

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

Under The Inquiries Act 2013

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

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

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

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

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

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

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

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

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TRANSCRIPT OF PROCEEDINGS

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1 [9.11 am]

2 **KAUMATUA NGĀTI WHĀTUA:** (Waiata Whakataka Te Hau). (Karakia tīmatanga). E ngā
3 mana, e ngā reo, ngā mātāwaka, tēnei te mihi atu ki a koe ki a koutou tae mai nei o tēnei wā
4 o tātou tēnei hui, nau mai haere mai, haere mai, whakatau mai rā. E mihi atu ki a koe o
5 tātou tini mate, tērā wiki te rangatira a Toby Curtis, e ā koutou mate o tātou ia marae, ia
6 marae, āe, moe mai, moe mai, moe mai haere. Kore anō tātou te hunga ora o tātou wairua,
7 ia koutou, ki a koutou, āe, haere mai. Haere mai ki te wehenga o Whātua hoki, Whātua
8 rangi, i tēnei wā. Tēnei te mihi ana ki a koe te rangatira e noho ana ki te marae ki a koe o
9 Ngā Puhi kaha o wairua hoki o tēnei tangata e noho mai ana i ngā tūpuna mātua, nā reira ki
10 a koutou āe, haere mai. Ngāti Porou, tēnei te mihi ana ki a koe, tū ake nei Ngāti Whātua,
11 maha ngā wairua o tātou marae ki Ōrākei Tumutumuwheua te tupuna whare tēnei te mihi,
12 nau mai haere mai, haere mai, whakatau mai rā.

13 O tēnei te kaupapa he mamae hoki, mamae hoki. A wairua hoki te kōrero ana tēnei
14 taumata te Kōmihana ki te mahi te whakarongo mai ki te kōrero ana o tēnei wā o e noho
15 ana ko tātou survivors me hoki te tangata o tātou. Te Minita Oranga Tamariki ki te haere
16 mai te kōrero nā anei konei te mahi ana i tēnei wā. Nō reira ki a koutou āe, kei te mihi ana
17 ki a koe tae mai o tēnei wā.

18 Perhaps just to express what I've been saying here today, is a welcome to our marae
19 here an important space which gives us the wairua led by our Commissioners here, and also
20 to be able to listen and to understand to the words that we will be receiving today, this
21 week, from last week, as we continue on the journey of making things right.

22 So I welcome you all, especially welcome to our whānau from the Oranga Tamariki
23 who have come along here today and also from those who have travelled afar and our
24 whanaungas from Ngāti Porou. Nō reira ki a koutou, just to say to us all on another journey
25 here this week and may we be able to come together as we did last week and the week
26 before to understand and to make things right.

27 So on behalf of us all here today, tēnei te mihi atu ki a koe ki a koutou, tēnā koutou,
28 tēnā koutou, tēnā koutou katoa. (Waiata Te Aroha). Nā reira āpiti hono tātai hono rātou te
29 hunga mate ki a rātou, āe moe mai, moe mai, ki te mate, hapati hono tatai hono, tātou te
30 hunga ora ki a koutou, tēnā koutou, tēnā koutou, kia ora mai anō tātou.

31 **CHAIR:** Tēnā koe matua.

32 **KAUMATUA HAURAKI:** Kāti i runga ake i ngā tikanga i waihotia e o tātou mātua tūpuna, kei te
33 tū ake tēnei te mana whenua o Ngāti Whātua whakahokia o whakatau maitanga. Engari i
34 runga tēnā, tātou o Oranga Tamariki, te whāiti mai nei i runga tēnei kaupapa hōhonu, tēnei

1 kaupapa uaua, tēnei kaupapa mātiotio ai ngā mahi. Nō reira whakatau mai, whakatau mai e
 2 tika ana i runga te āhuatanga o ō tatou aituā e kīia nei te kōrero o mātou o Ngāti Porou ka
 3 ngaro koe ki tua o Nukutaimemeha, kāre koe e hoki mai ā-tinana. Nā reira ahakoa ngā mihi,
 4 te hūpē, ngā wai i tukuhia ki runga i a rātou kāre ratou e hoki mai ana, otirā anei te kōrero
 5 waihohia rātou i te pito o te mate ki a rātou noho mai. Me te kōrero pēnei ake, i tērā tau i pā
 6 mai te ringa o aituā ki runga i a koutou mai a Neville. I tērā tau anō ka pā mai te ringa o
 7 aituā ki runga i a mātou i a Tā Wira. Nā reira, kau e wareware ngā tino ara whānui i
 8 waihotia e rāua hei whāinga mō tātou, otirā ahakoa nga taumahatanga o Neville kei runga i
 9 a koutou anei ko mātou e rite tonu te tuku nga whakaaro ki a Tā Wira. I runga i te kōrero
 10 pēnei ai, ko rāua, me kī pēnei ake, ahakoa ā rāua pukenga kāore i tino mahi tahi ai rāua,
 11 engari i runga i tēnā, ngā mea pēnei i a au i poipoia e rāua anei e tū nei i tēnei whare, otira
 12 waihotia rātou i te pito o te mate ki a rātou, hoki mai ki a tātou ko te mana whenua,
 13 whakatau mai, whakatau mai, whakatau mai. Whakatau mai i runga te āhuatanga me kī
 14 pēnei ake, ko tā mātou puta maitanga e whai ana i te ara pai mā ngā ra kei mua i a mātou,
 15 mō ngā hara nā tēnei o ngā tari, kei a mātou te whakamā, te mamae mō ena.

16 Tuarua, he mea nui kia āta kite he aha he ara whānui hei whaitanga mō tātou. Nō
 17 reira, koinei te mea mea nui mō tēnei o nga huihui. Nā reira, ki a koe te Kaiwhakawā, te
 18 heamana o te Kōmihana ki a koutou katoa. Talofa lava Sandra anō hoki, ko koutou hoki ki
 19 uri o Ngāti Whātua, te uri hoki o Taranaki, te tino whakatau mai i ngā waka o Mataatua,
 20 ngā waka o Waikato, i runga Ngāti Porou ki runga hoki i a Whanganui ko tae mai i runga i
 21 te karanga, i runga hoki i te mea nui mō ngā tamariki mokopuna.

22 Kāti, tua atu i tēnā ākuni koutou ka rongu i ngā kōrero ka uiui e te hanga noho mai
 23 nei me te kī pēnei ake, ko ngā kōrero ka puta mai, ehara mō tātou kei roto i tēnei hui, ehara
 24 mō ā tātou, ngā mokopuna. Engari, e tika kia waihohia he ara whānui, he ara aroro araroa
 25 hoki mō ngā whakatupuranga kāre anō kia whanau, nā reira i runga i tēnā e hika mā koutou,
 26 tēnā koutou, tēnā tātou katoa.

27 (Waiata He Hōnore). Āpiti hono tātai hono ko rātou te hunga mate ki a rātou. Āpiti
 28 hono tātai hono ka hoki ki a tātou te hunga ora, e hoa mā tēnā koutou, tēnā koutou, tēnā
 29 tātou katoa.

30 **KAUMATUA NGATI WHATUA:** Tēnā koutou, te tīmatatanga i tēnei wā, whaea kei a koe?

31 **CHAIR:** Tēnā koe matua. Tēnā koe Doug, nau mai haere mai. Tēnā tātou katoa. Welcome to
 32 everybody today, the beginning of our second week of hearing into this very important
 33 matter of hearing from the State institutions who were responsible for the care of our
 34 tamariki, tamaiti, children over the time that we are investigating, 1950 to 1999. And we

1 are looking forward very much this week to hearing from them and their responses to all
2 that we have heard previously from survivors.

3 A couple of acknowledgments. First of all, kia ora ki a koe Doug, thank you for
4 reminding us of the passing of two very important people in the history of the care space,
5 the response space and who have contributed to this Commission. The first was Neville
6 Baker, one of the authors of Pūao-te-Ata-tū way back, whose voice resonates -- even
7 though he has passed, resonates through that report. We acknowledge him.

8 We also acknowledge Tā Wira Gardiner who stepped into a difficult space at a
9 difficult time and who started to lead the changes that I know we're going to be hearing
10 about today, so a tribute from the Commission to both of those giants in this space.

11 Mention was also made of Tā Toby Curtis, who sadly passed last week, another
12 giant, and this time in the space of education of tamariki, mokopuna and a great leader and
13 we mourn each of those men.

14 The next thing I want to do is acknowledge the wonderful turnout of our survivors.
15 They staunchly sat through our evidence last week, they listened. I know they were in pain,
16 I know that it was difficult for them to sit and listen as patiently and as quietly as they did
17 and I commend them for that. This week is going to be no easier, I know that, but we really
18 appreciate the fact that you are here fronting up, showing your presence and being here, not
19 just for yourselves, but for all the other survivors who sit behind you and who don't have a
20 voice or who can't make it today. I include in that of course all those who are watching on
21 the livestream and I greet all of you.

22 This week we will be hearing principally, or at least for the first three days, from
23 representatives of Oranga Tamariki, the organisation that took up the responsibility from
24 the old Department of Social Welfare, Children and Young Persons and all its other
25 iterations and is now the principal caregiver of children in care in New Zealand. So we're
26 devoting three days to hearing from them and examining a number of their representatives.

27 On the fourth day we will be hearing from representatives of the Departments of
28 Corrections, of the Children's Commissioner and from the Ombudsman. And on Friday,
29 our last day of hearing of this particular matter, we will be hearing from Te Puni Kōkiri, the
30 Ministry for Pacific Peoples, and finally from the Public Service Commission and that will
31 end our proceedings for the week. So it's a big week, an important week, and many matters
32 will be canvassed over that time.

33 So thank you again for all your presence. I'm going to briefly introduce my
34 Commissioners, once I have remembered to describe myself to those who cannot see. My

1 name is Coral Shaw, I'm the chair of the Royal Commission, I am elderly, I have white
 2 chin-length hair, I wear glasses and today I'm wearing a cream top and a navy blue shirt.
 3 I'm now going to ask my fellow Commissioners to briefly introduce themselves. We'll start
 4 with Dr Andrew Erueti.

5 **COMMISSIONER ERUETI:** Tēnā koutou katoa. Ko te mihi tuatahi ki te kaikarakia, e pā, tēnā
 6 koe. Ko te mihi tuarua, ki a koe Matua Hauraki, e mihi ana ki a koe e te rangatira. Ka
 7 poroporoakitia ki ngā mate koutou kua wehe atu ki te pō, kei te maumaharatia mātou Tā
 8 Toby Curtis, Wira Gardiner, Neville Baker, haere koutou, moe mai rā, moe mai rā. E ngā
 9 ringa raupā koutou o mātou, o tātou me kī, tēnā koutou me ngā mahi i ngā rangi nei. E mihi
 10 ana ki a koutou e ngā purapura ora koutou i whakauru mai, koutou e mātakitaki mai ana,
 11 tēnā koutou, tēnā koutou, tēnā koutou katoa.

12 Ko Anaru Erueti tōku ingoa, no Taranaki, ko Taranaki te maunga, ko Ngā
 13 Ruahinerangi te iwi, ko Ngārongo te marae. My name is Anaru Erueti, I'm one of the
 14 Commissioners. I am middle aged with greying hair wearing a suit and tie today, nau mai
 15 everyone, looking forward to the evidence today. Tēnā koe.

16 **CHAIR:** Thank you. Julia Steenson.

17 **COMMISSIONER STEENSON:** Ata mārie tātou. Tēnei te mihi i tō karakia, Uncle; ngā mihi
 18 Matua e rangatira mō ō kōrero i tēnei wā. Ko Julia Steenson tōku ingoa, ko Ngāti Whātua
 19 rāua ko Tainui ōku iwi. My name is Julia Steenson, I'm one of the Commissioners. Today
 20 I am wearing a blue dress with brownish gold and white flowers. I have brown hair and
 21 brown eyes and brown features, I'm Māori and European. Nō reira, tēnā koutou, tēnā
 22 koutou, tēnā koutou katoa.

23 **CHAIR:** Kia ora. Ali'imuumua Sandra Alofivae.

24 **COMMISSIONER ALOFIVAE:** Tēnā koutou katoa. Faatalofa atu i le pa'ia ma le mamalu o le
 25 aofia ua mafai na faatasi mai i lenei aso. E faapitoa lava le faatalofa atu i lau susuga Doug
 26 faatasi ma le pa'ia lasilasi o le matagaluega. Lau afioga Aiolupotea fa'apea ē ua auai i lenei
 27 aso. Malo le soifua maua ma le lagi mamā. Talofa lava. (Greetings to distinguished guests
 28 who are able to be here today. I extend a special welcome to Doug and the ministry. Your
 29 honor Aiolupotea and everyone present today. Greetings to good health and wellbeing.
 30 Welcome). My name is Ali'imuumua Sandra Alofivae. I am of Samoan-Chinese descent.
 31 I've got shoulder-length black hair which is behaving itself at the moment so that's good.
 32 I'm wearing a black dress with big white flowers on it and a black jacket and I wear glasses.

33 **CHAIR:** Kia ora, Sandra. Paul Gibson.

1 **COMMISSIONER GIBSON:** Ata mārie katoa, ko Paul Gibson ahau. I'm a middle-aged greying
2 Pākehā male wearing a dark suit and I usually work with one headphone over one ear
3 through which I read documents, kia ora.

4 **CHAIR:** Kia ora, Paul.

5 So that brings us to the end of the introductions and I'm now go going to invite
6 Counsel Assist to introduce herself, tēnā koe.

7 **MS COATES:** Tēnā koutou katoa. Tautoko au i ngā mihi kua mihi ki te rangatira o Ngāti
8 Whātua i whakatūwhera ana tō tātou, te karakia me tō tātou ara i tēnei rā. Ki ērā i
9 whetūrangihia ki te pō ko tētahi o ērā ko Moana Jackson i wehe mai ia, mai te tīmatanga o
10 tēnei Kōmihana. Huri noa ki a tātou katoa ki a koutou ngā Kaikōmihana ki ērā e
11 whakakanohi ana i te Karauna i tēnei rā ko tāku mihi nui ki ērā purapura ora, e noho i konei
12 i te rā nei, i runga i te ipurangi ki roto i Aotearoa, e noho mamae mō tērā hara e pēhi ana i a
13 rātou.

14 Kia ora, just by way of brief translation, I just gave mihi to the kaikarakia who
15 opened up our proceedings today. I supported the acknowledgments to those who have
16 passed on and added one more, the late Moana Jackson who gave evidence at these
17 proceedings earlier. I also turned to those who are -- to the te hunga ora, those who are
18 living, the Commissioners, to those who are representing the Crown, but also most
19 importantly to the survivors.

20 So my name is Natalie Coates, I'm a descendant from Ngāti Awa and Ngāti Hine
21 and I'm Counsel Assist. I'll be one of the Counsel Assist team that will be questioning
22 today. By way of description I have brown hair, brown eyes, Māori Pākehā, late 30s and
23 I'm wearing a bluish jacket.

24 The other counsel to assist who I'm sure will introduce themselves when the time
25 comes is Dr Allan Cooke and Anne Toohey. Kia ora koutou.

26 **CHAIR:** Kia ora. Ms Schmidt-McCleave.

27 **MS SCHMIDT-McCLEAVE:** Mōrena ano ngā Kaikōmihana. Ko Rachael Schmidt-McCleave
28 tōku ingoa. For those who can't see me, I had it confirmed by my children in the weekend
29 that I am a middle-aged Pākehā woman, I have brown hair and brown eyes, and today I'm
30 wearing a black blouse with pink flowers and a black pin-striped jacket.

31 Commissioners, I have the pleasure today to introduce you to the Oranga Tamariki
32 team and I'll firstly outline who is present in the hearing room today and who you will be
33 hearing from and then we'll invite the Chief Executive, Mr Te Kani, to come forward for - I
34 think we have an hour of evidence--in---chief.

1 **MS SCHMIDT-McCLEAVE:** Commissioners will have a very extensive brief from Mr Te Kani,
2 which we are happy to take as read, but there are some key points from it he would wish to
3 highlight so I'll hand over to you, Mr Te Kani. Kia ora.

4 **MR TE KANI:** He korōria ki te ingoa tapu o Īhowa, he maungarongo ki te whenua, he whakaaro
5 pai ki ngā tāngata katoa.

6 Ko te mihi tuatahi kia koe nāhau i tuku te arawhata ki te Kaihanga nāna tātau katoa i
7 manaaki, i tiaki, e whakawhāiti nei tātou ki te kaupapa tino whakahirahira o te rā nei. Ara,
8 ko te nohoanga o te Kōmihana kua whakaritea kia whakarongo me te whiriwhiri i ngā take
9 katoa kua tae mai ki tana aroaro mai i ngā hunga katoa i maukinohia i roto i ngā momo
10 whare kāwanatanga, momo hāhi, hoki.

11 Ko te mihi whakamutunga ki ngā tini aitua kua huri ki tū o te ara. Otira, waihotia
12 rātou o te pito o te mate kia rātou whanga mai ai, ana, ka hoki mai kia tātou o te pito o te
13 ora kia tātou no reira, tēnā tātou katoa.

14 Kia koe te Kaihautū me koutou katoa ngā Kaikōmihana ko Chappie Te Kani au, te
15 Tumu Whakarae o Oranga Tamariki.

16 Mōrena tātou. I'm known to most people, including in my professional capacity --

17 **CHAIR:** I'm going to stop you before you even get going. And this is for everybody who will be
18 giving evidence this week, every word you are saying is being typed by a stenographer
19 who's sitting there and who will give you the evil eye if you go too fast, and we have two
20 wonderful signers and we must be respectful of their need to get the record down because
21 every word you're saying will be translated into writing, so if I could ask you all to please
22 be very mindful. Taking breaths between sentences is a really good idea, and also, if you
23 don't mind, if I put my hand up or if counsel puts her hand up, please that's the sign, and if
24 you think your colleague is going too fast, give them a shove with your elbow in the
25 gentlest way, please. Sorry to stop you before you started.

26 **MS SCHMIDT-McCLEAVE:** If I could also ask you to introduce yourself for the visually
27 impaired as well.

28 **MR TE KANI:** Chappie Te Kani tōku ingoa, I am wearing a blue suit with a blue tie with white
29 polka dots, I'm in my early 40s, I'm Māori, I've got short black hair and a greying beard.

30 I joined Oranga Tamariki in May 2021 as Deputy Chief Executive Governance and
31 Engagement before being appointed to the role of acting Chief Executive in late July 2021.
32 Prior to joining Oranga Tamariki I held several public service roles, including Assistant
33 Commissioner at the Public Service Commission from March 2017 to May 2021. I was
34 head of systems assurance and continuous improvement and caring for communities lead

1 within the Covid-19 group at the Department of Prime Minister and Cabinet from October
2 2020 to May 2021, I was also the acting Chief Executive of Te Arawhiti from April to
3 October 2020.

4 Firstly, I want to recognise all the survivors who have appeared before the Royal
5 Commission during this Inquiry into abuse in care. I have heard the horror of your
6 experiences and the impact these have had on you, your whānau, and your communities.
7 You have displayed extraordinary courage, not only in coming before this Commission and
8 sharing deeply personal and distressing information, but also the courage you show every
9 day in your daily lives.

10 I have no doubt that by sharing your experiences, you will greatly help address the
11 failings of the State in the past and minimise risk of future harm as we move forward with
12 the benefit of the information and the insights you have shared.

13 It is a fundamental right of those who have been or continue to be in the care of the
14 State to feel safe and protected by those who care for them.

15 For those of you who have shared your experiences with the Commission and
16 others, this has not been the case. The state has a responsibility and a duty, both to you and
17 to tamariki in care today and in the future, to do all that we can to eliminate the risk of
18 harm. We will ensure that your experiences of suffering and trauma inform our policies,
19 procedures and practices and everything we do so that the circumstances which have
20 previously led to so much hurt will never be repeated.

21 As the acting Chief Executive Officer for Oranga Tamariki, I am responsible for
22 providing strategic and operational leadership to Oranga Tamariki. I ensure that
23 appropriate policies and practices for tamariki and rangatahi in need of care and protection
24 or in the Youth Justice system are in place. That the organisation has a fit for purpose
25 culture and that decision-making and solutions for delivery are developed with regions,
26 communities, whānau and iwi.

27 I am responsible directly to the Minister For Children. In this brief of evidence, I
28 will address the topics and questions identified by the Commission as part of the Inquiry
29 into historical abuse in State care. I will also provide information about Oranga Tamariki
30 and what we are focused on achieving, through the transformation of our organisation, what
31 we have heard.

32 Representatives of Oranga Tamariki have attended each of the hearings held by the
33 Commission. Speaking to these people, I want to say that we have listened to the evidence
34 you have given about your childhoods and have carefully reviewed the Commission's

1 findings and recommendations across the various investigation areas. Oranga Tamariki has
2 heard the many concerns that have been raised throughout this Inquiry.

3 As survivors, you have described experiencing multiple types of abuse by staff,
4 caregivers, other children, and patients, which is often extensive and persistent. You have
5 also talked about how much of the time this abuse was perpetrated by the very people and
6 institutions that were responsible for keeping you, responsible for caring for you and
7 keeping you safe. You have spoken of not being believed when you told adults about the
8 harm that was happening to you. Others of you shared that you did not know you could
9 complain about what was happening to you or how to do so. Many of you said that not
10 being believed caused you additional trauma and distress.

11 Examples have been shared of practices in the care and protection and Youth Justice
12 system which meant that tamariki and rangatahi did not always have stable placements or
13 feel safe, loved and cared for while in State care. We have heard the impact of abuse in
14 care has, in many cases, been long lasting and wide-ranging, even intergenerational,
15 including the loss of identity and wellbeing where whakapapa and whanaungatanga
16 relationships have not been protected, difficulty in forming trust and relationships, and
17 feelings of shame and guilt.

18 Tāngata whenua, Pacific and tāngata whaikaha shared specific experience in these
19 hearings, including Māori survivors have described racism and discrimination against them
20 in the care and adoption systems and the removal of connection to your culture and
21 whakapapa, resulting in significant impacts on your well-being and in trauma and feelings
22 of isolation for both you and your whānau, hapū and iwi.

23 Pacific survivors have shared their experiences of cultural assimilation through
24 being placed with non-Pacific families, being cut off and denied access to family and
25 culture, and the significant impact on your well-being and resulting in trauma and feelings
26 of isolation for both you and your families.

27 Tāngata whaikaha have described being impacted by a care system that was ableist,
28 that considered you as less than and that deprived you of your human rights and your
29 dignity.

30 In preparing for this hearing, Oranga Tamariki also met with a group of young
31 people who have left care more recently. I wanted to know from them what they felt was
32 important for this Commission to hear. This group asked that I remind the Commission
33 that there are others who have experienced trauma in care outside of those who have
34 courageously given evidence. They spoke of losses similar to those you have heard,

1 including a loss of childhood, the need to grow up more quickly than they were ready, and
2 the impact of being disconnected from their culture and identity.

3 Like those you have heard from, they talked about not being believed and not being
4 supported in the way that they needed. They talked in particular about having emotional
5 and mental health needs which were not recognised and responded to. They wanted people
6 to understand that they carried these impacts into adulthood in everyday ways through their
7 relationships, their carers and their whānau life. Some of these rangatahi are now parents
8 themselves and they spoke of their determination to protect their own tamariki and not pass
9 on the trauma that they have experienced. I want to thank these rangatahi for their courage
10 in sharing these experiences.

11 We have also listened closely to the many expert witnesses the Commission has
12 heard from, their deep knowledge and experience within care, social work practice and
13 research among Māori, Pacific and tāngata whaikaha communities is critical in informing
14 future change.

15 I note in particular the evidence provided by Dr Hyslop and Dr Keddell which
16 emphasised the need for change that is led by iwi and community as multi-layered, properly
17 planned and resourced, and which shifts service responses from risk assessment towards
18 prevention.

19 In particular, I agree with Dr Hyslop's evidence that within a redesigned system
20 where there is an emphasis on support for whānau, there should be a significantly reduced
21 need for care. Care can be achieved without recourse to the State where power is shifted to
22 iwi and community.

23 I also agree with the cautions that Oranga Tamariki cannot and must not step away
24 from those situations where tamariki, tamariki safety requires us to act in order to keep
25 tamariki safe. As Dr Hyslop noted, encouraging whānau responsibility should not be a way
26 of avoiding responsibility.

27 What will we do about it? Lessons have been learned and findings and
28 recommendations from previous reports, reviews and inquiries into the care system have
29 been accepted. Many of these are relevant to the topics for this hearing and bear out the
30 experiences survivors have shared with the Commission. I have referenced these lessons
31 throughout this brief of evidence and summarised the steps Oranga Tamariki has taken in
32 response to the lessons learned.

1 We need to continue to listen to the experiences of survivors, tamariki and whanau
2 and be held accountable so that we can know if our work now and in the future is making
3 the difference we are seeking.

4 While being in care might be very different to what it was 50 or even 20 or five
5 years ago, we still have a long way to go to transform the system so that it is worthy of you.
6 As the Chief Executive of Oranga Tamariki, I am responsible for making this happen and
7 for ensuring that myself and the organisation as a whole is held to account.

8 Throughout the period the Commission is considering, the State has maintained an
9 obligation to provide safe care for tamariki and rangatahi who were unable to be cared for
10 by their parents or whānau in a wide variety of circumstances. Many of the experiences we
11 have heard from survivors are unacceptable and abhorrent by any objective standard in
12 place at the time the events occurred, as well as by present-day standards.

13 It is important to note, however, that the way the State provides care for tamariki
14 and rangatahi has changed significantly over time. So too has our understanding of how we
15 should meet the needs of tamariki and rangatahi, including contributing to their
16 development of a healthy and positive sense of identity. In particular, cultural identity and
17 connection, and how we can better support families to prevent the need for entry into State
18 care in the first place.

19 Some actions which we would describe as harmful and unacceptable today may
20 have been considered acceptable at the time and in the social context in which they
21 occurred. This in no way diminishes the impact these practices have had on those who
22 experienced them.

23 Oranga Tamariki was established on 1 April 2017 and took on the responsibilities of
24 the former Child, Youth and Family department of the Ministry of Social Development and
25 its predecessors.

26 While I firmly believe we are on the right path to transform the statutory care
27 system, I am mindful of the whakapapa of this organisation. Changing the statutory care
28 system is an evolution, and while it is important to note the progress that has been and is
29 being made alongside whānau, partners and the community, we cannot divorce ourselves
30 from our past. We must own these failings and ensure we do not repeat the mistakes and
31 the grave injustices that this Commission has heard about.

32 Before I outline the changes that have been made to the statutory care system and
33 our future direction, I would like to make the following formal acknowledgments on behalf
34 of Oranga Tamariki. As Oranga Tamariki is the Ministry responsible for the provision of

1 the statutory care and protection and Youth Justice system, it is appropriate for me to
2 deliver the following acknowledgments in recognition that we carry the whakapapa and
3 history of our predecessor agencies. It would not be appropriate for me to make formal
4 acknowledgments on behalf of the other agencies or in relation to care settings outside the
5 statutory care and protection and Youth Justice system.

6 For clarity, when I refer to the care and protection system throughout my evidence, I
7 am meaning the system which provided care for tamariki and rangatahi who had a legal
8 status under the relevant child welfare legislation, including those under the guardianship or
9 custody of the Superintendent of the Department of Education or the Director General of
10 Social Welfare.

11 These acknowledgments are based on what we have heard from survivors to date,
12 the lessons we have learned from previous reviews, and what we already know about the
13 historic practices within the statutory care and protection and Youth Justice system between
14 1950 and 1999.

15 In making these acknowledgments, it is important to recognise that every person's
16 experience in State care is unique and it would be wrong to conclude that all who were in
17 care during this period experienced harm or had negative experiences. While this is critical
18 and appropriate to acknowledge those harmful experiences which did occur, it is also
19 important to acknowledge those for whom their experience of State care afforded them the
20 love and support that all children deserve.

21 Acknowledgments.

22 Waitangi Tribunal concessions on behalf of the Crown.

23 I note the concessions that were made on behalf of the Crown at the Waitangi
24 Tribunal urgent inquiry (Wai 2915) in November 2020 and have direct relevance to the
25 experiences of tamariki Māori in State care and their whānau, hapū and iwi during the
26 period 1950 to 1999. These were:

27 Puao-te-Ata-tū, the Crown failed to fully implement Puao-te-Ata-tū in a
28 comprehensive and sustained manner. This failure has impacted outcomes for tamariki
29 Māori, whānau, hapū and iwi. It has undermined Māori trust and confidence in the Crown
30 and undermined confidence in its willingness and ability to address disparities.

31 Structural racism. Structural racism is a feature of the care and protection system
32 which has had adverse effects for tamariki Māori, whānau, hapū and iwi. This has resulted
33 from a series of legislative policy and system settings over time and has detrimentally
34 impacted the relationship between the Māori and the Crown. The structural racism that

1 exists in the care and protection system reflects broader society and has also meant more
2 tamariki being reported to it. The impact of structural racism on outcomes for and
3 experiences of tamariki and their whānau, and on culture and trust more generally, means
4 the Crown should have identified the need to tackle structural racism head-on in the
5 establishment of Oranga Tamariki.

6 Historic under-investment in the care and protection system.

7 That historically Māori perspectives and solutions have been ignored across the care
8 and protection system. To address this, we need to partner and engage with Māori so
9 together we can deliver better outcomes for tamariki Māori.

10 Acknowledgments by Oranga Tamariki.

11 The care and protection system did not always ensure children were safe.

12 I acknowledge that the care and protection system between 1950 and 1999 did not always
13 ensure that children were kept safe from harm. This includes having policies and settings
14 in place which did not always ensure caregivers were properly vetted, trained, supported
15 and monitored.

16 Children experienced abuse and other forms of harm in the care and protection
17 system. I acknowledge that there were children in the care and protection system between
18 1950 and 1999 who experienced abuse and other forms of harm. This included physical,
19 emotional and sexual abuse perpetrated by caregivers, staff and others in care and neglect,
20 including cultural neglect and the failure to fully meet the needs of all children in care.
21 I also acknowledge that the impacts of this abuse and neglect are ongoing for survivors and
22 their families.

23 The care and protection system failed to stop abuse and other forms of abuse.
24 I acknowledge that the care and protection system between 1950 and 1999 did not have
25 adequate policies, processes and practices in place to always detect and facilitate the
26 reporting of abuse and other forms of harm. When abuse and other forms of harm was
27 reported, those reports were not always believed or followed up on. This meant there were
28 incidents that were not appropriately investigated, which contributed to a lack of
29 accountability for those perpetrators and an increased risk of abuse and other forms of harm
30 continuing or reoccurring. This failure also added to the trauma already suffered.

31 The care and protection system did not always support families in order to prevent
32 children coming into care. I acknowledge that the care and protection system between
33 1950 and 1999 did not have the legislative or policy settings to ensure sufficient emphasis
34 was put on considering alternatives before placing children in State care. This included not

1 always providing support to families in need and not always working with extended family,
2 whānau, hapū and iwi to support them to care for their tamariki safely and choosing to
3 place some tamariki with non-kin caregivers rather than exploring family options.

4 Record-keeping was inadequate in the care and protection system. I acknowledge
5 that the care and protection system between 1950 and 1999 did not adequately protect and
6 preserve the records and case files of all children in State care. That has meant that some
7 survivors today are unable to fully understand their experiences as children, including in
8 some cases why they were placed in State care in the first place.

9 The care and protection system negatively impacted tamariki and rangatahi Māori in
10 care. I acknowledge that the care and protection system between 1950 and 1999 failed to
11 consistently and meaningfully ensure the cultural needs of all tamariki Māori were met and
12 did not support mana tamaiti, whakapapa and whanaungatanga. These impacts are ongoing
13 and have impacted whānau, hapū and iwi.

14 The care and protection system negatively impacted Pacific tamariki and rangatahi
15 in care. I acknowledge that the care and protection system between 1950 and 1999 failed to
16 consistently ensure that all Pacific tamariki in care had adequate access to their culture,
17 identity, language and communities, and in doing so, contributed to isolation and cultural
18 disconnection for these individuals. These impacts are ongoing and have also impacted not
19 just those individuals, but the wider aiga as well.

20 The system negatively impacted disabled children and young people in care.
21 I acknowledge that the care and protection system between 1950 and 1999 was ableist, did
22 not always meet the needs of disabled children and children with mental health conditions
23 and that those children often experienced discrimination and unfair treatment as a result of
24 their disability. I also acknowledge that many deaf children in particular were denied their
25 language and their place in community. These impacts are ongoing and have also impacted
26 their families.

27 **MS SCHMIDT-McCLEAVE:** Ngā mihi ki a koe Mr Te Kani. Despite our best planning we are
28 running a little close to time, so what I would like to do now in the 24 minutes that we have
29 left is if you could skip ahead in your brief to page 59 and in the time left outline the future
30 direction of Oranga Tamariki and the lessons learnt.

31 **CHAIR:** In saying that, please know that we have read your briefs of evidence fully so they're
32 not -- although they're not spoken, they are not ignored.

33 **MR TE KANI:** Thank you.

1 **MS SCHMIDT-McCLEAVE:** So I'm looking, Mr Te Kani, under "Lessons learned" at
2 paragraph 253.

3 **MR TE KANI:** Okay.

4 The Commission has identified that it would like to know the extent to which
5 recommendations from previous inquiries and reports have been implemented.

6 As I have addressed throughout my evidence, extensive amendments to policy,
7 practice and legislation have been made since 1950 to the present day in the functions
8 carried out by Oranga Tamariki and its predecessors. These form a response to the
9 recommendations from previous inquiries and reports and part of a broader shift in Oranga
10 Tamariki's practice. Oranga Tamariki has also made changes that I describe in my
11 evidence which reflect the themes of the survivors' evidence that has been given to this
12 Commission.

13 Before addressing these amendments, I recognise these changes have not and cannot
14 address all of the lessons learned and there are still areas in which Oranga Tamariki are
15 committed to improving. Oranga Tamariki will continually re-evaluate its processes and
16 policies and will take further steps to improve outcomes for tamariki across all aspects of
17 care.

18 Amendments to policy, practice and legislation. In September 2021, the Minister
19 for Children announced a new direction for Oranga Tamariki, including a future direction
20 plan to shift Oranga Tamariki to two key roles:

21 A high performing, highly trusted statutory care and protection and Youth Justice
22 agency that works in an integrated way with other agencies and communities, including
23 supporting the social work workforce, and an enabler and coordinator for Māori and
24 communities, to empower them to put in place the support, the solutions and the services
25 they know will work for their people to prevent tamariki coming to the agency's attention.

26 As noted at paragraph 1.70 of the NTP 418 response, the future direction plan is not
27 representative of all work the Crown has underway to transform the care and protection
28 system. There are also important initiatives underway that, while not directly in the scope
29 of the future direction plan, help build the foundations for the wider system change and
30 contribute towards the success of the plan itself. These include work in wider disability
31 sector, a Pacific strategy, a Youth Justice and care residences work programme, and the
32 ongoing work programme and assurance of the Oranga Tamariki Ministerial Advisory
33 Board.

1 Aside from the future direction plan, Oranga Tamariki has a number of other
2 programmes of work underway reflecting lessons it has learned following recent reports,
3 inquiries and reviews. This work includes the enabling communities programme, entering
4 into strategic partnership agreements with iwi and/or Māori organisations, the Oranga
5 Tamariki practice shift, the Oranga Tamariki action plan prepared in accordance with the
6 Children's Act 2014.

7 These changes are accompanied by Oranga Tamariki publishing reports in
8 accordance with section 7AA of the Oranga Tamariki Act.

9 As explained at paragraphs 1.58 to 1.70 of the NTP 418 response, the Oranga
10 Tamariki future direction plan details a set of actions that paves the way for the long-term
11 shifts to bring to life the full spirit and intent of Te Kahu Aroha, and responds to the intent
12 of the Waitangi Tribunal's report's findings and reviews and other reviews since 2019.

13 The future direction plan sets out the future direction of Oranga Tamariki for the
14 next two to five years. This plan was designed to address a number of recommendations
15 outlined in a number of previous reviews into the care and protection system. The plan is
16 designed to achieve better outcomes for tamariki and rangatahi and whānau, empower staff
17 to excel, enable local approaches and lead across the system.

18 **AUDIENCE MEMBER:** Tell the truth.

19 **MR TE KANI:** The future direction plan is informed by the findings and recommendations from
20 the Waitangi Tribunal report (Wai 2915) He Paharakeke, He Rito Whakakikinga
21 Wharuarua; the findings of the Oranga Tamariki Ministerial Advisory Board report,
22 Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa Te Kahu Aroha, September 2021; the
23 feedback of iwi, hapū, whānau and organisations who the Ministerial Advisory Board
24 engaged with in the development of the report above; a number of additional contemporary
25 and historical reviews and inquiries, and the voices of young people through the Oranga
26 Tamariki youth advisory group who provide care experienced perspectives and
27 contributions on the design and implementation of Oranga Tamariki policies, practices and
28 reviews.

29 **MS SCHMIDT-McCLEAVE:** And Mr Te Kani, in your brief then at 263, you set out reference
30 to the 418 response and the documents that articulate the lessons learned by Oranga
31 Tamariki and its predecessors, so the Commissioners have that and you don't need to read
32 that. Just for the Commissioners' information, the rest of Mr Te Kani's brief then touches
33 upon lessons learned and steps taken pre-2019 and lessons learned from reviews between
34 2000 and 2014, and then the lessons learned and steps taken in response to reviews into the

1 care and protection system from 2019 onwards. So perhaps in the remaining time, Mr Te
2 Kani, if you could just read from 274, please.

3 **MR TE KANI:** Thank you. Lessons learned and steps taken in response to reviews into the care
4 and protection system from 2019 onwards.

5 The Hawke's Bay practice review, November 2019. In November 2019, Oranga
6 Tamariki released the findings of the Hawke's Bay practice review and made immediate
7 changes to ensure greater scrutiny on how tamariki and rangatahi are taken into care and to
8 strengthen how the Ministry works with others, in the respects set out in paras 1.22 to 1.23
9 of the NTP 418 response.

10 Oranga Tamariki accepted all the findings and recommendations and apologised to
11 the whānau at the heart of the case. It also made immediate changes to practice to
12 strengthen how it works with others. These included providing the right planning and
13 support for parents and whānau at the earliest opportunity, making sure whānau are more
14 involved. Unless there is a clear need to protect a child or young person from immediate
15 and imminent danger, all custody applications are made on notice so whānau know that's
16 what's happening and are involved in the court's decision.

17 Better training and greater supervision for family group conferences. When staff
18 need to act fast to keep a child or young person safe, every section 78 without notice
19 application will go through additional checks to ensure it is the right action.

20 Oranga Tamariki has subsequently seen a practice change with a substantial
21 reduction in section 78 orders taken for yet to be born and new-born pēpi. This change is
22 equally attributable to the reviews listed above in para 1.23. The number of situations in
23 which a section 78 custody order was sought to achieve safety has continued to reduce
24 since 2017. While pēpi Māori continue to be over-represented in section 78 orders, this is
25 steadily declining, with the percentage of section 78 orders with and without notice for pēpi
26 Māori reducing from 70% in 2017 to 48% in 2021.

27 Ko te Wā Whakawhiti: It's time for change, the Māori-led inquiry, February 2020.
28 Ko te Wā Whakawhiti was a significant and comprehensive report focusing on historical
29 and current cases of State removal of tamariki Māori from their whānau.

30 The review recommended several action points acknowledging that while whānau
31 still need to connect with the Oranga Tamariki system as it currently stands, there is an
32 immediate and urgent need to address how whānau can be best supported to navigate the
33 issues they currently face. Many of the actions identified by the Māori led review align
34 with the work Oranga Tamariki already has underway.

1 Oranga Tamariki published its response to the review in August 2020. Some of the
2 actions identified by the review are about broader systemic change, and these changes are
3 being considered in a range of fora, and the work underway to develop the Oranga
4 Tamariki strategic direction.

5 **MS SCHMIDT-McCLEAVE:** And Mr Te Kani, you then set out in your brief the work done in
6 response to the other reviews, the Office of the Children's Commissioner report of 2020,
7 the report of the Chief Ombudsman and, critically, of course, the inquiry, Waitangi
8 Tribunal inquiry Wai 2915. Your brief then sets out a summary of the other steps taken by
9 Oranga Tamariki in relation to lessons learned and those are also reflected in the response.

10 So before I hand you over -- I'm going to ask you to introduce the other people in
11 your team sitting with you, but before I do that and then hand you over to Ms Coates after
12 the break, if I could just ask you to read your concluding remarks at the end of your brief,
13 please.

14 **MR TE KANI:** To summarise, significant foundations have been put in place since the late 1990s
15 which directly address the themes we have heard throughout hearings to date. I have set
16 out in my evidence the steps already taken and the actions underway to address the
17 concerns raised about the care and protection system and improve outcomes.

18 I am committed to the journey in front of us to transform the system and never
19 repeat the past. I am confident that the future direction of Oranga Tamariki is the right one.
20 However, Oranga Tamariki cannot do this alone and there are opportunities for tamariki,
21 whānau, partners and particularly survivors of abuse in State care to play an active role in
22 directly influencing how we give effect to the change activities that are underway.

23 I welcome their continued insights and those of the Commission as we continue this
24 important work together to transform the care system.

25 Kia koe te Kaihautū o te Kōmihana me koutou katoa ngā Kaikōmihana kei te wātea
26 mai mātau o Oranga Tamariki ki wā koutou pātai. To you, Judge Coral Shaw, Kaihautū
27 and to all your Commissioners, we of Oranga Tamariki avail ourselves for any questions
28 you may have. Tēnā tātou.

29 **CHAIR:** Tēnā koe.

30 **MS SCHMIDT-McCLEAVE:** Tēnā koe, Mr Te Kani. Before we have the break and then
31 embark on those pātai, I'll ask Ms Chase and Mr Whitcombe to introduce themselves.

32 **MS CHASE:** Ngā mihi ki a koutou katoa. Ko wai au? I rere kau mai te awanui mai te kāhui
33 maunga ki Tangaroa ko au te awa ko te awa ko au. Ko Frana Chase tōku ingoa nō Ngāti
34 Tūwharetoa, Ngāti Hauā o Whanganui ōku. Kia ora, I'm Frana Chase, I'm the Director of

1 Transformation Te Oranga o te Whānau and I have brown hair and blue eyes and I'm
2 slightly greying, and I am wearing a taonga that my seven tamariki gave to me and my
3 daughter's Doc Martens, kia ora.

4 **MR WHITCOMBE:** Mōrena koutou, ko wai au? Ko Tangi-te-keo tōku moana(sic), ko
5 Whanganui a Tara tōku moana, ko Egmont tōku waka(sic), he tauwi ahau, ko Peter
6 Whitcombe taku ingoa. Kia ora, I'm Peter Whitcombe. I'm the Tumu Tauwhiro Chief
7 Social Worker for Oranga Tamariki, and as Chief Social Worker, it is my role to be an
8 authority, a leader on social work practice. It's to lead practice for the organisation and it's
9 to be a voice of social work.

10 A description of me is that I'm a tall Pākehā male, I've got brown hair that is very
11 much greying. I've got a moustache, I'm in my early 40s and I'm wearing a blue shirt and a
12 blue tie. Kia ora.

13 **MS SCHMIDT-McCLEAVE:** Kia ora, ngā mihi ki a koutou. We have finished a little early,
14 Madam Chair.

15 **CHAIR:** That's remarkable and to be commended. We will take, if that's all right with you, Ms
16 Coates, we'll take the morning adjournment, 15 minutes now and come back for questions.
17 So if we can all be here back in the room by 20 to 11. Kia ora.

18 **Adjournment from 10.25 am to 10.42 am**

19 **CHAIR:** Welcome back, everybody. Kei a koe, Ms Coates.

20 **QUESTIONING BY MS COATES:** Tēnā koe, Mr Te Kani. You said in your opening statement
21 that you've been in your role since the end of July last year; is that correct?

22 **MR TE KANI:** Āe.

23 **MS COATES:** In my experience, and this was, I understand, some of the sentiment felt by some
24 last week, one of the frustrating things that can arise when talking to faces of the Crown is a
25 lack of institutional memory, because for people like yourself, your knowledge is confined
26 to your experience, which is just over a year, but for survivors, what you represent is a
27 continuous power structure that has existed for over 180 years. Do you have sympathy for
28 that frustration?

29 **MR TE KANI:** I do.

30 **MS COATES:** Would you be able to give survivors comfort at the outset that although you've
31 only been at Oranga Tamariki a relatively short time, that you and your team of staff are
32 here to answer for Oranga Tamariki, including its predecessors and past staff?

33 **MR TE KANI:** Yes, I can.

1 **MS COATES:** So just in relation to that, in terms of the approach as we've already discussed, I'll
2 direct my questions to you, but feel free where appropriate to draw on your staff as you see
3 fit.

4 **MR TE KANI:** Thank you.

5 **MS COATES:** Just by way of road map in terms of some of the topics that I intend to cover with
6 you, that includes the disproportionate number of Māori, Pasifika and disability in care,
7 some of the causative and contributive elements of that, including talking about
8 colonisation and structural racism, and I also want to talk to you about Te Tiriti o Waitangi
9 and the transformational change that's required. My colleagues will pick up more in respect
10 of the nature and extent of abuse that occurred in care, but just by way of heads up, that's
11 some of the topics that I wish to ask you questions on today.

12 In your brief of evidence, you recognise the importance of data to the work of
13 Oranga Tamariki, don't you?

14 **MR TE KANI:** Yes.

15 **MS COATES:** Why is data so important?

16 **MR TE KANI:** Three important perspectives for me. The first is it helps us ground truth, what
17 we know about who we are working with, so that's important.

18 The second is for the work, the mahi that we do, the information and data we
19 receive is, in my view, a taonga, so not only is it information that we have to seriously
20 consider, the information we have, we also have to be quite careful about as kaitiaki for that
21 taonga as well.

22 And the third is without the data and information, there is no way, for us or the
23 system, to learn and improve on our practice.

24 **MS COATES:** So it helps you make informed decisions?

25 **MR TE KANI:** It helps us make informed decisions, that's a fair statement to make, yes.

26 **MS COATES:** There have been a number of reports that have identified limitations in Oranga
27 Tamariki's data collection practices in relation to the care system, haven't there?

28 **MR TE KANI:** Yes, there have been.

29 **MS COATES:** Those report include the Waitangi Tribunal report, the Hāhā-uri, Hāhā-tea report,
30 the Martin Jenkins report, just by way of example, is that right?

31 **MR TE KANI:** Yes.

32 **MS COATES:** You'd accept the limitations and shortcomings that have been pointed in those
33 reports?

34 **MR TE KANI:** I acknowledge those, yes.

- 1 **MS COATES:** So you'd certainly acknowledge that in the time period that the Commission is
2 considering, so from 1950 to 1999, that data collection was inadequate during that period?
- 3 **MR TE KANI:** I acknowledge that, yes.
- 4 **MS COATES:** In terms of what we do know now, what's the current percentage of Māori in State
5 care.
- 6 **MR TE KANI:** Currently, as of today, it's approximately 79%.
- 7 **MS COATES:** And that has been a long state of affairs, that disproportionate number of Māori in
8 State care, hasn't it?
- 9 **MR TE KANI:** Yeah, that is correct.
- 10 **MS COATES:** What is the current known percentage of Pasifika peoples in care?
- 11 **MR TE KANI:** I want to make sure I get the correct number.
12 Approximately 12%.
- 13 **MS COATES:** I saw on the website that there was a breakdown between those who are Māori and
14 Pacific and Pacific, and on the website, I may have looked at it late last night, but it said
15 Pacific was 6% but that those who were Māori and Pacific were about 11%. Does that
16 sound about right?
- 17 **MR TE KANI:** That does sound about right, yes.
- 18 **MS COATES:** So if we were looking at the total number of those that identify as Pasifika in care,
19 that would be higher than 11%, wouldn't it, it would be more like 17%, does that sound
20 about right?
- 21 **MS CHASE:** Can you just describe how you've --
- 22 **MS COATES:** So Pacific 6% and then Māori and Pacific 11%, I've just added those two
23 numbers.
- 24 **MS CHASE:** So if you're Pacific and Māori you'll be counted as Pacific Māori and it's not the two
25 added together?
- 26 **MS COATES:** But if we were looking at those who had whakapapa to Pacific peoples, that would
27 be about 17%, so you would add those two together, wouldn't you, because they're Pasifika
28 as well. So there would be some overlap there.
- 29 **MS CHASE:** Yeah.
- 30 **MS COATES:** So there's clearly a disproportionate number of Pasifika peoples in care as well as
31 Māori in care, would you accept that?
- 32 **MS CHASE:** Āe.
- 33 **MR TE KANI:** Yes.

1 **MS COATES:** Would you agree with the Waitangi Tribunal that one of the data limitations that
2 has at least traditionally been the case is insufficient, patchy and poor ethnicity data?

3 **MR TE KANI:** Yes.

4 **MS COATES:** And I think in the NTP 418 statement at 18.27, and we don't need to go there, but
5 it says that in that statement, Oranga Tamariki indicated there is no breakdown in the
6 ethnicity of children in care prior to 2001. Does that -- is that correct? I'm happy to take
7 you to that statement if that would be useful.

8 **MR TE KANI:** It might pay to have one of our experts that's not currently up here to speak to
9 that. On the data questions, Ms Coates, it might pay for one of our experts to be here to
10 answer those questions.

11 **MS COATES:** Happy for that to occur.

12 **MR TE KANI:** Kei te pai.

13 **CHAIR:** Yes.

14 **MS COATES:** Tēnā koe. Is it Ms Attrill? Aroha mai.

15 **MS AIOLUPOTEA-AIONO:** Aiolupotea.

16 **MS COATES:** Aiolupotea, aroha mai. Tēnā koe.

17 **MS AIOLUPOTEA-AIONO:** Tēnā koe.

18 **CHAIR:** Could you just describe yourself for those who cannot see?

19 **MS AIOLUPOTEA-AIONO:** Tēnā koe, talofa lava, talofa i lou susuga le afioga le Komesina
20 Judge Shaw faapea le afioga o le Aliimuamua faapea le mamalu o le Commissioner, talofa
21 lava. (Welcome, welcome to the Commissioner Judge Shaw and Aliimuamua and the
22 Commissioner. Welcome). My name is Aiolupotea Sina Aiono, I am a middle-aged
23 Samoan female. I have black hair, brown skin, brown eyes, I'm wearing a green top with a
24 black jacket and I'm very short. Kia ora.

25 **MS COATES:** Is it appropriate for me to call you Aiolupotea?

26 **MS AIOLUPOTEA-AIONO:** Yes.

27 **MS COATES:** I'm looking at trying to establish some baseline data before we proceed. The
28 question that I just asked Mr Te Kani is in relation to ethnicity data prior to 2001, and I
29 understand that in the NTP 418 response, and if we could bring this up that would be great,
30 and that's at document number ORT -- yes, that's it, and for the record 0112365 at 18.27. It
31 says there that prior to 2000, the ethnic breakdown of children was not available in a
32 structured data format and there is no available information on the breakdown and ethnicity
33 of children in care prior to 2001. Is that correct?

34 **MS AIOLUPOTEA-AIONO:** Correct.

1 **MS COATES:** Why is that breakdown not available?

2 **MS AIOLUPOTEA-AIONO:** I think you may see in the body of evidence we talk about our
3 current CYRAS system and the actions that we have under the future direction plan to
4 enhance that and make sure we've got a better working system where we can gather data
5 from our local level, regional level up to national. At the moment where the records are,
6 you'd need to go through every individual file, so that is a work in progress that we're trying
7 to do now.

8 **MS COATES:** So there is ethnicity data that would have been recorded in a historical sense that's
9 just not captured in any -- or that work hasn't been done to extract that to give a full picture
10 of what that may have looked like?

11 **MS AIOLUPOTEA-AIONO:** Correct, it's not easily accessible.

12 **MS COATES:** Is that work being done now, the historical work to go back and look at what that
13 ethnicity breakdown may have been, or is it just we're looking at future practices going
14 forward?

15 **MS AIOLUPOTEA-AIONO:** Yeah, I'd need to check on that, I can't say for sure. My
16 colleagues might be able to answer that question.

17 **MS COATES:** My question's really just around is there any work being done to rectify that
18 historical picture or is it more just a focus on forward looking data collection practices?

19 **MR TE KANI:** I can't answer your question right now, apologies. We'll have to get you the
20 answer.

21 **MS COATES:** Ka pai, we'll come back to that if you can look at that perhaps in the break or
22 overnight.

23 One of the things that was identified in the Hāhā-uri, Hāhā-tea report, are you
24 familiar with that report?

25 **MR TE KANI:** Yes, I am.

26 **MS COATES:** In that report, the authors identified that justice did collect ethnicity statistics but
27 the care system didn't do that, so it was available possibly if that had been a priority, but it
28 just wasn't collected or prioritised, was it?

29 **MR TE KANI:** For my understanding of historical practices then, a lot was reliant on social
30 workers of the time collating and collecting that information. It was variable practice
31 across the sites, very manual, and oftentimes, as reflected in the report you're referring to,
32 relied a lot on individual judgments of people collating that information and how they
33 captured it.

34 **MS COATES:** But there's no systemic picture of what care looked like during that time, is there?

- 1 **MR TE KANI:** No.
- 2 **MS COATES:** That means that -- that result of that poor data collection means that we'll never
3 know the true number of Māori and Pacific peoples in care, is that right?
- 4 **MR TE KANI:** Correct, yeah.
- 5 **AUDIENCE MEMBER:** That was the purpose.
- 6 **MS COATES:** In addition to insufficient historical ethnicity data, there's also an issue with the
7 collection of data in relation to disabled and neurodiverse tamariki in care, isn't there?
- 8 **MR TE KANI:** Yes.
- 9 **MS COATES:** That issue is both a historic and a contemporary one, isn't it?
- 10 **MR TE KANI:** And current as well, yes.
- 11 **MS COATES:** That also means that the Commission is unlikely to be able to draw conclusions
12 about not only the number of children or people in care that are Māori, Pacific and disabled,
13 but also unable to draw firm conclusion about the number that were abused in care that
14 relate to those different cohorts, would you agree with that?
- 15 **MR TE KANI:** Yeah, I acknowledge that, yes.
- 16 **MS COATES:** I'm going to move on to some questions around the causative reasons for that
17 disparity and people coming into care. Are you familiar with the Waitangi Tribunal He
18 Paharakeke report?
- 19 **MR TE KANI:** Ae.
- 20 **MS COATES:** That was an inquiry into the disproportionate number of Māori in State care,
21 wasn't it?
- 22 **MR TE KANI:** Yes, it was.
- 23 **MS COATES:** At paragraph (xiv) of that report, and we don't need to go there, but that report's at
24 MSC008144, the Waitangi Tribunal stated:
- 25 "The Crown accepted that in addition to contemporary socio-economic factors, the
26 broader forces of colonisation and structural racism and the ongoing effect of historical
27 injustices on iwi, hapū and whānau have been significant contributing factors to the
28 disparity."
- 29 Would you affirm that concession?
- 30 **MR TE KANI:** I can affirm that, yes.
- 31 **MS COATES:** Are you familiar with the late Moana Jackson?
- 32 **MR TE KANI:** I am indeed.
- 33 **MS COATES:** And you would accept that he's a -- or was a pre-eminent Māori legal scholar with
34 particular expertise in the subject matter of colonisation?

1 **MR TE KANI:** Ae.

2 **MS COATES:** Are you familiar generally with the brief of evidence that he's given to this
3 Commission?

4 **MR TE KANI:** I have read his brief, yes.

5 **MS COATES:** If we can bring up his brief, that's at witness number 1235001, he made a number
6 of observations that I just wanted to draw your attention to.

7 **MR TE KANI:** Ka pai.

8 **MS COATES:** So at paragraph 28 of his brief, and that's at page 004, he says:

9 "Overrepresentation of Māori in care is unavoidably linked to the history of
10 colonisation and the failure of successive governments to honour Te Tiriti o Waitangi."

11 Given the concession that you've already, or the Crown has already made, would
12 you agree with that statement?

13 **MR TE KANI:** I agree with the statement that this process offers the opportunity to grapple with
14 why Māori are so over-represented. I acknowledge that. What I further acknowledge is,
15 without a doubt, with absolute clarity, there is a connection between what we conceded as
16 the structural racism drivers in the Waitangi Tribunal towards what we understand to be the
17 disproportionate number of tamariki Māori coming into care.

18 **MS COATES:** I understand in the tribunal, or at least that's how the tribunal reported it, that the
19 Crown also accepted that colonisation is part of that. Would you acknowledge that?

20 **MR TE KANI:** I'd acknowledge that in the Crown concession, yes.

21 **MS COATES:** Moana Jackson, at paragraph 30 of his evidence, goes on to talk about how
22 reckoning with colonisation and acknowledging the constitutional implications of that
23 reckoning will help develop policies to care,-- help better develop policies to care for
24 children and vulnerable peoples. Do you agree that such a reckoning, with some of the
25 causative impacts of the disparity that we see, is that necessary to help develop good
26 policy?

27 **MR TE KANI:** What I would say is understanding those implications from the effect of
28 colonisation on whānau, hapū and iwi across the system will help us better develop policies
29 for the care of children.

30 **MS COATES:** So understanding the implications of colonisation is important and helpful?

31 **MR TE KANI:** Yes, across the system, yes.

32 **MS COATES:** Across the system, yes.

33 In terms of a reckoning or the reckoning that Moana suggests needs to occur, are
34 you aware of what went into informing the concession that was made? Is that just an

1 obvious point, or did Oranga Tamariki undertake work to inform that particular
2 concession? How did that come about?

3 **MR TE KANI:** So the concession from the Crown, because it was agreed to by the Crown in the
4 Waitangi Tribunal hearing in 2020, was informed by data in the evidence, obviously, and
5 then in the clear disparity of tamariki Māori in care. It was informed by the reviews and
6 inquiries prior to the Tribunal, of course, and those had already been reported on in terms of
7 the number of tamariki Māori coming into care in such an acute way over a short period of
8 time, so there was practice evidence which led to that position from the Crown. But there
9 was also research that was done, understanding from the Crown's perspective the failure to
10 implement Puaote-Atatū, which also helped inform that Crown concession.

11 **MS COATES:** I appreciate this is probably a tricky question, but can you articulate succinctly
12 some of the impacts of colonisation that you think have contributed towards Māori being
13 disproportionately represented in care?

14 **MR TE KANI:** What I can speak to from my time with being the Chief Executive of Oranga
15 Tamariki to now is the reflections and work we are doing with whānau who are part of the
16 system now, whose parents and grandparents had come through previous iterations of the
17 care and protection system over decades, and what that reinforces is the intergenerational
18 trauma for not just those whānau, but whānau as part of hapū and that hapū is part of that
19 iwi. So that is clear today, those impacts for those whānau who have intergenerational
20 experiences in the system, in the care and protection system.

21 **MS COATES:** But you would acknowledge that the colonisation point relates more broadly than
22 just the care in system but it relates more generally to a transfer of land, power, assets out
23 of the hands of Māori?

24 **MR TE KANI:** Yes, I acknowledge that, yes.

25 **MS COATES:** One of the points made by Moana Jackson at paragraph 44 of his statement is:

26 "Taking away the land from people who live as people of the land is not simply
27 some passing land loss. It is an ongoing rupture that fractures the essential spiritual and
28 practical ties to identity and belonging. A people cannot be tangata whenua if they have no
29 whenua to be tangata upon."

30 Do you think that the transfer of land that happened en masse in Aotearoa was
31 ultimately one of the bigger historical causes of poverty, urbanisation, the loss of culture
32 and identity and the severing and disconnection of Māori to a land base?

33 **MR TE KANI:** I acknowledge that, that's well established.

1 **MS COATES:** Would you also acknowledge - so Moana Jackson talks about colonisation as
2 being a process by which people are dispossessed of their lands, lives and power. So- in
3 terms of that dispossession of power, would you also acknowledge that Māori, it's also
4 well -established, that Māori have, as a result of the colonisation process, lost power to be
5 self -determining over their own lives?

6 **MR TE KANI:** I wouldn't make that statement. I couldn't make that statement on behalf of
7 Māori. What's clear from the position I'm in is that we operate within a structure where
8 there's clear ways of moving forward that shifts decision-maker and authority closer to
9 whānau, hapū and communities.

10 **MS COATES:** Ka pai. I will get to what you're doing in the current space, I'm more looking at
11 the causative impacts of --

12 **MR TE KANI:** Understand.

13 **MS COATES:** Of how we got to where we are. And at paragraph 53 of Moana Jackson's
14 statement, he says:

15 "They, the Crown, assumed the authority to take Māori children from their whānau.
16 That action can equally and properly be described as cultural genocide."

17 Do you have a comment on that statement?

18 **MR TE KANI:** I have no comment on that statement.

19 **MS COATES:** Would you agree that the Crown has assumed the authority to take Māori children
20 from their whānau?

21 **MR TE KANI:** It's clear to me the Crown has authority to use, which includes at times taking
22 tamariki Māori into State care, but not only tamariki Māori.

23 **MS COATES:** And under the current constitutional and legal structure, Māori do not have the
24 power to prevent that, do they?

25 **MR TE KANI:** Not technically correct. What is under the current legislative framework and
26 constitutional structure, in the way in which we work together, Māori have, with the Crown
27 working in partnership and getting decision making and resourcing closer to whānau,
28 working in the prevention of tamariki coming into care, there's opportunity there.

29 **MS COATES:** But you would acknowledge that if we look at the time period that we're certainly
30 considering, Māori did not have that power and authority, did they?

31 **MR TE KANI:** What I acknowledge is that when the Crown between 1950 and 1999 made the
32 decision to take a tamariki Māori or any tamariki into care, that's the decision they made.

33 **MS COATES:** And Māori could not prevent that?

34 **MR TE KANI:** Not that I could see.

1 **MS COATES:** At paragraph 48 of his statement, Moana Jackson talks about how the presumption
2 of the right to take children from their whānau was derived from the same racist
3 presumptions of European superiority that marked colonisation as a whole and the attendant
4 belief that indigenous children needed to be saved, civilised and protected from themselves.

5 Do you have anything to comment on in relation to that particular statement?

6 **MR TE KANI:** No, no comment.

7 **MS COATES:** But you'd agree that Oranga Tamariki presumes the right to take children from
8 their whānau?

9 **MR TE KANI:** Oranga Tamariki has by default a statutory framework which leads to the taking
10 of tamariki into care.

11 **MS COATES:** Would you agree that colonisation is not just a historical force, but that it's
12 something we need to consistently reflect on and grapple with?

13 **MR TE KANI:** Yes.

14 **MS COATES:** If colonisation is one of the causative impacts that contribute to Māori coming into
15 care, to change the number and proportion of Māori coming into care, does it follow that
16 we need to address the cause, that cause, and some of the impacts that follow from that
17 cause?

18 **MR TE KANI:** I agree with that.

19 **MS COATES:** So put that in another way, if colonisation is part of the cause, is decolonisation
20 part of the solution?

21 **MR TE KANI:** To respond to that, my view is if the Crown can use its power to take a tamariki
22 into care, it can use its power to place the tamariki back with whānau.

23 **MS COATES:** That doesn't quite answer my question, Mr Te Kani.

24 **MR TE KANI:** Sorry, can you ask it again.

25 **MS COATES:** If colonisation is part of the cause and its impacts, is decolonisation part of the
26 solution?

27 **MR TE KANI:** No comment.

28 **MS COATES:** Would you care to comment?

29 **MS CHASE:** I'd probably just say that I only can talk for future state and what we're doing now,
30 but part of the partnering with whānau, hapū and iwi are around them caring for their own
31 tamariki and preventing tamariki coming into care is to develop that with whānau, hapū and
32 iwi, so from the ground up. So I'd say yes, that it is part of a decolonisation process that
33 needs to happen to ensure that to the best of our ability, that whānau, hapū and iwi are able
34 to set their own rangatiratanga.

1 **MS COATES:** Kia ora. I understand Mr Whitcombe also had a comment on that particular
2 question?

3 **CHAIR:** I'm happy for you to deliver your views from there.

4 **MR WHITCOMBE:** Kia ora, I wanted to make these statements as a tauwi practitioner and with
5 humility and the responsibility that that,-- that I bring into this conversation. I also wanted
6 to bring that social work perspective.

7 The impact in history of colonisation and the generations of that is felt so
8 significantly here in this country. The taking of land, the cultural practices or the stripping
9 away of cultural practices, the taking away of language, of resources, of splitting of
10 community and whānau structures, of incarceration through western oriented justice system
11 and the loss of whakapapa knowledge, those things are far reaching and they are felt today.

12 Those things absolutely have resulted in poverty, in disconnection, and it is not just
13 poverty through economic means that I am talking about. It's the generational trauma and
14 Chappie Te Kani spoke of the parents and the grandparents.

15 I want to be clear that there are strong bodies of knowledge around social work that
16 are there to push against the oppressive structures and we talk in social work language- and,
17 forgive me, but we talk about the macro, we talk about the system and the structures and
18 that is the space that I work in. We also know that social work seeks to enable
19 self- -determination and concepts of emancipation.

20 So, through that generational trauma, we know that there is overrepresentation
21 across a range of social indicators: poorer health outcomes, mental health outcomes, lesser
22 economic resources, poorer educational outcomes, poorer housing outcomes, justice
23 outcomes, family violence, drugs and alcohol, and inequity compounds inequity. These
24 social factors and the inequity of these social factors, the stresses of those give rise to a
25 space where child harm and abuse does occur, or can occur.

26 I would also say that generational trauma is not just a Māori issue, but I want to
27 frame it in terms of the colonisation history. You add into that a layer of a foster care
28 system that was bedded originally through orphanages, essentially a western foster care
29 system that preferenced non-kin or stranger care, it was out of step, and it was
30 individualistic and it didn't meet the needs of tamariki Māori. Essentially a child rescue
31 model.

32 So, I wanted to make those comments, I believe that there are many solutions and
33 I know that you will point us towards what we see in the future in terms of those solutions,
34 but there are many things that we're doing in the here and now to push against those things.

1 **MS COATES:** If we took a not uncommon profile of one of our survivors, so for example a
2 Māori Pasifika child, a third child born to a young mother, parents met in drug and alcohol
3 rehabilitation, third generation of welfare on both sides of the whānau, dad spent a lot of his
4 adult life in and out of jail, had a tough start, involved in gangs, that child is taken away
5 from that whānau and taken to a Pākehā whānau where they're abused, what do you think a
6 system responding well to that scenario would look like and be comprised of?

7 **MR TE KANI:** I'm very happy to answer that question. I'm going to ask Nicolette and Peter to
8 switch out with Frana and Sina to answer that question.

9 **MR WHITCOMBE:** Kia ora, and just to summarise the question, what I heard you asking was
10 around a whānau where there were drug and alcohol issues, a whānau Māori family and the
11 child had been brought into Pākehā care and within that Pākehā care abuse had occurred?

12 **MS COATES:** Yes, that's right, and what I'm keen to explore with you or to get your thoughts on
13 is ideal systems thinking. What does that look like in relation to the situation that we're in
14 now where that scenario plays itself out and where that profile is not an uncommon one?

15 **MR WHITCOMBE:** Yeah, so thank you for that. The starting point from my perspective would
16 have been around how we involve whānau, hapū, iwi in the decision making process and
17 there are a range of ways from a practice perspective that we can do that, the relationship
18 that the social worker will have with the family, the hui whānau processes, which is family
19 decision making, and family group conference processes that allow family decision
20 making.

21 I want to make a clear statement that appropriate practice calls us to preserve the
22 family and preserve the family unit. First and foremost, children have a right to be with
23 their parents, and it is there, if we can support that family unit in terms of safety and in
24 terms of well-being, then we know that the tamariki will have the best outcomes, and
25 investing in the right services and supports to be available for that whānau to achieve that.

26 In the instance that you refer to, it's around drug and alcohol issues, but, typically,
27 for many whānau, if there are drug and alcohol issues, that doesn't sit in isolation either.
28 Usually there are things that sit behind that and how is it that the whānau are supported in
29 the right ways to make the change.

30 I want to say that it's not just about Oranga Tamariki's social work approach. How
31 we invest and invest in by Māori, for Māori, approaches, how we ensure that those services
32 are there with the right cultural responses, engaging in a way where it doesn't need to be
33 Oranga Tamariki but it can be a community organisation, certainly that can help from a
34 power differential perspective.

1 **MS COATES:** Would you accept that Oranga Tamariki is in part the ambulance at the bottom of
2 a cliff and that there needs to be a whole of government response to ultimately what we're
3 seeing playing itself out in the disproportionate number of Māori that are in care, and
4 Pacific Islanders as well?

5 **MR TE KANI:** Yeah, Oranga Tamariki has, by the nature of work, been, to use your expression,
6 the ambulance at the bottom of the cliff. However, over the last three years, we as an
7 organisation have been moving towards that prevention, early intervention, engagement
8 part of the system. It requires further investment, it requires further work, but we're
9 moving in that trajectory.

10 To come back to your original question, Ms Coates, part of answering your question
11 is a recognition that, previously, Oranga Tamariki would have been in the centre of that
12 decision making for that whānau. Ultimately, where we want to get to is shifting that
13 process closer to the whānau where we're not in the centre. So what that means practically
14 is more work with our partners, more work with hapū, more work with iwi, all those Māori
15 providers, prior to coming to Oranga Tamariki for an intervention. So that work, that
16 whānau assessment, the recognition of the need for that whānau, the recognition of the
17 needs for that tamariki are clearly identified and supported and, as an organisation, shifting
18 our role towards enabling that.

19 **MS COATES:** Do you think part of the answer is having a more systemic and joined-up approach
20 with other government agencies?

21 **MR TE KANI:** Definitely the starting point has to be a shared view and approach to that whānau
22 and tamariki. A number of agencies, a number of entities, not just public sector agencies
23 but also non-public- sector agencies have an interaction and relationship with the whānau in
24 some shape or form. So a way of us connecting to give us - that- focuses in on the whānau,
25 the tamariki's best interests, I agree, is what's required.

26 **MS COATES:** Ms Dickson, did you want to make comment? You look like you were keen to do
27 so.

28 **MS DICKSON:** Kia ora koutou, if I could just take a moment to introduce myself first. So ko
29 Nicolette Dickson tōku ingoa, I'm the Deputy Chief Executive Quality Practice and
30 Experiences. I'm a Pākehā New Zealander, with blonde shoulder length hair, late 40s,
31 wearing a multicoloured top and a black jacket.

32 In responding to the questions that you've asked, and I think adding a little bit to
33 what Chappie and Peter have said, it's how,-- who holds the relationship with the whānau

1 that is going to be one of trust, and how do the agencies come behind that relationship to
2 address the very real needs that tamariki and whānau have.

3 So, it may not be, and it often will not be, an Oranga Tamariki social worker who
4 holds that relationship of trust, it will be someone from the community that that whānau
5 belongs to. But then what we need to have as agencies sitting behind that response is the
6 levers, the resources, the will to then meet those needs, and I would add, to understand the
7 aspirations of that whānau, so it's not just our perspective of what needs to change.

8 One of the things we hear a lot about whānau is that we see them only in the
9 incident of risk that's reported to us, so we only see the family violence incident or the drug
10 and alcohol issue, we don't see dad getting up early to do homework with a child or get
11 them to sports, or play with them when they get home. So, what is it, who can tell that
12 story, who can understand that story? The whānau, and how do we as a system wraparound
13 to meet those needs and to help realise those aspiration.

14 **MS COATES:** Kia ora, and do you think one of the traditional barriers to that happening
15 effectively is the very siloed way in which the Crown sees their individual responsibilities
16 and it's not a whole of system response to what that family needs?

17 **MS DICKSON:** I do believe that's certainly one of the challenges our social workers talk about a
18 lot is the ability to be joined up to be able to leverage the full set of supports available
19 through Crown agencies.

20 **MS COATES:** And, is having that more systemic and joinedup approach the intention behind the
21 Oranga Tamariki action plan that was introduced earlier this year?

22 **MS DICKSON:** It certainly is, and so that's a pretty significant commitment that's never in my
23 time as a practitioner happened before, that you have Crown agencies making a collective
24 commitment to prioritising the needs of tamariki at risk in care and leaving care, so that's
25 pretty significant.

26 Obviously, what needs to come from that commitment is some shared
27 understanding of the priority actions to work on and the shared approach to progressing
28 those actions, which is the work that's underway now.

29 **MS COATES:** So, in terms of that plan and the way that it connects agencies up, does it do,- are
30 you able to explain it a little bit more? Because on a reading of it, it still seemed to be we
31 will know what each other is doing as opposed to actually connecting- up in a meaningful
32 way. Are you able to, or someone able to talk to that?

33 **MR TE KANI:** I can speak to that. So as noted in our documentation, the Oranga Tamariki
34 action plan comes from the Children's Act 2014, so that's the platform from which it is

1 built. What that means is it's more than just a commitment. So now that it's been agreed to
2 by Cabinet, all of the chief executives have a positive duty under the Oranga Tamariki
3 action plan towards that identified cohort as stipulated in the action plan. So --

4 **CHAIR:** Can I just interrupt, just for the public's view, which agencies, which Crown agencies are
5 you talking about?

6 **MR TE KANI:** So the agencies as part of the children's,- the Oranga Tamariki action plan is the
7 Ministry of Social Development, Ministry for Education, the Ministry of Justice, the
8 Ministry of Housing and Urban Development, now the health system agencies, and the
9 Police,- Department of Corrections as well.

10 **CHAIR:** Whaikaha?

11 **MR TE KANI:** And will be tangata Whaikaha.

12 **CHAIR:** And will be when they're up and running?

13 **MR TE KANI:** Correct, yes.

14 **MS COATES:** So, in terms of that,-- and that only was implemented in March this year, wasn't it?

15 **MR TE KANI:** No, much more recently than that. I would say July this year.

16 **MS COATES:** In terms of what it substantively does, how does it connect up those agencies in a
17 way that will meaningfully be felt by whānau?

18 **MR TE KANI:** Yeah, so in terms of how the agencies work together and how it's governed, that's
19 governed by the Social Wellbeing Board, which is chaired by the Public Service
20 Commissioner who you'll be talking to on Friday. That board is accountable to the Child
21 and Youth Wellbeing Strategy group of ministers. The reason I make that point is the
22 accountability on chief executives as part of the Oranga Tamariki action plan is to report to
23 Cabinet on the progress we're making against the plan.

24 The plan highlights a couple of things. First, under the Children's Act, the umbrella
25 for the plan is very wide. It's close to 117,000 tamariki, that's my understanding. What we
26 are doing with the first iteration of the Oranga Tamariki action plan is focusing in on the
27 cohort of tamariki that's currently in the care of Oranga Tamariki. And then what the
28 agencies are committed to as part of the action plan is two things. First, understanding
29 what, through this process we're calling needs assessments, understanding the needs and
30 requirements of each of our tamariki in that cohort as part of the agencies, and then
31 committing to tangible actions and progress to meet those needs as stipulated in the plan.

32 So a tangible example from the Ministry of Education is support for tamariki in
33 residences.

34 **COMMISSIONER ERUETI:** Mr Te Kani, who's overseeing all this, is it a Cabinet Committee?

1 **MR TE KANI:** The Child and Youth Wellbeing Strategy Committee which is chaired by the
2 prime minister is the ministerial governance group and the chief executives governance
3 board is the Social Wellbeing Board chaired by the Public Service Commissioner.

4 **MS COATES:** And you're responsible for overseeing that particular plan as well?

5 **MR TE KANI:** We are the agency driving the delivery of the action plan.

6 **MS COATES:** What practically is Oranga Tamariki going to do differently as a result of that
7 plan?

8 **MR TE KANI:** What's really important from an Oranga Tamariki perspective with the action plan
9 is bringing absolute clarity to those agencies in the system about what's required to meet the
10 needs of that particular cohort with whom we're all collectively working with, and that's not
11 clearly articulated or understood across those agencies for our particular cohort.

12 It comes back to Nicolette's point that she made earlier, the feedback we often hear
13 from our frontline social workers, but also our frontline partners, is a, my words, a need for
14 a better understanding across those agencies on how we respond or work or meet the needs
15 identified for a particular cohort.

16 **COMMISSIONER ALOFIVAE:** Mr Te Kani, can I just unpack that a little bit for our survivors
17 that are in the room and who are listening online. So, 117,000 children, focusing first on
18 the 6,000 that are currently in care? It's about 6 --

19 **MR TE KANI:** It's about 4,500.

20 **COMMISSIONER ALOFIVAE:** So focusing on that 4,000, and then you're dealing to their
21 individual needs, so it's a wide age group from zero to 18?

22 **MR TE KANI:** Yes.

23 **COMMISSIONER ALOFIVAE:** So easier for the top end if the kids that are transitioning out of
24 care, if it's a housing issue, but for the kids that are in the whānau groups that might require
25 bigger houses to house the whole whānau to address the holistic view, I just -- just a point
26 of clarification.

27 **MR TE KANI:** Yes.

28 **COMMISSIONER ALOFIVAE:** It's one thing to deal with the child's issues, but it's the whānau
29 issues that are often the whole package.

30 **MR TE KANI:** I agree.

31 **COMMISSIONER ALOFIVAE:** Is that what this plan is intending to do?

32 **MR TE KANI:** Yes. So take your specific example about housing, so if we think about the
33 cohort of tamariki that are, in our words, aging out of care, so what's important from our
34 perspective is that each tamariki has a clear plan for that transition. And that transition isn't

1 just on the shoulders of Oranga Tamariki, it's housing, it's pathways to -- we want every
2 young person aging out, for example, to have access to employment or training, so that is
3 the Ministry of Social Development. We want to understand where their current academic
4 profile is at, so that's the Ministry of Education. So if we take that specific example, what
5 the action plan does is brings to a single focus how we think about that particular -- in that
6 example, that particular cohort.

7 **MS DICKSON:** If I could just add that the larger cohort that was referenced is those families that
8 are identified as being at a greater level of risk where children may come into care, so it is
9 also looking to those preventative things in the system as well.

10 **COMMISSIONER ERUETI:** Can I ask if this concept, this idea was a part of the expert panel,
11 expert advisory panel work in 2015 about being more joined up and holistic?

12 **MR TE KANI:** Yes, it was. Yes, it was.

13 **COMMISSIONER ERUETI:** It's been a long time between that report, which was in 2015, and
14 this Committee work.

15 **MR TE KANI:** Yeah.

16 **COMMISSIONER ERUETI:** That was set up in July, did you say? Why has it taken so long for
17 action?

18 **MR TE KANI:** Just to reference that, it was also identified in Puao-te-Ata-tū.

19 **COMMISSIONER ERUETI:** Yeah.

20 **MR TE KANI:** As well. So what that highlights from our perspective is, over the decades, the
21 recognition of the importance of agencies working in a joined up way and, as it comes back
22 to our concession earlier about the acknowledgment that we always haven't had policies
23 and practises and regulatory framework in place to best achieve that, what we have now
24 since 2015 with the EAP and then with the establishment of Oranga Tamariki, Oranga
25 Tamariki and the then government then tried to work through developing the Oranga
26 Tamariki action plan.

27 Like all of these things, it takes a concentrated effort, a lot of willingness and lots of
28 motivation to get it,- I wouldn't underestimate the significance of landing the
29 Oranga- Tamariki action plan, albeit it's at very early days.

30 **CHAIR:** Is that because it takes a,-- it's not just action, it's a cultural mind shift as well?

31 **MR TE KANI:** Yeah, yeah, and a transparent commitment, yeah.

32 **CHAIR:** And that's the hard bit, isn't it?

33 **MR TE KANI:** And accountability.

34 **COMMISSIONER STEENSON:** Can I just ask a follow-up question? Tēnā koe.

1 **MR TE KANI:** Kia ora.

2 **COMMISSIONER STEENSON:** So because in your statement you say that you don't want to
3 address issues relating to diversity of decision-makers across State and faith organisations
4 so I respect that. But do you have confidence in other decision-makers that they'll be
5 supportive to the need that's required for these outcomes that are necessary across that
6 ecosystem and the macro?

7 **MR WHITCOMBE:** I would just want to comment on that and say, you know, government
8 agencies within the Oranga Tamariki action plan have signed up for this, they have made a
9 commitment to see tamariki at risk of care or in care as a priority population. It's a really
10 significant commitment.

11 I would also say that there is a long way to go, you know, the plan by and large
12 commits Oranga Tamariki and the other agencies to a series of in-depth assessments which
13 should flesh out what really are those systemic barriers to access for services for the right
14 things happening for this population and what do we need to do to fix it, what do we need
15 to do to do the right thing.

16 I would also say there are examples right now in local communities where agencies
17 are teaming up around the needs of tamariki and families. What we know is that that's not
18 the situation right across our country, so what is it that we can learn and take away and play
19 a leadership role in enabling communities? And we need to do that with our government
20 partners, we need to do that with Public Service Commission leads within local
21 communities, but that is the challenge.

22 **COMMISSIONER STEENSON:** So would you say then that they are where they need to
23 be, - and- thank you for that answer, do you think they're where they need to be in terms of
24 the cultural competence that's required for these changes?

25 **AUDIENCE MEMBER:** No.

26 **MR TE KANI:** I can't answer that for my colleagues and their organisations, Commissioner
27 Steenson, but what I can say is the Oranga Tamariki action plan is a public accountability.
28 So to achieve it requires all of us working together. The willingness is there, I've talked to
29 all the chief executives directly, leading up to the finalisation of the action plan. The
30 motivation is there, I've got no reason not to think they'll be putting their investments into
31 the plan and their cultural competency.

32 **COMMISSIONER ALOFIVAE:** Because, in a sense, if it works in an ideal way, we should see
33 some significant shifts quite early in the piece, because we're not talking about extensive

1 numbers, we're not talking about 117,000, we're talking about the 4,500 to begin with. So
2 we should see some significant , - we- should be able to see, is that what I'm hearing?

3 **MR WHITCOMBE:** From my perspective, as I've initially started talking with social workers
4 about the plan, it's the sort of plan that I would want them to have in their back pocket
5 when they are working with other agencies, to be able to highlight this population as a
6 priority and highlight the responsibilities that collectively we have towards these families.

7 **MS DICKSON:** If I could just add that I think some things will shift quickly, like the kind of
8 things around making priority decisions in some areas. Some of the more complex and
9 deep issues, the kind of things that Peter talked a little bit about in terms of the footprint of
10 colonisation in an ongoing way will be harder to shift, and if I could just add in terms of the
11 time taken, the mindset shift, I would say this is quite different for government agencies.
12 Usually government agencies will work to a policy, a set of policy requirements that are
13 largely singular and in their own gift to give. It is quite a different way to think, as cross
14 government agencies, around how do we share this accountability, how do we stretch parts
15 of our settings to make sure there's sort of a seamless offer across. That's not something in
16 my time or in my experience that I think government agencies have done so much before
17 and that's the absolute opportunity that sits within the Oranga Tamariki action plan.

18 **COMMISSIONER ERUETI:** I'm so sorry, Natalie, but I also wonder whether there is,-- in
19 thinking about that, about thinking about other people other than the agencies providing
20 those services, consistent with your future directions plan of enabling communities where
21 OT and the other agencies fall back and allow others to step in to --

22 **MR TE KANI:** Indeed.

23 **COMMISSIONER ERUETI:** -- provide that to their people.

24 **MR TE KANI:** Indeed.

25 **CHAIR:** I'm just conscious of time and our signers and stenographer. Is this a moment for a
26 break or would you like to round this up before we take a break?

27 **MS COATES:** No, I think that's a good opportunity to take pause now.

28 **CHAIR:** All right, we'll take 15 minutes. Thank you.

29 **Adjournment from 11.46 am to 12.03 pm**

30 **CHAIR:** Just before we continue, I just want to address a question of people making comments
31 from the back of the room. Some of them aren't in the room, I hope they can hear what I'm
32 saying outside. I appreciate, as I said right at beginning, the depth of feeling that survivors
33 in particular have about this particular issue, the matters arising that can cause you distress,
34 and that is absolutely understood and recognised.

1 I do want to say, however, that when you make remarks, which I know you find
2 difficult not to, you do have the effect of triggering other people, and I'd just like you to be
3 aware that there are other people in the room who can be adversely affected by what you're
4 saying. So please be mindful and please be considerate of everybody in the room. If you
5 have comments to make, hold them to yourself, talk about it with your comrades, your
6 colleagues, your friends outside the room, but please do not interrupt the proceedings
7 because it's not helpful to anybody and, most importantly, it can cause harm to other
8 people, and we don't want that. So thank you for your consideration.

9 Yes, Ms Coates.

10 **MS COATES:** Kia ora anō.

11 **MR TE KANI:** Kia ora anō.

12 **MS COATES:** I understand that you wanted to make some corrections to some of the statistics
13 that were mentioned earlier? I'm happy for you to do so.

14 **MR WHITCOMBE:** Kia ora and my apologies, we would like to make a correction just on the
15 proportionality of tamariki Māori and Pacific and other in care. So this data is as of
16 31 March and it's published on our website this year, and it identifies that there are 57%
17 tamariki Māori in care, there is a further 11% that are Māori and Pasifika, then there is a
18 6% proportion that are Pasifika and a further 26% that are either New Zealand European or
19 other.

20 So I just wanted to make those distinctions. Thank you.

21 **MS COATES:** So in terms of whether -- I think your original response was 80%, where did that
22 number come from?

23 **MR WHITCOMBE:** And again, my apologies, that was an incorrect number.

24 **MS DICKSON:** I think it was 73% and I think it was the confusion between the population Māori
25 and the population Māori Pacific and the numbers are just slightly variable depending on
26 tamariki who leave and come into care. But the data as of March is the accurate data.

27 **MS COATES:** I wanted to start on a new theme of questioning with you moving on from the
28 kōrero that we just had. In your brief of evidence at paragraph 64, you say that Oranga
29 Tamariki has an obligation to give effect to Te Tiriti o Waitangi, don't you?

30 **MR TE KANI:** Yes.

31 **MS COATES:** And that's not on the basis of general legislative direction, that's just in relation to
32 an acknowledgment of the role that Oranga Tamariki plays, isn't it?

33 **MR TE KANI:** Absolutely, yes.

- 1 **MS COATES:** So you would agree that the systemic and transformational change that's required
2 in the care system needs to be grounded in giving effect to Te Tiriti o Waitangi?
- 3 **MR TE KANI:** Ae, yes.
- 4 **MS COATES:** Oranga Tamariki has been told many times, hasn't it, that it needs to,-- that there is
5 a need for structural and transformative change?
- 6 **MR TE KANI:** Yes.
- 7 **MS COATES:** And of course one of those strong and early calls that you've already mentioned
8 came from the Puao-te-Ata-tū report?
- 9 **MR TE KANI:** Yes.
- 10 **MS COATES:** And that report was written in 1988, so about 34 years ago?
- 11 **MR TE KANI:** Correct.
- 12 **MS COATES:** And that report made a number of recommendations that spoke specifically to
13 transformational change and how to better meet the needs of Māori in this space, didn't it?
- 14 **MR TE KANI:** Yes, it did.
- 15 **MS COATES:** And one of the recommendations in that report spoke to the equitable sharing of
16 resources and sharing of power and authority over the use of those resources, didn't it?
- 17 **MR TE KANI:** Yes, it did.
- 18 **MS COATES:** And are you aware that after Puao-te-Ata-tū was released, that a Māori resource
19 group was established?
- 20 **MR TE KANI:** I was aware of that, yes.
- 21 **MS COATES:** And that one of the suggestions that came from that group was that the proper
22 Te Tiriti and whakapapa based guardians was iwi, hapū and whānau?
- 23 **MR TE KANI:** Yes.
- 24 **MS COATES:** So from at least 34 years ago, the Crown has been told of two steps, two of the
25 primary steps that they need to undertake in this space, isn't that right?
- 26 **MR TE KANI:** Yes.
- 27 **MS COATES:** And I acknowledge the Crown's concession that Puao-te-Ata-tū wasn't
28 implemented in a comprehensive way, but the Waitangi Tribunal has since made similar
29 recommendations, haven't they?
- 30 **MR TE KANI:** They have indeed, yes.
- 31 **MS COATES:** As did the Ministerial Advisory Board, the Office of the Children's Commission
32 and others, is that right?
- 33 **MR TE KANI:** Yes.

1 **MS COATES:** Would you agree it's only in the last five years that really any steps were taken
2 towards a shift in power and decision-making and substantive resource going to Māori?

3 **MR TE KANI:** I acknowledge that there has been considerable work in that area over the last five
4 years.

5 **MS COATES:** Would you acknowledge that not much happened before the last five years?

6 **MR TE KANI:** I couldn't necessarily say that nothing happened, but what's clear over the last five
7 years, there's been changes to policy, regulation and law, and there has been an increase in
8 investment in the care and protection system.

9 **MS COATES:** In relation to the period that the Commission is looking at, and I'm happy for you
10 to pass this question to someone else if that's required, there was very little done in terms of
11 Māori getting substantive resource to look after Māori during that period; is that right?

12 **MR TE KANI:** Yes, that's correct.

13 **MS COATES:** And there was also very little Māori input directly into decision-making around
14 what-, where their tamariki- should go, is that correct?

15 **MR TE KANI:** Yes, and that's reflected in subsequent reviews and inquiries as well, yes.

16 **MS COATES:** What do you think are some of the reasons why there hasn't been change up until
17 the last five years, and we'll talk about what change has occurred since then, but what were
18 some of the barriers preventing that, do you think?

19 **MR TE KANI:** I'm going to ask the team to add some points here, but just to open up, one of the
20 clear insights from the report Oranga Tamariki commissioned, looking at the
21 implementation of Puao-te-Ata-tū, was, after the establishment of the resource panels, a
22 lack of investment in community resources. Peter.

23 **MR WHITCOMBE:** Kia ora. And firstly I do want to acknowledge that we have not gone far
24 enough yet and have certainly not fulfilled the aspiration and intent of Puao-te-Ata-tū and
25 the Treaty obligations that sit within that and we have not worked with whānau, hapū, iwi
26 to enable decision-making in a consistently quality way, in a way that engages and supports
27 the relationship. So- I just want to start with that acknowledgment.

28 I would also just want to point to the creation of the 1989 Children, Young Persons,
29 and Their Families Act. This was an Act that put the child in the context of whānau, hapū,
30 iwi. And what you are alluding to is that we have not fulfilled those obligations that are
31 really clearly laid out in that 1989 Act, and then further strengthened through the
32 establishment of section 7AA.

1 I'm going to give, again, a social work perspective, and this comes from, you know,
2 from my own perspective, having been in the organisation since 2001 on and off, and from
3 conversations that I've had with those who have gone before me.

4 I would say that Oranga Tamariki has been an agency that has had many, many
5 reviews. We know that, there's the Judge Mick Brown review, there's on average a
6 significant review every three or four years for Oranga Tamariki, and in those reviews,
7 actually there is a litany of consistency to many of the things that those reviews talk about.

8 But there are also differences, and Oranga Tamariki, I think at times, we don't give
9 enough account to the fact that we have change in governance, and there is influence on the
10 agency from a direction and practice perspective.

11 And it is an agency that at times has been subject to pendulum swings and the
12 pendulum swing that I would talk about is we know that we need to strive towards family
13 preservation, community strengthening approaches, and yet at times we've had a child
14 rescue, light touch or just-good-enough type approach to care.

15 And in some situations, you know, there's an event, there's a new report, a new
16 direction, and at times the engine room of Oranga Tamariki becomes focused on
17 responding to reports as opposed to focused on enabling communities and strengthening the
18 frontline practitioners, both within Oranga Tamariki and beyond Oranga Tamariki.

19 The ability to align services to the needs of tamariki in care, there are times at which
20 I would suggest the ability for Oranga Tamariki to do that with NGOs, with providers is
21 difficult, there is a lot of noise and we haven't achieved the funding shifts at times that
22 really responds to needs of families.

23 We have already spoken also about the wider system across education, health and
24 housing, and we know we need to do better to work to meet tamariki needs and to work
25 with those other agencies.

26 I'll also continue and just,- one thing that hasn't been spoken about, and this sits
27 heavily with me, it is around children who-,- or tamariki who have come into care often
28 have come from impoverished backgrounds, from backgrounds that they haven't had the
29 resources, the financial resources or the housing, or things that they've needed to have the
30 life that they need, and I have worried at times that our care and protection response masks
31 that poverty issue that we do have- and we need a poverty response.

32 We also have had ongoing and continuous leadership change. And I think that there
33 have been many gains over the last,- particularly over the last five years, I would suggest,
34 but there are a range of things that I think, from that review perspective, we need to have a

1 clear direction for a period of time-. I'm entirely convinced that the direction that we are on
2 in terms of enabling whānau, hapū, iwi, enabling communities and in terms of
3 strengthening our frontline is the right one to be on.

4 **MS DICKSON:** If I could just add why there wasn't more change before from a slightly different
5 perspective in addition, I think fundamentally it's about relationship and trust. The very
6 things that this Commission has heard and as others have talked about, over successive
7 generations makes it difficult, not just for whānau, but also for hapū and iwi to trust the
8 Crown. And I think about my colleagues, both tāngata whenua and tauīwi in leadership
9 roles and I think we heard this and we gave this evidence in the tribunal that there were
10 green shoots where things were done very differently, where -power was shared, where
11 resources were shared and it came down to relationships and it came down to trusted
12 relationships and that was often in spite of, not enabled by, the system and policies and
13 processes at the time. So for me, it's very much a -relationship based- answer.

14 **MS COATES:** And do you think in terms, picking up on what you said, Māori didn't trust the
15 Crown, that goes both ways, though, doesn't it, that the Crown also didn't trust Māori to do
16 what they needed to do in that space?

17 **MS DICKSON:** I would say there's certainly evidence of that occurring and continuing to occur
18 at times.

19 **MS COATES:** So if we look at some of the funding, and if I can take you to the NTP at
20 ORT0112365, and this is at paragraph 14.3. For the benefit of those at home, it provides a
21 table that sets out what I understand to be the funding provided to third-party providers
22 over the last five years, is that right?

23 **CHAIR:** Before you go on, Ms Coates, I have to explain to those in the room and watching that,
24 unfortunately, we're not able to show you these tables. There's a whole lot of technical
25 reasons, mostly to do with not being able to redact the vast numbers of documents
26 sufficiently to protect people's identities. So for that reason, I'm asking counsel to identify
27 the document and wherever anything is referred to, for her to read it out so that you can
28 hear what we have. So I'm sorry that you can't look at it, but that's the reason.

29 **MS COATES:** Certainly. So we're looking at the Crown response to a series of information
30 requests and this gives us some information about funding over the last five years. I just
31 wanted to clarify something, and I'm not a numbers person myself, so I just wanted to make
32 sure I understand what we're looking at.

33 In terms of the funding number that has been provided, where it says the total
34 financial year value of funding and so in the 2021 to 2022 year, that's about 155 million, is

1 that the total number,- is that the total amount of funding that Oranga Tamariki gets in or is
2 that the total value of funding that is provided to -third-party- providers?

3 **MR TE KANI:** That's not the total value, that's not the total value of funding that Oranga
4 Tamariki receives.

5 **MS COATES:** So in terms of what these numbers are referring to, it would just be the amount of
6 funding that Oranga Tamariki gives to third-party providers, is that right?

7 **MR TE KANI:** For care services, yes.

8 **MS COATES:** For care services in particular?

9 **MR TE KANI:** Yes.

10 **MS COATES:** So just to go through that for those that can't see what we're looking at, in the year
11 2017 to 2018, 3.9% of that funding went to Māori iwi providers. In the year 2018 to 2019
12 it was 7%, in the year 2019 to 2020 it was 14.4%, 2020 to 2021 it was 21.5% and 2021 to
13 2022 it was 30.5%, is that right?

14 **MR TE KANI:** Yes.

15 **MS COATES:** And in terms of what this funding covers, this funding wouldn't cover the
16 preventative work that Oranga Tamariki does, it's literally just to actually provide the care
17 when children are taken out of care, is that right?

18 **MR TE KANI:** Correct, that's for the provision of care services, correct, yes.

19 **MS COATES:** In terms of what this data tells us, would you accept that in the year 2017 to 2018
20 that that number of 3.9% is very low given the proportionate number of Māori that would
21 have been in care at that time?

22 **MR TE KANI:** I agree with that, yes.

23 **MS COATES:** And would you agree, and you may not know this but that before these five years,
24 that it wouldn't have likely exceeded that low number, would it have?

25 **MR TE KANI:** I can't answer that question, I don't know the answer.

26 **MS COATES:** Does anyone else?

27 **MR WHITCOMBE:** I don't have the data in front of us, but we do have one of our witnesses
28 who can respond to that. Frana?

29 **MS CHASE:** Kia ora. The majority increase in the table would be due to the increase in whānau
30 care partnerships, so the engagement with iwi and Māori to be able to build the capability
31 and capacity to be able to care for tamariki themselves. Pre -- in the beginning years, there
32 were hardly any iwi Māori organisations that were approved as section 396 caregivers, so
33 we have increased over time to 15 iwi currently and we're to build to 20 over the next two
34 years.

1 **CHAIR:** I think the question was whether do you know, Ms Chase, whether we've got that very
2 low figure in the year 2017 to 2018 of 3.9%, before that, is it likely that that number would
3 have been higher before that date or lower or about the same, are you able to answer that?

4 **MS CHASE:** I would say that during my time of looking at the Māori providers, that would have
5 been the same or less.

6 **CHAIR:** Thank you.

7 **MS COATES:** Thank you, Ms Chase.

8 In terms of what these numbers show us, this suggests that a significant percentage
9 of the funding for the care of Māori children is going to non--Māori providers, is that
10 accurate?

11 **MR TE KANI:** That's what that would show, yes.

12 **MS COATES:** And that could either mean two things, that there is a significant number of Māori
13 children being cared for by non--Māori providers, or that more money is being spent on
14 caring for non--Māori children than Māori children. Do you have a comment on that?
15 Perhaps a combination of the both of those things?

16 **MR TE KANI:** Frana can answer this.

17 **MS CHASE:** It's a combination of both. So the funding allocations for tamariki are sometimes
18 dependent on the provider, so certain providers may be seen to be caring for tamariki with
19 higher needs. However, over time, as we've looked at that, we have actually learned that
20 there are significant numbers of Māori tamariki that actually with-- higher needs who have
21 been cared for by their own whānau.

22 **MS COATES:** So related to that is part of the theme that at least,- or a conclusion that we might
23 be able to draw from that,- is that it's cheaper to look after Māori children? So in terms of
24 I guess what that funding shows us, it can show sort of two things, one that Māori children
25 are being cared for by non--Māori providers, or alternatively, that there is less money going
26 towards Māori providers even though they look after a substantial number of Māori
27 children.

28 **MR TE KANI:** Ka pai.

29 **MS CHASE:** Yes, that's a definite, there's a disparity between the funding allocations for whānau
30 versus different levels of providers.

31 **MS COATES:** Does Oranga Tamariki have information on the percentage of Pasifika providers
32 that receive funding?

33 **MS AIOLUPOTEA-AIONO:** Our current statistics show us that Pasifika receive 1% of the total
34 funding for providers.

1 **CHAIR:** Is that in the 2021 to 2022 year?

2 **MS AIOLUPOTEA-AIONO:** Yes.

3 **CHAIR:** So it's current, 1% current?

4 **MS AIOLUPOTEA-AIONO:** It's current, yes.

5 **MS COATES:** And it wouldn't have likely gone above that in any year prior to that, would it
6 have?

7 **MS AIOLUPOTEA-AIONO:** I suspect not.

8 **COMMISSIONER ALOFIVAE:** Can I just ask a question, Ms Coates, a point of clarification,
9 Ms Chase. So where you have Māori children who are in care but placed back with their
10 whānau, are they treated as caregivers and paid a caregiver allowance or board payment?
11 Or not, because that would make a difference to whether or not they're included in these
12 figures.

13 **MS CHASE:** Kia ora. So there are different ways that whānau can be supported to care for
14 tamariki, and the work that we did around the financial assistance and review for caregivers
15 that scoped across thousands of whānau across the country, not just tamariki who are in the
16 custody of our Chief Executive or State care, but also tamariki that might be supported by
17 MSD on, say, unsupported child's benefit or on orphan's benefit.

18 What we learned is that in our policy, all whānau who care for a child in the custody
19 of the Chief Executive should receive a standard board payment and then other support
20 mechanisms based on the needs of the tamariki, but what we did learn during that financial
21 review is that there are times when whānau are not receiving support, so they're going to a
22 hui or they're going to an FGC and tamariki are being placed in there,-- sent home without
23 custody status or something which means they're not getting the financial support that they
24 need or require. And, yeah, and depending on who they engage may depend on what type
25 of support they get.

26 **COMMISSIONER ALOFIVAE:** So despite best intentions, the psycho-social stressors
27 financially are still there, they're not actually alleviated, are they, by placing Māori children
28 back with their whānau?

29 **MS CHASE:** The way that we are mitigating that now is that we have whānau and hapū and iwi
30 who are now approved section 396 partners, so they are legally able to care for tamariki and
31 support whānau who care for tamariki. Prior to that, it would have been our Chief
32 Executive and Oranga Tamariki doing that, or another mainstream provider.

33 So that has given the assurance that not only will hapū and iwi ensure that there is
34 no disparities in those rates of support, they are also able to wrap around a more holistic

1 support based on their own capacity. For example, across housing, health, education,
2 dental, Whanau Ora.

3 **COMMISSIONER ERUETI:** Are they effectively stepping into the places that the non--Māori
4 NGOs have been doing for some time now? So access to more --

5 **MS CHASE:** Yes.

6 **COMMISSIONER ERUETI:** Specialist services for children, mental health, counselling and so
7 forth?

8 **MS CHASE:** Yes, and the majority of our hapū and iwi, their capacity in a provider setting
9 already exists. They have GP practices, they have doctors, they have psychologists, and
10 they had not been recognised in a care space. So their ability to be able to build their
11 capacity as a section 396 has meant that for all tamariki Māori that are in State care, they
12 can now be cared for and supported by their own. So that's significantly different for iwi.
13 They had never known the numbers of tamariki Māori that are in State care, let alone where
14 they lived outside of their tribal rohe. So now they know exactly where the tamariki are,
15 they know exactly how many of them are in non-kin- care and we're now building their
16 capacity to be able to, not transfer, but move them -- not home, physically home, because
17 people start thinking we're going to take kids off people and send them all back to
18 Tūwharetoa -- I say Tūwharetoa because I am, but it's not that, it's that we're building
19 capability and capacity for iwi Māori to care for their own tamariki, to be able to receive
20 them so that they can come home, their feet touches the whenua, they know who they are
21 and then they can reciprocate for other tamariki that reside within their tribal rohe.

22 **COMMISSIONER ERUETI:** That seems to be meeting that gap where Māori weren't
23 providing - than it was being provided by non---Māori providers, but there are very few 396
24 providers in Aotearoa at the moment, right, so that means when they're not working and
25 they would still have their challenges, you've got the status quo, which is this scenario
26 where it's non--Māori NGOs who are spending more money and receiving more money to
27 provide those holistic range of services? Would that be right?

28 **CHAIR:** Yes, I was going to ask something similar, maybe I can just add to that. It seems to me,
29 in terms of aspiration, we hear you, this is where you want it to go and where it should go.
30 The question is, how far has it gone so far, and is this something that any Māori child in
31 care can confidently expect to receive wherever they live in the motu? Have we got to that
32 point yet, and if not, how long is it going to be before we get there? And I'm looking at you
33 because you were the last questioner, but maybe there are others, maybe Mr Te Kani, we
34 place that at your feet.

1 **MR TE KANI:** Ka pai, thank you.

2 **MS DICKSON:** It's probably not going to answer that question, I just thought it might be helpful
3 just to contextualise, in terms of whānau care, there are three ways that can happen. There's
4 the informal care that Frana mentioned which might be through an informal plan without
5 custody and that has traditionally been a very poorly resourced and supported way of
6 caring. There are then caregivers who are approved by Oranga Tamariki, and again, we
7 certainly have plenty of knowledge to suggest that there has been an inequity in the level of
8 support for whānau caregivers versus non-whānau caregivers and please don't ask me for
9 the numbers but obviously there would be more Māori and Pacific caregivers in the whānau
10 caregiver space than in the non--whānau and the model that Frana's talking about, which is
11 growing and expanding, and I'm sure Frana could respond to that point, offers a way for
12 caregivers who may have been a whānau caregiver for Oranga Tamariki to belong, I guess,
13 within a care environment as a 396 provider within an iwi, within a hapū, with a much
14 more holistic responsive whanaungatanga way of being supported in the care that they
15 provide. So just to clarify,-- I'm not sure if that helps but just to clarify that a little.

16 **CHAIR:** Ms Chase wants to say something?

17 **MS CHASE:** I was just going to finish off to say that in terms of what that means for tamariki by
18 whakapapa is, is that based on those 15 iwi that currently exist, we could,- they could be
19 supported by-,- about 68% of all tamariki- Māori could now be supported by their own
20 whānau, hapū and iwi.

21 **COMMISSIONER STEENSON:** Can I just ask a question, because you've got the nine strategic
22 partnerships and I'm not quite sure what the difference is between being a strategic partner
23 versus a 396 partner, that's my first question.

24 The second is around,- it's very obvious- there's a massive gap in Tāmaki Makaurau
25 being absent from those strategic partnerships, being our largest population density in the
26 country.

27 **MR TE KANI:** If I can just step back a nano step and just reflect on what the data's telling us. So
28 if you think about the trend and trajectory of this funding and our approach over the last
29 five years, what that will show you is actually a massive growth in how we're thinking
30 about responding to the needs of our whānau and our tamariki, in ways that wasn't there
31 decades before, so I think that's an important first up point to make.

32 On the provision of care, so the real important point to make is at a real high level,
33 if tamariki come into care, tamariki Māori come into care, ultimately we think they're best
34 placed to be cared for by Māori. And in addition to the pathways that Nicolette's talked to,

1 what a whānau care provider does as a 396 provider, section 396 of our Act, it's a big
2 commitment for a provider to make because once you put your hand up to say you want to
3 be a section 396 provider, then you step into agreeing to be regulated and part of our
4 National Care Standards, and that's an important first step to make.

5 So when Frana has been working with iwi to build our whānau care network of 396
6 providers, I just want to acknowledge them because what they're fundamentally saying to
7 the State is they want to hold their hands up to be regulated and held to account in that way
8 to look after our tamariki, so it's a big commitment.

9 **COMMISSIONER ERUETI:** How long has 396 been in the Act?

10 **COMMISSIONER STEENSON:** Sorry, I'm not quite sure I got my answer there.

11 **MR TE KANI:** To come back to your question, Commissioner Steenson, so a 396 provider, you
12 know, under our regulations we make you a 396 provider, then you become part of the
13 National Care Standards and we monitor those in the appropriate way because you are
14 caring for our tamariki within the regulatory framework. A section 7AA strategic
15 partnership agreement is grounded in Te Tiriti, first and foremost, and it's a commitment
16 from Oranga Tamariki with our partner to take an approach with them over, in my words,
17 their mana motuhake for tamariki in their region, their hapū, their iwi, their rohe,
18 recognising that some of our strategic partnership agreements are not with iwi, they're also
19 with Māori providers as well that have come together. So 396 --

20 **COMMISSIONER STEENSON:** Thank you, that's helpful. So to me that means that a strategic
21 partnership is crucial for our biggest city in the country and so, again, my follow-up
22 question was, who is that or where is that at for Tāmaki?

23 **MR TE KANI:** So we will go at the pace that Tāmaki wants to go at. We have relationships in
24 Tāmaki Makaurau, we've got a relationship of Ngāti Whātua at a site level.

25 **COMMISSIONER STEENSON:** I understand that.

26 **MR TE KANI:** We're very committed to enter into a relationship with any number of iwi that
27 reside within Tāmaki Makaurau.

28 **COMMISSIONER STEENSON:** So it's the local iwi within the region is what you're saying are
29 not ready to get into a strategic partnership with Oranga Tamariki?

30 **MR TE KANI:** And we would welcome a conversation about that, yeah.

31 **COMMISSIONER STEENSON:** Thank you.

32 **MS COATES:** I just wanted to go back and -- it's disappeared from my screen, but to look again
33 at that, I guess, commensurability of funding, acknowledging that there's been an increase

1 over the last five years in particular, is the policy goal or intention to ultimately match the
2 number of Māori or Pasifika in care as to the providers that are receiving that funding?

3 **MR TE KANI:** That would be a goal that we would of course all agree towards attaining. The
4 reason I do want to be a bit careful about how I do respond is that what sits within our
5 existing 396 provider arrangements is actually a number of providers looking after our
6 tamariki and always at the heart of how we think about decisions here is their safety and
7 knowing for a number of our tamariki in those situations they've got quite a bit of support
8 around them given their current circumstances.

9 **COMMISSIONER ERUETI:** Sorry, Ms Coates, I understood from the foster care hearing that
10 most Māori in care are being cared for by Māori care providers, is that your understanding?
11 Or a large number.

12 **MR TE KANI:** A large number, I don't know the number off the top of my head, just looking at
13 Frana, if you knew, Frana?

14 **MR WHITCOMBE:** In terms of foster care I understand the number to be approximately 64%.

15 **COMMISSIONER ERUETI:** That is quite a significant number.

16 **MS DICKSON:** That would include, though, caregivers and care providers who are Māori, so the
17 distinction that I raised before.

18 **COMMISSIONER ERUETI:** Yeah, that's right. The question for me it keeps going back to is
19 that original question posed by counsel about where all the disparity between the funding is
20 going to Māori relative to non-Māori providers, given that Māori are being basically cared
21 for by Māori largely. Why do we have that? Why are they spending more money, do you
22 think, relatively, than non-Māori providers?

23 **MR TE KANI:** I can't answer that question straight off the top of my mind.

24 **COMMISSIONER ERUETI:** Could it be that they're providing,-- they're getting paid for all the
25 work that they do, let's put it that way, plus they've got access to more specialist services
26 that are expensive to provide?

27 **MR TE KANI:** We do know some of the non--Māori providers who have been here for a number
28 of years, decades in some cases, they have built a lot of capability, capacity and services
29 within themselves to deliver for our tamariki. So that would point to how that drives, for
30 example, the costs and the contracts and the provision that they would receive, absolutely.

31 **COMMISSIONER ERUETI:** Some provide wraparound intensive services 24/7, for example.

32 **MR TE KANI:** There's some very acute services and there's a broader range.

33 **COMMISSIONER ALOFIVAE:** Can I just ask a final question to Ms Chase, I think it might be.
34 Thank you, Ms Dickson, for explaining the three levels, I think that was very helpful. So

1 we've identified that for the Māori tamariki who are placed in the informal arrangements,
2 but would that, - is it an assumption that is carried across also to Pacific children and
3 also- to children with disabilities?

4 **MS CHASE:** It would be the same types of arrangements for all tamariki. I just think, when
5 I hear us talk about the foster care system, it's all how language is interpreted, but when
6 I first entered into Oranga Tamariki, it really seemed like the whole system for care was
7 based on foster kind of non-kin care. So the section 396 providers currently,-- well, at that
8 time, were mostly mainstream, hardly any Māori, so we've built that up. But a lot of the
9 care for tamariki still happens by whānau, even though they are in care. I think that bit gets
10 missed or not recognised. So what we're looking at here is funding that's gone to providers,
11 section 396 providers, but not necessarily the money that would have gone to whānau
12 caregivers or caregivers in general.

13 **COMMISSIONER ALOFIVAE:** Thank you. I'm conscious I think that,-- because there are a lot
14 of survivors who are listening and who are present in the room, and so when they talk about
15 the stressors and the frustrations about not knowing what to do and where to go and that
16 that is not a direct service of the social worker to be able to necessarily always help them in
17 that. Any reflections on that consistent frustration that we've heard in evidence?

18 **MR WHITCOMBE:** The reflection is really the importance of being heard and being believed,
19 and then those things being acted on. And there were times, many occasions through the
20 evidence where that hadn't occurred in the right way, so I wanted to acknowledge that.

21 I would want for all of our social workers to be in that place of, if they hear, if
22 they, - in- their relationship with that young person, that they are acting and responding and
23 doing the right things for those young people.

24 **MS DICKSON:** If I could just add, I talked before about the system, I guess, relationship between
25 community who hold relationships and the agencies that sit behind, I think that has to
26 happen at an individual practitioner level as well. So as a social worker, I need to trust the
27 knowledge, judgment, relationship that my community colleagues have with whānau and
28 they need to trust that I will be an advocate for the system gaps that whānau are
29 representing. So it is about a reciprocal honouring, I guess, of the knowledge and
30 contribution and I think where we see the needs of tamariki and whānau best being met, it
31 is where that collaborative way of working is happening. And there are examples of it, it's
32 certainly something we need to grow more of.

33 **COMMISSIONER ALOFIVAE:** Thank you very much.

1 **MS AIOLUPOTEAAIONO:** Can I just add too, reflecting on what the survivors did tell us, what
2 we have learned about wanting a workforce or providers or support that is Pacific cultural
3 competence, they are familiar with those competence. We heard about they want to have
4 relationships and services easy to access. We know also in the development of our Pacific
5 strategy current that our communities told us the solutions comes from our communities, it
6 is about making sure that we've got providers who are culturally competent in Pacific ways
7 of knowing and ways of being, that that is critical. So one part of our future direction plan
8 is ensuring that we have sufficient number of Pacific providers across the country, in
9 particular regions where we know our Pacific families are in need and our children are in
10 need to make sure that we're meeting those needs from the local level. So that's part of our,
11 the future direction plan and we are working towards our own staff being culturally
12 competent in our Pacific practice framework but also our community providers because we
13 know they know our people, they know our children, that's where it needs to start from,
14 those relationships.

15 **COMMISSIONER ALOFIVAE:** Fa'afetai lava, thank you.

16 **MS COATES:** Just to pick up on that question, I think you mentioned that, currently, only 1% of
17 funding is going towards Pacific providers. Is the goal to have that commensurate with the
18 number of Pasifika in care?

19 **MS AIOLUPOTEAAIONO:** I think the goal is to ensure that our Pacific people and their
20 families have a choice about who they go to in their region. So we often hear about the
21 postcode lottery, etc, in the areas where our Pacific populations, most of our children in
22 care are in Auckland but very growing numbers in Waikato, Bay of Plenty and Wellington
23 and in Christchurch. So I think for us it's ensuring that our families and our children have
24 the wraparound services to make sure they've got someone that they can trust and have
25 those relationships close to them, easily accessible, they know who to go to when they're in
26 need at any time. So investment does need to increase to match the numbers, but that's
27 not -- it's about need.

28 **MS COATES:** Need and choice, isn't it?

29 **MS AIOLUPOTEAAIONO:** Need and choice.

30 **CHAIR:** We'll leave you to it, Ms Coates, to get on. We've just got 10 minutes to go before the
31 lunch adjournment.

32 **MS COATES:** A well-deserved lunch break.

1 So I wanted to move now to some of the recommendations that the Waitangi
2 Tribunal and others have specifically made around power sharing and the transfer of
3 decision-making.

4 So you'll be aware of the tribunal recommendations, one of the primary ones being
5 that the Crown steps back from further intrusion into what was reserved to Māori under Te
6 Tiriti o Waitangi and allow Māori to reclaim their space. You'll be aware of that
7 recommendation?

8 **MR TE KANI:** Yes, I am.

9 **MS COATES:** Has that recommendation and- we'll talk about some of the specific things that
10 you're doing, but is ultimately that one of the goals to shrink Oranga- Tamariki and to allow
11 for Māori to have rangatiratanga over that space?

12 **MR TE KANI:** Yes.

13 **MS COATES:** And in your brief of evidence and picking up on some of the discussion that we
14 had, you talk about partnering with iwi and Māori, and my understanding is there's
15 currently nine partnerships with various groups?

16 **MR TE KANI:** Strategic -yes-, section 7AA strategic partnership agreements, yes.

17 **MS COATES:** In terms of the substance of those partnerships, I noted in your brief that you
18 talked about the general focus of those being preventing entry into State care through joint
19 decision making. I wondered what that reference to joint decision making means and how
20 that operates in practice.

21 **MR TE KANI:** Sure, I can speak to that. So to come back to where you started with the Waitangi
22 Tribunal, I absolutely acknowledge the recommendations and the important point to make
23 from there is the Waitangi Tribunal report, its recommendations, but also carefully and
24 deeply considered by the Ministerial Advisory Board and its report, te Kahu Aroha, and
25 that recommendation they hold together because the Ministerial Advisory Board shared that
26 recommendation, Ms Coates, and it's important because it's an anchor point for how we
27 think about the future direction plan and transformation for Oranga Tamariki, which is
28 shifting decision making and resources closer to whānau, hapū and communities,
29 strengthening our core frontline social work, but the recognition that Oranga Tamariki is
30 too big, does too much inside of communities and is placed at the centre and actually
31 stepping back from that to shifting decision making and to use your phraseology, power
32 closer to where decisions sit.

33 Section 7AA strategic partnership agreements, if I can be specific for a minute,
34 since September, we've worked with Waikato Tainui, Ngāi Tahu and last week announced

1 an intention with one of our other strategic partners Te Kahu Oranga Whānau around Te
2 Ata-tū. I point to those examples because they're all examples of how we're deepening our
3 strategic partnership agreements. Where the strategic partnership agreements started was
4 very conceptual, here's a commitment and an intention to partner in our area.

5 For each of those examples I've just pointed to, the key components of each is each
6 of our partners coming to Oranga Tamariki with the proposal as to what we would do.
7 Now what's important there is the recognition of all of the services that are provided by
8 Oranga Tamariki across the care and protection and Youth Justice spectrum of services we
9 provide. It was those entities that came to us and said, actually, we want to focus, from our
10 perspective, for what we believe is in the best interests of our people in these particular
11 areas.

12 Waikato Tainui is the example where we speak to around joint decision making, but
13 that's in a particular area around how we work in our intake and assessment area. So with
14 Waikato Tainui, last month we announced our investment in mokopuna ora. Mokopuna ora
15 is a programme that they developed with our support, so it's enabled what Oranga Tamariki
16 developed by Waikato Tainui under the umbrella of our strategic relationship, our strategic
17 partnership agreement, but it's Waikato Tainui being very clear to Oranga Tamariki about
18 where they were going to place the investment and their focus for the work that we do
19 together as our partnership, and that was very much in what we call our intake and
20 assessment area, but also in working with our sites to help them build their cultural
21 capability.

22 **MS COATES:** So does that mean when -- so just to tease that out, does that mean that when a
23 child comes to the attention of Oranga Tamariki, that has a whakapapa to Waikato Tainui,
24 that they'll be alerted and be involved in the decision-making in relation to that child?

25 **MR TE KANI:** Yes, so I've had pilots run in Papakura where that's exactly what happens, so a
26 national contact centre or any other entities might receive a report of concern. It might well
27 concern the whakapapa of a Waikato mokopuna. They would then refer that to Mokopuna
28 Ora, which is our partnership between our site who does that assessment and Waikato, and
29 together they will then work and jointly decide, actually, what's required to support that
30 whānau and that tamariki in that particular case.

31 **MS COATES:** This might be picking up on one of the points that Commissioner Steenson was
32 raising before, but is Waikato Tainui one of the only, or is that the deepest example where
33 there's actually been that joint decision making occur or is there more than that?

1 **MR TE KANI:** So that's the deepest example, and the reason I point to Waikato is because that's
2 where they want to be in the relationship with Oranga Tamariki. With our relationship with
3 Ngāi Tahu and our agreement with them and the investment we placed in their Whānau As
4 First Navigators initiative last year, Ngāi Tahu had a clear vision and aspiration for being
5 much more involved in the prevention realm of our work, actively working in communities
6 with their Whānau as First Navigators initiative to prevent tamariki coming into the system.
7 So that was an investment with their agreement where they wanted to be placed.

8 Last week's announcement with Te Kahu Oranga Whānau in Kaitaia, that was an
9 announcement to a commitment to quite a transformational shift in decision making and
10 resources that we have to work through and that's a shift towards, at a very local level, Te
11 Kahu Oranga Whānau making those decisions and Oranga Tamariki supporting them, so
12 they were much more involved in some of the core work of Oranga Tamariki.

13 I think just to add to that, just one more point, it's important to note that we already
14 have a provider who does have the legal authority already to do statutory work as well. So
15 what we're talking about isn't a precedent, from a legal framework perspective we can point
16 to an existing model where actually there is already a provider that's already carrying out
17 some of these.

18 **COMMISSIONER ERUETI:** In Kaitaia, you're talking about here?

19 **MR TE KANI:** No, that's a non-Māori large national provider who has the ability to carry out that
20 statutory work.

21 **MR WHITCOMBE:** I just wanted to make a couple of comments alongside those. Firstly, you
22 know, as you know, under the Act, it is -- the Act calls out the responsibility to engage with
23 whānau, hapū, iwi in decision -making processes, and so there's a role for the social worker
24 to be obviously working with the whānau and the hapū. There's a role in terms of the
25 coordinators to be enabling that whānau led decision- making approach, and there are
26 quite -a - there's an emerging number of examples where our family group conference
27 coordinators are not Oranga- Tamariki coordinators, they are led and supported and
28 employed through iwi or Māori organisations.

29 I also wanted to point to the importance of the establishment of Kaiaranga
30 ā- -whānau roles. They are roles that support our social work staff in terms of whakapapa
31 and hapū links, and the vast majority of Kaiaranga roles do support right at the early stage
32 of intake and assessment in terms of helping understand and work with the family and build
33 the links from a whakapapa perspective.

1 **MS COATES:** And just a final question before we take the lunch adjournment, coming back to
2 those partnership agreements, if I was an iwi wanting to enter into an agreement with
3 Oranga Tamariki, would the templates or examples of those other existing arrangements be
4 available to me? Are they public and transparent?

5 **MR TE KANI:** So they are publicly accessible, yes. I wouldn't say that they are templates
6 necessarily, but the spirit of our strategic partnership agreements is really going into them
7 in quite an open way. Each partnership agreement is different, each partnership agreement
8 focuses on particular areas, and to be open and transparent takes a lot to build the trust from
9 our partners in us, and that's understandable. We've got some way to go to build the trust of
10 Māori in Oranga Tamariki and it's- building- the agreements does take some time for that
11 reason.

12 **MS COATES:** Just finally, is Oranga Tamariki doing outreach work to iwi in this space or
13 waiting for them to approach you?

14 **MR TE KANI:** For the reason I said, because of trust and confidence both, we had attempted to
15 reach out to iwi. Understandably there would be those pushing back, saying --

16 **MS COATES:** Not yet.

17 **MR TE KANI:** Not yet. And that's totally respectful. And the basis of why we would do that is
18 what the data's telling us about the number of reports of concern that we have, and the
19 number of tamariki in care.

20 **MS COATES:** Ka pai, I think that's a good time to take the break.

21 **CHAIR:** We'll take the lunch adjournment and I think we're coming back at 1 o'clock- sorry-, let's
22 try 2 o'clock, one hour for lunch, thank you.

23 **Lunch adjournment from 1.02 pm to 2.03 pm**

24 **CHAIR:** Nau mai hoki mai, welcome back, everybody. Kei a koe, Ms Coates.

25 **MS COATES:** Tēnā ano koutou. I just had a couple of follow-up questions after reflecting on
26 some of the answers over the break.

27 **MR TE KANI:** Kei te pai.

28 **MS COATES:** So one of the questions was I think in answer to one of the questions that I posed,
29 you referred to a non-Māori provider that had assumed some statutory responsibilities?

30 **MR TE KANI:** Yes.

31 **MS COATES:** There'd been a delegation? Are you able, to avoid the Commissioners and us
32 making assumptions, to name who that is?

33 **MR TE KANI:** Sure, Open Home Foundation.

34 **MS COATES:** And in terms of the statutory responsibility that they have assumed, what is that?

- 1 **MR TE KANI:** So Open Home Foundation have a delegation from- through our Act to them to
2 carry out statutory social work on behalf of the Chief Executive of Oranga- Tamariki.
- 3 **MS COATES:** Kia ora. Another disparate random question that I had that arose from my
4 previous questioning was in relation to that categorisation of iwi and Māori provider and
5 we were wondering around what was captured or who was captured in that Māori provider
6 categorisation. That is, I guess, is it self-identification that makes an organisation a Māori
7 provider or who would fall within that?
- 8 **MR TE KANI:** Sorry, Ms Coates, you'll have to help me understand your question a bit more.
- 9 **MS COATES:** Part of it is going to what makes a Māori provider a Māori provider, that is, is
10 it,- there are some clear examples where there's a mandate or they're part of a
11 national,--- sorry, an urban Māori authority, for example, but we're just wondering who
12 falls into that categorisation of Māori provider. There are a lot of organisations with Māori
13 names now, what makes them Māori?
- 14 **MR TE KANI:** Understand, so an example would be the Māori Women's Welfare League, for
15 example Waitomo Papakāinga is another example.
- 16 **COMMISSIONER ERUETI:** What's the criteria though, what are their attributes to being a
17 Māori provider?
- 18 **MR TE KANI:** It's self,- I wouldn't say -self-identified-, but it's how they've built what they do
19 around the delivery of the service that they can then come to us to say, "This is what we do,
20 we interact --that we interact with", if that makes sense.
- 21 **COMMISSIONER ERUETI:** There must be a bit of grey area between that and a non-Māori
22 provider, then? If you had a trust, maybe the Open Home Foundation, I'm not sure -that
23 would be -non-Māori, right? If most of the trustees were Māori, for example, would they
24 suddenly become a Māori provider?
- 25 **MR TE KANI:** I understand your question, sorry. So the Māori provider, the definition is run by,
26 in our words, links to ownership by Māori. Most likely the form being stemming from
27 some sort of collective of Māori interests.
- 28 **MS DICKSON:** And more likely to be responding to a Māori population as opposed to a general
29 population. So we'd have providers who would work with Māori and non-Māori whānau,
30 whereas a Māori provider is more likely to be working with a sort of by Māori for Māori
31 approach.
- 32 **COMMISSIONER ERUETI:** Is that criteria online or accessible in the public domain?
- 33 **MR TE KANI:** Not that we can point to in that regard.
- 34 **COMMISSIONER ERUETI:** You would have to seek it to get it?

1 **MR TE KANI:** Yeah.

2 **COMMISSIONER ALOFIVAE:** So just a further clarification, that's the difference between a
3 Māori provider and a kaupapa Māori provider?

4 **MR TE KANI:** No, so I think we're talking about a Māori provider who's delivering services, in
5 your colleague's definition, to Maori, versus a non-Māori provider, and the non-Māori
6 provider, some are iwi, hapū based, and others are a collective of different Māori entities
7 coming together to deliver a service.

8 **MS COATES:** I wanted to also ask you, so I understand that there's section 7AA partnership
9 agreements with iwi and Māori collectives. Is it anticipated or are there any similar
10 partnership type agreements with Pacific communities or are they more just providing the
11 section 396 providers?

12 **MR TE KANI:** So there's the 396 arrangements. Section 7AA of course is for our Treaty
13 relationship and our Treaty partner. The nature of our partnerships with Pasifika would
14 most likely be contractual, but increasingly moving to more strategic formed relationships
15 which builds on the work that we're leading around our Pasifika strategy.

16 **MS AIOLUPOTEA-AIONO:** I think the intention is to increase the number of Pacific providers,
17 Pacific being Pacific governed and Pacific owned, but we do have a number of non-Pacific
18 providers who are providing for our communities currently but the intention in the future
19 direction plan is to increase the number of Pacific providers, whether they be section 396
20 or -- well, section 396 but the part -- yeah, so currently we are working on a partnering
21 strategy which incorporates the -- what our communities have told us in terms of what
22 they're seeking for Pacific providers.

23 **MS COATES:** Is it anticipated that there's any Pacific communities involved in the more
24 decisionmaking space that Māori seem to be getting into or just that hierarchical we're
25 paying you to provide that contractual service?

26 **MS AIOLUPOTEA-AIONO:** I think the development will be something - I mean that's a
27 conversation we need to have with communities around the relationship and what that looks
28 like. I think they have told us the aspiration for it not to be just a funding contract but it's
29 relationship- based. They have said that quite clearly in the engagements that we have had
30 around the enabling communities piece for Oranga- Tamariki.

31 **MS COATES:** I just wanted to ask a few questions on the Te Ata-tū announcement that was made
32 last week, and appreciating that it's still a work in progress.

33 **MR TE KANI:** Kei te pai.

1 **MS COATES:** But from the article that I read about it and how you articulated it, it appears that
2 that's acceptance that Maori or iwi providers will be making decisions about whether a
3 child needs to be uplifted and put into the care of whānau, is that right?

4 **MR TE KANI:** Yes, that's the intention, yes.

5 **MS COATES:** And that the Oranga Tamariki role is to support those decisions?

6 **MR TE KANI:** And enable it, yes.

7 **MS COATES:** And has any more detail around how that practically works been worked through,
8 or is that something still to come?

9 **MR TE KANI:** We're still working through that. It's been an engagement with (te reo Māori)
10 Kaiaranga ā- -whānau for nearly nine months now, but we're still working through that
11 detail. The precise nature of what we're going to be transferring to Kaiaranga -ā -whānau,
12 the precise nature of what we'll be sharing, really understanding the resourcing that's
13 required for Kaiaranga ā- -whānau to deliver that work, because that's critical to success,
14 making sure that they're well supported and resourced to deliver it. So we're working
15 through all of those details.

16 Underpinning all of that of course is clarity around our people capability, cultural
17 capability, and making sure we work through any legislative, I won't say barriers, but
18 working through how we operate this within our current legislative framework.

19 **MS COATES:** Is it fair to say, because this is the first time that that's being proposed in the same
20 way --

21 **MR TE KANI:** Yes.

22 **MS COATES:** Is it fair to say that is a test case, and the intention would be, if it works, to roll
23 that out more broadly across the country?

24 **MR TE KANI:** Yes.

25 **MS COATES:** One of the concerns that was expressed by the Waitangi Tribunal in its report was
26 the concern about replacing, I guess, one bureaucracy with another and really just Māori
27 becoming Oranga Tamariki, just wearing a slightly Māori pōtae. How are those concerns,
28 I guess, being addressed in relation to what's being proposed?

29 **MR TE KANI:** A very good question, and it's how I frame the conversation as well, which is we
30 don't want to reduce - we don't want to replace one bureaucracy with another bureaucracy,
31 I've been very upfront about my views on that, and there's a number of layers to it. The
32 first is actually creating or supporting Kaiaranga- ā- -whānau with how they think they can
33 invest and grow their workforce and their capability because, ultimately, who does the
34 work is the people on the ground, working with our whānaus and community and the

1 importance of growing that capacity and supporting it with greater capacity
2 so - and- helping them to focus there and not building deep organisational infrastructure
3 and what would normally come from a large bureaucracy.

4 **MS COATES:** So they're really leading the way instead of Oranga Tamariki leading that
5 conversation?

6 **MR TE KANI:** And we're supporting them and enabling them to have that conversation.

7 **MS COATES:** One of the other recommendations made by the Waitangi Tribunal was to
8 establish an independent Maori Transition Authority. That was to have a number of powers
9 or it was envisaged that that would have a number of functions, including improving the
10 transfer of powers to Māori communities, directing resource and having a clear mandate to
11 design and reform the care and protection system. That recommendation hasn't been
12 accepted, has it?

13 **MR TE KANI:** The Government in the Cabinet paper accepted the recommendations of the
14 Ministerial Advisory Board, Te Kahu Aroha, made a very clear decision to recognise that
15 that recommendation is consistent with the recommendations set out by Te Kahu Aroha and
16 that the future direction plan the Government announced with the launch and the
17 acceptance of the recommendations of Te Kahu Aroha creates that ability for Oranga
18 Tamariki to work directly with Māori to understand what shifting decision making and
19 resourcing to them looks like.

20 **MS COATES:** But that preliminary step was ultimately not adopted, was it, that is that there is a
21 Māori authority set up to have real teeth?

22 **MR TE KANI:** No.

23 **MS COATES:** In terms of some of the broader transformational changes that you've mentioned
24 and talked about in your brief that you haven't managed to talk about all of those aspects
25 today, one of the things- I guess the question is, there were changes that were made
26 after -Puao-te-Ata-tū that were intended to be transformational and ultimately they weren't.
27 We've now had the Oranga Tamariki Act that's intended to be transformational. Why
28 should survivors have faith that now is a time where that's actually going to happen?

29 **MR TE KANI:** So I first want to reiterate my acknowledgment about the failings to implement
30 the recommendations from Puao-te-Ata-tū. So I do want to start there. And we have
31 recognised and learned from the nature of those failings as to what we need to do
32 differently going forward to implement the changes we know are required for Oranga
33 Tamariki. So I just want to make that first point.

1 The reason we feel confident about the direction for transformation is, since 2019,
2 we're starting to see signs of change in practice, in approach, in building cultural capability.
3 If you recall, it was also a recommendation in Puao-te-Ata-tū. Since Puao-te-Ata-tū, we
4 have had a number of programmes in place, changes like Tu Maia which I've mentioned in
5 my brief of evidence, which is leading -- inside Oranga Tamariki it's improving our cultural
6 competency.

7 Our work towards a Toko Tumoana practice framework practice, as well as Tutuia,
8 so there's a number of aspects which speak to growing our cultural capability and that's an
9 important point to make for change, because one of the hallmarks, in my view, as to why
10 we haven't succeeded is we haven't had that cultural capability inside Oranga Tamariki.
11 And even if enable where we start to move decision making and resourcing closer to
12 whānau communities and iwi, and those examples I've given previously are tangible
13 examples of that direction, Oranga Tamariki will still need to lift its cultural capability
14 inside our organisation to truly give effect to that transformation.

15 The other point to add as to why we are feeling confident, but we've also got to be
16 mindful about this, is definitely from my time as being the Chief Executive since July
17 last year, Oranga Tamariki does have significant investment in our communities, but we do
18 need to think differently about that investment, more towards achieving the transformation
19 we know is required. The table you brought to our attention, for example, is evidence of
20 that.

21 **MR WHITCOMBE:** Could I make a couple of comments as well on that? I think it's a really
22 important question to ask around, you know, why haven't we fully realised the intent of the
23 various reports? In order for the kind of practice that we want to occur, which is relational,
24 it's based on a relationship and it's based on wellbeing, as opposed to purely safety focused
25 conversations, then there has to be the time and space for practitioners within the
26 community, for practitioners within Oranga Tamariki, to have that approach with whānau.

27 The simple comment that I'd make is that the runway to implement needs to stay on
28 a true path that is consistent and has longevity. It's not another,- I would also say that the
29 resources do need to follow for communities and for our frontline in order for- us to get
30 there.

31 We need to invest in the workforce to do this, kia ora.

32 **MS COATES:** Just following up on that, one of the barriers that I think you identified last time
33 around -- in discussion with me around Puao-te-Ata-tū not being implemented was the
34 change in government and change in leadership. Given that there needs to be a long

1 runway to implement these changes, how do you future-proof or ensure that that's going to
2 happen and not just be overturned with the changing of the next government, whenever that
3 may be?

4 **MR TE KANI:** It's difficult for us to guarantee that, of course, because we've got no control over
5 changes of government and what then comes from that, but what is within our control is
6 bedding in the changes we're already making. And the reason that's important to make is,
7 as we know from our learnings over the last 20 or 30 or so years, is once those changes are
8 embedded in the community, once you see the community capacity start to be developed,
9 especially in this area which is quite complex and there's a number of interdependencies,
10 change is a lot harder.

11 **MS DICKSON:** The only thing I would add is that I think there are a lot of legislative protections
12 and enablers that are built in now that didn't exist pre-2019. So we've talked a lot about
13 7AA which arguably is one of the most clearly descriptive set of Treaty obligations on a
14 Chief Executive in the public sector. There are other things in the legislation which have
15 changed markedly which would be very difficult to unwind, I guess, and I'm sure we'll talk
16 more about things like National Care Standards, support for young people, leading care,
17 prevention orientation and principles of the legislation, those things are encoded now,
18 I guess, in the legislation and that does provide some confidence, I guess, in having a
19 foundation to continue to mobilise change.

20 And if I could just add one comment, when I think about the future direction plan,
21 one of the things I think change has focused on is kind of a - quite a single set of change
22 activities. When I think about the breadth of the future direction plan, actions, it talks about
23 things to enable communities, but it also talks about things to invest in a social workforce
24 so actually we have a greater degree of quality practice and professional capability in our
25 workforce, it talks about data and information, which is a conversation we had this
26 morning. So- it's multifactorial, whereas I think a lot of changes in the past
27 have -been - and- rightly there's accountability on the people within, but they have been
28 about changing the people in the system, not sort of at the exclusion of changing some of
29 those systemic things as well.

30 **MS COATES:** So a systemic, transformative shift is required?

31 **MS DICKSON:** Yes.

32 **MS COATES:** Which brings me on to my next topic which I wanted to explore, which is
33 systemic or structural racism within the system.

1 Mr Te Kani, in your brief of evidence, you re-affirmed the concession that was
2 made in the Tribunal that structural racism is a feature of the care and protection system
3 that has had adverse effects on Māori whānau, hapū and iwi, is that right?

4 **MR TE KANI:** Yes.

5 **MS COATES:** Given that acknowledgement of structural racism as being a feature of the care
6 and protection system, would you acknowledge that it also has similar adverse
7 effects - well, maybe not similar-,- similar- adverse effects in relation to Pacific peoples
8 that have been in care?

9 **MR TE KANI:** I would say there's structural racism against Pacific people in care, yes.

10 **MS COATES:** Would you say that structural racism is part of the reason for the disproportionate
11 number of Māori and Pacific peoples that we see in care?

12 **MR TE KANI:** Yes.

13 **MS COATES:** That's long been known to be a problem, hasn't it?

14 **MR TE KANI:** Yes.

15 **MS COATES:** One of the things when talking about structural racism that's an issue is people are
16 often talking about different things when they're talking about that. What's Oranga
17 Tamariki's understanding of structural racism in relation to the concession that was made?

18 **MR TE KANI:** So in relation to the concession that was made, there was first a recognition of
19 policies, practices and legislative change reflecting broader public attitudes or whatever you
20 might say there.

21 The second component, which is important to note around structural racism, is a
22 clear acknowledgment of where decision making sits within government in relation to
23 decisions about tamariki in care, and a recognition, therefore, that the power for those
24 decisions mostly reside in the State when it comes to making decisions about tamariki in
25 State care or bringing tamariki into State care.

26 **MS COATES:** So just picking up on that, what you're saying in relation to that latter form - or
27 that latter example that you referred to was the fact that decision- m-aking doesn't reside at
28 all in Māori communities is an example of structural and systemic racism?

29 **MR TE KANI:** In relation to the care and protection system in State care, yes.

30 **MS COATES:** And I wanted to walk you through, because -- I wanted to walk you through a
31 number of different examples that we've heard about that reflect structural racism or racism
32 generally that have been felt by survivors as they've been in the care system.

33 **MR TE KANI:** Okay.

1 **MS COATES:** And to get your comment on some of those examples in particular. So I just
2 wanted to bring up a document, MSD 0014644, and just the first page, 0001.

3 So this is a letter from 1987 from a residential social worker to the Minister of
4 Social Welfare and one of the concerns that it picks up is the ignoring of Māori and other
5 Pacific Islanders' cultural needs and values. It's specifically framed in response to your
6 regulations do not do enough in this space but what it does is it walks through effectively a
7 number of places where this particular social worker has at least identified that Oranga
8 Tamariki, what was then the predecessor, are lacking in relation to those values. So it talks
9 about not having Māori programmes, issues around the teaching and recognition of Māori
10 language, there not being provision for Māori and Pacific Islanders' food, the importance of
11 the freedom to practise cultural traditions, exercise eating habits for kaumatua, kura,
12 kaiarahi to participate, for there to be training in relation to ethnic residential care, it also
13 refers to the participation of whānau in care and the provision of interpreters.

14 I'm appreciating that you may not have read this particular letter before, but would
15 those examples of a lack of those particular things that I've just stepped through be an
16 example of institutional, systemic racism? That is the lack of Māori language, the lack of
17 kai Māori, the lack of the practice of Taha Maori being in these programmes. Is that the
18 sort of systemic racism that we're talking about?

19 **MR TE KANI:** Noting this is the first time I've seen the letter, but on the reading of the text just
20 highlighted, those are examples, in my view, of the impact of the organisation, without
21 knowing their policies at the time, not having the policies, practices in place to deliver on
22 this. So, in my view, what I'm reading is the impact or evidence of an organisation that
23 doesn't have those core practices in place. Now, whether that means that the organisation at
24 that time was part of a care and protection system that was systemically racist, I think it's
25 hard to deduce that from reading this, but from the reports, inquiries and research we know,
26 that would be the case.

27 **MS COATES:** Because part of institutional racism, isn't it, is just the lack thereof or provision for
28 culture?

29 **MR TE KANI:** Yeah, absolutely.

30 **MS COATES:** And this illustrates that?

31 **MR TE KANI:** The recognition of, yeah.

32 **MS COATES:** Another example that I wanted to pull up is the Te Uri Hāhā report where it makes
33 some comment on these sorts of issues as well. The particular reference is MSC0008080,
34 page 14. In that report, they talk about there being clear evidence of negative differential

1 treatment towards pēpi, tamariki and whānau Māori across the care system, so this is
2 towards the bottom under evidence of negative differential treatment.

3 **MR TE KANI:** Yes.

4 **MS COATES:** They talk about whānau being discriminated against by magistrates who viewed
5 Pākehā upbringing as far superior and more desirable, they talk about Māori babies being
6 harder to place, and on the following page, they talk about Pākehā families of concern
7 being more likely to be granted approval if they adopted a nonwhite- baby, and they
8 also talk -- at the top of that second page, they go through some of these examples of the
9 type of disparity that Māori faced in the system. Another one is,- another example includes
10 tamariki- Māori also more likely to be placed in restrictive institutional environments rather
11 than European children more likely to end up in foster placements.

12 So these are the sorts of examples that you would say reflect the institutional racism
13 that Oranga Tamariki has accepted?

14 **MR TE KANI:** Acknowledged, yes.

15 **MS COATES:** One of the,- this is consistent with -a number of- the evidence that we heard
16 strongly from a number of our survivors. So we have some survivors, for example, talking
17 about how when they went into care and this is at witness-,- you don't need to bring this up,
18 I'll just read out this one statement. At witness statement number 0552001, where we had a
19 witness talking about how "I lost my culture and language during my time in care. Before
20 going into State care, I was able to speak Samoan fluently. It was my first and only
21 language for so long, I could hold a conversation and understand things. After being in
22 care, I couldn't speak the language and I had forgotten a lot of the fa'asamoa- and how to do
23 things the Samoan way".

24 Would you acknowledge that that is another example, I guess, of that lack of, during
25 the time period that we're considering, prioritisation on the importance of culture?

26 **MR TE KANI:** Yes.

27 **MS COATES:** Another thing that we have heard much about is not only the lack of prioritisation
28 but also the actual denigration of Māori and Pacific kids whilst in care. Are you familiar
29 with some of those examples?

30 **MR TE KANI:** I am familiar with some of those examples, yes.

31 **MS COATES:** So just to run through a couple of them, we had a witness, for example, at witness
32 number 0698001 at page 7, paragraph 39, talk to us about how "if they heard us kōrero
33 Māori we were reprimanded for it. I'd call it white out, where we were made to feel like a

1 white person. You had to speak like one and act like one, that's why we went to school. It
2 wasn't about educating us on our culture, it was about educating us to be Pākehā".

3 Is that one of the messages that Oranga Tamariki have heard that characterises the
4 way that Māori were treated in care during the period that we're talking about?

5 **MR TE KANI:** Yes, it is.

6 **MS COATES:** Would you say that this type of example, and we've got many of them and
7 hopefully you've heard a number of them, they're examples of that stripping away and
8 denigration of culture, identity and language?

9 **MR TE KANI:** Yes.

10 **MS COATES:** And Moana Jackson talked in the brief that you're familiar with about cultural
11 genocide, and he described it as the systematic destruction of traditions, values, language
12 and other elements that make one group of people distinct from another.

13 Would you agree that some of the examples that you've heard about, or that have
14 been heard about in this Commission, sound like that?

15 **MR TE KANI:** They sound like his articulation of it, yes.

16 **MS COATES:** And you've acknowledged that that has an intergenerational impact?

17 **MR TE KANI:** Indeed.

18 **MS COATES:** Can you appreciate that for a number of our survivors that bore the brunt of that
19 cultural loss and disconnection, that even though Oranga Tamariki is doing what it should
20 in terms of being more positive in relation to culture now, that that can be quite a painful
21 experience for them and why there was a reaction from some in relation to the naming
22 of -- renaming of Child, Youth and Family to Oranga Tamariki?

23 **MR TE KANI:** I acknowledge that, yes.

24 **MS COATES:** In addition to that denigration, one of the themes that we also heard coming
25 through clearly is stereotyping of Māori and Pacific Islanders in different ways. So, for
26 example, we've got examples where Māori boys were characterised as lacking in
27 intelligence and language ability. That wouldn't surprise you, would it?

28 **MR TE KANI:** That has not surprised me from what I've read.

29 **MS COATES:** We also have examples where young unwed Māori mothers were viewed as
30 unworthy as being parents. That example is also consistent with your understanding of
31 what was happening at the time?

32 **MR TE KANI:** Indeed.

33 **MS COATES:** We had heard further stereotyping of people considering young Māori women to
34 be viewed as promiscuous and aggressive. That's also not surprising to you, is it?

1 **MR TE KANI:** Not from what I've read and understand, no.

2 **MS COATES:** And I'll just refer to one particular example of that, at ORT0003497 at page 00024
3 at paragraph 2 where, in this particular letter, it says:

4 "The girls to whom I refer are in the main the dull, backwards, affection starved
5 Māori girls who cannot produce anything near a reasonable day's work and who try and get
6 their needed affection from any male who is handy."

7 I don't expect you to be familiar with that example, Mr Te Kani, but that's an
8 example in writing of the type of attitude that was reflected towards wāhine Māori, is that
9 right?

10 **CHAIR:** Can you just tell us who made that statement or what the context was of that statement?

11 **MS COATES:** Sure, if we can just scroll up.

12 Sorry, ma'am, I did have this written down.

13 **CHAIR:** It's an official document.

14 **MS COATES:** Yes, it is an official document and I understand it was from a woman in charge of
15 a residence.

16 **CHAIR:** Yes, it's addressed to the Superintendent.

17 **MS COATES:** Yes, that's correct.

18 Another example of that stereotyping, and this is a quote from one of our Māori
19 male survivors not that long ago, was where he said:

20 "One of the Youth Justice workers said to me, 'Oh, are you Youth Justice?' And
21 I replied, 'No, I'm Care and Protection', and he replied, 'Oh, future justice, then'."

22 That example illustrates that low expectation that is held in relation to Tāne Māori
23 in care, doesn't it?

24 **MR TE KANI:** I acknowledge that.

25 **MS COATES:** Would you agree that that type of treatment and attitude was just another iteration
26 of the native savages type of thinking about Māori, just in a different context?

27 **MR TE KANI:** What it reflects to me is, although I acknowledge in my brief of evidence, a
28 preparation of the attitudes and beliefs towards Māori.

29 **MS COATES:** Do you think that there is structural racism and discrimination still present in the
30 operations of Oranga Tamariki now?

31 **MR TE KANI:** I believe that inside Oranga Tamariki now we still hold decision making and
32 power inside the organisation. How we use it is really important, but if we come back to
33 the fact that our current structures and systems has power residing inside the organisation,
34 this is -what - the direction of- the organisation is trying to shift.

1 **MS COATES:** So that refers to the lack of decision making power that you're still trying to
2 address. If I take it back to the question, would you,-- so, for example, the
3 disproportionate number of Māori in care at the moment.

4 **MR TE KANI:** Yes.

5 **MS COATES:** Do you think that solely reflects the situation of Māori say as a legacy of
6 colonisation, or is there an element to that disproportionate number of Māori in care that is
7 also related to structural discrimination?

8 **MR TE KANI:** There's definitely an element of tamariki who have come into care of Oranga
9 Tamariki where the system and all of those agencies that interact with their whānau and
10 their community have to rethink how we do that to prevent tamariki coming into care. But
11 there is still a disproportionate number of Māori tamariki coming into care and in care.

12 **MS COATES:** And, again, there's multiple reasons for that?

13 **MR TE KANI:** Correct.

14 **MS COATES:** But racism, you can't say that racism is not a part of that?

15 **MR TE KANI:** I can't discount that, no.

16 **MS COATES:** What is Oranga Tamariki doing, apart from the shift to do more in the
17 decisionmaking power sharing space, to address the problem of structural racism?

18 **MR TE KANI:** If we start with our understanding of structural racism as we've articulated it,
19 there's four important parts of how we think about what we do inside Oranga Tamariki and
20 I'll ask Peter and Nicolette to speak to social work practice and what we're doing there as
21 well, because that's an important component of the shift in approach that we need to take.

22 But the first is, as I've said, the example of Te Ata-tū, the example of Ngāi Tahu and
23 others that will come, where Māori come to us if they start to trust us with options,
24 solutions, their vision for the services they wish to deliver, shifting that power imbalance
25 from the Crown closer to community, that's number one.

26 As I mentioned earlier, the work we're doing to strengthen our cultural capability
27 inside Oranga Tamariki, as recognised by Puaote-Ata-tū and as picked up in the expert
28 advisory panel report and again reflected in Te Kahu Aroha, we have that work underway
29 with Tu Maia, our partnership with Te Whare Wananga, and then there's the work we're
30 doing in social work with social work practice.

31 **MS DICKSON:** So just to share, we are making what, in my experience, is probably the most
32 fundamental paradigm shift in practice, and so what it starts with is a recognition of rights
33 and relationship based practice and fundamentally moving from valuing a Eurocentric
34 mainstream knowledge base where cultural ideas are tacked on, to reversing the balance of

1 what knowledge we value and draw from, starting with mātauranga Māori and other
2 indigenous knowledge.

3 Probably the most significant piece I would say is, traditionally, our child protection
4 system has been focused on a situation where there is risk, focus on the risk, you remove
5 the risk from the child or you remove the child from the risk. Where we are moving to is to
6 say, actually, you can't separate oranga of tamariki from the oranga of whānau. So we talk
7 about seeing the oranga of tamariki within the context of whakapapa and we talk about a
8 much more holistic view of oranga, building off certainly the work of Ta Mason Durie and
9 others, but going beyond that to some other social constructs of well-being, spiritual
10 constructs of well-being and whānau constructs of well-being.

11 What I would say is it's a shift that's intentionally to benefit tamariki and whānau
12 Māori, but actually it offers a really inclusive, relational, restorative way to work with all
13 children and I don't want to spend too long talking theory base, but we draw from our
14 particular paradigm within Aotearoa social work which has, if I could just really quickly
15 say, five features to it.

16 The first starts with understanding the significance of history, so that takes us to
17 colonisation, but not at colonisation inc, what does it mean for this rohe, the whānau in this
18 space and how does that impact the relationship that whānau can hold with agents of the
19 Crown? We then think about the valuing of Te Ao Māori knowledge, as I've spoken about,
20 drawing from Te Ao Māori principles.

21 Recognising cultural narratives, so that's about recognising the stories that whānau
22 have about their own experiences, and then the last piece is about principled practice, so
23 how do I recognise the benefits and the bias that might come from myself as a Pākehā
24 social worker, my world view, my experiences, how do I recognise how that might affect
25 decisions I'm making when I'm working with tamariki whānau Māori, Pacific families,
26 families with disabilities.

27 So it's quite a significant shift and what I would say is we've still got quite a journey
28 to go for our staff, but it is the first time a lot of our kaimahi, particularly our tangata
29 whenua social workers are saying, "I can actually see myself in the practice of the
30 organisation". So that's the shift we're on at the moment.

31 **MS COATES:** When did that framework come into play?

32 **MS DICKSON:** So we introduced the new practice framework that's based on that paradigm
33 through regional hui last year and we have a process over the next year or two of
34 progressively supporting kaimahi to work in the different tools and models and frameworks

1 that support that way of working but, to be honest, it starts with a mind shift first, and that's
2 the relationship with the work that Chappie has talked about in terms of cultural capability,
3 so it rests on a platform of cultural capability, which is an expectation for all professional
4 social workers anyway, but it's also a journey that's been really deepened through the work
5 we are doing with the wananga around Tu Maia. So I have staff right now who are on
6 those programmes and it's not just a "I come back with more knowledge about reo and
7 tikanga", it's actually going back to what does it mean to be Crown in the context of the
8 history that we have as a country.

9 **MS COATES:** In relation to those programmes that you mentioned that are happening in the
10 wānanga, as part of that, is there specific training on racism and bias as well as general
11 cultural building and competency?

12 **MR TE KANI:** Yes, so it follows the Te Arawhiti cultural competence framework for the public
13 sector and that takes you into understanding Te Tiriti, understanding colonisation,
14 understanding racism, and then also what are the skills that I might need, what's the
15 language and understanding that I might need to also engage in respectful ways, but it
16 definitely takes -- it's not just reo and tikanga.

17 **MS COATES:** Did any of the Commissioners have questions on the structure or systemic racism
18 piece that I've been talking about before I move on?

19 **COMMISSIONER ERUETI:** I'm good, thank you.

20 **CHAIR:** Yes, I think --

21 **COMMISSIONER STEENSON:** I did have just one question if you'll indulge, thank you.

22 Kia ora anō.

23 **MR TE KANI:** Kia ora.

24 **COMMISSIONER STEENSON:** I guess I'm just wondering around there's lots of changes and
25 it's a long time coming. There's lots of tamariki in care who can't wait for some of these
26 changes, they need change yesterday, last week, long before, and they need to be enduring,
27 so I guess I'm wondering around timeframes. Have you got an idea on that?

28 **MR TE KANI:** Yeah, so some things we're doing quite fast, so if you think about -- when I say
29 quite fast, what we're doing around cultural competency because that's important. Us being
30 culturally competent to actually interact with whānau, interact with our tamariki, that's
31 quite important. We have that going now and that will -- got the Ata haere message, so
32 that's okay. So we have that in place and that's going.

1 The work that Nicolette is speaking to in terms of the changes to our practice
2 framework and how it's built off a platform at the core of which is Te Tiriti, we have that
3 and we're making those changes now.

4 The changes to the work that Frana spoke to around whānau care, the increase in the
5 level of Māori whānau care providers, the increase in the level of funding towards that
6 model is happening now, so we'll start to see, coming to fruition, all these core parts for our
7 whānau and our tamariki.

8 What we need to continue to work on, which is as part of that broader children
9 system that we spoke about earlier today, is the work of the other agencies in working with
10 whānau in the prevention space and we need to do that, we do need -- I think we all accept
11 we have to do the work to accelerate that to better understand how we might work in
12 partnership to support our whānau and reduce State intervention, and I think that's the piece
13 that requires some effort. But of course, working across the system in that way, I think we
14 all want it to happen faster, but we'll go as fast as we can.

15 **COMMISSIONER STEENSON:** So with your organisation, if you gave me a percentage of
16 where you're at, would you say 50%, 80%?

17 **MR TE KANI:** In terms of the changes, if I were to give you a rough number --

18 **COMMISSIONER STEENSON:** Yeah, rough.

19 **MR TE KANI:** I would say we're 50% there as a broad measure. And by 50%, just to qualify
20 that, most of what we have is putting the components in place. Now the hard work, the big
21 work is delivering and implementing it.

22 **MS DICKSON:** I was just going to add, I think it does depend on what part of practice we're
23 looking at. If we just gave an example perhaps in the work that's happening now with pēpi,
24 everyone's really familiar with the Hastings practice review, the situation that happened
25 there. People are probably aware that we've had a really significant reduction in the
26 numbers of babies coming into care. We need to be confident that sitting behind that is
27 really good decision making. So one of the things I have a team that looks at is what is
28 happening in the case work for every baby that comes into care, and what we are seeing is
29 the practices that sit behind good decision making are evidenced more often than not with
30 our babies, so that's things like not seeing history in isolation but understanding history in a
31 current context, it's things like bringing whānau together early to make decisions, it's things
32 like what I talked about earlier about valuing the professionals and community who hold
33 relationship with whānau, understanding what their perspective is around safety, and it's

1 things like orientating support towards the maintenance of pēpi in the care of whānau, not
2 defaulting to a removal decision.

3 So, for me, because of the way that we are ensuring and looking at that practice in
4 real time, I do see that that is an area of practice that has changed and there is notable
5 change that's maintained over time now. So I think that's not true of every part of our
6 practice but it is one area of our practice where we have focused very hard and I think there
7 is evidence of change.

8 **COMMISSIONER STEENSON:** Thank you.

9 **COMMISSIONER ALOFIVAE:** Can I just ask a question, Ms Coates, thank you.

10 If you go, Ms Dickson, to the other end, which is when young people are aging out
11 of the system and the provisions that are provided around section 386(a) where they can
12 now come back up to the age of 25 if they so choose, so you might have shifted the power
13 in one sense, that the power now lies with the young person to come back. From a lot of
14 the evidence and stories that we've heard, they want to gap it, they never want to come back
15 into contact you, but their problems don't actually go away.

16 So that transitional space is very -it's a big space and it's an interesting space and it's
17 one where things could potentially go horrifically wrong, because this is when they're still
18 quite vulnerable and they need the support. Are you able to enlighten us what the work is
19 that's going on that might be monitoring oversight to, in actual fact-, make that work for
20 children and young people who are aging out of the system, or who are now in transitional
21 care that still require that support?

22 **MS DICKSON:** I think it's about understanding the full range of provisions that were offered for
23 that group so, yes, it is about rangatahi being able to reengage when they need support, it's
24 also about an obligation to proactively offer support and, often, exactly as you say, at that
25 early point, when a young person is no longer in the custody, that's probably a time they
26 don't want to talk us, but sometimes things happen quite quickly and then there is both the
27 reaching out and the reaching in. I think the only way we'll know whether that's realising
28 its intent is through ongoing engagement with rangatahi- and I think about this is a group
29 that VOYCE Whakarongo Mai are very connected to, so certainly the insights they share
30 about whether things are getting better or not for their age group is really important. It's an
31 age group that we talked about in the Oranga Tamariki action plan this morning, it's an age
32 group that a number of the agencies have signed up to specific commitments around so,
33 yeah, I think the fact we have those entitlements, those protections, those services, is a huge
34 advance from, you know, certainly hearing witness-,- sorry, survivor experiences about that

1 very cold cut off of- support. The fact that those supports exist is a huge step forward. I
2 think we've got to make --we've got more to do to make sure they are realising the full
3 range of needs.

4 **MS AIOLUPOTEA-AIONO:** I apologise, I didn't want to take us back, I just wanted to add on
5 to Chappie's response around the structural racism and the impacts of colonisation for
6 Māori but also for Pacific and then the added- addition- of our migration story for Pacific.
7 I remember our survivors talking about that and I guess the impacts of migration and the
8 discrimination that Pacific peoples faced in those days, that's recognised by the Dawn
9 Raids. But also, you know, some of the reasons why our survivors were entered into care
10 was because of the situations of our Pacific families and the assimilation kind of agenda,
11 family violence, sexual violence, just the challenges of migrating to a new country also
12 added on the challenges to our Pacific parents to be able to look after our children in those
13 times.

14 So just supporting too Chappie's comment about how ready are we in terms of the
15 future direction plan, 50% of that, that also incorporates our Pacific, that we are right there
16 in terms of the structural foundations that we're setting up around workforce, around our
17 Va'aifetu, around our culture and language, cultural competencies, and our workforce that
18 we have. So we have had, over the last 7, 8, 9, 10 years, a Pacific practice framework that
19 has been in place, our Va'aifetu. We have eight ethnic-specific cultural frameworks that
20 our workforce has been practising. Particularly in Auckland, we have cultural advisors
21 who have been on the ground for many, many years. Many are in their 70s now, passing
22 through, but just wanted to acknowledge the work that the cultural advisors have been
23 doing around supporting our Pacific families in the 80s, 90s, 2000s.

24 **COMMISSIONER ERUETI:** Can I just,- sorry, Natalie, I did say I had no questions on this
25 kaupapa but I did want to,- Mr Te Kani, when you defined structural racism, you had two
26 definitions, one related to there being policies and practices that would be racially biased,
27 let's say, and the second definition is where the decision- making is still within government.
28 And I think when you were asked if there's still structural
29 discrimination, -racial- structural- discrimination, you said there could be elements of the
30 second definition?

31 **MR TE KANI:** Yes.

32 **COMMISSIONER ERUETI:** But not the first, right?

33 **MR TE KANI:** Yes.

1 **COMMISSIONER ERUETI:** But there's no,-- you didn't comment on whether there might be
2 personal bias within individuals working within OT either. Do you think that there could
3 be personal bias held by people employed by OT?

4 **MR TE KANI:** Yes, I do. Yes, I do. Yes, I do. And to say that, to be transparent and open about
5 that, which speaks to the work we need to do around lifting cultural capability, around the
6 changes to our practice framework as well.

7 **MS DICKSON:** If I could just add, we have acknowledged that risk of bias, of cultural bias, of
8 personal bias within the new practice framework so there's a whole focus on how you have
9 professionally capable supervision that calls that out to make the safe place to address that
10 for staff and to work through that and to actively consider how that might be impacting a
11 decision that a social worker's making in real-time so it's very much a feature of the
12 practice framework that we have developed.

13 **COMMISSIONER ERUETI:** Thank you.

14 **CHAIR:** Back to you, Ms Coates.

15 **MS COATES:** I understand that now is break time, is that right?

16 **CHAIR:** No, it's 3.30. Would you like a break?

17 **MS COATES:** No, sorry.

18 **CHAIR:** Are you about to move on to a new topic?

19 **MS COATES:** Yes, I was actually going to suggest that,-- I did have some questions prepared but
20 then realised that they're probably better directed when Claudia's here because they relate to
21 disability, so that might be my questioning done for today and I may ask Mr Cooke to come
22 up and take over.

23 **CHAIR:** Well, I've got a question before that because I was going to leave it to the end of your
24 section, so if you've come to an end?

25 **MS COATES:** Yes.

26 **CHAIR:** Just referring back, it seems to me your acknowledgment, Mr Te Kani, of the place
27 where power lies is a deeply important matter that needs significant change if we're going
28 to do the transformation that everyone acknowledges is required, so that goes without
29 saying.

30 You also referred,-- well, you referred to it in many ways, really. In different ways
31 you referred to that power. So my question for you is this: do you believe that Oranga
32 Tamariki and you as the Chief Executive have the legislative tools to effect this? So to
33 what extent are these changes being driven by --wellmeaning people who recognise a
34 problem and who want to make change, and to what extent are they supported by the

1 legislation, you know, to what extent are you pushing the boundaries of the legislation- and
2 could you be helped by having some firmer, more obvious statements about that?

3 **MR TE KANI:** In terms of the legislation, to be clear about what we are doing, the legal
4 accountability under law still sits with the Chief Executive of Oranga Tamariki. What we
5 are proposing through the models such as section 7AA and Te Ata-tū is effectively the
6 Chief Executive of Oranga Tamariki is taking steps towards devolving decision making.

7 **CHAIR:** Is that devolution or delegation? I don't know if there's much --

8 **MR TE KANI:** Technically it would be delegation.

9 **CHAIR:** It would be delegation.

10 **MR TE KANI:** Technically it would be delegation.

11 **CHAIR:** Do you have the legislative authority to do that under the current legislation?

12 **MR TE KANI:** That's the boundaries we are pushing with the work we're doing with Te Ata-tū
13 that we're exploring.

14 **CHAIR:** Okay, so that might be a pinch point for you that you can go so far, but within the
15 framework of your existing legislation, you can't quite go as far as you would like?

16 **MR TE KANI:** Yeah, and that's because at the pinnacle of the legislative framework, the
17 accountability, the Chief Executive's accountability still sits with the CE.

18 **CHAIR:** Yes, so,- I'm not going to ask you to publicly make up and draft your own legislation on
19 the spot by any means, but it would be very interesting to us to know where we could go in
20 terms of facilitating the process to give it more legislative heft and backbone if you think it
21 was necessary. You're not a legislator, I appreciate that, but you are giving policy advice,
22 and that's important. So- I'm going to drop that in your lap and let you think about that.

23 **MR TE KANI:** Thank you.

24 **CHAIR:** And it would be very interesting to us if you would like to share with us in confidence
25 just some of your ideas about where you'd like to go to on that.

26 The other thing, and this goes to the political,- the vagaries of the political system,
27 the -three-year- cycle and the philosophical underpinnings of any government that comes in
28 and it's a question of safeguarding the positive changes if they're made and holding fast to
29 those.

30 You've talked about how some of it's now bolted into regulation and what not, but I
31 have this vision that if it can be got right and the citizens of Aotearoa New Zealand believe
32 we've got it right, then to what extent do you think that those citizens carry some power in
33 holding to the right path? I'm talking about a national dialogue here.

1 **MR TE KANI:** I understand the question. I can't speak to evolving government contexts, but as
2 of today, what I can stand and say and be confident about is how we are planning our way
3 through our current settings, and I speak to that with optimism. Te Ata-tū is a beachhead
4 initiative for Māori and the Crown, the Māori-Crown relationship, and I believe we have,
5 within our current framework, enough for us to make progress on that, but again we have to
6 test that.

7 Really important from my perspective too is my learnings from the time I've been
8 here is the importance of growing the trust and confidence in, not just Māori, but our
9 communities in us, and what we're finding, which is understandable, is that process,
10 understandably so, is taking quite a bit of time for all the reasons the Commission has
11 heard, from survivors over the years you've been doing this Inquiry, understandably so. For
12 those reasons, we don't have, I believe, the trust and confidence in the community to reach
13 in just yet. We have to go down the path of building that. That in itself is a big journey for
14 an organisation such as Oranga Tamariki, let alone policy changes or legislative changes.
15 That human cultural aspect is important. We've got a plan to make those shifts, but of
16 course we want it to take as quickly as possible, but for those reasons we still have some
17 way to go to build that confidence.

18 **CHAIR:** And bring the nation behind you.

19 **MR TE KANI:** Yeah, I'm open about that.

20 **AUDIENCE MEMBER:** [Applause].

21 **COMMISSIONER ERUETI:** I'll be brave, I'm with the Chair on this. I had that question too,
22 about whether there's progress being made. It's kind of come very recently, but steps have
23 been taken, and it could go on a trajectory so that it develops in this kind of piecemeal
24 fashion, but as to whether there's some sort of way in which to accelerate the process
25 through maybe a different model even, rather than this sort of, you know, hapū by hapū
26 engagement, some sort of statutory model which provides a framework for empowering
27 Māori organisations and iwi authorities immediately as enshrined in legislation, akin
28 to -- you'll be familiar with the Canadian legislation.

29 **MR TE KANI:** Yes.

30 **COMMISSIONER ERUETI:** The recent bill which recognises jurisdiction for tribes. We don't
31 have that history, but that's the type of thinking that we're looking for as that sort of
32 innovation to try and,-- you've got your commitment to empowerment. You've got a
33 process now, but is there another way in which it could be done to accelerate progress?

1 **MR TE KANI:** I think you're balancing a couple of tensions. The speed to progress, we can only
2 go as fast as all the actors in the process. So the analogy I would use would be the
3 progression of Treaty settlements. I think of course everybody wants settlements to be
4 settled quickly, but they can only go as fast as they can go. In the work that we do, of
5 course we want there to be acceleration, and any levers you might think that could happen
6 to bring it to bear would be great but, ultimately, what we're really talking about is work
7 with whānau. Unlike the consolidation of assets or taonga or land, for the work that we do,
8 it really is whānau by whānau by whānau. So whatever approach we take, that's our
9 starting point. Not how do we fix a whānau but, actually, when we think about the
10 ecosystem around the whānau, the hapū and the iwi, that's the point of which, in our view,
11 in my view, is our interaction. And though we might wish that to speed up, I think the
12 reality of it is it will take the time it takes, depending on who we interact with.

13 **COMMISSIONER ALOFIVAE:** Thank you, Mr Te Kani. Just actually picking up on that point
14 because we've heard from some of your other colleagues all of last week and Iona Holsted,
15 she referred to there being a lot of research, not just recent but past research as well, that
16 really identified very clearly that for Māori and Pacific, it was the importance of te reo,
17 tikanga, mātauranga, that went to the very heart of culture and identity, and so that was the
18 whole sense of well-being for the young person. And when you look at -- I mean, that's a
19 basic principle that's so important, but it doesn't necessarily translate across all of your
20 agencies in our care system.

21 **MR TE KANI:** Yeah.

22 **COMMISSIONER ALOFIVAE:** So when I think about your Oranga Tamariki action plan,
23 which is made up of about 6 or 7 agencies of which, by the looks of it, you're just another
24 player in this system, but in actual fact you're a critical player.

25 **MR TE KANI:** Yes.

26 **COMMISSIONER ALOFIVAE:** Because the kids are in your care.

27 **MR TE KANI:** Yes.

28 **COMMISSIONER ALOFIVAE:** And so it was really a question around your view, with your
29 agency hat on, obviously, are you strengthened enough in -- because you say you've got to
30 go at the rate of whānau, of communities, of iwi, but does that plan and your place in that
31 plan as an agency, is that strong enough? Should you in actual fact be leading it out
32 because your colleagues are not in the spotlight as often as you and your agency are, and
33 whether or not Oranga Tamariki should have a right to actually make some big demands of
34 your fellow agencies.

1 **MR TE KANI:** I'm happy to respond to that and no doubt my friends next to me will have
2 something to say too, I can feel them jumping out of their seat, but I think we have to, in
3 my view, think of it in two parts. Of course there's the complex social policy aspects that
4 we all need to think about with whānau prior to whānau coming into care, and that's an
5 important -- that's a big question, that's an important question and those are questions you
6 put to my colleagues last week, if we think about the importance of education, it has a
7 preventive effect on tamariki going into care, that was clear from the evidence in the kōrero
8 last week.

9 Then there's what we do, how we interact, how we respect the mana of all tamariki
10 in care. And to answer your question, we will speed some parts of the action plan
11 depending on where you'll be on that spectrum. Tamariki in care, of course we'll take that
12 leadership role because our statute demands that. So how we drive agencies to respond to
13 the needs of tamariki in care, that will ultimately sit with us as leaders to drive that, and
14 July was when the action plan was agreed and we've got some work to do there.

15 On the first aspect around that complex work, around the complex social policy,
16 that prevention work, bigger, more complex, but ultimately that speaks to the core
17 recommendations of Te Kahui Aroha, Puaote-Ata-tū, and also the Waitangi Tribunal, the
18 recognition that there's many agencies who have a role in that complex social policy fabric,
19 ultimately reducing the number of kids coming into care. So, yes, we'll take a strong
20 leadership role on what we're accountable for as part of the action plan, but then you've got
21 that front end.

22 **COMMISSIONER STEENSON:** I just want to ask one followup question, if I may, because you
23 talked about how the changes in the Oranga Tamariki Act are more supportive now to get
24 to where you need to go.

25 **MR TE KANI:** Yes.

26 **COMMISSIONER STEENSON:** I'm just wondering whether, in your view, these other agencies
27 who have their own legislations that they're beholden to, are also fit for purpose with
28 regards to what needs to be done in terms of a system-wide change?

29 **MR TE KANI:** I can't comment about how they're fit for purpose, but I can comment on their
30 commitment and our way of working together and our interactions. To be precise, we work
31 with the agencies at a local level on a daytoday basis, and by and large those relationships
32 should be tense, but by and large we work well together. So I want to acknowledge that.
33 Can we always improve? Of course we can. Are the agencies fit for purpose? I can't
34 answer that.

1 **COMMISSIONER STEENSON:** Sorry, I was meaning the legislation is,- because I think
2 your-,-- one of your colleagues said the changes to the legislation have made a big
3 difference.

4 **MR TE KANI:** For us, yes.

5 **COMMISSIONER STEENSON:** Yes, to go forward. So that begs the question, are there other
6 changes required in other pieces of legislation for other agencies to do the same?

7 **MR TE KANI:** Not that I can speak to right now.

8 **KAUMATUA HAURAKI:** Kia ora. Am I able to make a comment on that? We do have the
9 legislation under the Te Reo Māori Act 2016 which is requiring of all government agencies
10 to be involved in the revitalisation of te reo Māori, given that all of the policies and
11 legislation have acted against that happening in the past.

12 The second piece about legislation is the Public Sector Act 2020 which requires all
13 the agencies to begin the cultural journey that we are spearheading,-- I insist on saying we
14 are spearheading that. I just wanted to make those comments.

15 **CHAIR:** Kia ora matua, and we will be hearing from your big boss on that issue probably on
16 Friday.

17 I'm conscious we've eaten into quite a bit of the time you'd set aside. You'd
18 finished?

19 **MS COATES:** Yes, I was just going to ask one follow-up question that flowed on from some of
20 the exchanges that occurred. It's related to, I guess, Oranga Tamariki's capacity and
21 resourcing if all the iwi came to you and said, "We want to do this, we want to engage in
22 this transfer of power, etc, in terms of the journey that you're heading on". Would you be in
23 a position to pick up that wero?

24 **MR TE KANI:** We'll be in the position to engage with them to understand and to start that
25 kōrero. Would we be in a position to, on multiple fronts, all 79 or however many number
26 iwi there are, start an absolute transfer? No, I don't think we or the iwi will have the
27 resources to do that.

28 **CHAIR:** All right. That's it for you, Ms Coates?

29 **MS COATES:** Yes. I'm not sure if you want to take the break now?

30 **CHAIR:** I'm just going to hand over now to Dr Cooke. Were you next in line? Would you like to
31 start now for 10 minutes or would you like for us to take the afternoon break and then we'll
32 start fresh from there, would that suit you?

33 **DR COOKE:** I think the latter would be preferable.

1 **CHAIR:** The latter would be preferable? All right, we all get an early cup of tea, everybody.
2 We'll all have afternoon tea and back here at 3.35 pm.

3 **Adjournment from 3.20 pm to 3.38 pm.**

4 **CHAIR:** Welcome back and welcome to you, Dr Cooke, for your turn at the podium.

5 **DR COOKE:** Tēnā koutou, tēnā koutou, tēnā koutou katoa, ko Allan Cooke tōku ingoa and I am
6 one of the Counsel Assisting the Commission.

7 I'm going to proceed on the basis that the three of you together are going to be able
8 to answer a range of questions that will bring into play a degree of institutional knowledge
9 because I'm aware of the respective experiences that each of you have, particularly
10 Nicolette, and as well that's experience and knowledge that runs from a site level upwards
11 and then obviously it will include experience at policy levels as well. And, Mr Whitcombe,
12 I would anticipate that you would be able to answer some questions about social work
13 practice that may arise over the course of the next few days.

14 I wanted to start, Mr Te Kani, and kia ora -- oh, I should describe myself, of course,
15 to those who are watching, kia ora. I am one of the older people in the room, I have short
16 grey white hair, I have glasses, I'm wearing a bluish suit with a red tie and a red striped
17 shirt and with glasses.

18 I'm going to start at paragraph 10 of your brief where you say it's a fundamental
19 right of those who have been or continue to be in the care of the state to feel safe and
20 protected by those who care for them. That is a fairly self evident proposition, isn't it?

21 **MR TE KANI:** Yes.

22 **DR COOKE:** And it's been a self-evident proposition ever since the state first took coercive
23 powers and let's assume for present purposes we're only talking as far back as the Child
24 Welfare Act 1925, which would cover the period from 1950 through to 1974.

25 **MR TE KANI:** Yes.

26 **DR COOKE:** That's continued to date, hasn't it?

27 **MR TE KANI:** Yes.

28 **DR COOKE:** And the state in that time has exercised its powers in such a way that we know now
29 there have been a large number of children taken into care, a large number of Māori
30 children taken into care, and I think you gave us some figures this morning as to what the
31 latest stats were in that regard.

32 **MR TE KANI:** Yes.

- 1 **DR COOKE:** I think there's agreement by everyone that those stats for Māori children in
2 particular over many years are unacceptable and are there for a whole variety of reasons
3 that you have canvassed earlier in your evidence with Ms Coates.
- 4 **MR TE KANI:** Yes.
- 5 **DR COOKE:** Would you accept the proposition in your role as Chief Executive? Because you're
6 one of a number of people to have filled that role, irrespective of whatever nomenclature's
7 been attached to it, aren't you?
- 8 **MR TE KANI:** Indeed.
- 9 **DR COOKE:** In the past, the present and the future.
- 10 **MR TE KANI:** Absolutely.
- 11 **DR COOKE:** So "to feel safe and protected by those who care for them" is said as a statement
12 that's intended to have meaning attached to it. That's correct, isn't it?
- 13 **MR TE KANI:** That is correct, but it's also a statement, yes.
- 14 **DR COOKE:** But they're not merely words that are vacuous, are they?
- 15 **MR TE KANI:** Not at all.
- 16 **DR COOKE:** But would you accept that when one looks back over the history of care for
17 children who have been in them- the Chief Executive, the Superintendent, the -Director
18 General-, that for many of those, and I'm speaking here where we have numerous survivors
19 who are watching, that may well be the view they take. You would agree with that?
- 20 **MR TE KANI:** I do agree with that, yes.
- 21 **DR COOKE:** The words and the meaning, the intent behind them have been vacuous because
22 they haven't been kept safe?
- 23 **MR TE KANI:** Yes.
- 24 **DR COOKE:** You're accepting that as a fundamental proposition, aren't you?
- 25 **MR TE KANI:** I'm accepting in my acknowledgments that we haven't always kept them safe, yes.
- 26 **DR COOKE:** We're going to give some examples throughout the course of this afternoon and
27 into tomorrow, and they are but indicative of many, many survivors. So when you
28 say -- you use the word -- I think you use the word "all" in there which was a bit of a
29 qualifier and there may be good political reasons for you saying so, you're not meaning to
30 undermine the narratives that this Commission has heard over the course of its hearings, are
31 you?
- 32 **MR TE KANI:** There's no political motive behind my words, but there's no intent to undermine
33 or minimise the kōrero from the survivors.
- 34 **DR COOKE:** Okay, because I'm going to come on to that in a little while.

1 And you've agreed, haven't you, that the,- that Oranga- Tamariki is standing here
2 today in the shoes of predecessors?

3 **MR TE KANI:** Yes.

4 **DR COOKE:** Which are the Child Welfare division of the Ministry of Education, the Department
5 of Social Welfare, and since 1989, as known by numerous names and within numerous
6 structures, the present day Oranga Tamariki?

7 **MR TE KANI:** Yes.

8 **DR COOKE:** You said as well in your evidence, and this has come across from a few witnesses, I
9 was going to say almost establishment witnesses, if you put that in inverted commas, that as
10 from 1 April 2017, a new entity emerged out of Wellington which called itself Oranga
11 Tamariki and it was different from whatever had preceded it.

12 When you say in your statement that Oranga Tamariki was established on 1 April
13 2017, you're being literally correct, aren't you, but you're not being correct in the sense that
14 it's just a continuation of what had gone on in the past?

15 **MR TE KANI:** It's legally correct in the sense that that was when it was legally established.

16 **DR COOKE:** And you assumed, presumably, you assumed the legal responsibilities for children
17 who were then in care of the previous incarnation of Oranga Tamariki?

18 **MR TE KANI:** Yes, that's correct.

19 **DR COOKE:** In fact, you would have assumed the staffing responsibilities, the existing
20 contracts -- the organisation in effect was just rolled over from one name to another as at
21 1 April 2017?

22 **MR TE KANI:** On 1 April 2017 we assumed all those accountabilities, yes.

23 **DR COOKE:** I ask that question because I want to put to you the proposition which I think we
24 put last week to the Independent Children's Monitor that, for many, the change of name
25 hasn't mattered one iota as, despite those changes, and whether you stand alone or whether
26 you're part of MSD, it's really just the same old monolith, nothing's changed for those who
27 engage with you. Do you accept that proposition as being as-- how you're perceived by
28 those out in the community?

29 **MR TE KANI:** I accept that some in the community perceive that there hasn't been a change.

30 **DR COOKE:** When you say that, are you talking about,-- sorry, you say there are some in the
31 community who think there haven't been a change. Are you able to quantify that in any
32 way or is it just a guess as to the some in the community?

33 **MR TE KANI:** Not to the extent that --

34 **CHAIR:** Excuse me, Dr Cooke. Yes, Ms Schmidt-McCleave?

1 **MS SCHMIDT-McCLEAVE:** Apologies, ma'am, I'm just wondering whether it's appropriate for
2 Mr Te Kani to be commenting on --

3 **CHAIR:** Speaking on behalf of the whole community, yes, I was wondering the same myself. I'm
4 sure Mr Te Kani is sufficiently capable of saying whether he can or cannot answer.

5 **MR TE KANI:** Indeed.

6 **CHAIR:** Feel free to do that if that is indeed your perception.

7 **DR COOKE:** I'll reframe it in this way, which will be: the evidence that this Commission has
8 heard through its survivors would indicate that, from what one can see, the great majority
9 of those survivors, and they may be but indicative of many others, hold the view that
10 nothing has changed.

11 **MR TE KANI:** I acknowledge they may hold that view, yes.

12 **DR COOKE:** And does it follow in your view that in order for the institution, the state institution
13 that is responsible for children who may have to be taken into the care of the State, that the
14 legacy that you have to carry may be too much of a burden to be able to move on
15 effectively?

16 **MR TE KANI:** Can you reframe that question, please, Mr Cooke?

17 **DR COOKE:** My question is, you've talked this morning about the changes that are being made
18 and how you have confidence in what's going to occur.

19 **MR TE KANI:** Yes.

20 **DR COOKE:** Perhaps I'll reframe it by saying this isn't the first time that statements have been
21 made at a time when Oranga Tamariki has been under the microscope and under challenge.

22 **MR TE KANI:** Oh, okay.

23 **DR COOKE:** I wonder if you could look at,- bring up MSC008280. This is just an example, let's
24 say the Cabinet paper that was presented on the care and protection EXG report back in
25 2005 or 2006, and it's but an example. If we go to paragraph 9 and bring that up:
26 "Yet,- this was an aspiration..."

27 **CHAIR:** Remembering that we are the only ones who can see it, do you mind reading out the
28 relevant portion, please?

29 **DR COOKE:** Yes. This says:

30 "The merger of Child, Youth and Family and MSD provides an opportunity for
31 greater direct support from other MSD service lines, for Child, Youth and Family to do its
32 core business well, and to leverage off MSD's social sector leadership to engage with other
33 agencies."

1 Could you go down to paragraph 12. There, you'll see it tells us about improving
2 outcomes for children, young people and families at risk requires government to continue
3 its investment, etc, in the wider sector, address issues that face these families, especially the
4 community based family sector and responsibility is shared.

5 I say this because this is but one of a number of reports that have looked at Oranga
6 Tamariki and, at this time, the panacea would seem to be to roll you back into MSD and
7 since then you've been rolled back out of MSD. So if you take that as being indicative of
8 some of the issues, and I know there have been numerous reports since Oranga Tamariki
9 came into existence, we've had the Mason Report, there's been the Brown Report, the early
10 reviews in 2003 and 2004, the Treasury, the baseline review, we had the -there- was the
11 broad review, that of Mel Smith, the Rebstock reports, numerous, and that's why I'm
12 suggesting to you, and this is why -- sorry, that the task that you have in front of you is
13 significant and you have a massive amount of work to do to bring the hearts and minds of
14 people who have been in the system along with you. Do you agree with that?

15 **MR TE KANI:** Yes, I do.

16 **DR COOKE:** Now I want to talk about the legal side of it, okay? Responsibility, accountability
17 and how the statute works and I'm going to bring that back in to show, through survivor
18 examples, the concerns that have come through to this Commission.

19 The Chief Executive is the person who,-- in whom legal powers are placed. That's
20 correct, isn't it?

21 **MR TE KANI:** Correct.

22 **DR COOKE:** It's the Chief Executive who has to, under section 7, carry out the duties as in your
23 opinion would best serve the objects of the Act?

24 **MR TE KANI:** Yes.

25 **DR COOKE:** And under section 7AA, that's even more direct, isn't it?

26 **MR TE KANI:** Yes.

27 **DR COOKE:** There's no room for the exercise of discretion, ie your opinion as to what will serve
28 or how you meet 7AA?

29 **MR TE KANI:** It's clear, yes.

30 **DR COOKE:** And when you exercise those powers, which are the powers of investigation, of
31 intervention, taking orders, etc, it's in your name and you do so by the exercise of delegated
32 powers to statutory social workers?

33 **MR TE KANI:** Correct.

1 **DR COOKE:** And where intervention occurs, and if, for example, it's necessary to remove a child
2 from his or her home, from their whānau, there has been the exercise of discretion as to
3 how that,-- as to where that child will be placed. That's correct, isn't it?

4 **MR TE KANI:** Yes.

5 **DR COOKE:** And the statute itself and as interpreted by the courts has been very clear in saying
6 it's a matter for the Chief Executive where he is going, or she is going to place a child.
7 That's correct, isn't it?

8 **MR TE KANI:** Yes.

9 **DR COOKE:** And you will be aware there's some High Court authority that tells us that, for
10 example, even the Family Court has very limited power to direct the Chief Executive to
11 place a child in a particular placement?

12 **MR TE KANI:** Just to respond, the Family Court has a degree of influence in the process and
13 system to influence the decision of the Chief Executive on the placement.

14 **DR COOKE:** We could spend some time discussing the nuances of that.

15 **MR TE KANI:** Yes, we can.

16 **DR COOKE:** And I'm going to leave it on the basis that, as a general principle, I think you would
17 accept this, that the placement decision is one of discretion, because that's what section 101
18 and section 104 would say?

19 **MR TE KANI:** The placement decision is one of discretion.

20 **DR COOKE:** Over the years, when a child's been taken into care, if you go back -- again if we go
21 back to the 1925 Act and look at it from 1950, those orders would have been -- in the first
22 instance, a child would have been committed into the care of the Superintendent under the
23 1925 Act and under the 1974 Act there would have been guardianship orders made, for sole
24 guardianship generally it seems, and under the 1989 Act there will either be custody orders
25 running in parallel with additional guardianship orders or there could be orders for sole
26 guardianship, right, you accept that?

27 **MR TE KANI:** I'm not the expert in those pieces of legislation.

28 **DR COOKE:** There's nods from those on your side.

29 **MR TE KANI:** Yes.

30 **DR COOKE:** Where you have orders for guardianship, sole guardianship, that incorporates
31 custody, doesn't it?

32 **MR TE KANI:** Yes.

1 **DR COOKE:** Or a custody order, and this has always been the case, that the rights, duties,
2 powers, privileges of mum and dad who are able to exercise day-to-day care and/or
3 guardianship are suspended and of no effect. That's the legal effect of it, isn't it?

4 **MR TE KANI:** That's the legal effect of the decision, yes.

5 **DR COOKE:** Which means that the social worker exercising delegated power, or you, wields
6 significant authority?

7 **MR TE KANI:** I accept that.

8 **DR COOKE:** If we look at what's happened since 1950 in the scope period as we've already
9 discussed, you've acknowledged the many thousands of children taken into State care?

10 **MR TE KANI:** [Nods].

11 **DR COOKE:** And you will acknowledge as well that many of those children, and particularly
12 Māori children, were placed, were removed from whānau in the first instance?

13 **MR TE KANI:** Yes.

14 **DR COOKE:** They were placed often in non-Māori care?

15 **MR TE KANI:** Yes.

16 **DR COOKE:** That they, as a result of that, lost attachment relationships they had in the first
17 instance to those who cared for them?

18 **MR TE KANI:** Yes.

19 **DR COOKE:** That in many instances, when they were placed, they lost their attachment,
20 whakapapa connections to their whānau, their hapū, their iwi, their nans, their aunts and
21 uncles, didn't they?

22 **MR TE KANI:** Yes.

23 **DR COOKE:** And as we know from the survivors that we've heard, they lost their language, they
24 lost their culture, and sometimes, we even heard one from the foster care hearing, I think, or
25 I've read it, who was Samoan but thought he was Māori, and there was the belated
26 realisation many years later on his part of the loss that had occurred as a result of that, and
27 they are just but statistics, aren't they, in many respects of -- people are shaking their heads
28 but when you look at the numbers of people who went through the care system, these are
29 only the ones that we know about.

30 **MR TE KANI:** These are the ones that we know about, yes.

31 **DR COOKE:** So the rest of them are all the known unknowns, I think that must be the way to
32 describe it, or the unknown knowns?

33 **MR TE KANI:** Yes.

1 **DR COOKE:** Sounds like Dick Cheney, doesn't it, but yes. And in addition, sorry, we also know
2 that many children who were taken into care, were taken into care, not necessarily because,
3 and this was back in the 50s and 60s, not necessarily because they may have suffered ill
4 treatment at home such as has occurred more recently, but because they were perceived to
5 be out of control and I think you were asked some questions around that this morning.

6 **MR TE KANI:** [Nods].

7 **DR COOKE:** They were out there on the streets misbehaving, possibly getting pregnant, those
8 kind of things.

9 **MR TE KANI:** Yes.

10 **DR COOKE:** And as a result of being out of control, this is the child as a threat in some regards,
11 isn't it?

12 **MR TE KANI:** Yes.

13 **DR COOKE:** And the State intervened, the State removed them to the cost and loss of those
14 children and their whānau?

15 **MR TE KANI:** Yes.

16 **DR COOKE:** And in addition, we also have a range of children, we don't know the numbers yet,
17 do we, who were disabled in some way, neurodiverse, FASD, autism?

18 **MR TE KANI:** Yes.

19 **DR COOKE:** They're also another cohort of children, aren't they?

20 **MR TE KANI:** Yes, they are.

21 **DR COOKE:** To some degree they're an invisible cohort, aren't they, because, again, we don't
22 know what the numbers are?

23 **MR TE KANI:** Yeah, we don't know what the numbers are.

24 **DR COOKE:** I'm slowly coming to where I'm going, which is --

25 **MR TE KANI:** That's okay.

26 **DR COOKE:** -- accountability and responsibility in some instances, but I wanted to cover this
27 question of delegation to the Open Home Foundation. I wrote down your evidence where
28 you said they have a delegation to carry out statutory social work on behalf of Oranga
29 Tamariki and we don't know anything more about that. And I know that you're empowered
30 under the Act, under sections 7(c), (d) and (e), and I'm not familiar with those particularly,
31 to delegate powers, statutory powers. Is that where it comes from?

32 **MR TE KANI:** If it pleases the Commission, we can get an answer in the break, a legal answer in
33 the break.

34 **DR COOKE:** And I think it also invokes schedule 6 of the Public Service Act?

1 **MR TE KANI:** Correct, yes, indeed it does.

2 **DR COOKE:** And from what I read about schedule 6 of the Public Service Act, you, if you're
3 delegating to someone outside of the Public Service, you need to get ministerial approval?

4 **MR TE KANI:** Yes.

5 **DR COOKE:** So presumably, in this instance, there's been ministerial approval for you to
6 delegate some or all of your statutory powers to the Open Home Foundation?

7 **MR TE KANI:** I'll give an answer in the break, and I understand this provision of transfer has
8 been in place with the Open Home Foundation for a number of years prior to the Public
9 Service Act coming into force.

10 **DR COOKE:** Has there been,- have other NGOs other than the Open Home Foundation
11 been,-,-- had the benefit of a delegation such as that?

12 **MR TE KANI:** Only,- to my knowledge, there's one other, which is Barnardos-, but as I say, we
13 can get that information to the Commission.

14 **MR WHITCOMBE:** If I can just comment as well, there is an iwi Māori organisation in
15 Whanganui that for Youth Justice social work practice has got delegated social work
16 responsibilities also.

17 **DR COOKE:** So just to be clear,- I'm aware obviously through the work that I do down at
18 ground level often and having acted for some of the NGOs in question --

19 **MR TE KANI:** Yes.

20 **DR COOKE:** -- that they certainly have children who are in their custody because if they're
21 approved under 396 as a Child, Youth and Family social support service, whatever the
22 phrase is, that's sufficient, isn't it, for them to then take orders --

23 **MR TE KANI:** Take orders, yes.

24 **DR COOKE:** -- in their own name? Fine. And if they take orders in their own name, such as
25 Barnardos, I think they've got two children at the moment and Dingwall have given their
26 last up, and the Open Home Foundation have almost 300, I think.

27 **MR TE KANI:** Yeah, our largest provider, yes.

28 **DR COOKE:** Are those children in care simply by virtue of the 396 approval, or is the delegation
29 power that we're talking about slightly different from that?

30 **MR TE KANI:** I understand. I can give you a specific answer, but my understanding is the
31 tamariki in the care of those providers are by virtue of 396, not through statutory social
32 work.

33 **DR COOKE:** All right, not through the delegation?

34 **MR TE KANI:** Not through the delegations.

- 1 **CHAIR:** Ms Schmidt-McCleave.
- 2 **MS SCHMIDT-McCLEAVE:** Yes, I just wanted to clarify that, ma'am, from a legal perspective,
3 my understanding is that it's under section 396 by virtue of their status as 396 providers.
4 They don't actually have a Public Service Act delegation because they don't require one
5 because of their section 396.
- 6 **CHAIR:** Because it's under that contractual provision?
- 7 **MS SCHMIDT-McCLEAVE:** Yes, under that section 396 provision.
- 8 **DR COOKE:** I don't want to go down a rabbit hole.
- 9 **CHAIR:** Let's not go down, nor are we going to dance on the head of pins.
- 10 **DR COOKE:** Yes. It's something I enjoy, but --
- 11 **CHAIR:** Yes, I know. I think Mr Te Kani's got to the end of his expertise on this. If there is
12 more to say and you can find it overnight then we'll be happy to take it. Thank you.
- 13 **DR COOKE:** I think it will be important to have it clarified to the extent that NGOs such as Open
14 Home Foundation may be exercising, not as 396 providers but through delegated --
- 15 **CHAIR:** I can tell you that's something the Commissioners are interested in but probably
16 something that can be sorted out behind the scenes rather than answered by --
- 17 **MR TE KANI:** Yes, we can get that.
- 18 **DR COOKE:** In your statement, you've often talked about accountability.
- 19 **MR TE KANI:** Yes.
- 20 **DR COOKE:** And accountability arises from being the Chief Executive, doesn't it?
- 21 **MR TE KANI:** That's where accountability sits under the Act, yes.
- 22 **DR COOKE:** And the other side of accountability is responsibility?
- 23 **MR TE KANI:** Of course.
- 24 **DR COOKE:** The two run together, don't they?
- 25 **MR TE KANI:** They do indeed.
- 26 **DR COOKE:** We opened this discussion by talking about children being safe in care, and when
27 we look at your role as the Chief Executive and as the role that others have had and which
28 you now stand in their place, there's a continuum, isn't there?
- 29 A. Indeed.
- 30 **DR COOKE:** Yes. And it's an institutional continuum?
- 31 **MR TE KANI:** Yes.
- 32 **DR COOKE:** That your accountability and responsibility therefore embraces past actions?
- 33 **MR TE KANI:** Yes, it does.

1 **DR COOKE:** And we've seen that through the,-- there've been claims made to the High Court,
2 there have been claims made to MSD, for example.

3 **MR TE KANI:** Yes.

4 **DR COOKE:** That's one way. There are various ways of accountability and responsibility, isn't
5 it? And then there's future looking responsibility, which is making sure that children who
6 are in care or will be in care don't come to harm, and that's an aspiration, isn't it, that we
7 would say we do not want children at all who are in our care to come to harm?

8 **MR TE KANI:** Agree.

9 **DR COOKE:** And you intervene generally these days, don't you, because a parent has failed in
10 their obligations to their child that that child is at such risk in terms of care and protection
11 that intervention of varying kinds has to occur?

12 **MR WHITCOMBE:** Yes, in essence that's correct, there's also the provision under unable and
13 unwilling aspects as well.

14 **MS DICKSON:** We just wouldn't characterise it necessarily as a failure of parents, there's a range
15 of reasons that leads to children needing care and protection.

16 **DR COOKE:** Intervention occurs in those variety of circumstances because there's either been an
17 act of omission, an act of commission, or there may be some behavioural issues on the part
18 of the child where mum or dad are unable or unwilling to address those, right? That covers
19 it, doesn't it?

20 **MS DICKSON:** [Nods].

21 **DR COOKE:** And where that occurs, often it's the case that the parent in question, it could be
22 expressed in this way, is failing to carry out the duties and responsibilities they have as a
23 parent under the Care of Children Act, because they're not meeting the needs as we would
24 expect towards those children. Agree with that? If they were, you wouldn't be intervening?

25 **MS DICKSON:** Yes, so the child's needs, the child's care and protection is not being met by the
26 parents, yes.

27 **DR COOKE:** Yes, that's right. And the effect of a custody order under the current Act is the
28 same as if a parenting order's been made under the Care of Children Act, isn't it? Section
29 101 and 104 say that, that if you have a custody order, it's as if a parenting order has been
30 made under the Care of Children Act and therefore it gives you, as the Chief Executive, the
31 same rights, duties and obligations to that child in care as any parent would have in society
32 towards their own children?

33 **MS DICKSON:** So just to distinguish the difference between care and guardianship, I guess, in
34 that context, so we wouldn't necessarily always have guardianship.

1 **DR COOKE:** No, I realise that. I'm talking about care as in day-to-day care.

2 **MS DICKSON:** Yes.

3 **DR COOKE:** Day-to-day care implicitly means or explicitly means the Chief Executive is to
4 keep the child who is placed in his custody under a 101 order safe, in the same way that we
5 would expect a parent to keep his or her child safe and not in need of care and protection?

6 **MR WHITCOMBE:** That's right.

7 **DR COOKE:** And what I -- when we look at the evidence that has come through from survivors
8 to this Commission about the physical and sexual abuse that has occurred, and again the
9 survivors' witnesses and the examples we'll give will just be but indicative of many, you
10 will agree, I trust, that you will say, "We failed in our obligations as the custodians in law
11 of those children"?

12 **MS DICKSON:** Yes, we would, I think. We've acknowledged that, yes, we would.

13 **AUDIENCE MEMBER:** National disgrace.

14 **DR COOKE:** It's important, isn't it, for those who are watching and the survivors who are here
15 today that they hear an explicit acknowledgment, accepting that the acknowledgment can
16 only go so far for a variety of purposes, right?

17 **MR TE KANI:** Agree, yeah, absolutely.

18 **DR COOKE:** The acknowledgment is there that harm was caused, children were hurt, children
19 were severed from families, children were severed from their extended families?

20 **MR TE KANI:** Yes, I acknowledge that.

21 **DR COOKE:** And you would also acknowledge that as those children journeyed through care,
22 that often the harm that was caused by their coming into care, because coming into care in
23 itself can be traumatic in addition to whatever led to coming into care, and the journey
24 through care, multiple placements, abuse that occurred in placements and residences and
25 family homes and foster homes, and then ultimately possibly no remedial work being done,
26 and then an abrupt transition from care, and ultimately possibly into the criminal justice
27 system, because you would accept, wouldn't you, a continuum there?

28 A. Yes, the evidence proves that, yes.

29 **DR COOKE:** That that's indicative of institutional failure on the part of the organisation from
30 1950, certainly through to 1999?

31 **MR TE KANI:** I acknowledge that.

32 **DR COOKE:** And you acknowledge that?

33 A. I acknowledge that, yes.

1 **DR COOKE:** And you would acknowledge also, would you, in terms of the more recent reports
2 and the discussions that have been taking place more recently, and which in fact has given
3 rise to this Commission in part and also through the Hastings example, that has given rise
4 to reports and other matters, that those themes have continued since 1999, those themes of
5 concern that we've just talked about and for which you've acknowledged?

6 **MR TE KANI:** Can I reask your question, Mr Cooke, are you saying-- are you asking me to
7 agree that that continues to today, 2022?

8 **DR COOKE:** I'm asking you to-- I'm very mindful of the Commission's terms of reference.

9 **MR TE KANI:** Yes.

10 **DR COOKE:** And I'm asking you if you would-- you've made acknowledgments of the history
11 from 1950 to 1999.

12 **MR TE KANI:** To 1999, yes.

13 **DR COOKE:** We're also aware of a range of other matters that have occurred since 1999 which
14 are in the public arena.

15 **MR TE KANI:** Yes.

16 **DR COOKE:** Of course, reports, there are newspaper reports, for example, of stories that are
17 happening to children, we have this Commission being set up, for example, so my question
18 is, would you agree that there is a continuum of themes post 1999 that we can certainly be
19 satisfied of were in existence prior to 1999?

20 **MR TE KANI:** I think from 1999 to 2022, and the record is clear on this, there were multiple
21 occasions, multiple reviews that you referred to which led to organisational change, the
22 collapsing of CYF into MSD, the restructuring of MSD to establish Oranga Tamariki. So
23 what we have seen since 1999 is a degree of structural change to the organisation so I've
24 acknowledged that.

25 **CHAIR:** If I can just put the question bluntly, did these issues of children being harmed, failed to
26 be kept safe, severed from all of the matters that Mr Cooke had, do you think it ended on
27 31 December 1999?

28 **MR TE KANI:** No.

29 **CHAIR:** I think that's where we're at, really.

30 **DR COOKE:** I'm grateful to you.

31 **CHAIR:** Thank you.

32 **DR COOKE:** I'm going to move on, and I want to talk about some of the experiences under the
33 1989 Act around placement of children, and we'll get on to in the case examples. And it

1 follows on from what Ms Dickson said earlier around,-- I think there were three examples
2 of placement situations.

3 With the 1989 Act as it was, there was the principle of minimum intervention,
4 wasn't there?

5 **MR WHITCOMBE:** That's right.

6 **DR COOKE:** Would you agree that one of the consequences of that was possibly the,-- one or
7 more consequences could have been A, there was no intervention when there should have
8 been?

9 **MS DICKSON:** I think there's definitely experiences of that, yes.

10 **DR COOKE:** And as a consequence, children were harmed? It would follow, wouldn't it?

11 **MS DICKSON:** Certainly, their wellbeing deteriorated with the absence of support intervention.

12 **DR COOKE:** Would it be fair to say that throughout, as well, and possibly I think this is still
13 continuing in my experience, that minimum intervention resulted in a degree of
14 intervention that was informal, and there was the exercise of soft power, if I could use that
15 expression, by social workers. Do you agree with that?

16 **MR WHITCOMBE:** I haven't heard the expression "soft power", but what I take from what
17 you're saying is that if there were supports put in place, not through Child, Youth and
18 Family or predecessor organisations, that there remained a threat of Oranga Tamariki
19 getting involved?

20 **DR COOKE:** No, I'm going a bit further than that. What I'm suggesting is that there would have
21 been a-- family may have come to the notice of the local site office, there would have been
22 a visit by a social worker, there may have been a bit of a whānau hui, there may have been
23 a family group conference. It would never get to court, but as a result of that, because the
24 social workers' come along with whānau to the hui or to the FGC and say, "These are our
25 concerns. In order to remedy these concerns, we think little Johnny should go and live with
26 Nan or grandfather or aunt or uncle or go up north somewhere. And, by the way, just
27 behind my back, I've got a rather large glove which is full of statutory power so I think
28 I would like you to do what I'm suggesting". That's what I'm talking about. And I'd
29 suggest to you that that was a common occurrence under the 1989 Act and continued for
30 many years. And I'd like to know, I think, whether any of you are familiar with that
31 exercise of power.

32 **MR WHITCOMBE:** I don't disagree with you and I think that power that you're talking about,
33 you know, with that comes great responsibility and the importance of how we share that is
34 fundamental to practice in the here and now.

1 **MS DICKSON:** I would just add, I guess, that I think there is a continuum of where there were
2 genuine efforts to work with whānau around supported plans that were aligned with that
3 principle of least intervention, through to situations, as you describe, where there was an
4 implicit threat if things didn't work out that further action would be taken, but I wouldn't
5 want to categorise all decision making practice since 1989 in that way.

6 **DR COOKE:** No, but you wouldn't be surprised if I was to say, for example, somewhere on some
7 file back in my chambers I have an e-mail or a letter from a social worker to a client that
8 would say exactly that, you wouldn't be surprised, would you?

9 **MS DICKSON:** No, I wouldn't be surprised.

10 **DR COOKE:** Because one of the other issues around placing children informally where there is a
11 care and protection need is that we know, don't we, that children who have care and
12 protection needs, that those are often on top of the already demanding needs that the child
13 has?

14 **MR WHITCOMBE:** Yes.

15 **DR COOKE:** And we also know, don't we, that, and I'm thinking more -- again, it's from my own
16 experience of working in South Auckland, of Māori families being asked to take on
17 responsibility and Pasifika families, I should also acknowledge to my friend, that being
18 asked to take on responsibility for mokopuna, in particular one or more children
19 taking -- being taken into what would already be an overcrowded house, into a house that
20 probably was lacking in insulation, possibly where the parents were struggling financially,
21 etc. You're well familiar with those kind of situations, aren't you?

22 **MR TE KANI:** Yes, we are, yeah.

23 **DR COOKE:** And where there was very little support then provided by Oranga Tamariki to those
24 children and those whānau?

25 **MS DICKSON:** I acknowledge that did occur, yes.

26 **DR COOKE:** And you'd also agree that if, for example,- sorry, there were examples then where
27 Oranga- Tamariki may have said to the caregiver, "Go to the Family Court and get a
28 parenting order under the Care of Children Act", right?

29 **MS DICKSON:** Yes, that would have occurred.

30 **DR COOKE:** That would have occurred, wouldn't it?

31 **MS DICKSON:** Yes.

32 **DR COOKE:** They may have even pointed them in the direction of a lawyer and may have said,
33 "We'll meet your fees in that regard"?

34 **MS DICKSON:** Yes.

- 1 **MR WHITCOMBE:** Yes.
- 2 **DR COOKE:** And you would also agree sometimes that where that occurred, if there was then a
3 request to Oranga Tamariki for further assistance, the response would be, "It's nothing to do
4 with us, it's in the Family Court, everything's been done that has to be done to make sure
5 that those kids are okay". That was often a response, wasn't it?
- 6 **MS DICKSON:** I think that would have been a response that occurred.
- 7 **DR COOKE:** Yes, a very common response. You wouldn't disagree that it was a common
8 response? I'll take away the "very" and put in "common", just a common response?
- 9 **MS DICKSON:** Yes, I'd agree.
- 10 **DR COOKE:** Where that occurs, and I'm thinking of today, even in the last few years, if there
11 hasn't,- if family structures have been rearranged in the way that we've been talking about
12 and there hasn't been formal intervention, no custody order, for example, no formal
13 application made, then Oranga- Tamariki has no power under its Act to provide support,
14 does it?
- 15 **CHAIR:** Or no responsibility?
- 16 **DR COOKE:** Sorry?
- 17 **CHAIR:** No power or no responsibility?
- 18 **DR COOKE:** It would have no power, possibly.
- 19 **MS SCHMIDT-McCLEAVE:** That is a legal question, Madam Chair. Before a support or
20 services order can be made under the Act, there needs to be an order for care and protection
21 made.
- 22 **CHAIR:** That's right, so no services can be provided unless they're under care.
- 23 **MS SCHMIDT-McCLEAVE:** That's correct.
- 24 **CHAIR:** That's right. That's the point you're making?
- 25 **DR COOKE:** I'm exceedingly familiar with --
- 26 **CHAIR:** Of course you are.
- 27 **DR COOKE:** -- the supports that are available to people under the Oranga Tamariki Act.
- 28 **COMMISSIONER ERUETI:** So there's informal care and then you talk about a parenting order,
29 but that parenting order is different from a caregiver that's approved by Oranga Tamariki?
- 30 **DR COOKE:** Yes.
- 31 **COMMISSIONER ERUETI:** Who would have access to that funding?
- 32 **DR COOKE:** If it's an approved caregiver, then presumably there's going to be a status that the
33 Chief Executive would have. So there may have been an agreement reached under the Act
34 or there would have been a custody order of some sort.

1 **MS DICKSON:** My only hesitation in answering your question is thinking through where a
2 monitored FGC plan or a care agreement might sit in that spectrum of responses.

3 **DR COOKE:** What I'm wanting to get is where you have these informal arrangements for
4 children and whānau, that, yes, they can't get services and support orders because there is
5 no status in that regard. If it's a,- and if-,- and, equally, they're not going to be eligible for
6 the -postcare- support system, are they?

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

8 **DR COOKE:** Because there's no orders. So it becomes back. If these informal placements occur,
9 support is then dependent on the exercise of discretion, presumably by the local office?

10 **MS DICKSON:** Unless it's specified in an FGC but, yes, that's correct.

11 **MR WHITCOMBE:** Can I just also clarify that there are a range of activities that social workers
12 will do well before there's a family group conference, you know, if there is a need that is
13 presenting and there is the opportunity for that social worker for that site to respond to
14 those immediate needs, there's been various initiatives throughout the years, partner
15 response, strengthening families, children's teams that provide mechanisms for referrals for
16 support. I would also want to say, though, because the line of questioning leads us there, is
17 that the support for whānau who are caring for tamariki where there are no formal orders or
18 no formal status is not there in the way that it needs to be, and it should not be that a formal
19 order is required in order for the support to be available, and I would acknowledge that.

20 **COMMISSIONER ALOFIVAE:** Can I just ask a question, Mr Cooke, just following on from
21 your comments there. So the whānau are then left at the mercy of the wider social support
22 system, inevitably either Work & Income or MSD?

23 **MR TE KANI:** Yeah.

24 **COMMISSIONER ALOFIVAE:** Which all have thresholds and different standards?

25 **MR TE KANI:** Yes.

26 **COMMISSIONER ALOFIVAE:** That aren't always the easiest to navigate, so it increases again
27 the psycho stressors within those whānau and often in the position where grandparents are
28 being forced to take on the care of mokopuna and that whole standdown period before
29 they're eligible for financial support.

30 **MR TE KANI:** Yes.

31 **COMMISSIONER ALOFIVAE:** And there's absolutely nothing, is there, that Oranga Tamariki
32 can do, or its predecessors can actually do in that period because it's those big gaps, apart
33 from -- and if the whānau's already known to the system, there are all of those other
34 stressors, I guess I'm just wanting to understand your response, because no doubt your

1 social workers would feel the stressors but they've got a very easy out, "It's not our
2 problem, you need to go see Work & Income. It's not our problem, you need to go and
3 see" --

4 **MS CHASE:** Kia ora, I'm just wondering if again we can come back with the information. I just
5 think that the information around the financial review for caregivers would help with the
6 answer to that question.

7 **CHAIR:** Yes, that would be very helpful but I want to be clear, Dr Cooke, are you talking
8 historically or presently or- just- so that we've got a timeframe, because Ms Chase is
9 offering to give us what's happening now, I take it?

10 **MS CHASE:** Yes.

11 **DR COOKE:** I'm talking of the matters that are historical and contemporary in nature.

12 **CHAIR:** So they're continuing on?

13 **DR COOKE:** Yes.

14 **CHAIR:** It would be good to get clarification of that situation.

15 **MS CHASE:** It will help address the kōrero that's gone on around the perverse incentive around
16 tamariki having to come into State care to enable financial support, so if we can come
17 back? Kia ora.

18 **CHAIR:** Thank you, let's do that.

19 **DR COOKE:** We're going to move on. I'm going to bring up a document, which is MSD
20 0005491 and we're going to be looking at paragraph 8 and it's a --

21 **CHAIR:** Just to remind you, Dr Cooke that we're the only ones who can see this so if you
22 wouldn't mind reading in full the part that you want us to --

23 **DR COOKE:** I'm going to refer to each of the subparagraphs in this paragraph and I'm doing so
24 because of the discussion that we've had about the general expectations that arise when
25 parents lose their child to the Chief Executive and the Chief Executive is expected then, one
26 would hope, to carry out that statutory role for the child better than the parent could.

27 So this is a claim that was made and I'm going to just refer you to the portions of it
28 where the claim was accepted as reasonable. So, first of all, (a), that:

29 "The claimant was physically assaulted and sexually violated in a family home by
30 the family home foster father for eight years from 1972 to 1980. During this time, there
31 was an ongoing failure by social workers to visit and talk personally with that person. It
32 meant she did not have a trusted adult to confide in or to discuss any worries or concerns
33 she had. It is also accepted that she was subject to racist comments and this would have

1 had a negative impact on her and contributed to her feeling a sense of alienation and not
2 belonging in this home."

3 That's the first part. The second, (b):

4 "When she initially came into care, she required a supportive and nurturing
5 environment after being removed from her parents' unsatisfactory and neglectful home
6 environment. However, the Child Welfare division placed her in an inadequate foster
7 home. The school raised concerns about the poor care she was receiving and there were
8 also concerns that the foster father may be hitting her. The Child Welfare officer did not
9 act and investigate the concerns. She was not spoken to personally and interviewed as she
10 should have been. There was also no record of any attempt to organise visits with her for
11 her siblings who were living nearby. She was placed in a situation where she was at risk
12 from ongoing neglect and harm for two years. Child Welfare officers failed to protect her.

13 When she was placed in the above foster home, the foster parents already had five
14 children of their own and were already fostering two State wards. Foster care regulations in
15 terms of the number, age and sex of children were breached as the home was overcrowded
16 and this would have affected the quality of care the children received. There was a lack of
17 any attempt by the Child Welfare officer to ensure that she received appropriate religious
18 education. When children came into care, they were supposed to be placed in
19 circumstances better than those they were removed from. The care received was below the
20 required standard and the manual guidelines were not followed.

21 She was reunited with her siblings in a particular place. They remained there for
22 three months before moving to another foster placement for ten months before being placed
23 with caregivers. They were the foster home parents for eight years. In this placement, she
24 alleges she was sexually abused by the sons of the foster parents. The ministry is not
25 legally responsible for their behaviour. However, there was a lack of visits for two months.
26 Again, she did not have the opportunity to share any worries or concerns with a CWO."

27 The next one, the final two.

28 "The lack of any attempt to organise visits with the siblings prior to moving and the
29 lack of effort given to maintaining her relationships with her parents has a negative impact
30 on their whānau relationships. She did not bond with her siblings and still does not have a
31 relationship with them. The siblings all commented that they believe the lack of sibling
32 bonding is directly attributable to their time in care and being separated from each other
33 when they were young. There was a failure to plan and take appropriate action to keep her
34 safe during the three-year period prior to coming into care."

1 So this is one that's been,- it raises a number of- issues, doesn't it, which are in many
2 ways exemplars, one could say, of the system that many of the survivors found themselves
3 in. Do you agree with that?

4 **MS DICKSON:** Yes.

5 **DR COOKE:** And it comes back, doesn't it, to,- sorry, o-ne of the issues that comes out of that,
6 and this comes through on a number of survivor experiences, is that they were subject to
7 abuse, not by the caregivers necessarily, for whom there was a responsibility, but either by
8 visitors to the home or, in this instance, by children of the caregivers, significant harm was
9 occasioned, and yet there was no responsibility by the system then, and I'm going to ask
10 you whether it's different now, for what happened for children who are in your care and are
11 abused in that way by other children of a caregiver?

12 **MS DICKSON:** So I've read and heard the survivor stories that talk very explicitly about terrible
13 harm that occurred between children and young people in the same placement, yes.

14 **DR COOKE:** Is there a difference between abuse that occurs between children who are in care,
15 ideally they shouldn't be in that situation where they could do that, and where the harm is
16 caused by the children of the caregiver? Is there any difference there?

17 **MS DICKSON:** Can you please repeat that question?

18 **DR COOKE:** Well, you can get a group of children who are in care who are placed together and
19 there may be abuse between them, all right, and one would have hoped that the placement
20 exercise would have factored that risk out. One would hope, right?

21 **MS DICKSON:** Yes.

22 **MR TE KANI:** Yeah.

23 **DR COOKE:** Then you get the situation such as this child was placed in a family home where she
24 was sexually abused by the children of the foster family and there was no recourse
25 available and it seems there was no responsibility by the Chief Executive or by the
26 Superintendent in relation to that. What recourse is available in real terms for a child, an
27 adolescent who is in that situation?

28 **MS DICKSON:** Now?

29 **DR COOKE:** Then and now.

30 **MS DICKSON:** So, firstly, I would just want to say that both scenarios that you talked about
31 result in harm to tamariki. I certainly acknowledge then- - I'm thinking about that
32 sense -of - we- saw our responsibility being to an individual caregiver, as opposed to a
33 caregiving unit, and I think that probably did mean that there were situations where harm
34 and abuse by others in the family system went unchecked. I would say that is different

1 today, so what I would say is two things. The first is that our approach to assessing,
2 understanding, approving caregivers now, as I said, we would think more about the whole
3 family unit, and it would certainly be attuned to risk factors of adults, including young
4 adults who were part of the caregiving family.

5 The other thing I would say is, through the work that we've done in our Safety of
6 Children in Care unit, we have deliberately taken aboard description of abuse which
7 includes abuse between same aged peers.

8 **DR COOKE:** If a child in care is abused by a foster caregiver, then there's been claims made to
9 MSD, you can go to the High Court and make a claim. In terms of coming to OT, MSD on
10 a claim where the perpetrator of abuse, as occurred in that case, is the child of the caregiver,
11 is that going to result in any -- will that see, for example, an acceptance of liability and of
12 accountability and possibly the payment of money?

13 **CHAIR:** Maybe we should leave liability out of it, but let's talk about accountability and
14 responsibility to keep children safe. Is that going to stop you leaping to your feet,
15 Ms Schmidt-McCleave?

16 **MS SCHMIDT-McCLEAVE:** Yes, it will. Thank you, Madam Chair.

17 **CHAIR:** Because we're not in the business of liability, we're in the business of accountability.

18 **MS DICKSON:** Sorry, now I'm going to have to ask you to reframe that. Sorry, repeat that.

19 **DR COOKE:** I'm really asking you, if a claim was made today, similar to what we've just heard,
20 would the response be, "Yes, we are accountable for what occurred to you as perpetrated by
21 the children of the caregiver"?

22 **MS DICKSON:** I'm not sure I can answer that question directly, I'm sorry, Dr Cooke, but what I
23 would say is that the claim would need to assess the kind of practice failures that should
24 have detected and identified the abuse that was occurring and respond to it. I probably can't
25 help more than that.

26 **CHAIR:** I'm just going to interrogate that a bit more because this came up in our redress, it was
27 part of our redress hearings, and we had, I think,- I can't remember which agency it was,
28 but the person who was describing the process by which claims for redress were evaluated
29 and assessed and given was done on the basis of practice failure. Which, i-n other words,
30 social worker didn't visit within the required time, tick, \$1,000. Social worker didn't do so
31 and so, and all the general failures in the manual.

32 And I put it to the witness then that while that might have had some merit and
33 I could understand it from a bureaucratic point of view, what did it have to do actually with
34 the child's safety? Because once you place,- I think the point Dr Cooke is making is, once

1 you place the child into a family, does it really matter who did the harm in that family
2 environment when the whole responsibility on the Department was to keep the child safe?
3 Does it really matter if it was a child of the family or a visitor to the family? This was not a
4 safe environment. So- I'm just putting it out there, Dr Cooke, I think that's where you're
5 going, isn't it?

6 **DR COOKE:** Yes.

7 **MS DICKSON:** I think the point about not a safe environment with unsafe people having access
8 to the child and causing harm is the correct way of understanding that situation.

9 **CHAIR:** To that extent, the Department is failing in its obligations/responsibility to keep the child
10 safe?

11 **MR TE KANI:** Yes.

12 **CHAIR:** Whether it was a breach of the practice manual or not?

13 **MS DICKSON:** I'd agree with that.

14 **MR TE KANI:** Absolutely.

15 **CHAIR:** Everybody's nodding. You agree with that?

16 **MR TE KANI:** Yes, ma'am.

17 **MR WHITCOMBE:** In the way that we frame harm to children through the monitoring of safety
18 of children in care, it certainly includes those types of harm from other young people.

19 **CHAIR:** That's the current situation, is it?

20 **MR WHITCOMBE:** That's right.

21 **CHAIR:** Okay, thank you.

22 **DR COOKE:** That's convenient to move on to the vetting question in slightly more detail. I want
23 to bring up another document, which is CRLO250560. This is a historic claims trust and
24 I'm focusing on it from the point of view that on three separate occasions, this survivor was
25 placed with unapproved and unsuitable caregivers, and it's been accepted that there were
26 consequences that flowed from that.

27 So if you go down to the first of those bullet points,-- sorry, just above the first of
28 the bullet points, it says the assessment found there were breaches of policy and failures in
29 practice in respect of this claim. These were that he was placed with unapproved caregivers
30 who had a conviction history for violent offending and were not suitable, the social worker
31 failed to comply with policy and practice relating to the investigation of physical abuse, he
32 was subject to ongoing risk in the care of unsafe and unapproved caregivers after he was
33 assaulted, the social worker did not adequately monitor the FGC plan, the placement or
34 visit the person while he was in care.

1 Those essential statements come up I think on three different occasions in this
2 particular document, and the other ones that I'll refer you to, so we're going to look at
3 paragraphs 99, 100, 101, 102, 104 and 105 because, again, it goes back to that point I've
4 been making, I suppose, that these are not unknown practice failures, are they?

5 **MS DICKSON:** No.

6 **DR COOKE:** They would be practice failures that you would see on a regular basis?

7 **MS DICKSON:** I would say there's now quite mixed practice, so you would see failures, you
8 would also see examples of much strengthened practice.

9 **MR WHITCOMBE:** I wouldn't characterise this practice as the common practice today.

10 **DR COOKE:** You wouldn't. You wouldn't say the placement of children with caregivers who
11 have not been approved, are you saying that is not a common practice?

12 **MR WHITCOMBE:** That's correct.

13 **DR COOKE:** On that, would it be nonetheless a practice,- there is a practice that because of the
14 demands for caregivers, at times a caregiver will succumb to pressure and take on a child
15 on a Friday night, even though they may be over numbers because they feel that's part of
16 what they have to- do when the social worker is desperate for a placement?

17 **MS DICKSON:** I would certainly say that's happened in the past. I would say I think it's more
18 the social worker's responsibility than the caregiver's.

19 **DR COOKE:** It's indicative, isn't it, of an issue with a failure to have enough caregivers in any
20 event?

21 **MR WHITCOMBE:** Yes, and certainly the issues that you speak about on a Friday night, you
22 know, that is a real example and at times the pressure that that puts on care options is
23 significant.

24 **DR COOKE:** But it has been known as occurring on a number of occasions that children are
25 placed with a caregiver and that person is over quota?

26 **MS DICKSON:** I'm just thinking about,-- because, certainly, when I think about my own time,
27 certainly that would have been a feature. I think also what would have a feature, and we've
28 talked a lot about the move to more whānau care, so it would have also been a feature of the
29 time that there was an overreliance on -non-whānau care, which I think is part of that
30 broader context in which that occurred.

31 **DR COOKE:** But of course when we talk about the scope period for the Commission, that is
32 a -- it's relevant to the work of the Commission in that respect, isn't it?

33 **AUDIENCE MEMBER:** Yes.

1 **MS DICKSON:** Absolutely, and we are trying to answer, when you are asking past and then
2 future, so I'm definitely trying to speak to both when that's what you're seeking from us.

3 **DR COOKE:** And, again, what we're trying to do I think is to understand the present by
4 understanding the past.

5 **MS DICKSON:** That's right.

6 **DR COOKE:** At 99,- now- here, this is the analysis, that the caregivers were never assessed as
7 suitable caregivers. It says it's the responsibility of the FGC coordinator and the social
8 worker who are required to satisfy themselves that the criteria for suitability were met and
9 this person will be safe. A minimum of a police check, a referee check and a medical check
10 was required where a whānau member was well known- to the wider whānau. Otherwise,
11 if the whānau member was less well known-, a full caregiver assessment would have been
12 required before he could be placed. This was a breach of policy and failure of practice.

13 Can you explain the implication that comes out there of different standards, if a
14 whānau member was less well known as opposed to one who was well known?

15 **MS DICKSON:** It would have been a matter of taking into account, and I'm talking about at the
16 time, taking into account any context or information that the social worker may have had
17 from engagement with the whānau, potentially around other children, potentially around
18 previous experiences.

19 **DR COOKE:** Would there have been differences in the type of approval system, or approval
20 process, depending on whether a child was to be placed with someone who was a member
21 of a whānau, or that child's whānau, and someone who was not?

22 **MS DICKSON:** So the approval process for caregivers hasn't stayed static through that period.
23 So there was a particular period where there were still suitability checks and safety checks
24 required, but there was a more inclusive way of understanding the suitability of a caregiver
25 within a whānau decision making process, and I'm talking pre-care standards in that kind of
26 context.

27 **DR COOKE:** Does that mean, for example, that in one situation you may get a report, a police
28 report of convictions and that kind of thing, but in another one you wouldn't?

29 **MS DICKSON:** In my time, a police check would have always been part of -- understanding
30 police history and conviction history would have been --

31 **DR COOKE:** Would a decision have been made on the basis of -- I was going to use the word
32 "impression" almost, he seems a good joker to me?

33 **MR TE KANI:** No.

1 **DR COOKE:** Or I know his sister or I know his brother and that person is appropriate or
2 whatever?

3 **MS DICKSON:** No, there's no time when that should have been the measure or the test in my
4 knowledge.

5 **DR COOKE:** I hear what you're saying when you say no, that should have been the way, but do
6 you know from your experience, which is extensive and goes back many years, where it did
7 occur?

8 **MS DICKSON:** No, so police checks have always been a requirement. There has only probably
9 been some variation in the ways that that information might have been obtained with the
10 police.

11 **DR COOKE:** If you go to 100, it tells us about the caregiver:

12 "If the police check had been carried out in 1996, he wouldn't have been accepted as
13 a suitable caregiver because the police history showed a propensity for violence, several
14 convictions relating to violent offending over the years in question. This background
15 would have been in contraindication for approval and placement when the placement
16 occurred. This is evidenced by the refusal of a manager to approve them later in April 2005
17 when they submitted a formal caregiver application."

18 It would be, again, it's indicative of, in this case and possibly others, that you're
19 acknowledging that during this period there were such failures in practice that led to
20 children being placed in unsafe situations?

21 **MR WHITCOMBE:** Yes, we acknowledge that.

22 **DR COOKE:** Are you able to say, of the extent to which simple matters such as police checks
23 were not carried out when they should have been, do you have any statistics on that?

24 **MS DICKSON:** I wouldn't be able to answer that, sorry.

25 **DR COOKE:** Where it talks about the caregiver assessment, caregiver arrangement sorry--, there
26 wasn't an assessment because it wasn't carried out by the FGC coordinator or the social
27 worker. Is that a correct statement of who would carry out the assessment?

28 **MS DICKSON:** In terms of the role of the coordinator?

29 **DR COOKE:** Yeah.

30 **MS DICKSON:** Not for a caregiver approval process, it would be a social worker role. They may
31 engage with information that the coordinator may hold about the whānau but it would be a
32 social worker responsibility.

33 **DR COOKE:** Would the assessment have been carried out by the child social worker?

1 **MS DICKSON:** Again, that would have changed at different times through the period we're
2 looking at. So at times, an initial assessment may have been done by the child social
3 worker, and then followed up by a caregiver social worker when those roles were in place.

4 **DR COOKE:** Where it talks about there being a police check, a referee check and a medical
5 check, were they standard requirements at the time?

6 **MS DICKSON:** Yes.

7 **DR COOKE:** Were there any other formal checks that you could advise us on that should have
8 been carried out in a situation such as this for a person who's in your care and is going to be
9 placed?

10 **MS DICKSON:** You would usually expect a home check, a check of the physical environment.
11 Ms Attrill, I'm not wanting to put her on the spot but she's also an expert in this area, so
12 I just wanted to acknowledge that she may be able to add to the answers that I am not
13 covering fully.

14 **MS ATTRILL:** Tēnā koutou katoa, ko Paula Attrill tōku ingoa, I'm the General Manager
15 responsible for international case work and the adoption services in Oranga Tamariki. And
16 for the benefit of those remotely located, I'm a middle-aged Pākehā woman, short greying
17 hair, hazel eyes, I've got a green and black shirt on, and I wear glasses.

18 So just in addition to what Nicolette's explained in terms of assessment
19 requirements for people who were identified as potential caregivers for children in care, as
20 well as police checks, child protection database checks, a home visit, interviews of the
21 caregivers, we would also seek to gain information of medical checks and we would ask for
22 some referees that we could speak with in terms of a character test for the caregivers.

23 **CHAIR:** Thank you. Just from the,- we're going to hit 5 o'clock in a minute, doctor. Are you
24 going to continue on- past 5 or are you going to stop?

25 **DR COOKE:** I'm going to stop because I think in the schedule I have some time tomorrow
26 morning.

27 **CHAIR:** You do.

28 **DR COOKE:** I think it would be preferable for everyone if --

29 **CHAIR:** Absolutely, we would all love it if you stopped at 5 o'clock.

30 Can I just follow up a little bit on that. Again, from our experience of talking closely
31 with the survivors, many hundreds of them, and we ask them what it is that can be made
32 better, invariably they say the vetting. Now, when we say the vetting, I think we all know
33 that vetting is a term of art which is just police vetting, but what they're saying is, make
34 it - be sure that the child is being sent somewhere safe, and so we've got probably at least

1 1,000 examples where they did not feel safe and did not feel that those checks had been
2 made, and if they had, whether they were adequate. So I don't know if you wish
3 to -say - you've- told us what the paradigm is, but what was the reality actually? Can you
4 say that?

5 **MS ATTRILL:** I think that when I look back over the last 20 or so years and beyond, I think the
6 depth of analysis that we go into in ensuring the people we are entrusting with the care of
7 children in care has become more and more - sophisticated is not quite the right word, but
8 it's become more focused, it's become more thorough and, more recently, and my colleague
9 Frana Chase can speak in more detail about this, in thinking about tamariki- Māori and
10 people within their whānau, hapū and iwi who are identified to provide care and the
11 whānau care initiative, a whole different approach to ensuring their suitability of the people
12 identified as being developed and undertaken now. So I would say in looking back over
13 my experience that we are far more thorough than was the case in the past when we're
14 determining who's suitable to look after children in care.

15 **CHAIR:** That shows an acceptance or implicit acceptance that things were not done well in the
16 past?

17 **MS ATTRILL:** Yes, Judge Shaw, but also an absolute recognition of when we're entrusting
18 children into somebody else's care, I mean these children are New Zealand's most
19 vulnerable children and so therefore the greatest of care and caution needs to be taken in
20 determining who we entrust their care and safety and well-being in, so there's much greater
21 recognition in my view of that in recent times, particularly.

22 **CHAIR:** Thank you. Dr Cooke, are we rounding off at that point?

23 **DR COOKE:** We're rounding off at that point.

24 **CHAIR:** Okay, I'm not even going to invite my fellow Commissioners to start, because once they
25 start, they can't stop and I understand that, but I think it'll be better if we come back fresh in
26 the morning with some ideas. Can I just check, are we starting at 9.00 am in the morning?
27 Yes, we are, so for everyone's information, it's an early rise tomorrow again and we'll
28 convene again at 9 o'clock.

29 Time for karakia and waiata. Nau mai matua, nau mai haere mai.

30 **KAUMATUA NGĀTI WHĀTUA:** Mihi tuatahi me, tae mai nei ko tēnei wā. Through the
31 Chair, I just had a quick thought that I thought I might ask our rangatira to come in to
32 whakakapi, because they've been sitting in here, absorbing the kōrero, feeling the mamae,
33 and I just asked if he wants to do it, but he turned around and said, "No, carry on." So we'll
34 do that. Mō tō tātou aroha tae mai nei o tēnei wā.

1 (Waiata He Hōnore). (Karakia whakamutunga).

2 **Hearing adjourned at 5.04 pm to Tuesday, 23 August 2022 at 9 am**