

**Abuse in Care Royal Commission of Inquiry
Contextual Hearing on Wednesday,
30 October 2019 at the Rydges Hotel, Auckland**

Commission Members:

Sir Anand Satyanand - Chair

Commissioner S Alofivae

Commissioner A Erueti

Commissioner P Gibson

Commissioner C Shaw

TRANSCRIPT OF PROCEEDINGS

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OPENING ADDRESSES

CHAIR: Kia ora tatou. Morena, ladies and gentlemen, on day 2 of our contextual hearing, my colleagues and I, Dr Andrew Erueti on my left, Judge Coral Shaw, Sandra Alofivae and Paul Gibson, look forward to today's hearing and can I invite you to open proceedings, Mr Mount?

MR MOUNT: I'm joined today by Chris Merrick and Julia Spelman from our Counsel Assisting team. Mr Merrick will call today's witnesses.

CHAIR: Thank you, Mr Merrick and Ms Spelman, good morning.

MR MERRICK: Tena koutou (opening in Te Reo Māori). My acknowledgments to all of us gathered here today, to the Commissioners and I just pay an acknowledgment to mana whenua of Ngati Whatua who opened our hui today with karakia and waiata, so that we may start the day well.

I will start by calling the first witness Dr Rawiri Waretini-Karena.

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DR RAWIRI WARETINI-KARENA - AFFIRMED

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EXAMINED BY MR MERRICK

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MR MERRICK:

7

Q. Dr Waretini-Karena, in front of you there is a volume of documents, yes, and if you go to tab 4 of that you will find a copy of a brief of evidence prepared by you?

9

10.06 10

A. Yes.

11

Q. Can you just refer to that and just confirm that that is a copy of the brief of evidence prepared by you and filed with this Royal Commission?

12

13

A. I confirm that it is.

14

15

Q. You confirm that the contents of that brief of evidence are true and correct, to the best of your knowledge?

16

17

A. Yes, I do.

18

Q. Thank you. I want to start by asking, by way of introduction, who are you and where are you from?

19

10.07 20

A. Kia ora koutou katoa. (Speaks in Te Reo Māori). Tena

21

koutou, tena koutou, tena koutou.

22

Q. Kia ora. Dr Waretini-Karena, in your brief of evidence you've outlined some of your qualifications, do you care to share some of those with us this morning?

23

24

A. I have a PhD in Philosophy. My specialist field is Māori experiences of historical intergenerational trauma. That is my PhD thesis. I am a PhD lecturer at the university

25

26

in Whakatane. I am a lecturer and I am a Māori Battalion Doctoral Scholar, a Te Atawhai o te Ao Doctoral Scholar,

27

10.09 30

I have just finished as National President of Te Whariki

31

Tautoko which is the national governing body for Māori

32

counselling and social services.

33

I have been in the education field for 22 years. My specialist area of teaching is counselling, social work

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1 and mental health. I am a High Councillor in the Church
2 of Jesus Christ of Latter-Day Saints.

3 I am Co-Chair for the Kingitanga Academic Panel, so
4 I do research on behalf of the Māori King. I am also on
5 the Board of Trustees for Endowment College.

6 Q. Thank you for that.

7 A. Oh yeah, I'm also an Executive member of the New Zealand
8 Council.

9 Q. New Zealand Māori Council, is that right?

10.10 10 A. Yes.

11 Q. Have you also given evidence in the Waitangi Tribunal on
12 three occasions?

13 A. Yes, I have. 2006, 2015 and 2016 I was involved with the
14 Waitangi Tribunal claim.

15 Q. With the Corrections claim?

16 A. With the Corrections claim, yes. And so, my evidence was
17 used in that area and what I submitted is that
18 legislative policies which removed Māori language,
19 culture, identity, heritage and also contributed to Māori
10.11 20 experience of crime. If you look at the whakapapa, crime
21 comes from poverty and for Māori it's intergenerational
22 poverty, and that poverty stems from dispossession.

23 Q. Were you also involved in the Prisoner Voting Rights
24 Inquiry?

25 A. Yes, I was also involved in that.

26 Q. As a witness in that case?

27 A. As a claimant.

28 Q. As a claimant?

29 A. Yes.

10.11 30 Q. Are you involved as a claimant in the Māori in State care
31 claim currently before the Tribunal?

32 A. The Oranga Tamariki claim, yes.

33 Q. In your brief of evidence at paragraph 15, you've

34 referred as a foundation really to start your korero to

1 Te Tongi a Tawhiao?

2 A. Yes.

3 Q. Could you share that with us this morning?

4 A. Sure. Te Tongi a Tawhiao came about as a result of the
5 Waikato invasion in 1860, in fact 20 years after. So, my
6 people, after the invasion, they went into exile for
7 20 years. But when they came out of exile and they went
8 back to their homeland, they found all their sacred sites
9 destroyed. The place where I used to work, the Waikato
10.13 10 Institute of Technology, called WINTEC, the original name
11 of that place is (talks in Te Reo Māori) of the Waikato.
12 It used to go from the top of the hill all the way down
13 to the river. It fed the whole of the Waikato.

14 They sent it to Auckland to feed the people there.
15 So, they bulldozed half that hill but up the top of that
16 hill where the marae sits was a ata, an altar, where our
17 priests met and they would do their karakia. And their
18 karakia was so that the land would be fertile to grow.
19 When our people came back and they saw that, they were
10.14 20 very distraught, they were in despair. Over 1 million
21 acres of land was taken, so the connection to the whenua
22 was cut. And they were looking for a vision, a way out
23 of this turmoil that they were going through.

24 The Māori King at the time, King Tawhiao, came up
25 with the idea and it says:

26 Te Tongi a Tawhiao

27 Maku ano e hanga toku nei whare

28 Ko te tahuhu, ko te Hinau

29 Ko nga poupou ko te Mahoe, ko te Patate.

10.14 30 And what he was saying, is that our house will be
31 rebuilt. But what's really interesting about it, is that
32 when they built marae, they used Kauri, they used Totara,
33 these are the Rangatira trees, but in this instance they
34 referred to the Hinau. They are not Rangatira trees. They

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1 are the common trees that you find in the forest but
2 there's a big difference between the Rangatira trees and
3 the common trees. If you apply pressure to the Rangatira
4 trees, they break. But the common trees, they are wiry,
5 they are actually quite resilient, you can bend them, add
6 water, add fire to them and they will actually burn.

7 So, my interpretation is that the world will be
8 rebuilt or the house will be rebuilt not by the
9 Rangatira, not even by the Chiefs, but it will be built
10.16 10 by the power of the common people.

11 And so, when I look at that and I see these people
12 getting up there and giving evidence for the first time
13 in this Royal Commission, you know what I see? I see
14 resilience, like those trees they're resilient. They are
15 reemerging and sharing their stories that haven't been
16 shared before. Why? Because this is about restoration.
17 And this is the whole story is about resilience,
18 re-emergence and restoration.

19 Q. Kia ora. You've touched on some of the historic places
10.17 20 for Waikato in your earlier korero?

21 A. Yes.

22 Q. And in your brief of evidence you have discussed, albeit
23 briefly, you've made some comments around the genesis of
24 Māori child abuse or pre-colonial caring of children; do
25 you have anything to share with us today under that
26 topic?

27 A. Can I refer to what I want to show?

28 Q. Sure. [refers to genealogy chart - exhibit X]

29 A. What you have here, these are four generations of my
10.17 30 family. Over here it tells who they are. Over here it
31 tells a little bit of their story. And over here, right
32 on the far right, are all the legislative policies that
33 each generation was subjected to.

34 And so, what it allowed me to do was get an

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1 understanding of the legislative environment each
2 generation of my family was subjected to.

3 So, I want to talk about the one at the top first.
4 It's actually more than that. This is about my great
5 grandfather, Te Nahu Te Kuri Waretini-Karena, but it's
6 also about his grandfather, and his father. All of them
7 fought. What's significant about that is he is the older
8 half-brother of of the Māori king.

9 So, as a result of losing millions of acres of land,
10.19 10 what that highlights is generations of my family who
11 became destitute, who became intergenerationally
12 impoverished as a result of the Waikato invasion.

13 The next photo, that's my grandfather. He was
14 brought up by Princess Te Puea. He could only speak Te
15 Reo Māori. In 1930, he was taken away by the Social
16 Welfare Department. He was brought into a mainstream
17 school. He was beaten and abused until he learned to
18 speak English.

19 As a result of that, he wouldn't teach Māori beyond
10.19 20 the tikanga to the next generations because of what he
21 went through. So, as a result, I have 200 of my own
22 family who have never been on a marae. They don't know
23 Te Reo me ona tikanga because of what happened to my
24 grandfather.

25 My father was born in the aftermath of World War II.
26 His father went away and fought for the 28th Māori
27 Battalion. They fought for rights of citizenship, they
28 fought to become equal partners in the Treaty of
29 Waitangi. As successful as they were, when they came
10.20 30 back the land that they had was taken and given to the
31 settlor soldiers. As a result, it left them wandering
32 aimlessly from town to town to find work.

33 When they came to Hamilton, there wasn't a marae at
34 that time, so the marae became the Chartwell Pub. All

1 the tikanga changed. They became what I understand to be
2 the 'Once For Warriors' generation.

3 So, what that did, is it helped me to understand the
4 environment that I was born into, why I never learnt my
5 language, my culture, my identity or my heritage. Why I
6 ended up in such impoverished circumstances, that led me
7 to the journey that I have taken to today.

8 Q. Kia ora. We will talk shortly about your experience.

9 Before we get there though, you mentioned your father?

10.21 10 A. Yes.

11 Q. Who is under generation 2 of that diagram?

12 A. Yes. And so, he was taken into Social Welfare in 1954.

13 Q. What do you know of his experience in Social Welfare
14 care?

15 A. His experience was very traumatic. He experienced a lot
16 of beatings, a lot of trauma. He had no-one to help him
17 deal with that and so what happened is what he
18 experienced he pretty much applied to his family. That
19 was his role model.

10.22 20 Q. And how did his experience impact on your early journey
21 in life?

22 A. Well, our home was very abusive, extreme violence,
23 extreme childhood trauma. I experienced flashbacks to
24 that trauma. I would go into a trance as a coping
25 mechanism for dealing with it and at that time no-one
26 helped me through that, in fact I didn't really
27 understand what was going on, it wasn't until many, many
28 years later.

29 Q. Did your at home experience bring you to the attention of
10.23 30 the State?

31 A. Oh yeah, absolutely.

32 Q. Can you tell us about that?

33 A. So, I was 5, I was going to school with bruises and as a
34 result of that I came under the scrutiny of the teachers

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1 and a Youth Aid Officer who called them and one day I was
2 invited to come into the classroom and they said "You're
3 going for a ride" and so I got in the car with them and I
4 ended up in a place called Tower Hill.

5 Q. Did anyone explain to you why you were being taken to
6 Tower Hill?

7 A. No.

8 Q. What was your experience when you got to Tower Hill?

9 A. Actually I didn't understand what was going on and I had
10.24 10 a feeling my family would come and get me, so my room was
11 right by the door, so I would have a bag packed and I
12 just remember standing there waiting for them and waiting
13 for them and waiting for them. And so, days turned into
14 weeks, turned into months, turned into a year.

15 So, after about a year, they came and got me but by
16 that time I was really angry with them, I felt quite
17 abandoned.

18 Q. Did anyone help facilitate contact with your whānau
19 during that period?

10.25 20 A. Not that I know of. I know years later my Mum said that
21 she contacted the Police, they just told her that I was
22 with them. They didn't tell her where.

23 Q. Can you recall any incidences of abuse in that first year
24 that you spent at Tower Hill?

25 A. Not so much the first time but the second time, yeah.

26 Q. We will move on to that shortly.

27 A. Yes.

28 Q. Now, after that first year, you say your parents came?

29 A. Yes.

10.26 30 Q. Did you end up moving home with them?

31 A. Yes, I went home with them for a little while. When I
32 got there, I found I had another brother. Things did
33 change for a little while but after a while they just
34 went back to how it was originally.

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1 Q. Can you recall what either Social Welfare or the Police
2 did or didn't do to support you moving home or the
3 circumstances of you going back home? Can you tell us
4 anything about that?

5 A. To be honest, one minute I'm at Tower Hill and the next
6 minute I'm at home. Maybe they had discussions with the
7 parents but I wasn't part of that discussion.

8 Q. Can you recall social workers coming to visit or any
9 support being put in place for you to help you go back
10.27 10 home after a year?

11 A. I don't recall, I don't recall them coming, no.

12 Q. How long were you at home for before you moved away from
13 home again?

14 A. Maybe about 6 months.

15 Q. And can you recall why you moved out?

16 A. Yes. My father had gone to the pub and my mother had
17 gone to housie and so I was responsible for looking after
18 my little brother. It was raining, raining really
19 heavily, like a flash flood. And then the rain stopped
10.28 20 and the roads were flooded and all the children in the
21 neighbourhood pulled out their buckets and went to go
22 outside and play. It looked like fun. I knew I had to
23 look after my brother but I wanted to go out and play
24 with the neighbours. So, I put him out on the porch just
25 so I could keep an eye on him and I went out and played.
26 I got so engrossed in playing with my friends and
27 neighbours, I didn't notice that it started raining again
28 and it started raining quite heavily. It was only when I
29 heard my little brother crying that I realised that he
10.29 30 was getting wet. I remember going, picking him up,
31 toweling him off and taking him inside. Unfortunately,
32 my little brother was only 12 months old. He caught the
33 flu and he died 7 days later. I remember the screams in
34 my family, how did this happen? Yep, I was only 6 or 7

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1 at the time but I was frightened if I told them what had
2 happened, I thought my father would kill me.

3 Q. Have you since spoken to your whānau about that day?

4 A. Yeah, I have now, yeah, yeah.

5 Q. At that stage, what happened with you?

6 A. After the funeral, we talked through karakia and prayer,
7 it was my mother's way of dealing with grief. One day my
8 father came home and kicked us all to the ground and
9 started beating us because he blamed God for taking his
10.31 10 son.

11 Q. Were you, soon after that, sent again to Tower Hill?

12 A. Yes. It was again, when he was assaulting my mother,
13 something in me just snapped and I just remember yelling
14 at him and then he started hitting me, my Mum got
15 in-between and ended up unconscious. And so, that ticked
16 something in me, yeah. He was asleep in the bedroom and
17 I set the bed on fire.

18 Q. Can we look at that second time at Tower Hill. Can you
19 tell us about your experience when you went there for the
10.32 20 second time?

21 A. Two things. Going to school being a State ward was quite
22 hard. I used to get bullied because I was a State ward,
23 had no family.

24 Q. Who would do the bullying?

25 A. Just kids at school, that's just what they do, yeah. But
26 I grew up in an environment where if someone gets in your
27 face you respond, so I responded and next minute I'm
28 sitting in front of the principal's office wondering what
29 the heck I'm doing here.

10.33 30 Q. What would you say now about the culture of Tower Hill,
31 for example, in the time that you spent there in care?

32 A. The first part of it, it was good, but what I actually
33 saw the second time around is a lot of corporal
34 punishment, we were strapped for a lot of things. But

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1 the funny thing about it is it was actually quite soft
2 compared to what I got at home. But what became quite
3 significant the second time around, is that one day I was
4 in the laundry, had some towels because it's a three
5 storey building, Tower Hill, but I was coming from the
6 second floor into the first, and there was a man standing
7 there, he had his arms around one of the staff members
8 with a gun pointed at his head. He wasn't happy that
9 this Social Welfare had taken his daughter and he came to
10.34 10 take her back, so he made us all go into the lounge and
11 lie on the ground and he took his daughter. For the next
12 five weeks the Police and the Army were chasing him up
13 and down the country until they caught him and his
14 daughter, her name was Gwenda Rowe, she ended up coming
15 back to Tower Hill.

16 Q. Was anything done to support you or the other children
17 and young people at Tower Hill following that?

18 A. No.

19 Q. Can we move to, we are at paragraph 55 of your brief
10.35 20 where you talk about moving to a foster home?

21 A. Yes.

22 Q. Can you tell us about your foster home experience?

23 A. Well, both my foster parents were European, a British
24 father, Italian mother, I suppose you have to
25 contextualise what was going on between 1979 and 1981.
26 Dame Cooper had done the March from up north down to
27 Wellington. My aunty Eva Rickard was involved in the
28 occupation. Bastion Point was happening at the same
29 time. So, while it was happening it was frustrating my
10.36 30 European foster parents who were seeing these things, and
31 usually they would take their frustrations out on me.

32 Q. In what ways did they do that?

33 A. Just the ways that they spoke and undermined Māori. I
34 didn't understand what they were saying or why but all I

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1 knew is that it made me angry. That was my first
2 experience of racism.

3 Q. What sort of things can you recall them saying?

4 A. Not necessarily I can recall what they were saying but I
5 recall the way it made me feel.

6 Q. How did it make you feel?

7 A. It made me feel degraded, it made me feel undermined, I
8 didn't even understand why. And, of course, 1981 was the
9 Springbok Tour and that just topped it and it was just
10.37 10 about Māori this, Māori that, we should just be grateful
11 for what happened there.

12 Q. Apart from the way they spoke to you and what you've
13 described as the racist way in which they've spoken to
14 you, were there other ways in which they took their
15 frustrations out on you, physically, for example?

16 A. Yep, the father was - again, like one day he was giving
17 me a hiding and I laughed, and he said, "What's so
18 funny?" I said to him, "You hit like a pussy compared to
19 my father".

10.38 20 Q. What were some of the emotional or psychological impacts
21 on you? How did that negatively affect you?

22 A. Yeah, I think it affected my self-esteem, I became quite
23 suicidal, I was self-harming, I didn't like my life, not
24 at all.

25 Q. Again, at any time during that point did anyone offer
26 some support to help you with the way that you were
27 feeling or the way that you were acting?

28 A. No.

29 Q. What involvement did you have with a social worker or
10.39 30 Social Welfare, the Social Welfare system, while you were
31 in foster care? How often were they in your life?

32 A. They actually did come about once a month or so but it
33 was to sit down, have korero and then they'd go. I
34 didn't see any relevance, to be honest.

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1 Q. How long were you in foster care for with foster parents?

2 A. 1979-84, so '74-'79 in Tower Hill, '79-'84 in foster
3 homes and '84-'86 in boys home.

4 Q. In '84, you moved to a boys' home?

5 A. Yes.

6 Q. Where did you move?

7 A. Hamilton Boys' Home.

8 Q. Can you tell us about your experience there? And you've
9 discussed that at paragraph 56.

10.40 10 A. In the Hamilton Boys' Home, they had a secure unit and
11 administration and then the wings. The secure unit was
12 pretty much like a prison cell. They treated you quite
13 harshly but the reason why they did that is that, I feel,
14 they wanted to make it so uncomfortable that you'd never
15 come back but I also feel that it didn't work. I saw
16 people come in and out of there all the time, yeah. The
17 boys' home is definitely the next step into prison and
18 I'll probably explain that a little bit later, yeah.

19 Q. Well, before we move in that direction, is there anything
10.41 20 you wanted to say around the culture of the boys' homes
21 in terms of any physical abuse that you may have seen or
22 witnessed there?

23 A. I probably experienced more physical altercations in the
24 boys' homes than I did in the prisons. The other thing I
25 want to note, is that a lot of those young men in the
26 boys' homes I knew them from the foster homes, I knew
27 them from the Social Welfare homes, so all of us grew up
28 in the environment, going through Social Welfare homes,
29 foster homes and boys' homes.

10.42 30 Q. What sort of environments did you all come from before
31 entering that system?

32 A. So, nearly all of us came from, in fact nearly all of us
33 came from impoverished environments.

34 Q. And how many of those that you knew were Māori?

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1 A. Probably out of 50, 49 were Māori.

2 Q. So many Māori?

3 A. Yes.

4 Q. Earlier you talked about these places, the system being
5 preparation for prison.

6 A. Yes.

7 Q. And we hear often the words "pipeline", "prison
8 pipeline"?

9 A. Yes.

10.43 10 Q. Did that become a reality for you around 1987?

11 A. Yes, it did.

12 Q. Can you tell us briefly about that?

13 A. The thing about being in the boys' home, is that when I
14 moved into the prisons the first day I probably knew
15 about 80% of the people. So, when you talk about a
16 pipeline to prison process, you know, that's exactly my
17 experience. It's also the experience of my father. I
18 don't know about my grandfather but I do know about my
19 father. So, he went through the same process as well,
10.44 20 Social Welfare homes, Borstal, prison.

21 Q. And so, you went into prison the first time because you
22 were convicted of murder, is that correct?

23 A. Yes, yes.

24 Q. Can you tell us about some of the other people that were
25 in prison with you and their backgrounds or what you knew
26 of them?

27 A. They come from a place in Hamilton called Henderlie. In
28 Henderlie in the same street, in the street adjacent to
29 us, there was six of us all convicted of murder, all came
10.45 30 from the same environment, we experienced the same thing,
31 we were all in the Social Welfare homes, in the foster
32 homes, in the boys' homes.

33 Q. Now, since then you've done a lot of personal growth and
34 reflection?

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1 A. Yes.

2 Q. What's your overall reflection on some of the - you've
3 referred to at paragraph 59 psychological baggage that
4 you've referred to there that you were carrying from your
5 upbringing in that environment.

6 A. Yes.

7 Q. What's some of your reflections on that?

8 A. Well, early on I talked about my own experience of severe
9 childhood trauma, going into trances as a way of dealing
10.46 10 with abuse and flashbacks. I talked a little bit about
11 my friend Gwenda Rowe in the Social Welfare home Tower
12 Hill. We met up again when we were 17. It was about
13 that time when we heard about a story very similar to our
14 own, a 5 year old being abused by his father. 6 months
15 later things came to a head. We were sharing our own
16 experiences of abuse and the mother of the child was
17 there and she told us more about what was happening to
18 her son. That was the time when I realised, you know, on
19 reflection, you know, I was carrying my own psychological
10.47 20 baggage, I didn't even know I had it. But hearing that
21 story impacted me to such a degree, I ended up
22 superimposing my own story, my own history of the boy to
23 such a degree, I went and I fought and I killed his
24 father. When I got to my trial, what I found out was
25 everything I'd been told was a lie. It wasn't about
26 abuse at all, it was actually about a life insurance
27 policy.

28 And so, when I began to reflect on what happened, I
29 came to this conclusion that my own experiences of
10.47 30 trauma, my own history, my own demons, my own anger at my
31 father cost an innocent man his life. And so, I was
32 convicted of first degree murder and sent to prison.

33 Q. How long of that sentence did you serve?

34 A. Nearly 11, so 10 years 7 months, yeah.

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1 Q. Were you granted parole after that period?

2 A. Yes, I was, yes.

3 Q. Was that the first time that you'd applied for parole?

4 A. Yes, it was, yeah. I was lucky I'd done a lot of work in
5 prison. I actually helped form kohanga reo with prison
6 staff. I became a facilitator in the Alternative
7 Guidance Programme and as an Inmate Facilitator I worked
8 with hundreds and hundreds of prisoners dealing with
9 alternate ways of helping to deal with anger.

10.49 10 And so, as a result of, you know, doing that time, I
11 pretty much went to the parole, I was given a weekend to
12 go home, and when I came back I was released. So, they
13 had a category from A to E, so E and C basically the
14 likelihood of getting out, none. And then B is minimum,
15 you know, minimum requirements. A is no requirements.
16 As a result of the work I'd done in prison, I became the
17 only A qualifier in the country, so I had no
18 requirements.

19 Q. At paragraph 63 of your brief, you talk about this idea
10.50 20 of overcoming deficit legacies?

21 A. Yes.

22 Q. Can you tell us about that?

23 A. I'm a big believer in addressing the past. What I came
24 to understand is even though I'd done my time, I came to
25 the understanding that there were people out in the
26 community who were still hurting and they were still
27 hurting because of my actions. So, I recognised I had
28 two deficit legacies I needed to address.

29 The first one was with the family of the man whose
10.51 30 life I took. And the second one was with the shame I
31 brought about on my own family.

32 So, the first deficit legacy I had to address is
33 when I became a member of the Church of Jesus Christ of
34 Latterday Saints. I was in the temple when I came across

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1 the uncle of the man whose life I took. I put myself in
2 his shoes and I thought to myself how would I feel if I
3 came face-to-face with a person who murdered a member of
4 my family? How would I respond? He said to me, "If I
5 had met you anywhere else I said I wouldn't have forgiven
6 you". He said "but you're here in the House of the Lord
7 and I want to tell you I forgive you". And he said to
8 me, "Come with me, I want you to come and meet my
9 family".

10.52 10 So, I went with him to his home, he called everyone
11 together and I got up and introduced myself. I actually
12 thought they were going to be really angry, really
13 abusive. I stood up, I told them who I was, I told them
14 what happened and I told them why. But instead of
15 experiencing abuse, they rose as a family, they
16 surrounded me and put their arms around me and said "I
17 forgive you". We ended up doing an article in the
18 Waikato Times together, it was about redemption of David
19 Karena. I always talk about this because it was the
10.53 20 hardest thing I ever had to do because it exposed me to
21 the world with all my faults, my flaws, scars, warts and
22 all. But what I recognised was this, it was necessary
23 because it gave this family their own voice, it allowed
24 us to start our healing, our transforming journey
25 together.

26 And the second deficit legacy I would like to
27 address is, when I joined the education field 22 years
28 ago, I knew I was going to become a doctor way back then
29 because I wanted to use education as a vehicle to
10.53 30 establish a new legacy, one that my family could be proud
31 of. And so, that's when I studied for my bachelor
32 degree, Māori counsellor, I became a counsellor, worked
33 in the social mental health and then I started a Master's
34 in Counselling, a Master's degree in commercial music and

1 a PhD in philosophy.

2 Q. Kia ora. In relation to your time in State care or the
3 time of your father in State care, has anyone from the
4 State or have you been involved in any redress or any
5 apology process or restorative process with the State
6 about that part of your deficit legacy?

7 A. No, that was all - that was my own focus. I remember, in
8 fact I spoke with my Bishop and I told him how I was
9 feeling, recognising there were people in the community
10.55 10 that hurt me. You know what he said to me? He said to
11 me this, he said "Do all you can to make things right.
12 And when you've done all you can to make things right,
13 God's faith is sufficient to make up the difference".

14 Q. That puts us in a good position to talk about your PhD
15 research and how that is relevant to our Inquiry.

16 What was it that was the driver behind you doing
17 your PhD research on intergenerational trauma?

18 A. So, it started from this position: I had to take full
19 acceptability and accountability for my actions. But one
10.56 20 of the things I acknowledge, is that what I didn't have
21 control of is the environment I was born into and so I
22 wanted to know how the environment I was born into was
23 created. And so, I went on a journey of rediscovery back
24 into my history, back into the history of New Zealand,
25 back into indigenous history right around the world, all
26 the way back to a document called the Doctrine of
27 Discovery. From the Doctrine of Discovery, you know, it
28 gave me answers that I never knew before. It was from
29 the Doctrine of Discovery that this whole colonial
10.57 30 process came about. You take a stone, you drop it into a
31 pond, it ripples, you are looking at intergenerational
32 ripples. One of the things that I say in my PhD is this,
33 don't judge a person in isolation to their history. All
34 issues and behaviours have whakapapa, they came from

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1 somewhere for some reason, these things didn't just
2 manifest out of the land. Everything has a whakapapa,
3 everything. And so, for me, it was about looking at
4 contributing factors to the environment that I was born
5 into, contributing factors that led me to do the things
6 that I did.

7 Q. What were some of the things that you would identify as
8 being those contributing factors historically in the
9 context of your PhD research? You've spoken about, for
10.58 10 example, legislation and policy.

11 A. Yes.

12 Q. And I'm speaking now in terms of your brief of evidence
13 from paragraph 70.

14 A. I suppose, before I go into paragraph 70, I just want to
15 go back a little bit further to contextualise
16 paragraph 70 because under the Doctrine of Discovery, in
17 the age of discovery European wanted to do very similar
18 to what Christopher Columbus did, so they sent European
19 out into indigenous worlds to engage with Indigenous
10.59 20 Peoples, but when they got there, they found other
21 European emissaries. So, as a result all these European
22 emissaries and European monarchies got together and
23 created guidelines for engaging with Indigenous Peoples
24 and it was called the Doctrine of Discovery.

25 But to get the legal sanction that they needed, they
26 needed the sanction of the most powerful organisation in
27 the world at the time which was the Catholic Church and
28 the Pope. And they developed things like Papal Bull
29 decrees and here's an example of one of those Papal Bull
10.59 30 decrees, it's called Romanus Pontifex and it's from 1455
31 and it said this:

32 "If you go to indigenous land and you find
33 indigenous people are not Christian, they were invaded,
34 they were vanquished, captured, subdued, reduced to
 slavery and have their property seized by European
 monarchs".

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1 And then you have another one from 1493, and it says:
2 "If they go to land and find it empty, they could
3 claim it on behalf of the European power who found it".

4 However, they were Indigenous Peoples there and they
5 were not Christian. They didn't have right to entitlement
6 of land, they only had rights of occupancy. So, what that
7 meant was their status as human was lowered to that of a
8 tree, a hedgehog, a deer, a weed, a rabbit. So, they were
9 came to be known as flora and fauna. So, their status as
11.00 10 a human being was removed.

11 Now, we might actually think hey that's 1493 but you
12 know the last time that they used the Doctrine of
13 Discovery, terra nullius, was in 2007 and they used it
14 against the people because the State said they had to pay
15 rates. The people said we were here before you, they won
16 their case but the Supreme Court overturned it due to
17 terra nullius in 2007.

18 Q. Can I bring us to, with that lead in, into some of the
19 legislation that was put in place here in Aotearoa?

11.01 20 A. Sure.

21 Q. One of the particular Acts that you have spoken about in
22 your brief is the Native Schools Act.

23 A. Yes.

24 Q. Can you tell us about the impact of that?

25 A. I suppose, can I talk about where it came from first?

26 Q. Yes.

27 A. For me, this is the whakapapa of Oranga Tamariki. Oranga
28 Tamariki, the Department of Social Welfare, its origins
29 is not necessarily here in New Zealand. In fact, it was
11.02 30 established in 1837 through the House of Commons Select
31 Committee on Aborigines. Because the British Empire
32 colonised more indigenous countries than any other
33 European power, they decided to set up assimilation
34 templates and applied it right across the Commonwealth.

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1 Because their responsibility was around
2 assimilation, what they recognised is that they couldn't
3 change the mindset of the current Indigenous Peoples that
4 they were dealing with, so they decided to go after the
5 future generations. So, as a result, the House of
6 Commons Select Committee established the Aboriginal Acts
7 in Australia that led to the Stolen Generations, they
8 established the Indian Acts in Canada and USA and led to
9 the Residential Schools and Truth and Reconciliation
11.03 10 now. Why? Because thousands of children have gone
11 missing.

12 They also established New Zealand's experience of
13 Lost Generations. They did it through the Native
14 Department 1861, the Neglected and Criminal Children
15 Act 1867 and Native Schools Act 1867.

16 And so, while it was applied here and it's been
17 going on since 1921, its whakapapa, its origins, actually
18 sits in England.

19 And so now I can talk about that.

11.04 20 Q. In terms of some of the experiences of those who went
21 through the Native School system and was subject to that
22 corporal punishment for speaking Te Reo Māori, at
23 paragraph 88 you've taken historical account of that from
24 the work of Binney and Chaplin. Would you care to read
25 that for us?

26 A. Sure. This is a sample I took out of Judith Binney's
27 Book Ngā Morehu. It is written by Putiputi Onekawa who
28 was born in
29 1908 and was sent away to school at Turakina in 1921.
She said this:

11.05 30 "I started school quite old. And I can't talk
31 English. All we got to do is cry, because don't talk
32 Māori in school. We can't talk English - so all we do is
33 cry. Yes for a long while. I can't talk English no
34 matter what. I try but the only thing I know is stomach.

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1 Yes, I know that. Oh yes, Sister Anne, Sister Dorothy,
2 Sister Jessie and Mr Laughton and Mr Currie, he's hard,
3 very hard. No bloody humbug! A cousin of mine, we are
4 all sitting on the floor, singing, and she was naughty.
5 She did it on the floor. Because we don't know how to go
6 outside. All we do is go like that (putting her hand up
7 and point outside) and this girl she didn't want to say
8 anything. She was sitting on her slate. She had a slate
9 over it. We were just going to sing and I was going like
11.06 10 that - pointing to her. Mr Currie gave me a good hiding,
11 supple jack, eh across my back. He was a murdering
12 thing! And Mr Laughton didn't like it. He knew because
13 I didn't know how to say outside."

14 Q. I want to move on towards the end of your brief of
15 evidence where you talk about the ongoing impact of
16 colonisation. Have you come up with a model or a diagram
17 for that? We spoke earlier about te Tongi a Tawhiao and
18 the trees used in that prophecy, have you yourself come
19 up with your own figure to explain the ongoing, in your
11.07 20 view the ongoing impact of colonisation?

21 A. Yes, I have.

22 Q. Would you speak to us about that, please?

23 A. Sure. So, this is a model I developed, it's called
24 Putaketanga; so pu is origin and take is the issue. So,
25 what you're doing is you're tracking the issue back to
26 its origins. I'm going to use the Native Schools Act as
27 an example. When you understand the intergeneration
28 ripple effects of the Native Schools Act, one thing you
29 have to understand is this, pre-colonisation domestic
11.08 30 violence and child abuse was not indicative of Māori
31 culture. Domestic violence and child abuse can be
32 attributed straight back to the Native Schools Act. The
33 Native Schools Act became a vehicle of assimilation to
34 remove language, culture, identity. And so, they did
it through corporal

1 punishment.

2 And so, again if you took a stone and looked at the
3 whakapapa of it, what it highlights is that the source of
4 domestic violence and child abuse is the Native Schools
5 Act because it was applied to a kaumatua and kuia when
6 they were vulnerable children. It rippled into the next
7 generation and rippled into the next generation. Mereana
8 Pitman says this very well. She says "colonisation taught
9 us to hate ourselves and each other". That is the ripple
10 effect of the Native Schools Act.

11 And so, when it was applied to our kaumatua and
12 kuia, it applied to the next generation and the next
13 generation. What happened, it doesn't make any excuses
14 but what it does is contextualise where these things came
15 from because that's one of the things that happened. A
16 lot of the systems apply a labelling theory and what
17 labelling theory does is it talks about a deficit
18 position without giving the context but everything has a
19 context, everything has a whakapapa, and everything has a
20 story. So, what this is actually talking about, is
21 contributing factors. And these are the things that we
22 don't really talk about. These are the things that are
23 not really interesting.

24 And so, what it does, so for example I can look at
25 anything from poverty and track its whakapapa back, drugs
26 and alcohol and track its whakapapa back. What it does,
27 it takes it back to what the root cause is and that's
28 what this particular model does.

29 I applied it to a colleague. I don't think I'll
30 mention his name but he said this, he said Māori crime is
31 a factor of life, wherever you find Māori you find crime.
32 He did a comparison between Hamilton and Christchurch and
33 Dunedin, he said there's a lot of Māori crime in
34 Hamilton, there's a lot of Māori there but hardly any
Māori crime in Christchurch and Dunedin, he didn't

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1 mention the fact because there's Pākehā crime down there.

2 So, one of the things I looked at is authority. Who
3 has the authority to speak on Māori about Māori and Māori
4 things? He's a professor, he's from Canterbury
5 University, he is a psychologist and criminologist.

6 Those are his areas of expertise. But is he expert in
7 Te Reo Māori? No. Is he expert in Māori history? No.

8 Is he an expert in Māori taonga? No. So, even though he
9 has expertise in criminology and that, that's not the

11.12 10 expertise which is relevant. So, what I'm doing is
11 contextualising Māori history and Māori stories alongside
12 colonial discourse. I was lucky to write a chapter in
13 the Palgrave handbook on Criminology in New Zealand and
14 Australia and that's about colonial legislation, dominant
15 discourses and Māori experience and childhood trauma.

16 Q. The last thing I want to ask you about is Figure 3 in
17 your brief of evidence. This is what's up now, the
18 reference to colonisation.

19 A. Yes. So, what this talked about, I call this the
11.13 20 colonising tree. At its roots, it is the Doctrine of
21 Discovery, colonisation, ideologies, superiority,
22 discrimination, racism, prejudice. So, I'm saying that's
23 the roots and Māori experience of historical
24 intergenerational trauma is based on loss of land, loss
25 of identity, language, culture, heritage. So, what I'm
26 saying is that if this is what you're feeding the roots
27 and these are what the instruments are in the trunk, then
28 you're only going to get deficit outcomes because what's
29 being fed is deficits to the root. You can't feed
11.14 30 deficits to the root and expect good outcomes. You're
31 just not going to get it.

32 And so, I've also got a transformative model. What
33 it talks about is how you change the roots, restore the
34 language, the culture, identity, mana, tino
rangatiratanga.

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1 If you look at the trunks of it, it's
2 about restoring, language, culture, identity, heritage,
3 Tino rangatiratanga. Then what happens is you will
4 have
5 Transformative statistics instead of deficit.

6 Q. Where would you place State care, abuse in care, within
7 this model of the rakau, of the tree?

8 A. It's definitely amongst that and it's definitely, it's a
9 Māori deficit outcome but it's also based on deficit
10 whakapapa, yes.

11.15 11 Q. The last thing I would ask you is to share with us your
12 hopes for this Royal Commission of Inquiry?

13 A. You know my hope and my dream, that the Royal Commission
14 consider is this, colonisation both historically and
15 contemporary current times, it's hurt our people and it
16 continues to hurt our people. And the reality is this,
17 it's not sustainable. There is a total imbalance of
18 power and a lot of assumptions have been made and a lot
19 of promises have been broken.

11.16 20 So, for me, the solutions sit with Māori, they sit
21 with our people, they always have. And Māori need space
22 to take care of their own. I believe we have the
23 capacity to do it and that's why I advocate, that our
24 people work with our people to heal our people.

25 Q. Kia ora.

26 A. Kia ora tatou.

27 Q. What I'll do now, is I'll just check with the Chair to
28 see if there are any other questions for you.

29 **CHAIR:** Thank you, Mr Merrick. Dr Waretini-Karena is
30 available for questions from any counsel. Ms
31 Skyes?

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DR WARETINI-KARENA

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QUESTIONED BY MS SKYES

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6 Q. Morena. (Opening in Te Reo Māori).

7

I want to bring Te Tiriti o Waitangi and He
Whakaputanga as part of your

8

korero today and I want to start with the whakapapa that
you shared with us. I think it's important we recognise

9

11.18 10

that as a half-brother of Tawhiao who did not sign

11

Treaty of Waitangi, your great grandfather is quite

12

significant in the way you brought him into these
proceedings.

13

You would agree that Tawhiao signed He Whakaputanga, the
Declaration of Māori Independence in August 1839?

14

15

Yes.

16

And refused to sign the Treaty?

17

Yes.

18

However, your grand aunt, I heard today, Te Puea, was a

19

Follower of Te Tiriti and the values of Te Tiriti in

11.19 20

addressing the processes of colonisation that had
dispossessed your people of Tainui?

21

22

A. Yes.

23

Q. Can you elaborate on that history?

24

A. From Princess Te Puea?

25

Q. Why did she become a stern follower of the principles of
Te Tiriti o Waitangi, given the fact of the reality that
her tipuna, Tawhiao, did not sign te Tiriti?

26

27

28

A. I also think it was a way of holding them to account to
their own people. And Article 2 talks about protection

29

11.20 30

of taonga. There was no protection for them at all.

31

Protecting their mana, protecting their tamariki. And
that's part of promises given and promises broken, so

32

holding them to account for that.

33

34

I can only talk from my grandfather's experiences

1 with Princess Te Puea because he was brought up with her.
2 All I can do, and I understand she also stood tuturu to
3 what Tawhiao said and he said that Tainui wouldn't fight.
4 When they laid their guns down at Alexandra/Pirongia,
5 they weren't going to fight anymore. So, as a result,
6 they became conscientious objectors during World War I
7 and that's also something that Princess Te Puea led.

8 And so, when they were taken as conscientious
9 objectors to Narrowneck, she was standing there outside
11.21 10 the fence and singing to them and let them know that she
11 was there.

12 So, yes, for me it was about her keeping them
13 accountable to the words that they signed on a piece of
14 paper.

15 Q. If I can draw some threads from your korero. Children,
16 tamariki, human beings are taonga, the gift of life as
17 Mira Szászy once described is the most important taonga
18 protected by Article 2 of the Treaty; would you agree?

19 A. Yes.

11.22 20 Q. That's something that both Tawhiao and Te Puea lived
21 by?

22 A. Yes.

23 Q. And that was affirmed in He Whakaputanga, which is the
24 sister document that gives
25 force to Te Tiriti o Waitangi?

25 A. Yes.

26 Q. So, if we bring those values to going forward with
27 welfare of taonga, of children, of tamariki, of human
28 beings, how do they inform us in the solutions for
29 historical trauma?

11.22 30 A. What it highlights is that they haven't done a very good
31 job, in fact it's been abysmal, and they haven't held to
32 mana ki te kupu.

33 Q. Translate for everybody here, honour the words?

34 A. Yeah, so their words were not their bond. So, I think in

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1 bringing that context here, it's about putting it out
2 there and giving context to te Tiriti and our Tamariki and
honouring
3 that.

4 So, if they didn't do that, this is the forum to
5 bring it. Maybe that's a place where we can start in
6 this Royal Commission.

7 Q. And your evidence highlights the fact that Te Tiriti
8 or He Whakaputanga did not inform the Native Lands Act?

9 A. No.

11.23 10 Q. The various Social Welfare Acts that imprisoned your
11 father and your grandfather?

12 A. Yes.

13 Q. They were not informed by the values of those founding
14 documents?

15 A. No.

16 Q. Even though there's references though in the modern
17 legislation, what's missing?

18 A. Well, what I've come to understand with the doctrine of
19 discovery, the development of treaties was getting
11.24 20 people's foot in the door but actually forgetting that
21 they were also accountable to what they signed.

22 So, now, this process is about bringing them back to
23 what is that accountability.

24 So, what I am saying, is that Te Tiriti o Waitangi,
He Whakaputanga

25 to me is a sister, to me it's actually the parent, He
Whakaputanga is the parent.

26 There would be no Te Tiriti of Waitangi without
27 He Whakaputanga.

28 The other thing is this, He Whakaputanga was never
29 conceded, it doesn't say that anywhere. The English
11.24 30 version might say it but that's not signed by two
31 parties, so therefore it's an irrelevant document.

32 Q. I'm trying to look to the future rather than in the past.

33 Social workers should be trained in the values of He
34 Whakaputanga and Te Tiriti?

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1 A. Absolutely, yes, absolutely.

2 Q. Was that your experience while you were in care?

3 A. I trained them in He Whakaputanga, in the Declaration
4 of Independence and the Te Tiriti o Waitangi but my
5 colleagues trained in the Treaty of Waitangi. So, we
6 would always have conversations, robust conversations
7 around that, yeah. But it's definitely important our
8 counsellors, social workers, mental health, they're not
9 trained in that history.

11.25 10 Q. Do you sense that there is this misbelief of superior
11 values from a euro-centric position that subjugates
12 Māori values that sometimes colours people's practice
13 and I'd like some examples?

14 A. Yes, right across the board. I think, in my experience
15 in talking with my colleagues, they actually didn't know
16 enough about the Te Tiriti o Waitangi. It's like
17 speaking Te Reo, they would be whakamā to even try.

18 And so, I would have to take them through and these
19 are the people who have way more experience teaching than
11.26 20 I did. But one thing I knew was Te Tiriti o Waitangi and
21 the Declaration of Independence. Not only that, I know
22 the whakapapa of how it got to there. So, I wouldn't
23 just teach He Whakaputanga but also its whakapapa.

24 Q. So, in your last diagram, if we could put that up, this
25 is my last series of questions. If we are to reclaim the
26 values, to have a prescience or appropriateness of
27 practice, then we have to address, don't we?

28 A. Yes.

29 Q. The reclamation of identity, the reclamation of language,
11.27 30 the reclamation of heritage?

31 A. Yes.

32 Q. And the reclamation of economic wellbeing or the
33 prosperity or loss of land?

34 A. Yes, absolutely.

1 Q. How are we going to do that for, and I want you to think
2 back to you as the 6 year old child or the 12 year old
3 child in the Tower because that's the challenge before
4 this Commission. The big picture issues need to be given
5 substance and incremental steps if we are to honour, mana
6 ki te kupu o Te Tiriti o Waitangi, to give force to the
7 values of the honourable words of Te Tiriti o Waitangi.

8 A. If I think back to being a 6 year old and being a 12 year
9 old, you know, that wasn't even in their thought process.
11.28 10 But moving into the future, I think them learning about
11 He Whakaputanga, learning about te Tiriti o Waitangi,
12 learning about New Zealand history is very important
13 because what it does, it contextualises not only Māori
14 stories but the story of Tangata Tiriti,
15 our European partners.

16 Because at the end of the day we're all in this
17 together but how we work with each other to make things
18 better for the future. When it comes down to
19 relationships, not partnerships, it's about relationships
20 and about Māori has to be in that being respected.

11.29 20 Q. It's also about trust, isn't it?

21 A. Yes.

22 Q. Isn't it about the State trusting Māori to look after our
23 own?

24 A. Absolutely.

25 Q. As Princess Te Puea wanted?

26 A. Yes.

27 Q. It's about trust that Māori have solutions for our own,
28 isn't it?

29 A. If we have a good look at Whānau Ora, you know,

11.29 30 they operate on a budget that's way less than Oranga
31 Tamariki. What forms the basis of their practice is
32 relationships and, yeah, it is about trust but the thing
33 about it, it's a Kaupapa Māori Service, it's by Māori for
Māori.

34 Q. And that requires respect?

1 A. Yes. Manaaki ki te tangata.

2 Q. And it requires resources which is what you've just
3 talked about?

4 A. Yes.

5 Q. Thank you, I have no further questions.

6 **CHAIR:** Thank you, Ms Skyes. Any other counsel?
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DR RAWIRI WARETINI-KARENA

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QUESTIONED BY MS GUY KIDD

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6 Q. Tena koe. My name is Mrs Fiona Guy Kidd and I represent
the

7 Anglican Church for Aotearoa New Zealand and Polynesia.

8 Thank you for your powerful evidence of your meeting
9 with the family of your victim and you explaining your
11.30 10 offending and why that had occurred and receiving their
11 forgiveness.

12 I'd like to ask some questions exploring and seeing
13 what we can learn from that meeting that you went
14 through.

15 How long after your offending did that occur?

16 A. 12 years.

17 Q. And did you receive any feedback as to how the victim's
18 family found that meeting or what they gained from it?

19 A. We're still friends to this day, so yes, they also serve
11.31 20 in my church, so yeah.

21 Q. And what impact did that meeting have on you?

22 A. I suppose for me, it was about reconciliation, it was
23 about redemption. I developed a programme, it's called
24 He Kakano Ahau and it
25 recognises that you're a seed born of greatness,
26 descended from a line of Chiefs, so I am in the
27 process of taking that into the prisons. It's about
28 helping men to unpack the stories to help them make sense
29 of their current reality. But part of that process is
30 accountability. Māori had a process, it was called
11.32 30 Kokonga Ngakau, where you would have the person who has
31 offended, the person who's been offended, a facilitator
32 and you would have the hapu. The person who has offended
33 can only talk about what they contributed to the offence,
34 that's it. Once that process has taken place, the
facilitator steps back,

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1 the person who has been offended steps back, and then the
2 hapu makes a decision about how to move forward in a way
3 that saves face and mana for those who have been offended
4 and those who have offended.

5 So, I talk about it in the traditional sense. And
6 so, it's asking them to understand it in that context.

7 And so, what that's about, is about when you take
8 account of your own actions and you can actually walk
9 with your head high in the community. And regardless of
11.33 10 what everyone comes to say about you or challenge you
11 about your history and your past, you've already dealt
12 with it.

13 Because I've had instances, I had a student, for
14 example, who didn't like the mark and grade I gave her.
15 And she said to me, "I want you to change the mark". And
16 I said, "For me it's based on the evidence you provided".
17 And she said this to me, she said, "I know your history,
18 I've read about you. If you do not change the mark, I'm
19 taking this to the media". So, I'm a lecturer, you know,
11.34 20 at a tertiary education, but because I'd already dealt
21 with it, I dealt with it this way, I opened up my drawer,
22 I pulled out the article about me and the family and how
23 we met in the temple and my story of redemption, and I
24 said to her, "When you go to the media can you give them
25 this". So, it highlighted, it took away the power to be
26 used against me because that's something I've always
27 brought to the fore.

28 Q. So, do you think that face-to-face essentially
29 restorative justice process is important after abuse?

11.34 30 A. While I do, I'm also sensitive to those who have been
31 offended. And so, it is a restorative justice process,
32 so both parties have to be willing to go there for it to
33 succeed but yes, I do.

34 Q. Perhaps just a final topic then. Given what you've just

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1 said there, where there's a representative possible of
2 the offender, for instance, a representative of the State
3 or of the church, would that still have a benefit, do you
4 believe, for victims?

5 A. You mean in terms of the restorative process?

6 Q. Yes, participating in place of the offender, so instead
7 of the offender.

8 A. One of the things that I understand is this. Evil exists
9 in the dark. The only way to overcome that type of evil
11.36 10 is to shine a light on it. You shine a light on it so it
11 no longer has power over you or anyone else. And I think
12 this is the power of these courageous people who stand up
13 and tell their story because now that history will no
14 longer have power over them and it will bring about the
15 process of healing, something that has been needing to
16 come for generations.

17 **MRS GUY KIDD:** Kia ora, thank you.

18 **CHAIR:** Thank you, Ms Guy Kidd. No other counsel?
19 Colleagues?

11.36 20

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DR RAWIRI WARETINI-KARENA

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QUESTIONED BY COMMISSIONERS

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COMMISSIONER ERUETI: (Opening in Māori). I have a

8

question about the impacts of land loss, so it's

9

going back to paras 41-43 of your brief of

11.37 10

evidence. I want to ask you about the indication

11

there is that you have muru me te raupatu of

Waikato, vast areas of land taken

12

from..?

13

A. Yes, 1 million acres.

14

COMMISSIONER ERUETI: 1 million acres, thank you. In

15

paragraph 42 you talk about the Māori Battalion

16

soldiers coming home from the war?

17

A. Yes.

18

COMMISSIONER ERUETI: And more land was taken from them

19

and given to settlers?

11.38 20

A. Yes.

21

COMMISSIONER ERUETI: If you can elaborate more on that

22

process about how that land was taken? Was there

23

legislation also in -

24

A. Yes, it was a ballot. And so, what was interesting about

25

that, is when they came back as a result of the war, they

26

felt that because Māori already owned the land that the

27

land was given to the settlor soldiers but it was at the

28

expense of those who had land in the first place.

29

Dr Walker talks about even those Māori who had land in

11.38 30

the rural sectors and they went into the cities to find

31

jobs because they were away from their land and the

32

Council went and put rates on them and took them, yeah.

33

And so, it's an example that my grandfather, he was

34

a member of the 28th Māori Battalion Company C. Now,

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1 that's quite extraordinary because he's from Waikato
2 Tainui but what happened at the time is he was a young
3 man sheering sheep over in Ngati Porou when the war
4 started, so he went to war with his mates, and so he
5 signed that document Ngati Porou but he's actually
6 Waikato Tainui.

7 This process is not new. That's what happened at
8 Ihumatao.

9 They had newspaper clippings that said if you come and
10 join the fight on our behalf you will get a certain
11 amount of acres of land. So, they did in the 1860s and
12 they did in the 1940s. I'm not sure if you want me to
13 elaborate or not?

14 **COMMISSIONER ERUETI:** You are describing there
15 everything has a whakapapa?

16 A. Yes.

17 **COMMISSIONER ERUETI:** So, loss of the land and then your
18 father's generation then migrated to the cities?

19 A. Yes.

11.40 20 **COMMISSIONER ERUETI:** You talk about the pepper potting
21 strategy?

22 A. Yes.

23 **COMMISSIONER ERUETI:** Can you unpack that more for us,
24 the pepper potting and what that actually means?

25 A. Well, the pepper potting strategy, back in the '30s, even
26 before that, Māori lived in communes, communities. So,
27 what they wanted to do was break those communities up
28 because that's what actually gave them access to land.

29 And so, the pepper potting processes, they mixed
11.41 30 Māori and Pākehā communities together, made all the jobs
31 available in the cities. So, therefore, it moved Māori
32 off their land. I want to be very clear too, it was a
33 very intentional practice because those are the same
34 policies that they used in other indigenous countries
which they found quite successful.

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1 And so, a lot of legislative policies that they used
2 were imported from other countries: Australia, Scotland,
3 Ireland. I mean, Ireland, that's where the Native
4 Suppression Act came from because it was successful over
5 there.

6 **CHAIR:** Any other colleagues?

7 **COMMISSIONER GIBSON:** Kia ora, Dr Waretini-Karena.

8 You've put forward a powerful and a deep whakapapa
9 about the roots of what's going on in terms of the
11.42 10 taking of children, the abuse of children in this
11 country. With your experience also in terms of
12 mental health and counselling, I'm assuming the
13 same whakapapa about what's happening in terms of
14 Māori communities around mental health suicide
15 rates could be attributed to the same origins?

16 A. Yes, they can. In fact, it's a systemic outcome. And
17 so, when I talk about addiction, those all have a
18 whakapapa in poverty, they have a whakapapa for Māori
19 intergenerational poverty. That's why we talk about
11.43 20 where did that come from? That's taking of land,
21 cultural identity at the point it began.

22 **COMMISSIONER GIBSON:** From your working in services and
23 counselling, the same principles of tino
24 rangatiratanga could apply to care in terms of the
25 Mental Health System?

26 A. Yes, I think it can, yes.

27 **COMMISSIONER ALOFIVAE:** Dr Waretini-Karena, thank you
28 for the powerful honesty in which you shared your
29 evidence this morning. My question really arises
11.43 30 out of your comment that I found really encouraging
31 around you were referring to some redemptive
32 frameworks you found really useful in how you were
33 able to get to the place of a sustainable long
34 lasting peace.

A. Yes.

1 **COMMISSIONER ALOFIVAE:** It's about going back to the
2 roots of your tree. If you have any comments
3 around, given that redemptive justice isn't always
4 rooted in the legislation, if that was a possible
5 tool that we should be looking at unpacking in a
6 much more incentivised way?

7 A. I believe so because the current model is very punitive.
8 There's no healing process in punitiveness. You don't
9 get to the root cause through punitive measures.

11.44 10 How I came to the place that I did, it was about 5-6
11 years into my sentence and then the actress her name was
12 Miranda Harcourt, she brought a play to prison called
13 *Verbatim*, she played six different characters all
14 impacted by murder. So, I asked her what did you hope to
15 achieve by sharing this with us? And then she said to me,
16 how would you answer that? And this is when I got
17 the idea of a stone dropping into a pond and creating
18 ripples. The main character that she was playing thought
19 he was only hurting one person but didn't realise the
11.45 20 impact of his actions rippled throughout the community.

21 So, when I was alone in my cell reflecting on what I
22 heard, you know what my inner voice said this to me?
23 What about the impact in the community you had? And I'll
24 tell you what, I was stunned, I was shocked. I never
25 even thought about that before. And the reason why I
26 hadn't thought about it, I was whakamā to look at my own
27 history, I was whakamā to understand the impact of my
28 actions, and that's when I came to understand my own,
29 there's a community out there that's hurting because of
11.46 30 me. My only family I had, my mother, she was hiding away
31 at home. I had my brother being assaulted at school just
32 for being related to me. And so, that's when I came to
33 the understanding that there's some work I've got to do,
34 a deficit legacy that I need to address, because I
couldn't - but I think at the heart of that was actually

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1 understanding that I'd taken the life of an innocent man.
2 And so, for me what it was, it was about accepting my
3 sentence and accepting everything that went with it. But
4 I remember asking myself this question, I went so low, I
5 hit the bottom of the bottom and it was probably about
6 3 years into my sentence, and I remember looking in the
7 mirror looking at myself and I didn't like what I saw.
8 So, I got out and I was looking through the bars at the
9 stars, bars/stars, and I came to this conclusion, I can
11.47 10 continue looking at the bars and stay institutionalised
11 or I can look at the stars. And I realised if this is
12 what the bottom looks like, what does top look like?

13 And so, from there, in 1988, in my cell, I decided
14 to strive and I've been doing that ever since.

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

16 **CHAIR:** Thank you, Dr Waretini-Karena. The Royal
17 Commission has been enriched by your evidence and
18 your insights. Thank you. Mr Merrick, I think
19 this will be a suitable time for us to take the
11.48 20 morning adjournment.

21
22 **Hearing adjourned from 11.48 a.m. until 12.05 p.m.**

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ALISON GREEN - AFFIRMED

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EXAMINED BY MR MERRICK

4

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6 **MR MERRICK:** Our next witness today is Alison Green.

7 Q. (Opening in Te Reo Māori). Welcome and thank you for
8 being here and the work that's been done to get to this
9 point.

12.10 10 **CHAIR:** Can I insert a requirement of the Inquiries Act
11 (witness affirmed).

12 **MR MERRICK:** May I approach Ms Green to put her
13 microphone on?

14 **CHAIR:** Yes.

15 **MR MERRICK:**

16 Q. Just by way of introduction, Dr Green, can you tell us
17 who you are and where you're from?

18 A. Tena koutou katoa, (opening in Te Reo Māori). My name is
19 Alison Green.

12.11 20 Q. By way of further introduction, you've outlined in your
21 brief of evidence some of your qualifications. In 2018,
22 did you complete a PhD in Māori and Indigenous
23 Development?

24 A. Yes, I did.

25 Q. From the University of Waikato. Can you tell us more
26 about what that was about, what the thesis was?

27 A. Can I just go back a bit though?

28 Q. Sure.

29 A. I'd like to say that I am a mother of three grown
12.12 30 children, two of whom have recently had their first
31 babies and I am raising my 14 year old grandson who was
32 removed from his mother's care 10.5 years ago.

33 Q. Kia ora.

34 A. So, that's important context for me. So, I have a PhD in

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1 Māori and Indigenous Development. I researched and
2 compared indigenous knowledge in health legislation and
3 policy in New Zealand and Canada. I am also currently
4 the Inaugural Post-Doctoral Fellow At the University of
5 Saskatchewan. In that capacity, I am researching,
6 alongside a Cree professor from the university of
7 Saskatchewan. We are comparing the removal of indigenous
8 children in both polities.

9 Q. Do I understand it that that postgraduate fellowship,
10 post-doctoral fellowship will effectively travel
11 alongside the life of this Commission?

12 A. Yes, it will, that's right.

13 Q. At paragraph 4, you outline some of the work that you're
14 doing for Ngati Awa, can you tell us about that?

15 A. So, I'm currently the Chair of the Ngati Awa Community
16 Development Trust. So, we look into the issues of social
17 development, so health, housing, education, community
18 development in general, as well as the development and
19 maintenance of our reo and our tikanga for Ngati Awa.
12.14 20 But I have also done a couple of pieces of work for the
21 tribe and so in 2007 I spent time working for Te Runanga
22 o Ngati Awa looking at the co-production of social
23 policy. That was an interesting piece of work. So,
24 again we were looking at how we as an iwi might influence
25 legislation and policy, in particular social policy, so
26 that those worked well for our people. Whereas,
27 historically they haven't and of course that's been the
28 domain of the Crown and not Māori.

29 And the other piece of work that I did, which
12.15 30 somewhat touches on the work of the Commission, the brief
31 of this Commission, was looking into offending and
32 victimisation involving Māori, both as offenders but also
33 as victims in the Mataatua region. I was looking at how
34 those statistics, at why Mataatua were over represented

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1 in those negative statistics. That report was peer
2 reviewed by Professor Tracey McIntosh who will be with
3 the Commission in a few days.

4 Q. Just for those that aren't familiar, Mataatua region, can
5 you explain that for us, te rohe o Mataatua?

6 A. The Mataatua region would come what is called the Bay of
7 Plenty region, so right up the coast and then down into
8 the bowl around the Tauranga area.

9 Q. You come to it later in your brief but we acknowledge it
10 upfront, at this stage is it a piece of work that you did
11 in 1992 for the Human Rights Commission. Can you just
12 briefly tell us about that, that piece of work. We will
13 go into detail later on.

14 A. Right. So, in 1992, I co-researched and authored a
15 report with Pania Ellison. The report was entitled "Who
16 cares for the kids? A study of children and young people
17 in out of Family Care".

18 The report was done in two sections. So, there's a
19 Māori section and then there's a Tauīwi, Pākehā section.
12.17 20 And Pania and I did the Māori section which we can talk
21 about later.

22 Q. Yes. And it was the Human Rights Commission that
23 commissioned that report at that time?

24 A. That's right, it was.

25 Q. Turning back to your brief, and we're on page 2 now,
26 sorry we're still on page 1. I did want to ask you about
27 two things.

28 The first is, your involvement in claims before the
29 Waitangi Tribunal. Can you tell us about your
12.17 30 involvement in that Tribunal?

31 A. So, I am party to a claim, that's claim 2494, and we've
32 recently - sorry, I'm party to that claim because my
33 whānau have experienced three generations of removal
34 involving Department of Social Welfare, then the Child,

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1 Youth and Family Services, and most recently Oranga
2 Tamariki. In my Statement of Claim, I'm concerned around
3 two levels. I'm concerned about the factors which
4 pre-dispose some Māori families to the removal of their
5 children at rates that are far higher than our population
6 would suggest.

7 And the second aspect is the way in which the
8 removals happened, and in particular those removals
9 happened without the involvement of hapu and the whānau
10 more generally. Thank you.

11 Can I add, Chris, that we've just been advised that
12 that particular claim and two others will be heard with
13 urgency, and I think that speaks to the critical issues
14 that children, Māori children, are facing right now.

15 So, although it's valuable to have this broader
16 scope of the Tribunal, I think it's also important we
17 consider the rights of Māori children now.

18 Q. Kia ora. We are on page 2 now, I suppose as a starting
19 point for you to share with us your experience of going
12.20 20 into and being removed from your whānau. At paragraph 6
21 of your brief, you start to talk about that and if you
22 could start to share with us from that point, that would
23 be great, thank you.

24 A. So, I am the eldest of seven children. I was born in
25 1958 and I was removed soon after birth and raised by
26 Pākehā parents. My parents who raised me were recent
27 immigrants to New Zealand. The consequence of - so, I
28 was adopted under the 1955 Adoption Act and it was a
29 closed adoption and as a consequence of that, I was
12.21 30 separated from my whakapapa, whenua and whānau and those
31 had traumatic consequences for me through my early life,
32 and I'd say they still have consequences, they do.

33 Q. Did you come to learn some more about the circumstances
34 of you being born and then adopted?

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1 A. Mm.

2 Q. What could you tell us about that today?

3 A. Mm. So, I was adopted and around about 10 days after I
4 was born I was taken by my adopting parents to the Far
5 North. They were, they told me later that they were
6 advised by the social worker to say that I had a touch of
7 Spanish and that my parents, my birth parents, no longer
8 wanted me.

9 And I was told by them that there was no way, by my
10 parents this is, my adopting parents, that I was unable
11 to make contact with my birth parents. In fact, I'm
12 really uncomfortable using those terms birth parent and
13 adopting parents. I think those are, you know, the terms
14 themselves are probably pre-cursors as well, probably
15 justification for removal through the closed adoption
16 process.

17 The idea that you can be a birth parent but that
18 parenting and that relationship can end at birth, and
19 then you can pick up with somebody else.

12.23 20 So, yes, my parents, my birth mother, so my birth
21 mother was Pākehā, father Māori. My father and my - my
22 father and mother met at a dance in Tauranga. They dated
23 for around about 8 months and then she became pregnant
24 and out of the stigma that accompanied what was called
25 pregnancies out of wedlock in those days, she went to
26 Auckland to her parents where she was persuaded both by
27 Social Welfare but also I think by her mother that it was
28 in her best interests and mine that I be given up for
29 adoption.

12.24 30 She had been told by the Social Welfare that if I
31 was able to live my life as a Pākehā child, certainly not
32 as a Māori child, that my outcomes would be better.

33 And so, I guess a touch of Spanish kind of accounted
34 somewhat for the fact that I was a small brown round dark

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1 haired child and they needed some way to account for
2 that.

3 Q. Are you aware of the practice at the time of establishing
4 a hierarchy in terms of the adoption system?

5 A. Yes.

6 Q. And do you have any comment about that and how that on
7 reflection has impacted on you in your circumstances?

8 A. So, again, so my adopting parents told me that they had
9 been - because they were recent immigrants, recent
12.25 10 British immigrants to New Zealand, that they were given
11 the bad babies and the hard to place babies. And the bad
12 babies were the Māori babies and the hard to place
13 babies, in the case of my adoptive sister who was Pākehā,
14 were babies that were not expected to live and that was
15 her situation. In fact, she did live but that was the
16 hierarchy as it was explained to them.

17 Q. At paragraph 9, you've made reference to growing up in
18 Aotearoa without whakapapa, whenua and whānau.

19 A. Mm.

12.26 20 Q. I'd like us to unpack that a little bit in your own
21 circumstances. And as a starting point for that, can I
22 ask you how societal attitudes of that time, much like
23 what I'd describe as a racist hierarchy of adoption
24 system, how that impacted on you growing up across the
25 board, schooling, that sort of thing, in terms of your
26 identity?

27 A. So, I want to liken this to, my experience, to the
28 pīpiwharauoa. The pīpiwharauoa is a migrant bird, the
29 shining cuckoo and migrates from the Bismarck
12.27 30 archipelago, so from Papua New Guinea and Melanesia. In
31 spring it migrates to New Zealand and it looks for the
32 nest of the riroriro, the grey warbler. It lays its egg
33 in that nest and then it flies off and the riroriro
34 raises the pīpiwharauoa chick but here's the rub and
35 here's the Māori understanding of the situation, is that
36 the

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1 pipiwharauoa is always a pipiwharauoa. The
2 pipiwharauoa does not become the riroriro.

3 So, for me I was raised in a nest by Pākehā parents
4 but I remained myself.

5 Q. Kia ora.

6 A. And there is a sense, no it's more than a sense, there is
7 a belief in this country that when children are removed
8 and raised by somebody else that they will become
9 somebody else. I can tell you that it's not so. But
12.28 10 what you're left with are remnants of who you could be
11 and who you would be had you been raised in the
12 environment, in the nest, that you should have been, that
13 you belong to.

14 And so, I had a very unusual, I had an unusual
15 childhood, in that I knew that I was adopted and I knew
16 that I didn't belong in this nest and that I belonged
17 somewhere else, and that journey of finding out where I
18 came from and where I belonged was a lifelong journey.

19 So, that requires a lot of hard work on my part not
12.30 20 to lose focus of who I was meant to be. And importantly,
21 the original instructions of my people for their people
22 and for us going forward.

23 So, without those original instructions, which I'll
24 talk about later, Chris, but without those, it's hard to
25 find the path. You don't really - the path doesn't open
26 up naturally for you. So, in order to reach one's
27 potential, happens much later, I think, than if the child
28 is raised where it belongs, in the whānau, in the hapu
29 and with the iwi.

12.30 30 So, things like, so I know now, for example, you
31 know, when I go to my home territories, there is a
32 feeling about standing on those lands, about seeing,
33 looking through my eyes at the view that my tipuna would
34 have seen. Those are powerful feelings that I wasn't

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1 able to access during the early years of my life and only
2 later when the Adult Adoption Information Act 1985 came
3 into being, and then I could begin that journey back.

4 Q. And so, looking at that journey back, what did the Adult
5 Adoption Information Act 1985 allow you to do? What
6 happened from there for you?

7 A. Yes. Before that, I had approached Social Welfare on at
8 least two occasions and asked if I could be given, even
9 non-identifying information but information that would
12.32 10 allow me to say, in answer to the question "Nō hea koe?"
11 I could say, "Nō Tauranga ahau, nō Whakatane ahau" and
12 that would be at least some sort of toehold into that
13 journey of belonging but I was refused on both occasions.

14 So, finally when the legislation changed, I was I
15 think fairly well forward in the queue of people writing
16 to Social Welfare to ask for my file and it was my good
17 fortune that my birth mother hadn't heard about the
18 legislation and so hadn't had an opportunity to prevent
19 access to the file. I don't know whether she would have,
12.33 20 I'm unsure about that, but certainly it made it much
21 easier.

22 So, that happened in 1985. I think in 1987, it
23 might have been, that I first spoke to her and as we
24 spoke, we corresponded first and then we talked on the
25 telephone. She was able to provide me with the
26 information that I needed. We had contact with each
27 other for a period of time but she experienced
28 posttraumatic stress syndrome related to the adoption,
29 she was having flashbacks and panic attacks, so we
12.34 30 stopped further communication. But I found out that she
31 had another child after me to a Māori man and she kept
32 that child, despite the pressure to give him up. And for
33 her, that was a healing point for her.

34 Q. And so, do I have my math right, I always get it wrong,

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1 by that stage you were 21, around 21 years of age before
2 you've had that opportunity to access that information?

3 A. Yes, yes.

4 Q. And prior to that, you've been denied that?

5 A. Yes, I was. So, I moved from Epsom Girls Grammar where I
6 did my secondary schooling and I got there through a
7 Māori Affairs scholarship in the boarding school and then
8 went to Victoria University and did a degree in Te Reo
9 Māori and anthropology. And, of course, this was the days
10 following the land march and general Māori, sort of,
11 arising, an uprising of Māori across the country. And
12 so, we were concerned that the Crown had not honoured the
13 Treaty of Waitangi, and of course Te Tiriti o Waitangi
14 most importantly, and so we were involved, I was involved
15 in Māori activities all through my university
16 undergraduate degree. You know, the question was asked
17 of me all the time, "No hea koe?" And I didn't have the
18 answer as an 18 year old student. And for that reason
19 Professor Hirini Moko Mead and his wife made a tremendous
12.36 20 offer to whangai me in order to provide some sort of
21 resolution, albeit temporary, to that trauma of being
22 removed and not having whakapapa and whānau and whenua.

23 Q. Can we turn now to tō taha Māori, your Dad's side,
24 tell us about exploring that avenue and finding
25 out that side of yourself?

26 A. Yes. So, when I found out the name Mason, I immediately
27 contacted my professor, Professor Mead, and said to him
28 naively, do you know the Mason whānau from Tauranga? And
29 he said to me, well, actually, they're from Whakatane but
12.37 30 there are some Masons in Tauranga. And he said, actually
31 your koro sits in the office next to me, he's a whakapapa
32 expert, he is the person you need to talk to. This is I
33 think where the Pākehā western world with its
34 objectivities and its focus on what can be seen and what

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1 can be measured and described and the Māori world
2 separate.

3 So, there was - the fact that Professor Mead had
4 come to me and made this offer, the fact that we were
5 already closely related but didn't know, to me was
6 evidence of those things that are unseen which for us are
7 as important, if not more so, than what can be seen and
8 described.

9 So, the rest of my years have been spent building
10 the relationships that I wasn't able to build as a child,
11 as a young person growing up with my whānau.

12 My aunties, so my father's sisters and brother were
13 so generous, so welcoming, of me as the eldest child of
14 my father who had passed by the time I went back into the
15 family. But their generosity of spirit, on my Ngati
16 Ranginui side and on my Ngati Awa side, was so reassuring
17 and grounding for me.

18 Q. You have spoken about the importance of the unseen and
19 you also just mentioned the passing of your father and
12.39 20 you've talked about that in your brief.

21 A. Yes.

22 Q. Have you got some things to say about that aspect of your
23 brief?

24 A. Well -

25 Q. Your korero, your story, your life?

26 A. Yeah. So, as soon as I knew - so, to go back, when my
27 father passed, he passed a few kilometres from where I
28 was at boarding school and I knew he'd passed. Don't ask
29 me how but it was there and as there have been many other
12.40 30 things that have happened since then - sorry, Chris, I've
31 lost my place.

32 Q. That's fine. One of the things that you've talked about
33 in your brief is the extent to which you have, through
34 your father's connection, learnt about the whakapapa of

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1 your whānau.

2 A. Mm.

3 Q. And if I can describe it as the breadth and depth of it.

4 A. Yes.

5 Q. That's described at page 3 of your brief.

6 A. Yes.

7 Q. In particular, you've talked about some of your tupuna,
8 some of your ancestors?

9 A. Yes.

12.41 10 Q. Can you tell us why you chose to include them in your
11 brief of evidence and in your korero for us today?

12 A. So, anyone who knows anything about whakapapa would know
13 how tricky it is to come to understand the different
14 lines of your whakapapa. So, if you were talking about
15 your whakapapa and you were in a particular area of the
16 country, you might use another line of your whakapapa
17 than you might were you at home, and that's in order to
18 indicate the relationships that your tupuna have with the
19 people of the land on which you're standing.

12.42 20 So, I wanted to show that it takes a number of years
21 to amass that information. You gather it from people who
22 are respected in your whānau and I was very lucky on my
23 Ngati Awa side, so that's my grandfather's side, to have
24 Koro Jo Mason as a source of my information, and of
25 course it's always useful to go to the Native Land Court
26 minutes to read about one's tipuna. And then on my
27 grandmother's side, which is my Ngati Ranginui side, my
28 father's youngest sister, Te Iwi Pearson, gave me that
29 whakapapa.

12.43 30 The other point of having the whakapapa in my brief
31 of evidence was to highlight, for today anyway, two
32 members of my, two tupuna who were well respected and
33 well-known in my tribal areas.

34 So, Te Monotahuna on my Ngati Ranginui side was a
35 composer of

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1 waiata and to this day Ngati Ranginui sing and perform
2 the waiata that she wrote for her illegitimate daughter
3 Matatu Monotahuna and she wrote that. I mean, the term
4 "illegitimate" is a western term. For whatever reason,
5 Monotahuna didn't name the father of her child but she
6 wrote this waiata to celebrate the absolute adoration
7 that she had for her daughter. And my new mokopuna, so
8 my eldest daughter's child, she has named her Matatu
9 after Matatu Monotahuna.

12.45 10 So, on my Ngati Ranginui we have Monotahuna and on
11 my Ngati Awa side I have referred to Pouawhā Meihana, my
12 great great great grandfather. His statue stands on our
13 marae. His claims and his counterclaims are through the
14 Native Land Court minute books from the period from the
15 1880s. He was a stalwart and a forthright defender of
16 the mana of Ngati Awa me te mana o Ngati Pukeko.

17 So, that was my tupuna and it absolutely horrifies
18 me that from the 1970s onwards the State saw fit to
19 remove three generations of children from whānau of
12.46 20 respected tupuna. And so, that is the point of having
21 that information in there, to provide that contrast.

22 Q. We're going to head in that direction shortly but before
23 we move away from our korero about whakapapa, I wondered
24 if you had any comment about, given the time that you
25 were effectively disallowed to live in that whakapapa, to
26 really experience it, and now having learnt all of that,
27 if you've had any reflection about the lived experience
28 of being part of that wealth, cultural wealth and whānau
29 wealth, whānaungatanga compared to having to come in
12.47 30 later and learn about it and experience it later in life.
31 Have you got any reflections on that?

32 A. Well, of course, the whakapapa is, as Rawiri said this
33 morning, it is relationships. And so, while I have the
34 words here and the names, some of the richness can never

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1 be retrieved, you know. I wasn't party to conversations,
2 to events, to tribal gatherings where people were
3 regularly talking about the deeds of our tupuna. So,
4 I've come to that much later in life and that's something
5 that cannot be regained. And for that reason, I have
6 made it pretty much my life journey to make sure that my
7 children and my mokopuna, so the children of my siblings
8 and their children, that they never experience what I
9 went through because although I went through it in a
10 closed adoption system, effectively those who have been
11 removed by the State from the 1970s and 1980s onwards are
12 also experiencing that poverty of relationship connected
13 to whakapapa.

12.48 14 Q. Kia ora. We are now at paragraph 16 of your brief of
15 evidence. Can you share with us your thoughts about the
16 impacts of colonisation with your whānau hapu iwi
17 context?

18 A. Yes. So, on my Ngati Ranginui and Ngati Awa side, there
19 are the reports to the Waitangi Tribunal that document
12.49 20 the confiscation, the raupatu of thousands of acres of
21 land that both
22 of my iwi experienced. And the effects of that in a
23 socioeconomic sense but also in terms of a lack of
24 political authority or mana within our region.

25 So, those breaches, so the Tribunal found for the
26 claimants, so for both tribes, and were very clear with
27 the Crown that they had breached articles 2 and 3 - well,
28 had breached Te Tiriti o Waitangi. I'm alleging, I will
29 do this in my claim to the Waitangi Tribunal that
30 that breach of Te Tiriti has extended, that the Crown has
31 seen itself
32 as able to breach the Te Tiriti o Waitangi in relation to
12.50 33 the removal of our children. So, the Crown has seen
34 itself as having the right to remove our children, either
35 through closed adoption or through uplift and placement
36 or placement, yeah uplift, and that view is a breach, I
37 believe, of Te Tiriti o Waitangi.

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1 Of course, Puao-te-Atatu, this is an original of the
2 document, recommendations 1 and 2 which I can talk about
3 later, but certainly highlight the right under Te Tiriti
4 o Waitangi of Māori to care for and raise our taonga, our
5 children ourselves within our authorities.

6 So, I'd also like to comment on the part that racism
7 has played in my adoption but also in the removal of my
8 nieces and nephews and grandchildren.

9 So, it seems to me that there's a shameful silence
10 in this country, that those of us who have been removed
11 from our families under the adoption legislation, that we
12 have laboured under that shameful silence, and in fact we
13 have adopted that silence ourselves. There has been very
14 little about the impact of closed adoption on Māori
15 children, on the loss to hapu and iwi. And that to me
16 speaks to racism in this country.

17 I think that if the same were happening for Tauīwi
18 that there would be a public outcry, both about the
19 removal of children by Oranga Tamariki but also the
12.53 20 closed adoption system and the loss of potential of
21 children to Pākehā families. But because we are Māori,
22 that has happened with very little interruption until
23 recently.

24 Q. And when you say Tauīwi you mean non-Māori in that
25 context?

26 A. Yes.

27 Q. In your brief of evidence from paragraph 18, you talk
28 about some factors that you would argue have created
29 whānau vulnerable to child removal?

12.53 30 A. Yes.

31 Q. In your summary, what are some of those factors in the
32 context of your whānau, your hapu iwi?

33 A. So, years and years of legislation and policy and poor
34 practice across the whole range of social and economic

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1 and political, across those spheres, the cumulative
2 effect of that, part of which is dealt with in the
3 Waitangi Tribunal reports but the more recent material
4 has not been dealt with. But it is that legislation
5 policy and practice across the social, economic and
6 political spheres that have reduced some Māori families
7 to the point where we are extremely vulnerable to the
8 removal of our children.

9 This didn't happen overnight. My nieces and nephews
10 who have had their children removed, they were not in a
11 position where they had assets and resources as part of
12 their daily lives, knew where they were from, well
13 grounded in it their tikanga and reo. They did not
14 suddenly find themselves with Oranga Tamariki knocking on
15 their door. They, themselves, were removed from my
16 siblings, who were removed from their families, and the
17 poverty that - so, poverty, addiction, living in
18 neighbourhoods where there's high levels of crime and
19 violence, most recently the availability of
20 methamphetamine, these are antecedents to removal of
21 children. But it didn't happen overnight. Successive
22 governments allowed this situation to come to this point
23 and that is the point that my nieces and nephews and my
24 grandchildren find themselves in today.

25 Q. And what you've begun to touch on there is the move from
26 the papakainga to the cities, from the home base to the
27 cities, and at paragraph 24 of your brief of evidence
28 you've touched on that in terms of your earlier korero
29 about the loss of land in your home?

12.57 30 A. Yes. Can I read? In 1891, Pope described the lands of
31 Ngaitamarawaho as "little in quantity and poor in
32 quality. These Natives live a miserable existence at
33 Huria, endeavouring to get some return from their
34 ungrateful glebe, or working precariously for

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1 neighbouring Europeans...or wearing out their
2 constitutions on the gumfields".

3 So, that is a report about my hapu Ngaitamarawaho in
4 1891. Things were that bad. We've had nearly 200 years
5 of legislation and policy and that poverty has been
6 further entrenched.

7 Q. Coming back to your siblings. You've discussed their
8 entry into the State care system from paragraph 27 of
9 your brief of evidence. Can we pick up from that point?

12.58 10 A. So, after my father died, he died at 32 years of age, and
11 suddenly, after he died my children's mother made the
12 decision to leave the Papakainga at Huirā, Ngaitamarawaho
13 lands and take my siblings with her to Wellington. She
14 moved for work reasons but without the support of whānau,
15 of elders, people who knew not just the negative things
16 about ourselves, as was written in 1891, but also the
17 strong and positive things. Without that, my siblings,
18 my sisters and brothers, faced many, many challenges, to
19 the extent of being put into homes and foster care. And
13.00 20 through that separation from our home lands, although
21 they are fiercely proud of being from Tauranga and of
22 being Māori, the specifics around whakapapa, whenua and
23 whānau in its Māori sense, not just Mum and Dad but
24 whānau in a Māori sense, that information has not been
25 available to them.

26 And so that, in combination with poverty and a
27 school system that failed all but one, you know, failed
28 five out of six, their lives, the trajectory of their
29 lives was set for real difficulties.

13.01 30 And I've made the point in my brief of evidence, you
31 know, that this was a time when New Zealand was
32 experiencing its good years. This was the pavlova
33 paradise. We were not part of that. That is racism.

34 So, the culture and relationships of gang life,

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1 addiction, poverty, became constant features of my
2 sisters' and brothers' lives and those have remained.

3 **MR MERRICK:** I will just turn to the Chair now because
4 we are close to 1.00, Sir.

5 **CHAIR:** Yes, I think that might be a convenient moment
6 for us to take an adjournment. The stenographer
7 has been in full action for a lengthy time, so
8 Dr Green if you don't mind, we will take an
9 adjournment now and we will return to your evidence
10 at 2.15.

13.02

11 A. Thank you.

12

13

14

Hearing adjourned from 1.02 p.m. until 2.15 p.m.

15

16

17

MR MERRICK:

18

Q. Dr Green, just before the break I think where we ended
19 was you were talking about your siblings and the role

14.16

20

that State care had in, I think the words you used, their
21 life trajectory.

22

A. Yes.

23

Q. We hear a fair bit about the path from State care to
24 prison and I wanted to ask you whether that was a path
25 taken by any of your whānau?

26

A. Thank you, Chris. Yes, it is a path that two of my
27 siblings have found themselves or are on. And, given the
28 harsh circumstances of their lives, it isn't surprising.

29

But it's also trajectory that I'm concerned some of
14.17 30 my nieces and nephews may also be on, so these are
31 children who were removed from my siblings' care.

32

So, yes, that pipeline is well and truly established
33 in my whānau.

34

Q. Before we go on to talk about your nieces and nephews and

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1 their tamariki, I want to pause on a period of around
2 1988, and you have referred to Puao-Te-Ata-Tu in your
3 brief of evidence.

4 We heard yesterday about reports being shelved,
5 gathering dust, things like this and Puao-Te-Ata-Tu is
6 said to be one of those. Did you want to share with us
7 today your thoughts about that in the context of your
8 journey?

9 A. What we know about Puao-Te-Ata-Tu is the engagement
10 between the advisory Committee that developed the report
11 and Māori communities across the country was a close one.
12 So, they were, I think there may have been 65 or more hui
13 held with Māori and the voices of Māori are absolutely,
14 you can see them in the report, they're reflected in the
15 recommendations of the report. At the time, the support
16 from Māori communities, once the report was released was
17 strong. But after that, there was a silence and then I
18 had occasion to be doing work for the Human Rights
19 Commission and the tangata whenua, the Māori communities
14.19 20 that we were consulting with, were saying well what about
21 Puao-Te-Ata-Tu? We told everybody what we thought needed
22 to happen in order to make sure that hapu and iwi had
23 authority with regard to tamariki Māori but what is
24 happening in practice is light years from our
25 recommendations.

26 Q. Before we go on to talk about that report, the Human
27 Rights Commission report which you describe at paragraph
28 30 of your brief of evidence, have you got some things to
29 say about Puao-Te-Ata-Tu in the context of closed
14.20 30 adoption?

31 A. I have got things to say about closed adoption but also
32 about the removal of my siblings, their children and my
33 nieces and nephews.

34 So, in relation to closed adoption, Puao-Te-Ata-Tu

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1 was very clear that any decision about the placement of
2 Māori children, and they actually said including
3 adoption, should be made with hapu and iwi. The 1955
4 Adoption Act is exactly as it is now, as it was then.
5 So, we know that Puao-Te-Ata-Tu had no influence over
6 that particular piece of legislation.

7 And then in relation to my nieces and nephews and
8 those who have been removed from our family, again the -
9 actually, recommendations 1, 2 and 13 referred to the
10 kind of systemic changes that legislation should create
11 in Aotearoa in order to remove the burden of poverty, of
12 failed education, of lack of housing, of Māori engagement
13 with tikanga and Te Reo. Those Puao-Te-Ata-Tu
14 recommended that legislation should address those issues.

15 And I contend that had subsequent legislation
16 addressed those issues, that some of my nieces and
17 nephews may not have been removed because poverty, drugs
18 and alcohol, exposure to violence and abuse, would have
19 been addressed through those systemic changes but they
20 weren't.

14.21 21 Q. And so, that leads me now to ask you about this Human
22 Rights Commission report that you co-authored, the Māori
23 research component. If I could just pause there because
24 that report has only just come to hand and I just want to
25 check that has been circulated to the Commissioners?

26 What I intend to do, is just to touch on some
27 aspects of the report with Dr Green, read where relevant
28 some relevant sections of that but without diving too
29 deep for too long this afternoon on that.

14.23 30 **COMMISSIONER SHAW:** Will it be sent electronically to
31 us?

32 **MR MERRICK:** There is an electronic document that I
33 thought would be circulated by now.

34 **COMMISSIONER SHAW:** You just touch on it briefly and we

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1 will look at it later.

2 **MR MERRICK:** Thank you.

3 Q. Can you, Dr Green, outline the background to that report
4 which is called *Who Cares For the Kids: A Study of*
5 *Children and Young People in and Out of Family Care?*

6 A. I could do that by reading the first paragraph, I think.
7 The aim of the report was to examine the issues
8 concerning the placement of children and young people
9 who, for various reasons, are being cared for outside
14.24 10 their immediate or extended families. Information is
11 gathered about how and whom decisions are made for out of
12 Family Care placements and what happens during and after
13 placements.

14 The report also describes the perceptions of young
15 people themselves.

16 Q. And that report was commissioned by the Human Rights
17 Commissioner and the foreword signed off by the Human
18 Rights Commissioner at that time?

19 A. Yes, that's right.

14.24 20 Q. Can I refer you to page 1 which is under chapter 1,
21 Introduction, and there's reference there to the United
22 Nations Convention on the Rights of the Child. But in
23 particular because of what you're talking about in your
24 evidence today, I just thought it might be useful to read
25 paragraph which outlines article 30 of UNCROC, we can use
26 that abbreviation.

27 A. So, article 30 of UNCROC addresses indigenous rights. It
28 states that children who are indigenous shall not be
29 denied the right in community with other members of his
14.25 30 or her group to enjoy his or her culture, to profess or
31 practice his or her own religion or to use his or her own
32 language.

33 Q. You spoke earlier about Article 2 of Te Tiriti o
34 Waitangi, have you got some views about how the two sit

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1 together?

2 A. So, the Māori understanding of Article 2 would be that
3 children are taonga and that they, in relation to hapu
4 and iwi members, should not be denied their own culture,
5 their language, or any other practices or beliefs that
6 they have. But, in fact, that is what happened. So,
7 that has happened for those of us who were part of the
8 closed adoption process and it's happening now for Māori
9 children removed from care.

14.26 10 Q. Can I pick up on one piece of feedback that you have
11 included in paragraph 30 of your brief of evidence? I'll
12 just read it out. It's touched on in the report. In
13 that you've said, part of the feedback was it was found
14 had resulted from the corporate plan of DSW and that had
15 resulted in a lack of commitment by DSW to any real
16 bicultural development. Instead, a superficial
17 involvement in such development exists, one that
18 generated more negative than positive responses. And
19 you've referred, this is where I want to pick up on our
14.27 20 discussion about Article 2 and article 30 of UNCROC is
21 where one participant says "Māori concepts like Aroha
22 have been hijacked by DSW, trivialised and then used
23 against us". And that's found on page 91 of the report
24 we're talking about.

25 My question for you is, the answer is probably
26 obvious but discussion is important because of this
27 question of who is best placed to ensure that rights
28 conferred in article 30 to indigenous children, taonga,
29 mokopuna under Te Tiriti, Article 2, who is best placed
14.28 30 to ensure that those rights are nurtured?

31 A. So, of course, Puao-Te-Ata-Tu were very clear that those
32 best placed to make those decisions, and in fact to then
33 implement those decisions, were hapu and iwi, of which
34 whānau are a part. Puao-Te-Ata-Tu made a distinction

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1 between what might narrowly, what in the west might be
2 called parental rights, they describe those as being best
3 considered with regard to the rights of the collective.
4 So, not necessarily one or the other but certainly not
5 simply the rights of the State, nor the rights of
6 parents, but the rights of the collective.

7 Q. Can I take you now to the Māori section of your report
8 which I note you co-authored with Pania Ellison?

9 A. That's right.

14.30 10 Q. That's at page 75. The title of that is "Te Murunga
11 Tamariki Ki Kainga Tauhou", what have you put as the
12 English title for that?

13 A. So, the term Muru is used to, in some contexts and it's
14 been used this way in this context, to refer to
15 confiscation, as in which has a sense of punishment.

16 So, raupatu and muru are often discussed in this way.
17 The report is called Te Murunga Tamariki, so the
18 confiscation of children. Ki Kainga Tauhou, Tauhou means
19 strange or unusual or different. So, the title
14.31 20 altogether means the removal or the confiscation of
21 children to the homes of strangers. And that was - the
22 title was proposed by well-known kaumatua Ani Delamare
23 but it was supported by the Advisory Group that was
24 involved with this project.

25 So that, there's an English translation as well.
26 It's not a translation. An English interpretation, so
27 the subtitle is, "Mis-placed Māori children in out of
28 Family Care". That comes from a quote by Naida Pou, who
29 some of you will know. Naida said at one of the
14.32 30 consultation hui that we held with tangata whenua, "Our
31 kids are not being placed in out of Family Care, they're
32 being taken off us and misplaced". That was 1992, the
33 same practices are happening now. And this was after
34 Puao-Te-Ata-Tu. Nothing had changed in that period

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1 between the production of this report and the work we did
2 in 1992. So, I think what we can see there is a solid
3 line of continuous action of hapu and iwi being denied a
4 right in the care of their children and taking, a
5 confiscation form of punishment of our Māori communities,
6 taking our children and placing them with strangers.

7 Q. In terms of tangata whenua consultation at page 81 of
8 that report, you list that hui were held with tangata
9 whenua groups and you have listed those groups (reads
10 groups and names from page 81 of report).

11 Can I take you to the bottom paragraph of that page
12 because there was somewhat of a prophetic feedback,
13 wasn't there, from Ngati Koata and Ngati Kuia?

14 A. That's right.

15 Q. Can you read the portion stating, "The only"?

16 A. "The only hui tangata whenua not to propose
17 recommendations was the hui at Whakatu Marae, Nelson.
18 Some weeks after the hui, researchers were told that the
19 people at the hui in Nelson were so disillusioned by the
20 powers that be, that they did not think it a worthwhile
21 exercise for them to propose recommendations which would
22 not be heeded".

23 Q. Because it was one of the goals of your group to come up
24 with recommendations from each of the hui tangata whenua?

25 A. That's right.

26 Q. And you've included those in the report, haven't you?

27 A. Yes, we have.

28 Q. You said just before that some of the things that were
29 said, that have been said now about this issue, are what
30 was said back then. Do you have a summary for us of some
31 of what that feedback was during this report?

32 A. So, some of the issues that came from the tangata whenua
33 hui were actually as I've just described. Although
34 Whakatu marae withdrew, they decided not to make

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1 recommendations, the other groups made recommendations
2 that were very, very cynical of the likelihood that the
3 Crown would make changes. So, they made those
4 recommendations but they were very cautious that it was
5 unlikely that change would happen. So, that was the
6 tangata whenua hui. Parents who we interviewed about
7 their children who had been placed in out of Family Care
8 had a number of recommendations. For example, they
9 commented that in their interactions with the Department
10 of Social Welfare, Child, Youth and Family, that the
11 emphasis was always on removing the child. There was no
12 emphasis placed upon what support the child would receive
13 once it was removed, what support the whānau would
14 receive once the child was removed and what outcomes
15 could be guaranteed that would be better perhaps than
16 those of the child's situation right now.

17 So, parents had low levels of confidence about what
18 was happening for their children but they had no right,
19 no ability to prevent their children being taken.

14.38 20 Q. What about the views of the young people themselves? Did
21 you canvass those?

22 A. Yes, we did. We met with young people. It was a difficult
23 exercise because, you know, asking young people
24 questions, there are ethical responsibilities that
25 researchers have not to over-promise. And in fact we
26 were - so, when you asked a young person, so I recall two
27 young people that we interviewed at Weymouth, which was
28 like a Correctional facility for young offenders, they
29 were, I remember the young woman saying that she was
14.39 30 worried about what was happening back home and whether
31 people would be all right, everybody at home, were they
32 all right, because she had no communication with her
33 family. And I remember a young man who I felt gravely
34 concerned about. His perspective was what's the point in

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1 me saying anything? No-one has ever listened to me. I
2 expect, you know, my uncles, I've got more family in
3 prison than I have anywhere else and that's where I
4 expect to be. As a researcher, and as a Māori first and
5 foremost, one could not dissuade him of a situation which
6 actually he'd predicted fairly accurately.

7 And interestingly enough, Chris, this report has not
8 received very little attention in the public eye. It
9 took me a while to get a copy. I didn't have my own copy,
10 so it took a while for me and for the Human Rights
11 Commission to track it down. But I think that it behoves
12 us as people involved in this area of work to, as Rawiri
13 said, make sure the light shines on the voices of these
14 young people and family.

15 Q. That being said, did you want to produce that report as
16 an exhibit in this hearing?

17 A. I would very much like to do that, thank you.

18 **MR MERRICK:** Can that report be exhibited at Exhibit 3?

19 **CHAIR:** Thank you.

20 **Report produced as Exhibit 3**

21 **MR MERRICK:**

22 Q. Earlier, you touched on lack of intensive support or
23 wraparound support within the whānau. Removal response
24 and a response that's required in a whānau to support.
25 Is that a theme which comes out if we were to look at the
26 story, the life of your nieces and your moko?

27 A. So, again, the focus has been on the uplift of Māori
28 children and certainly not, at least on Oranga Tamariki's
29 part, certainly not a focus on how to alleviate
14.42 30 inter-generational poverty and all of the issues that go
31 with that.

32 So, if one interacts with Oranga Tamariki around
33 these issues, the focus, the response is usually
34 something along the lines of that's not something that we

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1 can address, thank you for bringing it to our attention.

2 So, no advocacy and when I think about my nieces and
3 their children who were removed. So, you know, children
4 are taken 10.5 years ago from one family that I'm
5 thinking of, three children, a two week old baby, a two
6 year old and a four year old. They're taken to the
7 bottom of the country, miles and miles away. The parents
8 are told that they can keep in contact with the children
9 but over the years the phone calls dwindle, the letters
10 dwindle. The correspondence from Oranga Tamariki about
11 the welfare of the children doesn't reflect at all the
12 children's reality which has since come to light. So,
13 the children were reported as thriving but I would
14 dispute that.

15 So, yes, and you know the mother is asked to go on a
16 parenting course, repeated parenting courses, with no
17 hope of ever having those children back. How inhumane is
18 that?

19 Q. One of the things that comes out in your brief around
14.43 20 your nieces, nephews and mokopuna, is the issue of what
21 happens on transition back. Would you have some things
22 to say about that, on returning home and the Department
23 saying, yes, you can go home and what happens or doesn't
24 happen?

25 A. Mm. So, just going back a bit, so, you know, if we think
26 about those antecedents to the removal of children, those
27 are systemic issues, they're multi-generational. So,
28 poverty for one, poor housing, violence and abuse, those
29 issues sit within families but there's no attempt to work
14.44 30 with whānau, hapu, to address those issues so that by the
31 time the children return there's an environment which is
32 more conducive to the kind of parenting that
33 traditionally Māori, that we did.

34 And so, you know, Oranga Tamariki returns children,

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1 it's like the Mr Bean picture, they're dropped into a
2 location, nothing has changed around it because there has
3 been no support or resources or advocacy for change. And
4 then Oranga Tamariki, it seems to me, watch and wait.
5 And then the inevitable happens, which is things go
6 wrong, both for the children who have not had a
7 relationship with the parent for over a decade, and for
8 the parent who's stuck in the poverty trap, so things go
9 wrong and then Oranga Tamariki sweep in and uplift again.
10 It's devastating.

14.46

11 Q. Shortly I want to ask you about your hopes for this Royal
12 Commission as which come to near the end of your evidence
13 today but before then, I just wanted to offer you the
14 opportunity to add anything more which you'd like to say
15 on any of those matters, particularly in relation to
16 current practice, the impact that it's had on your moko,
17 your nieces and nephews?

18 A. In terms of closed adoption, a change of legislation is
19 required. So, Māori children, we should not be seeing
14.47 20 Māori children put into or adopted outside of their
21 whānau or hapu or iwi. So, there's lots of scope there
22 for placing children when Mums and Dads make the
23 decision. And really, this shouldn't require State
24 intervention as it is now. And so, in my mind, you know,
25 so I'm not a fan for tinkering on the edges of
26 legislation. I think what is required is substantive
27 change in the way that power is held at the level of
28 government and also then who gets to make legislation and
29 policy and who practices that in this country.

14.48

30 So, I would like to see, I think it's important for
31 Māori that Māori have the opportunity to overhaul how
32 adoption happens for Māori.

33 There are some - I talked about the shame and the
34 silence that has accompanied Māori who are adopted out of

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1 their family. And so, because of that shame and silence,
2 I think we have to have a thorough engagement around the
3 issue, perhaps something akin to a Commission of Inquiry
4 specifically for adoption.

5 There are some hangovers for those of us who are
6 adopted. Te Ture Whenua Māori Act needs a real good
7 look. So, discussions need to happen within Māori
8 communities around the issue of succession of land
9 interests for Māori who have been removed from
10 families. It's not an easy process to be able to
11 succeed under the current legislation, so even if you
12 know your whakapapa, it may be that the parent, that
13 the Māori parent died and that there's insufficient,
14 and that it's difficult to bring together information
15 to support an application for succession. So, that
16 needs to be dealt with.

17 In terms of removal of children from care, again I
18 would say that the Crown, in removing Māori children, is
19 breaching Te Tiriti o Waitangi and we need to look at,
14.50 20 reconsider the issue from the perspective of Te Tiriti,
21 and I know that my colleague, Moana, will talk in more
22 detail about this.

23 In relation to that, those antecedents to the
24 removal of our children urgently need addressing because
25 unless those are addressed, the burden of poverty, the
26 burden of marginalisation, of violence, of abuse, will
27 continue to fall on our families. And, as I've argued,
28 this is not because we are more likely to fall into this
29 area but because government policies have pushed us in
14.51 30 that direction.

31 Q. Kia ora. Just to finish, at the head of your brief of
32 evidence you've included a whakatauki, a proverb, would
33 you care to share that with us. Please explain why it
34 is you've used that proverb in particular?

A. So, it's spring, well we're starting to move into summer,

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1 and at this time of year the kuaka or the Godwit returns
2 on a journey of 18,000 kilometres direct from the Arctic
3 to Aotearoa. And the Godwit has been doing that for
4 thousands of years and the map for how to return home is
5 in it, it is part of its makeup. So, although it's born,
6 so the eggs are laid in the Arctic, the bird hatches
7 there but it knows how to get to Aotearoa. So I chose a
8 verb which is about the Kuaka or the Godwit. "Te kuaka
9 marangaranga, kotahi manu i tau ki te tahuna: tau atu,
14.53 10 tau ra." And I chose that because the whakatauki speaks
11 to one Godwit arriving from across the ocean and landing
12 on the sand bank and as soon as we see one, we know that
13 more will come and we know that it will happen around
14 this time of year. I've likened that to the small, to
15 the voices that we have here at the Royal Commission of
16 Inquiry hearing. The voices are, you know, there's a
17 small number of voices but eventually the voices will
18 grow and this country will become aware of the injustices
19 that have been done. And so, I'm hoping that those of us
14.54 20 who have given evidence will be like the early Godwits
21 and we will all be followed by others and that altogether
22 change will come. Kia ora tatou.

23 Q. Kia ora (addresses in Te Reo Māori). Thank you for that,
24 thank you very much. I will just pass over now to the
25 Chair.

26 **CHAIR:** Thank you, Mr Merrick. Have any counsel
27 conferred with you, Mr Mount, about
28 cross-examination of Dr Green?

29 **MR MOUNT:** No, they haven't.

14.54 30 **MS SKYES:** I conferred through Mr Merrick, I sent emails
31 on Sunday.

32 **CHAIR:** Certainly, please proceed.
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JANE ALISON GREEN

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QUESTIONED BY MS SKYES

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6 Q. (Speaks in Te Reo Māori). There's two matters I'd like to
7 explore because I think that most of the others have been
8 covered.

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14.55 10

The first is a matter of cultural prejudice that
arises from land dislocation for those that are in closed
adoptions. One of the concerns, and it's been an ongoing
concern, is Te Ture Whenua Māori Act and even the
fisheries settlement processes can actually work for
those that have been taken out of their whakapapa and
placed into placements with strangers, so that they
aren't entitled to benefits that are being accrued by
some of the processes that address the colonisation. Are
you familiar with that kind of cultural dislocation and
prejudice?

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14.56 20

A. Yes, I am. Less so the fisheries settlements
process but certainly Te Ture Whenua Māori.

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Q. Can you elaborate what that means by someone who is
Māori, has been adopted but cannot claim ancestral rights
or benefits?

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A. So, if you can't locate yourself and be part of the life
of your hapu around a piece of land, then the
relationships that come from being involved with that
land are not formed.

29

14.57 30

So, one might intellectually know that they're part
of Taikawhaia or Pukeko but unless one is actively
involved and recognised in that process then it's a name
but is not a relationship and that relationship is what
whakapapa is.

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Q. There's actually case law, there's been Court cases,

- 213 -

1 hasn't there, that have determined that without
2 independent validation or verification from an ancestor,
3 you cannot claim entitlement?

4 A. That's right.

5 Q. Have you any personal experience of that?

6 A. Yes, there is. I was fortunate though that before my
7 aunt passed away, she was able to make a statement to the
8 Court that she knew my mother and of course my father,
9 her brother, and that she had heard some years later that
10 my mother had had a baby to my father and that I was that
11 child. And so, that was what I needed but if my aunt had
12 died before I'd got that statement, I would not be able
13 to succeed.

14 Q. And in inquiries and I'm going to move to your report,
15 that disconnection becomes permanent, doesn't it, because
16 of course the Native Land Court, now the Māori Land Court
17 becomes the place of your entitlements to your land, then
18 to your whānau, to your hapu's origins and of course it's
19 that basis for Treaty settlements quite often, isn't it?

14.59 20 A. That's right. It is permanent, it's permanent not only
21 for me but for my descendants as well.

22 Q. In your report, and I only want to focus on pages 182,
23 183 and 184, first of all it's a long time since I've
24 read it but I want to acknowledge the women that were
25 part of your team, the late Miria Simpson, the late Anne
26 Delamere were certainly Māori women extraordinaire. They
27 were stateswomen in their own right, founding members of
28 the Māori Women's Welfare League with Dame Mira and
29 devoted their lives to child welfare. So, I would just
14.59 30 like to acknowledge them.

31 And then I look that you're reporting to Dame
32 Elizabeth Murchie who is another great woman in the Māori
33 world. This report given it came after Puao-Te-Ata-Tu
34 and the Children Young Persons and their Families act
35 would be seen as a milestone in the Māori world the way
36 it was constructed biculturally and who it was reported
37 to

- 214 -

1 and I think with mana from Te Ao Māori or Wahine Māori
2 anyway; would that be fair?

3 A. That would, thank you.

4 Q. Now, you talk in there about the last resort
5 justification. I just want you to think, perhaps it's
6 now moved to the first resort justification, and I would
7 just like your comment?

8 A. Yes. So, I don't have the statistics in front of me,
9 Annette, but the number of Māori children who were placed
15.00 10 in institutions when this report was done in 1992, are
11 tiny compared to the numbers placed now. So, what we've
12 seen, so despite the report and despite the mana within
13 which this report was regarded in the Māori world, there
14 hasn't been a change, in fact there's been a worsening of
15 the situation. So, the burden absolutely falls with
16 Māori because at the same time, the number of Pākehā
17 placed out of family care has reduced.

18 Q. So, we've got increasing disproportionate number of Māori
19 children?

15.01 20 A. We have.

21 Q. Being placed in out of care arrangements. I looked at
22 your recommendations which were to try and put a pathway
23 which I would like you to look at which is on page 183,
24 there's two kind of sets.

25 Your recommendations really I thought if they had
26 been put into place, certainly they were received by the
27 Human Rights Commissioner. Who were they given to after
28 that because these recommendations seem like good steps
29 to avoid where we are today and I am just trying to
15.01 30 figure out why?

31 A. So, my understanding was that the report - that the Human
32 Rights Commissioner presented the report to the
33 Ministers, so that would have been Social Welfare,
34 Justice and Education in this case, I think that's right.

- 215 -

1 Q. So, a theme in the report which is then developed at the
2 bottom of page 183 and 184 is tino rangatiratanga, of
3 course we contextualise the report post or Te Runanga Iwi
4 Development Act and some of those social developments
5 that were occurring between Māori and the government.

6 But a strong theme is that Māori were seeking
7 control and care for their children and using the
8 vehicles of iwi development options, iwi authority or a
9 Runanga at that stage, for structural dimension or giving
10 force to that. How come that hasn't happened because, I
11 mean, even whānau ora now, if we look at it and that's
12 why I'm trying to look if you can guide us from this
13 report until now, what's been the barriers for
14 implementing that? Given it was signalled so early that
15 that kind of structural relationship was required.

16 A. So, thinking about the barriers that Governments face,
17 that would be the vote. So, Governments, Ministers, want
18 to retain their seats and in a racist New Zealand it
19 takes an extraordinary Minister to go up against an
20 electorate most of which would not support Māori control.

21 Q. But a humane society, if we can move it from the
22 discourse of governments, society, communities, would
23 surely want, as your report recommends, people to be
24 adequately refunded, to be adequately resourced, to
25 ensure the full potential of young people and children is
26 able to be obtained; wouldn't you agree?

27 A. Yes, logically one would think that, you know, people do
28 cost-benefit analyses, for example, and it would seem,
29 apart from the humane angle, that even if you went down
30 the cost benefit line, that it would be beneficial to put
31 resources in early into whānau. But let's not forget the
32 machinery that operates, in terms of prisons, in terms of
33 State institutions for so-called care, those machinery
34 and our people fill those and provide jobs for people,

1 for other people, not ourselves and profit.

2 Q. Because it strikes me, given our discussion it strikes me
3 if you look at some of your recommendations, it was a
4 forward thinking report?

5 A. Mm.

6 Q. It contemplated the tyranny of democracy, if I can use
7 that term, but it actually gave practical steps, based on
8 mutual respect and understanding, and the Puaio-Te-Ata-Tu
9 understanding as a way forward. Do you think those are
10 important flagships or moments in time that should be
11 guiding this Inquiry?

12 A. I think this is the opportunity that the Commission has
13 which is to put things back on track and to stay clear of
14 tinkering around the edges of control and power and
15 legislation and actually go back to even the recent work
16 on the constitutional review, to go back to that work and
17 start to look at how we might pull together the threads
18 of our country so that everybody benefits and that the
19 burden is not with Māori.

15.06 20 Q. Where is the place of Te Tiriti or the values of Te
21 Tiriti in that?

22 A. That's the framework. Te Tiriti is a framework. If we
23 ignore that, we'll reproduce this situation in 10 years
24 time.

25 Q. Thank you, I have no further questions.

26 **CHAIR:** Thank you, Ms Skyes. Any other counsel? Thank you.

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JANE ALISON GREEN

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QUESTIONED BY COMMISSIONERS

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COMMISSIONER ERUETI: I have a couple of brief

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questions. I wondered whether, just on the subject

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of adoption, your views about whether it could have

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made a difference if, under the Adoption Act 1955,

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there's no scope for recognition legally of

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whangai, and that's been the case as I understand

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for most of the 20th Century. But if there had

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been within that Act recognition, legal

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recognition, acceptance of the practice of whangai,

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whether that might have made a difference for

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tamariki Māori who ended up being placed in forced

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adoption?

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A. It may have made a difference. I would be reluctant

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though to suggest that the State become involved in the

15.08 20

whangai process because of course it wasn't. Whangai,

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the whangai, the practice of whangai was something which

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whānau and hapu practice. So, I'd be reluctant, very

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reluctant to extend the power of state into that domain.

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COMMISSIONER ERUETI: Kia ora. My final question is

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about your experience, your personal experience

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with your niece and you describe in paragraph 44,

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the intervention of Te Whakaruruhau as providing

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wraparound supports that you thought your niece and

29

her children needed. Is that the type of extensive

15.09 30

wraparound support that you think is needed to be

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provided to break the cycle, if you like, and keep

32

the whānau safe?

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A. We're still talking - I mean Te Whakaruruhau provided

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excellent support for our whānau at that moment but we're

- 218 -

1 still talking about an ambulance at the bottom of the
2 cliff. So, I would really like to see the span of
3 intervention sort of going right back and right across
4 the social and economic domains so that we didn't have
5 situations arising. But given that, that we haven't,
6 then that intensive wraparound service with high level
7 strategic arrangements between the Chief Executive of Te
8 Whakaruruhau, the Police in the Waikato, Oranga Tamariki
9 helped to provide some stability within which some
10 healing could take place. But it was important that
11 those systemic issues were addressed, not just - so that
12 the focus wasn't just on my niece and her boys but that
13 we had some understanding at the high level of
14 organisations that were involved in their case, that
15 there was an understanding there about what the family
16 required, what the direction was, what the practices were
17 that would support the whānau.

18 **COMMISSIONER ERUETI:** Kia ora.

19 **COMMISSIONER SHAW:** Thank you for such a powerful
15.11 20 personal story, combined with your intellectual and
21 academic knowledge and your traditional knowledge
22 of Māori tikanga and it's much appreciated.

23 I wanted just to turn to a small part and if you
24 don't feel comfortable answering these questions, please
25 say so because you've only glanced at this issue but it
26 is one that comes within our Terms of Reference, and that
27 is the plight of the unmarried mother i ngā wa mua who
28 had a very tough, tough time and I think maybe your
29 mother was one of those. Would that be correct?

15.11 30 A. That would be correct, yes.

31 **COMMISSIONER SHAW:** Do you mind just briefly giving us
32 some details about it? I mean, please say if you
33 don't want to.

34 A. No, no, that's fine.

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1 **COMMISSIONER SHAW:** First of all, how old was she when
2 you were born?

3 A. She was older than my father by a year, so she was 19.

4 **COMMISSIONER SHAW:** She was just a girl.

5 A. Yep, she was. So, the stigma that women experienced,
6 it's women here that are experiencing the stigma, from
7 society but the stigma that they experienced was awful.
8 It followed them in many cases to the grave and it
9 affected their families and their position in society.

15.12 10 So, those were - so, my mother was a cleaner in
11 Rosall Hospital Maternity Home on the North Shore. She
12 cleaned and had her board for free, in return for my
13 adoption.

14 **COMMISSIONER SHAW:** That is what I was really wanting to
15 hone in on. Did she become the cleaner during her
16 pregnancy in order to sustain herself and then to
17 come towards the adoption? Was that all part of a
18 package or was she already a cleaner there?

19 A. No, she was not a cleaner. She approached Rosall then
15.13 20 looking for a place where she could hide essentially.

21 **COMMISSIONER SHAW:** Exactly.

22 A. And in return for hiding her and arranging the adoption,
23 she cleaned. And she gave birth to me outside, in a
24 hallway unattended. She was told to keep her voice down
25 because the married mothers would be distressed and,
26 yeah, she was alone.

27 **COMMISSIONER SHAW:** That is a very sad story. And you
28 say that it was the nursing home and the Department
29 of Social Welfare which arranged the adoption. Do
15.14 30 you know any detail about that, how that was?

31 A. What kind of detail?

32 **COMMISSIONER SHAW:** I am just wondering how the nursing
33 home became involved with this. I can sort of
34 understand the State coming in but the nursing

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1 home, do you know anything about that?

2 A. Yes. One of the cooks in the kitchen knew of a family
3 who were after a child and told the nursing home of this
4 family and they contacted Social Welfare and made the
5 arrangement and it was to that family that I went.

6 **COMMISSIONER SHAW:** Thank you very much for that piece
7 of detail and just to signal that that is an area
8 well within our Terms of Reference and we are
9 looking, and I know the stories are there, it's
10 important to grab them when we have the
11 opportunity, so thank you very much indeed for
12 adding that piece of information for us.

13 **COMMISSIONER ALOFIVAE:** Thank you also just for the
14 courage to share the stories of you and your wider
15 family. The question I really want to ask you is
16 around you've really been able to articulate very
17 well for us one of the big giants that fall right
18 within our Terms of Reference, the systemic issues
19 and how we deal to that. One of the things that I
20 gleaned from your evidence is that actually in many
21 respects for Māori the work has been done. The
22 reports that you refer to, Puaoteata, the
23 human rights report, the uptake, and thank you to
24 Ms Skyes for the highlighting of the report. Māori
25 can put their weight behind things and it's not
26 reciprocated.

27 And so, I guess my question really is around in many
28 respects it's around the courage to actually revisit
29 those and to implement them and whether or not there
30 would be tweaks required for today's context?

31 A. Thank you for your question. Māori pretty much have been
32 saying the same thing about everything since, you know, a
33 long, for a long time now. So, we risk - I think if we
34 don't have regard for the work that's being done and the
35 important information that's produced, then I think the

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1 Commission risks a strong backlash from Māori, in terms
2 of, you know, we've told so many people this, the
3 information is here already. So, I think you kind of
4 need to balance that. And as well I'd say there are some
5 complexities that are here with us right now that we may
6 want to visit but essentially, and I know that Moana will
7 deal with this, essentially we need to look at what's
8 being produced, what the recommendations are and I think
9 look at how to integrate those into the findings of the
10 Commission where it's clear that we're talking about
11 apples and apples.

12 If we're talking about a new phenomena, then I think
13 you'll need to take information as it comes to hand
14 through the Inquiry and then meld them.

15 **CHAIR:** Dr Green, I have a question too which arises
16 from your statement just a moment ago, of having
17 regard to the work that has been done.

18 If you look at page 7 of your brief, paragraph 33,
19 there's reference to Puao-Te-Ata-Tu. I have a direct
20 question. Do you think that Puao-Te-Ata-Tu is fit for
21 purpose for discussion now again?

22 A. Yes, I do. I think that we have had - we now have the
23 United Nations Declaration on the Rights of Indigenous
24 Peoples, for example, that wasn't in force at the time.
25 So, there is going to need to be some positioning of that
26 document relative to our current situation but I think
27 it's a powerful report and I think that there are
28 components of that report that most Māori leaders would
29 support.

30 **CHAIR:** Thank you and thank you for your evidence. It
31 seems, Mr Merrick, that this might be, although a
32 little early, a convenient time, if you don't have
33 any further questions, to suggest that we have the
34 afternoon break now.

1 **MR MERRICK:** Agreed, Sir, thank you.

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Hearing adjourned from 3.20 p.m. until 3.35 p.m.

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DR MOANA JACKSON - AFFIRMED
EXAMINED BY MR MERRICK

CHAIR: Dr Jackson, may I in terms of the Inquiries Act,
ask you as follows. (Witness affirmed).

MR MERRICK:

Q. (Opening in Te Reo Māori). Just before we start, behind
tab 6 of the volume in front of you, the folder in front
of you, there should be - that folder which is sitting in
front of you - I think a signed copy of your brief of
evidence. Can I get you to sight that and confirm that
is your brief of evidence and it's true and correct to
the best of your knowledge?

A. Yes.

Q. Thank you. Now, in that brief of evidence you've
outlined the experience that brings you here. I don't
intend to cover that ground again today. That can be
taken as read from your brief of evidence.

And so, what I wanted to do simply is to handover
the time to you to pick up from where you feel is the
best place to start and we can go from there.

A. Kia ora. (Talks in Te Reo Māori). If it pleases the
Commission, I'd like to begin at paragraph 14 which
refers back to the biographical details which informs
this brief. But I did want to begin there because I say
that in presenting my brief, I am mindful and respectful
of the evidence that will be given to this Tribunal by
others, and particularly those who have suffered abuse
while in State or church administered institutions. I
acknowledge and honour their evidence. They are the
proper commentators on this kaupapa and I only hope that
this brief may give some context to their words and some
explanation of the ways in which successive Governments

1 have failed them.

2 The brief has five parts and because I'm mindful of
3 the time, I'll try and condense different parts as well
4 but I'm happy to answer questions on any part of the
5 brief.

6 So, part one, He Whakamarama is an explanation and
7 I'd like to pick up from paragraph 16. Over the last
8 four years I have been involved in research in the
9 relationship between Māori and the Criminal Justice
10 System. The research is an update of the 1988 report on
11 the same issue *He Whaipaanga Hou*, and it's been conducted
12 with two young researchers Ngawai McGregor and Anne Waapu
13 and the new report will be published early next year.

14 The research has been distressing because of the
15 stories of hurt that have been shared by mokopuna who
16 have done harm and those who have been harmed. That harm
17 has included abuse in care.

18 The research has been distressing because so little
19 has changed. As the Commission will know, Māori men make
15.44 20 up 52% of the prison population as they did at the time
21 of *He Whaipaanga Hou* in the 1980s. Māori women however
22 now make up nearly 64% of the female prison population
23 when on average they were less than half that number in
24 the 1980s. That is an especially shameful statistic.

25 The research involved hui and interviews with over
26 6,000 Māori people, including 600 Māori men and women who
27 are, or were, in prison. Of those 600 current or former
28 inmates, over half were placed in State or church care as
29 children. Over half of them were abused in care.

15.45 30 I would also like to add that among those 600, were
31 44 who identified as Takatāpui, gay or transgender. Over
32 half of those were also placed in care and all of those
33 Takatāpui were abused in care as children. Their
34 treatment or mistreatment in care was part of their
35 almost inevitable progression into prison. Many of them

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1 are still comparatively young and suffered abuse in
2 institutions after 1999. It was a matter of concern that
3 they may not have had the opportunity to tell their
4 stories to this Commission. It is my earnest hope that
5 the Commission will exercise its discretion in a helpful
6 way to address the abuse suffered by those victims.

7 The abuse which our research uncovered, and the
8 ensuing trauma which the victims have suffered, did not
9 only make the work personally difficult, it also
10 15.46 compelled us to look at causative and systemic factors in
11 a quite different way to that which was adopted in *He*
12 *Whaipaanga Hou*, and indeed in most other criminological
13 research.

14 An important part of that difference has been shaped
15 by the fact that the research for the first time includes
16 a comparative analysis of the incarceration of other
17 indigenous peoples in Canada, United States and
18 Australia. The high incarceration rates in those
19 countries are similar to the rates in this country.

15.47 20 What is also disturbingly similar is all four
21 countries have followed the same trajectory of
22 colonisation and have employed similar ideologies and
23 practices. The comparable injustice of the current rates
24 of indigenous incarceration in our view flows from those
25 colonising similarities which prompted a quite specific
26 research question - "why do states with a history of
27 colonisation imprison so many indigenous peoples?"

28 It became clear in the course of the research that
29 such a question was not only appropriate but necessary.
15.47 30 Indeed, there seemed to be clear symmetries between the
31 injustice of colonisation and the injustice of
32 disproportionate indigenous incarceration which were
33 system-based rather than offender-specific.

34 It is my considered view that the abuse of Māori

1 children in care also arises from the same context, as
2 indeed does the abuse of all children. Colonisation is
3 an inherently abusive process.

4 I accept with considerable sadness that many of
5 those who will speak to this Commission about abuse will
6 be Māori. For some time now, the statistics about Māori
7 over representation in negative social and economic
8 spheres has been regularly and publicly cited.

9 If I move to paragraph 27.

15.48 10 However, while the over-representation may be known
11 there seems less understanding about why Māori are so
12 over-represented. Some Governments have appeared eager
13 to invest in programs targeting Māori outcomes but have
14 been less willing to properly consider the reasons for
15 the disproportionality.

16 If I can just interpolate here. That is why it was
17 important to us to make those comparisons with Canada,
18 Australia and the United States.

19 I believe that this Royal Commission offers an
15.49 20 opportunity for New Zealand to grapple with those
21 reasons. In my considered view, they are unavoidably
22 linked to the history of colonisation and the failure of
23 successive Governments to honour Te Tiriti o Waitangi.

24 To honestly consider the issue in this way, is to
25 necessarily consider how colonisation evolved as a
26 trans-national process of dispossession that has had
27 destructive effects on indigenous peoples throughout the
28 world. An interrogation of its systemically violent and
29 racist nature helps position the recent and current abuse
15.50 30 of Māori children, and indeed all children, in a context
31 where understanding and eventual resolution might be
32 achieved.

33 And my friend Rawiri and Alison also alluded to some
34 of that history. But I'd submit that reckoning with

1 colonisation and acknowledging the constitutional
2 implications of that reckoning, will help better develop
3 policies to care for children and vulnerable people.
4 That will require a certain courage which I hope the
5 Commission will feel able to express.

6 I know that the Commission is aware of the work
7 already done in other jurisdictions to consider related
8 issues, such as the Australian Inquiry into Stolen
9 Generations and the Canadian Inquiry into Residential
10 Schools. However, I would like to quote from the
11 Executive Summary of the Canadian Inquiry's report as it
12 provides the trans-national colonising context referred
13 to earlier and illustrates the harsh complexity of the
14 issue:

15 "Canada's residential school system for Aboriginal
16 children was an education system in name only for much of
17 its existence. These residential schools were created
18 for the purpose of separating Aboriginal children from
19 their families, in order to minimise and weaken family
20 ties and cultural linkages, and to indoctrinate children
21 into a new culture, the culture of the legally dominant
22 Euro- Christian Canadian society, led by Canada's first
23 Prime Minister.

24 The Commission heard from more than 6,000 witnesses,
25 most of whom survived the experience of living in the
26 schools as students. The stories of that experience are
27 sometimes difficult to accept as something that could
28 have happened in a country such as Canada which has long
29 prided itself as being a bastion of democracy, peace and
30 kindness throughout the world. Children were abused
31 physically and sexually and they died in the schools in
32 numbers that would not have been tolerated in any school
33 system anywhere in the country or in the world.

34 Getting to the truth was hard but getting to

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1 reconciliation will be harder. It requires that the
2 paternalistic and racist foundations of a residential
3 school system be rejected as a basic for an ongoing
4 relationship. Reconciliation requires that a new vision,
5 based on commitment to mutual respect, be developed. It
6 also requires an understanding that the most harmful
7 impacts of residential schools have been the loss and
8 self-respect of Aboriginal people, and the lack of
9 respect that non-Aboriginal peoples have been raised to
10 have for their Aboriginal neighbours. Reconciliation is
11 not an Aboriginal problem, it is a Canadian one.
12 Virtually all aspects of Canadian society may need to be
13 reconsidered."

14 I believe that the observations of the Truth and
15 Reconciliation Commission are relevant to the work of
16 this Commission. Although the experience in this country
17 has been different in many ways, the intent, and indeed
18 the underlying and purposeful ideologies of colonisation
19 have been the same. It is that belief which most guides
20 this brief.

21 The context of colonisation. I understand that many
22 others who will speak to the Commission will address the
23 issue of colonisation. I would like to focus
24 specifically on its ideologies as well as its effects and
25 will discuss how the issues before the Commission are
26 inevitably framed by its violent history in this country.

27 Words like colonisation are contested and often
28 misunderstood. However, in simple terms colonisation has
29 always been a process in which people are dispossessed of
30 their hands, lives and power. It is an inherently brutal
31 process that has been defined by the United Nations as a
32 crime against humanity.

33 In this country, there is unfortunately been an
34 historical reluctance to acknowledge either its true

1 nature or the costs that it has exacted upon Māori. That
2 situation has changed somewhat in recent years but there
3 is still considerable unawareness of its history and the
4 ideologies which underpin its development prior to 1840.
5 Yet, it is the history that provides context for both the
6 general status of iwi and hapu today and for the
7 particular antecedents that have shaped the issues before
8 this Commission. It is also of course the context within
9 which the text of Te Tiriti o Waitangi was signed.

15.56 10 It is not possible to give a detailed chronology of
11 colonisation of the world's indigenous peoples that has
12 occurred since the arrival of Christopher Columbus in
13 the Americas in 1492. However, the disposition of
14 Māori is part of that wider trans-national history and
15 in my view cannot be understood without some recognition
16 of the forces and ideas which preceded it in the
17 dispossession of Indigenous Peoples in the Americas and
18 Australia.

19 Those historical forces are the whakapapa explaining
15.56 20 the colonisation of Māori. They were developed through
21 centuries of European discourse about the status and even
22 the humanity of indigenous peoples. Indeed, the
23 development of racism as an ideology and the assumption
24 that some peoples were inferior and could therefore be
25 dispossessed by more superior races evolved
26 contemporaneously with colonisation.

27 One of the most influential colonising discourses
28 derives from a series of Canon law debates convened by
29 the King of Spain in Valladolid in 1550. The purpose of
15.57 30 the debates was to determine firstly whether indigenous
31 peoples were fully human and secondly whether they could
32 be dispossessed in terms of the debate remit "without
33 damage to our conscience and in accord with justice and
34 reason".

35 The prevailing view of the debates was that
36 indigenous peoples were in fact human, although not so

1 fully human they could not be dispossessed provided it
2 was done "with kindness and gentle usage". It was
3 essentially a race-based conclusion and there is a
4 certain contradiction in terms in the assumption that
5 people could be dispossessed with "kindness". Certainly
6 the assumption was abused in the centuries that followed.

7 Yet the idea that colonisation could somehow be
8 humane and benevolent was adopted by the British
9 Humanitarian Movement that became influential in the
10 formulation of colonial policy in the 19th Century. It
11 led in turn to the notions of Crown good faith and the
12 honour of the Crown which have marked the dominant
13 narratives about colonisation in this country.

14 It has also led to the equally misleading
15 presumption that colonisation was consequently somehow
16 "better" here than elsewhere. It is that presumption
17 perhaps more than any other which has underscored the
18 reluctance to honestly discuss colonisation as both a
19 history and an ongoing reality.

15.59 20 Colonisation has of course occurred in different
21 ways in different places, but the ideas behind it have
22 always remained the same. So too have its costs for
23 indigenous peoples because its very "taking" has always
24 been destructive and traumatic. In this country, the
25 mis-remembering of colonisation as how "better" has led
26 to an abstraction of those costs which distorts their
27 true and ongoing nature.

28 For taking away the land from people who live as
29 people of the land is not simply some passing land
16.00 30 "loss". It is an ongoing rupture that fractures the
31 essential spiritual and practical ties to identity and
32 belonging. A people cannot be tangata whenua if they
33 have no whenua to be tangata upon.

34 Taking people's lives and the simple tragedy of loss

1 induces a collective inter-generational grief that
2 compounds the trauma of the other takings. In such
3 circumstances the possibility of maintaining a nurturing
4 sense of cultural integrity and collective strength is
5 necessarily diminished.

6 Each taking merges historically in colonisation's
7 ultimate goal which is to assume power and impose legal
8 and political institutions in places which already have
9 their own. It means subordinating the power of iwi and
16.01 10 hapu mana and tino rangatiratanga or self-determination
11 and thus limiting the ability to properly protect what
12 are the most important taonga for any people, the land,
13 the culture and the mokopuna.

14 In that context, the taking of Māori children has
15 been a cost that has been both intensely personal and
16 inherently political. The presumed right to do so was
17 derived from the same racist presumptions of European
18 superiority that marked colonisation as a whole, and the
19 attendant belief that indigenous children needed to be
16.01 20 saved, civilised and protected from themselves.

21 Indeed, the ethos of saving and protecting was a key
22 part of the humanitarian ideology. Its precedents were
23 established in the dialectics developed after the
24 Valladolid debates and given practical trans-national
25 effect for example in the process of uplifting and
26 placing indigenous children in the residential schools in
27 the US and Canada referred to earlier.

28 A brief examination of the policy may be helpful to
29 the Commission. One of its earliest proponents in the US
16.02 30 and the director of the first residential school Richard
31 H Pratt who outlined his philosophical intent in a paper
32 at the 19th Annual Conference of Charities and Correction
33 in which he said "A great general has said that the only
34 good Indian is a dead one, and that high sanction of his
35 destruction has

1 been an enormous factor in promoting Indian massacres.
2 In a sense I agree with the sentiment, but only in this,
3 that all the Indian there is in the race should be dead.
4 Kill the Indian in him, and save the man".

5 The aim then was to take the Indianness out of the
6 children in order that they might be successfully
7 assimilated into the superior European civilisation. In
8 many ways, the policy simply reflects the abusiveness
9 that is systemic in colonisation as a process. The
16.03 10 consequent sexual, physical and spiritual abuse that was
11 consequently suffered by the thousands of indigenous
12 children in the schools was simply a dreadful
13 manifestation of that inherent violence. It was not due
14 just to some individual perversity but was inevitable and
15 accepted expression of colonisation's purpose.

16 The Truth and Reconciliation Commission referred to
17 above described that purpose and the practice as cultural
18 genocide. To quote again from their report:

19 "Cultural genocide is the destruction of those
16.04 20 structures and practices that allow the group to continue
21 as a group. States that engage in cultural genocide set
22 out to destroy the political and social institutions of
23 the targeted group. Land is seized, and populations are
24 forcibly transferred, and their movement is restricted.
25 Languages are banned. Spiritual leaders are persecuted,
26 spiritual practices are forbidden and objects of
27 spiritual value are confiscated and destroyed. And, most
28 significantly to the issue at hand, families are
29 disrupted to prevent the transmission of cultural values
16.05 30 and identity from one generation to the next.

31 In dealing with Aboriginal people, Canada did all
32 these things".

33 Colonising Governments in this country never
34 established residential schools but they shared the same

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1 assimilative intentions. They also assumed the same
2 authority to take Māori children from their whānau.
3 Their actions as pertinent to this Inquiry, may equally
4 and properly be described as cultural genocide.

5 Again, it is not possible in this brief to canvass
6 all of the history which may fit within the definition of
7 cultural genocide adopted by the Truth and Reconciliation
8 Commission. However, some indicative examples may be
9 listed using the component parts of its terminology. And
10 I am sure the Commissioners are aware of many more.

11 The first point which they raised:
12 Land is seized, populations are forcibly transferred, and
13 their movement is restricted.

14 The wars which Dr Rawiri Waretini-Karena referred
15 to, the various Native Lands Act and several dozen
16 land acquisition statutes. The assault on
17 Parihaka, Ngati Whatua Orakei, Bastion Point and
18 Ihumatao are examples of cultural genocide.

19 Languages are banned.

16.07 20 The Native Schools Act 1867, the stories of those
21 like Putiputi Onekawa also referred to in the
22 evidence of Dr Waretini-Karena.

23 Spiritual leaders are persecuted.

24 Te Whiti o Rongomai and Tohu Kakahi,
25 Te Kooti Arikirangi, Rua Kenana

26 Spiritual practices are forbidden. The Tohunga
27 Suppression Act.

28
29 Objects of spiritual value are confiscated and
16.07 30 destroyed.

31 The taonga and wharenui now housed overseas.

32 The scorched earth policy which saw whare and kainga
33 razed in Tuhoe and other rohe.

34 And most significantly to the issues before this
35 Commission, families are disrupted to prevent the
36 transmission of cultural values and identity from one

1 generation to the next.

2 Closed adoptions, as referenced in the statement of
3 Alison. Social Welfare and Youth Justice Facilities such
4 as Kohitere, Epuni and others.

5 And the disproportionate taking of Māori babies.

6 To paraphrase, the Canadian Truth and Reconciliation
7 Commission "In its dealings with Māori, New Zealand did
8 all these things".

9 It is therefore my submission that while the
10 implementation of colonisation may have been different in
11 some ways in this country, it has not been "better". The
12 intention to take has been the same as in other countries
13 and dispossession is dispossession even when it is
14 carried out with an allegedly honourable intent or kind
15 usage.

16 Colonisation has always been genocidal and the
17 assumption of a power to take Māori children has been
18 part of that destructive intent. The taking itself is an
19 abuse.

16.09 20 Part 3, Tikanga and Te Tiriti o Waitangi. I
21 acknowledge the Commission is not mandated to be a
22 deliberative body on Te Tiriti o Waitangi. However,
23 Te Taumata o Kahungunu of which I am a part has long
24 held the view that the authority assumed by the Crown
25 to remove Māori children from their whānau is not
26 consistent with Te Tiriti. This view is supported by
the hui called by the Whānau Ora Commissioning Agency
earlier this year to establish an
27 Independent Māori Review of current Oranga Tamariki
28 policies. A member of the Governing body for the Review,
29 Dame Naida Glavish stated "Our tupuna did not sign
16.10 30 Te Tiriti giving permission for the Crown to take our
31 Tamariki".

32 For that reason, I hope it might be helpful for the
33 Commission to briefly canvass the consistent Māori
34 understanding of Te Tiriti as it indicates the grounds

1 upon which the taking and abuse of Māori children is
2 regarded as a breach of Te Tiriti. It also presages the
3 suggested resolutions outlined later in this brief.

4 I will try to paraphrase the next few paragraphs, if
5 that's all right for the Commission.

6 History shows that every society realises very early
7 on that it cannot survive in a lawless state. They
8 therefore establish ways of ensuring social cohesion and
9 harmony by developing a philosophy or jurisprudence of
10 law, as well as a discrete legal system to give effect to
11 it.

12 In paragraph 61. Iwi and hapu long ago developed a
13 law or tikanga that grew out of the stories and the
14 culture that developed in this land. It developed from
15 philosophies to do with the sacred interrelatedness of
16 whakapapa as well as from precedents and customs devised
17 by the tipuna. It recognised the need for sanctions but
18 stressed the ethical base of any behaviour and sought
19 reconciliation rather than punishment.

16.11 20 It recognised the relationships between people and
21 every part of the universe, both seen and unseen,
22 physical and spiritual.

23 Perhaps the clearest example of the efficacy of
24 tikanga as law is seen in the ceremonies that were
25 performed when a baby was born. The rites of birth
26 associated with naming and blessing the child were not
27 just a cultural celebration but a legal affirmation of
28 the rights or entitlements that would vest in the child
29 as he or she grew into adulthood. They established the
16.12 30 child's turangawaewae and the interests in title or land
31 that went with his or her whakapapa. At the same time,
32 they were a public declaration of the collective's
33 obligation to care for and protect the child.

34 It may be helpful to refer the Commission, although

1 it's not mentioned in the brief, to the Native Land Act
2 1867 and subsequent regulations which actually initiated
3 policy moves to ban Māori child birth ceremonies and
4 particularly the burying of the after birth of whenua and
5 the whenua of the child.

6 Paragraph 63. Tikanga itself was thus relational as
7 well as valued based. It was bound by the ethics of what
8 ought to be in a relationship as well as the values that
9 measure the tapu and mana of individuals and the
10 collective.

11 Paragraph 64. As in all cultures, law was symbiotic
12 with the exercise of political power. The effective
13 exercise of mana or tino rangatiratanga was proscribed
14 and prescribed by tikanga, which in turn was given
15 efficacy by the mana of the iwi and hapu.

16 The concept of mana as a political and
17 constitutional power denoted an absolute authority. It
18 was made up of what may be called the specifics of power.

19 (a) The power to protect - that is the power to
16.14 20 project, manaaki and be the kaitiaki for everything and
21 everyone within the polity.

22 (b) The power to define what should be protected
23 and the power to define the rights, interest and place of
24 individuals and collectives.

25 (c) A power to decide. That is the power to make
26 decisions about everything affecting the wellbeing of the
27 people.

28 (d) A power to develop. That is the power to
29 change to meet new circumstances in ways that are
16.15 30 consistent with tikanga and conducive to the advancement
31 of the people.

32 But if iwi and hapu were independent, they were also
33 necessarily inter-dependent through whakapapa. The mana
34 of one polity was necessarily connected to the mana of

1 another in the same way that individuals were
2 interdependent and the mana of humans was inseparable
3 from mana whenua, mana Moana and mana atua.

4 Within this reality, two fundamental tenets
5 underpinned mana and tino rangatiratanga and determined
6 how they could be exercised.

7 Firstly, the power was bound by law and could only
8 be exercised in ways consistent with tikanga and thus the
9 maintenance of relationships and responsibilities.

16.16 10 Secondly, the power was held by and for the people,
11 that is it was a taonga handed down from the tipuna to be
12 exercised by the living for the benefit of the mokopuna.

13 The ramifications of those prescriptions was that
14 mana was absolutely inalienable. No matter how powerful
15 Rangatira might presume to be, they never possessed the
16 authority, nor had the right to give away or subordinate
17 the mana of the collective because to do so would have
18 been to give away the whakapapa and the responsibilities
19 bequeathed by the tipuna. It would have been to abdicate
16.17 20 the responsibility to protect the people and the land.

21 To hold mana and tino rangatiratanga was the only
22 way in tikanga terms to hold the mana of every child
23 acknowledged in the rites of birth.

24 The fact that there is no word in Te Reo Māori for
25 'cede' is not a linguistic shortcoming but an indication
26 that to even contemplate ceding or giving away mana would
27 have been legally impossible, politically untenable and
28 culturally incomprehensible.

29 It was those legal and political understandings
16.17 30 which naturally guided the process of Treaty making. For
31 like all polities iwi and hapu have a long history of
32 negotiating treaties with each other. It predates Te
33 Tiriti o Waitangi and was known in Ngati Kahungunu as te
34 mahi tuhono, or the work to bring people together. Like

1 tikanga as law, treating was a relational process
2 dependent upon mana and the notion of equitable
3 interdependence.

4 The important question in situating Te Tiriti in the
5 Māori reality therefore is not whether Rangatira
6 understood sovereignty, a preoccupation of many Pākehā
7 historians and jurists, but whether they understood mana.
8 Sovereignty after all was a foreign concept of power and
9 because evidence shows that all of the understandings
10 reached by the Rangatira in relation to Te Tiriti were
11 concluded in Te Reo rather than a foreign language, the
12 key interpretive lens was obviously mana and tino
13 rangatiratanga with all of their implications and
14 absoluteness.

15 The evidence in iwi histories in Te Reo before and
16 at the time of the signing clearly indicates Rangatira
17 were mindful of their responsibility to preserve and even
18 enhance the mana they were entrusted with. In 1840 they
19 could only act according to tikanga and commit the people
20 to a relationship that was tika in terms of their
21 constitutional traditions.

22 The constant statements in those histories that the
23 words in Te Tiriti do not envisage or permit the cession
24 of mana or even a recognition of some sort of
25 over-arching Crown authority therefore reaffirm a
26 fundamental Māori truth. They simply could not consent
27 to something that was not only contrary to law but also
28 the very base upon which iwi and hapu society was built.

29 That truth points to an obvious Māori meaning to
30 Te Tiriti which the Waitangi Tribunal reaffirmed in its
31 first stage report on the Paparahi o Te Raki claim: He
32 Whakaputanga me Te Tiriti. In its report the Tribunal
33 declared that Māori did not cede sovereignty to the Crown
34 but rather sought the recognition of what the Tribunal

1 has called different spheres of influence. They retained
2 mana and tino rangatiratanga because that was the
3 prerequisite to any equitable relationship.

4 The tikanga understanding of Te Tiriti is affirmed
5 by the Tribunal may be illustrated with an analogy. For
6 just as part of the responsibility of mana was to
7 recognise relationships with others and to expect that
8 they would reciprocate by ensuring that their people did
9 nothing to impinge upon one's own harmony and wellbeing,
10 so Rangatira actively sought a relationship with the
11 Crown through Te Tiriti and granted it a limited power,
12 kawanatanga to ensure its people did not impinge upon the
13 mana of iwi and hapu.

14 Māori linguists have explained the nuances of the
15 words in Te Tiriti but the legal and political realities
16 of iwi and hapu give those nuances a specific meaning.
17 If mana was not ceded, then Te Tiriti was a Māori
18 reaffirmation of a tikanga based expectation that iwi and
19 hapu would continue to have the authority to protect
20 their mokopuna. The subsequent usurpation of that
21 authority by the Crown may in my view consequently be
22 seen as a breach of Te Tiriti.

23 The fact that such a tikanga based understanding has
24 been dismissed in the colonising history since 1840 does
25 not invalidate it. Rather, it merely indicates the steps
26 this country still needs to take to properly honour Te
27 Tiriti. It also indicates that there is already a Te
28 Tiriti based framework in place that could justly provide
29 both a measure to assess the wrongs of abuse in care and
30 a way to prevent such harm in the future.

31 Part four, Pu-Ao-Te-Ata-Tu and its aftermath.
32 Because this has been covered in some detail already, I
33 would like to refer the Commission to paragraph 80.

34 After the report was released, a Māori Resource

1 Group was established. Among its deliberations was a
2 consideration of the prevailing convention of the time
3 that the Director-General of Social Welfare was the
4 guardian of children in care in New Zealand.

5 The Resource Group suggested that if those children
6 were Māori then the proper Te Tiriti and
7 whakapapa-based guardian was the iwi, hapu and whānau.
8 The suggestion was never acted upon, but it was a genuine
9 attempt to give effect to the power to protect mokopuna
10 which was reaffirmed by Te Tiriti.

11 It also presaged the Waitangi Tribunal finding that
12 Te Tiriti envisaged different spheres of influence and
13 the logical tikanga assertion that the care and
14 protection of mokopuna was inherently a Māori sphere of
15 influence.

16 It is my considered view that the failure of the
17 Crown to acknowledge that power to protect vesting in
18 iwi, hapu and whānau is a continuation of the denial of
19 what Te Tiriti actually means. It is part of an ongoing
20 colonising dialectic which is not ameliorated by the
21 recent moves by Oranga Tamariki to establish relationship
22 agreements with iwi.

23 While those agreements are a positive initiative
24 entered into by iwi and officials of Oranga Tamariki with
25 good intent, they do not address the power imbalances in
26 the current iteration of Treaty partnership. Neither do
27 they address the systemic and historical issues which led
28 to the uplift and abuse of Māori children.

29 That kind of transformational change will only come
30 with a meaningful honouring of Te Tiriti and a different
31 constitutional arrangement between the Crown and iwi and
32 hapu.

33 And so the final part of my brief, constitutional
34 transformation and the care of mokopuna.

1 It may seem outside the Terms of Reference of this
2 Commission to consider issues of constitutional
3 transformation. However, it is my submission that the
4 ultimate resolution of the issue of abuse in care, and of
5 children in care in general, resides in returning the
6 care and protection of mokopuna to iwi and hapu.

7 That necessarily means something more than an iwi
8 responsibility for care within parameters prescribed by
9 the Crown. It ultimately requires a shift in the
16.26 10 constitutional decision-making processes which finally
11 acknowledges that Māori have the right to
12 self-determination in its fullest sense.

13 Such a discourse is not a new one for Māori. As
14 discussed earlier in the brief it was the base of
15 relationship envisaged in Te Tiriti in 1840. In
16 subsequent years, it was the motivation for the
17 establishment of the Kotahitanga and Kingitanga Movements
18 as well as the establishment of the Māori Parliament in
19 1892.

16.27 20 The discussion has not changed over the years
21 because Māori people have always sought equitable and
22 conciliatory arrangements with the Crown. That is
23 consistent with tikanga as well as necessary if the
24 injustice of colonisation is to finally be remedied. To
25 address that issue as part of a discussion about the care
26 of all our mokopuna seems a good place to continue that
27 dialogue.

28 At a national hui of Māori in 2010, the issue was
29 once again raised which led to the Iwi Chairs' Forum
16.27 30 establishing a Working Group, Matike Mai, to discuss the
31 issue with Māori around the country. I was asked to
32 convene the Working Group and Professor Margaret Mutu was
33 appointed as Chair.

34 The brief given to the Working Group was to hold

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1 discussions about a new constitutional framework based
2 upon tikanga, the 1835 declaration of independence He
3 Whakaputanga, Te Tiriti o Waitangi and relevant
4 international human rights instruments. Over the next
5 five years the Working Group held 252 hui and the
6 associated Rangitahi group organised
7 70 Wananga with young people.

8 The report of the Working Group, "He Whakaaro Here
9 Whakaumu Mō Aotearoa" was released on Waitangi Day in
10 2016. It is not appropriate to discuss its findings in
11 detail before the Commission but it may be helpful to
12 outline the main Te Tiriti values it identified as they
13 are pertinent to the creation of a truly Treaty-based
14 society where all mokopuna may be safe and cared for.

15 Although the values were discussed as prerequisites
16 for constitutional transformation, they may also be seen
17 as inter-related parts of a wider ethic of caring.

18 The first is the value of place. That is a need to
19 promote good relationships with and ensure the protection
20 of Papatuanuku so that all her mokopuna might live with
21 manaakitanga and aroha.

22 The value of tikanga, that is the core ideals that
23 describe the ought to be of living in Aotearoa and the
24 particular place of Māori within that tikanga.

25 The value of community - that is the need to
26 facilitate good relationships between all peoples.

27 The value of belonging - that is the need for
28 everyone, and especially the young, to grow with a secure
29 sense of belonging.

30 The value of balance, that is the need to maintain
31 harmony in all relationships in whānau and within the
32 wider community.

33 The value of conciliation - that is the need to
34 guarantee a conciliatory and consensual democracy.

Two major themes were identified at every hui and

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1 underpinned the values outlined above. The first was
2 that the land was a taonga that should be protected for
3 all. The second was mokopuna was also taonga who should
4 be free to grow in a safe and loving whānau.

5 The values and themes identified were then
6 incorporated into different constitutional models based
7 on the notion of different spheres of influence suggested
8 by the Waitangi Tribunal. In each model, the care of
9 mokopuna Māori was rightly placed in the tino
16.31 10 rangatiratanga sphere of influence.

11 It was acknowledged throughout the hui that in
12 relation to the wellbeing of children, there were
13 instances where for various reasons mokopuna might be
14 unsafe. However, it was also clearly expected that the
15 authority to decide whether the child might need to be
16 removed and other care provided was equally rightly a
17 decision for iwi and hapu to make.

18 It was also clearly recognised that any removal
19 needed to be within the child's whakapapa and involve
16.32 20 assistance for the whānau to address whatever social or
21 economic issues it might have. The word rangatiratanga
22 can literally be translated as weaving the people
23 together and it is that sustaining and mending of
24 relationships that has always been fundamental to the
25 proper Māori care of Māori children.

26 Those conclusions were part of the long struggle of
27 iwi and hapu to have the Treaty honoured and to at last
28 address the injustice of colonisation. The historic
29 abuse of mokopuna Māori is one of colonisation's most
16.33 30 egregious wrongs.

31 If this Commission offers some way to offer solace
32 to those that was been abused, that will be some measure
33 of justice long overdue. If it frames that comfort in a
34 willingness to systemically and constitutionally address

1 the over-arching injustice of colonisation that will be a
2 justice which offers hope for the future.

3 Kia ora.

4 Q. I wondered, just one additional question, whether you had
5 any comment around section 7AA of the Oranga Tamariki Act
6 which is a new provision. You've touched on it earlier
7 in your evidence but whether you wanted to elaborate on
8 in effect whether that goes far stuff against the korero
9 that you've given us this afternoon?

16.34 10 A. If I could just preface my response by repeating a point
11 I made in the brief, that iwi certainly, and I believe on
12 the ground staff in Oranga Tamariki have entered into
13 those agreements with good intent but they are
14 systemically flawed because they do not address the power
15 imbalances which exist. They retain the power of
16 decision-making with the Crown and do not acknowledge the
17 right inherent in tino rangatiratanga for iwi and hapu to
18 make those decisions.

19 The second part of my response, is that the rhetoric
16.34 20 currently used by the Crown is to establish relationships
21 that are by and for Māori and there is some value in that
22 depiction of the relationship but it is actually also
23 inadequate. If I can draw what might seem a farfetched
24 analogy that is nevertheless true.

25 When Abraham Lincoln gave his famous Gettysburg
26 address during the American civil war, he spoke about the
27 return of government "of the people for the people by the
28 people." The Treaty does not require a relationship just
29 for and by Māori. It requires a relationship of Māori,
16.35 30 in which Māori have the power of making decisions, and
31 that's the, if you like, philosophical shortcoming in the
32 whole idea of relationships based by and for Māori.

33 Q. Kia ora. I don't have any further questions and I am
34 conscious that others might, so I'll just take this

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1 opportunity (speaks in Te Reo Māori).

2 A. (Speaks in Te Reo Māori).

3 **CHAIR:** Thank you. Are there any counsel who wish?

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MOANA JACKSON

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QUESTIONED BY MS SKYES

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Q. (Speaks in Te Reo Māori). I notice in your brief which is carefully constructed, you've tried hard to limit the disclosures to yourself in the current project you're doing to events between perhaps 1989 and 1999 and the interviews you conducted with people that have been in State care in that period.

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One of the matters that you don't elaborate on is, did you notice, as Ms Green did, that the numbers of Māori really escalated in significant levels between the research that you did in 1988 and your current research? I'd really like to focus on that period and the trends that you observed between 1988 and 1999.

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A. The numbers of Māori men in prison has remained constant at around 52% for over 40 years. The sharp increase has been in the numbers of Māori women imprisoned which coincides with the implementation of neoliberal policies, what I call the criminalisation of poverty, so a lot of Māori women who are in prison are in prison for crimes of poverty.

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And the rise of a rate in the 1980s of less than 10% of the female prison population being Māori to now being 64%, which in the research we'd done per capita now makes Māori women the most imprisoned group of women in the world. But while that increase has been stark in the last 30 years, I think it's part of a longer trajectory as well which is part of colonisation as well. Because in the period of the most assimilative pressure being placed on Māori people in the 19th Century, a lot is similar to the pressure that was placed on Māori women

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1 and the role that Māori women played in Māori society.
2 So, there was not only an attack on the integrity of
3 whānau, there was a specific attack on the role of Māori
4 women which particularly infected the integrity of whānau
5 and the inter-generational effects were then played out.

6 The inter-generational effects of that were
7 exacerbated constantly by the criminal justice system
8 being the enforcing arm of the Crown.

9 What happened from about the mid 1890s, for the next
16.40 10 60 odd years, was when Māori were classified at the end
11 of the 19th Century as a dying race, we retreated to
12 those safe largely rural areas that had not been
13 confiscated. So, there was little contact between -
14 comparatively little contact between Māori and Pākehā
15 people.

16 And so, the Māori imprisonment rate which had soared
17 during the wars, when Māori who resisted the confiscation
18 of land were imprisoned, so there was a criminalisation
19 of Māori resistance, so the prison rate rose. But then
16.41 20 with the dying race and the retreat into rural safety,
21 the imprisonment rate declined.

22 Then in the Second World War, with the passage of
23 national emergency manpower regulations, when Māori began
24 to be moved into the cities to provide labour in the
25 essential wartime industries in the beginning of what
26 some people call the urban drift but I prefer to call it
27 an urban shift because Māori did not just drift into the
28 cities, they were shifted because of politico economic
29 policies. After the war that exacerbated with the taking
16.42 30 of more Māori land which is catalogued in research done
31 on Town and Country Planning Act, the Public Works Act
32 and so on. Māori were moved more into the cities to
33 provide labour in the burgeoning manufacturing
34 industries.

1 And as greater contact occurred between Māori and
2 others, then three things happened. Closed adoptions of
3 Māori children were introduced. The first tranche of
4 Māori children being taken into care occurred. And the
5 rate of imprisonment of Māori began to rise. And those
6 first generation of largely Māori boys who were taken
7 from their family and placed in care in the 1950s were
8 pipelined through to become the burgeoning Māori male
9 imprisonment rate in the 60s and 70s.

16.43 10 So, those statistics are traceable and then they
11 begin to rise again with Māori women in the 1990s. And
12 that coincides with the increasing number of Māori girls
13 being taken into care in the 1970s and 1980s.

14 Q. So, there is socioeconomic policy of that period, and I'm
15 talking '60s, '70s, '80s that are causing a
16 transmigrating shift of Māori whānau from rural areas to
17 urban communities. There's economic pressures. What's
18 happening to the cultural identity of those whānau and
19 cultural connections of those whānau and were there any
16.44 20 policies that impacted on their ability to retain that
21 identity?

22 A. If I could perhaps just illustrate the answer with the
23 latest criminal justice research we've done. Of the
24 600 Māori men and women we interviewed who are or were
25 in prison, all of them were what would be called "urban
26 Māori". They were either shifted from their whānau,
27 either shifted from their rural homelands into the
28 cities, or they grew up in cities within their iwi but
29 with no access to land because the land and their iwi
16.45 30 had been taken.

31 Those who moved into the cities, the generation that
32 moved were usually fluent in Te Reo, confident in their
33 tikanga. The economic and social pressures, which I call
34 the modern equivalent of colonising pressures, then made

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1 it really difficult to sustain those taonga, that
2 integrity, in the city environment. And because some of
3 that generation had also been punished for speaking Te
4 Reo, they chose not to hand it on to their children
5 because the assimilative pressure was to learn English.

6 And so, in the '60s, '70s and '80s you begin to see
7 the marked decline of Māori language, for example, as the
8 first language, the bulk of the younger generations.

9 Q. So, I'm puzzled by the fact we see the revival of - we
10 have activists like myself and others committed to the
11 revival of Te Reo Māori in urban and rural realities, and
12 yet reading your evidence or listening to your evidence
13 today we see incarceration rates and the taking of
14 children increasing and an expedient rate
15 notwithstanding that cultural revolution. Can you help
16 me explain, I want to limit it to that period 1988-1989?

17 A. There is now a growing cohort of prisoners and
18 ex-prisoners who were children of Kohanga reo and kura
19 kaupapa, fluent in the language, confident again in their
20 tikanga as our generation hoped they would be. But that
21 has not protected them from becoming pipelined into
22 prison, just as a number of the old people often say,
23 well, people who were arrested in the 19th Century for
24 resisting colonisation were absolutely fluent in Te Reo,
25 absolutely confident in the tikanga. So, that is why I
26 think it's important to look at other colonising
27 countries like Canada, Australia and the United States,
28 and say, well, what is it about those societies, what is
29 it about their histories, which makes it more likely that
30 indigenous peoples will be imprisoned, whether they are
31 secure in their tikanga or not.

32 Q. And my last question is, your report in 1988, like the
33 report that Ms Green took us to and the other report
34 you've taken us to, all talked about children being
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1 placed in the sphere of influence where Māori had control
2 and tino rangatiratanga over the decision-making of
3 tamariki, mokopuna, rangitahi. Notwithstanding those
4 recommendations in 1988, what have been the barriers to
5 achieving that transformation or change that certainly
6 you and many other Māori leaders of that time, Sir John
7 Rangihau, Dame Mira Százy, the late Bishop Bennett,
8 Bishop Vercoe, they were all part of that vanguard, what
9 were the barriers to achieving their aspirations?

16.48 10 A. It is essentially the unwillingness of the Crown to
11 acknowledge the relationship which was actually entered
12 into in Te Tiriti o Waitangi. It is an unwillingness of
13 the Crown to have the imagination to imagine the justice
14 of the relationship. It's been an unwillingness to
15 acknowledge that if Māori are able to exercise Māori
16 authority and Māori sphere of influence, this country
17 will not slide into the sea, and that's part of a process
18 of the Treaty journey which we are still on. In the
19 Constitutional Transformation Report we recommended 2040,
16.49 20 200 years after the signing of the Treaty, as a good
21 point to envision a Treaty based constitutional
22 relationship and I think it might take that time to
23 encourage the conversation, the social conversation,
24 which is needed for that to occur but the barrier has
25 been the Crown unwillingness to listen to Māori concerns.

26 Q. I suggest that to share power has also been a major
27 barrier, particularly in the context of what you also
28 mention in your brief, a desire now for Māori to design
29 our own systems and to implement those system with
16.50 30 appropriate resources?

31 A. Well, one of the currently popular Crown terms at the
32 moment is "co-design" which rather like the
33 relationship agreements that are being entered into
34 between some iwi and Oranga Tamariki, sounds good in
35 theory but in
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1 practice you are co-designing a relationship where the
2 Crown retains absolute power. So, that's not an equal
3 Tiriti based co-design. Whereas a Tiriti based process
4 of constitutional transformation will help deliver that,
5 I think.

6 **MS SKYES:** I can't thank you enough for your evidence. Thank
7 you. Kia ora, Moana.

8 **CHAIR:** Thank you, Ms Skyes. Are there any other
9 counsel who wish to address questions to
10 Dr Jackson? There aren't.

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MOANA JACKSON

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QUESTIONED BY THE COMMISSIONERS

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COMMISSIONER ERUETI: I would like to ask you as a longstanding champion of international indigenous rights a few questions, firstly about the Declaration on the Rights of Indigenous Peoples.

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It would be useful to know, I think, the reasons why Māori and other indigenous peoples journeyed all the way to Geneva in the 1980s to draft an international instrument on indigenous rights, particularly given that there were the two international human rights covenants that had been in place for some time. Could you give us the reason for that mahi?

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A. Happy to do that. There is a whakapapa. In 1923, a delegation of Rangatira, frustrated at the inability to meet with the Crown and the person of the monarch in London heard about a new international organisation that had been established after the First World War called the League of Nations in Geneva. A group of Rangatira travelled to Geneva in 1923 to petition the League of Nations about the grievances of our people and they were refused admission because the New Zealand Government had informed the other delegates that the League of nations was a League of Nations States and to quote the words "the native peoples waiting in the forecourt are not a nation".

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So, those Rangatira turned and sailed back home. One of them kept a diary and on the day that they were declined admission he wrote, "The halls of this palace are not yet ready to hear the voice of our people". 50 years later in 1973, a group of Indigenous Peoples, mainly from the Americas, travelled back to Geneva, which

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1 by then had become what had previously been the League of
2 Nations Palace de Justice had become the human rights
3 headquarters of the new United Nations and they travelled
4 with the same hopes as Māori delegation. And they too
5 were declined admission. But every year after that, they
6 returned asking for a place where their voice could be
7 heard and eventually at the instigation of a number of
8 Scandinavian Governments, Norway, Sweden and so on,
9 enough state support was gathered to establish within the
16.55 10 United Nations a Working Group on the rights of
11 indigenous peoples. And because my grandfather had been
12 one of the Rangatira who travelled to Geneva in 1923, I
13 was asked to be one of the Māori delegation that went to
14 the first meeting of the Working Group in 1988. And we
15 there drafted two agenda items for the Working Group. One
16 was that there would be an international study of
17 indigenous treaties. And the second was that work would
18 begin on drafting a Declaration on the Rights of
19 Indigenous Peoples because there was no extant or
16.56 20 distinct document of fundamental human rights pertaining
21 to Indigenous Peoples. There were discrete conventions
22 being developed, the Convention on the Rights of the
23 Child, the Convention on the Elimination of
24 Discrimination Against Women and so on. And so, we thought
25 it was important that there should be an international
26 set of minimum human rights standards for indigenous
27 peoples.

28 We also thought it was important because, as I
29 alluded to in my brief in talking about the Valladolid
16.57 30 debates, colonisation was predicated on the less than
31 full humanity of indigenous peoples and we felt that if
32 there was a distinct statement of indigenous human
33 rights, it was one way of restoring the full humanity of
34 indigenous peoples.

35 So, that was the consensus thinking, I guess, which

1 led to the actual drafting.

2 **COMMISSIONER ERUETI:** So, they are human rights but they
3 are adapted and fit so that they are specific to
4 indigenous peoples around the world; is that right?

5 A. I could perhaps illustrate that best, if it's helpful, by
6 referring to Article 3 of the declaration which is the
7 right to self-determination. The major human rights
8 conventions are the convention on civil and political
9 rights and so on, have statements on self-determination.
16.58 10 They say all peoples have the right to
11 self-determination. And so, what we did in the drafting
12 of the declaration, we took that article and just
13 inserted indigenous, so that in the declaration it reads
14 "all indigenous peoples have the right of
15 self-determination" and then the rest of the article
16 articulates what that right is. But, again, it was to
17 recover that full humanity, that peoplehood, if you like,
18 of indigenous peoples around the world.

19 **COMMISSIONER ERUETI:** Thank you. You mentioned the
16.59 20 right of self-determination in your brief of
21 evidence and you emphasise that, are there other
22 rights in the declaration that you think are also
23 important to this kaupapa?

24 A. If I can just contextualise that again. Yes, there are.
25 The drafting or the inclusion of Article 3 in the
26 declaration is regarded as crucial by indigenous peoples
27 because it's from that right seminal right that all
28 rights flow. So, you can't have a right, for example, to
29 education in your own language, which is another article
16.59 30 in the declaration, unless up the right to self-determine
31 what that education should be.

32 And so, you can't have an effective right, say the
33 rights of indigenous women, of indigenous children, of
34 indigenous old people and so on, which are also included

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1 in the declaration, without that right of
2 self-determination because they are dependent upon the
3 ability of indigenous peoples to determine for themselves
4 what those rights are.

5 And so, there are a number of distinct articles
6 which I am sure members of the Commission will be aware
7 of which relate to the wellbeing of children and so on
8 and they flow from Article 3, in my view.

9 **COMMISSIONER ERUETI:** Kia ora. Dr Jackson, you note

17.00 10 also that when the declaration was finally endorsed
11 by the New Zealand Government several years after,
12 it was endorsed by the UN General Assembly, that
13 there were a number of reservations that the State
14 made against the declaration. In your view, why was
15 New Zealand so opposed to the declaration and in
16 particular, the rights to self-determination?

17 A. I mention in my brief the work we've done in the criminal
18 justice research on Canada, Australia, the United States
19 and New Zealand, what are called the settler colonial
17.01 20 states, and they all oppose Article 3. They all oppose
21 the right of self-determination being included. And
22 their arguments were that when the programme of
23 decolonisation began after the Second World War, the
24 right of self-determination was articulated as part of
25 the right of peoples who had been colonised to be
26 independent again in their own countries. So, the great
27 independence struggles in Africa and Asia and so on. The
28 settler state Governments, New Zealand, Australia and so
29 on, sought to limit the right of self-determination to
17.02 30 exclude indigenous peoples in New Zealand, Australia,
31 Canada and the United States, and they did that by
32 inventing a doctrine called The Blue Water Doctrine which
33 said that the only peoples who are entitled to
34 self-determination are those whose colonies are across a

1 stretch of blue water from the governing authority. So,
2 Kenya was entitled, the people of Kenya were entitled
3 under that configuration to self-determination because
4 the Metropol government was in London, across a stretch
5 of water. Māori, indigenous peoples in Canada and so on,
6 under that configuration were not entitled to
7 self-determination because the government in those
8 countries was not across a stretch of water. The
9 settlers there did not go home, they came to stay. And
10 so, that rather fatuous distinction of a blue water
11 colony was created. When indigenous peoples began to
12 talk about all peoples being entitled to
13 self-determination, they resurfaced the blue water thesis
14 and when the vote was taken to ratify the declaration in
15 the General Assembly, as you will know, only four
16 countries opposed it, and those four countries were
17 New Zealand, Canada, Australia and the United States.
18 When they subsequently acceded to the declaration, they
19 placed a number of reservations on it, including
20 reservations on the right of self-determination.

21 **COMMISSIONER ERUETI:** So, it was fundamentally the human
22 right to equality, the basis for demanding the
23 right to self-determination for indigenous peoples,
24 as with other peoples around the globe?

25 A. Well, if we say that indigenous peoples say Māori people
26 of this country do not have the full right of
27 self-determination, then we are actually saying that
28 Māori are not fully human. We are not walking away from
29 the dreadful legacy of colonisation. We are embedding
30 the power structures within that legacy. And so, either
31 you have human rights because you are fully human or you
32 don't have them because you're not fully human. And the
33 whole basis of human rights discourse is that, as the
34 United Nations declaration says, all humans are born

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1 alike in freedom and dignity. It doesn't say some
2 humans, it says all humans, and that's the basis on which
3 the declaration was drafted and I think it's the basis on
4 which Te Tiriti o Waitangi should be understood.

5 **COMMISSIONER ERUETI:** You just mentioned Te Tiriti o
6 Waitangi and I wondered if we could shift also to
7 consider if we have the Declaration, He
8 Whakaputanga, and Te Tiriti about their
9 relationship to one another, are they mutually
17.05 10 reinforcing, are they slightly different in some
11 way?

12 A. They are all about the full humanity of people. When
13 our tipuna sought a relationship with the Crown, we had
14 no concept of these people coming here were other than
15 human. We recognised they were different. The term we've
16 used has never been Pākehā, we've used the term rereke,
17 they were different but they were human. There was never
18 any presumption or otherwise that in their own way they
19 had whakapapa, they were mokopuna. Colonisation created
17.06 20 a situation in which Māori were not seen in the same way
21 and that's been the basis on which the Crown has
22 interpreted the Treaty, that it is some superior humanoid
23 creation which can rule over Māori, and that's not the
24 basis for an interdependent conciliatory relationship, I
25 don't think. So, Te Tiriti, the Declaration, He
26 Whakaputanga, to me are part of the overall
27 constitutional framework which gives us an opportunity to
28 have something quite unique in this country and create
29 something which will, I think, help prevent the abuse
17.07 30 that this Commission is tasked with dealing.

31 **COMMISSIONER ERUETI:** Kia ora, Dr Jackson. I note also
32 that your tikanga based construction of Te Tiriti
33 is a longstanding one, from memory.

34 A. I am sorry?

COMMISSIONER ERUETI: Is a long-standing construction

1 that you've had.

2 A. Yes.

3 **COMMISSIONER ERUETI:** Well before the He Whakaputanga
4 Tribunal report, is that correct?

5 A. The notion that is fundamental to the Treaty, and I talk
6 about the Treaty as the English words favoured by the
7 Crown, is that Māori would do something which iwi had
8 never done. There is nothing in Māori history where,
9 say, Tuhoe would voluntarily give away Tuhoe
17.08 10 decision-making authority to Ngati Kahungānuī. It is
11 not a Māori reality. I don't think it is a human
12 reality. I am not aware of anywhere say in European
13 history where the King of England woke up one day and
14 said "I'm going to give all the authority making power
15 that I have to the Emperor of France". It is just not a
16 human reality. And so, the notion that we would not have
17 given away our authority but sought an equitable
18 inter-dependent relationship with these new people is
19 indeed a long-standing tikanga understanding, I think.

17.09 20 **COMMISSIONER ERUETI:** Kia ora. Just finally, it's good to
21 see that the legal historians have caught up with
22 your construction. So, rather than piecemeal
23 reforms at the bottom, if you like, the solution is
24 the starting point for Matike Mai, for the model is
25 for fundamental reform at a constitutional level
26 reflecting those relative spheres of influence to
27 rangatiratanga and another sphere of influence for
28 the Crown. And clearly tamariki Māori fit within
29 the Rangatira sphere. So, does it follow from this
17.10 30 model that in the Crown's sphere of influence that
31 is confined to non-Māori, Pākehā children?

32 A. Because our people in the constitutional transformation
33 process talked mainly about values, rather than
34 constitutional models, they wanted constitutional

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1 transformation that talked more about the values which
2 should underpin it, which is why the Tribunal finding
3 about spheres of influence was really helpful because it
4 enabled us to frame models. So, the sort of models we
5 looked at, and there are several in the report, were the
6 two spheres, if you like, the rangatiratanga sphere, the
7 Kawanatanga sphere and what we called a relational
8 sphere where we would come together within the Treaty
9 relationship to make joint decisions about matters of
10 common interest. But some issues are so values based
11 within tikanga, for example, such as looking after
12 mokopuna, that that would clearly be within the
13 Rangatiratanga sphere but they would not be isolated
14 spheres because we share this country because of Te
15 Tiriti.

16 **COMMISSIONER ERUETI:** Kia ora.

17 **COMMISSIONER SHAW:** No questions from me, thank you.

18 **COMMISSIONER GIBSON:** If I'm understanding you right,

19 and appreciating the power, the wisdom, the
20 matauranga behind what you say, we may make some
21 progress in the short terms with values of tikanga
22 based frameworks but to sustain what we are
23 striving to around abuse in care for tamariki
24 mokopuna and young people, vulnerable adults,
25 ultimately we need to sustain some kind of
26 constitutional transformation which falls out of
27 Te Tiriti as opposed to Te Tiriti falling out of
28 the constitution.

29 Alongside that, you talk about the various
30 international human rights instruments. Is there a
31 tension between the United Nations Convention on the
32 Rights of the Child and the paramountcy of the child,
33 perhaps the individual and the United Nations
34 Declarations on the Rights of Indigenous People with more
35 of a collective rights focus? Is there a tension or is

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1 there a misinterpretation, misrepresentation, about what
2 can be achieved, together with the children?

3 A. No, I think the tension exists because people
4 misinterpret the notion of collectivity and tikanga. The
5 interests of the child are paramount in tikanga but
6 they're paramount within a collective. You cannot
7 isolate the child from the whakapapa to which he or she
8 belongs. So, to talk about the paramountcy of the child
9 is to talk about the paramountcy of the whakapapa to
17.13 10 which he or she belongs. There is not a tension there.
11 The tension arises because under the individuated notion
12 that permeates the Oranga Tamariki legislation and so on,
13 it actually isolates the child, whether the child is
14 Māori or Pākehā or whatever. It is the interests of that
15 individual child which are paramount. And in tikanga
16 that is a contradiction of terms. The child is paramount
17 within the whakapapa to which they belong.

18 **COMMISSIONER GIBSON:** Kia ora, thank you.

19 **CHAIR:** Thank you, Dr Jackson. The Royal Commission has
17.14 20 been the beneficiary of your remarkable clarity of
21 expression. Mr Merrick, I think we should conclude
22 the day. Madam Registrar, would you connect us
23 with Ngati Whatua.

24 **THE REGISTRAR:** If everyone would please stand and we
25 will end the day with a karakia and waiata.

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27 **Hearing adjourned at 5.17 p.m.**
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