

**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'imuamua Sandra Alofivae
Paul Gibson
Julia Steenson

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

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

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

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

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

Venue: Level 2
Abuse in Care Royal Commission of Inquiry
414 Khyber Pass Road
AUCKLAND

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TRANSCRIPT OF PROCEEDINGS

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11 **CHAIR:** It is now time for us to hear opening statements from our core participants and I invite
12 Ms Schmidt-McCleave to open for the Crown.

13 **OPENING STATEMENT BY THE CROWN**

14 **MS SCHMIDT-McCLEAVE:** Kei aku nui, kei aku rahi, tēnā koutou katoa. Ko te mihi tuatahi ki
15 te mana whenua o tēnei rohe, Ngāti Whātua ki Ōrākei, tēnā koutou. Ki ngā Kaikōmihana,
16 tēnā koutou. Ki ngā mōrehu i tū kaha, i tū maia ki te kōrero i ngā huihuinga kua pahure ake
17 nei, kei te mihi, kei te mihi, kei te mihi. Ko Ms Schmidt-McCleave tōku ingoa. Ko mātou
18 nei, ko Mr Clarke-Parker, ko Ms White, ngā roia mō te Karauna.

19 (To all who are here in attendance, greetings to you all. My first acknowledgment
20 goes to Ngāti Whātua ki Ōrākei, the tribal authority, and also to you Commissioners, I greet
21 you. To the survivors who stood strong and brave to share, I acknowledge and greet you
22 all. I am Ms Schmidt-McCleave and we are Mr Clarke-Parker and Ms White, the Crown
23 lawyers).

24 Good morning, everyone, my name is Rachael Schmidt-McCleave and for those
25 who can't see me, I am a -- I own it -- a middle-aged Pākehā woman, I have brown hair and
26 brown eyes and I'm wearing a green jacket and a green and black dress.

27 Thank you, Madam Chair and Commissioners, for the opportunity to present this
28 opening statement for this critical institutional response hearing, where the Crown, as
29 represented by the key agencies involved in State care in a range of different settings, will
30 respond to much of the evidence it has heard over the past three years.

31 For those watching who may not be familiar with the Inquiry process or the Crown
32 response, my colleague Mr Clarke-Parker and I represent all the core government agencies
33 involved with this Inquiry. Also sitting at our table is Ms White, General Counsel for the
34 Crown Response Unit.

1 The agencies giving evidence in this hearing and for whom we speak are the
2 Ministry of Social Development, the New Zealand Police, the Ministry of Health,
3 Whaikaha, the new Ministry of Disabled People, the Ministry of Education, the Education
4 Review Office, Oranga Tamariki, the Department of Corrections, Te Puni Kokiri, the
5 Ministry for Māori Development, the Ministry For Pacific Peoples, and Te Kawa Mataaho,
6 the Public Service Commission.

7 One of the principles that Cabinet approved for the Crown's engagement in this
8 Royal Commission was that the agencies should be joined up for the purposes of the Crown
9 response. So while agencies had different responsibilities in the system over time, when
10 I refer to "the Crown" in this hearing, that reference is to all those agencies.

11 I want to acknowledge the evidence the Crown has listened to, heard and absorbed
12 over the past three years. I also want to mihi to the courage and the strength of the
13 survivors and their whānau and supporters who have come to this very public forum to
14 share their experiences. Your voices throughout this Inquiry are the very heart of the
15 Commission's work. Without you, it could not succeed. And the Crown thanks you for
16 your bravery in coming forward and speaking up.

17 The Crown also acknowledges survivors who have passed away but whose
18 experiences of abuse in care will nevertheless inform the Commission's work.
19 Understanding the past is key to ensuring it is not repeated. You have made this possible
20 and provided a valuable service for those in care now and into the future.

21 During this Inquiry we have heard of many different types of abuse and neglect in a
22 range of settings, including social welfare, educational, law enforcement, and health and
23 disability settings.

24 We have heard of horrific physical and sexual abuse, of over-medication and
25 inappropriate use of seclusion, and of families who were discouraged from visiting their
26 loved ones.

27 We have heard of children being separated from their siblings, taken far from their
28 families without being told where they were going, not seeing their parents for years, of
29 being placed with abusive caregivers whose abuse was not checked or prevented and who
30 were never held to account.

31 We heard that children, disabled people, Deaf people, people with mental conditions
32 lacked effective ways of reporting their abuse and were not adequately monitored while in
33 care. Further, we heard that staff and carers were not always properly trained or screened
34 before employment.

1 We have heard of people who left State care with little education and limited skills
2 to establish an adult life or a career, of children and disabled people who worked without
3 adequate pay. We heard about a lack of support for young people to transition into adult
4 lives after they left State care settings. We have heard of violence, lack of love,
5 disconnection from culture and whakapapa, and generally a lack of the kind of care which
6 all tamariki, rangatahi and vulnerable adults should have received.

7 We have also heard of the long-term impacts to survivors of their time in care,
8 including physical and psychological trauma, cultural disconnection and lack of trust,
9 including of the State and of other authority figures, which continues to impact on their
10 lives today. We heard that these impacts are often intergenerational. Whānau members
11 have spoken of their painful experiences of living with loved ones damaged by their
12 experiences.

13 We have heard remarkable stories of resilience, but we have also heard devastating
14 stories of loneliness, struggle, suffering and despair. We have heard, we have listened, and
15 we have believed.

16 Over the past three years the Crown has also provided a significant volume of
17 material to the Commission, as well as evidence for its various hearings and investigations.

18 In this opening statement, I will outline the evidence that Crown agencies who have
19 been called to provide witnesses will give. Over the next two weeks, 11 chief executives
20 with support from accompanying officials will respond to what they have heard.

21 It is important to also acknowledge that actions speak louder than words, and the
22 Crown is acutely aware that its words over the next fortnight will be assessed through
23 future actions and their effect over time.

24 It is hoped that the chief executives' willingness to appear at this hearing will be
25 interpreted as a sign of their intent and of the seriousness with which they view the
26 experience related by survivors.

27 Before I do that, however, I want to make a number of acknowledgments on behalf
28 of the Crown. These are that, the State did not always ensure children, disabled people,
29 Deaf people and those with mental health conditions were safe when in State care.

30 Second, children, disabled people, Deaf people, and those with mental health
31 conditions experienced abuse in a range of settings controlled by the State.

32 Third, the State did not always stop abuse in State care when it was disclosed or
33 reported.

1 Fourth, Māori, Pacific, disabled people and Deaf people were particularly
2 negatively impacted, either by being over-represented in the services, or through the
3 services not meeting their distinct needs.

4 And fifth, record-keeping issues such as gaps in recording and the loss of some
5 records have meant that the number of children, and particularly the number of Māori and
6 Pacific children, in State care during the period in question is unlikely to ever be known.

7 Individual agency witnesses will apply these acknowledgments to their own settings
8 as relevant in the course of their evidence over the next two weeks.

9 I want to say that these acknowledgments and others that witnesses may make over
10 the course of the hearing do not take the place of a more formal Government apology of the
11 kind that the Royal Commission recommended at Recommendation 10 of its report He
12 Purapura Ora, he Māra Tipu from redress to Poretumu Torowhānui in December 2021. The
13 Government has instructed officials to work on what that more formal apology could look
14 like. Final decisions on that apology are likely to be made after the Royal Commission has
15 delivered its final report in June 2023, so that all the final findings and recommendations
16 can be considered.

17 I in no way wish to denigrate the work of those good and dedicated professionals
18 who worked in the State care system across a range of settings across the decades to
19 provide care for children and vulnerable adults according to the standards of the day.
20 However, society has changed since 1950 and social settings have evolved significantly.
21 Undoubtedly there is still learning to be done and we are only part way along the path in
22 this regard.

23 The way the State cares for tamariki and rangatahi, Deaf people, disabled people
24 and people with mental health conditions has changed over time, as has the understanding
25 of how to meet the needs of those groups. We all know more about the needs of tamariki
26 and rangatahi as they grow and develop. We all have a greater understanding of and
27 reduced stigma around mental illness and we all have greater acceptance of the rights of
28 disabled people and Deaf people to live and flourish in society in the same way as others.

29 The Crown is party to international instruments such as the United Nations
30 conventions on the rights of the child, the rights of disabled people, and the rights of
31 indigenous people. Obligations inherent in those mechanisms create a context for policy
32 making and service development that didn't exist in the past.

33 Our understanding of the role of Te Tiriti o Waitangi in the constitution and society
34 of Aotearoa New Zealand and the place of Māori as tangata whenua is at a level

1 unparalleled in earlier decades, although there is of course still more learning and more
2 work to do.

3 But despite all those changes, what is abundantly clear is that there is a bleak history
4 of abuse in care, of behaviour that is unacceptable in any society and in any time period.
5 Throughout the period the Commission is considering, the State had an obligation to keep
6 all those in its care safe. Through the course of the Commission's work, survivors have
7 shared many experiences that are unacceptable and are abhorrent by any objective standard
8 both then and now.

9 This bleak history has now, through this Commission, been exposed and we have all
10 assumed the mantle of helping improve the system across all settings. The Crown hopes
11 that this means the stories we have borne witness to will not happen in Aotearoa again. The
12 Crown has stated repeatedly in these hearings that it is listening and that survivors are heard
13 and they are believed.

14 The steps now being taken across the Crown which you will hear about in the next
15 two weeks have been informed by the weight of the evidence, both survivor and technical
16 evidence before this Commission. The changes made by the Crown to date have not and
17 cannot address all the lessons learned by the Crown, but the Crown is committed to
18 ongoing change and improvement, particularly as a result of this Commission's
19 recommendations.

20 To assist the Royal Commission with its work, the Crown has provided extensive
21 written and documentary evidence from all of the agencies to help us all understand the
22 structural, systemic and practical factors that caused or contributed to the abuse of
23 individuals in State care.

24 In this hearing those key Crown agencies will provide evidence to the Commission
25 on many of the lessons they have learned, both over the decades and through the course of
26 this Inquiry. They will inform the Commission about some of what has changed over the
27 last 70 years and why. These changes include shifts in policies and professional practices
28 such as deinstitutionalisation, community service provision, new understandings about the
29 treatment of mental illnesses and support for disabled people, restorative justice processes,
30 increased mechanisms for monitoring and oversight of the system, new ways of supporting
31 families and of working more closely with Māori organisations and whānau, hapū and iwi,
32 that are either in place or being formulated, and of working to ensure that the experiences
33 we have heard and which have filled us all with such sorrow don't happen in Aotearoa
34 again.

1 I want to emphasise that the Crown's evidence is not to suggest that the current
2 system is perfect or that abuse never happens, but to say that while the system is much
3 improved, there is still work to do. However, this evidence is intended to assist the
4 Commissioners to focus your recommendations on where further improvements can be
5 made and what else needs to be done to ensure that the experiences heard in this Inquiry
6 aren't repeated.

7 Understanding the role of the Public Service is critical to understanding the
8 evidence you are to hear. The Public Service is part of the Crown, but departments and
9 agencies cannot act unilaterally of Government, except where independence is specifically
10 provided for in statute.

11 We have the Public Service Act 2020 now where the Public Service supports
12 constitutional and democratic government and enables the current and successive
13 governments to develop and implement their policies, and that's set out at section 11 of that
14 Act.

15 At section 14 of that Act the role of the Public Service in relation to Te Tiriti is to
16 support the Crown as the Treaty partner in its relationships with Māori, and it does that by
17 developing and maintaining the capability of the Public Service to engage with Māori and
18 to understand Māori perspectives and in specific matters relating to employment of public
19 servants.

20 So the Public Service is not a treaty partner in its own right but it supports the
21 Crown as a whole in this role.

22 In that context then, the specific themes that between them the Crown witnesses will
23 be addressing, and I've set them out at paragraph 35 of my opening statement, my friend
24 Ms Beaton QC has referred to them so I don't propose to take the Commissioners through
25 them, but they are set out there.

26 The witnesses you will hear from have knowledge of particular areas that will be
27 addressed by the Commission. However, Commissioners will appreciate that these
28 witnesses will have some limitations as to the extent of their knowledge about historical
29 matters dating back to the earlier decades of the inquiry, and more generally, due to both
30 the sheer volume of material relevant to the Commission's work as well as the time
31 constraints associated with this hearing.

32 So I'd like to turn now to the specific Crown witnesses who will speak to the themes
33 I have mentioned. Today you will hear from the Ministry of Social Development. Debbie
34 Power, the Chief Executive, will give evidence, accompanied by Barry Fisk, who will give

1 evidence on the accreditation process, and Arran Jones, the Executive Director of Te Mana
2 Whakamaru Tamariki Motuhake, the Independent Children's Monitor, and he will speak to
3 the function of that monitor.

4 Tomorrow, Police Commissioner Andrew Coster will give evidence accompanied
5 by Deputy Commissioner Tania Kura.

6 On Wednesday, the Ministry of Health and Whaikaha (incorporating the Office For
7 Disability Issues) will appear. Specifically you will hear from the Director-General of
8 Health, Dr Diana Sarfati and she'll be accompanied by Dr John Crawshaw, the Director of
9 Mental Health and Addiction, acting Associate Director-General Mental Health and
10 Addiction, Dr Arran Culver, and Deputy Director-General Māori Health, John Whaanga.

11 From Whaikaha, the Acting Chief Executive Geraldine Woods will give evidence.
12 She will be accompanied by Amanda Bleckman, the Interim Deputy Chief Executive,
13 Service Delivery, who will speak on operational settings and safeguarding, and Hannah
14 Kerr, General Manager, Policy who will speak to Whaikaha's policy and strategic direction.
15 And specifically Whaikaha's evidence will speak on the reasons that Whaikaha was
16 established and its strategic direction in supporting disabled people, tāngata whaikaha
17 Māori, Pacific disabled people and whānau, the Enabling Good Lives approach and the
18 disability system transformation, and how Whaikaha seeks to uphold Te Tiriti o Waitangi
19 and tino rangatiratanga and safeguard disabled people from abuse and neglect.

20 On Thursday the 18th the Ministry of Education will appear. The Secretary and
21 Chief Executive, Iona Holsted, will appear, accompanied by David Wales, National
22 Director Learning Support; Rachael Vink, Manager National Service Support and
23 Guidance; Hira Gage, Director Tai Tokerau (Ops); and Tipene Chrisp, GM Policy (Māori
24 education).

25 Finally this week, you will hear from the Chief Executive of the Education Review
26 Office, Nicholas Pole, accompanied by his DCE of Evaluation and Review and Māori,
27 Linda Pura Watson, and Jane Lee, DCE, Review and Improvement.

28 That will be followed by Lesley Hoskin the Chief Executive of the Teaching
29 Council, the regulatory body for teachers.

30 Next week on Monday the 22nd, three days of evidence from Oranga Tamariki will
31 commence. Chappie Te Kani, the Chief Executive will appear, accompanied by the Chief
32 Social Worker, Peter Whitcombe, Nicolette Dickson, the Tumu Tuarua Te Kounga o te
33 Mahi me ngā Wheako Deputy Chief Executive, Quality Practice and Experiences, Paula
34 Attrill, General Manager, International Case Work and Adoptions, Frana Chase, Director,

1 Youth Justice Transformation, Aiolupotea Sina Aiolupotea Aiono Chief Advisor, Pacific
2 and Claudia Boyles, Chief Advisor, Disability.

3 On Thursday 25 August, the Department of Corrections Chief Executive, Jeremy
4 Lightfoot will appear, accompanied by Emma Gardner, Director Mental Health and
5 Addictions, Neil Beales, General Manager Custodial and Chief Custodial Officer, Jessica
6 Borg, General Manager Psychology and Programmes, and Rebecca Barson, General
7 Manager Reintegration and Housing.

8 At the end of the week on the last day of the hearing, you will hear evidence from
9 Lau Lu Mac Leauanae, the Chief Executive of the Ministry for Pacific Peoples, accompanied
10 by Aiona Matthew Aileone, the Deputy Secretary, Policy. They will be followed by David
11 Samuels, Chief Executive of Te Puni Kokiri, accompanied by Grace Smit, Deputy
12 Secretary, Strategy, Finance and Performance.

13 And finally you will hear from Peter Hughes, the Public Service Commissioner.

14 Necessarily there will be limits on the extent to which witnesses are able to speak to
15 the past, such as when they do not have personal knowledge of the events or if the records
16 cannot be found. If appropriate, the Crown may file additional evidence to assist the
17 Commission. Nonetheless, these witnesses will speak not only to the specific themes I've
18 expressed above, but also about the lessons, the many lessons their agencies have learned
19 along this pathway to improve the various State care systems. Nō reira, tēnā rawa atu
20 koutou katoa.

21 **CHAIR:** Kia ora, thank you for your opening address. Are there other counsel who wish to
22 address? Ms Heine.