her own assessment that it would suit Mr Beale.

3.13 Ms Rowe wanted Mr Beale to reside at Parklands and this was a significant factor in the Ministry agreeing that he reside at this facility. The Ministry had reservations about the suitability of this facility for Mr Beale, which were relayed to Ms Rowe. Parklands was not identified as a preferred provider for the

Kimberly Hospital deinstitutionalisation project and, as a result of the findings of the Ministry's March 2004 audit report, the request for Mr Beale to reside at Parklands was initially declined.

3.14 Both the operator of Parklands and Ms Rowe sought an appeal of that decision. On 12 October 2004, the Ministry undertook a further quality audit of Parklands. As a consequence of Parklands' improved performance, on 29 October 2004, the Ministry advised the provider that it approved Mr Beale's placement at Parklands in accordance with Ms Rowe's wishes.

3.15 To address the Ministry's remaining concerns about Parklands, the Ministry imposed a series of conditions on Mr Beale's placement to ensure that it had closer oversight of Mr Beale than would usually be the case. The conditions involved: 1:1 support; detailed risk management plan; detailed behaviour support plan; lifestyle plan with regular community engagement; visits by the Ministry to ensure that the placement was functioning and that the conditions were being complied with; and a follow-up audit (after placement).

3.16 As explained above, the Ministry undertook targeted auditing processes of Parklands. I understand Ms Rowe was provided with a copy of the 12 October 2004 audit report and shared the fact of those with Ms Rowe before agreeing to allow the placement. In addition, the Family Court at Levin had established a system of monitoring the placement of residents like Mr Beale following the Kimberly Hospital deinstitutionalisation, involving appointment of counsel for Mr Beale (in addition to his welfare guardian).

3.17 Consequently, Mr Beale was under closer supervision by the Ministry and received more assistance at Parklands than would routinely have been the case in with disability facilities.

3.18 After receiving the proceedings, the Ministry advised Cooper Legal that it would raise Ms Rowe's desire for Mr Beale to reside at Parklands as part of its defence of Mr Beale's claim if the matter proceeded to trial. As Ms Rowe explains at paragraph 105 of her affidavit, Cooper Legal expressed concern about that point being raised against her. Whilst acknowledging the human effect of such a legal argument on Mr Beale's family as being construed as "blaming" Ms Rowe for the decision to place him there and remaining there, this was an argument responsibly available to the Ministry as part of its defence to the claim brought against it.

3.19 As a result of its ongoing monitoring of Parklands following Mr Beale's placement, the Ministry later became aware of issues with the management of Parklands, including some limited issues identified in 2005 and 2008.

3.20 A range of audits were undertaken (including routine audits, issues based audits and developmental audits). When service failures with Parklands were identified in audits, the Ministry took appropriate action to have those failures rectified. Actions taken by the Ministry included, for example the following steps.

(a) In 2006, the Ministry engaged a Disability Support Services contracted auditing organisation to work with Parklands to improve the quality of services.

(b) In 2008, the Ministry engaged consultancies to provide staff training and assist with development of quality systems.

(c) After problems were identified in 2008, Mr Beale's needs were reassessed and alternative residential options explored, but after consultation with his family were considered unnecessary.

3.21 By 2012, there were problems at Parklands with overcrowding, understaffing, underreporting of serious incidents (allegedly due to a fear culture at Parklands), gaps in records and inadequate staff training. In response, the Ministry took appropriate action in accordance with its rights under its disability funding contract with Parklands by appointing temporary managers (who identified further issues with the care provided to residents). This process resulted in the Ministry terminating its contract with the owners of Parklands and the closure of the facility in 2012, with residents transferring to other facilities for their ongoing care.

3.22 As Ms Rowe has explained at paragraph 106 of her affidavit, based on the Ministry's view of its legal position, it was indeed concerned about the precedent effect of settling Mr Beale's claim. The Ministry was conscious that entering into a settlement agreement in this case could be construed as accepting liability in situations where there was no legal precedent for finding that the Ministry had a duty of care towards residents in private care facilities, like Mr Beale. Such a settlement would have likely encouraged further claims from Cooper Legal and others when the Ministry did not consider it had breached any legal duty to Mr Beale.

Context to settlement discussions

3.23 The Ministry largely agrees with Ms Rowe's detailed account of the procedural events in this litigation and the time it took to settle this proceeding. Whilst it is true that the case did not settle until three years after the proceedings were commenced (and some four years after the matter was first raised with the Ministry by Cooper Legal) there were valid reasons for that, including those listed below.

(a) The Ministry assessed its position and the merits of Mr Beale's claim at key milestones in the proceeding with a view to considering the information available to it at each juncture.

(b) At the outset, the Ministry did not consider that it had sufficient information to enable it to have a meaningful discussion about the claim. As Ms Rowe has explained at paragraph 84 of her affidavit, Cooper Legal was advised by Crown Law that the Ministry was not prepared to participate in any meeting concerning settlement unless it fully understood the arguments advanced on Mr Beale's behalf. The Ministry took the view that the statement of claim lacked some detail and accordingly there were challenges responding to it.

(c) At the conclusion of the discovery and inspection process, the Ministry's litigation risk was assessed as being low.

(d) At the time of the judicial settlement conference in March 2015, approximately a year after the proceedings commenced, the Ministry was still not satisfied that there was merit to the claim, for the reasons I have explained earlier in this statement. Hence, the matter could not be

settled at this time because of the distance between the parties' respective positions.

(e) In December 2016, there was a significant turn of events. Cooper Legal filed a second amended statement of claim (and around that time additional information, including statements of evidence became available to the Ministry). This amended claim and supporting witness evidence raised new allegations of serious sexual and physical assault.

(f) In light of the further claims and additional evidence (including the location of additional Ministry records around that time), the Ministry carefully reviewed its position, rather than relentlessly progress towards a trial which was scheduled to start on 1 May 2017 for six weeks.

(g) As a consequence, the Ministry engaged in further settlement discussions with Cooper Legal in early February 2017. Although the Ministry still considered that it had a good defence to the claim, it recognised with the benefit of additional information that had come to light relating to serious sexual and physical abuse that its litigation risk had increased. The Ministry was mindful of the fact that a Court was likely to be sympathetic towards Mr Beale, making a finding in his favour more likely at trial. The Ministry was conscious that an unfavourable outcome at trial could have significant precedent effects for the Ministry and the Crown moving forward.

3.24 In March 2017, the parties reached agreement to settle this proceeding. As Ms Rowe was not happy with the form of apology originally offered to Mr Beale by the Ministry (which was in our usual format), we agreed to amend the wording to take into Ms Rowe's comments by making the following amendments in italics and underlined below:

Apology concerning your treatment at Parklands

I have received your signed agreement to receiving a lump sum payment and letter of apology, in resolution of your complaint about your time at Parklands.

I have carefully assessed the information available and also the information supplied by you. I am now able to acknowledge the seriousness of the matters that you raised.

Accordingly, the Ministry expresses its genuine apology for the *unreasonable* conditions that you had to endure. *You were entitled to feel safe with your caregivers, and I acknowledge that this environment did not always provide that for you.*

I hope that this letter of apology and the compensation will enable you to bring some closure to those experiences. I also hope that with this resolution process behind you, you are now able to move forward with a sense of peace.

Matters of public interest arising in the context of Mr Beale's claim

3.25 The allegations made in the second amended claim filed in December 2016 included allegations of a criminal nature involving persons who may still have been employed in similar roles at facilities such as Parklands.

3.26 The Ministry understood and took into account Ms Rowe's concerns about a criminal investigation into the allegations of sexual and physical abuse, including its potential impact and delay on the civil claim. In the public interest, the Ministry formed the view that it was necessary to prioritise the safety of other residents whose safety may have been at risk at the time. For that reason, the Ministry decided to refer the matter to the Police for investigation, despite Cooper Legal's opposition to that occurring.

4 Conclusion

Concluding remarks in response to the Cooper Legal brief of evidence

4.1 Overall, there is a significant amount of factual agreement between myself and Cooper Legal. The differences that exist tend to be of points of emphasis, interpretation and perception. Where there are material factual differences, I have sought to explain them as part of this statement of reply.

4.2 I would like to acknowledge that the lower level of wellbeing payments offered by the HARS and CHFA settlement processes is a key point of difference between those redress schemes and others operated by the Crown.

4.3 I have explained the underlying reasons for the difference in quantum across this statement and my primary brief of evidence. The differences reflect the specific circumstances in which the processes were developed. To summarise, the HARS and earlier CHFA settlement processes are characterised by the following contextual factors.

(a) These processes followed litigation and subsequent negotiation and were not developed in response to specific claims of systemic abuse, with a clear and identifiable claimant group.

(b) They have a lower evidential threshold than other processes, are administratively simpler and result in faster resolution of claims. Where claims are received by the Ministry outside the HARS process seeking higher amounts, then the expectation has been that this is supported by a higher evidential threshold (which is difficult to meet in the content of historic abuse claims relating to psychiatric care).

(c) As a final point, the quantum of offers made under HARS and earlier CHFA settlement processes have been determined by the available funding levels.

Concluding remarks in response to Ms Rowe's affidavit

4.4 By way of concluding remarks in response to Ms Rowe's affidavit, I wish to highlight the following.

(a) Ms Rowe's factual account of the procedural history of Mr Beale's claim against the Ministry (and the settlement of that proceeding) is largely accurate (although we differ as to points of emphasis).

(b) Strictly speaking, Mr Beale's experiences are outside the specific matters addressed by the Ministry's redress process for historic claims, but I appreciate that the Royal Commission may still wish to have the Ministry's response to the issues raised by his case.

(c) Mr Beale's care involved a placement at the request of a family member in a private facility.

(d) The Ministry was satisfied that there was no legal basis for the claim against it brought on behalf of Mr Beale and defended the proceeding on that basis.

(e) As part of the management of the claim, the Ministry reviewed its at regular intervals. Once additional substance was provided about the claim (three years after it had been filed), the Ministry offered to settle having regard to all the circumstances, and that offer was accepted.

4.5 I am available to answer any further questions that might assist the Royal Commission.

GRO-C

Philip Blair Knipe