

**Abuse in Care Royal Commission of Inquiry  
Contextual Hearing on Monday,  
4 November 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**

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5 **CHAIR:** Kia ora katou, everyone, I am Anand Satyanand and  
6 my colleagues, Paul Gibson, Sandra Alofivae, Judge Coral  
7 Shaw and Dr Andrew Erueti welcome you all for week two of  
8 the Contextual Hearing. I see, Mr Mount, you are joined  
9 by some new counsel and it seems to be a good idea to  
10.01 10 invite counsel to introduce themselves so that my  
11 colleagues and I can have a reorientation of the legal  
12 community that is supporting the Royal Commission.

13 **MR MOUNT:** Yes, you are quite right, Chair, I will get  
14 us started, Ms Beaton and I appear as Counsel  
15 Assisting and we have today four witnesses  
16 scheduled to give evidence, first Ms Sonja Cooper  
17 and Ms Amanda Hill, then Professor Elizabeth  
18 Stanley and Mr Fete Taito. I will sit down at this  
19 point and let the other counsel introduce  
10.02 20 themselves.

21 **CHAIR:** Thank you.

22 **MS ALDRED:** Wendy Aldred, and I appear for the Crown.

23 **MS SYKES:** Morena, Annette Sykes and Kelly Davis. This  
24 week I am accompanied by Ms Davis. I have a  
25 difficulty, one of the counsel from Rotorua,  
26 Mr Harry Edward, passed away. He has left his  
27 practice basically standing, so a lot of senior  
28 counsel are going back to have work reallocated.  
29 So I would seek leave, without disrespect to this  
10.03 30 proceeding, to be absent for Tuesday and Wednesday  
31 to assist my friend who has passed away. Ms Davis  
32 will be joined later tomorrow afternoon by  
33 Ms Bartlett who was here last week and they will be  
34 here in good stead, I'm sure, with the support of

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1 my other friends for this week. This is the first  
2 appearance for Ms Davis before this Tribunal, she  
3 hails from Ngati Manu and I am sure she will be a  
4 great asset to our team.

5 **MS McCARTNEY:** May it please the Commission,  
6 Ms McCartney with Ms Morten. May I greet the  
7 survivors and other people who are here at the  
8 Commission, this being the first opportunity that I  
9 have had to speak. We are here for the National  
10.04 10 Collective of Independent Women's Refuges in  
11 New Zealand, there are 40 in total and more than  
12 1,000 members. We are here to address a number of  
13 the Terms of Reference, including the impact on  
14 wider groups in the community of the abuse that has  
15 occurred directly to those who are survivors and to  
16 assist in relation to policies and recommendations.

17 **CHAIR:** Thank you.

18 **MS DOBBS:** Counsel's name is Ms Dobbs and I appear for  
19 the Salvation Army.

10.05 20 **MS McKECHNIE:** Counsel's name is Ms McKechnie and I  
21 appear with one of the graduates in my team, Mr  
22 Harrison Cunningham, we appear for the Catholic  
23 Bishops and Congregation Leaders of the Catholic  
24 Church in Aotearoa New Zealand.

25 **CHAIR:** Thank you.

26 **MS GUY KIDD:** My name is Mrs Fiona Guy Kidd and I appear  
27 with Ellie Harrison for the Anglican Church of  
28 Aotearoa New Zealand and Polynesia.

29 **CHAIR:** Thank you, Ms Guy Kidd and Ms Harrison. That  
10.06 30 seems to be everyone, thank you. Mr Mount?

31 **MR MOUNT:** Thank you, Mr Chair, our first two witnesses  
32 appearing together, Ms Sonja Cooper and Amanda  
33 Hill.

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**SONJA COOPER AND AMANDA HILL - AFFIRMED**

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**EXAMINED BY MR MOUNT**

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**CHAIR:** Ms Cooper and Ms Hill, make yourselves comfortable. There's the initial statement to be made in terms of the Inquiries Act with which you will be familiar. (Witnesses affirmed).

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**MR MOUNT:**

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Q. Good morning. To complete our formalities, in front of you in the folder you should have a copy of your written brief of evidence. On page 49 of that brief, I think you both signed. Can I ask you first to confirm that apart from any Corrections that you make as we go through the brief, it is true and correct to the best of your knowledge and belief. Firstly, Ms Cooper?

18

**MS COOPER:** It is.

19

**MR MOUNT:** And Ms Hill?

10.07 20

**MS HILL:** It is.

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**MR MOUNT:**

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Q. The way we are going to do this is to invite you each to develop certain sections of the brief and where necessary you will expand on them, and I may have some questions for you as we go.

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We spoke earlier about the need to keep an eye on our sign interpreters and our transcriber.

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The other formality, is that we will at certain points be seeing photographs on the screen. We will have a hard copy of those photographs to produce as a formal exhibit. I am not sure if that hard copy is ready yet, most likely we will do that after the break.

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Ms Cooper, I think you will get us underway with paragraph 1?

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1 **MS COOPER:** (Opening in Te Reo Maori). Sonja Cooper.

2 **MS HILL:** Amanda Hill.

3 **MS COOPER:** We just wanted to start by thank you to the  
4 Commission for giving us the opportunity to be  
5 heard today. Cooper Legal, we're both partners in  
6 the firm. It is a small law firm based in  
7 Wellington. Our core work is helping people make  
8 civil claims against the State and faith-based  
9 institutions for abuse they suffered in care as  
10.09 10 children or as vulnerable adults.

11 Today we will talk about a number of themes that  
12 have arisen out of our work. First of all, the  
13 beginnings of the civil claims against the State for  
14 abuse in psychiatric hospitals and Social Welfare care.  
15 We will also talk about how those claims grew and how the  
16 State responded, and that was with a mixture of listening  
17 forums and also fierce and uncompromising defence in the  
18 Court.

19 We want to talk about how state mechanisms, such as  
10.09 20 the Courts and Legal Aid, played a role in the claims  
21 process.

22 We want to then talk about how the role of our human  
23 rights law, both national and international, played a  
24 part in progressing the civil claims.

25 We will touch briefly, and it will be only briefly  
26 in this part of the hearing, on the settlement processes,  
27 both current and past, and why they're not fit for  
28 purpose.

29 Q. Just pause there, apart from saying your pace is  
10.10 30 excellent, thank you. As you know, the Commission will  
31 be coming back to the topic of redress, including  
32 settlement processes, in March, so you will leave further  
33 detail for March?

34 A. Absolutely. We could probably talk for some days about

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1 the settlement processes and hopefully we will get an  
2 opportunity to talk at length but this is really just to  
3 set the scene.

4 We wanted to talk about the disadvantages  
5 experienced by many survivors, and they include less  
6 access to information, particularly information about  
7 themselves, fewer resources to obtain help, often poor  
8 literacy or mental health and economic circumstances  
9 which pressured them to accept compensation and  
10.11 10 settlements which do not reflect in any way their  
11 experiences.

12 And briefly I think at this stage, what we see as  
13 the way forward for the claims process as part of a  
14 larger truth and reconciliation process.

15 First of all, I just want to address the language  
16 we're going to use. Often we talk about victims of abuse  
17 but we want to talk about the people that we meet and  
18 work with in a way that we think and hope is empowering.  
19 We're going to use the term "survivors" and nga morehu or  
10.12 20 care leavers to discuss the people who experienced abuse  
21 in care.

22 We want to put those people in the centre or what we  
23 talk about today and what we do as a firm but we know  
24 that every experience is different and just as survivors  
25 cannot speak with one voice, we can't speak to all of  
26 their experiences today.

27 We acknowledge obviously those care leavers who have  
28 already speak to the Commission and will speak to you, we  
29 don't and cannot stand in their shoes.

10.12 30 During the course of our evidence today we will talk  
31 a lot about civil claims. These are the claims that we  
32 take which are in tort, which is part of law obviously,  
33 or the human rights legislation. Mainly our claims are  
34 guess government departments which were responsible for

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1 the care of children and vulnerable adults. Most of our  
2 claims are directed to the government because it is  
3 liable for the actions of people it employed or  
4 contracted, and that's something we'll talk about in our  
5 evidence, to do its work.

6 We also work on claims against faith-based  
7 organisations and other organisations which provide  
8 services to children and vulnerable adults. We don't  
9 take claims against individual government employees and  
10.13 10 we don't take criminal claims either.

11 One of the things I think that's important about  
12 language, and we heard it a little bit in the Crown's  
13 opening statement by Wendy Aldred, is that the State will  
14 often refer to itself as the Crown which suggests that it  
15 is a single entity. But the responses that we have  
16 experienced by different parts of the Crown have been  
17 very different and there is no single Crown response to  
18 abuse of those who have been in care.

19 The Ministry of Social Development, or MSD, is the  
10.14 20 government department for all civil claims for abuse in  
21 the care of Child Welfare, as it first was, that was up  
22 until 1972, Social Welfare 1972-1989, then Child, Youth  
23 and Family Services and it had various names during that  
24 period which was the entity caring for children up until  
25 the creation of Oranga Tamariki in April 2017.

26 When we first did our evidence, Oranga Tamariki was  
27 saying it would be responsible for all claims for  
28 children who were in care from January 2008 but it had no  
29 process to do it and although we had several meetings,  
10.15 30 nothing developed.

31 We took the position that because Oranga Tamariki  
32 didn't come into being until 1 April 2017, that legal  
33 responsibility lay with the Ministry of Social  
34 Development. As I say, in the two months since we have

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1 written this brief, MSD and Oranga Tamariki have now  
2 agreed with us and now the Ministry of Social Development  
3 will deal with all claims up until people came into the  
4 care of Oranga Tamariki from 1 April 2017. So, we now  
5 know there is a single process to deal with claims up  
6 until the being of Oranga Tamariki.

7 Q. Pausing there. For those later reading the transcript,  
8 that means an update to paragraph 7?

9 A. It is.

10.16 10 Q. Thank you. I do note, it is a sad fact that Oranga  
11 Tamariki will be a defendant in its own right eventually  
12 as survivors continue to come forward and I just comment  
13 there, in my day-to-day practice as a youth advocate I  
14 would say that virtually every young person I act for in  
15 the Youth Court has a potential claim already at this  
16 stage, which is a very depressing thing to say.

17 The other two main defendants that we deal with are  
18 the Ministry of Education and the Ministry of Health.  
19 The Ministry of Education deals with civil claims by  
10.16 20 people who were abused in some State or special  
21 residential schools, so Waimokoia, McKenzie and Salisbury  
22 Schools are some examples. Sometimes the Ministry of  
23 Education is jointly responsible for a claim. For  
24 example, Campbell Park School or Owairaka, as known by  
25 our older clients was a special school near Oamaru, which  
26 was one by people employed by both the Ministry of  
27 Education and Social Welfare.

28 The Ministry of Health responds to claims about  
29 abuse for people in psychiatric hospitals, so that  
10.17 30 includes Porirua Hospital, Kingseat, Lake Alice, only  
31 where that abuse happened before 1993. And very  
32 recently, and again one wonders if that's a challenge, a  
33 response to the Royal Commission, the Ministry of Health  
34 has said it will deal with claims of abuse in general

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1 hospitals, again so long as that happened prior to 1993.  
2 After that date, we start dealing with the individual  
3 DHBs, and that's problematic.

4 Who do we represent? Currently, we have around 1250  
5 clients, about 1400 open files and growing. This  
6 difference reflects the fact that some people have  
7 multiple claims. For example, a client who was in CYPs  
8 care, may also have been in a special residential school.  
9 Some clients, particularly our older clients, may have  
10.18 10 been a State ward who was placed into somewhere like  
11 Campbell Park, run by the Ministry of Education, and may  
12 also have had faith-based care as well, so they may have  
13 gone through orphanages or into a Catholic school, for  
14 example. So, some clients may have as many as three  
15 claims.

16 Our clients vary in age from 18 at the youngest, to  
17 80. The claims in the main cover the period from the  
18 1950s through to the present time, although the majority  
19 are for abuse that happened during the 1970s and 1980s.

10.19 20 However, as I'm going to note, the number of claims  
21 after 1980 is growing.

22 Of our client group currently, about 17 are under  
23 the age of 22 and over 135 clients are under the age of  
24 30, and around 300 were in care after 1999. And they are  
25 theoretically at the moment excluded from the expressed  
26 Terms of Reference, so that's important to note.

27 We estimate that already we've settled around 1100  
28 claims against the Ministry of Social Development,  
29 Education and Health, as well as faith-based  
10.20 30 organisations. To date, our clients have been paid  
31 settlements totalling \$22, 775,000 which does include a  
32 contribution to legal costs. While no amount of money  
33 can heal some wounds, we would say that no survivor to  
34 date has received adequate compensation for the harm that

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1 has been done to them. We say that unapologetically.

2 Of course, the figures that we can say do not  
3 include payments made to those who are self-represented  
4 or from the small number of other firms who have done  
5 this work, only the State and the churches can provide  
6 that information.

7 It's important to say that most of our clients are  
8 vulnerable in some way.

9 The vast majority are either beneficiaries or low  
10.21 10 wage earners in precarious economic positions. Around  
11 40% of our clients at any given time are prison inmates.  
12 Almost all of them experience mental distress or ongoing  
13 psychological and other effects from their childhood or  
14 adult care. As has been noted already during the course  
15 of this hearing, our clients are disproportionately  
16 Maori.

17 Q. Ms Hill.

18 **MS HILL:** Thank you. I want to address the Commission  
19 on what State care means and talk about some of the  
10.22 20 terms that we use in the course of the civil  
21 claims.

22 In our work, we talk a lot about legal status, the  
23 legal status of a person who is in care. Because their  
24 legal status defines their relationship particularly with  
25 the State and how they could be treated.

26 So, many children came under the pursue of Social  
27 Welfare while they still lived at home. Sometimes this  
28 was due to notification of abuse or neglect or poverty,  
29 or because a child had committed offences. Many Maori  
10.22 30 children were prosecuted for the misdemeanour of stealing  
31 milk money. Many Pakeha children were not.

32 The Courts have held that if Social Welfare received  
33 a notification of concern about a child, such as physical  
34 or sexual abuse, a duty of care arose between Social

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1 Welfare and the child to investigate it.

2 And preventive supervision was an administrative  
3 mechanism developed by Social Welfare in their words "to  
4 prevent children becoming casualties". So, it often  
5 involved regular visits to a home by social workers,  
6 emergency financial assistance and visits to a child's  
7 school.

8 So, preventive supervision was different to legal  
9 supervision. Legal supervision was imposed by a Court,  
10.23 10 often in response to a child not being properly  
11 supervised by their parents or for offending.

12 At times, Social Welfare would receive reports or  
13 notifications of abuse or concern about a child and  
14 failed to act. Sometimes, the reports piled up about a  
15 child or their family, particularly about abuse in home  
16 environments, and still nothing happened.

17 This is still a major problem today. In contrast,  
18 other children, particularly Maori children, were removed  
19 from their families, sometimes for years, often just  
10.24 20 because the family was too poor.

21 So, I need to emphasise right now, that State care  
22 wasn't just being taken away and being put somewhere  
23 else. State care can mean being at home with their  
24 family and it was just as important to look at that time  
25 and look at what was happening for a child and their  
26 family before they're removed. It's not just about the  
27 institutions and the foster placements.

28 So, many children came into care by way of complaint  
29 action. So, that was a complaint by either Social  
10.25 30 Welfare or the Police that a child was not under proper  
31 control or that they were living in a detrimental  
32 environment. That would often pave the way for a child  
33 to be placed in care and then under the guardianship of  
34 the Director of Social Welfare.

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1           Much like an adult, a child could be remanded in  
2 care while a complaint went through the Court system and  
3 they could be taken and put into care at that point.

4           Sometimes children were voluntarily placed in care  
5 by their parents or caregivers. Sometimes that was for a  
6 month, sometimes a year, sometimes up to two years.

7           There were differences in the way a child under a  
8 voluntary agreement could be treated while they were in  
9 care, and we will talk about Secure Units a little later  
10.26 10 in our evidence but a child under voluntary agreements  
11 could be placed in institutions, family homes or foster  
12 care in the same way as a State Ward.

13           And a State Ward is the common term up until 1989  
14 for a child placed under the guardianship of the  
15 Director-General of Social Welfare.

16           Being a State Ward meant that Social Welfare had  
17 total control over a child. Social Welfare controlled  
18 where they could live, where they went to school, where  
19 they could work when they got older, how much money they  
10.26 20 were able to earn and where they could travel. A person  
21 was often discharged from guardianship at the age of 17  
22 but could remain a State Ward until they were 20.

23           Many children who were under the care or custody of  
24 Social Welfare were also placed in faith-based  
25 institutions by Social Welfare and so sometimes the line  
26 of responsibility for a child was blurred.

27           After 1989, the whole scheme changed and there are  
28 plenty of historians and sociologists who will talk about  
29 the changes that brought about the Children, Young  
10.27 30 Persons and Their Families Act 1989. And we will call  
31 that the 1989 Act.

32           That was a drastic departure from the earlier  
33 Children and Young Persons Act 1974. It brought in new  
34 language, new principles and new schemes for dealing with

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1 children in care. And it separated, some would say quite  
2 arbitrarily, the ideas of Youth Justice and Care and  
3 Protection. And in our experience, those two things are  
4 intertwined.

5 The 1989 Act provided a scheme for the Family Court  
6 to deal with Care and Protection issues with the ability  
7 to place a child in the custody or guardianship of Social  
8 Welfare, not in CYPS by that time obviously. And Youth  
9 Justice provisions went through the Youth Court. And  
10.28 10 that mainly dealt with children between the ages of 14  
11 and 16 who had committed offences, although as Sonja will  
12 tell you in her role as a youth advocate, the 1989 Act  
13 continues to criminalised younger children in certain  
14 circumstances.

15 Decisions were made, and are still made, by Family  
16 Group Conference or FGCs. The plans drawn up by FGCs  
17 often had a range of activities and outcomes for a child.  
18 Children and young people could be sent to programs, put  
19 into care, placed with whanau or made to do community  
10.29 20 work and so on. And some children never saw the inside  
21 of Youth Court if they could complete their plans.

22 So, these changes were considered to be quite  
23 revolutionary at the time and it meant the Family Court  
24 and Youth Court worked together but often not very well  
25 together, I would say, and often had quite disparate  
26 outcomes.

27 So, while the 1989 Act was considered to be world  
28 leading and extremely progressive, in our experience the  
29 social workers on the ground took a long time to catch  
10.30 30 up. Children in care in the transitional period between  
31 the late 1980s and the first few years of the 1990s, they  
32 really fell through the gaps. In our experience, social  
33 workers struggled to adjust, resources were not  
34 available. Almost always the records for people in care

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1 during that time period are incomplete and inadequate.

2 Important aspects such as FGCs were not used  
3 properly, although that's still a problem now.

4 Another important change which happened after the  
5 1989 Act, of course, was the introduction of the  
6 New Zealand Bill of Rights Act 1990 and that came into  
7 force on 25 September 1990. And from that date, children  
8 in care had additional rights under that legislation, and  
9 we say the State had additional responsibilities which  
10.31 10 overlaid the 1989 Act and we will talk more about the  
11 Bill of rights Act later in our evidence.

12 One of the important aspects of the 1989 Act was an  
13 approval scheme which allowed CYPS to use third party  
14 programs or organisations to care for children. The  
15 approval scheme was triggered by section 396, and so  
16 often to shorthand things I call them section 396  
17 programs.

18 So, this meant that third party organisations, which  
19 could be incorporated societies, iwi organisations or  
10.31 20 charities, had to meet a certain level of approval to  
21 provide services and in return they were paid by bed  
22 nights, however many nights a young person was in care.

23 So, CYPS was able to place children who may be in  
24 their direct custody with other providers, and that still  
25 happens today.

26 The scheme under section 396 provides for complaints  
27 to be investigated and annual reviews of an organisation  
28 and their ability to care for children. While this  
29 sounds a good in theory, the practice occasionally went  
10.32 30 horribly wrong. The division between frontline social  
31 workers dealing with children in these programs and the  
32 organisation which did the approving, was significant and  
33 there was often no communication between the two. So,  
34 the Community Funding Agency, which was the organisation

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1           tasked with reviewing these organisations, often did it  
2           on paper, making sure they had the right policies and  
3           procedures and guidelines but never really met the  
4           children and sometimes didn't meet the staff. And so,  
5           the social workers on the frontline receiving direct  
6           reports of concern would be dealing with that separately.  
7           Sometimes the two systems didn't meet in the middle. And  
8           so, an organisation again and again was approved because  
9           they met the policies and procedures but did not - but no  
10.33 10          account was taken of the individual complaints, so there  
11          was a real disconnect then.

12                    And when complaints weren't dealt with properly,  
13           further abuse was inevitable. And I'll talk more about  
14           Whakapakari, Moerangi Treks, the Eastland Youth Rescue  
15           Trust and the Heretaunga Maori Executive as some examples  
16           later in our evidence. Using these organisations at  
17           times has caused the Ministry of Social Development to  
18           say we're not liable for that, that's separate, they're  
19           contractors, even where the children are in their direct  
10.34 20          custody or under their supervision and where it was able  
21          to approve or suspend the approval of the organisations.  
22          This was a position that the Ministry had for quite a  
23          long time and it meant that for a group of survivors, the  
24          settlement of their civil claims was affected by that  
25          because large chunks of their experience were discounted.  
26          And so, they settled their claims based on that and  
27          settled their claims poorly sometimes. And since then,  
28          the Ministry has changed its position and has, while not  
29          expressly but for the purposes of settlement, has  
10.34 30          accepted responsibility for many third party  
31          organisations, leaving that earlier group of people  
32          disadvantaged.

33        Q.    I take it, there's no way for that first group who  
34           settled many years ago to reopen their change, despite

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1 the change in the Crown's approach?

2 **MS HILL:** They have signed full and final settlements.

3 Obviously, it would be open to the Commission to  
4 recommend that that could be re-opened, and that's  
5 certainly something that we would support.

6 Q. Ms Cooper.

7 **MS COOPER:** Thank you. I will just make sure the light  
8 is glowing.

9 I am now going to talk about our experience with  
10.35 10 faith-based institutions.

11 So, the experiences of people placed in faith-based  
12 institutions were often very different from those who  
13 were in State care. Very young children were sometimes  
14 placed in orphanages or foster homes run by faith-based  
15 institutions. Some examples of this included The Next,  
16 which was in Hamilton and was run by the Salvation Army,  
17 or we've got Catholic based orphanages such as the Star  
18 of the Sea or the Home of Compassion.

19 We're looking back typically quite far back in time.  
10.36 20 So, we look as far back as the Infants 1908, there  
21 anybody who had a child in care under the age of 6 had to  
22 be licensed as a foster parent. And then under the Child  
23 Welfare Act 1925, any child could be detained in an  
24 institution, which did include some private institutions,  
25 including faith-based institutions.

26 We had clients who were placed as sibling groups in  
27 what the man home in Masterton or Bramwell Booth Home in  
28 Temuka, run by the Salvation Army. The Salvation Army  
29 also ran Hodderville which was a home for boys in  
10.37 30 Putaruru in Auckland and it also dealt with the Auckland  
31 trust for women and children who ran Brett Home, Stoddard  
32 House and smaller cottage style institutions.

33 Q. I think you accidentally said the Auckland Trust, was  
34 that the Anglican Trust?

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1 **MS COOPER:** The Anglican Trust, yes. The Anglican  
2 Diocese of Waiapu ran Abbotsford Home in Waipukurau  
3 and that operated for many years. I think it's  
4 important, and I referred to that earlier to say  
5 the cross-over between State care and church care  
6 because a lot of State wards ended up in these  
7 placements.

8 Families also placed children there privately and  
9 paid maintenance if they had the funds.

10.37 10 Where a child was placed in a faith-based  
11 organisation by the State, their board was paid to the  
12 institution for the care of the child. Social workers  
13 were supposed to visit regularly, although that often  
14 fell by the wayside, particularly if the placements were  
15 remote, and Hodderville I think is probably a good  
16 example of that.

17 Then the psychiatric hospitals, patients going into  
18 psychiatric hospitals either went in there as voluntary  
19 boarders or informal patients, or as committed patients  
10.38 20 under the relevant mental health legislation. We also  
21 have clients who were admitted under the Criminal Justice  
22 Act, so that's when they've been remanded by the Courts  
23 on a criminal charge for assessment.

24 Informal patients, which was something we need to  
25 test through the Courts ultimately had the right to  
26 refuse medical treatment, which is something we say all  
27 the way through.

28 At this point, I want to set out what our clients  
29 told us through the years about what happened to tell in  
10.39 30 care. We've had to take a broadbrush here.

31 Dealing first with psychiatric hospital, this is  
32 children and adults. I should say predominantly our  
33 clients were children.

34 By far the most common complaints in psychiatric

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1 hospitals were of severe physical assaults. And that was  
2 not only at the hands of other patients but also at the  
3 hands of staff and that included being punched, kicked,  
4 hit. One thing I vividly remember from Porirua Hospital  
5 was a young boy particularly talking about a favourite  
6 punishment called the concrete pill. And this is where  
7 four staff members would hold a teenage boy by each of  
8 their limbs, haul them up and then drop them on the  
9 concrete. And that was a common treatment of young boys  
10.40 10 at Porirua Hospital in the 1970s particularly.

11 Our clients were also sexually violated and abused  
12 by staff and other patients.

13 Many were given what we call unmodified ECT. So,  
14 unmodified ECT is where you're given electroconvulsive  
15 treatment without any anaesthetic. So, the usual way of  
16 getting ECT is with anaesthetic and a muscle relaxant to  
17 stop any pain but a lot of our clients talked about  
18 getting it without either of these, so they did  
19 experience pain.

10.40 20 They were also given ECT as punishment. Again, this  
21 is mainly teenagers that we are talking about.

22 Teenagers again mainly but this also happened to our  
23 vulnerable adult clients, were pulled into the ECT rooms  
24 to watch other patients being given ECT to frighten them  
25 and were told, you know, this is what will happen to you  
26 if it you don't do what we tell you.

27 Clients talk about being given painful injections as  
28 punishment. One particularly painful injection was  
29 Paraldehyde which was so poisonous it actually had to be  
10.41 30 administered through a glass needle that was very thick.  
31 Again, a lot of clients were given that regularly to  
32 punish them.

33 Again, they complain about being put in seclusions  
34 rooms. The seclusion rooms were fairly barren awful

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1 circumstances.

2 Others, particularly children, were placed in  
3 psychiatric criminal wards with adult patients who were  
4 severely disabled and unwell and terrifying for teenagers  
5 to get them to do what they were told.

6 Up there, we've got a photo of Rotu Ward. This is  
7 one of the dormitories in Porirua Hospital. This just  
8 gives you an example of a psychiatric hospital ward  
9 during the timeframe our clients would have started to go  
10.42 10 into Porirua Hospital. You can see how barren it is.

11 There were other complaints that we've had of  
12 traumatic incidents, such as being actually hosed down by  
13 nursing staff, being threatened with a lobotomy and being  
14 told they would never leave the hospital. I interviewed  
15 a client last week in his mid 70s, who actually described  
16 to me having a hose pushed up his rectum for four or five  
17 days and water flushed through it, purportedly to see if  
18 he had any drugs but it was a torture and a punishment  
19 for him.

10.43 20 The picture that's now up there is I think the  
21 outside view of F Ward, which is also at Porirua  
22 Hospital. This is again a kind of bigger picture of  
23 Porirua Hospital. F Ward was the women's ward, the  
24 criminal ward, and again a number of our clients, teenage  
25 girls, were put in F Ward as punishment. When we are  
26 here again on Thursday, the client who is evidence I will  
27 be talking to will talk about her placement in F Ward as  
28 a 14 year old and the terrifying things that happened to  
29 her there.

10.44 30 One of the clients that we have describes it was  
31 common to get clouts, kicks up the bottom, verbal abuse  
32 and threats of ECT from nursing staff. "This would  
33 happen if I didn't do my jobs properly, like polish the  
34 floors. It was just an every day experience to witness

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1 staff physically abusing patients". As I say, I will be  
2 speaking to evidence of Beverley Wardle-Jackson on  
3 Thursday who was there at Porirua Hospital and talking  
4 about her experiences there.

5 I then want to talk again and summarise the  
6 experiences of our clients in Social Welfare, and that  
7 goes through the ages, and CYPS care. To be honest, it's  
8 impossible to summarise that but all we can do in this  
9 evidence is give you some examples to demonstrate what we  
10.45 10 say has happened to entire generations of children who  
11 have been placed in the care of the state. We have tried  
12 to reflect the range of experiences and the demographics  
13 of our client group. If we don't talk about an  
14 institution or a placement, it's not because it didn't  
15 happen, it's just because we can't cover everything.

16 First of all, Amanda has referred to family homes  
17 and foster placements. Social welfare family homes were  
18 spread all around the country and they still exist to  
19 this day. The house parents often varied, although some  
10.46 20 remained house parents for a long time. The idea behind  
21 a family home was, as the name suggests, that it was a  
22 family home and there would be five or six children  
23 living in an environment that was intended to be like a  
24 family.

25 Lots of our clients say that the people who ran the  
26 family homes were well meaning but either didn't have the  
27 tools or the skills to cope with what were often groups  
28 of difficult children.

29 One of the common themes is that there was no  
10.46 30 supervision at night-time, and I think that's probably  
31 still the case. And so, physical and sexual abuse  
32 between children was a regular feature of those who  
33 stayed in family homes.

34 Also too, as commented on, the abilities of family

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1 home parents varied a lot. Some had very positive  
2 reports and others had a long history of violence or just  
3 allowing bad things to carry on.

4 A number of family home givers are the subject of  
5 allegations of physical or sexual abuse.

6 One of the things that we noted, and it's still a  
7 common theme today, is that it's common to see the grown  
8 or older children of the family home caregivers acting as  
9 relieving caregivers or, in many cases, acting as  
10.47 10 enforcers of the rules. And clients often tell us the  
11 growing sons and daughters of family home or foster  
12 caregivers would be the ones dishing out violence to keep  
13 the children in line. And I worry about that still.

14 With foster care, there are many foster parents who  
15 are spoken about with appreciation and admiration by our  
16 clients. Unfortunately, long stays at good foster homes  
17 were rare. Like many foster children, including those  
18 who are in care today, children in the foster care system  
19 experienced multiple placements and that impacted  
10.48 20 obviously on their ability to settle, to adjust to  
21 school, to make friends and to feel safe and secure.

22 Sadly, many of our clients talk about the physical  
23 and sexual abuse they suffered at the hands of their  
24 foster parents. And I think what's particularly  
25 disturbing, is that a common theme is that their attempts  
26 to disclose this to their social workers or other people  
27 were met with disbelief and/or punishment for lying. It  
28 was exceptionally rare for a child to be believed and for  
29 action to be taken. Usually, action was taken only if a  
10.49 30 second person, usually not a child, could corroborate  
31 their account. But our experiences were more often than  
32 not complaints went ignored and abuse continued, and for  
33 some clients that abuse went on for years.

34 So then I'll talk about Social Welfare and CYPS

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1 residences, boys and girls homes were spread throughout  
2 the country. Some operated as remand homes, like Lookout  
3 Point or Stanmore, Owairaka, Epuni, others were national  
4 long-term training institutions and probably the most  
5 well-known were Hokio Beach School and Kohitere.

6 Several staff members from different institutions  
7 had been convicted of sexual abuse against children. I  
8 have set out in - we have set out in Appendix A a list of  
9 all the ones that are known to us. That's 28 people that  
10.50 10 we were able to identify who have been convicted of  
11 sexual offending against children in their care, and they  
12 cover a range of placements, so not just State care, they  
13 also cover religious clergy, Salvation Army caregivers.

14 I think what struck me about this, is how many of  
15 the prosecutions are relatively modern. In other words,  
16 they've happened within the last 20 or so years, even  
17 though the abuse occurred potentially decades earlier.

18 And that is something I want to comment on later on  
19 in my discussion about why it takes so long for survivors  
10.51 20 to come forward and talk about their abuse.

21 We know that our list is by no means complete. Even  
22 as late as last week, we were told of an Anglican  
23 archdeacon I think from Nelson who had been prosecuted  
24 for sexual offending, we had no idea he had been  
25 prosecuted until last week but I think there is an  
26 assumption that we know, we actually don't. This  
27 information is very difficult to come by and I know when  
28 we did our trials, the Crown actually wouldn't disclose  
29 this information to us. We actually had to get it  
10.51 30 ourselves. So, even though I think, you know, there  
31 should have been an obligation to disclose that to us, it  
32 was shrouded under legal professional privilege. How  
33 it's privileged, I don't know. And, as I say, we were  
34 told by the Court we had to go and find it ourselves, and

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1 so we did.

2 Q. Just pausing there. We won't ask you to go through the  
3 whole list but for those who have got the written  
4 statement, Appendix A is at page 50, I think, and it goes  
5 to two and a half pages of those who have convictions to  
6 your knowledge?

7 **MS COOPER:** Yes. As I say, they cover a range of  
8 placements, you know, sort of Epuni and Hokio, a  
9 few from Heretaunga Maori Executive Amanda will  
10.52 10 talk about, a Girls' Home caregiver, family home  
11 caregiver, Salvation Army, Catholic boarding  
12 schools, Ministry of Education's special residence,  
13 teachers. It covers a wide gambit and, as I say, I  
14 suspect there are a lot we don't know who have been  
15 convicted who should be on that list. Hopefully,  
16 the Royal Commission can get that information.

17 I think one of the points of just showing that there  
18 is this kind of growing list of convictions, is to say  
19 that that really only tells one part of a wider story  
10.53 20 because all too often staff members who were found to be  
21 abusing children were permitted to just resign from their  
22 positions without there being any referral to the Police  
23 or worse, were shifted to another institution and were  
24 allowed to abuse children there.

25 We are going to talk about some of those examples in  
26 this evidence because, you know, in some examples those  
27 staff members were actually promoted.

28 So, we give one example, first of all, of a  
29 caregiver, Mr S who was a staff member at Campbell Park  
10.54 30 School. In January 1970, he was suspended because there  
31 were allegations he'd been sexually abusing boys, so  
32 three different boys at Campbell Park School made  
33 allegations between March and August 1969.

34 Records that we have recorded that S had taken boys

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1 to his home on many occasions, sometimes at night when  
2 his wife wasn't at home, a rubber penis had been found  
3 concealed in the ceiling of his home, a train set was  
4 used by him to get the boys to come to his home. He  
5 showed the boys pornography. He paid one of the boys for  
6 a photo of his sister.

7 And as we commonly see, he denied he'd done  
8 anything.

9 He told the then principal, Mr Walsh, that a number  
10.55 10 of years earlier another boy had made allegations against  
11 him but the then principal, Mr Connor, hadn't believed  
12 him. This is a typical case in which the Police decided  
13 not to press charges because they thought the boys  
14 wouldn't do very well under cross-examination. And he  
15 was allowed to resign from Campbell Park.

16 We also had it brought to our attention that in  
17 1979, as part of a Human Rights Commission Inquiry, a  
18 staff member complaint to the Human Rights Commission  
19 that several staff members had been shifted or promoted  
10.55 20 after allegations had been made against them.

21 I just note up there, this is Campbell Park School  
22 Owairaka which was really isolated and run by both  
23 Ministry of Education and Ministry of Social Development.

24 I know that Oliver Sutherland has already talked  
25 about some of these shifting around of staff members.  
26 We're just going to speak to a couple of examples.

27 One example is that documents show a Mr Zygadio had  
28 been shifted from his post as Principal of the Margaret  
29 St Girls' Home in Palmerston North following an  
10.56 30 "indiscretion" with an inmate, with a girl. He was later  
31 promoted to be principal of a boys' home after spending a  
32 number of years in Hokio.

33 In 1978, the principal of Bollard Girls' Home was  
34 hurriedly transferred to Holdsworth School, and this was

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1 another person who had alleged misconduct with a girl and  
2 so he was hurriedly transferred. He was later promoted  
3 to principal of Holdsworth.

4 We're going to give an example of one staff member,  
5 Mr Drake, who was another staff member in our experience  
6 who had many, many allegations made against him. And so,  
7 we've gathered information about his movements over  
8 several years.

9 He began working for Social Welfare in September  
10.57 10 1958, starting at Hokio. He then was promoted and went  
11 to Owairaka for 2 years, back to Hokio and then he went  
12 to Campbell Park.

13 In 1971, he was again promoted and went to  
14 Holdsworth School as an Assistant Principal, and this was  
15 under Mr Powierza who was the Principal. When  
16 Mr Powierza was transferred to Auckland, Mr Drake was  
17 Acting Principal for a few months, so the top of  
18 Holdsworth, until Michael Doolan was appointed as  
19 Principal in late 1975. Mr Drake is a staff member who  
10.58 20 was able to continue in his job until he resigned.

21 During the time he was acting Principal of  
22 Holdsworth, he was investigated because there were  
23 multiple allegations made that he had been sexually  
24 abusing boys. The investigation was done by the  
25 controller of the national institutions, Denis Reilly.

26 If the outcome was documented, it's never been  
27 found. We've certainly never seen it. And the only  
28 reason we really know about it, is because in an  
29 inspection report in March 1975, it was noted that  
10.59 30 Mr Drake "now ... keeps his distance from the boys and  
31 this affects both his work and his job satisfaction".

32 So, the allegations against Mr Drake were again  
33 raised in July 2004 by a client of our firm. Three years  
34 later a team from the Ministry of Social Development and

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1 Crown Law interviewed Mr Drake. In the same year, a  
2 Police complaint was laid. At around the same time, the  
3 Ministry of Social Development told the Police that five  
4 other former students of Holdsworth had made allegations  
5 against Mr Drake. The Police Inquiry took about a year  
6 in terms of interviewing other staff members from  
7 Holdsworth, some of whom indicated they had had concerns  
8 about Mr Drake based on what they'd heard from other  
9 children.

11.00 10 The Police only spoke to Mr Drake in April 2009, so  
11 5 years later, by which time he was determined to be too  
12 unwell to make a statement. However, we note rather  
13 cynically, he was well enough to swear an affidavit for  
14 the Ministry of Social Development a few months later.

15 In the course of settling the historic claims, the  
16 Ministry of Social Development has accepted allegations  
17 of sexual abuse by Mr Drake but only at a lower level. I  
18 mean, the allegations against him go right through to  
19 rape but they've only been accepted at a low level. And  
11.01 20 this is in spite of the very strong evidence against  
21 Mr Drake.

22 We then refer to the cook at Hokio, Michael Ansell.  
23 Again, he's an example where complaints were ignored  
24 because, again, there were lots of complaints made by  
25 boys at Hokio that he was sexually abusing boys.

26 Q. Just to pause you there, I think we have a photograph, do  
27 we, of the boys lined up in a semi-Military style in the  
28 1960s?

29 **MS COOPER:** Yes, that's right. I mean, that's something  
11.01 30 that we'll talk to as some of the rigidity around  
31 the boys' homes and some of the punishments,  
32 standing on the line. This would be a good example  
33 of that.

34 Going back to Michael Ansell, one of the things that

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1 came out in discovery, was that if a Police check had  
2 been done before he was hired, it would have shown that  
3 he had convictions for sexual abuse in 1969, prior to  
4 actually working at Hokio.

5 He was eventually convicted of indecently assaulting  
6 boys at Hokio. And, in our view, that abuse could have  
7 been prevented in its entirety.

8 Another staff member at Hokio was disciplined for  
9 assaulting boys and dismissed after he was charged for  
11.02 10 sexually abusing boys. And I think one of the things  
11 that became very clear to us in our work, is that in each  
12 case Police involvement was a last resort, not a first  
13 response. And, in fact, the first response was typically  
14 shift or allow staff members to resign.

15 And these are only some examples of staff being  
16 shifted or complaints not being dealt with properly which  
17 exposed vulnerable children to further abuse.

18 And it also reflects the very long time that Police  
19 would take to investigate historic claims. I think  
11.03 20 certainly back in the 70s, 80s, even 90s, I think it  
21 reflects that they weren't deemed to be important enough  
22 cases.

23 We also want to talk about the more insidious kind  
24 of assaults, sexual assaults, which were often under the  
25 cover of medical examinations. We talk about the doctor  
26 who visited boys at Wesleydale and Owairaka, who was  
27 known by the boys as Dr Cough because he would make the  
28 boys remove their clothes, he'd line them up and see them  
29 individually, he would make them remove their clothes and  
11.04 30 he would touch their genitals. And so, he developed the  
31 name of Dr Cough. These medical examinations were  
32 completely unnecessary but they went on for years and  
33 many of our clients talk about them.

34 We also highlight, and I think Dr Sutherland has

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1 probably already referred to this, the issue of internal  
2 vaginal examinations which were conducted on girls  
3 throughout the country, and in particular at Bollard and  
4 Allendale internal examinations were conducted  
5 purportedly to establish if a girl had a venereal  
6 disease. Girls who refused to be examined were severely  
7 punished, and in fact, I think I vividly remember writing  
8 recently a letter for our client who was held down as a  
9 little girl, held down by a number of staff members, so  
11.05 10 this intrusive vaginal examination could be conducted.

11 So, ACORD made a complaint about this in February  
12 1979.

13 I just note that in recent correspondence that we've  
14 had regarding one of our client's claim, MSD has refused  
15 to accept the allegation that she had an improper vaginal  
16 examination on the grounds that that was the policy of  
17 the day. And I have to say that that is a way in which  
18 liability is frequently avoided on the grounds that that  
19 was consistent with the policy of the day. I think that  
11.06 20 in light of the work that was being done by ACORD back in  
21 the late 1970s, to still argue that does not really have  
22 much credibility.

23 Q. Ms Hill.

24 **MS HILL:** I want to talk about what we've commonly  
25 called a culture of violence at institutions and  
26 placements around the country. And a lot of what I  
27 will say is focused on Social Welfare Institutions  
28 but similar cultures existed, of course, in  
29 faith-based institutions and in psychiatric  
11.06 30 hospitals as well, so the comments are equally  
31 applicable.

32 I have to say, the phrase a culture of violence is  
33 used in MSD's description of some of its own programs and  
34 placements. It's not a phrase that's always been coined

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1 by us, it certainly has appeared in a number documents  
2 about placements and programs used by CYPs.

3 So, there was first a culture of violence and this  
4 was coupled with a prohibition on narking or snitching.  
5 So, the culture, these two things went hand in hand, that  
6 there was violence, you don't talk about the violence,  
7 and if you do talk about the violence you will experience  
8 worse violence.

9 At almost every institution, our clients have  
11.08 10 talked about welcoming or initiation or christening  
11 beatings. A new admission to a residence would be beaten  
12 up by the others, often at the direction of the oldest or  
13 biggest among them. I think for decades that child or  
14 young person has been referred to as the kingpin.

15 These weren't separated from the staff. The staff  
16 encouraged a culture of violence and this kingpin  
17 hierarchy. And they knew that these beatings took place.  
18 Sometimes they would be with staff members present, other  
19 times staff members would walk away.

11.08 20 At Hokio, for instance, the boys always went over to  
21 the sand dunes, no staff members ever went.

22 At Kohitere, sometimes the beatings would be in the  
23 dormitories at night where boys would put hard objects in  
24 a pillowcase and use them as a weapon.

25 At other times, the work boys, the boys out on the  
26 farms, would use their steel capped boots. There were  
27 names for the different levels of boys, depending on what  
28 time you were there, you could be a hard jube or a nark  
29 boy, or there's different levels. You had to work your  
11.09 30 way up because it wasn't just that first beating. You  
31 had to fight to survive. And the kingpin was the one who  
32 was the one out on top and they enforced that kingpin  
33 hierarchy by forcing the violence downhill.

34 Initiation meetings rolled into regular beatings and

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1 regular violence. And sometimes, discipline was kept by  
2 the kingpins at the direction of staff. Kingpins were  
3 privileged, they were given sometimes more food, more  
4 freedom, but their job was to keep the younger ones in  
5 line on behalf of the staff members.

6 And if you disclosed, if you narked, then further  
7 violence would inevitably follow and virtually every  
8 client we have spoken to who has been in these homes can  
9 name the kingpin and can say I don't want to be a nark.  
11.10 10 And that culture is still there now.

11 In kingpin hierarchies, they have existed in one  
12 form or another since the institutions have opened. It  
13 is a form of survival. They are not a thing of history.  
14 So, on the Whakapakari Programme on Great Barrier Island  
15 which closed in 2004, the kingpin hierarchy was  
16 formalised, they were called the Flying Squad. And the  
17 Flying Squad would be the two or three oldest and biggest  
18 boys appointed by the staff and part of their job was to  
19 chase boys who tried to run away and to beat them and  
11.11 20 drag them back to the main camp, throw them on a boat and  
21 take them to a smaller island called Alcatraz.

22 I have a still here from a movie, when the photos  
23 come up. Was it up? I wasn't looking. There we go.  
24 Just going backwards a bit from Whakapakari back to  
25 Kohitere, in 1985 a movie was made at Kohitere, in fact  
26 there were three movies. This one is the most well-known  
27 and it's called kingpin. In 1985, a group called Moro  
28 Productions made this movie using boys that were being  
29 held at Kohitere at the time. That is a still there of a  
11.12 30 guy, he's beating up on a young fella, a newer guy, and  
31 if you watch the movie, you can watch it, a part of it on  
32 the New Zealand on screen website, the bit you can't hear  
33 in the movie is him saying, "Don't be a hard jube, don't  
34 try and be a hard jube", don't try and be above your

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1 station.

2 So, the movie shows a little of what life was like  
3 at Kohitere at that time.

4 I was talking about the Flying Squad and Alcatraz.  
5 And the other part of those Flying Squad boys, the other  
6 part of their job was to go to Alcatraz, which was a  
7 little rock off the main camp Great Barrier Island, in a  
8 shelter, and boys were taken there as punishment. And  
9 the Flying Squad's job was to stay there with the boys  
10 being punished and supervise them but obviously  
11 supervision meant beating them regularly during that  
12 period of time.

13 At certain times at Whakapakari, there was a second  
14 tier of top boys. So, they were the deputies and they  
15 were called Junior Leaders. These are referred to in  
16 people's records, Junior Leaders. I've made the Flying  
17 Squad, it is a really good thing. One of the big driving  
18 factors about the Flying Squad was they got more food.  
19 At Whakapakari there was never enough food for the boys,  
20 so one of the factors driving the Flying Squad was  
21 hunger.

22 So, these are phrases regularly used in reports back  
23 to CYPS. In one set of records, a Whakapakari staff  
24 member described the Junior Leaders as being like tribal  
25 policemen.

26 So, it was commonly understood in the institutions  
27 and programs that if you disclosed abuse you'd be further  
28 punished. That environment has been perpetuated for so  
29 many years that it's still part of our clients' lives now  
30 in prison where marks are still beaten in prison and you  
31 don't talk to the Police or to the authorities. And in  
32 our current residences, our children in care now.

33 In 2017, the Children's Commissioner issued a report  
34 State of Care 2017, and in it they use the phrase

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1 "snitches get stitches", and that's 2017. In a photo  
2 that might pop up or might have already popped up, there  
3 we go, that's a boy standing on the line. That was a  
4 regular punishment, that's at Hokio, I think, at Epuni.  
5 Standing on the line was a regular punishment in the  
6 institutions. I wanted to use that photo to demonstrate  
7 the wide ranging psychological abuse that was present in  
8 institutions.

9 We talk a lot about physical and sexual abuse  
11.15 10 because these are the - they are what people understand  
11 more about what abuse really means. But psychological  
12 abuse and emotional abuse were just as harmful and just  
13 as prevalent.

14 So, children in care were told that they were  
15 useless, that they'd end up in prison, that they would  
16 never amount to anything, that their parents didn't love  
17 them, that nobody wanted them, that they were worthless  
18 and nobody cared what happened to them. And so many of  
19 our clients heard that for so long and they talk about  
11.16 20 how they absorbed that and it became part of their own  
21 self-belief.

22 And standing on the line, punishments like that,  
23 that wouldn't just be for 5 or 10 minutes, that would be  
24 for hours. And that would be in the rain and that would  
25 be while staff members and other boys would continuously  
26 verbally and sometimes physically abuse them. And I  
27 think Arthur Taylor when he gave evidence last week  
28 talked about standing on the line. There's different  
29 variations of things like that around the institutions.  
11.17 30 Standing facing a corner. Holdsworth had a dog box, you  
31 had to sit in the dog box. So, lots of these things  
32 where you were isolated and on show as part of your  
33 punishment.

34 And part of the psychological abuse and part of the

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1 enormous impact of Institute care is solitary  
2 confinement. There's different words for solitary  
3 confinement, seclusion is one that's used in the mental  
4 health context a lot. Solitary confinement or secure  
5 care. And some of the photos that will come up will show  
6 you a secure room at Hokio, for instance. There you go.  
7 And there's nothing in the secure rooms at Hokio, they  
8 were just two little lock up cells.

9 So, this was a significant part of institutional  
11.18 10 life at the boys and girls residences. Most remand  
11 centres in all national institutions had Secure Units of  
12 some sort. And so, being placed in secure meant 23 hour  
13 a day lock down. And in a lot of the boys' homes that  
14 one hour out was for extreme physical training. The  
15 photo up there, that's just thrashed up and gone again,  
16 there you go, is a boy inside a cell at Epuni. That  
17 looks quite well furnished, so I don't think it's a  
18 secure unit cell. I think that's your average, every day  
19 room.

11.18 20 So, there's nothing in secure unit cells. The  
21 bedding and the mattresses were taken out during the day  
22 and a boy had nothing but bare concrete, shorts and  
23 t-shirt. As I say, 23 hours on your own, meals in your  
24 cell, no-one to talk to, no school work, no activities.  
25 And punctuated by this really harsh physical training,  
26 carrying things while duck walking, really heavy things  
27 for often really little kids, duck walking, push ups, sit  
28 ups, running, all while being verbally abused and  
29 physically abused by staff.

11.19 30 After 1989, the standard in time for secure care was  
31 about 3 days and then you have to go through a particular  
32 process. But before 1989, there weren't really any rules  
33 about the use of secure. And so, lots of children were  
34 put in secure as a matter of course. It doesn't matter

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1 why they were being put in an institution, they did 3  
2 days in secure, just to sort of introduce you to the  
3 environment. And that was later found to be a breach of  
4 policy, that they couldn't do that but they kept doing  
5 that for years.

6 And other children were left in secure care for  
7 extraordinary amounts of time. One of our clients spent  
8 a total of 99 days in one stretch in the secure unit at  
9 Owairaka.

11.20 10 In 1986, regulations came into force, the Children  
11 Young Persons (Residential Care) Regulations 1986. The  
12 intention behind those regulations was to provide a bit  
13 more structure about the use of secure. So, those  
14 regulations required things like daily reviews of a  
15 resident's placement in secure. That education or  
16 recreation had to be provided. That they shouldn't be  
17 regularly confined to their rooms and so on. In our  
18 experience, those regulations were routinely ignored.

19 Importantly, if a child was placed in an institution  
11.21 20 under a voluntary agreement, right back at the beginning  
21 I explained children had been put in care voluntarily,  
22 those children could not be put in a secure unit.  
23 Unfortunately, that wasn't clear for a number of years  
24 and children in voluntary care were held in secure and  
25 there was no lawful basis for that.

26 And that was only clarified when a document was sent  
27 out and circulated to institutions in February 1987 and  
28 that confirmed there was no legal basis to detain  
29 children in secure when they were there under voluntary  
11.22 30 agreements but time and time again we have seen that  
31 happen after 1987. Despite the circular, children went  
32 into secure because I think once they got there, no-one  
33 looked at what their legal status was, they were just  
34 another kid in the institution.

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1           And that same document confirmed that children who  
2           were admitted temporarily or informally or under a  
3           warrant or under the Criminal Justice Act, they couldn't  
4           be kept in secure either but the same problems arose.

5           I want to draw the Commission's attention to a  
6           report called Thinking Outside the Box: A Review of  
7           Seclusion and Restraint Practices in New Zealand. That  
8           was done by Dr Sharon Shalev in 2017. It dealt with the  
9           use of solitary confinement and secure in not injuries  
11.23 10          CYPS residences but mental health institutions and  
11          anywhere elsewhere people could be detained. One of the  
12          things it emphasises, is the extraordinarily adverse  
13          impact that solitary confinement has on any person's  
14          mental health but on a child or a vulnerable person,  
15          someone with mental illness, for example, solitary  
16          confinement is devastating. So, I really commend that  
17          report to you.

18          There was a photo up that showed an obstacle course  
19          at Hokio. It may have already thrashed up. There it is.  
11.24 20          We have included that one, it is a rather wholesome  
21          looking photo but the reality was that the physical  
22          training, the punishment physical training, was extremely  
23          harsh at all of the institutions that we looked at.

24          Q.    Just for the record, it shows a log across a stream?

25          **MS HILL:** Yes, boys clambering across a log and there  
26          will be staff members somewhere there making sure  
27          that the boys go as hard and fast as they can.

28          I want to turn to the issue of practice failures,  
29          and that is a phrase that we use a lot in our work and  
11.24 30          it's shorthand, I guess, for social work practice  
31          failures.

32          So, of course, social workers and state agencies,  
33          and social workers who work for faith-based institutions  
34          as well, they were governed all the time by practices,

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1 policies, manuals, guidelines. No matter how far back we  
2 go, there was always rules and policies.

3 Q. This is something that Judge Henwood talked about on  
4 Tuesday last week?

5 **MS HILL:** Absolutely, yes.

6 Q. I recall her saying there were some very good policies  
7 but they weren't always followed?

8 **MS HILL:** Yes.

9 Q. I think she took the Commissioners through the set of  
10 practice failures identified in CLAS.

11 **MS HILL:** Yes.

12 Q. It might not be necessary for you to go through all of  
13 them in 82.

14 **MS HILL:** That's fine, I'm happy to skip over those.

15 What I wanted to emphasise is understanding  
16 practice failures is vital. And to do that, you  
17 have to be able to understand not only the policies  
18 in place but the records of an individual survivor,  
19 and be able to match that with their experiences.  
20 Part of the work that we do, is helping our clients  
21 understand what practice failures are and  
22 understand what their records show about what their  
23 social workers were doing. So, it's a much more  
24 intricate thing to be dealing with than physical or  
25 sexual abuse but it is so important because if a  
26 job is not done right or in accordance with a  
27 policy, then inevitably further harm follows.

28 Up on the screen there is actually another still  
29 from the movie Kingpin, it has a boy being restrained by  
30 a staff member after he's put his hand through a window.  
31 That is to, sort of, sometimes boys did not act in their  
32 own interests and harming themselves was one way to get  
33 out of bad situations.

34 Sonja mentioned earlier about the sort of fall back

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1 phrase the Ministry of Social Development has used  
2 previously about this was the practice of the day. I  
3 strongly encourage people to not feel like that's okay.  
4 That even the practice and policy of the day doesn't make  
5 something right and it doesn't make something lawful.  
6 So, we need to be very careful about allowing ourselves  
7 to be lulled by that.

8 I want to talk more about third party caregivers and  
9 programs. I touched a little on this earlier and I  
11.27 10 talked earlier about the section 396 approval scheme. We  
11 have already identified that the approval scheme was  
12 faulty and I think still is faulty in some ways.

13 **CHAIR:** It may be suitable, Mr Mount, just as this new  
14 passage begins, for us to take, albeit slightly  
15 early, the morning adjournment.

16 **MR MOUNT:** Certainly, Sir, thank you.  
17

18 **Hearing adjourned from 11.28 p.m. until 11.45 a.m.**  
19

20 **MR MOUNT:**

21 Q. Ms Hill, we were at third party caregivers.

22 **MS HILL:** Yes. I would like to summarise some of the  
23 experiences we have heard about in these programs.  
24 We also need to acknowledge that some of the  
25 organisations that we're talking about still exist  
26 today and we need to acknowledge that some of them  
27 do extraordinary work and invaluable work and we  
28 acknowledge START Taranaki and Challenge 2000, and  
29 organisations like that, who provide care and  
11.47 30 support to Tamariki in a really meaningful way.

31 Throughout the 1990s and the 2000s, the number of  
32 programs and organisations providing care, they expanded  
33 greatly, and some of them were very small, some were  
34 nationwide, and there were so many different ones. One

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1 of the photos we have for you shows the New Zealand  
2 Legionnaires Academy which ran out of South Auckland  
3 which ran along Army sort of lines. There were some  
4 fairly brutal account out of that organisation.

5 Q. These are people in Military style clothing with flags  
6 and so on?

7 **MS HILL:** Military style, yes, ran along a Military  
8 academy type of line. The next photo, that's  
9 Alcatraz, that is the small island that boys who  
10 played up at Whakapakari were placed on. There's  
11 no shelter, there's no fresh water, there's no food  
12 except what they could get out of the ocean, and  
13 boys would be placed on Alcatraz, its proper name  
14 is Whangara Island but all the boys called it  
15 Alcatraz and they would be placed there for weeks.

16 Programs that I highlighted earlier, Whakapakari,  
17 were run on Great Barrier Island. That started out in  
18 1986 and there's a litany of complaints, all documented  
19 between 1989 and when CYPS stopped using the programme in  
11.48 20 1994. These ranged from serious sexual assaults where  
21 one young woman became pregnant to a supervisor who was  
22 charged with unlawful sexual connection, rat infested  
23 huts, poor hygiene, ongoing physical assaults by  
24 supervisors. And at the end, the allegations became too  
25 much after years of CYPS saying don't place children  
26 there unless there's significant change, they had  
27 continued placing children there. The critical mass  
28 became too much and CYPS went in and took all the boys  
29 off the island in one fell swoop. But what it also meant  
11.49 30 is that a number of allegations of serious sexual abuse  
31 just faded away, they were never investigated because the  
32 programme was shut.

33 Moerangi Treks run in the really isolated parts of  
34 Ruatoki and the Ureweras, from memory, really hard bush

1 programs. What we heard out of that were boys being  
2 chained up, urinated on, made to stand in the river for  
3 hours while things were thrown at them, dragged behind  
4 horses, and, yeah, being shot at with firearms, beaten  
5 with rifles. Moerangi, again several investigations,  
6 boys continued to be placed there. Eventually, the  
7 programme, their approval was suspended and one of their  
8 key staff members who had serious allegations against him  
9 was allowed to start a programme down the road on the  
11.50 10 same property called Eastland Youth Rescue Trust. So, a  
11 man who's under investigation is able to start up again,  
12 take on more boys and almost immediately the allegations  
13 started again. Eastland Youth Rescue Trust culminated in  
14 one boy being hospitalised, his injuries were so severe,  
15 and that programme lasted less than a year. It should  
16 never have been opened at all.

17 The last programme I mention is the Heretaunga Maori  
18 Executive, much more recent. So, the first complaints  
19 about Heretaunga Maori Executive came up in 2004. When I  
11.51 20 was talking earlier about the two streams, the approvals  
21 on paper and the frontline complaints, this is where the  
22 disconnect really shows. Because they had their  
23 paperwork in order, they were approved most years. Even  
24 in the years where they were told they had homework to  
25 do, they were still allowed to keep children there.

26 Three different caregivers were convicted of  
27 physical assaults from Heretaunga Maori Executive. And  
28 it was only when the last person was convicted, Peter  
29 Kursell, only when he was convicted and the manager of  
11.52 30 the programme said, no, those boys are lying, that CYPs  
31 stopped placing children there. That is what it took. I  
32 will pass you over to Sonja to talk about the Ministry of  
33 Education.

34 Q. Just for the transcript, the written statement which will

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1 be available to everybody has as Appendix B from page 53  
2 more detail about these recent complaints?

3 **MS COOPER:** Yes, it does. Ministry of Education  
4 residential special schools sadly are a growing  
5 area of work for us. Most of our work arises out  
6 of two residential schools, Waimokoia School and  
7 McKenzie, both of which are now closed. I just  
8 want to talk about Waimokoia School which has had  
9 different names. So, it started its life as  
10 Mt Wellington residential school, then it moved to  
11 Bucklands Beach and it was known briefly as  
12 Bucklands Beach Residential School before it was  
13 renamed as Waimokoia School.

14 The residential schools in the 1980s through to  
15 2000s, they were not for children of intellectual  
16 disability which Campbell Park was, these were for  
17 children who had adjusted or emotional disturbance of  
18 some sort.

19 Just by way of example, Waimokoia School, we have  
20 children from the 1970s through to the 2000s. They have  
21 complained about physical and sexual abuse by staff,  
22 sexual and physical abuse between children. We are  
23 talking about children who were between the ages of 7 and  
24 13, so we're talking about little children. And often  
25 the sexual and physical abuse between residents, and I  
26 have to say that's kind of a residential school problem,  
27 went undetected or was ignored by staff, multiple  
28 complaints about excessive use of physical restraints by  
29 staff, children complaining, and we're talking about  
30 7-13 year olds, being locked for long times in the Time  
31 Out rooms. And at Waimokoia School the clients describe  
32 this as a concrete box which smelled of urine. At  
33 Waimokoia School they were also confined in a small box  
34 under the dormitory and there were just other excessive

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1 and cruel punishments that the children were subjected  
2 to.

3 Waimokoia School is an example of numerous  
4 complaints by the Education Review Office, so starting in  
5 2005 and I think the ERO complaints continued through to  
6 2008 until it was eventually closed down by the Ministry  
7 of Education in January 2010. Between 2008 and 2010,  
8 three former Waimokoia School staff members were  
9 prosecuted but were later acquitted of several charges of  
11.55 10 physical abuse against children in about 2007.

11 Then in 2009, a former staff member was brought to  
12 trial in relation to multiple charges of sexual abuse  
13 against several children at Waimokoia School between 1984  
14 and 1988. That trial had to be aborted because the staff  
15 member's health was failing and he died in August 2009  
16 before there was a retrial.

17 And then in 2010, we have another staff member,  
18 Graham McCardle, who also taught at a state school and he  
19 was convicted of multiple charges of sexual and physical  
11.56 20 abuse of children at Waimokoia School in the 1980s.

21 That's an example of a special residential school  
22 and, as I say, we have many claims against Waimokoia  
23 School, we also deal with the health and support for the  
24 deaf and we dealt with more recently Westbridge. Those  
25 claims are continuing.

26 In terms of the faith-based institutions, I think we  
27 just wanted to highlight some of the more major  
28 allegations. For example, with the Catholic Church we  
29 wanted to highlight Marylands School which was run by the  
11.56 30 St John of God Brothers and that was in Christchurch.  
31 That's a situation where allegations came to light, a  
32 raft of convictions followed, Brother Bernard McGrath was  
33 convicted of 21 charges in 2012, he was extradited back  
34 to Australia. And then another Brother Maloney was found

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1 guilty of 7 charges in 2008 after being extradited here  
2 from Australia. Another Brother was given a stay of  
3 proceedings because he was too unwell to stand trial.

4 I wanted to note Brother McGrath because after he  
5 spent time at Marylands, he worked with street kids in  
6 Christchurch in conjunction with an organisation called  
7 the Hebron Trust, and in that context he abused a large  
8 number of street kids, I think probably all boys that we  
9 know of and some of his convictions relate to this time  
11.58 10 period and I have to say that group is still very slowly  
11 coming forward. They have been incredibly damaged by  
12 their abuse by this Brother.

13 In terms of Catholic institutions, we heard about  
14 severe physical abuse that's carried out by priests and  
15 nuns, as well as sexual abuse by priests and nuns. I  
16 think for a lot of our clients, the abuse is really about  
17 psychological abuse, tied to their beds, having their  
18 hair shaved off, being deprived of food or being made to  
19 dress in the same uniform, and it was a uniform, being  
11.58 20 deprived of school, you know, a bit like the whole  
21 Catholic laundries, some of the girls for example were  
22 made to do ironing and do slave labour essentially for  
23 hours on end and were deprived of an education.

24 We note here that there were expectant mothers,  
25 teenage parents in particular, so they were in Catholic  
26 or Anglican institutions. Again, we are aware that they  
27 were subjected to quite cruel treatment. They had their  
28 babies taken away from them. Off then they felt forced  
29 or were forced to sign papers giving up their children  
11.59 30 for adoption even though they didn't want to adopt them.  
31 That is something I hope that story will be heard by the  
32 Royal Commission.

33 Where children were brave enough to disclose the  
34 abuse, they were often shamed or punished. We know of

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1 some clients who were told particularly, it is a big  
2 thing for a Catholic to be told you are going to hell.

3 I think one of the things we noticed that often  
4 blurred lines between the State and the church, for  
5 example at Hokio, and I don't think it was just Hokio,  
6 possibly Kohitere and Epuni actually, a Catholic priest  
7 was allowed to have access to the boys. He was allowed  
8 to take them out of Hokio on picnics and other  
9 activities. And there were many clients who were  
12.00 10 sexually abused by this Catholic priest on these  
11 activities.

12 One of our clients disclosed this to his local  
13 priest in Wellington and that priest was incredulous. He  
14 said that the best thing that the client could do was to  
15 confess, make his peace with the church and that he was  
16 damned and not fit to be a Catholic. That still  
17 resonates with that client to this day and he is in his  
18 60s, particularly because the priest went on to make  
19 similar comments to the boy's family.

12.01 20 So now I want to talk about how this work started  
21 for us. I started my life in New Zealand's big law  
22 firms, had a small stint at a small law firm before  
23 deciding to setup on my own in March 1995. It's fair to  
24 say at that stage these claims were almost unheard of and  
25 that's because we use the term "historic", that's because  
26 often the claims related to events decades before and  
27 there was a general view held by lawyers and Judges that  
28 you couldn't bring them, they were stale claims and you  
29 couldn't do anything about them.

12.01 30 And of course in New Zealand we had other legal  
31 barriers that we will talk briefly about as well.

32 In August 1995, I had the privilege of being  
33 appointed as a District Inspector of Mental Health in the  
34 Wellington region. Through that work, I started to come

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1 into contact with adults who have been locked up in  
2 psychiatric hospitals for many years who had been abused  
3 in psychiatric care, having started their life in  
4 psychiatric care as teenagers and who were also State  
5 wards. So, they had come into psychiatric hospital under  
6 the care of the State.

7 Other clients came to me from various sources, one  
8 was a colleague who became a Judge, she referred clients  
9 to me. Another one was apparently referred to me by his  
12.02 10 hairdresser, I don't know why. But anyway, people came  
11 to me from various sources and they were people who had  
12 suffered abuse in Social Welfare care. So, they were  
13 people who had suffered abuse in foster care or at that  
14 stage, that early stage, I think there was not much in  
15 terms of residences or they'd been taken into adoptive  
16 families where they'd suffered abuse.

17 This was a very new area of law, as I've said, so I  
18 kind of thought, well, what do I do? I have to say, I've  
19 always been somebody who thinks where there's a wrong it  
12.03 20 should be able to be remedied through the law. I was to  
21 find that's not necessarily the case. But anyway, in  
22 those early days I was gung-ho and wanting to change the  
23 world, so I found that I had to start taking claims  
24 because the State wasn't prepared to engage with them on  
25 an out of Court process.

26 So, my early years were spent in the High Court and  
27 also the Court of Appeal, just trying to get the law to  
28 establish that adults who had suffered abuse as children  
29 could actually bring legal claims. And that work, I have  
12.04 30 to say, in those early days was eventually successful.

31 I just note there that part of this was also around  
32 the developing psychiatric understanding that abuse  
33 caused the same kinds of impacts as war veterans had  
34 suffered. So, this also kind of dovetailed with

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1 increasing psychiatric and psychological understanding of  
2 the long-term effects of abuse. So, the law was able to  
3 build on that knowledge in terms of allowing these claims  
4 to go ahead.

5 **MS HILL:** In terms of the timeline, the next big thing  
6 that came up was the Lake Alice Inquiry which was  
7 managed by Grant Cameron and some other lawyers  
8 there but it was triggered, of course, much earlier  
9 and we acknowledge Hake Halo and Dr Sutherland who  
12.05 10 has given evidence at length about Lake Alice and  
11 things that happened there.

12 In our brief of evidence, we've gone into a bit more  
13 detail about that but I will leave that to one side,  
14 except to say that Gallen J in his report noted that most  
15 of the children in Lake Alice were placed there by State  
16 agencies and that's a really important thing to remember,  
17 that it was the State placing people in Lake Alice.

18 I also wanted to note that that compensation package  
19 of \$10 million that Gallen J was tasked with allocating,  
12.06 20 that triggered quite a lot of media interest at the time  
21 and a lot of discussion about the role of compensation to  
22 address harm.

23 While we recognise that the Lake Alice process was  
24 flawed in a number of ways, sadly it also represented a  
25 high watermark for compensation for individuals for abuse  
26 in New Zealand. And it also created a significant  
27 disparity between the people who had been in the Child  
28 and Adolescent Unit in Lake Alice and people who had been  
29 in other psychiatric hospitals who had had really similar  
12.06 30 experiences and so many people felt that their  
31 experiences in other psychiatric hospitals were  
32 overlooked.

33 Sonja will talk to you about the psychiatric claims.

34 **MS COOPER:** It was in 2002 that our firm first started

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1 doing psychiatric hospital work and we were  
2 obviously spurred on by what had happened for the  
3 Lake Alice claimants because most of our clients  
4 were teenagers who had been in psychiatric hospital  
5 care and had suffered very similar things to the  
6 allegations that were made and accepted by the  
7 adolescents who had been in Lake Alice Hospital.

8 In that year, in 2002, the Evening Post did a story  
9 saying we were doing some claims and they showed some  
12.07 10 pictures of pretty scary stuff from Porirua Hospital, so  
11 that client group grew from 5 to 40 to 200 quite quickly.  
12 We didn't do this work on our own. Because I was still  
13 at that stage a District Inspector of Mental Health, I  
14 could not do clients who were still in care in Porirua  
15 Hospital or had been in Porirua Hospital, so our  
16 colleagues, Roger Chapman and Lisa McKewen worked  
17 alongside us at Johnston Lawrence and we split that work  
18 up. I have to say now we couldn't have done that work  
19 without Johnston Lawrence.

12.08 20 Not surprisingly, our client group wanted a similar  
21 Inquiry and similar settlement process to the Lake Alice  
22 group but the Crown rebuffed that and I have to say there  
23 was a lot of push back on that from Crown Law. So, we  
24 were forced into the position of having to file legal  
25 claims in the High Court and at that stage I think in a  
26 big rush we had to file about 200 legal claims.

27 This was our first experience of significant push  
28 back by the Crown because in 2005 the Crown applied to  
29 strike out all of the claims using the Limitation Act.  
12.09 30 So, in other words, saying we had filed the claims out of  
31 time. And also to the immunities in the mental health  
32 legislation that were pretty draconian to say these  
33 claims couldn't go ahead.

34 It's relevant to talk a bit about that, just as a

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1 kind of indication of the sort of mechanisms that the  
2 Crown used to argue these cases and other cases that we  
3 were subsequently involved in.

4 So, the relevant mental health legislation, and this  
5 was principally the 1969 Mental Health Act, had immunity  
6 provisions which protected staff, in other words nurses,  
7 attendants, doctors, who were acting, this is the legal  
8 words "in pursuance or intended pursuance of the Act".  
9 So, they were protected from any civil claims unless they  
10 had acted in bad faith and/or negligently.

11 But even in that case, a patient had only 6 months  
12 to bring a claim. Of course, we were talking about  
13 events that had happened decades earlier.

14 I think what shocked us, was that the Crown  
15 unswervingly and unapologetically took the view that all  
16 allegations made by our clients apart from what was  
17 classified as major serious sexual assaults, whatever  
18 that was, came within the immunity as treatment and  
19 therefore all of the claimants had to apply for leave and  
20 because they hadn't done that within 6 months of their  
21 treatment all the claims were barred.

22 And I can give you an example of that because these  
23 were the submissions that were made in the Court of  
24 Appeal by the Crown. For example, it was argued in the  
25 Court of Appeal that burning a teenager with a cigarette  
26 could be treatment to discourage children from smoking,  
27 for example.

28 It was also argued that the concrete pill was a  
29 legitimate form of restraint. So, those were the sorts  
30 of arguments that were made by the Crown, by Crown Law,  
31 unapologetically, all the way from the High Court, all  
32 the way through to the Supreme Court, over 5 years.

33 So, the Crown asked the Court to somehow approach  
34 all of these allegations that were made by our clients as

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1           though they could somehow be treatment. They just asked  
2           the Court to imagine that in some way these really  
3           terrible allegations could be seen as treatment and,  
4           therefore, the immunities in the legislation applied.

5           So, while this was happening, the Confidential Forum  
6           was established. And Your Honour Sir Anand you were one  
7           of the chairs of that and obviously Judge Mahoney was the  
8           first Chair. And that, I think, was the Crown's response  
9           to our litigation, was to setup the Confidential Forum as  
12.12 10          an avenue for people to talk about their experiences in  
11          psychiatric care. And we acknowledge that lots of our  
12          clients had a very positive experience with the  
13          Confidential Forum. However, we received a lot of  
14          feedback that it provided no closure, there was no formal  
15          response. In fact, the Panel was specifically not  
16          allowed to acknowledge anything that was being told to  
17          them. They were specifically not allowed to offer any  
18          apology and they certainly weren't allowed to offer any  
19          compensation.

12.13 20          Reports at that stage were limited to letters to the  
21          government summarising the experiences of people who  
22          approached the Confidential Forum.

23          In essence, all the Confidential Forum could do at  
24          that stage was assist people to get their records where  
25          they existed and made referrals to counselling.

26          The transcripts, none of the actual backbone of that  
27          forum was ever able to be made available publically.

28          In the midst of us going through this long tortuous  
29          strike out process we had two trials. One run by our  
12.13 30          firm and one run by Johnston Lawrence. They both went  
31          ahead in 2007 which became an auspicious year for reasons  
32          we will explain.

33          K was allowed to go ahead because the allegations  
34          were of serious sexual assaults by nursing staff and so

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1           they had to agree that was allowed to go ahead. And J,  
2           which was the one we argued, was allowed to go ahead  
3           because she had earlier been given leave by the  
4           High Court, so her claim was allowed to go ahead as well.

5           K failed. I think at that stage the Judge was just  
6           incredulous about the allegations that K made because it  
7           really was not within the experience, New Zealand's  
8           experience, and I think he just found them incredible.  
9           And he also failed on the Limitation Act which was  
12.14 10          extremely surprising because he had an intellectual  
11          disability.

12          J, we got a number of successful findings,  
13          particularly that staff had physically assaulted our  
14          client and that she had been punished and that she'd had  
15          threats of punishment. But, as was starting to become a  
16          common theme at this stage, she also lost on the  
17          Limitation Act because she had been able to approach ACC  
18          some years before she brought her legal claim, apparently  
19          being able to approach ACC was the equivalent of being  
12.15 20          able to instruct a lawyer to bring a legal claim. So,  
21          this was our first experience of the law starting to  
22          clamp down.

23          As I said, we were still arguing our strike out at  
24          this stage and that went all the way to the Supreme  
25          Court. It was a costly exercise, totally funded by the  
26          public purse because we of course were funded by Legal  
27          Aid and the Crown was funded by the Crown.

28          And the effective result was we were declared the  
29          winners overall. The Crown was only partially  
12.16 30          successful. In the end, it got rid of literally a  
31          handful of claims and the rest were permitted by the  
32          Supreme Court to proceed.

33          And so, that forced the Crown to start thinking  
34          about settlement of the psychiatric hospital claims from

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1 2009 onwards for the first time, so we'd had a long run  
2 until then.

3 Then at the same time as we were doing this, we  
4 started the MSD claims. As I said, it was very clear to  
5 us there was a big link between teenagers who were in  
6 psychiatric hospital care and a lot of them were State  
7 wards, so they'd been dumped into psychiatric hospitals  
8 as children.

9 While the claims obviously had been dealt with for  
10 those who had been lucky enough to be in the Lake Alice  
11 Adolescent Unit, the rest of the group was on the  
12 outside. And of course their experiences in Social  
13 Welfare care weren't covered by that Lake Alice  
14 settlement process either, so they felt there was a big  
15 gap between their experiences and what had actually been  
16 acknowledged.

17 One of the things that we note here, was again the  
18 blurred lines of responsibility because we have a number  
19 of clients, and that's still being talked about today,  
20 who were at Holdsworth or Hokio and were taken on little  
21 day trips to Lake Alice and they are convinced they were  
22 given ECT. In fact, some actually remember they were  
23 given ECT, taken there as a day patient, given ECT as a  
24 punishment, taken back to the institutions. There are no  
25 records of that. It is not mentioned in the Social  
26 Welfare records and there is absolutely no record of that  
27 from Lake Alice either. So, those claims have never been  
28 accepted but we've heard it often enough to know that  
29 that is credible.

12.18 30 So, as discussion about the potential legal remedies  
31 for these claims became more known, the number of claims  
32 started to grow. Again, I was responsible for taking one  
33 of the first claims to trial in 2007, that was S v  
34 Attorney-General. At the same time, a former client of

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1 the firm, sorry way before 2007, it was 1999 sorry, so  
2 another client of the firm, former client of the form her  
3 case went to trial also in 2009 and 2000. Both of these  
4 were foster care placements and we were arguing for the  
5 first time that the State was liable for the abuse that  
6 happened at the hands of a foster parents on the basis  
7 that they had placed the children there and they were  
8 effectively their agents. So, this was very novel, it  
9 hadn't been argued in New Zealand at that stage and the  
12.19 10 case law even in the UK was still very much in its  
11 development stage. So, we were arguing new stuff here.

12 So, we won at High Court level, the High Court  
13 accepted in both cases that the Crown was liable. In the  
14 W case, the Crown also accepted that the social worker  
15 had been negligent because in that case the wee girl had  
16 tried to report that she was being sexually abused and  
17 the social worker had ignored it. And because she was a  
18 senior social worker, the Court accepted that the State  
19 was liable for that.

12.19 20 Both claims were lost because New Zealand has an ACC  
21 bar, so ACC covers all compensatory damages claim in  
22 New Zealand, so in both cases both clients were told at  
23 High Court level you've won but you've got no money.

24 So, both we and the Crown appealed. The Crown  
25 appealed on lots of things, Limitation Act. Oh because  
26 we won under the Limitation Act as well. So, they  
27 appealed, we won in the Court of Appeal, so the  
28 Limitation Act findings were upheld, and the Court of  
29 Appeal also in both cases found that both clients who had  
12.20 30 been abused before our ACC legislation came into force  
31 were entitled to compensatory damages. That all had to  
32 be done separately and private settlements were  
33 subsequently negotiated.

34 So, both of those clients, I have to say, got

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1 substantial compensation which we can probably now  
2 disclose but they again probably established a high  
3 watermark because the compensation in those two cases was  
4 substantially higher than anyone else was ever - we'd  
5 ever been able to negotiate since.

6 Following, we also had a lot of media interest in  
7 this work as well and so following those cases, the media  
8 work, that client group grew really rapidly. That grew  
9 from like, you know, 50 to 200 to 600 to 800 very  
10 rapidly.

11 I think one of the things that was distressing to us  
12 was as this happened, the climate in the Courts grew a  
13 lot harder. And I think we would say that the judiciary  
14 either could not or did not want to deal with the  
15 implications of these claims.

16 We tried again to negotiate with the Crown for an  
17 out of Court process and we thought we were actually  
18 getting somewhere with Crown Law. We were provided a  
19 whole lot of information on a good faith basis, we didn't  
20 file claims, but then as we had come to experience, Crown  
21 Law said, no, we're not going to do an out of Court  
22 process, so again we ended up having to file hundreds of  
23 claims to preserve our clients' legal positions.

24 In 2006, we did a 175 page paper for the Ministry of  
25 Social Development and Crown Law. So, at that stage it  
26 was a detailed breakdown of placement by placement  
27 setting out allegations made by our clients against staff  
28 members and the various experiences they had. So, we  
29 talked about the cultures and that covered even things  
30 like being, you know, given cigarettes and tattoos and  
31 things like that.

32 We gave that to the Ministry of Social Development  
33 in good faith. They then passed it on to the Police  
34 without our knowledge or consent and then we had a long

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1 conversation with the Police about whether we were going  
2 to handover our clients' identities and information so  
3 that the Police would then embark on prosecutions, again  
4 without knowledge or consent. And that has become  
5 another conversation which I talk about later in the  
6 course of the last year or so, hopefully put at an end by  
7 a Court of Appeal decision delivered about two months ago  
8 or a month ago.

9 But anyway, MSD took the position that it was  
10 entitled to breach our clients' privacy, to provide  
11 information to the Police. Whether or not the Police  
12 intended to act on it, and as I say regardless of whether  
13 or not our clients consented. And our clients had valid  
14 reasons for not consenting to that.

15 We then had to start filing proceedings against MSD.  
16 We couldn't manage this huge amount of litigation in the  
17 normal way, so it was agreed between Cooper Legal and MSD  
18 that we have a Judge allocated to manage our claims. We  
19 devised a protocol which is still in place today in which  
20 some claims are actively tracked towards trial but the  
21 vast majority sit once we've filed them, so that we can  
22 try and settle the claims out of Court.

23 Over the years, the protocols expanded. It now  
24 covers Ministry of Education claims, it also covers  
25 claims that we now always file for younger clients to  
26 protect their legal position, if we can protect their  
27 legal position we will do that.

28 2007, as I've said, was an auspicious year for the  
29 firm. It was the start of a bad time, I have to say. We  
30 had the first major Social Welfare trial about  
31 institutions, that was the White trial. So, the two  
32 plaintiffs were brothers, Paul and Earl were their names  
33 for the purpose of the public decision. The trial was in  
34 two parts. The first part was about their home life,

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1 what Social Welfare knew about their home life and their  
2 liability for failing to act in terms of notifications of  
3 abuse at home. And then the second part was about their  
4 care in residential care, both were in Epuni in the 70s  
5 and Earl was also in Hokio.

6 As we've already said, the Court upheld and had to  
7 really because there were Privy Council decisions saying  
8 once a child comes to notice, there is a duty of care  
9 that arises. And we just emphasise this because it is an  
10 important part of State care that's often overlooked and  
11 it's really, really significant, I think, now, that's  
12 what we're finding in State care now.

13 So, there were a number of findings.

14 **CHAIR:** Mr Mount and Ms Cooper, footnote number 29 makes  
15 a certain reference to the plaintiffs.

16 **MS COOPER:** I have just used the public names for them.  
17 That is not their real names.

18 **CHAIR:** Good, okay. I was just worried about whether  
19 the Royal Commission should make a section 15 order  
20 but we don't need to?

21 **MS COOPER:** No, those are the public names. Their real  
22 names are different and White is not their name  
23 either.

24 **CHAIR:** Thank you.

25 **MS COOPER:** Just in terms of the finding, there were  
26 some really significant findings about Epuni, for  
27 example, and Hokio. The Court specifically held  
28 that many of the witnesses, and these were our  
29 witnesses, 11 in relation to Epuni and 14 in  
30 relation to Hokio, hadn't known one another at all,  
31 or seen one another, hadn't seen one another for  
32 years, but they said, Miller J who was the Trial  
33 Judge found their evidence compelling, even though  
34 the Crown vigorously cross-examined them on whether

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1 they'd got together or whether they'd concocted  
2 their evidence, whether they'd talked about their  
3 evidence with other witnesses. I have to say, we  
4 still see that issue today. There is still the  
5 view that the starting position, I think, that the  
6 Ministry of Social Development or all of the  
7 government agencies start from is the clients are  
8 liars, rather than accepting that their - it is  
9 more the burden is put on them of proving their  
10 story, rather than accepting, starting from a  
11 position of we accept that you are telling the  
12 truth. So, there is a starting position of  
13 disbelief.

14 In relation to Epuni, the Court held most boys had  
15 been admitted there were held in secure for 3 days, 23  
16 hours a day, apart from showering and this period of PT  
17 that Amanda has talked about. Almost all had got the  
18 blanketing, the initiation beating on arrival. All  
19 talked about the hierarchy and kingpin. Several talked  
20 about the staff using the kingpins to keep order. It was  
21 noted that one of the staff members, Mr Moncreif-Wright,  
22 who one of the witnesses has already spoken about, had  
23 been convicted of several offences against children in  
24 1972 and another staff member, Mr Tjeerd handled the boys  
25 roughly.

26 The Court overwhelmingly accepted the evidence of  
27 the witnesses, our witnesses. So, there were findings  
28 made that the House Masters were aware of the  
29 initiations, that they turned a blind eye to the kingpins  
30 and that a number of staff members were violent towards  
31 our plaintiffs and other clients.

32 Hokio, the Trial Judge found that Earl had been  
33 sexually assaulted by the cook who we have referred to  
34 before, who was notorious among the boys. Also found

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1 that a number of the staff members were unreliable, that  
2 they had assaulted the boys, that kingpins again were a  
3 feature, that Pakeha boys had a harder time of it at  
4 Hokio because they were definitely the minority, and that  
5 staff members encouraged the use of violence.

6 So, these were important findings but we lost on the  
7 Limitation Act. So, the Court found that the claims were  
8 barred and even though these clients both had quite  
9 significant psychological and psychiatric diagnoses, the  
10 Courts found that they should have been able to bring  
11 their claims earlier.

12 And I mean one of the things I think that's really  
13 valid to question is, were they different from the two  
14 plaintiffs who succeeded only a few years earlier from W  
15 and S? No. And, in fact, probably, at least with  
16 respect to S, they were less highly functioning.

17 But by that stage, our view is that the Court was  
18 faced with literally hundreds of claims potentially  
19 coming through the system. And that wasn't the case when  
20 we'd started out with this work in the late 1990s, there  
21 were just a handful of cases. So, you know, that timing  
22 is interesting and the fact that the Wellington  
23 High Court particularly knew we had already filed  
24 literally hundreds of claims.

25 So, what happened was that the Courts started to  
26 really modify the applicable legal tests for the  
27 Limitation Act and what we saw is it got harder and  
28 harder for claimants to even get through the Limitation  
29 Act, so lots of claims were being struck out. We will  
30 talk that a bit more because the Crown used that as a  
31 weapon.

32 I think one of the financial that it's really  
33 important to point out here, is that it's a choice. It's  
34 a choice for a defendant about whether they rely on the

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1 Limitation Act. They do not have to. And at that stage,  
2 the Crown had an obligation to be a model litigant. In  
3 other words, not take technical defences, not take  
4 advantage of the mucinous plaintiffs.

5 Both the Crown and the churches during this period  
6 and still, rely on the Limitation Act as a weapon to bar  
7 what we say are completely legitimate claims. There is  
8 no doubt in my mind, well we know in the psychiatric  
9 hospital claim at client would have got damages because  
12.32 10 the Judge said so. The Judge said "but for the  
11 Limitation Act". And in this case, you know, to lose on  
12 the Limitation Act was really hard.

13 We will talk a bit more because this sparked a  
14 really negative response from Legal Aid who, on the 17th  
15 of January the next year, 2008, told us to stop work and  
16 then implemented a withdrawal of aid process and we'll  
17 talk a bit more about that, for 800 legally aided  
18 clients.

19 And they would not fund us to appeal the White  
12.33 20 decision, so we did it without any funding. We appealed  
21 the White decision to the Court of Appeal and again,  
22 although we had good findings in terms of the legal and  
23 factual findings, they upheld the findings in relation to  
24 the Limitation Act, even though they said the Judge had  
25 made errors and upheld the other legal findings. And we  
26 applied for leave to appeal to the Supreme Court and  
27 didn't get leave. So, yeah, we weren't able to take that  
28 any further.

29 **MS HILL:** I just want to touch briefly on some of the  
12.34 30 legal barriers faced by claims and Sonja has  
31 touched on a couple of these briefly, there's two I  
32 want to spend a bit more time on. The effect of  
33 the ACC, Accident Compensation legislation, and the  
34 withdrawal of Legal Aid.

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1           For those who weren't too familiar with the Accident  
2           Compensation legislation, the whole idea behind it, of  
3           course, was that it would replace personal injury  
4           litigation, instead of US style suing people for harm,  
5           and the model was intended to be that ACC would provide  
6           you with what litigation would provide you. That was  
7           quite an idealistic situation, I think.

8           So, the ACC legislation says that you are not  
9           entitled to receive compensatory damages, you cannot sue  
12.35 10          for those, for personal injury. The ACC legislation has  
11          changed so many times since its inception, that working  
12          out whether it applied and the extent of cover really is  
13          an exercise in and of itself.

14          And that legislation has been altered in response to  
15          historic abuse litigation as well.

16          So, where the law stands now, is that claims for  
17          general or compensatory damages for physical allows can  
18          only be brought if that abuse occurred before 1 April  
19          1974. And in the case of sexual abuse, such claims can  
12.35 20          generally only be brought if the abuse occurred before  
21          1 April 1974 and the claimant had not had treatment for  
22          the mental injury arising from that abuse by a certain  
23          date.

24          So, it's all rather complicated, it's fair to say.

25          There are things that sit outside the ACC  
26          legislation, psychological abuse without a physical  
27          element attached and false imprisonment.

28          Q. This of course is one of the topics we will come back to  
29          in more detail in March?

12.36 30          **MS HILL:** Yes. I guess the last thing I wanted to say  
31          is that when ACC does provide cover, we would say  
32          that cover is insufficient. It's something for  
33          Parliament perhaps to deal with, it's something for  
34          the Royal Commission to think about, that if you

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1 are a victim of sexual abuse you're entitled to  
2 counselling, not necessarily any financial  
3 compensation. And people who experience a lifetime  
4 of physical and psychological abuse don't get any  
5 counselling under ACC. So, it's something that we  
6 need to think about, that if you are going to have  
7 a scheme that is designed to replace this sort of  
8 litigation, then that scheme needs to operate  
9 properly.

12.37 10 I want to touch, Sonja has touched briefly on Legal  
11 Aid and of course the effect of the decision in the High  
12 Court was for Legal Aid to stop work or say to us to stop  
13 work, except for work that was urgent or Court  
14 timetabled. In April 2008, Legal Aid commenced the  
15 formal withdrawal of Legal Aid to about 800 survivors.  
16 And we were forced to provide submissions to Legal Aid  
17 for each and every client about whether they could get  
18 through the Limitation Act or not effectively, showing  
19 what's called prospects of success. And we were only  
12.37 20 allowed to do that work for them, and so we did that for  
21 800 people, and we went through a review process and an  
22 appeal process to what was then known as the Legal Aid  
23 Review Panel or LAR, and there were more appeals to the  
24 High Court brought by Legal Aid and subsequently our  
25 clients as well.

26 Through all of that, we were expected to do the bare  
27 minimum of work on the individual claims. It was a  
28 massive block on being able to do substantive work to  
29 progress the civil claims.

12.38 30 **MS COOPER:** I am going to talk a bit more about that. I  
31 have to say, it was an incredibly difficult time  
32 for the firm. Not surprisingly, our clients were  
33 distressed at the thought that their funding would  
34 be removed and also their claims might have to come

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1 to an end. We had to try as best as possible to  
2 reassure clients that we were continuing to do all  
3 that we could to protect each client's Legal Aid  
4 but we also had to say to them there were limits on  
5 the work that we could do because we, at that  
6 stage, had little to no funding and certainly no  
7 funding to progress substantive claims.

8 In the face of that, we continued to file as many  
9 people's claims as we could, whether or not we had  
12.39 10 funding. And we continued to do what we could to protect  
11 people's legal positions, given that the Crown was using  
12 the Limitation Act as a very big weapon.

13 There were financial consequences for me as the  
14 Principal of the firm. I couldn't guarantee ongoing  
15 employment to our staff and so we lost half of the legal  
16 staff over the next few months which was a relief in some  
17 ways because it meant I didn't have to make people  
18 redundant which I was very much dreading.

19 We also had to lose an office assistant position and  
12.40 20 we had four years really I think of considerable  
21 financial uncertainty, as well as other pressures being  
22 brought to bear on us which I think are more properly the  
23 place of the redress hearing.

24 During this time, we did a huge amount of work and  
25 we have estimated it, nearly \$1 million worth of work,  
26 without any funding and we did this to protect our  
27 clients' positions, as I've said. We continued to file  
28 claims, we continued to do as much work as we could to  
29 protect our clients.

12.40 30 As I've said, one of those things was taking the  
31 White claims through to the Court of Appeal and Supreme  
32 Court without any funding at all.

33 Matters were made more difficult for us during this  
34 period because Crown Law, particularly acting for the

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1 Ministry of Social Development, in the full knowledge  
2 that we were going through Legal Aid funding  
3 difficulties, chose to insist that some cases go ahead in  
4 terms of testing the Limitation Act. So, these were  
5 effectively strike out applications and they also  
6 insisted on some trials going ahead.

7 That wasn't just the Ministry of Social Development,  
8 there were other ministries we were dealing with as well.

9 But on at least two occasions the Ministry of Social  
10 Development, through Crown Law, pushed for a limitation  
11 hearing on particular claims where Legal Aid had been  
12 withdrawn before the hearing. The first time that  
13 happened, thankfully the Judge allowed the case to be  
14 adjourned because when the case was originally supposed  
15 to have gone ahead, we were ready to go and the Crown  
16 wasn't because it didn't have an expert witness brief  
17 ready, and so the Court agreed because we'd been ready to  
18 go ahead on the first hearing and we'd had Legal Aid at  
19 that stage, it would be unfair to force us to go ahead.

12.41 20 But on the second occasion, the Court knew that we  
21 were waiting for a decision from the Legal Aid Review  
22 Panel about whether funding was to be reinstated. The  
23 Crown, so MSD and I think the Salvation Army was also  
24 involved in that case as well, pushed the hearing on,  
25 knowing that Legal Aid was withdrawn and that we were  
26 waiting for a decision, and the Court said "Too bad,  
27 Cooper Legal, you've got to go ahead with that hearing.  
28 Not only that, we are not allowing you to withdraw  
29 either".

12.42 30 I have to say, that was an extremely difficult  
31 position for our firm to be put in. The client wasn't  
32 expecting us to go ahead without any funding. While we  
33 could have done a few limitation hearings without  
34 funding, we had 800 clients, pretty much all of whom were

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1 Legally Aided. And/or each of these clients we needed to  
2 obtain expert reports from a psychologist or psychiatrist  
3 to address why they couldn't take their claims earlier.  
4 These reports cost upwards of \$10,000. It just wasn't  
5 feasible for us to do that.

6 What happened with that second case, is ultimately  
7 Legal Aid was reinstated by the Legal Aid Review Panel a  
8 few days before the hearing, so we were able to be there,  
9 but by that stage the client had suffered a massive  
12.43 10 disadvantage, we hadn't been able to prepare properly, we  
11 hadn't been able to get reply evidence and not  
12 surprisingly, the outcome was not good for that client.

13 I think the reason why we've given these examples,  
14 is these just show the inequality of arms that our  
15 clients face.

16 One of the things I noticed during that period of  
17 time, it would have been an easier option for me and the  
18 firm to have just walked away from this work. And there  
19 was a lot of discussion from other people saying perhaps  
12.44 20 that's what you should do because we had to make some  
21 really unpalatable decisions, we had to reduce work, we  
22 had to deal with the distress about clients, but  
23 ultimately I didn't want to be yet another person who let  
24 these people down. I didn't want to be another person  
25 who decided this was too hard. And so, we kept going.

26 I think it's important to say that our relationship  
27 with Legal Aid now is a very positive one and we are  
28 really grateful for the ongoing support of Legal Aid and  
29 we are constantly mindful that we use public funds, so we  
12.45 30 try to do so wisely.

31 One of the things that we do do, is every time we  
32 settle a claim against the State, there are arrangements  
33 in place so that Legal Aid receives a substantial  
34 contribution to the costs, so our work is, you know, is

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1 reimbursed back, largely reimbursed back to Legal Aid.

2 I also want to talk about the Crown litigation  
3 strategy because that also changed during this critical  
4 period. Prior to 2012, Crown Law and the government  
5 agencies were supposed to act as litigants, as I've said.  
6 And so they're supposed to avoid, prevent and limit the  
7 scope of legal proceedings wherever possible, not contest  
8 liability if the real dispute is about quantum, not take  
9 advantage of a client who doesn't have money and not rely  
10 on technical defences, unless the Crown's interests would  
11 be prejudiced by the failure to comply with particular  
12 requirement.

13 What was really interesting is without any  
14 substantive public consultation in 2012, the Cabinet  
15 directions for the conduct of Crown legal business  
16 removed the model litigant obligation and replaced it  
17 with an obligation to act in a manner which satisfies the  
18 Crown's objectives.

19 So, I think this legitimated what we'd already seen  
20 as the response to our claims.

21 What that meant, and I think really we've continued  
22 to see that up until the Royal Commission which has  
23 produced some positive effects for us in Crown  
24 litigation. But what we've seen is it meant the Crown  
25 pursued vigorously setting down hearings and for a long  
26 time, in the knowledge we had no funding, the Crown asked  
27 for punitive directions and orders if we weren't able to  
28 comply and it continued to raise the Limitation Act as a  
29 barrier to the claims, even for clients whose claims were  
30 filed technically within the timeframe but where leave  
31 had to be given, and that was even within the last few  
32 years. And this was supported by the Courts.

33 Q. Ms Hill, the next topic the CLAS, the Confidential  
34 Listening and Assistance Service. Because we had Judge

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1 Henwood here last week, you may be able to just summarise  
2 some of the key points under this heading.

3 **MS HILL:** Yes, and I won't go into that, except to  
4 acknowledge Judge Henwood and her comments and the  
5 extraordinary work her team did.

6 And just to pick up on one comment. During her  
7 evidence she read out her personal note from the final  
8 report of CLAS. And she wrote that a picture was painted  
9 of a careless and neglectful system. I wanted to  
10 emphasise that because defendants often fall into what I  
11 call bad apple syndrome. There's one or two bad apples  
12 or a few unfortunate people and our position has always  
13 been that the system it he have is broken. And so, for  
14 Judge Henwood to say that back then, I think was  
15 courageous but it's also correct. And that's all I need  
16 to touch on in terms of CLAS.

17 Q. This a similar light our next heading is human rights  
18 perspective. We are scheduled to have Rosslyn Noonan  
19 here a little later in the week, so again you may be able  
20 to summarise your key points.

21 **MS HILL:** I can. In short, from about 2012, we started  
22 to change the conversation and we started to shift  
23 from a tort's focus to a human rights focus, both  
24 in terms of our domestic legislation and the  
25 international covenants that New Zealand had signed  
26 up to. And here we acknowledge the advice and  
27 support of our colleague, Dr Tony Ellis, who has  
28 been invaluable over the years. We have talked  
29 about so many of the things today that meet the  
30 definition of torture and cruel and unusual  
31 punishment or treatment.

32 New Zealand ratified the United Nations Convention  
33 Against Torture in 1989 and that Convention provides  
34 States have to provide a remedy when acts of torture are

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1 found. In our New Zealand legislation, the UNCAT, as  
2 it's called, is found in the Crimes of Torture Act 1989.

3 It is important to know a couple of things about  
4 this. New Zealand has entered a reservation to UNCAT  
5 that says that compensation will be paid only at the  
6 discretion of the Attorney-General. And then, in the  
7 Crimes of Torture Act, it is a requirement that the  
8 attorney consent to any prosecution under the Crimes of  
9 Torture Act. The defendant in these civil claims is the  
10 Attorney-General. So, in short, it's the government's  
11 lawyer who decides what torture is, who should be  
12 prosecuted for it and who should be compensated for it,  
13 and that to us is really problematic.

14 In our written brief, I've talked about the number  
15 of shadow reports we've made to different United Nations  
16 committees over the years and we've continuously tried to  
17 bring an international spotlight onto the experiences of  
18 survivors in care. And we think that slowly the snowball  
19 effect of adverse comments because there have been  
20 ongoing adverse comments from the United Nations has  
21 started a very slow turn towards the Crown agreeing to  
22 come to a better position and a let confrontational  
23 position but it has been very slow but we did start to  
24 see that turn there.

25 Q. Our next heading is the Bill of Rights Act 1990 which I  
26 take it provided another avenue of claim against the  
27 Crown?

28 **MS COOPER:** Yes, that's right. I think we referred to  
29 that right at the beginning. We've always said  
30 that people who were in care after the 25th of  
31 September 1990 have additional claims for breaches  
32 of their rights under the New Zealand Bill of  
33 Rights Act and some of these include the right not  
34 to be subjected to unreasonable search or seizure.

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1 So, we are looking at a number of programmes  
2 Whakapakari was one where people were strip  
3 searched without authority. The arbitrary to be  
4 free without detention, so being detained on an  
5 island like Alcatraz for example. Being locked in  
6 Time Out in inadequate and inhumane circumstances.  
7 In seclusion rooms without legal authority. The  
8 right, an important one is the right for anyone  
9 who's detained to be treated with humanity and with  
10 respect for the inherent dignity of the person.  
11 And the right, obviously the critical right, not to  
12 be subjected to torture or cruel, degrading or  
13 disproportionately severe treatment or punishment.

14 We've never actually got a trial yet to Court  
15 because they've settled. We've been trying I think for  
16 about the last 10 years to get one of these trials  
17 actually to Court. Because there are really lots of  
18 questions. So, for example, a child who's in the custody  
19 of CYPS now or who was in a psychiatric hospital, we  
20 would argue that they are clearly detained for the  
21 purposes of the Bill of Rights Act but that needs to be  
22 tested. And we say too that the use of third party  
23 providers doesn't change the Crown's obligations under  
24 the Bill of Rights Act or lessen its liability for what  
25 happened in the care of third party providers. But that  
26 all needs to be tested.

27 We don't know yet what the Courts will make of our  
28 clients who suffered sexual abuse or physical abuse  
29 because at present the only cases that have been dealt  
30 with have been adults in prisons and Police cells, so we  
31 don't know yet what the Courts will make of children  
32 being sexually abused and physically abused and locked up  
33 in inhumane circumstances, we don't know.

34 We've got three plaintiffs who are currently on a

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1 trial track and their claims are at this stage scheduled  
2 to be heard in a very long trial starting in August next  
3 year, assuming they don't settle.

4 Q. The next section from page 38 deals with the various  
5 different settlement processes and again this is  
6 obviously a topic that we will come back to next year in  
7 the Royal Commission. I realise it's almost impossible  
8 for you to summarise all of the complexity of this work  
9 but if you're able to highlight for the Commissioners the  
12.55 10 key points of the next section, I am sure they will  
11 appreciate that.

12 **MS COOPER:** Okay. One of our big bugbears, it's been a  
13 theme throughout the time of working in this area,  
14 has been access to information and records. As I  
15 say, it is an extremely vexed issue. Claimants are  
16 entitled to receive a copy of their records under  
17 the Privacy Act but the issue with that is that  
18 those records are routinely heavily redacted and so  
19 they are difficult to make sense of. And also too,  
12.56 20 they only contain the client's personal information  
21 or their family information. So, there is a lot of  
22 important information held on other records,  
23 institutional records, like the secure register or  
24 the punishment register or the day books or the  
25 time out register or the seclusion register. And a  
26 client accessing their own records will not get a  
27 information at all.

28 Redactions is a major issue because it's used as a  
29 means of denying what happened. I can give you a crazy  
12.57 30 example of redactions that we've seen. I mean, for  
31 several years the Ministry of Social Development refused  
32 to give us any Court documents because it decided that  
33 the Family Court rules applied which has some quite  
34 strict rules around access to Family Court documents, it

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1 decided that applied to all Court documents. And we had  
2 an ongoing battle with MSD, saying it doesn't apply to  
3 all Court documents, it only applies to specified  
4 Family Court documents. They've only just started to  
5 give us the other Court documents this year. So, we've  
6 had 4 or 5 years where those records were not provided to  
7 us at all, completely redacted, so they're now having to  
8 redo 4 or 5 years worth of disclosure to provide us with  
9 those records now. And they contain absolutely vital  
10 information. They often help you to piece together where  
11 a client was, why they were placed in care, what was  
12 happening with their family, what the State knew about  
13 their family. It's absolutely vital information to  
14 understand where, why, what. As I say, we had about 4  
15 years where we didn't get any of that information. Well,  
16 we couldn't explain reasons why we couldn't. Just crazy  
17 things like we had one client, this is just an example,  
18 where the word "abuse", the first two letters of that  
19 word were redacted so it was "use" all the way through  
20 the records. So, the letters "ab" were redacted every  
21 time there was the word "abuse". Of course, you could  
22 figure it out but that was to protect the privacy of the  
23 parents who were abusing the children. So, it's these  
24 kind of - often that information will be completely  
25 blacked out on the basis that that's to protect the third  
26 party. And so, this just creates enormous obstacles to  
27 being able to, one, work out what the State knew, which  
28 is relevant to its obligations, but also to put the  
29 client's claim together and that is an ongoing issue to  
30 this day. And, in fact, we would say that has got worse.  
31 We had a period where MSD accepted that it should be open  
32 with us and we had an agreement about what categories of  
33 documents we would receive, then I think lawyers stepped  
34 in at MSD and said, no, we should not give all that

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1 information, the Privacy Act applies and the Official  
2 Information Act, so we stopped getting a whole lot of  
3 information that we'd previously been entitled to.

4 We act for siblings, so we'd get one sibling's  
5 records where some information would be disclosed and  
6 then we'd get the other sibling's records where other  
7 information would be disclosed, so you would be able to  
8 see that information about sibling A had been redacted  
9 from sibling A's records, so it was about sibling A but  
13.00 10 redacted, but it would be in sibling B's records, so we'd  
11 know they'd redacted it improperly. So, we decided to  
12 take that to the High Court and that's one of the  
13 advantages of being lawyers, we have a lot of the claims  
14 filed in Court, we can ask the High Court to look at this  
15 and make orders that fix it. Claimants on their own  
16 can't. So, we said to the High Court, look at these  
17 examples. Here are records where we've got this page  
18 that's been redacted and here's the sibling's records  
19 which show that this was actually about this sibling, it  
13.01 20 hasn't been redacted in the sibling's records.

21 The High Court then made a ruling that we get two  
22 versions of the records. So, we get a "Privacy Act"  
23 version of the records which the claimant is allowed to  
24 see, the claimant is allowed to see, and we get an  
25 unredacted version of the records. So, we get a complete  
26 unedited version of the records and that makes our job so  
27 much easier. But claimants still have all this blacking  
28 out. And for the many clients now, we don't file all  
29 claims, we don't have the capacity to do that, we still  
13.01 30 get the same versions as the claimants, the survivors,  
31 with these multiple redactions that make it impossible to  
32 piece together what happened, why it happened, when it  
33 happened and, most importantly, what the State knew and  
34 did or did not do about what it knew.

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1 **MR MOUNT:** I think that's a good moment to pause. I am  
2 noticing the time, Mr Chair. I am wondering, in  
3 light of all of the important evidence we're  
4 hearing today, whether a slightly shorter lunchtime  
5 might be helpful?

6 **CHAIR:** Yes, it would be helpful. Would you like to  
7 nominate a time?

8 **MR MOUNT:** Could we get away with 45 minutes?

9 **CHAIR:** Yes.

13.02 10 **MR MOUNT:** Thank you, Mr Chair.

11

12 **Hearing adjourned from 1.03 p.m. until 1.50 p.m.**

13

14 **MR MOUNT:**

15 Q. Ms Hill, I think you are going to begin by talking about  
16 at a high level, in summary form, the process adopted by  
17 MSD?

18 A. Yes, recognising we will have time in March to deal with  
19 settlement and redress in quite a lot of detail, what I  
13.47 20 am about to summarise is fairly broad.

21 Settlement processes with MSD have had a large  
22 number of iterations, they've changed almost constantly  
23 over the years. But there's some things that are  
24 consistent and the first is a lack of consistency. The  
25 assessors are not consistent in how they treat staff  
26 members, in what information they look at, whether they  
27 look at just the personal file or the broader  
28 information. And they are not consistent in terms of the  
29 quantum of compensation offered to claimants.

13.48 30 Q. That is the amount of money?

31 **MS HILL:** Yes. When I talk about quantum, I talk about  
32 amount.

33 They are also universally lacking in transparency.  
34 Nobody ever knows really how things are assessed against

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1 what standard or how information is treated. They are  
2 not accountable because MSD is investigating its own  
3 staff, some of whom are still employed by MSD or Oranga  
4 Tamariki. So, MSD has said very clearly it has a duty to  
5 its staff members, so it cannot possibly independently  
6 investigate claims.

7 And delay, so much delay. So, in 2016 it was taking  
8 the Ministry 4 years to address claims that came to it.  
9 So, the Fast Track Process was introduced. This is what  
10 I would call a quick and dirty approach to a backlog of  
11 claims. It was flawed, it was underfunded and while some  
12 people did feel that they had meaningful settlements as a  
13 result of it, a large number of people didn't.

14 And after that, people who rejected their fast track  
15 offers got stuck in a mire because the full investigation  
16 process was incredibly slow and it was almost stopped  
17 while MSD started a new process, which is the current  
18 iteration. There's about 40 claims which don't appear to  
19 be progressing at the expense of more recent claims. And  
20 by more recent, I mean claims that were taken to the  
21 Ministry in 2015, so we're still looking at a 4 year  
22 delay.

23 The current iteration has got the same problems.  
24 We've asked for the rules of assessment and we received a  
25 completely redacted copy. We complained to the  
26 Ombudsman, we got a slightly less redacted copy, and I  
27 believe that's the copy the Royal Commission has received  
28 as well. So, nobody knows how claims are assessed and we  
29 have to do educated guesses to advise our clients.

30 What we can say is that, the two or three offers  
31 that we have seen under MSD's new process appear to be  
32 worse than offers settled previously. We are seeing a  
33 steady decline in the way claims are assessed and the  
34 amount of compensation offered.

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1 Q. Ms Cooper, I think you're going to pick up from the  
2 Ministry of Health and Ministry of Education?

3 **MS COOPER:** That's right. After the chain of litigation  
4 all the way up to the Supreme Court for the  
5 Ministry of Health claims or at that stage the  
6 defendant was the Crown Health Financing Agency, we  
7 were approached to engage in settlement discussions  
8 and in December 2011 a settlement process was  
9 approved which involved settlement offers being  
10 made to 320 claimants then.

13.51

11 Offers were made to all of the clients who had made  
12 claims at that stage, even those who had had to  
13 discontinue their claims as a result of the Limitation  
14 Act hurdles or other Mental Health Act hurdles. As I  
15 say, 320 claims were settled in 2012 and we settled the  
16 vast majority of those claims.

17 After that, the Ministry of Health took back the  
18 management of the Ministry of Health claims. That was  
19 approved by the Minister of Health in 2012. So, I've  
20 already said they'll consider any claims relating to  
21 abuse in psychiatric hospitals. Now they've recently  
22 included that to include State hospitals prior to 1993.

13.52

23 After 2012, the top payments available to claimants  
24 halved. So, under the process we negotiated settlements  
25 in 2012 the highest payment was \$18,000 and even that's  
26 modest compared with other settlements, as you will have  
27 heard. That's now \$9,000 and the lowest payment I think  
28 is \$2,000 or \$2,500. So, I have to say the Ministry of  
29 Health payments are at the bottom of the rank. While  
30 there are some pluses about that process, pretty low  
31 level burden of proof, it doesn't rely necessarily on  
32 records, although you have to show somehow that you were  
33 in a psychiatric hospital but this can be even if you've  
34 made a claim to ACC and referred to the fact that you

13.53

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1 were in psychiatric care because often the records don't  
2 exist anymore, that's the reality.

3 It's relatively fast. Typically, the claims are  
4 resolved within about 6 months at the outset. We had one  
5 slow period while the Waitangi Tribunal was potentially  
6 going to hear the claims.

7 But there are some flaws. It wasn't hear claims for  
8 those who died. So, even if you've made a claim, we've  
9 notified and asked for records but before that's been  
13.54 10 considered, too bad. Also too, I think there's actually  
11 nothing about the Ministry of Health process in the  
12 public space. You cannot look on the Ministry of Health  
13 website and find out anything about the Ministry of  
14 Health settlement process.

15 As I've said, the cap on quantum is really poor.  
16 It's definitely the lowest, it's at the bottom ranking of  
17 all of the government State settlements. Given there is  
18 supposed to be parity, that's inexplicable.

19 An example with the disparity with the Lake Alice  
13.54 20 settlements, we had one client who was a child in the  
21 Lake Alice Adolescent Unit, so he was entitled to a  
22 payment under that process, and then he was also entitled  
23 to a payment because he'd been abused in hospitals. In  
24 the Lake Alice hospital he got \$81,500 for his other  
25 hospital experiences he got \$6,000. And his experience  
26 this is psychiatric care were not markedly different.  
27 The only difference was at Lake Alice he had suffered  
28 sexual abuse on top of the other abuse he'd suffered but  
29 otherwise his experiences were pretty much identical. To  
13.55 30 try to explain to him the reason between one being \$6,000  
31 and one being \$81,500, impossible.

32 Q. The Ministry of Education?

33 **MS COOPER:** Ministry of Education, what can I say? It's  
34 very ad hoc. It's I think probably of all the

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1 processes the most flawed. There is again  
2 absolutely no transparency about how the Ministry  
3 of Health assesses claims. They do have an  
4 independent assessor who will meet with claimants  
5 but that person has worked within some of the  
6 Ministry of Education schools, so there's a  
7 question mark about independence there.

8 It takes literally years for any MOE claim to be  
9 determined and the settlement payments that we've had so  
13.56 10 far have been in a reasonably low range, between \$5,000 I  
11 think and \$35,000 is the top we've seen so far. So,  
12 again, add a lower level.

13 We know that the Ministry of Education does not take  
14 into account propensity or what we call similar fact  
15 evidence which Courts would take into account. So, say  
16 for example if we're able to say we've got eight other  
17 clients who make the same allegations, the Ministry of  
18 Education will completely ignore that or put that to one  
19 side, it does not take that into account at all. So,  
13.57 20 that means it's able to say unless there is documentary  
21 evidence, it will not accept allegations.

22 So, I think the burden of proof for people in the  
23 Ministry of Education process, I would say for some  
24 claimants is beyond a criminal standard, certainly higher  
25 than a civil standard. And that's the point, there is no  
26 transparency about what standard that it's adopting, so  
27 we don't know.

28 That is also beset with major delays, years and  
29 years.

13.57 30 There is no agreement with the Ministry of Education  
31 in respect of the Limitation Act. At the moment we are  
32 forced to file all Ministry of Education claims. We've  
33 been promised one limitation to rule them all. In other  
34 words, that will cover all of the government agencies but

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1 so far that has not appeared and we've been trying to  
2 work on one with the Ministry of Education since I think  
3 at least 2016 and here we are nearly at the end of 2019,  
4 yeah nothing yet.

5 As I say, we have to file.

6 Ministry of Education, very harsh, if there's no  
7 documentary evidence it typically denies things. As we  
8 know, most abuse wasn't recorded. As I say, it is an  
9 almost impossible bar.

13.58 10 Q. Ms Hill, still at this high level, the churches?

11 **MS HILL:** Touching very briefly on settlement processes  
12 with churches, there's a myriad of responses and  
13 processes. Even within a church that people would  
14 see as a whole, like the Catholic Church, there are  
15 a range of orders, so different areas of the  
16 country.

17 The Catholic Church has The Path to Healing. While  
18 it's a good process on paper, it is an opt out process.  
19 So, a number of Catholic Orders opt out of The Path to  
13.59 20 Healing and instead either defend claims aggressively or  
21 opt for another process.

22 We understand there is no common process with the  
23 Anglican Church and that may be being written at the  
24 moment.

25 The St John of God order, Sonja talked about  
26 Marylands. It's interesting with them, they are an  
27 Australian order and they pay a higher level of  
28 compensation for abuse at Marylands but in their it's  
29 still far less than they would have to pay if that had  
14.00 30 occurred in Australia. There is a myriad of structures  
31 and processes, some better than others, and that's a  
32 whole other hearing on its own, I suspect.

33 Q. Speaking of which, we have another topic which would  
34 justify a hearing on its own, and that is the interface

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1 with Maori.

2 **MS HILL:** Yes. If our technical people could jump to  
3 the very last photo which I think is really  
4 poignant and one that I wanted to have today.  
5 We've always been aware that Maori were  
6 disproportionately affected by the systems and  
7 practices of child welfare and its successor  
8 agencies since its earliest conception and there's  
9 better people than us to talk about it. What we  
14.00 10 can tell you is that over the lifetime of the  
11 claims, our clients have been disproportionately  
12 Maori. We see in the individual claims, Maori  
13 children were more likely to be uplifted from their  
14 homes or more likely to be separated from their  
15 siblings and more likely to be charged with  
16 offences.

17 We saw that Maori tane, Maori men, were more likely  
18 to be placed into institutions, rather than foster homes  
19 or whanau. And we see on a distressing regular basis the  
14.01 20 either unconscious or blatant racism expressed in  
21 records. And we are aware that welfare impact is  
22 intergenerational. We act for up to three generations of  
23 one whanau at any given time. We see their children and  
24 we see their grandchildren and that is a really  
25 distressing thing.

26 Q. You've talked about the various redress processes with  
27 different ministries, do you know, again I'm asking at a  
28 very general level, whether in designing those processes  
29 any of the ministries have engaged directly with Maori to  
14.02 30 take into account their particular position?

31 **MS HILL:** The only instances we are aware of occurred  
32 last year when MSD had some hui with selected  
33 people to talk about how its processes could be  
34 improved for Maori but we've seen no tangible

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1 changes or outcomes that have come out of those  
2 hui.

3 Q. Was there a comment you wanted to make about the slide  
4 that we saw a moment ago?

5 **MS HILL:** I think it just reflects the fact that there's  
6 a group of young Maori men on a couch in their  
7 pyjamas and they're all Maori, they're all Maori,  
8 and there's only one other thing that I wanted to  
9 say here and it's come up a couple of times, is  
14.02 10 that in institutions, they're not all Maori my  
11 apologies.

12 Q. Three out of four?

13 **MS HILL:** Three out of four. The Pakeha boys in those  
14 homes were often smaller and weaker and they became  
15 targets. So, the flipside of a disproportionate  
16 response to Maori, was that there was a small  
17 number of Pakeha kids in some of these institutions  
18 and just in the same way as the gangs started in  
19 the homes, some of the most well-known White  
14.03 20 Supremacists in our country were those small Pakeha  
21 boys.

22 Q. Can we turn to the final section of your brief with the  
23 heading, "Where we are today?".

24 **MS COOPER:** Yes. As we said at the start, we represent  
25 about 1250 people, most of whom are asking for  
26 redress from the State or faith-based institutions  
27 for harm. Sadly for us, the number is not  
28 declining. Some months we receive a new  
29 instruction or a new client every day, in fact one  
14.04 30 month we had about 1.5 clients every day. We  
31 interview each client face-to-face and we work as  
32 quickly as we can to put together their claim  
33 documents but it's fair to say that because of our  
34 workload we are behind.

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1           We are continually hampered by delays and changes to  
2 the processes. We've talked about the MSD delays and the  
3 Ministry of Education in responding to the claims. And  
4 so, we spend or our PAs spend a lot of time explaining  
5 why this is happening to survivors and we spend a lot of  
6 time following up with MSD and the Ministry of Education  
7 to find out what's happening and why nothing has come to  
8 us.

9           And look, understandably, our clients' survivors are  
14.05 10 distressed, angry and bitter about how long the process  
11 is taking or about how the relevant defendant responds  
12 and we cannot blame them for this.

13           A lot of our clients say they wish they'd never  
14 started their claims because of the delays. Because they  
15 feel that having been made by us and our process, because  
16 we do have a rigorous process, being made to dredge up  
17 these childhood memories has caused them harm,  
18 particularly when it takes such a long time for there to  
19 be an outcome and often that outcome is not a very  
14.05 20 meaningful acknowledgment or there is little to no  
21 redress provided.

22           I think one of the things that we can say is because  
23 of our large client group and because of the number of  
24 years, the long number of years we've been doing this  
25 work, we have a huge amount of visibility over the way in  
26 which whole families and whanau have been affected and  
27 continue to be affected by decades of involvement with  
28 Social Welfare and its success or agencies in particular.  
29 And I think one of the things we still see is that  
14.06 30 generations have all been taken into care with the  
31 resulting loss of their culture, loss of language and  
32 disconnection.

33           So, the role of social workers is often described as  
34 a tool of colonisation by Maori. We've heard that during

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1 the course of this hearing. We certainly agree with  
2 that. We think it will take several generations to undo  
3 this harm.

4 We wanted to talk again, as we flagged at the  
5 beginning, about the discretion of the Commission to hear  
6 from people who are in care after 1999. And we are  
7 pleased about this because, as I said at the beginning,  
8 we see home young people who come to us who are still  
9 experiencing abuse in care today. And I was talking to  
14.07 10 you, Simon, I had to do a special sitting at the  
11 District Court less than two weeks ago for a young client  
12 who is in Oranga Tamariki's custody and the proposal was  
13 that this young person in Oranga Tamariki's custody after  
14 Court was to be dropped with their suitcase out on the  
15 street without a placement. That's less than two weeks  
16 ago. So, I put this before the District Court Judge who  
17 obviously said not on my watch, placed the young person  
18 in a motel overnight and by the next day when we were  
19 required to go back to Court, the placement had  
14.07 20 materialised.

21 But if there had not been strong advocacy and if  
22 there had not been a strong Judge, that young person  
23 would be on the streets now, even though they are in  
24 Oranga Tamariki's custody, so that's less than two weeks  
25 ago.

26 One of the challenges we note, and I just finish  
27 that really by saying a lot of the challenges for our  
28 younger clients is that their caregivers or those staff  
29 members who were in residences are still employed, still  
14.08 30 contracted or are still employed by Oranga Tamariki.

31 Our experience of this is that MSD and Oranga  
32 Tamariki dealt with this issue extremely poorly. At one  
33 point, both or either/or agency provided a huge amount of  
34 information to the Police and to the perpetrators without

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1 consent or knowledge of the claimants.

2 The position taken was that there was a duty to  
3 provide this information and that the State agency Oranga  
4 Tamariki and/or MSD was protected by this, by an  
5 exception in the Privacy Act and in the Oranga Tamariki  
6 legislation.

7 We took issue with that because we know that our  
8 clients have safety concerns, valid safety concerns. So,  
9 we were only able to protect the clients who had claims  
14.09 10 in Court and thankfully for our younger clients, we do  
11 file our claims in Court. The High Court said to MSD and  
12 Oranga Tamariki, you are not allowed to provide that  
13 information to the Police unless you've made an  
14 application and the client either consents or the Court  
15 approves it.

16 Oranga Tamariki and MSD appealed that to the Court  
17 of Appeal. They weren't happy with that decision, wanted  
18 to be able to still pass on information to the Police and  
19 perpetrators. And so, that was heard in April this year,  
14.09 20 we got the decision a few weeks ago and thankfully the  
21 Court of Appeal has upheld the High Court.

22 So, as at today, MSD and Oranga Tamariki still need  
23 to apply to the Court and the Court still has supervision  
24 over what information can be provided to the Police and  
25 to perpetrators. But I note again that only applies to  
26 clients whose claims are filed in the Court and the vast  
27 majority of people, their claims will not be filed in any  
28 Court.

29 We've taken steps and continue to take steps to  
14.10 30 protect our clients. I just wanted to say that we do  
31 this work as lawyers. We have limited tools to try and  
32 bring about some sort of truth and reconciliation process  
33 because we think it's important to try and break the  
34 cycle of harm in New Zealand.

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1           The civil claims are only one part of the challenge.  
2           We're really clear that there needs to be a hearing and a  
3           reckoning with the truth of this history of Aotearoa and  
4           a commitment both to healing the past, which  
5           unfortunately is still the present, and changing our  
6           future, and that's going to take far more than legal  
7           action and we really support the work of the Royal  
8           Commission in unveiling that truth and helping us to move  
9           forward in a way that will protect those Tamariki young  
14.11 10          people who are now and in the future will come into the  
11          system.

12       **MR MOUNT:** Thank you very much, Ms Cooper and Ms Hill.

13           There are dozens if not hundreds of questions that  
14           I am sure we all have and we are not going to ask  
15           all of those now but as you know, the Royal  
16           Commission is coming back in just a few months time  
17           to look in detail at redress as a topic.

18           In the couple of minutes that we've got now, do you  
19           have a headline in terms of what the ideal redress world  
14.12 20          would look like or is it best to hold that off until next  
21          year?

22       **MS COOPER:** Our big request is that there be an  
23           independent process. I think it may be all right  
24           for preliminary processes to be dealt with by the  
25           individual agencies but there needs to be an  
26           independent process to go to when the claims are  
27           stuck. All we hear is a difference about the law  
28           or a difference about the facts and we're really  
29           clear about that, we've always been really clear  
14.12 30          about that.

31           I was at a meeting at the Human Rights Commission I  
32           think it was last year and the way that the current  
33           processes work, I think Ronald Young J described it, at  
34           the moment the government agencies and the faith-based

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1 institutions as the abusers put themselves in the place  
2 of the saviours because they get to make the apologies  
3 and pay the compensation. And there is something just  
4 morally bankrupt about that.

5 There needs to be independence and I think that will  
6 provide some more integrity and transparency about the  
7 processes.

8 **MR MOUNT:** Ms Hill, do you have anything to add?

9 **MS HILL:** I would add, accountability and transparency.

14.13 10 That everyone knows what the rules are, the  
11 guidelines are, and that they're the same across  
12 particularly the State agencies because if you  
13 don't know how a claim is being assessed, you are  
14 immediately at a disadvantage.

15 **MR MOUNT:** Thank you very much. Mr Chair, some of our  
16 colleagues have indicated that they may have some  
17 questions but I must say there is a general mood  
18 that there is so much detail and so much important  
19 material to cover, that I think in many cases  
14.14 20 people will elect to come back at the next hearing.

21 **CHAIR:** I know that that is certainly a feeling that's  
22 shared by some of my colleagues on the Commission  
23 as well but there is a right to ask questions and  
24 this will be the time to air those, even if in a  
25 preliminary fashion.

26 **MR MOUNT:** The right with permission, of course.

27 **CHAIR:** Can I then place the matter in the hands of  
28 counsel to exercise at this point, should they  
29 wish, a right to address questions to Ms Cooper and  
14.14 30 to Ms Hill? And it may be helpful to the  
31 witnesses, if it is confirmed in an early question,  
32 for whom which counsel acts. Ms Aldred, can I  
33 start with you?

34 **MS ALDRED:** I don't have any questions.

- 603 -

1 **CHAIR:** Ms Sykes, can I ask you next?

2 **MS SYKES:** Can I make a statement rather than a  
3 question. (Speaks in Te Reo Maori). I am here  
4 today with my friend Ms Davis who were assisted by  
5 your affidavit in the Waitangi Tribunal and we  
6 can't express our gratitude enough. I'm also here  
7 in the capacity representing a number of survivors  
8 who I have referred to you over the last 20 years  
9 and I wish to convey their respect to you for  
10 listening when others didn't. We have questions  
11 but in the interests of perhaps making a more  
12 opportune time for those, I just wanted to convey  
13 those two matters personally to you. We will be  
14 asking questions in March. One issue that we would  
15 like explored is that the Ministry of Maori Affairs  
16 seems to be absent in your discussion and those  
17 matters certainly arise for the 1950s and 1960s and  
18 1970s, so those will be the matters we may ask  
19 questions on in March. So, thank you, kia ora.

14.16 20 **MS COOPER:** Kia ora.

21 **MS HILL:** Kia ora.

22 **CHAIR:** Ms McCartney?

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**SONJA COOPER AND AMANDA HILL**

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**QUESTIONED BY MS MCCARTNEY**

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Q. May it please the Commissioners and good afternoon, my name is Jan McCartney, I haven't met with you before. I am acting in this Royal Commission together with Ms Lawton for the National Collective of Independent Women's Refuges.

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You will have seen from the Terms of Reference that one of the terms, this is what I am asking the question about just for context at the moment, is the impact on whanau, iwi, hapu and communities.

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And in that regard, and in asking these questions, can I say that we and Women's Refuge acknowledge the work that you've done, the obstacles that were put in your way and the results that you have achieved which, from what I have heard, have been frankly remarkable, given all that has happened.

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Can I again just in terms of context ask a number of questions. The first is this, Judge Henwood listened to 1103 abuse survivors and in her report, and this members of the Commission is at paragraphs 107-108, she spoke about or recorded what happened when her report was received by the government at the time. And the response was that of those in care only 3.5% had been the subject of abuse. Her evidence is that that percentage was drawn from the number of people who made claims and that it seemed, according to the response, that for others in care their response was positive or maybe neutral.

And this is my first question: From all the work that you have done, have you acted for or interviewed

- 605 -

1 anyone who described their response as positive?

2 Ms Cooper?

3 **MS COOPER:** No. Having said that, people have had some  
4 parts of their care that they have experienced  
5 positively. So, as we said, people have been in  
6 foster placements that they've loved but then have  
7 been removed from them. They were in family homes  
8 that they loved and were removed. They had a safe  
9 and happy time with their own families before they  
10 were removed. But the purpose for coming to us is  
11 because they have suffered abuse in care, so we are  
12 not expecting to hear the happy stories. We are  
13 expecting to hear about the harm that people have  
14 suffered. And I want to support Judge Henwood on  
15 that 3.5%. When that report was written, I mean it  
16 was at least, I would have thought, 12 years ago  
17 now. It was a report that MSD commissioned, we got  
18 to see a copy of it, and it was based on the  
19 numbers who had then come forward to the Ministry  
14.20 20 of Social Development. At that stage the numbers  
21 were quite low. The numbers have drastically  
22 multiplied since then. I would have thought that  
23 figure is already quite wrong. I would have  
24 thought it's at least double potentially.

25 **MS HILL:** I'd certainly agree with that. Another thing  
26 that Judge Henwood said is there's no evidence to  
27 support the number of people who have had positive  
28 experiences in care. The 3.5% really is a number  
29 that doesn't have a lot of evidence to it and  
14.21 30 there's not a lot of base to it. And I have to  
31 say, the expression "only 3.5" is really difficult  
32 for me because that's still too many.

33 Q. May I ask, going on from that answer, going forward from  
34 that answer, have you seen any evidential basis for a

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1 figure of persons abused in State care?

2 **MS COOPER:** Only that one I've just referred to. As I  
3 say, that was based solely on the number of claims  
4 that had been made to the Ministry of Social  
5 Development at that point in time. Of course, it  
6 only covered the Ministry of Social Development  
7 too. It didn't cover the Ministry of Education, it  
8 didn't cover the Ministry of Health, it didn't  
9 cover Corrections, it didn't cover health camps.  
10 There was a whole lot of people that were excluded  
11 from those figures anyway and it's very time dated  
12 now.

13 Q. You have referred to documents that have been withheld  
14 from you in the course of your work. Would, for example,  
15 the Time Out Register and the Secure Register, would that  
16 assist in identifying the extent of the abuse?

17 **MS COOPER:** Absolutely. We know that from the trial  
18 work that we do. We refer extensively to the  
19 secure registers and the day books. To be blunt, a  
20 lot of that - even that documentation has been  
21 lost. You know, there have been fires and floods  
22 and - I mean, one of the reporters found a whole  
23 stream of stuff in an old, just kind of floating  
24 around the premises of Hokio or Kohitere. I do  
25 note with the Ministry of Social Development, just  
26 as my firm was starting to embark on the work in  
27 the mid-1990s, MSD ordered the destruction of a  
28 whole lot of staff files in 1999. Time -  
29 interesting. But we know from the trial work that  
30 we do where we are required to be given that  
31 material, they're extremely helpful. The day books  
32 are probably even more valuable because the day  
33 books are telling you hour by hour what's  
34 happening. So, there will be restraints and there

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1 will be times in Time Out and seclusion that will  
2 be noted in the day books but are not noted on any  
3 seclusion register or any other document that they  
4 should be noted on. So, when we get to trial, we  
5 get this mass of information that we have to put  
6 together for an individual client to piece together  
7 because we also get incident reports. We get the  
8 whole raft of documentation about that client and  
9 about the institution generally that will enable us  
10 to put together their story. But an individual  
11 claimant going to the Ministry of Social  
12 Development will only get their personal file. So,  
13 you will not be able to work that through. And as  
14 I said, a lot of records are missing from personal  
15 claims. We've been dealing with a number of claims  
16 recently where clients have told us they've been in  
17 multiple placements, we have records for maybe two.  
18 Where have all those records gone?

19 And MSD and the Ministry of Education won't accept a  
14.25 20 claim if there aren't records. So, what do you do with  
21 it?

22 Q. In relation to your evidence about the initiation  
23 beatings in the State care residences, would that  
24 indicate that persons going into those residences, up to  
25 100% of them would be subject to abuse?

26 **MS COOPER:** Yes, definitely. We knew - I can think of a  
27 couple. For example, in the White trial, when Earl  
28 went to Hokio, he was lucky he went there in the  
29 school holidays so none of the kids were there, so  
14.26 30 he missed out on his initiation beating. We've  
31 done hundreds and hundreds of claims for children  
32 who have been through the various residences, and  
33 that includes the girls as well, and yeah, I mean,  
34 it goes without saying almost. As I say, you were

- 608 -

1 just lucky if you missed an initiation beating.

2 Q. Can I ask you to refer to paragraph 267 of your evidence  
3 where you refer there to an enormous number of your Maori  
4 male clients being in prison?

5 **MS COOPER:** Yes.

6 Q. Again, this is just context. Do the offences for which  
7 your male clients are in prison include offences of  
8 violence? Are you able to say this?

9 **MS COOPER:** Well, for some, yes, but, you know, again, I  
10 have to say for us, what they're in prison for is  
11 not important to us. We accept all our clients for  
12 who they are. So, as I say, we actually don't  
13 collect their criminal conviction histories, we  
14 don't ask them about their criminal histories  
15 because for us it's not an important factor of our  
16 work.

17 What we are interested in is how their time in care  
18 has impacted on them. So, if violence has been an  
19 impact, we are definitely interested in that and we  
14.28 20 reflect that in the claim documents that we put together,  
21 and there is certainly a very, very clear link.

22 Q. And when you refer in your brief of evidence right at the  
23 end of it, paragraphs 277-278, to the cycle of harm and  
24 breaking the cycle of harm, that would include, wouldn't  
25 it, breaking the cycle of violence that we've just  
26 referred to?

27 **MS HILL:** I think it's impossible to divorce what we  
28 know about State care from our statistics around  
29 family violence and domestic violence and sexual  
14.29 30 violence. And while we can't say that every person  
31 in care has been violent, we can't draw that  
32 conclusion. What we know is so many of our clients  
33 are angry and so many of them grew up in a culture  
34 of violence that has been perpetuated. There is

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1 certainly - there is a correlation there and when  
2 you think about I think 82% or 87% of our prison  
3 population has had some contact with welfare in  
4 their lives, then you can certainly start to see a  
5 pattern.

6 Q. Can I just talk about compensation that is paid and your  
7 evidence which I acknowledge, that not one of your  
8 clients in your view has received adequate compensation?

9 Would it be fair or is it your experience that  
10 higher compensation payments generally result in bringing  
11 about more positive outcomes for your clients?

12 **MS COOPER:** Again, it is a difficult question for us to  
13 answer because, of course, once we settle a claim  
14 our work for a client finishes, so we often don't  
15 know how they've used their money, to be honest,  
16 what they've done with it.

17 I think what we can say anecdotally, we know that  
18 clients have used their compensation to setup businesses  
19 which is a huge advance from where they have been. We  
14.30 20 know that a lot of our clients use their compensation to  
21 actually make better lives for their own children or  
22 their own grandchildren, mokopuna, because they recognise  
23 that they've probably caused harm to the next generation  
24 or generations and they want to make it right, so I think  
25 that's something we can say. For us, compensation is  
26 about vindication. It's about an acknowledgment that  
27 we've caused harm and that we're going to put that right  
28 in some ways. New Zealand compensation is really poor  
29 compared with our Commonwealth counterparts and that's  
14.31 30 largely because of ACC, as we've explained.

31 But I think, you know, we have seen it actually  
32 making quite a meaningful difference to people. We also  
33 know that the apologies can make a big meaningful  
34 difference to people. I mean, we know that people will

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1 frame their apologies and put them on the wall. And I  
2 think too, acknowledgment of harm, it's taken into  
3 account in sentencing. So, for a prison inmate or  
4 somebody who's facing the Criminal Courts for sentencing,  
5 we are regularly writing letters to support, to say  
6 they've made a claim or they are making a claim for abuse  
7 they've suffered in care because it's relevant in  
8 sentencing. So, there are multiple ways in which  
9 acknowledgment of that abuse I think empowers and  
10 enriches survivors' lives.

14.32 11 Q. Coming to the issue of costs, legal costs that were paid  
12 to you for work that you did. Did you ever have access  
13 to the quantum, the amount of costs that were being paid  
14 to Crown counsel?

15 **MS COOPER:** Yes. With the trials, costs became quite a  
16 vexed issue, I have to say. So, we were regularly  
17 doing Official Information Act requests to the  
18 Crown during the trial processes as to what Crown  
19 Law was being paid for work that we were being paid  
14.33 20 for at Legal Aid rates which for those of you who  
21 do Legal Aid work will know they are considerably  
22 less than commercial rates, about a quarter.

23 We know that the White trial is an example, I think  
24 our costs were something like \$300,000 or \$400,000 and we  
25 were acting for two plaintiffs, the Crown's costs in that  
26 were over \$900,000.

27 We know that in the Whakapakari trials that we did,  
28 and another trial that we did, the Crown's costs were  
29 around about \$3 million or \$4 million and they settled  
14.34 30 for a pittance. I guess our cynical view was we thought  
31 about how many clients' claims could have been settled  
32 without the dreadful litigation process that we and our  
33 clients were subjected to over quite a number of years.

34 Q. And directing those funds instead to the settlement

1 process?

2 **MS COOPER:** Quite, yes.

3 Q. This is my last area of question, it's about the  
4 Limitation Act.

5 **MS COOPER:** Yes.

6 Q. You will know that there have been some movements in the  
7 way in which the Courts address limitation, in particular  
8 where there's a fiduciary relationship, fiduciary duty.  
9 I will just expand on that.

14.34 10 Some overseas jurisdictions are dealing with the  
11 fiduciary duty relationship as an exception to  
12 limitation. Do you know because I don't I'm asking you  
13 this question, whether that argument has been developed  
14 in the New Zealand Courts where children have been wards  
15 of the State?

16 **MS COOPER:** So, in our earlier cases, and in fact we  
17 still plead fiduciary cause of action. In  
18 New Zealand, the way that fiduciary relationships  
19 are interpreted under the Limitation Act is if  
14.35 20 they're pleaded alongside a tort cause of action,  
21 the equitable cause of action, the equitable  
22 limitation period is interpreted in the same way as  
23 a tort limitation period.

24 So, it means that the Limitation Act, the normal  
25 rules apply, so you don't get any special treatment.

26 I think the other thing that I should say is that  
27 fiduciary causes of action have been really difficult in  
28 New Zealand and Australia. And England I don't even know  
29 if they've pursued them, to be honest. Because although  
14.36 30 you may be able to establish that there was a fiduciary  
31 relationship and that there was a duty to prove breach  
32 has been really difficult, when I argued S v  
33 Attorney-General in the Court of Appeal back in 2002, I  
34 argued quite strongly that there had been a breach of a

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1 fiduciary relationship because in that case my client had  
2 never had any formal status, even though he had been  
3 fostered by the same family his entire life. He'd never  
4 had any formal status with this family. He had been  
5 under preventive supervision for his entire life. So, he  
6 was effectively abandoned and placed into care where he  
7 suffered physical and sexual abuse his whole childhood.

8 I argued that there should be a fiduciary duty and  
9 it had been breached because it was clear that the reason  
10 why he never had any formal status was because the State  
11 was trying to save itself money which is a clear  
12 fiduciary breach context but the Court of Appeal held  
13 that I hadn't been able to establish a sufficient  
14 evidential base for that, even though I thought it was  
15 pretty clear from the records, and so we were able to  
16 succeed in tort and vicarious liability but the fiduciary  
17 cause of action failed. And I think the only times that  
18 fiduciary causes of action have succeeded in New Zealand  
19 have been where the abuser has been either a relation or  
20 a close family friend, otherwise I think we could  
21 probably say in New Zealand they will not succeed.

22 **MS MCCARTNEY:** Thank you very much.

23 **MS DODDS:** No questions.

24 **MS MCKECHNIE:** No questions.

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**SONJA COOPER AND AMANDA HILL**  
**QUESTIONED BY MS GUY KIDD**

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Q. Good afternoon, Ms Hill, Ms Cooper. I act for the General Synagogue of the Anglican Church and Aotearoa New Zealand and Polynesia. Just to explain further, the general synod is the governing body of the Anglican Church which is made up of three houses, the House of Bishops, the House of Clergy and the House of Laity?

Firstly, on behalf of them I wish to sincerely thank you both for your tenacity and hard work on behalf of your client survivors.

I just want to touch on a couple of points at a high level. The first may well be an example. Later this week we're going to have the statement read of your client Ms Wardle-Jackson and in part she deals with her contact with the Anglican Church, the abuse she suffered and then the subsequent contact which I have a letter here from you, Ms Cooper, dated 2004; would you agree that your first contact was by letter to the Bishop in Wellington, does that sound the usual approach?

**MS COOPER:** Yes, and that - I've had to remind myself. Obviously, I did that partly when I was helping Beverley with her brief but, yeah, you can imagine it's 15 years ago. Yes, that would be the usual way we approach and we still do that now when we don't know who to contact, we would usually approach who we think might be the head of the church.

Q. And in that letter to the Bishop, you recorded at the end, and I'll read to you what you said there. You asked

1 that the church seeks legal advice?

2 **MS COOPER:** Yes.

3 Q. And concluded, "I look forward to hearing from your legal  
4 representative within the next two to three weeks";  
5 that's what your letter says?

6 **MS COOPER:** Yes, and in those days, again, we were quite  
7 cautious that people got some legal advice to kind  
8 of help them understand what the legal liabilities  
9 might be and also to assist them hopefully to give  
10 them some guidance about how to embark on a process  
11 to engage. And we would still do that now too. I  
12 think we would, you know, I think people should get  
13 legal advice. Defendants or claimants, I think  
14 because this is a legal context within which we  
15 work.

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16 Q. So, you'd agree that you were expecting a response from  
17 lawyers?

18 **MS COOPER:** Yep.

14.42

19 Q. My second question just relates to some terminology in  
20 the brief that you've just given, Ms Cooper. For  
21 instance, at para 262 where you refer to claims brought  
22 against the Anglican Church and you say several parts of  
23 the Anglican Church rely on the Limitation Act.

24 I just want to flesh that out. When you're talking  
25 about or when you talk there about the Anglican Church, I  
26 understand you're actually talking about not just the  
27 parishes and the churches in the Anglican Church, but  
28 also other entities that may be seen in the public as  
29 affiliating with the Anglican Church?

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30 **MS COOPER:** Yes, that's correct.

31 Q. And you'd agree that some of those entities are actually  
32 independent, legally independent?

33 **MS COOPER:** Well, that was something, I have to say, I  
34 have not been brought up Anglican, so I didn't know

- 615 -

1 that. I think at that stage we were used to the  
2 Catholic process, The Path to Healing, so we were  
3 used to there being a homogeneous process within a  
4 church and we were also used to the Salvation Army.  
5 So, we were used to dealing with a church entity  
6 that even though it had its dispirit parts because  
7 I mean even within the Catholic Church there are  
8 numerous different orders that have different  
9 processes, we were used to there being a  
14.43 10 homogeneous process that we would attach to, to say  
11 this is how we might expect a claim to be dealt  
12 with.

13 So, we were hoping that the Anglican Church might  
14 have something like that. So, I think it was a bit of a  
15 surprise to us that the Anglican Church, given it is the  
16 biggest church in New Zealand, had no process. That it  
17 was lots of different individual bodies that all did very  
18 different things. And I have to say, that was incredibly  
19 frustrating for us because, you know, just knowing how an  
14.44 20 individual church body was going to deal with a claim,  
21 some taking a highly legal approach, others engaging in a  
22 more pastoral process, others just not engaging at all,  
23 was deeply frustrating and quite unsatisfactory.

24 As I say, we were hoping there might be some higher  
25 level process, like The Path to Healing or like the  
26 Salvation Army had in place that guided all the different  
27 parts of the Anglican Church on how to deal with claims.

28 Q. And again when you say "parts of the Anglican Church",  
29 you appreciate some of these technically are not parts of  
14.45 30 the Anglican Church?

31 **MS COOPER:** Sure.

32 Q. As part of our learning process, you actually reached out  
33 to the General Secretary of the Anglican Church by letter  
34 December 2016?

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1 **MS COOPER:** That's right.

2 Q. Expressing your concerns at the approach that you'd  
3 encountered?

4 **MS COOPER:** Yes.

5 Q. And while the church pointed out or the General Secretary  
6 pointed out the entity you were concerned about was  
7 independent, there then was an expression of desire to  
8 meet with you?

9 **MS COOPER:** Yes.

14.46 10 Q. And there was a meeting which was held in May 2017  
11 between yourself, the Archbishop of the Anglican Church  
12 and the General Secretary where you discussed your  
13 concerns with the process, they explained some of these  
14 issues around the structure of the church?

15 **MS COOPER:** That's correct and that was the first time  
16 that I'd really understood that the Anglican Church  
17 had these three different legal entities and then I  
18 think in New Zealand that's divided into another  
19 six or seven entities, so there is something like  
14.46 20 18 different legal entities in New Zealand. And  
21 that was the first time that I've really had a  
22 clear understanding of that. As you say, that was  
23 driven by our issues with the particular trust in  
24 Auckland that we just felt we were being  
25 stonewalled.

26 The other reason why we asked for that meeting, was  
27 because we were aware that in Australia, the Anglican  
28 Church in Australia had got together and come up with a  
29 protocol for dealing with claims in Australia and we were  
14.47 30 very much saying to the hierarchy in the Anglican Church  
31 when are you going to do it? It's clear that it needs to  
32 be done. So, we were very strongly advocating at that  
33 stage that the Anglican Church, as a body, and you know  
34 including its various different legal entities, get

1 together, do what the Australians had done and come up  
2 with a protocol to deal with claims.

3 I have to say, I'm not sure that that's happened  
4 yet. I think we are certainly seeing some shift in some  
5 of the entities that we have dealt with that we would put  
6 under the Anglican Church umbrella. But even as of last  
7 week or the week before, we had one of the Bishops of one  
8 of the Anglican Churches in the South Island basically  
9 brushing us off and telling us that we had the wrong  
10 defendant, even though it was an Archdeacon who had  
11 sexually abused one of our clients.

12 I think we are still seeing in the Anglican Church,  
13 I sue that as an umbrella, quite disparate approaches  
14 between the different legal entities.

15 One thing I want to say, you know, from my  
16 perspective, I've been raised Catholic so I understand  
17 about church care. I think our firm is very much of the  
18 view that the churches owe a pastoral obligation to those  
19 who were abused in church care. They owe a moral and  
20 pastoral obligation to put right abuse that has been  
21 caused in whatever context. And I think, you know,  
22 churches and the State should not be relying on their  
23 legal defences and their legal technical ways of, you  
24 know, removing themselves from liability to say no to  
25 claimants.

26 Churches, as I say, have pastoral obligations and  
27 they continue, particularly when often church abuse is so  
28 alienating for clients, not only in terms of where they  
29 feel in themselves but also where they fit within their  
30 own families. It can alienate them from their families.

31 I think that's one of the things we say very  
32 strongly to all of the church entities that we deal with,  
33 is you've got higher than legal obligations. You've got  
34 moral and pastoral obligations to remedy any harm that

1 you've caused, or those who have gone before you have  
2 caused.

3 Q. This is my final point to ask you about. Would you  
4 accept that at that meeting there was a genuine  
5 willingness expressed to listen to you and to respond to  
6 those concerns?

7 **MS COOPER:** Absolutely. I was with another lawyer of  
8 the firm, Rebecca Hay, we both experienced that as  
9 a very positive meeting but I think, as I say, one  
10 of the things we learned for the first time was  
11 just this very difficult legal structure that  
12 exists within the Anglican Church. It was made  
13 very clear to us that it was probably going to take  
14 some years for the Anglican Church to kind of come  
15 together with a cohesive church protocol and policy  
16 that governs all parts of the church. I'm not - as  
17 I said to you, I am not sure where that work is  
18 yet. It's not evident yet, given, as I say, given  
19 what we've had even within the last couple of weeks  
14.51 20 it's not evident yet that there is a protocol that  
21 governs the entire Anglican Church and I think  
22 that's a real challenge to the Anglican Church,  
23 given it is the biggest church in New Zealand.

24 Q. No doubt just on that point, it would have been explained  
25 to you that part of that is because of the way that  
26 there's decision-making in the Anglican Church requiring  
27 agreement across the board? And probably also requiring  
28 changes to Anglican law?

29 **MS COOPER:** Yes, I understand that. I guess my response  
14.51 30 would be, we had that meeting at the end of 2016  
31 and we're now at the end of 2019, so -

32 Q. It is not for me to give evidence but Ms Hill was on the  
33 track when she said that things are in the process.

34 **MS COOPER:** That's right. And so, I think that's one of

1 the great things about having a Royal Commission,  
2 is that there will be a lot of challenges, I think,  
3 to people who do better, get protocols in place,  
4 and we're certainly seeing that even with our  
5 engagement with the Crown as well. So, that's all  
6 positive stuff.

7 **MS GUY KIDD:** Thank you.

8 **CHAIR:** Thank you, Ms Guy Kidd. I will now ask my  
9 colleagues if they have any questions of Ms Cooper  
10 and Ms Hill?

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**SONJA COOPER AND AMANDA HILL**

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**QUESTIONED BY COMMISSIONERS**

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6 **CHAIR:** I propose to leave aside any questions until the  
7 redress hearing occurs next March.

8 **COMMISSIONER SHAW:** Thank you both for your evidence  
9 which is extensive and very interesting, and I  
10 believe, without any insult to you at all,  
11 preliminary. I think we have a long journey to  
12 travel in this matter and for that reason, as  
13 expressed by our Chair, I too will not ask any  
14 questions for the moment. Thank you.

15 **COMMISSIONER ERUETI:** I too would like to thank you for  
16 your evidence. I just have one quick question I  
17 was curious about. When you talked about how you  
18 use the new entry bodies to bring claims under the  
19 Human Rights Covenants and also UNCAT about whether  
14.53 20 you conferred using the UN mechanisms that are  
21 there for indigenous people like the UNCAT and  
22 indigenous rights, given the large number of Maori  
23 clients you have?

24 **MS COOPER:** Yes, we have. So, basically every covenant  
25 that there is, so it's the same for disability as  
26 well, so essentially every time New Zealand has  
27 been examined and every time we've had an ability  
28 to make a Shadow Report we've used it.

29 **MS HILL:** If I could just add to that. I do feel that  
14.54 30 there are people with perhaps - that are better  
31 placed to make those complaints and people like Ms  
32 Sykes and others who are engaged with the Waitangi  
33 Tribunal, that have a better knowledge about that  
34 kaupapa. We certainly support that work, even if

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1 we're not doing it ourselves. We think it's a  
2 really important conversation to be having.

3 **COMMISSIONER ERUETI:** Kia ora.

4 **COMMISSIONER ALOFIVAE:** Can I just thank you both also  
5 for your tireless commitment in pursuit of justice  
6 for your client base, it really is admirable. I  
7 have two questions but actually they are better  
8 suited for the redress hearing, it's around the  
9 structural barriers you have raised incredibly well  
10 and requires a bit of unpacking and just the  
11 personal journey that your firm had and the  
12 definite turning points, I am flagging that's  
13 coming in in March, thank you.

14 **COMMISSIONER GIBSON:** No further questions at this stage  
15 but thanks for your evidence.

16 **CHAIR:** Thank you. I want to also thank both of you for  
17 your prestigious work you've done in support of so  
18 many people whose plights have deserved it, thank  
19 you. Might that be a suitable time to have a short  
20 break while the next witness is arranged?

21 **MR MOUNT:** Just a very short break and then it's  
22 Mr Taito next. Ms Spelman will make his evidence.

23

24 **Hearing adjourned from 2.55 p.m. until 3.10 p.m.**

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**FA'AFETE TAITO - AFFIRMED**

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**EXAMINED BY MS SPELMAN**

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6 **MS SPELMAN:** Our next witness is already seated,

7 Mr Fa'afete Taito.

8 **CHAIR:** I will start, Mr Taito, by obtaining your

9 declaration. (Witness affirmed).

15.07 10 **MS SPELMAN:**

11 Q. Before we begin, if I could ask you to check you have  
12 your estimate in a front of you, it's signed on the last  
13 page, page 20?

14 A. Yes.

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

17 A. Sorry?

18 Q. Can you confirm the statement is correct to your  
19 knowledge and belief?

15.08 20 A. Yes, it is.

21 Q. Mr Taito, I wanted to start by asking a little about your  
22 family background. I understand your parents moved here  
23 from Samoa in the 1950s?

24 A. Yes.

25 Q. Can you tell us why it was that your parents wanted to  
26 move to New Zealand?

27 A. They came here with the hope that they could earn some  
28 money, find work, and I think generally to give us a  
29 better, give the family a better step up in life and  
15.08 30 return money back to Samoa to help the family back in  
31 Samoa.

32 Q. And whereabouts were your parents living when you were  
33 born?

34 A. In the city.

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1 Q. Can you tell us a bit about what your upbringing was like  
2 then?

3 A. So, I had - I was the only boy and three sisters, three  
4 older sisters and one younger. I guess, pretty typical  
5 of Samoan families in that era, growing up, church,  
6 church was everything, and yeah, pretty much that was my  
7 life growing up, just going to church and school and  
8 church, just doing - yeah, pretty much everything that  
9 your parents wanted to do at church. We spent most of  
10 our time at church, it sort of became the central place  
11 of our being really, yeah.

12 Q. And I understand you are going to give evidence today  
13 about your time as a State Ward. Could you tell us a  
14 little about how you first came to the notice of Social  
15 Welfare?

16 A. Growing up, so my Dad was a little bit of a strict man  
17 with his discipline. So, growing up I used to get  
18 disciplined quite a bit. And, yeah, so it went on for a  
19 few years. As you get older, you get naughty, I guess,  
20 and the hidings get worse. So, by the time I got to  
21 about 12/13, I knew what was coming, so I'd start running  
22 away from home. Yeah, just running away and staying away  
23 and I guess this is where the social workers, I came into  
24 contact with Social Welfare. Yeah, they started picking  
25 me up and taking me back home and, yeah, I tried to tell  
26 them don't take me back home because I'll get a hiding if  
27 it you take me back home, and they sort of thought, they  
28 didn't believe me. So, yeah, that became quite a  
29 pattern, me running away and them taking me back home.

15.11 30 Yeah, they never got that really, they never believed me.  
31 Anyway, as it was, it became quite frequent, to the point  
32 where I got taken to what they called the children's  
33 board at the time, it was in Lambton Court, Federal St  
34 here. Federal St has never been a good place for me but

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1 anyway that's where I was. Children's Board, when you  
2 got walked in there and there was Judges, Ministers,  
3 social workers, everyone around a big table and you were  
4 sitting at the end with a social worker, people were  
5 talking about what to do with you. I didn't understand a  
6 lot of it.

7 Yeah, so, that was me for a little while and then  
8 they sent me to stay with a foster home and, yeah, I got  
9 into a bit of trouble, serious trouble with the Police,  
10 yeah, I got charges and they took me to I am not sure if  
11 it was called Youth Court at the time but it was a Youth  
12 Court type, where The Metropolis is now. And yeah, then  
13 they made me a State Ward.

14 Q. You mentioned some trouble with the Police and I  
15 understand there was a Police team called the J-team?

16 A. Yeah, they were the one, Children's Board as well. Yeah,  
17 J-team, that's what they were called, the J-team. They  
18 were like a Police Juvenile team that roamed the streets  
19 of Auckland with cops and social workers and youth  
20 workers. They used to travel round and look for run away  
21 kids. Yeah, I became quite well-known to them.

22 Q. So you mentioned there was a Court case over I think  
23 where The Metropolis is now, was that the case where the  
24 decision was made about your future?

25 A. Yeah. I got picked up by the J-team, I can't remember  
26 what night it was but I ended up at Court the next day.  
27 My older sister turned up because my father forbade my  
28 Mum from coming, so my elder sister was there and, yeah,  
29 they started talking about me in this Courtroom about,  
30 yeah I don't know, talked about ward of the state and  
31 blah blah blah. And then they told them, yeah, the Judge  
32 said something and the House Master that was next to me  
33 said "let's go". We walked out to the van, I said "What  
34 happened then?" He said "You're jumping into the van and

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1 coming to Owairaka Boys' Home". I was like, "No, I'm  
2 going home to my mother". He said, "Nah, you're going to  
3 there, you're a ward of the State now" or something under  
4 some Act. So, that was my introduction to the State Ward  
5 Act, I guess.

6 Q. So, at the hearing itself, did anyone explain to you what  
7 that meant becoming a State Ward?

8 A. The Judge said something about I'm now a ward of the  
9 state under section something and said you're going to  
10 Owairaka Boys' Home or something, I remember that. And  
11 the House Master or social worker next to me told me,  
12 yeah, we're going.

13 Q. When you were being taken to Owairaka in the van, what  
14 was that experience like for you, being taken to an  
15 unknown place?

16 A. Yeah, I kept telling the House Master I wanted to go back  
17 to my mother's, go back home to my parent's place. And  
18 he said, nah, shut up, you're a fucken ward of the state  
19 now and you're coming back with us to Owairaka Boys'  
20 Home. I said where's that? I didn't know where that  
21 was. Yeah, being pulled up outside what I found to be  
22 security, I didn't know what it was at that stage. So,  
23 yeah, we jumped out and went into that dreadful secure  
24 unit reception area, told me to stand on this line.  
25 Yeah, just stood there and gave me my blankets and told  
26 me, yeah, I was actually for a look time just standing  
27 there, not sure what to do, nothing is telling me  
28 anything. They're doing all this paperwork, filling  
29 forms, stamping this and that. He said follow me and we  
30 walked to a cell, cell door, opened it and told me to get  
31 in there.

32 Q. That was your introduction to Owairaka?

33 A. Boys' home, yep, security.

34 Q. In terms of the staff that were at Owairaka at that time,

- 626 -

1 what was their make up? Were they mostly Pakeha?

2 A. They were all Pakeha, all honkys, sorry, all Pakeha, most  
3 of them were House Masters mainly Pakeha, as I remember.

4 Q. When you arrived, how did you learn what the rules were  
5 at Owairaka?

6 A. Yeah, they don't give you a set of rules or anything,  
7 guidelines. Yeah, I'm not sure what the expectations of  
8 you as a kid, what we were - we were supposed to listen,  
9 you know. I actually remember one of those Pakehas

15.17 10 Masters telling me just do as you're told, yeah. I  
11 remember waking up the night after I arrived, I remember  
12 waking up the next day and the door was unlocked and we  
13 were told to run around this little yard, just to keep  
14 running around, just run. Nobody told us how long for,  
15 whatever, just run. Yeah, that's what we did, we just  
16 ran around this yard, ran around the yard, kept running  
17 around the yard, while they were all in the office  
18 drinking coffees and things like that. Yeah, we just ran  
19 around and I ran around until at one stage the House

15.18 20 Master came out, he opened up this south door at the end  
21 of the yard, he opened it up and just left it open as I  
22 ran around I realised there was a shower block and so I  
23 kept running around, there was a towel there and as he, I  
24 think as you went back into the office, he said you  
25 better hurry up and have a shower because the water will  
26 go off any minute now. I didn't know what that meant. I  
27 ran into the shower, the shower was on, so I jumped in  
28 there and halfway through my shower the water went off.

29 So, you sort of just had to dry and then they don't tell  
15.19 30 you what to do after that. I assumed we'd go back to our  
31 cell. I was going back to my cell and I was told where  
32 are you going, go back to the shower block. So I went  
33 back to the shower block and waited and then they came  
34 out took me out. There was a lot of that in Owairaka.

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1 There was a lot of not telling you anything. One of the  
2 things he did tell me was he pointed to this Maori boy  
3 that was in the kitchen doing the food and he said he's  
4 the KP of this place. You know, that's kingpin. He's  
5 the KP of this place, if you don't behave yourself, we  
6 will get him to give you a hiding. That became quite a  
7 common feature in there because the KPs would stand over  
8 you, intimidate you and the House Masters there, they  
9 love that, they love putting the KP up to that sort of  
10 stuff, yeah.

15.19 11 Q. I'd like to come back and ask you a bit more about the  
12 kingpin culture later. I know in your brief at paragraph  
13 12, you give another example about blankets and some  
14 rules, can you explain what that was?

15 A. Yes, they had this way your blankets were folded. I  
16 didn't know this but the red has to be in line with your  
17 sheets. Yeah, so they had this special way of, like  
18 almost like tucked in, you have to tuck in your blanket  
19 in here and sheet has to be blanket, white sheet, then  
15.20 20 blanket then at the top was the red. Yeah, I didn't know  
21 any of that. I just thought you folded them up, put them  
22 at the end of the bed, yeah. And the first time I did  
23 it, the screw came in, the House Master, he came in and  
24 said, he threw it on the ground and say do it again and I  
25 said, oh, and I went to do it again but he took me  
26 actually to this guy nextdoor and showed me the way it  
27 was supposed to be. And I still didn't get it. So, I  
28 instead folded the sheets and tried to do the sheet,  
29 blanket, sheet thing and put it on and he threw it again  
15.21 30 on the ground and told that boy nextdoor to show me how  
31 to do it. And then he showed me how to do it and then I  
32 did it right, yeah. Yeah, like I said before, these are  
33 the things, they don't tell you anything like this to  
34 begin with.

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1 **COMMISSIONER SHAW:** I think you said what the House  
2 Master called you?

3 A. Yes, he called me a coconut.

4 **COMMISSIONER SHAW:** Coconut boy?

5 A. Yeah, speed it up coconut boy. That was their favourite  
6 saying in there to us.

7 **MS SPELMAN:**

8 Q. In terms of the racist name that he called you, were  
9 there other experiences of racism that you had being a  
10 Samoan boy at Owairaka?

11 A. Yeah. Well I guess for me, he was taking me up to the  
12 top house, he asked me if I was, yeah he said to me what  
13 nationality? I said Samoan. He said are you a New  
14 Zealander? And I went yeah. So he said you're a New  
15 Zealander now, you're not Samoan. And I went okay man,  
16 you don't want to answer them back, yeah. Yeah, I  
17 remember that, I was a New Zealander.

18 Q. In terms of the abuse in care that you experienced, I  
19 understand you weren't sexually abused at Owairaka but  
20 you did experience physical abuse?

21 A. Yeah. When they put me up the top, I was there for a few  
22 weeks. Yeah, there was a lot of intimidation, there was  
23 a lot of physical violence, not just to me, around, you  
24 know around the other kids. One of the things I really  
25 hated, if you like, was the way the screws and the House  
26 Master pitted out up against each other. You know so for  
27 example when I was in the recreation room and the  
28 so-called KP, kingpin, I'm not sure whether that screw  
29 put him up to it but, yeah, he said something, I didn't  
30 quite catch it but I turned around to him and said what  
31 was that, and he hit me with the table tennis bat and we  
32 started fighting. I found out later that, you know, what  
33 that all was about, was every time somebody new came in  
34 and looked quite big or fierce the KP would try and

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1 dominate. We had a fight and I was reluctant to fight  
2 back because there was a screw sitting there and then he  
3 seemed to enjoy it and then they pulled me off the KP and  
4 I went back to secure after that. Which, to be honest, I  
5 didn't mind it down there because now I knew what it was  
6 all about and it was better to be down there than up the  
7 top with all those.

8 Q. In terms of the fighting amongst residents, we heard some  
9 evidence last week that the staff saw it as a form of  
10 entertainment?

11 A. Yeah, well, I saw that a few times. You know, and  
12 really, it wasn't like noticeable but, you know, the  
13 screws, if they're standing around, they were encouraging  
14 our boys to fight each other, especially over little  
15 things like the table tennis table or darts or cards, you  
16 know, you go and complain to them and they say do  
17 something about it. For me, Owairaka Boys' Home was a  
18 scary place at first but then you learn how to survive in  
19 there, you have to otherwise you're going to get picked  
20 on. I didn't see those House Masters, you know, helpful  
21 at all in any way trying to help us. In fact, you know,  
22 I think they encouraged a lot of that violence because  
23 they used to have houses that backed onto to Owairaka  
24 Boys' Home, so you had to go and do their gardening, fix  
25 it all up. There was a lot of - I remember, I think I  
26 told you this, eh, there was a lot of picking of kids to  
27 go inside the house and do work inside there, you know.  
28 I said to one of my mates who was a crime boy, I said how  
29 come they getting to go in there, why can't we go in  
30 there? He said they just pick whoever to go in there  
31 but, as I learnt later on, things were going on in there.  
32 You learn these things as you go through that system and  
33 you end up in Waikeria Borstal and you see the same kids  
34 grown up a bit and you hear what happened in those

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1 places. And I go shit, is that what happened bro? And  
2 he goes, yeah, yeah. So, I guess I'm lucky I never got  
3 picked to go inside the house.

4 Q. You've told us about the staff involvement or at least  
5 awareness of residents fighting. Did you experience or  
6 witness any staff abuse of children while you were there?

7 A. Yep. Oh, lots of dining room incidents where they tip  
8 your tray up, you know. I don't know why but the kids  
9 walk past and tip your tray up and then pick it up. I  
10 don't know, little niggly stuff, you know. It was just  
11 uncalled for and I used to think, also you had to put  
12 your cups and saucers in such a way on the table and if  
13 you didn't, I've seen them flick it off the table and  
14 everything goes smash and make them clean it up, yeah,  
15 yeah, I remember that cup and saucer trick, go to put the  
16 handles inside the cups so you couldn't see the handles  
17 when they were sitting on the tabling, that sort of shit.  
18 It's like little stuff but they'll flick it off the table  
19 and hoary boy to a couple of my mates, you know. Yeah,  
20 for me, looking back at it, it wasn't a nice experience  
21 as kids, you know, in that age group. And I think what  
22 it also does to you, it makes you angry, it makes you,  
23 you know, you just think inside yourself, man, gees,  
24 you'd like to do something to you but you can't, you  
25 know, so yeah, build up a lot of anger.

26 Q. And just one other aspect while you were at Owairaka, you  
27 told us you'd been picked up by Social Welfare for  
28 running away?

29 A. Yes.

15.28 30 Q. And they'd sent you there. While you were there, what  
31 sort of education, if any, did you receive?

32 A. While I was at Owairaka?

33 Q. Yes.

34 A. Well, I had a good little young mate there who knew how

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1 to steal cars and taught me how to steal a car and showed  
2 me. He drew it, lock and all that stuff. And then even  
3 in the boys' home itself, you'd go up to these locks and  
4 go bro, this is how you open, this is easy to open, and  
5 show me with a screwdriver and you go yeah, yeah, good  
6 one bro. Those are the sorts of things you learn in  
7 there easily, you know. It becomes, yeah, a skill you  
8 pick up.

9 Q. And so, after you'd been at Owairaka that first time,  
15.29 10 what happened when you left the institution? Where did  
11 you go after that?

12 A. I was put in a couple of foster cares, foster homes.  
13 They tried to put me in a school, St Paul's wouldn't take  
14 me, Mt Albert wouldn't take me, so I ended up at Seddon  
15 College and a lovely Samoan woman to knew my parents as  
16 well, she was a social worker. She took me in and while,  
17 you know, she tried her best for me, school wasn't for me  
18 or where I wanted to be. I guess for me, I had trouble  
19 at school, I really hated teachers, you know, telling me  
15.29 20 what to do. You know, I think for me, you know, to be  
21 honest, Owairaka changed the way I thought about things,  
22 you know, and just made me, if anybody tried to tell me  
23 what to do, I would just hate that. Lots of fights at  
24 school. In the end, I think it was my third term at  
25 Seddon, yeah, I burgled the school and then, you know, it  
26 just went downhill from there. And then they tried to  
27 put me in other fosters homes, halfway houses around  
28 Auckland, Awanui Hospital was run by Ben Hawke and they  
29 had me in there with my social worker, who I hated. She  
15.30 30 put me there because, yeah, foster homes didn't want to  
31 take me and Betty, bless her kind heart, she took me in  
32 but I was young and so she had to have me close to her by  
33 her room because the house was full of gang members and  
34 it was a halfway home from jail to go on the outside.

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1 So, yeah, I did a lot of like foster homes with them and,  
2 yeah, I became a intrigued by them and I really wanted to  
3 be like them but I - yeah, so, that was my foster home  
4 care.

5 Q. You've mentioned obviously not getting on with your  
6 social worker but what involvement did the social worker  
7 have with you at that time? Were there visits?

8 A. She was, yeah, she gave me my allowance and my clothing  
9 chits and medical chits. She just signed all these  
10 chits, so I could go and buy clothes if I needed clothes.  
11 She would work with the foster home, they would give me  
12 about \$8 allowance a week. So, yeah, that was me and my  
13 social worker, she only saw me when - well, she went  
14 through the foster parent really. She came round to see  
15 me, she'd come to the house and we'd stand there and just  
16 talk. She would say if you need anything just ask me and  
17 we'll get the chits and then she'd come down or I'd go  
18 down to Penrow St down there and go to the office or the  
19 counter to sign forms. So, yeah, that was basically my  
15.31 20 relationship with her, was signing forms and getting my  
21 chits from her.

22 Q. And you mentioned that there was the burglary at the  
23 school. What happened to you after that?

24 A. They stuck me back into Owairaka Boys' Home until they  
25 could find me another foster care which was at Betty's.  
26 They didn't charge me for the burglary. They arrested me  
27 and I went down to the cops and then they put me back in  
28 Owairaka Boys' Home and then my social worker came to see  
29 me there and told me I'd be put into an Ohopu hostel. I  
15.32 30 didn't go up for a Court case because nothing got taken.  
31 What happened was I found a set of keys, the janitor's  
32 keys and I was going around and opening the doors.  
33 Nothing was taken at that stage, yeah. So yeah.

34 Q. You mentioned just briefly before, Mr Taito, about the

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1 Borstal at Waikeria. When did that come into the story?

2 A. Waikeria, I went there I think it was 1978, I think, when  
3 I was 16 or 17. Yeah, that was for - that was a Police  
4 chase. I ended up in there and when I went there, I have  
5 to say that was really a moment of this is my life, sort  
6 of. This is where I am in life, you know. Not really  
7 knowing what else to do. You know, I got that and I went  
8 there and I saw a lot of the boys I was at the boys' home  
9 with, a lot of them had joined the Mongrel Mob, some  
10 joined the Blacks. So, you know, it was like, I guess,  
11 that's what I'll do as well but I didn't, I didn't join  
12 any of those two but I did join a gang after I got out  
13 from there.

14 Q. Can I ask you to turn to paragraph 22 of your brief on  
15 page 5.

16 A. Yep.

17 Q. Just tell us a little bit about that because I think  
18 that's what you were just trying to touch on?

19 A. You know, Waikeria was 16-17 year olds trying to strut  
15.35 20 their stuff but it was much, much, much more violent than  
21 anything I could imagine anyway. Waikeria for me, there  
22 was a whole lot of violence going on there, people  
23 getting shoved and the screws beating up prisoners in  
24 front of you, kicking them. So, for me, that hardened my  
25 resolve to be hard, you know, to be, yeah, not to be  
26 fucked around basically. And so, you have to learn that  
27 in there and especially in a place called the  
28 classification unit, that's where you go when you first  
29 go in there, you have to polish the floor on your hands  
15.36 30 and knees all day, all afternoon. They make you shave  
31 when you haven't got anything to shave. It was just  
32 outrageous but looking back at it, I used to think that  
33 gave me, yeah, that made me really, installed in me a  
34 violence that, you know, I carried for a long, long time

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1 after that. And everything to me after that was just  
2 about violence, yeah.

3 Q. I understand it was when you were 16 and back in  
4 Ponsonby, that you started to spend time with those who  
5 would eventually be called the King Cobras with?

6 A. Yes, the KCs were happening around 1978, it was towards  
7 the end of that year that the local neighbourhood boys,  
8 yeah, I jumped in there with them. By the time my next  
9 lag came in 79, I was a patch member and fully emerged in  
10 that life.

15.37

11 Q. Was that your lag at Mt Eden Corrections facility?

12 A. Sorry?

13 Q. Was the next lag the one at Mt Eden?

15.38

14 A. Mt Eden was, yeah, I was at Mt Eden by 1979-1980 and,  
15 yeah, it was men's prison. Yeah, I met those boys again  
16 from Waikeria, a lot of them were fully into it now.  
17 They were all mates, yeah. We all made alliances and you  
18 all become friends just like every day people in  
19 mainstream life become friends with each other, so did  
20 we. We were all young and, yeah, we were looking to make  
21 a name for ourselves in that world. So, you carry along  
22 in that world until, yeah, things happen.

23 By the time 1981 came around, yeah, 1981 - actually  
24 1981, yep, yeah, I got myself involved with a bit of a  
25 street brawl with the skinheads and, yeah, I got done for  
26 that and, yeah, I got a lag for that in 1981. Also, the  
27 Springbok Tour, I was involved with that, so I got that  
28 on top of my time for the GBH on the skinheads. So, 1982  
29 I got sentenced, yeah, I was well and truly emerged in  
30 that life. And, to be fair, it was the only life I knew.

15.39

31 Q. During your time in prison, how common was it to come  
32 across someone that you knew from the boys' homes?

33 A. Oh, they were everywhere, yeah. They were - mainly my  
34 brothers, the Maoris. The island boys, there weren't so

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1 many in the beginning in the 70s. Even 80s, late 80s  
2 there weren't that many. 90s there was starting to be  
3 heaps and then 2000 there was even more. For me, that  
4 prison started an association with a lot of my mates from  
5 the boys' homes, yeah, establishing our roots and where  
6 we are in this world.

7 Q. So, during the time that you were, as you put it,  
8 immersed in that lifestyle and part of the KCs, how did  
9 it help you to have those connections, in terms of  
10 knowing some of the boys who went on to similar  
11 lifestyles?

12 A. Oh yeah, it was, yeah, it was great to have those  
13 alliances, you know. Yeah, it's good because, you know,  
14 then if, you know, trouble comes along, you're able to  
15 talk to them and try and negotiate something. Is that  
16 the sort of question?

17 Q. Yes.

18 A. Yeah, you learnt in that world that, you know, those are  
19 good connections to have because we'd been through boys'  
20 homes together and then onto youth prisons and now the  
21 men's prison, it helps you to be more successful, if you  
22 like, in that world.

23 Q. I know your life has moved on significantly from that  
24 period but could you talk us through your journey in  
25 terms of when you came out of prison and how you began to  
26 make the changes that you have in your life?

27 A. So, my last leg I got out in 2006 for an 8 year stint for  
28 manufacturing methamphetamine for supply. I got out from  
29 that leg and I, to be honest, I just carried on, you  
30 know, doing what I do best in that world, you know. But  
31 moving on to I think 2009, by then I'd been on the meth  
32 for about 10 years, yeah, and, yeah, it was affecting  
33 home life and also the one thing you learn in that world,  
34 for me anyway, and for a lot of the crims in that world,

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1 one thing you have to always understand when you're in  
2 the drug dealing world, is it's about the money, not the  
3 drugs and when it becomes about the drugs you're losing  
4 your way a bit and you should get back on track. But  
5 this P rubbish it drives you nuts, yeah. I was for  
6 getting about what we were in there for, for the money.  
7 So, yeah, I realised I had to do something about that P,  
8 I had to get off it somehow. And so, yeah, I tried to, I  
9 made moves to step away from it, with the help of my  
10 partner, and, yeah, I pulled out pretty much, I just  
11 stepped away from it all and went through 10 months  
12 withdrawal, with my partner. Yeah, and then I had to  
13 look to do something with the time and it was suggested I  
14 should go and study. From hating study to now going back  
15 to study. So, yeah, we had a look at a bridging course  
16 at university called New Start which allowed me - I  
17 didn't get the grades but with the help from my mentor,  
18 Tracey McIntosh, I was able to get through and do the,  
19 yeah, do the BA and I majored in Sociology and Maori in  
20 2014. It was a difficult time getting off that P.

21 Q. I know you've mentioned, Mr Taito, you've had the support  
22 of your partner and your family.

23 A. Yeah.

24 Q. To go through that. Did you have any external support or  
25 any help from the State or other agencies during that  
26 period?

27 A. Nah, nah, I just had to - I mean, we're talking 2009  
28 here, you know. Yeah, that P stuff was on everybody's  
29 radar. You don't know who to ask. I didn't really want  
30 to ask anybody. I just had to try and do it myself. I  
31 used dack to help me come off it a little bit, I had  
32 dack, I used dack a little bit. That helped, yeah, it  
33 was a difficult time living in that world for over 38  
34 years and making those changes, eh, it's gut wrenching at

- 637 -

1 times.

2 Q. And I know now, Mr Taito, having completed your Bachelor  
3 of Arts at the University of Auckland with a double major  
4 you just mentioned, you're now involved in some further  
5 research and public speaking and that sort of thing; is  
6 that right?

7 A. Yeah. I'm currently doing a university, the Crim  
8 Department - doing research for the Crim Department up at  
9 the University of Auckland. It's Maori and Samoan  
10 collaboration of youth experiences with the Youth Justice  
11 system across 10 cities, America, Australia and here, I'm  
12 on the Samoan side. Yeah, I have done, I'm doing, I do  
13 talking and speaking around, mainly around trying to help  
14 kids stay away from that. I don't know how successful  
15 I'll be but yeah.

16 Q. I wanted to turn now to ask you about the comments you  
17 wanted to share about the broader Pasifika experience.  
18 I'm just referring here at paragraph 37 of your brief. I  
19 know you've mentioned your story is not the only story  
20 like this.

21 A. No.

22 Q. I wondered if you could talk to us a little bit about  
23 that time period, just at 37.

24 A. Sure. I guess for me my story is not unique. Many  
25 families - if I could read from my - many families also  
26 struggled with the culture clash in moving to  
27 New Zealand. My parents were part of that first wave of  
28 Samoan families that came to New Zealand in the 50s and  
29 60s who experienced a bill culture shock. In Samoa, life  
30 was organised and regulated in accordance with the  
31 village structure and oversight from the village Council.  
32 Everyone knew everyone in the village and there was a  
33 shared understanding of the boundaries of appropriate  
34 behaviour.

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1           In New Zealand, there was a shift from the  
2           collective to the individual. While many Samoan families  
3           lives close to one another -

4   **CHAIR:** Mr Taito, could I ask you just to go a little  
5           more slowly, so that our stenographer and signers  
6           can keep up.

7   A.   Okay. Sorry. I guess, I'll just make my point like this  
8           rather than read that. My point I make is that, yeah,  
9           looking back now, I know the struggles my parents went  
15.48 10          through and I understand that, you know, what my parents  
11          tried to do for me was for the best, you know, that they  
12          could do. I understand that the church is a big part of  
13          our culture and who we are. Unfortunately, for me I  
14          never took that on board and I guess, you know, my  
15          pathway then became different from the rest of my family.  
16          Yeah, I know my parents meant well for me. My father,  
17          you know, and I, we never got the opportunity, if you  
18          like, to talk about what happened, he passed away before  
19          I could get there with that, you know, talk to him about  
15.49 20          it. My Mum passed away while I was in jail. So, you  
21          know, for me I understand what they were trying to do for  
22          me. And I understand a lot of our Pasifika family are  
23          the same situation, where they tried to make a better  
24          life for us and help us to get a better education but  
25          yeah.

26   **MS SPELMAN:**

27   Q.   Just speaking more generally, Mr Taito, I know you've  
28          commented in terms of gentrification in the 1980s and  
29          what that meant in terms of Pacific families moving  
15.50 30          within Auckland?

31   A.   Looking back going to and understanding more about  
32          mainstream society, for me gentrification at that time, I  
33          didn't know what that word was before I went to  
34          university but what I saw impulsively at that time, you

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1 know, we were pushed out of the city and into South  
2 Auckland where they are marginalised areas and I say here  
3 Pacific families were focused on earning money to send  
4 back home and to contribute to church but were not  
5 equipped to succeed in the Palangi capitalist  
6 environment. What I meant by that was our people really  
7 didn't understand the value or culture of money and they  
8 were vulnerable to Palangi institutions offering loans  
9 and high interest debt and did not have the skills to  
10 navigate interest rates and investments. We did not  
11 benefit from economic growth during that period but found  
12 ourselves mortgaged to the hilt in South Auckland.

13 I think for me, talking today, why I want to talk  
14 today. I don't want to read all that out but what I want  
15 to talk today is to help in the hope that it will bring a  
16 lot of our people out to talk about their experiences  
17 within the Youth Justice, you know, with the Borstals and  
18 that, with what happened to them in the boys' home  
19 because I think, you know, personally, I think our voice  
20 will not get heard and the reason why our people won't  
21 come to these sort of hearings like this, because it's  
22 the mana of our parents and it's the shame associated  
23 with this. And I even feel bad about having to talk  
24 about my parents like that but, you know, I'm hoping  
25 that our voices will get heard amongst all this and will  
26 do justice to our stories and it doesn't get buried in  
27 the archives somewhere. And that I listen, I've listened  
28 last week and this week, and I think, you know, Pasifika,  
29 we won't get heard if we don't come out. It took me ages  
30 to do this, you know, to be able to come here and sit  
31 here because this is not particularly good forum for us  
32 to do this in but I know it's the process.

33 Q. I know you've spoken, Mr Taito, in terms of losing some  
34 of your Pacific or Samoan identity in terms of what the

- 640 -

1 impact was for you of being taken away from your family,  
2 away from the church and your language?

3 A. I think that was the greatest injustice that Social  
4 Welfare system did to me, was to displace me from my  
5 family, especially my mother. And not only for me but  
6 for them as well, you know, there was no explanation to  
7 them. In fact, if I remember, they actually said to her  
8 that they shouldn't have rung them to report me. I  
9 couldn't be 100% but I'm sure that's what my sister said,  
10 that Social Welfare said that to my mother.

11 For me, I do this because I want our people's voices  
12 to be heard and there was some traumatic stuff that went  
13 through our facility, the kids I know, and I remember,  
14 you know, a couple of them were sexually abused at  
15 Kohitere and Hokio, especially some Cook Island boys. I  
16 remember when I was in Waikeria, the boys around me, you  
17 know, saying see that guy there, he got thinged. You  
18 know, that's 20 years later I'm doing something at Massey  
19 and that same kid, he's a man now, and he's walking  
20 around and people are still saying that, you know, and  
21 the impact on those boys, you know. We laughed about it  
22 in jail at the time because we're supposed to be staunch,  
23 you know, but it's not a good thing, you know. Everybody  
24 knows you're in jail and knows what happened to you by  
25 those pricks down at Hokio. We all know, we all heard  
26 the stories, everybody knew. All the kids at Waikeria,  
27 we all knew, he's one of them, he's one of them, and they  
28 carried that scar throughout all of their lags, yeah.  
29 Sometimes you want to help them but you can't because of  
30 the mentality, you can't, you can't, you've got to be  
31 staunch. So, yeah.

32 Q. And you mentioned, Mr Taito, this is just the last point  
33 I wanted to ask you about, one of the impacts you  
34 mentioned being staunch and you described in your brief

- 641 -

1 an impact of being taken away from your family was losing  
2 the ability to love. I wondered if you can share that  
3 thought with us?

4 A. Yeah, I remember talking to you about this and I've  
5 actually thought about it over all the periods or so, I  
6 wouldn't mind touching on that. One of the things I have  
7 to say, you know, being in that world, is that especially  
8 if you want to be staunch in that world and you want to  
9 be "the man", you lose your capacity to be compassionate,  
10 you know. Like, everything is violent or everything is  
11 like you just can't hold your girlfriend's hands, you  
12 know. So, the thing is, what I'm trying to say, is that  
13 over the years I was in that world I realised, you know,  
14 I lost the ability to love, you know, the emotion to be  
15 connected to. And, yeah, for me, yeah, it was - a lot of  
16 us, a lot of the kids in that world don't know how to  
17 love. They don't know what it means to be loved. They  
18 don't know how to love back. And for me, even with my  
19 kids, you know, I have five sons and 17 grandchildren and  
20 if I didn't step out from that world, I wouldn't know how  
21 to love them either, you know. I was be a absent parent,  
22 father, for most of my boys' life. You know, they've all  
23 been to jail too, yeah.

24 **MS SPELMAN:** Thank you, Mr Taito.

25 A. I don't mind crying because that's part of love, I guess.  
26 It's good to be emotional. I tell you, it's a hard life,  
27 that life but I've learnt to come to terms with, I'm at  
28 peace with myself now and it's about what I'm doing now  
29 for them which matters the most, yeah.

15.58 30 Q. Before we come to the end of this main part of your  
31 evidence, I just wanted to give you the opportunity if  
32 there was anything else you wanted to share with the  
33 Commission? You've given us so much already.

34 A. I think I said before about the hope of this Inquiry, is

- 642 -

1 that it doesn't get buried like the Puao-te-Ata-Tu  
2 report. But I hope, my hope lies in that we air our  
3 story to yous and it actually doesn't sit somewhere  
4 gathering dust and that we're able to help, especially  
5 for me, for our Pacific youth, because while I've got -  
6 while I'm in the mainstream world now, I've got a lens  
7 into that other world and our Pacific youth are being  
8 abused, you know, and I despair at what I see in that  
9 other world, especially with the 501s coming over and  
10 turning our kids into killers. It's not good, it's not  
11 good and I hope that, you know, by doing this today, that  
12 we can change things for them, I guess, eh? That's about  
13 me, Julia.

14 **MS SPELMAN:** I want to thank you for not only coming  
15 today and giving your evidence but for doing it in  
16 such a way that honours the people that you are  
17 speaking about, so thank you for that, Mr Taito.

18 A. Kia ora.

19 **CHAIR:** Thank you, Ms Spelman, thank you, Mr Taito. I  
20 am now going to ask whether any other of the  
21 lawyers who are present, if they wish to ask you  
22 any questions?

23 **MS SPELMAN:** I will just note, Ms Sykes has spoken to me  
24 about that and I understand does have some  
25 questions but none of the other counsel have  
26 indicated they do have questions for Mr Taito, just  
27 to let you know.

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**FA'AFETE TAITO**  
**QUESTIONED BY MS SYKES**

16.02 Q. (Talks in Te Reo Maori). I wish to acknowledge that I have known you for a long time. I was very moved, there's a saying that (speaks in Te Reo Maori). Aroha from one to the other is the foundation of all families, and I felt that inspiration in your evidence this afternoon.

16.03 I want to take you back to a part of your brief that you didn't really elaborate on. Even though as young as you were at 17, you were one of the leaders at that time, following the release of the Puao-te-Ata-Tu reports and other matters after Owairaka to do things about that. You were a leader in the Patu squad and challenges in the Springbok Tour and organising Pacific and Maori communities to the Treaty of Waitangi. You were also a leader in the Polynesian Panthers' efforts to find ways to prevent this from happening, what you've just described. And I think my question is, and I can ask a big question or small ones, is what went wrong, despite all those efforts in the late 70s and late 80s. You were young then, 17 and 18, to try and get this step change that you've talked about, what went wrong? Why didn't that happen?

16.04 A. I am not sure, Annette. Are you asking me what happened then?

Q. Yes.

A. Yeah, I think, to be fair, I was entrenched in the other thinking, in that other life. Yeah, I just couldn't move away from it.

- 644 -

1 Q. So, the problem is that even with decolonisation programs  
2 that you were part of, there was still a clawback to that  
3 other world, that world from the boys' homes to youth  
4 detention centres to prisons?

5 A. Yeah.

6 Q. You were part of the decolonisation programs during that  
7 period, weren't you?

8 A. I didn't even know what that was at that stage, eh? It  
9 was just - I don't know. I can't really answer. I felt  
16.05 10 that that was my pathway, that was who I was and where I  
11 was.

12 Q. Earlier last week, we heard evidence how the Pacific  
13 identity was getting lost, both in the recording of the  
14 way men and women go into the institutions and even in  
15 the statistical analysis after. Can you remember when  
16 you went in if there were many other Pacific Island  
17 community or members of whanau in Owairaka? I want to go  
18 through each of the institutions you've described, were  
19 there many there?

16.05 20 A. Yeah, a sprinkling, I think, but - are you asking me  
21 whether I knew they were islanders?

22 Q. Yes.

23 A. Nah, I didn't know a lot of them. I thought a lot of  
24 them were Maoris but then I found out later that some  
25 were, you know -

26 Q. There were no particular programs of identity and there  
27 were no particular processes to secure an understanding  
28 of your identity in any induction process?

29 A. No, there was definitely no - oh, are you asking how we  
16.06 30 were identified?

31 Q. Yes.

32 A. Oh right, yes, no, we were just the other.

33 Q. What do you mean the other?

34 A. Yeah, if you're not a New Zealander or a Maori, you were

- 645 -

1 just the other.

2 Q. So, you were labelled as "other"?

3 A. Yeah, I was, yeah, that's what we were.

4 Q. And some of you would have been Maori/Pacific, or  
5 Maori/Samoan or all three, Maori/Niuean/Samoan; how did  
6 that identity be dealt with?

7 A. Yeah, no, you were "other", that's how they were put  
8 under.

9 Q. Were there any courses opened for Pacific Islanders while  
16.07 10 you were in Owairaka? Any courses?

11 A. Oh nah, nah, there was nothing, no courses in Owairaka or  
12 Waikeria, there was nothing.

13 Q. Were there any Maori courses?

14 A. No, not that I know of.

15 Q. So, the only thing that was offered was a mana cultural  
16 approach to participation in your day-to-day life?

17 A. Yeah, pretty much we just, yeah.

18 Q. Were there any wardens or caregivers for you who were  
19 familiar with Samoan?

16.07 20 A. No, no.

21 Q. Are you able to tell us whether any of the - what were  
22 the proportion of those working there, were of Pasifika  
23 or Maori descent?

24 A. Owairaka, working there?

25 Q. Yes.

26 A. Gees, if there were any of them Maori, I never recognised  
27 any of them. I never recognised any of them as Maori or  
28 Pacific Islanders. They were just Pakeha, yeah.

29 Q. Can we go to Waikeria, by that stage when you'd gone into  
16.08 30 that, you've talked about it, was there a different  
31 emphasis, remembering that we're moving from late 70s, to  
32 early 80s, things happening in the community to try and  
33 understand cultural identity. Did anything trickle down  
34 into the way things happened in the Waikeria institution?

- 646 -

1 A. No. Yeah, there were Maori wardens there, screws, I  
2 noticed a lot of them in Waikeria. Did they have culture  
3 groups? I know we had culture group up at Mt Eden run by  
4 Anne Tea but not Waikeria.

5 Q. How much of a proportion of brown people at Waikeria,  
6 Pacific and Maori, 80%?

7 A. Yeah.

8 Q. And no culture programs at all?

9 A. Oh, actually, nah, I don't recall any cultural practices  
16.09 10 but I do remember Peter Sharples used to come down and  
11 talk to us in the - yeah, yeah.

12 Q. If we come back to Mt Eden, you've said was the old  
13 Auckland District Maori Council, Rangī Walker, Ani Tia  
14 and the late Sir John Turei, they would have come in?

15 A. Yeah, they came in to take us for Maori culture and do  
16 some culture practices.

17 Q. So, there was Maori. What about Pasifika? Given your  
18 brief very much highlights the importance of the church  
19 and whanau, was there opportunities at this stage we're  
16.10 20 looking at about 1980s, where there now the inclusion of  
21 important leaders from the church coming to visit you at  
22 Mt Eden?

23 A. At Mt? Nah.

24 Q. By this stage you'd been through the system nearly  
25 15 years, and no cultural support from Pasifika whanau,  
26 no cultural or participation from the church?

27 A. No.

28 Q. So, we go to Paremoremo?

29 A. Now we're into the 90s.

16.10 30 Q. What happened by then, what's happening in the 90s?

31 A. Paremoremo, there's churches on Sunday and some church  
32 groups coming in for Pacific Islanders and now they have  
33 a few courses starting, they're starting that.

34 Q. My last question is, given all this Treaty of Waitangi

- 647 -

1 from the 80s to the 90s, why do you think it took nearly  
2 25 years before we start seeing the Pasifika culture  
3 actually identified as an important part to be  
4 incorporated into prison programs?

5 A. Why do I see it as important?

6 Q. No, why did it happen? Are you able to help me  
7 understand why it suddenly starts happening in the 90s?  
8 What happened then?

9 A. Oh, because I think a lot of our people were coming in.

16.11 10 Q. So, you go from being not many of you at Owairaka to  
11 significant numbers in the '90s?

12 A. Yes. So, in 1980 when I was doing my Springbok Tour and  
13 GBH, my lag there, out of 420 inmates in the yard, I  
14 think there was only 14 of us Pacific Islanders or  
15 Pacific Island descent. By 1990 when I was doing my lag  
16 in 1990, there was like, gees, there was 14 in one unit.  
17 So, yeah, a significant increase.

18 Q. And you said in your evidence, one of the things we have  
19 to look very carefully for in here is the poverty and the  
16.12 20 loan sharks and all of those matters?

21 A. Yes.

22 Q. And that happens in the 80s and 90s period especially,  
23 does it?

24 A. Yes.

25 Q. Following privatisation and liberalism?

26 A. I don't know about liberalism, yeah, absolutely.

27 Q. And we're talking about loss of jobs and a whole lot of  
28 things that we've heard in the State sector in the 1980s,  
29 as well. From your own personal experience, did that  
16.13 30 impact on your family?

31 A. Yeah, it did impact on my family.

32 Q. How?

33 A. Loss of jobs, my sister had to move to Australia to try  
34 and, you know, better herself. Yeah, things like that

- 648 -

1 were happening. Lots of my family went to look for  
2 better opportunities elsewhere.

3 Q. The last section that I want is racism. You talk about  
4 the racism between the State care, those in  
5 responsibility. Was there racism between Maori and  
6 Pasifika communities inside these institutions? And how  
7 was that dealt with?

8 A. Yeah, there was.

9 Q. Can you give me some examples?

16.13 10 A. Of?

11 Q. Racism.

12 A. Between each other?

13 Q. Yes.

14 A. Okay. So, in Waikeria, the first guy I was bunked up  
15 with was a Maori guy and he said to me, oh bro, you're  
16 Maori? And I said nah, nah, nah I'm Samoan. He said oh  
17 there's a few of you bongas up there in Auckland now.  
18 Bro, what the hell is bongas? It was those sort of  
19 korero going on in jail.

16.14 20 And also, a lot of our island boys in the 90s were a  
21 little bit jealous, if you like, of what the Maori  
22 programs were getting and they wanted more for  
23 themselves. So, yeah, that sort of thing was happening  
24 in there.

25 Q. More recently, there's been a suggestion that there were  
26 fights encouraged between and amongst Maori and Pacific  
27 Islanders. Did you see any of that? When I say  
28 encouraged, encouraged by prison staff.

29 A. Yeah, let me say with the increase of Pacific Island  
16.15 30 inmates, this is my own observation, this is my own  
31 opinion, in the 90s, was because it also increased in  
32 Pacific Island and Maori staff, especially Pacific Island  
33 staff. There was a level of, if you like, jealousy  
34 amongst a lot of Samoans about what Maoris were getting.

1 And so, Pacific Islands would go to their own officers  
2 and complain to them and moan to them about what was  
3 going on in there. And also, you know, our people, we're  
4 very, we didn't have a pathway like the Maoris, you know,  
5 like that pathway into that world. And a lot of our  
6 people are very religious people, even in jail. So, if  
7 they see things being done wrong in jail, as far as  
8 they're concerned, they felt the need to tell officers  
9 about it and that was some of the dramas that were  
10 happening in jail at the time.

16.16

11 Q. Going forward, I think the last question, in terms of  
12 this racism, what kind of strategy should we be doing,  
13 firstly to educate the values between and amongst  
14 prisoners but structurally within the prisons as well to  
15 change that?

16 A. Oh, like I could introduce programs in jail that - yeah,  
17 I'm not sure about that really. I have my own ideas of  
18 what we should be doing to change the system, the way  
19 they operate in jail but yeah, nah, I have to think about  
20 that some more actually, yeah.

16.17

21 Q. Thank you, I don't have any more questions but thank you.

22 A. Kia ora.

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**FA'AFETE TAITO**

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**QUESTIONED BY COMMISSIONERS**

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**CHAIR:** I will now ask my colleagues if they have any questions of you, Mr Taito?

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**COMMISSIONER ALOFIVAE:** (Speaks in Samoan). Thank you

16.18 10 for the courage and the honesty in which you shared  
11 your story this afternoon. Taito, you're going to  
12 be the first of hopefully many Pasifika witnesses,  
13 we hear your cry, that our people Pasifika in  
14 general may not come forward for a forum like this  
15 but there will be other ways in which we can meet  
16 and talk. I hear your message really loud and  
17 clear about not demonising our parents, the faith  
18 and the culture which are really like the strong  
19 holds of the triangle that led to the migration of  
16.19 20 our people to New Zealand from the Pacific back  
21 from the 50s onwards.

22

One of the - there are lots of questions I want to ask you but I want to limit them really to what I believe I think you could have a lot of input for us. And I wanted to start really with the comments you made around your parents, the sacrifice that they made and you not understanding that until many, many years later because I think that's the experience of many of our young New Zealand born Pacific children today; would you agree?

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16.19 30 A. Yes, I agree.

31

**COMMISSIONER ALOFIVAE:** Not actually knowing the journey and the impact may be of colonisation on our parents. Do you have a perspective on that, of the migration of Pacific to New Zealand back in the 70s

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1 and the 80s? Your parents were part of that first  
2 wave that came across.

3 A. Yep.

4 **COMMISSIONER ALOFIVAE:** Do you have a perspective on  
5 colonisation on the Pacific on us or maybe just the  
6 Samoans?

7 A. So, yeah, I think, I personally, my opinion about why our  
8 people came, is because Samoans had a history with  
9 New Zealand Governments and one of the things I really  
16.20 10 believe, is that our people really feel a benevolence to  
11 the New Zealand Government and in that context, if you  
12 think about the way they colonised our country right up  
13 until they gave us back our independence and then they  
14 offered us jobs during post-war and then my parents were  
15 on the first wave that came here. I think all that,  
16 getting a job, being able to send money back, I think  
17 that showed, you know, a real respect towards the  
18 New Zealand Government. So, therefore, for me, it would  
19 be hard to get our people up here, especially in that  
16.21 20 area 1950-1999, to speak against the New Zealand state  
21 and the government. And I think rather than it being  
22 about the experiences they've had, I think it's about  
23 their respect for their parents, you know, and not  
24 wanting to cross that line, if you like.

25 **COMMISSIONER ALOFIVAE:** Because one of the things that  
26 comes out really clearly in your narrative was the  
27 impact of shame. And I dare say that probably  
28 intuitively one of the things we kind of understand  
29 in Pacific circles, is that it's probably more  
16.22 30 heavier than, say, with Maori or with Palangi  
31 people; do you have a comment on that? The way we  
32 carry shame?

33 A. Yeah, I think we, for me, my opinion of that is that I  
34 think Maori have a different relationship with Pakeha,

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1 Crown in this country and it's based on that and,  
2 therefore, they are always going to be pushed up against,  
3 pushing against them all the time. But I think we're  
4 different. We have a different relationship and  
5 therefore, yeah, our approach will be different. But  
6 nevertheless, I feel as though, you know, I don't believe  
7 this, the New Zealand Government has been good to us.  
8 You know, our parents came over here and they worked hard  
9 too, they worked hard for the economy of this country.  
10 So, to say that - to try and get our people out of that  
11 head space about don't feel as though we owe this  
12 government anything, you know, we should come out and  
13 tell our stories and say it like it is.

14 **COMMISSIONER ALOFIVAE:** Because the thing that's coming  
15 out of your story, and we've heard this early on  
16 last week in the evidence that was given as well  
17 around the poverty cycle, was that New Zealand was  
18 considered as a land of milk and hundred for many  
19 of the Pasifika families. We had economic policies  
20 here that invited our parents, our forefathers, to  
21 come to work for the goodness of the land here.

22 But the policies in New Zealand didn't support our  
23 mindsets and our structures and our value system. And  
24 so, I think that's what you talk about in your evidence  
25 where you say we didn't make the transition because the  
26 culture shock was so big?

27 A. Yeah, and I think - sorry, I can't hear. I tried to read  
28 your question. I guess for me, yeah, I was talking to  
29 you when I said in my evidence about we didn't come to  
30 grips with the value of money, we didn't come to grips  
31 with how we should treat money or finances because, you  
32 know, as a people that are a collective, we worry about  
33 everybody around us. And I guess, you know, we send back  
34 money to Samoa, we feed our families, you know. Yeah, we

1 struggle.

2 **COMMISSIONER ALOFIVAE:** And the breadth of our families,  
3 I just want to come back to the evidence you gave  
4 when you first had to appear before the Children's  
5 Board and you said there were lots of people at the  
6 table, Judge, lawyers, social workers and you were  
7 sitting down the back with your social worker at  
8 the end of the table. Was there any of your family  
9 invited? Had any thought been given to that, in  
16.25 10 terms of supporting you, knowing that you were an  
11 Island boy?

12 A. I don't know if they were invited or not but they weren't  
13 there, yeah, nah.

14 **COMMISSIONER ALOFIVAE:** And did you have lots of family  
15 in New Zealand at the time?

16 A. Yep.

17 **COMMISSIONER ALOFIVAE:** In Grey Lynn?

18 A. Yeah.

19 **COMMISSIONER ALOFIVAE:** When you were in Owairaka, was  
16.25 20 there any encouragement from the staff for you to  
21 be in contact with your family?

22 A. No.

23 **COMMISSIONER ALOFIVAE:** Did you want to contact them?

24 A. Yeah, yeah, I did but I didn't ask them but, yeah,  
25 actually yeah, I remember thinking, actually did I say it  
26 to the House Master, you know could they ring my parents,  
27 they kept saying I was a State Ward. Yeah, they said  
28 you're a State Ward, I think he said that actually.  
29 Yeah, nah, I didn't. Yeah, I just, yeah, as a kid, you  
16.26 30 didn't know whether you can ask them that or not, if you  
31 can ring your mother.

32 **COMMISSIONER ALOFIVAE:** So, you go in feeling like a  
33 young Samoan boy?

34 A. In there?

1 **COMMISSIONER ALOFIVAE:** Yes.

2 A. Yes.

3 **COMMISSIONER ALOFIVAE:** When you first went in, you knew  
4 your family, you knew your values that you were  
5 raised in the home. Can you remember at what point  
6 on your journey that you started to lose your  
7 identity, who you were as a Samoan?

8 A. Yeah, I'm not sure about that. I remember that screw  
9 asking me if I was a New Zealander and I said "No, I'm  
16.27 10 Samoan" and he said, "Are you a New Zealand citizen?"  
11 and I said, "Yeah". He said, "So you're a New  
12 Zealander". I don't recall being, you know, yeah, nah,  
13 to be honest with you, that far, I can't even - but I do  
14 remember, you know, I didn't want to keep calling myself  
15 a Samoan because of that coconut, you know, people, yeah,  
16 so you really want to be quiet in those places.

17 **COMMISSIONER ALOFIVAE:** Is it some point that you were  
18 there at Owairaka?

19 A. Sorry?

16.28 20 **COMMISSIONER ALOFIVAE:** Was it at some point while you  
21 were there at Owairaka?

22 A. Yeah, yeah. I think you just have a feeling of not  
23 wanting to say you're Samoan too much.

24 **COMMISSIONER ALOFIVAE:** Was it easier to just be in the  
25 "other" category?

26 A. Yeah, just go along with everybody else, what they're  
27 doing.

28 **COMMISSIONER ALOFIVAE:** So, it was about survival?

29 A. Yeah. Yeah, it's a funny thing that survival but you've  
16.28 30 got to do it, yeah.

31 **COMMISSIONER ALOFIVAE:** Thank you.

32 A. Thanks Sandra.

33 **CHAIR:** Thank you.

34 **COMMISSIONER GIBSON:** Nothing.

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1 **COMMISSIONER SHAW:** Thank you, Mr Taito, I have no  
2 further questions for you. Thank you for your  
3 evidence.

4 **COMMISSIONER ERUETI:** Mr Taito, I just have a question  
5 about, first of all I want to thank you for coming  
6 along and giving evidence and congratulations on  
7 your degree and all the mahi that you've done to  
8 come on this powerful journey. I wanted to ask  
9 about, you said with your P addiction, what type of  
10 rehabilitative counselling, drug and rehabilitation  
11 services were available to you when you were trying  
12 to kick the addiction?

13 A. Yeah, when I did it, when I did it myself, I looked for  
14 no help anywhere, just from my partner. And I thought  
15 the best way to get off it, and I knew the only way to  
16 get off it, was to cut contact with that other world  
17 completely and wholly, and so I did that. Also, my  
18 sister was sick at the time, so I went and it was a good  
19 opportunity to move myself away from that world, go in  
20 there and look after her and just concentrate on getting  
21 off. In respect to how I did it, yeah, I just went for  
22 walks each day, yeah, it's a hard thing. This is not the  
23 forum to talk about P addiction and that but I have my  
24 own views on that and how we can get off it but I was a  
25 heroin junkie in the 80s and I tell you, P was the worse,  
26 P was 10 times worse coming off and I think strength of  
27 mind is a biggie. And I wasn't sure if there was  
28 counselling out there for the P addiction and quite  
29 frankly, I didn't want to tell anybody that I was doing  
30 that, I was leaving the world and going to the  
31 mainstream, yeah. To answer your question, Andrew, it's  
32 a big, it's a big move, I tell you, mindset move, to  
33 leave that world and go into the mainstream world,  
34 especially when you don't know anything about the

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1 mainstream world really, yeah. People can talk about our  
2 experiences, people can, academics can prove logic to it,  
3 but you can never feel the pain in that world, you know.  
4 It's a different experience, yeah.

5 **CHAIR:** Mr Taito, I don't have any questions of you  
6 myself. I want you to know, and I think all of my  
7 colleagues understand how difficult it is to talk  
8 about these things and you're very greatly  
9 respected for what you've said. Thank you.

16.33 10 **MS SPELMAN:** Thank you, Mr Chair, there is one more  
11 witness for today. That's Professor Elizabeth  
12 Stanley. I just wonder, Sir, whether we might take  
13 a very short, perhaps just a 5 minute break for  
14 everyone but it would be good to start back soon  
15 after that.

16 **CHAIR:** Thank you.

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18 **Hearing adjourned from 4.33 p.m. until 4.45 p.m.**

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**PROFESSOR ELIZABETH STANLEY - AFFIRMED**

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**EXAMINED BY MS SPELMAN**

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6 **MS SPELMAN:** Our next witness is Professor Elizabeth

7 Stanley.

8 **CHAIR:** Good afternoon. (Witness affirmed).9 **MS SPELMAN:**

16.48 10 Q. Professor Stanley, if I could ask you just to check on  
11 the document in front of you, that's your brief that's  
12 signed on the last page, on page 20?

13 A. Yes.

14 Q. And for you to confirm that that statement is correct to  
15 the best of your knowledge and belief?

16 A. Yes.

17 Q. Before we begin, just to thank you for your patience  
18 today with our somewhat changing timetable, we are very  
19 appreciative that you are here to give evidence.

16.49 20 A. Thank you.

21 Q. If you could, for those who won't be familiar, just tell  
22 us a little about your background, and in particular the  
23 book that you wrote on this topic, just to provide some  
24 context?

25 A. About 10 years ago, I started work on examining abuse in  
26 State care, particularly Social Welfare Institutions.  
27 And my background, I am a criminologist and I'm  
28 interested in state crimes generally and I'm always  
29 interested in how we might deal with mass human rights  
16.49 30 violations and I saw this is an ultimate example of mass  
31 human rights violations and a State that was at the time  
32 in almost total denial, that these things were happening,  
33 had happened, the impacts on people's lives and  
34 everything. So, I started working in the area and I took

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1 my time, it took me about 7 years to produce the book  
2 which is called The Road to Hell.

3 Q. The book you wrote, The Road to Hell, I understand it  
4 tells a story of 105 New Zealanders?

5 A. That's right.

6 Q. And it's focus and what they experienced in State care?

7 A. Yeah, how they got into State care, what they experienced  
8 while in State care, the legacies of abuse on their  
9 lives, their revictimisation as they tried to come  
10 forward with claims.

16.50

11 Q. We will get into details of that book but I wanted to ask  
12 you at the outset how you use names in the book, just to  
13 be clear who are listening?

14 A. I got consent from all 105 and I asked what name they  
15 would like in the book, some of them chose their own name  
16 and others chose pseudonyms.

17 Q. So, when we're referring to names today, it will be a  
18 mixture of made up names and real names to protect the  
19 identity of those who don't want to be publically  
20 identified?

16.51

21 A. Yes.

22 Q. I want to begin by asking you about the topic in your  
23 brief is overview of abuse and neglect. Firstly, just to  
24 touch on the prevalence of physical and sexual abuse that  
25 you encountered, in terms of the people that you  
26 interviewed?

27 A. Yes. So, about 105 New Zealanders in the book, 91  
28 suffered serious physical violence at the hands of staff  
29 in institutional care. All, everybody in the book  
30 witnessed that kind of violence and I think that's  
31 something we all need to be mindful of as well, in terms  
32 of witnessing physical violence can be seen to be even  
33 more impactful sometimes on individuals than experiencing  
34 it. Yeah, so, I think, you know, over the last week and

16.52

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1 today people have spoken quite a bit about physical  
2 violence and I think that systemic violence within the  
3 institutions emerged from a few things. It emerged from  
4 a reliance on staff to use violence as a means of  
5 asserting control, trying to build compliance. Actually,  
6 trying to toughen children up. Some of the violence  
7 within the workforce of Kohitere, for example, it was  
8 undertaken to try and toughen children up and prepare  
9 them for the real world. As punishments and a form of  
16.53 10 deterrents as well, to try and indicate to children why  
11 they shouldn't return to the institutions. Of course  
12 they had no choice really. I think they were the  
13 fundamental things why staff used violence so readily and  
14 why violence wasn't necessarily challenged by bystander  
15 staff as well.

16 Physical violence was endemic. It merged through  
17 cruel or unusual punishments. So, 70 people in the book  
18 talked about cruel or unusual punishments that really  
19 went beyond policy for the time. They were really, it  
16.54 20 wasn't just this is what happened in those days, it was  
21 progressing beyond that and, again, issues like standing  
22 on the line in Otago, in the middle of winter, in singlet  
23 and shorts and those things were pretty common.

24 Moving wheelbarrows of sand from one part of Hokio  
25 Beach to another and having locals watch children and  
26 shame them even further was another.

27 **CHAIR:** Dr Stanley, Judge Shaw and I both conferred  
28 saying the same thing. We're having a little bit  
29 of difficulty hearing you. Perhaps with the  
16.55 30 assistance of our technical staff we could adjust  
31 the microphone.

32 A. I can talk up.

33 **CHAIR:** Thank you. They are already saying it's better,  
34 so thank you.

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1 A. I will do my lecturer head. People talked about those  
2 cruel or unusual punishments. Obviously the use of ECT  
3 as a form of punishment for individuals, discussed how  
4 they were taken for ECT and that wasn't as a result of a  
5 mental health diagnosis, it emerged as a form of  
6 punishment because people were running away or they were  
7 acting up. Not doing their homework was one reason.  
8 Actually, you can track some of those things through the  
9 files.

16.55 10 In terms of the kingpin hierarchy, again that's been  
11 well discussed today, so I don't really want to talk  
12 about that very much. It was clear that staff used the  
13 kingpin hierarchy as a means to control the institutions.

14 In many ways, left unprotected, children had no  
15 choice but to harden up and to use violence themselves,  
16 so victims became bullies and on it progressed.

17 In terms of sexual violence, 57 of the 105 people in  
18 my study were sexually assaulted by adults. And there  
19 are a number of those individuals who were repeatedly  
16.56 20 victimised by those adults.

21 Children were also sexually assaulted by other  
22 children, 48 of the 105 were sexually assaulted by  
23 another child.

24 I think one of the things that Sonja Cooper and  
25 Amanda Hill touched on this morning, was we do often look  
26 at those, the acts of physical and sexual violence and  
27 see those as being indicative of abuse. But I also think  
28 that one of the main things that came out of my research  
29 has been more around the neglect and the psychological  
16.57 30 violence directed towards children.

31 And I talk in the book about the daily denigrations  
32 basically that children endured that were part of the  
33 every day administration of the care system. The things  
34 that weren't necessarily headline news, they were just

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1 the drip, drip, drip of abuse that led people to lose a  
2 sense of themselves, led people to lose all self-esteem.  
3 And actually in the long-term, for many people these have  
4 been the things that have been the most difficult things  
5 to shift and have been experienced as the most harmful.  
6 Often people talk about these things as the most harmful  
7 things because they're really hard to get past.

8 So, in my statement I highlight a few intangible  
9 harms that were done to children.

16.58 10 So, the first one I talk about isolation. Isolation  
11 techniques were used extensively in the institutions. We  
12 can see it very clearly in terms of the use of secure,  
13 the use of secure cells. In my study, 86 respondents  
14 spent more than three days in secure cells. And a  
15 significant number spent weeks, months at a time, in  
16 secure cells.

17 Obviously, these were small sparten dehumanising  
18 places, there was no comfort, bedding and mattresses were  
19 removed during the day, excessive physical training  
16.59 20 dominated, mind games dominated, children in secure  
21 didn't have any access to visitors, they often didn't  
22 have any access to things to read, things to do, no  
23 hobbies. So, being in secure was basically an exercise  
24 in coping with isolation and it was something that caused  
25 a great deal of fear. When people talk about it, often I  
26 saw people just go right back to that point in their  
27 lives.

28 In some Secure Units, like Owairaka in the 1970s,  
29 they have the nodding system. Children were not allowed  
17.00 30 to speak, they couldn't look out the window, they  
31 couldn't keep a clock, they couldn't sing, and every  
32 communication was through nodding.

33 Q. In terms of the social isolation, I wanted to ask you  
34 about the experience for Maori children in particular

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1 that you have touched on in your brief, in terms of what  
2 that meant being kept away from family, whanau and  
3 everything that comes with that?

4 A. Yeah.

5 Q. What was the experience of those in your study?

6 A. Yeah, it was massive, it was unbearable for people.  
7 Maori all took - I think everybody talked about the  
8 dehumanising effects and how they, from these isolation  
9 techniques like secure but people shutdown, they were  
10 afraid, all of those things.

17.01

11 Beyond that, the isolation also emerged because  
12 social connections were regarded as a privilege and  
13 children had to earn their right to a human need.

14 Obviously, for Maori, Maori children who were in  
15 monocultural institutions and then utter isolation from  
16 whanau, hapu, iwi marae, every cultural mooring taken  
17 away, it was just another layer on top and of course the  
18 impacts of this has been intergenerational. The loss has  
19 been intergenerational. And it's impacted across every  
20 aspect of life, across health, across criminal justice,  
21 education. Of course, as Mr Taito pointed out, it wasn't  
22 just Maori as well, it was Pacific children had that same  
23 loss, similar loss.

17.02

24 Q. We've heard about the lack of keeping in contact with  
25 family and I just note one example from your brief in  
26 terms of children not being notified of significant  
27 events, including the death of a parent. Was that one of  
28 the examples of someone in your study?

17.03

29 A. Yeah, that was Tate. Basically Tate had gone from an  
30 institution to a family home for a bit of a holiday. On  
31 his way there, he was told by a social worker who met him  
32 from the bus that his mother had died and that was some  
33 time before. That was the first he'd heard of it. It  
34 was just a devastating experience.

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1 Q. Another aspect of the daily denigrations, as you put  
2 them, was what amounted to emotional neglect. Can you  
3 tell us a bit about that?

4 A. Yeah, it really stems from verbal abuse largely and the  
5 use of horrendous labels, names, being placed on children  
6 by staff, how children were treated with contempt, Maori  
7 and Pasifika children in particular. And children, one  
8 time as criminologists we know in terms of how labels are  
9 internalised, children did internalise those labels, they  
17.04 10 lost self-esteem and respect. They began to think of  
11 themselves as trouble. They were told - children would  
12 be sat down to watch a video of a person and told this is  
13 where you're going when you grow up and they began to  
14 believe that narrative of their lives, this is what I  
15 have to prepare for.

16 And beyond that, the emotional neglect was also  
17 exacerbated by public stigma towards children in care.  
18 I've met a lot of people since who have talked about  
19 living near Epuni and saying I could never, we were never  
17.05 20 allowed to even look at the children who were in Epuni,  
21 you know. This is where all the bad kids were. And you  
22 can see that replicated around the country and ideas of  
23 who State care kids are and what they are, and they are  
24 stigmatised, and that's also part of the reason why it's  
25 often so difficult for people to come forward because  
26 survivors say when you tell someone that I was in State  
27 care, people, I mean, in the book, people do a 360 and  
28 they begin to see you in a totally different light, they  
29 begin to wonder what it she do? Those things are very  
17.06 30 difficult to shake.

31 Q. How about the educational neglect that you've described?

32 A. Yeah. I mean, for the most part the institutions failed  
33 to provide children with even a basic education. There  
34 were low expectations about children's academic

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1 abilities. They were seen as not really deserving of an  
2 education. 1982, the Department provided approximately  
3 three to five books per institution.

4 In Hokio between 1972-1977, 22 teachers arrived and  
5 left. For long periods there were no teachers. That  
6 kind of experience, I mean that was maybe a bit extreme  
7 but that thing of having institutions that had no schools  
8 was quite common.

9 Of course, the State was removing children from  
10 families because children had truanted or were seen to be  
11 at risk of truanting.

12 So, Lynette, for example, she was picked up and  
13 placed into care because she hadn't attended school for a  
14 little while and then she got into the institutions and  
15 there was no education. And of course again that has  
16 such a significant long-term impact. It impacts on  
17 everything, people's opportunities for employment,  
18 absolutely everything across every aspect of life, yeah.

19 Q. And we might come back to that point, in terms of the  
20 long-term legacies. In terms of the next point in your  
21 brief, controlling bodies, we have heard some evidence  
22 last week about the checks that were done in the Girls'  
23 Home on admission. Are there some other points in terms  
24 of controlling bodies that you'd like to highlight?

25 A. Yeah. I suppose, the main thing would be around how  
26 children were continually humiliated. So, the control of  
27 bodies, whether that was about children having to be  
28 submissive, sitting at tables prim\and proper, hands on  
29 lips, that bodily submission. How girls endured very  
30 damaging gynecological examinations on arrival. How  
31 children would be inducted into the institutions and  
32 stripped and deloused and placed in communal clothing or  
33 placed into pyjamas because, you know, they were at risk  
34 of absconding. So, if you put them in pyjamas, they're

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1 less likely to abscond.

2 How staff controlled access to toilets, controlled  
3 access to toilet paper, controlled access to sanitary  
4 pads, the use of medication, again not necessarily for  
5 medical needs but to quell children who might be acting  
6 up, yeah.

7 So, I suppose, in terms of those daily denigrations,  
8 what might research really showed was that there are  
9 these mundane legacies of institutional life, as I've  
17.10 10 said, that have massively negative impacts.

11 The use of medications, for example, set some people  
12 up for raging drug habits, for example. So, they have  
13 overwhelmingly negative impacts and respondents  
14 constantly talked about the stress of being continually  
15 belittled by the adults around them, frustration at not  
16 receiving a proper education, their struggle to gain  
17 friends outside the institution, the despair in not  
18 having unconditional love, their loss of autonomy,  
19 continual feelings of insecurity, never knowing if  
17.11 20 they'll ever see their family again because some staff  
21 would say, you know, this is it now, you're in here,  
22 you'll go to another institution, then you're in prison,  
23 yeah.

24 So, all of those things have had extraordinary  
25 impacts on so many New Zealanders. And I think part of  
26 the emphasis that I wanted to make to give in writing  
27 about those things, was to detail to remember a lot of  
28 these things are still very much part of our care system,  
29 they're still part of our justice system. They're the  
17.11 30 things that may be a bit more difficult to shift, yeah,  
31 but they're very much alive.

32 Q. Thank you, Professor. The next point really, as you  
33 know, we've heard some evidence already in terms of the  
34 types of abuse and neglect and it's been very helpful to

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1 hear your evidence on that today.

2 The next part, I suppose, is the question of how  
3 this happened and how it was allowed to happen for such a  
4 long time. And I know in terms of your research you've  
5 looked at the bigger picture, in terms of the framework  
6 and the structures that allow such things to go on.

7 Could you talk us through that?

8 A. Yeah. So, the research really demonstrates that, you  
9 know, the often used arguments about apples or  
10 individuals that sustain abuse of environments is kind of  
11 out the window. Yeah, we can't take those kind of  
12 arguments at all.

13 And I think one of the questions has been around how  
14 this abuse came to be so tridently normalised, in terms  
15 of the cultures of the places and how individuals might  
16 come in and see something being wrong but nothing shifts  
17 essentially.

18 So, the structural frameworks are really important  
19 to identify.

17.13 20 Obviously, there were institutional cultures that  
21 allowed domination and violence to occur but there was  
22 also a real culture of impunity. And so, what my work  
23 really shows is just how institutions, I mean some  
24 institutions responded at times to complaints, and  
25 certain people might be moved to another institution,  
26 certain staff members might be moved to another  
27 institution or they'd be let go but often there wasn't  
28 anything on their records.

29 Some people would be - the Police might be called  
17.14 30 occasionally and some people were convicted at the time.  
31 But essentially, institutions generally ignored  
32 complaints. There was a real focus on ensuring  
33 legitimacy for institutions and maintaining the  
34 marketing, I suppose.

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1           So, what my work identifies were a few factors that  
2 really acted as barriers to abuse being detected or  
3 stopped.

4           So, the first one was at the level of the  
5 perpetrators, of adult perpetrators and how they operated  
6 effectively, so sexual offenders would groom children and  
7 give children lollies, allow children to have holiday  
8 leave and kind of protected them a little bit, and  
9 gaining their trust as a means to then abuse them and to  
17.15 10 try and ensure that they wouldn't tell.

11           And, of course, beyond that kind of grooming, there  
12 were also threats. So, some children were told if you  
13 don't do what I want you to do, then you're never getting  
14 out of here and you will not see your parents again. So,  
15 you have that level of the adult perpetrators and their  
16 techniques.

17           And then, of course, a lot of children, having been  
18 denigrated for so long within institutions, they thought  
19 well I'm not going to be believed, I'm a State Ward, who  
17.16 20 am I going to tell? Who's going to believe me? You're  
21 made out to be the troublemaker, so you're on the back  
22 foot. So, children felt, and often would self-censor as  
23 a consequence of that.

24           A lot of children also felt quite ashamed of their  
25 victimisation. They internalised their abuse. They  
26 worried about their complicity. They began to fret about  
27 their sexuality and they feared retributions, they feared  
28 punishments if they spoke. Some children, having come  
29 from families that had been violent, wouldn't necessarily  
17.17 30 even recognise the violence that they'd been subjected to  
31 in State care. It's just this is normal, a normal  
32 victimisation.

33           Beyond that, so they kind of level out from those  
34 individuals, you obviously have the issue of the narking

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1 culture. Really, institutions didn't tolerate narks,  
2 they didn't tolerate complainants. Staff would sometimes  
3 point out children who would complain about minor matters  
4 and they would see that child then get beaten. So, narks  
5 could be punished by staff and other residents, so there  
6 was that culture aspect.

7 There was also the issue that bystander staff often  
8 didn't intervene in the face of - even in the face of  
9 clear evidence of assaults. I think 45 children in the  
17.18 10 book tried to complain at the time. It's not that  
11 children were told to be silent, there were a lot of  
12 attempts to tell. Workers often told them they were  
13 lying, they didn't necessarily believe them, they blamed  
14 the child for the beating or the assault. People talked  
15 about, well, you're here because you're bad and you've  
16 got to expect a bit of a beating. What did you think  
17 this is going to be like? It was kind of that response.

18 And then on top of that, you've got the  
19 institutional protection, you know how institutions tried  
17.18 20 to stage-manage themselves as reasonable places.

21 So, people talked about how, after having received  
22 quite significant beating, that they then were taken on  
23 this odd day out and they had a lovely time outside the  
24 institution fishing, and then they kind of returned back  
25 to the institution and they've realised, oh, there was a  
26 monitoring group coming through, so they were taken off  
27 the premises, removed from the premises.

28 Other people spoke about how they knew when a group  
29 was coming through because all their t-shirts would be  
17.19 30 changed and all of a sudden they'd get lollies for the  
31 day. That kind of institutional marketing was very much  
32 in operation.

33 I suppose, all of those things, they compounded to  
34 teach children that there was no safety, there was no

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1 protection for them.

2 And added to that, that institutional impunity was  
3 upheld through the files as well. Like, one of the -  
4 certainly the worse aspect of writing the book was going  
5 through case files. They are pretty much uniformly  
6 negative, they focus on children's delinquencies, their  
7 deficits, their inability to do things, the problems with  
8 their families, their psychological troubles. There's  
9 next to nothing in case files about children's good  
10.20 10 points, about how they might be kind, how they might try  
11 and do well in their education, how they might have  
12 particular strengths or any aspect of their being that is  
13 positive is not recorded.

14 So, within that, when you have this whole system  
15 that's magnifying unruly behaviours, personal deficits,  
16 these things confirm the stereotypes of the risky  
17 children in care.

18 Added to that, of course, files rarely mentioned  
19 abuse or ill-treatment against children. Even when  
17.21 20 people were convicted there's often no record of it in  
21 children's files. So, all of these things are  
22 legitimised over decades, they legitimise the  
23 institutions.

24 And I thought one thing that was really clear from  
25 my work, was about how people become mechanical to their  
26 files. Once those Social Welfare files were in  
27 operation, you can basically track how the same language  
28 and the same stories about children are replicated from  
29 Social Welfare into Justice, Corrections, Health, you  
17.22 30 know because there's a lot of cutting and pasting that  
31 goes on across these agencies. And these stories are  
32 just built up and up and up, and sometimes you can see  
33 exactly where a narrative about an individual and their  
34 psychological deficit emerges 20, 30 years later, you can

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1 kind of track back to see whether they emerge in the  
2 Social Welfare system.

3 Of course, all those things ensure impunity because  
4 the target and the focus is on the children and what we  
5 should do to control this child, to treat them, to  
6 intervene in their families, all of those things.

7 Q. Just on record-keeping, we had an acknowledgment from the  
8 Crown at the beginning of this hearing, that the Crown  
9 hasn't always been the best record-keeper and their  
10 record-keeping was patchy. I just wondered if you have a  
11 comment in terms of whether that is or can be seen in  
12 terms of poor practice perhaps or something more systemic  
13 and deliberate in terms of the impunity that you've  
14 spoken about?

15 A. Yeah, I think certainly some institutions were better  
16 than others, I could say that. I think every institution  
17 has gaps in their registers and in their record-keeping.  
18 Some institutions basically fell off the map in terms of  
19 record keeping. You'd have kind of the Head Office  
20 saying we don't actually know what's going on at  
21 Weymouth. Like, we have not heard from them in ages,  
22 they don't file anything, apparently there's nothing  
23 going on there, they're not having anyone punished. It's  
24 just totally fallen off the map.

25 So, I think in that respect, there was at times a  
26 systemic lack of record keeping.

27 And, of course, since that time, as Cooper Legal  
28 team pointed out earlier, there's been an absolute loss  
29 in records as well. So, I think a lot of records were  
30 quickly removed, destroyed, yeah, left on sites to  
31 flutter in the wind, yeah.

32 Q. Another aspect of your evidence, and we've also heard  
33 about this from several witnesses already, is this idea  
34 of a care to custody pipeline or trajectory.

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1 A. Yeah, yeah.

2 Q. And I know that it's an important point in your book to  
3 acknowledge that obviously this is not all people that  
4 were in care and that many people in care went on to live  
5 law abiding lives.

6 A. Yeah.

7 Q. But could you talk us through what your research showed,  
8 in terms of the factors that compounded that trajectory?

9 A. Yeah. I think the book was really clear in this aspect  
17.25 10 and actually, when I went to look at the international  
11 literature later actually because I developed the book  
12 just really out of a lot of New Zealand material, when I  
13 went to look at the international literature later a lot  
14 of it is really resonate in that international literature  
15 too. There are several factors that underpin this care  
16 to custody trajectory. And what became really clear  
17 again, is that it wasn't about necessarily the actions of  
18 individual children, adolescents, adults, care leavers.  
19 A lot of these things really emerged out of the system.

17.26 20 So, the first one was around histories of  
21 maltreatment. And clearly, previously maltreatment  
22 within families or State care settings increased the  
23 likelihood of a person then progressing through to  
24 criminal justice attention.

25 The second aspect was around multiple placements.  
26 This was really significant. In my research, 71 of the  
27 105 spent time in both community and institutional  
28 placements. 42 experienced more than three placements.  
29 Some children experienced dozens of placements. And  
17.27 30 that, when we kind of think about moving house, what that  
31 entails and the stress of that, of moving and maybe  
32 making new friends in your new neighbourhood or meeting  
33 new colleagues, and then you multiply it. As a child as  
34 well, to be moved in those conditions. So, transfers

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1 remove emotional stability. Transfers meant that  
2 children felt they didn't fit anywhere, that they were  
3 unlovable, that there was nowhere where they could  
4 settle. Placement changes meant that children were  
5 continually disconnected from family, whanau, former  
6 carers, from social workers who might have been fighting  
7 their corner at a particular point in time. It meant  
8 that they could never have that educational aspect, you  
9 know, they were constantly on the move, never settling  
10 for education.

11 They stressed about fitting in, in their new home,  
12 about learning new placement rules. All of those aspects  
13 of multiple placements increases a sense of isolation for  
14 children. It increases their alienation, their  
15 insecurity, and it had all kinds of knock on effects,  
16 particularly in terms of how children then progressed.  
17 You know, they had no attachment to anything. So, you  
18 didn't have anyone to look out for you. You didn't have  
19 anyone to live a different life for as well, yeah.

17.29 20 Added to that, of course, you have institutional  
21 cultures and conditions. So, children who were in  
22 institutional care are subject to the most peer pressure  
23 of any of the group in society probably. That kind of -  
24 the level of peer pressure is so significant. And, of  
25 course, within these institutions you had a whole mix of  
26 children who were placed there, very small children mixed  
27 in with older children, children who had been removed for  
28 Care and Protection being placed alongside children who  
29 had already started to offend, you had all of that  
17.29 30 immeshed.

31 Added to that within the institutions, we often talk  
32 now about care criminalisation and how children in care  
33 are quickly criminalised for things that in normal family  
34 life they wouldn't have to deal with. Of course, within

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1 the institutions, there's a lot of surveillance, there's  
2 a lot of monitoring. What you are doing is being written  
3 down, is being recorded and is being built up as well, so  
4 there's this kind of idea every little delinquents act  
5 that you do or you're not following the rules, that will  
6 be noted and recorded. And at times you have situations  
7 where children might abscond for the day, turn up late,  
8 they weren't there at lunchtime but would turn up later  
9 at dinner time because they'd been kicking about outside  
17.30 10 but the Police had been called. So, they are an  
11 absconder, given that label of absconder, which you don't  
12 get when you're in your family home, you don't get that  
13 at all, so you become, you know, that is a delinquent act  
14 and the Police are called and then they are further  
15 marked. That criminalisation is very significant.

16 Of course, given the issues of how the institutions  
17 were criminogenic places, given the peer pressure and the  
18 use of violence and everything else, those things very  
19 much, kind of, lead children onto that offending path  
17.31 20 which is why we're seeing it so clearly in the evidence.

21 So, added to that, I think the fourth, is it fourth,  
22 issue on the care to custody trajectory is of course  
23 around social disadvantages and also psychological harm  
24 because on leaving care, children encountered and still  
25 encounter endemic disadvantages within society. As  
26 abused care leavers, the people in the book often talked  
27 about how they lacked an attachment to friends, family,  
28 whanau. These feelings coalesced with psychological  
29 harms, that responds kind of left care with long-term  
17.32 30 problems, a whole host of long-term problems from things  
31 like poor sleep and intimacy problems to being  
32 hypervigilant, not being able to be at peace in  
33 relationships, not trusting other people, using  
34 substances to self-medicate to try and block out bad

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1 memories. There's a whole host of psychological impacts.

2 And, of course, as they were transitioning out of  
3 care, as the narrative goes, you're transitioning out of  
4 care, they weren't merely transitioning, they were thrown  
5 the door and off they were, they obviously lacked the  
6 financial ability to live. They didn't have the know  
7 how. They were largely uneducated and so the story goes.

8 And so, all of the respondents talked about those  
9 long-term multiple disadvantages.

17.33 10 Children, as a consequence, often sought protection  
11 from gangs, it gave them some material comfort. 33  
12 children in the book turned to gang life aftercare, and  
13 only a handful had gone into care with gang associations.

14 And, of course, those burdens of disadvantages have  
15 been exacerbated for Maori, they have been exacerbated  
16 for Pasifika people. How those children were made to  
17 feel that Maori identify, Pasifika identities, were  
18 something to shun. All of those. They produced  
19 immeasurable intergenerational harms.

17.34 20 So, on top of that, on top of those disadvantages  
21 and harms, we've also got this idea that I pulled out in  
22 terms of how children became imprisonable. I talk about  
23 two issues here. The first one is in terms of  
24 differential all justice responses because once a child  
25 has been institutionalised, then officials are more  
26 likely to regard that child as being worthy of further  
27 incarceration. Once you have that record of being in an  
28 institution, it's seemingly more easier for people to  
29 send people to prison, and we can see this replicated in  
17.35 30 international research.

31 But obviously, if a child came before a Court as an  
32 adult, child as an adult, but if they came to the Court  
33 as an adult, they would obviously arrive in Court with  
34 very lengthy case records, again very negative files.

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1 They would arrive with this whole list of things that  
2 they were - why they were bad. So, their problems were  
3 magnified. And so, children could be given custodial  
4 sentences on that basis because of their "risk". You  
5 know, they have long histories of record, of  
6 delinquencies and criminal acts, so they're seen as a  
7 risk.

8 But they could also be given prison sentences as a  
9 consequence of it being seen it was good for their  
10 welfare because they might be struggling on the outside,  
11 they might be sleeping on the street. And actually, then  
12 it becomes a case of we'll give you a short sentence and  
13 you can have some respite in a cell, yeah.

14 So, I think those things were really clear, in terms  
15 of how that differential criminal justice responses was  
16 directed to care leavers.

17 And, of course, within the work, it became clear  
18 that previously institutionalised girls and Maori  
19 children were especially disadvantaged in those Court  
20 decision-making processes because they were more likely  
21 to be viewed as being risky and in need of further  
22 containment.

23 So, there was that differential criminal justice  
24 response. And also how children/adults became to  
25 normalise their incarceration because children also knew  
26 that they could do the time.

27 Q. Just in terms of your last point about previously  
28 institutionalised girls and Maori children, was that also  
29 seen within whanau in terms of if an older sibling had a  
30 history and that was transferred, was that something you  
31 came across in the research?

32 A. Yes, for sure. Now if we look at the risk factors our  
33 criminal justice and welfare agencies are revolving  
34 around, a lot of these things are around past sentences,

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1 previous incarceration and family connection, kind of  
2 family involvement with agencies, poverty, lack of  
3 education, like all the crucial risk factors that allow  
4 decisions, whether you're going to get community sentence  
5 or custody, you're going to have custody if you have  
6 those things ticked off. You can see those things really  
7 very, very clearly, yeah.

8 Q. And then you were going on to talk about the  
9 normalisation of incarceration as well?

17.38 10 A. Yeah because on leaving State care children felt like  
11 they could do the time. They knew what it was to be in a  
12 cell. Often children, when they got out of care life was  
13 hard, you know, a lot of people went onto the streets,  
14 they struggled. Some people preferred a cell. A few  
15 boys in the book had spent a long time in secure and they  
16 struggled to be outside, so they became really  
17 institutionalised pretty quickly. And we can see that  
18 generally, you know, in terms of how institutionalisation  
19 operates and how it develops quite quickly, even in  
17.39 20 remand prisoners actually who were on a fairly short  
21 period, it can be up to a year but who will be on a more  
22 limited time. We can see that very clearly.

23 So, I think that normalisation also propels that  
24 care to custody trajectory.

25 And, as I said, these explanations are kind of found  
26 in international studies. And what's also important, is  
27 that these aspects are also, again, reiterated in our  
28 current system, in our current welfare and criminal  
29 justice systems. Like, everything I've just been talking  
17.40 30 about are still very much alive and well in our welfare  
31 and justice systems.

32 Q. And so, what you've been talking about in terms of those  
33 risks and the way that those risks are framed and used, I  
34 know you wanted to discuss a little more about risk in

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1 terms of the way that it's framed currently and how that  
2 might need to shift. Could you talk us through that?

3 A. Yeah. I think this really has kind of emerged out of how  
4 my research has really shown that we need to be far more  
5 attentive to the risks of intervention and the risks of  
6 criminalisation and the risks of incarceration, the risks  
7 of removal, even that initial act of removal, the risk of  
8 that. Because obviously, a lot of our risk narrative, in  
9 contemporary terms, is directed towards individuals.  
10 It's directed towards family and whanau. That is the  
11 whole structure of our risk assessment processes within  
12 welfare and criminal justice spheres.

13 And what this work really demonstrated, was that the  
14 risks were not really individual risks or family risks,  
15 whanau risks. They were really directed to the risks of  
16 State action. Even State action that's seen to be  
17 benign. So, now we have, kind of, we can see within our  
18 welfare and criminal justice agencies how risks are re  
19 articulated and they can be seen as being, well, we need  
20 to do this for a child's wellbeing, we need to do this  
21 for a child's best interests, we need to do this because  
22 a child is vulnerable. Like, there's kind of sometimes  
23 quite progressive language that's wrapped over risk.

24 But what you can effectively see in the current  
25 strategies, are elements of risk across welfare and  
26 criminal justice that are essentially the same. So, if  
27 you're a vulnerable child, then you are at risk but you  
28 can also be very quickly labelled at "the risk" because  
29 your risk factors are the same.

30 So, what we can see, is that once you have those  
31 risk factors in place, the pre-emptive interventions, you  
32 know which we're kind of moving towards so clearly now in  
33 our current systems, pre-emptive interventions will be  
34 very quickly directed to certain populations. And we

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1 know exactly who they are. And that's kind of one of the  
2 reasons why we're seeing - we've seen an increase in  
3 uplifts from Oranga Tamariki that are obviously directed  
4 to Maori families. We can see them in terms of, kind of,  
5 the ways which our Criminal Justice System is being  
6 directed to pre-emptive interventions towards families on  
7 the basis that a child might offend in the future. You  
8 know, and what a lot of international research is telling  
9 us now, McCarra & McVee in Edinburgh, they are really  
10 demonstrating to us there are significant risk even of  
11 benign interventions within families, particularly when  
12 children are younger. So, what a lot of this research is  
13 now showing us is we should move away from this kind of  
14 targeted pre-emptive interventions and be really focusing  
15 on universal, developmental programs because, you know,  
16 we talk about risks and the risks of poverty but then we  
17 have this situation in New Zealand where, well, 12% of  
18 children lack seven attributes of daily life, like not  
19 having two pairs of shoes, not having a warm coat, not  
20 being able to do sports or external activities, 7% of  
21 children are in severe poverty. You know, we have those  
22 and I know our current government is attempting to deal  
23 with those things but we're also still propelling this  
24 very clear risk pre-emptive targeted approach towards  
25 particular children and particular families.

26 We can see how that's going to play out effectively  
27 in sustaining the contact between Maori and Pasifika  
28 children and families and State care.

29 Q. Thank you. I'm conscious of the time and I know that  
30 there's a final section in terms of legacies of care  
31 abuse and long-term impacts and I just wondered if you  
32 might share a couple of points from that but in  
33 particular perhaps the quote that you have at  
34 paragraph 47 of the brief question encapsulates that?

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1 A. I think the main, some of the material in that section is  
2 really detailing the psychological impacts and the stress  
3 and the lack of self esteem and all of the anger and lack  
4 of trust and everything else that care leavers emerge  
5 with. And all of that really feeds into the difficulties  
6 of disclosure. The difficulties of disclosure in just  
7 getting up here and telling people of what's happened.  
8 Also difficulties of disclosure for family and friends.

9 There's kind of whether or not you can disclose is  
10 an issue but beyond that, victims often talked about how  
11 trying to really articulate what has happened to them is  
12 almost impossible and how the language that you need to  
13 say what's happened to you, well we just don't have the  
14 language for it either.

15 So, Peter explained it very well to me. He said,  
16 "You can't get the impact of years and years of abuse,  
17 isolation, solitary confinement, stigma, degradation,  
18 self-loathing, you know, everything. You can't get that.  
19 All those hours and days and weeks of sitting there  
20 looking at walls, wondering when you're a child what you  
21 did so wrong. Wondering why people don't care about you.  
22 How you did something for the world in general to loathe  
23 you so much, you know. The nights of crying yourself to  
24 sleep and missing your family, the pain and the  
25 separation, just everything. And then on top of that,  
26 the abuse from the people that were living with you and  
27 were supposed to be looking after you. And for that to  
28 go on for years and years and years."

29 Q. Professor Stanley, there are many more questions I would  
30 like to ask but it's only proper that I bring this to an  
31 end at this stage to allow the Commissioner to ask you  
32 some questions if they have some as well but can you  
33 thank you for your evidence today.

34 **MS SPELMAN:** I should note that counsel have indicated

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1           they don't have questions for this particular  
2           witness, Chair.

3   **CHAIR:** Thank you, Ms Spelman.

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**PROFESSOR ELIZABETH STANLEY**

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**QUESTIONED BY COMMISSIONERS**

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**CHAIR:** It is then a matter of asking colleagues if they wish to ask Professor Stanley any questions. Can I commence by asking you, Dr Erueti?

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**COMMISSIONER ERUETI:** We are under pressure of time, I will keep this brief. It could be a comment actually that I'm interested in the current work, it's astonishing that even benign intervention would put children at risk. By that, include wraparound intensive services and still have this negative outcome?

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A. Yeah, I think what the evidence is showing, is that there's - what is tending to be working best are universal support mechanisms. So, where children are not in poverty, for a start but where, if interventions are made, it's at the family's request or it's been done in terms of a very - basically, it's not - there isn't an ounce of coercion in there because I think even a lot of our benign interventions are built on coercion and are built on a focus of, well, this is in your best interests and this is going to be good for you and you're going to thank us for it in the end.

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**COMMISSIONER ERUETI:** Thank you very much.

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**COMMISSIONER SHAW:** Thank you. That last question and answer resonates with me because it goes back to the beginning of your evidence when you characterise the treatment of children in these institutions in a way that I confess I hadn't thought of before, and that was you said that they were trying to make these children something. In

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1 other words, from your account or from your  
2 interpretation, it seems that you think that  
3 however horrific we feel they were doing, they were  
4 doing it to make them harden up?

5 A. Mm-Mmm.

6 **COMMISSIONER SHAW:** Deter them, stop them offending.  
7 So, in a way, that was coercive intervention as  
8 well; is that right?

9 A. Mm-Mmm, yeah, yeah. I mean, the reason why these  
10 institutions were allowed to continue as they did, was  
11 that we had narratives to explain away and to give us  
12 some comfort so we can talk about treatment or we can  
13 talk about, you know, we need you to harden up for the  
14 real world or we need to discipline you because we can't  
15 have you like this. You know, there's all these kind of  
16 different narratives that get layered over to allow us to  
17 legitimise these activities.

18 **COMMISSIONER SHAW:** So, do you think that these were  
19 like almost excuses for the way, the barbaric  
17.52 20 behaviour metered out, we did it for their own  
21 good?

22 A. Yeah, yeah. If you move away from that, then where are  
23 you going to be?

24 **COMMISSIONER SHAW:** You're completely complicit, yes.  
25 It is a very interesting aspect which I'm going to  
26 think about long and hard. Thank you very much for  
27 your evidence, Dr Stanley.

28 **COMMISSIONER ALOFIVAE:** Thank you, Dr Stanley. I was  
29 really grateful for your evidence and I was  
17.52 30 interested also around your comments around  
31 universalism. When you talk about universal  
32 programs, Plunket comes to mind as a national  
33 universal programme and I think about the lack of  
34 accessibility by certain population groups. So,

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1 when you talk about in this context I guess it's a  
2 point of clarity, when we talk about Kaupapa Maori  
3 programs and Pasifika programme that has a focus on  
4 cultural framework, would you consider those  
5 universal programs?

6 A. Of course, yeah. When I talk about universal, I'm not  
7 saying a Pakeha model, like it's universally applied.  
8 It's about more there were equitable services that are  
9 resonate and useful and all those things.

17.53 10 **COMMISSIONER ALOFIVAE:** Thank you for clarifying that,  
11 otherwise we'd just be doing what we're currently  
12 doing.

13 **COMMISSIONER GIBSON:** A couple of questions. Just  
14 following up again on the universalism, is there  
15 something about progressive universalism and is  
16 there something about opting in verses opting out  
17 that you are alluding to in terms of collusion?

18 A. I am not quite sure I get your question.

19 **COMMISSIONER GIBSON:** I suppose, are there degrees of  
17.53 20 universalism for different populations? And is the  
21 way we avoid coercion, some services are bordering  
22 on compulsory and some where you do have an opt-out  
23 option, as opposed to a sense of coercion?

24 A. Yeah. I think it's about a the whole culture of  
25 interventions that I'm thriving to drive at. At the  
26 moment, we are kind of moving into this new world of  
27 preemption, so we're identifying families, we're  
28 identifying children, on account of what they may do at  
29 some point in the future, and that is - that's seen to be  
17.54 30 the future of our interventions and seen often to be kind  
31 of this is a benign place to start. But that effectively  
32 relabels everybody and we can see how the cards will fall  
33 on those things and we will see, you know, once you have  
34 - because these things are kind of tied to knowledge

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1 systems, monitoring systems, knowledge sharing systems  
2 and so, those things are very difficult to move away  
3 from.

4 So, I think that's kind of the point that I'm trying  
5 to get at, that we're moving, even though we're moving  
6 away from a language of targeted and social investment  
7 approaches, we're still replicating a very similar type  
8 of model. And I think that's a real worry.

9 **COMMISSIONER GIBSON:** A last question, you talked about  
17.55 10 a culture of impunity mostly at an institutional  
11 level but you gave a system wide picture and talked  
12 at times about some institutions not reporting up  
13 even. Is there a wider cultural impunity beyond  
14 the institutional level or how would you describe  
15 it?

16 A. Yeah, of course because that wider cultural impunity, you  
17 weren't having institutions that were giving information  
18 upwards but also, we had very little in the way of  
19 oversight and monitoring bodies as well. So, you might  
17.56 20 have situations where there were kind of three people  
21 running around all the kind of care institutions and  
22 community care to try and monitor them. That's kind of  
23 impossible, isn't it? There was also that kind of  
24 happening at the state level.

25 **COMMISSIONER GIBSON:** Thank you.

26 **CHAIR:** That leaves me, Professor Stanley, I have one  
27 question which is partly addressed to Ms Spelman.  
28 Paragraph 1 and footnote 1 refer to Professor  
29 Stanley's book The Road to Hell: State Violence  
17.57 30 against Children in Post War New Zealand. Is it  
31 the intention that the book be produced by her as  
32 an exhibit?

33 **MS SPELMAN:** No, Sir, it's not, although I have  
34 discussed that with Professor Stanley but her

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1 publisher pointed out that would not be something  
2 he would agree to. That's why we've referred to  
3 passages from the book within the brief.

4 **COMMISSIONER SHAW:** Wouldn't be agreeable to selling it  
5 to us?

6 A. I am happy to give you some copies.

7 **MS SPELMAN:** I am sure we can make some copies available  
8 to you.

9 **CHAIR:** You can rest assured that for the Commissioners  
10 your book has been a required piece of reading  
11 before our public hearings and it will remain until  
12 the last day a central document so far as our  
13 deliberations are concerned and thanks from the  
14 Royal Commission are due to you in that regard.

15 Thank you, that brings us to the end of today.

16 Madam Registrar, can you invite Ngati Whatua to  
17 close off our day.

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20 (Closing Waiata and karakia)

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23 **Hearing adjourned at 6.00 p.m.**

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