

**Abuse in Care Royal Commission of Inquiry  
Contextual Hearing on Thursday,  
31 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

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**TRANSCRIPT OF PROCEEDINGS**

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**OPENING ADDRESSES**

**MR MOUNT:** Good morning, Mr Chair, good morning  
Commissioners. Today we are expecting three  
witnesses, Oliver Sutherland, Kim Workman and Aaron  
Smale, I am joined by Ms Spelman and Ms Haronga.  
Ms Spelman will lead the first two witnesses today.

10.03 **CHAIR:** Thank you, everyone, welcome to day 3 of the  
Royal Commission Contextual Hearing and the  
witnesses who will give their testimony today.  
Ms Spelman, it is in your hands.

**MS SPELMAN:** (Opening in Te Reo Maori). May it please  
the Commission, just beginning by acknowledging  
Ngati Whatua for opening us up this morning and  
acknowledging those who have already given evidence  
this week, particularly the survivors, and  
greetings to all others who have come today for  
10.04 day 3 of our Contextual Hearing. If I could call  
now, Chair, as our first witness, Dr Oliver  
Sutherland.

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**DR OLIVER SUTHERLAND - AFFIRMED**

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**EXAMINED BY MS SPELMAN**

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6 **CHAIR:** Good morning, Dr Sutherland. The Inquiries Act  
7 2013 requires me to ask you as we commence (witness  
8 affirmed).

9 **MS SPELMAN:**

10.05 10 Q. If I could just first ask you to refer to your written  
11 statement in the folder in front of you. I understand  
12 you have prepared a statement for the Royal Commission  
13 and that there's a signed copy, signed on the last page  
14 of that brief just in the folder in front of you?

15 A. Yes.

16 Q. If you could confirm the statement is correct to the best  
17 of your knowledge and belief?

18 A. It is.

19 Q. Thank you. Before we begin with questions,  
10.06 20 Dr Sutherland, if you would like to begin by just telling  
21 us a little about who you are and where you're from?

22 A. (Opening in Te Reo Maori). I just want to take the  
23 opportunity at the beginning to acknowledge the support  
24 over the years, some them are represented here from the  
25 Polynesian Panther Party, from Nga Tamatoa, from the  
26 Citizens Association for Racial Equality, Auckland  
27 District Maori Council, all of those were at the  
28 forefront of the struggle in the '70s to get justice for  
29 children in the Courts and I want to acknowledge them.

10.07 30 I want to pay my respects to those who were members  
31 of some of those groups and who are not with us today,  
32 who were in the vanguard of the struggle, particularly,  
33 in no particular order, Syd Jackson and Hana Jackson of  
34 Nga Tamatoa, Eruera Nia, Ranginui Walker, Betty Wark,

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1 Agnes Tuisamoa, Eddie McLeod, Helen Kesha, they were all  
2 people in the 70s who I drew strength from and we worked  
3 together on these issues and it's almost 50 years ago and  
4 it's nice to have this opportunity to acknowledge them.

5 It is 50 years ago and I want to start by thanking  
6 Jacinda Ardern and the present government for the fact we  
7 even have an Inquiry. I recall the 9 years of the past  
8 government when they refused and refused to hold a Royal  
9 Commission into these events and so I want to thank  
10.08 10 Jacinda Ardern, I want to thank the present government  
11 and I want to thank the Minister Tracey Martin for her  
12 efforts on behalf of this Royal Commission. And to you  
13 Sir Anand, I want to thank you for the role you've played  
14 in the past couple of years. I am sorry to see you going  
15 but I acknowledge the work you've done and I wish you  
16 well in the future, kia ora.

17 The last group I want to acknowledge are the  
18 survivors network. There are represents of the survivors  
19 here and I want to pay my respects to them for the  
10.08 20 willingness that they have shown to relive the past and  
21 to support the future. Kia ora.

22 Q. Kia ora. Dr Sutherland, I know on the desk before you  
23 there's also another document which is the manuscript of  
24 the book you've written as a submission to the Royal  
25 Commission?

26 A. Yes, that's correct. My evidence today is a sort of  
27 brief version of the 170 page version which is actually  
28 my full submission and I understand it's been taken as my  
29 full submission. And so I know that you have that,  
10.09 30 Anand. There's a signed copy here and it's certainly  
31 what I want to put forward as my submission.

32 Q. Thank you. And if that full submission could be produced  
33 as Exhibit 4. Madam Registrar does have copies to be  
34 handed up to Commissioners of that, although they have

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1 received it in advance as well.

2 **Yellow folder produced as Exhibit 4**

3 **CHAIR:** Thank you.

4 **MS SPELMAN:**

5 Q. I understand, Dr Sutherland, that book will shortly be  
6 available to all once it has been published; is that  
7 correct?

8 A. Yes, I hope so, I hope so. Some of you might get a free  
9 copy, not many of you. It's in the hands of a publisher,  
10.10 10 Roger Steele of Wellington, I hope that will happen  
11 eventually but I wanted it to come to this Commission  
12 first because this is the place for whom it was  
13 originally written.

14 Q. Thank you.

15 A. You've asked me a bit about my background, shall I get  
16 into that? The evidence I'm going to give draws on my  
17 experience from 1969 when I joined the Nelson Maori  
18 Committee, Nelson Race Relations Action Group and then  
19 after that in 1973 the Auckland Committee on Racism and  
10.10 20 Discrimination.

21 There are very extensive archives thank goodness of  
22 the work we did back then and that's what my submission  
23 is based on.

24 During those years, together with particularly my  
25 colleague Ross Galbreath who is here and others from  
26 ACORD, we were deeply involved in a series of  
27 investigations into and campaigns against the treatment  
28 of children, especially Maori children, by the social  
29 justice, by the Police, by the Social Welfare system and  
10.11 30 the health systems. Today my focus is principally going  
31 to be on the judicial and Social Welfare systems and the  
32 way in which they treated children in the 70s and early  
33 80s.

34 From 1970 to 1986, I personally advocated on behalf

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1 of scores of children whose cases I drew to the attention  
2 of one Cabinet Minister after another. It didn't matter  
3 whether they were Labour or National, they weren't really  
4 interested. The notes of my interviews with all those  
5 children and my correspondence is in the archives in the  
6 Auckland City Library. They are what I will draw on in  
7 this submission.

8 We also instigated a number of inquiries over that  
9 15 year period, Ombudsman inquiries, Inquiry by the Human  
10.11 10 Rights Commission, judicial and other official Inquiries  
11 and again you have those papers have been given to you  
12 and they are part of the evidence that I draw on.

13 So, what I want to do here is summarise what's in  
14 this larger document. I want to provide an insight into  
15 the bigger picture of what was happening to children when  
16 they got into the hands of the Police, then the justice,  
17 then the Social Welfare or whatever. I want to provide  
18 that bigger picture when they were incarcerated and then  
19 what happened to them when they were incarcerated and how  
10.12 20 they got out of that.

21 Q. Dr Sutherland, just at this point -

22 **CHAIR:** Can I intervene just for a moment to ask you as  
23 you speak, if you will keep your eye on the  
24 stenographer in front of you, she is working at  
25 very high speed. If you would be good enough to  
26 just keep an eye on the pace so that she can keep  
27 up with you.

28 A. Yes, I would be glad to do that and I will slow down  
29 certainly.

10.13 30 **CHAIR:** There are also the signers to be involved in  
31 that picture. Thank you.

32 **MS SPELMAN:** Thank you, Chair.

33 Q. Dr Sutherland, just before you begin speaking to us about  
34 that judicial processes that you want to outline, I just

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1 wonder if you could tell us a little bit about the  
2 formation of ACORD, as I know ACORD features heavily in  
3 the work that you're going to go on to describe, how that  
4 group came to be established?

5 A. It happened in 1972, a meeting of the New Zealand Race  
6 Relations Council with the Polynesian Panther party and  
7 Sir Jackson challenged the Pakeha who were there to deal  
8 with institutional white racism. That was what they saw  
9 needed to be challenged, needed to be campaigned against.  
10.14 10 But they said don't leave it to us. So, there was some  
11 of us who were there, a few Pakeha, and we got ourselves  
12 together and actually several of us are here today from  
13 that time and we formed a group called the Auckland  
14 Committee of racism and discrimination and we chose the  
15 name carefully because we wanted the word racism to be in  
16 there right from the beginning because that was the focus  
17 of what was to be our campaigns over the years. And from  
18 1973 onwards, ACORD pursued those campaigns, all the time  
19 being supported by, monitored by, a group of Maori and  
10.14 20 Pacific Island leaders who kept us on the right tracks.

21 Q. Thank you and we might have to slow you down even a  
22 little more just to make sure we're not going too fast  
23 but thank you for that.

24 And I believe you were going to begin by telling us  
25 about some of the issues with racism in the judicial  
26 process in terms of Social Welfare?

27 A. Yesterday we heard about the pipeline and kids getting  
28 into the pipeline and ending up inevitably progressing to  
29 the end of the pipeline which was probably prison at one  
10.15 30 time or another. And getting into the pipeline usually  
31 required the Police. I want to draw your attention to a  
32 particular study that was done by Ross Hampton, a  
33 researcher for the Justice Department. He studied  
34 thousands of files of the Police, Auckland Police Youth

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1 Aid, and what he found out was that there was a marked  
2 bias against Maori boys in particular when youth aid  
3 officers were deciding who to prosecute or who not to  
4 prosecute. And he said that the Police discriminated  
5 against Maori boys by sending a disproportionate number  
6 of them to Court, thus inflating their crime rate  
7 compared with that of non-Maori children.

8 What he found was through looking at these thousands  
9 of case histories, was that racial bias and the decision  
10.16 10 to prosecute, it remained evident, even when class and  
11 the seriousness of offence were taken into account. In  
12 other words, the system was bias against Maori boys and  
13 disproportionate numbers of them were pushed into the  
14 system. Girls as well but it wasn't quite as bad, at  
15 least in his study for girls.

16 After that, then there's the question of being  
17 arrested and being bailed, if I am progressing through  
18 the judicial system. What we were aware of at the time  
19 in the Children's Courts, was that children were often  
10.16 20 held in Police cells before they got into Court even.  
21 There was rarely a parent present, there was never  
22 lawyers present, no advocate was present. Social Welfare  
23 officers might have been present but basically they and  
24 the Police persuaded the children to plead guilty. And  
25 so, the concept of the child having any rights and the  
26 concept of the child having access to a lawyer was  
27 unheard of, and certainly for State wards.

28 So, in the Nelson Maori Committee we became aware of  
29 what was happening in the Nelson Courts and when children  
10.17 30 as young as 13 could be held for a day or two or three  
31 days in the Police cells and at the mercy of the police  
32 officers who were supervising them.

33 So, Magistrates at the time seemed to place great  
34 reliance on the advice of social workers and seemed ready



1 to remand young Maori particularly into prison or into  
2 Social Welfare custody.

3 So, we saw what was happening and we setup our own  
4 Legal Aid Scheme. We didn't have any particular  
5 experience of the judicial system but we knew enough to  
6 know that representation by a lawyer was essential. And  
7 so, we established this scheme which aimed at getting  
8 free legal representation for every Maori and Pacific  
9 defendant in the Nelson Courts and certainly particularly  
10.18 10 the Children's Courts because you need to know although  
11 we've had a judicial scheme for years and years, there  
12 was no duty solicitor scheme then, there was nothing. If  
13 you are a 13 year old boy in the cells of the Nelson  
14 Police Station there was no way you could do that and you  
15 went straight into Court without any assistance.

16 And we knew that there were disproportionate numbers  
17 of Maori that were being sent through the system, so we  
18 wrote to the Minister of Justice complaining about, from  
19 the statistics, complaining about the disproportionate  
10.19 20 effect the system was having on Maori. And what we got  
21 back was, "Implications that Maori appearing before the  
22 Magistrate's Court in New Zealand and getting less than  
23 justice are not correct. We have the best of British  
24 justice for all".

25 So, that was how the Ministers and that was how the  
26 judicial system saw it. It was the best of British  
27 justice for all and it was a totally Pakeha system.

28 We also wrote to the Minister of Justice about the  
29 failure to have any lawyers for the children in Court.  
10.19 30 And we asked whose job is it to get legal assistance for  
31 the children. And Sir Roy Jack wrote back in January  
32 1972 and he said, "While there's no direct responsibility  
33 on the Magistrate or the Police or the Child Welfare  
34 Officer to obtain legal representation, they are all

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1 concerned that defendants should have every opportunity  
2 to be legally represented if they wish".

3 So, of course it was therefore up to the child.

4 Q. Dr Sutherland, perhaps particularly when you are reading  
5 those quotes if I could ask you to read them a little  
6 slower for the benefit of the signers and stenographer.

7 A. I'm sorry, yes. At that stage, we began arguing for a  
8 duty solicitor scheme and the government, the Labour  
9 Government at the time, Dr Finlay was the Minister of  
10.20 10 Justice slowly started to work towards it.

11 But in actual fact, and in our submission, we said  
12 that all children should be accompanied by a lawyer when  
13 being questioned by the Police and all children on  
14 whatever charge should be represented by counsel whenever  
15 they appear in Court.

16 Q. When you're speaking of children, Dr Sutherland, I know  
17 we'll come to some detailed statistics later but what  
18 sort of age range are we talking about there?

19 A. Well, the children's Courts were mostly dealing with  
10.21 20 children from the age of 10 years upwards but as I'll  
21 mention shortly, actually younger children than 10 were  
22 appearing before the Courts facing criminal charges. So  
23 that, it was impossible for those children to represent  
24 themselves. Maori children even more so. Whakama in the  
25 circumstances of the Court.

26 The duty solicitor scheme did get off the ground in  
27 1974. It didn't go very far, didn't go as far as we  
28 wanted and didn't give us the guarantees we wanted for  
29 the children, particularly for the children going through  
10.21 30 the Courts.

31 I want to turn now to what happened when they got to  
32 Court. The Courts were very intimidating. There was a  
33 Judge looking stern and a Policeman in uniform and then  
34 there might have been a Social Welfare officer and then

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1 there was the poor 13 year old or 12 year old or 10 year  
2 old standing there.

3 If they were not bailed and in the case of many  
4 State wards they weren't bailed, then they would be  
5 remanded in one form of custody or another. Now, what  
6 sort of custody you got depended where you were in the  
7 country. If you were in Auckland, you could be remanded,  
8 unless you'd been bailed you could be remanded in Social  
9 Welfare custody and you went off to a children's home.  
10.22 10 Or you could be remanded in Police custody. That was a  
11 bit of a misnomer because Police custody meant Mt Eden  
12 prison. That was Police custody in Auckland.

13 A child in Nelson who was going to be remanded in  
14 custody, those options weren't there. Nelson didn't have  
15 any prisons or Social Welfare homes and so, the only  
16 place to lock them up was the Police cells again back in  
17 the Nelson Police cells, no separate sells for children,  
18 no separate facilities, and with Police who probably  
19 didn't even want to look after them.

10.23 20 Others might have gone to a psychiatric hospital or  
21 a psychiatric ward and I'll mention some of those later.

22 There aren't very many statistics for remands in  
23 Social Welfare custody but in a report that Sir Guy  
24 Powles did a little later, he found of 878 children on  
25 remand in Social Welfare custody in 1975, 51% were Maori.  
26 It gets worse for the remands in penal institutions, if  
27 we look at Mt Eden in particular. The national figures  
28 in 1974 were 269 children, 53% were Maori; and 1975, 320  
29 children, it was going up, 57% Maori, getting worse.  
10.24 30 1977, 356 children remanded to a penal institution. 63%  
31 were Maori. Things were getting increasingly worse.

32 That was the remand situation. In a sense being  
33 punished already because as I will explain later, it was  
34 no easy life in the remand cells in Mt Eden prison.

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1           We haven't even got to sentencing. Now we get to  
2 sentencing and I've drawn together a lot of statistics  
3 and you have them in front of you. They come from the  
4 published annual New Zealand justice statistics and we  
5 analysed 10 years worth of those statistics from 1967 to  
6 1976.

7           What we found in those 10 years, 116,595 children  
8 went through the Courts. That's 116,000 children. Of  
9 them 41% were Maori. But when you looked at the  
10.25 10 sentences that they got, you discovered that those who  
11 got the softer sentences being fined or getting periodic  
12 detention, they were more predominantly the non-Maori.  
13 And the statistics showed absolutely clearly that when  
14 you get to the more heavy sentences, which were detention  
15 centre, they didn't exist now but they exist the at the  
16 time and some of you will remember the detention centres,  
17 3 months training at Waikeria or Social Welfare custody  
18 or Borstal which was the worse, then the figures for  
19 Maori crept right up to nearly 60% of the children sent  
10.25 20 to Borstal in that 10 years.

21           So, the pattern was similar for boys and girls.  
22 Almost in every category, girls were worse, received  
23 heavier sentencing than boys did. So, it was very clear  
24 that Maori children received these heavier sentences and  
25 actually, any Maori child before the Court was more than  
26 twice as likely to be sent to a penal institution for  
27 sentence as a non-Maori child, almost twice as likely.  
28 Whereas the non-Maori child was more likely to be fined  
29 or admonished and discharged.

10.26 30   Q. Dr Sutherland, in terms of the clear pattern that shows,  
31 I understand that you expressed a view on what that  
32 meant, this is looking at paragraph 8 of your brief, at  
33 the Auckland branch of the Association of Social Workers  
34 in 1976 about what that showed. Would you share that

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1 with us?

2 A. Well, yeah, I spoke to the social workers looking at  
3 these figures which nobody could dispute and which were  
4 never disputed because they came from the Justice  
5 Department's own research. And I said, and I quote, "It  
6 seemed that Social Welfare officers simply feel because  
7 they're unable to control the Maori or other Polynesian  
8 child, he should be held in Mt Eden. But surely the  
9 social worker's failure to control or perhaps relate to  
10.27 10 the child is more their problem. A problem of the system  
11 which was a system based on wholly Pakeha concept of  
12 crime and offending and welfare and punishment".

13 I just want to remind you of the ages of the  
14 children that were appearing before the Courts because if  
15 you look at those 10 years worth of justice statistics, I  
16 mentioned there were 116,000 children. Some of them were  
17 under the age of 8, they were infants but they were  
18 brought before the Court facing charges of one sort or  
19 another. There were 8 years olds, there were 45 x 9 year  
10.28 20 olds, 662 x 10 year olds. And then if you look at the  
21 sort of charges that they were facing. They could  
22 involve burglary, theft, conversion, of course, offences  
23 against a person, and particularly vagrancy. And I want  
24 to focus a bit more on vagrancy because it came up a bit  
25 more in the later cases we investigated. This was, in  
26 most cases, being idle or disorderly or being a rowing  
27 and vagabond. Well, 56 children between the ages of 10  
28 and 13 would face Court, 45% of them were Maori and they  
29 were being charged with being a rogue and vagabond or  
10.29 30 being idle and disorderly.

31 It was, I think, the figures were extraordinary.  
32 Nobody was looking at those figures in the 70s but when  
33 you see them they jump out from the statistics.

34 And I just want to mention, if I might, the impact

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1 on Maori in particular. It doesn't really matter what  
2 statistics you look at, whether it's who was in remand in  
3 Social Welfare custody, the majority certainly of the 14  
4 year olds and even of the 15 year olds, the majority were  
5 Maori and it was up to 73% of 14 year old girls.

6 Look at the adult prisons on remand. I mentioned  
7 the figures there. They were up to 60% of those children  
8 held in adult prisons on remand were Maori.

9 The sentencing gets even worse.

10.30 10 Q. Just to note, I think you're currently at page 8 of your  
11 brief, just in terms of the numbers you are referring to.

12 A. Yes, the tables are the figures. The heavier sentences,  
13 as I mentioned before, were either being sentenced to  
14 prison, Borstal or detention centre. And again, Maori  
15 children in general were the majority in those cases but  
16 particularly more Maori girls, and there were figures,  
17 the 15 year old Maori girls in the period 1974-1976, 15  
18 year olds, 100% of those Maori girls, 100% of the girls  
19 sent to Borstal were Maori, not one Pakeha in that whole  
10.30 20 group. The figures were extraordinary. And I think they  
21 were profoundly disturbing because what it meant was, and  
22 if you take the totality of what I've been talking about,  
23 any Maori who got into trouble at the beginning of the  
24 pipeline and then was brought before the Court was much  
25 more likely to be taken away from home, much more likely  
26 to be locked up if he or she was Maori.

27 And the disparities got worse for the younger ones  
28 and worse for the girls. So, that, I hope, gives you a  
29 bit of a picture of just the totality of what was  
10.31 30 happening to children in the Courts where nobody was  
31 looking except the Social Welfare officers, nobody was  
32 looking when the 8 year olds were dragged through the  
33 Courts to face some charge or another.

34 Q. In terms of the statistics, Dr Sutherland, it's clear

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1 from what you've told us the extreme disproportionality  
2 in terms of Maori children. I know the statistics don't  
3 go into this in great detail but what was your experience  
4 in terms of looking at the numbers for Pasifika children  
5 going through during that same time period?

6 A. Yeah, that was the trouble with the statistics, the  
7 Pacific children were just added in with the Pakeha  
8 children, so it was Maori and non-Maori. So, there was  
9 no real data at all on that. The feeling we had was that  
10.32 10 they would be over-represented but I think not to the  
11 same extent as the Maori children.

12 Q. And we might come to some of the particular stories in  
13 terms of children that you have recounted shortly.

14 Before we move on, is there anything else you want  
15 to share with the Commission in terms of the statistics  
16 during that period?

17 A. No, I think it's time to have a look at what was  
18 happening to the children when they got into the clutches  
19 of the Justice Department and when they got into the  
10.32 20 clutches of the Social Welfare, we need to focus on that.

21 Q. Yes. Should we begin, Dr Sutherland, perhaps by looking  
22 at the Police cells which I understand was the first work  
23 that you were involved with, visiting children held in  
24 the cells. Can you tell us about that?

25 A. When I was on the Nelson Maori Committee, we took  
26 testimony from a number of children who appeared in the  
27 Police cells. We were given the right to go in and talk  
28 to those children and arrange lawyers for them. So, we  
29 found out a little bit about what was happening to them.

10.33 30 I just want to highlight a couple of cases. One was  
31 a boy who was 16 years old, he was arrested, taken to the  
32 Nelson Police cells and then he was told by the Police  
33 Officer to take a shower before he went to Court. When  
34 he was stark naked standing in the showers, he was

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1 questioned about the charge of having an offensive  
2 weapon. There was no lawyer, there was no welfare  
3 officer, there was nobody. There was a Police Officer  
4 who jabbed him with a baton and the boy was standing  
5 naked. He gave a confession. He said that he had done  
6 it. It later transpired the confession was false but he  
7 went to Court and was initially convicted.

8 Then when he'd been convicted, before they could  
9 decide on the sentence, he was sent back to the Police  
10.34 10 cells again for another 4 days. And the feeling we had  
11 at the time, and we said so to the Justice Minister, was  
12 that the questioning by Police by a boy naked and alone  
13 in the Nelson police cell blocks was inhuman and  
14 uncivilised and that we couldn't believe that a  
15 confession obtained in such circumstances would be  
16 accepted by the Court, let alone to be the sole basis for  
17 his conviction but it was.

18 Just a few days later, there was another boy, he was  
19 13, he'd just left primary school, he'd come up to Nelson  
10.34 20 with some mates and was arrested on burglary and being  
21 idle and disorderly. Again, when I saw him in the Nelson  
22 Police cells, he'd already been questioned by the Police,  
23 no lawyer, no Social Welfare officer and because he was  
24 so young I tried to get him out on bail but it was  
25 refused. When we got him a lawyer, the charges were  
26 changed and he was not facing such a serious charge.

27 But 13 year olds were being held in the Police cells  
28 at the mercy of the Police then and so those two  
29 examples. It will be happening throughout the country in  
10.35 30 every town where there was a Court but where there was no  
31 a welfare home or a prison for the children to be  
32 remanded to in custody, they had to be held in Police  
33 cells, from Kaitaia down to Bluff.

34 **COMMISSIONER SHAW:** There's a detail that I think should



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1 be spoken rather than just left in your brief of  
2 evidence, Dr Sutherland. The nature of the - the  
3 matters that led the Police to pick these children  
4 up in the first place, could you put those on the  
5 record for us, please? For example, the boy Victor  
6 T, what was he actually arrested for?

7 A. Yeah, he was arrested because they found him in a cricket  
8 pavilion, an open cricket pavilion. He was just in  
9 Nelson passing through with a couple of older mates and  
10.36 10 they found him in a cricket pavilion. When we got him a  
11 lawyer, they changed the charge because of course they  
12 couldn't sustain the original one. So, without a lawyer  
13 it would have all just appeared before the Court, the  
14 Magistrate would have believed it and the boy would have  
15 been dealt with accordingly.

16 **COMMISSIONER SHAW:** Thank you.

17 A. You took that out of my main submission.

18 **COMMISSIONER SHAW:** I did. I just think it needs to be  
19 stated publically so people can hear.

10.37 20 A. That was the case of that first boy, the 16 year old who  
21 was questioned naked. I mean, again in that case if we  
22 hadn't got him a lawyer, the original charge would  
23 probably have stood, in which case he would have been  
24 charged with having an offensive weapon which was a more  
25 serious charge.

26 So, I just - and thank you Judge for sounding me out  
27 on that.

28 **COMMISSIONER SHAW:** I just think these details add much  
29 to the force of your submission?

10.37 30 A. Really what they showed was what was happening to  
31 children who got into trouble in smaller towns, and  
32 Nelson was an example. What happened to them in  
33 Auckland, of course, in a sense was much worse and we  
34 will come on to that.

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1 I guess we're moving on to the Social Welfare homes?

2 **MS SPELMAN:**

3 Q. Yes, thank you.

4 A. So, now we get on to the Social Welfare homes, such as in  
5 Auckland or Owairaka, Bollard and Wesleydale. During the  
6 70s, there were 20 homes throughout New Zealand, 20 of  
7 these Social Welfare homes. The following details I am  
8 going to give you are about experiences of children held  
9 in some of these homes. There were thousands of children  
10.38 10 who went through them every year. For example, in 1978,  
11 this is in answer to a Parliamentary question, there were  
12 4,225 children admitted to Social Welfare homes in  
13 New Zealand, including over 1,000 to Owairaka here in  
14 Auckland.

15 Q. So, Owairaka, Dr Sutherland, what sort of home was that?

16 A. Owairaka was a home for boys aged 14-17 years. We made  
17 our first complaint to the Minister of Social Welfare  
18 set, Bert Walker, in April 1978. And detailed the case  
19 of a particular boy, perhaps one of the very first cases  
10.39 20 that was brought to our attention. Kevin in January 1978  
21 was held for 10 days in a secure cell at Owairaka and his  
22 parents and the boy outlined his story to me. He was  
23 never charged with anything, he was a State ward. So, I  
24 want to quote from what I wrote to the Minister, "He was  
25 immediately placed in what the Department of Social  
26 Welfare termed secure care which is in fact solitary  
27 confinement, in a cell about 3 metres by 2 metres. The  
28 only clothes he was allowed to wear was a t-shirt and  
29 football shorts, no underpants, no singlet, no socks, no  
10.40 30 shoes. For the first four days he had to wear his  
31 t-shirt and football shorts at night as well as during  
32 the day. He was issued with pyjamas on the 5th day. In  
33 the secure cells all meals were taken in the cell,  
34 sitting on the bed beside his toilet. And the only time

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1 he mixed with the other boys was at physical training,  
2 PT, three times a day which totalled one hour. And even  
3 then the boys were not permitted to talk to each other.  
4 So, he was locked alone in his cell for 23 hours a day  
5 for 10 days. He and other boys in solitary were very  
6 embarrassed by the lack of underpants during PT and  
7 because he was only allowed shoes for one of the three PT  
8 sessions during the day, he got badly blistered feet. It  
9 seems so horrific to us because the boy suffered this for  
10.41 10 10 days, that we wrote to the Minister and demanded that  
11 he suspend the principal and staff of the home and have a  
12 full and public Inquiry into what was going on at  
13 Owairaka".

14 The routine practices at Owairaka started in secure  
15 on. On admission, every child had to strip in front of  
16 staff, get deloused and then given a t-shirt and shorts.  
17 They would be sent straight to secure for days, weeks or,  
18 as I'll mention later, months in secure. 23 hours a day  
19 in solitary confinement with one little window.

10.42 20 There was the toilet in the cell, all meals were  
21 eaten in the cell. And a rag and a cleaner was passed  
22 from cell to cell, single rag, single bottle of cleaner,  
23 for them to clean out their toilets, flushing toilet that  
24 they had in the cell, and then they cleaned that out with  
25 a rag and then handed it onto the boy in the next cell.  
26 There was no concept of cleaning.

27 The boys were not permitted to speak to each other  
28 but they were not permitted to speak to staff, all of  
29 whose communications were conveyed to the boys by nods of  
10.42 30 the head. And I'll come back to the nodding system  
31 shortly.

32 So, I'm going to mention one or two cases. I want  
33 to start first of all with a 9 year old boy, Craig.

34 Q. This is at paragraph 43 of your brief?

- 20 -

1 A. Paragraph 43. After persistent truancy because he was  
2 running away from school and there were problems at home,  
3 he was incarcerated, initially for three months in ward  
4 12 of Auckland Public Hospital. This was principally an  
5 observation ward for adult psychiatric patients run by  
6 the Auckland Hospital Board. It had no special or  
7 separate facilities for children and especially not for a  
8 9 year old. He was there for 3 months but the ward  
9 admitted children because there was nowhere else for them  
10.43 10 to go into Auckland. According to his mother, while he  
11 was in ward 12 he had a lot of drugs pumped into him and  
12 he became very lethargic and fat and didn't want to do  
13 anything. When he was discharged from 3 months in ward  
14 12, he was sent to Owairaka, 10 year old at this stage.  
15 They weren't supposed to take anyone under the age of 14  
16 but perhaps Wesleydale was full, who knows. Of course,  
17 he'd been admitted to Owairaka through the same process  
18 of secure cells.

19 He spent 5 weeks at Owairaka and of those 5 weeks, 3  
10.44 20 weeks were in secure. He was 10. He couldn't do pushups  
21 because he was so fat and lethargic from the drugs he had  
22 been given, so his mother explained the PT instructor  
23 decided he would help him along, 'he took his sandshoe  
24 and really belted my son's buttocks until you couldn't  
25 get a pin between the massive bulk bruising'. Taken out  
26 of secure he ran away immediately, he ran home. His  
27 mother complained to Arthur Ricketts who was the  
28 principal of Owairaka who was apologetic and said it  
29 shouldn't have happened.

10.45 30 There was another boy, Cruise, who spent three days  
31 in secure before sentencing three days after. He said on  
32 arrival he was deloused and stripped. "I was too scared  
33 to say I didn't want to get undressed in front of them".  
34 Then he described the nodding system and I want to detail

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1 that because no vocal communication was allowed between  
2 staff and boys, let alone between the boys. And so, what  
3 Cruise said was 'When you have a shower he comes to the  
4 door and after you finish your shower, he looks at you,  
5 then he nods his head. You say thank you Sir. Then you  
6 shake your towel out and you go like this (and he pulled  
7 the waste band of his shorts forward) and he checks you.  
8 And then you stand outside the door and he goes like that  
9 again, gives you a nod, and you say thank you, Sir. And  
10.45 10 then you go back to your room and you stand outside your  
11 door while he does that again, he gives you a nod and you  
12 say thank you Sir and then you're allowed back into your  
13 cell for the next 23 hours'.

14 Q. Dr Sutherland, I'm just getting a message from our  
15 stenographer if when reading those quotes if you could do  
16 them a little slower.

17 A. I will. I spoke to a mother who went and visited her boy  
18 at Owairaka. She said it's the coldest place I've ever  
19 been into for a parent who's already distressed because  
10.46 20 her son has done something wrong and I'm shown into a  
21 visiting room and my son comes in bare footed, shorts and  
22 single and we sit down. You are not allowed to take  
23 fruit or sweets or food, you're only allowed to take  
24 comics or readable things. One day he was upset and  
25 crying. I'd never seen him cry before. I felt he had  
26 been too long in secure. He asked me to see about him  
27 going up to the main part of the home. He was only 14.  
28 In fact, after running away, as a punishment he was  
29 incarcerated in secure continuously for two months before  
10.47 30 he was sent to Kohitere. During that two months he saw  
31 no teacher, no welfare officer, nor was he allowed to see  
32 his sister and brother, you were only allowed to see your  
33 parents, you weren't allowed to see your siblings. The  
34 mother said, she spoke to staff and one of them said to

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1 her it's a wonder your boy hasn't gone up the wall, he's  
2 been there too long.

3 I could go on. I want to talk a bit about some of  
4 the other punishments.

5 There was a boy called Raymond who had been a State  
6 ward and he had been in Owairaka. He said it's all quite  
7 true about the ill-treatment, the PT etc. "We used to be  
8 waked at 2.00 a.m. in the morning to do press-ups. This  
9 would be if another boy had absconded. All boys had to  
10.48 10 be punished if a boy had absconded. I hadn't committed  
11 any crime except being a State Ward but because I had a  
12 brother there, I was singled out for humiliation. I  
13 remember having to kneel and cut the lawn with shears. I  
14 was hit across the small of the back with a cane for  
15 being too slow. On one occasion an innocuous comment had  
16 been interpreted by staff as being smart, I had to run  
17 around outside until I dropped and then I was put in  
18 solitary."

19 I just want to refer, it's not in my evidence but  
10.48 20 you've been given a copy of it, an ex-staff member called  
21 Frank Ryan gave evidence later on to Archbishop Johnston  
22 who was looking into this stuff. He had been a House  
23 Master at Owairaka and he gave corroborating detail. He  
24 said, "Punishment was not restricted from", I am quoting  
25 from page 1, "Punishment was not restricted to the cane.  
26 It consisted also very frequently of PT. There was a boy  
27 who had been caned by the House Master and then received  
28 PT from 6.00 p.m. until 10.30 p.m. and on several  
29 occasions the boy had faulted and then he had been  
10.49 30 slithered by the staff member who later on apparently was  
31 reprimanded for it. Slithering was a term used when a  
32 large rubber squeegee of the type found in milking sheds  
33 was applied to the boy's buttocks at the whim of a staff  
34 member".

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1 I want to summarise the Owairaka situation, if I  
2 can. All meals were given in the cell, sitting beside  
3 the toilet. If there was sometimes over crowding, there  
4 could be two and sometimes there were more boys put in a  
5 cell. And they all had to sit there with a single toilet  
6 between them and eat their meals sitting on the edge of  
7 their bunks which were on either side of the toilet.

8 Bed wetting was common, inevitably bed wetting was  
9 common amongst the traumatised children and for John, one  
10.50 10 boy who told his story to the Evening Standard, he said,  
11 "I was the youngest and I got in trouble from everyone".  
12 He couldn't stop wetting his bed so he had to wear an  
13 electrified cattle arrangement attached to his penis,  
14 "even a drop of urine in the cap would trigger the senses  
15 and gave me an electric shock. One day they must have  
16 got fed up with me, the dial on the belt was meant to be  
17 set at a maximum of 3 for just a mild shock but one night  
18 the dial was turned up to 10 and I got a hell of a shock"  
19 and he remembers a staff member rubbing his nose in the  
10.51 20 bed that he wet which he tried to hide.

21 There was one cell at Owairaka called Cell 7. It  
22 was the punishment cell, in a secure block, as if secure  
23 wasn't bad enough, Cell 7 was worse, you couldn't look at  
24 all out the window. The mattress was taken out during  
25 the day and so you were left to spend all day sitting or  
26 lying on the bare bed springs or on the concrete floor  
27 and that could last for up to a week.

28 Q. I am conscious, Dr Sutherland, there's some more you'd  
29 like to share in terms of other children's homes. Could  
10.52 30 we perhaps move on to Wesleydale, if you want to  
31 summarise firstly what sort of home that was?

32 A. Two things in Wesleydale I want to stress. Was the  
33 punishments, they had the same secure cells and that sort  
34 of thing but these were younger boys. One staff member

1 gave evidence to the Human Rights Commission Inquiry  
2 later. It was common for staff to hold a boy down while  
3 a senior House Master strapped him repeatedly on the  
4 body. One 11 year old boy would not bend over after  
5 receiving 6 strokes on the buttocks, 3 staff held him  
6 down while the fourth administered further strokes until  
7 he was severely bruised on the thighs the buttocks and  
8 the jaw.

9 That witness who was a staff member, an ex-staff  
10.52 10 member said he'd seen boys receive 15-20 strokes with the  
11 strap. On other occasions a cricket bat had been used  
12 instead of the strap. One boy spoke to the Human Rights  
13 Commission and said that he had, after he'd absconded,  
14 he'd been hit with 12 strokes on the backside with a  
15 cricket bat until his buttocks bled.

16 And then the staff member said to the Human Rights  
17 Commission, "When you get a lot of absconding and  
18 strapping doesn't work, you try the boxing match." And  
19 he said he thought it was the cruelest thing he'd ever  
10.53 20 seen done. It was called the golden fist. We thought it  
21 was the most barbaric practice of what happened at any  
22 home, punishment metered out to one boy who was the  
23 absconder by another boy chosen by the staff to  
24 administer the punish. it was an arranged boxing match.  
25 When a boy ran away all the boys in Wesleydale were taken  
26 off privileges and had to build up a negative feeling  
27 towards the absconder. When the absconder was brought  
28 back, the boxing match was arranged and everybody stood  
29 around and the boy was beaten until he couldn't stand up  
10.54 30 or got a fat lip or was crying uncontrollably.

31 That happened regularly in Wesleydale.

32 The last thing I will say about Wesleydale, and I'll  
33 quote again from Frank Ryan, an ex-staff member, he gave  
34 me a - are you going to put it up on the screen? It was



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1 a memo that was sent around the night staff at Wesleydale  
2 by the Deputy Principal.

3 Q. Dr Sutherland, what we can see on the screen is the memo  
4 you are referring to, obviously the handwritten memo but  
5 you're going to read that?

6 A. This had to be signed off, as you can see by the  
7 different night staff. "It seems a number of boys are  
8 being allowed to go to the toilet during the night. This  
9 should not happen. An earlier memo pointed out we would  
10.55 10 prefer a boy to wet his bed rather than be allowed to go  
11 to the toilet. All sorts of trouble starts from this  
12 kind of thing, smoking, absconding, stealing. Please  
13 ensure the boys are kept in their beds until the day  
14 staff arrive at 7.00 a.m.".

15 Q. So, this was an official directive to the staff?

16 A. Yes, it was. We talk about the girls homes?

17 Q. Yes, thank you. I note you are at paragraph 53 of your  
18 brief at this stage.

19 A. In some respects, things were much the same at the Girls'  
10.55 20 Home. There was a secure block and all admission was  
21 through secure but I want to quote from a girl called  
22 Tina who described the admission procedures.

23 "You were stripped of your clothes, stripped of  
24 your privacy when you arrived, you were deloused, you had  
25 nit goo and a Dettol bath and then you were put in a cell  
26 with very small bed, rubber mattress and a toilet. You  
27 were given 4 squares of toilet paper for the day. We  
28 wore pyjamas all day even for cleaning out our cells.  
29 They often didn't fit too well which was demoralising.  
10.56 30 Worse was the compulsory venereal disease check. You  
31 were moved into another cell and told to take everything  
32 off except your top. Then you were put onto a bed and  
33 into stirrups like when you have a baby. The old bag,  
34 that's the doctor, the old bag shoves your legs around

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1           wherever she likes. She didn't say thank you, please,  
2           just undress, get up there, spread your legs out. Tina  
3           noted that some girls who were kicking and struggling  
4           were held down by straps. It was a procedure described  
5           by all the ex-inmates of the girls homes. One girl who  
6           was 13 wouldn't take the test. I was put in secure and I  
7           wouldn't agree to it. In the end 3 or 4 staff came and  
8           took me and I was strapped down for it.

9           I just want to read a submission that was made by  
10.57 10          one of the house mistresses of Bollard Girls' Home,  
11          particularly about the VD testing. "If a girl refused",  
12          this is from Linda B -

13        Q.     That is the image that we have on the screen, the  
14          statement of Linda B.

15        A.     "It a girl refused the test, she was to refer the girl to  
16          a senior house mistress who would talk to the girl. If  
17          the girl still refused, she was not allowed any  
18          privileges so she was not allowed to work in the kitchen,  
19          play softball with the other girls or go on outings such  
10.58 20          as to the beach. If a girl was adamant that she had no  
21          sexual contact whatsoever, she was a virgin, they were  
22          still given the test and persuaded in the same manner.  
23          Girls as young as 11 years old were subjected to an  
24          internal examination."

25                It mostly happened at Bollard. Van loads of girls  
26          from the Weymouth Girls' Home, Allendale Girls' Home,  
27          were often brought to Bollard for the test. They were  
28          all herded into one room and left to wait for the test.  
29          There was no preparation given to the girls in terms of  
10.58 30          what to expect. And girls often told how the test  
31          frightened them, upset them. The doctor was cold and  
32          clinical and barely said hello. And if a girl's test was  
33          positive, she was confined to her bed for 6-14 days. VD  
34          checks were also given to any girl who ran away and to

- 27 -

1 any girl who was allowed out on some sort of day leave  
2 and the girls saw them as punishment and they hated them.

3 Q. In terms of the girls homes you have been referring to,  
4 can I just clarify this is Bollard Girls' Home, Allendale  
5 Girls' Home, Stratmore and Weymouth?

6 A. That's right.

7 Q. This was homes for girls aged between 10-17 years?

8 A. Yes. Well, Bollard was 14-16, I think. Allendale was  
9 for the younger ones but I think Stratmore in  
10.59 10 Christchurch took all age groups.

11 What emerged, a lot of this got publicity at the  
12 time. We made sure it did. So, stories kept coming out  
13 from Christchurch, from Wellington, from Epuni, from  
14 children who wanted to reveal their stories. So, the  
15 pattern was clear across the country in terms of the  
16 secure cells, the VD testing, punishments and so on,  
17 although I think Wesleydale was the only home that had  
18 the boxing matches.

19 Q. Dr Sutherland, I know you want to speak to us about the  
11.00 20 particular Human Rights Commission report and findings.  
21 Before we move to that, was there anything else you  
22 wanted to mention in terms of the girls homes?

23 A. Well, just about the use of secure. You see, it was a  
24 punishment within a punishment. The staff of the homes  
25 had the power to incarcerate children, this was not  
26 something ordered by the Courts. This was something that  
27 was a routine practice done by staff and yet the children  
28 could be taken from the open part of the institution and  
29 put into the secure, 23 hours solitary confinement, with  
11.01 30 no judicial oversight. No oversight of any sort  
31 actually. Nobody from the Social Welfare Department.

32 And there was an ex-staff member from Weymouth who  
33 said that the length of incarceration as a punishment in  
34 secure was determined by the Senior House Master. And I

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1 quote, "There are sorts of 'sentences' of different times  
2 in secure. For a hostel misdemeanour, three days;  
3 absconding, one week; absconding a second time, two  
4 weeks. They are in their cells most of the day, one or  
5 two hours out. Physical assaults occurred: I have seen  
6 girls struck in the home, and I have slapped them myself.  
7 Tensions build up in institutions and it does happen".

8 Q. Thank you. I understand that ACORD made a complaint to  
9 the Human Rights Commission about these practices in  
11.02 10 1979, could you tell us a bit about that?

11 A. Yeah. What had happened, we'd held our own Inquiry in  
12 '78. We had asked repeatedly for the government to hold  
13 Inquiries into these revelations, so we decided to hold  
14 our own Inquiry, together with Nga Tamatoa in 1978 and we  
15 had 30 or so witnesses come along, many of the cases I've  
16 talked about.

17 And we felt we were getting nowhere. It didn't  
18 matter which government was in power, it didn't matter  
19 who was the Minister of Social Welfare or Justice, they  
11.02 20 rejected the complaints. So, we thought, in 1977 the  
21 Human Rights Commission was established, and we saw there  
22 was perhaps an opportunity to go to that body and lodge a  
23 complaint of breaches of the international covenants by  
24 the inhuman treatment, the degrading treatment, the  
25 shocking treatment of those children.

26 So, we made a complaint to the Human Rights  
27 Commission that the State was in breach of the  
28 International Covenant on Civil and Political Rights and  
29 the International Covenant on Economic, Social and  
11.03 30 Cultural Rights in relation to the Treatment of Children  
31 by the Department of Social Welfare.

32 The Human Rights Commission held hearings throughout  
33 1980, and I will refer you to their report of which  
34 you've got a copy. After they listened to all the

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1 witnesses, and they listened to the children from  
2 whatever homes and ex-staff members and current staff  
3 members, and they listened to the current apologists for  
4 the Department. After considering all the information  
5 put before them during the Inquiry they wrote, my  
6 paragraph 59, "The Commission is of the opinion that some  
7 practices and some procedures are of such a nature that  
8 they raise serious and substantial questions relating to  
9 this country's better compliance with the standards set  
11.04 10 out in the Articles of the UN Covenants on Human Rights."

11 And then the three Commissioners, Pat Downey, who  
12 was the original Commissioner, Peg Hutchinson and Hiwi  
13 Tauroa, they spelt out the allegations that were of  
14 particular concern. They didn't find breaches. They  
15 couldn't find breaches but they went as far as they could  
16 and they listed the allegations of particular concern for  
17 the International Covenant on Civil and Political Rights,  
18 Article 7, which refers to cruel or inhuman or degrading  
19 treatment or punishment. They noted the nodding system.  
11.05 20 They noted the arranged boxing matches. The physical  
21 exercising and the physical treatment. The long-term  
22 punitive use of Cell 7 at Owairaka Boys' Home.

23 Article 9 which referred to the right of liberty and  
24 security.

25 They referred to the confinement of children and  
26 young people secure blocks in the absence of legal rules,  
27 regulations, covering the grounds for or the duration of  
28 that detention. Coupled with the lack of any practical  
29 means of seeking independent judicial review of that  
11.05 30 confinement in secure block.

31 Then article 10 which refers to the humane treatment  
32 and respect for the inherent dignity of the person.

33 They listed all those practices that they'd already  
34 listed and then also the admission procedures at

- 30 -

1 Owairaka, the venereal disease testing procedures at  
2 Bollard, the toilet facilities in the secure cells,  
3 particularly when shared, and the isolation in secure  
4 block cells.

5 Then they referred to the rights of minorities, the  
6 lack of any recognition at all of differing cultures and  
7 ethnic backgrounds in the administration of the homes.

8 Then they listed allegations of concern relating to  
9 the International Covenant on Economic and Social and  
11.06 10 Cultural Rights, the standards of the physical and mental  
11 environment in the secure blocks at the children's homes.

12 Then they referred to the lack of education  
13 facilities because I haven't really mentioned it but  
14 there were no teachers or if there were teachers they  
15 never went anywhere near the secure blocks where children  
16 could be held for up to two months.

17 That list of allegations of concern that I have  
18 mentioned was comprehensive and it left absolutely no  
19 doubt that Pat Downey, Peg Hutchinson and Hiwi Tauroa had  
11.07 20 been really impacted by the evidence that had been put  
21 before them.

22 In the end the Human Rights Commission concluded, I  
23 think rather sadly that things had improved. They talked  
24 to the staff and if they were right, we were pleased and  
25 things had perhaps improved. But they also said the  
26 Department had embarked on a programme of innovative  
27 change. We never saw it but the Commission was told  
28 about it. "The Commission was gratified by the  
29 seriousness with which the Department accorded the  
11.08 30 Inquiry". That was all very well but when the report was  
31 made public, it was rejected by the government as being  
32 exaggerated.

33 The Minister of Social Welfare accepted that there  
34 was some pretty hair raising stuff but he criticised the

- 31 -

1 process of the Inquiry. Robin Wilson, who was Head of  
2 Department of Social Welfare in Auckland, he rejected the  
3 report entirely as being based on false complaints.  
4 Arthur Ricketts, who was the principal of Owairaka,  
5 stated the report was untrue, unfair, untrue and biased.

6 So, what the government decided to do, was to have  
7 another look at what was going on right there and then  
8 and setup an Inquiry into Archbishop Johnson and Merimeri  
9 Penfold to look at the current state of affairs in the  
10 homes.

11.09

11 Q. Before we turn to look at that Inquiry, I am wondering  
12 what the view of ACORD was at that time? You had done  
13 your own Inquiry which you said hadn't received much  
14 traction and then we had this response from the  
15 government effectively rejecting the findings from the  
16 human rights position; what was the position of ACORD in  
17 response to that?

11.09

18 A. More of the same. We felt really pleased that the Human  
19 Rights Commission had acknowledged these allegations of  
20 concern but we didn't get any - all we got was a  
21 defensive comment from the politicians and from the  
22 Department. The Department was rejecting it. Robin  
23 Wilson said it was untrue. Well, what he was saying was  
24 what we were saying was untrue, the children were untrue.  
25 And so, I think we were pretty disillusioned at that  
26 stage. So, then when the government took on retired  
27 Archbishop Johnston, who as a retired agent Pakeha male  
28 couldn't be more different and distant from the children  
29 that he was talking about, he had Merimeri Penfold as  
30 well, they did find and were convinced that there had  
31 been some changes but they were not convinced about  
32 solitary confinement and they were concerned at the  
33 continual use of secure. What they said was solitary  
34 confinement cannot be acknowledged as a suitable form of

11.10

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1 punishment in the homes. They said if it's going to be  
2 used therapeutically no-one should be kept in secure for  
3 longer than two days unless gratified by a Committee  
4 consisting of a non-departmental person and psychologist.  
5 Then they recommended a series of rules setting out the  
6 rights of children in detention and that was good, that  
7 was good, they listened to what Pauline Tapp had said,  
8 she was a lawyer, she made submissions to them, and this  
9 led to the drafting of the Children's Young Persons and  
11.11 10 Their Families (Residential Care) Regulations in 1986 and  
11 1987. I think at last, we felt that after a 7 year  
12 campaign by ACORD, Tamatoa, that the worse abuses in  
13 punishments were over.

14 And just as a rather rye note, would say when Robin  
15 Wilson was interviewed a few years later by Bronwyn  
16 Dalley who was writing a history of the department, for  
17 years Robin Wilson had rejected every statement I ever  
18 made, said I was making stuff up, in the end he was  
19 quoted by Bronwyn as saying, "some of it was pretty  
11.11 20 indefensible. I guess the Department shouldn't have  
21 allowed it to happen. With hindsight, a lot of what  
22 ACORD said was right".

23 So, I suppose that was in 1999 a sort of blatant  
24 admission but offered no comfort to the thousands of  
25 children who had gone through and suffered those  
26 conditions.

27 Q. I understand, Dr Sutherland, that ACORD was also made  
28 aware of what was happening at Lake Alice at that time  
29 and you also had some involvement in advocacy in relation  
11.12 30 to those cases. Could we turn, this is at paragraph 66,  
31 just to tell us about your involvement with that work?

32 A. The Adolescent Unit at Lake Alice, which was for the  
33 criminal insane adults, it had an Adolescent Unit opened  
34 in 72 administered by the Palmerston North Hospital



- 33 -

1 board, not far from Whanganui.

2 We first learnt of the existence of it and the  
3 psychiatrist Dr Leeks who ran it when a Department of  
4 Education psychologist, Lynn Fry, came to us and  
5 approached us about the case of Hake. Hake is here, he  
6 is here today and he knows I'm going to talk about his  
7 case.

8 A Commission of Inquiry eventually was setup into  
9 his case and it led to major investigations of Dr Leeks'  
11.13 10 unit and the use and misuse of electroconvulsive  
11 instrumentation and electroconvulsive therapy.

12 So, I want to talk about Hake's case. It was the  
13 case that blew open the whole dreadful story of what was  
14 happening at Lake Alice,

15 Hake came to New Zealand aged 6 from Niue with his  
16 grandmother. He got into a bit of trouble for  
17 shoplifting leading to Children's Court and he was made a  
18 State Ward and placed in the Owairaka Boys' Home. And  
19 from there, he was sent to the Lake Alice Adolescent Unit  
11.14 20 when he was 13. Within a week, he had received three  
21 electroconvulsive therapy treatments within the first  
22 week and over the next 8 months he received a further  
23 five treatments. Hake later described the ECT treatments  
24 to me, he explained that while sometimes he was sedated,  
25 given an anaesthetic before the shock, on several  
26 occasions he had it straight, that is the word that was  
27 used when you have it without any anaesthetic. He wrote  
28 to his mother and said 'It hurts when I have it. Dr  
29 Leeks said you get this for having done this and that  
11.15 30 wrong. They did this to punish me'.

31 At the time, nobody explained to Hake's primary  
32 caregiver, his grandmother, who needed a Niue  
33 interpreter, or to his parents where he was being taken  
34 to. They never knew he went to Lake Alice or what might

- 34 -

1 happen to him when he got there. The first they knew was  
2 when he wrote a letter home written in Niue and it said,  
3 "I have been given electric shock by the people Mum. The  
4 pain is very bad."

5 So, we publicised the case, front page news it was  
6 at the time, because nobody knew that this stuff was  
7 happening. And a Magistrate William Mitchell was  
8 appointed to undertake an Inquiry. And during that  
9 Inquiry, there was a teacher at Lake Alice called Anna  
11.16 10 Natusch and she gave evidence. She taught Hake for a  
11 year at Lake Alice and, as I wrote to Sir Guy Powles, she  
12 really blew the whole thing wide open. We had heard the  
13 psychiatrist Dr Leeks give a super smooth story about the  
14 place, and that was really his story about the  
15 therapeutic use the ECT, the value of it. On the other  
16 hand, Ms Natusch gave details with names of ECT used for  
17 punishment and she gave as an example Hake, he got six  
18 Ds, you got Ds for bad behaviour, six Ds for bad  
19 behaviour earnt an ECT. This wasn't therapy, this was  
11.17 20 punishment. And injections were used as threats of  
21 punishment or they might be locked because Lake Alice  
22 unit had a solitary confinement cell that the children  
23 could be locked up there.

24 In Mitchell's report, Robert Ludbrook who is here  
25 today was our lawyer and he focused on the issue of  
26 consent but there was no consent. And in the end,  
27 Mitchell in his report equivocated, the question was  
28 whether the shocks were administered with or without  
29 authority. Mitchell said it's not easy to find out in a  
11.17 30 straightforward way whether ECT was administered with or  
31 without authority in the first period. When the boy had  
32 more ECT later, Mitchell did say there was no express  
33 authority given by the family or by the Social Welfare  
34 officer for ECT to be administered.

- 35 -

1           But then Mitchell went on to say, to let them off  
2 the hook by saying I consider the hospital was entitled  
3 to imply in all the circumstances that the treatment  
4 should continue if the need arose for it.

5           Looking back on it from a distance, Hake's case  
6 exemplified everything that was worst of institutional  
7 racism prevalent in the 1960s and 1970s. Hake and his  
8 grandmother who had formally adopted him at birth, they  
9 came in 67, they couldn't speak English, they weren't  
11.18 10 familiar with the social and government processes, they  
11 went to Court. There were no interpreters in those days.  
12 From the moment of their arrival in New Zealand from  
13 Niue, their encounters with the education, Police, Social  
14 Welfare, were all characterised by misunderstanding and a  
15 lack of understanding which culminated in Mitchell's  
16 report which demonstrated the glaring failure of various  
17 institutions that dealt with Hake and his grandmother.  
18 Those institutions, their failure to understand the  
19 cultural divide between themselves of this troubled  
11.19 20 Niuean family. Later on Anna Natusch wrote about this in  
21 a memoir. She taught at Lake Alice for a year, "By the  
22 time I had seen out my teaching term at Lake Alice, I was  
23 to gain an insight into Nazism. It is one thing to call  
24 an episode in medical history 'a medical experiment' and  
25 another thing to tolerate downright cruelty, such as I  
26 saw occurring in the psychiatric situation at the Lake  
27 Alice Adolescent Unit. ECT to be administered without  
28 anaesthetic upon children as a form of aversion therapy,  
29 is a horrifying episode in New Zealand medical history".

11.20 30 Q. Thank you, Dr Sutherland. I just wonder, turning to our  
31 Chair, I know we're slightly ahead of time but if this  
32 might be an appropriate moment to take the morning  
33 adjournment?

34 **CHAIR:** Yes, I think this is a good time to do that

- 36 -

1 because there are other specific instances in the  
2 brief. Madam Registrar, can we take the morning  
3 adjournment, please?  
4

5 **Hearing adjourned from 11.20 a.m. until 11.40 a.m.**  
6

7 **MS SPELMAN:**

8 Q. Dr Sutherland, just before the break you had shared with  
9 us the powerful testimony in relation to your work. I am  
11.39 10 conscious you have some other case studies in your brief  
11 but in the interests of time and the other material we  
12 are going to cover, can you pull out some of the key  
13 points you want to make in relation to some of the other  
14 case studies?

15 A. Yes, sure. The publicity that was given to Hake's case  
16 brought forward other parents and children to talk to me.  
17 There were two boys who I spoke to and I'll summarise the  
18 most significant information that they gave me, and it  
19 related, they both were given ECT. In neither case, were  
11.39 20 the parents consulted. But Hake had had that. What  
21 these boys told me was the use of the ECT equipment for  
22 punishment. I will just describe what one boy said. He  
23 said, "The nurses used to put us all in the dayroom after  
24 school on Fridays. They called out the boys whose names  
25 were written on a bit of paper. They were the kids who  
26 had played up or been naughty, like not listening to the  
27 House Masters. They were taken to the medical room and  
28 the electrodes were placed on either side of their knees.  
29 They were given a shock as punishment. We could hear  
11.40 30 them scream. I knew two to three boys who had it."

31 This is the electrodes which are used on the temples  
32 for the therapeutic delivery of ECT were being used on  
33 the legs to give shocks for absconding or whatever.

34 A second boy said that that had happened to him. He

- 37 -

1 had had the shocks as punishment. He was one of the ones  
2 who have had it on the legs. His account to me was the  
3 first time that it had been expressed in detail. His  
4 name was called out and he was taken to the medical room.  
5 "They sat me on a chair. I watched them plug in the  
6 machine. They put the electrodes, one on each side of my  
7 knee. They gave me a shock, turned it off and on. It  
8 jolts you out of the chair. The chair fell over and I  
9 rolled around on the floor until they turned it off. I  
10 got it twice on the knee, once for whistling at one of  
11 the nurses and once for smoking".

11.41 12 That boy also had ECT on the head as a punishment.  
13 Now, according to his account, it was administered  
14 straight by the nurses without any medical supervision,  
15 "I was fighting with another boy, play fighting. The  
16 nurses took me to their office to talk to me. They took  
17 me the medical room. They told me they were going to  
18 give it to me for fighting. It was on Good Friday, I  
19 remember it was a holiday and Dr Leeks wasn't there. No  
11.42 20 doctor was there".

21 So, what it shows is there was no medical  
22 supervision, there was no pretense that this was therapy.  
23 It was just the use of some shocks for punishment.

24 Later on, we complained to Dr Mirams who was the  
25 Director of Health and he got an investigation underway  
26 with an Auckland lawyer with Gordon Vial who was the  
27 inspector of the mental hospitals. They did believe that  
28 possibly there was some criminal behaviour involved in  
29 what we called torture of the children. But in the end  
11.43 30 the Police investigated and nothing came of it, though I  
31 think, and I hope, it's still an ongoing story.

32 Meanwhile, Sir Guy Powles, he launched an  
33 investigation into another boy's case and I won't go  
34 through that but simply say that what Sir Guy said was

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1 "there is considerable evidence that both medical and  
2 psychiatric procedures were imposed on the by against his  
3 will without his consent or consent of his parents or the  
4 social workers responsible for his guardianship".

5 Taking in all of the boy's circumstances, Sir Guy  
6 concluded, paragraph 94, "the cumulative effect of a  
7 number of the actions and decisions of officers of the  
8 Departments of Health and Social Welfare was, in my  
9 opinion, to cause the boy a grave injustice."

11.44 10 Now, that report was never made public. You got it  
11 because I got it and I've passed it on to you but it was  
12 never made public, although Sir Guy, his summary of his  
13 report was made public. But again it was denied by the  
14 Minister of Social Welfare or Health at the time. By  
15 1978, enough publicity had come out for the unit to be  
16 closed and Dr Leeks in 1977 packed up and went to  
17 Australia.

18 I just want to finish my story about Lake Alice by  
19 referring to Sir Rodney Gallen's report. In 1999, there  
11.44 20 was a class action, Hake was part of it, and Helen Clark  
21 gave an apology. What Gallen wrote in his report, which  
22 again I don't know if it was made public, he said he  
23 could have just dolled out the money but rather he read  
24 the stories and listened to the stories of the children  
25 who had been through Lake Alice. He heard "statement  
26 after statement of the pain associated with the  
27 administration of ECT, of the screaming which was plainly  
28 audible to other children in the unit when ECT was being  
29 administered and the sight of those who were to receive  
11.45 30 the treatment being dragged screaming and struggling  
31 upstairs to the room where the treatment was carried  
32 out."

33 I wrote Gallen was left aghast because he said, "ECT  
34 delivered in circumstances such as I've described could

- 39 -

1 not possibly be referred to as therapy. And when  
2 administered to defenceless children can only be  
3 described as outrageous in the extreme. The best summary  
4 I can make is the children lived in a state of extreme  
5 fair and hopelessness".

6 It was, if ever there was to be a judgement on what  
7 happened at Lake Alice between 1972 and 1978, that was  
8 it.

9 Q. I am conscious, Chair, just for the benefit of those  
11.46 10 watching, that the Lake Alice evidence we're hearing  
11 today from Dr Sutherland is fairly limited but given we  
12 are at our Contextual Hearing, just to note this is  
13 something the Commission will be returned to in later  
14 investigations.

15 **CHAIR:** Yes, we know that, thank you.

16 **MS SPELMAN:** Thank you, Sir.

17 Q. Dr Sutherland, I know you also wanted to share with us  
18 today the work that you did in relation to children who  
19 were remanded into adult prisons but I will just check  
11.46 20 with you if there was anything else in relation that Lake  
21 Alice before we move on to the next topic?

22 A. No.

23 Q. Okay. Turning then to the practice of children being  
24 remanded into adult prisons, I understand that was  
25 another area ACORD worked. Can you tell us how you came  
26 to be involved?

27 A. As soon as we got involved with children in the Courts in  
28 Auckland particularly they were being remanded in Police  
29 custody, and if they were then they ended up in Mt Eden  
11.47 30 prison in the remand wing. Not everybody would be able  
31 to remember how dreadful Mt Eden Prison was in that way.  
32 The remand wing was probably the worse. And I publicised  
33 a case at the time of a boy called Arapeta, 15 year old  
34 arrested on several charges of house breaking. When he

- 40 -

1 was finally sentenced, he'd been remanded and re-remanded  
2 to Mt Eden prison on four successive occasions by four  
3 different Magistrates for a total of almost four weeks.  
4 He shared a cell with a 19 year old alleged rapist, mixed  
5 freely in the showers and lavatory block with remand and  
6 sentence prisoners and mixed with prisoners under the age  
7 of 21. There were no separate facilities for children.

8 And we thought, we drew that case to the Royal  
9 Commission sitting at the time Sir Justice Beattie and we  
11.48 10 challenged anyone to deny this boy was not subject to  
11 cruel and unusual punishment.

12 Guy Powles started an Inquiry into what was  
13 happening to the children in prison. There were many  
14 cases that were made public but in the end, he didn't  
15 make it public because he retired and the Ombudsman who  
16 came after him wouldn't but we did release a draft report  
17 that we were given in confidence because it contained  
18 factual material that we thought was important people  
19 should know what Sir Guy had found.

11.49 20 In particular, we were interested in the figures  
21 that he gave in relation to the remanding of children,  
22 Maori children to Mt Eden prison.

23 The Justice Department picked up on this and then  
24 they published their own report written by Mel Smith who  
25 went on to become Secretary of Justice and Ombudsman. He  
26 gave some more revealing statistics. I won't go into his  
27 report other than to say that he showed one boy was held  
28 on remand in an adult prison for 44 days and another one  
29 for 71 days. The boy held for 44 days was ultimately  
11.50 30 sentenced to probation. He didn't get a custodial  
31 sentence. And when Mel Smith investigated the figures,  
32 the number of children incarcerated in the prisons had  
33 gone up to 356, 63% being Maori.

34 I want to just conclude this section by talking



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1 about some cases that we drew to attention of the new  
2 Minister of Justice Geoffrey Palmer because we thought  
3 that Palmer might do what Dr Finlay had never done, which  
4 was to address this issue squarely and sensitively.

5 So, there were four cases. I will skim through them  
6 quickly. One was a boy in Kaitaia, a distant Court from  
7 Auckland with a Judge who went round every month. He was  
8 in Court for - a State ward, he was in Court for a  
9 relatively minor offence, remanded for 4.5 weeks, given  
11.51 10 bail, except his mother couldn't come up with the bail,  
11 so nobody did, so he was shipped off to Mt Eden from  
12 Kaitaia for the 4.5 weeks that he would have to wait  
13 until the Judge went back to Kaitaia and he went go back  
14 up to the Kaitaia for the case to be heard.

15 I found him in Mt Eden Prison. By this stage I was  
16 allowed into Mt Eden, the superintendent would let me go  
17 in and see any of the boys in there from the Children's  
18 Court because they didn't particularly want the children  
19 in Mt Eden anymore. So, I went in and saw the boy,  
11.51 20 George, I found him a lawyer and we got him out on bail  
21 straight away.

22 There was another boy, Robert, I saw a week later.  
23 We got a lawyer, Ross France, who represented him. I  
24 wanted to quote from what Ross France wrote in an  
25 affidavit, "Robert told me he had been on remand in  
26 Mt Eden for the previous week. He was most upset about  
27 the possibility of having to return there. He said he  
28 had been stood over by a number of older inmates who had  
29 tried to force him to commit sexual acts on him and then  
11.52 30 assaulted him on a number of occasions when he refused to  
31 comply with their demands. They took his clothing,  
32 leaving him without enough to keep warm. He was agitated  
33 and threatened to commit suicide. He said if he had to  
34 return to Mt Eden he would get another razor blade and

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1 would kill himself".

2 There was another boy called Paul. I will use his  
3 example to exemplify how disgusting the situations were  
4 that these children were held in.

5 He was not able to wash his clothes, so by the time  
6 he had his second Court appearance he spent two weeks in  
7 the same underwear, jeans, sweatshirt but it was worse  
8 than the cell. Aged 15, he was considerably younger than  
9 the cell mates that he shared with, two of whom were 18  
11.53 10 and two were 19. Being so much younger he "hated the  
11 toilet bucket and held onto his shit during the 14.5  
12 period he was locked in his cell from 4.30 p.m. to 6.00  
13 a.m. and then he went to the lavatory in the exercise  
14 yard with adult remand prisoners because I didn't like  
15 doing it in front of my cellmate".

16 And they had to eat in the cells, they had a plastic  
17 bucket that they shared.

18 The last case was a boy called Spencer. He suffered  
19 all those same things but he got into a fight and Mt Eden  
11.53 20 Prison had a punishment cell for remand prisoners, mostly  
21 for adult remand prisoners, it was called The Well. It  
22 was under the floor. It entailed 23 hours solitary  
23 confinement in one day. So, 23 hours solitary  
24 confinement but to add to the punishment his mattress was  
25 taken from the cell each morning and given back at 4.00  
26 in the afternoon, leaving him to lie or sit on the bare  
27 bed or floor all day with one comic to read, he was  
28 allowed no visitors.

29 And we wrote to the Minister and said this  
11.54 30 constituted barbaric and intolerable punishment,  
31 especially for a boy of his age.

32 Within a week, Geoffrey Palmer setup an Inquiry and  
33 requested Judge Augusta Wallace inquired into the four  
34 cases and others, she went to the prison, she looked at

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1 the punishment cell, The Well, and in the end she  
2 concluded, she accepted the evidence given by the boys.  
3 She was critical of the failure of Social Welfare, I mean  
4 these were State wards, they were supposed to come under  
5 the purview of the Department of Social Welfare. They  
6 never saw a social worker.

7 Q. Can I ask, Dr Sutherland, in your time when you were  
8 visiting these boys and effectively facilitating legal  
9 representation, were there any social workers that you  
10 saw or knew of going into the prison?

11.55 10 A. None. They didn't see the Chaplin, they didn't see the  
11 social worker, Maori Affairs, I don't know whether they  
12 had social workers, Ngati Whangai might have assisted  
13 then, they saw nobody, they saw nobody. In fact, I  
14 arranged bail for some. They wereailable, one of them  
15 was, I got him out because I signed the surety. That's  
16 what Judge Wallace was very critical of, the Department  
17 of Social Welfare's failure to assist the boys even  
18 though three of them were State wards. She singled out  
19 the toilet facilities with particular criticism. Every  
11.56 20 boy told her how much they hated to use a plastic bucket  
21 in a shared cell. For the adolescents, she wrote, "The  
22 use of a potty is an embarrassing and degrading  
23 experience". She noted there was no running water in the  
24 cells in the remand cells at Mt Eden, nowhere for the  
25 children or the remand prisoners, but these were  
26 children, to wash their hands.

27  
28 And then of course, she accepted Robert's evidence  
29 that he had been sexually harassed and assaulted. She  
11.56 30 went on to say new inmates were subject to a degree of  
31 intimidation or stand-over tactics by the older more  
32 experienced remandees. She went on to say in Mel Smith's  
33 report, he found in his statistics that there were  
34 children of the age of 13, boys and girls aged 13 who

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1 were remanded in one or other of the country's prisons,  
2 perhaps not Mt Eden but maybe Mt Crawford or Addington.  
3 Judge Wallace said she agreed with everybody that  
4 children should not be remanded in Mt Eden anymore and  
5 she suggested from that moment they should be held at the  
6 secure facility at Weymouth Girl's Home and Geoffrey  
7 Palmer agreed with her recommendations and passed them  
8 on.

9 But it would be another 5 years until, that was in  
11.57 10 84, justice Wallace's report, not until 1989, with the  
11 passage of the Oranga Tamariki Act that the detention of  
12 under 17 year olds actually came to an end, was statutory  
13 ended. 17 years after John Hippolite and me of the  
14 Nelson Maori Committee had started our campaign in 1970.

15 I want to conclude, and I am concluding now, with  
16 something that was brought to my attention just a week  
17 ago. You are not the first Royal Commission to look into  
18 the mistreatment of children. There was a Royal  
19 Commission in 1900 into the Stoke Industrial School in  
11.58 20 Nelson, turangawaewae. It was run by the Catholic  
21 Church. 224 boys from aged 9-15 years. Now, a Royal  
22 Commission was established because some people from the  
23 Nelson community complained about the treatment of the  
24 children in the Stoke institution. And particularly they  
25 complained about the flogging which was administered as  
26 thrashing on the hands with a piece of supplejack. In  
27 some cases the Commission said with great severity, up to  
28 40 strokes, 20 on each hand. Previously, there had been  
29 flogging on the body which verged on cruelty. Then there  
11.59 30 was the flogging. Then the cell punishment, the children  
31 were locked in solitary confinement in a totally bare  
32 tiny dingy cell with just a tin potty for periods ranging  
33 from 3 days to 3 months. Does it sound familiar? This  
34 was 1900. And then during this confinement, the

- 45 -

1 thrashing on the hand would continue. Then there were  
2 lengthy periods of painful kneeling. We've heard about  
3 lengthy periods of cutting the lawns of the Owairaka  
4 Boys' Home with a pair of shears and there was inadequate  
5 clothing. So, 75 years later, that was 1900, 75 years  
6 later I am reminded of the canings, strappings and the  
7 flogging at the Owairaka Boys' Home and the solitary  
8 confinement. I am reminded of the fact that nothing  
9 changed; it was the Catholic Church in 1900 and it was  
11.59 10 the State in 1975.

11 I leave all this with you. I just hope that my  
12 submission will provide a backdrop against which the  
13 testimonies that you are going to hear from the children  
14 that I have been talking about, incarcerated in these  
15 institutions in the 70s and 80s and before, I want that  
16 to be a backdrop which you can view them.

17 I've given a bigger picture, I hope, which I hope  
18 will validate their stories and just give an indication  
19 of the scale of the injustices and the scale of the abuse  
12.00 20 and the scale of the racism that was the hallmark of  
21 those institutions in the 70s and 80s. Kia ora.

22 Q. Kia ora, Dr Sutherland. Chair, I don't have any further  
23 questions for Dr Sutherland. I have had some discussion  
24 with my learned friend Ms Skyes who may have some  
25 questions.

26 **CHAIR:** Thank you. Ms Skyes, do you wish to ask  
27 Dr Sutherland some questions?

28 **MS SKYES:** Since Mr Sutherland's evidence was made  
29 available to us, there's a number here from Nga  
12.01 30 Tamatoa who were involved that contacted me. So,  
31 when we got the brief on Sunday we were fortunate  
32 to have the assistance of Professor Galsy who was  
33 also very much involved in the report and I have  
34 now managed to get some original documents, some of

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1           which were referred to by the witness, some haven't  
2           been. What we would like to do is have those  
3           placed on the record of Inquiry for your future use  
4           and your leisure. They are quite fragile, they are  
5           originals, so we thank the Commission staff for  
6           photographing them for us. They haven't been made  
7           available for other counsel yet but if we are going  
8           to use them, that's an appropriate first step.

9           I will turn to, we can't thank Oliver enough  
12.02 10          for the work he's done for Maori. He has been  
11          fearless and courageous ever since he and John  
12          Hippolite began their journey for justice and we  
13          hope the information he's brought will be assisted  
14          by the information that others have collated for  
15          this Commission. He is an inspiration for the  
16          kinds of justices that Nga Tamatoa, certainly today  
17          we are represented by Rebecca Evans and Hilda  
18          Tarawira and Donna Matahaere-Atariki, they have  
19          come here to stand in solidarity with him and we  
12.02 20          can't again say enough for his efforts to ensure  
21          that Maori children are treated with respect and as  
22          the taonga that they are. If I could make that  
23          statement at this time and ask, there is a yellow  
24          folder which will ultimately be placed on the  
25          record for everybody's perusal.

26       **CHAIR:** Thank you. Ms Spelman, do you have a view about  
27          the proposal made by Ms Skyes that you would like  
28          to offer?

29       **MS SPELMAN:** Yes, Sir. I support that and have had some  
12.03 30          discussions with Ms Skyes about those documents  
31          which I have now handed to Madam Registrar and I  
32          can make those available electronically to the  
33          other counsel, Sir.

34       **CHAIR:** Thank you. Are there any other counsel wishing

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1 to cross-examine? No. There being nothing, may I  
2 then ask my colleagues, are there any questions any  
3 would like to have of Dr Sutherland?  
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**DR OLIVER SUTHERLAND**

3

**QUESTIONED BY COMMISSIONERS**

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5

6

**COMMISSIONER ERUETI:** I have a couple of brief

7

questions. One, I wanted to ask about Lake Alice

8

and the work that ACORD carried out, the

9

investigative work they carried out during that

12.04 10

time. It seemed from your brief of evidence that a

11

large number of the children that ended up in Lake

12

Alice were coming from residences, social homes in

13

the area. I think you speak of Hokio and

14

Holdsworth and Owairaka. Was that a pattern that

15

you saw through your investigation?

16

A. It was. I didn't highlight it too much in what I said

17

but certainly from, I mean they came from Owairaka, the

18

psychiatric hospitals in Auckland but they sent them down

19

to that unit at Lake Alice, and from Hokio, Owairaka,

12.05 20

Epuni, I am sure if you talked to children from some of

21

those other institutions, they knew that going to Lake

22

Alice was a possibility. In fact, I think it's in my

23

main evidence. Dr Leeks visited some of the homes and

24

saw some children and I think that was a bit of a pathway

25

for them through to his unit.

26

**COMMISSIONER ERUETI:** Yes, you do refer to that in your

27

evidence. I wondered whether, in your experience

28

in your work with ACORD, whether these children

29

were sent to Lake Alice specifically because they

12.05 30

were difficult, the homes characterise them as

31

being too difficult to handle, to control, and the

32

move was to punish them?

33

A. I think that could have been the case. I mean, most

34

children did not go to Lake Alice, the naughty ones, the



1 ones alleged to be naughty. So that, there was something  
2 about the behaviour of the ones who ended up at Lake  
3 Alice. Maybe they were just too difficult to control,  
4 maybe they ran away, they just ran away too often. It's  
5 hard to know what was going through the minds of the  
6 managers of those welfare homes and their interaction  
7 with the Health Department but I think it must have been  
8 the case that the staff at Owairaka, they would know,  
9 well, if he's that bad let's send him down to Lake Alice  
12.06 10 and Dr Leeks will fix them. I mean, I think it was  
11 probably as crude as that.

12 **COMMISSIONER ERUETI:** Kia ora. A question about the -  
13 it's at the beginning of the pipeline as you  
14 describe it, and your work is mostly from the 1970s  
15 on until mid 1980s, it seemed from your experience  
16 it was mostly that first point of contact where  
17 children are being apprehended is by the Police. I  
18 am trying to get a sense of the context. So, you  
19 have emphasised that disproportionate with the  
12.07 20 majority cases of Maori being apprehended and  
21 brought before the Courts. The context is Maori in  
22 an urban setting after being shifted from the  
23 tribal area. In an urban setting, there seems that  
24 there is a vigilant Social Welfare service in  
25 apprehending children in the 1960s. And then in  
26 the 70s and 80s we see a shift towards the Police  
27 apprehending children. Is that how you would  
28 characterise the context?

29 A. A bit of a complicated question, I think. What was  
12.07 30 happening, was children could end up at Owairaka any time  
31 day or night. If the cops picked them up because they  
32 were wandering around town, they might deliver them there  
33 if they were a State Ward. Or if they thought they were  
34 into some misbehaviour, then they would pick them up and

1 then they would make that decision whether to prosecute  
2 them or not.

3 I mean, so I think there was always the option for  
4 children to end up in the Social Welfare homes in the 50s  
5 and 60s. But you're saying in the 70s, maybe there was  
6 more, it was more a result of the Police and sort of  
7 misdemeanour pathway. That might be the case, I don't  
8 know. You'd need to talk to people who knew more about  
9 what was happening actually in terms of the entrance into  
12.08 10 the Social Welfare because a lot of the children in those  
11 homes, they were not there because they were young and  
12 criminal, they were there because they were alleged to be  
13 not under proper care and protection, NUPC or whatever it  
14 was. Perhaps the majority were like that. They were all  
15 jumbled in together. It didn't matter. This is the 1900  
16 Royal Commission and that was one of the issues back then  
17 that was being complained about, was that at that Stoke  
18 school kids from the Courts and kids whose parents had  
19 died or something were all jumbled in together and all  
12.09 20 got the same treatment.

21 **COMMISSIONER ERUETI:** You have a clear mixing of  
22 children from the Care and Protection and those  
23 with the Justice background in homes?

24 A. There were, yes.

25 **COMMISSIONER ERUETI:** Can I also ask about ACORD's  
26 investigation into the homes about - you explained  
27 to us about abuse and neglect that you recorded but  
28 the circumstances that allowed this to happen. For  
29 example, oversight, accountability.

12.09 30 A. What I haven't talked about today or in my main  
31 submission much, was for instance at Owairaka, the  
32 majority of the staff were ex-Army and we found  
33 advertisements for staff for House Masters at Owairaka  
34 that said a Military background would be a benefit. And

1 the whole place was run on Military lines. They got  
2 these people who were probably thrown out of the Army and  
3 they became a House Master at Owairaka, so that there was  
4 a culture amongst the House Masters of punitive  
5 Militaristic ways of dealing with children. These were  
6 children who were distressed. It was the last, sort of,  
7 treatment that they needed and the nodding system was  
8 probably the ultimate example of it. Speech was not  
9 allowed.

12.10 10 **COMMISSIONER ERUETI:** Kia ora. It seems also that  
11 throughout the 1970s that you have a shortage of  
12 beds in homes in Auckland?

13 A. Yes.

14 **COMMISSIONER ERUETI:** Vast numbers of children coming in  
15 and high turn over.

16 A. Yes.

17 **COMMISSIONER ERUETI:** Can you explain the circumstances  
18 that were leading to this?

19 A. Well, there were just too many children coming in. I  
12.11 20 mean, again I can't remember if it's included in my main  
21 evidence but at the Girls' Home, they ran out of secure  
22 cells and so they used the art room and they would cram  
23 up to 7 or 8, they just dragged in mattresses. The art  
24 room could be locked, so it was a sort of standard, it  
25 was an extra secure cell but there could be 6 girls in  
26 there and one toilet bucket because it was an art room,  
27 it didn't have a built in lavatory or anything, so they  
28 just had a bucket and they would be kept in there.

29 So, the homes were swamped because what was  
12.11 30 happening, I suppose, was that the Courts were busy  
31 channelling the children off to the welfare homes and the  
32 Social Welfare just had to take them. They couldn't -  
33 unless they were bailed but if they were State wards and  
34 there was nowhere for them to go, they had to go to the

1 homes. So, if it was crowded, it was simply because the  
2 numbers were too great and the facilities were too  
3 limited. If you were going to lock up kids, I don't  
4 advocate that at all but, I mean, if you're going to, you  
5 need enough cells I suppose and they just ran out of  
6 cells.

7 **COMMISSIONER ERUETI:** Kia ora.

8 **CHAIR:** Thank you, Dr Erueti.

9 **COMMISSIONER GIBSON:** Thank you, Dr Sutherland, you've  
10 painted a pretty comprehensive picture of what's  
11 gone on over the years and how, I suppose,  
12 underwhelming the response has been at times when  
13 the issues have come to light. The challenge about  
14 some Inquiries which exonerated people, Inquiries  
15 that have become weak kneed and it is a challenge  
16 for us to act on this.

17 You made the comment, I think, around Lake Alice's  
18 justice issues still would be resolved. In the mix of  
19 things, a failure of a number of individuals, systems  
12.13 20 failures, practice of the day, what kind of things do you  
21 still think need to come out of this and be resolved?  
22 A. For Lake Alice, there's got to be an Inquiry. There's  
23 never been an Inquiry. Into this case or that case or  
24 whatever, the comprehensive picture of what happened, how  
25 were staff allowed to give shock treatment to children  
26 with no doctor there? Use the electrodes on the head?  
27 How did that happen? These are the unanswered questions.  
28 Where are the bloody staff? They're still alive, some of  
29 them, these people. I think Dr Leeks is still alive. I  
12.14 30 think Dr Morims might be. Some of the nurses, they were  
31 called. That's what needs to happen. I mean, it's not  
32 your job to do it, it's the job of a specific Inquiry  
33 into a terrible, terrible period in the treatment of  
34 children in the country.

1 **COMMISSIONER GIBSON:** Thank you.

2 **COMMISSIONER ALOFIVAE:** Dr Sutherland, thank you very,  
3 very much for the meticulous way in which you've  
4 outlined some of those examples and the details  
5 around numbers, in particular around Maori. I'd  
6 like to ask you some questions around the Pasifika  
7 numbers if that's possible. You made the comment  
8 earlier that actually they weren't well recorded or  
9 they might have been lumped in with Tauwiwi and  
12.15 10 maybe with Maori as well?

11 A. Yes, when you look at the Justice Department's  
12 statistics, I have a copy here, there is no mention of  
13 Pacific children at all, absolutely none. So, you can't,  
14 we weren't able to get any picture of the scale of the  
15 impact of these punishments or treatments on Pacific  
16 children.

17 **COMMISSIONER ALOFIVAE:** Okay. But the fact that you had  
18 the fabulous support of both Nga Tamatoa and  
19 Polynesian Panthers give us a great sense of hope  
12.15 20 there was a lot of activity going on back in the  
21 day. Because you said they were also monitoring  
22 the work around what was going on?

23 A. Yeah, that's right. We did and I don't know, sort of,  
24 where all of that detail ended up. What I do know is in  
25 a number of the case histories there are Rarotongan  
26 children, Samoan children, Pakeha, Nuean, plenty of  
27 Pacific children in the system at that time. But in  
28 terms of you're asking me to quantify it, you know I  
29 can't do that and that would be a whole research topic in  
12.16 30 itself, probably something that should be done.

31 **COMMISSIONER ALOFIVAE:** Thank you. And Hake and his  
32 family, at para 73, you've summed it up really well  
33 and it's my sense actually that that was the  
34 experience of many Pacific early arrivers in

1 New Zealand around the disjointed system and lack  
2 of appreciation around the cultural divide between  
3 things Pakeha and things Pacific. Was that your  
4 sense also of the young Pacific people that were  
5 coming through into your purview?

6 A. Well, it was and particularly for their parents. The  
7 '70s, as you know, was a time of arrival from the Pacific  
8 and the Pacific communities were growing but there was no  
9 evidence that any of the systems wanted to acknowledge  
10 that or understand the particular needs, so there were no  
11 interpreters in the Courts. Interpreters didn't come in,  
12 you will see that in my main submission, we did a big  
13 sort of campaign to get interpreters in the Courts but  
14 that didn't come in until the late 70s. So, with cases  
15 like Hake's, I used that as an example because the  
16 education system didn't understand him. He wasn't  
17 stupid, far from it. And none of the systems understood  
18 him and they couldn't communicate with his main caregiver  
19 who was his grandmother. Mitchell spoke to his parents  
20 and said there's no need, and complained I was making a  
21 fuss about interpreters and Mitchell said no need because  
22 I can talk to the parents. The point was Hake's  
23 caregiver was his grandmother, there was no understanding  
24 of that.

25 **COMMISSIONER ALOFIVAE:** Thank you. I want to refer to  
26 your table in your para 71 which is where you  
27 highlighted the number of 116,595 of which 41% of  
28 those children were Maori. This might be a  
29 sensitive question and please feel free you don't  
30 have to answer but can I flip it? Had those  
31 children, because you made the comment that  
32 irrespective of who was in government it seemed  
33 that nobody really cared or wanted to take up the  
34 travesty of the statistics you were putting before

1 them. Had those kids been of what I would refer to  
2 as Palangi decent or European decent, do you think  
3 you might have had a different response?

4 A. I'm sure we would have, I'm sure we would have. The  
5 point was, these figures were not, stark as they are,  
6 they were not a secret. They were published by the  
7 government themselves. Anybody could have bloody well  
8 analysed them and done the analysis we did and thought  
9 what are the implications of this? So, you're right, if  
10 the thing was flipped the other way, I'm sure there would  
11 have been an outcry.

12 **COMMISSIONER ALOFIVAE:** Thank you, Dr Sutherland, no  
13 further questions.

14 **COMMISSIONER SHAW:** Dr Sutherland, I have no question  
15 for you but I was struck by the fact that you said  
16 at the beginning of your evidence that no-one is  
17 looking and I want to thank you for looking. Thank  
18 you.

19 A. Thank you.

12.19 20 **CHAIR:** Thank you, Dr Sutherland. The example shown by  
21 your tenacity over the years is remarkable. Thank  
22 you.

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**SIR KIM WORKMAN - AFFIRMED**

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**EXAMINED BY MS SPELMAN**

4

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6 **CHAIR:** Good afternoon, Sir Kim. In terms of the  
7 Inquiries Act, I'm required on behalf of the  
8 Commission to ask you (witness affirmed).

9 **MS SPELMAN:**

12.21 10 Q. Sir Kim, before we begin, if I could just ask you to  
11 check in the folder before you, we have a copy of the  
12 brief that you've prepared for the Commission which I  
13 understand is signed on the last page?

14 A. Yes, I do.

15 Q. And could you confirm the statement is correct, to the  
16 best of your knowledge and belief?

17 A. Yes.

18 Q. Thank you. Sir Kim, if we could start, I know you will  
19 be well-known to some here, but just with some details  
12.21 20 about yourself?

21 A. (Speaks in Te Reo Maori). Now, well I've had the good  
22 fortune to wander about the public sector for many years  
23 in a range of occupations, each of which has provided a  
24 different perspective.

25 I joined the Police in 1958 as a Police Cadet and  
26 apart from a 3 year absence between 1962 and 1965, I  
27 remained in the Police until 1976. For 8 of those years  
28 I was a Youth Aid Officer and in 1972 I was appointed as  
29 a Deputy National Director of Youth Aid, responsible for  
12.24 30 training and development.

31 Between 1976 and 1983, I was a Senior Investigator  
32 in the Ombudsman's office with the primary responsibility  
33 for dealing with complaints from prisoners, psychiatric  
34 patients and complaints against Police.



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1           In 1983, as Manager of the Social Services branch in  
2           the State services Commission, I worked with the late  
3           Rangitihi (John) Rangihau on a review of Matua Whangai  
4           and later as an adviser to the Puao-te-Ata-Tu Committee.

5           Subsequent positions in the Department of Maori  
6           Affairs between 1986 and 1989, and as Assistant  
7           Secretary, Penal Institutions from 1989 to 1993 provided  
8           further insight into the treatment of children and young  
9           people, their removal into, and abuse, while in  
12.25 10          institutional care.

11        Q.    I want to start, Sir Kim, by asking you about your time  
12           in the Police. As you know, the Police are within the  
13           scope of this Inquiry in terms of abuse in care?

14        A.    Yes.

15        Q.    And I understand some of your first experiences were when  
16           you were a Youth Aid Officer visiting Kohitere. Can you  
17           tell us about what you saw and witnessed there?

18        A.    Yes, I started visiting Kohitere in 1971 when I was a  
19           Youth Aid Officer. I would spend 3 days a month there  
12.26 20          doing group work with the boys who were due for release.

21           Nothing I had encountered up until that time  
22           prepared me for it. It had been established in 1950 to  
23           rehabilitate male offenders aged between 14 and 17 and  
24           its programme had a strong work focus, mostly centered on  
25           farming and forestry. Some secondary schooling was  
26           available for selective participants but the number of  
27           resident beds had increased from a maximum of 55 in the  
28           1950s to 110 in the early 1970s with about the same  
29           number of staff.

12.27 30          On my first visit, I spent time talking with staff  
31           and noticed immediately a distinct split in philosophy  
32           and approach between the residential social workers and  
33           caregivers, and the farming and forestry instructors.  
34           While it was clear that only a few of the residential

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1 staff were adequately trained, they did talk about their  
2 efforts to do so. There were no such pretensions from  
3 the farming and forestry staff. They were there to  
4 instill good work habits into the offenders, and if that  
5 meant "kicking arse" so be it. I wondered why they were  
6 so open about their approach and I thought that it might  
7 be because I was wearing a uniform.

8 While officially only the principal could administer  
9 punishment, I learned that farming and forestry  
12.28 10 instructors would punish regularly, from booting back  
11 sides and cuffing ears to punching, through to a thorough  
12 beating. Forestry staff were particularly prone to deal  
13 with residents in that way and a forestry camp, which was  
14 some distance from the centre, had developed a very macho  
15 culture.

16 The secure unit operated as a remand prison for  
17 those awaiting trial; for those who needed protection,  
18 either from self-harm or other residents; or as a  
19 punishment facility for bad conduct. But no distinction  
12.28 20 was made when it came to their treatment, and some staff  
21 regarded the unit primarily as a punishment facility.  
22 And its design made that obvious.

23 Purpose-built in 1967, it accommodated up to 12 boys  
24 in individual locked cells, each of which had their own  
25 toilet, with a separate staffroom, showers and  
26 dining-room. Made of concrete blocks, it was extremely  
27 cold and bare, and compared unfavorably with similar  
28 facilities in adult prisons.

29 Boys were regularly left locked in their cells  
12.29 30 without staff in attendance, and while staff were evasive  
31 about the length of time spent in the cells, I was  
32 reliably informed that it could be for as long as three  
33 months. Undercurrent criteria, the time spent in locked  
34 in a secure unit cell would count as solitary

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1 confinement, and the psychological impact would be  
2 extremely damaging.

3 Q. Sir Kim, in terms of the abuse you have said you were  
4 aware of when you were visiting Kohitere and there was  
5 some differences between the staff, how widespread was  
6 the knowledge of such abuse, from your perspective?

7 A. Oh, it was very widely known. In the evenings when I was  
8 there, after the evening meal, I would socialise with the  
9 boys and they would tell me their experiences, as would  
12.30 10 some staff members. It was during that period when there  
11 was very few supervisory staff, that probably, it seemed  
12 to me, the most unsafe time of the day, in that there was  
13 a hierarchy and there was a lot of bullying and stuff  
14 going on. You know, I've been in a lot of institutions  
15 with adults and it was one of the few times that actually  
16 I did feel unsafe. What concerned me in the discussion,  
17 not only was there considerable difference in the size of  
18 the boys, there was some very violent boys there, but  
19 that have some of them were sent there for serious  
12.31 20 crimes, others were minor offenders, while others were  
21 sent there for sleeping rough for years and for indulging  
22 in what I would call survival related crime, stealing  
23 food or being unlawfully on enclosed premises. It was  
24 clear that some had diagnosable mental illness, while  
25 some were locked in the secure unit because they were  
26 considered to be dangerous. Others misbehaved so they  
27 could be sent there to protect themselves from other  
28 residents.

29 Q. And other than secure, is it right that the boys you are  
12.32 30 talking about, with the different backgrounds, were all  
31 in together? There was no separation in terms of how  
32 they'd come to be at Kohitere?

33 A. No, there was no separation. Some were sent there under  
34 not being under properly care or control of their

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1 parents, others were sent there for minor offending. And  
2 there was no effort to distinguish between the two  
3 groups.

4 Q. So, as a young Police Officer visiting this residence and  
5 witnessing what was going on there, what was your  
6 reaction to what you saw?

7 A. I became very angry. I was angry that the State could  
8 allow such conditions. The conditions were so inhumane  
9 that they were almost guaranteed to turn vulnerable  
10 children and youth into distrusting and sometimes  
11 dangerous adults. Angry that senior public servants and  
12 policy advisers could have allowed these conditions to  
13 continue for so long. Knowing that they were the parties  
14 and accomplices to the creation of criminals. Angry  
15 that no-one was concerned that the offenders of today  
16 were almost always the victims of yesterday but that the  
17 moment they were old enough to be held accountable for a  
18 criminal act, their history of victimisation and neglect  
19 became of no account. It was almost as though the State,  
12.33 20 having neglected the welfare and needs of children in the  
21 first 12 years of their life, was able, once the child  
22 inevitably progressed to committing a criminal act, to  
23 breathe the collective sigh of relief, reclassify the  
24 child as a young offender, and quickly transfer any  
25 corporate accountability away from themselves by  
26 redesignating it as a personal responsibility and laying  
27 it on an accountable individual.

28 Disbelief that the judiciary could send increasing  
29 numbers of Maori youth to facilities of this kind on the  
12.34 30 grounds it would make a difference.

31 Disbelief that successive Governments have failed to  
32 monitor and correct conditions in those same  
33 institutions, which were eventually to become a matter of  
34 national disgrace and shame.

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1           The other emotion that I felt was guilt. Was there  
2 anything that I personally could have done to make any  
3 difference? And I really didn't realise until that time  
4 that what we were doing as individual police officers and  
5 Social Welfare workers was contributing to a situation of  
6 institutional racism. I mean, there were very few Maori  
7 staff at Kohitere, I think 5% of the total, whereas about  
8 80-90% of the boys were Maori. And in that institution,  
9 there was a total absence of any cultural input into the  
12.36 10 lives of young Maori people.

11           Secondly, it was very much the situation that it is  
12 today in prisons, in the adult prisons, that is you  
13 deliver the programme and that was it. Residents were  
14 discharged without any ongoing support, often returning  
15 home to the same conditions that had contributed to their  
16 entry in the first place.

17 Q. And so, during your time visiting Kohitere, what were  
18 some of the things that you tried to implement?

19 A. Well, after visiting for about two or three months, my  
12.37 20 role was to work in group situations with the young -  
21 with the boys who were due for release. And so, we had  
22 group sessions with these young men, facilitating  
23 discussion about the challenges they would face and what  
24 resources were available to them in their efforts to stay  
25 out of trouble.

26           I had sufficient details about each of them to be  
27 able to refer them to key resources in the communities to  
28 which they returned.

29           If they were in agreement, I used to hook them up  
12.38 30 with a Youth Aid Officer in the area that they were  
31 returning to but only when I considered that the match  
32 was likely to be positive.

33           Part of the pre-release programme involved helping  
34 Maori youth to cope with what would happen if they become

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1 targets of ethnic profiling and harassment by the Police,  
2 of which there was sufficient anecdotal evidence at the  
3 time. Those known to have an offending history were  
4 especially vulnerable and their encounters with the  
5 Police often triggered more serious offending, so I used  
6 to wear a uniform and we role played situations and  
7 discussed how they could respond to Police questioning in  
8 a civil and respectful way, how to deal with taunts and  
9 badgering and how to exercise their civil rights in  
10 relation to unreasonable questioning, stop and search  
11 procedures, and unlawful behaviour by officers. The guys  
12 seemed to enjoy the experience and I made contact with  
13 people that I still know and still meet with.

12.39 14 Gary Hermansson was Kohitere's counsellor and he was  
15 very good at identifying which boys were wanting to  
16 change and working with them on those issues. However,  
17 introducing tikanga Maori and Te Reo into the institution  
18 was much more difficult. I didn't have the necessary  
19 skills and Kohitere was strapped for cash. But I did  
12.40 20 have some contacts within Nga Tamatoa and I contacted, in  
21 particular, Rangitihi (John) Tahuparae and his mate  
22 Eruera (Ted) Nia and they would come with me to the  
23 institution and take the boys for sessions in Te Reo and  
24 tikanga. John, in particular, was amazing and he would  
25 always be able to trace a boy's whakapapa and tribe just  
26 by knowing his name.

27 The Kohitere staff, however, were less receptive.  
28 They were convinced that when the boys practised Te Reo,  
29 they were taking the opportunity to make disparaging  
12.41 30 remarks about them. There were muttering about evil  
31 Maori influences and the presence of radical Maori  
32 activists who were, in fact, unpaid volunteers.

33 The teaching continued until, I think, the end of  
34 1974 and while it may not have helped reduce reoffending,

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1 it brought some affirmation, encouragement, into an  
2 otherwise drab and grey existence.

3 Youth institutions were singularly unsuccessful in  
4 reducing youth crime. In fact, they were primarily an  
5 intermediary step between the boys' homes and Borstal,  
6 and the great majority of those who passed through them  
7 ended up in adult prison.

8 In later years, I thought about why I didn't do more  
9 to address the situation, to blow the whistle, report on  
12.42 10 what I knew and call for an investigation.

11 If it did occur to me, I would have put the idea  
12 quickly out of contention. The culture was such that I  
13 would not have been supported. Moreover, I would have  
14 been branded as a "stirrer" and secured my place as an  
15 outlier within the Police organisation. I was 32 years  
16 old, ambitious and not prepared to jeopardise my future.  
17 In this regard, I was probably no different from most  
18 other police officers and public servants at that time.  
19 In later years, I summoned the courage to speak up on  
12.43 20 issues of injustice and came to know what a  
21 self-fulfilling prophecy looks like.

22 Q. Kia ora. I'd like to return to the topic of Police  
23 culture a little later but I just wanted to ask you a bit  
24 more about what you've just said in terms of individual  
25 police officers and Social Welfare officers contributing  
26 to the situation. And just to ask you about what role  
27 Police played in terms of transporting or facilitating  
28 the uplift of children who were taken to these homes.  
29 Could you tell us a little bit about the Police role in  
12.44 30 that situation?

31 A. Well, I mean, I think one of the important points here,  
32 is that in 1950 there was only one Maori Police Officer  
33 in the whole of the Police force. That was Bill Carren  
34 who joined the Police in 1920 and was hired as an

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1 Assistant Commissioner but in order to survive, he was  
2 compelled to put to one side his Maori origins.

3 When I joined in 1958, there were 26 Maori police  
4 officers and 10 years later there was something like 62.

5 So, there was two things here that were going on.  
6 One was the lack of cultural understanding within the  
7 Police, and Social Welfare was in the same place. The  
8 lack of - Child Welfare Officers often had insufficient  
9 training to adequately respond to the issues of child  
10 abuse and neglect and had very little departmental  
11 resource.

12 The common response was to deal with the issue  
13 through a criminal justice paradigm, rather than take a  
14 welfare orientated approach.

15 In doing so, they often attempted to involve Police,  
16 youth aid officers and uniformed Police in their  
17 operational process, which created considerable tension  
18 between the two agencies. Child Welfare Officers had a  
19 tendency to portray youth aid and the Police as the  
20 "enforcers" when it came time to remove a child from a  
21 family, even though they may have initiated the process.

22 I think the other thing that happened, was that the  
23 youth aid section's reputation was starting to grow under  
24 the single-minded and visionary leadership of inspector  
25 Brian Mooney. By 1971, I think, the numbers had grown  
26 from 15 to 46. In 1971, I was promoted to Sergeant in  
27 charge of Youth Aid in Wellington and I could see that  
28 too many young people were being brought before the  
29 Courts charged with comparatively minor offences. There  
30 was far too much reliance on an institutionalised  
31 residential approach and the system did not provide for  
32 whanau or cultural input.

33 Some of those things were pretty worrying. The  
34 intent of the legislation at that time was to reduce the



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1 number of referrals to the Children's Court but under the  
2 system that existed at that time, if the CIB or frontline  
3 staff arrested somebody, then they weren't entitled to be  
4 considered for diversion, they had to be referred to the  
5 Court. So, the common practice was for frontline Police  
6 and the CIB to arrest children, especially Maori  
7 children, so that youth aid couldn't have any part in  
8 influencing the direction that they took.

9 The other thing that happened, was that the focus  
10 was entirely on the individual behaviour of the young  
11 offender and the whanau didn't actually figure in the  
12 process. The idea of holding a hui with whanau to  
13 discuss what happened and work out how to prevent future  
14 offending was anathema to most Pakeha police officers.  
15 They feared losing total control of the process, failing  
16 to realise that the locus for behavioural change did not  
17 necessarily reside within the individual but with the  
18 ongoing commitment of whanau.

19 And I recall calling a hui in relation to a Samoan  
12.49 20 offender, a young man, persuading Social Welfare that  
21 this was an appropriate thing to do. I knew quite a bit  
22 about Maori culture but nothing really about Samoan  
23 culture. And when we held the hui, 32 people turned up  
24 and I found out that the father of the offender was not  
25 the main spokesperson for the whanau. And that really  
26 put everyone off doing it more in the future. So, you  
27 know, we had a lot of learning to do.

28 I'd like to just point out one other feature which I  
29 think Oliver Sutherland, Dr Sutherland, referred to about  
12.50 30 the Militarism that existed within the residential homes.

31 When I joined the Police in 1958, the Police  
32 training school was run by a Brigadier General fresh from  
33 the Second World War and we had a Sergeant Major in  
34 charge of physical training and we marched every morning

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1 for an hour. The language of the Police culture was very  
2 Military. It was held in a Trentham Military Camp. And  
3 any idea really that this Police force or this Police  
4 organisation was committed to the principles of Robert  
5 Pennel and his understanding of what civilian Police  
6 should do actually had disappeared.

7 And I think some of that was due to the corruption  
8 the Police encountered in the early '50s with  
9 Commissioner Compton. It was a very low point in Police  
10 culture. And as the culture regenerated at the time,  
11 there was an interesting focus on professionalism of  
12 intolerance of any adverse behaviour, for a while, but  
13 the biggest issue was that we believed that we were  
14 fighting a war, we were fighting a war on crime. And it  
15 was true to say that during that period, the crime rate  
16 was increasing rapidly.

17 So, the whole culture of the Police was geared  
18 towards enforcement, catching people doing stuff and  
19 punishing them in the naive belief that that would  
20 prevent them from doing it again. And that culture held  
21 fast, I think, until probably the 1970s when some of the  
22 Police visionaries attempted to introduce the concept of  
23 community development and working with iwi and, you know,  
24 working with the community and moving back to the ideas  
25 of Robert Peel and there was a constant struggle in that  
26 vision until even today. We see the same conflict  
27 arising constantly. In the 70s, they introduced team  
28 policing, you know, this group of professionals who would  
29 go into a community and enforce the liquor laws,  
30 something of that kind, no connection with the community,  
31 no understanding of the whanau, no understanding of the  
32 children. And a great deal of harm was done through that  
33 approach.

34 When the Youth Aid Section was developed, the intent

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1 was to change that thinking. Well, it was difficult  
2 because the Youth Aid Officers were recruited from the  
3 Police and they often came into that role just wanting to  
4 enforce the law but with another age group. And it was  
5 really difficult to challenge and change that, to the  
6 extent that as the Youth Aid Section grew, it widened its  
7 net, so rather than less people going before the Court,  
8 more people went before the Court. And I think that was  
9 one of the failures.

12.55 10 Q. Sir Kim, you've told us about the culture in the Police  
11 at that time with the focus on enforcement and this war  
12 on crime. I am just wondering if you could tell us from  
13 your experience whether that translated at all into what  
14 extent in terms of Police abuse of people in Police  
15 custody which is something this Commission is also  
16 inquiring into?

17 A. Yes. I know that there was abuse, individual cases of  
18 abuse, but when I reflect back on that, I think that it  
19 certainly wasn't just a case of having, you know, a few  
12.56 20 bad apples in the basket. There was a culture which  
21 condoned not so much extreme abuse but continual  
22 harassment. During those years when we had the Maori  
23 urban migration in the late 1950s and it moved into the  
24 1960s, what I experienced and I was really uncomfortable  
25 about, was the extent to which young Maori were targeted  
26 by the Police, using stop and search processes and so  
27 forth. And there's no doubt in my mind that there was  
28 for some police officers, Maori were considered to be a  
29 dangerous under-class. And if a group of young Maori  
12.57 30 children were skylarking down the street, often singing  
31 and so on, they became a target for Police attention. If  
32 it was a group of young Pakeha children doing the same  
33 thing, they were just kids having fun.

34 And the research that was done around that time in

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1 the 1970s by Victoria University, I can't think of her  
2 name, but actually reinforced that, that there was you  
3 know this view of Maori that meant that Maori were  
4 becoming a focus of Police attention, which often led to  
5 arrests for obstruction or obscene language or something  
6 of that kind and started that journey into the Criminal  
7 Justice System. We all knew at that time that one of the  
8 things about keeping anybody out of trouble was to avoid  
9 feeding them into the formal Criminal Justice System but  
12.58 10 it was not something that the Police acted on.

11 **MS SPELMAN:** Thank you. Chair, I am conscious that  
12 we're at 1.00 now and this might be a good time for  
13 the break?

14 **CHAIR:** I agree. This seems to be a suitable time, Sir  
15 Kim, for us to take the luncheon adjournment.  
16 Madam Registrar, would you please adjourn the Royal  
17 Commission sitting?

18  
19  
12.59 20 **Hearing adjourned from 1.00 p.m. until 2.15 p.m.**  
21  
22  
23

24 **CHAIR:** Ms Spelman, and Sir Kim, please continue.

25 **MS SPELMAN:** Thank you, Sir.

26 Q. Sir Kim, before the break we were discussing Police  
27 mainly and Police culture. If I could move now just to  
28 paragraph 44 of your brief of evidence, I want to ask you  
29 about the institutionalisation of Maori children in  
14.16 30 particular and if you could give us your perspective why  
31 it was during that period why so many Maori children in  
32 particular were put into homes?

33 A. Thank you. The Department of Social Welfare during that  
34 period developed a comprehensive network of foster

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1 parents, family homes and Social Welfare institutions to  
2 accommodate children who were removed from their homes,  
3 forming a range of optional settings in which children  
4 could be located. However, it failed to identify  
5 sufficient foster parents within the Maori community,  
6 instead sending Maori children to live with Pakeha  
7 parents, who did not know how to connect culturally with  
8 them. As a result, Maori children were often dealt with  
9 swiftly, by way of supervision or removal to an  
14.17 10 institution, rather than through constructive engagement  
11 with their whanau.

12 One of the continuing problems was that the future  
13 of Maori and Pasifika children was left largely in the  
14 hands of Pakeha officials. In 1982, only 15% of all  
15 field social workers were Maori at a time when 60% of all  
16 Court reports related to Maori and Pasifika children.  
17 Pakeha Magistrates dominated the Courts and cultural  
18 ignorance and racism was allowed to flourish. By 1985,  
19 the Department recorded a 78% Maori population across six  
14.18 20 Auckland institutions.

21 Maori Police Officers, as I mentioned before, were  
22 very much in the minority, and in 1965 Commissioner  
23 Urquhard declared the Chinese, Hindu, I think he meant  
24 Indians, and Pacific Islanders were unsuited to policing  
25 and would not be recruited. He stated that apart from  
26 Maori policing should only be done by the white races.

27 Q. Sir Kim, I understand that prior to your time in Police  
28 when you were still living in the Wairarapa, that you had  
29 some experience of similar attitude of distrust of the  
14.19 30 Pakeha Social Welfare officials. Could you tell us a  
31 little about that, this is picking up at paragraph 7 of  
32 your brief.

33 A. When Maori children were ill-treatment or neglected,  
34 there was a distinct reluctance to report such abuse to

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1 Child Welfare Officers or the Police, given that their  
2 response was to remove children from their homes and  
3 place them understate supervision or care:

4 In the Wairarapa older children were often fostered  
5 to local farmers and were expected to help with milking  
6 cows or other essential farming chores. They stood out  
7 in our classrooms poorly attired and prone to fall asleep  
8 during the day. It was tempting not to conclude that the  
9 children were fostered primarily because they provided an  
10 economic benefit to the farming community.

11 I do recall on joining the Police the infamous  
12 Mazengarb report issued in 1954 which gained parents for  
13 giving children excessive freedom, limited discipline,  
14 too much pocket money and insufficient religious  
15 instruction. Prior to joining the Police, I have to  
16 confess that I happily immersed myself in that period of  
17 moral decline, embracing radical changes in clothes, hair  
18 styles, taste in music and coupled with a tendency to  
19 congregate on the streets in celebration of our  
20 transformed identity. We were increasingly regarded as  
21 delinquents.

22 Social commentators of the time described you see as  
23 precocious, threatening and potentially dangerous,  
24 criminal, noxious, even so the numbers actually appearing  
25 before the Children's Court were in decline.

26 I am pleased to say that joining the Police cadets  
27 saved me from all that.

28 Q. We have heard from other witnesses yesterday about  
29 throughout this period the continued Maori resistance and  
30 Maori work that was done to address these issues. I  
31 wanted to ask you about the Matua Whangai programme which  
32 is at paragraph 54 of your brief, in terms of an  
33 indigenous response to what was taking place at this  
34 time.

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1 A. Well, growing Maori concerns with the State's treatment  
2 of children and young people came at a time when the  
3 government's new devolutionary policies were being  
4 debated and worked through. Tribally based initiatives  
5 escalated. New community based initiatives also  
6 flourished and at the 1981 Hui Whakatauirā, the idea of a  
7 community based Maori foster parenting scheme was  
8 proposed. Matua Whangai was piloted from late 1983. It  
9 was continued by the new government in 1984, and  
14.23 10 established under the auspices of the department of Maori  
11 Affairs and other government agencies from 1985.

12 Matua Whangai met two Maori needs. First, it was a  
13 response to the increasing demand for the tribal  
14 authorities and Maori communities to control both  
15 resources and delivery of services and to promote Maori  
16 empowerment.

17 Second, it was a Maori reaction to the State's  
18 racist treatment of young Maori offenders.

19 Matua Whangai was presented by the heads of the  
14.23 20 department of Maori Affairs, Justice and Social Welfare,  
21 as a programme to de-institutionalise Maori people, to  
22 prevent their entry into carceral institutions, and  
23 instead to place them in the care of their whanau. With  
24 \$1 million to spend, Social Welfare would find  
25 alternative care for Maori children, and Justice would  
26 fund work done by people in the community to care for  
27 those children appearing before the Courts, to arrange  
28 alternatives to incarceration or institutionalisation.

29 But the initial intent was much more ambitious than  
14.24 30 that. Tribal networks which support whanau, hapu and iwi  
31 development, and departmental; officials from all three  
32 departments would facilitate that process. Involvement  
33 in Matua Whangai would be on the basis of a mandate from  
34 tribal representatives. Whanau, hapu and iwi would

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1 evaluate how well the networking occurred and how the  
2 ropu could need the notes of Maori.

3 In the next five years, it enjoyed a high profile,  
4 with a Roper Report on violence, Puao-te-Ata-Tu and the  
5 Mason Review, calling for more resources to be invested  
6 in it. Maori at hui inquired as to its progress, and it  
7 rated a special mention in both the Criminal Justice Act  
8 1985 and the Children, Young Persons and Their Families  
9 Act 1989. It was seen as a model of devolution in  
10 practice; an initiative of Maori, delivered via the  
11 bureaucracy, and unusually for the time, directed at  
12 criminal justice issues.

13 The difficulty was to persuade departmental  
14 officials that the primary purpose was to develop whanau  
15 networks. They tended to see whanau and other sub-tribal  
16 networks as vehicles for government policy  
17 implementation, rather than opportunities to provide  
18 Maori with a measure of self-empowerment.

19 In 1984, John Rangihau, Doug Hauraki and I were  
20 asked to undertake a review of Matua Whangai, with the  
21 intention of reorienting the programme and shifting  
22 ultimately responsibility from local offices to iwi  
23 authorities. It was fairly limited in scope but as we  
24 travelled throughout the motu, talking with whanau, with  
25 departmental staff and service providers, the stories and  
26 concerns mirrored those that emerged during  
27 Puao-te-Ata-Tu, the Ministerial Review into the  
28 Department of Social Welfare.

29 Unfortunately, Matua Whangai failed to live up to  
30 its initial expectations. This was largely because while  
31 the programme was first setup within the Department of  
32 Maori Affairs, it was subsequently administered and  
33 implemented mostly by Pakeha staff who did not understand  
34 the purpose and protection of the programme.



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1           By 1991, the initial purpose of Matua Whangai was  
2 lost in the mists of bureaucratic understanding and  
3 described as a programme to assist district officers in  
4 their work with iwi in connection with Child, Youth and  
5 Their Families Act.

6           Matua Whangai became little more than a mechanism  
7 for contracting out the delivery of State Services and  
8 added to prevailing Maori suspicions about the Crown's  
9 motivations. The underlying concept never gained  
14.29 10 acceptance and was derailed by government departments who  
11 turned the programme and the funding that accompanied it  
12 to their own purposes. Maori paradigms were beyond the  
13 comprehension of mainstream government agencies, leading  
14 to their own interpretation of responsiveness to Maori.

15           The other probable reason that Matua Whangai was  
16 never able to realise its full potential as an  
17 alternative fostering scheme, is that government  
18 departments were simply unwilling to yield territory. It  
19 would be dangerous to assume that government agencies do  
14.29 20 not have a rangatiratanga of their own; an underlying  
21 view about their own special place in the universe, their  
22 own set of underlying values and beliefs, accompanied by  
23 the underlying determination to preserve their autonomy.  
24 Ultimately, government departments did not want to truly  
25 devolve power to Maori in the way intended.

26 Q. Sir Kim, I know you were here yesterday when we heard  
27 some evidence from Dr Jackson commenting on, as he put  
28 it, the limitations of Kaupapa Maori programs which do  
29 not go to the heart of the power structure. I am just  
14.30 30 wondering if you want to make any further comment in  
31 terms of that idea, in relation to your reflections on  
32 Matua Whangai?

33 A. Well, over, you know, many years now, I must confess that  
34 I started off being incredibly optimistic about the

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1 potential for the development of tikanga Maori programs,  
2 Kaupapa Maori initiatives, within the public sector. And  
3 I have to say that over recent years I have basically  
4 come to the view that Dr Jackson is right, and that the  
5 underlying issue really for me is that unless there is a  
6 substantial cultural reform within the public sector,  
7 that we will never achieve the place where those kinds of  
8 programs are going to be fully effective, unless we are  
9 prepared and are courageous enough to provide Maori with  
14.32 10 the necessary opportunity to be fully empowered and to  
11 develop programs according to their own tikanga, not in  
12 any joint relationship with Pakeha but in their own terms  
13 and in their own ways, then nothing that we do is likely  
14 to succeed.

15 Q. Kia ora. If I could just continue that thread for a  
16 moment, Sir Kim, and ask you the same question in  
17 relation to your reflection on Puao-te-Ata-Tu because I  
18 understand you were involved on the Advisory Committee  
19 for that report. Would you be able to tell us a little  
14.33 20 about that process and your reflections on it?

21 A. Sure. When the Labour Government came into power in  
22 1984, I think it was the Minister of Social Welfare, Anne  
23 Hercus, who recommended to Cabinet that rather than take  
24 a piecemeal approach to child welfare legislation, it  
25 establish a full review of it.

26 As a first step, a departmental working party was  
27 established to review the existing legislation and  
28 despite growing dissension by Maori to the 1974  
29 legislation, there was no Maori representation on the  
14.33 30 working party, an act seen by Maori, given their  
31 increased concerns, as a deliberate snub.

32 Despite the exclusion of Maori from that party, it  
33 was clear that Maori concerns were starting to impact on  
34 government thinking. In the same year, a series of hui

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1 were convened by the Department of Social Welfare to  
2 discuss concerns felt by many Maori that the Department  
3 was a racist and hierarchical institution which reflected  
4 the dominant Pakeha values of the day and failed to  
5 provide fair access to Maori to its services and to  
6 Income Support.

7 A group of Auckland staff known as the Women's  
8 Anti-Racist Action Group, joined in the fray. The  
9 following year, in response to the growing criticism, the  
14.35 10 Minister of Social Welfare established a Ministerial  
11 Advisory Committee to advise on the most appropriate  
12 means to achieve an approach which would meet the needs  
13 of Maori in policy planning and service delivery in the  
14 Department of Social Welfare.

15 I was then working for the State Services Commission  
16 and was appointed as an adviser to the Committee. The  
17 Puao-te-Ata-Tu Committee engaged in direct and extended  
18 consultation with Maori communities, social work staff,  
19 government agencies, the wider public, and other  
14.35 20 stakeholders. It was strongly supported by the  
21 Director-General of Social Welfare, John Grant.

22 Under the leadership of Tuhoe elder John Rangihau,  
23 it be gauged in direct and extended consultation with  
24 Maori communities and other stakeholders. The members of  
25 the ministerial Committee were Lena Manuel, Hori Brennan,  
26 Donna Hall, Peter Boag, Tamati Reedy (represented by  
27 Neville Baker) and John Grant. The committee attended 60  
28 hui over nine months. It was an extraordinary  
29 experience.

14.36 30 I can't recall a more comprehensive consultative  
31 process since then. The public hui were well publicised  
32 and well attended. They were a draw card for iwi and for  
33 Maori. Te Rangihau's mana ensured that Maori felt safe  
34 speaking about the Department of Social Welfare, the

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1 treatment of children and young people and the hui would  
2 be held in accordance with tikanga Maori. People were  
3 free to express their frustration and anger, to shed  
4 tears and share their stories. The casual observer might  
5 have concluded that it was not much more than a cathartic  
6 opportunity for participants. But there were also  
7 moments of insight, and the articulation of ideas and  
8 thoughts, which Te Rangihau and the Committee were able  
9 to ultimately transform into workable policy.

14.38 10 The hui were not confined to iwi and Maori.

11 Meetings were held with departmental staff, some of whom  
12 were openly hostile and defensive. I recall one such  
13 meeting in Whanganui, where at the outset, a senior staff  
14 member expressed his opposition to the Committee. Te  
15 Rangihau then talked about the history of race relations  
16 in New Zealand, which reduced the staff member to tears.  
17 He apologised, following which Te Rangihau invited him to  
18 accompany the Committee to New Plymouth, where the  
19 Committee was to meet with a similar group that  
14.38 20 afternoon. He did so as a converted acolyte who opened  
21 the meeting by speaking in favour of change, to the utter  
22 astonishment of his regional colleagues.

23 Q. I know yesterday we heard some evidence about the report  
24 itself, Puao-te-Ata-Tu, and the recommendations?

25 A. Yes.

26 Q. I wonder if you could comment on the impact of that  
27 report in terms of subsequent legislation and whether it  
28 did or didn't have the desired impact?

29 A. Right. Well, the case for structural reform and the

14.39 30 shifting of resources to Maori communities was well  
31 argued by the report. There was clearly articulated a  
32 greater recognition of customary Maori support structures  
33 and a closer commitment to customary iwi forms of  
34 conflict resolution. The writers of of Puao-te-Ata-Tu

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1 was able to tap into Treaty polemics as the basis for its  
2 construction of both past and the present. When the  
3 Minister accepted the recommendations for her own  
4 department, a precedent was set for other departments and  
5 heightened Maori expectations of change.

6 The Puao-te-Ata-Tu report was released in 1987 and  
7 exposed many deficiencies emerging from this report and  
8 subsequent consultation with Maori groups was a strong  
9 message that whanau must be at the centre of  
10 decision-making processes for children.

11 When the draft 1986 Children, Young Persons and  
12 Their Families Bill was presented to Parliament it was  
13 the subject of extensive criticism. The bill was seen  
14 as even more likely to continue to remove Maori children  
15 from their families, whanau, hapu, iwi and communities.  
16 The bill was in direct conflict with the findings of the  
17 Puao-te-Ata-Tu report whose recommendations for a  
18 bicultural approach had been accepted by the Department  
19 of Social Welfare but had not transitions into the  
20 content of the Bill. When the Minister of Social Welfare  
21 left Parliament on labour's re-election in 1987, the 1986  
22 bill lost its key component. At the Select Committee  
23 stage in 1987, the decision was made to leave the  
24 original Bill with the Select Committee and a team of  
25 officials, rather than to withdraw it from the House and  
26 start again. The Select Committee, with the benefit of a  
27 Maori Advisory Group, travelled throughout the country  
28 visiting local marae to hear directly from the people  
29 most affected. The Bill was radically overhauled,  
30 guidelines were introduced to safeguard children being  
31 questioned by Police and formal Police diversion was  
32 mandated. Importantly for Maori, the youth justice  
33 provisions were exempted from the paramountcy principle  
34 and it was established that young people should be

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1 treated in the same way as adults in relation to  
2 establishing culpability but that their age would be a  
3 mitigating factor in determining penalty.

4 As the final stages of drafting were reached, it was  
5 clear that the Bill left represented something  
6 internationally unique and created for New Zealand's own  
7 particular national purpose.

8 Q. In terms of the Children, Young Persons and Their  
9 Families Act 1989, I note you've commented the youth  
14.43 10 justice system of today is laundered internationally but  
11 also that there are some shortcomings that still exist?

12 A. Yes.

13 Q. I am looking to paragraph 87 of your brief.

14 A. Yes.

15 Q. I wondered with the benefit of your involvement with the  
16 system through these years, if you could give us your  
17 comment on the current system and where the shortcomings  
18 may lay, if any?

19 A. Yes, I commented that the current youth justice system is  
14.44 20 frequently laundered internationally, it's one of the  
21 most progressive and visionary in the world but plaudits  
22 these mask an ugly history and an attitude for the care  
23 and control of young people, especially Maori, which  
24 resulted in their horrendous treatment by the State and  
25 which in turn contributed to significant increases in the  
26 adult offending population.

27 The establishment of a radical and innovative youth  
28 justice system was indeed a major achievement but it also  
29 revealed patterns of personal and institutional racism  
14.45 30 which has not entirely disappeared.

31 Over that period and since, I have either witnessed  
32 or become aware of unacceptable treatment of children and  
33 young persons in state institutional care and in Police  
34 custody or care. The usual response is to regard such

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1 actions as individual failures rather than existing  
2 within an unsafe institutional culture.

3 New Zealand's experience of common patterns of  
4 colonisation and racism has created social disintegration  
5 and structural cycles of intergenerational trauma which  
6 requires significant redress. In the context of abuse of  
7 children and young people in State care, it is a  
8 particularly appalling history in terms of failing many  
9 of our most vulnerable members of our society.

14.46 10 Q. Sir Kim, I know you've been involved for a long time now,  
11 since 1958, working in these areas and I wanted to ask  
12 you why it was important for you to come along today to  
13 this Commission to give your evidence about these topics?

14 A. When I arrived yesterday, I met a couple of people in the  
15 foyer. One who had been in Kohitere in 1972 and who I  
16 met again when I was Head of Prisons in 1989. There were  
17 many in that category. And for me, it was a growing  
18 consciousness that we are a racist and unforgiving and  
19 even vengeful society and that too often we treat people  
14.47 20 as less than human. And it seemed to me important to  
21 take this opportunity to tell my story as a credible  
22 witness, I guess, as an observer, in the hope that other  
23 credible witnesses will appear, that we will start truth  
24 telling and that we will start looking beyond the  
25 rhetoric of government with all the talk about responding  
26 to Maori, about tikanga Maori programs and so on, and be  
27 prepared to analyse what is actually happening in the  
28 system from the point of stops and searches, to Police  
29 bails, to remanding in custody, to sentencing practices,  
14.49 30 to the reintegration and support of people, and to start  
31 to develop a whole new paradigm.

32 I don't actually fully know what that paradigm is  
33 but on listening to Dr Jackson yesterday, and it  
34 confirmed my view that there are two things that we need

1 to do. One is to somehow address the constitutional  
2 relationship between Maori and the Crown and Pakeha, and  
3 the second thing that we need to do is to actively  
4 consider how we can change the culture of the public  
5 sector and the way it deals with the least, the lost and  
6 the lonely.

7 **MS SPELMAN:** Thank you for coming to share your evidence  
8 with us today, Sir Kim.

9 **CHAIR:** Thank you, Ms Spelman. Are there any counsel  
10 who wish to address cross-examination to Sir Kim  
11 Workman? There are not. Colleagues, are there any  
12 questions to be raised of Sir Kim by any of you?  
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**SIR KIM WORKMAN**

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**QUESTIONED BY COMMISSIONERS**

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**COMMISSIONER ERUETI:** I just have a quick question. It

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is to get a sense of the role of the institutions,

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on the one hand the Child Welfare Officers, and the

14.51 10

other the Police and the apprehension of children

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in the '70s, say. And to your mind which

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institution played a more prominent role, was it

13

the Police spurred on by political rhetoric about

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law and order or Child Welfare Officers or a

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combination of both?

16 A.

I think, you know, when we look at what's happened, I

17

think from a Police perspective we are still grappling

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with the issues of what an ideal Police culture should

19

look like. I did refer, I think, to the sort of never

14.52 20

ending conflict between the idea of policing in the

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traditional sense of Robert Peel as a civilian

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enterprise, civil enterprise, and this tendency we have,

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perhaps historically, to regard the Police as enforcers

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of the law and as being about, you know, treating the

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whole thing as a war against crime, if I can put it that

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way.

27

So, that's one aspect of it. And it seems that

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regardless of - the Police have done a wonderful job in

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recent years in trying to address those issues, more than

14.53 30

probably any other agency within the Criminal Justice

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System, but it always seems that when there's an issue

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that arises, we revert to that underlying culture of

33

enforcement and so on.

34

We have just had examples of that in some of the

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1 policies that have emerged in the last week, where the  
2 tendency has been to say we have a problem and we're  
3 going to put more people in and we're going to have more  
4 access to firearms and so on, without understanding the  
5 unintended consequences of that.

6 Yeah, I think perhaps I will leave it at that but I  
7 think that really is something that's ongoing and is an  
8 issue.

9 **COMMISSIONER ERUETI:** Kia ora, thank you.

14.54 10 **COMMISSIONER GIBSON:** Kia ora, thank you, Sir Kim. You  
11 placed a strong emphasis on culture, as you say,  
12 and I think you made the comment, something along  
13 the lines that Police condoned a low level of  
14 abuse, the Police culture condoned a low level of  
15 abuse back in time.

16 You also made a lot of statements about racism and  
17 culture. How would you describe the culture in terms of  
18 what was condoned or not condoned around racism, the  
19 Police and other public agencies that you've worked with?

14.55 20 A. I need to keep reminding ourselves that the Police  
21 culture is probably representative of New Zealand culture  
22 by and large, and that the racism that exists within the  
23 Police also exists within our larger society.

24 But, in addition, it seems to me that what happened,  
25 in my experience anyway, was that within that closed  
26 culture there was reinforcement of practices around the  
27 treatment of offenders or members of the community, that  
28 sort of scaled that level of racism up some notches.

29 And it's almost as though some of the policies that  
14.56 30 emerged gave Police Officers permission to be even racist  
31 than they were. And I'm thinking of, say, the 1976 over  
32 stayers and the dawn raids, I was a Senior Sergeant at  
33 that time and actually, it contributed to my resignation  
34 from the Police because we had a constitutional

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1 arrangement where the Commissioner was, sort of, in  
2 charge of operational matters and could separate himself  
3 or herself from the government of the day and say to the  
4 Prime Minister, or whoever, that is not an issue that  
5 you're entitled to tell us how to act. We are in charge  
6 of Police operations. And what we saw in that case was  
7 the government of the day telling the Police to do stuff  
8 that was incomprehensively racist, that resulted in  
9 groups of Police executing raids on the homes of Pacific  
10 people without any real evidence that they had committed  
11 any type of offence at all. It was horrific.

12 Sometimes that sort of decision that we make has  
13 serious consequences for our relationship with the wider  
14 community, with Pacific peoples, with Maori, in the same  
15 way I guess that the 2008 Operation had in terms of the  
16 relationships in that situation.

17 When that happens, it seems to me, you know, we're  
18 giving people permission to behave in the worse way  
19 possible.

14.59 20 And if I can make one comment, and I think it's  
21 relevant to this Inquiry. When we look at the policies  
22 relating to gangs over the last 30 years, we are between  
23 one view which says that we need to talk to gangs, that  
24 we need to engage with the whanau, that there are people  
25 within gangs who desperately want to change and they can  
26 facilitate change in their own right, to a diametrically  
27 opposed position which says I hate gangs, we will do  
28 everything we can to subjugate them, probably knowing  
29 that all that will do is make things a great deal worse.

15.00 30 And often, those positions will fluctuate in the  
31 political mind. And I can think of a couple of programs  
32 which were introduced to help gang communities change and  
33 which were very successful. But the problem was they had  
34 a three year timeframe and they started off with a very

1 positive we're going to support you, the agencies will  
2 support you to make changes, and within 18 months there's  
3 a new government and the new government has said we don't  
4 want you see talking to gangs, we instruct the government  
5 agencies not to have anything to do with them. So, the  
6 client community is left stranded after having made  
7 significant changes, after feeling that for the first  
8 time they may be legitimised, they may be accepted within  
9 the wider community, to being excluded once again, to  
15.01 10 being isolated and deprived of the resources that  
11 originally they thought would be available.

12 I don't think we can continue doing this. Every  
13 election year it's the same thing. And, you know, if you  
14 look at the cartoonist they describe every three years,  
15 get out the whip, it's election time. So, the  
16 communities, they don't know where the hell they are.  
17 They try to work out how they can improve, how to change,  
18 and it seems to me that somehow or other we have to have  
19 a really vigorous public discussion about how we should  
15.01 20 respond to marginalised communities, to communities of  
21 poverty, to communities of need.

22 You know, I don't want to sound, I don't want to get  
23 into a preaching mode here but I can't help but go back  
24 to a couple of parables from the New Testament, and  
25 particularly that of the Good Samaritan when Jesus  
26 changed the whole scenario and said, "Well, it's not  
27 sufficient to only look after people from your own tribe  
28 or from your own community. Your role is to help anyone  
29 that needs help."

15.02 30 And so, that changed the whole idea of who was our  
31 neighbour. We've redressed. We've gone back to a  
32 situation where we are judging our communities in a way  
33 which supports parts of it and excludes others. We're  
34 seeing this in the gang policies that are emerging at the

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1 moment and I fear, you know, to deny families, some of  
2 whom are gang members, the benefits on the basis that  
3 they are assumed to be making a lot of money out of  
4 drugs, requiring them to provide evidence that they don't  
5 have - that they're not earning money illegally, rather  
6 than having the Police prove it, is a significant  
7 retrograde step which is even more likely to result in  
8 even more crime. And I think we've got to stop relying  
9 on rhetoric and start looking at the evidence.

15.04 10 **COMMISSIONER GIBSON:** Thank you. A second question, a  
11 looking backwards to look forward question. You  
12 talked about your time at Kohitere teaching young  
13 men how to communicate with Police so they would  
14 avoid getting into trouble. Now today there's an  
15 emerging discourse about diversity which at times  
16 can be desperate and at times the people themselves  
17 use it in a self-termining and empowering way. Do we  
18 now, are we equipped enough to recognise the  
19 difference in how people communicate, people can  
15.04 20 understand and the global evidence that 70-80% of  
21 people in community justice have neuro disability,  
22 and are we not just teaching people enough to  
23 communicate with Police but how the Police  
24 communicate with a diverse range of people who end  
25 up as clients?

26 A. I started doing that stuff in 1972-1973, after spending  
27 four months at the Institute for Delinquency Control in  
28 the United States and saw a black Probation Officer who  
29 was doing this very successfully in Los Angeles who  
15.05 30 managed to keep a lot of those young people out of  
31 trouble and decided it was something that was worth  
32 doing. I think today we understand better than we ever  
33 have done about how best to communicate with offenders  
34 but it's not necessarily valued by the Criminal Justice

1 System. Over the last 20 years, we have actually moved  
2 from a place where relationships were significant, where  
3 we understood that if justice was not relational, it was  
4 not justice. Where we started to value ideas like  
5 restorative justice. Where we were developing strength  
6 based processes for working with young people. And we  
7 shifted, I think as a result of some of the neoliberal  
8 policies of the 1980s, to a situation where we valued our  
9 own individual achievements and we honoured those and it  
15.07 10 was important to look after oneself and not concern  
11 oneself with one's neighbour, into a Criminal Justice  
12 System which is essentially risk averse, which treats  
13 people not as humans but as risks to be managed. And  
14 with that comes a view that we don't have to relate to  
15 you, we just have to manage you. And so, I would like to  
16 see more of a movement towards strength based positive  
17 treatment of offenders and victims. And, you know, Maori  
18 are really well equipped to do that because in tikanga  
19 Maori, you know, it's important that people's mana is  
15.08 20 upheld, it's important that we don't abuse their central  
21 humanity. It's important that we gather the whanau  
22 around people, that we encourage them to work on their  
23 strengths, rather than their shortcomings.

24 If we could, I think that if we were able to give  
25 Maori more control over tikanga Maori programs and so on,  
26 we would see a totally different concept which would have  
27 wider implications for the Criminal Justice System.

28 **COMMISSIONER ALOFIVAE:** Thank you also for sharing your  
29 honesty and insights around the dawn raids because  
15.09 30 there would have been a lot of children who would  
31 have been caught up in those families that were  
32 unfairly raided.

33 My question really arises out of your comments  
34 around Matua whangai because it sounds like at the time

1 it was a programme that was absolutely fit for purpose  
2 for what was a very relevant issue at that time. And  
3 then you go on to describe the structural barriers which  
4 again fit within our Terms of Reference and I really  
5 loved how you framed it, every government agency likes to  
6 build and they're not prepared to share their theory.  
7 Over the years, have you seen an improvement in that  
8 attitude because what I think for me was coming clearly  
9 through your evidence was the lack of visibility that any  
15.10 10 one agency would have over the life of the young person  
11 that was coming through the system?

12 A. I have to say that I haven't seen any significant  
13 improvement at all. Perhaps one of the examples I can  
14 give is the responsiveness strategies of the 1980s. You  
15 know, the 1980s, it was a period of considerable promise.  
16 We had the whole bicultural period that the government  
17 was wrestling with. And there was a period in which  
18 there was legislation introduced in Parliament, the  
19 consequences of it for Maori had to be addressed. It was  
15.10 20 part of the reporting philosophy where the State Services  
21 Commission instructed government agencies to address  
22 within their strategic planning the commitment to the  
23 Treaty of Waitangi and responsiveness to Maori  
24 strategies. It was a major industry, if I could put it  
25 that way, and I have to admit that I was part of it.  
26 What happened in the 90s, is a lot of that withered away,  
27 there wasn't the same level of commitment. But what  
28 happened instead, was that government agencies were using  
29 responsiveness strategy to convince Parliament that they  
15.11 30 were doing stuff in relation to Maori, to the point that  
31 the government started reporting to the various United  
32 Nations committees on racism, on human rights, on  
33 arbitrary detention, in glowing terms the responsiveness  
34 strategies that they had, new programs, tikanga Maori,

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1 we've increased the number of Maori working in our  
2 government agencies, we have committees established in  
3 the districts relating to Maori. And the United Nations  
4 committees from about 2005 onwards started asking a  
5 different question. They started asking government, what  
6 are you doing about the underlying racism? What are you  
7 doing about the institutional discrimination that is  
8 apparent in all your statistics? And the government  
9 never answered the question.

15.13 10 If you look at the government reports, they would  
11 avoid that question. And agencies would instead refer to  
12 their wonderful responses to the strategies which  
13 actually don't meet the issues that were being addressed.  
14 From 2005 to just recently, there was what I would call a  
15 period of socially constructed silence and what happened  
16 during that decade was that the word "racism" was no  
17 longer used or referred to. There were I think 15  
18 reports addressing those issues prior to 2005, government  
19 reports, and then they dried up, they dried up and there  
15.14 20 was nothing. The last report was done I think by the  
21 Ministry of Justice in 2009, nothing else.

22 But there was another significant thing that  
23 happened. Very skilled and experienced Maori researchers  
24 were applying to criminal justice agencies to do research  
25 into those issues, Corrections and the Ministry of  
26 Justice. They had the funding and they had the support,  
27 they were being turned down by those government agencies  
28 on the basis that their research had no useful purpose in  
29 terms of meeting the objectives of those departments.

15.15 30 So, if we look at the research history from 2005 to  
31 the present, there was almost no research done on the  
32 issues of racism and institutional discrimination, which  
33 meant of course that when people said we've got a problem  
34 with it, and they would then say to them, well where's



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1 the research? Well, the research wasn't there because  
2 they made sure that it didn't happen. So, you know, if  
3 we're going to move forward, I think we need to have - we  
4 not only need to monitor what government agencies are  
5 doing but we need to monitor how much research and how  
6 much interest they have in finding out what's actually  
7 happening.

8 **COMMISSIONER ALOFIVAE:** Thank you. Final question, Sir

9 Kim, thank you for sharing the example of the hui  
10 for the young Samoan boy where 32 people showed up.  
11 Just in terms of Pasifika numbers that were coming  
12 through in the time you were working as a Youth Aid  
13 Officer and in the force, any sense?

14 A. We did keep statistics in the youth aid but I don't know  
15 that they ended up in the government, in the Department  
16 officials' statistics. And they were certainly a lot  
17 lower than Maori offending.

18 I think the other thing that we generally understood  
19 was that Pacific Island offending stopped at a much  
15.16 20 younger age and there was a lot of thoughts about why  
21 that happened. And there was one view, I mean none of  
22 this is empirically proven but there was one view that it  
23 was because of the influence of the church and that  
24 people were redirected to the church. Other view was  
25 that those naughty boys were sent back to Samoa or Tonga  
26 or whatever and their whanau sorted them out there.

27 But the level of understanding of Pacific culture  
28 was almost nil, within the Police certainly. And I do  
29 recall I spent a short time at the Police College  
15.17 30 training. One of the instructors said I've got this  
31 Samoan recruit who can't count, and I said what do you  
32 mean can't count? He said, well, I asked him how many  
33 brothers and sisters he had, and he said it was 7. And  
34 then the second question I said, well how many are in

1 your family? And he stopped and thought for a while and  
2 he said 32. I mean, I thought he was joking, you know.  
3 I thought, come on, you know, but he didn't understand  
4 that we count people differently. I thought, you know,  
5 that was an amazing revelation and there was nothing done  
6 that I am aware of, and very little really done about  
7 educating on Maori issues either.

8 **COMMISSIONER ALOFIVAE:** Thank you very much, Sir Kim.

9 **COMMISSIONER SHAW:** Thank you for your testimony, Sir  
10 Kim.

11 **CHAIR:** Thank you, Sir Kim. The Royal Commission is it  
12 in your debt for your wisdom.

13 Ms Spelman, I have the idea that we might take the  
14 afternoon break now a little bit early, I know. This  
15 will enable everything to be setup for witness number 3  
16 for today and for us to go from then until the end of the  
17 day.

18 **MS SPELMAN:** Thank you, Sir.

15.19 20 **Hearing adjourned from 3.20 p.m. until 3.35 p.m.**

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**AARON EDWARD SMALE - AFFIRMED**

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**EXAMINED BY MS HARONGA**

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6 **MS HARONGA:** If I can call the next witness, Aaron

7 Edward Smale.

8 **CHAIR:** Please do that. Good afternoon, Mr Smale.

9 (Witness affirmed).

10 **MS HARONGA:**

11 Q. Mr Smale, some formalities for the beginning. If you  
12 look in front of you, there should be a statement. Can  
13 you confirm that's the statement you prepared and signed  
14 for the purpose of this hearing?

15 A. Yes, I can.

16 Q. Is there also a folder of relevant documents referred to  
17 in that written statement before you?

18 A. Yes.

19 Q. Do you formally produce that collection of documents for  
15.41 20 the Commission's consideration?

21 A. Yes, I do.

22 Q. Can you please introduce yourself, including any  
23 acknowledgments you would like to make at the outset,  
24 particularly in relation to the stories contained in  
25 those documents?

26 A. Kia ora, my name is Aaron Edward Smale. (Speaks in Te Reo  
27 Maori). I would just like to acknowledge the  
28 Commissioners, kia ora, kia ora katou. I would also like  
29 to acknowledge as a journalist my evidence is largely  
15.42 30 based on the korero, the conversations I've had with  
31 other people and particularly survivors, and there's a  
32 couple of them who are here today and other survivors  
33 that I would like to acknowledge. Jimmy McLaughlin is  
34 here, Tyrone Marks is here, Kath Greg, Rangī, Toni.

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1 I would like to acknowledge them. Albie Epere was  
2 hoping to be here, he was unable to make it. I would  
3 like to acknowledge them because my coverage of this  
4 issue would not have been possible without conversations  
5 with them and many others, and I think I would like to  
6 emphasise that the power of their stories has been, I  
7 think anyway, one of the major factors in getting this  
8 Inquiry to happen.

9 I would like to also acknowledge some of the  
10 previous witnesses who gave evidence, Moana Jackson,  
11 Alison Green, Keith Wiffin, Judge Henwood, and  
12 particularly today Oliver Sutherland and Sir Kim Workman.  
13 Yeah, I'd like to acknowledge these people because  
14 they've, as you heard, been talking about this issue and  
15 fighting for this issue for in some cases longer than  
16 I've been around. So, this is how long it goes back, kia  
17 ora.

18 Q. By way of a deeper introduction, you've outlined your  
19 whakapapa but you also have a personal story in relation  
15.44 20 to State intervention in your early childhood. Insofar  
21 as you want to share it today, are you able to talk to us  
22 a bit about your early childhood. Take your time.

23 A. Yes, I was born in 1971. My birthfather, for want of a  
24 better term, is Maori. His mother, Kumeroa Tawhara, was  
25 Ngati Porou, and then on my birth mother was Pakeha,  
26 Irish, Scandinavian, English. And that relationship did  
27 not - was practically over, I suppose, by the time I was  
28 born. And so, in 1971, as you've heard from Alison and  
29 others, adoption was kind of, I won't say the only option  
15.45 30 but it was the main option that young teenage single  
31 mothers without any means to support themselves, that was  
32 the option that was kind of you know "sign here".

33 I will come back to this and Alison has already  
34 referred to it, the whole ranking of children in that

1 adoption system. In late 1960s/early 1970s, there was  
2 after over-supply, if you like, which meant that the  
3 predominantly Pakeha couples, middle class couples that  
4 were lining up to adopt, got to pick and choose, if you  
5 like. And there was a process whereby they would be  
6 interviewed and their preferences, in terms of what kind  
7 of child they wanted, would be noted and supply and  
8 demand kind of dictated that the children that were least  
9 wanted were Maori boys.

15.46 10 I didn't know this until some years later and I will  
11 come back to how I came across that information. It was  
12 actually from Anne Else, it is in my written statement  
13 anyway.

14 That had some impact on how my adoption scenario  
15 played out, if you like. And one of the, as I found out  
16 again years later, the Adoption Act actually excludes  
17 traditional Maori adoptions. By way of contrast, there's  
18 a number of or several anyway, members of my whanau,  
19 older members, where they were whangaed within the wider  
15.47 20 family members. Whangaed, the word whangai is often used  
21 interchangeably with adoption. What it means is to feed  
22 or nurture which I think is actually quite a beautiful  
23 term.

24 So, because the Adoption Act excluded that option,  
25 it meant that, yes, my birth mother and father had their  
26 differences and gone their separate ways, and I won't go  
27 into their personal details, but as I've tried to explain  
28 to my birth mother what that meant was the option of my  
29 wider whanau stepping in and taking responsibility for my  
15.47 30 upbringing, that option was taken out of the picture.

31 I will fast forward. A couple by the name of Jim  
32 and Tina Smale, you might have to forgive me if I get a  
33 little bit emotional. My adoptive mother Tina passed  
34 away in April, so a lot of the issues around my adoption,

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1 I have had to revisit them. But they were a sharemilking  
2 couple, didn't have a particularly good education and I  
3 wonder whether that meant they were ranked in some way as  
4 well. They were open to adopting a Maori child and so  
5 they were told, I think, that it would mean they would  
6 jump the queue, if you like, because there was more Maori  
7 babies available. And they got a phonecall that there  
8 was this child in the Hutt Valley, they were in the Bay  
9 of Plenty, they drove down. A nurse met them at the  
10 hospital waiting room, was carrying me, dropped me in  
11 Mum's lap, Mum had no experience of newborns, this nurse  
12 went away, came back 5-10 minutes later and said, "Well,  
13 do you want him or not?". And Mum always told that story  
14 with a motive disgust of the sort of callous way that it  
15 was carried out. But I was fortunate, I was very  
16 fortunate that, as a couple, they were, you know, the  
17 best parents I could have asked for really. They gave me  
18 everything they could but they, as I grew up they  
19 understood and realised that they couldn't give me my  
20 identity, to the extent that my father said a couple of  
21 years ago, you should never have been taken from your  
22 family.

23 I took that, it was actually a relief in some ways,  
24 I took that as he meant it. I don't think for a minute  
25 that he meant that he didn't want me. I just think he  
26 always had my best interests at heart and he could see  
27 the damage it had done to both myself and my other sister  
28 who was adopted.

29 So, sorry to be long-winded about this but it  
30 actually, my personal journey has been quite influential  
31 into my professional work, so bear with me here a bit.

32 So, that growing up, knowing I was Maori, very  
33 minimal information, but not having any information about  
34 that, I can remember being upset about that from a very

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1 young age and struggling with that. As Alison has  
2 referred to, you know, I concur with much of her  
3 experience.

4 As I said, my parents tried to give me everything  
5 they can in terms of my identity and part of that was  
6 they sent me to St Stephens. Unfortunately, that only  
7 underlined my lack of identity and alienation because  
8 many of the other guys, I had mates that were tutu, they  
9 had their language, everything, they knew who they were.  
10 You know, and become from the Bay of Plenty, a lot of the  
11 guys were the same.

12 So, the other aspect of St Stephens that wasn't  
13 great, it was quite a violent place. You know, I could  
14 tell a few examples. I mean, I've got a scar over my  
15 left eye from being stitched up after a brawl, I got  
16 visited in the middle of the night by two guys that beat  
17 me up in bed, you know. There's a number of other  
18 occasions. We used to have a turn walking the dorm, you  
19 walked down the line, seniors could have a crack at you  
20 and they did. One of the individuals that did have a  
21 crack at me was a guy that ended up later convicted for  
22 murder. I can't say I was surprised.

23 So, that was, on top of my kind of lack of identity,  
24 you know, by the time I hit 16, I had a few things I was  
25 struggling with. I met my birth parents at that time  
26 and, yeah, I won't go into the detail of that but it was  
27 quite a significant day. My birth father told me I was  
28 Ngati Porou, it was like a physical cloak of presence  
29 being put on me.

15.52 30 So, that's kind of, I guess, my back story.

31 In terms of my work as a journalist, I had a bit of  
32 a knack for writing and an irritating habit of asking  
33 annoying questions. And so, I ended up in that career.  
34 I'd just like to note that, yes, journalism is a job

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1 description, the media is an industry, but I'd like to  
2 put it in a wider context. It's what I call, I suppose,  
3 one term I could use, public conversation. Because as  
4 somebody who works in the media but somebody who's Maori,  
5 there's often a bit of a tension there. We've heard from  
6 a number of very impressive witnesses about institutional  
7 racism. I'd just like to touch on I guess what I regard  
8 as the institutional racism in journalism. That's a  
9 subject all on its own that there's not the space to  
10 canvass here but - from my point of view, if you look at  
11 in terms of the public conversation and the role the  
12 media plays in that, if you look at the media and then  
13 you have the politicians, they're doing quite a similar  
14 thing because what they're trying to do is reach the  
15 biggest number of people, the biggest audience. That's  
16 just politics, it's just business, you could say, but  
17 what tends to happen, is that the biggest audience, the  
18 biggest market, the biggest electorate is white middle  
19 class Pakeha. So, political messaging, journalistic  
20 coverage of any issue, even when it relates to Maori,  
21 particularly when it relates to Maori or other  
22 ethnicities, is always filtered through that lens. And,  
23 yeah, I just think that's worth just noting that here  
24 because some of my coverage wrestles with that question.

25 You've heard from Oliver Sutherland, this issue has  
26 been out for a long time. Some people will talk about me  
27 breaking the story and you know, well done Aaron, you  
28 broke the story, I find that embarrassing because it's  
29 been hiding in plain sight for decades as we've heard.  
30 I've kind of scratched my head at times be and wondered,  
31 well, why hasn't it got the traction 20 years ago,  
32 30 years ago, 40, 50 years ago because there's been a  
33 number of very great individuals who fought this cause  
34 long before I came along. There's been journalistic



1 coverage of it as well.

2 So, that's, I guess, a little bit about my  
3 background. I'm not sure I can talk next about the I  
4 guess the stories that are directly relevant to this  
5 topic?

6 Q. That's right and also as you will recall, your brief is  
7 taken as read, so the Commission does have records of the  
8 places where you worked. But why don't we fast forward  
9 and you look at the category of investigative work that  
10 you did focusing on survivor stories and perhaps you can  
11 tell us a little bit about the lead-up to the article  
12 Justice Delayed, Justice Denied.

13 A. Yes.

14 Q. Focusing first on the research and investigative work  
15 through the experts and also highlighting the survivors  
16 story there?

17 A. Sure. Just a little preface to that, on the adoption  
18 issue again, I found a sister I didn't know about, about  
19 10 years ago, and that raised that whole question again,  
20 how did this happen? How did I miss out on this person?  
21 I think you're hearing from Anne Else, I believe, she  
22 canvasses that subject of Maori boys already touched on.  
23 And that really raised some quite painful questions  
24 actually initially as to why, what was wrong with Maori  
25 boys? We were only just born, you know. Is there  
26 something kind of, are we some kind of less human?  
27 Moana's testimony yesterday was about the colonisation  
28 being about another group of people being inherently less  
29 human. And that really struck, that got to me personally  
30 but it also really focused my work, I had worked, as you  
31 will know from my written evidence, that Mana magazine  
32 and I had a short-term contract at Radio New Zealand,  
33 previously done work around the high number of Maori in  
34 prisons. I had heard about welfare homes but I had no

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1 real concept of the scale of it. And it wasn't until I  
2 got a copy of Stanley's book. At first I was like, okay,  
3 a lot of the stuff was similar to St Stephens in many  
4 respects. But it was the scale of it. The scale of the  
5 abuse, especially the sexual abuse, that really kind of  
6 got to me, I suppose. And I started, and it was obvious  
7 that most of those victims were Maori. I started to ask,  
8 what does that do? If you say take that ballpark number  
9 of 100,000 and say 70,000-80,000 of that group are Maori,  
10 and then not only have they been damaged but then you  
11 start to escalate that and multiply it by their children  
12 and their grandchildren. And you've got a problem, to  
13 say the least.

14 And so, I was struggling to find my place a little  
15 bit within Radio New Zealand, I'd come from investigative  
16 background, Radio New Zealand is a very daily news focus  
17 and I was trying to do a multi media sort of story around  
18 this but it started initially talking to, I guess you  
19 could call them experts, Judge Henwood was one, Lizzie  
20 herself was another, Sonja Cooper, Ross Newman who had  
21 previously been at the rule rights Commission. I got  
22 some really strong background material and that laid a  
23 foundation and I guess to summarise that, what they were  
24 saying consistently between them was that there's been  
25 this abuse but the Crown's response to that abuse has  
26 been - it's been about, to put it colloquially, covering  
27 the government's arse. It's been about minimising the  
28 State's liability, both legally and financially, and  
29 there's a number of incidents and examples there which  
30 are in my written brief, that in my view showed quite a  
31 consistent pattern of the State denying the allegations.

32 And not only that, also if you want to bring it back  
33 to an individual, if you have an individual perpetrator,  
34 particularly when we're talking about sexual crimes,

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1 there's a tendency for that perpetrator to silence the  
2 victim in various ways, threats, manipulation. And if  
3 you scale that up to the State, the State was doing, I  
4 believe, the same thing.

5 So, that was, I guess, the general gist of - and I  
6 tracked the - that happened over a long period of time  
7 and I tracked that, aspects of that journey, if you like.  
8 But I knew that a story like this is pretty technical and  
9 it doesn't really capture an audience unless you, I  
16.01 10 guess, humanise it, for want of a better term. And I  
11 knew that, yeah, to really make this story fly, so to  
12 speak, I needed to find somebody who had been through  
13 that experience. Through a couple of contacts I have in  
14 the Mongrel Mob, I ended up being put in touch with Jimmy  
15 McLaughlin and, this sounds a bit silly but I will always  
16 be grateful to Jimmy because his quiet telling of his  
17 experience was extremely moving and I had many colleagues  
18 who felt the same when they read that story. He had been  
19 picked up for wagging school and I believe his parents  
16.02 20 weren't home when the Police took him home. As you've  
21 heard from Sir Kim, the next step was welfare home. And  
22 like many people, he spent several years in those homes.  
23 There was a reference this morning to Owairaka and I  
24 think Oliver put up that it was for 14-17 year olds. I  
25 was sitting beside Jimmy and I turned to him and said,  
26 "How old were you?" because I was pretty sure he wasn't  
27 14, and he was 10. So, yeah, like I say, I just want to  
28 really give a shout out to Jimmy. He came down to the  
29 protest on this issue and he was there and I said to him,  
16.03 30 and I meant it and I still do, you know, "You started  
31 this". He was a bit embarrassed but yeah.

32 So, that was a long form, 6,500 words. I had  
33 already interviewed Judge Henwood but at that stage when  
34 I first interviewed her the government hadn't responded

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1 to the CLAS report. It was kind of snuck out quietly, if  
2 you like, that's just my interpretation, of course.

3 Q. Are you talking about the written response from the  
4 government?

5 A. Yes, yes. And I stumbled on it quite by accident. There  
6 was no press release. When I read it, I knew immediately  
7 that Judge Henwood would be furious. And then I tried to  
8 get hold of her and she was overseas and by the time I  
9 got through to her, she gave me 20 minutes, she was in  
16.04 10 transit, and she kind of unloaded big time. I walked out  
11 of that recording booth and I thought to myself, is she  
12 allowed to do that? Because a Judge taking a crack at  
13 the government, I thought that's not kind of how things  
14 work or something.

15 What that did, is I had this big contextual feature,  
16 if you like, and then I had a very sharp news angle of  
17 Judge Henwood really socking it to the government and I  
18 had a very good producer who briefed. We had quite by  
19 chance Kim Hill was filling in on Morning Report and, as  
16.05 20 many people will be aware, Kim has a ferocious well  
21 earned reputation as being a pretty brutal interviewer.  
22 Anne Tolley had been avoiding giving me an interview and  
23 it was like, okay, you don't want to talk to me, talk to  
24 Kim Hill. Anne Tolley rung up a couple of minutes before  
25 the 7.30 news I think hoping to be saved by the bell.  
26 The producer saw that Kim was on a roll and pushed the  
27 news off the cliff and let her go. Yeah, that was - I  
28 knew I'd done, that the story had sort of blown up. I  
29 came into the news room and I couldn't, I was on the  
16.06 30 train and I couldn't hear it live, but the whole news  
31 room was fizzing. Not only that, it wasn't just some  
32 journalistic thing, there was a number of survivors were  
33 ringing in and walking into newsrooms. Like there was  
34 one that walked into Christchurch news room. Yeah, it's,

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1 I guess, a combination of things, I think, we have these  
2 people who knew what they were talking about and we had  
3 Jimmy and his experience and you had this dismissive  
4 response from the Crown and, you know, the strength of  
5 and courage of Judge Henwood just going, no, that's not  
6 good enough.

7 And, yeah, it kind of just - I never say I broke the  
8 story but I did give it a good kick, yeah.

9 Q. One of the things that came out of that story that you  
16.07 10 mention in your brief, is the human rights report. Do  
11 you want to fill in some detail around that? Where did  
12 that report come to you from?

13 A. Like all journalists, I cannot reveal my sources.  
14 Somebody had gone through and requested it and passed it  
15 on to me. Yeah. It didn't really matter where it came  
16 from. You could see the correspondence backwards and  
17 forwards between the Attorney-General, Chris Vincent, he  
18 wouldn't give me an interview either, and Ros Newman. I  
19 got in touch with Ros and asked about the background to  
16.07 20 that and her take on it was they had tried to engage with  
21 Crown Law right through that process. Sorry, the report  
22 was focused on, you know, the State abuse and the Crown's  
23 response to it. The report was in draft and it went  
24 backwards and forwards and according to Ros and I take  
25 her word for it, they went to great length to involve  
26 Crown Law and discussing what they thought of the report.  
27 It was, you know, she thought well researched and she  
28 said the Crown didn't engage at all until the last minute  
29 and then through a spanner in the works to try and, in  
16.08 30 her view, try and disrupt it.

31 Chris Finlayson, the correspondence from him was by  
32 that stage with David Rutherford who had taken over from  
33 Ros, and the tone was quite, in my reading anyway, quite  
34 arrogant. Again, it reinforced this idea that the Crown

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1 was just not going to listen, did not want to hear  
2 anything that contradicted its position.

3 And so, that - and the other thing that Ros kind of  
4 mentioned to me that has stuck with me and continues to  
5 be a line of investigation, I am not sure if he's still  
6 here, Michael Smith, I've done quite a lot of work with  
7 Mike and one of the major focuses we've worked on, I  
8 believe Mike has a series coming out, just a promo about  
9 it, Ros said something about I was very concerned about  
16.09 10 the original scope of this, about the 99 cutoff date, and  
11 the reason I was concerned was for me the Helen Clark  
12 government was the one that really was at the centre of  
13 developing the legal response and legal strategy and that  
14 - I will come back on this and touch on it here - but  
15 that started really in earnest with Lake Alice. There's  
16 probably earlier things that happened but that for me is  
17 quite a major turning point.

18 Ros said something that has always irritated me or  
19 has been kind of a motivation to find out why, and she  
16.10 20 said that the officials from Crown Law were pressuring  
21 the Attorney-General at the time, Margaret Wilson, to  
22 "shut it down". And that to me just said, that raised  
23 some red flags. You've got these major allegations,  
24 proven allegations I believe, of some horrific abuse and,  
25 you know, I'm not a lawyer, I don't understand Crown  
26 Law's kind of, you know, internal operations and  
27 deliberations, but you know I would have thought there  
28 was a responsibility for Crown Law to investigate  
29 criminal allegations. And you hear Crown Law is shutting  
16.11 30 it down apparently and to me there seemed to be a real  
31 internal contradiction, conflict of interest, I guess is  
32 the term that comes to mind for me.

33 So, yeah, that report never initially saw the light  
34 of day until, yeah, I got hold of it and then, here you

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1 go, here it is.

2 And it pretty much said what Judge Henwood said, to  
3 be honest. It said the same thing, that we need to  
4 understand what went wrong here. There needs to be an  
5 independent Inquiry. For the Attorney-General to try and  
6 say no we don't, it just seemed a bit strange.

7 Q. So, you've described, Aaron, that was the first story  
8 Justice Delayed, Justice Denied and you've added in some  
9 colour about the public response.

16.12 10 Your brief further goes on to the follow-up of that  
11 story and that's where you touch on more the element of  
12 gang membership coming out of the welfare homes. Do you  
13 want to speak about that specifically?

14 A. I'd heard from a number of sources, Lizzie's book refers  
15 to it, conversations I've had with people from  
16 Corrections, gang members themselves, I'd sort of got  
17 this very strong impression that, yeah, there was a  
18 direct line between not only the welfare homes and prison  
19 but welfare homes and gangs.

16.13 20 I was very aware that, you know, when I looked and  
21 did a bit of a Google trawl before I did the first story,  
22 I was aware that there were a number of journalists who  
23 had covered the story, there had been a front page  
24 headline and then nothing had happened and I didn't want  
25 to join that club. I wanted to shift it and make  
26 something happen. So I wanted to do a strong follow-up.  
27 I had the great pleasure of interviewing Kim Workman  
28 around this topic and he probably knows as much as  
29 anybody. By that stage, I had some reasonable, you know,  
16.13 30 good relationships with a couple of guys in the Mongrel  
31 Mob, including Harry Tang, and he invited me to a gang  
32 hui in Featherston that he'd arranged. He was aware of  
33 my work. And there was, I later found out there had been  
34 some gang shooting and there was a bit of tension there

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1 because I noticed there weren't any women or children, so  
2 I think there was a few things in the background that I  
3 wasn't aware of fortunately. But there was Mongrel Mob  
4 there, Black Power, Nomads, probably about 50 guys. I  
5 had to drive from Levin to Featherston to think about how  
6 am I going to sell this one? I talked about my previous  
7 work and mentioned Francis and Jimmy and Edge Te Whaiti  
8 but I said to them, look, you know, the way I put it was  
9 I talked about whakapapa. And I said, you know, the  
10 audience that I have is this white middle class Pakeha  
11 and they look at you and they see a brown face and a  
12 patch and I said, you know, I don't need to explain to  
13 you the conclusions they draw from that. But I said what  
14 I'm interested in is like this Powhiri process of where  
15 are you from? What's your whakapapa? And I said, if  
16 you've come through these welfare homes, the State is  
17 your parent. And there was this very - there was silence  
18 and I wasn't quite sure how it was going down because  
19 there were some pretty stony faces in front of me.

16.15 20 Anyway, we sort of wrapped up and I greeted them  
21 all. Shortly after that, there was two conversations  
22 that I will refer to. I will refer to Albie Epere first.  
23 I sat round the lunch table with a few of them and all of  
24 them pretty much had been through those places, Epuni,  
25 Kohitere, Owairaka, and it pretty much confirmed my hunch  
26 that there's something going on here.

27 So, I managed to convince Albie to go on the record  
28 with that. I will just step back for a moment. One of  
29 the other things that was going on at that time, was  
16.16 30 Stuart Nash was in the Labour Party and was in  
31 opposition, and he was kicking up and making a song and  
32 dance about smashing the gangs. He was the spokesperson  
33 for Police. And it kind of annoyed me. I kind of, I  
34 didn't mention him by name but I was essentially



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1           countering the, kind of, argument that he was making.  
2           And I sort of angled the interview with Albie around this  
3           whole question of the government being responsible for  
4           this stuff and Albie kind of rose to the challenge of  
5           that question and really put it back on the government  
6           and the State.

7           It was a very, very strong interview, largely  
8           because of Albie's kind of, you know, ability to  
9           articulate his experience.

16.17 10           I'd just like to separate here a little bit because  
11           now we have an opposition that's the National Party and  
12           we've got the leader of the opposition, Simon Bridges,  
13           saying pretty much exactly the same thing that Stuart  
14           Nash was saying a few years ago. As Kim Workman pointed  
15           out, it goes in a constant loop.

16           And permission to be frank here, Mr Chair? I'm sick  
17           and tired of it, listening to these politicians, and it  
18           seems to me that the politicians that most like to dump  
19           on Maori, are Maori. Now, Winston Peters is going to  
16.18 20           hate this but Simon Bridges has learnt it from Winston.  
21           Paula Benefit - Bennett sorry - Shane Jones, they've all  
22           learnt the trick from Winston. Coming back to the public  
23           conversation I mentioned and getting the votes and  
24           getting the clicks and selling the papers, they've learnt  
25           that the best way to get that white middle class vote is  
26           to shit on their own people.

27           Now, Simon Bridges has got no idea what some of  
28           these individuals have been through. And it infuriates  
29           me. He wants to talk about, and not just him, he's part  
16.19 30           of a whole pattern, about being tough on crime. The only  
31           problem with that, is he's very selective about the  
32           criminals, he's very selective about the crimes. You  
33           know, I've sat and listened to individuals, including  
34           gang members, who have been raped multiple times. Simon

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1 Bridges was in government for 9 years. When did he ever  
2 talk about those crimes? When did he ever talk about  
3 getting tough on those criminals? And let's go to  
4 Winston Peters. We've heard from Oliver Sutherland, you  
5 know this stuff has been hiding in plain sight for  
6 decades. Why has Winston Peters not kicked up about  
7 that? It infuriates me. They use people who have  
8 already been abused to further their political careers.  
9 Shane Jones, he made a statement, he wanted to nuke gang  
16.20 10 members, put them off the face of the earth. He wants to  
11 portray himself as this Maori boy from the north. What  
12 about all those other Maori boys from the north that  
13 ended up in those places? What about them? I am sick of  
14 it. I am sick of listening to it. The crimes that have  
15 been committed against these individuals, men and women,  
16 are horrific. I don't know if anyone noticed during  
17 Oliver's testimony, there were two women who had to bolt  
18 out of this women when he was describing the stuff that  
19 went on at those girls homes. I know one of them,  
16.21 20 another one I introduced myself to. They had to get out  
21 of here because it was too traumatic for them. Why  
22 haven't these politicians like Simon Bridges spoken up  
23 and stood up for that, you know, being hard on that  
24 crime? I'm sorry, I'm just, I've had enough of listening  
25 to this message and the media has got a responsibility to  
26 knock that over. They don't because the victims are the  
27 gang members. Duncan Gunn he made a public statement  
28 that gang members don't have any human rights. Before  
29 they were a gang member, before they had their patch on,  
16.22 30 before they masked up with the tattoos they were little  
31 boys. They had their human rights stripped when they  
32 were kids and violated then. What about that, Mr Gunn?  
33 I am sick of the political figures, media figures, who  
34 want to shit on these people who never met them, never

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1 taken an interest.

2 Q. We probably might just take a break there to catch our  
3 breath a little.

4 A. Sorry.

5 Q. I don't want to curtail your evidence on that point.

6 A. I'm done.

7 Q. It was always going to be an important point, so I do  
8 thank you for your points there. We probably don't need  
9 to rehash the actual journalistic article that you put  
10 forward because it was essentially that argument.

16.23

11 A. Yep.

12 Q. Are you fine to continue?

13 A. Yes, I'm fine.

14 Q. Yesterday we heard some significant evidence from Moana  
15 Jackson about the parallels with indigenous experience in  
16 other colonised countries. You also wrote an article  
17 about that, that centered on a survivor story. Do you  
18 want to briefly cover that as well?

19 A. Yeah. I'm honoured that Tyrone Marcus is here today.

16.23

20 I've got to know Tyrone and I'm honoured to call him a  
21 friend. His story is one of the worse I've heard, you  
22 know, and yet he's a remarkable individual who's just,  
23 I'm astonished at times how he's survived what he has. I  
24 had always thought there was a parallel with the Stolen  
25 Generations and that originally was based on my  
26 experience of adoption. But, yeah, certainly when I  
27 looked into this issue, there's just such strong  
28 parallels. One example of that, is if you take the  
29 Canadian report, which I refer to, and Lizzie's book and  
30 you put them side by side, and it's like reading the same  
31 kind of document in places.

16.24

32 I think there's some differences in terminology and  
33 methods, if you like, but the pattern is the same, you  
34 know. You take the land, you sort of take the culture

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1 and then, you guys are still here? Okay, we'll take your  
2 kids and knock them into shape. I think in New Zealand,  
3 if you look at Canada, the residential schools, were  
4 residential boarding schools for over 100 years, I think  
5 in New Zealand it was kind of played out differently.  
6 You had the native schools which weren't boarding schools  
7 but they stripped the language. And then there's those  
8 native schools were winding down, the welfare homes were  
9 winding up as the urbanisation and that shift happened.

16.25 10 So, one question that I raised with some of the  
11 people I talked to, Wilton Littlechild who is a native  
12 American, Canadian, has played huge roles in the UN etc.  
13 and was a residential school survivor.

14 Q. Is he also a Commissioner?

15 A. He's also a Commissioner. He was fantastic to talk to.  
16 He wasn't really familiar with the New Zealand situation  
17 but what he described in both his own experience and in  
18 the bigger picture, was very similar.

19 I also talked to Peter Read from Australia who  
16.26 20 coined the term Stolen Generations. I could talk at  
21 length about those guys because they were fantastic.

22 One thing that struck me was they talked about how  
23 it took a long time for what you might want to call the  
24 narrative to kind of sink in with not only the general  
25 public, the white public, but even survivors themselves.  
26 Peter Read talked very clearly about this, many just did  
27 not understand the bigger context of what had happened to  
28 them. And likewise with Canada.

29 When they were telling me this, I was actually, it  
16.26 30 kind of scared me a bit because it's like, well, we were  
31 about 20 years behind that and we're not even at square  
32 one, you know you're shit house when you're lagging  
33 behind Australia. So, that, you know, and I felt then a  
34 responsibility to, okay, put that narrative in place.

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1 Like, I'm not going to do it on my own but I'm certainly  
2 going to try and contribute to it.

3 So, yeah, for me, and then I guess if you look at,  
4 say, for example, the Maori language claim, there's kind  
5 of a famous moment where I don't know who it was but  
6 asked Sir James Henere, how there's no actual specific  
7 legislation here that says the Maori language shall be  
8 abolished, Sir James said there's not legislation but  
9 there's certainly a gentlemen's agreement. I put that  
10 whole question about specific legislation to Vicky Tauli  
11 Corpuz, I think she was the UN Indigenous representative,  
12 she said it doesn't matter, if you have the same methods,  
13 the same outcomes, it's the same thing, you don't need  
14 the legislation. If you look at Australia and Canada,  
15 there is specific legislation and I think that needs to  
16 be kept in mind that although we didn't have the specific  
17 edit to take Maori children, all these other policies  
18 that were going on added up to the same result.

19 I'd also like that just make, if I can, a  
16.28 20 distinction between legislation and policy/practice.

21 I know you are all very learned Judges and lawyers  
22 but, for example, with adoption, that legislation has  
23 been in place for over 60 years now. It hasn't changed  
24 significantly but the policy has swung all over the place  
25 and from when I was adopted, and even earlier, things  
26 were quite different. Whereas, now I mean I have two  
27 nieces that have been adopted from the Philippines. My  
28 birth father has adopted two girls and that was open.  
29 And I guess the point I'm trying to make, is that, you  
16.29 30 know, you can have the legislation but there's always  
31 these unelected sort of bureaucrats and officials and  
32 practitioners who can kind of make it up as they go along  
33 in some cases. And it can be, I don't know, just, you  
34 know, the latest fashion. And somebody gets an idea in

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1 their head or it's the public pressure or the public, the  
2 social environment. I mean, it was a shameful thing for  
3 a girl to get pregnant when she was a teenager back in  
4 the 1960s. It's not that - that social attitude is not  
5 there now.

6 I guess, I'm just trying to highlight there can be  
7 quite - the legislation is not going to tell you a whole  
8 lot sometimes. It's actually at that other level that  
9 things operate. You probably know that but anyway.

16.30 10 Q. So, we've covered your investigative work and some of  
11 your arguments around this issue. If we can move now to,  
12 if we can frame it around your article you've referenced  
13 on page 14, paragraph 61, if you want to catch up to  
14 where we are in the brief.

15 A. Sorry, page 14?

16 Q. Yes, top of page 14. This section of your brief covers  
17 another argument that you made in an article about the  
18 behaviour of the State which again you can take the brief  
19 as read and the article as read. But are there some key  
16.31 20 aspects of the brief that you'd like to highlight for the  
21 record today?

22 A. Yeah. I guess, journalism is often about explaining  
23 quite complex things in a way that the average  
24 intelligent lay person can understand. You know, a lot  
25 of this information, and you're going to hear more of it  
26 than I am, is quite complex. And I guess when I looked  
27 at the State's behaviour over a long period of time, you  
28 know, it's a bit of a struggle to explain it in a way  
29 that's succinct.

16.32 30 But the more I thought about it, the more I thought,  
31 well, the State is a legal person and if I was to try and  
32 describe that person, how would I do that? This person  
33 has been accused of committing some horrendous crimes,  
34 what's been their response? When I broke it down like

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1 that, the analogy, and it is an analogy that I came up  
2 with, is the State is a psychopath. And if you go  
3 through the list, tick all the boxes of psychopath. No  
4 remorse, no insight into their offending, manipulative,  
5 lying, etc., etc.

6 Now, I'm not saying that, you know, people who work  
7 at Crown Law are psychopath individually. I mean, I've  
8 met a couple, they're quite pleasant people. But the  
9 behaviour of the Crown overall, if you add it up, it's  
10 about looking after itself.

11 I think you've heard the evidence from many people  
12 and the causes of some of that original abuse and you  
13 could say is it negligence? You know you could not  
14 explain it away but you could explain it. But that's one  
15 thing. I think the Crown's response to that, it hasn't  
16 been some kind of oversight or negligence. It's been  
17 very sophisticated and it's been very deliberate.

18 Just as an aside, I get all sorts of tid bits of  
19 information and then sometimes I can verify it, sometimes  
20 I can't, but I've heard now recently that Crown Law has  
21 got more funding to respond to this Royal Commission than  
22 the Royal Commission has got itself. And like I say, I  
23 don't know if that's correct and I'm just raising it  
24 because I'd be interested to know. I'm getting the  
25 impression from the demeanour of one Commissioner at  
26 least, that that's not - they are not aware of that.

27 Now, for me it's about if I was to, for example,  
28 I've made a lot of Official Information requests and  
29 often it's not MSD that you're dealing with. It's  
30 sitting behind MSD is Crown Law whenever you're talking  
31 about this issue in particular. And for me it's been  
32 Crown Law all the way through that has, I referred  
33 earlier to Ros saying Crown Law was trying to shut it  
34 down. And, you know, there's a whole lot of events that

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1 are in my statement, I don't need to cover it here  
2 exactly, but you can see this ark of the Crown's  
3 behaviour over a long period of time. I haven't got all  
4 the evidence. I've got bits and pieces but I've got  
5 enough to build an impression that the State has always  
6 been about acting in its own interests.

7 Q. That's your characterisation, you put it forward in that  
8 article and you have some examples in your brief about  
9 that. I just thought I might inquire with Mr Chair, if  
16.35 10 we're not going to go through the examples word-for-word,  
11 if that's not necessary, would you like to take a short  
12 break or just continue with this witness because we'd be  
13 close to wrapping up?

14 **CHAIR:** I think we'll just continue.

15 **MS HARONGA:**

16 Q. If that's okay with you, Mr Smale?

17 A. That's fine, yes.

18 Q. Because I am conscious of the time. The two examples  
19 that you used, being Lake Alice and the White trial.

16.36 20 A. Yep.

21 Q. If I can just direct maybe any lagging questions that you  
22 have, that you might challenge this Commission with in  
23 relation to where your investigation ended and what you  
24 think could be learnt from what was available to you and  
25 how far you could take it?

26 A. Yeah, I think, I mean, I've already touched on it in a  
27 couple of ways. Again, I mean, my first story and my  
28 current work actually, has been very focused on the  
29 Crown's response. And when I say Crown, it's  
16.37 30 predominantly Crown Law which spans a number of  
31 governments. It's advised several Governments now on its  
32 response and I've always found that response extremely  
33 problematic. I mean, I'll just give a little  
34 illustration. I mean, I'll touch on Lake Alice a little



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1 bit again and just give another random example of which I  
2 have a multitude.

3 There's some serious questions around Lake Alice, in  
4 terms of - I'll start with Gallen J's report. Now, as  
5 you will know from reading the evidence and you would  
6 have already probably done some research yourself, there  
7 was a civil claim in the late 90s and that was eventually  
8 settled by the Helen Clark government and a sum was paid.  
9 Part of that process was Gallen J was asked to divvy out  
10 that amount, I think Oliver may have referred to that,  
11 and that report, sorry Gallen J, that's what he was asked  
12 to do, was to figure out who should get what, but he went  
13 through and thoroughly investigated, Oliver has mentioned  
14 it. That report was damning and there was a couple of  
15 things.

16 One, that report was leaked and the media got hold  
17 of it, I believe it was the Evening Post, and were about  
18 to publish a story and there was an injunction put on  
19 them.

16.38 20 Q. By who?

21 A. Crown, so it wouldn't be made public. And that went to  
22 Court. I believe it was Justice Ryan Young, I believe,  
23 said, no, it can be released and it was, and I have a  
24 copy and I'm sure the Commission has a copy. What's  
25 curious about that is all Gallen J does is layout the  
26 facts as he saw them, so what's the problem? Why go to  
27 that length? And who was involved in that  
28 decision-making process?

29 That's just one little aspect of this case, one  
16.39 30 small aspect.

31 Some of those claimants then, their allegations were  
32 then forwarded to the Police. And this is where it gets  
33 really, really weird and murky. I guess I have to be  
34 careful I don't speculate but forgive me if I venture

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1 there, but there's just this really strange process over  
2 a good decade almost, where those allegations were never,  
3 in my view, and in the view of a number of people, never  
4 properly investigated. And then the Police came, I think  
5 it was in 2008-2009, and made a statement that there was  
6 not enough evidence to prosecute which is really weird  
7 when you put that statement alongside Gallen J's report.  
8 You put those two side by side. Not only that, Mike and  
9 I have been digging around and Mike is going to launch on  
16.40 10 a big boat very shortly but there was never really a  
11 Police investigation anyway. As far as we can tell, the  
12 evidence points to I think there was one person who was  
13 spoken to, it might have been Hake Haho and that was  
14 taken as being representative. It wasn't. There were a  
15 number of other cases that were quite different, I think.

16 There was also, I am losing my track here, sorry,  
17 there was - again, Crown Law's position there is this  
18 conflict of interest because they took statements from a  
19 number of staff, they took those statements not to  
16.41 20 investigate them for any criminal activity, they took  
21 them to, they were acting like their defence lawyers  
22 effectively. Because they were working for the State  
23 they were going to defend them. This is where I start to  
24 speculate because my understanding is, if anybody is a  
25 State employee is convicted of serious crimes, then the  
26 Crown's liability, the Crown is liable. And that  
27 conviction in a Criminal Court is rock solid evidence.  
28 Now, I'm not a lawyer, I'm just kind of layman's  
29 understanding here, so please forgive me if I'm kind of  
16.42 30 venturing into areas I am not qualified to.

31 But, again, when the National Government came in,  
32 just before the Police released their report, Chris  
33 Finlayson, I believe, waived privilege on six of those  
34 staff statements. Mike and I found out recently that

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1 there's actually a substantial number that they haven't  
2 waived privilege on. And I guess again speculating, the  
3 six that were released were probably of no real risk, if  
4 you like, in terms of improper behaviour.

5 Q. Those would be just some of the questions that you -

6 A. Those are just some of the questions I'd like to put out  
7 there. Those other statements that were taken by the  
8 Crown from staff at Lake Alice, what's in them? Is it  
9 incriminating? If it is incriminating, it incriminates  
10 state employees and for the State that's a big problem  
11 because if those allegations are proven then, you know,  
12 the Crown is on the hook for more than it paid out.

16.43

13 Yeah, that's an opinion but that's what it looks  
14 like to me. And it looks like that to a couple of other  
15 people we've spoken to.

16 Q. And you have similar, some questions about the White  
17 litigation strategy as well?

16.44

18 A. Yeah. My brief of evidence, I mean it was hard to sort  
19 of figure out how to narrow it all down. I think there's  
20 a very direct link between the legal strategy that was  
21 developed, I haven't seen it, I've tried to get a copy of  
22 it and of course legal privilege kind of scuffed that  
23 attempt. But I did get some documents in my OIA request.  
24 There's a report to White Creech and a lot of it is  
25 redacted out and it's about the Lake Alice situation.  
26 There's a couple of things in there that are notable.

16.45

27 One of them is that they layout some options, that's  
28 standard and something to be accepted. But one of the  
29 options that they layout, in terms of the Crown's  
30 response, is, I mean one of them is let it go to Court  
31 and let the Courts test it. Yeah, there's several  
32 options.

33 One of the options that they canvass but you can't  
34 see the detail, is use all technical defences.

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1           The other thing that's notable, is that you've got  
2 these, in one paragraph it makes note and flags that most  
3 of the kids that were in Lake Alice had come from other  
4 institutions. And so, there's this very real kind of,  
5 they mention, they also make allegations about those  
6 places. So, I think it's been flagged that we don't just  
7 have to worry about Lake Alice. We've got a great big,  
8 kind of, elephant galloping down the road at us and we  
9 need to figure out what do.

16.46 10           Now, that was in when was it late 90s. If you fast  
11 forward to 2007 in the White trial, you can see there's,  
12 I've read the transcript, I talked to Sonja Cooper, sorry  
13 I've read the decision, some of the transcript, had  
14 conversations with Sonja and I think Sonja has basically  
15 been for the entire time she's been working in this area  
16 fighting that strategy of using all technical defences.  
17 Not only has she been fighting it, survivors have been  
18 fighting it.

19           And that, again I'm piecing together little  
16.46 20 fragments and I can't see the whole picture. I would be  
21 - I would love for the Royal Commission to kind of fill  
22 in those gaps because I think, again, it will show the  
23 State's response and, you know, was that the adequacy or  
24 otherwise of that response.

25 Q.   So, that would wrap up the characterisation of the  
26 State's behaviour and do you have some close being  
27 comments around the treatment of Maori, particularly  
28 Maori men, in relation to abuse in care?

29 A.   Yeah. I think in some respects it's kind of -

16.47 30 Q.   Sorry, in reference to the brief for the Commissioners,  
31 from page 21 onwards.

32 A.   It's already been fairly well canvassed, that you know  
33 Maori men are the biggest cohort here. I want to  
34 emphasise that my focus has been on Maori men, for the

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1 reasons I've already outlined. I don't in any way want  
2 to exclude or diminish the suffering of non-Maori or  
3 women at all. In fact, for many Pakeha, they actually  
4 got harder treatment because they were in the minority  
5 and they were smaller but I guess, standing back from  
6 individual stories, if you look at the big picture, it's  
7 very clear who the biggest group are and they're Maori  
8 men.

9 I'm sort of reluctant to - as a journalist I like to  
16.49 10 put other people up on the platform and it's embarrassing  
11 to - I don't want to claim ever to speak on behalf of  
12 survivors. I just give them a platform. One of my jobs  
13 has always been to convince people that, you know, that  
14 are very downtrodden and have suffered immense abuse,  
15 that they are worthy to be heard. You know, I hope the  
16 Commission takes, you know, that approach.

17 I mean, I could give you multiple examples. I don't  
18 want to speak on behalf of survivors, they can speak for  
19 themselves and I think they do.

16.49 20 I guess one example, to try and illustrate some of  
21 the stories I've heard, some of the other witnesses talk  
22 about what's been going on in the welfare homes. There's  
23 one individual I've got to know, who was in, for good  
24 reason, but had been removed from a particular situation  
25 at the age of 6, probably earlier, went through welfare  
26 homes. You can see through his file there's this  
27 constant pattern abscond, abscond, abscond, running away.  
28 There's quite a negative slant put on that by the welfare  
29 staff in his file.

16.50 30 You talk to the individual, and the reason he was  
31 absconding and running away is because he was being  
32 sexually abused in particular in those places, and it's a  
33 massive pattern going on. And there's an escalation.  
34 These kids, they had very limited choices but when they

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1 did they took them, whether it was fighting back or  
2 running away.

3 But there's this escalation that happens. It's like  
4 snakes and ladders without the ladders. And then this  
5 escalates and he goes into the welfare homes, he runs  
6 away from there. Then there's the secure, you know,  
7 solitary confinement and on it goes. And each of those  
8 welfare homes, I have built up a spreadsheet of  
9 perpetrators in these different places, and you kind of  
10 overlay that onto his time through there and look at his  
11 actual Statement of Claim, and there's these perpetrators  
12 that here's encountering all the way through.

13 And then he ends up, the escalation continues and he  
14 ends up at Lake Alice by the time he's 12-13, and that's  
15 just another house of horrors that's on another level all  
16 again and the ECT etc. and the sexual abuse actually and  
17 the ECT gets a big play, talking about Lake Alice, the  
18 sexual abuse was rife as well. Remember, you have  
19 criminally insane adults that kids are being chucked in  
20 with.

21 So, it doesn't take much imagination to figure out  
22 some of the stuff that was going on there.

23 And this individual who's got what I would call a  
24 very robust sense of humour, and please forgive the  
25 language here -

26 Q. Just before you tell the story for the purpose of the  
27 record, do you have the consent of the survivor?

28 A. Yes, I do, yeah.

29 Q. He's supporting you telling this story?

16.52 30 A. Yeah, I checked with him. And he once said to me, he has  
31 this rather brutal sense of humour that is I guess his  
32 way of coping or trying to cope, the trauma is still  
33 there, it's a coping mechanism, if you like, he once said  
34 to me that he had "been fucked up the arse so many times

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1 you could park a truck up there and turn it around". And  
2 then he kind of laughs about it. And, you know, I don't  
3 mean to be offensive or to - I suppose for many survivors  
4 that would not be the way they talk about it but that's  
5 the way he talks about it. And when you hear the scale  
6 of the abuse he's been through, I think that's probably a  
7 fairly accurate summary. You know, this thing, Oliver  
8 Sutherland's just stunning evidence this morning, the  
9 incarceration of kids, that individual was in I think it  
16.53 10 was Mt Eden by the time he was 14-15 and he was in one of  
11 those solitary confinement cells there that Oliver talked  
12 to and I believe Oliver, I'm pretty sure Oliver  
13 encountered him in his work, and he was in D block by the  
14 time he was 16. Since then, he's been 35 years in and  
15 out of jail.

16 This is the scale of what we're talking about here  
17 and he describes, you know, the suicides in D block and  
18 reels off the names. And, you know, I guess people end  
19 up in D block for all sorts of reasons but I was always  
16.54 20 curious did they go on the same journey as you? Yeah.  
21 And he can tell you where he knew them as a child and  
22 which home they went through, and even in some cases, you  
23 know, there was individuals where, in one case, he was  
24 raped by the same individual at virtually the same time.  
25 And it's - you know, I've spent hours with this guy just  
26 talking, you know, and he will tell you story after story  
27 and I've spent probably, I don't know, weeks, maybe  
28 months, just chatting. And I still, I'm still, I think,  
29 what he's told me is only still a small percentage of  
16.55 30 what he's been through. And the first time I met him  
31 after about a 3 hour conversation, I drove from his place  
32 down to the petrol station and I can remember very  
33 distinctively just being in a fog of shaking my head and  
34 thinking how the hell does any human being go through

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1 that much trauma and still be kind of standing? He has  
2 his challenges, don't worry about that, but it's just the  
3 fact he's still alive. And when you say survivor, people  
4 chuck that word out kind of a bit glibly sometimes.  
5 Surviving what? You listen to this guy's story and you  
6 know it's just astonishing. And he's not the only one.

7 And there's a lot of, this individual, I think is a  
8 really healthy attitude in many respects and his ability  
9 to talk about it. What concerns me though is there's a  
10 whole lot of individual out there, and they're  
11 predominantly Maori men, who have just closed up and  
12 don't talk about it.

13 As an aside, I'm working on a number of things, I  
14 have a PhD I've started into this very subject and a  
15 documentary, but I'm working on, and have been working on  
16 for some time, a story about, well it's not a story yet,  
17 it's a conversation, regarding some serious allegations  
18 of sexual abuse, allegations against some very prominent  
19 New Zealanders, and I won't say any more than that  
20 because I have a lot of due diligence to do to get that  
21 story to a point where it will be published and it may  
22 not be published, I don't know, I hope it does. But I  
23 find those allegations credible. One of the very, very  
24 sad things about it, is that one of those individuals  
25 recently took his life and that's, I guess, the ultimate  
26 silencing. There's people that won't make it here and in  
27 the time that I've been working on this, there's probably  
28 half a dozen people I know, some of them I don't know,  
29 I've heard of, people I've spoken to and know them, have  
30 passed away in what I would call premature deaths. That  
31 one is one of them. Suicide, drug and alcohol abuse, P,  
32 I think there's a lot of people, people talk about gang  
33 members on P, yeah well maybe a lot of them are  
34 self-medicating. There's several individuals I've heard,



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1 only a couple of weeks ago there's a guy I know, one of  
2 the founding members of the Nomads, there's a guy that he  
3 was close to who was, you know, a feared individual in  
4 his day, but was reduced to a physical wreck from P use  
5 and he went through that same journey. And, yeah, people  
6 want to talk about P and gangs, well, maybe that's just  
7 their way of coping with some pretty ugly stuff.

8 Q. We're probably drawing to a close of the total evidence  
9 briefed here, Aaron. Do you want to close with your  
16.59 10 final paragraphs on page 26 in again, if you can confirm  
11 you have the support of the survivor mentioned to use  
12 those words?

13 A. Yeah. Again, I'm coming back to Tyrone. Tyrone and I  
14 have had a lot of conversations. He has a very, very,  
15 he's been through them all, including Lake Alice, and, as  
16 I say, just a remarkable individual. This is part of the  
17 story I did on Stolen Generations and I concluded with  
18 this quote because I think it's, yes, he has a very  
19 powerful story to tell and, you know, I one day want you  
17.00 20 to hear it, it's up to him obviously but he gave me  
21 permission, well I've used it in the story but he's  
22 verified he's happy for me to read it out here. He puts  
23 it back on, it's not about, you know, he knows what his  
24 story is and it's again this point I make about the  
25 behaviour of the State. And he's been fighting, well the  
26 Lake Alice settlement, he's fought through that, he's  
27 currently on Sonja Cooper's books and I think he's been  
28 there for about 12 years on her books, and his remark, I  
29 think, summed it up for me. I will read it out.

17.00 30 Speaking about the State he said, "They just breach  
31 every principle, ethically, morally, and they don't take  
32 responsibility. We've had to take responsibility for  
33 everything we do in life. But they don't. They haven't.

34 I know my story. But I want to hear the State tell

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1 its story. I want to hear them give their explanation  
2 for what they did to us".

3 And I will leave it there.

4 **MS HARONGA:** Can I just check with Mr Mount? Thank you,  
5 Mr Smale, I'll hand back to Mr Chair. There's no  
6 further questions from Counsel Assisting.

7 **CHAIR:** May I ask, first of all, if any counsel wish to  
8 cross-examine Mr Smale?

9 **MS SKYES:** Sir, I had intimated I did but in light of  
10 his oral testimony, we won't take this opportunity  
11 at this time.

12 **CHAIR:** Thank you.

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**AARON EDWARD SMALE**

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**QUESTIONED BY COMMISSIONERS**

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**CHAIR:** Colleagues, are there any questions that any of you have?

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17.02 10 **COMMISSIONER ERUETI:** I have a few questions. The first question is about the work on the residences. It's curious to me that there's a lot of academic journalistic focus on the residences, like Hokio and others, but less attention seems to be on foster care, although you've got survivors who are moving in and out of institutions into foster care.

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17.03 20 I think it's a concern for me that we know less about the family homes and other larger homes, Tower Hill for example. Even those, we heard from Keith the experience he had in the family home reminded him of the experience he had at Epuni. I wondered what your thoughts were on that about this gap, if you like, blind spot?

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17.04 30 A. Yeah. I mean, I actually revisited that question a short while ago, looking at - I had another look at Lizzie Stanley's book and she gives a break down on the sort percentages, if you like, stats isn't my strong point unfortunately but it was quite noticeable that, for example, and I think this probably needs to be highlighted a little bit in the public conversation that I mentioned, where for example the church homes accounted for in the figures, it was a survey I think that Lizzie was referring to, I haven't got the figures at hand sorry, but it was quite noticeable to me that the actual church run homes, and I don't know the definition on

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1 that, but it was 4%. And then the - I think it was,  
2 yeah, I stand to be corrected but I think the State run  
3 homes was something like 12-15% or something. And then I  
4 can't remember what the family homes were, it wasn't as  
5 big but, yeah, the biggest group was actually the foster  
6 homes.

7 Yeah, I mean, sometimes you read something and you  
8 miss it the first time around and I'm going through this  
9 at the moment with my research where I'm revisiting a lot  
17.05 10 of this stuff and I'm like, okay, the foster homes, I  
11 guess, yeah, I mean, a lot of the emphasise has been on  
12 these tangible bricks and mortar institutions because  
13 there they are. I mean, I live in Levin, you know, some  
14 of those old buildings are still standing, I've been down  
15 there a few times and it's quite airy to see a physical  
16 place but there's a couple of survivors I've spoken to  
17 and those foster homes, I think, were very much, my  
18 impression is that it was a lot of kids going into the  
19 foster homes were young, you know, you're talking kind of  
17.05 20 5 or 6 up. And I think when, you know, a couple of the  
21 examples of individuals I know, they get to a point where  
22 if there's - I suppose if you think about it, the abuse  
23 that I've heard described to me in foster homes, you  
24 know, I always get a little uncomfortable ranking certain  
25 crimes but, yeah, some of the worse stuff I've heard has  
26 been in foster homes. And when you think about it,  
27 there's just no control. I mean, those foster parents  
28 had utter total control over those children. There was  
29 no other staff who could have mitigated or modified some  
17.06 30 of the worse behaviour by other staff members.

31 If those foster parents were bad, they were bad,  
32 that was it. And so, yeah, I take your point, I mean,  
33 there is, I think, a need to, and again the children are  
34 at an age where they're extremely vulnerable. And then,

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1 as I say, there's this pattern you can see with some  
2 individuals, where they bolt and run. I would suggest if  
3 you are looking at files like that, that you kind of read  
4 them against the grain and take that as a possible, there  
5 might be other reasons but a possible potential flag as  
6 to there's something wrong there, there's something going  
7 on. If a kid feels safe, but there's a little bit of a  
8 balancing act there because sometimes a kid has gone  
9 through a whole series of foster homes where they have  
10 been abused and then they get to a good one and they just  
11 have been so damaged and have lost so many trust that  
12 they can't actually settle.

13 You know, I've had conversations with individuals  
14 who say they can remember, yeah, "that one wasn't bad,  
15 the person was all right, they beat me up but they  
16 weren't raping me". But, yeah, I think there is, you're  
17 right, there is a huge, it's almost overlooked, I think.  
18 I'd have to go back and check the survey that Lizzie is  
19 referring to, but it's probably a snapshot that is  
20 indicative but it's certainly worth, I think,  
21 considering.

22 And then, as I mention, from the foster homes  
23 there's this escalation. I don't know what the controls  
24 or the accountability structures or the vetting or the  
25 screening, if you like, of those foster homes, I don't  
26 know what they were like. I mean, there's one example I  
27 can think of where they were struggling to place a  
28 particular child and then up pops this individual, they  
29 were desperate to find somewhere to put him, and they put  
30 him in that particular foster home and he was passed  
31 around what I would just almost consider a paedophile  
32 ring. The individual, at least a couple of those foster  
33 parents were known and was abusive, there's allegations  
34 of abuse going on at both of them, and that kind of

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1 there's a lot to dig in and try and understand. It is a  
2 feed, I think, because once those kids start exhibiting  
3 that kind of behaviour, they're running away around  
4 exhibiting that, yeah, behaviour, that the welfare  
5 officers criticise, then that's it, bang, you're off to  
6 Owairaka and that's again the next step up.

7 **COMMISSIONER ERUETI:** That definitely requires the  
8 Committee's attention. I take your point and  
9 acknowledge the role of Maori boys and the impact  
17.10 10 it's had on them. I do think again perhaps it's  
11 worth looking at as well there's another untold  
12 story that requires more recognition and space of  
13 the impact on Maori women. We saw Oliver earlier  
14 today talk about the significant numbers of young  
15 Maori women who were escalated up to Borstal in the  
16 70s. I suspect too, that I take your point and  
17 acknowledge it about the impact on young Maori boys  
18 too but there's more work that we need to be doing  
19 to explore about the impact that apprehension by  
17.10 20 Police and Child Welfare Officers has on young  
21 Maori women. Fareham House and other Maori girls  
22 schools?

23 A. It's funny you mention that, in my research I'm looking  
24 at what's happening to Maori and I was astonished because  
25 that's one of the few homed that was specifically setup  
26 for Maori. And the rationale, it was setup I think in  
27 about the 1940s and of course you had the war on and so  
28 you had a lot of sort of soldiers in camps like  
29 Palmerston North etc., and the rationale for it was that  
17.11 30 these Maori girls were kind of promiscuous and therefore,  
31 we had to contain them in a separate kind of institution  
32 in case they corrupted these pure little Pakeha girls.  
33 That's kind of a, I won't say an anomaly but it's a kind  
34 of curious example of the fact that at least in that

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1 period, that Maori behaviour, if you like, or attitudes  
2 towards Maori, whether it was Maori girls, adolescent  
3 girls or whether it was Maori whanau, you know, this is  
4 slightly off topic but it's not, I mean for example, you  
5 know, one of the things that I'm trying to look at in my  
6 research is what were all these factors? We've heard  
7 some, many of them, but take for example you know  
8 urbanisation. You had places like Freemans Bay, you  
9 couldn't get any change out of a couple of million now  
10 but it was a slum in the '50s and earlier. And I can't  
11 remember, the State Services Corporation or something,  
12 there was a government department that was responsible  
13 for housing. Freemans Bay, there was all this slum  
14 housing there and of course Maori were coming in from the  
15 urban migration was kicking off big time and the Council  
16 decided, right, we're going to clear these slums out,  
17 just bowl the lot, and there was these developments going  
18 on in that area and you receive these references and  
19 language around the Maori problem or Maori social  
20 adjustment or integration, you know, there's all sorts of  
21 euphemisms used. And Maori Affairs were trying to get  
22 resources to house people and not only that, the State  
23 Services Corporation, I think that's the name of it,  
24 said, no, you guys are responsible for not only Maori but  
25 all those Pacific Island people and Indians. Maori  
26 Affairs pushed back and said, well, it's not that we have  
27 anything against Polynesians or Indian people but this is  
28 our responsibility here.

29 And so, from there you get these Maori, and many of  
30 them and other ethnicities, ended up getting dumped out  
31 at Otara. People often think of state housing as being  
32 for poor brown people. Originally it wasn't, it was for  
33 middle kind of Pakeha. And there was this resistance to  
34 letting Maori into that resource but in the end the sort

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1 of numbers became such that they couldn't. I mean, the  
2 Maori population doubled, it went from 80,000 to I think  
3 160,000 in a 30 year period or something. You can see  
4 the government departments just aren't prepared and in  
5 fact are quite hostile to all these Maori turning up.  
6 Not only that, you had Pakeha families themselves, make  
7 these constant, a number of scholars refer to these, I am  
8 only just starting into the primary sources but  
9 complaints about Maori because they're Maori. These  
10 neighbours, do strange things like have a tangi in the  
11 garage or have a boil up or something, what is that? It  
12 was probably a whole lot of Pakeha people freaking out,  
13 and the pepper potting that Kim and others referred to.

14 And so, the reason I sort of sketched that out is  
15 because, you know, these youth aid welfare officers and  
16 the like, that's the environment they're operating in.

17 You know, I think that period, I don't want to  
18 broaden your scope because it's already been, the whole  
19 economic background is huge, you know, particularly in  
20 that period and that's where you see the escalation.

21 **COMMISSIONER ERUETI:** Kia ora. I am thinking of the  
22 resumption birth, impact on white women which  
23 affects it also?

24 A. Yes.

25 **COMMISSIONER ERUETI:** Thank you for your evidence, I  
26 appreciate it.

27 **COMMISSIONER SHAW:** I have no questions, thank you for  
28 your evidence.

29 **COMMISSIONER ALOFIVAE:** I just want to thank you for the  
30 forthrightness and the honesty in which you shared  
31 your evidence this afternoon.

32 **COMMISSIONER GIBSON:** Kia ora, Aaron, a couple of  
33 acknowledgments and a question. First  
34 acknowledging the people who have generously, the



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1 survivors who have generously shared their stories  
2 with you and acknowledging them and they share with  
3 the Commission as well, that we seek for them to  
4 have justice from this as well.

5 Secondly, you raise the issue of suicide amongst  
6 many survivors and I think that is a big issue which we  
7 need to deal with as well and acknowledging that many  
8 people passed as a result of abuse in care.

9 An observation, and I'm keen to get your take on  
10 that, there are lots of reports which nothing may have  
11 come from early on but from my reading of a lot of  
12 documentation, there was almost no mention of sexual  
13 abuse up until about reports of the mid 80s or something  
14 like that, despite the evidence that we're hearing that  
15 it was endemic. Any thoughts, any comments, learnings  
16 from that?

17 A. Yeah, Moana Jackson and I had this conversation, why is  
18 this stuff coming out now? And I don't know that there's  
19 - I think the social climate and having a name for it. I  
17.17 20 don't know that there was much awareness of it at that  
21 time, whatever context it was happening.

22 I think there's also - this might seem a strange  
23 analogy but I've interviewed war veterans, for example,  
24 and there's many of those old guys would not talk about  
25 what they'd experienced until later in life when they had  
26 time to reflect, whether it's grandchildren, they knew  
27 their time was up.

28 And I think there's a certain degree of that with  
29 survivors. And I think one aspect is, actually, yeah, a  
17.18 30 friend in Corrections mentioned this to me, that for many  
31 of them, they don't really reflect, they charge off, the  
32 abuse sends their life off into this chaos and then there  
33 gets a point at which they may have had kids but they  
34 were kids themselves and they don't have much interaction

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1 with those kids. And then it's not until they have  
2 mokopuna, grandchildren, that a bit of age and wisdom  
3 kicks in and they start to think about and reflect on  
4 their grandkids and the thought of their grandkids going  
5 through that. And that can be sometimes, I think, one  
6 trigger for people to talk.

7 One of the - I never got to meet this person but  
8 after I think it was my first story went out, the Human  
9 Rights Commission picked up a lot of the people were  
10 calling into them, I would like to acknowledge a couple  
11 of people, Susan Devoy and Christine at the Human Rights  
12 Commission, they did a fantastic job at supporting the  
13 people that came out in response to some of those  
14 stories. It was overwhelming and it was certainly  
15 overwhelming for me to try and, you know, I just didn't  
16 have the ability and they picked up the slack.

17 But anyway, I can't remember, it might have been  
18 Susan mentioned to me that there was a woman who rang up,  
19 ran into them, I think she was seeking some kind of help.  
20 And what had happened is her husband had broken down and  
21 told her what had happened to him, in terms of sexual  
22 abuse, and he had never disclosed that to her. Like I  
23 say, I didn't meet that individual and I can't comment  
24 but that's been one of the really, if there's one thing I  
25 will kind of, I don't know what the result of this Royal  
26 Commission is going to be but if there's one thing I can  
27 say that perhaps I've helped or maybe even you could even  
28 say achieved, is broken through some of that silence, and  
29 giving people permission to talk about it. They may come  
30 and speak to the Royal Commission, they may not. It  
31 might be that they just talk to their family. One of the  
32 things that just blew me away working with Tyrone, is  
33 he's got four adult daughters and they read my story and  
34 that was the first time that they had known what he'd

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1 been through and that was just astonishing to me. I  
2 suppose, there's a certain logic to it. Why would you  
3 want to expose your children to that kind of thing? And  
4 I suppose now that they're adults, maybe. But that, I  
5 just felt utterly kind of humbled by that, that somebody  
6 finds out something that's happened to their own father  
7 from me, yeah. Yeah, I don't know if I'm answering your  
8 question but it's just that silencing and that shaming is  
9 just huge and I think perpetrators are very keen to be  
10 very manipulative and the fear, you know. There's  
11 certain people that I'm dealing with that I'm trying to  
12 talk to who there's a fear. You know, I'm trying to - I  
13 think I made this statement earlier, is trying to  
14 convince them that they're actually worthy to be heard  
15 and, yeah, that's - I would consider that probably one of  
16 the most important things I do or try to do.

17 **CHAIR:** That seems to me to be a helpful note which  
18 might suitably bring our proceedings for today to  
19 an end and to conclude the evidence that you have  
20 given, Mr Smale.

21 Can I join my colleagues in thanking you for the  
22 prestigious work that you have committed yourself to for  
23 a great many years which provides landscape on which the  
24 Royal Commission is tasked with its work. Madam  
25 Registrar, can we conclude today's proceedings with you  
26 inviting Ngati Whatua to come forward and to do that in  
27 the way that is appropriate?

28 **MR MOUNT:** Sorry, Mr Chair, just before Ngati Whatua  
29 does that, I believe we are now scheduled to start  
30 tomorrow at 9.30. This is just by way of  
31 communicating that to those who are here.

32 **CHAIR:** Thank you, your belief is correct, it basis  
33 itself on a submission that you made earlier in the  
34 day. We have tomorrow, ladies and gentlemen, a

1 passage of testimony which, in order to make sure  
2 that we finish at 5.00, or very shortly thereafter,  
3 that we should start at 9.30 rather than 10.00.  
4 The general rule is 10.00 for very good reason,  
5 particularly lawyers need to prepare to get the  
6 hearing going at 10.00, but there is good reason  
7 for tomorrow for us to start at 9.30.

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9 (Closing karakia and waiata)

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**Hearing adjourned at 5.27 p.m.**

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