

**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

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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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TRANSCRIPT OF PROCEEDINGS

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Hearing opens with waiata Purea Nei and karakia tīmatanga by Ngāti Whātua Ōrākei

1
2 **[9.08 am]**

3 **CHAIR:** Just on behalf of the Commissioners, we acknowledge and note, with great sadness, the
4 passing of Sir Toby Curtis and it is appropriate to do that, -- he passed yesterday, it's
5 appropriate to do that today -- and I'm getting nodding from our witnesses - Tā Toby was a
6 great leader in the world of education, but particularly of kaupapa Māori education and he
7 was one of those great champions for Māori education, kaupapa Māori education at a time
8 when it wasn't the fashionable thing to do and he led it and pushed it and pushed it to the
9 point where things have certainly come on in that area and we owe him a great debt of
10 gratitude for that. So- it's fitting on this day, which is devoted to the question of abuse and
11 neglect in education, and with the issue of cultural neglect as an issue, that we mark his
12 passing and we do so with sadness and with great respect.

13 Good morning everybody, just for those who cannot see, my name is Coral Shaw, I
14 am the Chair of the Royal Commission. I am a Pākehā, elderly woman with chin length
15 white hair and I wear glasses. And I'll ask each of the Commissioners to introduce
16 themselves now in a similar way. Paul.

17 **COMMISSIONER GIBSON:** Kia ora, Paul Gibson, I'm a 6-foot-tall Pākehā male with greying
18 hair and I generally sit here with a headphone over one ear listening to a computer as I am
19 partially blind, legally blind, kia ora.

20 **COMMISSIONER ALOFIVAE:** Tēnā koutou katoa, Talofa lava i le pa'ia ma le mamalu o le au
21 aofia. (Greetings to distinguished guests present today). I am Ali'imuumua Sandra
22 Alofivae, I am of Samoan-Chinese descent, I have shoulder length, black, curly hair and
23 I wear glasses.

24 **COMMISSIONER ERUETI:** Tēnā koutou katoa, ko te mihi tuatahi ki te kaikarakia i te
25 haukāinga Ngāti Whātua te mana, te wehi, te ihi. Ka poroporoakitia ki nga mate koutou kua
26 wehe atu ki te pō, ki te maumaharatia e Ta Toby Curtis, moe mai rā, moe mai rā. Hoki
27 wairua mai ki a koutou katoa, ngā mihi nui ki a koutou katoa, kua huihui mai ki te tautoko
28 tēnei kaupapa. I'm Anaru Erueti, one of the Commissioners and I'm a middle-aged Māori
29 male wearing a suit today, tēnā koutou.

30 **COMMISSIONER STEENSON:** Ata marie tātou, ko Julia Steenson toku ingoa. I am a middle-
31 aged Māori female, woman wearing a black top and brown jacket today with brown hair
32 and brown features. Kia ora.

33 **CHAIR:** Kia ora tātou. Today I think we have some new counsel and I invite you to make your
34 appearance. It's Mr Fargher, is that right?

1 **MR FARGHER:** Yes, mōrena Commissioners, ko Zac Fargher toku ingoa. To describe myself, I
2 am a Pākehā male, about 5'11" with black, albeit rapidly greying hair. I appear today on
3 behalf of Te Ropu Tautoko and the bishops and congregational leaders of the Catholic
4 Church in Aotearoa New Zealand. Members of Te Ropu Tautoko are also here today,
5 given the Church's interest, involvement in integrated education. I don't presently intend to
6 question any witnesses, but as indicated by Ms McKechnie, we will file a memorandum
7 addressing any matters that arise, including today.

8 **CHAIR:** Kia ora Mr Fargher, thank you for your appearance and thank you for the appearance of
9 Te Ropu Tautoko today.

10 Apart from that we have the usual suspects, except for Mr Thomas who's making
11 his first appearance in this hearing, mōrena Mr Thomas.

12 **MR THOMAS:** Mōrena, Madam Chair and Commissioners, tēnā koutou katoa, ko Michael
13 Thomas ahau. My name is Michael Thomas and I'm one of the Counsel Assisting the
14 Royal Commission. I'm a tall male approaching 40, I'm of Fijian-Indian and Pākehā
15 descent and today I'm wearing a blue suit with a green tie. I have black hair which is
16 increasingly grey as my 4-year-old daughter points out.

17 I'll be leading the questioning for the first three sessions today, Madam Chair, until
18 the afternoon tea adjournment and I'll be joined by my colleague later in the day, Katherine
19 Anderson, who will be leading the last session today. We have representatives, witnesses
20 here today from the Ministry of Education, hello to you, and I'll let Ms Schmidt--McCleave
21 introduce them and we'll have evidence-in---chief to begin with, Madam Chair.

22 **CHAIR:** Thank you Mr Thomas. Tēnā koe Ms Schmidt-McCleave.

23 **MS SCHMIDT-McCLEAVE:** Mōrena ano ngā Kaikomihana. For those who may be joining the
24 hearing today and haven't heard from me yet, my name is Rachael Schmidt-McCleave and I
25 am counsel for the Crown response. I am a 49-year-old woman who my children would
26 describe as middle-aged, I am Pākehā, I have shoulder length brown hair which has some
27 grey creeping in and brown eyes and today I'm wearing a grey dress and a black pinstriped
28 jacket. I'm joined at counsel table by my friends Mr Clarke-Parker and from the Crown
29 Response Unit, Ms Julia White.

30 This morning we have four witnesses present from the Ministry of Education and I'd
31 like to hand over to them shortly to introduce themselves, but just to explain to the
32 Commissioners, we have Iona Holsted, the Secretary For Education; next to her is
33 Mr David Wales, the National Director Learning Support; and next to David is Ms Rachael

1 Vink, the Manager National Service Support and Guidance Learning Support Special
2 Education.

3 We had intended to be joined by Hira Gage and Tipene Chrisp but, as the
4 Commissioners will appreciate, they also are isolating and unwell, but we are pleased to
5 welcome, and she's presently sitting behind me, but will be subbed in at some point today,
6 Ms Yvette Guttenbeil Po'uhila and she's the Education Manager and she can speak to the
7 development and implementation of the Ministry's specific action plan.

8 So tēnā koutou katoa, I'll hand over to you Ms Holsted to introduce your team.

9 **CHAIR:** If I could just take affirmations first and then get that bit --

10 **MS SCHMIDT--McCLEAVE:** Sorry ma'am.

11 **CHAIR:** That's all right, we'll get that bit over. Where is Ms Guttenbeil Po'uhila? There she is,
12 thank you. I'm going to include you. I said yesterday it's like a moonie wedding, I'm going
13 to do an affirmation to cover everybody from the beginning of the day and then we're all
14 clear.

15 **MINISTRY OF EDUCATION**

16 **MS IONA HOLSTED, MR DAVID WALES, MS RACHAEL VINK AND**

17 **MS GUTTENBEIL PO'UHILA (Affirmed)**

18 **MS HOLSTED:** Ngā mihi nui ki a koutou katoa. Ko Iona Holsted toku ingoa, te Tumu
19 Whakahaere mō Matauranga, I'm the Chief Executive of the Ministry of Education., I'm the
20 Chief Executive of the Ministry of Education.

21 I join with others in noting the passing of Tā Toby Curtis, the loss of a huge Totara
22 in the forest of mātauranga Māori, and I join with others to acknowledge his courage and
23 relentlessness in pursuit of maintenance of kaupapa Māori in this country. We were, as a
24 Ministry, working with Tā Toby in the last three or four weeks to finalise an agreement
25 with Te Arawa around their education plan, and so it's with great regret, and particularly
26 because of that proximity, that I'm conscious of his passing, so thank you to others who
27 have acknowledged that.

28 A little about me. Before I commenced this role at Te Tahuhu on 8 December 2016
29 I was the Chief Executive of the Education Review Office. Prior to that I was a Deputy
30 Secretary at the Ministry of Social Development, prior to that some years at what is now
31 the Public Service Commission; and a bit of an eclectic background having been a teacher
32 first, trade unionist and worked at a community health service.

33 I'm pleased to have David and Rachael and Yvette with me today and they will
34 introduce themselves when their time comes.

1 Can I begin with some acknowledgments. I first want to acknowledge the courage
2 and the strength of the survivors who have written and spoken about their experiences in
3 this Inquiry, and I want to acknowledge the ongoing impact on those people and their
4 whānau.

5 I particularly acknowledge the survivors and the whānau of those here today. I have
6 heard the terrible experience of those people through this Inquiry. I have often read of their
7 experiences in my former role in the Ministry of Social Development and in my current
8 role as Secretary for Education. I have been in the position of having to acknowledge and
9 apologise for those experiences.

10 Abuse of any kind is unacceptable, especially when it involves the most vulnerable.
11 Part of my job as being Secretary for Education is to build a system which doesn't tolerate
12 abuse and in fact embraces inclusivity. That is a responsibility that we all hold, not just
13 those in the profession, but across our community.

14 I will set out in my brief today some of the things that we have done and are in the
15 process of doing to try and achieve that state. Before doing so, though, I would like to set
16 out some other acknowledgments that are not currently in my brief. And I'd also like to
17 touch on some of the lessons we have learned in years gone by and through this experience.

18 I acknowledge that the Department of Education failed to actively protect te reo and
19 encourage its use by iwi and Māori and that was in breach of Te Tiriti o Waitangi, and this
20 has had an ongoing detrimental effect on the acquisition and use of the Māori language, and
21 on the tikanga and mātauranga of Māori.

22 I acknowledge that the education system has not sufficiently valued Māori cultural
23 understanding and has had consistently lower expectations of tamariki and rangatahi Māori
24 and its failure to respond to the identity, language and culture of Māori has harmed Māori
25 and contributed to poor education outcomes over the generations.

26 We cannot change what has happened, but we are committed to lifting the
27 participation and progress of tamariki and rangatira(sic) as a priority.

28 I acknowledge that record-keeping issues, including the loss of some records, has
29 caused pain to many because their full story could not be told.

30 I acknowledge that historically the State has failed to provide education fit for
31 different groups, including Blind, Deaf, Disabled tamariki.

32 I acknowledge that historically the Department of Education had less oversight of
33 private schools than State or State-integrated schools, and this may have provided
34 opportunities for predators.

1 I acknowledge that at times the Ministry's approach to responding to complaints
2 about access to support services, especially in relation to learning support, can be too slow
3 and can feel bureaucratic to families and whānau.

4 I further acknowledge there are instances where some Disabled and Deaf tamariki
5 are still not able to access the full curriculum and wider education experience.

6 Finally, I acknowledge that the Ministry doesn't always get it right. Some records
7 show that the Ministry should have acted with greater urgency; for example, Ruru.

8 So what lessons have we learned? Regularly, specific examples, specific lessons
9 are learned in relation to specific events or series of events, and we can change our policies,
10 our practices, our guidance and our advice. But at a wider system level, if we take it above
11 the specific, fundamentally Te Tahuu o te Matauranga needs to be a change agent.

12 Legislation, regulation, policy and guidance, monitoring on their own will not make
13 the changes that we need to make. Te Tahuu needs to set expectations and support a
14 diverse and fragmented system to change its attitudes, practice and sometimes its beliefs to
15 transform the daily experience of young people at school.

16 There is a balance here in how far Te Tahuu pushes ahead of public sentiment and
17 how much it follows it. That is an ongoing tension in a highly devolved education system.

18 What we have learned. That we can be an effective change agent if we work with
19 and alongside others, other government departments, NGOs, iwi Māori, schools, early
20 learning services, the profession, the paraprofessionals, diverse communities and whānau.

21 Most critically, though, we need to hear the voices of tamariki and rangatahi, and
22 engage them directly in decision making through hearing their lived experience.

23 We need to get the right balance between what gets directed from the centre and
24 what is devolved to the frontline to create local solutions to local circumstances. This is
25 work that is underway, it is by no means complete. Thank you.

26 **MS SCHMIDT-McCLEAVE:** Ngā mihi ki a koe, Ms Holsted. And Commissioners, Ms
27 Holsted, of course, has filed a written brief of evidence which supports the Ministry's notice
28 to produce responses, or many responses.

29 What I'll do now in the approximately 45 minutes I've got left to lead Ms Holsted,
30 we will work through her brief, but we will be touching on aspects of it and Ms Holsted
31 will be adding further material. So it probably won't work if you follow the written brief as
32 such, but there will be parts that she will read.

33 **CHAIR:** Just an assurance that we have all read your brief of evidence, Ms Holsted, so we're
34 away to a flying start on that.

1 **QUESTIONING BY MS SCHMIDT-McCLEAVE:** Thank you Madam Chair.

2 So Ms Holsted, if you could turn to part four of your brief and this part outlines the
3 framework of the education sector and start reading.

4 **MS HOLSTED:** Te Tahuu is the Government's lead advisor on education from early learning
5 through to tertiary. That means that we approve policies, we administer the legislation and
6 we of course provide on-the-ground services as well. We have more than 1,000 learning
7 support staff in the system.

8 I'll make the point here though, because often it's not clear, we do not, unlike other
9 jurisdictions, employ teachers. And in fact, do not employ most of the people employed in
10 the education workforce.

11 We do work with other agencies; the Education Review Office whose role is to
12 evaluate schools and publish reports. The Teaching Council of Aotearoa New Zealand,
13 which registers teachers to ensure the quality of the teachers that are employed by boards
14 and take complaints against actions where those teachers have breached certain conditions
15 or codes. New Zealand Qualifications Authority, which oversees standards of
16 qualifications, including NCEA. The Tertiary Education Commission which is essentially
17 a funder for the tertiary education system and judges performance of that sector.

18 It's an understatement to say that the education system in New Zealand is complex.
19 There are, apart from the number of Crown entities I have just referred, there are other parts
20 of the system which are not mentioned in this brief. There's an Education Payroll Crown
21 company, there's the Network for Learning Crown company, and then of course there's the
22 more than two and a half thousand boards of trustees who make up the governors of the
23 schooling system, around about 5,000 learning services registered and so on.

24 We have a mix of private, State-integrated and State schools, and there is a history
25 to how private schools became State-integrated schools, which we will go into later.

26 We also have a small number of kura kaupapa schools, around about 11,000
27 students are in kura kaupapa. There are other children learning te reo Māori, immersion
28 Māori, through rumaki classes in so-called mainstream schools. Between 1950 and 1989
29 State schools were controlled by Regional Education Boards and secondary schools were
30 controlled by boards of governors. These bodies were responsible for - they employed the
31 teachers, recruited and employed teachers. They recruited them, should I say, into teacher
32 training as well, they were part of the whole end-to-end system.

1 In 1989, the Tomorrow's Schools reforms saw a massive change in that system.
2 The administration, management and governance of State, primary and secondary schools
3 shifted to boards of trustees with locally-elected members.

4 My statement describes those as being independent. That's probably a stretch too
5 far. They are Crown entities and therefore required to give effect to Government policy.

6 Within the context of this regulatory framework, and through a devolved system of
7 functions, Te Tahuhu has some oversight, but little direct influence on what happens on a
8 day-to-day basis in schools. And within that system there is an uneasy tension between
9 local autonomy and central control, which I mentioned at the beginning.

10 In a practical sense, during Covid and lockdown, boards of trustees and principals
11 looked to the Ministry to tell them on a daily basis how they should perform. When that
12 situation changed, they're more inclined to say "We don't want to hear from you."

13 In response to the schooling review, the Government signalled changes to Te
14 Tahuhu, and this is the subsequent review in 2016 when the Government came into office,
15 it indicated it wanted to review the Tomorrow's Schools approach, and that was led by Bali
16 Haque, and an independent task force reported to the Government.

17 Subsequent to that review, the Government made decisions about Te Tahuhu in
18 which Te Mahau will become and is becoming the front of Te Tahuhu, the porch in the
19 whare, and in the course of that work, we have adopted four substantive design principles.

20 The first is to take practical action to give effect to Te Tiriti o Waitangi, to give
21 priority to regional and local voice, deliver greater responsiveness, accessibility and
22 integrated services and support, and improve feedback loops and information flows.

23 Te Mahau is made up of three frontline regional offices as well as a curriculum
24 centre and operations and integration. Te Mahau is already beginning to deliver new
25 services and supports and these will continue to grow particularly from the beginning of
26 term 1, 2023.

27 **MS SCHMIDT-McCLEAVE:** Thank you, Ms Holsted. The next portion of your brief speaks to
28 Te Tiriti o Waitangi and you've touched on some of that in your earlier statements. Would
29 you like to expand on that now.

30 **MS HOLSTED:** The Public Service Act requires Public Service departments to give effect to
31 Te Tiriti, to support the Government of the day as the Treaty partner. Government
32 departments, of course, are not Treaty partners, but we are there to support the Government
33 to be a good Treaty partner, to be a good kāwanatanga partner.

1 The Education and Training Act requires schools to also give effect to Te Tiriti and
2 to particularly work with their mana whenua in the design of their curriculum and,
3 increasingly, to provide opportunities for te reo teaching, so all of that legislation has been
4 passed in the last short while, the last few years.

5 We are, as an organisation, committed to honouring Te Tiriti o Waitangi and giving
6 practical effect to it. We have led policy and strategy work intended to support Māori
7 students to enjoy achievement as Māori. This is the vision of Ka Hikitea Ka Hapaitia
8 Māori education strategy, Tau Mai Te Reo, the Māori language strategy.

9 In July we published a report that I can make available to the Commission today
10 which gives you some statistics on some of the highlights and growth areas for Māori
11 education, and as with all such reports, it has some indicators in there which are not as good
12 as we would like as well. It is a thorough piece of work about the place of Māori in 2020.
13 It was delayed.

14 Internally within Te Tahuu we have embarked on two quite major pieces of
15 capability building for our own staff. Our staff go through a Treaty training programme
16 which begins not from the Treaty being signed but in fact from pre-European times in
17 New Zealand or Aotearoa. In addition to that, we have had, for the last -- we've had around
18 about 3,000 staff now I think go through a cultural competency training programme called
19 Courageous Conversations. That does confront people's baggage and racial bias and
20 is -- has attracted some attention politically because these things are not seen necessarily to
21 be good things to do, but I'm very committed to understanding that we need to clean up our
22 own whare first.

23
24 **MS SCHMIDT--McCLEAVE:** I note, for Commissioners, that the written brief contains a
25 number of specific provisions from the Education and Training Act. So, Ms Holsted, if we
26 could move on then to the statement of National Education and Learning Priorities, and is
27 there anything you'd like to tell Commissioners and the public about that?

28 **MS HOLSTED:** Can you help me, Rachael, please just which paragraph you're on?

29 **MS SCHMIDT--McCLEAVE:** We're at 5.5.

30 **MS HOLSTED:** Thank you. The National Education Learning Priorities are set out as the
31 Government's priorities for education that are intended to support the success and
32 well-being of all learners. These priorities, for the first time, have been set out across the
33 spectrum from early learning through to tertiary so that there is a continuum of learning and
34 some common objectives across the system.

1 They're used to guide Government policy and increasingly they're being used as
2 ways that we can measure the effectiveness of policies and practices that are occurring.
3 Some of the measures are more developed than others, as you would expect. I'm sure you
4 don't want me to go through all of them at this point.

5 **MS SCHMIDT-McCLEAVE:** No, they are contained in your brief, so perhaps if we move over
6 the page and to paragraph 5.9, and if you can outline Ka Hikitia - Ha Hapaitia and Tau Mai
7 Te Reo.

8 **MS HOLSTED:** Thank you. So those are the three strategies that are particularly focused on
9 Māori achieving as Māori, and they set out goals for those groups. Again, there are in the
10 brief the measures that we're looking to use to understand the effectiveness against the
11 outcomes of te whānau, te tangata, te kanorautanga and tuakiritanga. These are concepts
12 that have been developed with Māori, they have been in place for quite a while but refined
13 over time, and they are strongly endorsed by the sector.

14 I would have to say that a lot of the strategies and objectives that we've had in place
15 have been disrupted by Covid; the schooling sector in the last three years has been
16 incredibly disrupted and most particularly in Tāmaki Makaurau and Tai Tokerau.

17 **MS SCHMIDT-McCLEAVE:** Thank you, Ms Holsted. Yes, I'm sure the parents in the room as
18 well as teachers will appreciate that statement. Just moving on in your brief and that leads
19 us to an important topic which you'd like to address, and that is the national curriculum.

20 **MS HOLSTED:** The curriculum is the lifeblood of any Ministry of Education. It's only been in
21 the last six years, five years, that we have been funded on an ongoing basis to build
22 curriculum. So we've achieved quite a lot. The national curriculum, the New Zealand
23 curriculum, was first launched around about 13 or 15 years ago, but was not fully
24 implemented because shortly thereafter the Government introduced national standards
25 which created a schism in the sector which meant that attention was not paid to the full
26 curriculum.

27 The curriculum that we do have and the marautanga are both highly valued by the
28 sector in that they're very broad and enabling frameworks. When we went to the sector to
29 discuss how we could breathe life into those, it became clear that the work involved for
30 teachers to breathe life into them was huge, that we had extremely high expectations of
31 what individual teachers or schools could do to give effect to it. And so we have launched
32 a major refresh of the curriculum which includes introducing Te Ao Māori concepts
33 throughout the curriculum with particular emphasis on curriculum in the Marautanga and

1 throughout the NCEA review we're also bringing in parity of esteem, so we have
2 introduced parity of esteem for certain courses which tend to be taken up by Māori.

3 The curriculum itself is based on the principles of Te Tiriti, acknowledges Aotearoa
4 New Zealand's bicultural foundation, and enables students to acquire te reo Māori and
5 Tikanga Maori. The marautanga, like the New Zealand curriculum, aims to grow
6 competent and confident learners, effective communicators in a Māori world, healthy of
7 mind, body and soul and secure in their identity, and, critically, a sense of belonging.
8 They'll have the skills and the knowledge to participate and contribute to Māori society and
9 the wider world.

10 Te Marautanga o Aotearoa identifies how this vision links to the learning
11 environment of children in mātauranga Māori and Maori-medium schools. This starts with
12 the learners, their knowledge, skills, values and attitudes, as in addition to the aspects of
13 teaching and learning.

14 Critical in all of our indigenous research shows how critically important for both
15 Māori and Pacific achievement is strong and powerful connection with family and whānau.
16 That same research tells us that connection with identity, language and culture is
17 fundamental to the participation and progress of Māori and Pacific children and disabled
18 children and Deaf children and all children.

19 **MS SCHMIDT-McCLEAVE:** And Te Tahuu also provides a range of support and tools to
20 assist school boards to uphold Te Tiriti principles. Can you briefly outline what those are?

21 **MS HOLSTED:** Thank you. We work alongside boards to build their local curriculum as
22 required by the national education learning priorities. We provide professional learning
23 and development to teachers, to build cultural competency. We fund the School Trustees
24 Association to provide boards with support and guidance in cultural competency, we work
25 to strengthen the Māori net -- the network of Māori medium provision, we built
26 partnerships, including iwi relationships, to encourage iwi and whānau to become involved
27 with student learning and their local kura, and we support kura and Māori-education
28 workforce through various grants and scholarships and support packages.

29 **MS SCHMIDT-McCLEAVE:** Thank you, Ms Holsted. There's a number of initiatives in your
30 brief which relate to early learning and we can take those as read. So if we could pick up
31 your brief again at 6.2 and there you have given some evidence on the priority groups for
32 the Ministry.

33 **MS HOLSTED:** At the risk of repeating myself, and I will, we know that where schools connect
34 to that identity, language and culture of ākonga, that building a strong connection between

1 educators and those outside of the school gate, parents, whānau, communities, hapū, iwi
2 employers, learning outcomes for children and young people are significantly improved.

3 It's an easy thing to say and quite a challenging thing to achieve in an environment
4 where families, whānau, they too are busy and stressed and stretched. When I spoke before
5 about Te Mahau becoming the frontline of the Ministry, the people going into the roles in
6 Te Mahau are there to walk alongside those schools, to build their capability and to create
7 some more heft to enable them to free up some resource and some time to actually do that
8 connectivity which is so very important. We expect that places of learning are safe,
9 inclusive and free from racism and the NELP sets that out as well.

10 We also know that discrimination and bullying, however, remain major issues in our
11 schools, as they do in our community at large. We are going through a major change
12 programme to support the increasing diversity of students, including those to support
13 inclusive education of diverse learners, those who may be disabled, Deaf, to ensure they
14 can participate, belong and achieve.

15 We apply the principles of the United Nations Convention on the Rights of the
16 Persons with Disabilities throughout several of our major reform programmes, learning
17 support action plan, which Rachael and David are expert in the detail of, the NCEA change
18 programme, curriculum refresh that I mentioned before, as well as other impacts on
19 disabled learners.

20 Other initiatives, that includes draft standards for curriculum resources, materials
21 that specifically identify the impacts and benefits for disabled and Deaf ākonga, updated
22 design standards to make school property more accessible, and design NCEA achievement
23 standards and resources to give more equitable opportunities for learners.

24 Disabled children and Deaf people with learning support needs are supported at
25 school in their everyday context. When teaching staff need additional support, they can
26 access a range of resources and advice through resource teachers and specialists. Students
27 can also spend time in alternative settings if they require more intensive support.

28 We're currently reviewing the system of supports available to design a more
29 accessible and responsive system, particularly for those with very, very high needs. That
30 work is in train, but is an incredibly important piece of work and we're learning a lot
31 through it.

32 We also work closely with Oranga Tamariki to support access to education for
33 children and this has been strengthened recently by the signing of an agreement known as
34 the Oranga Tamariki Action Plan where a number of departments, health, education, social

1 development, have made commitments agreed by Cabinet as to how we will work to give
2 priority access over time to children in care to access services.

3 **MS SCHMIDT-McCLEAVE:** Thank you, Ms Holsted. One of the themes this Commission has
4 indicated it's interested in hearing from you on is monitoring oversight and safeguarding,
5 clearly, and your brief sets out some historic changes in that regard and we won't go
6 through those in any detail, I'm sure you'll be asked some questions in relation to that, but if
7 we could pick your brief up again at 7.6 so you can speak about a summary of the current
8 situation.

9 **MS HOLSTED:** I'll return to 1989.

10 **MS SCHMIDT-McCLEAVE:** Thank you, yes.

11 **MS HOLSTED:** There were major reforms in the administration of education under which the
12 administration, management and governance of State primary and secondary schools
13 shifted to the boards of trustees. There was a desire to give real but accountable autonomy
14 within the system. Central to these reforms was the balance between local autonomy and
15 central prescription.

16 Under the 1989 reforms, the Education Review Office, a Government department,
17 so again not an independent agency, but with independent statutory powers to review, was
18 established to review the performance of schools. Boards are also required to submit
19 annual reports to me, to my organisation, and to develop and submit planning and reporting
20 documents every year.

21 The key focus of this is to improve student performance and achievement,
22 particularly for students at risk of not achieving, and we use those reports to -- at a Te
23 Mahau level to understand where additional need or support may be required.

24 The Education Act 1989 brought in three powers to intervene in the control and
25 management of schools in trouble. Over time, with growing awareness and experience of
26 the complex mix of factors that contribute to school failure, changes were made. In
27 recognition that problems in schools could be the result of a change of factors, such as
28 geographical isolation, difficulties with curriculum implementation, financial management
29 issues, governance, management and health and safety issues, Te Tahuu started the school
30 support project in the mid-1990s, where we could identify a range of factors and therefore
31 add more support to those schools.

32 Over time, the roles of Te Tahuu and other agencies were refined to improve
33 standards. The Act was amended to include new powers in a risk management framework
34 which provided a range of interventions that may be used to address the risk of operation of

1 individual schools. These include a requirement on the board to provide information,
2 engage specialist help, carry out an action plan, appoint a limited statutory manager, and in
3 the most serious cases, we can dissolve the board and appoint a Commissioner.

4 In applying those interventions, the secretary or the minister is required to apply
5 whatever intervention they consider will be enough without intervening more than
6 necessary that interrupts the affairs of the school.

7 Alongside this, each school board is required to have a health and safety plan; it
8 needs to provide a plan that shows the place is safe, physically and emotionally, for
9 students. We provide a contract with STA to support schools to govern those plans.

10 **MS SCHMIDT-McCLEAVE:** Just for the benefit of those listening, can you explain what STA
11 is, Ms Holsted?

12 **MS HOLSTED:** School Trustees Association. It's not a creature of legislation, it is -- the school
13 boards join the School Trustees Association voluntarily, but our contract requires the
14 School Trustees Association to provide services to all boards, regardless of their
15 membership status. They provide industrial support to schools as well.

16 All schools must comply with the prohibition on the use of corporal punishment
17 since 1990, the use of seclusion in 2017, as well as limits placed on restraint in 2017.

18 In 1990, new provisions were introduced into the Act which granted powers of
19 inspection to all registered schools. A further amendment in 1998 granted authority to
20 enter and inspect a private school which was suspected of operating whilst unregistered.

21 Mandatory Police vetting and reporting on criminal convictions, three-yearly Police
22 vetting was introduced for teachers in both State and private schools in 2002. From 2002,
23 nonregistered school staff and contractors were required to be Police vetted every three
24 years with equivalent requirements introduced for employees of contractors from May
25 2010. All children's workers must be safety checked under the Children's Act. Licensed
26 hostels must be reviewed by ERO to evaluate the children are living in safe emotional and
27 physical conditions.

28 The education regulations came into force on 1 March 2006. The intention, again,
29 was to raise the standard of quality of safety for children in those institutions. Schools are
30 required to adhere to the NELP. From 2017, the managers of a private school and the
31 school's principal and staff were required to give regard to the NELP, which I've discussed
32 before.

33 Obligations to adopt a written child protection policy were introduced in 2014.
34 These must be reviewed every three years and must contain provisions about how staff will

1 handle the identification and reporting of child abuse and neglect under the Oranga
2 Tamariki Act 1989.

3 Obligations to ensure, as far as practicable, the health and safety of students under
4 the Health and Safety At Work Act, and there are duties on principals when student are
5 stood down or suspended.

6 Guidelines are provided to schools to help them understand the legal framework,
7 regulating the use of restraint. Those are in the process of being updated. We also support
8 schools to develop their bullying prevention and response approaches through a collective
9 group called the Bullying Prevention Action Advisory Group. Guidance is also provided to
10 school boards, principals and teachers so they understand their legal requirements in
11 relation to stand downs, suspensions and exclusions and expulsions.

12 The stand downs, suspensions, exclusions and expulsion guidelines are currently
13 being updated and will focus on inclusive principles to give practical effect to Te Tiriti,
14 emphasise a range of options for early intervention and support the reduction and
15 prevention of seclusions, etc.

16 **MS SCHMIDT-McCLEAVE:** Thank you, Ms Holsted. There's a large portion in your brief then
17 around staff and caregivers in regulation of staffing in schools, special schools and teacher
18 registration. We're going to take those aspects as read, and we'll skip forward to paragraph
19 9.1.

20 **MS HOLSTED:** Private schools have always been owned and operated by private entities rather
21 than the State. As set out in the evidence of Helen Hurst, 7 October 2021, the Ministry has
22 always had considerably less involvement in private school settings by comparison to the
23 State or State-integrated system.

24 While private schools receive some funding, they adhere to their own internal rules,
25 canons and constitutions and applicable statutes. Private schools must be registered, but
26 otherwise have considerable flexibility in choosing their own curriculum and assessment
27 methods.

28 State-integrated schools, and let me be clear, not all private schools are faith-based
29 schools and not all faith-based schools are State-integrated schools and not all State-
30 integrated schools are faith-based schools. State-integrated schools were originally private
31 schools who opted into the State education system following the Private Schools
32 Conditional Integration Act in 1975.

33 That Act was introduced following lobbying from church authorities, particularly,
34 and came at a time when many of those schools were experiencing financial difficulty. The

1 difficulties resulted from a number of factors, including new requirements from the State
2 that registered teachers be employed. For example, in Catholic schools, the number of
3 priests, brothers and nuns in teaching declined and the number of registered teachers
4 increased, thus increasing their costs.

5 While the proprietors of an integrated school retained ownership of the land and
6 buildings and they were responsible for bringing those up to State conditions, in all other
7 respects, they were and are funded like State schools, receiving the same general operating
8 grants and the same staffing entitlements.

9 State-integrated schools must teach the New Zealand curriculum, however the
10 teaching can reflect their special character. ERO reviews State-integrated schools and State
11 schools in the same way. ERO also reviews private schools and their hostels to evaluate
12 whether students are living in a safe and emotional environment.

13 **MS SCHMIDT-McCLEAVE:** Thank you. And just in the approximately 10 minutes I think I
14 have left, could you -- we'll take 10.1 to 10.3 as read, and if you could pick up 10.4 and the
15 issue of racism and ableism in the system.

16 **MS HOLSTED:** On a universal level, we need to reduce the level of racism and ableism in the
17 system and our communities. We do this, aim to do this, through professional learning and
18 development with priority on cultural capability and programmes like Te Hurihanganui in
19 schools.

20 Te Tahuu acknowledges that the pace and scale of developing resources in te reo
21 and underpinned by Te Ao Māori lags behind where it needs to be. At the same time, I
22 would note that since 2021 we have prioritised cultural competency in relation to the
23 professional learning and development of teachers.

24 There's been an increasing amount of work with ākonga and their whānau to help
25 inform the changes needed to create an inclusive and equitable education system. Te
26 Tahuu uses key Government strategies to measure the required system improvements.
27 I've mentioned these before, the statement of National Education and Learning Priorities,
28 Ka Hikitia Ha Hapaitia, the education system's Māori education strategy.

29 Workforce capability and capacity is a major challenge for the education system as
30 it is for broadcasting, the Public Service, and private enterprise wishing to recruit and retain
31 Māori staff, Pacific staff, disabled staff, te reo, especially those who are capable in te reo.

32 **MS SCHMIDT-McCLEAVE:** And we can take the remainder of that part of your brief as read.
33 There are just two more topics in the time left that I would like you to address. The first
34 being learning support, picking that up at 10.12.

1 **MS HOLSTED:** Learning support has evolved significantly in the 20th century. I will take the
2 paragraphs as read because we have experts here to talk about it. I think it would be worth
3 me noting, however, that we have made a decision in this country that accessing learning
4 support is on the basis of need and not diagnosis. And that, I'm sure, will be canvassed
5 later in our discussions. It is an important differentiator in our system and it presents some
6 challenges and some opportunities.

7 **MS SCHMIDT-McCLEAVE:** Thank you, and just we can take the remainder of the brief,
8 including the complaints referrals aspect as read, and I'm sure Mr Thomas will have some
9 questions for you. So which means, I think, that we may have come to the end of your
10 evidence-in-chief, Ms Holsted. But just before I pass you over to Mr Thomas for
11 questioning, could you -- and, I'm sorry, this is my oversight, I forgot to ask you to describe
12 yourself for the benefit of those who are visually impaired and perhaps also your two team
13 members could introduce and describe themselves as well.

14 **MS HOLSTED:** My apologies also. I will describe myself as a wrinkled, white public servant.
15 I'm wearing a blue trouser suit and a piece of turquoise around my neck which I like to play
16 with.

17 **MS SCHMIDT-McCLEAVE:** Thank you, and Mr Wales.

18 **DR WALES:** Kia ora tatou katoa, I'm Dr David Wales, I'm the National Director for Learning
19 Support Delivery with the Ministry. I'm a late middle-aged, Pākehā male with limited
20 amounts of short grey hair and today I'm wearing a grey suit to match. Kia ora.

21 **MS SCHMIDT-McCLEAVE:** Thank you, and Ms Vink.

22 **MS VINK:** Tēnā koutou katoa, ko Rachael Vink toku ingoa. My current role is the manager of
23 the National Service Support and Guidance team which is within service delivery of
24 learning support. Iona mentioned briefly that we have 1,000 learning support specialists
25 employed in regionally based teams. My team has oversight of evidence-based practice,
26 both those delivered by them and also partner organisations who are contracted by the
27 Ministry. I am 41 years old, I'm a Pākehā female with black, shoulder length hair and
28 glasses and today I'm wearing a green top with birds and flowers. Kia ora.

29 **MS SCHMIDT-McCLEAVE:** Nga mihi ki a koutou. I will now pass you over to my friend
30 Mr Thomas who will have some pātai for you. Tēnā koutou.

31 **CHAIR:** Thank you Ms Schmidt-McCleave. Mr Thomas.

32 **QUESTIONING BY MR THOMAS:** Kia ora, Ms Holsted, and also good morning to your
33 colleagues who are here. I just wanted to indicate I'll primarily direct my questions to you
34 unless otherwise stated, but I'm happy to take a steer from you if any of your colleagues

1 wish to answer a particular question. I guess I want to start by saying thank you for the
2 acknowledgements that you made during your evidence in chief, and these are noted and
3 appreciated, and we'll consider these further following this hearing as well. I may test you
4 on some of my questions on how far these acknowledgments extend, we'll come to this.

5 I'm going to start with some questions for you about the education framework, parts
6 of it anyway, and the Ministry's role in that, starting with Helen Hurst's statement which
7 she's provided to the Commission which you've referenced in your evidence. We've got
8 part of this up on the screen now. For the record it's document ending 20167 and she
9 describes the Ministry's role in the education system and I'm going to read that for the
10 record as well:

11 "The Ministry has a stewardship role that encompasses creating, designing,
12 managing, regulating, fostering, and leading New Zealand's education system so that
13 children and young people gain the skills, knowledge and ability they need to be competent,
14 confident lifelong learners."

15 Do you agree with that summary?

16 **MS HOLSTED:** It's part of the story. As I said before, the education system is complex. We
17 definitely have the role of creating the regulatory framework, the legislative framework and
18 the policy and guidelines that get distributed and provided to the sector for them to
19 implement.

20 When I came into this role, one of my observations was that the Ministry tended to
21 talk about itself as if it was teaching children, and it doesn't. And so I set about asking what
22 is the purpose of the Ministry of Education and we spent quite a bit of discussion and time
23 talking about that, and we did come up with the role is to shape a system. And I think that's
24 the right word, because it is such a system where accountabilities do rest in different places
25 at different times. So if the term "stewardship" is a shaping role, then yes. But I wouldn't
26 want people to think that I, anybody in the Ministry, is out there helping young people
27 directly gain skills, knowledge, because we haven't got that capacity to reach into the
28 schooling system.

29 **MR THOMAS:** You would accept, though, the leadership role that the Ministry has within the
30 system as you've described?

31 **MS HOLSTED:** The shaping of a system that delivers equity and excellence, yes.

32 **MR THOMAS:** Do you think the statement by Ms Hurst is missing an element of child safety in
33 education?

1 **MS HOLSTED:** Well, I think that if you've got the -- if you are able to be a competent and
2 confident lifelong learner, it does probably infer that you have also been nurtured in a safe
3 environment, it's an outcome statement.

4 **MR THOMAS:** So you would say it's implicit in that statement but not explicit?

5 **MS HOLSTED:** I think that's correct. Ideally, a safe environment is, as I've said in my own
6 statement, something we expect every school to provide.

7 **MR THOMAS:** Thank you. Taking you to paragraph 2.4 of your brief of evidence, and for the
8 record, that's document ending 20553, I'm just going to refer to a short part of that. I don't
9 think we need it up on the screen, I'll just read that. You note that:

10 "We all have a responsibility to all children to do everything we can to eliminate the
11 risk of harm to children in the education system and to provide a safe environment."

12 Your evidence in your brief, again, at 4.1 is that the Ministry is the Government's
13 lead advisor on education in New Zealand. However, you also say that the Ministry has
14 some -- sorry, I'm quoting here, "has some oversight but few direct influences on what
15 happens day to day in schools."

16 That's at paragraph 4.8, I believe. I'm just going to ask you about that statement. Is
17 it correct to say that the Ministry's leadership role is in the sense of policy advice and
18 influence on how the education system operates?

19 **MS HOLSTED:** 4.8 I think restates what I just said, was we can set the rules, we can set the
20 policy, the legislation and the expectation, but our ability to reach in on a day-to-day basis
21 is very limited.

22 **MR THOMAS:** Thank you. As CE of the Ministry, if you had a concern that the education
23 system or part of it was not working as it should, would you advise the Minister of
24 Education and potentially provide or propose solutions to that?

25 **MS HOLSTED:** At a system level I think that we have -- that's an ongoing piece of work and if
26 you look back over the changes that have happened in policy and legislation and regulation
27 over decades, they have all been seeking to improve the performance of the system; the
28 most recent being the Education and Training Act changes where it raised, for example, the
29 expectation around Te Tiriti, it did a lot of other things as well, but a lot of -- every single
30 change that's occurred has been to make the system better. So at that level, yes, but
31 practically it will be when there's -- if there is an individual school that's got a situation, we
32 will not necessarily refer that to the minister, we've got other ways of dealing with that.

33 **MR THOMAS:** We might come to that in a couple of questions. So if there's more of a sort of
34 systems issue, a broader issue, that might be raised at the minister's level?

1 **MS HOLSTED:** The minister may raise it or we may raise it, yes.

2 **MR THOMAS:** I was going to ask that next. Sometimes the minister might come to you as CE
3 for advice on a particular issue if he thinks something's not working, is that fair?

4 **MS HOLSTED:** It's fair. I think it's important to put this into context for the recent past. This
5 Government began its term with Kōrero Mātauranga, which was two large, open sessions
6 where the members of the New Zealand public were brought together for two days, one in
7 Auckland and one in Christchurch, for politicians to hear what it was that they wanted from
8 their education system, and that formed the basis of a major work programme that you will
9 have seen referred in my brief, but which it may be useful to provide to the Commission in
10 a different form, to put it all in one place.

11 **MR THOMAS:** Sure. You mentioned the Ministry has other ways of, say, dealing with a
12 particular issue in a school. I guess, relating to that, can you say at a higher level what
13 levers the Ministry has as a leader in the education system to bring about change?

14 **MS HOLSTED:** Can I -- probably 5.16 is where I set some of those things out. Those are the
15 formal levers that we have to engage with schools, and then earlier in that I think
16 I mentioned that in a worst-case situation install a Commissioner who basically takes over
17 all of the board's functions, so everything from what might be a conversation with a
18 principal or a teacher on a -- from one of our staff, through to the Commissioner. There are
19 a range of interventions that we might take if there was a particular issue, depending on
20 what that issue was.

21 **MR THOMAS:** So these are the specific powers to intervene in schools and support schools, is
22 that right?

23 **MS HOLSTED:** That's right.

24 **MR THOMAS:** In your view, I guess, are those powers sufficient?

25 **MS HOLSTED:** Well, they're sufficient in an environment where I'm not the employer, because
26 we need -- you'll note that elsewhere when I talked about using interventions, I'm required,
27 as is the minister, to take account of the balance of the rights of the board to be the board.

28 So in an environment where there's been a decision taken more than 30 years ago,
29 so 1989 the Government and the people of New Zealand presumably changed the rules so
30 that the employer was the board, that was reviewed recently when the independent task
31 force was recruited by this Government, and interestingly, one of their early
32 recommendations that was never finalised, was to recentralise the employment of teachers,
33 but there was a very strong backlash against that proposition. So at this stage I think we've

1 got the Government, or any government, reflecting how the nation wants its schooling
2 system to be operating.

3 **MR THOMAS:** Thank you, yeah, I'll come in a moment to that task force just to refer to some of
4 their findings. But before I do, you refer in paragraph 8 of your brief of evidence, and
5 you've mentioned it as well in your evidence today, about the current framework and you
6 state that within this model lies an uneasy tension between local autonomy and central
7 control. You may have answered this, but do you think the system currently strikes the
8 right balance between those tensions?

9 **MS HOLSTED:** I think I need, as a public servant, to be clear that the Government has recently
10 considered the structure of the education system and has made some decisions about that.

11 The fact that there is tension in a system doesn't make it wrong and it can strengthen
12 it. The task that I have is to manage that tension as best I can. And as I said in my opening
13 statement, but not written here, I appreciate, how we work with the sector, with the
14 profession, and with whānau and kids is actually central to how we manage that tension.
15 And I don't think we have done that very well always in the past.

16 **MR THOMAS:** Referring you now to that Tomorrow's Schools independent task force review
17 that you've mentioned, and they reported in November 2018, unfortunately, we don't have
18 that in the bundle, but I'm going to just paraphrase some of the findings of that report as
19 I have read it.

20 Some of the issues, systemic issues raised in that report by the task force
21 included -- I'm just going to read these out and ask you about them -- variability of
22 capability of school boards and the report described the 2,500 approximately schools as
23 self-governing islands. A second issue was the role and capacity of the education agencies
24 and the report stated:

25 "National education agencies are often seen as bureaucratic and removed from the
26 day-to-day work of schools/kura, while their regional offices are underresourced and have
27 limited capacity or discretion to provide the support that schools/kura want and need."

28 That was on page 4. One more:

29 "Children from disadvantaged homes, too many Māori and Pacific families and
30 those with significant additional learning needs remain those most poorly served by the
31 system."

32 I appreciate those are only parts of that task force's work, but on those specific
33 points, do you have any comment?

1 **MS HOLSTED:** Thank you. Variability in a distributed system is inevitable, so I absolutely think
2 we'd all accept that. And I think this self-governing islands is probably a bit extreme, I'm
3 not -- so, for example, there's been quite a big initiative that was introduced under the
4 previous National Government, Kahui Ako, which brought together clusters of schools
5 and -- so we've got around 2,500 boards and we have around 250 Kahui Ako, so it's not
6 evenly spread but just by rough numbers. That means that most -- you know, quite sensibly
7 groups of 10 schools grouping up to support one another. So that is one thing I would point
8 to as a way that schools have -- and that was funded by the Government, it was one of the
9 biggest investments in New Zealand's history probably in terms of funding to support that.
10 So they exist.

11 Secondly, second from that is in the system, the role of principalship is very, very
12 important, because although boards may be variable, they're not there all the time, and the
13 leadership of the principal is critical to the environment, probably, that the school has.
14 School principals gravitate to other school principals. So, for example, we're in Newmarket
15 now, I can tell you that the principals of the schools around here will almost all be members
16 of the Auckland Primary Principals' Association or the Auckland Secondary Principals'
17 Association, they will also affiliate to the New Zealand Principals' Federation or the
18 Secondary Principals' Association. They will, in many cases, be a member of a subject
19 association.

20 So there are a lot of ways that the system does actually accommodate the
21 distribution. So it's not quite as stark, I think, as it's painted there. It's not to say that there
22 won't be elements of that.

23 In terms of the capacity of the national bodies appearing and feeling bureaucratic,
24 I couldn't agree more. I think I said it in my opening that the way we deal with people
25 actually can feel bureaucratic.

26 So the Government's response to that report was to say you need more people out
27 there working alongside schools and principals who know their business, who can relate to
28 them, who have got credibility with them, and who can work with them. So in the first
29 tranche of funding to support that, we had around about 40 curriculum advisors come in to
30 our Te Mahau two years ago. In the following budget we had funding for a further 35
31 people to come in and work. We could not fill those vacancies because of Covid, but we
32 have transferred that funding to this year, and then in the last budget, we were funded for
33 about 40 leadership advisors.

1 So if you go back to the independent task force report, you will find they
2 recommended curriculum advisors and leadership advisors and that is what the Government
3 has responded to.

4 In relation to disadvantage, outside of that report, the Government has done some
5 pretty significant things in terms of food in schools, has been deliberately targeted at poor
6 families, donations policy to reduce the pressure on schools in low deciles to respond to
7 needs for cash, free period products in schools, all schools, and then a commitment to fund
8 the equity index next year.

9 So I think on the disadvantage, there's a number of different policies that
10 have -- they will not resolve all of the issues raised but they do try to attend to some of the
11 issues.

12 **MR THOMAS:** Thank you. So, in summary, you'd see it that there are some good initiatives
13 taking place to address some of those findings?

14 **MS HOLSTED:** The Government's response was comprehensive and I think it's on the record, so
15 I am implementing the Government's response.

16 **MR THOMAS:** Thank you. I'm going to move now away from the sort of framework questions a
17 bit and ask you some questions about Te Tiriti o Waitangi. Sorry, just bear with me when
18 I determine where to start. I'm going to start with the Ministry's response to the
19 Commission's notice to produce number 422. We don't need to bring this up, but that
20 contains an acknowledgment on page 20 that as a partner to Te Tiriti, the Crown has a duty
21 to actively promote and protect Treaty rights and to develop educational settings in a way
22 that reflect Māori/Crown relationships, and this has been reflected in the Education and
23 Training Act 2020.

24 We understand that the Public Service, in and of itself, is not a Treaty partner and
25 the Treaty partner is the Crown, and we appreciated having evidence from another CE
26 earlier this week on that point. However, would you agree that the Public Service does
27 have a role under the Public Service Act 2020 to support the Crown in its relationship with
28 Māori under the Treaty?

29 **MS HOLSTED:** We have an obligation to support the Government in relation to its role as a
30 Treaty partner, yes.

31 **MR THOMAS:** I'm going to turn now to some of your Ministry's documents around the Treaty
32 and starting with the Treaty of Waitangi policy document, which is document ending
33 250960 for the record. I'm just going to read a quote from that and then ask you about it.
34 Sorry, we'll just see if we can have this up.

1 **MS HOLSTED:** Is it a long quote or a short quote?

2 **MR THOMAS:** Relatively short, the part I'm going to refer to, but Ms Schmidt-McCleave asked
3 for that to be brought up. I'll just get up the wording. I might continue reading in the
4 meantime. So in this document, yes, I'm reading from around the middle of the page under
5 "Ministry of Education", I'm just going to read from there. So the Ministry's describing
6 itself as:

7 "A major institution of Government with many statutory powers and functions
8 exercised by Ministry officials that affect Māori children and young people, their whānau,
9 hapū and iwi."

10 Would you agree that in carrying out that role as described and in order for the
11 Crown to meet its Treaty obligations, it is critical that the Ministry gives effect to the
12 Treaty?

13 **MS HOLSTED:** The Crown gives effect to the Treaty. We need to provide advice to the Crown
14 to meet that, and in our daily work, we need to respect the role of the Crown as a Treaty
15 partner. I don't know if I've answered your question, I'm sorry.

16 **MR THOMAS:** Prior to the statutory direction in the 2020 Education Act and Training Act, what
17 informed the Ministry's role in giving effect to the Treaty?

18 **MS HOLSTED:** Well, there's a constitutional role for the Crown and as an agent, a Public
19 Service department, one's job is to support the Crown in its functions. So really it codified
20 but I don't think it particularly changed the responsibility. The Act codified what - I think
21 it's absolutely fair to say, though, that the relationship between the Crown as a Treaty
22 partner and iwi Māori as Treaty partners has developed quite a lot in the last few years, and
23 it is shifting and it is working its way through different places at different times. So- the
24 words on the page here are intended to say in order to do our job, particularly in relation to
25 respecting article 3, then you must take account of equity if nothing else.

26 And we know that Māori have been failed by the system, so if you've got an
27 education system that's attempting to improve that situation, you need to pay attention to it.

28 **MR THOMAS:** Thank you. Yeah, I guess prior to that the 2020 legislation giving some statutory
29 direction on that, though, was there anything in, say, the 1989 Act that assisted in that
30 regard or is it more recent that we see that?

31 **MS HOLSTED:** No, I think it would - I think it goes quite a long way back in education, that the
32 relationship between iwi Māori and education has been quite close at times. And at other
33 times it hasn't been, but it wasn't created, is my point I suppose, by that 2023 legislation. In
34 fact, I'm sorry, I -can't - that- document there is 2020?

- 1 **MR THOMAS:** That's correct, yes.
- 2 **MS HOLSTED:** Does that precede the Act or is it after the Act?
- 3 **MR THOMAS:** It's certainly in the year of.
- 4 **MS HOLSTED:** It may well have preceded it. I can't quite recall exactly -- it says January 2020,
5 so...
- 6 **MR THOMAS:** Thank you. I'm going to bring you to another Ministry document now and we'll
7 try and get this up as well. We've got it there. So this is, I guess, yeah, what I'm wanting to
8 say here is that the Ministry's commitment to giving effect to Te Tiriti is articulated in its
9 internal policy documents, which include this one specifically, commitment to the Treaty of
10 Waitangi.
- 11 At page 1 the principle of active protection is included there as a guiding principle;
12 is that correct?
- 13 **MS HOLSTED:** It is a guiding principle of the Treaty.
- 14 **MR THOMAS:** And the document goes on to state under the heading "What this means for our
15 work", that:
- 16 "We see Māori students as taonga to be protected."
- 17 Would you agree that active protection requires the Ministry to take, by definition,
18 proactive steps to achieve this vision as opposed to a passive or reactive role?
- 19 **MS HOLSTED:** Yes.
- 20 **MR THOMAS:** Would you accept that protecting students as taonga, as treasured possessions,
21 includes protecting them from harm in education settings?
- 22 **MS HOLSTED:** Through the regulations, the provisions that we can give effect to, yes. And I
23 will repeat, what happens on a daily basis in schools is not something that we have daily
24 contact on. So I think you'll find that our legislative frameworks, our NELPs, our guidance,
25 our expectations, are entirely consistent with that protection.
- 26 **MR THOMAS:** Just continuing on with this line of questioning, is the Ministry's commitment
27 and the Crown's commitment to actively protecting Māori students from harm one of the
28 ways by which it fulfils its active protection duties?
- 29 **MS HOLSTED:** I'm going to repeat; the Crown gives effect to those principles of the Treaty, we
30 are here to assist them to do it.
- 31 **MR THOMAS:** I guess with reference to the Commission's terms of reference period 1950 to
32 1999, I guess can you explain how in practical terms that the Crown, and with assistance
33 from the Ministry, if I can take into account your comments, has met its commitment to
34 actively protect Māori students as taonga from harm across the different education settings?

1 **MS HOLSTED:** I said at the outset that I did not think we had, it was one of the
2 acknowledgments I made.

3 **MR THOMAS:** Thank you. In terms of assessing the successive educational outcomes for
4 Māori, does the Ministry routinely assess the effectiveness of its duty to protect Māori
5 students from harm?

6 **MS HOLSTED:** Well, we regularly look at the impact of policies, practices, legislation,
7 curriculum and we -- over all of that we have a Treaty of Waitangi te ao Māori, Māori lens,
8 and so to that extent, particularly in recent years, the answer would be yes. Whether or not
9 those are all fit for purpose, I would be naive to suggest that I think they are.

10 What we are, and I again said at the outset, the way that we will be more effective at
11 changing the system so that the outcomes that I think we all want to achieve are achieved is
12 working alongside and with. And I don't really think that a Ministry on its own can or will
13 achieve that.

14 **MR THOMAS:** Just in relation to that previous acknowledgment that you mentioned in relation
15 to harm, sorry, I took it that the acknowledgment related to te reo only. Is the
16 acknowledgment, does that extend to an acknowledgment of failure to protect from harm?

17 **MS HOLSTED:** It acknowledged failure to access te reo, tikanga and mātauranga. The reason
18 those three things are there together is because with the three of them, we know that Māori
19 experience success as Māori. So if you take some of those away, and I know - I'm not sure
20 the way you're using "harm" but I'm using it in a very general sense, that you do harm
21 people if you take away aspects of their identity, their language or their culture. So te reo
22 tikanga and mātauranga- go to the heart of identity, language and culture.

23 **MR THOMAS:** What about harm in the sense of, like, children's safety, physical and emotional
24 safety?

25 **MS HOLSTED:** We should have done everything that we could have done to protect every
26 child's safety. To the extent that we haven't, then I think we'd acknowledge that.

27 **MR THOMAS:** Thank you. I guess I just want to explore with one more question, one or two
28 more questions, the distinction which you've mentioned between the Ministry's role in the
29 system and the devolution, I guess, down to school boards in terms of what they do.
30 I guess the question's aimed at, yeah, how can the Ministry ensure, I guess, students are
31 protected from harm, you know, if it's not involved in that day-to-day operational side of
32 schools?

1 **MS HOLSTED:** It can't. And it's something that I find I talk about a lot. Even the last reading of
2 this submission I saw the word "ensure". It's not possible to give that assurance, I'm sorry.
3 It would be wrong to do so.

4 **MR THOMAS:** I'm just going to have another look at one of the Ministry's documents, the Policy
5 Statement. That's document ending 650 and I'm just going to read this extract into the
6 record:

7 "A coherent Crown approach is needed to deliver equity for Māori in education.
8 This means working with education-related agencies so that all levers operate in unison to
9 uphold and honour Te Tiriti, the Treaty, in education."

10 I wanted to ask you, I guess, at a high level, how does the Ministry work with other
11 agencies to ensure that Māori students in education are protected from harm, and by
12 "harm", I'm referring more to safety?

13 **MS HOLSTED:** So the statement relates to equity of outcome in relation to educational
14 achievement, and we work particularly with the Tertiary Education Commission, the
15 New Zealand Qualifications Authority, New Zealand Teaching Council, the Education
16 Review Office. As a group of chief executives, we meet regularly on this. We have deputy
17 secretaries who also work together, and we have increasingly a relationship between those
18 deputy secretaries overseeing Ka Hikitea, and alongside them the Mātauranga Iwi Leaders
19 Group is engaged in oversight of that work as well.

20 **MR THOMAS:** Thank you. I just want to ask a question specifically in relation to the role of the
21 Education Review Office that you mentioned as one of the agencies. How does that office
22 support the Ministry's role to meet its commitment under the Treaty?

23 **MS HOLSTED:** The Education Review Office is its own department, it has its own obligations to
24 its own work, and it reviews schools and it needs to do so in accordance with the evaluative
25 framework that it is independently required to develop.

26 In the course of that, their job would be to include how those schools are responding
27 to the identity, the language, the culture of the children at that school.

28 **MR THOMAS:** What about specifically in relation to protection from harm, what role would you
29 say that office having in supporting your office?

30 **MS HOLSTED:** The Education Review Office checks with boards to make sure that they have
31 the policies in place that they are required to under the law, under the legislation, that we
32 nurse through the system. So they are the monitors of the implementation of those laws.

33 **MR THOMAS:** I've got one final question in relation to this protection from harm theme before
34 I move to a new topic. So on day one of this hearing, the Crown acknowledged through the

1 opening statement of Crown counsel that -- and I'll read these, that number one, that the
2 State did not always ensure children, disabled people, Deaf people and those with mental
3 health conditions were safe when in State care; and two, the State did not always stop abuse
4 in State care when it was disclosed or reported."

5 Given those acknowledgments, do you accept that it would follow that where those
6 children were Māori children, the Ministry has not satisfied its commitment to actively
7 prevent them from harm?

8 **MS HOLSTED:** The Department of Education, in respect of those children, failed to do that at
9 the time, that is correct.

10 **MR THOMAS:** Thank you. I'm going to ask you some questions now about systemic racism and
11 specifically, I guess, coming back to the acknowledgments that you made in your evidence.

12 There was no specific acknowledgment in relation to systemic racism, is that right?

13 **MS HOLSTED:** Correct.

14 **MR THOMAS:** Are you able to explain why that is?

15 **MS HOLSTED:** I don't know how to describe systemic racism. I know it's a label that we put
16 across a lot of things. I'm not sure what it means in practice, and so therefore what am
17 I acknowledging? The words in the acknowledgments from this morning were carefully
18 chosen to be something that we could change.

19 **MR THOMAS:** Okay.

20 **MS HOLSTED:** I don't know that I could change systemic racism, because I think by its nature it
21 is pervasive -- I know it is pervasive beyond any single part of the system.

22 **MR THOMAS:** Within the education system though, would you consider your Ministry has a
23 role in that?

24 **MS HOLSTED:** I think that we would absolutely acknowledge, is that we have, as a system too
25 often, not always, but too often had lower expectations of certain groups and communities,
26 and I would include in that Deaf, disabled, Māori, Pacific, so that expectations of those
27 children is biased against their success. And we know that expectation is an extremely
28 powerful influence in how children achieve and engage in learning.

29 **MR THOMAS:** Would you consider, I guess, in your view that as an example of systemic racism,
30 or would you not be prepared to go that far?

31 **MS HOLSTED:** As I say, I'm happy to, not happy to, but I'm prepared to acknowledge those
32 things that I think we can influence. To acknowledge things that we can't is something of a
33 platitude.

1 **CHAIR:** If I could just intervene briefly. Ms Holsted, there are certain -- "systems" is a wide
2 word, isn't it.

3 **MS HOLSTED:** Mmm.

4 **CHAIR:** But counsel has directed you through the frameworks of the Te Tahuhu and its
5 predecessors and to the extent that the system is, for present purposes, those frameworks,
6 legislative, written policy and practices, I think if we could focus on that. I mean, there's
7 the crying out loud example, for example, of the prohibition on reo, which was a legislative
8 process.

9 **MS HOLSTED:** That's right.

10 **CHAIR:** To that extent, I think anyone could accept, in hindsight at least, that was a racist
11 systemic piece of racist policy which possibly we all regret now. Would you agree with
12 that?

13 **MS HOLSTED:** I'm trying to -- I have no question with you that the policy -- there's a whole
14 series of legislation which has been, in hindsight, described as racist, absolutely. Whether
15 you would describe it at the time that that's how people believed, what they believed they
16 were doing, I can't comment on that.

17 **CHAIR:** If we take away the subjective view of what the people intended at the time, we can't
18 second-guess that, but I think if we can say the effect was a racist in that it discriminated
19 against a particular racial group.

20 **MS HOLSTED:** Absolutely discriminatory. Discrimination may be a better word.

21 **CHAIR:** It's probably a more comfortable word, but --

22 **MS HOLSTED:** Well, discrimination can be positive or negative which is perhaps why it's an
23 easier word to use, but definitely it discriminated. We've had legislation that discriminated,
24 and we have done what we can over the years to eliminate legislated discrimination. That
25 has not eliminated biases, human biases. And I'm on record some years ago in media
26 talking about unconscious bias of many teachers, because many of them go to school
27 believing they're doing absolutely the right thing and are not aware that some of their
28 actions are in fact discriminatory, biased or racist. So I don't wish to assign that to it, but I
29 do know that the outcome is devastating for those young people, devastating.

30 So I'm very concerned with how we change the outcome, and for me, I'll come back
31 to it, I don't think labelling their actions actually will help us change their actions.

32 **CHAIR:** Just to bring you back, we are talking here not about the individual, although obviously,
33 you know, there's a very grey line there, but we are talking about the extent to which a
34 Ministry, a Government Ministry, can legislate both in high legislation and in its policies

1 and in its practices in a way that has a discriminatory effect and in hindsight can be seen as
2 racist.

3 **MS HOLSTED:** I'd agree absolutely with that, absolutely agree with that statement.

4 **CHAIR:** Thank you.

5 **MR THOMAS:** Thank you, Madam Chair. I'm going to bring you to your brief of evidence at
6 paragraph 2.2. I'll give you a minute to get that. There you refer to the accounts of
7 survivors that you've heard through this Inquiry and you say that:

8 "You have listened to the experiences of suffering and trauma, in particular how
9 these have impacted on Māori, Pacific and children with disabilities."

10 Can you tell us what are the particular impacts for Māori that you have heard?

11 **MS HOLSTED:** Loss of mana, loss of status, loss of a sense of well-being; the sense of being
12 useless, of being hopeless, of having nowhere to turn, of not being able to manage in
13 society more generally, of not being educated, of therefore not being able to be employed
14 and therefore going through another round of discrimination for other reasons and often on
15 an ongoing basis.

16 **MR THOMAS:** Thank you. Some of the impacts that I've noted that we've heard, I'll read
17 through these, include Māori being punished for speaking te reo, disconnection from
18 culture, language, mispronunciation of names, renaming Māori children with Pākehā
19 names, discouraging Māori from pursuing academic pathways, suppression of cultural
20 identity, assimilation into western ideologies of education, and discrediting traditional
21 Māori knowledge, devaluing Māori performing arts and discrediting Māori customary
22 practices including karakia.

23 I guess do you acknowledge on behalf of the Ministry that these were real impacts
24 on Māori children?

25 **MS HOLSTED:** Absolutely accept the statements from survivors. And, yeah, absolutely accept
26 what they've said to be true.

27 **MR THOMAS:** Relating to the question of impacts, can you talk about what impacts you've
28 heard for Pacific peoples in the evidence?

29 **MS HOLSTED:** I'm not sure they're too different, to be honest. Because of that loss of face, a
30 sense of disbelief, of not feeling -- not being able to front family again, feeling that they're
31 to blame, I think those are the other aspects of abuse that are long-lasting and devastating.

32 **MR THOMAS:** I'm just going to again refer to some of the other specific impacts that we've
33 heard in relation to Pacific peoples and then I'll just ask you a couple of questions at the
34 end. In summary, we've heard evidence about a teacher changing a Samoan name to an

1 English name as it was -- as the teacher found the pronunciation difficult, a disconnection
2 from language, culture and identity while in education settings and due to those mentioned
3 impacts, Pacific children struggling to connect and communicate with their families and
4 communities outside of the education sector.

5 What can the Ministry implement in terms of change in response to those impacts,
6 both in relation to Māori and Pacific children?

7 **MS HOLSTED:** Primarily, we need to do it through growing the capability of the teaching
8 workforce, the education workforce, and recruiting greater numbers of Māori and Pacific
9 into the workforce. On the -- my first year of teaching in Auckland, I discovered I was
10 teaching a second-year school class and I learned that Johnny was Etione, so in his second
11 year of school that school had already changed his name, so I'm strongly currently aware
12 that that's the sort of -- that wasn't unusual. That's my point. Unfortunately, that was
13 normal.

14 So we had a long way to go. I would like to say now, and I know it's not normal for
15 that to happen. I don't in any way deny the experiences of those people who did experience
16 that. When I was teaching back in 1970 something, as I say, that would have been
17 common. I don't think it is common now.

18 So what we have done from a societal point of view, I take no credit for the shift in
19 that, there's been a lot of advocates and challenging people out there helping society shift
20 on those things. But as a system we have advocated for better language opportunities for
21 teachers to understand how to say names. We have tried to normalise particularly te reo,
22 we are much slower on Pacific languages, I'm really conscious of that, and there's been
23 some small things done more recently that will start to grow that.

24 But we need to -- the Teachers Council has identified, for example, their
25 competencies required for teachers coming out of training, as to how they can be and need
26 to be culturally competent. We do not recruit teachers, but the universities need to be
27 recruiting to meet that standard. The schools then need to reinforce that behaviour and
28 leadership needs to reflect it. So it's through the workforce that we need to influence those
29 changes.

30 **MR THOMAS:** Thank you. I'm going to move to some other questions now relating more to
31 Pacific peoples in the time we've got left in this session. So I just wanted to start, I guess,
32 by again referring back to the acknowledgments and I just wanted to clarify, does the
33 acknowledgment that the education system has underserved many learners, does that
34 include Pacific learners?

- 1 **MS HOLSTED:** It does.
- 2 **MR THOMAS:** Sorry, Ms Schmidt-McCleave has just mentioned that we might also have one of
3 your colleagues to assist with these questions.
- 4 **CHAIR:** Yes, and please feel free to refer to any of your colleagues if you think that it's their area.
5 We'll leave that to you to decide, it's up to you.
- 6 **MS SCHMIDT-McCLEAVE:** We may do a reconfiguration, to use the language of counsel
7 yesterday, ma'am. Ms Vink will just pop out. I'd like to introduce Ms Yvette
8 Guttenbeil -Po'uhila, and she will introduce herself.
- 9 **MS GUTTENBEIL PO'UHILA-:** Malo e lelei everybody, Malo e lelei Commissioners. Ko
10 Yvette Guttenbeil -Po'uhila. I hail from the islands of -- many islands of Moananui a Kiwa,
11 actually, but mainly from Tonga and I'm a daughter of the migration to Aotearoa, have had
12 all those experiences, and I'm here on behalf of the Ministry of Education. I am a
13 middle-aged Tongan woman with brown features wearing black. Malo 'aupito.
- 14 **CHAIR:** Malo.
- 15 **MR THOMAS:** Thank you, Madam Chair. And again, Ms Holsted, I'll direct the questions to
16 you but I'll take a steer from you if you'd like your colleague to address the question as
17 well.
- 18 So I guess the first question, did representatives of the Ministry attend or listen to
19 the Royal Commission's Pacific hearing in July last year, 2021?
- 20 **MS HOLSTED:** I'm not sure if education representatives were there, but I know the Crown was
21 there and we were given reports of all of the hearings.
- 22 **MR THOMAS:** Were there any -- from those reports, I guess, were there any particular learnings
23 or reflections that your Ministry took from that evidence?
- 24 **MS HOLSTED:** I'm not sure I can answer that question, to be honest. I'm not sure that Yvette
25 can either.
- 26 **MS GUTTENBEIL PO'UHILA-:** Yes, thank you. There were representatives there from the
27 Ministry at the hearing, specifically from Ministry of Education, also the regional Auckland
28 team, Tāmaki Makaurau team attended. We have had some information from the -- for the
29 regional team but not a lot.
- 30 **MR THOMAS:** Sorry, going back a step before I get into my other questions -- no, sorry, I've
31 covered that point. Moving on, relating to that hearing, there was some expert evidence,
32 Dr Julia Ioane gave evidence about the many negative experiences Pacific survivors had,
33 including from the education system. She spoke of language barriers, bullying and feelings
34 of isolation which led to non-compliant behaviour. That witness said that we need to invest

1 in intensive support for our school-aged children. I guess, firstly, yeah, were you aware of
2 that evidence and how would you respond to that evidence?

3 **MS HOLSTED:** I'm certainly aware of the lack of language capability in the system, and I'm
4 certainly aware of the sense of isolation, I suppose, for Pacific people. I think where it
5 might be useful for Yvette to talk about is what we're working on in terms of the Pacific
6 Plan and where that's come from, and where it's at at the moment.

7 **MS GUTTENBEIL PO'UHILA-:** Thank you. In 2018 to 2019, the Ministry underwent a Kōrero
8 Mātauranga which was an extensive consultation with communities. In that programme,
9 there was extensive consultation and fono with various Pacific communities, church leaders
10 and identified groups. So we had learners, we also met with the rainbow community, we
11 met with whānau, with learners with disabilities, we also met with, we also fonoed with
12 providers and young people who identified as needs, not in education, employment or
13 training. And so that - from that consultation or from those various fono we were able to --
14 that information contributed to the development of the action plan for Pacific peoples 2020
15 to 2030. And in the action plan there are five specific shifts that the action plan is seeking
16 to support Pacific learners and their families in the system.

17 **MR THOMAS:** Can you, I guess, briefly outline what those are?

18 **MS GUTTENBEIL PO'UHILA-:** Yes. The shifts speak to working with -- sorry, my English is
19 a second language so I've got to read this slowly. Working reciprocally with diverse
20 Pacific communities to respond to unmet needs and aspirations. The second is to confront
21 systemic racism and discrimination in education. The third is to enable teachers and
22 leaders in education to take coordinated action and become culturally competent for diverse
23 learners. The fourth is partnering with families to design opportunities together with
24 teachers and leaders, and the last one talks about valuing highly-competent teachers and
25 leaders in the sector.

26 **MR THOMAS:** Thank you. At a high level, and I'll direct this to Ms Holsted firstly, would the
27 Ministry recognise cultural neglect as in a failure to provide access to one's culture,
28 language and identity while in education as a type of abuse or neglect?

29 **MS HOLSTED:** I said right at the outset identity, the order is important; identity, language and
30 culture, and as I said at the outset, those things are central to the engagement and learning
31 for all children. The absence of them discriminates against their capacity and their ability
32 to be the best they can.

33 **MR THOMAS:** I'm going to ask now about some evidence around cultural support for Pacific
34 children, including migrant people, Pacific peoples. We heard some evidence at the Pacific

1 hearing that from 1950 to the present day, the education has failed to meet the needs of
2 Pacific children by not providing culturally-appropriate wrap-around supports for Pacific
3 children and families. Specifically including those who have migrated from the Pacific
4 Islands.

5 Does the Ministry accept that?

6 **MS HOLSTED:** I accept that there's a -- we have an insufficient number of Pacific teachers,
7 support staff, specialist staff, as we do Māori staff. And recruiting and retaining those
8 people is a huge and ongoing challenge. We have sought to do that through the use of
9 scholarships and other ways of providing access. And sometimes that's been successful but
10 it is an ongoing piece of work, and it's under a permanent act of consideration how we grow
11 that workforce.

12 **MR THOMAS:** There's also been evidence at that hearing about not providing
13 culturally-appropriate training and support for teachers to ensure that the needs of Pacific
14 children, particularly migrant children, are met. Would you accept that that was a failing?

15 **MS HOLSTED:** I would ask Yvette to talk to you a little about Tapasā which is the initiative
16 we've taken to try and address that issue.

17 **MS GUTTENBEIL PO'UHILA:** The Tapasā framework is a cultural competency framework for
18 teachers who teach learners from the Pacific. It takes in through a module process of
19 identifying what young - what Pacific learners might need in the classroom or the schooling
20 setting.

21 We also have funded and supported Tautai o le Moana, which is a principals' or a
22 leadership programme and is run by the New Zealand Principals' Association, members of
23 the New Zealand Pacific Principals' Association, and that is to support principals who have
24 either a high Pacific learner population or Pacific principals themselves. So there are two
25 competency or cultural competency frameworks that the Ministry supports presently; one
26 for teachers and one for leadership.

27 **MR THOMAS:** I guess just to place those in time, would those be more recent frameworks?

28 **MS GUTTENBEIL PO'UHILA:** Yes.

29 **MR THOMAS:** So, as to my question, would there have been less training and support, say,
30 going back to the terms of reference period 1950 to 1999 in particular?

31 **MS HOLSTED:** I suspect there was none. The 2018 Tapasā work was done in response to a
32 recognised need.

33 **MR THOMAS:** I'm just going to go through a couple more impacts, and I appreciate we're nearly
34 out of time, Madam Chair.

1 **CHAIR:** Is this a new topic?

2 **MR THOMAS:** It's a continuation. Perhaps if I just finish with two more questions and then
3 continue after the break?

4 **CHAIR:** We don't want to go too much over our 45 minutes.

5 **MR THOMAS:** Thank you. There was evidence that the educational system has failed to address
6 barriers that prevent Pacific children, especially migrant children, from being able to
7 adequately adjust to the New Zealand education system. Would you accept that evidence?

8 **MS HOLSTED:** I'd probably want to know when. I think that the system has changed
9 tremendously since 1950 to the time. So we know from the stories of the Pacific migrants
10 in the 1950s into places like Dunedin and so forth which were completely alien at every
11 level from climate through to -- so the system, migrant workers in New Zealand generally
12 were expected to come and become workers for "the system", the system wasn't there to
13 welcome them, and I think that there's generations of migrants to New Zealand who have
14 experienced that and large numbers of Pacific workers were in that situation.

15 What I would like to say is that while change may be happening too slow, and it
16 often feels like it is, it has occurred. I don't want to diminish the experience of those people
17 and Yvette herself, as a modern woman, will have experienced her own forms of
18 discrimination, and I'm sure would be happy to share some of those.

19 **MS GUTTENBEIL PO'UHILA-:** Sure. So just coming -- just Tautokoing Iona's kōrero or
20 talanoa, we have come a long way and in recent -- in the recent 2020 budget, we have been
21 able to support a number of community providers, Pacific providers, Pacific experts and
22 professionals who have stepped up to be part of the solution of the very context that you are
23 talking about. When I think of my own personal education journey, those things were not
24 there or not available for my migrant parents. But as a migrant myself, it is available for
25 me and my young children. And so the Ministry supports the Talanoa Ako programme
26 which is across New Zealand. It is an opportunity for parents, for whānau, for families and
27 communities to come together and Talanoa Ako which is talk education, talk learning and
28 talk schooling. So that programme is currently being run.

29 In the Pacific education funding we have mentoring, academic mentoring
30 programmes out there, we have partnered with various agencies, Pacific providers but also
31 health and social agencies to provide a more comprehensive service to our learners during
32 the Covid impact especially, and so while they are --

1 **CHAIR:** Sorry, can I just stop you? We are returning over time. I don't want to stop you, and
2 what I'd like to do is to pause, you can take a breath, we'll all have a cup of tea and then
3 we'll come back and then you can continue, all right? Is that all right?

4 **MS GUTTENBEIL PO'UHILA:** That's fine.

5 **CHAIR:** Let's take a 15-minute break and we'll return about 25 to 12.

6 **Adjournment from 11.17 am to 11.35 am**

7 **CHAIR:** Welcome back everybody. Now, we interrupted you and so now you've got an
8 opportunity in a more relaxed way perhaps to explain, but again, remembering speed.
9 Especially when people, I find, are listing things, the list goes faster and faster like a steam
10 train, so if you wouldn't mind. So did you want to just reorient this, Mr Thomas?

11 **MR THOMAS:** Yes. Sure, Madam Chair. Thank you. I guess yeah, we were talking about, I
12 think you were talking previously about the sort of more current initiatives in relation to
13 Pacific peoples. Did you want the opportunity to finish that or I can move to the next topic
14 questions?

15 **MS GUTTELBEIL PO'UHILA:** Yes. I think I left off where I was talking about the
16 partnerships or the contracts that we have with a range of Pacific providers, professionals,
17 experts in the sector also, and how the funding has enabled so much activity and also how
18 we've experienced the community coming forward to be part of the solution for a lot of the
19 things that we're here for today.

20 **MR THOMAS:** Thank you. Still in relation to Pacific peoples, I want to ask about barriers to
21 education briefly, and in the Ministry's response to the Notice to Produce 422, we've got
22 this up on the screen, document ending 4599 page 7, the Ministry acknowledges that
23 racism, ableism and bias have impacted access to education for some learners. I wanted to
24 ask Ms Holsted and yourself, I guess, what barriers to education does the Ministry
25 recognise for Pacific peoples?

26 **MS HOLSTED:** I think I'd like to describe that as access to learning. I think education may make
27 it sound like actually attending school, whereas attending school for many of our Pacific
28 children is not such an issue. I have to say, can I say, Covid again has impacted on that, but
29 at the time this relates to. So I think the issues that Yvette's talking about in terms of access
30 to learning is what we're really reflecting in that statement. Is there anything else that you
31 wish to add?

32 **MS GUTTELBEIL PO'UHILA:** Yeah, so when we think of access to learning, it is access to a
33 physical place where our young people can enrol and attend learning or school, or early
34 learning providers, which is something that the Ministry is very much responsible for.

1 The other part I'd like to probably bring to the kōrero, to the talanoa at the minute is
2 the impacts of, we've just gone through the -- last year we had the public apology for the
3 Dawn Raid policy, and the impacts during that time are long lasting, and so you will have a
4 community of people who, in sometimes legislation, sometimes description, are labelled as
5 "other", so if you are Pacific or you are Tongan or Samoan, you're put over here and there's
6 another response for you.

7 Important when we're thinking identity language and culture because the
8 competency around that needs to be acknowledged and supported. However, when we're
9 thinking of bias and we're thinking of the learning environments, there's a lot of work that's
10 required in this space. The Ministry has the Tūlī scholarships, of which we've
11 acknowledged the harm that happened during that time, but also we've got the work that we
12 are doing again in our communities to support them understand the impacts in the
13 environment that we came into to also support their children, our tamariki, our mokopuna
14 in learning spaces and the sector in the workforce. So there's a lot of work happening in
15 that space.

16 **CHAIR:** Can I just clarify that. So we've got two aspects here, I think. One is access to
17 education by being able to go to school, actually attend physically, but once they're there,
18 the access issues are still there, aren't they, because it's the type of teaching, the competency
19 of the teachers and the different cultures and the recognition of the need for different
20 learning environments that is also impacting on access to learning.

21 **MS HOLSTED:** That's correct. In fact, more so. And typically, and I'll go pre-Covid for a while,
22 if you were looking at regular student attendance it was quite often the case that Pacific
23 children would attend school, they'd be present, but they were not participating. And then
24 when you saw them at the end of their schooling life at NCEA, they'd often stay on longer
25 but not necessarily achieve at the same level. So that tells you that the experience they
26 were having was not helping them to participate in learning. So those are the changes that
27 Yvette's talking about in helping teachers to change their practice.

28 The other point I would make, and it's too early to tell, I suppose, but the
29 introduction of Histories Aotearoa New Zealand supports access to learning, because if you
30 don't see yourself in history, you aren't part of it. And for Māori and Pacific and our
31 Chinese migrant communities in particular whose stories have not been told, this provides a
32 new opportunity, and we're a year later doing it, because of Covid, but actually to my point
33 earlier, I think that year will have given our profession greater time to be more confident in
34 teaching it.

1 **CHAIR:** Thank you for that, I'd just like to note that what you have said is well supported by our
2 survivor evidence, the number of Pacific people who spoke of the almost hostile
3 environment that they felt when they were at school, so thank you very much for that.

4 **MR THOMAS:** Thank you, Madam Chair. I wanted to move now to ask a question about
5 educational under-performance for Pacific students, and this is again referring to the
6 Ministry's NTP response page 9, which is up on the screen. The Ministry acknowledges
7 that the education system continues to under-perform for Pacific students. I guess in what
8 key ways do you see it still under-performing?

9 **MS HOLSTED:** It goes to the heart of education. The teacher bias and low expectations which
10 I mentioned earlier in response to another question are extremely powerful determinants for
11 learning outcomes. As the saying goes, you get what you expect. So if Pacific children are
12 being expected to either not succeed or to just go into the trades, and I don't diminish the
13 importance of trades, but if that's the only options that they're given, then that level of bias
14 seriously impacts on their outcomes.

15 Again, we come back to the identity; who is the child in front of you, their
16 language, how can I communicate with you? And their culture; what is it that's meaningful
17 and important to you and how do I change my practice to respond to those things?

18 **MR THOMAS:** Thank you. I'm going to keep moving along, in the interests of time, on to
19 complaints.

20 **COMMISSIONER ERUETI:** Just before, excuse me, before you move from the topic if I can
21 ask a quick question about Te Tiriti. Ms Holsted, I wonder if you can help us with a short
22 statement of the Treaty about the Crown. The Crown includes the Public Service which
23 includes your Ministry but the Ministry is not a treaty partner, so we heard that
24 Ms Schmidt-McCleave talked about this in her opening and I have to admit, I'm a bit
25 puzzled by that, about why the Treaty obligations -- they stop somewhere but they don't
26 extend to your Ministry.

27 **MS HOLSTED:** I'm not sure if it's obligations as much. Perhaps if I can describe to you the
28 framework that is in my mind when I think about this. On the Crown side kāwanatanga is
29 exercised and that is described in Te Tiriti, and tino rangatiratanga is described iwi Māori
30 side. In a triangle, those two things are at the top. At the bottom you have equity, if you
31 like, and the job of the Public Service is to bring to that situation a way of giving
32 expression to tino rangatiratanga. Now, we can't do that as Public Service departments any
33 more than the Crown can do it, but we need to create the space for it.

1 So if I give you a practical example of what we're doing at the moment in a policy
2 process it might help. We're undertaking work on behalf of the Government to grow the
3 numbers of Māori children, tamariki, in Māori medium or kaupapa Māori medium
4 education by 30% by 2040. That's a hugely aspirational ask, but that's the aspiration.

5 In order to do that, we have, with the Crown, set up a group of Māori, Te Pae Roa,
6 who are actually going around the country independently, independently of us and
7 independently of the Crown, to talk with Māori and iwi Māori about their aspirations and
8 how they would see us collectively achieving that goal.

9 They have brought that tino rangatiratanga to the table. Eventually the Crown will
10 make a decision about that. We, as a policy agency, are navigating between those two
11 things to provide advice to allow the Crown to exercise its rights and obligations. Does that
12 help?

13 **COMMISSIONER ERUETI:** Not really, I'm afraid, because you are the Crown, and you accept
14 that you are the Crown, but what you're saying is that even though you are the Crown, you
15 are not a treaty partner, the Ministry is not a treaty partner, I just need to be clear about that.

16 **MS HOLSTED:** I'm not of the Crown, I'm a creature of the Crown, but the Crown is the
17 government on behalf of the Queen.

18 **COMMISSIONER ERUETI:** Okay, so this seems to me to be a constitutional broad question,
19 right?

20 **MS HOLSTED:** Mmm.

21 **COMMISSIONER ERUETI:** I still can't see any justification for the distinctions that are being
22 made on the basis of what's been said so far.

23 **MS HOLSTED:** My point -- I don't want to overlabour it because in practice we have a range of
24 relationships between Te Tahuhu and iwi Māori across the motu. My point is I can do
25 those things because I have the permission of my ministers. They are not things that I can
26 enter as an independent partner to the Treaty. So if I'm entering a relationship with iwi
27 Māori that's based on Te Tiriti I require my ministerial -- I require ministerial Crown
28 approval to do that. So in a day--to-day basis this doesn't affect our relationship very much
29 at all. But I just need to be clear about where the authority for that lies.

30 **COMMISSIONER ERUETI:** Okay, I've got your explanation. I mean, I still don't understand it
31 fully, about what the legal basis is for making that distinction between you not being a
32 Treaty partner and it being somewhere -- it sits with Cabinet, is what you're saying, it sits
33 with the minister as the Treaty partner.

34 **MS HOLSTED:** Correct.

1 **COMMISSIONER ERUETI:** Then it stops there, and your relationship --

2 **MS HOLSTED:** The relationship doesn't stop but the authority for establishing the relationship as
3 a Te Tiriti relationship does. So we have a continuum of relationships with iwi Māori as set
4 out by Te Arawhiti, the Crown Māori relationship agency. Sometimes you're involved
5 informing Māori, sometimes you're consulting, sometimes you're engaging and at one end
6 of the continuum you have actually got a Treaty partnership. When you're at that end of the
7 continuum, I'm doing so with agreement from ministers.

8 **COMMISSIONER ERUETI:** I suppose one way to look at it is if you look at your Treaty clause
9 in your legislation which is really a direction from the law-makers including your minister,
10 that you seem to be saying that that is the extent of the obligations because they're
11 delegated to you through the legislation. But that means that, for me, the question is
12 whether there are any other Treaty obligations that apply to your Ministry that are not
13 specified in that Treaty clause because they seem to be contained neatly within section 9, I
14 think it is, and you seem to be saying that beyond section 9 you don't see any other
15 obligations that may arise from the Treaty.

16 **MS HOLSTED:** I think those are absolutely things that we are learning about all the time. What
17 I'm trying to describe here is the formal situation that we're in at the moment. So is, for
18 example, consulting with Māori before we establish a professional leadership and
19 development course, is that a treaty relationship, from your perspective?

20 **COMMISSIONER ERUETI:** It would be, yes, an obligation under the Treaty. That would flow
21 from section 9.

22 **MS HOLSTED:** So we would do that anyway because we respect the mana whenua.

23 **COMMISSIONER ERUETI:** So you see there are obligations that would apply to the Ministry
24 beyond those spelt out specifically in section 9?

25 **MS HOLSTED:** That was my point before, that on a daily basis, that's exactly what we do but
26 there comes a point of engagement which, for example, consulting, a silly example, but
27 consulting over something of that nature is something that is absolutely within my ken and
28 which all of our documents say we will do, and we do. There is a distinction when we get
29 to committing the Crown to a Treaty relationship which might in turn translate into ongoing
30 expenditure, for example.

31 **COMMISSIONER ERUETI:** Okay. I think we'll leave it there for now, but I appreciate the
32 explanation. The other puzzle was your way of describing discrimination and not wanting
33 to acknowledge systemic discrimination. I think you're prepared to concede that there is
34 discriminatory legislation historically, but when it comes to the notion of systemic racism

1 within the education sector historically, you don't -- you say you can't make that assessment
2 because it's not something that you yourself could effect or change? If you could
3 just -- I just was a bit puzzled by it. I think the other view you said was that back then it
4 may not have been considered to be discriminatory and therefore you now cannot say it was
5 systemic?

6 **MS HOLSTED:** No, I said I didn't know if it would have been described as racist. I think it was
7 definitely discrimination, it was just as the Social Welfare legislation continues to
8 discriminate, it allows for some people to get some things and other people not to. So we
9 still have discriminatory legislation. So that was the response to that question.

10 The question I was asked was more generally in terms of systemic racism and I said
11 that was a huge issue.

12 In terms of education, I don't know if there's been systemic racism. I do know that
13 there are people who will hold racist views because they represent the population at large. I
14 do know that there are people there who will discriminate deliberately, and is that racism?
15 Probably. I know there will be others who will behave in ways which will negatively
16 impact on people but I'd probably describe that as an unconsciousness. So what we're
17 trying to do through everything we're doing is go from critical consciousness through to
18 active protection, if you like, in the engagement.

19 **COMMISSIONER ERUETI:** Okay. If you discriminate on the basis of race, that's racial
20 discrimination. Just to be clear, that throughout all periods of history, you're not prepared
21 to accept that there was any systemic racism within the education system?

22 **MS HOLSTED:** No, I'm not saying I don't accept it, I'm just saying I'm not sure what it means
23 and where it means, because I'm not sure how it takes us anywhere. The concept is big and
24 it's a useful label, but I'm not sure what we do next with it.

25 **COMMISSIONER ERUETI:** Let's just see it as this, that throughout the education - say with the
26 Native Schools Act, for example, is that Māori were only able to attend to those schools if
27 they provided the bricks and mortar, and the building, and when they did attend they
28 weren't allowed to speak te reo Māori and it was used as a tool of assimilation. Māori were
29 effectively excluded from the education system. I think in the 1930s it would have been
30 maybe 1,000 Māori throughout the country. Maybe a 1,000 who were in school. Do you
31 think that that paints a picture of systemic racism?

32 **MS HOLSTED:** I think it does, I think it does. My point, I suppose, is I want to describe things
33 in a way that we can fix them, so it's the labelling of things that doesn't help us fix them,
34 that's all I'm saying.

1 **COMMISSIONER ERUETI:** Okay. What is important for counsel is just to get the
2 acknowledgment and recognition of systemic racism within the education system
3 historically, because we weren't able to get that from the Police Commissioner and it's so
4 important in terms of healing and also recognising the extent of the problem so we can fix it
5 today, so I really appreciate that.

6 **MS HOLSTED:** Can I distinguish between the Police Commissioner's situation and what I'm
7 talking about though? Because you are talking to me about a system which is a very, very
8 expansive system. I think you would find, I think you were asking the Police
9 Commissioner, whether or not there was systemic racism within Police and that is a
10 different question.

11 **COMMISSIONER ERUETI:** Okay, thank you for your time, I appreciate it.

12 **CHAIR:** Yes, Mr Thomas.

13 **MR THOMAS:** Thank you, Madam Chair. Ms Holsted, I'm going to move now to a different
14 topic entirely, the use of seclusion in education settings. Apologies, we're just going to
15 swap witnesses around.

16 **CHAIR:** Please do.

17 **MR THOMAS:** Ms Holsted, I'm just going to start briefly in a summary way to talk about the use
18 of time-out at a residential school between 1999 and 2000 and I'm not going to propose to
19 bring this up on the screen, I'm just going to summarise that you sent a letter of apology to
20 a complainant about the use of time-out at a residential school on behalf of the Ministry,
21 and this letter was in 2019. In relation to that apology, do you accept that that was an
22 example of inappropriate use of a time-out room within a school setting?

23 **MS HOLSTED:** Which school are we talking about, please?

24 **MR THOMAS:** I can't name that for the purpose for natural justice reasons, but I can bring the
25 document up for you, if it would assist.

26 **MS HOLSTED:** Thank you.

27 **MR THOMAS:** Just bear with us while we do that. Here we are. So the document is ending
28 214454 and I'll just give you a chance to --

29 **MS HOLSTED:** Yes, thank you. I am familiar with it. It's an unusual situation, actually, because
30 the reason that they're -- "yes" is the short answer to the question, but the reason it came
31 from the secretary rather than from the school was that by the time that claim came to us
32 the school had closed.

33 **MR THOMAS:** I understand, thank you. Would you accept in that case that that was relating to
34 inappropriate use of a time-out room?

1 **MS HOLSTED:** Yes.

2 **MR THOMAS:** Sorry, if you need a minute to --

3 **MS HOLSTED:** No, I've read it. Yes, I do.

4 **MR THOMAS:** That complaint falls within the Commission's terms of reference period, being
5 1999. I'm going to not dwell on that one and I'm going to move to talk more about the Ruru
6 complaint that you've mentioned already in your acknowledgment, and I've noted that,
7 thank you.

8 **MS HOLSTED:** Thank you. I'll ask David to speak to the detail of the Ruru end, and possibly it
9 might help to deal with subsequent issues related to seclusion as well.

10 **MR THOMAS:** Sure.

11 **MR WALES:** It might be helpful to give a brief history of some of this material. And I note that
12 you use the term "time-out" and I'll come to that shortly. But there would have been a
13 period of time within the time period that you're considering that seclusion, ie locking a
14 child away in isolation, was considered an appropriate response to behaviour; in the same
15 way that corporal punishment was acceptable. But things did begin to move and shift
16 around the 1970s to the 1980s where the notion of time-out came into favour.

17 This was something a little different from simply locking children away. This was
18 about assisting them to move away from an environment that was reinforcing or
19 encouraging certain behaviour. So it had a therapeutic element to it that simply locking
20 children away did not.

21 However, the terms were fairly casually used and sometimes conflated and used
22 instead of each other. So by the time we came to consider Ruru and some other schools, we
23 needed to ascertain whether they had used timeout in an appropriate way to assist a learner
24 to essentially self---regulate. This is a way -- I think in some way or another, we all do, we
25 all take ourselves out of situations to manage our emotions, and the behaviour that stems
26 from that. We needed to ascertain whether Ruru had used that appropriately in that sense
27 or whether they had used it in a punitive way. So that was the investigation that occurred at
28 Ruru and in a number of other circumstances as well.

29 **MR THOMAS:** Thank you for that context to these questions and I will, I guess for clarity, when
30 I use the terms "seclusion" or "time-out" in my questioning, I'm thinking more in terms of
31 the current legislative definition, if you like, which is along the lines of where a child or
32 student believes -- either cannot physically leave a room or reasonably believes that they
33 cannot.

34 **CHAIR:** Just for clarity, is that the definition of seclusion or the definition of time-out?

1 **MR THOMAS:** Seclusion, in the legislation, Madam Chair.

2 **MR WALES:** By definition for time-out they can leave.

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

4 **MR WALES:** It's a voluntary exercise, yeah.

5 **MR THOMAS:** Thank you. I'm just going to, I guess, give some context to that, the
6 circumstances of that complaint and in doing that I'm going to refer to the independent
7 investigation report that the Ministry commissioned in relation to that complaint. I guess
8 just to introduce that for the benefit of listeners, this was a 2014 complaint that the Ministry
9 became involved with in relation to the use of the seclusion room at Ruru Special School in
10 Invercargill and the complaint was made by the parents of a student who attended that
11 school and those parents were Victoria and Callum Turnbull. Their son has autism and
12 attended that school. They discovered at a meeting with school leaders that their son had
13 been placed in a seclusion room at the school when he was aged around 10 years old.
14 That's just a bit of context. I'm going to talk about the investigation report first of all and
15 then I'm going to move to ask you some questions about the Ministry's guidelines at the
16 time and then come to more the current position on seclusion, so if that is just to help
17 orientate you.

18 So, starting with the investigation report in 2015, as I said, the Ministry appointed
19 an independent investigator to complete a report into the school board's handling of the
20 complaint. In fairness as well, I'm going to note that there are aspects of that report that
21 both the school and the Turnbolls disagree with or dispute. So I'm just wanting to note that
22 in fairness to those parties, wanted to note that.

23 My questions today are more focused on the Ministry's response and guidelines and
24 what's happened later. But to assist, I think that report will help the Commissioners to
25 understand that specific complaint. So referring to the investigator's report, I'm going to
26 refer to the investigator's description of the room at that school. And we have some photos
27 up as well on the screen. This is document ending 7793 at page 17 of the document. I'm
28 going to summarise the investigator's description of the room, which she described it as
29 located in the corner of a classroom and specifically built as a time-out room, was 1.3
30 metres by 1.8 metres and 3.3 metres high. It had high internal windows, no electric light,
31 but had a door, and she described the room as dark and grimy, the atmosphere was not
32 pleasant. In her view, the room should be closed. To your knowledge, was it closed?

33 **MR WALES:** From memory yes, it was.

34 **MR THOMAS:** I understood that changes were later made to it, but it wasn't closed, as such.

1 **MR WALES:** My recollection is that there was some versions of building plans where it was
2 labelled differently, I can't recall whether that related to a period of time before the
3 complaint was made or after. I think it was before.

4 **MR THOMAS:** The investigator looked at the school's documentation regarding the use of the
5 room and this showed the school's records that it had been used for four different students
6 on multiple occasions between 2011 and 2014. Did it concern the Ministry to read that?

7 **MR WALES:** Yes. Yes, most certainly.

8 **MR THOMAS:** The investigator considered the school's safe area procedure document and she
9 commented that that was lacking and she had a number of questions remaining regarding
10 the room's use. I'm going to actually bring up these questions, so that is document ending
11 7793, this is the investigator's report, and I'm just going to read out some of those questions
12 that she had: What is a reasonable time to be in the safe room; is there a time limit; how
13 robust are safe room use records; is the use of the safe room integrated into an
14 individualised student programme; has a psychologist been involved in the decision for
15 individual student use of the safe room; when does behaviour or a crisis call for another
16 form of intervention; what is the involvement of parents; are parents required to sign a
17 consent form for their child to be placed in the safe area if it is deemed necessary; if parents
18 are not in agreement with the use of the safe room as a strategy for their child, what
19 alternative are they offered; are the parents informed of the safe room as part of their child's
20 programme?

21 And then down below: Is there an opportunity for misuse; how does the school
22 guard against misuse, for example, students being in the safe area for an extended period of
23 time; the door to the safe area being closed when the policy stipulates it must always be
24 open; how does the use of the safe area keep the integrity of the young person intact?

25 My question in relation to those questions is, would the Ministry agree that these
26 were important questions about the room's use that were either unknown or at least not
27 documented at the time?

28 **MR WALES:** Yes, they certainly are important questions, yes. I would also say that the report
29 and those questions were part of the reason why we moved to really take a close look at
30 seclusion. They also, might I say, kind of reflect the comment I made before, that we're
31 conflating seclusion with time-out within this sense, a safe room, so that the use is unclear.

32 **MR THOMAS:** Thank you. And the investigator also noted that the school's criteria for the room
33 was for it to be used as a last resort when a child presents a clear risk of harm to
34 themselves, others or property. The investigator contacted both the Ministry of Education

1 and the New Zealand Schools Trustees Association, but could not locate any Ministry
2 guidelines about these spaces. Did the Ministry have guidelines at the time?

3 **MR WALES:** Again, relying on memory, I understand there were some internal guidelines that
4 were available from some period quite before this.

5 **MR THOMAS:** We'll come to the specific guidelines shortly. My understanding is there were
6 guidelines issued in 1998 and we'll come more to the content of those. I guess the question
7 is: why could the Ministry not locate those guidelines to provide to the investigator, do you
8 know why?

9 **MR WALES:** I'm sorry, I can't tell you that.

10 **MR THOMAS:** The investigator also referred to a room at another Special Education school and
11 noted it was only to be used with explicit parental consent. This is at page 30 of the report.
12 The investigator also said that there was no doubt the use of such facilities was common
13 practice in Special Education environments. Did it concern the Ministry to read this?

14 **MR WALES:** Yes, it did.

15 **MR THOMAS:** Was it a surprise?

16 **MR WALES:** Yes, it was.

17 **MR THOMAS:** Did the Ministry at the time have any data to show the level of seclusion room
18 use in schools in New Zealand?

19 **MR WALES:** No, we didn't and in the light of these findings we quickly moved to get an
20 understanding of that.

21 **MR THOMAS:** The investigator's report was critical of the school board's handling of the
22 complaint and concluded that the board have potentially failed the school community. The
23 report's final recommendation was that the Ministry convene a national working party to
24 consider the use of seclusion and restraint in schools and investigate best practice models.
25 That did occur in 2016; is that correct?

26 **MR WALES:** Correct.

27 **MR THOMAS:** I'm going to take you now through the Ministry's guidelines and starting with the
28 1998 ones I referred to, we might bring these up because I'm going to refer to some
29 extracts. This is document ending 7794, starting at page 14. Just looking at the middle of
30 that page, the guidance says -- sorry, just to orient the Commissioners, this document is
31 called "Managing Extreme Behaviour in Schools", and my understanding from the front of
32 the document, that this was an external document. We can go to that, or you can take it
33 from me.

34 **CHAIR:** What do you mean external document?

1 **MR THOMAS:** Sorry, Madam Chair, as in it wasn't internal only for the Ministry's use, it was --

2 **CHAIR:** It was a public document?

3 **MR THOMAS:** It was to be provided to schools for guidance.

4 **MS HOLSTED:** So it's not something we generated, though, by the looks of it.

5 **MR THOMAS:** Perhaps if we zoom out and go to the cover page just to have a look at that.

6 **MS HOLSTED:** Sorry, I'm just relying on the typeface as being different.

7 **MR THOMAS:** Bear with us while we get that up. It's a bit hard to see, but the top right is the
8 Ministry of Education.

9 **MS HOLSTED:** That's fine. Thank you.

10 **MR THOMAS:** Perhaps over the page as well, just further to my point about its intended use,
11 bear with us while we get this up.

12 **CHAIR:** While that's coming up, this was 1998, are you aware if there were any policies on this
13 before that date?

14 **MR WALES:** No, I'm not, no.

15 **CHAIR:** Thank you.

16 **MR THOMAS:** Sorry, I've got it here on a hard copy version at 7794-3. I'll just read what I'm
17 looking at and we'll hopefully get this up. It says:

18 "Primarily this booklet is a resource for classroom teachers but it will also provide
19 parents with a range of useful information."

20 I take it from that, that suggests its intended use. Perhaps we don't need that up if
21 you're happy to take that as read. So, yeah, going back to -- sorry, back to where we were
22 on page 14, I'm just going to read that out for the record. In the middle of the page the
23 document notes that:

24 "In the past it was believed that the punitive measures such as corporal punishment
25 and exclusion were essential tools for behaviour change. These and other aversive methods
26 are not necessary and have a dehumanising effect on staff and students."

27 I think that goes to the point you were making Mr Wales; is that correct?

28 **MR WALES:** Correct.

29 **MR THOMAS:** Page 36 of the document, 7794-36, I just want to read this into the evidence:

30 "Time-out is when a student is removed from other students for a specified period
31 of time. Sometimes special time-out rooms are used. Time-out is often misused and
32 misunderstood. Time-out rooms should not be used. They are not necessary and can result
33 in teachers and schools being accused of inhumane and cruel punishments."

1 What I wanted to ask is do you accept that those guidelines are quite clear, that
2 time-out rooms should not be used?

3 **MR WALES:** Yes, I accept that, with a caveat that sometimes time-out is used in a room or in a
4 corner of a room or some space and you can do that appropriately as a voluntary move.

5 **MR THOMAS:** Understood, we'll come to, yeah, perhaps when we get to current usage. Do you
6 know how schools were provided with these guidelines, given that intention we saw on the
7 third page?

8 **MR WALES:** No, I'm sorry I don't, it was before my time.

9 **MS HOLSTED:** if I , perhaps picking up on a point I made at the beginning. The volume of
10 material that a school would receive from the Department of Education or the Ministry of
11 Education in any given week would have been huge. And when I said at the outset that if
12 we're going to change the system, we need to think about how much we work with the
13 sector in order that what looks to me like a very clear statement is well-understood by the
14 sector and whilst the sector is supported to give effect to it.

15 **MR THOMAS:** Thank you. I guess, yeah, if you can answer this, please do. Did the Ministry do
16 anything, to your knowledge, to make schools aware of these guidelines?

17 **MR WALES:** Not to my certain knowledge, but it's possible that our specialist staff may have
18 used them in discussions with schools, but I'm guessing there.

19 **MR THOMAS:** Thank you. Do you agree that these guidelines, the '98 ones, 1998, were in place
20 at the relevant time to the Turnbolls' complaint in 2014?

21 **MR WALES:** Time-wise, they would have been, yes.

22 **MR THOMAS:** And they were in place, I understand, until new guidelines were issued in late
23 2016; is that correct?

24 **MR WALES:** That would be correct, yes.

25 **MR THOMAS:** I'm going to refer briefly to -- you had mentioned earlier as well some internal
26 guidelines and I think this is perhaps what you were referring to in 2007. This is document
27 number 7795. This is a Ministry document, but this document states that it was
28 issued -- these were internal guidelines for the Ministry's Special Education staff, so unlike
29 the previous ones, this was internal only. Looking at what's on the screen there in the
30 document, do you accept that these guidelines stated that a certain form of time-out, that's
31 isolation or seclusion, is not an appropriate practice?

32 **MR WALES:** Yes.

33 **MR THOMAS:** Moving now to August 2016, this is document ending 7798, the advisory group
34 that was formed by the Ministry that we've referred to drafted some guidelines which were

1 not finalised or published and the guidelines stated that they were a step on the path to
2 eliminating the use of seclusion over the next three years.

3 I just wanted to ask for your comment; why was that timeframe given, over the next
4 three years?

5 **MR WALES:** At the time we considered seclusion to be a fairly rare event, and there was plenty
6 of evidence and advice before that, that it should not be used. We wanted to give schools
7 who were using it and felt reliant on it sufficient time to develop their skill set to use an
8 alternative approach.

9 **MR THOMAS:** Do you accept that without -- we can bring them up if we need to, would that
10 assist? I was just going to ask one further question about that. I'll ask the question and you
11 let me know if you need them, but would you accept that these guidelines propose to permit
12 the use of seclusion in some situations and, in fairness, that was in emergency or last-resort
13 situations?

14 **MR WALES:** The title of the document, from memory, was focused on the elimination of
15 seclusion and the content reflected that. So it was about providing skills to schools to use
16 different approaches.

17 **MS HOLSTED:** If I may add, the examples you've used go to the point. The instruction, if you
18 like, that was sent from the centre back in 1998, was explicit: do not do this. You point out
19 rightly that despite sending out instructions, those rules were breached. So I think the point
20 that David's making is, and it's a point I've made before, if you're actually going to change
21 behaviour in a sustainable, decent way, you actually have to find a way to help people get
22 there. We're facing something very similar with streaming in schools, which we know is
23 damaging for Māori and Pacific children in particular, because they get streamed out of
24 options for maths and science in particular. Working with Ngāi Tahu and the Mātauranga
25 Iwi Leaders Group that's been agreed that we will need to do this over time. We need to
26 create, give teachers other things, other tools with which to respond to their experiences,
27 which I need to add are extremely challenging.

28 **MR THOMAS:** Understood, thank you. I'm just going to refer to one final set of guidelines
29 which were published guidelines in October 2016, so a few months after the August ones
30 that I referred to. This is document ending 7796. We might have this up, page 16. Sorry,
31 I'll read, on page -- sorry, before I get into the specifics, did the Ministry publish amended
32 guidelines in October 2016, to your knowledge?

33 **MR WALES:** Yes, it did, yes.

1 **MR THOMAS:** Those guidelines stated that seclusion should no longer be used in New Zealand
2 schools, is that your understanding?

3 **MR WALES:** That's correct.

4 **MR THOMAS:** I'm going to have page 16 up of document 7796. I'll read that:

5 "Seclusion is an extremely serious intervention. It is potentially traumatic and can
6 harm a student's well-being. It is an inappropriate response to a child's behaviour and it
7 must be eliminated."

8 I wanted to ask what changed between August 2016 and October 2016 to move
9 from some limited, albeit limited use of seclusion, to this pretty emphatic statement?

10 **MR WALES:** In part, it was the determination of Government to illegalise seclusion. The overall
11 message, though, is consistent with the earlier advice in terms of the harm it causes.

12 **MR THOMAS:** And further to that, my understanding is that on 3 November 2016, the Acting
13 Secretary for Education wrote to all schools advising that the use of seclusion was no
14 longer acceptable. Is that correct, to your knowledge?

15 **MR WALES:** That's correct.

16 **MR THOMAS:** I'm going to move on now to a survey conducted by the Ministry following on
17 from this in relation to the use of seclusion. In October and November 2016 I understand
18 that the Ministry surveyed all schools, over 2500 schools, to identify which were using
19 seclusion. In 2016, 36 schools self-reported as potentially using seclusion. Of the 36, the
20 Ministry determined that 17 were using it in 2016 in that year and of those 17, five were
21 special schools. Do you have any comment on those survey results?

22 **MR WALES:** They reflect what we found. I would say it was slightly more than a survey, it was
23 actually us contacting every single school and talking to them and discussing their use of
24 seclusion.

25 **MR THOMAS:** Do you acknowledge that the survey was -- sorry, the question was asked of
26 schools about the use of seclusion, but only for that year in question, 2016?

27 **MR WALES:** Yes.

28 **MR THOMAS:** Is there any -- do you have any comment on why it was limited in that way?

29 **MR WALES:** The intention of the survey was to get an understanding of current use of seclusion,
30 it wasn't an historical inquiry, it was we needed to know quite quickly which schools were
31 presently or recently using seclusion.

32 **MR THOMAS:** Would you accept, then, that it wouldn't give you a full picture of the use of
33 seclusion over a longer time period?

1 **MR WALES:** Logically, that's true, but 12 months is, in my view, a reasonable amount of time to
2 ascertain whether a school is using seclusion. If they hadn't used it in 12 months, there's a
3 very strong likelihood that they don't need to use it and they don't.

4 **MR THOMAS:** In this questioning of schools about using seclusion that you've mentioned,
5 would you accept that there's a risk that a school might not tell you that it's using seclusion?

6 **MR WALES:** Yes, it was reliant on self-report.

7 **MR THOMAS:** I'm going to move on to an Ombudsman's report now, November 2017. This is
8 document ending 159. I'm going to refer to aspects of the Ombudsman's report, so under
9 the same complaint, as I'm sure you're aware. He released his final report in 2017. When
10 the Ombudsman viewed the room in 2017, he noted that the door had been removed and the
11 room made into a sensory space. Even then, the Ombudsman stated and I quote:

12 "For any child or young person, let alone someone with particular disability-related
13 needs, sensitivities and vulnerabilities, I consider that it would have been an uninviting and
14 unpleasant place to spend even a short amount of time involuntarily."

15 Do you have any comment on that statement?

16 **MR WALES:** I can only agree with the Ombudsman if his description is correct and it doesn't
17 reflect the kind of time-out spaces that I've had the privilege to see being used in other
18 schools.

19 **MR THOMAS:** In summary, the Ombudsman found that this school had acted unreasonably in
20 using the room to manage the child's behaviour and that was in relation to failing to consult
21 and inform the parents about the use of the room, failing to properly record transportation
22 to the room, and the unsuitable location and form of the room.

23 In relation to the Ministry, the Ombudsman found that it had failed to provide
24 schools with clear and unambiguous up-to-date guidance in relation to the use of seclusion
25 and that this was an unreasonable omission. Further to this point, the Ombudsman stated,
26 and we might bring this up, paragraph 213 of his report, I'll read this into the record:

27 "As I have said, acceptable practice in relation to the management of students
28 exhibiting difficult behaviour has evolved over time. However, it would seem that by
29 1998, if not before, the Ministry was of the view that seclusion should not be used.
30 I consider that it should have done more sooner to provide schools with clear and
31 unambiguous guidance and its failure to do so was unreasonable."

32 Did the Ministry accept that finding?

33 **MR WALES:** Yes, we accepted that.

34 **MS HOLSTED:** And we've acknowledged it this morning.

1 **MR THOMAS:** Thank you. In his report, the Ombudsman noted, at paragraph 156, article 14 of
2 the UN Convention on the Rights of Persons With Disabilities, the UNCRPD, which
3 provides, "The existence of a disability shall in no case justify deprivation of liberty." I'm
4 going to again read this for the record:

5 "I note that although special schools comprise a very small proportion of the total
6 number of schools in New Zealand, less than 2%, they made up more than a quarter of the
7 17 schools identified by the Ministry as having used seclusion in 2016. This is only part of
8 the picture with many students with disabilities attending mainstream schools. However, it
9 is a concerning indicator that the most restrictive behaviour management strategies and
10 techniques have been used disproportionately with children with disabilities such as N."

11 I wanted to ask you, do you have any comment on that point made by the
12 Ombudsman in relation to the UNCRPD?

13 **MR WALES:** We would share his concerns that he's expressed there, yes.

14 **MR THOMAS:** Finally, in the Ombudsman's report, he commented, and this is at paragraphs 214
15 to 219. I'm going to paraphrase here, but commented on the Ministry's awareness and
16 oversight of the use of seclusion in schools, and in summary, noted that the Ministry had its
17 own staff and teams working directly with schools dealing with students exhibiting
18 challenging behaviour. It therefore had the means and opportunity to observe the use of
19 time-out rooms. The Ministry's role in approving the construction of rooms such as that
20 relating to the complaint in question was also noted. Complaints about seclusion were not
21 centrally held and dealt with in regional offices.

22 Given all of those findings by the Ombudsman, do you accept that the Ministry had
23 failed to adequately monitor the use of seclusion in schools?

24 **MR WALES:** Yes, I do. At the time, yes.

25 **MR THOMAS:** Thank you. Moving then to the current position on seclusion, I want to ask you a
26 few questions about that. Firstly, would you agree that the Turnbills' complaint that I've
27 referred to was instrumental in bringing about a law change in May 2017 to the then
28 Education Act 1989 to make the use of seclusion in schools and early childhood services
29 unlawful?

30 **MR WALES:** Yes, indeed.

31 **MR THOMAS:** What is the Ministry doing now to ensure that schools are not using seclusion
32 rooms?

33 **MS HOLSTED:** I'll have to repeat what I said this morning, we can't ensure that they're not. So
34 we would expect ERO in its regular reviews to be noting any of those actions, but also we

1 do have quite large -- we have quite a large workforce in schools working with those
2 children with learning support needs. So our own staff would observe some of those
3 behaviours, if indeed, they were happening. We would also rely, and it's after the event I
4 understand, but we would rely on complaints and advice from parents, or indeed, from
5 schools and students who are increasingly and appropriately active in raising their own
6 issues.

7 **MR THOMAS:** Mr Wales, you refer to other appropriate uses of time-out, but I also want to ask
8 about what the Ministry does to identify any practices where the school might not label
9 something as use of seclusion, but would still meet the definition of seclusion. Has the
10 Ministry got any assurance that that's not happening?

11 **MR WALES:** I think that's back to Iona's comment.

12 **MS HOLSTED:** The board assurance statement that the Education Review Office collects on
13 every review requires the board to advise them that they are meeting the requirements of
14 the law. The law requires that they do not have children in seclusion.

15 **MR THOMAS:** Thank you.

16 **CHAIR:** Is there a specific question about seclusion or is it as general as that, that they are
17 complying with the law?

18 **MS HOLSTED:** There's quite an extensive board assurance statement, it would be best to ask
19 Mr Pole about the details of that. It may well have changed since I was aware of it.

20 **CHAIR:** If it's not there, would you -- what do you think about it not being there? Is this
21 something that should be expressly reported against?

22 **MS HOLSTED:** Yes, in the context of the requirement to have a safe and inclusive school,
23 having an seclusion room doesn't meet that obligation. So, yes, I would expect it to be
24 specific. And it is something that the Education Review Office has independence in
25 determining what they may ask from any school.

26 **CHAIR:** Yes, thank you.

27 **MR THOMAS:** Thank you, and just finally on that point, and it goes to the ERO's role, in an
28 NZP response to the Commission the ERO -- we might have this up if we can. This is page
29 26 of ERO's response down the bottom. Sorry, I'll just find the reference. Sorry, going up
30 on the document please. Keep going up. Yeah, at 8.1 ERO stated there that it does not
31 have the powers to directly monitor the use of seclusion, restraint and punishment in
32 education institutions. So my question is, if they're not directly monitoring it, is there
33 enough assurance within the system that it is being monitored?

1 **MS HOLSTED:** I think it's something you'll need to raise with Mr Pole. ERO can only see what
2 it sees when it's in school, so I'm second-guessing what that sentence means, but I would
3 think it means that they can't -- if it's -- if something's not happening when they're there,
4 they can't know that it's not happening, which is why the law gives them the power to seek
5 attestation from the board. So, as I say, I suggest you check that with him, but I would read
6 that as being they can't guarantee that it's not happening when they're not there, or maybe
7 somebody -- I don't know, but that's the reality. And so we do rely on internal systems, we
8 rely on good leadership and good governance and people who will do the right thing for
9 their students.

10 A devolved system by its nature relies on an element of trust. We simply don't have
11 a system where we could have everybody monitoring everything all the time. So the
12 balance has to be struck between what is a reasonable set of monitoring arrangements and
13 obligations upon governance and leaders. That is the environment we work in.

14 **MR THOMAS:** Thank you for that explanation, Ms Holsted. We'll move on now. I think we've
15 still got a bit more time, Madam Chair, before the adjournment, I'm going to move to a new
16 topic.

17 **COMMISSIONER STEENSON:** Sorry, before you do, can I just ask a question on what you've
18 just explained around devolvement. Do you think, then, that there is a reduced level of
19 safety for children under that model? Or does it require higher monitoring?

20 **MS HOLSTED:** It's a really difficult question to answer, because in our schooling system,
21 whether it's centralised or decentralised, mostly it occurs in a one teacher to one class
22 situation. So the extent to which something may happen in a classroom which is either
23 perceived or is actually damaging a child, is not something that I think any system can
24 monitor all the time. You'd have to have somebody in the room all the time.

25 So what I do think is that what -- the framework we've got is we want boards of
26 trustees to be accountable for their schools, and that's the way that the law has been
27 established, is that they're accountable for what goes on in their schools. It does require,
28 and I think the model when it first was invented back in 1989, assumed a level of
29 community engagement that may not be there anymore, because a lot changed since 1989
30 in terms of parental time actually, the time to be conscious of what's going on.

31 I think the Commission's got a huge task and opportunity, I suppose. This goes to
32 the heart of almost everything, and I think you will be considering, is what is it that's going
33 to keep our tamariki safe. And I reached a view, it's my view, which is that we do it with

1 people not to people and more monitoring is unlikely, in itself, to eliminate it. It's more
2 likely things will go underground.

3 **COMMISSIONER STEENSON:** Thank you.

4 **MS HOLSTED:** I think transparency and daylight is really, really powerful, and if I may just
5 make another plug; how we give voice to students and give them the agency to tell people
6 about what's happening for them, the better. I really think that's where the greatest strength
7 lies and we've still got a lot of work to do.

8 **COMMISSIONER STEENSON:** Thank you.

9 **CHAIR:** Moving to the next topic, Mr Thomas.

10 **MR THOMAS:** Thank you, Madam Chair. We'll just make a start on this at least, and I'll keep an
11 eye on the clock. Ms Holsted, I want to ask you some questions which go more into the
12 Inquiry's terms of reference period now and the question is about educational neglect at
13 former psychopaedic and psychiatric hospitals. I appreciate that you weren't in your
14 current position then, but as the representative I'll be asking you to answer as best you can.

15 So I want to ask about some special schools attached to those former hospitals such
16 as Templeton, Braemar, Māngere, Tokanui and Levin. Starting with a document that we'll
17 have up ending 4537 at page 1, this is enlarged on the screen. I'll need to read that into the
18 record. So it's a letter from 1973 from the office of -- from the Officer for Special
19 Education of the Department of Education to Waikato Hospital Board. It states:

20 "The present procedure for the education of children resident in psychiatric and
21 psychopaedic hospitals was established about 1960. At the time arrangements were made
22 for the Department of Education to establish a school at the Levin Hospital and training
23 school to cater for the small group of mildly or moderately mentally retarded patients who,
24 had they been living in the community, would have been eligible to enrol at an ordinary
25 school, probably in a special class for backward pupils. The Department of Health
26 remained responsible for the education and training of the much larger group of patients
27 who were more seriously mentally retarded. In subsequent years, schools for the same
28 purpose were established at Templeton, Braemar and Māngere hospitals and a special class
29 at Tokanui."

30 Over the page on the same document it goes on to state:

31 "However, the schools have not catered for the large group of more seriously
32 retarded patients who, if they lived in the community, might be eligible to enrol at a special
33 school for intellectually handicapped children. These patients and those who are even more

1 seriously handicapped have remained the responsibility of the training officers employed
2 previously by the Department of Health and now by hospital boards."

3 Then down lower:

4 "The Department of Education appreciates that other patterns could be developed
5 for the provision of education for the mentally retarded children living in the institutions
6 controlled by hospital boards."

7 So my question on that document is, to your -- can you state to your knowledge
8 what was the basis upon which some children in these settings, psychiatric and
9 psychopaedic institutions, on what basis was it decided whether they were eligible for
10 education and others were not?

11 **MS HOLSTED:** I would only be able to hypothesise. I'm guessing, and David, you might be able
12 to correct me, I'm guessing that prior to 1960 there was probably no or very limited
13 education provided at psychiatric and psychopaedic hospitals, and in fact psychopaedic
14 hospitals, from memory, were a bit of an invention after 1960. I'm not sure they actually
15 existed. I recall Mangere opening in around 1970-something. I had a sister who was a
16 nurse at Tokanui Hospital in the 1970s. I think that -- so 1960 would have been "let's look
17 at those students who were easier to teach, maybe, had more chance of learning, so we will
18 provide education for them", and then subsequently health and education, "Hang on, we've
19 got some other people here who should have been included" and the Department of
20 Education has said, "Well, maybe there is something else we could do." I'm sorry, I'm
21 absolutely hypothesising from my sketchy knowledge of the health system and personal
22 family background.

23 I would probably go further, though, and say that I would have thought that the
24 experience of children in those education facilities was pretty unpleasant, given the
25 dreadful language that is used in this statement and it's horrific that as recently as
26 19 -- well, I don't know when it was written.

27 **MR THOMAS:** 1973, that one.

28 **MS HOLSTED:** Well, the language is just appalling and where we've come from, however
29 imperfect, I think we have at least learned how to respect people a bit more with how we
30 describe their conditions.

31 **MR THOMAS:** Thank you for that explanation, and I guess just further to your point about
32 smaller numbers possibly receiving an education in these settings, I'm just going to
33 summarise from a number of documents that we've got here about the numbers of children
34 in those institutions receiving an education. In some cases we don't have the total numbers

1 of children attending so we can't see the full picture, but even by the low numbers that were
2 attending, I would suggest we can get an idea. And on that, I'm going to note that there
3 were eight children at Braemar in 1972 on the school roll, four at Kenepuru Special School
4 in Porirua in 1984, 11 at Tokanui Special School in 1970, and in 1984, 14 out of 133
5 students attended the Kimberley Hospital and training school. I'm not going to bring up all
6 the documents, but would you agree that that's a low number of students in education in
7 those settings?

8 **MS HOLSTED:** I would have to know how many school-aged children there were. Most of the
9 people I would have expected in a psychiatric hospital may well have been beyond school
10 age.

11 **MR THOMAS:** In relation to that last example from Kimberley, 14 out of 133 students were at
12 the training school. Would you consider that to be a low number?

13 **MS HOLSTED:** It sounds low, and as we know, there was a whole range of issues around
14 Kimberley and indeed all of those institutions, which led to their closure.

15 **MR THOMAS:** Who would you consider responsible or can you comment on the failure of
16 children in these settings to receive an education?

17 **MS HOLSTED:** Ultimately, it would have been the Department of Education, but as your
18 segments show, these roles have shifted over time from health to education, and so strictly
19 speaking -- the obvious answer at one level is education, but as I say, it's clear that this was
20 a point of transition.

21 **MR THOMAS:** Thank you. I'm just going to refer to one final example on this topic. This is
22 from survivor evidence heard by the Commission. This was a survivor who attended Lake
23 Alice school at age 12 in the early 1970s and I'm just going to read part of that survivor
24 statement which states

25 "I was vision impaired when I went to Lake Alice and this made it difficult for me
26 to learn. I would use a magnifying glass to read books. There was no Braille at Lake Alice
27 school, I missed out on a lot of things such as being taught how to read Braille. Now
28 I cannot read."

29 Just reflecting on that statement, would you accept that during the Commission's
30 terms of reference many children in both psychiatric and psychopaedic hospital settings
31 would have been educationally neglected?

32 **MS HOLSTED:** Yes, I would go further, though, because the history of provision of education
33 for the blind is a relatively new introduction into our system, across a 270-odd year history.

1 So, yes, as I've said before, if you are not able to respond to the needs of the child in front
2 of you, then they are deprived of their opportunity to learn and discriminated against.

3 **MR THOMAS:** Thank you, Madam Chair. I'm wondering if that might be a good time and we'll
4 pick up after lunch.

5 **CHAIR:** Yes, certainly. We'll come back at 2 o'clock. Thank you everybody.

6 **Lunch adjournment from 12.57 pm to 2.04 pm**

7 **CHAIR:** Nau mai hoki mai, welcome everybody for the afternoon session. Mr Thomas. You're
8 continuing, thank you.

9 **MR THOMAS:** Thank you Madam Chair, Commissioners. Ms Holsted, I'm going to ask you a
10 couple of questions about school exemptions and in relation to example from Hokio Beach
11 School in particular. I'm going to ask for a survivor account to be brought up, I'm just
12 going to read from that and then ask you a question at the end.

13 **MS HOLSTED:** When was the incident sorry?

14 **MR THOMAS:** This was during the terms of reference period 1973 incident, thank you. So
15 we've got part of it up on the screen and I'll read it into the record. This is a survivor
16 statement, as I mentioned, a report. Starting at paragraph 95:

17 "A report from 5 March 1973 records that I was probably the best in the class at oral
18 and written expression and that I was articulate and well conversant with language.
19 I remember that one of the teachers took an interest in educating us. It was good and
20 I would have liked the opportunity to continue my schooling."

21 There is also a file note from 3 April 1973 recording that:

22 "I had a good attitude to schoolwork and that I had made amazing progress at
23 school."

24 And I'm going to skip to paragraph 99:

25 "At Hokio Beach they applied for a school exemption for me. I have seen a letter
26 from -- redacted -- dated 9 July 1973 in which he said that I was aspiring to labouring work.
27 This was not the case, my school report dated 9 July 1973 also confirmed I was achieving
28 well at school."

29 Paragraph 100:

30 "No-one asked me whether I wanted to continue and I never had any aspirations of
31 labouring work. I never spoke to -- redacted -- about this. The only time anyone ever
32 spoke to him was when you were in trouble. There was no talking about what your future
33 would look like with anyone at any time that I was in State care. I was given an exemption
34 to school when I was 14."

1 I just wanted to ask you about those statements from this student in relation to the
2 exemption. Do you agree that it appears that in granting this exemption the student was not
3 involved in that decision?

4 **MS HOLSTED:** That's correct. I would say that in many cases of exemption even to today the
5 student may not be involved in decisions.

6 **MR THOMAS:** At page 70 of the Ministry's NTP response the Ministry was asked by the
7 Commission for records of children who were exempted from mandatory education. The
8 Ministry stated in response that the Ministry of Education's evidence data and knowledge
9 group was unable to identify those who are/were in State or faith-based cares and exempted
10 from mandatory education. Can you explain why that data is not collected?

11 **MS HOLSTED:** Well, you're talking about 1973 that it wasn't collected, or are you talking about
12 another time?

13 **MR THOMAS:** Yes, in that terms of reference period.

14 **MS HOLSTED:** I can't explain why it wasn't collected, I don't even know that it wasn't collected.
15 What I know is that we don't hold it, and I do know that at the point -- and it was one of the
16 reasons we made the issue about record-keeping as an acknowledgment because individual
17 case notes are often not available, but also in the transition in 1989 away from the school
18 boards --

19 **CHAIR:** Slow down.

20 **MS HOLSTED:** Sorry, in the transition 1989 where we went from school boards having
21 accountability for schools to the Ministry of Education, the transfer of records was not well
22 done. I don't know, and I don't think I could find out, if the school boards were still in
23 existence, my expectation actually is that they would have had quite a lot of records back in
24 the day, but they would have been manual and they would have been difficult to transfer
25 into an electronic system. So I suspect over time quite a lot of information has been lost.

26 I would also be interested to know if that information was maintained by, would
27 have been the Department of Social Welfare in the day, because those children were in their
28 care and therefore are strictly speaking the parent.

29 **MR THOMAS:** Just in relation to current data in relation to exemptions, would that be collected
30 now?

31 **MS HOLSTED:** By State and faith-based?

32 **MR THOMAS:** Yes.

33 **MS HOLSTED:** We would be able to, I'm checking my mind here, we certainly would know it
34 by -- I don't think we'd know it by State care because we don't always know that a student

1 is in State care. And unless somebody decides to tell the school that and the school then
2 chooses to record that, we wouldn't centrally know that.

3 So theoretically we could ask school by school by school, but I don't think what's
4 what you mean, I think you mean do we centrally hold that information.

5 **MR THOMAS:** That's correct.

6 **MS HOLSTED:** The answer to that would be no.

7 **MR THOMAS:** Do you think this would impact on any oversight by the Ministry on educational
8 continuity in these situations?

9 **MS HOLSTED:** Well, now when there's an exclusion or a seclusion, Te Mahau office staff will
10 be involved with that. So we will know at a local level and we do know at a national level
11 how many there are and from there you can dice and slice where they're happening. So for
12 example, I can tell you that the fewest number of seclusions and exclusions are in kaupapa
13 Māori schools.

14 And so we do know quite a lot about it, including that overall there has been a
15 decline since we've introduced new advice about seclusions and exclusions. And when
16 children are now excluded or secluded, Te Mahau have a plan to transition those students,
17 with the help of the school, to another schooling option. Some cases that's to te kura, but
18 other times it's a directed enrolment to another school.

19 **MR THOMAS:** Just to clarify the terminology there, when you were saying "seclusion" and
20 "exclusion", would that be exemptions plus other suspensions and the like?

21 **MS HOLSTED:** Particularly exclusions and seclusions because exemptions can be for a day or
22 two, it can be a cooling down period after a fight, for example, or something. So at the
23 sharp end is where we focus our attention, where a child needs to be enrolled in a different
24 school or there has to be another pathway for them. But we don't exclude
25 children under -- the Ministry doesn't exclude any children at any point and no school
26 would exclude a child in order that they could go and take up work at the age of 14.

27 **MR THOMAS:** I think Mr Wales wants to add to that, go ahead.

28 **MR WALES:** Can I just add for clarify, probably not talking about seclusion because that's
29 something quite different.

30 **MR THOMAS:** Yeah, not in that sense, no.

31 **MR WALES:** We're talking about expulsions, exclusions.

32 **MR THOMAS:** Thank you, that's what I understood.

33 **MS HOLSTED:** Thank you very much.

1 **CHAIR:** I think we're also -- I just don't know so I need to be educated. Talking about
2 exclusions, which is you can't stay at the school because you've misbehaved but you can go
3 to another school; exemptions, as I understand it, but help me on this, is that not you are
4 exempt from the mandatory requirement to stay at school until you're 15 or 16? Is that it or
5 not? I don't know.

6 **MR WALES:** Yes, it's an exemption from having to attend school compulsorily.

7 **CHAIR:** That's right, so if that's the case, does Te Mahau kick in at that point and say well, you
8 don't have to attend school but you might go somewhere else, or we're going to look after
9 you, or are they basically consigned to oblivion as far as the education is concerned?

10 **MS VINK:** There is information collected by regionally-based Te Mahau staff around the next
11 step for that young person. Typically it might be education and training of another kind, so
12 it might be a course or in a locally -- or into work, that information is collected.

13 **CHAIR:** Do you know when that started, when that wrap-around, that support began? Because it
14 doesn't sound as though it happened for this young man when he was at Hokio Beach, he
15 was just exempted from education and then didn't have any more education. Do you
16 know --

17 **MS VINK:** I don't know but we could probably find that out.

18 **CHAIR:** It would be useful for us to know when the tide turned on that, the way it's obviously
19 turned on seclusion etc.

20 **MS HOLSTED:** I'm sure we can find out some history on that.

21 **CHAIR:** Thank you.

22 **MR THOMAS:** Thank you I'm going to move on to another topic now, oralism. So I'm going to
23 ask you about Deaf culture and the practice of oralism, which for clarity was focused on the
24 teaching of Deaf children by oral methods and lip reading and signing was stigmatised.

25 From 1950 until the late 1970s when total communication started being introduced
26 and that was using all available means to communicate, including sign language, what did
27 the Ministry do to ensure Deaf children in educational care had access to education that
28 reflected their culture and language, and by that I mean sign language?

29 **MS HOLSTED:** Thank you, I'll ask David to give the background to that period because it's quite
30 clear, as the Commission will know, that there was a distinct time when sign language was
31 not regarded as being the way to teach Deaf children. So we'll start from there and move
32 forward.

33 **MR THOMAS:** Thank you.

1 **MR WALES:** I think it's very similar to a number of other things we've discussed today, that it
2 reflects a sign of the times at that time in terms of what was the held view of what was good
3 education. Frankly, I have to say, probably without very much evidence to support it and
4 without considering such things that we now consider such as Deaf culture.

5 **MR THOMAS:** I think this has been acknowledged, in fairness, in the Ministry's NTP response
6 to the Commission, that oralism was initially promoted in New Zealand as a consequence
7 of the 1880 Milan Conference of the International Congress on Education of the Deaf,
8 ICED.

9 Just further to that, in 2010, the ICED released a statement acknowledging and
10 expressing its regret for the detrimental effects of the 1880 Milan Conference and we have
11 that up on the screen now, document ending 8416. If we look at that, the ICED supported
12 oralism and banned sign language and acknowledged the significantly detrimental effects
13 of oralism on the lives of Deaf people.

14 Reflecting on that ICED statement in 2010, would the Ministry accept by having
15 these initial oralist policies, that this prevented Deaf students from exercising their choice
16 to use sign language?

17 **MS HOLSTED:** Entirely.

18 **MR THOMAS:** Would the Ministry further accept that this will have had a detrimental effect on
19 those students' ability to communicate and their education?

20 **MS HOLSTED:** I would expect so, yes.

21 **MR THOMAS:** Just further to this topic, I'm going to refer to some survivor evidence that the
22 Commission has heard from Deaf survivors that they were physically punished on occasion
23 for using sign language and then ask you a question about it at the end. I'm going to read
24 from a survivor's statement who attended a Deaf boarding school from age five to 13. And
25 to help with the context, this was 1966 to 1973 period that the survivor's talking about.
26 Document -- yeah, we've got the witness statement number up, 1099001 and I'm just going
27 to read into the record this statement:

28 "The staff communicated with me and the other kids using the oral method only.
29 The staff made it clear that it was not okay to sign. When they saw us signing they would
30 hit us on the hands and we were told to turn our voice on and talk. I would never turn my
31 voice on for a Deaf person but for staff I had to turn my voice on and speak. This was
32 drilled into us every time we were caught signing. Back then the staff were told to punish
33 the Deaf kids if they saw them signing, so every time the staff weren't watching we would
34 switch to sign. I guess they were just following orders from higher up. Their reasoning for

1 that was that if you want to get on in a hearing world you need to learn how to speak, not
2 use gestures and signs. We followed what they said so we would not get smacked or
3 strapped, but if they were not around we would sign."

4 There's other evidence I could refer to, but does the Ministry accept that Deaf
5 survivors were then punished for using sign language?

6 **MS HOLSTED:** Yes.

7 **MR THOMAS:** Thank you. I'm going to move on in the interests of time to the next topic, which
8 is relating to Deaf staffing. Just bear with me. So staff recruitment in relation to Deaf
9 communities and Deaf schools.

10 On page 87 of the Ministry's NTP response it stated that the Ministry of Education
11 employs around 45 advisors on Deaf children who support Deaf and hard of hearing ākongā
12 and their whānau as part of the learning support service. I was wondering if you know
13 what percentage of the Ministry's total number of advisors are Deaf or hard of hearing?
14 Would you know that?

15 **MS VINK:** I can speak to that. Over the time that I have been a colleague and manager of
16 advisors on Deaf children I've worked with two who are users of sign and are Deaf. I know
17 of one currently based in the Canterbury area. I couldn't confirm that she is the only one.

18 **MR THOMAS:** Thank you.

19 **MS VINK:** I was just going to say we also support the training of advisors on Deaf children
20 through study awards, and we collect the rationale for people who take up those, or who
21 apply for those scholarships from the Ministry to get a sense of why they might be
22 motivated, and certainly many of our applicants for those scholarships indicate either a
23 lived experience or whānau experience of people from the Deaf community.

24 **MR THOMAS:** Thank you. Would you have any comment on whether you think that's enough
25 advisors that are Deaf and hard of hearing?

26 **MS VINK:** I think it relates to a wider diversity of workforce issue. The prerequisite training for
27 the scholarship training that's provided at Massey are speech and language therapists or
28 teachers, that's a prerequisite. So we know from what we've already talked about today that
29 we have a diversity challenge across workforce in education that reflects our community as
30 well as it could.

31 **MR THOMAS:** Thank you.

32 **CHAIR:** Does anybody know what the proportion of Deaf students are in the Ministry's purview?
33 What percentage of your total students would be Deaf, classed as Deaf?

34 **MS VINK:** I can find that.

1 **MS HOLSTED:** I think the answer is we do know, we just --

2 **CHAIR:** You just can't find it.

3 **MS VINK:** Yeah.

4 **CHAIR:** It would be interesting to compare, wouldn't it, the proportion of children who are Deaf
5 compared with the number of advisors who are --

6 **MS VINK:** Certainly, yeah, we do have that information.

7 **CHAIR:** When you can find it, it would be good to have, thank you.

8 **MR THOMAS:** Thank you. Just while we're on the topic of Deaf and diverse staffing, at last
9 month's Disability, Deaf and Mental Health Survivor Voice Hearing, Deaf survivors raised
10 three issues which were, and still are, problematic for them and I'm just going to list these.
11 The first one was a lack of Deaf teachers at Deaf schools and I'm going to ask more about
12 that shortly. The second was lack of Māori staff at Deaf schools, and the third one was lack
13 of trilingual NZSL interpreters, that is English, te reo and NZSL fluent.

14 I'll briefly touch on each of those, but starting with the second one, the lack of
15 Māori staff at Deaf schools, Ms Holsted's already acknowledged that it's hard to recruit and
16 retain Māori staff. I wondered if that would extend to Deaf schools in your school, Māori
17 staff at Deaf schools?

18 **MS HOLSTED:** I would say it's harder to recruit into those roles.

19 **MR THOMAS:** Thank you. Looking at the issue of lack of Deaf teachers at Deaf schools, I'm
20 going to deal with that now. In relation to the cultural appropriateness of having Deaf
21 teachers teaching Deaf students, a Deaf survivor who gave evidence at last month's hearing
22 was asked whether teachers should be hearing or Deaf and I'm just going to read out an
23 extract of his evidence. This is document ending 4899:

24 "I think a Deaf teacher is better, that's my perspective. Most of them are hearing
25 teachers but they can sign. And actually, I talked to some of the Deaf students and said
26 "what's your preference, who do you think's better?" "The Deaf teachers." So I inquired
27 further as to why they thought that, and they said "because the communication, we use the
28 same language. I identify with that person, we have the same culture."

29 In relation to other teachers he stated:

30 "They said 'they can't culturally identify, they can't linguistically identify' and the
31 signs were clumsy. And so they were often having to clarify what was being said and it
32 was just very difficult for these children to get their education in a language that they
33 understood. Whereas with a Deaf teacher, there's this unwritten unsigned or unspoken
34 knowing that when a student doesn't understand, you then go back with another question

1 and another until they get it. So I'd love to see more Deaf teachers, I'd love to see that
2 number grow."

3 I wanted to ask some questions in relation to that point, and first one is how many
4 Deaf teachers are there currently in the Deaf Schools, do you know?

5 **MS VINK:** We don't have that information. We could find out.

6 **MR THOMAS:** Our understanding is that it's a relatively low number, perhaps three or four out
7 of 20 teachers. If that's correct, do you have any comment on why Deaf teachers would be
8 under-represented at Deaf schools?

9 **MS HOLSTED:** We aim to recruit a diverse -- well, we don't recruit, but we aim for a system that
10 will recruit diversity into the system. And so we are hostage, I suppose, to the people who
11 choose to go teaching.

12 In respect of providing teaching offering to this group of students, if we don't have
13 teachers who are there and are Deaf, then the best that we can do is to train them in sign.
14 And so in the meantime that's what we do. And I know you can talk to the training that we
15 provide for that purpose, taking into account that it's by no means the ideal situation.

16 **MR THOMAS:** Thank you, I think that probably answers my next question, which was would it
17 be more culturally appropriate for a Deaf teacher to be teaching Deaf students in your
18 view?

19 **MS HOLSTED:** I think that will depend on -- children will respond to different people in
20 different circumstances. I think what we've read here is what we've discussed before, that
21 the more the children can see themselves in their community and in their school, the more
22 comfortable they will be.

23 **MR WALES:** Could I just add a little context to that.

24 **MR THOMAS:** Of course.

25 **MR WALES:** Deaf Education per se doesn't just take place in Deaf schools, there's a range of
26 delivery modes and most children who are Deaf or hard of hearing will receive their
27 education in their local school with support. So as they attend different places, the means
28 of teaching will vary as well. We have Ko Taku Reo, a new school which is charged with
29 taking Deaf Education forward, these are the challenges that they're up for.

30 **MR THOMAS:** Are you aware of, I guess, any efforts whether by the Ministry or Ko Taku Reo,
31 to recruit more Deaf teachers to try and bring that number up?

32 **MS HOLSTED:** The Ministry doesn't recruit teachers.

33 **MR THOMAS:** Perhaps not specifically the Ministry, but are there any efforts more broadly that
34 you're aware of?

1 **MR WALES:** Not that the I'm aware of, but I wouldn't say -- that doesn't mean it's not happening.

2 **MR THOMAS:** Thank you.

3 **MS VINK:** I can take you back to the data from before. So some of the numbers we have are the
4 numbers of children supported by our advisors, Ministry employed advisors on Deaf
5 children, and just to bring a couple to the fore, so children aged 0 to 5 in 2020 was 274
6 children, to provide a bigger picture we support about 15,000 children with an early
7 intervention, the whole of early intervention services.

8 Moderate hearing service that works with children from 5 to 8, so not the children
9 who are funded through the ongoing resourcing scheme, that was 984 in 2020 that were
10 supported by advisors on Deaf children.

11 **CHAIR:** Thank you.

12 **COMMISSIONER ERUETI:** I was just going to add that it's kind of akin to having Māori
13 teaching teo reo Maori in kura, is having the incentives there for people to step forward,
14 that's I think is behind this questioning; are those incentives provided in your view within
15 the education system? Is there active recruitment policies, for example, or inducements to
16 have Deaf people come and teach in kura, to learn to be a teacher?

17 **MS HOLSTED:** At the moment I'm not aware of any particular incentives, whereas for
18 Pacific Island teachers and Māori teachers there is an allowance, so a similar thing does not
19 exist for Deaf teachers.

20 **COMMISSIONER GIBSON:** Can I ask a question more broadly about all disabled teachers. In
21 your role as shaping the system and that goal that the system, people see themselves
22 reflected in the teaching staff, how do you, as a shaper of the system, reshape the system so
23 that all disabled students do see themselves reflected more in those who are teachers, those
24 who are in other roles within the education system?

25 **MS HOLSTED:** It probably goes back to -- at our end of the spectrum it is about incentives
26 probably, and that can be done through bargaining with unions, the Māori immersion
27 allowance and the Pacific immersion allowance are both bargained through with the unions.
28 So that's one vehicle.

29 I think there's probably a harder issue, which is how do we make it easier for people
30 who have got disabilities and Deafness to participate as teachers in the system. And I don't
31 know that we have given a huge amount of thought to that, quite frankly. And I think we
32 should.

33 **CHAIR:** Carry on Mr Thomas.

1 **MR THOMAS:** Thank you Commissioners and Madam Chair. The third and final point in
2 relation to this recruitment topic is, as I signalled, around New Zealand Sign Language
3 interpreters. In 2020 the independent monitoring mechanism of the CRPD released a report
4 where they stated that despite raising this in 2016 there is still, and I'll read a quote here,
5 this is from document ending 8029:

6 "...significant and historical underfunding of NZSL interpreters that prevents Deaf
7 children and young people being able to fully engage in their studies. For example, teacher
8 aides who often support Deaf children and students often have lower sign language skills
9 than the students own NZSL language capabilities."

10 Underfunding of NZSL impacts tangata Turi significantly, and we've heard
11 evidence from Deaf survivors that there were only a few NZSL interpreters who are
12 trilingual and can sign te reo. I wanted to ask what is the Ministry doing to address this
13 issue?

14 **MR WALES:** Look I think the short answer is there's still work to be done. Māori Deaf are a
15 smaller group, Māori Deaf who are fluent in te reo and English and sign language are even
16 rarer, the challenge is even bigger for us to support the schools to bring those very special
17 people into the workforce.

18 **MR THOMAS:** Do you think, I guess further to that, more needs to be done specifically in that
19 space?

20 **MR WALES:** Yes.

21 **MR THOMAS:** I'm going to move to another topic of now inclusive education. And I'm going to
22 start with the historical perspective, if you like, the terms of reference period 1950 to 1999
23 and I'm going to start by summarising some historic documents relating to Pukeora Home
24 for the Disabled and special school, which was a home established in the Hawke's Bay
25 region in the late 1950s, initially for physically disabled young adults and teenagers.

26 In the interests of time I'm not going to bring up the full documents, Madam Chair,
27 I'm just going to take extracts from those and ask a question. The documents I'm referring
28 to, to give the context, one's a 1965 letter from the Department of Education Office of the
29 Special Education, and it's about teaching resources at Pukeora. And within that letter it's
30 noted that -- there's a comment made that students attending at Pukeora may be "too dull to
31 profit" is the quote from further schooling.

32 I'm going to refer to one more document, a 1968 letter from the Director of Primary
33 Education for the Department of Education to the Hawke's Bay Education Board about
34 staffing levels at Pukeora. I'm just going to again refer to some words that were used that

1 letter, which were that students there may have reached their "academic ceiling" were the
2 words used in that letter.

3 I wanted to ask, do you think those two quotes represented an ablest view of these
4 students at the time?

5 **MS HOLSTED:** I'm sorry, based on the two quotes I'm not quite sure. What I have heard, what
6 I heard you say, is that the system or the people in authority at the time made decisions
7 about the potential of those young people based on something, which sounded pretty
8 arbitrary. I don't know whether it was their race, their gender, their ability, their disability,
9 based on -- it could have been any one of those things.

10 The point I think we've discussed before is that the expectations that we place on
11 our young people will go a long way to determining what happens to them in their future,
12 so the important point is that we have the highest expectations for all of our young people.

13 So I don't know under which of those categories or what led those people to say
14 that, but clearly it's not the right thing to have done.

15 **MR THOMAS:** Just one further question to that, and appreciate that you weren't directly
16 involved in these, but I just wanted to ask, if the comments were made just based on the
17 fact that they were at this Home for the Disabled, would that, do you think, represent an
18 ablest view?

19 **MS HOLSTED:** The reason I'm avoiding the question, if you like, is that if that young person
20 was a Māori girl, under which of the "isms" might that person have reached that conclusion
21 or was it because they had three isms?

22 **MR THOMAS:** I guess assuming --

23 **MS HOLSTED:** We've been over this before. That decisions made on race, to the point that Dr
24 Erueti made before, decisions made about race, decisions made about gender, decisions
25 made about whether or not you're able-bodied are all forms of discrimination that should
26 not occur.

27 **MR THOMAS:** Thank you, we'll leave that one there. Further to this topic of inclusive
28 education, I want to move slightly to a different example of that in relation to braille
29 resourcing and I want to refer to a survivor's evidence and an IMM report on that and then
30 ask you a question.

31 A blind survivor gave evidence at last month's survivor voice hearing about access
32 to braille resources in teaching. He stated, and it is on the screen, document ending 18789:
33 "Most blind kids are mainstreamed these days unless they have multiple disabilities.
34 However, since the 1980s, it is too often the case that blind kids are put with teachers that

1 are not literate in blindness terms, meaning they do not know braille. What happens then is
2 you get rationing because the specialised teachers who do know braille have to travel from
3 school to school and only have so much time to do so.

4 Rationing means only the most intelligent or most blind are given access to braille.
5 Even though you might have a kid who has a prognosis that their vision is going to
6 deteriorate over time, they should know braille for when that happens, but they're not
7 taught it. The education of blind kids is historically under-resourced."

8 My question is, do you agree that if there is a failure to properly resource for braille
9 this is inconsistent with the principle of inclusive education?

10 **MS HOLSTED:** I'm sure that there is an inconsistency and availability of resources for braille,
11 and I'm certainly confident that we use whatever resources there are as best we can to meet
12 the needs that are there. That we should be able to or could provide more if we had more,
13 of course we would.

14 **MR THOMAS:** I'm going to now refer to another IMM report in 2020. This is document ending
15 8209. We'll bring this up, I think, page 112. This report found that since 2016 there have
16 remained significant issues in inclusive education for students with disabilities in
17 New Zealand, including there were still delays in making the necessary adjustments to
18 school property to ensure an inclusive education for students with disabilities in
19 New Zealand.

20 Would you agree there's still work to be done now by the Ministry as leader in this
21 sector to ensure an inclusive education system?

22 **MS HOLSTED:** Yes, without a doubt.

23 **CHAIR:** Do you know if there are any plans -- this might not be for you -- do you know if there's
24 any work being done in this area?

25 **MS HOLSTED:** There's a lot of work doing done in terms of property which is directly in our
26 purview. I know at the moment, for example, there's considerable work being done on
27 prioritising work and including speeding up the responsiveness to those schools because
28 I know that in some cases it has taken up to two years, for example, to get an elevator put
29 into a school. I know of cases where in fact students have started at a school and left before
30 the said elevator has arrived. So I'm really conscious of those things.

31 **CHAIR:** This is physical accessibility.

32 **MS HOLSTED:** Yes, that's the first one. And second to that, perhaps I'll turn to David and to
33 Rachael to talk more about the other things that are being done, particularly in relation to
34 making ORS funding easier to access and the high needs review that's on the way.

1 **CHAIR:** Tell us what "ORS" means.

2 **MS HOLSTED:** Sorry, the Ongoing Resource System, so these are children who are at the high
3 end of needing help. So in the first instance it's quite a difficult thing to access that service,
4 but secondly and more importantly there's a review that Rachael can speak to.

5 **CHAIR:** You can speak to slowly won't you.

6 **MS VINK:** I will, I've written it on my page to remind myself. So the ongoing resourcing scheme
7 is a package of supports, I guess, that have come about through a process of verification.
8 They are criteria-based, there are criterias one through four described as very high needs
9 and criteria five through nine as high needs. And those are relatively arbitrary terms,
10 I recognise, in the context of the learners we're speaking about, they all have high and
11 ongoing needs that will be present for the time that they are within education.

12 For those students who receive the ongoing resourcing scheme, they are able to
13 remain in education until they are 21. They don't have to, but they are able to. The
14 package of support that sits around those children and young people include specialist
15 teacher provision. So for the very high needs cohort, point two, one day per week and for
16 high needs, half a day per week. And so that is a recognition that there is significant
17 adaptation of curriculum to support progress for those learners.

18 Another part of that support is teacher aide time, and there is a component of
19 specialist time attached to that. When a child receives those supports, and by far the
20 majority do in their local school, those specialist supports are provided by Ministry of
21 Education-employed specialists, such as speech language therapists, psychologists,
22 kaitakawaenga cultural advisors, who am I missing, occupational therapists,
23 physiotherapists. So that's a better description of the ORS.

24 So that is a verification process that can either be made when a child is in an early
25 learning service or once they are at school, there's no time limit on when those applications
26 are made.

27 To go back to property, there is work being done with the property team within the
28 Ministry. Recently the design standards for all newbuilds has been reviewed with a lens of
29 accessibility. Both for ākongā with physical needs but also other types of needs around,
30 you know, the option for quieter spaces for sensory regulation and spaces like that within
31 the school, particularly within modern learning environments there's consideration given to
32 spaces within schools that will meet a range of learner needs.

33 There is also, as Iona mentioned, the movement towards much quicker
34 identification where a learner may enrol in a school and a modification may need to be

1 done, such as a ramp or where schools are older stock and are needing update. So there
2 used to be -- the necessity was that the student was already enrolled in the school before
3 those modifications could begin. That has been softened somewhat to reflect that if there is
4 a high likelihood that can get started and to reduce that window of time where the property
5 isn't accessible in all places and spaces for the learner to be within their educational
6 environment.

7 By their nature, children who attend a specialist school are often more suitable and
8 set up in terms of physical spaces and accessibility. I think that's all I needed to say about
9 property. Was there any other questions about that?

10 **CHAIR:** I think we get the gist and that is that things are getting better I think.

11 **MS VINK:** Yes.

12 **CHAIR:** Trying harder, still some work to be done.

13 **MS VINK:** Correct.

14 **CHAIR:** Do you mind if I summarise it like that?

15 **MS HOLSTED:** Yes, thank you, I think that's a good summary. I would add, though, that
16 curriculum is an important part of this equation. The curriculum needs to be accessible too
17 and ERO is very positive about the quality of our inclusive curriculum and the resources we
18 produce to support teachers. However, we also know that the majority of teachers are not
19 using them.

20 So this goes back to an earlier discussion, how do we make sure that we move away
21 from what I call the post and hope method, which is you deliver great stuff and then busy
22 lives it doesn't land where it needs to. So I'm not blaming teachers for that, we need to take
23 responsibility for that.

24 **CHAIR:** Thank you.

25 **MR THOMAS:** Thank you Madam Chair. Just one final area of questioning on inclusive
26 education, and this is around support for children who may be schooling away from home.
27 I just want to read out a quote from a blind survivor, a survivor I referred to earlier about
28 this and he was speaking about the emotional and psychological impact that being sent to
29 blind residential boarding school has on a young child. This is document ending 18789.

30 "The first point I would like to make is that five-year-old kids belong with their
31 parents. I would often see five-year-old kids crying for parents and not getting a lot of
32 sympathy from the staff. It was a really difficult environment."

33 He goes on to say at 3.2:

1 "Having to send kids to board at a school for the blind at that age is a hard decision.
2 It often comes with family separation and I think a lot of people had quite dysfunctional
3 relationships with their family as a result."

4 My question is, what emotional and psychological support does the Ministry
5 provide to young children who may have to uproot their lives and move away from their
6 family to receive schooling such as those attending special schools or other residential
7 boarding schools?

8 **MR WALES:** In some respects it depends on the circumstances and the learning needs of the
9 child. But those schools who are responsible for those students are very aware of the
10 wrench that is often caused when a learner leaves home to receive their education and in
11 my experience work very hard to accommodate the needs of those children.

12 But it really is, I think, a question of ensuring that the best needs of the child are met
13 on a case-by-case basis. Certainly understand where this person is coming from, but I've
14 also heard anecdotes from Deaf adults who speak very positively of their time in a boarding
15 situation and that was the place that they encountered for them Deaf culture. So I don't
16 think this is one where there's a single right answer, we have to think very carefully about
17 what's right in each case for each learner.

18 **MS HOLSTED:** I would note in 1974 that institution was actually run by the Foundation for the
19 Blind.

20 **MS VINK:** And in addition I think importantly under section 37 of the Education and Training
21 Act, those conversations about when a child may attend a specialist school, residential or
22 more local, are required to be agreed by three parties; whānau, Ministry of Education's,
23 Iona's, delegate in the regions, typically are directors of education and, who have I missed,
24 and the school, the enrolling school. So those processes, perhaps in a way that they weren't
25 previously, is around exploring all of the options and identifying the decision that's in the
26 best interests of the child.

27 In addition there's a review process and that's a really important part of that, because
28 a decision at a point in time may not be the best decision over time and that should be
29 reviewed and reflected on regularly as part of that checking in.

30 **MR THOMAS:** Thank you for that. Just one final question going back to a topic we covered in
31 the prior session, but there was one question I forgot to answer back in relation to seclusion.
32 Given that seclusion is now unlawful as we canvassed, does the Ministry accept that
33 seclusion in the sense of how it's defined in the current legislation is an abusive practice?

34 **MS HOLSTED:** It's an unlawful practice.

1 **MR THOMAS:** Would you say abusive as well?

2 **MS HOLSTED:** Sorry, I'm not quite sure what the question is, can you repeat it?

3 **MR THOMAS:** Whether the Ministry would regard it as an abusive practice, if it was used now.

4 **MS HOLSTED:** I'd expect so, but in the first instance it's unlawful.

5 **MR THOMAS:** Thank you.

6 **CHAIR:** Abusive implies -- it can be unlawful but it's the effect on the person.

7 **MS HOLSTED:** The reason it's in the law is because we knew that the traumatic effect of it was
8 so great, so that's why it's in the law. So yes, I think -- sorry, yes, because it's a form of
9 abuse it went into the law.

10 **MR THOMAS:** So implicitly abusive by being unlawful, is that fair?

11 **MS HOLSTED:** The law recognised it as being abusive.

12 **MR THOMAS:** Thank you. Madam Chair, I'm going to pass over to Ms Anderson now. We're
13 going to try and continue on until the 3.30 adjournment. I just want to thank the witnesses
14 for their time and patience, thank you.

15 **CHAIR:** Thank you very much. It should be noted Mr Thomas does not work alone but has a
16 bevy of helpers and assistants who I think we can credit with a lot of the work behind the
17 scene.

18 Nau mai haere mai, Ms Anderson, welcome back.

19 **QUESTIONING BY MS ANDERSON:** Tēnā koutou katoa. Ms Holsted, in the session this
20 morning at which I was unfortunately unable to be present, I understood you spoke to the
21 systems role that the Ministry has under the current regulatory regime. And that really you
22 described the role as shaping the system, is that right?

23 **MS HOLSTED:** That's what we describe as the purpose of the Ministry, yes.

24 **MS ANDERSON:** So you're creating the regulatory framework and you're the lead advisor. One
25 of the statements that you've set out in your witness statement, and I'll just read it out into
26 the record and it won't be foreign to you because it's your language, you've said:

27 "We all have a responsibility to all children to do everything we can to eliminate the
28 risk of harm to children in the education system and to provide a safe environment."

29 In terms of that work of it's everyone's task to minimise that risk of harm, am I right
30 that you need to know quite a bit about what's happening in the system about where harm is
31 occurring and the nature and extent of that harm?

32 **MS HOLSTED:** And -- to the extent possible, and to have some understanding of where it may
33 occur to the extent that that is possible.

1 **MS ANDERSON:** And with that understanding, it then becomes more possible, doesn't it, to
2 calibrate the response to the size of the problem and the nature of the problem of abuse in
3 education settings?

4 **MS HOLSTED:** Possibly. It depends on the availability of resources always but yes, within the
5 resources available one can allocate them accordingly.

6 **MS ANDERSON:** But as the lead advisor, if you had that information and you could see that
7 there was a problem in a particular element of the system, you would be advising the
8 Minister and its ministerial governmental prioritisation of resources to fix that problem?

9 **MS HOLSTED:** I could give that advice, yes. The advice may or may not be taken.

10 **MS ANDERSON:** Quite.

11 **MS HOLSTED:** Yes.

12 **MS ANDERSON:** A bit like being a lawyer. You also say that schools are not required to advise
13 the Ministry if they've received, I think the language you've used in your statement is "a
14 sensitive claim". So does that mean that if a school's receiving a report of abuse, if we use
15 that language, they're not actually required under the current framework to notify the
16 Ministry of that?

17 **MS HOLSTED:** I believe that's the case, yes.

18 **MS ANDERSON:** So when we think about the 1989 reforms, the Tomorrow's Schools regime
19 which we're effectively still under now, in education settings, there might be reports of
20 abuse made directly to the Teaching Council under the current regime?

21 **MS HOLSTED:** Correct.

22 **MS ANDERSON:** It might be made to the school itself, is that right?

23 **MS HOLSTED:** Yes, to the board.

24 **MS ANDERSON:** It might be made to the Education Review Office in the context of their
25 processes with a school?

26 **MS HOLSTED:** Yes.

27 **MS ANDERSON:** There might also be a report to the Police?

28 **MS HOLSTED:** Yes.

29 **MS ANDERSON:** Potentially of which the school has no knowledge.

30 **MS HOLSTED:** Correct.

31 **MS ANDERSON:** And in relation to the faith-based schools, there might be a report of that abuse
32 only to the particular faith?

33 **MS HOLSTED:** To the proprietor, you mean?

- 1 **MS ANDERSON:** Leaving aside the language, effectively it becomes within the knowledge of
2 the faith entity and not the school potentially.
- 3 **MS HOLSTED:** That's the proprietor, yeah.
- 4 **MS ANDERSON:** So we've got multiple actors in the system.
- 5 **MS HOLSTED:** Correct.
- 6 **MS ANDERSON:** And multiple points of entry of reports of abuse.
7 Thinking about the regime that would have applied before the 1989 Tomorrow's
8 Schools reforms, would there have been fewer points of entry for reports of abuse?
- 9 **MS HOLSTED:** Yes, I think there would have been. Yeah, I think that's probably right because
10 we didn't have the boards, we wouldn't have had proprietors separate from what were
11 essentially private schools, the faith-based schools and back in the day, in 1950, were
12 private schools. But you still could have the possibility of the Department not knowing.
- 13 **MS ANDERSON:** And we saw that, didn't we, with Marylands --
- 14 **MS HOLSTED:** That's right.
- 15 **MS ANDERSON:** -- there were some reports of abuse directly to the order running that school but
16 potentially the Department, as it was at the time, may have had no knowledge.
- 17 **MS HOLSTED:** That's right. Large numbers actually, relative to the occurrence, yes.
- 18 **MS ANDERSON:** But in terms of an evaluative term assessing the current regime of multiple
19 points of entry and, as you say with boards, there's thousands of them.
- 20 **MS HOLSTED:** 2,500.
- 21 **MS ANDERSON:** Was the system simpler before 1989 in terms of if somebody had wanted to set
22 up a system to capture all of the reports of abuse, would there have been less potential entry
23 points?
- 24 **MS HOLSTED:** I think potentially yes, I haven't done that assessment, but I think my intuition
25 says that would be right.
- 26 **MS ANDERSON:** We've seen reference in some of the documents relating to Marylands, I'm not
27 taking you to them, to back in the days when it was Department of Education pre-1989 to
28 there being a Child Welfare division within the Department of Education. And it seemed
29 that potentially there was a closer alignment of Child Welfare considerations with
30 education back in that dynamic that operated some decades ago now. Is there -- the Child
31 Welfare element now, so, first of all, just in terms of the past and you may not know and it
32 might be one of those topics that we follow up with you after the hearing, but there clearly
33 was a Child Welfare division within the Department of Education and those early part of
34 the 50s certainly. In the current regime, that's sort of -- do you think there's a separation of

1 the interests of the Child Welfare from education across to other agencies that potentially
2 leaves a gap?

3 **MS HOLSTED:** There's two different things that exist now and one of which I did refer to this
4 morning, and isn't in my notes, so the first of those is a recently announced agreement with
5 Oranga Tamariki and their action plan, and the role that Education, Health and Social
6 Development have committed to working with that institution regarding in time giving
7 priority access to learning support, for example, and other supports in the system, to
8 children in care.

9 The second thing of course is that we've got legislation which talks about the need
10 for our schools to provide safe and inclusive schools. We have a national education
11 learning priorities framework which reinforces that, and then we have staff in Te Mahau at
12 the front porch of the Ministry working directly with schools.

13 So there is still a network of people concerned about Child Welfare in the broader
14 sense as well as those who are specifically in care.

15 **MS ANDERSON:** Just coming back to the current position with the multiple entry point of
16 reports of abuse, I'm curious about the fact that the system the Ministry is steward of
17 doesn't accommodate a central collation point of all of that information. I'm right there,
18 aren't I, that the Ministry doesn't have a central dataset of where abuse has occurred in
19 educational settings in the past or today?

20 **MS HOLSTED:** Well, I think --in terms of the past, I think this Commission has revealed a lot of
21 that, but in terms of today, there's a couple of things about complaints. One of the things
22 that has changed in the world since 1989 is social media. So complaints don't come
23 through any one channel ever anymore. So even if institutions established themselves as
24 having single points of entry, people will make complaints in any number of spheres.

25 **MS ANDERSON:** That's right.

26 **MS HOLSTED:** And sometimes they're defensible and sometimes they're not. So what we aim to
27 do is use different points of data to give us an indication of the health of the system. And
28 one of the things that we're engaged with with ministers at the moment is identifying what
29 measures we will use to judge the well-being of children in the system, so it's a live issue to
30 your point.

31 **MS ANDERSON:** In order to, so leaving aside the point you might have -- there's clearly
32 multiple points of entry and, as you say, more emerging every day with technology. That's
33 not really my point. My point is around the Ministry at the centre of the hub, as the lead

1 advisor, actually having a system and a mechanism by which you actually know what is
2 happening in terms of abuse in education settings.

3 **MS HOLSTED:** So it goes to the point I was making, we don't have to collate it but we have to
4 access it. So that is my point, that what we need to be doing and we are working to
5 describe with ministers is what are the measures, as a child and well-being strategy, against
6 which we are required to report to the Government regularly. That is -- was originally led
7 out of the Department of Prime Minister and Cabinet, and is a very -- it's a document that is
8 overseen by joint chief executives of Health, Education, Social Welfare, Justice, Police. So
9 within that framework, we are required to report on a number of measures, we're
10 determining what are the measures that will give us information about well-being, which
11 will need to include issues of abuse.

12 **MS ANDERSON:** So that is in a forward-looking sense.

13 **MS HOLSTED:** Yes, but not forward-looking in terms of a decade, forward-looking in terms of
14 months, not years.

15 **MS ANDERSON:** So over a period of time two, three, five, ten years, it might reveal some
16 patterns in terms of which kinds of schools, whether it's private schools or State-integrated
17 schools or State schools, or special schools, at which there might be greater levels of abuse,
18 and I'm using abuse as defined in our terms of reference.

19 **MS HOLSTED:** I would say we have got a pretty good idea now in terms of the abuse in care
20 over time, and this goes to the question -- the issue that was raised before lunch, about are
21 we better off with a centralised system or a decentralised system and what are the risks and
22 opportunities of that? Because ironically, while we had a more centralised system back in
23 the day, we also had very high, relatively high levels of abuse and they were, in the first
24 instance, in private schools.

25 **MS ANDERSON:** We'll come on to that regulatory regime relating to those schools.

26 **COMMISSIONER STEENSON:** Sorry, just to clarify, my question was around the monitoring
27 aspects regardless of the structure for safety.

28 **MS HOLSTED:** Thank you, yes.

29 **MS ANDERSON:** Looking in the rear vision mirror in terms of the past, the process that you're
30 looking at now, you're not going to be personally collating it, but every player or participant
31 in the system is going to input information relating to Child Welfare and safety.

32 **MS HOLSTED:** No, it's more likely that it will be data points that we collect through other
33 sources. So that might be through Police, it might be through the IDI, I haven't got the

1 detail of that, sorry, but we're not trying to build some massive collation system because I
2 don't think that will work in the 21st century, to be honest.

3 **MS ANDERSON:** I'm not talking about the methodology, I'm simply talking about if you're the
4 lead advisor, steward of the system, in terms of how you understand where abuse has
5 occurred in the past, becomes an important element, I think we've agreed, in terms of future
6 decisions about how to eliminate risk to child safety.

7 **MS HOLSTED:** Minimise risk, yes.

8 **MS ANDERSON:** Minimise. But at the moment you wouldn't be able to say -- well, you may be
9 able to say - whether students at state--integrated faith--based- schools from 1976 when
10 integration began, are subject to greater or lesser levels of abuse, as defined in the Inquiry's
11 terms of reference, relative to students in State schools?

12 **MS HOLSTED:** I could tell you that they're subject to the same terms of review, the Education
13 Review Office, that they have the same access to make complaints as anybody else,
14 including to me if they so choose. And I am not aware of any greater numbers of those
15 sorts of complaint from faith-based schools at the moment than other schools.

16 **MS ANDERSON:** But that's because there hasn't been a system to actually -- other than a reactive
17 approach now, there hasn't been a system that would help you understand the answer to that
18 question.

19 **MS HOLSTED:** Well, I'm not sure what you mean by reactive because all of these systems are
20 reactive, they're all after the event. So to the extent that we do know where cases do exist,
21 and we know that the public is increasingly open to sharing their concerns about
22 well-being, I don't think it's fair to say that there's widespread abuse.

23 **MS ANDERSON:** I think my point is it's essential to be able to understand that now in a
24 contemporary sense, and that's what you're looking at in your forward work programme.

25 **MS HOLSTED:** That's right.

26 **MS ANDERSON:** But we also need to understand the past, don't we?

27 **MS HOLSTED:** Correct.

28 **MS ANDERSON:** And the proposition I'm putting to you is that the Ministry doesn't actually
29 have the tools and hasn't got a means of answering that question that I just posed to you
30 about students in one type of educational facility, have they been safer in one type of
31 educational setting than others.

32 **MS HOLSTED:** Well, what we do know is that when there was a single Department of Education
33 and regional boards, those cases were not known then either. So [GRO-C] is a very good

1 example of that, the historic cases at [GRO-C] have only emerged recently, so I'm not sure
2 that that's - something- was better or worse. Based on what we know now, it wasn't better.

3 **MS ANDERSON:** But that's -- we're going to disagree on this one, Ms Holsted, I think. My point
4 is, as a steward of the system, there needs to be a systematic methodology by which you
5 would, even now, understand where reports of abuse are being fed into the system through
6 the multiple entry points. Now, we can't change the past about perhaps certain barriers to
7 disclosure in the past, but for the future, the system will absolutely, won't it, need to be able
8 to give you an up-to-date and accurate understanding of whether some types of settings and
9 whether some specific schools are actually safer than others?

10 **MS HOLSTED:** We certainly know where there are complaints and we know about those
11 regionally and we count them nationally. Whether or not we collect them all of course is a
12 matter -- depends on, perhaps, the scale of the complaint. But increasingly we're actually
13 going back more to a regional Department of Education model than a centralised model, in
14 that we're building staff and, again, we discussed this this morning, the resources that we're
15 putting out to the frontline help us to work closer with schools so we've got greater
16 visibility of what's going on in schools.

17 So those are good things to be doing and we would want to continue to do them.

18 **MS ANDERSON:** So that regional collation of reports of abuse, because everyone doesn't have to
19 come to you, the school doesn't have to tell you, the Ministry, if there's a report of abuse.

20 **MS HOLSTED:** No, but most parents will.

21 **MS ANDERSON:** So most parents will come to the school and the Ministry?

22 **MS HOLSTED:** They will often come to us first and depending -- I'm going to use the word
23 "complaint" because it's such a big continuum of things that we hear about. And if they're
24 at that abuse end then they would go to the Police.

25 **MS ANDERSON:** Is that referral by the Ministry to Police or is that --

26 **MS HOLSTED:** If indeed we learn of it, yes, when we learn of it it's referred to the Police.

27 **MS ANDERSON:** So, for example, if parents are coming to you now in relation to [GRO-C] --

28 **MS HOLSTED:** Which they're not, parents haven't come to us because I think that's the nature of
29 the age of the complaints.

30 **MS ANDERSON:** We've seen right through this Inquiry, haven't we, that it can take 20, 30, 40
31 years for people to choose to disclose abuse.

32 **MS HOLSTED:** Yes, they tend to be the victims who are disclosing abuse though not the parents
33 of the victims.

1 **MS ANDERSON:** But often a parent won't know unless the person has -- that is the victim has
2 disclosed to them.

3 **MS HOLSTED:** Sorry, I think we were talking past each other. What I mean is that the age of
4 the cases are such that the parents are no longer with us.

5 **MS ANDERSON:** So in summary, are you confident that there's an adequate methodology now
6 for you as the leader of the system to understand where abuse is occurring in the
7 educational settings?

8 **MS HOLSTED:** I think we've got more points of understanding now than we've ever had before.
9 We've got an independent review authority, which didn't used to be independent from the
10 Department; we've got a Teaching Council, which is registering teachers and responsible
11 for making sure that disciplinary action is taken against teachers; we've got health and
12 safety legislation which never existed before, back in the day.

13 We also have an integrated -- we have a much closer working relationship with
14 other agencies, which where children are at risk we can share information, and that
15 happens. We've got a range of informal contacts with schools that we didn't have before.

16 So we have a growing suite of things and I would add to that that a number of those
17 things have been applied to the private school setting in recent years to increase the amount
18 of scrutiny on those institutions. Because as I acknowledged this morning, the relatively
19 light touch on those schools in the past could well have meant that they were places that
20 predators would go.

21 **MS ANDERSON:** What do you see as the Ministry's role in how -- the adequacy of how schools
22 respond to persons coming forward and disclosing abuse?

23 **MS HOLSTED:** The adequacy of the board's response?

24 **MS ANDERSON:** That's right. Sometimes it's a principal, sometimes it's a board, but using that
25 language school as a --

26 **MS HOLSTED:** The school, yeah. It's really mixed, and that's why we have a School Trustees
27 Association as well. They help with the governance side of that but, equally, if the school
28 doesn't want to use the School Trustees Association, they will often contact us and we will
29 provide them with advice about how to properly deal with the complaint, and particularly
30 one of abuse.

31 **MS ANDERSON:** So what would your advice be to a school coming to you about how to
32 appropriately respond?

33 **MS HOLSTED:** It would depend on the nature of the abuse. If it was one that --

1 **MS ANDERSON:** But are there some key touchstones or principles that you would apply in that
2 situation?

3 **MS HOLSTED:** Yeah, first and foremost, and the law doesn't always help us in this regard if
4 I may say, but ideally the voice of the child, the voice of the victim, should be uppermost.

5 **MS ANDERSON:** Do you think that there will be a number of reports of abuse being responded
6 to by schools that you will have no contact with or knowledge of what's actually happened
7 in relation to them?

8 **MS HOLSTED:** No, I have no reason to believe that.

9 **MS ANDERSON:** So you're confident that all of the reports of abuse currently being received by
10 school boards, the Ministry will have a good picture of how the reported abuse is being
11 responded to.

12 **MS HOLSTED:** No, I can't say yes to that either. As I said this morning, words like, you know,
13 "ensure" that things don't happen are simply not possible in a world where adults are adults
14 and behave badly and will often go underground to do so.

15 **MS ANDERSON:** And also where a school might -- we've seen this in some of the evidence
16 previously in the Inquiry where a school might allow a teacher to resign and not notify
17 anyone --

18 **MS HOLSTED:** There --

19 **MS ANDERSON:** Yeah, we'll come on to mandatory reporting but --

20 **MS HOLSTED:** No, mandatory reporting by schools to the Teaching Council which has meant
21 that those loopholes around people switching around the system have been closed off and
22 that's the reason that happened.

23 **MS ANDERSON:** We'll come on to that which is a topic later in our conversation.

24 Madam Chair, I'm just about to move on, unless the Commissioners want to have
25 questions just on that topic before we close, I'm coming on to a new topic.

26 **CHAIR:** Yes, rather than -- I've got another "educate me please" question. You referred to an
27 independent review authority. What is that? I wrote it down, you said there were more
28 points of oversight.

29 **MS HOLSTED:** Sorry, did I say IDI?

30 **MS ANDERSON:** I think, Madam Chair, it might have been a reference to the Education Review
31 Office which is now independent that used to be --

32 **MS HOLSTED:** Yes, yes, my apologies, which was part of the Department, yes. So the
33 inspectorate --

34 **CHAIR:** So it's the ERO which is now independent.

- 1 **MS HOLSTED:** That's right, thank you.
- 2 **CHAIR:** Just a quick question here.
- 3 **COMMISSIONER ALOFIVAE:** Ms Holsted, just a quick question, point of clarification. So
4 every board of trustee should have a policy that records abuse or sets out how they're going
5 to collect that information.
- 6 **MS HOLSTED:** Thank you, you're quite right, and I didn't add that to the list of things that they
7 should do.
- 8 **COMMISSIONER ALOFIVAE:** Thank you. But it's left to their discretion, so it's not a blanket
9 standard policy that would be issued by the Ministry?
- 10 **MS HOLSTED:** No, but it's one that would be reviewed by the ERO.
- 11 **COMMISSIONER ALOFIVAE:** So just, then, in terms of variation, so that, you know, some
12 schools might be a bit creative, there are some parameters around the framing so there's
13 consistency?
- 14 **MS HOLSTED:** The School Trustees Association provides frameworks for the development of
15 policies to do that, and one of the things we've found, and it's more so now than ever, the
16 standard policy approach creates real problems for Kura Kaupapa Māori and other schools
17 that don't fit, if you like, that mould. So yes, good principles, but not templates.
- 18 **COMMISSIONER ALOFIVAE:** Thank you.
- 19 **COMMISSIONER STEENSON:** Yes, I had a pātai as well, kia ora anō. I just wondered, on the
20 board with regards to these school boards because they become pretty critical, in terms of
21 competence, etc, who are the boards accountable to?
- 22 **MS HOLSTED:** Their communities.
- 23 **COMMISSIONER STEENSON:** So is that a formal --
- 24 **MS HOLSTED:** In the law they're required to report and in the law they're required to
25 share -- coming 2023 they'll have to have consultation with their communities about their
26 strategies and plans.
- 27 **COMMISSIONER STEENSON:** And their outcomes?
- 28 **MS HOLSTED:** Included, yes.
- 29 **COMMISSIONER STEENSON:** So in terms -- I'm just trying to get my head around, because
30 understanding the board compositions of these 2,500 boards around the country are quite
31 often varying and depending on the area can obviously be reflective of the make-up of the
32 area which means there's different levels of who might be there representing.
- 33 **MS HOLSTED:** The boards are able to co-opt people on to them if they feel they need some help
34 and again, as I say, the School Trustees Association is there to wrap themselves around

1 those boards that need help, and includes training for them, so they have modules, so
2 they're quite accessible and schools do not have to pay for them.

3 **COMMISSIONER STEENSON:** So other than ERO, the Ministry doesn't have any, other than
4 supporting them, there's no relationship with regards to --

5 **MS HOLSTED:** No, at the moment that is correct, but part of the report of the independent task
6 force did identify the need to have greater support around governance and their
7 recommendation was that the leadership advisors who had been -- a number of whom had
8 been funded for the coming year, should provide governance support as well as support to
9 principals. I think there's a potential conflict in that model, and so we're actively thinking
10 about how we can create opportunities to support board governance when that's necessary,
11 along with STA, the New Zealand School Trustees Association. But at the moment we've
12 got no formal engagement on that.

13 **COMMISSIONER STEENSON:** Which really makes it quite a voluntary relationship at any
14 point in time at the moment.

15 **MS HOLSTED:** I think that's right, except it is -- I think we have to be really mindful of the
16 really great work that boards of trustees do as well, and you're right that in some areas they
17 will struggle with capability but, overall, people are really dedicated to doing the right
18 thing. So it's one of the strengths of the system, it's given us diversity, it's given us
19 engagement of the communities in a way that wouldn't have been there otherwise.

20 **COMMISSIONER STEENSON:** I guess there is a risk of what you don't know you don't you
21 know, so you don't reach out for, but...

22 **MS HOLSTED:** I appreciate the importance of their role, though, to your point.

23 **COMMISSIONER STEENSON:** Thank you.

24 **CHAIR:** I don't think there are any more questions so let's take 15 minutes -- oh, you've got one
25 question? Yes.

26 **MS ANDERSON:** I've just got one follow-up question. I just think it might be useful, Ms
27 Holsted, the regime that we have here, the regulatory regime with Tomorrow's Schools with
28 the role of the board of trustees, is that a model that is unique to New Zealand or is that
29 something that is shared with other jurisdictions?

30 **MS HOLSTED:** There's a slightly similar system in the UK, I think, they have governors.

31 **MS ANDERSON:** But their local authorities have quite a different role in relation to school, don't
32 they?

33 **MS HOLSTED:** I think we're all a bit different. The Australian states tend to be more
34 centralised, but then, of course, they are states, it's not a national system; and likewise, in

1 the Canadian system. And I wouldn't look beyond the Commonwealth, really, in terms of
2 comparators.

3 **MS ANDERSON:** Thank you.

4 **CHAIR:** We'll now take 15 minutes, thank you.

5 **Adjournment from 3.30 pm to 3.49 pm**

6 **CHAIR:** In the break there's been some decisions made about timing. As always, we have less
7 time than we can reasonably get through in our work so it's been decided that we will now
8 sit, and I take it this has been discussed with the witnesses -- no, nobody's bothered to ask
9 you?

10 **MS SCHMIDT-McCLEAVE:** Sorry, ma'am, in the sense that we checked for tomorrow morning
11 but yeah, they're aware there's flexibility.

12 **CHAIR:** I'm going to tell you what is possible for us to do subject to your not having to dash off.
13 We would normally try and end by 5, it's not going to be possible given the amount of
14 material that we need to get through. We have checked with our signers and with our
15 stenographer, and it would be all right with them if we were to go through until 5.15, take a
16 15-minute break and then do another half an hour, that would leave you there until 6
17 o'clock.

18 Are any of you looking as though you're going to have a heart attack about that?

19 You're all looking quite jolly.

20 **MS HOLSTED:** We've already changed flights tonight once already, so we should be able to
21 accommodate that.

22 **CHAIR:** I'm very grateful, thank you so much, because I appreciate you can't come back
23 tomorrow.

24 **MS HOLSTED:** I'm in Otago with a large number of principals, I'm afraid, who are meeting in
25 one place.

26 **CHAIR:** Wouldn't you rather be here?

27 **MS HOLSTED:** I said that actually.

28 **CHAIR:** Talk about the devil and the deep blue sea. All right, thank you everyone for
29 your cooperation, I do appreciate that.

30 Ms Anderson.

31 **MS ANDERSON:** Thank you Madam Chair.

32 I understand you're familiar with the Helen Hurst brief of evidence provided in the
33 context of the Marylands hearing. I'm just going to run through some of the elements of
34 that, I'm not going to call it up except for one small portion of that. So we'll just see if we

1 can move through it reasonably quickly, checking that you agree with elements of
2 information she's provided on behalf of the Ministry.

3 This relates to the development of faith-based schools, private schools in Aotearoa.

4 Ms Hurst she says that New Zealand's first schools were all private, they were
5 established by religious missionaries to teach Māori and children of missionaries. So that is
6 the beginning of our education system, isn't it?

7 **MS HOLSTED:** Correct.

8 **MS ANDERSON:** And she goes on to say that in this era the Catholic Church in particular began
9 to establish its own network of schools.

10 **MS HOLSTED:** Yes.

11 **MS ANDERSON:** And then it's not until 1877, under the Education Act, that we get
12 New Zealand's first State schools established. And so that we see that that very evolution
13 of the system has begun with the missionary schools for Māori and then evolved into State
14 primary schools being catered for in that 1877 legislation. That's right, isn't it?

15 **MS HOLSTED:** Yes.

16 **MS ANDERSON:** And we see a development of entirely secular schools, Ms Hurst says that
17 those first State primary schools were mandated under the legislation to be entirely secular,
18 so we have a parallel system emerging of secular State schools and private faith-based
19 schools in this era.

20 At that point in time there wasn't any State regulation of those private faith-based
21 schools. The first time we get State regulation of faith-based schools is in 1921, and I'm
22 just going to call up a paragraph, 3.5 of Ms Hurst's evidence where she talks about what
23 Parliament said was the purpose of the requirement that effectively private faith-based
24 schools had to be licensed.

25 If we can just call up paragraph 3.5. So no limits on who could apply to register a
26 private school, but the Hansard record is that it was not sufficient to allow any person to
27 open a school of any sort in any sort of building and with any sort of instruction, and to the
28 children who attended those schools, she says that Parliament said:

29 "The Government owes some duty so see that the schools are reasonably efficient,
30 just as in the case of nursing homes, private hospitals, dentists and plumbers, we insist upon
31 registration to protect the public and secure efficiency".

32 So plain language there that public safety was an element driving that move to
33 licensing of private schools at that time. Do you agree with that?

34 **MS HOLSTED:** Well, the emphasis was actually on efficiency.

- 1 **MS ANDERSON:** We'll come on to the definition of efficiency because that's the next thing that
2 Ms Hurst deals with in her --
- 3 **MS HOLSTED:** All right. I suppose my point, though, is we know the well-being issue is a
4 relatively late entry into the regulations or recent entry.
- 5 **MS ANDERSON:** Yeah, but clearly Parliament is expressing here, isn't it, "We insist upon
6 registration to protect the public"?
- 7 **MS HOLSTED:** And then goes on to talk about plumbers.
- 8 **MS ANDERSON:** No, they're using the examples of regulatory regimes for nursing homes,
9 private hospitals, dentists and plumbers, "We insist upon registration to protect the public
10 and to secure efficiency", so there's two elements there, isn't there?
- 11 **MS HOLSTED:** Yes, there is. I'm just not sure what they mean by protect the public, in that
12 context at that time, given that it was not until 2019 that the actual requirement for
13 regulation included language around well-being and --
- 14 **MS ANDERSON:** Well, express language around well-being.
- 15 **MS HOLSTED:** That's right.
- 16 **MS ANDERSON:** We might have a difference of view about whether you could see some
17 elements of that in the system earlier.
- 18 **MS HOLSTED:** Correct. Mmm.
- 19 **MS ANDERSON:** If we come on to just the paragraph, if we can call up the paragraph below
20 that, and so this was the legal concept of efficiency that was introduced, and this applied, of
21 course, didn't it, to Marylands?
- 22 **MS HOLSTED:** Yes.
- 23 **MS ANDERSON:** Because it was licensed under this regime.
- 24 **MS HOLSTED:** That's right.
- 25 **MS ANDERSON:** So that the Department at the time issuing the licence had to be satisfied that
26 the premises, staff, equipment and curriculum of the school are suitable, and other aspects
27 relating to the instruction provided within, being as efficient as in a public school.
- 28 What I'm wanting to explore with you now is this concept of the plain language here
29 in the statute as to "staff have to be suitable".
- 30 If you're thinking about Marylands with The Order of St John of God, in order to be
31 registered, the Department at the time had to be satisfied that the staff were suitable; that's
32 right, isn't it?
- 33 **MS HOLSTED:** That's what the words say, that's right.

1 **MS ANDERSON:** And that test kicked in at the time of registration and then for a period of years
2 there were annual inspections and then there were - over time that moved to a three---yearly
3 inspection; that's right, isn't it?

4 **MS HOLSTED:** Well, it was a pretty light touch, I think you'd have to admit.

5 **MS ANDERSON:** In the same way that the ERO, the Education Review Office, when it's looking
6 at private schools today, is still assessing whether the efficiency criteria related to private
7 schools are met.

8 **MS HOLSTED:** As well as the new regulations, so they assess against the regulations at the time.

9 **MS ANDERSON:** That's an expansion of the definition of efficiency, but --

10 **MS HOLSTED:** No, it's not an expansion of the definition of efficiency, it's an additional explicit
11 requirement, and I think that was the intention.

12 **MS ANDERSON:** Do you interpret an assessment that staff are suitable back here in the day, if
13 we use Marylands as a scenario, did the Department not need to, in assessing staff
14 suitability, did they not need to take into account any safety aspects of the teachers in the
15 school?

16 **MS HOLSTED:** I don't know that they didn't, but what I would note, I would be surmising, that
17 there was very little information about some of those people. There wasn't a Teaching
18 Council, there was not a code of conduct, there was not teacher education, there was not a
19 register of teachers, there was not vetting of teachers by the Police, none of those things
20 existed, so --

21 **MS ANDERSON:** Yes, they've incrementally come in over time, haven't they?

22 **MS HOLSTED:** Yes.

23 **MS ANDERSON:** Do you agree that staff can't fairly be characterised as suitable if they posed a
24 risk to child safety?

25 **MS HOLSTED:** If you knew that to be the case, that would be correct.

26 **MS ANDERSON:** Or if you had some process by which you would actually ask that question.

27 **MS HOLSTED:** I don't know what process they had, sorry.

28 **MS ANDERSON:** Do you accept that from the evidence the Ministry has provided in relation to
29 Marylands, we simply just don't know how that criteria was assessed in relation to
30 Marylands?

31 **MS HOLSTED:** That's probably fair, yeah.

32 **MS ANDERSON:** When -- there was an amendment to the definition of efficiency in 2010, we
33 can probably bring that one down from the screen, was that in relation to staff suitability it
34 said:

1 "Staffing that was suitable to the age range and the levels of the students, the
2 curriculum taught and the size of the school."

3 So that is suitable to the age range, the levels of the students, the curriculum taught
4 and the size of the schools. One way of looking at that, that's a clarification perhaps or it's
5 making it easier, isn't it, to understand what the criteria are in terms of staff suitability?

6 **MS HOLSTED:** Yes, it's suitability, though, and efficiency to your point, because the only reason
7 you have in that criteria the size of the school is because of efficiency. The individuals
8 don't become more or less suitable because of the size of the school; it becomes more or
9 less efficient.

10 **MS ANDERSON:** That's the staff-student ratio element, isn't it, potentially?

11 **MS HOLSTED:** That's right - well, no, it's not, the staff--student ratio is in relation to a class not
12 in relation to the size of the school.

13 **MS ANDERSON:** Then we see a development where from 2010 there's a new criteria also
14 introduced into the private school regulatory regime where the managers have to be fit and
15 proper persons, so managers of private schools need to be fit and proper persons. That's
16 because in a private school context we have managers very distinct from the board of
17 trustees that we talked about before the break, that's right, isn't it?

18 **MS HOLSTED:** Well, they may have some sort of governing board, they are entitled to manage
19 themselves how they wish to manage themselves, but usually there'll be, there could well
20 be a, more like a Chief Executive than, say, a teacher who's become a principal, so
21 somebody who's -- a little bit like we have an early learning services that are private,
22 supervisors there, you know, aren't necessarily teachers.

23 **MS ANDERSON:** In relation to Marylands, that assessment of staff suitability, that happened to
24 get registration and then do we agree, as Ms Hurst sets out, there was for a period of years
25 the regulation required an annual inspection of the school.

26 **MS HOLSTED:** Sorry, I'm a little confused because Helen spent a whole day here, I think.

27 **MS ANDERSON:** No, we've not had a Ministry of Education witness.

28 **MS HOLSTED:** Helen spent a whole day on Marylands.

29 **MS ANDERSON:** She's not being called as a witness on Marylands.

30 **CHAIR:** No, she was called as a -- she was in the redress --

31 **MS HOLSTED:** Sorry, so she's provided a lot of this information. So I'm just curious in the
32 interests of time, are you wanting to go through that evidence with me?

1 **MS ANDERSON:** No, I'm picking up and using some of that, and I think we should be able to
2 move through it relatively quickly. That -- as she said, that the residential settings were
3 outside the scope of that annual inspection or that triannual inspection.

4 **MS HOLSTED:** That's right. At that time, that's correct.

5 **MS ANDERSON:** It's not until, is it 2005 that we get the first regulations related to the safety of
6 school children and the boarding element.

7 **MS HOLSTED:** I'm guessing the year actually about 2005, something around that, that's right.

8 **MS ANDERSON:** Just to close off the point around Marylands, I think we can probably all in this
9 room unreservedly agree that the Brothers staffing the schools were not suitable.

10 **MS HOLSTED:** The abusers?

11 **MS ANDERSON:** Yes.

12 **MS HOLSTED:** Correct.

13 **MS ANDERSON:** 21 of the 37 Brothers who taught at the school have had reports of abuse
14 against them.

15 **MS HOLSTED:** That's right.

16 **MS ANDERSON:** We've also heard quite strong evidence about the lack of education actually
17 provided in the school.

18 **MS HOLSTED:** Understand.

19 **MS ANDERSON:** When you say yes, you agree they weren't suitable, is that bringing a modern
20 day lens to it, or do you think that's an assessment that could have been made at any of the
21 inspections across the period of time that Marylands was operating.

22 **MS HOLSTED:** No, I don't think it was ever considered right to abuse children in the way they
23 were abused.

24 **MS ANDERSON:** Well, of course not, it was quite shocking, wasn't it?

25 **MS HOLSTED:** Yeah.

26 **MS ANDERSON:** And I'm not going to dwell much on Marylands but I'm just using it as an
27 example. We see quite a lot of State funding went into Marylands School and that was
28 through ad hoc grant approved by Cabinet and other payments per child under different
29 regulatory regimes. There's documents that the Ministry's provided where the language
30 used is "State aid to private schools", and so I think that was -- that framed how
31 Government was thinking about it at the time.

32 **MS HOLSTED:** That's right.

33 **MS ANDERSON:** In the Ministry's Notice to Produce 468 you've referred to an inter-
34 denominational faith lobby group in New Zealand in discussions for State funding in

1 relation to those private schools. And I think we see an incremental approach from the
2 State where initially they agreed to fund 20% of salaries in private schools from 1970 and
3 then the Minister of Education chaired a three-day conference on State aid to private
4 schools in 1973 and a working party was established, and do we agree that coming out of
5 that process is where you see the State integration legislation where the Government is
6 really upping its State aid to those faith-based schools?

7 **MS HOLSTED:** Yes, because of the circumstances the State found itself in of course. It didn't
8 have its own -- the State system was too immature and too small to take those children on.

9 **MS ANDERSON:** So it's a bit over a barrel, because I think one of the figures that Helen Hurst
10 gives is that in 1975, 11% of primary students and 18% of secondary students were in faith-
11 based private schools.

12 **MS HOLSTED:** That's right.

13 **MS ANDERSON:** So are you agreeing that really it was a conundrum for the Government that if,
14 where would these children go to school if those schools could no longer continue
15 operating?

16 **MS HOLSTED:** I think it was a very difficult time, I think that three-day conference, I wasn't
17 involved with it, but if my history serves me correctly, it was a "come into the room and
18 sort this because we need to sort it", you know, "you're not allowed out until we've got a
19 solution".

20 **MS ANDERSON:** So the solution was that the State would effectively subsidise the faith schools.

21 **MS HOLSTED:** You can put it that way, you can say that the State would pay the State-
22 integrated schools, as they would State schools, with the exception of property.

23 **MS ANDERSON:** It's quite a strong alignment, effectively a partnership between faith and State
24 at that role in relation to the development of that legislative scheme and the funding that
25 flowed under it.

26 **MS HOLSTED:** Mmm, yeah.

27 **MS ANDERSON:** I'm going to turn to the Catholic data that was publicly released in February of
28 this year, the number to read into the record is CTH0020759. Just while that's being
29 brought up, I think you've familiarised yourself with this document before today, and in a
30 broad picture sense what the Catholic Church publicly stated is that it had 1,680 reports of
31 abuse by 1,122 individuals -- I think I've got that number right. And that 687 of those
32 reports of abuse related to Catholic educational facilities.

33 If we can just go to the next page on that one. Just over to the next page. This is
34 where we see that of all the -- in that second paragraph with the bullets, of all of the

1 numbers of reports of abuse those in the educational facilities are actually the highest of
2 any of the other settings in the Catholic Church.

3 Within this document they also outline which decades the reports of abuse relate to,
4 and without turning to it now, the majority of those reports are in the 70s. I think the
5 number is that 447 reports of abuse related to the 1970s.

6 We can agree, can't we, that everything we know about reports of abuse that the
7 numbers that the church is talking about here would be the tip of an iceberg in the sense of
8 the barriers to disclosure mean that there'll be many people who have not reported abuse to
9 the church.

10 **MS HOLSTED:** That's quite possibly the case.

11 **MS ANDERSON:** So now with the benefit of hindsight we can see in the 1970s we've got a high
12 level of reports of abuse at the same time as the Government's making a decision to
13 increase the State funding to these schools, because the Catholic schools were the majority
14 of the integrated schools.

15 **MS HOLSTED:** Sorry, can I just ask a question about this piece of paper because I'm not quite
16 familiar with that. Of those total number of reports of abuse, when were those all made?

17 **MS ANDERSON:** We'll just turn back to page 3.

18 **MS HOLSTED:** Thank you.

19 **MS ANDERSON:** What we don't have here, Ms Holsted, is the dates of the reports of abuse.

20 **MS HOLSTED:** Right.

21 **MS ANDERSON:** We know most of them are many decades after the abuse. But they do set out,
22 that top table period there --

23 **MS HOLSTED:** They relate to that period.

24 **MS ANDERSON:** -- relate to those periods.

25 **MS HOLSTED:** Thank you, that's what I wanted to be clear. It wasn't that they reported in that
26 period but they relate to the period.

27 **MS ANDERSON:** No.

28 **MS HOLSTED:** Correct.

29 **MS ANDERSON:** That's where we see the 447 in the 70s and the 376 in the 60s.

30 **MS HOLSTED:** Yes.

31 **MS ANDERSON:** So in the role that you've got now as the leader of the system, if you were
32 advising the Government of the day at the time and you knew this about the Catholic
33 Church, do you think your advice would be different in terms of in favour of State aid to
34 private Catholic schools?

- 1 **MS HOLSTED:** That's a very odd hypothetical question really.
- 2 **MS ANDERSON:** Well, let me put it to you in a different way.
- 3 **MS HOLSTED:** I --
- 4 **MS ANDERSON:** With the benefit of hindsight --
- 5 **MS HOLSTED:** Of course not. Of course not. But to be fair, that's a huge bit of hindsight that
6 you're putting out there. There's an awful lot of things that we wouldn't have done with the
7 value of hindsight.
- 8 **MS ANDERSON:** Of course, of course, and we can agree on that.
- 9 **MS HOLSTED:** We can see over the period of history in education that we've learned lots as
10 we've gone and it unfortunately has been difficult at times for people as we've learned that.
11 And hindsight is a wonderful thing.
- 12 **MS ANDERSON:** There's no evidence that I've seen from the Ministry, and it might be
13 something that -- could be information supplied after this hearing, about what due diligence
14 was done at the time about the safety of students in the schools before the Government
15 decided to fund them in that way.
- 16 **MS HOLSTED:** That is another bit of hindsight because -- because we don't know, and to your
17 own point, a large number of these complaints have been many, many years, decades later,
18 we don't even know that if due diligence had been done at the time, and I'm not able to
19 comment on that here and now, that the evidence would have been there to have advised
20 the Government of that at the time.
- 21 **MS ANDERSON:** Clearly there's a speculative element in that, but if we think about Marylands
22 we've certainly got evidence from a number of survivors that they in fact made
23 contemporaneous disclosures of abuse to Brothers at the school, to social workers who
24 were involved with them, so there is a record of contemporaneous disclosures in that setting
25 and we simply just don't know what they are in the other settings, do we?
- 26 **MS HOLSTED:** The counterfactual to it is, and I really do want to deal with the implication of it,
27 is that Public Service officials were complicit in the abuse of children. And I don't think
28 that's a fair accusation or implication, or inference.
- 29 **MS ANDERSON:** But you don't need to take it that far, do you, it's --
- 30 **MS HOLSTED:** I'm simply telling you how it sounds.
- 31 **MS ANDERSON:** Let's just step back a little from that. We can agree that there's actually been,
32 on the church's own data, quite a high level of abuse that was occurring in Catholic private
33 schools.
- 34 **MS HOLSTED:** Yes.

- 1 **MS ANDERSON:** And we can agree that government has made a decision to fund those same
2 schools going forward to enable them to continue.
- 3 **MS HOLSTED:** Yes, but to put the two things in the same sentence simply repeats the statement
4 in another way.
- 5 **MS ANDERSON:** What's unclear to the Inquiry and which is something that is worth exploring, I
6 think, with further information from the Ministry, is from the records of the time whether
7 any consideration was given to how you might assess the welfare of the children in those
8 schools before State aid was increased to those schools.
- 9 **CHAIR:** Can I put that more directly. Because you used the word before, Ms Holsted, due
10 diligence, and you said that you weren't aware of what it was and I understand that. But I
11 think Ms Anderson is correct that what we really want to know is, when the State made that
12 decision, and I understand from the little you've said that it was under pressurised
13 conditions with a "lock you in the room and come out with a decision", whether there's any
14 evidence at all that in the course of that, the State took into account matters other than
15 money, resources, buildings, and whether they looked at all into the standard of education
16 and the safety of the pupils.
- 17 **MS HOLSTED:** And that would be something I'd have to come back on.
- 18 **CHAIR:** That's what we would like to know. I think if we place it in that way -- Ms Anderson,
19 would that cover that point?
- 20 **MS ANDERSON:** I think that would be right, Madam Chair, I wasn't intending to draw an
21 inference necessarily from the facts but facts align in a certain way and it's understanding,
22 as you say, that missing bit of the puzzle as to the decision-making process.
- 23 **MS HOLSTED:** You'll appreciate that my expert witness on the subject is ill with Covid, so
24 when he's back we'll be able --
- 25 **MS ANDERSON:** We understand that.
- 26 **CHAIR:** We completely understand that, and now you understand exactly what the parameters of
27 the question are.
- 28 **MS HOLSTED:** Yes. Thank you.
- 29 **CHAIR:** I think we would very much appreciate it if you could get that to us.
- 30 **MS HOLSTED:** Thank you very much, appreciate that.
- 31 **MS ANDERSON:** Just moving on to a different topic. You've talked a little bit earlier today
32 about exclusion from education and the fact that that can have a, I think we can agree it can
33 have a significant adverse impact on a life path.
- 34 **MS HOLSTED:** Yes.

1 **MS ANDERSON:** What are the mechanisms that you have today to understand whether stand
2 downs and suspensions of Māori and Pacific students was being used proportionately and
3 not on a non-discriminatory basis, if we think about the last 20 years?

4 **MS HOLSTED:** I don't know if I can do the last 20 years. I know that in recent, the last five
5 years, 10 years, we saw, and I'm sorry I haven't got the numbers on me, but I can remember
6 the graphs, if you like, and the lines on them, that Māori and Pacific were
7 disproportionately excluded or stood down. That trajectory has changed a bit recently,
8 which is good, it's gone down. It's - the data during Covid is not helpful -because - for- all
9 sorts of reasons, but prior to that we were seeing a decline.

10 But yes, it remains disproportionate to the numbers of Māori and Pacific in the
11 system.

12 **MS ANDERSON:** And if you saw an ERO report in the last number of years that indicated a
13 problem with high numbers of Māori and Pacific students being stood down, or
14 expelled - that- would be the two options, isn't it, sort of suspended or expelled, potentially?

15 **MS HOLSTED:** Well, they can be stood down, yeah, that's not a -- yeah.

16 **MS ANDERSON:** School boards make decisions to expel or suspend students.

17 **MS HOLSTED:** Yes, with our engagement, in that if they need to be -- if they're of school age
18 they need to be enrolled at another school.

19 **MS ANDERSON:** So if you were seeing a school that perhaps had a disproportionate record of
20 standing down Māori and Pacific, what are the steps that you would be taking today in
21 that - in- response to that?

22 **MS HOLSTED:** There's a couple of different things we might do. The -- we have special
23 advisors in Te Mahau so it may be that we would use one of them to go and work with the
24 principal to understand what was going on. It might be accompanied by some advice on
25 how to deal with behaviour management, it might involve some form of greater
26 intervention around getting a school to be a Positive Behaviour for School school so you're
27 actually changing the whole environment. So there's a range of interventions that we would
28 do and can do and do do.

29 We're not always as successful as we would like to be but we are growing the range
30 of interventions at the front end of the system.

31 **MS ANDERSON:** But it's certainly something that would get your attention and you'd be looking
32 to assist with a better -- with a system that didn't have that kind of discrimination.

33 **MS HOLSTED:** As far as practical yeah.

1 **MS ANDERSON:** In terms of what might be the real limits that you might -- what are the real
2 challenges that you might face in turning that practice in a particular school around?

3 **MS HOLSTED:** Again, it depends on the - what's sitting behind it, but leadership is critical in a
4 schooling setting; boards and leadership, we've discussed before, are very important;
5 teachers that have got the support and capability to respond to a range of kids; diversity.
6 I mentioned this morning, I think some of the behavioural challenges that are facing
7 teachers now that weren't necessarily there ten years ago, even five years ago, are testing
8 and so we do need to think about how we provide trauma---informed practice for example,
9 how we provide them with skills to divert kids from bad behaviour, it's all of those things
10 that have to be done.

11 It's usually a whole school environment, it's not very often one thing. It could also
12 be a community environment. Some parts of our country, high Methamphetamine use, for
13 example, means that those kids are coming to school quite dysfunctional, they might even
14 be affected by drugs as a result of living in those households. So it may be something that
15 we have to go well beyond the school grounds to understand and to engage with, the wider
16 community, not necessarily directly but through NGOs, possibly with the Police or OT.

17 **MS ANDERSON:** But it would certainly get your attention and something that you'd be focused
18 on what the Ministry could do in its stewardship role to turn that around?

19 **MS HOLSTED:** Yeah.

20 **MS ANDERSON:** You've referred in your evidence today to the duty to actively protect Māori
21 students, the duty of act of protection which, am I right, that's a commitment the Ministry's
22 got in its own documents.

23 **MS HOLSTED:** Well, the term "protection" of course is one of the Treaty principles and that's
24 stated in our policy, so the advancement of the provision of education that works for Māori
25 is absolutely critical to our mission and vision.

26 **MS ANDERSON:** That's the same whether that Māori student's in a State or a private faith-based
27 school?

28 **MS HOLSTED:** Correct - well, -State-integrated- school, sorry, what did you -- State or?

29 **MS ANDERSON:** Or a private faith-based school.

30 **MS HOLSTED:** It's not quite the same no, because our interaction with State and State-integrated
31 schools is still higher than it would be with a private school.

32 **MS ANDERSON:** That's how you operationalise the act of protection, isn't it, as opposed to
33 whether the commitment that you've given to that act of protection applies in different
34 settings?

1 **MS HOLSTED:** It applies in a setting in the same way if we're involved with a school. But we're
2 not as involved with private schools as we are with State and State-integrated schools, that
3 is correct.

4 **MS ANDERSON:** And so in your document, the Ministry's document that describes Māori
5 students as taonga to be protected, are you saying that that commitment --

6 **MS HOLSTED:** Is primarily through the State and State-integrated- system. In the private school
7 system, we have increasing levels of engagement not directly through the Ministry but, as
8 we've covered before, expectations around -- not expectations, requirements for teachers to
9 be registered, requirements for the Teachers Council to oversee them, requirements for
10 them to have policies, requirements for ERO to go in and test against the well-being for
11 students.

12 **CHAIR:** Requirements to go a little slower.

13 **MS HOLSTED:** Sorry. So there are a range of things that we have done over, incrementally over
14 the years to raise the level of connection with private schools. But it would not be fair to
15 say that we have as much to do with private schools as we do with State and State-
16 integrated, so that is the fact.

17 **MS ANDERSON:** So the ability to fulfil that commitment to those Māori students in private
18 faith-based schools will be different to the ability to fulfil that commitment in the State and
19 integrated schools you've just mentioned.

20 **MS HOLSTED:** Can I just understand why you refer to private faith-based, because there are
21 private schools that are not faith-based.

22 **MS ANDERSON:** That's exactly right but in the subset of private schools, so we can take it both
23 ways because the whole kete or basket of private schools is bigger than faith-based schools
24 but they are a significant component of the private school sector.

25 **MS HOLSTED:** So, for example, in Northland and had Hira been here she would have talked
26 more about this, but in Northland we are, for example, directly providing learning support
27 into a private school for a Māori student there who needs it. So it's not a cut-and-dried we
28 won't deal with you and we won't respond to you. What I'm saying to you that over time
29 the relationship between the State and State-integrated system and the Department has been
30 much closer than it is with the private system.

31 **MS ANDERSON:** And that same more distant ability to fulfil a commitment applies in a
32 boarding school context, doesn't it?

33 **MS HOLSTED:** Yes, that's right.

34 **MS ANDERSON:** So the boarding facility.

1 **MS HOLSTED:** The facilities, yes.

2 **MS ANDERSON:** Do you accept that in the plain reading of the commitment that's in the
3 Ministry document could legitimately - it could create an expectation within Māori that that
4 commitment's applying across all of- the different kinds of settings.

5 **MS HOLSTED:** Yes, and I would certainly not like -- I wouldn't want anybody to think that if we
6 were aware of it we wouldn't be doing something about it, but we may be doing it a
7 different way. So we may not have a Te Mahau staff in there but we may find some other
8 way to engage with that school.

9 If we're dealing with levels of abuse of the sort that we had in Marylands, those are
10 Police matters. They are matters that go well beyond my ken, so whenever we hear about
11 anything of that level it gets referred to the Police regardless of where it is.

12 **MS ANDERSON:** Are integration agreements with the State-integrated schools, are they static or
13 do they change over time?

14 **MS HOLSTED:** No, they can change over time.

15 **MS ANDERSON:** And is that a mechanism by which the Ministry and those State-integrated
16 schools has a mechanism to ensure that Māori student are actively protected from harm in
17 those settings?

18 **MS HOLSTED:** Every State-integrated school is required to have policies to ensure that children
19 are kept from harm. It's not the integration agreement that forces that in a State-integrated
20 school, it is because they're subject to the NELP, they're subject to the Education Act,
21 they're subject to the curriculum, they're subject to everything else. So it's not the
22 integration agreement that gives effect to that requirement.

23 **MS ANDERSON:** And are you comfortable with the how the Ministry fulfils its commitment to
24 active protection of Māori across the education settings?

25 **MS HOLSTED:** I think the evidence shows there's an awful lot more that needs to be done by
26 every part of the education system and the wider community actually, in terms of the
27 outcomes for Māori across a number of dimensions.

28 **MS ANDERSON:** If you had to say what was top of your list of what must be done by the
29 Ministry to improve active protection in private faith-based settings or private school
30 settings, what would be top of your to do list?

31 **MS HOLSTED:** In the private school system?

32 **MS ANDERSON:** Mmm.

33 **MS HOLSTED:** I wouldn't have a top of the list for the private school system because the top of
34 the list for me in terms of outcomes for Māori will be around the growth of te reo, tikanga

1 and mātauranga Māori. And so those things - this is where the private system is free, if you
2 like, to separate itself in some way from those things, that is the nature of the system, and
3 that's not private -faith-based- schools, that's any private school because it's private.

4 **MS ANDERSON:** Do you accept that there might be some who find the response on that active
5 protection question in the private school setting a bit frustrating perhaps?

6 **MS HOLSTED:** Particularly in -- for those people who have suffered abuse in those private
7 schools in the past, absolutely. And if you go back, and I said at the beginning of my
8 section today that our -- the absence of greater levels of monitoring and engagement
9 probably did allow or possibly allowed for predators to go to those places because they had
10 less oversight. I have acknowledged that.

11 I would also come back to the point that a lot more has been put in place since then
12 to ensure, not ensure, but to, if you like, put more regulation around the private system.

13 **MS ANDERSON:** So would you describe the private school system as still quite a work in
14 progress in terms of child safety in those environments?

15 **MS HOLSTED:** I'm not sure what particular example you're referring to in the private system at
16 the moment.

17 **MS ANDERSON:** I'll come on to that perhaps in a different topic, we might pick that up again.

18 **MS HOLSTED:** I'm not sure what time period you're talking about.

19 **MS ANDERSON:** I'll be more specific when I come on to that. Just leaving that topic that I've
20 just been addressing around the active protection commitment, you've mentioned a couple
21 of times in your evidence the importance of the Teaching Council and its role within the
22 education system overall, and the mandatory reporting of abuse obligation, we've seen a bit
23 of an iteration of what was required, haven't we, from 1997 through to 2004, slightly
24 different obligations.

25 Just to orientate Commissioners, from 1996 an employer needed to notify a
26 dismissal or a resignation within 12 months of being advised -- of the teacher being advised
27 they were dissatisfied with or intended to undertake an investigation, so that is the dismissal
28 and resignation limb, or if the employer received a complaint about any aspect of behaviour
29 that might be relevant to registration.

30 So that is what we see in '96 and it's buttressed by a statutory obligation on
31 registrars of the court to inform the Teaching Council of convictions against a teacher. So
32 that was the regime then.

33 And then we see a further legislative change in 2004 requiring the reporting of
34 possible serious misconduct. So this has come at a point in the regulatory evolution where

1 the Teachers Council has got a mandate to describe what is serious misconduct, it's issued a
2 code of ethics, and we're seeing more focus on behaviours that are safe for children to be
3 around.

4 **MS HOLSTED:** Mmm-hmm.

5 **MS ANDERSON:** Lesley Hoskin's evidence for the Teaching Council, I'm sure you would have
6 read that before coming here today, says the enactment of those provisions sequentially
7 indicates shortcomings in the system prior to their enactment.

8 **MS HOLSTED:** Absolutely.

9 **MS ANDERSON:** I think we can probably accept that.

10 **MS HOLSTED:** Yes.

11 **MS ANDERSON:** Is it fair to say that we're seeing, as we do with many pieces of legislation,
12 reform over time as more problems become evident?

13 **MS HOLSTED:** Or different problems, mmm.

14 **MS ANDERSON:** Different problems emerge. But, in essence, because from '96 there's been a
15 requirement for an employer to notify a complaint about behaviour that might be relevant to
16 registration, we've really had that mandatory reporting obligation in there from that early
17 time, haven't we?

18 **MS HOLSTED:** Mmm.

19 **MS ANDERSON:** Really, probably, the -- 2004 crystallised an element of it, in the language of it,
20 but we've seen it in the regime since 1996.

21 **MS HOLSTED:** It does seem to have taken hold more since then though, I have to say. I wasn't
22 in this role in 2004. Lesley will be able to speak more to that in her experience in that role.

23 **MS ANDERSON:** And in terms of child safety, there's a really important element to that
24 mandatory reporting, isn't there, because it enables safeguarding steps to be put in place.

25 **MS HOLSTED:** Well, it was primarily, I think, to stop the risk of perpetrators going from one
26 place to another.

27 **MS ANDERSON:** But there'd be an element, surely, of urgent steps if there's been a complaint
28 about a teacher in a school, and nothing's done, they might continue to have access in that
29 same school, they might not be dismissed.

30 **MS HOLSTED:** There is that, but the purpose was to stop the perpetrators moving around
31 without anybody knowing because, if you'll recall, that was one of the concerns that
32 everybody had at one stage which was that people who had committed crimes, basically,
33 committed abuse, would quietly disappear one day and turn up somewhere else. So that
34 is -- that was its origin as I understand it.

- 1 **MS ANDERSON:** The mandatory reporting regime goes to the Teachers Council because it's
2 relevant as to whether that person should continue in the profession but it doesn't go to
3 Police.
- 4 **MS HOLSTED:** It depends, I think you'll find that Lesley will speak to that point, it will depend
5 on the nature of the issue.
- 6 **MS ANDERSON:** What I'm talking about is the legislation. So the legislation is very clear the
7 obligation is only to report to the Teaching Council.
- 8 **MS HOLSTED:** Yes, but the Teaching Council takes action.
- 9 **MS ANDERSON:** And under the regulatory regime, the Teaching Council itself is required to
10 monitor and prosecute failures to mandatorily report. So sitting back in your role as the
11 steward of the education system, you'd have a strong interest, wouldn't you, in knowing that
12 the mandatory reporting regime works pretty well?
- 13 **MS HOLSTED:** Yes.
- 14 **MS ANDERSON:** Can you just explain to the Commissioners what you do in your role to make
15 sure that that mandatory reporting regime is working as intended?
- 16 **MS HOLSTED:** Well, the Teaching Council is independent of me, so while I may be the steward
17 of the system, they're independent of that, and that was quite deliberately done to ensure
18 they could carry out that function that they have. So again, I think you'll find that Lesley
19 will speak strongly to how she maintains the sturdiness of that system, and is absolutely
20 something I rely on. And she forms, although independent, she forms part of the Chief
21 Executives group that we collectively use -- it's an informal network, but regularly meet
22 across NZQA/TEC, ERO, myself and Teachers Council.
- 23 **MS ANDERSON:** And under the current legislation, the Teaching Council has to monitor and
24 enforce that mandatory reporting regime, so are you saying sitting up as the sort of, with the
25 Ministry as the sort of centre, really, of the regime in the sense of you give the advice to the
26 people who can make legislative changes.
- 27 **MS HOLSTED:** That's right.
- 28 **MS ANDERSON:** What have you done in your role to have a high level of confidence that the
29 Teaching Council is carrying out that monitoring and enforcement of mandatory reporting?
- 30 **MS HOLSTED:** I have a close working relationship with Lesley, it's a relatively small
31 organisation, it's not a big thing to deal with, and I do operate on the basis that she's a
32 highly trusted professional public servant fulfilling her --
- 33 **MS ANDERSON:** So relationships in high trust?
- 34 **MS HOLSTED:** Well, high trust with a very strong statutory role.

- 1 **MS ANDERSON:** And what information do you receive in the forums that you've talked about, is
2 it informal advice or is it formal advice that you get confirmation from the Teaching
3 Council that it's --
- 4 **MS HOLSTED:** The Teaching Council doesn't have to report to me, it is required, if it needs to,
5 to report directly to the Minister, in which case I would receive a copy of that advice to -- if
6 the Minister's office decided that was an appropriate thing to do.
- 7 **MS ANDERSON:** Is it fair to say, and it may not be so, do tell me if it's not, that perhaps the
8 Ministry has never asked that question, you know, what are the mechanisms we have to be
9 satisfied that the Teaching Council in its monitoring and enforcement role is carrying out
10 that role in the way that works best for the system?
- 11 **MS HOLSTED:** That's -- because it's an independent organisation it's subject to its own reporting
12 regimes to Government, so it's not under my jurisdiction, if you like, any more than ERO
13 is.
- 14 **MS ANDERSON:** But the Minister can audit the performance of the Teaching Council's
15 functions.
- 16 **MS HOLSTED:** Yes, and receives performance audits from it, and if he is inclined to, he can ask
17 for advice on those or he can provide them to me for my own information.
- 18 **MS ANDERSON:** And so the Minister might initiate that off his or her volition or it might be
19 advice from you that it would be something that would be worthwhile doing.
- 20 **MS HOLSTED:** I haven't had any reason to do it.
- 21 **MS ANDERSON:** So the performance audits you've referred to, is that --
- 22 **MS HOLSTED:** The regular reporting to, as we all do, to Parliament and so forth.
- 23 **MS ANDERSON:** Annual reports? Okay.
- 24 **MS HOLSTED:** Yes, if there's anything unexpected, of course, in between times, Chief
25 Executives are expected to report to their ministers.
- 26 **MS ANDERSON:** Without going into details, are you aware of ERO reports where it indicates
27 that perhaps there has been a report of abuse in a school that the senior people in the school
28 haven't reported to the Teachers Council?
- 29 **MS HOLSTED:** No, I haven't. I think one of the critical points here is that, rightly or wrongly,
30 the system is designed to have multiple points of accountability, that's how it's been
31 established, and there are checks and balances within it, so there isn't a single monitoring
32 point in it. That's how it's designed and that's the system that we work in.
- 33 **MS ANDERSON:** And do you think that is best practice?
- 34 **MS HOLSTED:** I think that's something for the Commission to consider.

- 1 **CHAIR:** A simple question about how it works without going into detail, the example that
2 Ms Anderson put to you where a school, a hypothetical, a school has a case of abuse but
3 doesn't report it, is that a vacuum?
- 4 **MS HOLSTED:** Could it be invisible?
- 5 **CHAIR:** Could it be invisible? That's right. Could it be invisible?
- 6 **MS HOLSTED:** Hypothetically, yes. Practically, unlikely in this country.
- 7 **CHAIR:** Because of the --
- 8 **MS HOLSTED:** Yes.
- 9 **CHAIR:** -- talk and the 2 degrees of separation?
- 10 **MS HOLSTED:** That is correct. Point 6 degrees of separation.
- 11 **CHAIR:** Indeed, indeed.
- 12 **MS HOLSTED:** In fact, one of the challenges I think the Teaching Council sometimes faces is
13 affording natural justice and privacy to people who have been accused of certain things,
14 because once that accusation is made it becomes knowledge very quickly.
- 15 **CHAIR:** And a quick follow-up on that, if it becomes apparent that there is a school that's had a
16 case of abuse which it was mandated to report and it hasn't, are you aware of any follow-up
17 or any sanctions against a school that has failed in that regard?
- 18 **MS HOLSTED:** I'm not aware it's ever happened but I would expect we would have very strong
19 sanctions against that.
- 20 **CHAIR:** We won't pursue that any further because it's probably another area.
- 21 **MS HOLSTED:** Thank you.
- 22 **COMMISSIONER STEENSON:** Can I just ask, so is what you're saying, because what we've
23 heard from many survivors is it takes a long time for them to talk about their abuse and so
24 I guess what you're saying is it's quite different that survivors today speak about it through
25 various methods that you would find out through the kūmara vine.
- 26 **MS HOLSTED:** I don't think you find out through the kūmara vine, I don't think that's what
27 I mean. I think what I would say is that the secrecy, if you like, that surrounded some of
28 the institutions that existed back in the 1950s and the 1960s was quite different to the world
29 we live in now. And that there was some, and I mentioned this at the outset, some of the
30 schools, the private schools, that there were really no State regulation or very little in, that
31 they were places where I think predators went, and so we saw those very high levels of
32 abuse at a particular time in history, because people were going there for that purpose. That
33 is my -- I think that is what happened.
- 34 **COMMISSIONER STEENSON:** So the change now that doesn't allow that --

1 **MS HOLSTED:** It's daylight and transparency. So, you've got -- first of all, you've got trained
2 teachers, which you didn't have back then.

3 **COMMISSIONER STEENSON:** Because of the changes to the system and legislation.

4 **MS HOLSTED:** That's right. And I have to add the social media and the willingness of people to
5 talk. People talk about their privacy now in a way that nobody ever did ten years ago, let
6 alone 40 or 50 years ago, and I think that is a huge change and it comes back to a point
7 I made earlier this morning, I was going to say yesterday because it feels like that, that how
8 we get student voice and garner that new confidence that so many kids do have, I think is
9 really a powerful opportunity.

10 **COMMISSIONER STEENSON:** Okay, thank you.

11 **COMMISSIONER ERUETI:** Could I just add to that, my colleague's comment, I think it is clear
12 that we don't have the number of total institutions, totalising institutions and residences that
13 we had in the past and we've gone through that process of deinstitutionalisation and all of
14 those residential schools have been closed, but we still have that locked in 24-hours-a-day,
15 seven days a week type of institution that still operates in the forms of hostels and boarding
16 schools and even, it seems, from what we're hearing in these community-based community
17 homes for people with disability.

18 So it's a sure thing we don't have it to the degree we had it before but these
19 institutions still exist, and what we've seen in the evidence over the years is how they're ripe
20 for abuse, and how difficult it is to make disclosures and that continues over time despite
21 increases in regulation and oversight and so forth.

22 **MS HOLSTED:** I think that's probably right, although also, I can't speak about community
23 homes, of course, but the hostel regulations and the investigations into hostels and the role
24 that ERO has taken in relation to hostels I think has really changed a lot in the last decade
25 or so.

26 I suppose at the risk of repeating, many of the outcomes for young people who go
27 through boarding schools are actually very, very good, and if there was - this is going to
28 sound dreadful but if there was widespread abuse I think the outcomes would be different.
29 I'm going to put my head into the lion's mouth and say the outcome for Māori- boarding
30 schools is particularly good and not decile related, and boys schools which are, take for
31 example the Rotorua Boys which is not - it's a State school, never been -State-integrated,
32 not a -faith-based school, very high Māori- population, has a boarding school of 125
33 students, has a history of NCEA level 2 being achieved by all of the boys in the boarding
34 school and has done that for a decade.

1 So, the instance of having a boarding school where they're managed like that is
2 actually stronger than some of those -- for some of those children who might not have had
3 those outcomes otherwise. And we do need to take -- manage the circumstances that we
4 have to maximise those opportunities and not, if you like, lose the good things because of
5 those things.

6 So there is something of a dilemma in that but I do think we have to work probably
7 to grow some of that offering in some places where we've lost it.

8 **COMMISSIONER ALOFIVAE:** Ms Holsted, just a point of clarification. So I think when
9 there's mass abuse in a particular setting, I think we've understood that, so thank you. But
10 in situations where there's an abuse of power, so a teacher with a particular student is a very
11 common example, and the school through their own mechanisms have decided on a
12 particular course of action, but the Ministry doesn't agree -- or does the Ministry even get
13 involved?

14 **MS HOLSTED:** Can do and would quite often do.

15 **COMMISSIONER ALOFIVAE:** So if the Ministry didn't agree with that particular course of
16 action, is that an option or is it just left to the school because of the jurisdiction of the board
17 of trustees?

18 **MS HOLSTED:** No, again, obviously if the Police should be involved, the Police are involved,
19 but if we take the hypothetical as not being of that order, there's a couple of -- we might
20 help or direct the patient -- the patient -- the parent to the Ombudsman, or to another
21 authority, or to refer the matter to the Teachers Council themselves, or we would
22 reverse -- sorry. We would send stuff to the Teaching Council, so we would take that
23 action. I think the important point here is that the rights of the child come first.

24 **COMMISSIONER ALOFIVAE:** But you can't actually interfere with the decision that the
25 school made about how to deal with that particular --

26 **MS HOLSTED:** If it was of a significant order we can have a Commissioner, we can put an LSM
27 in there, we can mediate, if you like, with the boards. Often when there's a dispute of that
28 sort that's what it comes down to, there's a discussion between the board and the parent or
29 parents and us, and increasingly in my situation where we have long-standing disputes with
30 schools and often the Ministry has been involved, I introduce a third party to mediate in
31 that situation.

32 **CHAIR:** We're going to let Ms Anderson carry on because I know she's champing at the bit to get
33 through her topics.

1 **MS ANDERSON:** Just as an example, and we don't need to go into the detail, but Lesley Hoskin
2 talks in her witness statement about a principal of a school endorsing the Practising
3 Certificate of a teacher even when that principal knew the teacher had sexually offended.
4 And inherent in that, because that's a certification not once but twice, so over three-yearly
5 intervals.

6 **MS HOLSTED:** Yes.

7 **MS ANDERSON:** Plainly there hasn't been a mandatory report.

8 **MS HOLSTED:** That's right.

9 **MS ANDERSON:** And to the point that Commissioner Steenson asked you earlier, there's a big
10 element here, isn't there, of we just don't know what we don't know, because it seems
11 sometimes happenstance as to the discovery of a failure to comply with that legal duty to
12 report to the Teaching Council.

13 **MS HOLSTED:** That's right, and we're not prescient.

14 **MS ANDERSON:** But there must be a systems perspective -- because that's the conundrum with
15 every mandatory reporting regime, isn't it, how do you get people to comply, how do you
16 check the level of compliance, how do you know whether your objectives are actually
17 being achieved and you're getting the outcomes that are designed to be delivered by the
18 policy and the legislative fix.

19 **MS HOLSTED:** Mmm.

20 **MS ANDERSON:** It would be unlikely, isn't it, that that example that Ms Hoskins referred to is
21 isolated, or do you interpret it as just an isolated --

22 **MS HOLSTED:** I still think you're better to talk to Lesley about her areas of jurisdiction, please.
23 I don't believe it's a common thing. Again, I suppose I know it sounds soft and waffly, but
24 we have a highly professional teaching workforce and most of the principals in it would be
25 just shocked and horrified to know that one of their number has done that. We are fortunate
26 in this country with the standard, actually, of the leadership of most of our schools. It's not
27 to say there are people who could not do better and some who do harm.

28 **MS ANDERSON:** I'm going to call up a document, TGC 0000360. Just to orientate you while it's
29 coming up, Ms Holsted, this is a Teaching Council letter responding to an Official
30 Information Act request, and what we can see there is that they're asked for certain
31 information about cancellation of the registration, records of complaints, and whether the
32 Council had information on previous convictions.

1 And you see at paragraph 4(ii) that the Teachers' Council doesn't have any records
2 of complaints made against this person. And that -- it says that the Teachers Council
3 received information from a public source of a conviction.

4 I think we can agree that what that means is we're very lucky that somebody in the
5 Teaching Council was -- picked up something in the open source forum. But there must
6 have been two failures potentially, one by the registrar of the court in terms of advising the
7 Teaching Council of a conviction of a teacher or previous teacher, that's one potential
8 failure in the system.

9 **MS HOLSTED:** This is back to 2000.

10 **MS ANDERSON:** This is a 2011 document.

11 **MS HOLSTED:** So...

12 **MS ANDERSON:** So the letter is written in 2011.

13 **MS HOLSTED:** Thank you.

14 **MS ANDERSON:** And the knowledge that the Teachers Council had was in June 2000. It's not
15 said in this letter what the date of the conviction was, but my understanding is that there's a
16 time gap there.

17 **MS HOLSTED:** Right, again, it would be better to talk to Lesley directly about that. I understand
18 what you're saying about the gap in the information --

19 **MS ANDERSON:** What I'm trying to get from you, Ms Holsted, is a sense of, in your leader
20 advisor role, when you see aspects like this coming through in evidence, does it trigger for
21 you a question about whether more should be done to actually understand whether the
22 mandatory regime is functioning as intended?

23 **MS HOLSTED:** It's a very sound question and if there was -- I don't know that I'd do it on the
24 basis of one incident, but if there was sufficient incidents of it, yes, there is a threshold for
25 the point at which one would do an investigation of that sort.

26 **MS ANDERSON:** And are you saying that threshold's reached if you get a number of instances of
27 this emerging as opposed to a bottom-up kind of audit of the system?

28 **MS HOLSTED:** Well, I think you do need to have some evidence to ask for a bottom--up audit
29 because by adding -- just by auditing things regularly, and there's an awful lot of things one
30 might audit, in order to give oneself confidence about everything, that would very quickly
31 have the system grind to a halt. So you do need to pick areas that you've got particular
32 concerns about and in this case, if you had two or three of these, that would be of the sort of
33 level of concern, I think.

1 **CHAIR:** Whose responsibility is it, do you see, to do that audit? Is it the Ministry or is it the
2 Education Review Office or Teachers Council?

3 **MS HOLSTED:** The Teachers Council should have its own internal systems of monitoring. If
4 the external view is that that's -- there's a repeated failure, then that would be something
5 that I would give advice to the Minister on how that might be reviewed.

6 **CHAIR:** Thank you.

7 **MS ANDERSON:** Madam Chair, I'm about to move on to my last topic, pending a couple of
8 other conclusory questions. Perhaps if we took the break now for 15 minutes and came
9 back at 5.15, I'll be about another half hour and then that would leave sufficient time for
10 Commissioners' questions.

11 **CHAIR:** I'll just check -- does that suit our signers, does that suit our stenographer? All right,
12 we'll take 15 minutes, and come back and 5.15. Thank you.

13 **Adjournment from 4.59 pm to 5.16 pm**

14 **CHAIR:** Yes, Ms Anderson.

15 **MS ANDERSON:** Thank you. Turning to some questions now about another important actor in
16 the whole regulatory framework, which is the Education Review Office, which we'll be
17 hearing from tomorrow as well, you have referenced earlier a change to the efficiency
18 element that needs to be assessed in relation to private schools, and Mr Pole in his evidence
19 talks about that element now that needs to be assessed that the school is physically and
20 emotionally safe. So that is an efficiency element relevant to the review of a private school
21 setting.

22 **MS HOLSTED:** Efficiency element? I'm not sure I'd call it an efficiency element.

23 **MS ANDERSON:** Well --

24 **MS HOLSTED:** It's an effectiveness and well-being element, I think.

25 **MS ANDERSON:** I think what I'm referring to is under the legislation it defines efficiency and
26 includes these things, so it was the last factor added to that list of things that would be
27 assessed.

28 And he talks about quite a difference in approach to the Education Review Office's
29 review of private schools relative to State and faith-based, and that's not controversial, that's
30 just simply how it is.

31 **MS HOLSTED:** That's right.

32 **MS ANDERSON:** I'm interested in your perspective about whether that's something that you,
33 knowing what you know now, perhaps about private schools and you've talked about some
34 of the changes that have been put in place to perhaps get a little bit closer connection

1 between the State and the private schools, my question to you relating to that -- the flip-side
2 of the light-handed regulation of private schools is that when ERO is looking at those
3 private schools, it's also -- Mr Pole describes it as lower intensity of review.

4 **MS HOLSTED:** So, as at today, I don't believe there's an argument for changing that nature of
5 the review based on our experience of private schools or our knowledge of them and you
6 may well go to the point of I don't know everything about them, and I'd have to admit that.
7 There's not a growth in them, their proximity to the State varies a bit depending on
8 circumstances, so the Independent Schools Association, for example, uses a lot of the
9 material that we produce for health and safety around Covid and they receive all our
10 bulletins, or the association receives our bulletins and they decide what they will
11 communicate out to their network and I'm free with that information, nothing's held back.
12 For example, we had a virtual conference with two ministers earlier this week, all of that
13 was recorded and provided to the Independent Schools Association so that they could use
14 that with their -- so there's quite a lot of that sort of come and go, and I've no reason to
15 believe that the current settings are not appropriate.

16 **MS ANDERSON:** Moving away to ERO reports more broadly for all schools, what's the
17 Ministry's role in relation to those reports?

18 **MS HOLSTED:** Well, there's two sorts of reports, there's the school reports which obviously if
19 the -- they're all online so they're all public, but particularly if ERO identifies actions that it
20 believes the Ministry should take in respect of a particular school, then those reports are
21 shared with us, usually prior to publication, so that we know -- we're not surprised by the
22 report. And then we will work with ERO to determine the extent to which we might be
23 able to meet those recommendations. They can't always be met because we may need, for
24 example, a particular type of career -- curriculum intervention which we may just not have
25 available at that time, in which case we'll discuss how we can address them.

26 If there are other reports --

27 **MS ANDERSON:** That's on the - because ERO's looking at both the competency and the
28 curriculum content in the schools as well as behaviour and conduct---related matters.

29 **MS HOLSTED:** They're looking at the whole school, yeah, they're not looking at the
30 performance of individual teachers but they're looking at the overall environment within
31 which children are learning.

32 **MS ANDERSON:** And so in relation to child safety in those schools, you've said that there might
33 be a recommendation for action that the Ministry should take.

34 **MS HOLSTED:** Yes.

1 **MS ANDERSON:** Is there an example you can call to mind where that might have happened in
2 relation to conduct in the school?

3 **MS HOLSTED:** Not sure if -- I may be -- I certainly know we've --

4 **MS ANDERSON:** I don't mean to put you on the spot.

5 **MS HOLSTED:** No, I don't want to be -- I would be surprised if there hasn't been one about
6 bullying in a school or where the environment is such, at some stage, I'd be very surprised
7 if there hasn't been because that is an ongoing issue in some schools.

8 **MS ANDERSON:** What kind of recommendation might come to the Ministry given that you're
9 not in the school, you're --

10 **MS HOLSTED:** Well, my Te Mahau people can be in the school and they are in the school. But,
11 for example, the PB Farell approach where you actually have a schoolwide approach to
12 building better capability to respond to diverse learners and to diverse circumstances. It
13 might be a recommendation that we work with a school to do that.

14 **MS ANDERSON:** So you're getting those recommendations before it goes public. In relation to
15 other reports that are completed and don't have a Ministry recommendation, are they
16 required to be sent to the Ministry -- do you receive them?

17 **MS HOLSTED:** No, they just go online, and we would -- we have access to them, but for
18 example we don't get hard copies of them or anything. We used to, I think, but not any
19 longer.

20 **MS ANDERSON:** And would it be the Ministry role to have a look at those from a systems
21 perspective, what's been revealed through those?

22 **MS HOLSTED:** Well, that's ERO's job in some ways because that's the first thing they do, school
23 and early learning evaluations, but they also do system-wide evaluations. So they will do,
24 for example, how is the system performing in relation to science teaching, years 4 to 8?
25 How is the system performing in relation to bullying? So they've got an annual cycle of
26 evaluations they decide what it is they want to evaluate.

27 Over and above that, the Ministry may pay them to do a particular valuation of
28 something that we've got an interest in, if it's not on their work programme. And in the
29 future, that is this financial year onwards, they will also review the effectiveness of the
30 professional learning and development that we offer to teachers.

31 **MS ANDERSON:** So they've got that assurance -- that systems inquiry and assurance element to
32 their remit?

- 1 **MS HOLSTED:** Yes, as well as building the capability of schools to do self-review because
2 fundamentally what goes on every day in a school is more powerful than what happens on
3 an irregular cycle of review.
- 4 **CHAIR:** Can I just be clear, are we talking here about just about private schools or all schools?
- 5 **MS HOLSTED:** All schools, State and State-integrated schools.
- 6 **CHAIR:** So we're not talking about private schools at all here; is that right?
- 7 **MS ANDERSON:** No, the private schools have that much lighter --
- 8 **CHAIR:** That's right, yes. I missed the segue from private schools to everywhere else, but thank
9 you.
- 10 **MS ANDERSON:** And in relation to -- so you're getting what's notified to you because you're
11 going to be asked to do a particular action, obviously you need to know about that. In
12 terms of those other reports about schools, so not the more systems--wide ones but
13 particular schools, what would be the Ministry's role in relation to those reports? Is it that
14 you're just leaving it to ERO or does the Ministry take a look and --
- 15 **MS HOLSTED:** No, so if a school, for example, and you will need to talk to Nick about the detail
16 and I would need my regional folks to talk about the detail but at a general level, the ERO
17 used to do a differentiated approach to reports, I don't think they're doing that now, but -- so
18 those were schools that were on a one to two year review, so they were considered to be at
19 greater risk, if you like, of failure or poor performance. So those schools would be brought
20 to the attention of the Ministry, and we would quite often work together to work out an
21 improvement plan with that school.
- 22 **MS ANDERSON:** That's consistent with your sort of leadership and system --
- 23 **MS HOLSTED:** Yeah.
- 24 **MS ANDERSON:** -- stewardship of the system?
- 25 **MS HOLSTED:** Well, it's very much at the front end of the system really, it's the operational end
26 of the system. It's the wrong time of the day to be doing this, probably, but bearing in mind
27 that the Ministry of Education started out fundamentally as a policy shop and then had
28 things plugging back into it over time. So we're now rebuilding that Te Mahau, that front
29 end thing, and that's going to -- that gives us a lot more opportunity to work differently with
30 schools and to be more proactive.
- 31 **MS ANDERSON:** I'm going to move now to look at the Notice to Produce response that ERO
32 provided, I think we've given a heads up that you'd have some questions about that. And
33 what ERO has done is quite helpfully summarise some of their reports in relation to
34 particular schools.

1 When I'm asking you questions about this, obviously ERO's got a remit it's gone in
2 and doing certain things and there'll be questions to ERO tomorrow, but the frame that
3 I invite you to bring to the questions is thinking about it from the Ministry role in relation to
4 what's revealed through these reports and, as I said, these are summaries of a series of
5 reports.

6 For the record, the document is ERO 0000121. Just turning to page 9 of that report,
7 which is where we get these extracts from reports -- just had a little flood in the desk
8 behind -- and we're not going to read out the names of the school, so we're just going to talk
9 about what's revealed through here. And you can -- I'll just give you a minute to look at
10 that and we'll talk about a few points that come out from that.

11 So what we can see there, isn't it, that there's been an assurance audit in '95 of this
12 particular school, and there's been a concern expressed about the approach to discipline
13 involving corporal punishment, and the ERO in 1995 has required the actions by the board
14 which is "to ensure no corporal punishment is used in the registered school".

15 And then further down the page we see that in September '97, a couple of years
16 later, they're doing the review and they're finding the same problem in relation to the
17 discipline and corporal punishment. And, of course, this is illegal conduct in a school
18 under the regulatory regime. So we see the same recommendation made a couple of years
19 later.

20 Then over the page, at the top of the page you can see that there is:

21 "The board has declined to give any assurance that corporal punishment is not
22 currently administered at the school."

23 And again, ERO makes a recommendation that:

24 "The board must ensure no corporal punishment is used in the school."

25 And through to a review in 2003 that found the concern that:

26 "Again, the principal and the board have declined to assure ERO that corporal
27 punishment is not administered in the school."

28 So therefore the concern is raised there.

29 So from a systems perspective it's a serious matter the school is not complying with
30 the law, that corporal punishment appears to be being administered in the school and no
31 traction is being gained over an eight-year period.

32 **MS HOLSTED:** Mmm.

1 **MS ANDERSON:** So thinking of it from a leadership role in the system, what would you
2 summarise as to what should have happened in relation to this and what's gone wrong that
3 the same problem is simply being found over numerous years?

4 **MS HOLSTED:** Well, it is a distinction with a private school where parents had decided, they've
5 chosen, possibly to walk past several State schools, to have their child go to a private
6 school. Every one of these reports is public, every one of those parents will know that
7 they've chosen to send their child to that school. They have a complete choice to remain
8 there or not. So in that sense they take -- the parent takes on an added level of
9 responsibility for the safety and well-being of their child when they choose to put them into
10 a private school. That is the system.

11 **MS ANDERSON:** And so what's the Ministry's role in enforcing the law not to have corporal
12 punishment in the school?

13 **MS HOLSTED:** If the parents were of the view that we should do that, I think the Ministry would
14 have done it, but I think in terms of activating -- I actually think that -- personally, I would
15 have thought there should have been some action taken in that case but I wasn't there. And
16 it seems to me that if anybody's going to enforce the law it should be us. But you need to
17 take into account the full set of circumstances.

18 But the first point I'd make is parents do make a decision and they do so knowingly.
19 And that's what makes it different. It is compulsory for children to go to school, it is not
20 compulsory for them to go to a private school.

21 **MS ANDERSON:** But the law applies equally to public and private schools, doesn't it?

22 **MS HOLSTED:** Yes.

23 **MS ANDERSON:** And so the law was introduced for a very good reason --

24 **MS HOLSTED:** Yes.

25 **MS ANDERSON:** -- to outlaw physical punishment, physical abuse in schools.

26 **MS HOLSTED:** Yes. So those parents, if I was one of those parents, I'd be wanting to report
27 them to the Police, but my guess is these parents chose not to do that.

28 **CHAIR:** Ms Holsted, you just said before, and take this as far as you want or can. You said that
29 if you'd known about this maybe some action should have been taken. What were you
30 thinking of in your mind, if you'd been sitting in the chair looking over this?

31 **MS HOLSTED:** Well --

32 **CHAIR:** And what can you -- what can -- who would it be, the ERO?

33 **MS HOLSTED:** No, the Ministry can take action against a school, it can take -- you would report
34 them to the Police for breaking the law, that would be the action you might take. But that

1 would be quite a big action. If you have 100 children whose parents have chosen to send
2 them to this school and the State is threatening or taking action to direct their principals and
3 their leaders to the Police in a way that might affect the availability of that school, then the
4 State has to consider where it sits on that, it's not a black and white "this is good, this is
5 wrong, this is right". The private school system is part of the system in that it is an option
6 for parents to choose.

7 **MS ANDERSON:** It seems extraordinary to suggest that parents can choose to -- the Ministry has
8 no role in relation to making sure a school complies with the law because the school's
9 registered and licensed so that is a regulatory lever. I'm correct, aren't I, that the State is
10 actually giving money to these private schools? There's some element of --

11 **MS HOLSTED:** There's some.

12 **MS ANDERSON:** -- of State money into those schools.

13 **COMMISSIONER STEENSON:** So, sorry, just for my clarification too, I guess what to my
14 mind that translates to is that children at private schools who do not have the choice,
15 because the parents decide ultimately, they therefore have less State protection than those in
16 State and integrated schools?

17 **MS HOLSTED:** Potentially, yes. Because there's a different level of monitoring and
18 engagement. But as I say, my personal view is that if one has observed someone breaking
19 the law then there's some actions that should be taken. But I would need to understand the
20 circumstances that meant that that didn't happen and I'm not familiar with those.

21 **MS ANDERSON:** We're going to move through this document to some other examples. So the
22 third school, which again we won't name, on page 12, so quite similar to the example that
23 we've looked at previously, that there's been a 1995 ERO audit of the school, and again, the
24 board would not discuss the use of corporal punishment with the review officers. And then
25 down, November 1998, the same issue has been picked up.

26 But we see the very mandatory language of the ERO action that the board's required
27 to take, that the board "must" ensure that no corporal punishment is used, so that is very
28 directive language, isn't it?

29 **MS HOLSTED:** Yes.

30 **MS ANDERSON:** But are you saying there's actually no consequence for the school if it doesn't
31 comply with the ERO directive?

32 **MS HOLSTED:** Unless -- one expects the school to -- no, there isn't.

33 **MS ANDERSON:** Do you think that that's the way the system should work?

1 **MS HOLSTED:** Well, I think in this case, as I said, it's a matter for the Police if you wanted to
2 take it there.

3 **MS ANDERSON:** But what I'm curious about is, isn't it an issue for the Ministry.

4 **MS HOLSTED:** Well, I think what I would want to know about is, and I haven't, sorry, checked
5 it and I should have perhaps, but I'm not sure what the regulatory approach to this was, and
6 whether or not these schools continue to exist. I'm not sure that they do. In other words,
7 something has happened to them is my assumption.

8 **MS ANDERSON:** We'll come to another school, which is on page 29 of the document. And
9 again, we don't need to name the school. I'll just give you a moment to look at that. And
10 there's some additional information that's been provided by the Ministry and ERO relating
11 to this particular school.

12 And it's in that category, isn't it, that you've identified earlier that there are some
13 schools, there's a real problem with bullying and violence in the school, including peer on
14 peer violence.

15 **MS HOLSTED:** Mmm.

16 **MS ANDERSON:** Before I get into the substance of this particular school, I'm just going to spend
17 a few minutes on this one, in ERO's response to a Notice to Produce it said that it had
18 identified 29 instances of private schools being non-compliant with the legal prohibition on
19 corporal punishment. It's just the tail end of the last topic that I dealt with the two schools
20 that we've been -- that we addressed.

21 Do you see that that number of schools perhaps indicates a threshold at which the
22 Ministry needs to be quite concerned about what the children in those schools are being
23 subjected to?

24 **MS HOLSTED:** Were subjected to. I'm not sure that the same conditions would apply now. I
25 think that what I said right at the outset was that in some cases we have clearly been too
26 slow to act and that's an acknowledgment I've made. And I would like to think that we
27 would not be so slow in the future and I would like to think that we're not.

28 So, to this one, I know that over a period of time there were reports of different sorts
29 and there were responses, they didn't all respond in a way that made the changes as fast as
30 they should have been, but they did actually -- there were responses to all of those
31 accusations.

32 **MS ANDERSON:** Well, in relation to the school that we've got on page 29 and the documents
33 that you've received before coming here today, there's quite a long period, isn't there, from
34 1995 to 2009, so we've got a 14-year period, that there are matters of concern relating to

1 bullying and violence in the school being reported, so there's no dispute that that's what
2 happened.

3 **MS HOLSTED:** That's right. My - unfortunately, if we go back to the record---keeping issue, my
4 records on this only relate back to 2008, but I accept your point.

5 **MS ANDERSON:** And there was a point at which the Minister became involved and sought an
6 ERO report on the safety in the school in 2007.

7 **MS HOLSTED:** Yeah, that's right.

8 **MS ANDERSON:** So what do you say to those children who were at that school over that 14-year
9 period who have suffered real harm and trauma?

10 **MS HOLSTED:** The suffering of trauma under any circumstances in any school is tragic and
11 wasteful. I have the greatest of respect for the survivors who have come forward and told
12 their stories. When I look through the history of this one and, as I say, my records don't go
13 back as far as this, and they should, the actions that came out of it by the time we got to
14 2008 actually made big changes to the hostels regulations, things actually did happen. And
15 I agree there was a period of time before that, at least one other Secretary before the
16 Secretary who acted, so we are going over a long period.

17 **MS ANDERSON:** So, thinking back to -- for this period, so up to 2009, what are the levers that
18 you as the Secretary for Education would have had that you could have deployed here to
19 keep those children in this particular school safe?

20 **MS HOLSTED:** Not very many, unless -- sorry, I don't know that I can answer that question as at
21 that time in terms of all of the levers that were available in 2009.

22 **MS ANDERSON:** If this was -- so if we just imagine this is current, what would be the levers that
23 are available to you?

24 **MS HOLSTED:** Again, this is an absolute matter that is a criminal -- this is criminal action, and
25 there's abuse occurring in the school. If the parents -- again, I come back to the fact that I
26 don't know if parents were aware of it then, but I'd be very surprised in 2021 if this was
27 happening that parents wouldn't be aware, but let's assume they're not, for the purposes, and
28 we became aware, or ERO became aware, or the Teachers Council became aware, that that
29 would be something that would be referred to Police.

30 **MS ANDERSON:** I suppose the point I'm narrowing down on here is what can you say to
31 Commissioners is the extent that the Ministry accepts some responsibility for the harm that
32 occurred to those children in that school over this very lengthy period of time where ERO
33 was faithfully reporting the problem?

- 1 **MS HOLSTED:** I think I take responsibility for the Ministry being far too slow to respond to
2 those issues, and that did result in harm to those children.
- 3 **MS ANDERSON:** And if contemporary reports were coming through to you today of abuse in
4 this particular school, in light of the history, what would you be advising should happen?
- 5 **MS HOLSTED:** I'd be taking full account of the circumstances and making a decision at that
6 point, and with the interests of the children at the centre.
- 7 **MS ANDERSON:** And what are the range of, on the scenario of options for, what your decisions
8 might be, just so Commissioners are aware --
- 9 **MS HOLSTED:** Everything to -- not many -- there's not very many subtleties in the private sector
10 system, you're either registered or you're not.
- 11 **MS ANDERSON:** So you're really talking about the regulatory levers under the licensing regime
12 and also in relation to the hostel because you administer those --
- 13 **MS HOLSTED:** That's right, yes.
- 14 **MS ANDERSON:** The hostel regulations, don't you?
- 15 **MS HOLSTED:** That's right, so you invoke your regulatory power.
- 16 **MS ANDERSON:** Yeah, so...
- 17 **MS HOLSTED:** That's it.
- 18 **MS ANDERSON:** Is that what makes it quite hard to take any action, because it's kind of a
19 nuclear option, isn't it?
- 20 **MS HOLSTED:** Possibly. Yeah, it's not something that I've been faced with so -- and I hope I'm
21 not. But your point is right, it is a nuclear option.
- 22 **MS ANDERSON:** Presumably a halfway element between, because the boarding component is
23 not fully nuclear, is it, it's separate?
- 24 **MS HOLSTED:** That's right.
- 25 **MS ANDERSON:** And what would it take, do you think, for the Ministry to decide to use the
26 offence provisions in the hostel regulations?
- 27 **MS HOLSTED:** Well, I presume it's something like this, but I wouldn't like to say it had to get to
28 this stage to do that. I mean --
- 29 **MS ANDERSON:** We can agree it's a very sad history.
- 30 **MS HOLSTED:** It's a very sad history, yeah, it's a tragic history.
- 31 **CHAIR:** Given that, Ms Holsted, we won't name this, but the Commissioners have heard the
32 evidence from the survivors of what went on there, and these children were particularly
33 vulnerable --
- 34 **MS HOLSTED:** That's right.

1 **CHAIR:** -- for a number of reasons which I won't state. Just standing back, if we can, from all
2 this, do you think there is a case for giving the Ministry greater powers to intervene in a
3 situation like this, because I think we all agree the nuclear option which is deregister,
4 school close, all go home, seems to be certainly hard and doesn't do anything to ameliorate
5 the situation. So looking at what can be done to protect children in that situation, within the
6 reasonable framework of the private -- allowing the private schools their autonomy, which
7 they are set up for, but with the interests of the child's safety at heart.

8 Because at the moment it appears to protect the private school institution almost
9 more than the children in it, without some adequate safeguard. I don't know if you've given
10 any thought to that.

11 **MS HOLSTED:** To be honest, I haven't, and partly it's because we've established an application
12 of our energy and resources into the State and State-integrated sector.

13 **CHAIR:** Of course.

14 **MS HOLSTED:** So adding to that has consequences. How much it would add, to be honest, I
15 don't know, because currently, as I say, the - well, as they refer to themselves, the
16 independent schools are well self---governing.

17 **CHAIR:** If I can just extend that a little bit further, I'm sorry to take up your time, Ms Anderson,
18 but to go back to the duty to protect under Te Tiriti, we've heard similar from you, it's the
19 private school, they can do what they like, we can't intervene, our duties are only -- are
20 almost limited to State and integrated. But if you turn that around and say your duty is to
21 the child, is there a case for broadening the Ministry's powers in relation to your obligations
22 to act for the Crown in this regard?

23 So all I'm doing is taken a child-centred view rather than an institution view.

24 **MS HOLSTED:** I understand that and I think what I'd want to think about before I answer that,
25 and I'm not going to answer it here, is the relationship, the power relationship between the
26 State and the parent. Because in this case where you have parents who choose to put their
27 child into a particular setting and then they choose to take them out of the State's care, if
28 you like, if we use the word "care" from that point of view, and put them into an
29 independent setting, then --

30 **CHAIR:** There's a tension, isn't there?

31 **MS HOLSTED:** There's a tension.

32 **CHAIR:** Because that's one aspect, but the other aspect is you have a duty, don't you, to enforce
33 Te Tiriti and to protect children --

34 **MS HOLSTED:** I can't enforce Te Tiriti.

- 1 **CHAIR:** I don't mean enforce, but you know what I mean, to uphold the Crown's obligations
2 under the Treaty.
- 3 **MS HOLSTED:** It wouldn't only be in relation to Māori students that this would be done, of
4 course.
- 5 **CHAIR:** No, I'm adding this to the thing, I'm saying first of all there's our nation's obligation to
6 care for its children and prevent abuse in a general way.
- 7 **MS HOLSTED:** Yes.
- 8 **CHAIR:** And there's the additional one of the Te Tiriti obligations.
- 9 **MS HOLSTED:** In the first case I think the real discussion to be had and possibly a wider - a
10 national discussion, is where does the responsibility lie between parent and State? I think
11 it's not a simple question at all, and I'm not trying to be clever about it, I think it's
12 something we'd need to really think through. And then in relation to Te Tiriti, again, if
13 I think about as a public servant the more I push into being the parent of Māori- students,
14 the more I quite rightly get pushed back from that community.
- 15 **CHAIR:** We won't push it any further because I appreciate -- it might be something we might
16 engage with you and the Ministry at a later date.
- 17 **MS HOLSTED:** That would be -- I'd be pleased to do that, I think we're at an interesting time in
18 our history.
- 19 **CHAIR:** We are. And at an interesting time in our conversation too.
20 Ms Anderson.
- 21 **MS ANDERSON:** Thank you, Madam Chair, so just rounding off the school that we've just been
22 looking at, I think we've all agreed there's a very serious issue there.
- 23 **MS HOLSTED:** Absolutely.
- 24 **MS ANDERSON:** And it's contemporary issue, isn't it, in terms of it's not a school we can say it's
25 closed.
- 26 **MS HOLSTED:** No, it's on watch, mmm.
- 27 **MS ANDERSON:** Two questions to close before we have further questions perhaps from the
28 Commissioners. Nicholas Pole for the ERO concludes his witness statement with some
29 recommendations for reform, and rather than run through all of them in the interests of
30 time, perhaps, have you identified anything that you wouldn't support?
- 31 **MS HOLSTED:** I don't know that that's appropriate, I think they're all suggestions for the
32 Commission to consider. I haven't discussed them with Nick also, so --
- 33 **MS ANDERSON:** So the Ministry doesn't want to give a view on whether these are --

1 **MS HOLSTED:** The Ministry is very happy to give a view on what we think might be useful
2 things to consider, and as I've raised before, I think we need to consider how we make it
3 more normal that student-- agency and student voice does get collected and used in every
4 situation. And I don't know how to do that, to be honest, but I do think that that affords a
5 power that we have not afforded to the right place. And until we have that, we will
6 continue to have pockets of darkness.

7 And the second area that I would say is, it's not just the collection of student voice,
8 but the expectation of how transparently that is used or made available to the community
9 that it's serving. I do really believe that sunlight is a very, very good disinfectant and we
10 have had -- our worst cases of abuse are where there is none.

11 So in order to address that darkness, we have to find a way to put light on it. And
12 that's probably my strongest message. And one that we as a Ministry are promoting
13 through some early work on how we can use technology to help students provide real-time
14 experiences and feedback in a safe way, in a very, very safe way, but I think that -- I think
15 the technology has a lot to offer in terms of providing young people with access to their
16 rights.

17 **MS ANDERSON:** Thank you, Madam Chair, that's a point for me to pause, I've got no further
18 questions.

19 **CHAIR:** Thank you very much, Ms Anderson. I'm just going to ask my colleagues, we haven't
20 determined an order.

21 **COMMISSIONER GIBSON:** Kia ora, sort of a question in two parts looking backwards and
22 looking forwards. First we see historically the horrific abuse in places like Marylands,
23 [GRO-C], a range of specialist schools, residential or otherwise, and hearing from
24 other sources of evidence, would you accept that institutionalisation, segregation is a
25 precursor to abuse and neglect historically?

26 **MS HOLSTED:** I think that's right but I would have to have the caveat that David raised, which
27 is it's not universal, that experience, it is far too -- it has been far too frequent, and had it not
28 been for institutionalisation those predators wouldn't have survived.

29 **COMMISSIONER GIBSON:** The whole of system picture, I think, kids that were going to these
30 places weren't going to their local schools at the time. Welcoming your commitment to
31 safe and inclusive schools, but looking at your role as a safe and inclusive system, I assume
32 you look to -- you've talked about the principles of the Convention on the Rights of Persons
33 with Disabilities, I assume you looked to the general comment on education as a guide, as a
34 road map to how to achieve inclusion in the whole system?

1 **MS HOLSTED:** As a general approach, yes.

2 **COMMISSIONER GIBSON:** And also welcoming your focus on discrimination, it talks about
3 the right to be free from discrimination is also to be free from -- should not be put in a
4 segregated setting, and it talks about progressive realisation. How does the Ministry map
5 out a path to be consistent, to actually realise that inclusive vision and be consistent with
6 that general comment on the right to education?

7 **MS HOLSTED:** It's a very difficult path to walk and you will know, Paul, that there's -- sorry,
8 Commissioner, you will know that there are different thoughts on this from different parts
9 of the community, and we navigate those on an ongoing basis, and David is right in the
10 middle of that at the moment, actually, and we go backwards and forwards in this country
11 in the political setting as to whether or not we have residential schools, specialist schools or
12 not, and if we do have them, how do you access them and why do you access them and for
13 how long do you access them, and then I have parents writing to me saying, "I want more
14 specialist classrooms in my local school, please." So we have a very diverse population
15 that we're trying to navigate with.

16 **COMMISSIONER GIBSON:** Do you think that response is consistent with New Zealand's
17 commitment to the Convention on the Rights of People with Disabilities?

18 **MS HOLSTED:** I think it's absolutely consistent with our modus operandi to engage a lot of
19 voices when we're making policy.

20 **COMMISSIONER GIBSON:** Thanks, I will leave it there.

21 **COMMISSIONER ALOFIVAE:** Tēnā koutou katoa. Malo e lelei Ms Guttenbeil Po'uhila, Malo
22 le soifua maua. Faafetai le faasoā, faafetai le lagolago malosi i le tou matagaluega.
23 (Greetings to good health. Thank you for your sharing, and the strong support of the
24 ministry.) Mālie.

25 Ms Holsted, I fully appreciate it's a very long day. You made a number of
26 acknowledgements this morning and for all of our survivors that are listening, and that are
27 present in this room in some part it goes a long way in their healing journey, but I want to
28 ask you a question specifically around our Pacific children.

29 You may or may not know this, but there were education scholarships that extended
30 to the Realm Nations, so to Niue, to Tokelau, to the Cook Islands back in 19 -- I think it
31 was 63 to 1982 for the Tokelau community in particular. What we know and we've heard
32 evidence is that a number of children, I think it was about 186 in total, came to
33 New Zealand on those scholarships. But what wasn't known was that for a number of them

1 they were coming and were placed directly in boys' homes, [GRO-C] Home, as an example,
2 down in Lower Hutt.

3 So I'm not going to go over all of the issues in the interests of time, but I think you
4 understand my point, was the trauma, the lack of support, the lack of integration that was
5 then, and we fully appreciate with all of the tools now that there's a big shift.

6 But just in light of the conversation that we've just had in terms of the schools
7 where there currently are still big problems, was it deliberate that the Pacific community
8 was not paid a particular acknowledgment? I fully appreciate that they were swept up in a
9 kind of a catch-all phrase.

10 **MS HOLSTED:** It was an oversight, I apologise, it was -- we were working on our
11 acknowledgments, I was working on the acknowledgments late last night actually, and I do
12 apologise. I wouldn't have chosen that particular example but I am very, very saddened to
13 be reminded of it and I absolutely acknowledge the State's abuse of those young women
14 through that time and I'm very happy to put that in writing for you and to add it to the
15 acknowledgments.

16 **COMMISSIONER ALOFIVAE:** Thank you. It's not for myself that I ask it.

17 **MS HOLSTED:** I understand.

18 **COMMISSIONER ALOFIVAE:** But in this room are survivors where English was a second
19 language and for a number of our survivors in the 60s and 70s, that was the pathway into
20 care, so I just wanted to --

21 **MS HOLSTED:** I really appreciate you drawing it to my attention.

22 **COMMISSIONER ALOFIVAE:** Thank you. And just a final question, we're very excited with
23 the future plans. Of course the golden question is: How soon is this future? So thank you
24 for referring to the Oranga Tamariki action plan. We've heard earlier this week from your
25 colleagues in the ICM.

26 The question really is around operationalising that, it's very ambitious, but it's
27 appreciated that it's a significant step forward from where we are today. And in one sense,
28 it reflects what our survivors have been telling us in the remit period that governments have
29 never taken a whole of life course approach when it comes to impacts.

30 **MS HOLSTED:** Mmm.

31 **COMMISSIONER ALOFIVAE:** Are you able to help us around understanding how do you
32 jockey for position around priorities? Because you're all big shops, Health, Social Services,
33 Education, and what we know for sure is that every kid will pass through the education
34 system here in Aotearoa.

1 **MS HOLSTED:** Thank you. Two parts to that. In terms of jockeying for additional resources,
2 what I've learned through government over the years is that when ministers come together
3 around one thing, then it becomes easier to navigate the resources, because they are
4 collectively working as well, and we saw that with the sexual violence, family violence task
5 force. So for the first time we actually had a joined up approach to the resourcing. So that
6 gives me, and should give you some confidence that we've learned our way forward on that.

7 But actually, the big money is actually already in the base lines of course, it's not
8 the new money and how we re-allocate. And that is going to be challenging. One of the
9 challenges we have practically is always knowing who the children are. Because for
10 privacy reasons and not wanting to stereotype children, it's not necessarily in their best
11 interests that everybody knows that they're a State ward.

12 So Mr Te Kani and I are having very practical discussions about how we get over
13 that barrier and when we do know where they are then it becomes much easier, because
14 mostly these young people already meet the threshold for need, and what we've found is
15 that the system doesn't necessarily push them to the top. So, we know where they are, they
16 can, and we've been successful in doing that with Kōhanga Reo where we noticed there was
17 a low uptake of early learning interventions, and so we worked with the National Trust to
18 find a different way of getting those services to those young children and that's working.

19 So again, we will apply similar principles to that work.

20 **COMMISSIONER ALOFIVAE:** So understanding the communities better and how to
21 effectively engage.

22 **MS HOLSTED:** That's right, and it's not just more and more. It's got to be doing different with
23 what we've got.

24 **COMMISSIONER ALOFIVAE:** Fa'afetai lava, thank you.

25 **COMMISSIONER ERUETI:** Tena koe, Ms Holsted, I understand it's been a long day. My
26 question is just one question, and it follows from what you said about kōhanga. When the
27 Commission is on the road engaging with Māori, one kaupapa that comes up is the support
28 and commitment to kōhanga reo and kura kaupapa. And so I just wanted to ask you about
29 your views on their concerns about the level of commitment and funding and support for
30 those important kaupapa?

31 **MS HOLSTED:** So I mentioned this morning Te Pae Roa, so we have - as I said to you, there's a
32 Government commitment to growing the pathway from kōhanga through to wānanga. So
33 it's not just having the 30% in kura because of course to do that you've got to have them in
34 kōhanga first. And so we will be going to Government later this year with advice about

1 how to grow that, and that will end up becoming part of a budget process into the -future
2 depending on what Cabinet says, of course, if they agree, it will become part of the budget
3 process for '23, '-24. That won't fix everything, this will be a very -long-term- investment
4 to grow that pathway.

5 Equally, we have, in the last couple of budgets, allocated funding specifically for
6 kura buildings, because they are in a bad way, and we're working with Tūrangānui to
7 identify the priorities with them for their network, not to grow their network but to invest in
8 their network at this stage. That's a joint governance arrangement over that resource.

9 It's never enough, we know that, Education, Health, we've never got enough money,
10 but we can redirect what we've got.

11 **COMMISSIONER ERUETI:** Kia ora, tēnā koe, thank you again, and ngā mihi ki a koutou and
12 malo e lelei, thank you so much, it's been an interesting day but worthwhile.

13 **MS HOLSTED:** Thank you, I wish you all the very best.

14 **CHAIR:** Yes, and just on behalf of us all, may I thank you again, I don't know what's in the water
15 this week but something, I think it's the issues that are so big, so important, our time is
16 limited and we're trying to squidge a whole lot in.

17 **MS HOLSTED:** Understood.

18 **CHAIR:** And we know that puts huge burdens on the people who we're demanding information
19 from and the like. We really do appreciate the long hours, obviously late last night, and the
20 efforts you've put in, so we appreciate that and your teams behind you.

21 **MS HOLSTED:** Thank you very much.

22 **CHAIR:** Thank you very much. It's time to end. What time do we start tomorrow so I can tell the
23 world? Is it 9 o'clock?

24 **MS ANDERSON:** Yes, Madam Chair, 9 o'clock.

25 **CHAIR:** 9 o'clock it is. No rest for the wicked.

26 Kua mutu, tēnā koe e Pā. Nau mai hoki mai.

27 **KAUMATUA:** Tēnei te mihi atu ki a koe e te taumata, tēnā koutou. Ki waho nei kei te uaua.

28 Can I say that outside it is raining and then inside here it has been raining. But the
29 difference is we can create the rain to stop by having our kōrero together, and with the
30 support of our Commissioners here, that we can bring warmth back into this space. So with
31 our waiata this evening, Ka Waiata ki a Maria talks about bringing in the warmth of us as
32 people, then I'll say a karakia for us to end this. (Waiata Ka Waiata). (Karakia).

33 **Hearing adjourned at 6.09 pm to Friday, 19 August 2022 at 9 am**