

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
STATE INSTITUTIONAL RESPONSE HEARING**

Under The Inquiries Act 2013

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

Royal Commission: Judge Coral Shaw (Chair)
Dr Anaru Erueti
Ali'imua Sandra Alofivae
Paul Gibson
Julia Steenson

Counsel: Mr Simon Mount QC, Ms Kerryn Beaton QC, Dr Allan Cooke, Ms Katherine Anderson, Ms Anne Toohey, Ms Tania Sharkey, Mr Michael Thomas, Ms Ruth Thomas, Ms Kathy Basire, Mr Winston McCarthy, Ms Julia Spelman, Ms Alice McCarthy and Ms Natalie Coates for the Royal Commission

Ms Rachael Schmidt-McCleave, Mr Max Clarke-Parker, Ms Julia White for the Crown

Ms Victoria Heine QC for the Office of the Children's Commissioner

Ms Sally McKechnie for Te Rōpū Tautoko, the Catholic Bishops and congregational leaders

Mr David Stone for the New Zealand State Abuse Survivors Charitable Trust

Venue: Level 2
Abuse in Care Royal Commission of Inquiry
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AUCKLAND

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TRANSCRIPT OF PROCEEDINGS

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TEACHING COUNCIL OF AOTEAROA NEW ZEALAND

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**Hearing opens with waiata He Hōnore and karakia tīmatanga by
Ngāti Whātua Ōrākei**

3 **[9.03 am]**

4 **CHAIR:** Tēnā koutou, tēnā koutou, arā, tēnei rā tātou katoa rangatira mā, tēnei te mihi ki a koutou
5 katoa. Good morning everybody. I am Coral Shaw, I am the Chair of the Commission and
6 I am an elderly woman with white, Pākehā woman with white hair to my chin and I'm
7 wearing glasses, a beige jacket and a black blouse. That's for those who cannot see.

8 I'm going to ask my Commissioners shortly to introduce themselves in a similar
9 manner. Just to let everybody know that for today's hearing we're welcoming our witnesses
10 from the Education Review Office, nau mai haere mai. We're going to be taking two
11 breaks this morning, one at 10.30 and another one at 11.45, so we're spreading our breaks
12 out a bit more evenly in the interests of health and safety and humanity for our signers and
13 our stenographers.

14 So with that being said, I'll just ask my fellow colleagues to introduce themselves.
15 Dr Erueti.

16 **COMMISSIONER ERUETI:** Tēnā koutou katoa. E mihi ana ki a koutou ngā kaiwhakaatu, nau
17 mai haere mai. E mihi ana ki a koutou katoa e ngā purapura ora whakauru mai ana, e
18 mātakitaki ana, tēnei te mihi mahana ki a koutou. Ko Anaru Erueti tōku ingoa, I'm one of
19 the Commissioners, a middle-aged Māori male with greying hair wearing a suit, kia ora.

20 **COMMISSIONER STEENSON:** Ata mārie tātou, ngā mihi nui ki a koutou, ko Julia Steenson
21 tōku ingoa. I am a female in her 40s, I'm Māori and European, I've got woolly brown hair
22 today, I'm wearing a black top with lions on it. Kia ora.

23 **COMMISSIONER ALOFIVAE:** Tēnā koutou katoa, Faatalofa atu i le pa'ia ma le mamalu o le
24 au aofia aemaise le matagaluega ua aofia mai i lenei aso. (Greeting everyone. Greetings to
25 distinguished guests present today, in particular to the members of the ministry also here
26 today). Malo e lelei Ms Sharkey. Good morning everybody, my name is Ali'imuumua
27 Sandra Alofivae, I am of Samoan Chinese descent, I have shoulder length black very curly
28 hair at times, I wear glasses and today I'm wearing a maroon dress pepper potted with lots
29 of yellow leaves and a black jacket.

30 **COMMISSIONER GIBSON:** Kia ora koutou, I'm a middle-aged Pākehā man with greying hair
31 with a dark suit and white shirt, I'm blind with some peripheral vision and I usually sit with
32 one headphone over one ear listening to a computer, kia ora.

1 **CHAIR:** So we will commence proceedings for the day, the last day of what's been a very long
2 week but we are looking forward very much to hearing the evidence today. So we'll just
3 take a couple of appearances, Ms Sharkey.

4 **MS SHARKEY:** Tēnā koutou katoa, and malo e lelei, Madam Chair and Commissioners. My
5 name is Tania Sharkey and I'm one of the Counsel Assisting the Royal Commission. By
6 way of visual introduction, I am female of Tongan Palagi descent and today I am wearing
7 red glasses and a black jacket.

8 I will be leading the questioning for the first two sessions within the three breaks
9 today until the lunch break and I will be joined by my colleague later in the day, Katherine
10 Anderson, who will be leading the last two sessions.

11 We have representative witnesses here today from the Education Review Office,
12 and I will let Ms Schmidt McCleave introduce them, and we'll have evidence in chief to
13 begin with.

14 **CHAIR:** Thank you. Tēnā koe Ms Schmidt-McCleave.

15 **QUESTIONING BY MS SCHMIDT-McCLEAVE:** Tēnā koutou ano ngā Kaikōmihana, tēnā
16 koutou katoa. Ko Ms Schmidt McCleave tōku ingoa. For those who cannot see me, I am a
17 49 yearold Pākehā woman with brown hair and brown eyes. Today I'm wearing a black
18 blouse with red and blue flowers and a cream jacket. Tēnā koutou katoa.

19 Commissioners, this morning, as my friend Ms Sharkey has mentioned, we have the
20 Education Review Office representatives here, and I'll ask them to introduce themselves in
21 a moment, but just to explain who we have, the Chief Executive for ERO is Nicholas Pole
22 and he is on the right; next to Nicholas is Deputy Chief Executive Review and
23 Improvement Services, Jane Lee, and to Jane's right Deputy Chief Executive Evaluation
24 and Review Māori, Lynda Pura Watson. So tēnā koutou, nau mai haere mai.

25 Mr Pole has a written brief of evidence which Commissioners have received. He is
26 going to make some introductory comments and introduce himself and his team, so I will
27 hand over to Mr Pole.

28 **MR POLE:** E ngā mana, e ngā reo, e ngā rangatira ma, tēnā koutou, tēnā koutou, tēnā tātou katoa.

29 **MS SCHMIDT-McCLEAVE:** If you just turn your microphone on, Mr Pole.

30 **CHAIR:** And before you proceed any further I have to do the formalities of getting the
31 affirmation, we've just jumped ahead.

32 **MS SCHMIDT-McCLEAVE:** Sorry, Madam Chair, I had forgotten again.

33 **CHAIR:** That's all right, it's easily done. And these are the only three witnesses, we don't have
34 anybody else lurking in the back?

1 **MS SCHMIDT-McCLEAVE:** Nobody today, ma'am, no.

2 **CHAIR:** Thank you. If I just give one affirmation and I'll just ask the three of you to agree in
3 unison if you like.

4 **EDUCATION REVIEW OFFICE**

5 **MR NICHOLAS POLE, MS JANE LEE AND MS LYNDA PURA-WATSON**

6 **(Affirmed)**

7 **CHAIR:** Now you can embark, Mr Pole, on your opening.

8 **MR POLE:** Tēnā koutou katoa. Ko Nicholas Pou tōku ingoa, Kaihautū mō Tari Arotake
9 Mātauranga ahau, ko Whanganui a Tara e noho ana ahau. I'm Nicholas Pole, Chief
10 Review Officer, Chief Reviewer sometimes we're called, of the Education Review Office.
11 It is a role I have been in since June 2017 covering a period of five years.

12 In beginning I wish to make some overarching comments to the Commission.
13 Having had a long career in education, I'm deeply distressed and saddened by what
14 witnesses who have presented to this Commission have told you about the abuse they have
15 suffered from those working in or connected in education. I want to acknowledge the
16 survivors for their bravery in coming forward and opening the door on atrocities which for
17 too long have kept hidden.

18 This harm has come from some who have exploited their positions and failed in
19 their duty and their moral and professional obligations to support and protect. Equally, we
20 have had periods in our history where there have been omissions in our systems and
21 practises which, from today's perspectives, cannot be condoned.

22 This Commission provides us with an opportunity to acknowledge the shadows of
23 our past, to provide redress for our failings, and to reflect on our current settings to ensure
24 that we learn and strengthen our systems of protection, so that such events do not happen
25 again.

26 The purpose of my appearance here today is to provide current information about
27 ERO, including our role and operations, and the changes we have made and are continuing
28 to make to improve the care and protection of children, and assure that every learner in
29 Aotearoa receives a quality education.

30 Where the Commission raises matters that I have not been directly involved in, I
31 will rely on information provided to me, including documents provided to the Royal
32 Commission. I have also explored some of these matters with people who worked many
33 years ago in different roles prior to the reforms in the system. There may still be gaps in

1 the information, especially in relation to historical practices, but I will endeavour to assist
2 this Commission to the best of my knowledge and abilities.

3 Here appearing on behalf of ERO, as the CEO of part of the education stewardship
4 role that I fulfil, I want to fully endorse the acknowledgments which were made to the
5 Commission by Iona Holsted, the Secretary for Education at yesterday's hearings. Iona
6 yesterday addressed the current organisation regulatory framework which operates in the
7 delivery of education in Aotearoa and described to some extent ERO's role.

8 ERO was established as an independent government department as part of a major
9 transformation of the system that occurred in 1989. Prior to this, the responsibility for
10 school review or inspection, as it was called, rested with the former Department of
11 Education. In its establishment, it is my assessment that ERO extended the inspectorate
12 mandate, adopting a more rigorous and systematic approach to school review and
13 assessment, and places substantially greater focus on the safety of children and keeping
14 them from harm.

15 The Department of Education which operated through much of that time period
16 covered by your Inquiry operated its processes of review with few guidelines. A primary
17 function was assessing and grading the performance of teachers. This activity equally had
18 little transparency by today's standards.

19 Since the introduction of Tomorrow's Schools, local governance and self
20 management of schools in the State system, including faith based integrated schools, has
21 aimed at strengthening community involvement in local school provision and decision
22 making, reducing substantially the social distance between central bureaucracies and the
23 operation of the school within their communities. This governance arrangement has
24 increased the accountabilities of practitioners working in schools by observing them up to
25 direct scrutiny from their communities.

26 ERO, over the last 32 years, has played a major part in driving local accountability
27 and ensuring that boards of trustees focus on those things that matter most; the care and
28 protection of children, and ensuring that every learner receives a quality education.

29 In saying this, self-management has also seen many struggle to fulfil these
30 obligations to fully understand them. There have been differences in interpretation and a
31 lack of understanding of the intent of some central guidelines and legislation.

32 Many continue to work in isolation with little opportunity for support and the
33 adoption of change in the system can be slow. I believe the recent establishment of Te

1 Mahau within the Ministry, as Ms Holsted talked about yesterday, starts to address this at
2 this time.

3 ERO today's prime emphasis is around ensuring quality education provision,
4 understanding learners' achievement and progress, and the underlying contributions that
5 work towards these outcomes. Our whakatauki, ko te tamaiti te Pūtake o te kaupapa places
6 the child always at the heart of the matter in framing our work and our approach.

7 ERO's mandate is provided by the Education and Training Act 2020. This Act
8 empowers me as Chief Review Officer to initiate reviews, report and publish findings on
9 the provision of education, and the care of children and young people in Aotearoa. In
10 practice, ERO fulfills this mandate through two core functions. Institutional reviews and a
11 programme of system-wide inquiry, evaluation and research.

12 As Chief Review Officer, while accountable to the minister of the day, we remain
13 independent from influence. I administer reviews on my own motion and despite section
14 52 of the Public Service Act, which defines the accountability on chief executives.

15 The minister of the day may also request that ERO look into particular matters in
16 the system. Our mandate extends to education entities that are owned or operated by the
17 Crown, funded by parliamentary appropriation, or regulated by or under statute. Our focus
18 does not go beyond secondary schooling.

19 ERO is not mandated to deal with complaints, resolve disputes, or provide an
20 advocacy function. We do not have powers to direct or enforce compliance or actions by
21 individual entities. Where we identify concerns, our obligation is to report and to raise
22 them with the appropriate entity. We equally do not have a function of policy or
23 resourcing.

24 ERO's monitoring and oversight also differs between State and State integrated
25 schools and registered private or independent schools where our scope is substantially more
26 limited. ERO's reviews are conducted by approximately 135 review officers that I delegate
27 in my capacity as the Chief Review Officer. They review and report on education delivered
28 by early learning, kōhanga reo, puna reo, schools, kura and whare kura throughout
29 New Zealand. This wide spectrum of education providers reflects the breadth of ERO's
30 work across paradigms. This also extends to the review of hostels and boarding facilities
31 which we took on from the start of 2002.

32 As a government department, ERO gives effect to the Crown's obligations under the
33 Treaty. We strive to do this through partnerships, participation in decision making, and
34 placing a focus on successful outcomes for Māori in the settings and communities that we

1 work in. There are currently 2,400 schools and 5,500 early learning services which are
2 generally reviewed on a three-year cycle. Our focus is on quality of educational provision,
3 and recent shifts in our approach aim to work along schools and early learning services in a
4 drive for improvement.

5 Where we hold concerns, we place greater intensity and frequency in working with
6 these entities. Reports of our findings are prepared for the Minister of Education and for
7 the wider community of Aotearoa and in every case we will publish and make this publicly
8 available.

9 While providing natural justice opportunities for entities to correct errors of fact, the
10 findings and recommendations that we report are based on our integrity as an agency and
11 the judgments and assessments of the evidence that we collect.

12 In respect of schools as Crown entities, we're obliged to keep the Minister of
13 Education informed about their performance and the performance of the system.

14 In a programme of national inquiries, which may be pertinent to the Royal
15 Commission in terms of your explorations, we have recently undertaken work into
16 education provision for those in the care and youth justice settings, learners with
17 disabilities, the safety of students in hostels and schools, into alternative education, teen
18 parent units and bullying in schools.

19 Over recent years, the Education Review Office has also developed an extensive
20 programme of research into Māori medium education provision and the delivery of Te Ao
21 Māori. As an example, a recent work Te Ara Huranui provided an insight into Māori
22 enjoying educational success as Māori, aspects of mātauranga Māori, te reo Māori and
23 Te Ao Māori.

24 The establishment of ERO in partnership with other central education agencies,
25 including the Ministry of Education, the Teaching Council, changes in legislation and
26 regulatory settings, greater professionalisation amongst teachers, the strengthening of
27 systems and practices in child safety and well-being have, over the decades, from our
28 perspective, contributed to an increase in awareness and improvement in the protective
29 settings for children and young people in education.

30 In performing our role, we provide one element in that protective layer aimed at
31 ensuring that young people are safe and that their welfare is supported while in education.
32 In saying this, I acknowledge that we have made mistakes, let down individuals and
33 families. Where we have identified these failings, it has been our approach to learn and
34 improve our practice and oversight. Nō reira, tēnā koutou, tēnā koutou, tēnā tātou katoa.

1 **CHAIR:** Kia ora Mr Pole.

2 **MS SCHMIDT-McCLEAVE:** Ngā mihi ki a koe Mr Pole. Just for Commissioners' benefit, you
3 do have Mr Pole's written brief which expands on the points he has summarised today and
4 in particular I imagine you will want to explore with him his recommendations that he has
5 made at the end of his written brief.

6 Just before I pass you over to my friend Ms Sharkey, Mr Pole, could I ask you to
7 visually describe yourself and also for your team to introduce themselves, thank you.

8 **MR POLE:** I've been very scared about this; am I an old, aging male or a middle-class male,
9 blonde greying hair, a beard, glasses, I'm wearing a blue jacket and a red and blue striped
10 shirt.

11 **CHAIR:** That's an excellent description, Mr Pole, do not be alarmed.

12 **MS LEE:** Kia ora tātou, I am described as a middle-aged woman of Māori descent of slight build
13 or medium build, I have short dark hair, I wear glasses, today I am wearing a yellow and
14 black jacket and a black dress.

15 **CHAIR:** And your name?

16 **MS LEE:** And my name is Jane Lee.

17 **CHAIR:** Thank you.

18 **MS PURA-WATSON:** Tēnā tātou katoa. Tēnā koe e te rangatira o te Commissioner. Ko Lynda
19 Pura Watson ahau, ko au te Kairuruku o te Tari Arotake Mātauranga. My name is Lynda
20 Pura-Watson, I'm a Deputy Chief Executive Evaluation Review Māori. It's always hard to
21 describe yourself, I should probably let someone else do that. However I am Māori, I have
22 lots of earrings in my ears I'm told, I have short grey hair. My grandchildren would say I'm
23 elderly and today I'm wearing black. I'd also like to suggest that my face exudes warmth
24 and generosity, so tēnā tātou.

25 **CHAIR:** Kia ora.

26 **MS SCHMIDT-McCLEAVE:** Tēnā koutou. I'll hand you over now to Ms Sharkey who will
27 have some questions as Counsel Assisting the Commission and no doubt Commissioners
28 will as well. Thank you.

29 **CHAIR:** The practice that we've had, and this will be for Ms Sharkey and yourselves, but she will
30 direct her questions perhaps to one of you, but if any of you wishes to answer, feel free,
31 won't you. All I ask is for our stenographer is that you identify yourself as you go and that
32 you keep what you say clear and not too fast please so that it will all be typed up. Kei a koe
33 Ms Sharkey.

1 **QUESTIONING BY MS SHARKEY:** Thank you. Yes, so very happy to be guided by you,
2 Mr Pole, if someone else is more appropriate to answer these questions. But I guess I do
3 want to start by thanking you for endorsing the acknowledgments that Ms Holsted spoke to
4 yesterday. And also there were some recommendations in NTP 449, the response, which
5 were actually quite helpful, and what I intend to do is to explore that as we move through
6 these sessions.

7 So yesterday was interesting and I just wanted to pause because we're in the
8 education system, some of that will flow in to today. I just want to start with Te Tiriti.

9 In NTP 449 in your response, what I'll call as your response, you talk about -- and
10 this is at paragraph 2.18 -- a strategy and ERO's commitment to honouring your obligations
11 to the articles in Te Tiriti. Have you got that?

12 **MR POLE:** Can we bring it up?

13 **MS SHARKEY:** Yes, sure.

14 **CHAIR:** Ms Sharkey if we could orient ourselves, when you say response, if you could explain
15 for the public what this is please?

16 **MS SHARKEY:** Yes, so a request for information went to ERO and I just remember something I
17 was asked to point out that where I refer to ERO I'm talking about the Education Review
18 Office. That's for, --we have some survivors watching this morning who made that request.

19 So an information request went to ERO and this is the response that was provided.
20 And what I'm asking Mr Pole to speak to in that paragraph, it's pointed out-- we're talking
21 about ERO's commitment to honouring the obligations in Te Tiriti, and it's a topic that I
22 would like to explore.

23 And so my question is, when you refer to obligations, you are confirming that you
24 do have obligations?

25 **MR POLE:** Absolutely.

26 **MS SHARKEY:** And I just want to draw out in respect of those obligations, is that an obligation
27 to protect Māori from harm in education settings, what do those obligations look like?

28 **MR POLE:** Those obligations, as I see them, are to give effect to the obligations of the Crown in
29 terms of the Treaty.

30 **MS SHARKEY:** We've heard a bit about that, but in your words, in your brief you say
31 obligations, but are you saying -- could you just expand on the difference you're talking
32 about there?

1 **MR POLE:** It does extend to ensuring care, it ensures equity of outcomes, and in terms of the
2 work that we do, that Māori learn and succeed as Māori, that the Crown, through our
3 schooling system, affirms culture, identity and supports language.

4 **MS SHARKEY:** Right, carry on.

5 **MR POLE:** Maybe I'll go into how that manifests itself, does that help?

6 **MS SHARKEY:** Yes.

7 **MR POLE:** I think in subsequent parts of our brief we have outlined that -- or, sorry, our response
8 to produce, notice to produce, has covered that.

9 So first and foremost, Māori outcomes and support for Māori learners is the number
10 one area that we focus on when we are going into schools, or early learning services. What
11 does the school know about those outcomes, how well are Māori learners succeeding, and
12 how well are schools succeeding in terms of meeting their own Treaty obligations.

13 Since the changes to the Education Training Act in 2020 placed specific obligation
14 on boards, there's been that a board supports Māori learners in terms of Te Ao Māori,
15 mātauranga Māori, te reo Māori and Tikanga Māori; that these are in fact occurring in a
16 school setting, and where they are not, ERO will draw that to the school's attention and will
17 start working with the school to support them in that journey.

18 **MS SHARKEY:** Right. Because at paragraph 4.2 -- and you referenced it before, the whakatauki,
19 that has been adopted by ERO, and you refer to the child being at the heart of the matter.

20 **MR POLE:** Absolutely.

21 **MS SHARKEY:** Okay. So in that Te Ao Māori, children are seen as taonga?

22 **MR POLE:** Absolutely.

23 **MS SHARKEY:** Your colleagues are nodding their heads.

24 **MR POLE:** Yes.

25 **MS SHARKEY:** And inherent to that is that their well-being and safety is protected.

26 **MR POLE:** Absolutely.

27 **MS SHARKEY:** And at paragraph 2.18, again this is the NTP response, we talk about the
28 principle of protection and you would have been familiar with some of the evidence that
29 was discussed yesterday?

30 **MR POLE:** Yes, I am.

31 **MS SHARKEY:** There was discussion about MOE's commitment to the Treaty of Waitangi and a
32 commitment to actively protecting Māori students from harm. And I just want to ask
33 whether ERO consider the act of protection of Māori students from harm an obligation that
34 you do have?

1 **MR POLE:** Yes, we would say we do have that.

2 **MS SHARKEY:** And there was a discussion before about State integrated and private schools.

3 Does ERO's commitment in terms of how you carry out its role in respect of tamariki
4 Māori, does that change when we're looking at different school settings?

5 **MR POLE:** So over time our obligations in terms of independent or private schools has changed.
6 So when ERO was first established through 2010, our obligation in respect of private
7 schools was in order to confirm their licensing or registration status, whether they were
8 deemed as efficient.

9 **MS SHARKEY:** Yes.

10 **MR POLE:** And that was the limit of ERO's mandate in working in those schools. Subsequently
11 in 2019, the Education Act was amended to include an additional element which was
12 around ERO having a role in confirming licensing arrangements that ensured a school was
13 physically and emotionally safe.

14 **MS SHARKEY:** 2019?

15 **MR POLE:** 2019.

16 **MS SHARKEY:** So it's only very recent.

17 **MR POLE:** It is a recent change, yes.

18 **MS SHARKEY:** So in the past that hasn't been done well.

19 **MR POLE:** In respect of independent and private schools, that is the case.

20 **MS SHARKEY:** So when Māori children have experienced abuse in educational settings, in
21 schools, to what extent does ERO accept responsibility in terms of its commitment to
22 actively protecting Māori children from harm?

23 **MR POLE:** In terms of our role and function, it is my expectation that we will, if we have done
24 our job properly, to have highlighted and reported on that, to have raised it in those contexts
25 and to support interventions where that has been the case, where we have identified it.

26 **MS SHARKEY:** Okay, Mr Pole, I've just been given a signal, one of the Commissioners has a
27 question.

28 **COMMISSIONER STEENSON:** Thank you Ms Sharkey. I just had a quick question
29 around -- so it's only been in place since 2019; how many schools have you then reviewed
30 with this new mandate, this additional safety mandate?

31 **MR POLE:** I'll ask my colleague Jane Lee.

32 **MS LEE:** It's my understanding since 2019 that we've carried out over 17 reviews in private
33 schools, and asked about the health and safety of students in relation to that criteria.

34 **COMMISSIONER STEENSON:** And that's out of a number of, a total number of?

1 **MS LEE:** I don't have that information for you, I can't recall off the top of my head. I can get that
2 information for you.

3 **COMMISSIONER STEENSON:** That would be helpful, thank you.

4 **MR POLE:** I would just say, private schools in the New Zealand setting are very, very small in
5 number.

6 **COMMISSIONER STEENSON:** Yeah, thank you.

7 **MS SHARKEY:** Mr Pole, you might have heard yesterday there was a discussion about systemic
8 racism. And I just wanted to know what your thoughts were on that discussion about
9 racism within the education system. Could I have your views on that please?

10 **MR POLE:** So I think the Secretary traversed this in terms of is racism endemic throughout the
11 system, and we can't say that. What we can say is that some of the practices and some of
12 the policy settings that have existed in the past did result in discrimination against certain
13 groups of kids, and some of the schools that you are dealing with here, it's alarming that we
14 would take young Māori kids from the far north from their whānau and put them in places
15 such as [GRO-B] in North Otago with no capacity for communication, engagement or
16 a capacity to maintain connections with their culture and their language.

17 **MS SHARKEY:** Okay. I just want to unpack this a little bit.

18 **MR POLE:** Yeah.

19 **MS SHARKEY:** Right, because we've heard an acknowledgment earlier on this week,
20 institutional racism and legislation policy and systems, that was Whaikaha just to clarify,
21 contributed to the abuse of Māori Pacific peoples in Health and Disability care settings and
22 I'm just asking whether in your view and the experience that you've had in the education
23 system, whether that acknowledgment extends to what's happened in ERO in the past and
24 present as part of the education system.

25 **MR POLE:** ERO as an organisation I think has been on a learning journey over the last 30 years.

26 **MS SHARKEY:** So is that a yes?

27 **MR POLE:** Well, in terms of dealing with issues of unconscious bias. We, early on as an
28 organisation, placed a focus on Māori learning outcomes and features in the system that
29 would support Māori outcomes. We've worked very hard as an organisation to work in the
30 Māori medium sector, and as our notice to produce shows, we have gone through a process
31 of developing partnerships in a co-constructed for Māori by Māori approach to the way we
32 work in the system. We are guided by Māori communities, our Māori leadership in the
33 work we do. So that for me is answering part of your question.

1 But the second part is yes, in the past denial of te reo Māori in our schools and
2 people being caned for the use of te reo when at school, the failure to provide te reo in
3 school, or even as recently as the mid 80s where you saw things like School Certificate
4 where the scaling of that exam meant that only 35% of Māori kids going through School
5 Certificate could pass, or would pass based on the approach the Department of Education
6 had at the time, are all manifestations of a system that was blind to their Treaty obligations
7 and resulted in racist outcomes.

8 **MS SHARKEY:** Right, a system that was racist?

9 **MR POLE:** I said resulted in outcomes can be perceived as racist.

10 **MS SHARKEY:** A number of survivors in both the Māori and Pacific peoples hearings spoke of
11 their treatment in educational settings, and I just want to bring in one of the challenges you
12 outline in your NTP response at 11.10(a). You talk about substantial inequities, and if
13 I could just read into evidence:

14 "First and foremost our system continues to underserve many groups of learners and
15 substantial inequities persist. This includes large inequities in outcomes and poorer
16 experiences in our school settings by Māori and Pacific learners and those with
17 disabilities."

18 So Mr Pole, just on that issue, and I'm looking at the scope period and
19 contemporary.

20 **CHAIR:** And for clarification for everybody, scope period is the scope of our terms of reference,
21 which is 1950 to 1999.

22 **MS SHARKEY:** How has the education system continued to underserve children for so long?

23 **MR POLE:** I think the education system has found adaptation, its strategies, its philosophical
24 underpinnings to the delivery of pedagogy or teacher training practice has been slow to
25 adapt. As a system we are changing. The intent and will of schools is to provide the best
26 education they can and schools are shifting. But as I said in my introductory statement, it is
27 slow.

28 **MS SHARKEY:** Right. But, and survivors listening to this and how the education system has
29 been perceived by them as abusive; is this where we come back to these inequities, is this
30 whole discussion about discrimination part of that, part of how these inequities have
31 resulted?

32 **MR POLE:** I think there are deeper underlying issues at play here.

33 **MS SHARKEY:** Such as?

1 **MR POLE:** Well, in some of the work and in terms of the paragraph that you highlight, a strong
2 phenomenon or factor involved for learners in these schools has been one of poverty. They
3 are broader issues than just the education system. Over the last three years, as that
4 paragraph highlights, Covid has confounded some of the impacts on learners in these
5 schools, and this has been disproportionately, as we say there, in Māori and Pacific Island
6 located communities.

7 **MS SHARKEY:** Okay. Just on this paragraph, so how can Māori, Pacific and those with
8 disabilities, you say there, with poorer experiences in our school settings, how does this
9 happen when we have agencies who are responsible for those experiences, how is this able
10 to continue? You brought up poverty before, but what needs to happen in your view?

11 **MR POLE:** So there are multi-layers to this and so I think Ms Holsted outlined some yesterday,
12 so how we ensure a priority in our teaching practice, so I think she talked about Tapasā and
13 a whole range of work we're doing to raise capability of teaching staff with respect to
14 delivering appropriate, culturally relevant education for Māori and Pacific learners.

15 It is around resources provided to these schools, and again yesterday the highlight of
16 the new equity funding targeting these schools in these communities. It's working to ensure
17 that our system respond to the needs of individual learners much more closely. So when
18 ERO is working in a school and we're talking about how are things going for Māori and
19 Pacific learners, we're going down to what are the numbers of kids who are at risk of not
20 succeeding, what are their names, what are their needs, what are you doing about that. And
21 so in our role we are trying to place a spotlight on ensuring that every single learner gets the
22 best chance they can in terms of the professionals that are working with them.

23 **MS SHARKEY:** Right. And we just talked about the learners, Māori and Pacific learners, but
24 also those in disability settings as well. You follow from that alienation from education,
25 that's another challenge that you identified and that was mentioned yesterday as well. Did
26 you watch, or were you briefed on the witnesses that we heard in those three hearings,
27 Māori, Pacific and disability mental health hearings?

28 **MR POLE:** I did not watch them, I've had some of that feedback provided to me.

29 **MS SHARKEY:** Just in looking at alienation from education, because that was something we
30 kept hearing. We heard from survivors about how the abuse, racism, cultural neglect they
31 experienced in educational settings, negatively impacted their experience of school and
32 about how their experiences in education settings led to behaviour such as truancy, petty
33 crimes, gang involvement, and that then led them into pathways into the care system. And

1 we had experts which we had put in the bundle who spoke in their expert opinion about
2 what the negative experience of education can do before entry into care.

3 So my question is, what does ERO see as its role in ensuring that these experiences
4 of abuse, cultural needs, barriers, don't continue and are recognised and adequately
5 addressed as part of your oversight and monitoring role?

6 **MR POLE:** I think there's two elements to your question there. So the first is we as an
7 organisation, through our national studies in evaluations around the system's performance,
8 have placed a spotlight on these issues. Our work recently around learning in residential
9 care highlighted continuing issues in terms of transience for a number of those people in the
10 care of Oranga Tamariki and the need for education to stay connected with them.

11 Our follow-up to that was to develop a set of recommendations for policy work and
12 change to occur that will see that that is removed or reduced substantially.

13 So in terms of the work we're doing, we're placing a spotlight on those issues, we're
14 looking at what good practice is and where it works successfully, and we're trying to effect
15 change in partnership with other agencies and making recommendations to the ministers of
16 the day.

17 **MS SHARKEY:** Okay, so we'll explore that I think now then, because the statutory and
18 regulatory framework is of particular interest. So the statute, Education and Training Act
19 2020, and correct me if I'm wrong, but there are have been no fundamental changes to
20 ERO's statutory role since it was created?

21 **MR POLE:** No, that's incorrect. So I think I referred to 2002 changes in terms of boarding and
22 hostels.

23 **MS SHARKEY:** Yeah.

24 **MR POLE:** I think the 2020 Act also saw some changes to allowing ERO to go into family
25 homes when they were providing early childhood services out in a home. And last week
26 parliament agreed to extend ERO's mandate to the review of professional learning and
27 development provided to teachers and those working in schools in early learning services.

28 **MS SHARKEY:** Okay. So in terms of the statutory framework we're looking at 11 sections of
29 the Education and Training Act. And you mentioned before, just before I come back to the
30 statutory framework, in your introductory session at the beginning, your accountability.
31 And so as CE, you're accountable to Public Service Commission, is that right?

32 **MR POLE:** I'm employed by the Public Service Commissioner.

33 **MS SHARKEY:** Do you have a direct line to the minister?

34 **MR POLE:** Yes I do, so I equally report to the minister of the day in terms of education.

1 **MS SHARKEY:** Okay, so are there two lines of reporting then?

2 **MR POLE:** There's the employment obligations which report to Public Service Commissioner
3 and then in the partaking of our duties, so called ownership issues, they rest with, first and
4 foremost, the Minister For Education and then with Parliament through the select
5 committee process.

6 **MS SHARKEY:** And so that direct line to the minister, how often does that happen? On an as
7 needs basis or are there regular kind of meetings, or what does that relationship look like?

8 **MR POLE:** We would meet with ministers on a weekly basis.

9 **MS SHARKEY:** Okay.

10 **MR POLE:** Across the organisation, if not multiple ministers on multiple days.

11 **MS SHARKEY:** Okay.

12 **MR POLE:** We will also, if there is a specific issue that we believe attention needs to be drawn
13 to, we will provide a briefing to the minister, or in fact request meetings associated with
14 multiple ministers. So the example that I gave earlier of the work we did in residential
15 care, that involved bringing together the Minister For Children and the Minister For
16 Education to work through the recommendations that we were making to them about things
17 that needed to change.

18 **MS SHARKEY:** Right, it's good to get an idea of how that relationship is, what it looks like.

19 **CHAIR:** Ms Sharkey, are you going to ask any questions about that residential care review ?

20 **MS SHARKEY:** Yes, a bit later on.

21 **CHAIR:** I'll leave it until that.

22 **MS SHARKEY:** So just coming back to the statutory framework. So Mr Pole, is there a specific
23 statutory purpose to ERO or to the Chief Review Officer, other than the broad section 4?

24 **MR POLE:** No.

25 **MS SHARKEY:** And so section 4 is where we're looking and that supports health, safety and
26 well-being?

27 **MR POLE:** Yes.

28 **MS SHARKEY:** So really that's where you come back to in terms of the legislation?

29 **MR POLE:** Yes.

30 **MS SHARKEY:** In your view, is that sufficient?

31 **MR POLE:** It hasn't limited how I have been able to act and fulfil my duties over the past five
32 years.

33 **MS SHARKEY:** But is it sufficient?

1 **MR POLE:** Where we have sought additions to the Act, such as the one I raised in terms of home
2 care, the government of the day has chosen to make those changes. There have been other
3 areas where we have said that our powers might be considered to be extended and the
4 government of the day at those times have chosen not to.

5 **MS SHARKEY:** In order to make changes it all takes time though, right, you'll ask for changes
6 and that all takes time to push through?

7 **MR POLE:** It's also about clarity of the respective roles that sit between the Education Review
8 Office, the Ministry of Education, the New Zealand Qualifications Authority, and others.

9 **MS SHARKEY:** Yes, which we will come to. So at paragraph 4.2 of your brief of evidence you
10 describe ERO's prime emphasis, is revolving around ensuring the quality of education
11 provision, understanding learners' achievement and progress, and the underlying conditions
12 that contribute towards these outcomes. And I just wanted to clarify your agreement that
13 child safety and wellbeing in schools would be an underlying condition.

14 **MR POLE:** Yeah, absolutely. It's number one in terms of when we are working with schools.

15 **MS SHARKEY:** Right. Now coming to the role of ERO, and I saw your briefing to the incoming
16 minister 2020. And on page 5 -- we don't need to bring it up -- you'll be well familiar with
17 it, you say to the minister, "we are your eyes and ears on the ground". And that for me
18 evokes quite powerful imaging, "we are your eyes and ears on the ground." And is that
19 because you're at the frontline, understanding what's happening in schools, how safe
20 students are; is that what you mean by that?

21 **MR POLE:** We are in schools every single day. We are in early learning services every day. We
22 are in those communities and in terms of the changes that we presently are pushing forward
23 on, that relationship is only going to be strengthened.

24 **MS SHARKEY:** Right. And would you agree that the public and communities are also likely to
25 see you as the eyes and ears on the ground for them?

26 **MR POLE:** Yes.

27 **MS SHARKEY:** And as you said in your brief, Tomorrow's Schools has increased accountability
28 by opening schools up to greater scrutiny from communities, so that makes sense when you
29 say "we're eyes and ears on the ground". So eyes and ears on the ground for the minister,
30 for parents, and that also extends to our children?

31 **MR POLE:** Yes, absolutely.

32 **MS SHARKEY:** And your understanding of the importance of these ERO reports, the great
33 reliance that many parents place on them.

34 **MR POLE:** Yes.

1 **MS SHARKEY:** And how in reading those reports they make decisions about what school their
2 children go to; you'd agree with that?

3 **MR POLE:** For some parents it is part of their decision process.

4 **MS SHARKEY:** And for some schools they use it as marketing material. "We've got a fantastic
5 ERO report, this is how well we're doing, bring your children to our school." Agree?

6 **MR POLE:** Yes, that has been the case in the past.

7 **MS SHARKEY:** Yes, it has been the case in the past, yes, okay. But those reports, as you say in
8 your evidence, reviewing and reporting, you're reliant on the veracity of self-reporting of
9 schools?

10 **MR POLE:** Not entirely.

11 **MS SHARKEY:** But you are reliant?

12 **MR POLE:** So our process requires at the front of that process an attestation or self-report by
13 schools to their compliance with their statutory obligations and regulatory obligations as
14 schools ?

15 **MS SHARKEY:** Right.

16 **MR POLE:** In our process, we will probe and go into those, and in particular those areas
17 associated with health, safety and welfare and well-being. Yesterday, for instance, the
18 question was raised about seclusion. That is an area since 2016 that we explicitly look at
19 and question and probe. That probing goes not only to is there a seclusion room, but what
20 are the practices around behaviour management that this school is adopting in the
21 capabilities of teachers in managing difficult or challenging behaviour at a time.

22 So while there is an attestation process, we go deeper. We will probe. That probe
23 includes talking with the board about what they know and what assurances they are getting
24 from the principal and the leadership in the school about compliance with their policies; it
25 includes talking with the senior leadership team; talking with students, and with parents and
26 with other teachers in the school.

27 **MS SHARKEY:** Okay. Can a school say to you that they're not yet ready for a review?

28 **MR POLE:** It would depend on the circumstances.

29 **MS SHARKEY:** But they can say that they're not ready for a review?

30 **MR POLE:** Well, so if the school had had, this week, all of the senior leadership go out with
31 Covid, then we would say it's probably not appropriate for us to be in that community. If
32 the school was dealing with a tragic suicide of a respected member of that community, then
33 equally.

34 **MS SHARKEY:** But you will rely on what the school tells you is the issue of the day?

1 **MR POLE:** We will work it through with the school. In saying that, we are shifting the approach
2 we operate with schools to maintain in an ongoing relationship, so we're touching in with
3 the school very frequently all of the time about what's going and how they are progressing
4 in terms of actions that we've worked through with the school that need to be undertaken.

5 **MS SHARKEY:** Right.

6 **COMMISSIONER ALOFIVAE:** Can I just ask a question there, just a point of clarification,
7 Mr Pole. So we can assume that there's a consistency, so it's the same reviewer that goes
8 in, or same team of reviewers?

9 **MR POLE:** So the shift at present that we're going through is there will be the same reviewer
10 over time for the time with which they are working and its appropriate. They will on
11 occasion be supported by other reviewers coming in and supporting them. For instance, if
12 they do not have depth of te reo and pedagogical understanding about the teaching of te reo,
13 then we will have one of our experts in the delivery of te reo, or Samoan, accompany that
14 reviewer for that part of the exploration with the school.

15 **COMMISSIONER ALOFIVAE:** Thank you.

16 **MS SHARKEY:** But coming back to the statutory powers, no other powers than to collect
17 information and prepare those reports?

18 **MR POLE:** That is correct. Oh, prepare, and publish.

19 **MS SHARKEY:** Yes, prepare and publish the reports. And there is a devolved and autonomous
20 nature of schools?

21 **MR POLE:** That is correct.

22 **MS SHARKEY:** And that can make it quite difficult, that can present some challenges?

23 **MR POLE:** Yes, it can.

24 **MS SHARKEY:** And there's a high reliance on the board of trustees to support, when I say
25 leaders, let's say principals?

26 **MR POLE:** Constitutionally boards of trustees are the governors of the school and have the
27 accountability in that governance.

28 **MS SHARKEY:** As you say, not all boards are able to support the leaders.

29 **MR POLE:** Some boards struggle.

30 **MS SHARKEY:** And what do you mean by that?

31 **MR POLE:** So --

32 **MS SHARKEY:** Is it capability issues?

33 **MR POLE:** It can be capability issues, they focus on the wrong things, they find it challenging to
34 probe or hold account the senior leadership in the school. Maybe some of my colleagues

1 who have been involved recently with the school reviews might comment on some of those
2 challenges.

3 **MS LEE:** Jane speaking. Some of those challenges that a board might face is, in picking up on
4 Nick's comments, it could be around capability and understanding their role and
5 responsibilities as a board, it could be also relationships with their senior leaders of the
6 school, other challenges that a board may face is the community relationships and
7 expectations of the community.

8 **MS SHARKEY:** Right. Board of trustees who wield quite a bit of power, don't they?

9 **MS LEE:** Yes, they are responsible for the education and delivery of quality education in the
10 school.

11 **MS SHARKEY:** Right. And just on a -digress for a brief second while I'm on this issue; we had
12 talked about before alienation from education and I'm just talking about -exclusions it- was
13 expelled in my day, but it's -exclusions I think now. Board of trustees are responsible for
14 making those big decisions or --

15 **MR POLE:** Yes, it rests with the board.

16 **MS SHARKEY:** Right. So in terms of exclusions, do you have a view on whether such a huge,
17 massive decision should remain with that board? Should it be an independent body looking
18 at that, someone who's not really tied to the school? Just a question, because that's a big
19 issue for Māori and Pacific children.

20 **MR POLE:** So my own view is there should be greater protections and greater advocacy and
21 support for whānau going through the process of having their child stood down or
22 excluded.

23 **MS SHARKEY:** Because the impacts are long-lasting, once you lose a child in education it's very
24 near impossible to get them back.

25 **MR POLE:** The obligation should be that if for certain reasons this child is excluded, that there
26 are alternative arrangements with alternative schools where this child can be placed.

27 **MS SHARKEY:** Right.

28 **MR POLE:** Now, our work that we released a year back looking at Te Kura said there were too
29 many of these kids being alienated from their school setting and being placed on the roll of
30 The Correspondence School.

31 **MS SHARKEY:** Yes.

32 **MR POLE:** That is an issue and that is something we have asked the policy agencies, primarily
33 the Ministry, to work on.

1 **MS SHARKEY:** Because we do have a number of survivors who, for one reason or another, got
2 kicked out of school, left school.

3 **MR POLE:** Just before you move to your next question, can I come back and say that equally we
4 have seen across the motu parents and grandparents contributing to their boards of trustees
5 with a diligence, a commitment that is unbelievable in terms of time and an absolute rigour
6 in terms of the work that they are doing. And I'll deviate here if I can, if I'm allowed to.

7 I went into Christchurch in 2011, flew in the night after the earthquake. First part of
8 what I did is in that environment I went around and visited every school, just to look at the
9 level of damage. On going to one school in probably the poorest part of Christchurch, and
10 prior to that I'd been to many others and they were wastelands, there was no one there, there
11 were cars locked in the garage, I even went into one principal's office where his wallet was
12 left on the desk. This poor part of east Christchurch, the entire board came out to visit me
13 and talk about their community and already the restructuring of their community. They
14 were parents who were struggling themselves. I went and looked at that school and the
15 planting and the landscaping showed months, if not years, of work of busy bees and work
16 to make that school the most beautiful thing it could be within their community for their
17 tamariki.

18 So when we get it right, it works extremely well. And that happens across the
19 country every month, every couple of months by volunteers who are running these schools.

20 **MS SHARKEY:** Thank you for that Mr Pole. There are many that don't and I guess in terms of
21 us wanting transformational change, it's about looking at those where there are struggles
22 out there.

23 **COMMISSIONER ERUETI:** Thank you, Ms Sharkey, Mr Pole, you sometimes referred to kura,
24 I'm not sure whether you're referring to schools generally or to kura kaupapa; could you just
25 clarify for us what you do --

26 **MR POLE:** I'm talking about State and State-integrated schools which include kura and whare
27 kura.

28 **COMMISSIONER ERUETI:** Yeah, when you were talking about exclusions, as it's called now,
29 you referred to kura, I wasn't sure whether you were talking to kura kaupapa. So it will
30 vary according to the context.

31 **MR POLE:** Yeah.

32 **MS PURA-WATSON:** Kia ora, Lynda speaking. Nick was referring at that point to Te Kura
33 which is the overarching -- the old Correspondence School, and in relation to the old
34 Correspondence School the children who have been let go from their schools and may be

1 needing additional support through an education programme, and now I'm sure that
2 prompts Nick to jump in and say his next point.

3 **MR POLE:** Thank you.

4 **CHAIR:** It would be easier, and I think it's an important question so we do know what you're
5 talking about; if we're talking about kura kaupapa talk about kura kaupapa, then we know
6 that that's the focus, otherwise "kura" has a more general meaning.

7 Did I take it from that that the word "kura" is also the word you use for The
8 Correspondence School?

9 **MR POLE:** So The Correspondence School has named itself Te Kura.

10 **CHAIR:** Te Kura, right.

11 **COMMISSIONER STEENSON:** I also have a question just in relation to Ms Sharkey's
12 questions around expulsion from schools and the board. So I guess my question is
13 understanding the cultural competency levels of these boards, 2,500 across the motu. In
14 your assessment, do you think that's satisfactory?

15 **MR POLE:** Firstly, boards represent and reflect their community, they are elected from their
16 community. We see some schools who do this well; that's not the majority. So at the
17 moment in terms of our assessment and our assessment with respect to responsiveness to
18 Te Tiriti, only about 10% of schools we are working with we would say are reflecting their
19 obligations to the fullest extent at present.

20 **COMMISSIONER STEENSON:** Thank you.

21 **MS LEE:** Excuse me, would it be helpful if we explained what ERO did and how it looked at
22 suspensions and exclusions while on site in the school?

23 **COMMISSIONER STEENSON:** Absolutely, thank you.

24 **CHAIR:** It may be something, let's just check to see whether it's going to be something that you're
25 going to explore. We're looking at the systems and processes here, more the systems than
26 the --

27 **MS SHARKEY:** I'm happy for the witnesses to expand on that.

28 **CHAIR:** That's fine, I just didn't know if you were going to do this later, but if now is the
29 appropriate moment we'll do it.

30 **MS SHARKEY:** Now is a good time.

31 **CHAIR:** Okay. Yes.

32 **MS LEE:** So when we visit the school we do look at suspensions and stand-downs as part of the
33 board assurance statement and compliance. So the review officer would look at, not the
34 reason why the student was stood down, excluded, but would look at to see whether the

1 processes were followed. Those processes being that they had notified the parent and the
2 child of their rights in relation to the stand-down and suspension, and that the meeting for
3 the exclusion was held in a timely fashion and that the parent was informed that they could
4 bring support to that stand-down meeting.

5 You would also look from a perspective as to whether the school has a systematic
6 process for ensuring that they are following the expectations and the requirements around
7 stand down and suspensions.

8 We would also look for patterns of suspensions and if there was a disproportionate
9 number of exclusions, then we would look at that and ask questions around that, and if they
10 were not compliant in that, we would report that in our report.

11 **COMMISSIONER STEENSON:** Thank you very much for that.

12 **COMMISSIONER ERUETI:** Excuse me, Ms Sharkey, I've got some questions on the Treaty but
13 I'm just wondering -- I don't want to interrupt the flow so I can ask them after the break, if
14 you like, I just don't want to stray too far from the kaupapa.

15 **MS SHARKEY:** I just had one other question in relation to that and then I'm mindful that we've
16 got a break in 15 minutes. I just wanted to tie off this topic.

17 Ms Lee, as you were talking there about what you do to find out more information
18 about stand-downs and exclusions, that's at the end though, right, that decision has been
19 made in respect of that child?

20 **MS LEE:** Correct.

21 **MS SHARKEY:** Right, so what I'm -- and I think we'd discussed before, is that something needs
22 to be done before we get to that point, correct?

23 **MS LEE:** Correct, yes.

24 **MS SHARKEY:** And so just in terms of that power, staying within that board of trustees, there
25 could be merit in there being another body to look at that? Yes?

26 **MS LEE:** Yes, there could be.

27 **MS SHARKEY:** Should there be?

28 **MS LEE:** There was a recommendation in Tomorrow's Schools about having an independent
29 body to deal with complaints. That might be the potential, could be extended to that, yes.

30 **MS SHARKEY:** Thank you. Ms Pura-Watson had her hand up first.

31 **MS PURA-WATSON:** Aroha mai, I just thought it was an opportune time to talk about the Māori
32 medium paradigm and the differences, and while the law is the same and the expectations
33 are the same in relation to what's required, there are just a couple of things I'd like to bring
34 to the table, firstly about the way the board is formed, the voice of whānau, hapū and iwi,

1 and then secondly about exclusion, suspension; and the other E word which was about gone
2 forever and -- yeah, sorry.

3 So firstly, the boards for kura kaupapa Māori, Ngā Kura Ā Iwi, Kura Motuhake
4 generally always have nominated people responsible to participate on the board. The
5 boards run quite differently in terms of they uphold the law around confidentiality, and yet
6 they work in a far more collaborative way with their communities. It's quite different, so as
7 a board if they need additional skills and expertise, they take the time to bring that in
8 through the governing bodies, peak bodies, who provide expertise similar to the way NZ
9 STA does in English medium settings.

10 However, the Te Rūnanganui o ngā Kura Kaupapa Māori, Ngā Kura Ā Iwi
11 generally come in and provide the support so that boards have the wherewithal to deliver on
12 their expectations, it's a very strong, overarching support network. Beyond network, that
13 was the word that came out of my mouth at that moment.

14 Then secondly in relation to expulsions and suspensions, they don't. They don't and
15 it's checked and very carefully understood that a child is a taonga through that education
16 space, paradigm, and they arrive at school and they are worked with to deliver the
17 education that they get, require, while at the same time never given the opportunity to be
18 released out until their education journey has moved through in that way. Quite different,
19 and I'm not sure if that's where you were heading in terms of your question around what
20 kind of options might boards have.

21 So in relation to kaupapa Māori, that's the way that works. And then just to come
22 back to the English medium paradigm, they do have, as Iona mentioned yesterday, NZ STA
23 who's able to provide the boards with ongoing support, and so between the two paradigms
24 we have different things operating and the Māori paradigm needed to be mentioned as well.

25 **MR POLE:** And in terms of the Māori medium school Ms Pura-Watson was referring to, that is
26 the kaupapa Māori.

27 **CHAIR:** Kaupapa Māori, yeah.

28 **MS SHARKEY:** I think that's a good segue into Commissioner Erueti's questions perhaps.

29 **MR POLE:** I just wanted to add two further perspectives around exclusions. The first is, and it
30 may be a consideration for the Commission, that actually we have a system that doesn't
31 have exclusions, that schools and communities need to work through how to support the
32 needs of every learner.

33 In many schools that we have worked with where there are high numbers of
34 exclusions or stand-downs and so on, we find generally the layers or the conditions in the

1 school are equally weak, and often it is a manifestation of the quality of teaching, the
2 quality of leadership, the quality of governance, practices and systems in the school, and a
3 lack of that collective teacher efficacy where teachers are working together around making
4 sure every single learner is successful.

5 In those schools, they're the schools that I'm talking about where we go in and we
6 spend a long time working alongside them, diving deep into how can we address these
7 things factor by factor. Most notably starting with school leadership and school leadership
8 probably more so than governance, although governance is an element in it.

9 **COMMISSIONER ERUETI:** Tēnā koe Mr Pole. I'm just trying to determine where your
10 statutory directives under the Te Tiriti come from. Could you explain that?

11 **MR POLE:** So first and foremost from the Public Service Act and then now at the same time the
12 2020 Education and Training Act.

13 **COMMISSIONER ERUETI:** Yes, but it seems, in looking at the Treaty clause, that there's a
14 statement that's issued by the minister in consultation with Māori, is that right, about what
15 your Treaty obligations are? Not sure?

16 **MR POLE:** No, sorry. I think the statement you're referring to is the NELPs or the National
17 Education Learning --

18 **COMMISSIONER ERUETI:** It's section 9 small paragraph (c), that seems to be where it comes
19 from. But Ms Sharkey brought up your statement of your Treaty policy and it is interesting
20 that you refer to the three Ps, if you like, the Treaty principles, but I think the Tribunal and
21 others have noted that the thinking has moved from those three Ps more recently to greater
22 emphasis on the Act of participation, so if someone was trying to find what your Treaty
23 obligations are, if they're not specified clearly in the Act for the office, are they somewhere
24 accessible to the public and to Māori?

25 **MR POLE:** Not beyond the statements that I think you're referring to.

26 **COMMISSIONER ERUETI:** Okay. Are they on your website or...

27 **MR POLE:** Well, our website has an outline of ERO's strategy, Māori strategy and our
28 commitment to Te Tiriti. And I've got to say our practice and our processes go beyond
29 merely the three Ps. We are actively involved, as we are now shifting our methodologies to
30 ensuring decision-making and looking at decision-making by schools in partnership around
31 the decisions that schools take in ensuring a localised curriculum.

32 **COMMISSIONER ERUETI:** My point is it's important to know what those standards are,
33 because some are lower and higher than others, and also for them to be public so everyone
34 sees them.

1 But my other question is, just to clarify on your comment, I think you said that
2 racial discrimination was not endemic or systemic in the education system. Are you saying
3 to us that -- and you in your position as a leader, educational leader will know the history of
4 Māori Crown relations in this -sector - that- across time that there's no evidence of systemic
5 racism within the education system, historically across our knowledge of the history?

6 **MR POLE:** I think I've stated that there have been elements in our system that have openly and
7 actively discriminated against Māori.

8 **COMMISSIONER ERUETI:** Yes, you said something like that, so different bills and policies
9 say, but not across history, no evidence of the systemic racism. You're not prepared to
10 recognise that? Okay, thank you, just wanted to clarify, kia ora.

11 **CHAIR:** We've got a couple of minutes, I wanted to ask just to go back to the issues that we just
12 talked about expulsion -- sorry, that's the old-fashioned word. Have you come to the end of
13 your questions on this topic at this stage or not?

14 **MS SHARKEY:** I was about to shift into how that ties into the next topic of well-being, but if
15 you want to finish that, I'm just mindful of the time.

16 **CHAIR:** I think what I might do, ask my question, check if there's nothing else arising and we'll
17 take the break and then you can move. It strikes me, Mr Pole, that you have said something
18 quite significant for the Commission to consider. And it flows out of Ms Pura-Watson's
19 very interesting description of the way boards of trustees for kura kaupapa act in a different
20 manner and with different results. And I really want to get this really clarified now,
21 because I think it affects not just this issue of expulsion, exclusion or suspension, but
22 maybe across the board.

23 And that is that the impacts on children, the outcomes for children are a
24 manifestation -- sorry, negative outcomes for children are a manifestation of the way in
25 which a school operates, and I use that in its widest sense, from the leadership of the
26 schools, the governance of the schools, the culture of the school and the like. Is that really
27 what you're saying?

28 **MR POLE:** That's exactly what I'm saying. And we have a lot of evidence and a lot of insight
29 from working with schools to that effect.

30 **CHAIR:** And would you agree that whilst that is obvious, and we've got a practical example here,
31 haven't we, in the kura kaupapa paradigm, which says we will not exclude, we will not
32 suspend, but we will make sure it works. Do you see that that philosophy, that method of
33 working could apply across the board to other things? And I mean I note your references to
34 the disability or the disabled children and the low levels of inclusive practices which are

1 demonstrated, so if good practice is demonstrated there are good outcomes for children, it
2 sounds obvious, but I just think, I think we often skirt around this and I really want to
3 hammer it home.

4 **MR POLE:** So there's a couple of observations that I have. The first is the relationship with a
5 child and their family, and I think Iona Holsted in her evidence yesterday said increasingly
6 we are saying that that is critical; understanding who that child is and what's going on in
7 their lives and getting in there early and responding to their needs before they get out of
8 hand.

9 We have other models around the country which have been explored, so for some
10 time in Dunedin the secondary schools have agreed where a student may have, I'll use the
11 term "outworn their welcome", that they are brought into another sister school or another
12 school in that community, and that's equally been explored over on the Coast in Napier.
13 But first and foremost, my desire is that we have the well-being, which we'll go to next, and
14 the welfare and the identification approaches to manage and support these kids to be
15 successful in the environments they're in.

16 **CHAIR:** And also support the schools to create the environment in which that can flourish.

17 **MR POLE:** That was my reference yesterday, or earlier in my opening about Te Mahau and the
18 work that the Ministry is doing to regionalise. Those schools that we identify, and I can
19 think of one that I've been very closely involved in, we have been in that school for four
20 years now to try and rebuild all of those facets and the conditions that are operating in that
21 school to ensure that those learners -- and those learners in that school are 50% Māori and
22 50% Pacific -- shift from a regime that expels or excludes substantial numbers of students.
23 To date that is looking successful but it still has a long way to go to be resilient and
24 sustainable.

25 **CHAIR:** Thank you very much.

26 **COMMISSIONER ALOFIVAE:** Just one comment, and it really just is a comment, an
27 acknowledgment of the statements that you've all made, that because I know -- well, what
28 we've heard out in community, of course, is that in some of your former, I think they were
29 called partnership schools but around your Pacific partnerships schools which are now
30 integrated, that where there's a predominant world view that is healthy and holistic, like in
31 kaupapa Māori where that's the predominant world view, that it's much easier to be able to
32 apply it because the paradigm shift is quite different.

1 **MR POLE:** Yes, I would agree and we've done work where we've profiled those schools, and in
2 terms of some of what you're exploring around faith-based schools, there are some
3 integrated schools who provide superbly for their Pacific learners.

4 **COMMISSIONER STEENSON:** I just have one question as well, just a follow-up question for
5 Ms Pura-Watson. Just around that kura kaupapa methodology you spoke of, so what
6 happens, say, for a student who -- I guess what I'm trying to think through, is say a student
7 is found -- I'm making this up -- selling something, selling drugs, like meth or something,
8 or has impacts on other students' safety. So obviously that is quite a significant social issue
9 for the school to have to deal with to keep that student there and ensure the other students
10 are kept safe at the same time. So I'm quite interested to understand the process there.

11 **MS PURA-WATSON:** I can talk about what I know given the philosophies that guide in this
12 paradigm. So children are viewed as taonga, I mentioned that, and in their philosophies
13 they're articulated in that way. They also talk about them as being tama-ariki, children
14 from the God, so whichever day, in relation to your comment about maybe not being on
15 form or doing something not the right -- not legal potentially, it's quite different in kaupapa
16 Māori, because the child basically has a korowai wrapped around. So if it's an illegal drug
17 like you've kind of mentioned, then the right people are brought in to support counselling,
18 both for the child and the family. So it's a full and complete wrap-around.

19 We've seen it, I have personally seen examples where this has happened so that the
20 child has had a difficulty, been nurtured, the parents have been supported to accommodate
21 that need, and then basically the school's always there. And more and more, even if it's
22 reversed, I'll go the other way, where the whānau needs support, they are wrapped around
23 too and the children are nurtured within the larger whānau, hapū, iwi context.

24 Now it sounds like I'm speaking in the language of fabulosity. It is a truth and the
25 evidence that we've gathered since 2000 demonstrates that actually there is an alternative
26 way to deal with children. Having said that, in answer to your question, in English medium
27 settings it's similar, it's articulated differently, but the components of care and welfare are
28 very similar, where it works.

29 **COMMISSIONER STEENSON:** So how do the other families of other children feel about that
30 in the meantime? Because I totally agree it's fantastic that that particular student gets that
31 wrap-around with their whānau. But I'm just interested to understand in a non--Māori -- if
32 you're going to spread it, how would that reaction be --

33 **MS PURA-WATSON:** I'm not sure about how you would spread it. What I do know, to your
34 comment, is that if you are born in a space where it's normal to be supported on a day that

1 might be difficult, if it's normal as walking down the road or breathing, then that normality
2 enables it to just be a constant, so other children don't see it as preferential treatment, the
3 child is being supported, is supported by other children as well. Because remember, it's the
4 kaupapa, it's whānau, hapū and iwi coming together in a philosophical underpinning that
5 supports education for these children. I'm not sure if I --

6 **COMMISSIONER STEENSON:** You have, what I'm trying to reconcile is whether that would
7 work in a non -Māori space.

8 **CHAIR:** Can I just -- this is a very important line of questioning, but I'm really conscious of our
9 timing and our workers. Can we hold the answer to that question and maybe follow it up
10 when we come back in 15 minutes, give you a chance to think about it and give some
11 fingers a much needed rest. So we'll come back at 10 to 11.

12 **Adjournment from 10.38 am to 10.53 am**

13 **CHAIR:** Welcome back, everybody. Thank you, Ms Sharkey.

14 **MS SHARKEY:** Thank you, Madam Chair, I think we're going to receive the answer to that
15 question.

16 **CHAIR:** Thank you.

17 **MS PURA-WATSON:** Could you just repeat the question, sorry.

18 **COMMISSIONER STEENSON:** Sure, I guess what I was trying to reconcile in my mind was
19 whether the kaupapa Māori approach, which is underpinned by Māoritanga and a Māori
20 way of living, whether that would easily translate across to non -Māori settings where
21 perhaps parents and families have a different basis and way of operating, with regards to
22 having a student removed or not for, say, something that they considered was unsafe for
23 their child, just that different lens and acknowledging that.

24 **MR POLE:** It's my belief that, yes, it can. I think a lot of schools are exploring restorative
25 practices as part of their behaviour and their school management programmes. Those
26 schools are not excluding or standing down students. It comes with layers of how the
27 school firstly sets expectations around behaviour and how it responds to those. So I think
28 we can learn a lot from kaupapa Māori practice, and I think it can work well in English
29 medium settings.

30 **MS PURA-WATSON:** If I may, I think also what we can see, while this is a kaupapa Māori way
31 of living and educating, there are also elements across the country where iwi have provided
32 additional kinds of support. So if I go to-- the first initiative I would potentially put on the
33 table is Kai Tahu are currently looking at the ending streaming. Ending streaming pushes
34 schools to no longer put us in categories or define how we breathe, rather it's an opportunity

1 to insist that schools learn to understand about the child and their learning needs. That's the
2 first thing in terms of iwi are currently providing a range of options, and that's one that I
3 can think off the top of my head.

4 Then secondly, in terms of education initiatives that have come out of the Ministry
5 of Education and aligned with other core programmes, building capability in that English
6 medium setting, I'm not sure if as a group you will remember Te Kotahitanga which was an
7 initiative in schools many years ago. More recently has become the -- became the genesis
8 to build on poutama pounamu which is a really strong professional to programme provided
9 for schools and professionals to support them to understand what being culturally
10 responsive in a setting and across communities would look like.

11 So to your point, could it be, could the kaupapa Māori approach influence, we
12 believe as Nick's described, yes. Has it grown legs already? Another yes, because there are
13 a number of things that the system is working to make the changes that give a similar
14 outcome for learners.

15 **COMMISSIONER STEENSON:** Yeah, thank you for that. I have no doubt that there's lots that
16 it can influence, so it was just around that particular point on exclusion. So I guess your
17 answer is that yes, State and integrated and private schools could also benefit from that
18 philosophy?

19 **MR POLE:** Yes, absolutely.

20 **COMMISSIONER STEENSON:** Thank you.

21 **COMMISSIONER ERUETI:** Excuse me, Ms Pura-Watson, the Ngāi Tahu example, I didn't
22 catch your first sentence.

23 **MS PURA-WATSON:** Ending streaming.

24 **COMMISSIONER ERUETI:** It's streaming.

25 **MS PURA-WATSON:** Tokona Te Reo is the --

26 **COMMISSIONER ERUETI:** Sorry, sorry, I can't quite hear sorry.

27 **MS PURA-WATSON:** No, that's probably because I speak softly. So Tokona Te Reo is the
28 programme that's been operated by Kai Tahu and in partnership with the CEOs -- I think
29 that's correct, isn't it, Nick -- and is looking at ending streaming throughout the system.

30 **COMMISSIONER ERUETI:** Okay, yeah, ka pai, thank you.

31 **CHAIR:** Ms Sharkey, we're eating into your time. So please.

32 **MS SHARKEY:** Yes. No, that's fine, very important discussion. And something that brings me
33 to this wellbeing issue, we had an expert psychologist in the Pacific People's hearing,
34 Dr Julia Ioane, and she said that a rollout programme was needed in schools to promote a

1 trauma informed system. Specifically, she said, culturally appropriate training was
2 important in order to respond to trauma and violence as these are often the main barriers to
3 learning and are pathways to suspension and exclusion from school.

4 And I just wanted to ask, there's a bit to absorb there, right, but what are your views
5 in regards to that statement she makes? Her statement was in the bundle.

6 **MR POLE:** I absolutely agree with what she said.

7 **MS SHARKEY:** So I'm aware that ERO have a, is it a research development -- how do you see
8 ERO's role in promoting a more trauma-informed education system?

9 **MR POLE:** Let me just maybe give some examples of what's going on at present. So post the
10 earthquake, a wellbeing programme called Manaaki was developed in Christchurch for
11 primary students. It covers the entire Canterbury DHB region, it has focused on
12 trauma- informed practice, culturally responsive practice and being a partnership between
13 health professionals, welfare professionals and the schools. It has involved clustering
14 schools into groups of around ten and providing layers of response to the needs that are
15 presenting from kids who are showing-- were showing up at school with anxiety to also
16 dealing at the other end of the spectrum with children and young people with deep
17 challenging concerns and complexities in their family.

18 It involved all of the associated professional community agencies and the education
19 sector groupings like RTLBs and social workers in schools, all working in wrapping those
20 services around the child. That has been extended in this last budget to six further DHB
21 areas.

22 ERO and I have looked at that programme, from my assessment and it has had two
23 other independent evaluations, it is a fantastic response to the points that you have just
24 raised by the witness you talked about.

25 **CHAIR:** Does your reference to the DHB districts indicate that there is an involvement with
26 health as well?

27 **MR POLE:** Yes, it's a partnership between health and education.

28 **CHAIR:** Thank you.

29 **MR POLE:** It's locally determined and arranged, so it's not just a carbon copy and it's going to be
30 rolled out, it's actually the leadership in both sectors getting together and co-constructing
31 how it's going to look for our location.

32 **CHAIR:** And a recognition that education and health are almost inextricably linked in many
33 ways, aren't they?

34 **MR POLE:** I would add in there "and welfare support services".

1 **CHAIR:** That's right, thank you.

2 **COMMISSIONER ALOFIVAE:** And it won't be one of the things that's lost in the big
3 transformative systems that's going on right now.

4 **MR POLE:** I would hope not. So the money coming through government is guaranteed, while
5 I'm in my role, because that's one of the most outstanding programmes I've come across. It
6 also has another element to it for classroom teachers where they can look up I'm meeting
7 these challenges with a particular learner that's in my class or a particular circumstance and
8 you can go into resources to find how you might want to adapt your practice, or actually
9 call someone and seek advice on that.

10 So I would hope long-term it's nationally rolled out and the evidence in terms of its
11 impact in terms of dollar value return is very high.

12 **CHAIR:** Thank you.

13 **MS SHARKEY:** Because in tying that to your challenge at 11.10(d), well-being of children,
14 coming back to that particular expert who spoke about the impacts of abuse on children's
15 well-being and mental health, but you're seeing this as a growing concern?

16 **MR POLE:** Yes, it is.

17 **MS SHARKEY:** And children being diagnosed at younger --

18 **MR POLE:** Earlier in their lives, yes.

19 **MS SHARKEY:** And that's in relation to -- could you expand on that just a bit?

20 **MR POLE:** So in relation -- well, in relation to dealing with complex behavioural issues.

21 **MS SHARKEY:** Right.

22 **MR POLE:** Trauma in their lives, neurodevelopmental challenges in reading or processing
23 cognitively.

24 **MS SHARKEY:** So in coming back to that trauma informed but also training that enables those
25 who are working with our children to know what they're doing and how to handle that?

26 **MR POLE:** Absolutely. And so recent work that we have done, some of our, well, core
27 recommendations have been about first and foremost nationally getting some consistent
28 guidance about approaches to dealing with trauma informed practice and ensuring trauma
29 informed practice and models of teaching practice, and ensuring that this is extended
30 throughout the teaching community, and in particular as we see more kids in local
31 communities.

32 **MS SHARKEY:** Okay, I might stick with that, the training and support topic.

33 **COMMISSIONER ERUETI:** Sorry, Ms Sharkey, can I just...?

34 **MS SHARKEY:** Sure.

1 **COMMISSIONER ERUETI:** What's the name of the programme? I missed that

2 **MR POLE:** Manaaki.

3 **COMMISSIONER ERUETI:** Thank you.

4 **MS SHARKEY:** Just in terms of the review officers, so since 1989 what explicit review
5 procedures relating to the relevant sections of the Education and Training Act were in place
6 to guide review officers in investigating and reporting on schools? Would you be able to
7 answer that question?

8 **MS LEE:** We have a manual of standard procedures in relation to how review officers undertake
9 a review from pre review on site and post review. Does that answer your question?

10 **MS SHARKEY:** Can you describe the explicit review procedures?

11 **MS LEE:** So, for example, if- the pre- -on-site review would be contacting the board to indicate
12 there will be a review, then we would meet with the board in relation to what that onsite
13 review would look like, and that the expectation would be that they would let their parents
14 know that we would be visiting the school between the dates specified. Then while on site
15 we would follow up and meet with leaders, teachers, speak with students and also- parents
16 who'd wished to meet with us. We would look at various procedures and policies, we would
17 undertake observations in classrooms, and we would also look at the physical safety of
18 students and emotional safety of students while on site.

19 **MS PURA-WATSON:** Could I add to that please, if I may? Earlier in ERO's establishment we
20 had a code of conduct and it basically required that we understood our role and it was
21 aligned very strongly to the Public Service code of conduct. It held us to account in terms
22 of how we commit and our role as public servants. It's really important to, I think -- I'm not
23 sure quite sure if you were going there, but I wanted to put that on the table.

24 Then secondly, we all come from the range of schools, kura, kōhanga, puna reo, our
25 workforce is built up of experts, people who have been a part of an education system either
26 as principals, teachers and so they understand the system, so they come with a code of
27 conduct, an understanding of education, and then they move into then being able to work
28 within the methodologies that have been developed by ERO and since the timeframe you've
29 identified, we have moved from audit through to accountability reviews, education reviews
30 and now into an improvement evaluation.

31 So depending on which particular time, ERO's continued to grow and our
32 expectations of review officers have grown as well to ensure that we are --I'm not sure this
33 is appropriate and my colleagues will probably tell me off later, but fit for purpose,
34 particularly in terms of service to the communities that we work in.

1 Now, if I've taken your question the wrong way, my apologies.

2 **MS SHARKEY:** No, no, that's fine.

3 **MS LEE:** Can I also add to that, in relation to Lynda's comments is that we also have an extensive
4 professional learning and development programme in relation to key areas of interest in
5 education at that particular time.

6 **MS SHARKEY:** These are all new initiatives, they weren't there in 1989?

7 **MR POLE:** My understanding is by 1989 - ERO evolved as an organisation in its practice.

8 Originally- we started off in terms of thinking about, working through the issues that you've
9 previously raised around attestation and so on, had a handbook. Our practice has evolved,
10 has become more sophisticated, there is more guidance and I would say much more
11 thorough. I'm more than happy to share with you the guidance that we have. We have --

12 **MS SHARKEY:** Just before we move to there, Mr Pole, I just want to bring you back to the
13 historic part of the scope period. Because during that period there was no specific
14 professional training for review officers to identify things such as bullying, sexual
15 harassment, abuse; would that be correct?

16 **MR POLE:** I don't have that information.

17 **MS SHARKEY:** And review officers wouldn't have had that ethnic specific cultural training to
18 help them understand cultural -approaches -during- that relevant period?

19 **MS PURA-WATSON:** During that period. Can I go to the staffing at that time and I can speak to
20 it and I want to acknowledge those who have passed, because in terms of whakapapa,
21 ERO's got a strong whakapapa for Māori and around Māori. So w-hen ERO was first
22 established during the 1989 period there were a number of- Māori who were employed who
23 influenced the way that ERO worked, strongly in relation to the way they worked,
24 acknowledging Tikanga Māori, and often following the protocols, marae protocols of entry.
25 And that sounds very tweek. However, these were leaders in education, and the name, I'm
26 not sure if we're allowed to name them, but there are a number of them who influenced
27 ERO's initial direction.

28 Whilst it might not have been a particular professional development programme, by
29 their presence and their number, and there were quite a number, they influenced the way
30 ERO traversed sometimes difficult situations in schools for Māori.

31 **MS SHARKEY:** Okay. For the other priority groups, Pacific peoples and disability?

32 **MS PURA-WATSON:** From my knowledge and remember, mine is about whakapapa for Māori,
33 there were very few, if any, Pacific people and I'm not sure that there were any disabled.

34 **MS SHARKEY:** So just coming forward to present day, I think you said -- is it 135 officers?

1 **MR POLE:** Yes, that's correct.

2 **MS SHARKEY:** And could you please for us describe the make-up, the ethnicity.

3 **MR POLE:** So it sits at over 20% Māori and Pasifika...

4 **MS LEE:** 10%.

5 **MR POLE:** About 10%.

6 **MS SHARKEY:** And for disabled?

7 **MR POLE:** We don't have that information.

8 **MS SHARKEY:** Right.

9 **COMMISSIONER GIBSON:** Would you like to estimate the number?

10 **MR POLE:** Very small.

11 **MS SHARKEY:** Is that something that you are looking at?

12 **MR POLE:** It is something we are looking at, it is something we work very hard around. There
13 are certain rigours in the role as a review officer or working in the field, and one of those
14 things is we draw our people from senior leadership roles in the sector, and so a large part
15 of our approach is structured by the profiles of people who are working in leadership roles,
16 in management roles, in schools today.

17 In saying that, we are looking at approaches where we can second and source and I
18 would say when we are working in particular projects associated with disabled learners, we
19 will partner actively with the disabled community in that work. And the most recent piece
20 of work which we will publish in a couple of weeks' time we had the Human Rights
21 Commission with responsibility for disability and the Office of Disability Issues as partners
22 in undertaking that work.

23 **MS SHARKEY:** But that is a significant, would you call it a gap?

24 **MR POLE:** It is a gap, yes.

25 **MS SHARKEY:** Right. That needs to be addressed?

26 **MR POLE:** Yes.

27 **MS SHARKEY:** And just looking at the current framework you said that review officers come
28 from senior leadership and management roles in the education sector and they work in a
29 range of schools. I just wanted to clarify what do you mean by "they work in a range of
30 schools"? They're not working in the schools, they --

31 **MR POLE:** Sorry, working "with".

32 **MS SHARKEY:** Right. And so you talk about extensive training. Does that include issues such
33 as we've been talking about today, racism, unconscious bias?

1 **MR POLE:** Yes, so our workforce has all recently been through Courageous Conversations
2 About Race, which is a programme about acknowledging racism and understanding that.
3 They, as part of our commitment this year, all --have objectives around te reo and growing
4 and expanding their te reo capabilities, growing an understanding awareness and
5 acknowledgment of tikanga, and obligations in terms of local contexts and local history.

6 Equally through our Pacific commitments, all of our frontline reviewers are working
7 through or have worked through, if they have been with us for a while, Tapasā which is the
8 training programme for teachers in the sector about acknowledging Pacific pedagogical
9 approaches and needs.

10 **MS SHARKEY:** Is that delivered by the Teaching Council, is that right?

11 **MR POLE:** Yes, and also delivered internally from Apaulie(?) Pasifika. So we have a senior
12 leader in ERO whose responsibility is ensuring culturally responsive practice by all of our
13 frontline review staff.-

14 **MS SHARKEY:** H-ow do you assess, monitor and assess how the reviewer's cultural awareness
15 and competency goes once they've done that programme? -Tapasā I understand, but as we
16 heard in our Pacific people's hearing, ethnic specific were not,-,-- it's not homogenous
17 Pacific peoples.

18 **MS LEE:** That would be monitored through their ongoing performance appraisal. As Nick has
19 said, they will have certain goals and expectations around that. It also is through our
20 ongoing monitoring of our strategies around the Pacific and Māori strategy as to how we
21 are monitoring and tracking towards achieving those goals.

22 **MS SHARKEY:** Do you get feedback from the schools or parents about reviewers?

23 **MS LEE:** Not from parents as such, unless they wish to talk about the findings of a review.

24 However, we do seek feedback from schools in relation to how well the review has gone or
25 how well the review has contributed to their school improvement, not specifically about
26 reviewers.

27 **MS SHARKEY:** Right, okay. And so with those reviews you mentioned before that you do talk
28 to some students, you do talk to some parents possibly?

29 **MS LEE:** Yes, we do.

30 **MS SHARKEY:** How are they selected? How does that happen?

31 **MS LEE:** I can only speak from my experience as a review officer. I would have randomly
32 selected those students from a list that the school would have given me at the time of the
33 review, and as I said prior, parents would have been informed of our review and they could

1 approach us or we would have asked the school to select a group of parents or, in some
2 cases, given us the contact details of those parents so we could make contact ourselves.

3 **MS PURA-WATSON:** I'd just like to add, there is variation in the way we move in terms of our
4 work, and it's not -- it is important to note, so Jane has referred to the process that
5 acknowledges the conversations or listening to the voices of children and parents. In the
6 Māori medium space we can't start our work without hearing them first, and by that I mean
7 the kura kaupapa, Kōhanga Reo establish who they want to speak on their behalf, they take
8 the opportunity to. W--e are quiet, we are manuhiri, so we are there to listen to their voice
9 and we then move into having, as Jane has indicated, the ongoing conversations both with
10 whānau and learners at different points.

11 So the point I'm trying to make here, and I just would like to take it slowly, is that
12 our processes have evolved. We give mana to the voice of the learner more frequently now
13 than we have, and we learned about that and the need for it because kaupapa Māori said,
14 "no, stop, kōrero has mana, we need you to listen". And we've adopted that notion or the
15 importance of listening to voice.

16 To that, you'll see now in our research projects that are being done, both in Ihuwaka,
17 which is one part of the business, and Te Pou Mataaho, which is the Māori medium space;
18 we actively seek learner whānau, hapū, iwi voice in our reports because it has value and it
19 truly tells the fulsome story.

20 **MS SHARKEY:** Yes, there are other groups that also have that holistic whānau approach, the
21 importance, Pacific peoples are one example. Is there that same approach there under the
22 English medium?

23 **MS LEE:** In English medium we would speak to Pacific parents, Māori and Pacific students while
24 we're on site.

25 **MS SHARKEY:** Then the statement of the expert psychologist is in the bundle, she talks about
26 the barriers, Ms Holsted mentioned yesterday the strength in the child's voice, but our
27 expert clinical psychologist also spoke to the barriers in children being able to disclose
28 abuse as well. Do you have and identify that challenge?

29 **MR POLE:** Can I answer that. Yes, we do. And -it's fair to say we continue to work through
30 how do we capture that voice and how do we have safe ways in particular contexts where
31 children and young people can disclose -bullying. We are presently working in a context
32 where we are looking for former students to talk with us and to seek out former students to
33 come in, to run anonymous surveys in that school where we can get at the extent to which

1 there are things occurring to those students that are hostile, inappropriate to their inclusion
2 and sense of belonging in that entity.

3 It is challenging when a review officer is in a school for maybe two or three days
4 for young people particularly to feel confident to raise issues or speak out.

5 Our changes in our approach and establishing a longer-term relationship with school
6 entities, one of the aims in that is so that our evaluation partners, we are calling them, can
7 be known by and a potential port of call by parents or by learners should there be concerns
8 that they feel uncomfortable surfacing within the boundaries of that school community.

9 **COMMISSIONER ERUETI:** So between reporting periods they can reach out.

10 **MR POLE:** Between reporting periods, and as I said, it's our intention to be back there regularly
11 and be part of the school fabric, so to say.

12 **COMMISSIONER ERUETI:** Can I ask just briefly, is there an effort to match, to have a review
13 officer who goes to a kōhanga or kura, endeavour to have a Māori review officer establish
14 that relationship? And the same for Pasifika, disability?

15 **MS PURA-WATSON:** So ERO has a really strong, - over a 20- year period, - has established a
16 process that we have a team of Māori review officers who are capable, who have evaluation
17 expertise, te reo Māori, kaupapa, who work in those arenas that you're talking about.

18 **COMMISSIONER ERUETI:** Good. It must be hard to grow that pool because you would need
19 a significant pool in order to cover all the kura.

20 **MS PURA-WATSON:** In that regard we've traversed the space carefully, because, as you
21 say -- and the demand is high. So what we do do is over the years we've built really strong
22 relationships with the peak bodies and we second, we bring those teachers and learners into
23 our space on secondment and we do a training, we train them in evaluation and they equally
24 train us in their philosophies. So a mutually beneficial engagement with our peak bodies so
25 we're building evaluation capability and they continue to build our workforce capability
26 around kaupapa.

27 **COMMISSIONER ERUETI:** Who are these people that you bring in to second?

28 **MS PURAWATSON:** Staff from the National Trust, National Kōhanga Reo Trust, so these are
29 practitioners from Kōhanga Reo and people from Te Rūnanganui, teachers, principals from
30 Te Rūnanganui o ngā Kura Kaupapa Māori, and Ngā Kura a Iwi, again, principals and
31 teachers. And it's, as I've suggested, an opportunity to build our capability while at the
32 same time building theirs.

33 **COMMISSIONER ERUETI:** When you say second, do they sometimes carry out a review
34 officer function?

1 **MS LYNDA PURA-WATSON:** They come in as part of the review team and they learn the art of
2 evaluation and work alongside us, yeah.

3 **MS LEE:** That is similarly equal in English medium, that we will endeavour to ensure that the
4 review officer and evaluation partner particularly in the approach that we're taking now, is
5 matched to the school. Also, we have a leadership partners programme that we have
6 piloted for over two years where we can draw on or second leaders in schools from English
7 medium into work with us over an extended period of time where they are trained as review
8 officers and receive the same level of induction, and we hope to grow that and we have
9 several Māori and Pacific leadership partners.

10 **MS SHARKEY:** But in respect of Deaf and disabled communities though, there is a significant
11 lack?

12 **MS LEE:** Yes, there is.

13 **CHAIR:** Ms Sharkey, are you moving on to complaints at some stage?

14 **MS SHARKEY:** At some stage, yes.

15 **CHAIR:** Then I'll hold my question for Mr Pole about complaints until we get there.

16 **MS SHARKEY:** I just wanted to continue, we'll talk about partnership, and in the briefing you
17 referred to MOE as a critical partner. Does the same emphasis extend to families and
18 community, because, quite rightly, Ms PuraWatson, what you describe is exactly for a
19 number of groups how we would want to see that relationship?

20 **MS PURAWATSON:** Absolutely. I'd like to just go to one of the first points around the
21 relationship and how big it is. So yes, with the Ministry. We have over the years been
22 called to account, ERO, and so during 2000 Te Rūnanganui o ngā Kura Kaupapa Māori
23 asked us to stay away until we learned how to do the job best with Māori. As a result of
24 that, we then moved to the co-construction of how we would work, which is working with
25 the overarching governing body and with each school and with each community.

26 Then we moved and learned from that experience, so that's one additional partner in
27 the picture, Te Rūnanganui. Then we moved and by 2002, we then developed another
28 relationship because it was an expectation of Māori with the Te Kōhanga Reo National
29 Trust, and that was in 2002, where we developed a new methodology with indicators,
30 crafted together with ERO facilitating. So that's another major relationship.

31 Then we moved into working with Ngā Kura a Iwi, --we developed methodology
32 and indicators, which then strengthened our working relationship across the Māori medium
33 space. What that also did was lead us into another arena and we're so small, we can only do
34 what we can do. In this instance we've since had requests from iwi and where we are able

1 to, we respond by providing an evaluative service. The example in this space would be
2 Ngāti Kahungunu where they came and asked if we would look at co--constructing
3 evaluation in Kahungunu for the schools, early learning services and kura in that particular
4 iwi.

5 So it's over time the notion of who we engage with and our relationships and who
6 they are with has grown as well. So while the Ministry is a very strong partner, we also
7 have multitudes of others who are significant.

8 **MS SHARKEY:** You've outlined a number of the partners that you work with but as you said,
9 small organisation for 2,500 schools, and I come back, the statutory framework is silent on
10 who ERO should work with, so that's a big job.

11 **MR POLE:** Can I just maybe add to what we've said about those partnerships. First and
12 foremost, and it's a critical element in our framework when we are working with schools, is
13 ensuring the quality and the depth of partnership which the school has with its community
14 and the parents, whānau and iwi within its setting. So it is not -- we do not see it as our role
15 to go in and broker those partnerships. Yes, we want to hear how education is going for
16 that community.

17 But at the end of the day what we want to do is ensure a sustainability in the
18 school's connections and ownerships of the wishes and aspirations for their tamariki that
19 that community has, and to deliver on that and to resolve and work through the challenges
20 that will no doubt occur every day or every week.

21 **MS SHARKEY:** Is that part of wanting to maintain an independence?

22 **MR POLE:** I see it as it's about ensuring a quality education is delivered in that teachers and the
23 community do that for themselves. Where that's weak, where there are tensions, we will
24 step in and that may go as far as recommending interventions where in fact a board might
25 be stood down and that would be recommendations to a Minister or to the Secretary For
26 Education, because there's a fundamental breakdown in the relationship between a school
27 and its community.

28 **MS SHARKEY:** Right, because those levers for change in terms of dissolving boards and
29 appointing Commissioners, and statutory,-- is it LSM-- specialist advisors, that's all with
30 MOE, but not with ERO.

31 **MR POLE:** It sits with the Ministry of Education, yes, but ERO can make recommendations and
32 there is a long track record of where we have made recommendations about interventions in
33 terms of dealing with issues that we see in the school where we see little capacity amongst
34 those there to deal to those issues themselves.

1 **MS SHARKEY:** Okay. I'm just coming to a new topic. If we could bring up- it's a school, and a
2 number of- ERO reports relating to this school, and it was discussed yesterday, if we could
3 bring up...

4 **CHAIR:** For clarity, we're going to be talking about a particular case of a school which won't be
5 named.

6 **MS SHARKEY:** Yes -- which will not be named.

7 **CHAIR:** Thank you.

8 **MS SHARKEY:** If we could go to appendix 1 and Ms Holsted was taken through this yesterday,
9 I'm not sure if you'll be aware of the evidence provided.

10 **CHAIR:** Let's put it up. Again, for the audience in the room and those watching, you will not see
11 these documents because they contain matters of privacy which have not been able to be
12 redacted but counsel will read out the parts that she's referring to so that you can hear
13 it -- won't you counsel?

14 **MS SHARKEY:** Yes, I will. We're just trying to get the technology going. I think it's page 30.
15 It's moving a bit slow today.

16 Whilst that's coming up, Mr Pole, in talking about this school there are a number of
17 ERO reports carried out in relation, and we've read them all, they're in the bundle.

18 **CHAIR:** Now you can see the name of the school that is going to be referred to.

19 **MS SHARKEY:** There are a number of ERO reports in the bundle and there was an audit 1995
20 which raised some issues then we have through to 2009 several ERO reports, a 14 year
21 period that there were matters of concern related to bullying and violence in the school.
22 Would you agree with that?

23 **MR POLE:** Yes.

24 **MS SHARKEY:** And when I talk about successive ERO reports to MOE, there was one to the
25 Minister where the Minister got involved regarding bullying and violence, and
26 I acknowledge the survivors who suffered terrible abuse and are watching today. What
27 more could ERO have done given the matters of concern outlined in several ERO reports?
28 What more could have been done?

29 **MR POLE:** In reflecting on this case, I think ERO should have approached the Police and laid a
30 complaint with the Police if we had foundations for making those judgments.

31 **MS SHARKEY:** When you say "if" you had foundations.

32 **MR POLE:** If we had foundations, if we were aware of incidents that had occurred against
33 children, that would be our obligation, or child on child.

- 1 **MS SHARKEY:** There are a couple of reports there where nothing is mentioned. And the
2 concern with that is that there was a bullying and violence pattern throughout. How was
3 that not picked up?
- 4 **MR POLE:** I can't comment on what the team saw at the time, or equally what they discussed
5 with the leadership in the school or the governance of the school.
- 6 **MS SHARKEY:** Right, so we come back to that self-veracity, it's what they were told at the
7 time?
- 8 **MR POLE:** Not necessarily, there may have been discussions that review officers held with the
9 school, raising concerns.
- 10 **MS SHARKEY:** Would it be common for there to be a number of reports that reference bullying
11 and violence and then for another report to be absolutely silent about the previous report's
12 issues on that; is that acceptable?
- 13 **MR POLE:** It seems abnormal in the circumstances. Generally, a subsequent review, going into a
14 school subsequently, involves you looking deeply into the previous records and our
15 engagement with that school going through the file for that school.
- 16 **MS SHARKEY:** So in your --
- 17 **MR POLE:** I think in the chronology for the school ERO was back in the school very frequently,
18 very regularly, it wasn't on a three- to five-year cycle over that period of 14 years you've
19 talked to.
- 20 **MS SHARKEY:** Right.
- 21 **MR POLE:** Which meant that in our system it was a concern to us.
- 22 **MS SHARKEY:** Yes, but unfortunately the failure of someone to act meant that that abuse and
23 bullying continued. Is that correct?
- 24 **MR POLE:** I acknowledge that.
- 25 **MS SHARKEY:** And in your view, what would, or should MOE have done?
- 26 **MR POLE:** I think this school is a clear example of a serious series of interventions.
- 27 **MS SHARKEY:** Sorry, could you explain that?
- 28 **MR POLE:** A series of interventions.
- 29 **CHAIR:** Which did or did not occur? Do you know?
- 30 **MR POLE:** No, I don't know.
- 31 **CHAIR:** The fact that the reports year after year continued to repeat the same problems indicate
32 that if there were interventions they weren't successful.
- 33 **MR POLE:** Yes.
- 34 **CHAIR:** If there were interventions at all.

1 **MR POLE:** Absolutely, and I note in this-- the records for this school that the Deputy Chief
2 Reviewer actually took -- actually wrote directly to the board chair and to the Ministry
3 raising our concerns that we could not give confidence about the safety of the school.

4 **MS SHARKEY:** Right. And the board didn't agree.

5 **MR POLE:** The board did not agree.

6 **MS SHARKEY:** Right, so then you have an ongoing issue, right?

7 **MR POLE:** Yes.

8 **MS SHARKEY:** Because --of the issues that are going on between MOE, ERO and the school, the
9 children are still there going through what is happening in that school. So in ERO's
10 situation, there isn't more you can do other than ask MOE to step in?

11 **MR POLE:** Not in terms of our existing powers. It's to review and report. In this situation we
12 were regular returnees to the school because of the concerns that we held.

13 **MS SHARKEY:** The last ERO report is 2015. Given the history with the school, should you
14 have done further ERO reports in that time?

15 **MS LEE:** Since 2015 we have changed our approach and we have an evaluation partner review
16 officer working in an ongoing way with that school currently.

17 **MS SHARKEY:** Okay. In terms of public accountability and having things on your website, the
18 last piece of information there is 2015.

19 **MS LEE:** Yes, we were due to visit the school. However, Covid got in the way of that, and as
20 soon as we were able to, we on-boarded the school into our new approach,-- had appointed
21 an evaluation partner who will in time produce a report in due course.

22 **MS SHARKEY:** But at this stage ERO don't know what the situation has been for those children
23 in the school since 2015?

24 **MS LEE:** We are currently working in the school and we have started the board assurance
25 statement, so we are already in conversation with that school, so we do know aspects of
26 what's happening.

27 **MS SHARKEY:** When did that start?

28 **MS LEE:** That started at the beginning of this year.

29 **MS SHARKEY:** There has still been a delay?

30 **MS LEE:** There was a delay due to Covid and as soon as we were able to, that school was brought
31 into our new model.

32 **MS SHARKEY:** If I take Covid back to 2020, 2015 to 2020 is still a long gap.

33 **MS LEE:** I acknowledge that.

1 **MS SHARKEY:** And just in your brief, Mr Pole, you talk about New Zealand's students continue
2 to experience high rates of bullying, double the OECD average, that's in your brief to the
3 incoming Minister. So this is a real issue, it's a real issue. What do you see as being
4 required to change this? Because it's a topic at the moment, it's out there in the media and
5 all sorts of places, but this is not a new issue. What needs to happen?

6 **MR POLE:** So in 2019 we published a major report looking into bullying in schools.

7 **MS SHARKEY:** Yeah, saw that.

8 **MR POLE:** That report confirmed amongst OECD countries that New Zealand has one of the
9 highest rates of bullying amongst students and in schools of most other OECD nations, and
10 I will reference OECD nations because there are concerns in other more developing
11 nations, that in that result around a third of New Zealand children reported that in the
12 school that they were currently attending they had experienced bullying. That bullying
13 ranged from being called names to having stories told about them around school, to cyber
14 bullying, through to physical assault, choking, being hit or kicked, which was
15 disproportionately higher for male students than female students, and extremely high for
16 gender diverse students.

17 So I think in terms of boys it was rated at about 11%, for gender diverse students
18 being hit or kicked regularly in their school setting was about 19%.

19 **MS SHARKEY:** So in terms of the work that you're doing.

20 **MR POLE:** So in that work we highlighted a range of schools who have very good practices
21 based on evidence and about what we identified. In those schools, the levels of reported
22 bullying was reduced by about 30%, so quite a significant reduction.

23 The factors that were contributing to that were strong leadership, it was a thing that
24 the school focused on; universal programmes, so the school collectively owned
25 expectations around behaviour and gave everyone within that school setting the right to
26 intervene and act; there was good training by teachers of children in knowing about
27 bullying and what to do; having go to people to talk with; and having whole school
28 processes and practices that I referred to before, such as restorative practices.

29 In saying that, within those schools even though we had very significantly lower
30 levels of bullying, it did not eliminate this issue.

31 In our conclusion and our wider recommendations, we saw the consequence of this
32 as being a broader societal issue. There is something about New Zealanders, and you only
33 have to be on the side of a 9 year old's soccer field in even affluent areas, having been a
34 soccer coach for many years, where parents' behaviour on the sideline is atrocious and this

1 has played into our schools. I think it's something that we need a national conversation
2 about.

3 There are, -we have identified a range of programmes that do work,- even -go
4 further than where the practice in those good schools were. So government has for long
5 sponsored a programme Positive Behaviour For Learning which has multi--elements- to it
6 from teacher education right through to changing the whole school context.

7 **MS SHARKEY:** Right, so these are all new --

8 **MR POLE:** --PB4L has been there in the last decade, it's a long haul for a school to change their
9 culture, and programmes like that will only work where you have the conditions that I've
10 previously talked about in terms of leadership, capability and so on.

11 Schools, some of the signposts that we had through our work were classrooms that
12 were noisy, disruptive, chaotic, had disproportionate levels of bullying occurring in those
13 environments. That spoke to the whole environment in that school context, which is
14 something I've raised earlier.

15 **MS SHARKEY:** Yes.

16 Can we all go for that break now, Madam Chair?

17 **CHAIR:** Yes, we need to take another break so if we can come back at just after 12 o'clock and
18 resume again at that stage, thank you.

19 **Adjournment from 11.48 am to 12.02 pm**

20 **MS SHARKEY:** All right, Mr Pole, just continuing on from where we left off. I'm just looking at
21 your recommendations. And this is 11.11, "The following are possible recommendations or
22 areas for the Royal Commission to consider" and you talk about improving the evaluating
23 of bullying prevention and response policies programmes and procedures that monitor
24 student experiences.

25 Is there anything you wanted to elaborate on in that respect? Or is that similar to
26 what we have just been discussing?

27 **MR POLE:** I think it's similar to what we have been discussing. A critical element in that is
28 ensuring student voice and good practice, from my perspective, is using tools such as the
29 well-being at school where actually you're polling students all the time about their
30 experiences, and I think the Secretary talked about some of those yesterday.

31 **MS SHARKEY:** Okay. And just going back a little bit, you've got in (e) "the establishment of an
32 independent complaints and advocacy service for parent and learners", and that's so that
33 children can go somewhere and not the school.

1 **MR POLE:** That's correct and when there are breakdowns and disputes between families and the
2 school, that there is somewhere to go to get those resolved.

3 **MS SHARKEY:** Okay. Any ideas on that what service might look like?

4 **MR POLE:** No, not particularly. In 1989 it's fair to say that the Education Act actually put in
5 place a parent advocacy function, that was removed a year later after the passing of that
6 Act.

7 **MS SHARKEY:** Right.

8 **CHAIR:** Do you have international experience or evidence or understandings that might help
9 inform the creation of such an independent group?

10 **MR POLE:** There are examples around the world and they can go to actually having
11 representation in such things as an expulsion or a stand-down, particularly in respect of the
12 disability community.

13 **CHAIR:** Is that for an advocacy process where you have somebody representing, sitting beside or
14 supporting the child and the family in that process, or is it a place where you go and have
15 the exclusion resolved?

16 **MR POLE:** I think -- I've seen examples of both. I would say we probably need to consider both.

17 **CHAIR:** Thank you.

18 **MS SHARKEY:** In terms of how schools are approaching complaints, especially with children,
19 have you seen any new or innovative ideas, schools using apps, for example, since our kids
20 are all in that kind of space?

21 **MR POLE:** One of the biggest changes over recent years has been the adoption of SchoolDocs,
22 which is a technology provider into schools, which outlines, I think very clearly, the
23 responsibilities on boards and managing their complaints. I think there is opportunities to
24 go further with social media around capturing complaints, particular issues. But what it
25 relies on is mechanisms within the school and the maturity of the school systems to actually
26 work through and resolve those. And to analyse data and look for key themes.

27 Equally, some of this technology can do horrid things, so there are examples of
28 where some of this technology has just spammed schools or spammed teachers or been
29 quite uncomfortable. I was involved in one case in Australia where the particular lobby
30 group crowd sourced responses from Malaysia and Indonesia.

31 **MS SHARKEY:** Right. So if a complaint is received by the school, how does it come to you, it
32 has to be shared by the school to you?

33 **MR POLE:** So when we go into a school we will look at the operation of the complaint system;
34 firstly, that they have a policy and that they are abiding by that policy and that policy is

1 available to the widest parent community, usually that it is online; when managing a
2 complaint, those procedures represent good practice, so that they allocate that complaint,
3 there's natural justice in dealing with that complaint and so on, depending on the nature of
4 the complaint.

5 We will, when we go into a school, look at those systems and processes; we will, in
6 terms of management of complaints, go into looking at committee minutes to see what the
7 discussions were about that complaint; and we will equally look at particular themes.

8 A key question when we're going and working with the school is, what complaints
9 have you had in the last 12 months or the time since you have been here -- what
10 investigations have you had in your school? And we expect that the leadership and the
11 governance of the school will bring that to our attention, and we will work through that.

12 We equally, prior to going into schools, require schools to announce that we're
13 coming, we have announced that we are coming.

14 **MS SHARKEY:** Are there benefits to cold calling so they don't know you're coming?

15 **MR POLE:** We've not as out of right had cold calling.

16 **MS SHARKEY:** What we see, I'll use the example of the school we were talking about before,
17 there were complaints to MOE, to the school, to the faith-based organisation in that
18 particular situation. So do you identify a gap as being complaints being received by so
19 many people but not everybody knows what's going on in the one place, like a central
20 nervous system where everybody knows these are the complaints that are coming in.

21 **MR POLE:** In terms of at a system level?

22 **MS SHARKEY:** Yes.

23 **MR POLE:** That does not exist. It does exist in terms of early childhood education, so the
24 Ministry of Education collects and actually publishes all of the complaints that are received,
25 that they receive, and the nature of those.

26 We do share perspectives with the Ministry prior to going into a school setting, but
27 there is no national place where those complaints are sitting.

28 **CHAIR:** Is that the reason why you are -- one of your recommendations is for an independent
29 complaints service?

30 **MR POLE:** I think it would be good.

31 **CHAIR:** So wherever the complaint enters, it ends up at that central place to be dealt with?

32 **MR POLE:** Yeah. In saying that, there are a myriad of dimensions to complaints. They may be
33 staff disputes, they may be about matters in the school that don't pertain to risk or safety of
34 children, and it's how you disentangle those.

1 **COMMISSIONER ERUETI:** It's not clear whether you think that this mechanism should be part
2 of ERO, you're not going so far as to say that, are you?

3 **MR POLE:** I'm not going so far as that.

4 **COMMISSIONER ERUETI:** But would you think there's good reason for it to be part of ERO,
5 given the relationship that your officers have, are establishing with the schools?

6 **MR POLE:** It's a function that I think ERO could grow and develop into.

7 **COMMISSIONER ERUETI:** Yes. Would you like to speak to that too, either of you?

8 **MS LEE:** I do believe that there does need to be a function where it is independent for parents to
9 take complaints and raise those without fear of not being able to have them resolved.

10 **MS PURA-WATSON:** I think I would go to, you just asked us do we have a view or do we have
11 a perception. What we know, and because of our strong relationships with Māori, that
12 sometimes it's important to do with and not to, and in that regard, and in particular in
13 relation to anything in relation to the Crown now includes whānau, hapū and iwi. So what
14 I'm suggesting is, we should look to issues like this as being a co-constructed process that
15 comes from two angles. -O--ne is about empowering whānau and the other is about
16 empowering learners and having a central body perhaps like ERO. The only reason
17 I suggested this is because co--construction has seen absolutely benefits for children in the
18 system.

19 **COMMISSIONER ERUETI:** Ka pai.

20 **MR POLE:** There is the fundamental issue, though, that once you get to the point of an
21 irrevocable tension, there are other manifestations of that which we've talked about earlier
22 today. So without a power to direct or a power to resolve these or so on.

23 **CHAIR:** You want a Court of Final Appeal.

24 **MR POLE:** Yes.

25 **CHAIR:** I've been involved in a number of -- the development of a number of these and I
26 understand the complexity. But I think if we extract from what you're saying at a high
27 level, I think the point about co-design and production is very important. But we're talking
28 here at a conceptual level, the parameters of it, the jurisdiction of it, the powers of it, are
29 matters of detail that would be dealt with by the co-design I would have thought. But I
30 think we've got the message clearly about the direction that you suggest we take.

31 **MS SHARKEY:** Because just bringing that back to the survivors from what we hear, they tell one
32 person, they think everybody knows, or everybody should know. So that's how important it
33 is that there is some kind of central place for them to do that and not share their story 10 or
34 20 times.

1 So just following on from that, you talk about "enhancing the system by obligating
2 agencies to share information", whilst taking into consideration rights of privacy of course,
3 but you believe that that's important.

4 **MR POLE:** Absolutely. So we have had situations when we are working in schools where there
5 are investigations underway by Police or Oranga Tamariki or others that we have not been
6 aware of and have not been made aware of those by those that we've been working with. I
7 would say, and you will be hearing from Ms Hoskins later this afternoon, that we are
8 presently exploring a memorandum of agreement sanctioned by the Privacy Commissioner
9 in the case where there are cases they are dealing with while we are in a school that would
10 be of concern in terms of the health and safety of children at that school. So the Teaching
11 Council.

12 **MS SHARKEY:** Okay. So coming back to that recommendation and the information sharing,
13 and looking at that against the backdrop of what we were talking about before in terms of
14 training of staff, you also talk about "a mandatory requirement of all education workers to
15 report incidents, disclosure and suspicion of child abuse". The Teaching Council can do
16 teachers but there are a number of other workers that are in the schools working with
17 children. Is that where this kind of comes from?

18 **MR POLE:** Exactly. So what I'm suggesting the Commission consider is that for education
19 workers it is mandatory if you suspect abuse in any way, that that's recorded. So I've had
20 four years' experience in a senior leadership role in education in Victoria where mandatory
21 reporting was a core requirement. It has been an issue that has gone back and forward in
22 the New Zealand debate.

23 **MS SHARKEY:** Yes.

24 **MR POLE:** In the Australian situation it meant there was no ambiguity in your obligation. And
25 where I'm talking about education workers, I'm going those who are employed or working
26 in early learning services or schools, and there are -- so we may have obligations from
27 registered teachers, but this is extending it. And it's extending it to if you have concerns
28 about peers in your school.

29 **MS SHARKEY:** And you say they're "supported with training and guidance".

30 **MR POLE:** Absolutely supported with training and guidance, and protections. So in the
31 Australian context for some teachers who reported in very small communities, there was
32 huge challenges in doing that. And protections for the child or young person that you may
33 be reporting on.

1 **COMMISSIONER ERUETI:** It's not just peers, you said peers in your school, so would this
2 extend beyond that to questions about abuse in a home?

3 **MR POLE:** Sorry, if you have suspicions that a child is coming into your early childhood service
4 and there are bruises that look odd and there's repeated patterns, first and foremost that you
5 were reporting that suspicion, that you were recording your observations, so building up
6 that file, and that you will make a referral to Oranga Tamariki and to the Police. And that
7 the school ensures, so some of our schools do this very well and teachers are well trained,
8 but ensuring that that training is core part of those working in the system.

9 **COMMISSIONER ERUETI:** Is that based on your experience in Victoria, do you think the
10 Victorian model might be a useful guide?

11 **MR POLE:** I think the Victorian model is well worth looking at but I don't want to pre-empt that
12 model over others.

13 **COMMISSIONER ERUETI:** Okay.

14 **MS SHARKEY:** Thank you. Just following on from that we've got:

15 "Establishing a national registration requirement and code of practice for all early
16 learning and school employees because currently registration exists for trained teachers."

17 Do you want to speak to that?

18 **MR POLE:** So this is extending that registration requirement, so we have a public record of who
19 is working in the system; and secondly, through registration that as an employee or a
20 contractor working in a school, you are committed to a code of responsibility.

21 **MS SHARKEY:** And so for the benefit of those watching, their understanding, this is about
22 prevention, ensuring registration so that you know who is in the system and working in
23 there.

24 **MR POLE:** Yeah, and being explicit about your obligations working in that system, and also
25 then --extending the capacity for us to sanction behaviour that we would be concerned
26 about as we do with teachers through the Teaching Council.

27 **CHAIR:** That mirrors, doesn't it, the requirement for vetting, because I believe at this stage all
28 people who are working in schools must go through a vetting process; is that right?

29 **MR POLE:** That's correct.

30 **CHAIR:** So we've got the vetting at one end but we don't have the registration at the other, and
31 this might close that.

32 **MR POLE:** I'd just extend it a little bit. We require all employers of education workers to do the
33 safety check which goes beyond vetting, vetting is one element.

34 **CHAIR:** I'm glad you said that.

1 **MR POLE:** Ensuring identity is a critical second element.

2 **CHAIR:** That's right. When I said vetting I really meant the holistic, the whole thing, yeah.

3 Thank you.

4 **MS SHARKEY:** Thank you, Mr Pole. You talk about the development of national child
5 protection policy guidelines, because nothing is in place at the moment.

6 **MR POLE:** So schools and early learning services are required in terms of the Children's Act
7 from 2014 to have those in place. What I'm suggesting is we don't want any grey space
8 between what good practice and what passable practice should look like.

9 In schools and early learning services developing their own, it is open to different
10 interpretations and practice. Now, in some respects, that is appropriate, because they are in
11 different contexts, but being clearer about what those minimum standards are and ensuring
12 that there is strong guidance around that. And I think it goes to our -- my previous
13 comments, you know, guidance around what supports do you give a child who has been
14 abused, who is in your school? How do you support that? How do you support the
15 tensions as that process is going, playing out?

16 **MS SHARKEY:** Because without that broad national child protection policy it's really up to the
17 schools how they deal with it.

18 **MR POLE:** We have general requirements in terms of the Children's Act and subsequent to that.
19 I'm saying guidelines that strengthen and build on that.

20 **COMMISSIONER ERUETI:** So you haven't had sufficient specificity to ensure there are these
21 minimum standards and consistency across --

22 **MR POLE:** It's building on the standards that are there.

23 **MS SHARKEY:** Turning to a new topic, and we heard a bit about it yesterday, and it is the
24 function of ERO within the education system looking at private schools.

25 And we heard a bit about that yesterday and it's in your brief of evidence. So it's
26 limited to the assessment of whether the efficiency standard is met.

27 **MR POLE:** No, sorry, the efficiency standard sat up until 2010.

28 **MS SHARKEY:** Right, yes, okay. So part of ERO's mandate but not the case previously; that's
29 correct?

30 **MR POLE:** That's correct.

31 **MS SHARKEY:** So just wondering whether you heard our discussion about private schools
32 yesterday and Commissioner -- Chair had shown some interest in it before. Is there
33 anything you wanted to follow on or -- I'm happy to take you to certain parts if you'd like

1 me to, but you would have been aware of what the conversation was yesterday and I just
2 wanted to know what your thoughts were about that, the role of ERO in private schools.

3 **MR POLE:** So, I mean, I think I outlined the changes to legislation in 2019 have extended our
4 focus to looking at a safe physical and emotional environment. In saying that, it's very
5 difficult to identify that, or to surface that.

6 **CHAIR:** Because I raised the issue perhaps I could frame the question a little. It became apparent
7 in the course of the evidence yesterday from the Ministry that there is, I don't want to call it
8 a line or an attitude, but the approach is that whilst the Ministry has responsibility for State
9 schools and integrated schools and can intervene, have oversight, take action, etc, within its
10 mandate, when it comes to private schools, there is a great reticence to become involved in
11 the questions of child welfare, child safety, almost anything, and the reason for that given
12 by Ms Holsted yesterday, as I recall, and I paraphrase, is that parents have chosen to
13 remove their child from the "State system" for a reason, and that is that they want their
14 child to be educated in a particular way according to particular standards and principles and
15 curriculum and the Ministry does not want to get involved in that relationship between the
16 parent and the private school. I hope I'm stating Ms Holsted's views accurately.

17 Do you recall that?

18 **MR POLE:** Yes, I do.

19 **CHAIR:** And I posed the question whether or not, understanding that approach, whether or not
20 that gave sufficient weight really to the safety of the child. So there was a question of
21 physical, corporal punishment, where private schools either refused to report or continued
22 to do it almost with impunity and the Ministry is reluctant to intervene even though it's
23 illegal. And my question was, are we thinking about this the wrong way, should we start
24 not from the relationship between the parent and the school, but from the welfare of the
25 child?

26 I'd be very interested in your comments on that if you feel as though you are able to.

27 **MR POLE:** I can comment on it, some of it -- so the current arrangements with respect to private
28 schools are decisions in statute agreed by Parliament and have been evolved over time.
29 And so if I go back to prior to 2010 that "efficient" definition was very much an economic
30 paradigm.

31 **MS SHARKEY:** Sorry, Mr Pole, for those watching, what do you mean by that?

32 **MR POLE:** So it was about is this school managing their resources, their property, and so on, in
33 an efficient way.

34 **MS SHARKEY:** Thank you.

1 **MR POLE:** So very much driven by economics, and driven probably with a commercial lens, and
2 that the State steps back from, given the choice that parent are making, from influence or
3 interference with the curriculum and the delivery of teaching.

4 Over time the State has evolved that, and from 2010, private schools offering
5 equivalent to the education that is found in a State setting, and 2019 going a step further.

6 I think, and I agree with you Commissioner, that the child should be the heart of the
7 matter, and there are issues where the values that parents may have and the school may
8 hold may not necessarily support the well-being and outcomes and place the child at the
9 centre. And I think the walking through the case of the school where ERO had been back
10 to I think four or five times around corporal punishment was where those values were
11 absolutely in conflict with both where the law was.

12 It's my personal view, and I'm probably along the spectrum of more interventionist
13 in my views, that there are things that we can consider in strengthening. So in 11.11(g), I
14 have suggested one area for that is the definition of a fit and proper person. Presently a fit
15 and proper person is someone who does not have criminal convictions, is healthy of mind,
16 and is not bankrupt.

17 It's my view that a fit and proper person in terms of Education and Training Act and
18 in relation to early childhood sector should be extended to probably include elements which
19 we have of the profession under article or objective 2 in the Code of Teaching Practice.

20 **CHAIR:** So it should be a uniform definition and application across all educational sectors?

21 **MR POLE:** Absolutely. And so that talks about being inclusive and supporting the care and
22 well-being of learners. As I said at the start, I'm not a policy maker, or policy advisor, but
23 I'd equally look to having an ongoing and regular statutory obligation to ensure that as part
24 of the obligations.

25 **MS SHARKEY:** Right. 11.11(d)?

26 **MR POLE:** (g).

27 **MS SHARKEY:** But in (d) you talk about private schools as well.

28 **MR POLE:** That speaks to looking at the extent to which we might have more sanctions or more
29 powers of intervention, for instance to place a monitor focused on child well-being within
30 that school setting. And the State presently has that intervention power in relation to
31 State-integrated schools in terms of limited statutory managers.

32 **CHAIR:** Just clarifying the (g) one, the monitoring of fit and proper persons, would you limit that
33 to teachers in private schools or would you do all people employed by the school?

34 **MR POLE:** So this refers to the proprietor, the manager, at the governance level.

- 1 **CHAIR:** At the governance level, right.
- 2 **MR POLE:** And subsequent obligations to have all workers covered by some level of
3 arrangement.
- 4 **COMMISSIONER STEENSON:** Do you think that would help or stretch to the deficit in the
5 cultural competency of, say, the governance boards, because you mentioned that only 10%
6 at the moment has that, and also the kind of bullying culture potentially?
- 7 **MR POLE:** In terms of what I refer to --
- 8 **COMMISSIONER STEENSON:** Under the fit and proper person.
- 9 **MR POLE:** Inclusivity.
- 10 **COMMISSIONER STEENSON:** And that's how that would be addressed potentially.
- 11 **MR POLE:** And health and safety and well-being.
- 12 **COMMISSIONER STEENSON:** Yeah, because just thinking about the example that was given
13 of the school, and clearly the board-- did not see that behaviour, of that school, did not see
14 it as a problem, which suggests from the top from that board level, bullying culture, fear
15 was potentially there, because it comes from the top. So I'm just trying to see whether that
16 would fit into that, or whether there's another way to approach that.
- 17 **MR POLE:** I think it would fit into that.
- 18 **COMMISSIONER ERUETI:** Can I ask just a follow-up on that, you say you don't have a policy
19 function, talking about the need for a complaint process and your role is monitoring and
20 reporting. I wonder with these research reports that you produce on bullying and other
21 thematic areas, do you make recommendations?
- 22 **MR POLE:** Yes, we do.
- 23 **COMMISSIONER ERUETI:** You do.
- 24 **MR POLE:** We do and we'll make recommendations to ministers, to the Ministry of Education or
25 other ministries or departments, and to schools themselves.
- 26 **COMMISSIONER ERUETI:** So with the recommendations in 11.12 here, there's scope for you
27 to provide those recommendations too to the Minister, so over time have you made other
28 types of recommendations?
- 29 **MR POLE:** Yes, there is. Over time there have been similar recommendations.
- 30 **COMMISSIONER ERUETI:** This isn't the first time --
- 31 **MR POLE:** But in terms of presenting this, these are notions that we are putting before the
32 Commission for you to consider.
- 33 **COMMISSIONER ERUETI:** Absolutely.
- 34 **MR POLE:** They're not government policy or government presently exploring these.

1 **COMMISSIONER ERUETI:** Is there something in this list that you've been calling for for
2 sometime more than others?

3 **MR POLE:** I think in previous recommendations we've highlighted the need for complaints
4 disputes resolution. Without giving you the results of the work that we will release on
5 disabilities in the next two weeks, that will be one of the recommendations that will sit in
6 that report.

7 **COMMISSIONER ERUETI:** Is that paragraph (e), it's not independent complaints?

8 **MR POLE:** Yes.

9 **COMMISSIONER ERUETI:** It is that (e)? Thank you.

10 **MR POLE:** And I would note it was there proposed in our system in -- at the start of Tomorrow's
11 Schools, it has been subsequently explored over many years. The last time I recall it, the
12 2009 Special Education Review highlighted that as a potential mechanism for
13 consideration.

14 **COMMISSIONER ALOFIVAE:** Mr Pole, just a point of clarification because we're very
15 conscious there are many who are watching. ERO does enormous work and from what
16 we've seen and heard very -- the depth and the breadth is there, you make
17 recommendations, but to the Minister or to the Ministry of Education, and it's up to them
18 whether they take those on board or not?

19 **MR POLE:** That's correct.

20 **COMMISSIONER ALOFIVAE:** So your accountability as an independent entity actually stops
21 at that point.

22 **MR POLE:** So our usual process would be make those recommendations, the Secretary for
23 Education over the time that I've been in this role has always written back to me and
24 acknowledged or we've worked through those recommendations and it may have resulted in
25 shifts in practice within the Ministry, or them pursuing particular policy avenues for
26 ministers to then consider.

27 **COMMISSIONER ALOFIVAE:** Thank you. A--ccountability is a very big issue for our
28 survivors and it was about understanding that in a continuum. Thank you very much.

29 **MS SHARKEY:** Just taking the point from the Commissioner, because we did find these
30 recommendations helpful, it's good for us to kind of see this and talk about it and explore
31 them. And yesterday Ms Holsted said she didn't know them, couldn't comment on them,
32 because we wanted to know what her views are.

33 I guess my question is, as a critical partner, you guys haven't had this conversation
34 before about these types of recommendations, which to me have been considered?

1 **MR POLE:** They have been considered and they have been considered by previous governments
2 over time.

3 **MS SHARKEY:** Right, okay.

4 **MR POLE:** Ms Holsted and I did not sit down and work through our briefs together, we did share
5 our briefs, but right at the last minute given the time limit.

6 **MS SHARKEY:** Yeah, okay. And coming back to, I think it was the very beginning, I invited
7 you to comment on whether more statutory powers would be of assistance, and I guess
8 when we explore the range of recommendations the Commission could consider, I guess
9 because it's reviewing and reporting, there is potential there, right, to put more tools in your
10 kete?

11 **MR POLE:** Yes.

12 **MS SHARKEY:** Would that be fair?

13 **MR POLE:** Yes.

14 **MS SHARKEY:** Just making sure there are no other questions.

15 **COMMISSIONER GIBSON:** I'll just ask, given the recommendation about complaints to
16 advocacy services especially from the disability community that's been around for so long,
17 we need to understand what's the resistance that this hasn't been put in place. Have there
18 been the conversations about that with the Ministry of Education or anyone else as to why?

19 **MR POLE:** I can't comment on that. I think in some respects it may be financial or fiscal. But
20 beyond that, as I said, we're about to enter into those discussions again in terms of the work
21 we will release on our look at inclusive practices in schools and early learning services in a
22 couple of weeks.

23 **CHAIR:** Yes, Ms Sharkey.

24 **MS SHARKEY:** And just finishing off that discussion on private schools, and you had mentioned
25 some of those instances ERO had faithfully gone back and you keep reporting and you talk
26 about, in NTP 449 at paragraph 6.11 you identified 29 instances of private schools being
27 non-compliant with the legal prohibition on corporal punishment then. At a minimum, that
28 would be frustrating, but very, very concerning at the other end. But again, it's just about
29 all you can do really is to report on it and try and elevate it as best you can.

30 **MR POLE:** That's correct.

31 **MS SHARKEY:** We're moving to another topic. And you have briefly touched on it before,
32 we're looking at Ruru school. That's the use of seclusion, restraint and time-out in special
33 schools. Yesterday the MOE witnesses were asked questions about the school and the
34 situation for the Turnbull family and I just wanted to address ERO's involvement in that

1 situation and also a couple of other examples of ERO's involvement in special schools
2 where seclusion, time-out and restraint was used.

3 So just some general questions, looking at NTP 449, paragraph 8.1. I think we're
4 going to bring it up.

5 While we're bringing it up, it's the response that:

6 "ERO does not have the powers to directly monitor the use of seclusion, restraint
7 and punishment in education institutions, but it does through the review process, require
8 schools to attest..."

9 And that's something that we've gone through today:

10 "...and the attested information is verified on site by ERO by reference to any
11 document."

12 So the above is correct.

13 So apart from referring the school board back to non-compliant areas that we see in
14 this paragraph, what else does ERO do to ensure that the non-compliant practices cease
15 effective immediately, so as to reduce the impact and harm on the child being subjected to
16 these practices?

17 **MR POLE:** So, first and foremost, we will discuss with the school their behaviour management
18 practices and processes what they are doing in terms of restraint and following the restraint
19 processes, and whether or not there is -- exploring in terms of time-out, whether there are
20 any examples of time-out practices that we would say have crossed the line in terms of
21 being concerning. So I think as Mr Wales outlined yesterday, the core element in time-out
22 is freedom to remove yourself from that place.

23 Now, time-out has been used for a very long time, it's sitting out in the desk outside
24 the principal's office by the team. So ensuring that the school firstly is aware of that
25 distinction and that there is no instance where since 2016 they are using seclusion in any
26 way.

27 We have had cases where we in fact have gone into schools and talked with them
28 when a couple of students may have been locked in a classroom and we've seen that and
29 worked through that with the school.

30 **MS SHARKEY:** Locked in the classroom because?

31 **MR POLE:** For some behaviour reason.

32 **MS SHARKEY:** Punitive?

33 **MR POLE:** It may have been to keep a couple of kids apart, you know, between the playground
34 and the school. Even in that situation we look very dimly on it.

1 We do explore, and this goes to the point that, I think you were questioning Ms
2 Holsted yesterday, we do explore deeply, and so the guidance for our evaluation partners
3 working in schools is that they will dig and dig deep and probe into the use of restraint and
4 seclusion, particularly following on the events that you described yesterday with respect to
5 Ruru special school.

6 **CHAIR:** How does that accord with what you've said in your Notice to Produce, which is that you
7 have no power to monitor seclusion and restraint, but what you're describing here --

8 **MR POLE:** We're not in there every day, we're not -- we can't ensure the practices of every
9 classroom teacher --

10 **CHAIR:** You're not being the police officer sitting there watching and waving.

11 **MR POLE:** No, but we will go into a school and ensure that they understand the policy settings,
12 the requisite practice and those practices, from my perspective, are about how you ensure
13 that you have good behaviour management strategies, and I've talked about those earlier.

14 **CHAIR:** To that extent it is monitoring, isn't it?

15 **MR POLE:** It is monitoring, it's not --

16 **CHAIR:** It's oversight.

17 **MR POLE:** It's oversight.

18 **CHAIR:** Yes, okay. Thank you.

19 **MS SHARKEY:** Just on Ruru school, you'll be well familiar with that situation. Do you accept
20 the information sharing was not accurate nor reliable?

21 **MS LEE:** I can answer that question, it's Jane speaking. Yes, we could consider there was a lack
22 of information sharing in a timely way at the time of the 2015 review.

23 **MS SHARKEY:** I think we had heard an example of that before about Police not telling you there
24 was an investigation. Well, they were telling you that there was no investigation?

25 **MS LEE:** Correct, we were unaware at the time of the review in 2015 that there was a Ministry
26 investigation into the use of a seclusion room, and also that there had been a Police
27 investigation. We did know that in 2016. As a result of the report coming to light and the
28 Police investigation coming to light, we put the 2015 review and report aside and
29 conducted a new review in 2016.

30 **MS SHARKEY:** And just before tying that part off, the Ministry of Education also didn't inform
31 you?

32 **MS LEE:** That is correct.

33 **MS SHARKEY:** Does that show this kind of, --why there's that silo approach; would you agree
34 with that?

1 **MS LEE:** At the time the Ministry of Education, that particular investigation was being handled
2 out of another office in the Ministry as opposed to the office where the review team were
3 situated. For example, the complaint was handled out of Canterbury, or the investigation,
4 and the ERO team was from the Otago office.

5 **MS SHARKEY:** Okay. So there's an issue with sharing that information and it all coming into the
6 place where it needs to?

7 **MS LEE:** At the time, yes, there was an issue with the sharing of information, we've
8 acknowledged that.

9 **MS SHARKEY:** Is it my understanding that there was this ERO report done, we're talking about
10 2016 now, and a refusal to amend the report?

11 **MS LEE:** That's not correct. I do have to declare that I was the lead review officer into Ruru in
12 2016 and that I wrote that report along with the review team.

13 **MS SHARKEY:** Right, so there weren't discussions about information that was held to be
14 incorrect and a request for you to amend it or withdraw it?

15 **MS LEE:** At the time of the review we had followed up --on site with the school and the board as
16 to how they had addressed the recommendations in the Ministry report during the 2016
17 review. We also contacted the Ministry office in relation to that particular investigation as
18 to how did they perceive that the school had addressed those recommendations and they
19 were satisfied at the time.

20 **MS SHARKEY:** But was it the family that were not happy about how --with the ERO report or
21 the exclusion or omission in relation to seclusion?

22 **MS LEE:** I believe the family were not happy with the fact that their child had been secluded, and
23 were probably not happy with the fact that we did not make mention of that in the report.
24 What we made mention of in the 2016 report that there had been an investigation around
25 seclusion. That was our acknowledgment.

26 **MS SHARKEY:** But you wouldn't go as far as to what the family would have liked to have seen
27 in that report?

28 **MS LEE:** Our reports are to report on the quality of education and care to its community, not to
29 redress specific issues for families. As I said, in the 2016 report we referred to the
30 recommendations being addressed by the school.

31 **MS SHARKEY:** Okay. So just on ERO reports, schools can come to you and do they see a draft,
32 they can say something about it and say, "Look, we're not happy with that"?

33 **MS LEE:** Correct.

1 **MS SHARKEY:** I'm just wondering about that process, because --it seems to me that schools do
2 wield a bit of power in that respect then. Is the same afforded to others, or is it just the
3 school?

4 **MS LEE:** The board are from the parent community in relation to-- if you're suggesting whether
5 parents have an opportunity to respond to our report, the board are from that parent
6 community and are representatives of the parents.

7 **MS PURAWATSON:** I'd just like to add, the review process itself enables all participants to be a
8 part of the sense making, and by that I mean contribute their views, the evidence is gathered
9 and then the evaluative team creates the sense making around it. The report is the final
10 artifact, it's not the absolute end in terms of a community not having more than the board,
11 the community not having a contribution to the findings of an ERO report.

12 So -- and in our mandate, review and report, both go hand in hand and are equally
13 as strong as the other. So the contribution of all of those we interview will inform the
14 findings which will be discussed and shared and then we report on those. So I just wanted
15 to create a link between our really structured and very careful process for reviewing and the
16 report. So it's an and and, not just the final artifact that's discussed with the board.

17 **MR POLE:** Can I also add, the process of a board getting a draft report is one where they have
18 provided the opportunity to correct facts. It is not that we negotiate a settled position, and
19 we stay steadfast to the judgments that we make on the basis of the evidence that we have
20 collected.

21 **CHAIR:** Was this a case really where there was a divergence of opinion between the board and
22 the parents?

23 **MR POLE:** I think the Ombudsman's report into Ruru paints that picture.

24 **CHAIR:** That's right, and so here you have, although you consulted with the board as
25 representatives of the parents, all of the parents, the parent community, it didn't specifically
26 set out the views of the actual parents in this case. Was that really one of the reasons for
27 the grievance of the parents?

28 **MR POLE:** Yes, and can I say here, and to the Turnbills, what their child experienced with
29 atrocious, and so I've got to acknowledge that and I've got to acknowledge that as an
30 organisation we did not spot it and we let that family down.

31 It has, however, resulted in substantial changes, so as I referred to before, our
32 probing in every single school in the nation, issues of seclusion and restraint came on the
33 basis of our learnings from that school.

1 Secondly, it is now our expectation that we sit down with the Ministry of Education
2 and share information at my level with Iona, at Jane's level with her counterpart right
3 through to the local office.

4 **CHAIR:** I'm pleased to hear that because I did get the impression yesterday that the Ministry, and
5 I hope I don't misrepresent them, had the sense that seclusion was dealt with, it was no
6 longer allowed and it wasn't happening very often and so the need, -maybe I'm going too
7 far in saying this-,- the -need for vigilance probably wasn't as great as before.

8 But it seems to me that you have got a determined stance on this question of
9 actually keeping an eye on the question of seclusion. Would that be right?

10 **MR POLE:** Absolutely.

11 **MS LEE:** Can I just say that when we're on site undertaking reviews, review officers are required
12 to ask specifically whether there is a seclusion space on site.

13 **CHAIR:** That answers a question that was put yesterday, so thank you, that's filled a gap for us.

14 **COMMISSIONER GIBSON:** Can I ask, are you aware of recent NGO research on the relative
15 rates of restraint between specialist and regular schools? Or do you have information on
16 that yourselves?

17 **MR POLE:** I'm aware there is, I can't quote the exact outcomes or findings of the NGO work. It
18 is something we are equally aware of and we probe into in our engagements with schools.
19 It is fair to say our experience is schools are still working through their requirements, and
20 fully understanding those.

21 **COMMISSIONER GIBSON:** I think the figure they come up with was you are 5,000 times more
22 likely to be restrained in a special school, which I know there's a range of nuances on it, but
23 that sounds pretty alarming and it seems some need to be investigated, looked into.

24 **MS LEE:** I would also like to state that we will be undertaking reviews of special schools in terms
25 4 and 1 of next year.

26 **MR POLE:** And that will involve a systematic process of visiting every special school in
27 Aotearoa.

28 **COMMISSIONER GIBSON:** Thanks.

29 **CHAIR:** I think we should leave you to finish off, if you can, where you want to go on this topic.

30 **MS SHARKEY:** I did have one topic left, there was some communication about Ms Anderson
31 granting another 20 minutes after the break.

32 **CHAIR:** Yes, she has, she's been very generous. Part of that might be for Commissioners, but I
33 want you to use your time as you can. So you've got a couple of minutes to go at this point.

1 **MS SHARKEY:** Okay, so just before tying it up, I just had a couple of questions I wanted to ask.
2 Does it happen often that schools will object, will come back about their reports and say,
3 "Hey, hang on a second"?

4 **MS LEE:** As part of the process schools will come back and ask for further clarifications or
5 changes to a report. In saying that, they must provide additional information that builds on
6 their request, otherwise we don't change the report. The report findings are our findings,
7 and it is our decision as to what we report.

8 **MS SHARKEY:** Right.

9 **MS PURA-WATSON:** In the Māori medium space it's similar, in terms of we don't have a lot of
10 return, because we ensure that the ownership of the findings happens during the process,
11 and the only time we would alter it would be, as Nick referred to earlier, areas of fact
12 evidentially.

13 **MS SHARKEY:** Have you ever faced the threat of litigation from any school about an ERO
14 report?

15 **MR POLE:** In my time not in relation to schools but definitely in relation to early childhood
16 services.

17 **MS SHARKEY:** Right. And that's in relation to your reviews on them?

18 **MR POLE:** Our judgments, yes.

19 **MS SHARKEY:** Okay. I have no further questions.

20 **CHAIR:** Yes, Ms Schmidt-McCleave.

21 **MS SCHMIDT-McCLEAVE:** Ma'am, just before we break for lunch I just wanted to note, there
22 were a couple of points in which, Madam Chair, you referenced Iona Holsted's evidence.

23 **CHAIR:** And I stand to be corrected, as I said, I'm not sure how accurate I was.

24 **MS SCHMIDT-McCLEAVE-:** Yes. So what I was going to offer, I think on both points, one
25 was in relation to private schools and the other on seclusion, we can follow up --

26 **CHAIR:** Please do. I don't want to misrepresent her.

27 **MS SCHMIDT-McCLEAVE-:** -- just to make the full position, because I think there was a little
28 bit more to it.

29 **CHAIR:** I'm sure there was and I'm very glad and grateful for that, thank you very much.

30 **MS SCHMIDT-McCLEAVE:** Thank you, Madam Chair.

31 **CHAIR:** So let's take the lunch adjournment. We'll resume again sharp at 2 o'clock, we will take
32 up some of Ms Anderson's valuable time finishing off this particular part, so thank you.

33 **Lunch adjournment from 1.00 pm to 2.01 pm**

1 **CHAIR:** Nau mai hoki mai ki a koutou katoa, welcome back everybody. Now the Commission
2 has got some limited time which we hope to make the best of, we've each got a topic that
3 we'd like to address with you. I haven't organised the question order, but maybe,
4 Commissioner Steenson, would you like to go first? Are you ready for that?

5 **COMMISSIONER STEENSON:** Why not? Kia ora koutou ano. So, as you're aware, we did
6 hear from the Secretary of Education yesterday and one of her comments, and again, I'm
7 not going to try and be exact, but the general gist was that monitoring could not be done to
8 such an extent across the system; it was a high trust system essentially, was effectively
9 what she was saying in terms of reporting.

10 And given our understanding of survivors' delays in how they might come forward
11 to speak about abuse, we've heard that many times from all of our survivors, it's very, very
12 hard to come forward; there's trust issues, there's a multitude of issues as to why they don't
13 come forward at the time of the abuse. My question is really around if you have any
14 comments around the Secretary of Education's views or comments on the high trust system
15 and also what's ERO's part in how it can know if there's some abuse going on in a school.
16 Big questions.

17 **MR POLE:** Thank you. Usually as a teacher, in the session after lunch, we have selected silent
18 reading.

19 **CHAIR:** A lot of people went to sleep during that time.

20 **MR POLE:** My general response to that is I think our system is complex, it is large, and the
21 issues that you were gripping with as a Commission, particularly in thinking about going
22 forward, do we have the appropriate layers of protection? So I'm talking about having
23 multiple layers of protection, not relying on any one, and in that case, clearly ERO. So, first
24 and foremost, are our legislative and regulatory frameworks sufficient and the default is
25 around the child at the centre and child protection.

26 The second is, as you were highlighting, monitoring, accountability and oversight.
27 And in terms of our role, and my opening this morning, having an accountability that is
28 within the community and much closer to the ground has a lot of merits. That is what we
29 are saying in terms of Māori representation. It is what we are saying about things that
30 schools should be doing to be effective, is having really strong relationships and
31 partnerships.

32 I think next for me is around professionalisation, is ensuring that we have a
33 workforce that is committed to protection, is well-trained, and knows what to do when they
34 don't know.

1 A big part of the reforms over the last 20 years, and this may be part of another
2 Commissioner's question, has been decommissioning institutionalisation. So if I look at
3 some of the things we have done for blind and low vision learners, that education takes
4 place for them out in their community, in their home, in their local context, and how do we
5 get that to continue to grow and occur? And that's -equally that-- transformation is going on
6 in terms of education in depth.

7 I think practice, guidance, professional development in terms of the skills of
8 teaching we've talked about here is probably my next layer of protection, and then in
9 supporting the other agencies and supports that wrap around that learner, their whānau, and
10 their context.

11 We've also seen new layers which I think -- and yesterday the secretary highlighted
12 these, could we exploit them more, such as new technology and social media?

13 At the heart of the question you're raising is how do we ensure student agency and
14 voice, and that's the first place we go as monitors, that's the first place that boards go, that
15 teachers go, and leaders go in surfacing issues and concerns.

16 **COMMISSIONER STEENSON:** That's our hope but I don't know that we can make that
17 assumption that all children will come forward.

18 **MR POLE:** And I'm equally saying that in the available time that ERO, as a monitoring agency
19 has, it is not likely that we will necessarily have people -- or children and young
20 people -- disclose to us. What we want to ensure is that those layers of protection are
21 working for those young people, and so the opportunity to be picked on or singled out or
22 abused doesn't exist.

23 **COMMISSIONER STEENSON:** So the system really has to work to protect them.

24 **MR POLE:** So it's the system and all of those layers operating. And when it fails, and when
25 those elements aren't working, that we are quick to identify it.

26 **COMMISSIONER STEENSON:** And that's the heart of my question: how do you identify that?
27 Because that is ERO's part in it, is that fair?

28 **MR POLE:** That's fair, and so we have learnt, we have developed guidelines, training and a
29 vigilance and a professionalisation in our workforce. Can we continue to grow and learn?
30 Yes.

31 **COMMISSIONER STEENSON:** Thank you. I'm not quite sure I got my answer, but thank you
32 for the attempt. Kia ora.

33 **COMMISSIONER ERUETI:** Kia ora anō. My question is I think of a scenario where a school's
34 under tremendous pressure, has a series of reports, say, and needs help, needs wrap-around

1 support. There's only so much that your office can do, but I know that you make a plug for
2 Te Mahau as being something, a new initiative, and I'm wondering what it is really. I know
3 Ms Holsted spoke about it yesterday and it showed a lot of moving beyond policy to
4 operational. I'm just wondering if you could say in that scenario how --what supports there
5 would be in addition to your functions and whether Te Mahau has potential to provide that
6 support?

7 **MR POLE:** So I'll reference some work we've been doing over the last couple of years and this is
8 going in and working with schools who have complex issues across most domains of their
9 activity. So that work involves firstly identifying a theory of change; what are the things
10 and the sequences and steps and the intensity that we need to focus on? And usually our
11 work through evaluation tries to unpack that, and identifies the first order shifts that we
12 would want to see in that institution.

13 For me, it always starts with leadership. Leadership isn't necessarily the principal, it
14 is ensuring a good strong leadership team and structure focused on the right things. And
15 then progressively working through all of the other elements that you see and the
16 complexity of the school.

17 Our work in doing that, we see Te Mahau as a key partner agency with us. So we're
18 identifying, we're looking at that theory of change and then we're saying to Te Mahau, you
19 are part of this turnaround team with the schools' own community, and let's start building
20 up on this. Other partners may include the New Zealand School Trustees' Association to
21 support governance, strengthening of governance. It may also include, as a
22 school we-- work with a school not too far from here -looking at accessing really
23 great- calibre resources from other schools who are doing this very well. So, in that case,
24 we accessed senior leadership around curriculum and capability building in teachers.

25 So we are presently piloting a shift in the way we might direct professional learning
26 and development resources to actually say, rather than going and picking off the shelf this
27 set of training that's available, actually, what is the bespoke response needed to this school
28 in this context? And one of the issues in our earlier work was we would leave a school
29 with maybe a shopping list of activities two pages long and there was never a capacity for
30 them to engage and deliver on that and we would go back and, you know, you haven't done
31 it.

32 So it's walking alongside that school and in terms of the work that I'm talking about,
33 it's us going back every 10 weeks every term and holding everyone to account; the

1 leadership and the community and the board and, equally, the Ministry and STA and others
2 to monitor and see shifts then change.

3 **COMMISSIONER ERUETI:** I think Ms Holsted spoke about a "post and hope" sort of method,
4 but just for Te Mahau's role in that, does that mean that in effect you've got more bodies
5 involved in problem-solving, who are closer to the ground?

6 **MR POLE:** It's regionalising support services, it's bringing in specialists around curriculum,
7 around leadership, so advice to school leaders, and people who can problem-solve and I
8 would hope in terms of what we're doing, is also accessing system leadership from
9 colleague schools throughout Aotearoa who can work alongside and in the context of the
10 schools that you are referring to.

11 **COMMISSIONER ERUETI:** Kia ora, thank you.

12 **COMMISSIONER GIBSON:** Kia ora. I'm interested in the complaints and advocacy
13 independence and broadly thinking about structures and thinking how we've failed to
14 resolve many issues of educational neglect, cases going through the court system for
15 15 years or so. Lessons learnt from other areas, is there a role for something like an
16 Education Commissioner to fill the gap between what happens at the ground level, filling
17 those complaints and taking something to a strategic level for change and then even if that
18 doesn't, then it goes on to a court or something like that?

19 **MR POLE:** I myself haven't thought or worked through that as an option. As I said earlier in my
20 recommendation, I think there is a need for advocacy and resolution of these issues. If
21 I look at the work that we've recently completed, we still have too many kids where there
22 are conditions on their enrolment, or they are not welcome in their local school, or they are
23 turfed out of their school. And that needs to change and we need a circuit breaker there.

24 Some of it is around capability, some of it is around level of the resource, and some
25 of it is around just the complexity of the support infrastructure that has evolved over time.

26 **COMMISSIONER GIBSON:** And is some part of it around the strength of an independent
27 voice?

28 **MR POLE:** I think so.

29 **COMMISSIONER GIBSON:** Kia ora, thanks.

30 **COMMISSIONER ALOFIVAE:** Malo lava le soifua. My question is around bringing it back to
31 our kaupapa of abuse in care. Earlier on this week we heard from one of your colleagues,
32 the Independent Children's Monitor, and so we know about the care standards and what's
33 required. We also heard yesterday about the Oranga Tamariki action plan and all of the

1 children's ministries that are required to be involved to bring about a very ambitious work
2 programme.

3 And then of course we've heard today about your significant investment into
4 ensuring that child and safety well-being is very much to the fore of ERO. Are you able to
5 help us understand the role of ERO when it comes to the children in care and what's the
6 interplay with the ICM in terms of monitoring, given that there's a significant
7 disproportionate number of young Māori and Pasifika and disabled actually in that cohort?

8 **MR POLE:** So the bill before the House at present is establishing a departmental agency which
9 will have the current independent children's monitor which is under MSD transferred into a
10 departmental agency, and the chief executive of that will have a range of powers which
11 include, as you've mentioned, looking at the care standards, but that bill extends those to
12 looking at the provision of health, welfare and education services for children in care and
13 protection, or who may be at risk of being in care and protection.

14 And in that determination, there is an obligation on them to engage and to work
15 through where those boundaries might sit. As you will no doubt be aware, the proposal is
16 that they would be hosted by ERO. That is a hosting arrangement, so their strategic
17 intentions and their focus in that is undertaken by the chief executive of that organisation.

18 **COMMISSIONER ALOFIVAE:** Thank you. Yes, so we understand the arrangements and how
19 it will be set up, but given ERO's responsibility is to monitor all children in schools, the
20 Independent Children's Monitor is simply under the national care standards, so the children
21 in care.

22 I think the question is really around that operational level. Because we've talked
23 about the lack of information sharing in a timely way, so wanting to understand the quality
24 and the journey of our tamariki in care but who are also in schools, the feeding of that
25 information back and forth so that we're really getting a real time picture of where it's at.

26 **MR POLE:** I would hope, in fulfilling their duties, the Independent Children's Monitor will have
27 full access to as much information on the experiences of those in care as is available. But I
28 would go a step further and say we've got woefully poor information here, and our work of
29 a year or so back around learning in residential care, the educational experiences of those
30 children, what they achieve, their desires, their passions, their successes, their challenges,
31 was lost every time those children shift a location. Our systems do not support the
32 transportability of that.

33 That's somewhat technical. There are also privacy considerations in that and I think
34 it's something that we really need to address.

1 **COMMISSIONER ALOFIVAE:** Just as an aside, so there'll be some schools that are very
2 obvious in care, residences, but there'll be others in mainstream. Is that part of perhaps the
3 questionnaire of data that schools are required to keep that ERO might be privy to, the
4 number of children in a particular school who might be in care?

5 **MS LEE:** It could be something that we could request as part of the information gathering
6 exercise, yes. In relation to your question about the ICM, there is advantage of looking at
7 the life of the child in care and schooling and ensuring whether the intercepts and connects
8 and the impacts of that; I think that would answer your question.

9 **COMMISSIONER ALOFIVAE:** Thank you, yes. Thank you very much.

10 **CHAIR:** I have three areas. The first you've already referred to, Mr Pole, and that's the residential
11 care, was it a review?

12 **MR POLE:** It was a nationwide study.

13 **CHAIR:** When was this done?

14 **MR POLE:** 2020, I think.

15 **CHAIR:** 2020?

16 **MR POLE:** Yes.

17 **CHAIR:** Was there a reason why that was done?

18 **MR POLE:** We have looked at residential care schools and education provision for those in
19 residential care or Youth Justice facilities previously --

20 **CHAIR:** Sorry to interrupt you, did it include children in health institutions?

21 **MR POLE:** No, it didn't, it was Oranga Tamariki Care and Protection and YJ facilities.

22 **CHAIR:** So what were you looking -- what was the review about actually?

23 **MR POLE:** The prime review was around quality of educational provision for these young
24 people.

25 **CHAIR:** Was that contemporary or historic?

26 **MR POLE:** Contemporary, it was there and then and it looked at the quality of the providers and
27 it looked into the quality of practice generally and then how the system was working as a
28 system around this group of learners.

29 **CHAIR:** You will be aware that we of course have been investigating that as part of our major
30 work, and a major part of the voices of survivors who were held particularly in residential
31 care is the lack of education. In some cases none; in some cases, as we discussed
32 yesterday, coming to the school but actually not learning because of issues; some cases
33 their voices being disregarded, but a general picture of real educational neglect while
34 children were held in residences. You're aware of all of that?

1 **MR POLE:** Yes, I am.

2 **CHAIR:** That would be a backdrop to the work that you're doing now?

3 **MR POLE:** And our central finding in that work was these kids in those settings loved their
4 education experience. It was the first time for many of them, and we're talking about kids
5 who may have been 14 or 15, that they had had anyone who actually cared and took their
6 learning as a priority in their lives.

7 The question that we raised, though, was quite often that was for a very short spell if
8 these children or young people were on remand, or going through the YJ system. So our
9 observation --

10 **CHAIR:** Because it was linked to the care they were in at that time?

11 **MR POLE:** It was linked to the placement. So our observation is how can you make that point
12 one where the system will wrap around these learners and sustain that commitment to their
13 education.

14 **CHAIR:** Thank you. Was there a published report on that?

15 **MR POLE:** Yes, there is, and I'm more than happy to give that to --

16 **CHAIR:** I think we'd be very interested to receive that thank you.

17 **MR POLE:** I'll get that to the Commission.

18 **CHAIR:** I've got two more points and not enough time but I'm going to do it anyway because
19 they're both important. The first one relates to your interesting observations and suggestions
20 for recommendations about a complaint system, and in that light, I take it that you've read
21 the evidence of Leslie Hoskins who's coming, may be here already, to give evidence?

22 **MR POLE:** No, I haven't at this stage.

23 **CHAIR:** Can I just give this to you and it may be you need time to think about it and respond later
24 and if you do, please say so. In her brief of evidence she refers to the Education and
25 Training Act 2020 which introduced a dispute resolution scheme. Are you aware of that?

26 **MR POLE:** Yes, I am.

27 **CHAIR:** She says that it's to facilitate and promote the resolution of serious disputes between
28 students in State schools and it relate to racism, discrimination, physical emotional safety
29 etc. It seems that the Teaching Council had some reservations about this but it went ahead
30 anyway. Are you able to say how your recommendation for a complaints system would fit
31 in with -- would it fit in with this, would it replace this, would it be alongside this?

32 **MR POLE:** I think it should be absorbed in, but fulfilling a broader mandate.

33 **CHAIR:** So your complaints process might be part of this dispute resolution?

34 **MR POLE:** Yes.

1 **CHAIR:** You see that as a vehicle, maybe, for that to happen, so widening the scope of the
2 dispute resolution.

3 **MR POLE:** Yes, and it's not just disputes resolution, it's how do we take what we're seeing and
4 translate it to broader shifts in our policy settings.

5 **CHAIR:** Lessons learned, yeah. Thank you for that. The last point is this, and again, it brings it
6 back to the people who we've heard most from and those are the survivors of historic abuse
7 in care and I just wanted to let you know that we have a number of survivors watching on
8 the livestream and some of them are indeed in the hearing room, who have experienced
9 abuse through the education system. They went to schools where they were abused, and
10 some of them were State schools, some of them were faithbased schools, and they come
11 from a wide range of places, including [GRO-B], for example, which is a school you may
12 well have heard of.

13 I just wondered if you were able to give those people who are watching now any
14 message, and I appreciate I might have taken you by surprise here a little bit.

15 **MR POLE:** Well, firstly, as I said in my opening, I need to acknowledge that some horrific things
16 have occurred at the hand of professionals in our institutional settings, which are abhorrent.
17 As an educator and a professional, I'm deeply saddened by. I want to acknowledge their
18 bravery and persistence for bringing these issues before us and out into the public. And that
19 has involved a level of bravery.

20 In terms of what ERO can do and what we are doing, I hope we never see the need
21 for a Commission again, and I look forward to your deliberations. I think it's, as a
22 community, continuing to discuss and exchange views and ideas about how we get a
23 stronger system.

24 I will equally say there are hundreds of thousands of learners at school today who
25 are sitting in a classroom with a teacher who is passionately committed to their success,
26 enhancing their identity and culture, who are equally ashamed by what some of those in
27 their profession have done in our past. And so that's by way of a closing comment.

28 **CHAIR:** I think that is appreciated because it acknowledges the hurt and the impacts and, yes, and
29 I think that's an important thing, but really importantly, and I think all the Commissioners
30 have heard the many hundreds of people we've spoken to, the survivors all want the
31 question, one thing, and that is for this to stop and for this to be prevented. And so all I can
32 say is that I'm very grateful to you three for coming today to explain, first of all, your
33 acceptance of what went on, but more importantly where we're going, the steps you're
34 taking to hopefully make things better.

1 To you, Mr Pole, very grateful for your suggested recommendations. It's always
2 helpful when somebody else tries to do the work for you and we will take all the help that
3 we need. And we thank you two as well, wāhine toa, for your reflections particularly on
4 the kaupapa Māori areas. Very important for us to hear the journey of that, the differences
5 in that and the way in which those different ways of working can be used for the betterment
6 of all children in New Zealand. So thank you all very much for your evidence. The bell
7 has rung, you're let out, it's interval.

8 Shall we take a break while we change over or would you like to be seamless?

9 **MS ANDERSON:** I think we can be seamless.

10 **CHAIR:** Let's be seamless. Very well. I believe we have a fresh face at the bar, this is
11 Mr McMullan?

12 **MR McMULLAN:** Yes.

13 **CHAIR:** Yes, would you like to make your appearance please?

14 **MR McMULLAN:** Tena koutou e ngā Kaikōmihana. Ko McMullan mō Matatū Aotearoa.

15 Madam Chair, Commissioners, my name is Sam McMullan and I appear for the Teaching
16 Council of New Zealand. For those who can't see me, I'm a male of European descent with
17 dark hair and a dark suit. Here with me today, Madam Chair, Commissioners, is Lesley
18 Hoskin and Robyn Baker of the Teaching Council, and Madam Chair, if it's an appropriate
19 point I'll ask them to introduce themselves to the Commission.

20 **CHAIR:** First I'll take their affirmation and then we can release you.

21 **TEACHING COUNCIL OF AOTEAROA NEW ZEALAND**

22 **LESLEY HOSKIN AND ROBYN BAKER (Affirmed)**

23 **QUESTIONING BY MR McMULLAN:** Ms Hoskin, may we start with you; can you tell me
24 your full name?

25 **MS HOSKIN:** Lesley Anne Hoskin.

26 **MR McMULLAN:** Can you help by describing yourself for those who can't see you?

27 **MS HOSKIN:** I can. I'm a Pākehā female, who is in my early 50s. I have shoulder length dark
28 brown hair, I wear purple-framed glasses and today I am wearing a white shirt that is
29 gathered around the neckline.

30 **MR McMULLAN:** Thank you. The Commissioners have your brief of evidence, but have you
31 prepared a brief of that brief to help frame the evidence that you intend to give today?

32 **MS HOSKIN:** I have.

33 **MR McMULLAN:** Madam Chair, I can provide a written copy of that if you would like, in due
34 course, but I've discussed this with Ms Anderson.

1 **CHAIR:** Yes, we'll take that later. Thank you.

2 **MR McMULLAN:** Thank you. If you could start working through your pre-prepared statement?

3 **MS HOSKIN:** E ngā iwi o motu nei, tēnā koutou katoa. Ko Tarikaka te maunga, ko Te
4 Kaiwharawhara te awa, ko te Moana o Raukawa te moana, he tangata Tiriti ahau. Nō
5 Kānata ahau, engari kei te Whanganui a Tara e noho nei ahau. Ko au Te Tāhuhu Rangapū o
6 Matatū Aotearoa. Nō reira, tēnā koutou, tēnā koutou, tēnā tātou katoa. I want to begin by
7 acknowledging survivors of abuse by teachers. I particularly acknowledge those who have
8 had involvement with the processes of the Teaching Council or its predecessor whom we
9 have let down. I acknowledge that our processes have had a significant and ongoing
10 negative impact on some of you, and for that I am sorry.

11 The Teaching Council is an independent statutory body. By independent I mean it
12 is not part of the public sector or what is termed the Crown. That means it is not a
13 Government department or agency and it is not directed by the minister. The Teaching
14 Council is governed by a council made up of 13 councillors, seven are elected by the
15 teaching profession and six are appointed by the minister. Robyn Baker is one of the
16 councillors and is the chair of the council. There are about 140,000 registered teachers in
17 New Zealand today. Approximately 108,000 have a current practising certificate working
18 in early childhood education, primary and secondary school.

19 At the Council, our responsibilities are limited to working with registered teachers,
20 or those who hold a limited authority to teach. The Teaching Council's key areas of
21 responsibility are raising the status of the profession, quality of teaching, and the safety of
22 children and young people.

23 We undertake these responsibilities for setting the requirements for who can
24 become a teacher and the requirements that allow them to stay teaching. In addition to the
25 legislation, it is the code and standards that describe what it means to be a teacher, what
26 they do and how they do it. The code and standards also provide the framework to
27 determine if teachers are competent, of good character and fit to teach. We are funded by
28 the teaching profession through fees and levies to do this work.

29 We hope the information we have given to the Commission demonstrates that, over
30 time, there has been changes in societal and professional expectations, legal requirements,
31 policies and practices and induction and training.

32 These changes have influenced how we perform our role and how we interact with
33 those involved in our processes. Part of our commitment to doing better is trying to be as
34 open as possible about where we have not done as well as we should. We acknowledge

1 that for ourselves as a regulatory body and for the whole of the teaching profession. This is
2 an ongoing journey with much yet to be learned and applied, and with a view to
3 overcoming the impact of colonisation, learning how to give genuine effect to Te Tiriti o
4 Waitangi, reflecting the ethnic diversity of Aotearoa, being proactive in the ways that we
5 work with differently-abled people. Ultimately, respecting the mana of all and most
6 important, keeping all learners safe.

7 I did want to take the opportunity to reiterate, I acknowledge survivors of abuse by
8 teachers, particularly those who have been involved in our processes, where we have not
9 taken appropriate care to ensure their safety and well-being.

10 The instances of harm that resulted are unacceptable. We recognise our processes
11 have had a significant and ongoing negative impact on some individuals, and we wish to
12 engage with survivors in a genuine and well-considered way. We have done and will
13 continue to apologise to them. We want to make sure those apologies are meaningful and
14 individualised and so what we say here today should be only seen as a part of that
15 engagement.

16 **MR McMULLAN:** Kia ora, Ms Hoskin. I'll come back to you in just a moment with a bit more
17 detail. But, Ms Baker, could I have you please introduce yourself and maybe give a
18 description of yourself for those who can't see you?

19 **MS BAKER:** Thank you. My name is Robyn Jane Baker. I'm an older person, actually this
20 morning ancient, apparently, which I will accept. I have blonde hair that was once natural
21 and is no longer natural. I'm tall about 5 8 and I'm Pākehā.

22 **MR McMULLAN:** Kia ora, thank you. And have you also similarly prepared a synthesis of your
23 brief of evidence for the Commission?

24 **MS BAKER:** I have. I have a short statement I'd like to make, thank you. I also want to
25 acknowledge those survivors who have had involvement with the processes of the Teaching
26 Council or its predecessors where we have not taken appropriate care to ensure your safety.
27 Nothing that we wish to say this afternoon is intended to take away from the hurt and
28 trauma that you have suffered.

29 I'm the Chair of the Teaching Council, and I have been involved in education for all
30 of my career. Over the last 30 years, the Teaching Council and its predecessors have
31 evolved from a body charged with registering and certificating teachers to one with a
32 mandate that is fit-for-purpose for a professional body in the world of today. One very
33 important aspect of our work today is the many ways we work collaboratively with others
34 who are also working to ensure the safety of children and young people.

1 We are committed to ensuring safe and high-quality leadership, teaching and
2 learning for children and young people in early childhood settings and in schools. We
3 acknowledge that the best way to do this is to continue to improve our practices in light of
4 new knowledge in learning. We see our involvement in the Commission processes as an
5 opportunity to be held accountable, as well as to listen, share our thinking, and learn how
6 we might better improve to ensure the safety of all our learners in the future. Thank you.

7 **MR McMULLAN:** Kia ora Ms Baker. Ms Hoskin, I said I'd come back to you. Do you
8 understand one of the areas of interest from the Commission is likely to be the Teaching
9 Council's disciplinary processes?

10 **MS HOSKIN:** Yes, I do.

11 **MR McMULLAN:** Thank you. Similarly, for proficiency purposes, have you prepared a
12 synthesis of your brief of evidence insofar as it relates to those processes?

13 **MS HOSKIN:** Yes, I have.

14 **MR McMULLAN:** Could you take us through that, please.

15 **MS HOSKIN:** The Teaching Council has several ways in which it can prevent or respond to
16 abuse by teachers. This is primarily a gatekeeping role, controlling entry to the profession
17 and thereafter controlling who may remain within it. I apprehend that our responsibility for
18 maintaining professional standards and disciplining those who breach the code is of most
19 interest to the Commission. It is therefore worth me explaining that function in a little
20 more detail.

21 The professional disciplinary process is designed to work out whether a teacher
22 should be permitted to continue teaching, and if so, under what conditions. The most
23 severe penalty that the Council can apply to a teacher is to remove the teacher from the
24 profession by cancelling their registration. Professional discipline is principally concerned
25 with safety for learners and the reputation of the profession, including public perception.
26 To do this work well, we need to receive good information, and over the past 30 years, the
27 legislative and policy framework has improved the flow of information to us.

28 Today, information about serious breaches of the code comes from five main
29 sources: a mandatory report where the law requires a teacher's employer to immediately
30 report to the Teaching Council when it believes a teacher has committed a serious breach of
31 the code of professional responsibility, or they resign, and a conduct issue was being
32 managed within that last year. If they are dismissed for any reason, they must also send a
33 mandatory report.

1 Serious misconduct is now described in detail in our rules and includes unjustified
2 or unreasonable physical force, emotional abuse that causes harm to a young person, and
3 neglecting a young person.

4 The second way is a complaint which can come from any member of the public
5 where it is believed a teacher has committed a serious breach of the code. The Council can
6 also raise an own motion if a concern has not been notified to us.

7 Teachers are required to self report convictions where an offence may have a
8 penalty of more -- of imprisonment of more than three months. And the last way is
9 information coming from other agencies that we work with. We receive information from
10 the courts about convictions, including about specified offences as determined in the
11 Children's Act where immediate cancellation of registration occurs; from Oranga Tamariki,
12 the Ministry of Education and Police, where we have a memorandum of understanding.

13 Our investigation and determination of the complaints process are controlled by our
14 empowering legislation and governing rules, along with general principles of natural
15 justice. In this context, we work hard to take care of everyone involved with particular care
16 for vulnerable witnesses, including those with disabilities. For example, in certain
17 situations, we encourage victims to make their own complaint so that they obtain the rights
18 of an initiator, which under the rules allows them to access more information throughout
19 the process and this ensures they are not left out of the process.

20 The Complaints Assessment Committee, which is the body with responsibility for
21 investigating and determining whether complaints should be referred to the Disciplinary
22 Tribunal or not and the teacher are parties to the proceeding. The rules require the
23 complaints assessment committees' process to be confidential. We also have developed the
24 capacity to conduct all proceedings in accordance with tikanga Māori and in te reo Māori.
25 We recognise there is more to be done to build a system that meets the needs of our most
26 vulnerable, including survivors of abuse.

27 I note that work like the Commission's can support the work we are already doing
28 ourselves to achieve this.

29 **MR McMULLAN:** Kia ora Ms Hoskin, Ms Baker, those are all the questions I have for you. If
30 you could just remain there and answer any questions that Ms Anderson has for you or the
31 Commissioners have for you.

32 **CHAIR:** Thank you, Mr McMullan. Welcome back, Ms Anderson.

1 **QUESTIONING BY MS ANDERSON:** Thank you, Madam Chair. For those tuning in at this
2 time who can't see me, I am a, I would have to say, shorter of stature, older female lawyer
3 with blondish hair wearing green-rimmed glasses.

4 Kia ora and welcome. Are you happy for me to call you Robyn and Lesley?

5 **MS HOSKIN:** Kia ora thank you.

6 **MS ANDERSON:** Let's proceed on that basis. Just a little bit of orientation, in the first instance,
7 to the role of the Teaching Council and the overall regulatory scheme. And we heard
8 yesterday from the Secretary for Education, in that they've got the big picture stewardship
9 role and I think what you've outlined in your evidence is that the remit of the Council is
10 much narrower, not so much for the whole system, but am I right to characterise it, you've
11 got a very distinct role in relation to the profession operating within the overall educational
12 system?

13 **MS HOSKIN:** That's correct.

14 **MS ANDERSON:** So, clearly, you've got a leadership role, but that's a leadership role in relation
15 to the profession generally?

16 **MS HOSKIN:** Yes.

17 **MS ANDERSON:** That's evolved over time, hasn't it, because you now -- you issue guidance,
18 you've got a mandate in that space as well?

19 **MS HOSKIN:** That's correct.

20 **MS ANDERSON:** And, helpfully, you've outlined the disciplinary process, you've referred to the
21 Complaints Assessment Committee, and of course there's a Disciplinary Tribunal as well,
22 isn't there, in the mix?

23 **MS HOSKIN:** Yes.

24 **MS ANDERSON:** It's the tribunal that would ultimately make a decision to cancel registration?

25 **MS HOSKIN:** Yes. The determination for whether something has to go to the discipline tribunal
26 at the moment, and there is a law change, is if a matter may possibly be serious misconduct,
27 then it must go to the discipline tribunal.

28 **MS ANDERSON:** So you're working in a landscape, if you've got an initiator, a survivor who's
29 come forward with a complaint, you might be initiating the Teaching Council processes,
30 but there might also be an employment matter going on at the school in relation to the same
31 incident that's given rise to the complaint; that might be right?

32 **MS HOSKIN:** That is true and I would add it's not unusual also for Police to be performing their
33 role.

1 **MS ANDERSON:** Yes, I was coming to that. So, as is often the case, three processes might be
2 initiated and then there's a question of sequencing and I think what you've said in your
3 evidence is that the disciplinary process would wait until the end of any Police process.

4 **MS HOSKIN:** That's correct.

5 **MS ANDERSON:** That, of course, can be quite a long time.

6 **MS HOSKIN:** That is true. I would, just for clarity, say that the school involved, so different
7 with historic abuse perhaps, but ordinarily that mandatory report is required immediately.
8 So they do have to give us that mandatory report immediately. We just then wait for the
9 outcome of the Police investigation before we do anything further.

10 **MS ANDERSON:** But there are some safeguards that can be put in place in the interim, aren't
11 there, in relation to -- because the fact that a person's charged doesn't mean of course that
12 they step aside from their employment, but there's some mechanisms that you've got in the
13 Teaching Council to make some interim arrangements?

14 **MS HOSKIN:** That's correct.

15 **MS ANDERSON:** Would you like to just outline those briefly for the Commissioners.

16 **MS HOSKIN:** Yes. So the rules have the ability for an interim suspension to be applied by the
17 Complaints Assessment Committee, and the process of how that might happen, which is
18 why I was drawing attention to the immediate requirement for a mandatory report, is so that
19 we can look and determine right at that very beginning point if there are any concerns or
20 risks to children. And if there are, our normal practice is to then ask the teacher to agree to
21 what we call an undertaking not to teach, so it's done by agreement, but it is based on the
22 construct in our rules called an interim suspension. If the agreement is not reached, the CIC
23 would then apply for interim suspension.

24 **MS ANDERSON:** That's a helpful clarification. And so your process pauses while the Police
25 matter is in train. Does your process pause because an employment matter is in train in the
26 school?

27 **MS HOSKIN:** No, it doesn't.

28 **MS ANDERSON:** So those two can run in parallel?

29 **MS HOSKIN:** Yes. I would just -- yes is the answer. I would just add that we would have
30 received the mandatory report. There is a requirement, with some exemptions, but there is
31 a requirement initially for the school to be able to be investigated and so we would always
32 ensure that the employer, so the board or the early childhood centre, might have their own
33 process of looking into that complaint, but that does not -- you know, we still want the
34 mandatory report immediately.

1 **MS ANDERSON:** Does that mean you get to rely for some of your evidence on what's happened
2 in that employment context, or the survivor has to participate potentially in both of those
3 processes?

4 **MS HOSKIN:** I understand the question. The employment matter is probably not something that
5 we would be -- that information is not necessarily relevant to us but we do get it. I think
6 often what is -- to answer -- you know, is this person going through multiple occasions of
7 having to tell their story? We do work with every agency, so the school, but also if Police
8 are involved we work with them to ensure that, where possible, we're not having to
9 re-traumatise and re-interview.

10 **MS ANDERSON:** That's a helpful orientation to the very crucial safety role that the Council
11 plays as a check in the system. I'm just going to come now to your statutory remit, so the
12 purpose of the Teaching Council, and just to help Commissioners and others, we're going to
13 call it up on the screen. It's from the notice to produce that the Council provided,
14 TG C 00002432. This of course will be a provision that both of you will be very familiar
15 with and which I think you've summarised in your evidence. Just coming up to page 9 of
16 the document...

17 **CHAIR:** For those watching and in the back of the room, you won't see these documents because
18 they can't be properly -- redacted -- for privacy reasons. We can see it, the witness can see
19 it and counsel can, but counsel will read out any relevant portions so that you know what's
20 being discussed.

21 **MS ANDERSON:** We'll just call out where it says, under the second paragraph under 2.1:

22 "Our purpose is to ensure safe and high quality leadership, teaching and learning for
23 children and young people in early childhood, primary and secondary schooling and
24 English medium and Māori medium settings through raising the status of the profession."

25 I've got some questions for you just about that, about how you interpret that
26 purpose, because of course this is the touchstone for everything that you do in terms of all
27 the powers that you have. I'm not going to bring it up on the screen but in the briefing to
28 the incoming minister in 2020, one of the statements that you've articulated in that briefing
29 is that you say, "it's our duty to protect and grow teachers' mana" and that the Council's
30 legal purpose speaks of "an enhancing of the status of the profession."

31 And then you go on to explain that the mana-enhancing responsibility is seen as key
32 to achieving safe, high quality leadership teaching and learning for students. It seems,
33 standing back and coming to this fresh, and you both work with this every day, it seems a
34 slightly complicated little purpose, that you've got things that you've got to do through

1 raising the status of the profession, and then we see through your briefing to the incoming
2 minister and other documents, annual reports and things, that you've got a real focus on the
3 enhancing the mana of the profession.

4 It would be very helpful for you to clarify how you link that enhancing the mana of
5 the profession to this overall child safety element that is a key part of your work.

6 **MS HOSKIN:** So, mana, that authority and respect and ability to have self--determination, we
7 have set mana at the heart of being able to be a good leader and having good leadership. It
8 sits at the ability to have care for others and for self and for environment. So in the - to
9 connect that, how we connect that and think about that in relation to the conduct matters is
10 the public, the parent, the profession themselves to have a high- -trust relationship and
11 therefore the mandate to do their job, they do have to have trust.

12 And so when we're describing the work that we do, and I would say -- and I don't
13 minimise or trivialise as all, but we deal with a few in the conduct space of the whole -- the
14 importance of doing that and doing that well and getting the right outcome, so whether
15 someone can stay in the profession or not is about the mana or what is described in the
16 statement in law, about status. And the connection is do we do that well, that there can
17 remain trust in those teachers who are -- have that core duty of care.

18 **MS ANDERSON:** Robyn, perhaps I'll come to you because you've recently come into this chair
19 role, haven't you, in July this year, and I presume that this is one of the first things that you
20 will have looked at as the sort of key piece of legislation that governs, sets out what the
21 purpose of the council you chair is: does it leave any ambiguity for you about where child
22 safety sits in this statutory purpose?

23 **MS BAKER:** Although I've come into this role recently, as I said, I've been in education for a
24 very long time. I think that what's really important here is people, including myself, went
25 into teaching because we have a strong, have had, and continue to have a strong belief in
26 learning and that by providing opportunities for young people to build the skills and
27 knowledge needed to thrive as people, personally and professionally, and contribute to the
28 society that we want in Aotearoa New Zealand. That is what drives us. And I'm not
29 avoiding the question about safety, but what I'm saying is we're driven by knowing that
30 education matters. And in doing that, we inherently, as a profession, want our charges to be
31 safe.

32 The status part, one of the things, as Lesley has said, it's really important that the
33 public as a whole, so a lot of this is set, and this is where a professional body with
34 responsibility to the profession and the public, I think that's really important. And one of

1 the things that's critical here is that we want the -- we need the public's trust in us, and so as
2 a profession you've got the work to do and part of that is knowing and being held to
3 account for a code of standards of what we expect of ourselves and each other, and also a
4 code of conduct about how we expect ourselves to behave and how we expect our
5 colleagues to behave.

6 **MS ANDERSON:** We'll come on and look at those two documents in a little bit more detail.

7 **MS BAKER:** Yeah. So I think that -- I know in this context we're talking about child safety in a
8 slightly different way and it really matters, but I don't think there's a conflict in the idea that
9 we had -- we aren't pushing the status of teaching as though in that traditional view of
10 putting them on a pedestal, we really want the public to value and appreciate the
11 importance of education and therefore the role of us as professionals in supporting their
12 young people.

13 **MS ANDERSON:** And, Lesley, you gave an outline of what you think is within the concept of
14 mana that you're talking about there. And I think we can probably agree, can't we, that the
15 mana of a teacher, of an individual teacher, must by definition be sustained in relation to
16 their services to the tamariki and the school, so we can agree on that.

17 **MS HOSKIN:** We can.

18 **MS ANDERSON:** Where harm to a child occurs by a teacher, or in fact even by a volunteer or
19 teacher's aide in the school, we'll come on and talk about those who are not registered and
20 under your remit, both the mana of the teacher and the child will be impacted by that
21 incident --

22 **MS HOSKIN:** Yes.

23 **MS ANDERSON:** -- or that abuse. Do you think that the Teaching Council would do things
24 differently in relation to your gatekeeping role to the profession, and that's both entry and
25 during the lifetime of being a member of the profession, if the overall purpose in the
26 legislation was more squarely on enhancing the mana of the child and of the child's rights?
27 And I'll ask that question of each of you.

28 **MS HOSKIN:** So my -- the way that we think about the work that we do, because of course
29 education and teachers are there for learners and children. As a professional body and a
30 regulator of registered teachers, our contact and our engagement is with teachers. But we
31 do that very clearly understanding that the reason we do that is for the benefit of those
32 children and young people that they are working with every day.

1 **MS ANDERSON:** And so are you aligning that in the focus on enhancing the status or mana of
2 the profession, that there's a - and I'll say trickle down, it's not intended to be pejorative in
3 that sense, but there's a flow--o-n impact for the children in the educational settings.

4 **MS HOSKIN:** That is what we are saying.

5 **MS ANDERSON:** But, overall, is it your view that you've got the right balance currently between
6 the emphasis on children's rights versus regulation of the profession?

7 **MS HOSKIN:** When you say "children's rights", are you thinking about our consideration of how
8 we're doing our work? We don't work directly with children at all. Could I give you an
9 example maybe of where I think that might fit? One of our roles is the requirements for
10 teaching education. We approve programmes and we monitor them. And certainly within
11 the design of those programmes which have been refreshed very recently, those
12 considerations of the child, those with disabilities, different cultural backgrounds, which
13 are -- and I know you'd said you'll come back to it, but they are set in the foundational
14 document of the code and the standards, is what we then built that up from.

15 So I don't mean to be -- to separate that, but we are very clear about what our role is
16 and how we can influence and our powers and we work to do that so that teachers can do
17 the job that they need to do.

18 **MS ANDERSON:** So you're working on the layer at the top that's got this benefit for children in
19 the educational settings?

20 **MS HOSKIN:** Yeah.

21 **MS ANDERSON:** And just also in the notice to produce, and again, we might not need to turn to
22 it, but just you were asked some questions about the commitment of the Teaching Council
23 to Te Tiriti and how giving effect to that in your work is manifest. So perhaps if you could
24 like to summarise in your own words, because what I took from the notice to -- the
25 response to the notice to produce is that as a Crown entity you don't see yourself
26 necessarily having obligations of the Crown but that you have incorporated that into parts
27 of the way that you work and the commitments that you've made.

28 **MS HOSKIN:** Just a technicality, we're not even a Crown entity, we are an independent statutory
29 body. But the answer would still be true for how you have characterised that. And what
30 I might say is in the work that we have done in giving effect to Te Tiriti o Waitangi we
31 worked with the profession. And it's the profession that gave us the mandate to do the
32 work that we have done, and I come back to those important documents, the code and the
33 standards, where it is articulated the expectation.

1 The profession wrote those themselves. We consulted on them and they approved
2 them and now they are legally binding. And so the difference perhaps of those Crown
3 agencies is that the profession, because we're an independent statutory body, are the ones
4 that are giving us our direction and mandate.

5 **MS ANDERSON:** And in terms of Te Tiriti, can you explain how you work within that frame and
6 the delivery of what it is that you're delivering for the teaching profession?

7 **MS HOSKIN:** So what we did was we took a view of the changing language in the law over time
8 from things like honouring and committing to now being "give effect". And so we have
9 looked at what practical things we might do that genuinely gives effect to those aspirations
10 or dreams of the tīpuna who were there at that time.

11 So maybe some examples of those practical things is the standards do articulate the
12 requirement and what we have done is we have pulled out one of the standards so that when
13 an endorser of a certificate, so often a principal will have to endorse the certificate of a
14 teacher every three years, we've asked a question specifically that says has this teacher
15 progressed in their knowledge and understanding of te reo, me Ngā tikanga Māori and it's a
16 check box "yes" or "no". If it's a "no" then we require a comment.

17 What we're doing is putting a spotlight on those things that should be done that will
18 start to enable us to better give effect to Te Tiriti. I might add to that --

19 **MS ANDERSON:** When you say "us" do you mean society generally or do you mean the
20 Council?

21 **MS HOSKIN:** Sorry, I mean the profession, so that certificate point is when a teacher renews
22 their certificate to teach. Another example, if I could just add, is the work we've done.
23 And when I say "we" I mean us, the profession, on creating 'unteach racism'. That's an app
24 with lots of resources, it is for teachers, it is not a curriculum programme or anything, and it
25 is supporting teachers to reflect, to literally unteach what we know or thought we knew, and
26 then to learn how to teach in a way that gets the outcomes that we all want for all children.

27 **MS ANDERSON:** And I think we see this expressed in the code of professional responsibility,
28 don't we, so we'll turn to that now, which is TG C 00002440. And on page 10 of the
29 document, which you'll be very familiar with so I won't need to orientate you to it.
30 Actually, perhaps we'll start on page 4 and so -- we'll just wait for that to come up on the
31 screen so Commissioners can follow it. So this is "our" commitment, being the teaching
32 profession commitment.

33 **MS HOSKIN:** That's right.

1 **MS ANDERSON:** That's what's being expressed here. Just if we could call up at the bottom of
2 the left-hand, the very last paragraph? And so in this code, this is what teachers are making
3 a commitment to, "To honouring Te Tiriti o Waitangi and we understand that this has
4 implications in all of our practice." We'll just call up the bottom half of the red, it's slightly
5 difficult to read it, but -- so, again, we see the focus on being the professional body for the
6 teachers and the last sentence:

7 "It means enabling changes to the system that improve the quality of teaching and
8 educational leadership and doing so with the interests of children, young people and the
9 public at heart."

10 I think when I was looking through all of your documents, this was the one place
11 I found the concept of being the child being at the heart of what you're doing. And just
12 turning over to beginning on page 10, running through so that Commissioners can see, the
13 first code relates to commitment to the teaching profession, which includes demonstrating a
14 high standard of professional behaviour and integrity, commitment to learners.

15 Perhaps we'll just call up that whole bottom commitment there, is "Promoting the
16 well-being of learners and protecting them from harm, respecting professional boundaries
17 and respecting diversity, affirming Māori learners as tāngata whenua and supporting their
18 educational aspirations." So this commitment here clearly intended that the teaching
19 profession is going to carry a commitment to give effect to the Treaty into the classroom.

20 **MS HOSKIN:** That's correct.

21 **MS ANDERSON:** Just so that Commissioners can see the third and the fourth commitment, page
22 12. So the code expresses a commitment to families and whānau, and a commitment to
23 society, including again demonstrating a commitment to Te Tiriti o Waitangi.

24 **MS HOSKIN:** [Nods].

25 **MS ANDERSON:** So quite a strong emphasis in the code, and this is baked into the legislative
26 scheme, isn't it, that teachers have to comply with this?

27 **MS HOSKIN:** That's true.

28 **MS ANDERSON:** And perhaps you could clarify for the Commissioners how you as a council go
29 about being confident that all teachers are meeting these standards that are set out in the
30 code. And I suppose the question is, is it purely reactive, you know, complaints come in
31 the door and problems come in the door and that's when you identify perhaps that conduct
32 hasn't met the standard, or is there some other methodology that you employ?

33 **MS HOSKIN:** To start at the end of your questions, the discipline processes where there may
34 have been serious misconduct is where those processes kick in against the code. But the

1 code on a day-to-day basis of how a teacher behaves and does their job of causing learning
2 to happen, this frames, as I call them, foundational documents. So they are day to day.
3 There is a supplement document to that where there are examples where each of these
4 commitments are shown in a light of "this is what it would look like if you were doing this
5 well", and then the profession themselves says, "We want bottom lines as well", and so that
6 example also has, "This is what it would look like if you are not meeting these
7 expectations."

8 To go to your first part of your question, every teacher, to renew their practising
9 certificate, has to engage in a professional growth cycle. We don't determine what the
10 content of that is, that's for the teacher and the schools to do that, but what we do -- what
11 we have done is set the requirement for the elements that need to be there. And so the
12 legislation requires that to happen, so there has to be professional growth, and that those
13 two foundational documents, the standards and the code, are where they would go to start
14 to frame what growth of practice would look like.

15 **MS ANDERSON:** We'll come on and talk a little bit more later about that renewal process
16 because there's a few thorns in how that might work as well, isn't there? It doesn't always
17 work as intended. But I'll come on to that.

18 **MS HOSKIN:** I'm not quite sure what you're referring to but happy to discuss it.

19 **MS ANDERSON:** In terms of the code, I won't go through the standards, but they're a
20 back-to-back arrangement are they, so clearly teachers have clarity as to the standards
21 they're intended to meet. We heard yesterday and today about the role of the Education
22 Review Office and reports on schools that might, for example, indicate that over time
23 there's a repeated problem with the use of corporal punishment in a school, or other
24 bullying, violence matters, cultural aspects within a school. Is there a relationship between
25 the Teaching Council function and the information being revealed through those ERO
26 reports that gives you -- is an activator for any steps that you might take in relation to a
27 particular set of teachers in a particular setting?

28 **MS HOSKIN:** It can be, and it certainly does happen. What I would say is what we are doing at
29 the moment, and it's because we've got another situation where it's working well, is we are
30 working on a memorandum of understanding that, one, formalises that and, two, enables
31 the Privacy Act still to be -- the intentions of those principles to be met but for information
32 to be shared on a regular and ongoing basis.

33 **MS ANDERSON:** And is that perhaps a recognition that things haven't been quite working as
34 well as they might have because you'd want to know if there was practice in a particular

1 school where it looked like the relevant standards expected of teachers weren't being met as
2 revealed through ERO reports?

3 **MS HOSKIN:** I think what we've identified is that it is an opportunity to improve. I'm not able to
4 recall anything that would have suggested we didn't know something that the ERO report
5 had found, but I'm sure that -- you know, I can't reference something but I'm sure that may
6 have happened.

7 **MS ANDERSON:** And sometimes, as you say, you might come into information and
8 arrangements, you might share that with ERO?

9 **MS HOSKIN:** If there was a concern for the safety of children, so rather than the competence of
10 teachers, if we had any concern for safety of children, we have the powers to act and to
11 move alongside with Police and Oranga Tamariki and with the Ministry of Education,
12 particularly in early childhood settings, and so we already have, and have had for a number
13 of years, a memorandum of understanding where regular meetings occur with those
14 agencies and information shared and it has -- nothing's perfect but it has actually proved to
15 be very effective in what you're describing what we might do with ERO.

16 **CHAIR:** Is that memorandum of understanding just with ERO or is it with other educational
17 agencies?

18 **MS HOSKIN:** It's not yet with ERO. What we are looking to do is to create that to see if that
19 strengthens the system. It is currently with the Teaching Council, Oranga Tamariki, Police
20 and the Ministry of Education.

21 **CHAIR:** So you have an existing MOU?

22 **MS HOSKIN:** That's right.

23 **CHAIR:** And you're thinking of adding ERO to that?

24 **MS HOSKIN:** Yes. We haven't got far enough through to determine do they just add into that
25 existing one or are there reasons that's not appropriate. And I would just add we're also
26 talking to the Education Payroll company for the same reason, they hold information about
27 where teachers -- where they're getting paid, means that's where they're working. So I don't
28 know if that answers your question.

29 **CHAIR:** That answers my question, thank you.

30 **MS ANDERSON:** Linked to that, I think you've been very clear that the way that you manage the
31 data is really on a teacher-by-teacher basis, isn't it, that if somebody comes to you and says
32 "We've got a concern about a particular school", what you know isn't able to be pulled
33 together currently and say, "Well, actually, there's a repeated pattern of problems of
34 misconduct, abuse of children" at this particular school.

1 **MS HOSKIN:** I've done a lot of thinking about this. Mainly, you know, was there a missed
2 opportunity and should we look to do that now? And it's not that we haven't thought of it
3 before. Historically, so what we were asked for through this process, was to organise our
4 data around a particular school. In a day-to-day situation, it's not that that might not occur,
5 and I think of -- I've got two examples in my head where there have proven to be multiple
6 occurrences of abuse in one setting.

7 In the process of the investigation, and the discipline process, that is where we most
8 commonly identify at that time, and I accept that not everybody might come forward, but
9 that is where most commonly we would identify that potentially there was a, if you like, a
10 failure in leadership, and potentially look to own motion other -- in fact, not potentially, we
11 do; if we do find in investigating one matter other failings, potential or serious breaches,
12 then we will own motion those teachers. And that includes things like knowing of abuse,
13 and not completing that --

14 **MS ANDERSON:** We'll come on to that because that's partly the employers' mandatory reporting
15 obligation as well, which is the front-end intended to get the Teaching Council attention
16 rather than perhaps wait until the end of a disciplinary process to find out more.

17 **MS HOSKIN:** In sending a mandatory report?

18 **MS ANDERSON:** Yes. You've acknowledged in your written brief and in the statements that
19 you've made this morning, and I'll use language perhaps that you haven't quite used but
20 we'll see whether you can agree to it, that the process for survivors who are at the centre of
21 a complaint against a teacher, a report of abuse against a teacher, that they haven't been
22 dealt with in a trauma-informed way through the Teaching Council processes.

23 **MS HOSKIN:** I can agree with that if we're talking about matters that were considered in the past.
24 I would say that if they were being considered today, and we are clearly, through this
25 process and others, we are considering some today. I am confident we do that much better,
26 and yet I know there will be more we can do.

27 **MS ANDERSON:** And presumably that's a matter of operational practice within your framework,
28 it's not that adding a statutory element or a requirement for you to engage in that trauma-
29 informed way would change your current practice? Is that what you're saying, that you're
30 already doing it?

31 **MS HOSKIN:** I am and I'm being careful because in other constructs of the law where my
32 predecessors have operated that might not have been the case, but today there is no
33 reason why we can't take care of our vulnerable witnesses.

1 **MS ANDERSON:** We'll come on probably after the break to talk about somebody's experience of
2 the process which is no doubt one of the experiences that have helped shape the changes
3 that you've foreshadowed have been made. Just before we close for the break, so the
4 Commissioners and those listening are clear, there are the limits, the boundaries on where
5 you can't do go as a Teaching Council. So just to clarify, you don't have a role in relation
6 to non-registered teachers?

7 **MS HOSKIN:** That is correct, so you have to be qualified through a degree at a university or a
8 polytech, you get your training, your teaching qualification, and that enables you then to
9 apply to be registered, and there are criteria there. Those are what we call teachers, and
10 then there are also limited authority to teach, where we award, for limited times, as it
11 suggests, to either people with in short skill spaces or in supply pressures.

12 **MS ANDERSON:** And some of the documents that you've given to us, the Teaching Council has
13 had to write to a complainant, so you've had somebody come in with a complaint or a
14 notification that there's something of concern about a teacher's behaviour and you've had to
15 write back and say, "In fact, we can't do anything"?

16 **MS HOSKIN:** That is absolutely true. If they're not registered, we have no remit. Registered or
17 with a LAT, for technical --

18 **MS ANDERSON:** It seems that your practice would be then to refer the person perhaps to go to
19 the Police?

20 **MS HOSKIN:** If that was appropriate, we look to ensure we can connect them to any other
21 support agencies, whether that's the Ministry of Education, Police, Oranga Tamariki, victim
22 support. We try not to just say "it's not us", in fact, we don't say it's not us, therefore find
23 your way through a system that can be quite hard to navigate. We do try and support that
24 connection.

25 **MS ANDERSON:** And some of the other aspects where you've got no remit and relate to the
26 boarding hostels attached to some schools because they're mostly not staffed by teachers,
27 are they?

28 **MS HOSKIN:** That is true.

29 **MS ANDERSON:** So your safety remit doesn't reach into that environment?

30 **MS HOSKIN:** No, it doesn't.

31 **MS ANDERSON:** And in terms of persons teaching when not registered when of course the law
32 requires them to be, if the Council received a report that there was perhaps a school that had
33 a large number of unregistered teachers, when the teachers should be registered in
34 accordance with the law, what are the steps that you would take?

1 **MS HOSKIN:** So we have a system where every fortnight we do a data match with our payroll
2 company to inform us if there are any teachers being paid, so therefore working, who don't
3 hold a certificate. So that's generally how we get advised of those situations. At that point
4 we write to the teacher or ring them to --

5 **MS ANDERSON:** Can I just pause there; will that bring up everything? So, for example, if it's a
6 private school and they've got unregistered teachers in that private school, would the
7 system that you've just talked about, the data matching, would that help in that --

8 **MS HOSKIN:** No, it doesn't, that's a good point, thank you. It doesn't cover early childhood and
9 it doesn't cover those situations where the Crown is not paying the salaries of teachers.

10 **MS ANDERSON:** And that's a bit of a gap?

11 **MS HOSKIN:** For this particular process, it doesn't work, but what I would suggest is, in a
12 regulatory environment or regulatory body such as ours, there are a number of checks and
13 balances and so if the teacher did come to renew their certificate, we would see there had
14 been a period of time that potentially that they had been teaching.

15 **MS ANDERSON:** And would you take -- so you've got no remit over unregistered teachers so is
16 there nothing much you can do in relation to those individuals?

17 **MS HOSKIN:** For unregistered, that's correct.

18 **MS ANDERSON:** So if we take the private school example, there might be a lot of people
19 teaching who should be trained teachers with a certificate but in fact they've got
20 unregistered people teaching, is that a situation where you don't have any levers, there's
21 nothing that you can do directly?

22 **MS HOSKIN:** That's correct. So if I think about the design of a school or even early childhood
23 centre, there are many different roles in addition to a registered teacher having engagement
24 with children. As you say, our ability -- and it's about because, if I could just maybe add
25 the clarity as to why that might be, because -- I hesitate to say it again, but we have a code
26 where we can hold people to account and that's where the discipline comes in. So they're
27 registered, they've signed up to the code, and if there are any serious breaches, then that is
28 where our discipline process can intervene.

29 For someone who is not a registered teacher, a teacher aide or someone else you
30 were thinking of, they're not part of the teaching profession and so that code doesn't apply.
31 I have no teeth, there's nothing I could actually do, it would be an employment matter.

32 **MS ANDERSON:** So, within the overall education system, whose responsibility would it be to
33 ensure that only registered teachers are teaching?

1 **MS HOSKIN:** So, ultimately, the board of trustees and the principal delegated I guess to the
2 principal who, in law, that person must ensure that their teachers have a current practising
3 certificate.

4 **MS ANDERSON:** And who would take action against the board to enforce that obligation? It's
5 obviously not the Council, I'm just interested as to who it might be.

6 **MS HOSKIN:** It's interesting. As of 1 August this year, just a month ago, this month, we sought
7 law change to enable us to prosecute in those situations. What we found mostly through
8 the data match was if we had someone who refused to renew their certificate but continued
9 to teach, it wasn't clear who should take action. So we wanted that clarified because it goes
10 to child safety. At the point of a renewal of a certificate a Police vet occurs and other
11 things.

12 **MS ANDERSON:** Just pause there just for a moment. That's because you've got a remit over
13 teachers and formerly registered teachers, isn't it?

14 **MS HOSKIN:** That's right.

15 **MS ANDERSON:** That's why you've got it in there, but in the scenario where they've never been
16 a registered teacher, and the board's employing them, my question is, and you might not be
17 able to answer it, is to it's clearly not in the Council's remit, who's the actor in the system
18 that would --

19 **MS HOSKIN:** The principal. The principal would hold that responsibility to ensure, through the
20 core workers and Children's Act, they still have to have a Police vet, they still have to do
21 safety checks and those requirements are set and the responsibility falls to the principal.

22 **MS ANDERSON:** Yes, I understand completely as to what you've said, where the responsibility
23 sits at the board and/or principal level, my question is, who is the enforcer, the regulator in
24 the system to take any action if that board or principal has failed to fulfil their duties? It's
25 clearly not the Council.

26 **MS HOSKIN:** It's clearly not the Council and I would only suppose that it would be the Ministry
27 of Education.

28 **MS ANDERSON:** You might not you know but -- okay, thanks.

29 **MS HOSKIN:** No.

30 **MS ANDERSON:** Perhaps, Madam Chair, that's a convenient place to take a break?

31 **CHAIR:** Yes, we'll take 15 minutes and return shortly after quarter to.

32 **Adjournment from 3.33 pm to 3.47 pm**

33 **CHAIR:** Thank you, Ms Anderson.

34 **MS ANDERSON:** Thank you, Madam Chair.

1 Welcome back, Lesley and Robyn. We've got a sessions that's about an hour and a
2 quarter before 5 and there are two major topics that I'm going to cover. One is a survivor's
3 experience of bringing a complaint and some of the difficulties that the Teaching Council
4 had under the legislative structure at the time included in that.

5 And then we'll come on and the last topic of the day will be in relation to mandatory
6 reporting and there will be time for Commissioners' questions so that is the direction we're
7 heading in.

8 I'm going to call up document TG C 0000011_00088. I think you'll be familiar with
9 this document from the bundle. I'm just going to call up the first two paragraphs there.

10 Commissioners, to orientate you, this letter relates to a survivor whose experience
11 we're going to look at in more detail and she's also got some questions that she's put
12 forward, the survivor has, that will be discussed with Robyn and Lesley. This is a letter
13 which has come from the Teaching Council to a particular school and it says, "Noting that
14 the school has not applied for cancellation of the teacher's registration, and as a result the
15 board", as it was at the time, "will not have jurisdiction to address this matter until such
16 time as the teacher's practising certificate expires and a new application is made." That
17 must have been quite frustrating for the Council of the day at the time.

18 **MS HOSKIN:** I can only imagine so.

19 **MS ANDERSON:** And so what we're seeing here is a reluctance of a school perhaps to notify the
20 Council at the time in relation to what we can see from the paragraph 1 there, that it deals
21 with a sexual relationship between a teacher and pupil, being at the most serious end of the
22 misconduct scale. I think in your brief, Lesley, you outlined what you thought some of the
23 reasons it might be that schools are reluctant to come forward and disclose a report, as they
24 should, to the Council, reports of serious abuse like this.

25 Two of those had a cultural aspect; the first one was really that everything happens
26 in secret and the barriers effectively to disclosure might be such that nobody outside the
27 abuser and the person being abused has any knowledge. So it's confined to those
28 individuals.

29 **MS HOSKIN:** That is my reflection particularly when this situation occurred.

30 **MS ANDERSON:** And then there may be cultural aspects in relation to the internal culture of the
31 school where the behaviour is normalised, and there may also -- the other element you
32 identified is that it's just not seen as something that should be reported outside of the
33 school.

34 **MS HOSKIN:** I agree, and just for clarity, those are my reflections of the time.

1 **CHAIR:** I appreciate that there's been some redactions about date, are we allowed to know
2 roughly when this -- is this a contemporary matter or an historic matter?

3 **MS ANDERSON:** It's in the early 2000s.

4 **CHAIR:** That's helpful, that's all we need to know. Thank you.

5 **MS ANDERSON:** And this legislative gap has been fixed, hasn't it, where you couldn't really do
6 anything between the renewal process and the knowledge that had come to you?

7 **MS HOSKIN:** That's correct.

8 **MS ANDERSON:** So that's a gap that's been fixed. But in terms of the reporting obligation
9 today, the way that that gap has been fixed is through the mandatory reporting of serious
10 misconduct, is that right? Real-time reporting.

11 **MS HOSKIN:** Yes, that is the formal mechanism put in place to ensure the employer for a
12 mandatory report reports immediately to the Council.

13 **MS ANDERSON:** And so looking at this through a survivor's eyes, they've come to you, to the
14 Council, they've disclosed a complaint, and then the survivor must have also needed to be
15 told, "Wee can't do anything because the school hasn't reported it"?

16 **MS HOSKIN:** Yes, and I can see in the evidence in fact how hard that Council worked at that
17 time to try and get the right outcome, and I'm sure all parties that were trying to achieve
18 that were frustrated.

19 **MS ANDERSON:** And the witness that we're talking about, Mrs N, you've read the statement, in
20 her supplementary statement, that she's provided?

21 **MS HOSKIN:** I have.

22 **MS ANDERSON:** I'll orientate the Commissioners and those who are listening to the scenario
23 before we go through some questions.

24 This was a student complaint to a faith--based school that her teacher had had sex
25 with her. Before the school board could determine the guilt of grave misconduct -- and
26 there's another narrative that I won't go into now about what that experience of that school
27 inquiry was for this particular survivor -- the teacher resigned and of course what that
28 meant was that the school then considered it didn't need to determine the misconduct
29 allegation.

30 And, Lesley, I think we can agree that's probably an accurate summary of it --

31 **MS HOSKIN:** That's correct.

32 **MS ANDERSON:** -- of the situation? Then, as we've said, the survivor came to the Council and
33 then was informed that because the college itself had not sought cancellation of this

1 teacher's certificate, there was nothing the Council could do at that time. And the survivor
2 clearly found that quite a traumatic experience.

3 **CHAIR:** Did you not have an own motion ability at that stage?

4 **MS HOSKIN:** No, they did not.

5 **MS ANDERSON:** But this survivor was very determined to ensure that other people did not
6 experience abuse by this person and she fought very hard, didn't she, for the Council to
7 consider the registration issue?

8 **MS HOSKIN:** She absolutely did.

9 **MS ANDERSON:** And in terms of the internal process, if that complaint was received today,
10 I just digress a little bit from -- the complaint would come in, it would be triaged. If it was
11 over a certain level, which this certainly would have been, it would have been referred to
12 the Complaints Assessment Committee who would have done perhaps an initial
13 investigation or referred it directly to the Disciplinary Tribunal?

14 **MS HOSKIN:** And, importantly, we would have put in an undertaking not to teach and the Police
15 would also be -- if the Police were not already informed, then we would have informed
16 them.

17 **MS ANDERSON:** And is that regardless of whether the survivor wished to bring the Police into
18 the picture?

19 **MS HOSKIN:** I'm sure that would -- no.

20 **MS ANDERSON:** I think you would appreciate there are a lot of victims of sexual abuse who do
21 not find the police process comfortable to engage in?

22 **MS HOSKIN:** Yes. Absolutely. Should we be able to aid in connecting that process for them,
23 then we will do that. If they don't wish that, then obviously they need to maintain the self-
24 determination of that.

25 **MS ANDERSON:** And then in 2001, at this the stage the survivor was living off-shore, working
26 in another country, and she received notification saying that her case was to be heard by the
27 Council, but that she couldn't appear by CCTV and she needed to attend in person; that's
28 right, isn't it?

29 **MS HOSKIN:** That is the account of the witness.

30 **MS ANDERSON:** And so the survivor has left her off-shore job, come back to New Zealand, and
31 paying the cost of her own flights to return, but in fact the hearing was delayed for some
32 years after that point, wasn't it?

1 **MS HOSKIN:** Yes, it was further frustrated by the teacher going to an Ombudsman, to a Privacy
2 Commissioner, seeking court proceedings around that ability to voluntarily deregister to
3 avoid the process, and so the many years of delay were because of those processes mostly.

4 **MS ANDERSON:** Perhaps understandable processes but still very difficult, very, very difficult
5 from a survivor perspective?

6 **MS HOSKIN:** I can't even -- you know, I look at that in the role we have and imagining wanting
7 to do the right thing and I can see the organisation at the time did want to do the right thing
8 and not having the powers or finding the ability to be able to do that, I can't reconcile that
9 and I can only imagine for that survivor of abuse how traumatising that must have been.

10 **MS ANDERSON:** And it would be right, wouldn't it, that in fact those same other legal
11 mechanisms might today cause delay in one of the Council's processes relating to a
12 particular teacher?

13 **MS HOSKIN:** That is true. Other processes would cause a delay.

14 **MS ANDERSON:** And so three years after returning to New Zealand, the survivor has, from her
15 perspective having her case heard, but is it fair to say that perhaps she wasn't participating
16 in a process that was her case at that time, she was at the centre of something which was a
17 process about a teacher?

18 **MS HOSKIN:** That is correct.

19 **MS ANDERSON:** And we know, don't we, that she's described that experience of giving
20 evidence in person in that hearing as horrific.

21 **MS HOSKIN:** She has, and my review of that is I completely agree, can only have been horrific.

22 **MS ANDERSON:** And part of the reasons, one of the reasons she identifies for the experience of
23 being in that process which was only to ensure that other students were safe from that
24 person, was that she found herself in a panel of 20 in the room of teachers who had no
25 specific training.

26 **MS HOSKIN:** That's correct. So, because of the delays, the Teachers' Registration Board had
27 been disestablished, they'd become the Teachers' Council, we've had many names, and the
28 ability -- the law around a CAC and a DT was governed --

29 **MS ANDERSON:** That's the Disciplinary Tribunal.

30 **MS HOSKIN:** Sorry, my apologies, the Complaints Assessment Committee and the Discipline
31 Tribunal were established and that 2002 law took effect in 2004. It was, in effect, the
32 governing council, the board that were the members of the Complaints Assessment
33 Committee and the Discipline Tribunal. So her reflections of teachers who were not skilled
34 to run that tribunal hearing, I think is an absolute fair reflection.

1 **MS BAKER:** May I just add something there, not in any way to -- I totally agree with what
2 Leslie's saying. I think in this role it was -- I think there were about nine councillors there
3 at the time, they were actually there as the governors of -- they were governors of the
4 Teachers' Council at the time. So although they came from a teaching background, they
5 were there in that moment to enact what they were able to under the legislation and they
6 were required to, as a whole group, listen, but they were working as governors in a very
7 different time, so I just think that's important to say.

8 **MS ANDERSON:** Because it's a very unusual aspect of a governance role, is to have an
9 operational disciplinary function, isn't it?

10 **MS BAKER:** Yes, it's just a slight nuance but I think it matters, because the people around the
11 table, in retrospect, didn't take a duty of care to the witness. At the time they would have
12 been looking at their role as governors to make the best decision about this teacher, and
13 given the evidence, they would have been putting all their focus on making sure that they
14 had sufficient evidence to make the right decision. So their eyes -- which you have picked
15 up, their eyes were on the teacher and the decision and not the witness.

16 **MS ANDERSON:** The Committee records, I think, of that clearly have at least 19 people in the
17 room, some of them lawyers, some of them, as you say, the governors, a stenographer, and
18 obviously the teacher.

19 **MS BAKER:** That's right. Yeah.

20 **MS ANDERSON:** And because the teacher represented himself, he was able to cross-examine the
21 survivor for quite a long period of time. That's what happened, isn't it?

22 **MS HOSKIN:** That is what happened.

23 **MS ANDERSON:** And she said that the Chair enabled irrelevant questions to be asked of her.
24 Now, we did try to -- we did ask you for a copy of the transcript and there's clearly a record
25 of that, the transcript from the hearing being delivered to the Teachers' Council, and you're
26 not now able to find it, are you?

27 **MS HOSKIN:** No, we're not and we have taken further steps to see if it was hidden among some
28 other papers, so we have exhausted our ability to try and find that. It is not with the other
29 evidence.

30 **MS ANDERSON:** And we'll come on later on to -- because the survivor's got some questions and
31 some natural concerns about who's got access to that.

32 **MS HOSKIN:** I understand.

33 **MS ANDERSON:** So I'm going to read out into the record, Commissioners, the survivor says:

1 "I felt physically sick during this experience, embarrassed having to reveal graphic
2 details to strangers who were judging me and cross-examining me. I found it very
3 traumatising for the content I was having to explain. I was crying and shaking and one
4 teacher leaned over with tears in her eyes and said she hoped it would be over soon. But
5 no one stopped him, the teacher asking me these questions."

6 So years later she's reflected on this and she said, "The teacher was able to continue
7 his abuse of power over me through the Teaching Council hearing, sitting metres away
8 from me, cross-examining and tormenting me for more than an hour. He asked irrelevant
9 questions, such as whether I was stopped by Customs agents at the border when I was
10 trying to leave the country for a holiday."

11 She says:

12 "The Chair allowed it, she allowed all his questions and in no way acted as a
13 gate-keeper for my safety. She treated all his rights as though it was a court setting, but it
14 was not a court setting. I was a victim and he was continuing to victimise me and she
15 allowed it. She was clearly inexperienced and out of her depth."

16 Now, we know coming on from this, that she achieved the outcome that she wanted
17 in terms of safety of other teachers¹ and that the decision of the Council was to deregister
18 the teacher. You've indicated that you think the processes of a Disciplinary Tribunal
19 hearing today would be a different experience for a survivor. I'm going to ask you to
20 explain why you think that's the case, because when I look at the Teaching Council rules of
21 the Disciplinary Tribunal process, in which the Complaints Assessment Committee acts as
22 a prosecutor in the hearing, and the rules are very much as if it's a criminal trial process; so
23 against that background, what would be different today for a survivor participating in a
24 tribunal hearing? Would there be other modes of them giving evidence, do they need to be
25 present? How would that operate?

26 **MS HOSKIN:** Before I go on, I can't not acknowledge and sincerely apologise for what happened
27 there. It just should never have happened, and I can't continue until I say that.

28 **MS ANDERSON:** I think we're both very disturbed by it, aren't we?

29 **MS HOSKIN:** We are, and rightly so. I'm okay with that, these are terrible things that have
30 happened to people who deserved the care and protection of the organisation.

¹ Point of clarification, Mrs N achieved the outcome that she wanted in terms of safety of other students.

1 So, to answer your question, they are not -- they are a quasi-judicial body and what
2 that means is that they are in effect set up like a courtroom and operating like a courtroom,
3 possibly not dissimilar to here today.

4 But what is very different is the things that sit outside of the rules, and the rules are
5 one part of what we must do, but they don't go far enough to how we must do it. Some of
6 the changes and some of the things why I am confident to say that that wouldn't happen
7 today, firstly, we have a very experienced Chair who is a lawyer, so more than seven years
8 experience, who knows things like --

9 **MS ANDERSON:** Can I pause there for a moment, just a side question. I wasn't able to find on
10 your website who are the members of the Disciplinary Tribunal. Is there a public list of
11 who's on that tribunal?

12 **MS HOSKIN:** There can be, absolutely. From time to time we put it on the website, they change.

13 **MS ANDERSON:** It could have been operator error on my part, but I can certainly tell you it's
14 not intuitive to find out.

15 **MS HOSKIN:** No, and I will note that and take that away and rectify that. So the Chair is an
16 experienced lawyer who therefore is very clear around not only in our legislation and our
17 rules where the protection for witnesses and vulnerable people are determined, they are
18 also, I think, more skilled in the understanding of things like pre-conference hearings and
19 determining what safety requirements might be needed.

20 **MS ANDERSON:** Is that because they've had in- addition to their legal training, have those
21 people on that tribunal been given trauma--informed learning? -

22 **MS HOSKIN:** That's correct. Our investigators who are working on behalf of the CIC and those
23 people on the Complaints Assessment Committee and the tribunal now participate in
24 trauma-informed practice and training.

25 **MS ANDERSON:** That's very recent, isn't it?

26 **MS HOSKIN:** It is quite recent. Another thing that happened was the Chair has written a practice
27 note in 2021 on how to work with vulnerable witnesses, so knowledge and understanding
28 of the need and then desire, ensuring the right kind of people are on those panels, so they
29 are populated with teachers still. There are many other things we have done like a learner
30 and whānau support process.

31 **MS ANDERSON:** Is that support for the survivor going through -- during the process, because
32 that's one of the aspects that wasn't afforded to this particular survivor. There was no
33 support provided to her --

34 **MS HOSKIN:** That's correct.

1 **MS ANDERSON:** -- for the actual process.

2 **MS HOSKIN:** That's correct, and I don't want to overstate it. The role that we perform there is to
3 ensure they understand the process, we encourage them in these sorts of situations to
4 become what we call the initiator, so to lay their own complaint because in law that enables
5 them to get more information at different points.

6 **MS ANDERSON:** Can you just unpack that for me a little bit? So they're not -- it's still the
7 Complaints Assessment Committee that's bringing effectively the charge against the
8 individual teacher and prosecuting it in the tribunal. So as the initiator, are you saying that
9 they have got more process rights?

10 **MS HOSKIN:** That's correct. So, described in our rules, they get the triage outcome, a CAC
11 decision letter, notice of referral if it was referred to the DT. So certainly not any of the
12 content that is protected for confidentiality reasons. But if they weren't an initiator, and by
13 that I mean the complainant, it's the parties to that proceeding remain the CAC and the DT.
14 And this is just through horrific experiences, but also just -- where I'm getting complaints
15 as the Chief Executive of people being frustrated by our process, where they feel left out of
16 it, they don't know what's happening and the way that's constructed means that without
17 being initiator, they cannot get that information.

18 **MS ANDERSON:** And that's a reflection, isn't it, that the process is not about resolving what the
19 survivor's bringing to the table, their motivation for coming forward, it's responding to, in
20 the gatekeeping sense, of should this person be in the profession or not, and that's the focus.
21 So there's still probably quite a bit of the ship to turn there, isn't there, to ensure that the
22 process is more survivor--friendly, because not everyone might want to go through a
23 procedure where they have to become an initiator to participate in a -- at an enhanced
24 information level?

25 **CHAIR:** Could I ask, because I haven't looked it up, and I'm sorry for that, are these rules
26 statutory rules, are they in your statute?

27 **MS HOSKIN:** Yes, they are.

28 **CHAIR:** Or are they regulations attached to it?

29 **MS HOSKIN:** They are secondary legislation, they are the Teaching Council Rules 2016.

30 **CHAIR:** So they're rules? Sorry, what year were they?

31 **MS HOSKIN:** 2016, the most recent ones that we have. There were previous rules 2004 when
32 that first body -- so the Teachers' Registration Board, the first organisation, had no powers.
33 The next organisation, Teachers' Council, had some, and then lots of name changes, there's
34 an Education Council which predominantly has the same powers at the Teaching Council.

1 **CHAIR:** My short question really is: given they're just rules, albeit secondary legislation, it would
2 be within your -- the ambit of the Council to ask if they could be amended or changed or
3 rewritten; would that be right?

4 **MS HOSKIN:** Yes, and we are in the process of doing that very thing.

5 **CHAIR:** Perhaps in the light of some of these experiences?

6 **MS HOSKIN:** Undoubtedly, absolutely. We will -- and that is a commitment and certainly the
7 Council, the Chair, we are not missing this opportunity that happens to coincide with the
8 time where we are refreshing the rules. To your point, what do we need to ensure that that
9 witness or survivor of abuse, while protecting the proceeding and natural justice, what
10 needs to be done to ensure that they are looked after and cared for and able to get, I don't
11 know what -- we haven't done the work, but it's certainly a question on our mind.

12 **COMMISSIONER ERUETI:** Sorry, counsel, so the Act, the primary statute is the Education and
13 Training Act? Yes, thank you.

14 **MS HOSKIN:** [Nods].

15 **MS ANDERSON:** In terms of recalibrating the rules, are you proposing to engage with survivor
16 advocacy groups so that you can develop with that collaborative approach to ensuring the
17 survivor's voice is part of the process?

18 **MS HOSKIN:** 100%. This is not an area that I think we could add our own thinking to and get it
19 right.

20 **MS ANDERSON:** At the end of the process here, the teacher's registration was cancelled, but
21 when somebody looks on the online registration for the teacher's name and sees that it says
22 "cancelled" or sometimes it might say "censured" or some other kind of very brief
23 annotation, how would any member of the public appreciate what might have happened to
24 cancel that person's registration, or from the Council perspective, do you think that the
25 world understands that that annotation means misconduct? That the public would interpret
26 it in that way?

27 **MS HOSKIN:** I don't think that, that they would -- that they would have the understanding to
28 necessarily interpret that. The purpose, the primary purpose for the register is employers do
29 need to ensure that someone has a current practising certificate, or if there are conditions,
30 what they are. It's another area we want to explore. Do we have the right level of
31 information there for the public interest component? We've taken, I guess, historically a
32 much more careful view in relation to confidentiality and privacy, but what I would say, for
33 the public, the Discipline Tribunal hearing is an open hearing and anyone can attend. And
34 in addition, the decision, the judgment, is published on our website.

1 **MS ANDERSON:** That's once it goes -- if it's gone through that process?

2 **MS HOSKIN:** Correct. But most likely it has, in instances where you're referring to, around
3 cancellation.

4 **MS ANDERSON:** Before we move on to the questions that Mrs N wants to ask, she's
5 characterised her experience as saying that the Council put her in a dangerous and
6 life-threatening position. And I just wonder what your reflections are on her sense of the
7 peril that she was in.

8 **MS HOSKIN:** Having read back through and reviewed that, all I can say is I fully accept her
9 view, her perspective, her position, and again, I wholeheartedly apologise for that, I accept
10 that that is how she would have felt.

11 **MS ANDERSON:** So, turning to some of the questions that Mrs N has for the Council, in terms
12 of the online register which identifies the person's teacher registration is cancelled, she's got
13 a question about how, if the person's got a job in a different industry, how would that
14 industry have any awareness of the severity of cancelling a teacher's registration?

15 **MS HOSKIN:** I think it comes back a little bit to what our role is, and the regulatory body to say
16 who can be a teacher, and if you stay, can you stay, or do you need to exit the profession.
17 So that role means that we are providing that information in relation to people working in
18 the education system. I'm not sure what other industry she might be referring to, but
19 certainly in relation to access to children and being a core worker, in those other industries
20 or those organisations, those criteria of Police vet and things would still stand.

21 **MS ANDERSON:** Does a Teaching Council cancellation, does that information flow across to
22 Police and would show up if somebody was doing a Police vet?

23 **MS HOSKIN:** A Police vet shows convictions or concerns by Police, so it wouldn't use that
24 language per se, but the cause perhaps of why that -- something of a specified offence and
25 things where there's convictions, they would appear on the Police vet, but it would not
26 connect it to also having been cancelled by the Teaching Council.

27 **MS ANDERSON:** For misconduct that might be sexual misconduct; so that information stays
28 over with the Council and never enters the Police sphere of awareness where there's been
29 no related criminal matter proceeded with?

30 **MS HOSKIN:** So I come back to your point. If the person who has been abused chooses not go
31 down the criminal process or path, we don't share that information.

32 **CHAIR:** This is a question for you. We spoke this morning with a witness, I mentioned the word
33 Police vetting and I was corrected, correctly, that, who was it, was it ERO? Was it Mr Pole
34 who said that, no, it's not vetting, there's another word for it which is wider than vetting

1 where the Police take into account things other than criminal convictions. This is not for
2 you, but it's something for us to look at, is what the scope of that wider suitability finding is
3 and whether it includes teacher deregistration.

4 **MS ANDERSON:** Yes, I think my point is it probably at this stage doesn't, which is an obvious
5 error for -- area for opportunity for greater information sharing.

6 **CHAIR:** Absolutely. I think we first need to know whether it is or not for sure, and then if it's
7 not, then obviously I think you'd agree with that?

8 **MS HOSKIN:** I would, in preparing to respond to the questions that were posed by Mrs N, I did
9 look into that and I can confirm that that is not the case, and Mr Pole's -- it's still a Police
10 vet, but, for example, we get different amounts of information at different levels of concern
11 because of the fact that we're looking to put that person in with children.

12 **CHAIR:** Thank you for that.

13 **MS ANDERSON:** Just returning to the topic of the transcripts, and Mrs N's got some very
14 specific questions around that. One of them was whether a copy of that had been provided
15 to the abuser, because obviously she never received a copy. Are you able to tell from the
16 records whether it was sent to the teacher who cross-examined her?

17 **MS HOSKIN:** I can't confirm or deny it. There's nothing that indicates to me that it did or did
18 not.

19 **MS ANDERSON:** So, again, you probably can't answer most of her questions about storage and
20 security, but perhaps what you can outline for Commissioners, because in all Disciplinary
21 Tribunal matters and even in the investigations and triaging stage, there will be highly
22 sensitive personal information disclosed. What is the security of that information? What
23 are your systems for ensuring the privacy of the individuals are protected?

24 **MS HOSKIN:** So at that time I would reflect that it was an entirely paper-based system that was
25 used, although the transcript may have had a digital recording process. The environment
26 we work in today is mostly in an online digital environment. We understand the duty of
27 care and I'm sure they did too. Clearly, some things go missing at times, but we do ensure
28 that that information is protected and safe and if it is in physical, because sometimes it is,
29 then in storage, it is stored in a secure offsite storage.

30 **MS ANDERSON:** So you're confident with the current practices, both in terms of document
31 retention issues that's occurred here, shouldn't arise in the future for others and also that
32 the -information only- those who really need to see it have access to it? -

33 **MS HOSKIN:** I would. I would just account for human error.

1 **MS ANDERSON:** In terms of Mrs N's question about why she had to sit in a court-like room in
2 person, what's your response to her question about why she had to participate in that way?

3 **MS HOSKIN:** So this is just me looking at it and imagining why that might be. I think it was set
4 up like a courtroom deliberately. I think the idea of a quasi-judicial body in proceedings,
5 I felt that -- from what I can see and actually experienced, this was not, sadly, an isolated
6 event in the way that the proceeding happened, of course, and at the point of change when
7 the Education Council was coming in, I did sit in and observe the very thing that was
8 described there, not of a witness being so terribly looked after, but certainly that very -- you
9 know, a courtroom, formal power, you know, displacement, being separated from support
10 people and whānau, and I can only imagine they felt that that was their ability to get to the
11 right decision and hold those things.

12 What I would say, and I will continue to say, is how we get there is just as important
13 as getting the right decision, and I think we agree, they got the right decision, the teacher
14 had his registration cancelled.

15 **MS ANDERSON:** After many years.

16 **MS HOSKIN:** After many years, but the process there, which we acknowledge, it was not - it was
17 just not satisfactory. She was not looked after, she was not well- -prepared to -- for it, for
18 what would happen in there, what the possible outcomes --

19 **MS ANDERSON:** Do you mean the Council process had not well prepared her, as opposed to
20 some fault of her own for not preparing herself?

21 **MS HOSKIN:** Absolutely not, no, totally looking at the responsibility of the organisation, where
22 today there'd be a written document that, you know, would be given to the witness to
23 ensure they understood what was happening, how it would happen. They would have a
24 contact person to be able to speak to about any questions or concerns that they might have.

25 **MS ANDERSON:** And in terms of her question around why the abusive teacher was actually
26 allowed to cross-examine her in person, can you comment on why that might have
27 happened at the time, as the first limb, and the second limb is whether that could still
28 happen today under the current regime?

29 **MS HOSKIN:** So reading back through the evidence and my knowledge of the process suggests
30 to me that what they were attempting to do was allow for natural justice for those questions
31 to be asked, not intervening and not ensuring and using all the provisions that should be
32 been --

33 **MS ANDERSON:** Just on the question of whether the accused teacher can be the one asking
34 questions of the survivor?

- 1 **MS HOSKIN:** So then it did happen, and I'm imagining they felt that that ability for those
2 questions to be asked, I don't think they realised that there could be another way and that
3 there should have been another way to protect the witness.
- 4 **MS ANDERSON:** But if a teacher today was facing a charge and representing themselves in a
5 tribunal hearing, could they in fact be in the same position where they're not represented by
6 counsel, they're representing themselves and conducting the hearing on their own behalf,
7 that they would get to ask questions of a survivor?
- 8 **MS HOSKIN:** Absolutely not.
- 9 **MS ANDERSON:** So that would go through the Chair?
- 10 **MS HOSKIN:** It would go through the Chair. The survivor of abuse would have options around
11 how that might work; they could be in the room with screens, they could use video, they
12 could be asked by somebody else, the Chair. It's well -understood that the need to protect
13 those vulnerable people and not allow, as she rightly describes, a continued environment of
14 abuse, that would not happen, that would be --
- 15 **MS ANDERSON:** So that process of questions through the Chair to the survivor giving evidence
16 in the tribunal, which of course to support the Council's objective of only having fit and
17 proper people in the profession, does that apply also where a teacher is legally represented,
18 in the sense of do all questions at all times go through the Chair?
- 19 **MS HOSKIN:** That's right.
- 20 **MS ANDERSON:** So quite a different change in process over the years which I'm sure Mrs N
21 will be very pleased to hear, that others won't have that same experience.
- 22 **MS HOSKIN:** Yes. I hope she is reassured that that is not what happens today and would not
23 happen.
- 24 **COMMISSIONER ERUETI:** Could I just confirm that the remedy is cancellation, there's no
25 rehabilitation or counselling or any other form of redress, today?
- 26 **MS HOSKIN:** For the teacher after cancellation or for that witness?
- 27 **COMMISSIONER ERUETI:** For the witness, yeah.
- 28 **MS HOSKIN:** No, there isn't any at this stage, and it is -- those are the types of things that we
29 need to consider how -- it might not be us, but how do we reassure ourselves that they have
30 been cared for through the process. At the moment, we can find little system design
31 opportunities to support them.
- 32 **COMMISSIONER ERUETI:** And does that include the advocacy support as well?
- 33 **MS HOSKIN:** It does.
- 34 **COMMISSIONER ERUETI:** Yeah, okay. Thank you.

1 **MS ANDERSON:** Madam Chair, we'll move on from the survivor's, Mrs N's experience now, and
2 move into discussion, some questions, probably for about 15 minutes. Do Commissioners
3 think they might need 20 minutes or how long do you think?

4 **CHAIR:** We never know but we're getting better and better at confining things to the very
5 essential, so let's see where we go.

6 **MS ANDERSON:** I'll attempt to go for the next 10 minutes or so on mandatory reporting.

7 **CHAIR:** Okay.

8 **MS ANDERSON:** So, clearly, a very critical and central element of the safety regime for children
9 is the mandatory reporting regime. One of the documents in the bundle that I won't take
10 you to because I think if I describe it you'll recall the circumstances, so it relates to a
11 Complaints Assessment Committee decision last year to refer a matter to the Disciplinary
12 Tribunal relating to a principal's repeated endorsement of a teacher as being fit and proper.

13 **MS HOSKIN:** Yes.

14 **MS ANDERSON:** And so the circumstances, the facts that emerge in the Complaints Assessment
15 Committee document is clearly that there had been a report of abuse against a teacher in
16 2012, and there'd been subsequent certifications by the principal on two occasions after
17 that, that the relevant teacher was fit and proper.

18 **MS HOSKIN:** [Nods].

19 **MS ANDERSON:** So inherent in that circumstance, which has gone through a process, including
20 a Disciplinary Tribunal process, is the fact that the original report of abuse in 2012 was not
21 reported to the Council.

22 **MS HOSKIN:** That's correct.

23 **MS ANDERSON:** And there are other instances we've seen, I think, that that's not an isolated
24 incident in itself.

25 **MS HOSKIN:** That the mandatory report doesn't come to us?

26 **MS ANDERSON:** Yes.

27 **MS HOSKIN:** Most often, so certainly in the situation you're referring to where it wasn't known,
28 that is true. I would say I do believe that the process of mandatory reporting by schools is
29 well known and is well used, it's been in place for a number of years. There are of course
30 instances where it doesn't happen in a timely fashion.

31 **MS ANDERSON:** And there's also some evidence in the documents, isn't there, of quite lengthy
32 delays for information coming from the courts through the court registrar notifications of
33 convictions.

1 **MS HOSKIN:** Yes. There are, I think, two examples there, and again I would say, on the whole,
2 since that was put in place in 1996 even, that works reasonably well. There is an aspect of
3 maybe human error moving into the digital world. Perhaps we can get even better at
4 ensuring that happens every time.

5 **MS ANDERSON:** And we're just going to call up a document which is a December 2018
6 document, TG C 0002439. This is a Teaching Council response to an Official Information
7 Act request. So we'll just call up the top part of that letter. It's a 2018 response. You've
8 been asked about how many fines have been issued for failing to manditorily report, how
9 many investigations have been conducted under section 396 of the Act, so that's the
10 provision, isn't it, that --

11 **MS HOSKIN:** That's correct.

12 **MS ANDERSON:** Because it's the Council's role to monitor and enforce the mandatory reporting
13 obligation.

14 **MS HOSKIN:** That's correct.

15 **MS ANDERSON:** And if there have been any investigations or fines. And the answer is that
16 there have been no investigations or prosecutions under that section at that time. And of
17 course as a consequence no convictions. In terms of no investigations of failure to
18 manditorily report, what's your view of whether the Council is adequately meeting its remit
19 to actually monitor whether people are reporting in accordance with the law?

20 **MS HOSKIN:** So the question as I see it in the OIA refers to investigations conducted under
21 section 396 of the Education Act. And we have not done that, so that's investigations to
22 prosecute. What we have done, so we absolutely consider whether someone should have
23 sent us a mandatory report if they haven't. The actions that we have taken, so we have not
24 prosecuted, but what we have done, we have considered prosecution, we haven't taken that
25 step, but what we have done is taken an own motion to investigate those decisions and
26 behaviours of the person that should have sent that mandatory report to us. And, again, it
27 comes back to sort of the most severe -- so we could fine, potentially, if that was -- if we
28 chose to, but the most severe action we can take is to exit that person from the profession.
29 So at that time --

30 **MS ANDERSON:** So that becomes the topic, the subject of a disciplinary charge against the
31 person who failed to report being misconduct effectively, is that --

32 **MS HOSKIN:** Correct.

33 **MS ANDERSON:** And it goes through that misconduct route --

34 **MS HOSKIN:** Same process.

1 **MS ANDERSON:** -- as opposed to this investigation or prosecution route.

2 **MS HOSKIN:** Yes, so even -- we could also prosecute.

3 **MS ANDERSON:** That was what I was just coming to. Why does it seem to be either/or.

4 **MS HOSKIN:** It's not either/or, so I think we have considered prosecution in the instance I'm
5 thinking of and I think possibly the situation you've just recently referred to, it was
6 considered. And the decision was that we would not do that. The decision from the
7 Tribunal and the penalties awarded in that situation suggested that we would not have the
8 evidence to be successful with the prosecution. But we did consider it.

9 **MS ANDERSON:** So you let that first process run through and then might have a look at whether
10 there's an evidential basis for effectively a beyond reasonable doubt standard for a
11 prosecution, because there'd be two different standards in your processes?

12 **MS HOSKIN:** That's correct.

13 **MS ANDERSON:** The big question for the Inquiry of course, because a lot of people advocate
14 mandatory reporting as a real solution to prevent abuse, keep people safe. It's obviously
15 part of a system, not the complete answer. But the big picture question is, how reliable is
16 the system and how do you know that the system is reliable, because almost certainly the
17 incentives for those who are misbehaving is to not comply, whether it's a principal or
18 someone else.

19 So the hard question is, in your monitoring role of how well the profession is
20 complying with this mandatory obligation, what are the steps that you take to satisfy
21 yourself? Is there a formal audit of that function? How -- perhaps I'll come to Robyn
22 because this is really a sort of governance risk management, it's at the governance table,
23 isn't it, of how well the agency's performing its statutory obligation.

24 **MS BAKER:** I think I'll start with Lesley and the detail and then I'll make a governance comment.

25 **MS HOSKIN:** So one of the things we do, and I would -- I have to say mandatory reporting, it is
26 one avenue. We have a system and regulation that has checks and balances and multiple
27 points of entry and where these things might become known to us. But I accept that people
28 see that one pathway as a very critical one and it is certainly -- I do believe it's working
29 well.

30 To answer the question, so we have a governing board, we report to the governing
31 board monthly on -- so we have key performance indicators of the number of matters, the
32 types of matters, how long they are taking to be resolved. What I would say in addition to
33 that is we proactively release on to our website statistical information. Media play a part in
34 asking for that information.

1 **MS ANDERSON:** Those are transparency elements, aren't they, they're not quite the same as
2 what gives you the level of confidence that your professional -- members of the
3 professional body are actually doing the right thing.

4 **MS BAKER:** I think I'll pick that up. I think it's a very good question. We said at the beginning
5 that we know we can improve our processes, we're here to learn. I think that our -- I go
6 back to a comment I made earlier, we have a strong profession, we have a very good
7 commitment to the code and standards. I think people in the profession hold themselves
8 and each other to account.

9 So saying, which is your point, there are always people who don't behave well. I
10 think that's a question that we as a governing board should ponder about what is our
11 assurance of a gap. And that's something we can talk -- we do a lot of obviously
12 conversations with the profession. I'm sure principals will be able to give us good advice
13 about what kind of processes would be useful.

14 **CHAIR:** Can I just interrupt, while you're thinking about these matters. Have you have got a
15 sense of the scale of the problem of non-reporting, the extent to which the requirement to
16 mandatorily report is breached. You're trying to prove the invisible, I suppose.

17 **MS HOSKIN:** What I can say is where there's a delay we certainly -- so the matter comes to us
18 somehow, whether through Police, the courts, we see it in the media.

19 **CHAIR:** So you'll get the information, but it's not reported by the school?

20 **MS HOSKIN:** Not how it should have been, so --

21 **CHAIR:** So that might give you have a sense of numbers, mightn't it?

22 **MS HOSKIN:** Yes, and so I can't tell you who never reported obviously and should have, but in
23 those ones, they are fewer and further between year on year. The knowledge and
24 understanding and the work we have done on those expectations, I am confident it is
25 well-known from the board, to the principal, to the staff, we have done an extensive amount
26 of work on making sure they understand that expectation.

27 **CHAIR:** Right. Can you give us a sense of numbers at all?

28 **MS HOSKIN:** I can't, but that is something that we could interrogate our data for.

29 **CHAIR:** I think it would be good to know and if there's a trend downward or a trend of any sort it
30 would be good to see over the last few years, if you've got those numbers.

31 **MS HOSKIN:** To give you a sense on my sort of intuition of that, that we are talking maybe a
32 handful, because I have written recently to a principal where there was a delay, to remind
33 them of their obligations. So we are aware of that and we do intervene. Perhaps to your
34 point, what we're not doing is maybe a formal collection of that data on a regular basis to

1 report. So I don't think it's a large number and certainly where we see that happening, we
2 do intervene. And we have own motion for that very reason.

3 **COMMISSIONER ERUETI:** Do you look at other jurisdictions like we're talking about Victoria
4 and a mandatory reporting and several States in Australia have this, to look for insights
5 about how to ensure that the system is working properly the way it should?

6 **MS HOSKIN:** Yes. I meet regularly with the chief executives of all of those bodies and we do
7 talk about -- although very different environments, of course, we do talk about how better
8 to do that very thing.

9 **COMMISSIONER ERUETI:** Are you talking about other jurisdictions?

10 **MS HOSKIN:** Yes, the Australian, all of the Australian States and then actually internationally
11 there is also a group for teacher registration boards who don't meet as often but meet and
12 talk about those things that are common in all of our systems, the challenges of.

13 **COMMISSIONER ERUETI:** That's helping?

14 **MS HOSKIN:** It is. Our systems are very different but because there are common concerns they
15 don't know, how do they you know, those conversations, I think, are helping us to at least
16 understand the problem. I don't have an answer, is what I'm saying.

17 **CHAIR:** Yes, Ms Anderson.

18 **MS ANDERSON:** Thank you, Madam Chair. Of course we could continue for quite some hours
19 with fruitful conversation and dialogue and I've got only partway through some of my
20 topics, but I think I'll draw it to a close here and have questions from the Commissioners.

21 **CHAIR:** So you are quite certain you've ground to a halt?

22 **MS ANDERSON:** I've done all the essential work, and other work we can do offline, but follow
23 up information.

24 **CHAIR:** Very well. I'll just take a moment for us to take breath and see if there are questions
25 from my colleagues.

26 **COMMISSIONER GIBSON:** Just quickly, on the Disciplinary Tribunal, I think you said there
27 was a lawyer chair and teachers. Are there any lay people, non-teachers involved in that
28 process?

29 **MS HOSKIN:** On the Complaints Assessment Committee there are three teachers and a layperson
30 and in the Discipline Tribunal they have a chair who is an experienced lawyer plus two
31 teachers, so no layperson on that one.

32 **COMMISSIONER GIBSON:** Is that in the regulations, how that's made up or is that...

1 **MS HOSKIN:** It is in the regulations. I can't recall quite off-hand about that layperson. I know
2 that is what we have, but it points to a very good question around our -- the role that
3 layperson has in those processes.

4 **COMMISSIONER GIBSON:** The mix of, I think you said, there were 13 people on the
5 Teaching Council at the moment. Is that a general diversity across the population; Māori,
6 Pacific, disabled people?

7 **MS BAKER:** I'll answer that. Yes, there are 13 people. Seven are elected by the profession, so
8 secondary, primary, primary principal, secondary principals, early childhood settings, and
9 the other six are appointed by the Minister of Education. And the usual process is the
10 elections are held, and then the minister appoints the remaining councillors to ensure both
11 diversity and knowledge, the kind of mix of knowledge to be a strong governing group
12 today. So as a chair -- and the chair is appointed by the minister.

13 **COMMISSIONER GIBSON:** So are there Māori and Pacific and disabled people on that group?

14 **MS BAKER:** There are Māori and Pacific. There is currently no disabled person on the group.

15 **MS HOSKIN:** Sorry, I just want to slightly --

16 **MS BAKER:** Yes, you can add that, actually --

17 **MS HOSKIN:** -- adjust that. There is someone representing the disability sector. I'm not aware
18 of any personal disability or -- but I do know that the appointment was made for that
19 purpose.

20 **COMMISSIONER GIBSON:** My question was about was there disabled people. So thanks.

21 **COMMISSIONER ALOFIVAE:** Thank you, tēnā kōrua. My question is, we've heard a lot of
22 survivor evidence around the imbalance of power, we've had a couple of examples this
23 afternoon, and I'm really wanting to pose to both of you, and I really appreciated your
24 comments, Ms Baker, that you feed back into the profession, to your constituency, there's
25 lots of room for dialogue back and forth. In terms of where you've placed, I was going to
26 say sexual offending but inappropriate sexual behaviour, inappropriate relationships, the
27 age of consent in New Zealand is 16. So when you get to those older children that would
28 be vulnerable where there was inappropriate relationships happening, it might be easy to
29 say that consent is not an issue because they're over 16.

30 Is there any discourse in the profession, or even from the trends that you might see,
31 about raising the age of consent to 18 specifically for the school population?

32 **MS HOSKIN:** Not that I'm aware of, for your question. What I might add is in our role, that
33 criminal distinction is irrelevant and we do engage students who are over that 16-year-old

1 age and get their testimony, even though that might not or would not have been part of the
2 Police process.

3 **COMMISSIONER ALOFIVAE:** But for survivors in terms of the impacts what we hear years
4 later they come back, but they can track the roots of the trauma to the abuse that actually
5 happened in the schools. Whether or not, philosophically, in terms of honouring the
6 profession and you talk about the mana of the teachers, the mana of the students, whether or
7 not that's a discourse that would be worth having.

8 Of course, it's a wider societal conversation, but just in terms of driving the
9 discussion, to be able to put a stake in the ground, about a group of children, you care for
10 all children in one sense in Aotearoa, that comes through --

11 **MS HOSKIN:** I absolutely do and coming back to our first starting point today around our
12 purpose, for leadership and direction of the profession, being an independent statutory body
13 to be able to speak on those big important issues is what fits into that purpose.

14 **MS BAKER:** I want to say sometimes documents can seem to be not as important as they are and
15 I think the code and standards are really important, because not only do they specify what
16 as a profession you have agreed to be and do, but it gives a very strong conversation, an
17 ongoing conversation. So that's a very big change in recent years, to be able to talk about
18 things that we didn't talk about.

19 So the code and standards provide a vehicle and I think that's been very helpful. I
20 think in the cup half full, that is a very -- it's constructive. It's also, as Lesley pointed out,
21 it's also very helpful when we're looking at where people haven't met the standards but just
22 think of it in a positive sense, too, it does enable the conversations that we should have
23 been having a long time ago.

24 **COMMISSIONER ALOFIVAE:** Food for thought. Thank you very much.

25 **COMMISSIONER ERUETI:** Tēnā kōrua. Independence is so critical, of course. I couldn't help
26 wondering though, listening to the evidence about whether there would be some advantage
27 in having clearer direction in legislation about your fundamental principles. I know you've
28 created them through your code in partnership with teachers, but I just wondered of you'd
29 thought about that, about the utility of having a statutory code which had directions on how
30 the Disciplinary Tribunal should be operating consistently with human rights and Treaty
31 principles, for example. I think it's admirable what you've done with the Treaty through
32 that code, but I also wonder whether if there was that clear direction or legislation, would
33 you need to have gone down that path?

1 **MS HOSKIN:** I'll start with some initial thoughts. I think one of the successes of the new code
2 and standards, and I was asked them being in the same booklet. That was something the
3 profession chose to do, was to bind them together even in the same booklet. They own that,
4 they created them, they consulted on them and I think there is -- I'm not suggesting the law
5 doesn't have a place, but in matters like this where the profession have to hold themselves
6 to account and each other to account, I actually think the environment and the -- them being
7 accepted to the degree they have possibly was, I wouldn't say because they weren't in the
8 law, but I think the process that did occur has meant that they are owned by the profession.

9 **COMMISSIONER ERUETI:** I can see the merit, I can see that, yeah, accept that. Do you want
10 to add to that?

11 **MS BAKER:** I think there's an advantage in using something like a code and standards that have
12 been -- I think there's a strong advantage at this moment in time for a code and standards
13 that's been constructed by a profession and owned to help make the changes at the
14 grassroots, that someone -- that wouldn't happen so easily just by law. That's my gut
15 instinct, that many people working in schools feel already, I won't say "many" -- many New
16 Zealanders feel over-regulated anyway, and so this is just my feeling would be if we can,
17 let's do things that help change behaviour for better, for better outcome for our young
18 people, through ways that are closer to everyday action.

19 On the other hand, I rather lean into your suggestion for different reasons, but I'd
20 have to think about it because I think it's a very interesting suggestion.

21 **COMMISSIONER ERUETI:** Appreciate it. Thank you.

22 **COMMISSIONER STEENSON:** Ngā mihi ki a kōrua, kia ora. I've got questions around
23 Te Tiriti and it's good to see you've got a journey that you're going on, both with the
24 Council itself, and it's good to hear that there is some Māori representation on the board;
25 one?

26 **MS BAKER:** No, many.

27 **COMMISSIONER STEENSON:** Many? Great. Many, as in? I don't need exact, but --

28 **MS BAKER:** About four.

29 **COMMISSIONER STEENSON:** Four out of?

30 **MS HOSKIN:** 13?

31 **MS BAKER:** Four or five.

32 **COMMISSIONER STEENSON:** And it's good that you've acknowledged that there is some way
33 to go with the disciplinary process with regards to a Te Ao Māori lens, and acknowledging
34 the injustices that have been created over time by a biased education system and the impact

1 that's had on both teachers and learners. So you've got a strategy and so I guess my first
2 question is around when would you -- when do you expect the strategy to get to a point
3 where you feel you've got cultural competence, as the Teaching Council, with regards to te
4 reo me Ngā tikanga Māori?

5 **MS HOSKIN:** The strategy has got some dates in there that we are holding ourselves to account
6 for. They have very detailed and explicit descriptions of what we would see te reo, tikanga,
7 it's described in there as it would be part of our DNA, it's not a lens we apply, it's not
8 something we think of after, it's inherent in how we think and behave. Each of those
9 different things have dates against them, and supposing those are the right things and we
10 will review it along the way, then I think by 2025 we have suggested in there when we
11 started that we would have a significant shift in those cultural competencies.

12 **COMMISSIONER STEENSON:** That's great. How far along do you think you're going to meet
13 it?

14 **MS HOSKIN:** The te reo is variable but I am confident that we can get very close and I say that
15 because we've done things that enable that, like our recruitment process. Right in the very
16 interview, we ask for that -- we set our expectation that you will learn and understand how
17 to behave, I won't use the word partner", but understanding your Te Tiriti place. And then
18 every step through that, when they get their letter of offer, we ask them to tick and confirm
19 yet again because we want them to know, if you're going to work here, then this is the waka
20 we are on.

21 And we have another process set up where we defined our kawa and tikanga and
22 kaupapa that says some things are non-negotiable for here. So we've done a lot of those
23 environmental things, if you like, that gives me the confidence that we, if we don't hit those
24 goals we will significantly have shifted how we do that.

25 **COMMISSIONER STEENSON:** Then my second question -- so that sounds really great,
26 ambitious which is an important focus. My second question is around, then, the teacher's
27 progress part of it. Because you have a process which, by which the -- it's another senior
28 teacher endorses that they have -- they either have or they haven't. And I guess it's just
29 around whether or not they get to a point where it's -- how do you know, other than that
30 endorsement? Because what I'm thinking about is, you know, there's so many, what is it,
31 2,500 schools right, so you've got some in areas where Māori will be absolutely the
32 minority and that's where it becomes quite -- they become quite vulnerable in that setting.
33 And whether or not that supervising teacher also feels there's enough competency becomes
34 a question, I guess.

1 **MS HOSKIN:** So firstly acknowledging that as a whole country this is something that we are all
2 learning how to do better in and teachers signed up to this quite a long time ago. How we
3 know if they've met the standards around that specific area is we ask the question. Now,
4 that's unusual because normally that determination happens with the principal or that senior
5 person closest to where that practice is happening and that's the correct sort of regulatory
6 model.

7 To assure ourselves - actually, let me start at the other end. I am sure that we do not
8 have the desired levels of competency, and therefore we have chosen to put a spotlight on
9 that particular area of the standard, and at the Council level. So in a three---year cycle, we
10 would have asked every teacher to confirm if they have progressed, and I can -- I think
11 I may have said it already, I can tell you that in the last year, 317 said no, the teacher had
12 not progressed. And then they have to tell us why would that be, because there's
13 responsibility of course on the endorser and responsibility on the teacher.

14 I can tell you the reasons and things and share them, but we put a spotlight on the
15 expectation and then we are potentially in the future more able to decide at what point do
16 we then use it differently for a hard lever to -- so we'll get generally those willing, push a
17 little bit harder with our lever, we might get more engaged. The reality is that at some point
18 we're going to have to say no longer can you have a certificate to teach in Aotearoa
19 New Zealand without that competency.

20 **COMMISSIONER STEENSON:** I guess that was my next obvious question, because what we
21 have heard from our survivors is the importance of cultural identity and being able to relate
22 to teachers. So thank you for that. Kia ora.

23 **CHAIR:** I think I asked enough questions along the way, so I'm not going to ask any more. I
24 would like to acknowledge the fact that you, Robyn, said it, and I think it's obvious from
25 your answers, that you've come here first of all because you were asked to, but - and you've
26 given your evidence but you've also come here to learn, and I think the Commissioners
27 really appreciate that attitude, that this, although we're sitting here in a quasi---judicial
28 setting, this is about learning both ways, and so I really appreciate your openness to that
29 and thank you very much. Thank you for all the work you did in replying to our notice to
30 produce, I know that was onerous and difficult, and thank you to the team behind you who
31 assisted as well.

32 **MS HOSKIN:** Yes.

33 **CHAIR:** Please convey that. So you are now free to go, but we invite you to stay for our closing
34 karakia. But before we do that, kua mutu aku mahi mō tēnei wiki. It's been a long and hard

1 week, we've worked long hours, but I think no one's worked harder than our survivors, our
2 loyal band of brothers and sisters who have sat throughout the whole week, and I want to
3 acknowledge you. You're all familiar faces to us, we know who you are, and it's of
4 enormous credit to you that you come and you sit and you listen through the interesting bits
5 and the boring bits, but you're showing -- and here's another one coming in now. Just come
6 in, Keith, in time to be thanked. I'm just acknowledging survivor presence today.

7 I don't forget, I know there are survivors who are watching online and thank you to
8 you for your interest, thank you for your contributions so far, and, yeah, we just
9 acknowledge your presence to the cause.

10 So I think it's time that we end it and we hand over to our matua, kei a koe te
11 karakia matua. Nau mai.

12 **KAUMATUA:** Tēnā anō tātou katoa. E tū ana hau tēnei te mihi ana ki a koe. Madam Chair, kei te
13 mihi ana ki a koe. Tautoko me o tātou kōrero, te mamae, te ngākau o rātou, te wairua o ngā
14 tātou te tāngata e mate mamae, nō reira tēnei te mihi. This evening, just on listening to our
15 Chair, talking about the wellness of us, of people. It reminds me of a tauparapara of our
16 tupuna. It talks about our native birds, talks about the tui and how we all relate to the tui;
17 the sweet sound, the sweet note of a tui which brings us joy into our life, into our lifespan,
18 and it creates the wellness in our being. And that tauparapara is whakarongo ake hau ki te
19 tangi a te manu nei a tui, tui, tui tuia. Tuia i runga, tuia i raro, tuia i roto, tuia i waho, tuia ai
20 te muka here tangata. Karanga te ao karanga te pō, ki te pō uriuri, ki te pō nakonako, me te
21 ranga wairua waenganui ki a koutou.

22 So in that saying that the sweet sound that we share together will be above, below,
23 inside and outside, and that brings us, bonds us to the sweetness of life. So that will be part
24 of my kōrero this evening, and we're going to sing Parea Nei to close off.

25 (Waiata Parea Nei). (Karakia).

26 **Hearing adjourned at 5.09 pm to Monday, 22 August 2022 at 9 am**