

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

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

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

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TRANSCRIPT OF PROCEEDINGS

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

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

21 **TEACHING COUNCIL OF AOTEAROA NEW ZEALAND**

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

23 **QUESTIONING BY MR McMULLAN:** Ms Hoskin, may we start with you; can you tell me
24 your full name?

25 **MS HOSKIN:** Lesley Anne Hoskin.

26 **MR McMULLAN:** Can you help by describing yourself for those who can't see you?

27 **MS HOSKIN:** I can. I'm a Pākehā female, who is in my early 50s. I have shoulder length dark
28 brown hair, I wear purple-framed glasses and today I am wearing a white shirt that is
29 gathered around the neckline.

30 **MR McMULLAN:** Thank you. The Commissioners have your brief of evidence, but have you
31 prepared a brief of that brief to help frame the evidence that you intend to give today?

32 **MS HOSKIN:** I have.

33 **MR McMULLAN:** Madam Chair, I can provide a written copy of that if you would like, in due
34 course, but I've discussed this with Ms Anderson.

1 **CHAIR:** Yes, we'll take that later. Thank you.

2 **MR McMULLAN:** Thank you. If you could start working through your pre-prepared statement?

3 **MS HOSKIN:** E ngā iwi o motu nei, tēnā koutou katoa. Ko Tarikaka te maunga, ko Te
4 Kaiwharawhara te awa, ko te Moana o Raukawa te moana, he tangata Tiriti ahau. Nō
5 Kānata ahau, engari kei te Whanganui a Tara e noho nei ahau. Ko au Te Tāhuhu Rangapū o
6 Matatū Aotearoa. Nō reira, tēnā koutou, tēnā koutou, tēnā tātou katoa. I want to begin by
7 acknowledging survivors of abuse by teachers. I particularly acknowledge those who have
8 had involvement with the processes of the Teaching Council or its predecessor whom we
9 have let down. I acknowledge that our processes have had a significant and ongoing
10 negative impact on some of you, and for that I am sorry.

11 The Teaching Council is an independent statutory body. By independent I mean it
12 is not part of the public sector or what is termed the Crown. That means it is not a
13 Government department or agency and it is not directed by the minister. The Teaching
14 Council is governed by a council made up of 13 councillors, seven are elected by the
15 teaching profession and six are appointed by the minister. Robyn Baker is one of the
16 councillors and is the chair of the council. There are about 140,000 registered teachers in
17 New Zealand today. Approximately 108,000 have a current practising certificate working
18 in early childhood education, primary and secondary school.

19 At the Council, our responsibilities are limited to working with registered teachers,
20 or those who hold a limited authority to teach. The Teaching Council's key areas of
21 responsibility are raising the status of the profession, quality of teaching, and the safety of
22 children and young people.

23 We undertake these responsibilities for setting the requirements for who can
24 become a teacher and the requirements that allow them to stay teaching. In addition to the
25 legislation, it is the code and standards that describe what it means to be a teacher, what
26 they do and how they do it. The code and standards also provide the framework to
27 determine if teachers are competent, of good character and fit to teach. We are funded by
28 the teaching profession through fees and levies to do this work.

29 We hope the information we have given to the Commission demonstrates that, over
30 time, there has been changes in societal and professional expectations, legal requirements,
31 policies and practices and induction and training.

32 These changes have influenced how we perform our role and how we interact with
33 those involved in our processes. Part of our commitment to doing better is trying to be as
34 open as possible about where we have not done as well as we should. We acknowledge

1 that for ourselves as a regulatory body and for the whole of the teaching profession. This is
2 an ongoing journey with much yet to be learned and applied, and with a view to
3 overcoming the impact of colonisation, learning how to give genuine effect to Te Tiriti o
4 Waitangi, reflecting the ethnic diversity of Aotearoa, being proactive in the ways that we
5 work with differently-abled people. Ultimately, respecting the mana of all and most
6 important, keeping all learners safe.

7 I did want to take the opportunity to reiterate, I acknowledge survivors of abuse by
8 teachers, particularly those who have been involved in our processes, where we have not
9 taken appropriate care to ensure their safety and well-being.

10 The instances of harm that resulted are unacceptable. We recognise our processes
11 have had a significant and ongoing negative impact on some individuals, and we wish to
12 engage with survivors in a genuine and well-considered way. We have done and will
13 continue to apologise to them. We want to make sure those apologies are meaningful and
14 individualised and so what we say here today should be only seen as a part of that
15 engagement.

16 **MR McMULLAN:** Kia ora, Ms Hoskin. I'll come back to you in just a moment with a bit more
17 detail. But, Ms Baker, could I have you please introduce yourself and maybe give a
18 description of yourself for those who can't see you?

19 **MS BAKER:** Thank you. My name is Robyn Jane Baker. I'm an older person, actually this
20 morning ancient, apparently, which I will accept. I have blonde hair that was once natural
21 and is no longer natural. I'm tall about 5 8 and I'm Pākehā.

22 **MR McMULLAN:** Kia ora, thank you. And have you also similarly prepared a synthesis of your
23 brief of evidence for the Commission?

24 **MS BAKER:** I have. I have a short statement I'd like to make, thank you. I also want to
25 acknowledge those survivors who have had involvement with the processes of the Teaching
26 Council or its predecessors where we have not taken appropriate care to ensure your safety.
27 Nothing that we wish to say this afternoon is intended to take away from the hurt and
28 trauma that you have suffered.

29 I'm the Chair of the Teaching Council, and I have been involved in education for all
30 of my career. Over the last 30 years, the Teaching Council and its predecessors have
31 evolved from a body charged with registering and certificating teachers to one with a
32 mandate that is fit-for-purpose for a professional body in the world of today. One very
33 important aspect of our work today is the many ways we work collaboratively with others
34 who are also working to ensure the safety of children and young people.

1 We are committed to ensuring safe and high-quality leadership, teaching and
2 learning for children and young people in early childhood settings and in schools. We
3 acknowledge that the best way to do this is to continue to improve our practices in light of
4 new knowledge in learning. We see our involvement in the Commission processes as an
5 opportunity to be held accountable, as well as to listen, share our thinking, and learn how
6 we might better improve to ensure the safety of all our learners in the future. Thank you.

7 **MR McMULLAN:** Kia ora Ms Baker. Ms Hoskin, I said I'd come back to you. Do you
8 understand one of the areas of interest from the Commission is likely to be the Teaching
9 Council's disciplinary processes?

10 **MS HOSKIN:** Yes, I do.

11 **MR McMULLAN:** Thank you. Similarly, for proficiency purposes, have you prepared a
12 synthesis of your brief of evidence insofar as it relates to those processes?

13 **MS HOSKIN:** Yes, I have.

14 **MR McMULLAN:** Could you take us through that, please.

15 **MS HOSKIN:** The Teaching Council has several ways in which it can prevent or respond to
16 abuse by teachers. This is primarily a gatekeeping role, controlling entry to the profession
17 and thereafter controlling who may remain within it. I apprehend that our responsibility for
18 maintaining professional standards and disciplining those who breach the code is of most
19 interest to the Commission. It is therefore worth me explaining that function in a little
20 more detail.

21 The professional disciplinary process is designed to work out whether a teacher
22 should be permitted to continue teaching, and if so, under what conditions. The most
23 severe penalty that the Council can apply to a teacher is to remove the teacher from the
24 profession by cancelling their registration. Professional discipline is principally concerned
25 with safety for learners and the reputation of the profession, including public perception.
26 To do this work well, we need to receive good information, and over the past 30 years, the
27 legislative and policy framework has improved the flow of information to us.

28 Today, information about serious breaches of the code comes from five main
29 sources: a mandatory report where the law requires a teacher's employer to immediately
30 report to the Teaching Council when it believes a teacher has committed a serious breach of
31 the code of professional responsibility, or they resign, and a conduct issue was being
32 managed within that last year. If they are dismissed for any reason, they must also send a
33 mandatory report.

1 Serious misconduct is now described in detail in our rules and includes unjustified
2 or unreasonable physical force, emotional abuse that causes harm to a young person, and
3 neglecting a young person.

4 The second way is a complaint which can come from any member of the public
5 where it is believed a teacher has committed a serious breach of the code. The Council can
6 also raise an own motion if a concern has not been notified to us.

7 Teachers are required to self report convictions where an offence may have a
8 penalty of more -- of imprisonment of more than three months. And the last way is
9 information coming from other agencies that we work with. We receive information from
10 the courts about convictions, including about specified offences as determined in the
11 Children's Act where immediate cancellation of registration occurs; from Oranga Tamariki,
12 the Ministry of Education and Police, where we have a memorandum of understanding.

13 Our investigation and determination of the complaints process are controlled by our
14 empowering legislation and governing rules, along with general principles of natural
15 justice. In this context, we work hard to take care of everyone involved with particular care
16 for vulnerable witnesses, including those with disabilities. For example, in certain
17 situations, we encourage victims to make their own complaint so that they obtain the rights
18 of an initiator, which under the rules allows them to access more information throughout
19 the process and this ensures they are not left out of the process.

20 The Complaints Assessment Committee, which is the body with responsibility for
21 investigating and determining whether complaints should be referred to the Disciplinary
22 Tribunal or not and the teacher are parties to the proceeding. The rules require the
23 complaints assessment committees' process to be confidential. We also have developed the
24 capacity to conduct all proceedings in accordance with tikanga Māori and in te reo Māori.
25 We recognise there is more to be done to build a system that meets the needs of our most
26 vulnerable, including survivors of abuse.

27 I note that work like the Commission's can support the work we are already doing
28 ourselves to achieve this.

29 **MR McMULLAN:** Kia ora Ms Hoskin, Ms Baker, those are all the questions I have for you. If
30 you could just remain there and answer any questions that Ms Anderson has for you or the
31 Commissioners have for you.

32 **CHAIR:** Thank you, Mr McMullan. Welcome back, Ms Anderson.

1 **QUESTIONING BY MS ANDERSON:** Thank you, Madam Chair. For those tuning in at this
2 time who can't see me, I am a, I would have to say, shorter of stature, older female lawyer
3 with blondish hair wearing green-rimmed glasses.

4 Kia ora and welcome. Are you happy for me to call you Robyn and Lesley?

5 **MS HOSKIN:** Kia ora thank you.

6 **MS ANDERSON:** Let's proceed on that basis. Just a little bit of orientation, in the first instance,
7 to the role of the Teaching Council and the overall regulatory scheme. And we heard
8 yesterday from the Secretary for Education, in that they've got the big picture stewardship
9 role and I think what you've outlined in your evidence is that the remit of the Council is
10 much narrower, not so much for the whole system, but am I right to characterise it, you've
11 got a very distinct role in relation to the profession operating within the overall educational
12 system?

13 **MS HOSKIN:** That's correct.

14 **MS ANDERSON:** So, clearly, you've got a leadership role, but that's a leadership role in relation
15 to the profession generally?

16 **MS HOSKIN:** Yes.

17 **MS ANDERSON:** That's evolved over time, hasn't it, because you now -- you issue guidance,
18 you've got a mandate in that space as well?

19 **MS HOSKIN:** That's correct.

20 **MS ANDERSON:** And, helpfully, you've outlined the disciplinary process, you've referred to the
21 Complaints Assessment Committee, and of course there's a Disciplinary Tribunal as well,
22 isn't there, in the mix?

23 **MS HOSKIN:** Yes.

24 **MS ANDERSON:** It's the tribunal that would ultimately make a decision to cancel registration?

25 **MS HOSKIN:** Yes. The determination for whether something has to go to the discipline tribunal
26 at the moment, and there is a law change, is if a matter may possibly be serious misconduct,
27 then it must go to the discipline tribunal.

28 **MS ANDERSON:** So you're working in a landscape, if you've got an initiator, a survivor who's
29 come forward with a complaint, you might be initiating the Teaching Council processes,
30 but there might also be an employment matter going on at the school in relation to the same
31 incident that's given rise to the complaint; that might be right?

32 **MS HOSKIN:** That is true and I would add it's not unusual also for Police to be performing their
33 role.

1 **MS ANDERSON:** Yes, I was coming to that. So, as is often the case, three processes might be
2 initiated and then there's a question of sequencing and I think what you've said in your
3 evidence is that the disciplinary process would wait until the end of any Police process.

4 **MS HOSKIN:** That's correct.

5 **MS ANDERSON:** That, of course, can be quite a long time.

6 **MS HOSKIN:** That is true. I would, just for clarity, say that the school involved, so different
7 with historic abuse perhaps, but ordinarily that mandatory report is required immediately.
8 So they do have to give us that mandatory report immediately. We just then wait for the
9 outcome of the Police investigation before we do anything further.

10 **MS ANDERSON:** But there are some safeguards that can be put in place in the interim, aren't
11 there, in relation to -- because the fact that a person's charged doesn't mean of course that
12 they step aside from their employment, but there's some mechanisms that you've got in the
13 Teaching Council to make some interim arrangements?

14 **MS HOSKIN:** That's correct.

15 **MS ANDERSON:** Would you like to just outline those briefly for the Commissioners.

16 **MS HOSKIN:** Yes. So the rules have the ability for an interim suspension to be applied by the
17 Complaints Assessment Committee, and the process of how that might happen, which is
18 why I was drawing attention to the immediate requirement for a mandatory report, is so that
19 we can look and determine right at that very beginning point if there are any concerns or
20 risks to children. And if there are, our normal practice is to then ask the teacher to agree to
21 what we call an undertaking not to teach, so it's done by agreement, but it is based on the
22 construct in our rules called an interim suspension. If the agreement is not reached, the CIC
23 would then apply for interim suspension.

24 **MS ANDERSON:** That's a helpful clarification. And so your process pauses while the Police
25 matter is in train. Does your process pause because an employment matter is in train in the
26 school?

27 **MS HOSKIN:** No, it doesn't.

28 **MS ANDERSON:** So those two can run in parallel?

29 **MS HOSKIN:** Yes. I would just -- yes is the answer. I would just add that we would have
30 received the mandatory report. There is a requirement, with some exemptions, but there is
31 a requirement initially for the school to be able to be investigated and so we would always
32 ensure that the employer, so the board or the early childhood centre, might have their own
33 process of looking into that complaint, but that does not -- you know, we still want the
34 mandatory report immediately.

1 **MS ANDERSON:** Does that mean you get to rely for some of your evidence on what's happened
2 in that employment context, or the survivor has to participate potentially in both of those
3 processes?

4 **MS HOSKIN:** I understand the question. The employment matter is probably not something that
5 we would be -- that information is not necessarily relevant to us but we do get it. I think
6 often what is -- to answer -- you know, is this person going through multiple occasions of
7 having to tell their story? We do work with every agency, so the school, but also if Police
8 are involved we work with them to ensure that, where possible, we're not having to
9 re-traumatise and re-interview.

10 **MS ANDERSON:** That's a helpful orientation to the very crucial safety role that the Council
11 plays as a check in the system. I'm just going to come now to your statutory remit, so the
12 purpose of the Teaching Council, and just to help Commissioners and others, we're going to
13 call it up on the screen. It's from the notice to produce that the Council provided,
14 TG C 00002432. This of course will be a provision that both of you will be very familiar
15 with and which I think you've summarised in your evidence. Just coming up to page 9 of
16 the document...

17 **CHAIR:** For those watching and in the back of the room, you won't see these documents because
18 they can't be properly -- redacted -- for privacy reasons. We can see it, the witness can see
19 it and counsel can, but counsel will read out any relevant portions so that you know what's
20 being discussed.

21 **MS ANDERSON:** We'll just call out where it says, under the second paragraph under 2.1:

22 "Our purpose is to ensure safe and high quality leadership, teaching and learning for
23 children and young people in early childhood, primary and secondary schooling and
24 English medium and Māori medium settings through raising the status of the profession."

25 I've got some questions for you just about that, about how you interpret that
26 purpose, because of course this is the touchstone for everything that you do in terms of all
27 the powers that you have. I'm not going to bring it up on the screen but in the briefing to
28 the incoming minister in 2020, one of the statements that you've articulated in that briefing
29 is that you say, "it's our duty to protect and grow teachers' mana" and that the Council's
30 legal purpose speaks of "an enhancing of the status of the profession."

31 And then you go on to explain that the mana-enhancing responsibility is seen as key
32 to achieving safe, high quality leadership teaching and learning for students. It seems,
33 standing back and coming to this fresh, and you both work with this every day, it seems a
34 slightly complicated little purpose, that you've got things that you've got to do through

1 raising the status of the profession, and then we see through your briefing to the incoming
2 minister and other documents, annual reports and things, that you've got a real focus on the
3 enhancing the mana of the profession.

4 It would be very helpful for you to clarify how you link that enhancing the mana of
5 the profession to this overall child safety element that is a key part of your work.

6 **MS HOSKIN:** So, mana, that authority and respect and ability to have self--determination, we
7 have set mana at the heart of being able to be a good leader and having good leadership. It
8 sits at the ability to have care for others and for self and for environment. So in the - to
9 connect that, how we connect that and think about that in relation to the conduct matters is
10 the public, the parent, the profession themselves to have a high- -trust relationship and
11 therefore the mandate to do their job, they do have to have trust.

12 And so when we're describing the work that we do, and I would say -- and I don't
13 minimise or trivialise as all, but we deal with a few in the conduct space of the whole -- the
14 importance of doing that and doing that well and getting the right outcome, so whether
15 someone can stay in the profession or not is about the mana or what is described in the
16 statement in law, about status. And the connection is do we do that well, that there can
17 remain trust in those teachers who are -- have that core duty of care.

18 **MS ANDERSON:** Robyn, perhaps I'll come to you because you've recently come into this chair
19 role, haven't you, in July this year, and I presume that this is one of the first things that you
20 will have looked at as the sort of key piece of legislation that governs, sets out what the
21 purpose of the council you chair is: does it leave any ambiguity for you about where child
22 safety sits in this statutory purpose?

23 **MS BAKER:** Although I've come into this role recently, as I said, I've been in education for a
24 very long time. I think that what's really important here is people, including myself, went
25 into teaching because we have a strong, have had, and continue to have a strong belief in
26 learning and that by providing opportunities for young people to build the skills and
27 knowledge needed to thrive as people, personally and professionally, and contribute to the
28 society that we want in Aotearoa New Zealand. That is what drives us. And I'm not
29 avoiding the question about safety, but what I'm saying is we're driven by knowing that
30 education matters. And in doing that, we inherently, as a profession, want our charges to be
31 safe.

32 The status part, one of the things, as Lesley has said, it's really important that the
33 public as a whole, so a lot of this is set, and this is where a professional body with
34 responsibility to the profession and the public, I think that's really important. And one of

1 the things that's critical here is that we want the -- we need the public's trust in us, and so as
2 a profession you've got the work to do and part of that is knowing and being held to
3 account for a code of standards of what we expect of ourselves and each other, and also a
4 code of conduct about how we expect ourselves to behave and how we expect our
5 colleagues to behave.

6 **MS ANDERSON:** We'll come on and look at those two documents in a little bit more detail.

7 **MS BAKER:** Yeah. So I think that -- I know in this context we're talking about child safety in a
8 slightly different way and it really matters, but I don't think there's a conflict in the idea that
9 we had -- we aren't pushing the status of teaching as though in that traditional view of
10 putting them on a pedestal, we really want the public to value and appreciate the
11 importance of education and therefore the role of us as professionals in supporting their
12 young people.

13 **MS ANDERSON:** And, Lesley, you gave an outline of what you think is within the concept of
14 mana that you're talking about there. And I think we can probably agree, can't we, that the
15 mana of a teacher, of an individual teacher, must by definition be sustained in relation to
16 their services to the tamariki and the school, so we can agree on that.

17 **MS HOSKIN:** We can.

18 **MS ANDERSON:** Where harm to a child occurs by a teacher, or in fact even by a volunteer or
19 teacher's aide in the school, we'll come on and talk about those who are not registered and
20 under your remit, both the mana of the teacher and the child will be impacted by that
21 incident --

22 **MS HOSKIN:** Yes.

23 **MS ANDERSON:** -- or that abuse. Do you think that the Teaching Council would do things
24 differently in relation to your gatekeeping role to the profession, and that's both entry and
25 during the lifetime of being a member of the profession, if the overall purpose in the
26 legislation was more squarely on enhancing the mana of the child and of the child's rights?
27 And I'll ask that question of each of you.

28 **MS HOSKIN:** So my -- the way that we think about the work that we do, because of course
29 education and teachers are there for learners and children. As a professional body and a
30 regulator of registered teachers, our contact and our engagement is with teachers. But we
31 do that very clearly understanding that the reason we do that is for the benefit of those
32 children and young people that they are working with every day.

1 **MS ANDERSON:** And so are you aligning that in the focus on enhancing the status or mana of
2 the profession, that there's a - and I'll say trickle down, it's not intended to be pejorative in
3 that sense, but there's a flow--o-n impact for the children in the educational settings.

4 **MS HOSKIN:** That is what we are saying.

5 **MS ANDERSON:** But, overall, is it your view that you've got the right balance currently between
6 the emphasis on children's rights versus regulation of the profession?

7 **MS HOSKIN:** When you say "children's rights", are you thinking about our consideration of how
8 we're doing our work? We don't work directly with children at all. Could I give you an
9 example maybe of where I think that might fit? One of our roles is the requirements for
10 teaching education. We approve programmes and we monitor them. And certainly within
11 the design of those programmes which have been refreshed very recently, those
12 considerations of the child, those with disabilities, different cultural backgrounds, which
13 are -- and I know you'd said you'll come back to it, but they are set in the foundational
14 document of the code and the standards, is what we then built that up from.

15 So I don't mean to be -- to separate that, but we are very clear about what our role is
16 and how we can influence and our powers and we work to do that so that teachers can do
17 the job that they need to do.

18 **MS ANDERSON:** So you're working on the layer at the top that's got this benefit for children in
19 the educational settings?

20 **MS HOSKIN:** Yeah.

21 **MS ANDERSON:** And just also in the notice to produce, and again, we might not need to turn to
22 it, but just you were asked some questions about the commitment of the Teaching Council
23 to Te Tiriti and how giving effect to that in your work is manifest. So perhaps if you could
24 like to summarise in your own words, because what I took from the notice to -- the
25 response to the notice to produce is that as a Crown entity you don't see yourself
26 necessarily having obligations of the Crown but that you have incorporated that into parts
27 of the way that you work and the commitments that you've made.

28 **MS HOSKIN:** Just a technicality, we're not even a Crown entity, we are an independent statutory
29 body. But the answer would still be true for how you have characterised that. And what
30 I might say is in the work that we have done in giving effect to Te Tiriti o Waitangi we
31 worked with the profession. And it's the profession that gave us the mandate to do the
32 work that we have done, and I come back to those important documents, the code and the
33 standards, where it is articulated the expectation.

1 The profession wrote those themselves. We consulted on them and they approved
2 them and now they are legally binding. And so the difference perhaps of those Crown
3 agencies is that the profession, because we're an independent statutory body, are the ones
4 that are giving us our direction and mandate.

5 **MS ANDERSON:** And in terms of Te Tiriti, can you explain how you work within that frame and
6 the delivery of what it is that you're delivering for the teaching profession?

7 **MS HOSKIN:** So what we did was we took a view of the changing language in the law over time
8 from things like honouring and committing to now being "give effect". And so we have
9 looked at what practical things we might do that genuinely gives effect to those aspirations
10 or dreams of the tīpuna who were there at that time.

11 So maybe some examples of those practical things is the standards do articulate the
12 requirement and what we have done is we have pulled out one of the standards so that when
13 an endorser of a certificate, so often a principal will have to endorse the certificate of a
14 teacher every three years, we've asked a question specifically that says has this teacher
15 progressed in their knowledge and understanding of te reo, me Ngā tikanga Māori and it's a
16 check box "yes" or "no". If it's a "no" then we require a comment.

17 What we're doing is putting a spotlight on those things that should be done that will
18 start to enable us to better give effect to Te Tiriti. I might add to that --

19 **MS ANDERSON:** When you say "us" do you mean society generally or do you mean the
20 Council?

21 **MS HOSKIN:** Sorry, I mean the profession, so that certificate point is when a teacher renews
22 their certificate to teach. Another example, if I could just add, is the work we've done.
23 And when I say "we" I mean us, the profession, on creating 'unteach racism'. That's an app
24 with lots of resources, it is for teachers, it is not a curriculum programme or anything, and it
25 is supporting teachers to reflect, to literally unteach what we know or thought we knew, and
26 then to learn how to teach in a way that gets the outcomes that we all want for all children.

27 **MS ANDERSON:** And I think we see this expressed in the code of professional responsibility,
28 don't we, so we'll turn to that now, which is TG C 00002440. And on page 10 of the
29 document, which you'll be very familiar with so I won't need to orientate you to it.
30 Actually, perhaps we'll start on page 4 and so -- we'll just wait for that to come up on the
31 screen so Commissioners can follow it. So this is "our" commitment, being the teaching
32 profession commitment.

33 **MS HOSKIN:** That's right.

1 **MS ANDERSON:** That's what's being expressed here. Just if we could call up at the bottom of
2 the left-hand, the very last paragraph? And so in this code, this is what teachers are making
3 a commitment to, "To honouring Te Tiriti o Waitangi and we understand that this has
4 implications in all of our practice." We'll just call up the bottom half of the red, it's slightly
5 difficult to read it, but -- so, again, we see the focus on being the professional body for the
6 teachers and the last sentence:

7 "It means enabling changes to the system that improve the quality of teaching and
8 educational leadership and doing so with the interests of children, young people and the
9 public at heart."

10 I think when I was looking through all of your documents, this was the one place
11 I found the concept of being the child being at the heart of what you're doing. And just
12 turning over to beginning on page 10, running through so that Commissioners can see, the
13 first code relates to commitment to the teaching profession, which includes demonstrating a
14 high standard of professional behaviour and integrity, commitment to learners.

15 Perhaps we'll just call up that whole bottom commitment there, is "Promoting the
16 well-being of learners and protecting them from harm, respecting professional boundaries
17 and respecting diversity, affirming Māori learners as tāngata whenua and supporting their
18 educational aspirations." So this commitment here clearly intended that the teaching
19 profession is going to carry a commitment to give effect to the Treaty into the classroom.

20 **MS HOSKIN:** That's correct.

21 **MS ANDERSON:** Just so that Commissioners can see the third and the fourth commitment, page
22 12. So the code expresses a commitment to families and whānau, and a commitment to
23 society, including again demonstrating a commitment to Te Tiriti o Waitangi.

24 **MS HOSKIN:** [Nods].

25 **MS ANDERSON:** So quite a strong emphasis in the code, and this is baked into the legislative
26 scheme, isn't it, that teachers have to comply with this?

27 **MS HOSKIN:** That's true.

28 **MS ANDERSON:** And perhaps you could clarify for the Commissioners how you as a council go
29 about being confident that all teachers are meeting these standards that are set out in the
30 code. And I suppose the question is, is it purely reactive, you know, complaints come in
31 the door and problems come in the door and that's when you identify perhaps that conduct
32 hasn't met the standard, or is there some other methodology that you employ?

33 **MS HOSKIN:** To start at the end of your questions, the discipline processes where there may
34 have been serious misconduct is where those processes kick in against the code. But the

1 code on a day-to-day basis of how a teacher behaves and does their job of causing learning
2 to happen, this frames, as I call them, foundational documents. So they are day to day.
3 There is a supplement document to that where there are examples where each of these
4 commitments are shown in a light of "this is what it would look like if you were doing this
5 well", and then the profession themselves says, "We want bottom lines as well", and so that
6 example also has, "This is what it would look like if you are not meeting these
7 expectations."

8 To go to your first part of your question, every teacher, to renew their practising
9 certificate, has to engage in a professional growth cycle. We don't determine what the
10 content of that is, that's for the teacher and the schools to do that, but what we do -- what
11 we have done is set the requirement for the elements that need to be there. And so the
12 legislation requires that to happen, so there has to be professional growth, and that those
13 two foundational documents, the standards and the code, are where they would go to start
14 to frame what growth of practice would look like.

15 **MS ANDERSON:** We'll come on and talk a little bit more later about that renewal process
16 because there's a few thorns in how that might work as well, isn't there? It doesn't always
17 work as intended. But I'll come on to that.

18 **MS HOSKIN:** I'm not quite sure what you're referring to but happy to discuss it.

19 **MS ANDERSON:** In terms of the code, I won't go through the standards, but they're a
20 back-to-back arrangement are they, so clearly teachers have clarity as to the standards
21 they're intended to meet. We heard yesterday and today about the role of the Education
22 Review Office and reports on schools that might, for example, indicate that over time
23 there's a repeated problem with the use of corporal punishment in a school, or other
24 bullying, violence matters, cultural aspects within a school. Is there a relationship between
25 the Teaching Council function and the information being revealed through those ERO
26 reports that gives you -- is an activator for any steps that you might take in relation to a
27 particular set of teachers in a particular setting?

28 **MS HOSKIN:** It can be, and it certainly does happen. What I would say is what we are doing at
29 the moment, and it's because we've got another situation where it's working well, is we are
30 working on a memorandum of understanding that, one, formalises that and, two, enables
31 the Privacy Act still to be -- the intentions of those principles to be met but for information
32 to be shared on a regular and ongoing basis.

33 **MS ANDERSON:** And is that perhaps a recognition that things haven't been quite working as
34 well as they might have because you'd want to know if there was practice in a particular

1 school where it looked like the relevant standards expected of teachers weren't being met as
2 revealed through ERO reports?

3 **MS HOSKIN:** I think what we've identified is that it is an opportunity to improve. I'm not able to
4 recall anything that would have suggested we didn't know something that the ERO report
5 had found, but I'm sure that -- you know, I can't reference something but I'm sure that may
6 have happened.

7 **MS ANDERSON:** And sometimes, as you say, you might come into information and
8 arrangements, you might share that with ERO?

9 **MS HOSKIN:** If there was a concern for the safety of children, so rather than the competence of
10 teachers, if we had any concern for safety of children, we have the powers to act and to
11 move alongside with Police and Oranga Tamariki and with the Ministry of Education,
12 particularly in early childhood settings, and so we already have, and have had for a number
13 of years, a memorandum of understanding where regular meetings occur with those
14 agencies and information shared and it has -- nothing's perfect but it has actually proved to
15 be very effective in what you're describing what we might do with ERO.

16 **CHAIR:** Is that memorandum of understanding just with ERO or is it with other educational
17 agencies?

18 **MS HOSKIN:** It's not yet with ERO. What we are looking to do is to create that to see if that
19 strengthens the system. It is currently with the Teaching Council, Oranga Tamariki, Police
20 and the Ministry of Education.

21 **CHAIR:** So you have an existing MOU?

22 **MS HOSKIN:** That's right.

23 **CHAIR:** And you're thinking of adding ERO to that?

24 **MS HOSKIN:** Yes. We haven't got far enough through to determine do they just add into that
25 existing one or are there reasons that's not appropriate. And I would just add we're also
26 talking to the Education Payroll company for the same reason, they hold information about
27 where teachers -- where they're getting paid, means that's where they're working. So I don't
28 know if that answers your question.

29 **CHAIR:** That answers my question, thank you.

30 **MS ANDERSON:** Linked to that, I think you've been very clear that the way that you manage the
31 data is really on a teacher-by-teacher basis, isn't it, that if somebody comes to you and says
32 "We've got a concern about a particular school", what you know isn't able to be pulled
33 together currently and say, "Well, actually, there's a repeated pattern of problems of
34 misconduct, abuse of children" at this particular school.

1 **MS HOSKIN:** I've done a lot of thinking about this. Mainly, you know, was there a missed
2 opportunity and should we look to do that now? And it's not that we haven't thought of it
3 before. Historically, so what we were asked for through this process, was to organise our
4 data around a particular school. In a day-to-day situation, it's not that that might not occur,
5 and I think of -- I've got two examples in my head where there have proven to be multiple
6 occurrences of abuse in one setting.

7 In the process of the investigation, and the discipline process, that is where we most
8 commonly identify at that time, and I accept that not everybody might come forward, but
9 that is where most commonly we would identify that potentially there was a, if you like, a
10 failure in leadership, and potentially look to own motion other -- in fact, not potentially, we
11 do; if we do find in investigating one matter other failings, potential or serious breaches,
12 then we will own motion those teachers. And that includes things like knowing of abuse,
13 and not completing that --

14 **MS ANDERSON:** We'll come on to that because that's partly the employers' mandatory reporting
15 obligation as well, which is the front-end intended to get the Teaching Council attention
16 rather than perhaps wait until the end of a disciplinary process to find out more.

17 **MS HOSKIN:** In sending a mandatory report?

18 **MS ANDERSON:** Yes. You've acknowledged in your written brief and in the statements that
19 you've made this morning, and I'll use language perhaps that you haven't quite used but
20 we'll see whether you can agree to it, that the process for survivors who are at the centre of
21 a complaint against a teacher, a report of abuse against a teacher, that they haven't been
22 dealt with in a trauma-informed way through the Teaching Council processes.

23 **MS HOSKIN:** I can agree with that if we're talking about matters that were considered in the past.
24 I would say that if they were being considered today, and we are clearly, through this
25 process and others, we are considering some today. I am confident we do that much better,
26 and yet I know there will be more we can do.

27 **MS ANDERSON:** And presumably that's a matter of operational practice within your framework,
28 it's not that adding a statutory element or a requirement for you to engage in that trauma-
29 informed way would change your current practice? Is that what you're saying, that you're
30 already doing it?

31 **MS HOSKIN:** I am and I'm being careful because in other constructs of the law where my
32 predecessors have operated that might not have been the case, but today there is no
33 reason why we can't take care of our vulnerable witnesses.

1 **MS ANDERSON:** We'll come on probably after the break to talk about somebody's experience of
2 the process which is no doubt one of the experiences that have helped shape the changes
3 that you've foreshadowed have been made. Just before we close for the break, so the
4 Commissioners and those listening are clear, there are the limits, the boundaries on where
5 you can't do go as a Teaching Council. So just to clarify, you don't have a role in relation
6 to non-registered teachers?

7 **MS HOSKIN:** That is correct, so you have to be qualified through a degree at a university or a
8 polytech, you get your training, your teaching qualification, and that enables you then to
9 apply to be registered, and there are criteria there. Those are what we call teachers, and
10 then there are also limited authority to teach, where we award, for limited times, as it
11 suggests, to either people with in short skill spaces or in supply pressures.

12 **MS ANDERSON:** And some of the documents that you've given to us, the Teaching Council has
13 had to write to a complainant, so you've had somebody come in with a complaint or a
14 notification that there's something of concern about a teacher's behaviour and you've had to
15 write back and say, "In fact, we can't do anything"?

16 **MS HOSKIN:** That is absolutely true. If they're not registered, we have no remit. Registered or
17 with a LAT, for technical --

18 **MS ANDERSON:** It seems that your practice would be then to refer the person perhaps to go to
19 the Police?

20 **MS HOSKIN:** If that was appropriate, we look to ensure we can connect them to any other
21 support agencies, whether that's the Ministry of Education, Police, Oranga Tamariki, victim
22 support. We try not to just say "it's not us", in fact, we don't say it's not us, therefore find
23 your way through a system that can be quite hard to navigate. We do try and support that
24 connection.

25 **MS ANDERSON:** And some of the other aspects where you've got no remit and relate to the
26 boarding hostels attached to some schools because they're mostly not staffed by teachers,
27 are they?

28 **MS HOSKIN:** That is true.

29 **MS ANDERSON:** So your safety remit doesn't reach into that environment?

30 **MS HOSKIN:** No, it doesn't.

31 **MS ANDERSON:** And in terms of persons teaching when not registered when of course the law
32 requires them to be, if the Council received a report that there was perhaps a school that had
33 a large number of unregistered teachers, when the teachers should be registered in
34 accordance with the law, what are the steps that you would take?

1 **MS HOSKIN:** So we have a system where every fortnight we do a data match with our payroll
2 company to inform us if there are any teachers being paid, so therefore working, who don't
3 hold a certificate. So that's generally how we get advised of those situations. At that point
4 we write to the teacher or ring them to --

5 **MS ANDERSON:** Can I just pause there; will that bring up everything? So, for example, if it's a
6 private school and they've got unregistered teachers in that private school, would the
7 system that you've just talked about, the data matching, would that help in that --

8 **MS HOSKIN:** No, it doesn't, that's a good point, thank you. It doesn't cover early childhood and
9 it doesn't cover those situations where the Crown is not paying the salaries of teachers.

10 **MS ANDERSON:** And that's a bit of a gap?

11 **MS HOSKIN:** For this particular process, it doesn't work, but what I would suggest is, in a
12 regulatory environment or regulatory body such as ours, there are a number of checks and
13 balances and so if the teacher did come to renew their certificate, we would see there had
14 been a period of time that potentially that they had been teaching.

15 **MS ANDERSON:** And would you take -- so you've got no remit over unregistered teachers so is
16 there nothing much you can do in relation to those individuals?

17 **MS HOSKIN:** For unregistered, that's correct.

18 **MS ANDERSON:** So if we take the private school example, there might be a lot of people
19 teaching who should be trained teachers with a certificate but in fact they've got
20 unregistered people teaching, is that a situation where you don't have any levers, there's
21 nothing that you can do directly?

22 **MS HOSKIN:** That's correct. So if I think about the design of a school or even early childhood
23 centre, there are many different roles in addition to a registered teacher having engagement
24 with children. As you say, our ability -- and it's about because, if I could just maybe add
25 the clarity as to why that might be, because -- I hesitate to say it again, but we have a code
26 where we can hold people to account and that's where the discipline comes in. So they're
27 registered, they've signed up to the code, and if there are any serious breaches, then that is
28 where our discipline process can intervene.

29 For someone who is not a registered teacher, a teacher aide or someone else you
30 were thinking of, they're not part of the teaching profession and so that code doesn't apply.
31 I have no teeth, there's nothing I could actually do, it would be an employment matter.

32 **MS ANDERSON:** So, within the overall education system, whose responsibility would it be to
33 ensure that only registered teachers are teaching?

1 **MS HOSKIN:** So, ultimately, the board of trustees and the principal delegated I guess to the
2 principal who, in law, that person must ensure that their teachers have a current practising
3 certificate.

4 **MS ANDERSON:** And who would take action against the board to enforce that obligation? It's
5 obviously not the Council, I'm just interested as to who it might be.

6 **MS HOSKIN:** It's interesting. As of 1 August this year, just a month ago, this month, we sought
7 law change to enable us to prosecute in those situations. What we found mostly through
8 the data match was if we had someone who refused to renew their certificate but continued
9 to teach, it wasn't clear who should take action. So we wanted that clarified because it goes
10 to child safety. At the point of a renewal of a certificate a Police vet occurs and other
11 things.

12 **MS ANDERSON:** Just pause there just for a moment. That's because you've got a remit over
13 teachers and formerly registered teachers, isn't it?

14 **MS HOSKIN:** That's right.

15 **MS ANDERSON:** That's why you've got it in there, but in the scenario where they've never been
16 a registered teacher, and the board's employing them, my question is, and you might not be
17 able to answer it, is to it's clearly not in the Council's remit, who's the actor in the system
18 that would --

19 **MS HOSKIN:** The principal. The principal would hold that responsibility to ensure, through the
20 core workers and Children's Act, they still have to have a Police vet, they still have to do
21 safety checks and those requirements are set and the responsibility falls to the principal.

22 **MS ANDERSON:** Yes, I understand completely as to what you've said, where the responsibility
23 sits at the board and/or principal level, my question is, who is the enforcer, the regulator in
24 the system to take any action if that board or principal has failed to fulfil their duties? It's
25 clearly not the Council.

26 **MS HOSKIN:** It's clearly not the Council and I would only suppose that it would be the Ministry
27 of Education.

28 **MS ANDERSON:** You might not you know but -- okay, thanks.

29 **MS HOSKIN:** No.

30 **MS ANDERSON:** Perhaps, Madam Chair, that's a convenient place to take a break?

31 **CHAIR:** Yes, we'll take 15 minutes and return shortly after quarter to.

32 **Adjournment from 3.33 pm to 3.47 pm**

33 **CHAIR:** Thank you, Ms Anderson.

34 **MS ANDERSON:** Thank you, Madam Chair.

1 Welcome back, Lesley and Robyn. We've got a sessions that's about an hour and a
2 quarter before 5 and there are two major topics that I'm going to cover. One is a survivor's
3 experience of bringing a complaint and some of the difficulties that the Teaching Council
4 had under the legislative structure at the time included in that.

5 And then we'll come on and the last topic of the day will be in relation to mandatory
6 reporting and there will be time for Commissioners' questions so that is the direction we're
7 heading in.

8 I'm going to call up document TG C 0000011_00088. I think you'll be familiar with
9 this document from the bundle. I'm just going to call up the first two paragraphs there.

10 Commissioners, to orientate you, this letter relates to a survivor whose experience
11 we're going to look at in more detail and she's also got some questions that she's put
12 forward, the survivor has, that will be discussed with Robyn and Lesley. This is a letter
13 which has come from the Teaching Council to a particular school and it says, "Noting that
14 the school has not applied for cancellation of the teacher's registration, and as a result the
15 board", as it was at the time, "will not have jurisdiction to address this matter until such
16 time as the teacher's practising certificate expires and a new application is made." That
17 must have been quite frustrating for the Council of the day at the time.

18 **MS HOSKIN:** I can only imagine so.

19 **MS ANDERSON:** And so what we're seeing here is a reluctance of a school perhaps to notify the
20 Council at the time in relation to what we can see from the paragraph 1 there, that it deals
21 with a sexual relationship between a teacher and pupil, being at the most serious end of the
22 misconduct scale. I think in your brief, Lesley, you outlined what you thought some of the
23 reasons it might be that schools are reluctant to come forward and disclose a report, as they
24 should, to the Council, reports of serious abuse like this.

25 Two of those had a cultural aspect; the first one was really that everything happens
26 in secret and the barriers effectively to disclosure might be such that nobody outside the
27 abuser and the person being abused has any knowledge. So it's confined to those
28 individuals.

29 **MS HOSKIN:** That is my reflection particularly when this situation occurred.

30 **MS ANDERSON:** And then there may be cultural aspects in relation to the internal culture of the
31 school where the behaviour is normalised, and there may also -- the other element you
32 identified is that it's just not seen as something that should be reported outside of the
33 school.

34 **MS HOSKIN:** I agree, and just for clarity, those are my reflections of the time.

1 **CHAIR:** I appreciate that there's been some redactions about date, are we allowed to know
2 roughly when this -- is this a contemporary matter or an historic matter?

3 **MS ANDERSON:** It's in the early 2000s.

4 **CHAIR:** That's helpful, that's all we need to know. Thank you.

5 **MS ANDERSON:** And this legislative gap has been fixed, hasn't it, where you couldn't really do
6 anything between the renewal process and the knowledge that had come to you?

7 **MS HOSKIN:** That's correct.

8 **MS ANDERSON:** So that's a gap that's been fixed. But in terms of the reporting obligation
9 today, the way that that gap has been fixed is through the mandatory reporting of serious
10 misconduct, is that right? Real-time reporting.

11 **MS HOSKIN:** Yes, that is the formal mechanism put in place to ensure the employer for a
12 mandatory report reports immediately to the Council.

13 **MS ANDERSON:** And so looking at this through a survivor's eyes, they've come to you, to the
14 Council, they've disclosed a complaint, and then the survivor must have also needed to be
15 told, "Wee can't do anything because the school hasn't reported it"?

16 **MS HOSKIN:** Yes, and I can see in the evidence in fact how hard that Council worked at that
17 time to try and get the right outcome, and I'm sure all parties that were trying to achieve
18 that were frustrated.

19 **MS ANDERSON:** And the witness that we're talking about, Mrs N, you've read the statement, in
20 her supplementary statement, that she's provided?

21 **MS HOSKIN:** I have.

22 **MS ANDERSON:** I'll orientate the Commissioners and those who are listening to the scenario
23 before we go through some questions.

24 This was a student complaint to a faith--based school that her teacher had had sex
25 with her. Before the school board could determine the guilt of grave misconduct -- and
26 there's another narrative that I won't go into now about what that experience of that school
27 inquiry was for this particular survivor -- the teacher resigned and of course what that
28 meant was that the school then considered it didn't need to determine the misconduct
29 allegation.

30 And, Lesley, I think we can agree that's probably an accurate summary of it --

31 **MS HOSKIN:** That's correct.

32 **MS ANDERSON:** -- of the situation? Then, as we've said, the survivor came to the Council and
33 then was informed that because the college itself had not sought cancellation of this

1 teacher's certificate, there was nothing the Council could do at that time. And the survivor
2 clearly found that quite a traumatic experience.

3 **CHAIR:** Did you not have an own motion ability at that stage?

4 **MS HOSKIN:** No, they did not.

5 **MS ANDERSON:** But this survivor was very determined to ensure that other people did not
6 experience abuse by this person and she fought very hard, didn't she, for the Council to
7 consider the registration issue?

8 **MS HOSKIN:** She absolutely did.

9 **MS ANDERSON:** And in terms of the internal process, if that complaint was received today,
10 I just digress a little bit from -- the complaint would come in, it would be triaged. If it was
11 over a certain level, which this certainly would have been, it would have been referred to
12 the Complaints Assessment Committee who would have done perhaps an initial
13 investigation or referred it directly to the Disciplinary Tribunal?

14 **MS HOSKIN:** And, importantly, we would have put in an undertaking not to teach and the Police
15 would also be -- if the Police were not already informed, then we would have informed
16 them.

17 **MS ANDERSON:** And is that regardless of whether the survivor wished to bring the Police into
18 the picture?

19 **MS HOSKIN:** I'm sure that would -- no.

20 **MS ANDERSON:** I think you would appreciate there are a lot of victims of sexual abuse who do
21 not find the police process comfortable to engage in?

22 **MS HOSKIN:** Yes. Absolutely. Should we be able to aid in connecting that process for them,
23 then we will do that. If they don't wish that, then obviously they need to maintain the self-
24 determination of that.

25 **MS ANDERSON:** And then in 2001, at this the stage the survivor was living off-shore, working
26 in another country, and she received notification saying that her case was to be heard by the
27 Council, but that she couldn't appear by CCTV and she needed to attend in person; that's
28 right, isn't it?

29 **MS HOSKIN:** That is the account of the witness.

30 **MS ANDERSON:** And so the survivor has left her off-shore job, come back to New Zealand, and
31 paying the cost of her own flights to return, but in fact the hearing was delayed for some
32 years after that point, wasn't it?

1 **MS HOSKIN:** Yes, it was further frustrated by the teacher going to an Ombudsman, to a Privacy
2 Commissioner, seeking court proceedings around that ability to voluntarily deregister to
3 avoid the process, and so the many years of delay were because of those processes mostly.

4 **MS ANDERSON:** Perhaps understandable processes but still very difficult, very, very difficult
5 from a survivor perspective?

6 **MS HOSKIN:** I can't even -- you know, I look at that in the role we have and imagining wanting
7 to do the right thing and I can see the organisation at the time did want to do the right thing
8 and not having the powers or finding the ability to be able to do that, I can't reconcile that
9 and I can only imagine for that survivor of abuse how traumatising that must have been.

10 **MS ANDERSON:** And it would be right, wouldn't it, that in fact those same other legal
11 mechanisms might today cause delay in one of the Council's processes relating to a
12 particular teacher?

13 **MS HOSKIN:** That is true. Other processes would cause a delay.

14 **MS ANDERSON:** And so three years after returning to New Zealand, the survivor has, from her
15 perspective having her case heard, but is it fair to say that perhaps she wasn't participating
16 in a process that was her case at that time, she was at the centre of something which was a
17 process about a teacher?

18 **MS HOSKIN:** That is correct.

19 **MS ANDERSON:** And we know, don't we, that she's described that experience of giving
20 evidence in person in that hearing as horrific.

21 **MS HOSKIN:** She has, and my review of that is I completely agree, can only have been horrific.

22 **MS ANDERSON:** And part of the reasons, one of the reasons she identifies for the experience of
23 being in that process which was only to ensure that other students were safe from that
24 person, was that she found herself in a panel of 20 in the room of teachers who had no
25 specific training.

26 **MS HOSKIN:** That's correct. So, because of the delays, the Teachers' Registration Board had
27 been disestablished, they'd become the Teachers' Council, we've had many names, and the
28 ability -- the law around a CAC and a DT was governed --

29 **MS ANDERSON:** That's the Disciplinary Tribunal.

30 **MS HOSKIN:** Sorry, my apologies, the Complaints Assessment Committee and the Discipline
31 Tribunal were established and that 2002 law took effect in 2004. It was, in effect, the
32 governing council, the board that were the members of the Complaints Assessment
33 Committee and the Discipline Tribunal. So her reflections of teachers who were not skilled
34 to run that tribunal hearing, I think is an absolute fair reflection.

1 **MS BAKER:** May I just add something there, not in any way to -- I totally agree with what
2 Leslie's saying. I think in this role it was -- I think there were about nine councillors there
3 at the time, they were actually there as the governors of -- they were governors of the
4 Teachers' Council at the time. So although they came from a teaching background, they
5 were there in that moment to enact what they were able to under the legislation and they
6 were required to, as a whole group, listen, but they were working as governors in a very
7 different time, so I just think that's important to say.

8 **MS ANDERSON:** Because it's a very unusual aspect of a governance role, is to have an
9 operational disciplinary function, isn't it?

10 **MS BAKER:** Yes, it's just a slight nuance but I think it matters, because the people around the
11 table, in retrospect, didn't take a duty of care to the witness. At the time they would have
12 been looking at their role as governors to make the best decision about this teacher, and
13 given the evidence, they would have been putting all their focus on making sure that they
14 had sufficient evidence to make the right decision. So their eyes -- which you have picked
15 up, their eyes were on the teacher and the decision and not the witness.

16 **MS ANDERSON:** The Committee records, I think, of that clearly have at least 19 people in the
17 room, some of them lawyers, some of them, as you say, the governors, a stenographer, and
18 obviously the teacher.

19 **MS BAKER:** That's right. Yeah.

20 **MS ANDERSON:** And because the teacher represented himself, he was able to cross-examine the
21 survivor for quite a long period of time. That's what happened, isn't it?

22 **MS HOSKIN:** That is what happened.

23 **MS ANDERSON:** And she said that the Chair enabled irrelevant questions to be asked of her.
24 Now, we did try to -- we did ask you for a copy of the transcript and there's clearly a record
25 of that, the transcript from the hearing being delivered to the Teachers' Council, and you're
26 not now able to find it, are you?

27 **MS HOSKIN:** No, we're not and we have taken further steps to see if it was hidden among some
28 other papers, so we have exhausted our ability to try and find that. It is not with the other
29 evidence.

30 **MS ANDERSON:** And we'll come on later on to -- because the survivor's got some questions and
31 some natural concerns about who's got access to that.

32 **MS HOSKIN:** I understand.

33 **MS ANDERSON:** So I'm going to read out into the record, Commissioners, the survivor says:

1 "I felt physically sick during this experience, embarrassed having to reveal graphic
2 details to strangers who were judging me and cross-examining me. I found it very
3 traumatising for the content I was having to explain. I was crying and shaking and one
4 teacher leaned over with tears in her eyes and said she hoped it would be over soon. But
5 no one stopped him, the teacher asking me these questions."

6 So years later she's reflected on this and she said, "The teacher was able to continue
7 his abuse of power over me through the Teaching Council hearing, sitting metres away
8 from me, cross-examining and tormenting me for more than an hour. He asked irrelevant
9 questions, such as whether I was stopped by Customs agents at the border when I was
10 trying to leave the country for a holiday."

11 She says:

12 "The Chair allowed it, she allowed all his questions and in no way acted as a
13 gate-keeper for my safety. She treated all his rights as though it was a court setting, but it
14 was not a court setting. I was a victim and he was continuing to victimise me and she
15 allowed it. She was clearly inexperienced and out of her depth."

16 Now, we know coming on from this, that she achieved the outcome that she wanted
17 in terms of safety of other teachers¹ and that the decision of the Council was to deregister
18 the teacher. You've indicated that you think the processes of a Disciplinary Tribunal
19 hearing today would be a different experience for a survivor. I'm going to ask you to
20 explain why you think that's the case, because when I look at the Teaching Council rules of
21 the Disciplinary Tribunal process, in which the Complaints Assessment Committee acts as
22 a prosecutor in the hearing, and the rules are very much as if it's a criminal trial process; so
23 against that background, what would be different today for a survivor participating in a
24 tribunal hearing? Would there be other modes of them giving evidence, do they need to be
25 present? How would that operate?

26 **MS HOSKIN:** Before I go on, I can't not acknowledge and sincerely apologise for what happened
27 there. It just should never have happened, and I can't continue until I say that.

28 **MS ANDERSON:** I think we're both very disturbed by it, aren't we?

29 **MS HOSKIN:** We are, and rightly so. I'm okay with that, these are terrible things that have
30 happened to people who deserved the care and protection of the organisation.

¹ Point of clarification, Mrs N achieved the outcome that she wanted in terms of safety of other students.

1 So, to answer your question, they are not -- they are a quasi-judicial body and what
2 that means is that they are in effect set up like a courtroom and operating like a courtroom,
3 possibly not dissimilar to here today.

4 But what is very different is the things that sit outside of the rules, and the rules are
5 one part of what we must do, but they don't go far enough to how we must do it. Some of
6 the changes and some of the things why I am confident to say that that wouldn't happen
7 today, firstly, we have a very experienced Chair who is a lawyer, so more than seven years
8 experience, who knows things like --

9 **MS ANDERSON:** Can I pause there for a moment, just a side question. I wasn't able to find on
10 your website who are the members of the Disciplinary Tribunal. Is there a public list of
11 who's on that tribunal?

12 **MS HOSKIN:** There can be, absolutely. From time to time we put it on the website, they change.

13 **MS ANDERSON:** It could have been operator error on my part, but I can certainly tell you it's
14 not intuitive to find out.

15 **MS HOSKIN:** No, and I will note that and take that away and rectify that. So the Chair is an
16 experienced lawyer who therefore is very clear around not only in our legislation and our
17 rules where the protection for witnesses and vulnerable people are determined, they are
18 also, I think, more skilled in the understanding of things like pre-conference hearings and
19 determining what safety requirements might be needed.

20 **MS ANDERSON:** Is that because they've had in- addition to their legal training, have those
21 people on that tribunal been given trauma--informed learning? -

22 **MS HOSKIN:** That's correct. Our investigators who are working on behalf of the CIC and those
23 people on the Complaints Assessment Committee and the tribunal now participate in
24 trauma-informed practice and training.

25 **MS ANDERSON:** That's very recent, isn't it?

26 **MS HOSKIN:** It is quite recent. Another thing that happened was the Chair has written a practice
27 note in 2021 on how to work with vulnerable witnesses, so knowledge and understanding
28 of the need and then desire, ensuring the right kind of people are on those panels, so they
29 are populated with teachers still. There are many other things we have done like a learner
30 and whānau support process.

31 **MS ANDERSON:** Is that support for the survivor going through -- during the process, because
32 that's one of the aspects that wasn't afforded to this particular survivor. There was no
33 support provided to her --

34 **MS HOSKIN:** That's correct.

1 **MS ANDERSON:** -- for the actual process.

2 **MS HOSKIN:** That's correct, and I don't want to overstate it. The role that we perform there is to
3 ensure they understand the process, we encourage them in these sorts of situations to
4 become what we call the initiator, so to lay their own complaint because in law that enables
5 them to get more information at different points.

6 **MS ANDERSON:** Can you just unpack that for me a little bit? So they're not -- it's still the
7 Complaints Assessment Committee that's bringing effectively the charge against the
8 individual teacher and prosecuting it in the tribunal. So as the initiator, are you saying that
9 they have got more process rights?

10 **MS HOSKIN:** That's correct. So, described in our rules, they get the triage outcome, a CAC
11 decision letter, notice of referral if it was referred to the DT. So certainly not any of the
12 content that is protected for confidentiality reasons. But if they weren't an initiator, and by
13 that I mean the complainant, it's the parties to that proceeding remain the CAC and the DT.
14 And this is just through horrific experiences, but also just -- where I'm getting complaints
15 as the Chief Executive of people being frustrated by our process, where they feel left out of
16 it, they don't know what's happening and the way that's constructed means that without
17 being initiator, they cannot get that information.

18 **MS ANDERSON:** And that's a reflection, isn't it, that the process is not about resolving what the
19 survivor's bringing to the table, their motivation for coming forward, it's responding to, in
20 the gatekeeping sense, of should this person be in the profession or not, and that's the focus.
21 So there's still probably quite a bit of the ship to turn there, isn't there, to ensure that the
22 process is more survivor--friendly, because not everyone might want to go through a
23 procedure where they have to become an initiator to participate in a -- at an enhanced
24 information level?

25 **CHAIR:** Could I ask, because I haven't looked it up, and I'm sorry for that, are these rules
26 statutory rules, are they in your statute?

27 **MS HOSKIN:** Yes, they are.

28 **CHAIR:** Or are they regulations attached to it?

29 **MS HOSKIN:** They are secondary legislation, they are the Teaching Council Rules 2016.

30 **CHAIR:** So they're rules? Sorry, what year were they?

31 **MS HOSKIN:** 2016, the most recent ones that we have. There were previous rules 2004 when
32 that first body -- so the Teachers' Registration Board, the first organisation, had no powers.
33 The next organisation, Teachers' Council, had some, and then lots of name changes, there's
34 an Education Council which predominantly has the same powers at the Teaching Council.

1 **CHAIR:** My short question really is: given they're just rules, albeit secondary legislation, it would
2 be within your -- the ambit of the Council to ask if they could be amended or changed or
3 rewritten; would that be right?

4 **MS HOSKIN:** Yes, and we are in the process of doing that very thing.

5 **CHAIR:** Perhaps in the light of some of these experiences?

6 **MS HOSKIN:** Undoubtedly, absolutely. We will -- and that is a commitment and certainly the
7 Council, the Chair, we are not missing this opportunity that happens to coincide with the
8 time where we are refreshing the rules. To your point, what do we need to ensure that that
9 witness or survivor of abuse, while protecting the proceeding and natural justice, what
10 needs to be done to ensure that they are looked after and cared for and able to get, I don't
11 know what -- we haven't done the work, but it's certainly a question on our mind.

12 **COMMISSIONER ERUETI:** Sorry, counsel, so the Act, the primary statute is the Education and
13 Training Act? Yes, thank you.

14 **MS HOSKIN:** [Nods].

15 **MS ANDERSON:** In terms of recalibrating the rules, are you proposing to engage with survivor
16 advocacy groups so that you can develop with that collaborative approach to ensuring the
17 survivor's voice is part of the process?

18 **MS HOSKIN:** 100%. This is not an area that I think we could add our own thinking to and get it
19 right.

20 **MS ANDERSON:** At the end of the process here, the teacher's registration was cancelled, but
21 when somebody looks on the online registration for the teacher's name and sees that it says
22 "cancelled" or sometimes it might say "censured" or some other kind of very brief
23 annotation, how would any member of the public appreciate what might have happened to
24 cancel that person's registration, or from the Council perspective, do you think that the
25 world understands that that annotation means misconduct? That the public would interpret
26 it in that way?

27 **MS HOSKIN:** I don't think that, that they would -- that they would have the understanding to
28 necessarily interpret that. The purpose, the primary purpose for the register is employers do
29 need to ensure that someone has a current practising certificate, or if there are conditions,
30 what they are. It's another area we want to explore. Do we have the right level of
31 information there for the public interest component? We've taken, I guess, historically a
32 much more careful view in relation to confidentiality and privacy, but what I would say, for
33 the public, the Discipline Tribunal hearing is an open hearing and anyone can attend. And
34 in addition, the decision, the judgment, is published on our website.

1 **MS ANDERSON:** That's once it goes -- if it's gone through that process?

2 **MS HOSKIN:** Correct. But most likely it has, in instances where you're referring to, around
3 cancellation.

4 **MS ANDERSON:** Before we move on to the questions that Mrs N wants to ask, she's
5 characterised her experience as saying that the Council put her in a dangerous and
6 life-threatening position. And I just wonder what your reflections are on her sense of the
7 peril that she was in.

8 **MS HOSKIN:** Having read back through and reviewed that, all I can say is I fully accept her
9 view, her perspective, her position, and again, I wholeheartedly apologise for that, I accept
10 that that is how she would have felt.

11 **MS ANDERSON:** So, turning to some of the questions that Mrs N has for the Council, in terms
12 of the online register which identifies the person's teacher registration is cancelled, she's got
13 a question about how, if the person's got a job in a different industry, how would that
14 industry have any awareness of the severity of cancelling a teacher's registration?

15 **MS HOSKIN:** I think it comes back a little bit to what our role is, and the regulatory body to say
16 who can be a teacher, and if you stay, can you stay, or do you need to exit the profession.
17 So that role means that we are providing that information in relation to people working in
18 the education system. I'm not sure what other industry she might be referring to, but
19 certainly in relation to access to children and being a core worker, in those other industries
20 or those organisations, those criteria of Police vet and things would still stand.

21 **MS ANDERSON:** Does a Teaching Council cancellation, does that information flow across to
22 Police and would show up if somebody was doing a Police vet?

23 **MS HOSKIN:** A Police vet shows convictions or concerns by Police, so it wouldn't use that
24 language per se, but the cause perhaps of why that -- something of a specified offence and
25 things where there's convictions, they would appear on the Police vet, but it would not
26 connect it to also having been cancelled by the Teaching Council.

27 **MS ANDERSON:** For misconduct that might be sexual misconduct; so that information stays
28 over with the Council and never enters the Police sphere of awareness where there's been
29 no related criminal matter proceeded with?

30 **MS HOSKIN:** So I come back to your point. If the person who has been abused chooses not go
31 down the criminal process or path, we don't share that information.

32 **CHAIR:** This is a question for you. We spoke this morning with a witness, I mentioned the word
33 Police vetting and I was corrected, correctly, that, who was it, was it ERO? Was it Mr Pole
34 who said that, no, it's not vetting, there's another word for it which is wider than vetting

1 where the Police take into account things other than criminal convictions. This is not for
2 you, but it's something for us to look at, is what the scope of that wider suitability finding is
3 and whether it includes teacher deregistration.

4 **MS ANDERSON:** Yes, I think my point is it probably at this stage doesn't, which is an obvious
5 error for -- area for opportunity for greater information sharing.

6 **CHAIR:** Absolutely. I think we first need to know whether it is or not for sure, and then if it's
7 not, then obviously I think you'd agree with that?

8 **MS HOSKIN:** I would, in preparing to respond to the questions that were posed by Mrs N, I did
9 look into that and I can confirm that that is not the case, and Mr Pole's -- it's still a Police
10 vet, but, for example, we get different amounts of information at different levels of concern
11 because of the fact that we're looking to put that person in with children.

12 **CHAIR:** Thank you for that.

13 **MS ANDERSON:** Just returning to the topic of the transcripts, and Mrs N's got some very
14 specific questions around that. One of them was whether a copy of that had been provided
15 to the abuser, because obviously she never received a copy. Are you able to tell from the
16 records whether it was sent to the teacher who cross-examined her?

17 **MS HOSKIN:** I can't confirm or deny it. There's nothing that indicates to me that it did or did
18 not.

19 **MS ANDERSON:** So, again, you probably can't answer most of her questions about storage and
20 security, but perhaps what you can outline for Commissioners, because in all Disciplinary
21 Tribunal matters and even in the investigations and triaging stage, there will be highly
22 sensitive personal information disclosed. What is the security of that information? What
23 are your systems for ensuring the privacy of the individuals are protected?

24 **MS HOSKIN:** So at that time I would reflect that it was an entirely paper-based system that was
25 used, although the transcript may have had a digital recording process. The environment
26 we work in today is mostly in an online digital environment. We understand the duty of
27 care and I'm sure they did too. Clearly, some things go missing at times, but we do ensure
28 that that information is protected and safe and if it is in physical, because sometimes it is,
29 then in storage, it is stored in a secure offsite storage.

30 **MS ANDERSON:** So you're confident with the current practices, both in terms of document
31 retention issues that's occurred here, shouldn't arise in the future for others and also that
32 the -information only- those who really need to see it have access to it? -

33 **MS HOSKIN:** I would. I would just account for human error.

1 **MS ANDERSON:** In terms of Mrs N's question about why she had to sit in a court-like room in
2 person, what's your response to her question about why she had to participate in that way?

3 **MS HOSKIN:** So this is just me looking at it and imagining why that might be. I think it was set
4 up like a courtroom deliberately. I think the idea of a quasi-judicial body in proceedings,
5 I felt that -- from what I can see and actually experienced, this was not, sadly, an isolated
6 event in the way that the proceeding happened, of course, and at the point of change when
7 the Education Council was coming in, I did sit in and observe the very thing that was
8 described there, not of a witness being so terribly looked after, but certainly that very -- you
9 know, a courtroom, formal power, you know, displacement, being separated from support
10 people and whānau, and I can only imagine they felt that that was their ability to get to the
11 right decision and hold those things.

12 What I would say, and I will continue to say, is how we get there is just as important
13 as getting the right decision, and I think we agree, they got the right decision, the teacher
14 had his registration cancelled.

15 **MS ANDERSON:** After many years.

16 **MS HOSKIN:** After many years, but the process there, which we acknowledge, it was not - it was
17 just not satisfactory. She was not looked after, she was not well- -prepared to -- for it, for
18 what would happen in there, what the possible outcomes --

19 **MS ANDERSON:** Do you mean the Council process had not well prepared her, as opposed to
20 some fault of her own for not preparing herself?

21 **MS HOSKIN:** Absolutely not, no, totally looking at the responsibility of the organisation, where
22 today there'd be a written document that, you know, would be given to the witness to
23 ensure they understood what was happening, how it would happen. They would have a
24 contact person to be able to speak to about any questions or concerns that they might have.

25 **MS ANDERSON:** And in terms of her question around why the abusive teacher was actually
26 allowed to cross-examine her in person, can you comment on why that might have
27 happened at the time, as the first limb, and the second limb is whether that could still
28 happen today under the current regime?

29 **MS HOSKIN:** So reading back through the evidence and my knowledge of the process suggests
30 to me that what they were attempting to do was allow for natural justice for those questions
31 to be asked, not intervening and not ensuring and using all the provisions that should be
32 been --

33 **MS ANDERSON:** Just on the question of whether the accused teacher can be the one asking
34 questions of the survivor?

- 1 **MS HOSKIN:** So then it did happen, and I'm imagining they felt that that ability for those
2 questions to be asked, I don't think they realised that there could be another way and that
3 there should have been another way to protect the witness.
- 4 **MS ANDERSON:** But if a teacher today was facing a charge and representing themselves in a
5 tribunal hearing, could they in fact be in the same position where they're not represented by
6 counsel, they're representing themselves and conducting the hearing on their own behalf,
7 that they would get to ask questions of a survivor?
- 8 **MS HOSKIN:** Absolutely not.
- 9 **MS ANDERSON:** So that would go through the Chair?
- 10 **MS HOSKIN:** It would go through the Chair. The survivor of abuse would have options around
11 how that might work; they could be in the room with screens, they could use video, they
12 could be asked by somebody else, the Chair. It's well -understood that the need to protect
13 those vulnerable people and not allow, as she rightly describes, a continued environment of
14 abuse, that would not happen, that would be --
- 15 **MS ANDERSON:** So that process of questions through the Chair to the survivor giving evidence
16 in the tribunal, which of course to support the Council's objective of only having fit and
17 proper people in the profession, does that apply also where a teacher is legally represented,
18 in the sense of do all questions at all times go through the Chair?
- 19 **MS HOSKIN:** That's right.
- 20 **MS ANDERSON:** So quite a different change in process over the years which I'm sure Mrs N
21 will be very pleased to hear, that others won't have that same experience.
- 22 **MS HOSKIN:** Yes. I hope she is reassured that that is not what happens today and would not
23 happen.
- 24 **COMMISSIONER ERUETI:** Could I just confirm that the remedy is cancellation, there's no
25 rehabilitation or counselling or any other form of redress, today?
- 26 **MS HOSKIN:** For the teacher after cancellation or for that witness?
- 27 **COMMISSIONER ERUETI:** For the witness, yeah.
- 28 **MS HOSKIN:** No, there isn't any at this stage, and it is -- those are the types of things that we
29 need to consider how -- it might not be us, but how do we reassure ourselves that they have
30 been cared for through the process. At the moment, we can find little system design
31 opportunities to support them.
- 32 **COMMISSIONER ERUETI:** And does that include the advocacy support as well?
- 33 **MS HOSKIN:** It does.
- 34 **COMMISSIONER ERUETI:** Yeah, okay. Thank you.

1 **MS ANDERSON:** Madam Chair, we'll move on from the survivor's, Mrs N's experience now, and
2 move into discussion, some questions, probably for about 15 minutes. Do Commissioners
3 think they might need 20 minutes or how long do you think?

4 **CHAIR:** We never know but we're getting better and better at confining things to the very
5 essential, so let's see where we go.

6 **MS ANDERSON:** I'll attempt to go for the next 10 minutes or so on mandatory reporting.

7 **CHAIR:** Okay.

8 **MS ANDERSON:** So, clearly, a very critical and central element of the safety regime for children
9 is the mandatory reporting regime. One of the documents in the bundle that I won't take
10 you to because I think if I describe it you'll recall the circumstances, so it relates to a
11 Complaints Assessment Committee decision last year to refer a matter to the Disciplinary
12 Tribunal relating to a principal's repeated endorsement of a teacher as being fit and proper.

13 **MS HOSKIN:** Yes.

14 **MS ANDERSON:** And so the circumstances, the facts that emerge in the Complaints Assessment
15 Committee document is clearly that there had been a report of abuse against a teacher in
16 2012, and there'd been subsequent certifications by the principal on two occasions after
17 that, that the relevant teacher was fit and proper.

18 **MS HOSKIN:** [Nods].

19 **MS ANDERSON:** So inherent in that circumstance, which has gone through a process, including
20 a Disciplinary Tribunal process, is the fact that the original report of abuse in 2012 was not
21 reported to the Council.

22 **MS HOSKIN:** That's correct.

23 **MS ANDERSON:** And there are other instances we've seen, I think, that that's not an isolated
24 incident in itself.

25 **MS HOSKIN:** That the mandatory report doesn't come to us?

26 **MS ANDERSON:** Yes.

27 **MS HOSKIN:** Most often, so certainly in the situation you're referring to where it wasn't known,
28 that is true. I would say I do believe that the process of mandatory reporting by schools is
29 well known and is well used, it's been in place for a number of years. There are of course
30 instances where it doesn't happen in a timely fashion.

31 **MS ANDERSON:** And there's also some evidence in the documents, isn't there, of quite lengthy
32 delays for information coming from the courts through the court registrar notifications of
33 convictions.

1 **MS HOSKIN:** Yes. There are, I think, two examples there, and again I would say, on the whole,
2 since that was put in place in 1996 even, that works reasonably well. There is an aspect of
3 maybe human error moving into the digital world. Perhaps we can get even better at
4 ensuring that happens every time.

5 **MS ANDERSON:** And we're just going to call up a document which is a December 2018
6 document, TG C 0002439. This is a Teaching Council response to an Official Information
7 Act request. So we'll just call up the top part of that letter. It's a 2018 response. You've
8 been asked about how many fines have been issued for failing to manditorily report, how
9 many investigations have been conducted under section 396 of the Act, so that's the
10 provision, isn't it, that --

11 **MS HOSKIN:** That's correct.

12 **MS ANDERSON:** Because it's the Council's role to monitor and enforce the mandatory reporting
13 obligation.

14 **MS HOSKIN:** That's correct.

15 **MS ANDERSON:** And if there have been any investigations or fines. And the answer is that
16 there have been no investigations or prosecutions under that section at that time. And of
17 course as a consequence no convictions. In terms of no investigations of failure to
18 manditorily report, what's your view of whether the Council is adequately meeting its remit
19 to actually monitor whether people are reporting in accordance with the law?

20 **MS HOSKIN:** So the question as I see it in the OIA refers to investigations conducted under
21 section 396 of the Education Act. And we have not done that, so that's investigations to
22 prosecute. What we have done, so we absolutely consider whether someone should have
23 sent us a mandatory report if they haven't. The actions that we have taken, so we have not
24 prosecuted, but what we have done, we have considered prosecution, we haven't taken that
25 step, but what we have done is taken an own motion to investigate those decisions and
26 behaviours of the person that should have sent that mandatory report to us. And, again, it
27 comes back to sort of the most severe -- so we could fine, potentially, if that was -- if we
28 chose to, but the most severe action we can take is to exit that person from the profession.
29 So at that time --

30 **MS ANDERSON:** So that becomes the topic, the subject of a disciplinary charge against the
31 person who failed to report being misconduct effectively, is that --

32 **MS HOSKIN:** Correct.

33 **MS ANDERSON:** And it goes through that misconduct route --

34 **MS HOSKIN:** Same process.

1 **MS ANDERSON:** -- as opposed to this investigation or prosecution route.

2 **MS HOSKIN:** Yes, so even -- we could also prosecute.

3 **MS ANDERSON:** That was what I was just coming to. Why does it seem to be either/or.

4 **MS HOSKIN:** It's not either/or, so I think we have considered prosecution in the instance I'm
5 thinking of and I think possibly the situation you've just recently referred to, it was
6 considered. And the decision was that we would not do that. The decision from the
7 Tribunal and the penalties awarded in that situation suggested that we would not have the
8 evidence to be successful with the prosecution. But we did consider it.

9 **MS ANDERSON:** So you let that first process run through and then might have a look at whether
10 there's an evidential basis for effectively a beyond reasonable doubt standard for a
11 prosecution, because there'd be two different standards in your processes?

12 **MS HOSKIN:** That's correct.

13 **MS ANDERSON:** The big question for the Inquiry of course, because a lot of people advocate
14 mandatory reporting as a real solution to prevent abuse, keep people safe. It's obviously
15 part of a system, not the complete answer. But the big picture question is, how reliable is
16 the system and how do you know that the system is reliable, because almost certainly the
17 incentives for those who are misbehaving is to not comply, whether it's a principal or
18 someone else.

19 So the hard question is, in your monitoring role of how well the profession is
20 complying with this mandatory obligation, what are the steps that you take to satisfy
21 yourself? Is there a formal audit of that function? How -- perhaps I'll come to Robyn
22 because this is really a sort of governance risk management, it's at the governance table,
23 isn't it, of how well the agency's performing its statutory obligation.

24 **MS BAKER:** I think I'll start with Lesley and the detail and then I'll make a governance comment.

25 **MS HOSKIN:** So one of the things we do, and I would -- I have to say mandatory reporting, it is
26 one avenue. We have a system and regulation that has checks and balances and multiple
27 points of entry and where these things might become known to us. But I accept that people
28 see that one pathway as a very critical one and it is certainly -- I do believe it's working
29 well.

30 To answer the question, so we have a governing board, we report to the governing
31 board monthly on -- so we have key performance indicators of the number of matters, the
32 types of matters, how long they are taking to be resolved. What I would say in addition to
33 that is we proactively release on to our website statistical information. Media play a part in
34 asking for that information.

1 **MS ANDERSON:** Those are transparency elements, aren't they, they're not quite the same as
2 what gives you the level of confidence that your professional -- members of the
3 professional body are actually doing the right thing.

4 **MS BAKER:** I think I'll pick that up. I think it's a very good question. We said at the beginning
5 that we know we can improve our processes, we're here to learn. I think that our -- I go
6 back to a comment I made earlier, we have a strong profession, we have a very good
7 commitment to the code and standards. I think people in the profession hold themselves
8 and each other to account.

9 So saying, which is your point, there are always people who don't behave well. I
10 think that's a question that we as a governing board should ponder about what is our
11 assurance of a gap. And that's something we can talk -- we do a lot of obviously
12 conversations with the profession. I'm sure principals will be able to give us good advice
13 about what kind of processes would be useful.

14 **CHAIR:** Can I just interrupt, while you're thinking about these matters. Have you have got a
15 sense of the scale of the problem of non-reporting, the extent to which the requirement to
16 mandatorily report is breached. You're trying to prove the invisible, I suppose.

17 **MS HOSKIN:** What I can say is where there's a delay we certainly -- so the matter comes to us
18 somehow, whether through Police, the courts, we see it in the media.

19 **CHAIR:** So you'll get the information, but it's not reported by the school?

20 **MS HOSKIN:** Not how it should have been, so --

21 **CHAIR:** So that might give you have a sense of numbers, mightn't it?

22 **MS HOSKIN:** Yes, and so I can't tell you who never reported obviously and should have, but in
23 those ones, they are fewer and further between year on year. The knowledge and
24 understanding and the work we have done on those expectations, I am confident it is
25 well-known from the board, to the principal, to the staff, we have done an extensive amount
26 of work on making sure they understand that expectation.

27 **CHAIR:** Right. Can you give us a sense of numbers at all?

28 **MS HOSKIN:** I can't, but that is something that we could interrogate our data for.

29 **CHAIR:** I think it would be good to know and if there's a trend downward or a trend of any sort it
30 would be good to see over the last few years, if you've got those numbers.

31 **MS HOSKIN:** To give you a sense on my sort of intuition of that, that we are talking maybe a
32 handful, because I have written recently to a principal where there was a delay, to remind
33 them of their obligations. So we are aware of that and we do intervene. Perhaps to your
34 point, what we're not doing is maybe a formal collection of that data on a regular basis to

1 report. So I don't think it's a large number and certainly where we see that happening, we
2 do intervene. And we have own motion for that very reason.

3 **COMMISSIONER ERUETI:** Do you look at other jurisdictions like we're talking about Victoria
4 and a mandatory reporting and several States in Australia have this, to look for insights
5 about how to ensure that the system is working properly the way it should?

6 **MS HOSKIN:** Yes. I meet regularly with the chief executives of all of those bodies and we do
7 talk about -- although very different environments, of course, we do talk about how better
8 to do that very thing.

9 **COMMISSIONER ERUETI:** Are you talking about other jurisdictions?

10 **MS HOSKIN:** Yes, the Australian, all of the Australian States and then actually internationally
11 there is also a group for teacher registration boards who don't meet as often but meet and
12 talk about those things that are common in all of our systems, the challenges of.

13 **COMMISSIONER ERUETI:** That's helping?

14 **MS HOSKIN:** It is. Our systems are very different but because there are common concerns they
15 don't know, how do they you know, those conversations, I think, are helping us to at least
16 understand the problem. I don't have an answer, is what I'm saying.

17 **CHAIR:** Yes, Ms Anderson.

18 **MS ANDERSON:** Thank you, Madam Chair. Of course we could continue for quite some hours
19 with fruitful conversation and dialogue and I've got only partway through some of my
20 topics, but I think I'll draw it to a close here and have questions from the Commissioners.

21 **CHAIR:** So you are quite certain you've ground to a halt?

22 **MS ANDERSON:** I've done all the essential work, and other work we can do offline, but follow
23 up information.

24 **CHAIR:** Very well. I'll just take a moment for us to take breath and see if there are questions
25 from my colleagues.

26 **COMMISSIONER GIBSON:** Just quickly, on the Disciplinary Tribunal, I think you said there
27 was a lawyer chair and teachers. Are there any lay people, non-teachers involved in that
28 process?

29 **MS HOSKIN:** On the Complaints Assessment Committee there are three teachers and a layperson
30 and in the Discipline Tribunal they have a chair who is an experienced lawyer plus two
31 teachers, so no layperson on that one.

32 **COMMISSIONER GIBSON:** Is that in the regulations, how that's made up or is that...

1 **MS HOSKIN:** It is in the regulations. I can't recall quite off-hand about that layperson. I know
2 that is what we have, but it points to a very good question around our -- the role that
3 layperson has in those processes.

4 **COMMISSIONER GIBSON:** The mix of, I think you said, there were 13 people on the
5 Teaching Council at the moment. Is that a general diversity across the population; Māori,
6 Pacific, disabled people?

7 **MS BAKER:** I'll answer that. Yes, there are 13 people. Seven are elected by the profession, so
8 secondary, primary, primary principal, secondary principals, early childhood settings, and
9 the other six are appointed by the Minister of Education. And the usual process is the
10 elections are held, and then the minister appoints the remaining councillors to ensure both
11 diversity and knowledge, the kind of mix of knowledge to be a strong governing group
12 today. So as a chair -- and the chair is appointed by the minister.

13 **COMMISSIONER GIBSON:** So are there Māori and Pacific and disabled people on that group?

14 **MS BAKER:** There are Māori and Pacific. There is currently no disabled person on the group.

15 **MS HOSKIN:** Sorry, I just want to slightly --

16 **MS BAKER:** Yes, you can add that, actually --

17 **MS HOSKIN:** -- adjust that. There is someone representing the disability sector. I'm not aware
18 of any personal disability or -- but I do know that the appointment was made for that
19 purpose.

20 **COMMISSIONER GIBSON:** My question was about was there disabled people. So thanks.

21 **COMMISSIONER ALOFIVAE:** Thank you, tēnā kōrua. My question is, we've heard a lot of
22 survivor evidence around the imbalance of power, we've had a couple of examples this
23 afternoon, and I'm really wanting to pose to both of you, and I really appreciated your
24 comments, Ms Baker, that you feed back into the profession, to your constituency, there's
25 lots of room for dialogue back and forth. In terms of where you've placed, I was going to
26 say sexual offending but inappropriate sexual behaviour, inappropriate relationships, the
27 age of consent in New Zealand is 16. So when you get to those older children that would
28 be vulnerable where there was inappropriate relationships happening, it might be easy to
29 say that consent is not an issue because they're over 16.

30 Is there any discourse in the profession, or even from the trends that you might see,
31 about raising the age of consent to 18 specifically for the school population?

32 **MS HOSKIN:** Not that I'm aware of, for your question. What I might add is in our role, that
33 criminal distinction is irrelevant and we do engage students who are over that 16-year-old

1 age and get their testimony, even though that might not or would not have been part of the
2 Police process.

3 **COMMISSIONER ALOFIVAE:** But for survivors in terms of the impacts what we hear years
4 later they come back, but they can track the roots of the trauma to the abuse that actually
5 happened in the schools. Whether or not, philosophically, in terms of honouring the
6 profession and you talk about the mana of the teachers, the mana of the students, whether or
7 not that's a discourse that would be worth having.

8 Of course, it's a wider societal conversation, but just in terms of driving the
9 discussion, to be able to put a stake in the ground, about a group of children, you care for
10 all children in one sense in Aotearoa, that comes through --

11 **MS HOSKIN:** I absolutely do and coming back to our first starting point today around our
12 purpose, for leadership and direction of the profession, being an independent statutory body
13 to be able to speak on those big important issues is what fits into that purpose.

14 **MS BAKER:** I want to say sometimes documents can seem to be not as important as they are and
15 I think the code and standards are really important, because not only do they specify what
16 as a profession you have agreed to be and do, but it gives a very strong conversation, an
17 ongoing conversation. So that's a very big change in recent years, to be able to talk about
18 things that we didn't talk about.

19 So the code and standards provide a vehicle and I think that's been very helpful. I
20 think in the cup half full, that is a very -- it's constructive. It's also, as Lesley pointed out,
21 it's also very helpful when we're looking at where people haven't met the standards but just
22 think of it in a positive sense, too, it does enable the conversations that we should have
23 been having a long time ago.

24 **COMMISSIONER ALOFIVAE:** Food for thought. Thank you very much.

25 **COMMISSIONER ERUETI:** Tēnā kōrua. Independence is so critical, of course. I couldn't help
26 wondering though, listening to the evidence about whether there would be some advantage
27 in having clearer direction in legislation about your fundamental principles. I know you've
28 created them through your code in partnership with teachers, but I just wondered of you'd
29 thought about that, about the utility of having a statutory code which had directions on how
30 the Disciplinary Tribunal should be operating consistently with human rights and Treaty
31 principles, for example. I think it's admirable what you've done with the Treaty through
32 that code, but I also wonder whether if there was that clear direction or legislation, would
33 you need to have gone down that path?

1 **MS HOSKIN:** I'll start with some initial thoughts. I think one of the successes of the new code
2 and standards, and I was asked them being in the same booklet. That was something the
3 profession chose to do, was to bind them together even in the same booklet. They own that,
4 they created them, they consulted on them and I think there is -- I'm not suggesting the law
5 doesn't have a place, but in matters like this where the profession have to hold themselves
6 to account and each other to account, I actually think the environment and the -- them being
7 accepted to the degree they have possibly was, I wouldn't say because they weren't in the
8 law, but I think the process that did occur has meant that they are owned by the profession.

9 **COMMISSIONER ERUETI:** I can see the merit, I can see that, yeah, accept that. Do you want
10 to add to that?

11 **MS BAKER:** I think there's an advantage in using something like a code and standards that have
12 been -- I think there's a strong advantage at this moment in time for a code and standards
13 that's been constructed by a profession and owned to help make the changes at the
14 grassroots, that someone -- that wouldn't happen so easily just by law. That's my gut
15 instinct, that many people working in schools feel already, I won't say "many" -- many New
16 Zealanders feel over-regulated anyway, and so this is just my feeling would be if we can,
17 let's do things that help change behaviour for better, for better outcome for our young
18 people, through ways that are closer to everyday action.

19 On the other hand, I rather lean into your suggestion for different reasons, but I'd
20 have to think about it because I think it's a very interesting suggestion.

21 **COMMISSIONER ERUETI:** Appreciate it. Thank you.

22 **COMMISSIONER STEENSON:** Ngā mihi ki a kōrua, kia ora. I've got questions around
23 Te Tiriti and it's good to see you've got a journey that you're going on, both with the
24 Council itself, and it's good to hear that there is some Māori representation on the board;
25 one?

26 **MS BAKER:** No, many.

27 **COMMISSIONER STEENSON:** Many? Great. Many, as in? I don't need exact, but --

28 **MS BAKER:** About four.

29 **COMMISSIONER STEENSON:** Four out of?

30 **MS HOSKIN:** 13?

31 **MS BAKER:** Four or five.

32 **COMMISSIONER STEENSON:** And it's good that you've acknowledged that there is some way
33 to go with the disciplinary process with regards to a Te Ao Māori lens, and acknowledging
34 the injustices that have been created over time by a biased education system and the impact

1 that's had on both teachers and learners. So you've got a strategy and so I guess my first
2 question is around when would you -- when do you expect the strategy to get to a point
3 where you feel you've got cultural competence, as the Teaching Council, with regards to te
4 reo me Ngā tikanga Māori?

5 **MS HOSKIN:** The strategy has got some dates in there that we are holding ourselves to account
6 for. They have very detailed and explicit descriptions of what we would see te reo, tikanga,
7 it's described in there as it would be part of our DNA, it's not a lens we apply, it's not
8 something we think of after, it's inherent in how we think and behave. Each of those
9 different things have dates against them, and supposing those are the right things and we
10 will review it along the way, then I think by 2025 we have suggested in there when we
11 started that we would have a significant shift in those cultural competencies.

12 **COMMISSIONER STEENSON:** That's great. How far along do you think you're going to meet
13 it?

14 **MS HOSKIN:** The te reo is variable but I am confident that we can get very close and I say that
15 because we've done things that enable that, like our recruitment process. Right in the very
16 interview, we ask for that -- we set our expectation that you will learn and understand how
17 to behave, I won't use the word "partner", but understanding your Te Tiriti place. And then
18 every step through that, when they get their letter of offer, we ask them to tick and confirm
19 yet again because we want them to know, if you're going to work here, then this is the waka
20 we are on.

21 And we have another process set up where we defined our kawa and tikanga and
22 kaupapa that says some things are non-negotiable for here. So we've done a lot of those
23 environmental things, if you like, that gives me the confidence that we, if we don't hit those
24 goals we will significantly have shifted how we do that.

25 **COMMISSIONER STEENSON:** Then my second question -- so that sounds really great,
26 ambitious which is an important focus. My second question is around, then, the teacher's
27 progress part of it. Because you have a process which, by which the -- it's another senior
28 teacher endorses that they have -- they either have or they haven't. And I guess it's just
29 around whether or not they get to a point where it's -- how do you know, other than that
30 endorsement? Because what I'm thinking about is, you know, there's so many, what is it,
31 2,500 schools right, so you've got some in areas where Māori will be absolutely the
32 minority and that's where it becomes quite -- they become quite vulnerable in that setting.
33 And whether or not that supervising teacher also feels there's enough competency becomes
34 a question, I guess.

1 **MS HOSKIN:** So firstly acknowledging that as a whole country this is something that we are all
2 learning how to do better in and teachers signed up to this quite a long time ago. How we
3 know if they've met the standards around that specific area is we ask the question. Now,
4 that's unusual because normally that determination happens with the principal or that senior
5 person closest to where that practice is happening and that's the correct sort of regulatory
6 model.

7 To assure ourselves - actually, let me start at the other end. I am sure that we do not
8 have the desired levels of competency, and therefore we have chosen to put a spotlight on
9 that particular area of the standard, and at the Council level. So in a three---year cycle, we
10 would have asked every teacher to confirm if they have progressed, and I can -- I think
11 I may have said it already, I can tell you that in the last year, 317 said no, the teacher had
12 not progressed. And then they have to tell us why would that be, because there's
13 responsibility of course on the endorser and responsibility on the teacher.

14 I can tell you the reasons and things and share them, but we put a spotlight on the
15 expectation and then we are potentially in the future more able to decide at what point do
16 we then use it differently for a hard lever to -- so we'll get generally those willing, push a
17 little bit harder with our lever, we might get more engaged. The reality is that at some point
18 we're going to have to say no longer can you have a certificate to teach in Aotearoa
19 New Zealand without that competency.

20 **COMMISSIONER STEENSON:** I guess that was my next obvious question, because what we
21 have heard from our survivors is the importance of cultural identity and being able to relate
22 to teachers. So thank you for that. Kia ora.

23 **CHAIR:** I think I asked enough questions along the way, so I'm not going to ask any more. I
24 would like to acknowledge the fact that you, Robyn, said it, and I think it's obvious from
25 your answers, that you've come here first of all because you were asked to, but - and you've
26 given your evidence but you've also come here to learn, and I think the Commissioners
27 really appreciate that attitude, that this, although we're sitting here in a quasi---judicial
28 setting, this is about learning both ways, and so I really appreciate your openness to that
29 and thank you very much. Thank you for all the work you did in replying to our notice to
30 produce, I know that was onerous and difficult, and thank you to the team behind you who
31 assisted as well.

32 **MS HOSKIN:** Yes.

33 **CHAIR:** Please convey that. So you are now free to go, but we invite you to stay for our closing
34 karakia. But before we do that, kua mutu aku mahi mō tēnei wiki. It's been a long and hard

1 week, we've worked long hours, but I think no one's worked harder than our survivors, our
2 loyal band of brothers and sisters who have sat throughout the whole week, and I want to
3 acknowledge you. You're all familiar faces to us, we know who you are, and it's of
4 enormous credit to you that you come and you sit and you listen through the interesting bits
5 and the boring bits, but you're showing -- and here's another one coming in now. Just come
6 in, Keith, in time to be thanked. I'm just acknowledging survivor presence today.

7 I don't forget, I know there are survivors who are watching online and thank you to
8 you for your interest, thank you for your contributions so far, and, yeah, we just
9 acknowledge your presence to the cause.

10 So I think it's time that we end it and we hand over to our matua, kei a koe te
11 karakia matua. Nau mai.

12 **KAUMATUA:** Tēnā anō tātou katoa. E tū ana hau tēnei te mihi ana ki a koe. Madam Chair, kei te
13 mihi ana ki a koe. Tautoko me o tātou kōrero, te mamae, te ngākau o rātou, te wairua o ngā
14 tātou te tāngata e mate mamae, nō reira tēnei te mihi. This evening, just on listening to our
15 Chair, talking about the wellness of us, of people. It reminds me of a tauparapara of our
16 tupuna. It talks about our native birds, talks about the tui and how we all relate to the tui;
17 the sweet sound, the sweet note of a tui which brings us joy into our life, into our lifespan,
18 and it creates the wellness in our being. And that tauparapara is whakarongo ake hau ki te
19 tangi a te manu nei a tui, tui, tui tuia. Tuia i runga, tuia i raro, tuia i roto, tuia i waho, tuia ai
20 te muka here tangata. Karanga te ao karanga te pō, ki te pō uriuri, ki te pō nakonako, me te
21 ranga wairua waenganui ki a koutou.

22 So in that saying that the sweet sound that we share together will be above, below,
23 inside and outside, and that brings us, bonds us to the sweetness of life. So that will be part
24 of my kōrero this evening, and we're going to sing Parea Nei to close off.

25 (Waiata Parea Nei). (Karakia).

26 **Hearing adjourned at 5.09 pm to Monday, 22 August 2022 at 9 am**