

**Royal Commission into Abuse in Care
Faith-based Redress Hearing, Phase 2
CLOSING STATEMENT**

29 March 2021.

Ka pēhea ināianei?
What now?

Kōrero pono kore noa iho te pono
The truth, nothing but the truth.

In our opening we said this truth may be painful, it may be deeply troubling but this is what this Royal Commission is pledged to reveal, without fear or favour.

This Hearing has confirmed what survivors expected.

We have heard nothing that can give survivors or you, commissioners, any confidence that left to the churches, there will be any change.

We have heard witness from three churches in this hearing that confirm that their past and current practices for receiving and investigating survivor complaints are seriously flawed, and cannot lead to survivors receiving redress.

Their witness confirmed that addressing the harm suffered by survivors as a result of the abuse they suffered in church institutions has never been the priority of the churches.

When questioned, they gave some acknowledgement to the failures of their protocols and processes for addressing abuse but were not proactive and did not propose to this Commission any significant change.

In our opening statement we gave the churches notice that survivors do not want apologies that are not followed by action. And yet again, that is what happened.

Churches, survivors have asked that an apology be directly given to them when it is accompanied by action.

Survivors viewed the apologies as attempts to gain the sympathy of the Commission and suggest things would now be different. And they are not.

The response of our survivors was represented in the statements to the media by survivor, Frances Tagaloa and Anne Hill. Frances stated her belief that an apology would **not** have been forthcoming if this Inquiry had not happened. Anne Hill that the apologies were no more than a media stunt.

Neither are survivors impressed with the catholic church authorities instructing their legal counsel to undermine the credibility of one of the expert members of our Network, who publicly advocates on their behalf and supports them.

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It is, however, what they have come to expect. It confirmed for them that the catholic church will not move from what has been their usual defensive strategy - to protect the institution - regardless of the cost to survivors.

Counsel for the Bishops and Congregational Heads did her best to undermine the credibility of our most prominent Network member, Dr Tom Doyle, at one point thanking him for his "American" testimony. She clearly was not listening when his experience of abuse globally was noted and in New Zealand for over 30 years.

But we can help Ms McKechnie by responding to her queries:
The relevance of canon law to redress?

Because the Bishops have used it to argue to survivors who have come to them that they cannot be held responsible for the harm caused to them by a member of an order or congregation, which is directly contrary to canon law.

Because your clients' complaints and safeguarding process, *A Path to Healing*, clearly states it is based on Canon law, not civil law.

The anglican and catholic church witnesses referred to their protocols and processes for receiving and investigating complaints and safeguarding.

They confirmed again what survivors have already evidenced, and the church has always known. They are re-traumatising rather than enabling, don't work, and a barrier rather than a pathway to redress.

The church institutions have not responded to the feedback from survivors to make them accessible, trauma free and fit for purpose. Their actions to date do not reflect the change in culture the authorities of the church suggest has happened.

The churches know if they are genuine about taking responsibility for abuse in their institutions, the harm done to those who have suffered abuse and prevention of further abuse, RADICAL change is needed.

Not only do survivors not trust the churches to do the job, they cant. They can never be impartial. Neither should the Government leave them to do the work that is its responsibility.

Catholic church witnesses formed the largest part of this Hearing.

If survivors are to believe the Bishops care enough to address their concerns, why was Bishop Steve Lowe of Hamilton not giving witness for the catholic church as the with delegated responsibility for NOPS, and explaining why the Bishops have not made changes to ensure their processes are trauma informed and do meet the principals of openness, transparency, consistency, and will prevent further trauma and harm to survivors. Why have none of the seven Emeritus (Retired)Bishops not appeared at these proceedings? They know a great deal about the sexual abuse by clerics and lay officials of children and vulnerable adults and carry the institutional memory of these horrific events they surely have shared with the current 5 men running the show.

The response to church witness testimony and questioning of their statements we heard from the Catholic hierarchy, in particular the heads of the Marist orders, it is perhaps understandable why the majority of our survivors are likely to remain silent.

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The Royal Commission has received 1119 complaints about Catholic Church abuse from 1950. When you consider the great majority of records have been lost or destroyed and, the Society of Mary has been here since 1838 and like the others have only records from the 1990s, a massive hole of over 150 years missing, this figure is a gross underestimation.

Even so, despite huge holes in the data, it is a greater comparatively, than the 4444 complaints received by the Australian Royal Commission whose Catholic population is 10 times that of New Zealand by a factor of more than two. We are equivalent to the Archdiocese of Melbourne. One might expect the problem here to be at least twice as bad as across the ditch.

Of all the witnesses presented let us focus on the testimony of Society of Mary witness, the Provincial Tim Duckworth

He argued the Society of Mary would go it alone. Our survivors were also moved to tears from retriggered trauma by the hypocrisy they witnessed, the disjunct between apparent contrition and tearful compassion, while they listened to his denials and disbelief of the evidence of survivors he had engaged with.

Not surprising to those survivors, he doubled down on insulting two survivors who gave testimony at the first Redress Hearing; Anne Marie Shelly and Mr F -taking umbrage at Anne Mary's lack of gratitude at the sentencing hearing of her rapist, Hercock and impugning Mr F's honesty as related to the nickname Fred the Fiddler for Frank Durning SM.

He then had a go at lawyers, blaming them for all the Society of Mary woes with their bad advice, Too bad his tears and dislike of lawyers did not extend to the hideously cruel and inhumane treatment of Mike Phillips, who at aged 50, in 2003, and dying of cancer outed Father Tom Laffey SM as his sexual assailant in the 1960s. All of this is on public record and readily available. Laffey admitted the crime and admitted to four other assaults. Mr Phillips felt validated for he was told this by Tim Duckworth. It was healing. He could die at peace. Only for Tim to retract and retreat and deny this, basically calling a man dying of cancer a liar.

Father Duckworth was happy to take legal advice to validate his refusal to talk to Mr Phillips or to answer questions.

Deeply ironic, this happened in June **2003**, yes 2003, which coincided with an unprecedented public apology from the country's Catholic bishops, who gave a commitment to confront the "evil" of the past. So Cardinal Dew's apology on Friday March 23 2021, despite claims in the media to the contrary, was not the first public apology and 18 years later here we go again. More apologies. Same culture. No change.

Change? At the funeral of the self -confessed pederast Tom Laffey SM, the assailant of Mike Philipps, in May 2019, a funeral I attended in person and video taped and recorded, the then Provincial David Kennerley encouraged everyone to "imitate the faithful spirit" of this pederast.

Change? On Friday, March 26th, the day after Tim Duckworth's testimony, the journalist Mick Hall-who had attempted to get a comment from Duckworth on the very day of his testimony, produced a devastating article about Father Phil Roberts, the former rector of St Augustine's (now Cullinane College), Whangarei and Pompallier College, Whanganui, Northland outing him as a sexual assailant as far back as the 1950s at St Bede's, Christchurch and the other locations.

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The journalist was stonewalled. Duckworth refused to comment citing the Royal Commission as the wall he hid behind. David Kennerley, the former Provincial who had refused to comment on Roberts in 2018, when he had to have known about the complaint about Roberts, was the original sinner by omission.

Change? These are the actions of the top SM men, the ones who make the decisions. Clear cover up. No ifs but or maybes. Cardinal Dews included with his apology to survivors an acknowledgement

"that the systems and culture of the Church allowed abuse to occur. These systems and culture failed you and must change.

May I quote just one of many Network survivors who approached us after that apology:

"E kore au e ora i tēnei! ka mate ahau kore rawa e mōhio ki te rangimārie o tētahi rā mai i ahau i te tuatahi whakararururia.

Tiwhatiwha te pō, tiwhatiwha te ao

"I won't survive this. I will die never having known a day's peace since I was first molested. Gloom and sorrow prevail, day and night"

We asked the churches giving witness in this hearing to support survivors call for an independent body not only to this Commission, but to the Government and people of NZ.

The response of the bishops and religious in the catholic and anglican churches has been varied.

Anglican Archbishop Peter Carrell called for redress to be left to the Church.

Survivors like Jacinda Thompson are not surprised by the unwillingness of this man to consider survivors first.

Jacinda responds, and I quote, "this response is not surprising from a man who admitted excusing priestly misconduct as being akin to accidental shoplifting and admitted not even thinking to ask the survivor what happened."

The other Anglican Archbishops clearly said that they are "committed to finding the best way forward for redress for survivors and have heard their call for an independent body" We appreciate their willingness to explore this path with survivors.

In their closing today they have responded and gave a commitment to our proposal and provided their thoughts on how it could work.

Can survivors trust your word for it? You will understand they are cautious having trusted in your good intentions before and not seeing the action to give it meaning. Thank you, the Anglican bishops who are supporting the independent body proposal to this to Commission. However, you are correct, The State has the responsibility to step up. If you are sincere in this approach, survivors ask that you support them by advocating to Government they take action and pass the statutory provision requirements under urgency.

Cardinal John Dew supported the concept of an independent body. However, in spite of him being addressed as the leader of the catholic church in NZ, he does not have the authority to speak on behalf of the other bishops.

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What we have heard, in the closing submission from Ms McKechnie for the catholic church, attempts to rationalise the catholic church position.

In response we ask:

Why did the church not take action following its apology in 2002.

Why have they waited until this Inquiry to finally collate their records to inform them and survivors.

As to the structure of the church, Ms McKechnie, again we see the Bishops hiding their responsibilities behind the other entities you keep referring to. Regardless of how many entities that exist in New Zealand and you represent, Tom Doyle left no doubt – the five Bishops are the ones with the power and the authority to change this. How the Bishops organize the Congregations and Orders they contracted to work in in their Diocese to contribute financially is not Survivors or this Commissions concern. Neither need I be a concern of an independent body.

The Bishops are accountable. They must finance the redress for survivors of abuse that happened in their Diocese. Whether they pool their resources is a matter for them.

4 days of evidence is not enough for McKechnie and the Bishops?

The reports of survivors in private and public hearings, and the media, and provided to the church itself, is enough.

As we suspected, the catholic Church is happy to draw out this investigation into redress in the hope it will drop out of public view, confirming there is no change of heart. Reputation protection at the expense of survivors continues to be their modus operandi.

Their response to our proposal was woven into their usual but consistent rhetoric makes I clear. Just as they had to be dragged kicking and screaming into this Inquiry they will resist inclusion in an independent body.

It is time to go back to the Government and the people of New Zealand. We as a nation can no longer tolerate the division of state and church that allows the like of this catholic church to continue to enable abuse.

The Salvation Army gave support to the independent body in principal and acknowledged that delay is costly for survivors and I quote, *that a prolonged Royal Commission process risks further traumatizing survivors.*"

It is clear from some of the churches comments they do not see how they could carry out their responsibilities if an independent body was set up.

The churches regard the priesthood, religious vocations and providers of pastoral care, as professions, and the standards that apply to them, professional standards. No other profession stands outside statutory regulation and oversight.

The medical profession has their own professional body, the Medical Council, that requires its professional standards and ethics to be adhered to, and functions under the requirements of statute – The Health Practitioners Competency Assurance Act 2003, which provides a framework for the regulation of doctors and other health professionals where there is risk of harm from their professional practice.

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The Medical Council website makes clear how it works with the independent body, the Health and Disability Commissioner, when it received complaints:

“If you notify us directly, we are required by law to refer your notification directly to the Health and Disability Commissioner (HDC). If the HDC starts a formal investigation, they will advise us and we will determine whether to begin our own process alongside theirs.” The HDC and the Medical Council refer doctors who have breached their standards to an Independent Health Practitioners Disciplinary Tribunal.

If they refer to our proposal, there is no requirement that the churches not run their own disciplinary system for those who breach their institutional professional standards for example, breaches of celibacy, in addition to the independent one, or put their reliance on the independent body. We are asking for mandatory reporting of abuse to the independent body when it happens in their institutions.

We recognize that only the churches can put safeguarding policies, procedures and protocols in place. What we are asking is for those to be required by statute and authority given to the independent body to have oversight and hold institutions accountable institutions when they fail to implement them, or they are breached.

We are not suggesting setting up such a body will save them from the cost of financial compensation for the victims who are abused in their institutions. Or that they not respond to survivors who choose to report to them or seek their pastoral care and spiritual healing.

Current processes that lead to redress in the churches and the Ministries are fatally flawed. Those institutions cannot be left to do this work for survivors. Where they need to be involved it must be with oversight of statute and an independent body.

The choice must be with the survivor as to what aspects of the redress they are entitled to, they choose to take up. Redress should not have to be negotiated.

Some survivors may choose to have a church provide some aspects of the redress.

Commissioners

We put our proposal to the churches.

You have heard their response.

Survivors ask that you make the recommendation for an all - inclusive independent body to Government now, so survivors of abuse in faith-based institutions are at not at risk of being left out of solutions already being progressed for survivors abuse in state institutions.

The work to prepare the required statute, policies, protocols and budgets needed for an all-inclusive body needs to start now. A prolonged delay to accumulate further information when there is already sufficient, is unacceptable.

The common barriers that face the survivors of abuse in both state and the churches to receiving adequate redress have been witnessed.

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As a result of the evidence that has been publicly witnessed in the Redress Hearings, both State and faith-based, the Government needs to act. They know they are in breach of their responsibilities while they do not address the needs of survivors of abuse in the care of institutions. It is irrelevant where the abuse took place.

Survivors who have reported to this Commission, to Ministries and churches have been left unacknowledged and struggling, others remain silenced. Many have no access to redress systems. The abuse they have suffered has been known about for decades and still they wait for redress. They cannot wait months for this Commission to recommend to the government the independent body they are requesting. We know that those who have reported do not represent the numbers abused. But you have sufficient evidence on which to base your recommendation. Survivors do not need the Commission to “fill the gaps in the states” as stated at the launch of its interim report last year. A delay to collect more data causes more trauma for survivors who have reported and deprives them of much needed redress.

There is sufficient evidence to show that:

- The government leaving institutions to deal with the abuse of children in their care has failed.
- Current systems that exist are failing to provide redress.
- The current processes for complaints and seeking redress are traumatic and not survivor-informed.
- Survivor evidence to date and that gathered from institution records, have confirmed the common impacts on survivors abused in the care of both State and faith-based institutions, the common systemic issues that create barriers to their having redress and the common solutions required.
- The cost of waiting is huge, both in terms of survivor lives not lived as healthy adults and the contribution they could make, continued failure to mitigate the impacts resulting in survivors over – represented in poverty, prison, mental health and physical health statistics, and the huge wasted resource poured into litigation by institutions and the State required by an on-going investigation of redress.

Commissioners, you have been mandated by Survivors and the churches to Recommend this independent body. Survivors ask that you act now on the completion of the public redress hearings. The cost of not doing so is unacceptable.

Fa'afetai lava
Malo 'aupito kotoa pe
Vinaka vakalevu kemuni na turanga kei na marama
Maraming Salamat sa inyong lahat
Ka nui te mihi ki a koutou
Thank you all very much.