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Brief of Evidence of Simon Charles MacPherson for the Ministry of Social Development – Redress

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1 Introduction

- 1.1 My full name is Simon Charles MacPherson. I joined the Ministry of Social Development (**Ministry**) in December 2015 as Chief Policy Advisor and am currently the Deputy Chief Executive for the Policy branch and a member of the Ministry's Senior Leadership Team. I am also on the Official's Social Wellbeing Committee that supports the Chair of the Cabinet Social Wellbeing Committee.
- 1.2 Prior to joining the Ministry, I was in the Policy Advisory Group in the Department of the Prime Minister and Cabinet and my career has also included roles at Treasury (where, among other things, I was the Vote Manager for Social Development) and the State Services Commission.
- 1.3 Policy works with other groups across the Ministry and with partner agencies in the social and economic sectors with an overall goal of improving social and economic wellbeing. The branch provides strategic policy advice across a range of topics and issues, including social housing, income support and employment, the transition of young people to adulthood, student support, initiatives to support families, issues faced by people with a disability, positive ageing and social sector initiatives.
- 1.4 The work on the Ministry's response to the Royal Commission of Inquiry is hosted in the Policy branch, and the branch has also provided policy advice and input into the redress work done by Historic Claims.
- 1.5 To the extent I was not involved in an event referred to in this brief of evidence I have relied on the relevant material held by the Ministry. In particular, I note that much of the discussion of events prior to 1 July 2006 relates to the Department of Child Youth and Family, prior to it being incorporated into the Ministry.

2 Overview

How the system has changed

- 2.1 The Ministry's current redress system for responding to historic claims has evolved directly out of litigation brought against the Crown in the early 2000s.
- 2.2 The system started as a set of ad hoc responses to litigation with an emphasis on successfully defending the Crown's legal position and moved to a system by 2005 that placed more emphasis on potential resolution out of court but still placed a heavy reliance by the Crown on available legal defences both in court and in out of court settlements.
- 2.3 With the greater flexibility implicit in the Crown Litigation Strategy from 2008 the Ministry established an out of court alternative disputes resolution process which evolved towards a more claimant-focussed and less legalistic approach which accepted that the Crown was morally obliged to respond to claims, despite the existence of legal defences, while still being conscious of the interests of the Crown. This process was highly personalised and focussed on engaging directly with claimants, hearing the claimant's story, reviewing the claimant's social work records to determine whether it was reasonable to accept

the allegations so that a settlement offer could be made, acknowledging any wrongdoing and taking steps to try and put the harm right.

- 2.4 The system is now very different to that in place in 2005. Some of this change has been the result of deliberate review, but some of it has been more evolutionary or in response to ad hoc issues that have arisen. Over time it became apparent that claims were increasing at a significant rate and through engaging with claimants it was evident that litigation was not the best way to resolve these claims – either for claimants or the Crown. The system as it has evolved has been heavily shaped by the Crown’s Litigation Strategy.
- 2.5 Along the way the we have gone from:
- (a) A small team geared around supporting legal process and the defence of legal claims against the Crown, to a much larger dedicated team focused on settling claims directly.
 - (b) A function that was integrated into the legal team of the Department responsible for the children’s care system, to (from 2006) one set up on a more arm’s length basis in the Ministry of Social Development (but still in the same department), to one located (from 2017) in a Ministry separate to Oranga Tamariki.
 - (c) An approach that relied implicitly on the social work professionals to take into account the cultural needs and context of claimants to where cultural competency and a commitment to the principles of the Treaty of Waitangi has been more explicitly factored into the approach and make-up of the Historic Claims Team.
 - (d) Ad hoc funding arrangements, sometime based on underspends in other areas of activity, to more regular multi-year funding arrangements culminating in the recent injection by the Government in 2019 of \$95.2 million over three years.

2008 to present

- 2.6 Although the alternative disputes resolution process (established from 2008) was effective in responding to the needs of many claimants, the time intensive nature of the assessment process and increasing claim numbers meant that the Ministry needed to reconsider the way in which it assessed claims.
- 2.7 To attempt to address growing delays for claimants, the Ministry implemented the “Two Path Approach” in 2015. The Two Path Approach was a one-off accelerated assessment approach which was a less personalised approach to each claim – trading off detailed investigations of claims against increased timeliness. At that time, forecasting indicated that claims could be resolved by 2020 – which was not borne out in fact as time progressed.
- 2.8 This approach was successful in settling a high number of claims but did not resolve the problem of delays because claim numbers did not significantly reduce. Instead, numbers of claims were increasing at levels that were unexpected and unplanned for.
- 2.9 To be more effective in addressing delays, the Ministry then embarked on further review and reform of its redress system, driven by consultation with

claimants that eventually led to new processes implemented in November 2018. These new processes retain the important parts of listening to and engaging with claimants but includes a more streamlined assessment than the original process. The changes are also a significant improvement in the extent to which the Ministry is actively taking steps to ensure its commitment to te Tiriti o Waitangi is reflected in its processes and meet the needs of individual claimants.

- 2.10 It is clear that the Ministry has not always “got it right”. However, the Ministry has always been committed to improvement, and considers that commitment is reflected in the evolving nature of its processes over time.
- 2.11 Throughout the development of claims processes, the Ministry’s aim has been to provide a redress system that meets the needs of claimants – while necessarily having to balance the interests and resources of the Crown. We have listened to claimant feedback and that of their representatives and adapted our processes to be responsive to that feedback.
- 2.12 The Ministry’s current redress system seeks to focus on what claimants have shared is important to them and has been developed out of many years of experience. The Ministry is committed to continued improvements to the process and will be guided in its work by claimants’ voices wherever possible. The Ministry values the work of the Royal Commission as an opportunity to reflect on and improve its processes in order to best meet the needs of claimants.
- 2.13 My brief will provide an overview of the Ministry’s “story” and discuss events prior to the implementation of the 2008 process, along with a number of discrete issues that are relevant to the Ministry’s response to historic claims over the years. My colleague Linda Hrstich-Meyer’s brief will pick up the narrative with the development of the 2008 process through to current practice.

3 Background to the provision of child welfare services

- 3.1 The Child Welfare Division of the Department of Education had responsibility for the provision of child welfare services until it was transferred to the Department of Social Welfare which was established in April 1972. In May 1992 the Department of Social Welfare was restructured into business units including the New Zealand Children and Young Persons Service which continued to carry out the child welfare functions.
- 3.2 In October 1999 the Department of Child, Youth and Family Services (**CYF**) was established as the government agency responsible for the care and protection of children in New Zealand.
- 3.3 The Ministry of Social Development was established in 2001 as a result of merging the Department of Work and Income with the Ministry of Social Policy to become the government’s primary advisor on strategic and cross-sectoral social policy, as well as delivering operational support and services particularly around employment and income support.
- 3.4 On 1 July 2006, CYF was disestablished as a separate government department and became part of the Ministry. The purpose of the merger was to “back [CYF]

with MSD's organisation and support"¹ following a period in which CYF had struggled to deal with demand and budget pressures. The merger did, however, have a significant impact on the historic claims process.

- 3.5 Management of historic abuse claims was identified as one of the Ministry's most significant organisational issues in terms of both the interests of the Crown and the claimants, with the Chief Executive indicating that he planned to take a strong, hands-on role in managing the issue.²
- 3.6 The small Historic Claims Team that CYF had established to address growing claims of historic abuse was transferred to the Ministry and placed within the Corporate and Governance Group.³ This group had specialist capability in governance and contained the Ministry's legal team. Placing the Historic Claims Team within this group provided access to that expertise.
- 3.7 This placement of the team also provided separation from the CYF service line and was intended to give reassurance to claimants that the team was independent from CYF. The Manager of the Historic Claims Team directly reported to the Deputy Chief Executive, Corporate and Governance (through this period, the role of the Chief Social Worker in CYF was also expanded to allow her to take a stronger role in providing independent advice on social work practice issues). The establishment of the Confidential Listening and Assistance Service in 2008 (discussed in Section 6 below) provided another, more independent, route for people to discuss harms they had experienced in the care, health or education systems and to get assistance in accessing available services.
- 3.8 Responsibility for leading the policy work on options for managing future claims was shifted to the Deputy Chief Executive, Social Services Policy at the time of the merger.
- 3.9 The Ministry also formed a single governance arrangement across both the litigation and policy work, so that the management of the litigation proceeded alongside work on how other claims could be managed in future, and so key staff (such as the Chief Social Worker and the Chief Legal Advisor) were able to take a view across all the relevant issues.
- 3.10 In April 2015 the Minister for Social Development established the Expert Advisory Panel to review the extent to which CYF and related agencies in the care system were providing positive outcomes for children and young people and any changes required to improve these outcomes. As part of a wide-ranging final report the panel recommended establishing a separate department responsible for the children's care system, which was accepted by the Government.
- 3.11 On 1 April 2017 Oranga Tamariki – Ministry for Children was established to replace CYF in the provision of child welfare services, and so this function separated from the Ministry. Initially the Ministry retained responsibility for

¹ Minister for Social Development Press Release *Child Youth and Family to merge with Ministry of Social Development* (7 March 2006).

² Report to Associate Minister for Social Development and Employment *Management of Historic Abuse Claims* (8 August 2006). **Crown Bundle - Tab 17**

³ Report to Associate Minister for Social Development and Employment *Management of Historic Abuse Claims* (8 August 2006).

historic claims – that is, all claims relating to events prior to 1 January 2008; more recently, on the direction of Ministers, the Ministry has taken responsibility for all claims prior to 1 April 2017.⁴

- 3.12 Today, the Ministry plays a key role in the social sector, working directly with New Zealanders of all ages to improve social wellbeing. It provides policy advice and delivers social services and assistance to young people, working age people, older people, and families, whānau and communities. It does not have a direct role in child welfare or child protection, with the two specific exceptions below.
- 3.13 The Ministry is currently responsible for setting up the Independent Children’s Monitor, as well as progressing the policy and legislation changes needed to give full effect to the Monitor’s role. The Independent Children’s Monitor function is intended to transfer to the Office of the Children’s Commissioner once it is fully functional and running effectively.
- 3.14 The Independent Children’s Monitor is a key part of the government’s drive to strengthen independent oversight of the Oranga Tamariki system and ultimately will help ensure that the wellbeing of children is protected.
- 3.15 The Ministry also hosts the Social Services Accreditation function which reviews organisations wishing to provide community services to ensure they have both the capacity and ability to provide effective services, including organisations that deal with children.

4 2000 – July 2004: The identification of the need for a more systematic approach to responding to historic claims

- 4.1 Prior to 2003 the Crown had only received a small number of child welfare-related historic abuse claims and agencies did not have dedicated internal policies or processes to address historic claims.

Salvation Army claims⁵

- 4.2 By 3 December 2003 CYF had received 31 complaints⁶ from former state wards alleging various forms of abuse and inadequate care in Salvation Army Homes thirty to sixty years prior. These claims, and the uncertainty about the number of future claims, led to the establishment of the Salvation Army project team within CYF in February 2004.

⁴ When Oranga Tamariki was first established, Oranga Tamariki was to take responsibility for claims of abuse dating back to 1 January 2008, with the Ministry retaining responsibility for claims prior to that date. In October 2019 Ministers agreed that the Ministry would take responsibility for processing all claims for events prior to Oranga Tamariki’s establishment on 1 April 2017.

⁵ Child, Youth and Family *The Management of Historic Child Abuse Complaints against the Salvation Army* (Policy Consultation Paper, 26 November 2003); Child, Youth and Family *The Management of Complaints of Historic Child Abuse by Former State Wards Against the Salvation Army* (Report to Associate Ministers for Social Development, 3 December 2003).

⁶ These were initially determined to be “complaints” rather than “claims” as there were no filed proceedings and some of the group were not seeking compensation. This group had also raised concerns directly with the Salvation Army.

- 4.3 The Salvation Army project team was set up initially for a period of 6 months, with the primary aim being to address the enquiries and concerns from this group, which had by then increased to 34 people. The Salvation Army Team's role was to provide information about the process, explain the contents of files to claimants, assess what assistance might be available to claimants through other government agencies, and listen to and record claimants' stories.⁷
- 4.4 CYF recognised that it was almost certain that a number of complaints about historical abuse would be brought against the government in the coming decade, and therefore the response to the Salvation Army claimants would have implications for other departments.
- 4.5 As well as this group of claims against the Salvation Army, claims against the Crown began to be filed in relation to psychiatric institutions. CYF had been named as a defendant in approximately 20 of these civil claims, with 22 more pending but not yet filed.⁸ CYF was a defendant because some of the claimants were in state care as well as being placed in psychiatric institutions. Accordingly, CYF worked with officials from the Department of the Prime Minister and Cabinet (**DPMC**), Crown Law and the Ministry of Health to discuss a consistent approach across government to historical abuse claims. The agencies supported an inter-agency project team to scope the size of the problem, examine the issues, look at the overseas models, and suggest a way forward.
- 4.6 Sonja Cooper and Roger Chapman were the primary solicitors representing claimants. They signalled that they anticipated filing in excess of 250 claims against CYF.⁹ It was clear that CYF would need to respond to claims in the future.

Historic Claims Team established

- 4.7 On 21 July 2004 the Executive Committee of CYF approved the establishment of a "Historic Claims Team" to manage civil claims that were anticipated to be filed against the department. It was to be part of the Legal Services team, with the Chief Social Worker (**CSW**) the instructing client.¹⁰
- 4.8 The Historic Claims Team was effectively a continuation of the team that had been established to address the Salvation Army complaints, with an expansion of its role to include all civil claims of historical abuse against CYF.¹¹
- 4.9 In 2004 and 2005 the team was small, comprising a project coordinator, a solicitor and in 2005 a senior social work advisor and an administrator.

⁷ Child, Youth and Family *The Management of Complaints of Historic Child Abuse by Former State Wards Against the Salvation Army* (Report to Associate Ministers for Social Development, 3 December 2003). **Crown Bundle - Tab 6**

⁸ Child, Youth and Family *Historic Claims Team – Update, Policy Developments and 2005/06 Fiscal Year (F06) Resourcing* (Submission to Executive Committee, 20 April 2005). **Crown Bundle - Tab 11**

⁹ Child, Youth and Family *Historic Claims Team – Update, Policy Developments and 2005/06 Fiscal Year (F06) Resourcing* (Submission to Executive Committee, 20 April 2005).

¹⁰ Ministry of Social Development *Historical Claims: Options for Resolution* (Report to Associate Minister for Social Development, 29 September 2006). **Crown Bundle - Tab 18**

¹¹ Ministry of Social Development *Historical Claims: Options for Resolution* (Report to Associate Minister for Social Development, 29 September 2006).

- 4.10 The Historic Claims Team has been called other names at various stages in time such as the “Care Claims and Resolution” team and “Claims Resolution”. In this brief I will simply refer to the team as the Historic Claims Team.

5 Early development of the Historic Claims Team, its processes and Crown strategy (2004-2008)

Development of the Historic Claims Team

- 5.1 The Historic Claims Team was initially established to support CYF’s response to litigation and worked very closely with CYF’s (and then later the Ministry’s) legal team. Prior to 2007, most claims were filed in court and were actively managed by the legal team and Crown Law.
- 5.2 The Historic Claims Team managed all of the non-legal aspects of historic claims. By the time CYF was integrated into the Ministry on 1 July 2006, the Historic Claims Team performed the following functions:¹²
- (a) processing information requests from lawyers (primarily Cooper Legal) and individuals who had been in care;
 - (b) undertaking research into policy and practice standards for residences and time periods mentioned in historical claims;
 - (c) providing support for the Ministry’s legal team, for example file searching and providing advice on social work; and
 - (d) dealing with general phone inquiries – often from people who did not want to lodge a claim but wanted access to their files and/or advice on any services that could assist them with issues arising out of claimed abuse.
- 5.3 In these early years, there was not a dedicated claims resolution function. Rather, the focus was on responding to litigation. As detailed in Ms Hrstich-Meyer’s brief, claimants did not start coming to the Ministry directly until mid-2006, and then more regularly in 2007.

Litigation and development of Crown Litigation Strategy

- 5.4 The legal team managed claims in consultation with Crown Law and in accordance with a detailed set of principles that were approved by Ministers in 2005 to assist Crown Law and other agencies responding to claims.¹³ The general principles involved the Crown:
- (a) acting as a model litigant;
 - (b) meeting liability if established but not paying public money without good cause;

¹² Ministry of Social Development *Historical Claims: Options for Resolution* (Report to Associate Minister for Social Development, 29 September 2006). **Crown Bundle - Tab 18**

¹³ Cabinet Policy Committee “Historic Abuse Claims Against the State” (9 May 2005) POL (05) 95. **Crown Bundle - Tab 12**

- (c) seeking to avoid establishing ad hoc mechanisms that would constitute an undesirable precedent for future claims; and
 - (d) using public resources efficiently in responding to claims.
- 5.5 These principles also involved a thorough investigation of the documentary records available, speaking to witnesses and then applying the evidence to the legal tests. Where that assessment indicated that there was a reasonable prospect of liability, the Crown would consider making an offer of settlement. All settlement offers were to be based on the best available evidence as to actual loss or damage.
- 5.6 Following these principles meant the claims would generally have had to be able to overcome obstacles to establishing liability under the Limitation Act 1950 and accident compensation legislation. As well as legal obstacles, many of the claims faced significant evidential difficulties. Many statements of claim did not have much information about the substantive allegations, and some did not even specify the time period in which they were abused, the institution in which the abuse occurred, or the alleged perpetrator. The lack of a clear evidential basis for claims made it difficult to properly assess claims to determine their credibility and the legal risk they posed. Given the above, only a small number of claims were resolved during this early period.
- 5.7 At the direction of Ministers, the Crown Litigation Strategy was reviewed in 2007/2008. On 21 May 2008, a new litigation strategy was adopted by the Cabinet. It was a three-pronged approach:
 - (a) first, agencies were to seek to resolve grievances early and directly with the particular individual where that was practicable;
 - (b) second, settlement was to be considered for any meritorious claims; and
 - (c) third, claims that did proceed to a court hearing because they could not be resolved were to be defended.
- 5.8 With this new strategy around attempting to resolve grievances directly with individuals and with the establishment of the Historic Claims ADR process in 2008, there began to be a move away from relying upon limitation and accident compensation legislation defences if the matter was resolved outside of court, though there still needed to be sufficient information to support the claim.
- 5.9 In the early stages of the Historic Claims process, for filed claimants, where the Ministry determined that there was no reason for a settlement offer to be made, the claimant was invited to discontinue their proceedings and the Ministry offered to meet their legal aid debt and in some early instances it also made a small payment to meet wellness costs such as counselling, drug and alcohol services or tattoo removal.
- 5.10 I understand details of the development of the Crown Litigation Strategy will be provided in the Solicitor-General's evidence.

CYF's investigation of past practice and culture, and allegations against current staff

- 5.11 During the second half of 2005, CYF engaged with Sonja Cooper about the possibility of her providing a synopsis of other potential claims that she was intending on filing in due course. It was intended that this would assist the Department in making an assessment of the nature of the claims, consider the appropriate way to manage such a large number and begin conducting research. I understand that Ms Cooper was reluctant to do this, but agreed to provide a summary of the themes, the residences and alleged perpetrators.¹⁴
- 5.12 In January 2006 Ms Cooper presented CYF with a paper prepared by Cooper Legal entitled "Culture of Abuse and Perpetrators of Abuse at Department of Social Welfare Institutions".¹⁵ Ms Cooper described the nature of her clients' allegations arising out of their time in residential care between the 1960s and 1990s, and named approximately 235 alleged abusers.
- 5.13 Ms Cooper's paper made allegations of a culture of physical and sexual abuse within State child welfare institutions and referred to initiation rituals, a "Kingpin" culture within the homes, physical and sexual abuse by staff and by residents which the staff failed to prevent, excessive use of secure care and physical training as punishment, staff providing the residents with cigarettes, cannabis or alcohol and a lack of adequate education.¹⁶
- 5.14 This paper was used to inform various pieces of work. As part of that, the Historic Claims Team investigated and identified that 9 staff named in Ms Cooper's paper were still currently employed by the department.¹⁷ As a result, an investigation plan and process to address the allegations raised by Ms Cooper's clients was prepared. It was important that the current safety of any children and young people in light of those allegations was properly assessed.
- 5.15 Based on the information provided, for 8 of the 9 staff members, it was determined that employment investigations were not possible based on the brief anonymous summary information provided in the report. Further information was provided for one staff member which allowed an employment investigation to be completed.
- 5.16 The Ministry took these allegations seriously and met with Police to discuss possible investigations of criminal offending. No Police investigations were completed as Cooper Legal clients did not wish to lay criminal complaints.

¹⁴ Child, Youth and Family *Historic Claims Team – Update* (Submission to Executive Committee, 5 April 2006). **Crown Bundle - Tab 15**

¹⁵ Child, Youth and Family *Historic Claims Team – Update* (Submission to Executive Committee, 5 April 2006).

¹⁶ Child, Youth and Family *Historic Claims Team – Update* (Submission to Executive Committee, 5 April 2006).

¹⁷ Child, Youth and Family *Historic Claims Team – Update* (Submission to Executive Committee, 5 April 2006).

Developing a historic claims alternative disputes resolution process

- 5.17 The development of the claims process occurred in parallel to the development of the Crown response to historic abuse and the Crown Litigation Strategy. The Ministry was involved in interagency working groups and other policy work.

Research into past practices

- 5.18 The Historic Claims Team in CYF undertook research into past child welfare practices in New Zealand. This was to assist in understanding abuse that had occurred and growing the team's knowledge about events that had taken place in child welfare residences. The team interviewed current CYF staff who had previously worked in some of the residences identified in the claims in order to obtain their accounts of the practices and cultures within them.¹⁸ The team also performed searches of administrative and personal files to look for evidence of abuse or inappropriate behaviour by staff.¹⁹
- 5.19 It was clear to the Historic Claims Team at the time that the past standards of care did not meet modern standards, and that abuse had occurred in some institutions.
- 5.20 The Department also commissioned other pieces of research into residences. Wendy Parker's research paper "Social Welfare Residential Care 1950-1994" provided a baseline measure of social work practices and standards in residential care that could be used to assess claims received by CYF. The research included a discussion of 15 of the residences operated by CYF during the period which were implicated in claims. This research was extremely helpful and is still used today to inform the team's understanding of such residences.
- 5.21 In November 2009 a research report titled "Understanding Kohitere" was published based on discussions with 94 people, including former residents, staff, professional service providers, school teachers and government officials. This research was to gain an understanding of Kohitere from 1950 to 1985, from the perceptions of people who had direct experience of it, with regard to staff practices, the standard of care and the general culture of the organisation.
- 5.22 The research found that Kohitere was a well-intentioned institution with mostly dedicated and hard working staff, but that some residents were physically punished and there were instances of sexual abuse described during the research interviews. There were also issues of bullying among the residents that the staff were unqualified to deal with. As with the Social Welfare Residential Care research paper, "Understanding Kohitere" informed (and continues to inform) the team's understanding of what Kohitere was like and how it operated.

The number of claims continues to increase

- 5.23 By 2006, it became apparent that the number of claims of abuse of people in its care was increasing. Prior to the disestablishment of CYF on 1 July 2006, CYF

¹⁸ Child, Youth and Family *Historic Claims Team – Update* (Submission to Executive Committee, 5 April 2006). **Crown Bundle - Tab 15**

¹⁹ Child, Youth and Family *Historic Claims Team – Update* (Submission to Executive Committee, 5 April 2006).

regularly updated the Minister and Cabinet on the number and status of claims filed in the courts. At 23 March 2006, CYF had been named as a defendant in 55 civil claims in court;²⁰ by the end of the year this had increased to 127.²¹

- 5.24 Information from Cooper Legal, together with increases in the number of relevant Privacy Act requests and legal aid applications, all indicated that the number of claims was increasing. Cooper Legal advised that approximately 300 potential claims were anticipated in June 2005. This increased to 600 potential claims by the end of December 2006.²²
- 5.25 Throughout this period the Historic Claims Team sought information from Cooper Legal as to the substance of the anticipated claims so that it could make an assessment of the nature of the claims and the most appropriate method of dealing with them. Ms Cooper advised that:
- (a) most claims related to the period 1960-1990, although there was a growing group bringing claims for events in the late 1990s onwards;
 - (b) it was estimated that between 65-75 per cent of the claimants were Māori; and
 - (c) a large number of the claimant group were in prison, or had been in prison when they had instructed Ms Cooper.
- 5.26 With the rising number of claims, it was clear that an alternative approach to litigation needed to be developed.

2006 Consultation with claimants

- 5.27 In September 2006 the Historic Claims Team (now in the Corporate and Governance Group of MSD) met with members of the Confidential Forum,²³ Ms Cooper, and nine of her clients. The Ministry carried out interviews with claimants in order to consider what a positive process for assessing and managing the claims would look like. Interviews were carried out confidentially and on the basis that the information provided would be kept separate from court proceedings brought by those persons.
- 5.28 The claimants said they believed that the time they spent in State care negatively affected their life outcomes. The claimants identified a range of needs in response to their claims. All identified compensation, but some said this was only a secondary concern. Claimants wanted to tell their story and be heard, to have an acknowledgement of harm done, a service response, a

²⁰ Child, Youth and Family *Historic Claims Team – Update* (Submission to Executive Committee, 5 April 2006). **Crown Bundle - Tab 15**

²¹ Ministry of Social Development *Progress Update: Child, Youth and Family Historical Claims* (Report to the Associate Minister for Social Development and Employment (CYF), 15 December 2006). **Crown Bundle - Tab 20**

²² Ministry of Social Development *Progress Update: Child, Youth and Family Historical Claims* (Report to the Associate Minister for Social Development and Employment (CYF), 15 December 2006).

²³ The Confidential Forum was administered by the Department of Internal Affairs and provided former patients of psychiatric institutions before 1992 a service to air their grievances. It is described in more detail in the evidence of Philip Knipe on behalf of the Ministry of Health.

commitment to raising public awareness of child abuse and preventing its recurrence, and an apology.²⁴

5.29 The Ministry considered the need for a fair process supported by evidence and acknowledged that where children were wards of the State, the State (or Crown) owed them a duty of care and had a moral obligation to provide remedies where it had failed that duty.²⁵ As well as accounting for the needs of the claimants, the Historic Claims Team considered that any potential options would need to account for the following factors:

- (a) the rights of alleged perpetrators to defend themselves against allegations and not suffer unnecessary trauma;
- (b) the need to protect the reputation, where deserved, of staff and the Ministry/CYF;
- (c) providing a timely response;
- (d) financial cost and value for money;
- (e) accessibility, both emotional and physical, to claimants;
- (f) public and political credibility; and
- (g) administrative feasibility and impacts on other government agencies.

5.30 The Historic Claims Team also carried out research into international approaches to inform policy development.

5.31 Having received this feedback from claimants, by 15 December 2006 the Ministry was considering ways that claims could be resolved out of court while achieving a fair result for all parties.²⁶ The alternative process would likely include the following features:

- (a) an apology and acknowledgement of harm done;
- (b) strengthened services for people who may have been abused in care - this would require work across the Ministry and other agencies to establish what services would be delivered and how;
- (c) the ability for any person who had questions regarding their care to work with the Ministry, in a supported environment, to look at their care, ask questions, and where appropriate receive a personal apology; and
- (d) a visible commitment to ensuring that the current system prevents and detects abuse to the extent possible, and that an environment is

²⁴ Ministry of Social Development *Management of Child Welfare Historical Claims* (Report to the Associate Minister for Social Development and Employment, 4 May 2007). **Crown Bundle - Tab 23**

²⁵ Ministry of Social Development *Historical Claims: Options for Resolution* (Report to the Associate Minister for Social Development, 29 September 2006). **Crown Bundle - Tab 18**

²⁶ Ministry of Social Development *Progress Update: Child, Youth and Family Historical Claims* (Report to the Associate Minister for Social Development and Employment (CYF), 15 December 2006). **Crown Bundle - Tab 20**

provided where children and young people are able to report any issues with their care.

- 5.32 The possibility of an out of court payment was also being considered, but the Ministry was very mindful that it was bound by the existing Crown policy on settling such claims (that is, it would meet liability if established or where an assessment indicated that there was a reasonable prospect of liability but would not pay money without good cause). This meant applying the Limitation Act and the accident compensation legislation defences. The Ministry's application of the new Crown Litigation Strategy from 2008 provided for out of court financial payments in cases where the Ministry considered there was a moral imperative to make them, and without relying on the Limitation Act and accident compensation legislation defences.
- 5.33 These features, along with settlement payments became key components of the Ministry's alternative dispute resolution process and continue to this day, as discussed in Ms Hrstich-Meyer's evidence.
- 5.34 Claimants can also make claims through the Accident Compensation Corporation.
- 5.35 Although payment of legal costs and counselling have been consistent parts of its redress system, and other supports made available, the Ministry acknowledges that its support offerings claimants to date have been limited. As part of developing the Ministry's new process and with additional funding, the Ministry has been working to develop and strengthen its support options for claimants. Ms Hrstich-Meyer's evidence will cover these initiatives.

6 Referrals of claims from the Confidential Listening and Assistance Service (CLAS) to the Ministry

- 6.1 On 20 June 2007 Cabinet agreed to the establishment of what would become CLAS. This was at the same time that Cabinet decided to review the Crown Litigation Strategy. CLAS was officially established in 2008 and met with participants between April 2009 and 2015. CLAS provided a listening service for people who had experienced harm in welfare, health and/or education care.
- 6.2 The role of CLAS was to provide an opportunity for participants to talk about their care experience, provide assistance for participants to access existing services (ie referrals to other support services) and entitlements based on their needs and to enable participants to access information held by state agencies (which CLAS would request on the person's behalf). CLAS made 424 requests to the Ministry for social work files on behalf of participants. The standard approach was for the Ministry to process these and provide the files to CLAS who took responsibility for providing these to participants and where needed, additional supports around reading these files.
- 6.3 CLAS were also able to register a claim on the person's behalf with the Ministry, which typically involved providing a brief synopsis of the claim as well as an audio recording of the claimant's CLAS interview. Although the Historic Claims Team directly connected with claimants who had been referred by CLAS once their claim was ready for assessment, the information from their CLAS interview largely formed the basis of their claim and claimants would not typically need to share their story again unless they had additional details to provide. In total,

CLAS referred 514 participants to the Ministry to lodge a claim. The first claim was referred by CLAS in July 2009²⁷ and these continued to be referred up until May 2015, shortly before its closure in June 2015.

- 6.4 The Ministry assessed and responded to all claims that were referred by CLAS in the same way it did for all other claimants that approached the Ministry directly or through another referral source. The CLAS claims were put into the “queue” of claims waiting to be assessed and were generally allocated in date order. Some of the earlier CLAS referrals were assessed using the case assessment model whereas most later referrals would have first received an offer under the Ministry’s Two Path Approach (both of these processes are discussed in Ms Hrstich-Meyer’s evidence).
- 6.5 The time taken to resolve these claims depended on a variety of factors including the wait time that existed at the time the referral was made, the assessment model that was in place at the time of the referral and whether the claimant accepted the Ministry’s first offer. For example, the first CLAS referrals were assessed much more quickly than later referrals given there was a shorter wait-time. Also, referrals that were made shortly prior to the introduction of the Two Path Approach benefitted from a shorter wait time as generally all claims lodged before 31 December 2014 that had not previously been assessed were eligible to receive an offer.

7 Litigation of claims (2007-2018)

- 7.1 A number of significant cases proceeded through the courts in this period, addressed in the brief filed on behalf of Crown Law Office. *White v Attorney-General*²⁸ was an extremely important case for both the Ministry and the Crown as it is the only historic abuse claim for a person in State welfare care that proceeded through to a full trial since the inception of the Historic Claims team in 2004. Although the Ministry’s preference was not to progress to trial, and attempts were made to settle the claims of the two plaintiffs, the High Court decision provided important legal findings around the Crown’s liability. These findings helped shape aspects of the Ministry’s assessment process around duties that the Ministry owed to children in state care. The Court also made factual findings relating to the plaintiff’s concerns about the Residential Institutions of Epuni Boys’ Home and Hokio in the 1960s and 1970s which has assisted in the Ministry’s understanding of these residences and assessment of other similar claims.
- 7.2 The case was conducted having regard to the Crown strategy at the time which included acting as a model litigant and meeting liability if established, but not paying public money without good cause. The Crown took an orthodox approach to responding to the litigation which included pleading and relying upon applicable defences.
- 7.3 The two plaintiffs had their claims for abuse in care dismissed, despite factual findings against the Crown being made including that one brother had been sexually assaulted at the institution.

²⁸ *White v Attorney-General* HC Wellington CIV-199-485-85; CIV-2001-485-864, 28 November 2007. **Crown Bundle - Tab 30**

- 7.4 Despite this decision that the Ministry was not legally liable for the abuse, it still considered it appropriate to offer a payment to the plaintiffs in the *White* case as they had come to harm while in the care of the State and the Ministry wanted to acknowledge this and try and put right some of the harm. A payment was offered and paid to the plaintiffs. This payment included an ex-gratia payment along with a contribution to their legal aid debts. An amount was agreed with the Legal Services Agency which enabled the plaintiffs to retain their ex gratia payments in full.
- 7.5 There have been other claims progressed during this time through the courts and some have had trial dates allocated, but all have settled before being heard. These have included a trial relating to three claims all involving placements at the Whakapakari Youth Trust which was to be heard in 2015/16 and the claim by "X" (name suppressed) which was to be heard in 2017. It is not the Ministry's preference for claims to be progressed to trial and in these cases the Ministry has actively pursued settlement. However where claimants do not wish to accept settlement offers then they may pursue their claim through court.
- 7.6 These claims were more recent than *White* and related to events that took place in the 1990s and early 2000s. If they had been heard, the Court would have considered the Crown's liability for contracted providers and how the New Zealand Bill of Rights Act 1990 applies to the State care system. There is a further claim set down for trial in August 2020 which will consider these issues if it proceeds.
- 7.7 For claimants that were not able to reach resolution with the Ministry during the 2007-2018 period and did not want to progress their claim to trial, some claimants have requested a Judicial Settlement Conference. The Ministry attended a number of these conferences throughout this period, and these cases have largely been resolved shortly after the conference. However, there were limits on the Ministry's ability to agree to a very different outcome to what would have been achieved through settlement as it is unable to agree to pay a higher amount to resolve the claim without there being a principled basis to do so. It is important that the whole of the claimant group is treated the same and similar cases are being paid similar amounts.
- "Stopping the Clock" agreement with Cooper Legal*
- 7.8 On 11 May 2011 the Ministry entered into an agreement with Cooper Legal that it would not use the Limitation Act 1950 to avoid making a fair offer to resolve the claim out of court, and that it would "stop the clock" where claimants were engaging directly in the out of court process. This would ensure claimants were not disadvantaged by engaging fully in the Ministry's processes for resolving claims out of court. An addendum to the agreement was entered into in early 2015 under which the Ministry agreed not to rely on the long stop periods in section 23B(1) of the Limitation Act 1950.
- 7.9 This agreement gave Cooper Legal claimants some surety that they did not need to file proceedings in court to preserve any Limitation Act defence they might have. This agreement led to a reduction in claims being filed in court and this continues today. Most claims from Cooper Legal are no longer filed in court.
- 7.10 The Crown's approach to the use of statutory defences is discussed in more detail in the Solicitor-General's evidence.

8 Commitment to Te Tiriti o Waitangi

- 8.1 As previously mentioned, the majority of claimants have Māori whakapapa, reflecting the general care population. From the origins of the Historic Claims Team within the Ministry in 2006, the Ministry has sought to place a strong emphasis on the Historic Claims process responding to a claimant's individual needs, in accordance with social work principles. The Ministry considered that these principles allowed for the expression of tikanga Māori where it was raised by the individual claimants.²⁹
- 8.2 The Historic Claims processes were originally based on social work practices which emphasised te ao Māori. The Historic Claims Team staff were always encouraged to be sensitive to cultural concerns. Staff at times attended relevant training to support their ability to work cross-culturally. Ongoing evidence of cultural competency was a professional requirement for the many staff who were registered social workers.
- 8.3 The Ministry also gave consideration to the needs of Māori claimants in its original development of the Historic Claims process. During the 2006 consultation with Ms Cooper and nine of her clients, six of whom were Māori, the Ministry discussed the claimants' expectations and possible concerns about an out-of-court resolution process. These were used to inform the design of the Historic Claims Process. For example, the Ministry incorporated an option for providing counselling services in response to a concern that claimants' issues could affect their families and put them at risk.³⁰
- 8.4 This was, however, relatively informal and implicit, and the Ministry accepts that the Historic Claims process and its underpinning principles could have more consciously and explicitly embraced and reflected the values and principles of te ao Māori.³¹ To address this issue, highlighted by the Waitangi Tribunal claims filed in 2017, the Ministry undertook significant consultation with Māori claimants. The Ministry relied on this consultation when designing the changes to the processes implemented from November 2018 which have specifically incorporated issues raised by Māori claimants. The Ministry considers that this process was undertaken in the spirit of the treaty principle of partnership with Māori.
- 8.5 A number of the changes (or intended changes) to the Historic Claims operating model have been implemented as part of the Ministry's commitment to ensure that the principles of Te Tiriti o Waitangi have been incorporated. These are discussed in detail in Ms Hrstich-Meyer's brief of evidence, but include diversification of staff working on claims, trialling initiatives to incorporate greater whānau involvement in the claims process, and ongoing work to ensure continuous improvement based on feedback received from claimants.

²⁹ Affidavit of Linda Hrstich-Meyer filed in the Waitangi Tribunal (WAI 2615 and WAI 1247, 13 April 2017). **Crown Bundle - Tab 79**

³⁰ Affidavit of Linda Hrstich-Meyer filed in the Waitangi Tribunal (WAI 2615 and WAI 1247, 13 April 2017).

³¹ Affidavit of Linda Hrstich-Meyer filed in the Waitangi Tribunal (WAI 2615 and WAI 1247, 13 April 2017), at [19].

9 Changes to definition of “historic claims” over time

- 9.1 There have been various changes to the time periods that the Historic Claims Team has assessed over the years:

Pre 1993 claims – Historic Claims

- 9.2 The Historic Claims team was initially set up to respond to claims relating to events up until 31 December 1992. These were known as “historic claims”. At the time, most of the claims that had been received in the 2004-2013 period related to events that took place in the 1960s to 1980s.

1993 – 2007 claims - Contemporary Claims

- 9.3 More claims relating to events that occurred after 1992 began to be lodged with the Ministry. These technically sat outside the date range that the Historic Claims Team was responsible for but made it clear that there was a larger group of claimants than initially thought. On 24 July 2014³² the Ministry decided that “contemporary claims” (defined as all claims with allegations of abuse occurring between 1 January 1993 and 31 December 2007) would be responded to by a new team called the Contemporary Claims Team.
- 9.4 This new team would sit alongside the Historic Claims Team in the same business unit within the Ministry but these claims were funded by CYF baseline funding, rather than being paid from the Historic Claims appropriation, which was limited to claims relating to events up until the end of 1992. The two teams worked closely together and used the same claims process.
- 9.5 The Contemporary Claims Team was merged in with the Historic Claims Team, largely because there was not a significant practical difference in the work type of each of the teams.

2008 – 2017 claims

- 9.6 Any claims and complaints relating to the period from 1 January 2008 were defined as “CYF complaints”. These complaints were dealt with by the Child, Youth and Family service line within the Ministry. When Oranga Tamariki was established on 1 April 2017 it took over the provision of child welfare services, and responsibility for these CYF claims.
- 9.7 On 4 August 2019 Ministers agreed that the Ministry would take responsibility for resolving claims relating to events in state care for the period up to 1 April 2017, which is the date Oranga Tamariki was established. Oranga Tamariki would continue to take responsibility for resolving claims relating to events post 1 April 2017.
- 9.8 All outstanding claims relating to the period before 1 April 2017 that have not yet been assessed or are not currently being assessed by Oranga Tamariki have been transferred to the Ministry. All claimants that have had their claims transferred have received communications around this.

³² Ministry of Social Development *Responsibility for Resolving Contemporary Claims of Abuse and Neglect while in State Care* (Memorandum of Agreement, 24 July 2014). **Crown Bundle - Tab 69**

10 High Tariff Offenders

- 10.1 In 2010 Ministers expressed an interest in exploring whether a policy was needed for managing compensation payments made to claimants who had been convicted of very serious crimes such as murder, child molestation and rape. This group became known as “High Tariff Offenders”.
- 10.2 Between 2010 and 2017, Crown agencies and Ministers explored various options to determine whether it may be appropriate to put conditions on how this group of offenders receive and use their settlement payments which would take into consideration the particular characteristics of the group, including the interests of victims and the community. These conditions included this group being able to use their payments only for rehabilitative and reintegration purposes and various Trust and legislative mechanisms were considered to manage the funds. It would only apply to claimants who were to receive in excess of \$10,000.³³ This policy initiative was complex with difficult administrative, legal and financial issues to be worked through and there were a variety of Crown agencies involved. There were also different Ministerial views as to what this policy should look like throughout the development period.
- 10.3 Assessment of claims by High Tariff Offenders was put on hold while policies were considered. Approximately 43 claimants fell into this group, some of whom had their settlement offers delayed (but not denied) while this work progressed.
- 10.4 In December 2017, the newly elected Government decided not to progress the introduction of legislation that would have enabled the Crown to manage payments to High Tariff Offenders through a statutory management scheme. In February 2018, the Ministry began making offers to this group of claimants with many receiving an offer under the fast track of the Two Path Approach.

11 State Services Commission’s investigation into the use of external security consultants

- 11.1 It is not the Ministry’s usual practice to use private investigators in the context of responding to filed claims of historic abuse and it is not part of the Historic Claims Team’s out of court claims process at all. However, from time to time, as cases have progressed towards trial, the Ministry has used private investigators to assist in locating witnesses and preparing for trial (eg analysing documents). In these cases, the engagement has typically been through Crown Law who engaged these services on the Ministry’s behalf.
- 11.2 In December 2018 the State Services Commission released their report into the use of external security consultants. The Inquiry found that in the White case that Crown Law had breached the State Service Code of Conduct by providing broad instructions to a private investigator, without explicit controls to protect privacy interests. There were indications on file that the investigators used techniques involving low-level surveillance, or something close to it for one person, though a definitive finding could not be made.

³³ Ministry of Social Development *Decision sought on future of work on compensation payments due to serious offenders* (Report to Ministers for Social Development and Corrections, 15 December 2017). **Crown Bundle - Tab 82**

- 11.3 The report also found that the Ministry breached the Code of Conduct, although “at the lower end of the scale” because it was aware that potential low-level surveillance could be undertaken and that it did not query this or seek any assurance that privacy interests would be protected. The Inquiry confirmed that there is no information to suggest that the Ministry knew about or directed this surveillance being carried out.
- 11.4 White is the only Historic Claims case that the Ministry is aware of where low level surveillance may have been used. Searches of the Ministry’s records have identified four other cases where an individual was engaged to assist in trial preparation. These engagements were focussed on locating potential witnesses and supporting witness preparation. There is no indication that surveillance was a part of these engagements.

12 Referrals to Police, Oranga Tamariki and NGOs

- 12.1 The Ministry is committed to ensuring that children in State care and in the community are kept safe through sharing information where appropriate with relevant agencies. Although the mechanisms for how the Ministry shares information with other agencies have changed over the years, the intention in sharing information has always been to prevent similar events alleged by claimants from happening to children today and in the future.
- 12.2 Upon receiving a claim, and through the claims process where further information is identified, a safety check is completed to understand whether alleged perpetrators of abuse are current staff members or caregivers with Oranga Tamariki or the Ministry, or who may still be employed by an operating NGO. The outcome of these safety checks may result in referrals to Oranga Tamariki, the Police, NGOs or other government agencies.
- 12.3 When CYF was a service line of the Ministry, arrangements were in place to ensure that safety risks were assessed for staff members or caregivers who had allegations made against them. For example, as at 4 May 2007 the Ministry’s process for addressing claims that made allegations against current Ministry staff included advising the staff member of the allegation and ensuring that the staff member was not allowed in a position where children in their care could be at risk. Staff were informed that the Ministry would support them and provided financial assistance for independent legal advice until the allegations could be proved one way or another.³⁴ This process was challenging to manage because most claims did not provide detailed information or refer to underlying evidence, especially in the early stages of a claim. The Ministry could not undertake a formal employment investigation without clear evidence and had to be mindful of its obligations as an employer.
- 12.4 In May 2016, the Ministry entered into an agreement with Police to refer allegations of physical or sexual abuse to Police, to assist Police in their prevention, detection and investigation of criminal offences, including for reasons of public safety. Some claimants of Cooper Legal objected to this practice and litigation was filed to prevent the Ministry from making these referrals. In June 2018, the High Court decided that information in Court documents relating to a collection of cases involving the Ministry and the

³⁴ Ministry of Social Development *Management of Child Welfare Historical Claims* (Report to the Associate Minister for Social Development and Employment, 4 May 2007).

Ministry of Health that are being managed together (known as the DSW litigation group) cannot be provided to non-parties unless:

- (a) leave is granted by the Court;
 - (b) the documents are shared for the conduct of litigation and any settlement purposes; or
 - (c) the documents are shared between the Ministry, Oranga Tamariki and the Ministry of Education for the purposes of ensuring the safety of children presently in care.
- 12.5 On 16 October 2019 the Court of Appeal confirmed the High Court decision. While this litigation has been pending, the Ministry has not made any referrals to the Police for filed or unfiled claims unless claimants asked the Ministry to assist in this process.
- 12.6 As the Ministry no longer provides care and protection services through Child, Youth and Family, Oranga Tamariki is responsible for addressing allegations made against their staff and caregivers. Similarly, NGOs are responsible for addressing allegations made against their staff and caregivers. Historic Claims' role is to ensure that information is shared with these agencies to ensure that they can take the necessary steps to maintain the safety of children in their care.
- 12.7 By approaching the Historic Claims team, claimants place trust in the team to handle their information with respect and sensitivity. The Historic Claims team published a privacy statement in 2018 which outlines who the Ministry may need to share information with and the reasons why. Historic Claims staff also take the opportunity to discuss with claimants when their information may be shared and for what purpose when they first register a claim and in subsequent discussions when serious concerns about individuals are raised.
- 12.8 Current practice for referring allegations to Police is that such referrals are only made with the claimant's consent.

13 Information about claimants and their claims

- 13.1 The Ministry's data collection has improved over time, and Historic Claims has actively sought to develop a stronger understanding of claimant demographics. The information below has been provided as of 31 October 2019, though captures data from both closed and open claims since Historic Claims has operated. Although only up to 31 October 2019, the Ministry would not expect to see significant variation in this data quarter to quarter.

Ethnicity, gender, age and characteristics

- 13.2 As at 31 October 2019, the Ministry had 3,866 historic claimants.
- (a) Over half of claimants (54%) are recorded as Māori (either as their primary or secondary ethnicity) and just under half (45%) are recorded as New Zealand European. 4% of claimants are recorded as Pacific Island.

- (b) The gender distribution of claimants is 71% male and 28% female, with less than 1% identifying as gender diverse. The Ministry has only recently provided the ability to record numbers of claimants who identify as gender diverse, which may mean that this number is under-reported.
- 13.3 Historic Claims gathers the age of claimants when they first register a claim. The most common age ranges to lodge a claim with the Ministry are between 35-44 years and 45-54 years, which together account for 58% of all claims. 25% of claimants are under the age of 35 and the remaining 17% are over 55 years old.
- 13.4 Consistent themes of engagement with claimants and their representatives going back to 2006 are that many claimants have low income, health or mental health difficulties, difficulties finding or retaining work, are transient and some have been in prison at some point since leaving State care. Many claimants attribute the difficulties they have faced to their experiences as a child in State care. Overcoming these challenges may not be possible without an understanding and acknowledgement of that experience. Experiences in State care have also contributed to a distrust of government, and a resulting reluctance to engage with government services that may be able to offer assistance to claimants and their families.

Nature of claims

- 13.5 Claims received to date cover a very wide range of abuse and neglect allegations and alleged failures in the provision of care. Claimants have made allegations about sexual, physical, verbal, emotional and psychological abuse and neglect. These allegations relate to residential institutions, foster care, Family Homes, Ministry caregiver placements, approved church and community organisations and by staff members. Concerns also relate to decisions made by social workers, such as failing to remove a child from an unsafe family environment, or failing to provide the necessary support to a child in care. In the early years of the Historic Claims process, claims generally related to events that took place during the 1960s, 1970s and 1980s. Though, as time has progressed and the definition of “historic” has broadened, the Ministry now has a much broader spread of claims and now regularly receives claims relating to events in the 2000s.

Claims numbers

- 13.6 As of 31 October 2019, the Ministry had received 3,932 claims in total.
- 13.7 Key data to note are:
- (a) Most years, claims have increased year on year. The actual claim numbers can be seen in the table in the appendix.
- (b) The Ministry has resolved 1858 claims (see appendix).
- (c) As at 30 June 2019, 56% of claimants had lodged claims directly with the Ministry without a lawyer and the remaining 44% are legally represented.
- (d) Approximately 18% of all claims received have been filed in court, with the remaining 82% unfiled.

- (e) As at 31 October 2019, of the claims the Ministry had resolved, 45% were resolved by way of an ex gratia payment and 37% by way of a settlement payment. 9% of claims were assessed but no offer was made for a variety of reasons, but common reasons include where the assessment concludes that the Ministry is not the responsible agency to respond to the abuse a person has been subjected to, or that there is insufficient information to support the claim. The remaining 10% were closed for other reasons (often without being assessed) such as the claimant being uncontactable, withdrawing their claim or the claimant becoming deceased and no contact being received from the claimant's estate.

Historic Claims expenditure

- 13.8 From July 2007 to June 2019 the Ministry has spent approximately \$76,922,972 on the resolution of Historic Claims. As shown in the graph in the appendix, approximately 39 percent (\$30,220,698) of total expenditure has gone to claimants as settlement payments and seven percent (\$5,599,140) to Legal Aid to contribute to claimants' legal aid debt. The remaining funds have predominantly been spent on operational costs and external legal fees (including Crown Law fees).
- 13.9 The second expenditure graph shows the Historic Claims expenditure by year for this same period. The two financial years where there were spikes (2014/2015 and 2016/2017) relate to the two years where the Ministry resolved a significant number of claims through the Two Path Approach, which was a one-off initiative by the Ministry to assist in reducing the back-log of claims. This is discussed further in Ms Hrstich-Meyer's brief of evidence.

14 Concluding comments

- 14.1 As noted, the Ministry values the work of the Royal Commission and the opportunities it provides to the Ministry in considering and improving its processes. I am available to answer any questions that the Royal Commission may have.

GRO-C

Simon Charles MacPherson

27/1/20

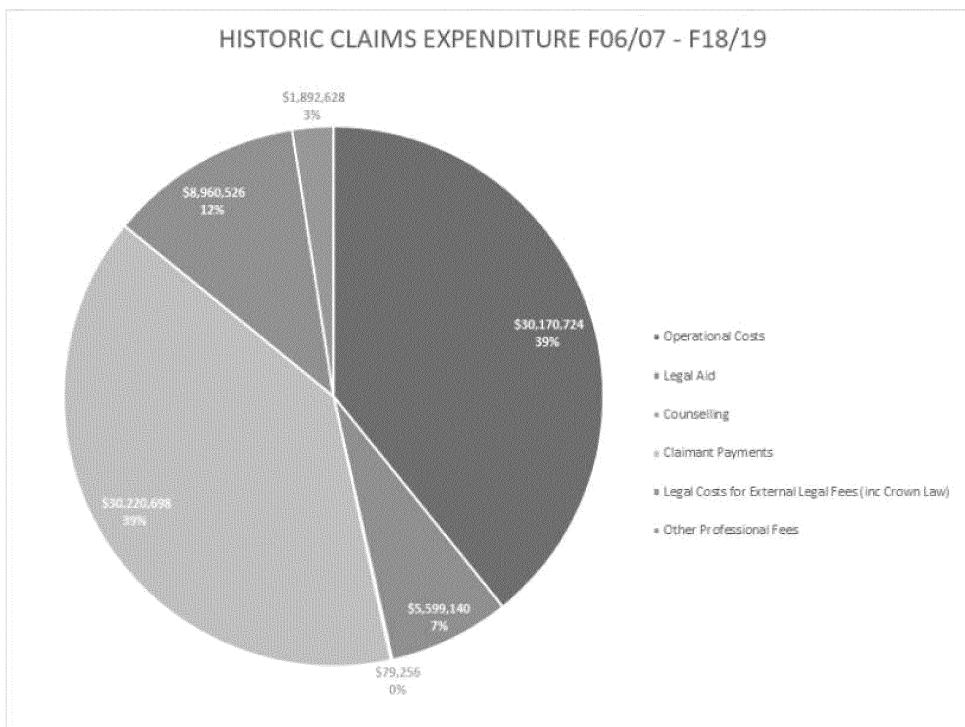
Appendix

Number of claims received year by year

Financial Year	Claims registered	Claims resolved	Backlog of Claims
F03/04	6	0	6
F04/05	6	0	12
F05/06	63	1	74
F06/07	82	4	152
F07/08	130	19	263
F08/09	105	31	337
F09/10	141	43	435
F10/11	212	89	558
F11/12	254	109	703
F12/13	193	107	789
F13/14	253	114	928
F14/15	316	162	1082
F15/16	311	467	926
F16/17	359	393	892
F17/18	577	177	1292
F18/19	766	103	1955
F19/20 ³⁵	158	39	2074
Total	3932	1858	

³⁵ F19/20 is a partial year. Data as of 31 October 2019.

Historic Claims expenditure total



The above graph includes costs relating to:

- Operational costs – staffing, travel, office admin;
- Claimant payments - claimant settlements and ex-gratia payments;
- Legal Aid – payment made direct to Legal Aid for payment of claimants' legal aid debt;
- Legal costs for external legal fees – includes Crown Law fees and fees for external barristers;
- Counselling – payments made to counsellors for payment of counselling fees that the Ministry has agreed to fund for claimants;
- Other professional fees – contracting services.

Historic Claim expenditure by year for financial years 2006/2007 – 2018/2019

