

**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

Date: 15 August 2022

TRANSCRIPT OF PROCEEDINGS

INDEX

OPENING STATEMENT BY THE ROYAL COMMISSION	5
OPENING STATEMENT BY SAGE	10
OPENING STATEMENT BY THE CROWN	16
OPENING STATEMENT BY OFFICE OF THE CHILDREN'S COMMISSIONER	23
OPENING STATEMENT BY NEW ZEALAND STATE ABUSE SURVIVORS CHARITABLE TRUST	26
MINISTRY OF SOCIAL DEVELOPMENT	
Questioning by Ms Schmidt-McCleave	28
Questioning by Ms Toohey	37
Questioning by Mr McCarthy	49
Questioning by Dr Cooke	63
Questioning by Commissioners	84

28 **CHAIR:** Tēnā koe, Mr Stone. I now invite Ms Beaton to open on behalf of the Counsel Assist on
29 behalf of the Commission, thank you.

30 **OPENING STATEMENT BY THE ROYAL COMMISSION**

31 **MS BEATON:** Tena koutou, tēnā koutou, tēnā tātou katoa. Ko Kerryn Beaton tāku ingoa.
32 I appear today as counsel assisting the Royal Commission and for those who cannot see me,
33 I admit to being a middle-aged Pākehā woman also. Today I am wearing a green jacket and
34 I have long brown hair.

1 I begin also by acknowledging Ngāti Whātua as mana whenua, the survivors of
2 abuse and neglect, including those who have passed and their whānau. Tēnei te mihi ki a
3 koutou. I acknowledge members of the Royal Commission Survivor Advisory Group, our
4 core participants and those who are granted leave to appear, all of the many people who
5 have and who continue to contribute to and to support the Inquiry's work. Ngā mihi nui ki
6 a koe.

7 This opening statement will outline the intended purpose of the Inquiry's hearings
8 into institutional responses to abuse in care, and the agencies we will hear from over the
9 next two weeks and the big questions that the Commission seeks to address.

10 So the purpose of these hearings. The inquiry has the broadest terms of reference of
11 any Royal Commission of Inquiry ever held in this country. Over the last three and a half
12 years the Inquiry has heard from thousands of people in many different ways, through
13 private sessions, public hearings, roundtables, wānanga, hui and fono through witness
14 statements and written accounts. During its investigations and its research work and policy
15 work, the Inquiry has used its powers under the Inquiries Act to require people and
16 organisations to provide us with now over a million documents containing information
17 relevant to answering its terms of reference. And this work goes on and the Inquiry is due
18 to deliver its final report to Government by 30 June 2023.

19 As noted by our chair, this is the Inquiry's 13th public hearing and its overall
20 purpose is to publicly examine the responses of institutions to abuse in care. It was initially
21 intended that this would be the Inquiry's final hearing and would include witnesses and
22 evidence from both State and faith-based institutions. However, a few weeks ago a
23 decision was made to split the hearing into two and to extend the total hearing days. This
24 was to enable time, further time to prepare for and to hear from the faith-based institution.
25 So a second institutional response hearing will be held in October this year for a week
26 where witnesses from faith-based institutions will be called.

27 That doesn't mean, though, that failures to prevent and respond to abuse and neglect
28 of people in faith settings will not be addressed in this hearing, as they will be. Because as
29 is reflected in the terms of reference, the State often had and indeed has responsibility
30 directly and indirectly for people in the care of faith-based institutions, including in
31 schools.

32 Unlike most of our previous hearings, survivors of abuse will not be called as
33 witnesses in this hearing. Instead, this hearing has a sharp focus on the State and its
34 responses to the abuse and neglect that survivors experienced. We will pose some big

1 questions to Government and to the faiths in these hearings. This Inquiry has heard over
2 and over again terrible stories of abuse and neglect of people in care in places where they
3 were supposed to be cared for and by people and by systems that were supposed to care for
4 them. It happened, it's still happening and it can happen again.

5 So it's not enough to say, "Yes, that was terrible what happened so long ago, but we
6 shouldn't judge what happened then by today's standards." Many of the experiences of
7 abuse and neglect that we have heard, both publicly but also privately, were common.
8 They were common but they were never acceptable. Disconnecting people from their
9 whānau, their whakapapa, their identity has never been acceptable.

10 Sexual and physical abuse and ignoring someone's complaint or cry for help if they
11 disclose that abuse has never been acceptable. Locking people away in isolation without
12 lawful reason has never been acceptable. Requiring disabled people to spend their lives in
13 a room or a ward with no stimulation, no conversation, no care, that has never been
14 acceptable. Using violence, including to administer drugs or electric shocks as punishment,
15 has never been acceptable. Terrifying and traumatising and over-medicating people in care
16 who cannot leave has never been acceptable. And these are only some examples of what
17 we have heard.

18 The challenge for this Royal Commission and for the witnesses from the State
19 agencies who will be giving evidence in the next two weeks, and the faiths in October, is
20 how can the Government and the faiths in New Zealand act to address the harm that has
21 occurred and to prevent further abuse in the future?

22 Kia whakatōmuri te haere whakamua -- I walk into the future with my eyes fixed on
23 the past. This whakatauki encapsulates the Inquiry's approach to these hearings, the
24 purpose is threefold: First, to seek acknowledgment and accountability, acknowledgment
25 from State and faith-based institutions of the nature and extent of abuse in care, the factors
26 which caused or contributed to it and the impacts of abuse. And accountability from those
27 institutions for the failures to prevent and respond to abuse.

28 Second, to hear what lessons the institutions have learned from what happened,
29 what changes did they make to try and prevent and respond to these failures in the past.

30 And third to, identify what changes are still required to address the harm that has
31 happened and what the Government, the agencies and the faiths still need to do to ensure
32 that the factors which allowed abuse to occur don't continue.

33 So over the next two weeks the Inquiry will hear from representatives of 14
34 agencies, the Ministry of Social Development, New Zealand Police, Ministry of Health,

1 Whaikaha, the new Ministry of Disabled People, the Ministry of Education, the Education
2 Review Office, the Teaching Council, Oranga Tamariki, Department of Corrections, the
3 Office of the Children's Commissioner, the Ombudsman New Zealand, the Ministry for
4 Pacific Peoples, Te Puni Kokiri, and the Public Service Commission.

5 In total, we will hear evidence from 43 witnesses and most sessions will involve
6 multiple people sitting in the witness box. They include the chief executives and the senior
7 leaders of each of these agencies who will appear and answer questions, including the Chief
8 Ombudsman, the Children's Commissioner, and the Public Service Commissioner.

9 In planning for this hearing it has not been possible to call evidence publicly from
10 every State agency that was involved in providing care or involved in responding to or
11 preventing abuse in care. However, that does not mean that those agencies have not
12 provided information to us -- they have. All of these agencies, and many other agencies
13 who aren't being called in this hearing, have provided written information and evidence to
14 the Commission over the last three and a half years, and in the lead-up to this hearing,
15 agencies were sent Notices to Produce requiring them to provide information on some key
16 topics and the questioning at this hearing will focus on these key topics, which I'll list
17 briefly now.

18 The extent to which the care system has and does ensure that obligations under Te
19 Tiriti o Waitangi and human rights obligations are upheld.

20 The extent to which the care system supported or undermined the cultural continuity
21 of Māori and Pacific Peoples and the autonomy and care needs of disabled people and
22 people with mental health conditions.

23 How racism, ableism and bias has impacted the care system historically and now,
24 for example whether it's affected the resourcing of care, or how people came to be in care in
25 the first place.

26 The monitoring, oversight and safeguarding policies and practices.

27 The delegation of responsibility of care by the State to third parties, including
28 faith-based institutions.

29 And the extent to which the State failed to meet its obligations to people in the care
30 of these providers.

31 The issue of entry into care -- the circumstances in which people came to be in care
32 and the extent to which the State attempted to implement policies to avoid pathways into
33 care; the training, resourcing, supervision and vetting of staff and caregivers.

1 Failures in the provision of care including failing to provide education and
2 healthcare and, of course, the nature and extent of abuse.

3 The handling of complaints of investigations and of prosecutions.

4 Funding and resourcing of the care system.

5 And lessons learned, including the extent to which recommendations from earlier
6 reports and inquiries have or have not been implemented.

7 So questioning of the 14 agencies over the next two weeks will focus on many of
8 these kaupapa or issues that I've just listed. But time will not permit us to publicly question
9 all agencies or all witnesses on each of those. That doesn't mean that these issues will not
10 be addressed in other ways.

11 The Commission has and continues to receive evidence and information in many
12 non-public ways, including under Notices to Produce, and we continue to welcome and
13 encourage survivors of abuse, witnesses of abuse, former staff and public servants who
14 witnessed systemic failures to contact the Inquiry and share your experiences with us.

15 I want to move briefly to some housekeeping matters and then formal appearances.
16 Each of the agencies who have witnesses appearing in this hearing have filed formal briefs
17 of evidence. And these briefs of evidence will be available to review on the Inquiry's
18 website along with short biographies of each of the 43 witnesses who will appear.

19 Each agency will have the opportunity at the beginning of their session to give
20 additional oral evidence addressing topics they wish to highlight to the Commission. There
21 will then be questioning from Counsel Assisting the Commission and there may be
22 questioning from core participants and of course from Commissioners.

23 The hearing will be referring witnesses to documents where that is necessary but,
24 different from our previous hearings, the documents themselves will not be live streamed.
25 This is simply because the documents have not been redacted to protect the privacy rights
26 of people, including survivors, and so they cannot be published. Instead, as we have
27 always tried to do, the lawyer questioning will ensure that the relevant part of the document
28 is read out loud into the hearing transcript.

29 And for similar reasons, in this hearing, the names of survivors, of perpetrators, of
30 witnesses will usually be anonymised in questioning and in some cases the names of care
31 places will be anonymised to protect privacy.

32 Finally, I confirm, Commissioners, that I appear today with a team of Counsel
33 Assisting, who have worked across a range of our investigations. Simon Mount QC, Dr
34 Allan Cooke, Katherine Anderson, Anne Toohey, Tania Sharkey, Michael Thomas, Ruth

1 Thomas, Kathy Basire, Winston McCarthy, Julia Spelman, Alice McCarthy, and Natalie
2 Coates.

3 I also want to note and acknowledge the huge amount of work that has gone into the
4 preparation of questioning for this hearing by other counsel but also by the in-house teams,
5 ably led by Tom Powell, Belinda Himiona and Richard Roil.

6 Tēnā koe, Madam Chair, that's it from me. I understand we will now, I think, hear
7 from the members of our Survivor Advisory Group.

8 **CHAIR:** Yes, tēnā koe, Ms Beaton. I now have great pleasure of inviting members of the
9 Survivor Advisory Group to come forward and address the Commission.