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PROFESSOR TRACEY MCINTOSH - AFFIRMED

3

EXAMINED BY MR MERRICK

4

5 **MR MERRICK:** Thank you, Sir. I'll call our next
6 witness, which is our last witness for the day,
7 Professor Tracey McIntosh who's already seated.

8 Q. Tracey, welcome this afternoon.

9 **CHAIR:** Professor, just as we start, there is a
10 requirement of the Inquiries Act 2013 that as Chair
11 I ask you - (witness affirmed).

14.20

12 **MR MERRICK:**

13 Q. Professor McIntosh, behind tab 23 I think you've got in
14 front of you a signed copy of your brief of evidence for
15 this hearing?

16 A. That's correct.

17 Q. And can you just confirm that's true and correct?

18 A. I can confirm that.

14.21

19 Q. Thank you. With that done, just start with some
20 introductions?

21 A. (Speaks in Te Reo Maori). I would just like to take this
22 opportunity to acknowledge the Commissioners, recognise
23 the importance and significance of this work and wish you
24 great strength and great wisdom in what you are doing. I
25 would like to acknowledge specifically the survivors,
26 through your strength, through your knowledge, through
27 your expertise, through your insight, it will help us
28 navigate the path we need to go forward.

14.22

29 I would also like to acknowledge those who did not
30 survive the system and with a very heavy heart recognise
31 the damage and the devastation that the system has done.
32 I recognise those who for a range of reasons why remain
33 silent and for those that have been silenced. In terms
34 of my own work, I want to recognise all of those who are

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1 the people that have shaped and informed and enlightened
2 me and educated me under conditions of incarceration.
3 They are the experts of their own condition, they are the
4 experts that I will be drawing on in regards to this
5 brief summary.

6 Q. (Talks in Te Reo Maori). Those that have passed away.
7 To bring us back to those of us who are here today
8 present, I acknowledge your acknowledgments in full.

9 That being said, it's probably not a natural
10 conclusion to start, the step to start with, what some
11 would describe as a korero to talk about yourself. I'll
12 lead you through that.

13 A. Thank you.

14 Q. Can we just confirm for those who may not know you, those
15 who are watching, for example, on the livestream, that
16 you're currently a Professor of Indigenous Studies and
17 Co-Head of Wanaga o Waipapa, the School of Maori and
18 Pacific Studies at the University of Auckland?

19 A. Yes, that's correct.

14.24 20 Q. Formally a Co-Director of Nga Pae o te Maramatanga,
21 New Zealand's Maori Centre of Research Excellence hosted
22 by the University of Auckland?

23 A. Yes, that's correct.

24 Q. Previously, you've held roles as Head of Sociology at the
25 University of Auckland?

26 A. Yes.

27 Q. And relevant to some of the evidence that we've heard,
28 you were in 2018 and 2019 a member of the Independent
29 Welfare Expert Advisory Group established by the Minister
14.24 30 of Social Development?

31 A. That's right.

32 Q. Before moving on, I wonder if we might just pause on that
33 experience that you had because we've heard over the last
34 few days around one of the core failures, being the

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1 failure to address, I think, what some described as the
2 antecedents to safe care, namely Powhiri House and
3 Addiction.

4 Given that experience, I leave it open to you to
5 make comment around firstly the role that the welfare
6 system may have to play in that State care cycle, if you
7 like.

8 A. Yes.

9 Q. And over the page at paragraph 8 you have talked about
10 your role on ropu Te Uepu Hapai it te Ora, Safe and
11 Effective Justice Advisory Group. And the reason why I'm
12 asking this, is because you've spoken about the hui that
13 you went to around the country for both of those kaupapa,
14 so how has State care played out in those context, can I
15 ask?

16 A. If I can just look at the Welfare Expert Advisory Group,
17 particularly the report Whakamana Tangata: Restoring
18 Dignity to Social Security in New Zealand which was
19 publically released in May this year, I think that's a
14.26 20 very important -

21 **CHAIR:** Professor, can I intervene a moment to ask you
22 as you speak, to keep your eye on the stenotyper
23 but also to be aware of the signers. So, if you
24 look towards both of them, you will get the sense
25 of the pace at which you will need to keep so that
26 they can keep up.

27 A. Aroha. So, in thinking about the report Whakamana
28 Tangata, I think that report is of great significance to
29 this Commission, both in terms of its content but also in
14.27 30 terms of its recommendations. Largely that is because
31 when we're looking at the many people who churn through
32 our welfare system, churn seamlessly between the welfare
33 system and our Criminal Justice System. So, it's a
34 really important element to look at where in many parts

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1 of this country and many parts of our State agencies we
2 do transitions poorly, it is of great concern that that
3 particular transition between those two systems can be so
4 seamless.

5 So, certainly what we recognise is that when we look
6 at our people who are living in deprivation, in scarcity,
7 who encounter far greater levels of social
8 marginalisation and whose contact with the State is
9 nearly continuous but often a poor encounter, and where
10.28 10 the operating mechanism both within the State system of
11 the prisons and often through particularly an increasing
12 level of sanctions within the welfare system, means that
13 you have an operating mechanism that can often be
14 characterised as coercive control.

15 What this does to those that sit within the system.
16 So, I think that's a very significant area. As you
17 noted, we travelled, I was a member of both the Welfare
18 Expert Advisory Group and ropu Te Uepu Hapai it te Ora,
19 the Justice Advisory Group, both of those groups
14.29 20 travelled throughout the country meeting with thousands
21 of people. We had fono, we had forum, hui, throughout
22 the country, both in main urban areas, as well as small
23 areas and rural and quite isolated areas.

24 And the overwhelming sentiment that we got,
25 certainly out of those that we met from the Criminal
26 Justice System, was the emotion of grief. Interestingly,
27 probably the overwhelming emotion we got from those that
28 we encountered as a part of the welfare group, was anger.
29 And I think these are very powerful emotions in regards
14.29 30 to very significant numbers of our people going through
31 the system.

32 What it means to not - the need for the restoration
33 of mana was clear in our workings, whether it was working
34 with the welfare group or whether it was working through

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1 the justice group.

2 The recommendations that we see in Whakamana Tangata
3 are really significant, as I said, in terms of the
4 Commission work as well, in terms of the way that we
5 don't just uplift members of our communities but actually
6 how we uplift the nation.

7 Q. In the course of those hui, fono and other forums, was
8 anything said about the State of children in care?

9 A. So, it was probably one of the most talked about
14.30 10 elements, certainly within the justice one with ropu Te
11 Uepu Hapai it te Ora but also with the welfare one. So,
12 we heard, the very first hui that we went to was in
13 Hastings and the very first person who spoke to us in a
14 public forum spoke to us about, first talking about the
15 release from prison and the incredible difficulties that
16 they encountered but also in speaking to that, also then
17 spoke their history in terms of being in care. And so,
18 that was our very first encounter under the Welfare
19 Expert Advisory Group. Throughout the country, that
14.31 20 grief that I spoke about, I talked about it that what we
21 saw was a landscape of devastation, in terms of the
22 Whangai and the intergenerational reach of the disruption
23 of whanau, of the loss of children and that many of us
24 who talked about the loss of children had themselves
25 experienced State care. So, their anxiety was far more
26 heightened around their children because of what they had
27 experienced.

28 Q. In your brief at paragraph 11, you outline some further
29 relevant experience about work done in the Auckland
14.32 30 region correction facility, can you tell us a little bit
31 about that at this stage?

32 A. Yes, I've been going into the Women's Prison for well
33 over a decade now. I go in on a weekly basis. Though
34 Maori indigenous incarceration is a research area me in

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1 terms of my professional life, it is an important area of
2 research, this work is, while it informs my professional
3 life, it has been, I guess, of the most significance to
4 me personally. So, I go in as a volunteer and I run a
5 range of programs, including a creative writing programme
6 and education programs within the prison. But really
7 what it is, you know, we call it these names, it's about
8 human work. It's about what it means to be human
9 together. And I think that is the most significant part
10 of the work.

14.33

11 And without a doubt, all of my own work has been
12 informed and shaped and enlightened by working with
13 particularly Wahine Maori and particularly young Maori
14 women.

15 I have worked with some of those women since the day
16 they entered the prison, in some cases at the age of 16
17 into the adult prison, with some of those 12 years later
18 I'm still seeing the same young women who have yet to be
19 released.

14.34

20 Q. You alluded to it in your early acknowledgments about
21 bringing that korero to us today and we are privileged to
22 have that. And so, at this stage I just want to flag for
23 those that have the brief of evidence, that we will
24 depart from the order of the brief of evidence because
25 you bring real life experience of people you've worked
26 alongside and to that end, I think we could pick up our
27 korero at paragraph 60 where you talk about the life of
28 Stan.

14.34

29 A. Yes, and I'd just like to recognise and acknowledge Stan
30 Coster in this moment. Stan and I worked together for
31 6-7 years and Stan is unable to be here today. So, what
32 I will be drawing on here, he gives as a koha to all of
33 us.

34 Q. By that, you've spoken with Stan?

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1 A. I have spoken with Stan.

2 Q. He has given his approval for you to speak about his
3 story?

4 A. Yes. I am hoping that he will be watching it.

5 Q. If you are Stan (speaks in Maori). And you're drawing on
6 work that you've previously published also?

7 A. That's right.

8 Q. In conjunction with Stan?

9 A. We published together, we've actually published quite a
14.35 10 bit together and also with Dominic Andrae who has also
11 been an author on the work that we have done together.
12 And to recognise that Stan is far more than a research
13 participant. He is both author and auteur of this work.

14 Q. I leave it with you.

15 A. While Stan's experience is a unique experience, it is one
16 that's much more collective shared, so I speak about
17 that.

18 So, Stan's most ongoing intimate relationship has
19 been with the State. I think that's a really significant
14.36 20 space for him to imagine the world without the State
21 absolutely at the centre is very difficult for him. When
22 I say it's the most intimate relationship he had, it
23 doesn't mean that encounter and that relationship has
24 been a good one but it's certainly been the most
25 prolonged and sustained relationship that he has had.

26 So, Stan is -

27 **MR MERRICK:** If we can pause the hearing, please?

28 **CHAIR:** We will take an adjournment.

29

14.37 30 **Hearing adjourned from 2.37 p.m. until 3.13 p.m.**

31

32

33 **CHAIR:** Thank you, Mr Merrick, please continue with

34 Professor McIntosh's evidence.

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1 **MR MERRICK:** Thank you.

2 Q. Professor, we were beginning to talk about the narrative
3 about Stan. I just wanted to ask a question. We have
4 heard the different life stories of people in this
5 hearing. Can you comment on what some of the common
6 events in Stan's journey through State care might have
7 been or some of the common threads to that?

8 A. I think some of the areas where you see really high
9 levels of commonality for many people who have
10.14 10 experienced State care, is that often the whanau, even
11 prior to the birth of the child, has been under a level
12 of scrutiny or surveillance by the State and the State
13 has often had quite high levels of intervention already
14 within the family.

15 Like many others, gang characterised, by living
16 under conditions as I said earlier of degradation and
17 scarcity, and that a particular event in this case in
18 terms of the death of the mother which meant that the
19 children, through a change of processes were then placed
15.14 20 into State care.

21 As I said, there had already been the Department of
22 Social Welfare, as it was at the time, the family was
23 already very well-known to them, so that would not be an
24 uncommon feature.

25 So, I think we've heard this morning around
26 placement and stability, for example, and that certainly
27 is a feature of Stan's life as well.

28 There were a number of children involved. In the
29 beginning there was an attempt to keep those children
15.15 30 together, given that they had suffered, you know, one of
31 those most significant and profound losses that children
32 can have, in terms of the death of their mother. So,
33 there were some attempts made to keep those children
34 together, though within weeks that approach was

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1 abandoned, largely due to the difficulties of placing
2 children into foster care together.

3 So, very high level of placement instability. So,
4 in that first year he experienced, and this was 1969, and
5 so in that first year he experienced five placements in
6 three different geographical regions, two of those in the
7 North Island and one in the South Island. So, that was
8 also the level of movement that he experienced during
9 that time.

15.16 10 Q. How did the progression through residential homes impact,
11 for example?

12 A. It's interesting when we look at the reports. What we
13 did to try to better understand his own story, was
14 through the Official Information Act applied, given his
15 very close relationship with the State, applied for all
16 documents that had been held on him. This was a huge
17 amount of documentation.

18 So, one of the things that you can really see there,
19 and again so characteristic of this period, 1969, by 1975
15.17 20 he's a 15 year old/16 year old. So, if we follow that
21 documentation through, we see this movement into foster
22 care, sometimes into group homes, into the larger ones,
23 Epuni, Owairaka, those homes, sometimes in foster care,
24 and we see really this incredible constant escalation
25 from those homes.

26 So, the reports are interesting because they're
27 reports, nearly formulaic. In the beginning when there
28 is the placement, there's usually a quite hopeful report,
29 that this person is shy but is settling in. That's sort
15.18 30 of the nature of the first report. Then you start to see
31 the second and third report where there are concerns
32 around either behaviour, a range of different things, not
33 outgoing, not talking, not doing those sorts of things,
34 until you start to get these final reports before

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1 movement saying not settling in, disruptive either to the
2 family life of the foster home or disruptive in the
3 larger home, and then moving on.

4 In one case, there was documentation where a foster
5 family, a Pakeha foster family who had been optimistic
6 that they would be able to not so much care because
7 that's not really the language that's used in the report
8 but they would be able to control this young child that
9 had been placed with them. They seemed to be optimistic
10 that they would be able to do that.

15.19

11 The second report, not settling in.

12 Third report, finding it very difficult.

13 And the concern that they raised was, whilst they
14 did not wish to continue with the placement, they were
15 concerned that other people in the community in which
16 they lived would think they were not able to control a
17 Maori child.

18 And the Department of Social Welfare response to
19 that in the report written was that they understood those
20 concerns and that the placement would be out of the
21 community. And so, there we got the sense that the
22 concerns of the foster family were more important than
23 the concerns around a 9 year old child.

15.19

24 And so, we have heard about the sort of dehumanising
25 element of children not really having their rights as
26 children to be children and cared for, and where the
27 adults and adult needs were much more likely to be met
28 than the needs of the children. And so, we see this
29 movement through into different forms of care facilities
30 and with higher levels of constraint and surveillance
31 being a characteristic of those movements.

15.20

32 We've heard over the Contextual Hearing about the
33 use of Secure Units and this is also a characteristic of
34 Stan's story, so much so that by the time he had moved up

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1 through into the prison system, Secure Units were by far
2 the most familiar, and indeed - familiar places for him
3 and indeed the places that he sought.

4 So, within the brief of evidence, it does talk about
5 that first time going into Epuni Boys' Home, for example,
6 into the secure unit, the types of induction practices,
7 particularly the cleansing rituals that he went through
8 which again has been characteristic of many of the
9 stories that have been heard and I'm sure will be heard
10 as the Inquiry continues.

15.21

11 Q. Just one final topic, if you like, before you move on to
12 your work with women in prison. How has that system
13 played a role in gang affiliation, gang membership, from
14 that narrative that you were talking about just then?

15 A. So, here particularly looking at my research, which looks
16 at the State's role in gang formation and just how
17 significant the role the State has played, particularly
18 in the early formation of the gangs. So, if we think
19 about 1975 as a particular, sort of, apex year in regards
20 to you've got within the youth resident system 80% of the
21 young boys are Maori during that time, you know, you see
22 how important, particularly Epuni Boys' Home but
23 certainly not only that boys' home, how significant that
24 was in terms of gang formation. The very early members,
25 the vast majority had gone through that home or through
26 other homes. And certainly, again, with Stan's
27 narrative, that is a significant feature as well.

15.22

28 The roles of being alienated, of being marginalised,
29 of being in what, you know, were called forced
30 association with others, in many cases completely removed
31 from their own whakapapa, completely removed from their
32 own place, their own whenua, and the types of solidarity
33 that we have. There is a brief of evidence what that
34 means in terms of the new forms of collective that were

15.23

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1 formed during that period.

2 So, I think that the State's role in gang formation,
3 particularly in early gang formation, is incredibly
4 significant and cannot be overstated.

5 Q. Can we now turn to paragraph 89 of your brief of
6 evidence, unless there was anything under that heading
7 that you wanted to touch on before you go there?

8 A. What I guess I'd just like to stress, is around this
9 transition. So, from a child who was put formally into
10 State care as a 9 year old in 1969, that the next
11 30 years, the next 30 years would be characterised by
12 being totally institutionalised, either through the home
13 system or through the prison system. And in fact on the
14 day where the State extinguished their obligations as
15 guardian and as parent, was the day that he entered into
16 the adult prison system. That's how seamless that State
17 engagement was.

18 And so, this is someone who has then spent 25 years
19 within the prison system, often for relatively short
20 lags, though there have been some significant ones in
21 there as well. And so, you think of that child, that 9
22 year old child, experiencing the most profound loss,
23 having already suffered significant hardship prior to
24 being put into State care, and that any aspiration that
25 he had, in terms of the qualities that had been
26 identified and recognised, you do see some of those in
27 the reports, that they were quashed and they were
28 squandered. It has completely marked the trajectory of
29 not only his life but the broader whanau life and there
30 has been intergenerational impact.

31 Q. In your brief of evidence, you talk about an
32 intergenerational impact, particularly as we should
33 discuss it around the role that gender has to play and
34 the reach, and that's probably a good point to pick up

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1 your korero about the work that you do with women in
2 prison, and so, if we can move to that topic.

3 A. Yes. Just looking at the brief in paragraph 89, I just
4 note that the really distinguishing feature of
5 incarcerated women is this really strong common
6 histories, common characteristics. One of those very
7 common characteristics is around trauma, certainly much,
8 much higher than you'd find in the general population.

9 Our men who are also incarcerated have extremely
10 high levels of trauma as well, much higher than the
11 general population but for women it's very marked. Very
12 high levels of victimisation particularly around violence
13 and sexual violence, that is an international trend we
14 see. ~~Also~~Also, just to note that incarcerated women are
15 much
16 more likely, much, much more likely than the general
17 population to have been in State care and to have
18 suffered abuse within the environment of State care.

19 In terms of the intergenerational reach, what we
20 have seen in New Zealand is incredibly, as we know, we
21 have a very common social statistic that we're very
22 familiar with, which is on the one hand very high
23 incarceration rate and particularly the gross
24 proportionality of Maori within our prison system. And
25 what we've seen over the last 10 years is the incredible
26 increase in terms of Maori women's incarceration.

27 So, while, for example, Maori men make up around 51%
28 of the male prison population, women make up, Maori women
29 make up around 63% of the women's prison population. If
30 you disaggregate that for age, particularly looking at
31 from say 16-25, it is far higher.

32 So, the intergenerational reach of that, the impact
33 of having such high numbers of Wahine Maori in prison is
34 incredibly significant.

There is much less research done, there's quite a

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1 lot of research on the impact of having a father in
2 prison for children. There's much less research on
3 having a mother in prison. But what research has been
4 done, and my own research would support this, is that the
5 impact on children is so immediate.

6 So, certainly it is not a good thing to have a
7 father in prison, the damage is severe and sustained.
8 Having your mother in prison, as I said, the impact is
9 much more immediate. Women are much more likely to be
10 the sole carers or the primary carers of children and so,
11 on an arrest, for example, it is much more likely that
12 there will be disruption for those children immediately.
13 It's much more likely that they will be uplifted if they
14 are unable to find family members to take them. So, you
15 have a much more immediate impact with women being in
16 prison.

17 Because I've had a particular focus on young women
18 or young Wahine Maori in prison, many of them who have
19 yet to be mothers, then there's some other really
20 interesting work around what that means and the impact of
21 those people who become mothers after they've already
22 experienced incarceration. As I noted, in most cases
23 they've also experienced high levels of State care.

24 Q. You've talked about the impact of having a father in
25 prison. Do you have some experience to draw on with
26 those you have worked with, other women for example,
27 around the disruption to internal whakapapa?

28 A. That has been a really significant feature, is how many
29 of the young women I've worked with. It's an interesting
30 thing. Most of the women I've worked with, in fact
31 nearly all of them, they know their whakapapa, they know
32 where they come from. Some of them actually have been
33 quite involved in their marae life. Many of these very
34 young women come from small town New Zealand.

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1 But when we have done whakapapa work, when we're
2 sort of doing that as part of the work that we do, very
3 often they're not able to - they don't have the same sort
4 of access to their whakapapa through their father's side,
5 and this is when a lot of those issues actually come out,
6 when they realise because their father was absent, that
7 their father was in and out of prison, that they had not
8 really had an ongoing sustained relationship with their
9 father.

15.32 10 And sometimes this was most apparent in regards to
11 their names because when they came in, they know their
12 name. Often had the most beautiful whakapapa names, both
13 first names and in their last names. Often I would talk
14 about that name and a very common response was, "Yeah,
15 that's my Dad's name, I don't know much about that side
16 of my family". And so, that disruption, so that part of
17 their whakapapa has yet to be revealed to those women.

18 Q. A parallel korero about disruption, actually no it links
19 to whakapapa because that ties you to a place. Has there
15.33 20 been some experience that you've had around disruption of
21 place as a result of State care and prison context?

22 A. Yes, particularly for where young girls are placed. As
23 we've seen, a vast majority of people who have been put
24 into care have largely been young boys, often there are
25 far less placements for young girls, so they're much more
26 likely to be at some geographical distance. It's the
27 same with the prisons, we only have three women's
28 prisons, so that continues that same continuum.

29 So, that loss of place has come up as really
15.34 30 significant in terms of the women's lives.

31 One of the things, if you will allow me to - one of
32 the things that we often do when the young women come in,
33 is I'll have a map of New Zealand, I tell them show me
34 all the places that you've lived on this map. And it's

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1 an interesting one because it allows, if there is any
2 sort of issues around whakapapa, often if they sort of
3 say I was here, that's where my Nan was, you know, you're
4 able to get that sort of sense, usually they know that,
5 so they're able to show where they're from in terms of
6 where their whakapapa lines are from and also where
7 they've lived. In some cases, you might see a high
8 alignment from where they live to where they whakapapa
9 to.

15.34 10 One of the really interesting things, is because due
11 to placement, State care placement, just where they are,
12 all over the place. So, for some very young people who
13 come to prison under 18, when you see how many places
14 they've been placed in, nearly all of them excluded from
15 the compulsory education system, as I note in my brief of
16 evidence, by 13 and yet have been to up to 25 schools and
17 yet have been excluded from the compulsory education
18 system by 13.

19 The first time it happened to me, yeah, it really
15.35 20 marked me. We were doing this particular piece of work
21 and there was quite a number of young women who I was
22 doing it with. We were doing it as a piece of group
23 work. And one of the young ones was explaining all of
24 her places that she had lived. And they were in common
25 with many of the other girls because they'd been in the
26 same homes together. And I noted, we were in Wiri, at
27 the Women's Prison in Wiri, and I noted that she hadn't
28 put Auckland or even Manukau, she hadn't put a mark on
29 it. And I said to her, "You haven't put Auckland on it?"
15.36 30 and she just looked at me and she went, "Oh no, I've
31 never lived there" and yet here we were on that whenua in
32 Auckland and that young girl was going to be there for
33 quite a number of years and yet she had never lived
34 there, and it really made me think about what it means to

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1 live.

2 Q. You've also talked about some Maori women who experienced
3 abuse in State care and their thoughts to their own
4 children. Did you want to comment on that?

5 A. So, certainly one of the most pervasive narratives that
6 I've heard from the women who are incarcerated is around
7 their stories of abuse in State care and the level of
8 anxiety for those that are now mothers who have, in turn,
9 their children in State care, the level of anxiety and
10 stress and ongoing trauma that that produces. And the
11 reason that it produces such a high level of trauma, is
12 because of their fears and their expectations that their
13 child or children will be harmed in State care.

15.37

14 And ~~unfortunately~~unfortunately, because I've been
15 going in there such a long time, there have been far too
16 many cases where that has been confirmed, where their
17 children have been harmed in State care.

18 Q. As part of that, what have you come to know for some
19 about the role State care has had to play in their
20 parents' or grandparents' lives?

15.38

21 A. As noted in the brief of evidence, in many cases their
22 parents of the young women that I've had, their parents
23 have experienced State care and in some cases their
24 grandparents have experienced State care.

25 And so, what that means, in terms of their own
26 expectations around family, their own understandings.
27 It's interesting because their desire to have
28 flourishing, beautiful family life is constantly
29 articulated and that is constantly against the idea of
30 the real fear that that is impossible to realise.

15.39

31 Just very recently, only in the last week, I spoke
32 to a young woman who will be released some time in the
33 relatively near future, who is hoping to be able to, from
34 her point of view, rescue not her own children, she has

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1 not had children yet, but that she hopes to be able to
2 rescue, using her words, her whanau members, in one case
3 her sister's child, in one case her first cousin's
4 children, from State care.

5 Having to talk about the very significant
6 difficulties she's likely to encounter in trying to take
7 those children into her care was quite a difficult
8 conversation to have.

9 Q. Before we - I have a couple of questions left around this
15.40 10 korero that we're having about the work you've been doing
11 with Wahine Maori in prison. The first is, I understand
12 you've brought a piece of creative writing that you would
13 like to share with us?

14 A. Yes.

15 Q. I think this might be an appropriate time to do that
16 before I ask the last question about this subject.

17 A. If I could just give some context for this work. Again,
18 I did speak to the young woman prior to coming in here,
19 saying that if the opportunity was afforded, would it be
15.41 20 all right for me to read one of her poems, and again she
21 gave that she really would love and really wanted to be
22 able to bring some element of her experience to this
23 place. That at the moment she's not in a position to be
24 able to speak directly to the Commissioners and to
25 others, and so that is really important to bring that
26 lived experience within this group.

27 AgainAgain, to give context of someone who entered
into

28 the system, both the State care system and into the
29 prison system at a very young age, who has done her
15.41 30 growing up within that environment, so she has grown up
31 under conditions of confinement, containment and
32 incarceration. I've chosen one, it was very difficult to
33 choose which one, an incredibly talented poet and this
34 poetry has been read in a whole range of places and she

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1 goes under the pseudonym of Maia. It was difficult for
2 me to choose one that I thought for the Commissioners
3 that would capture it. You can see there is a
4 significant amount of work here. There's two lines in
5 this one that I think are really significant for the
6 Commission.

7 So, again, someone who early, real characteristics
8 of this young woman's life, very unique and specific to
9 her but certainly part of a much more collective
10 15.42 experience as well, excluded very early from the
11 compulsory education system, experienced great levels of
12 social harm and the tragedy of the ~~nm~~ going on to
13 perpetrate harm against others. And in no way wanting to
14 trivialise or underestimate the harm that she recognises
15 that she has caused herself.

16 So, I've chosen this poem she gave me, I've chosen
17 this poem. The poem is entitled "Misery so pure". I
18 also read this poem at the Maori Justice Hui Inaia Tonu
19 Nei in Rotorua for some of the same reasons.

15.43 20 "Broken hearts fear the loudest.

21 A prisoner in tears.

22 A scene surround us.

23 Broken bones can always heel but words seep in,
24 painful to feel.

25 Trapped souls struggle in the arms of hell but in
26 this cell the walls never tell.

27 Broken dreams reveal a forgotten call, yet a scream
28 doesn't seem to be heard at all.

29 Surrendered in the heart of hate, the Devil inside
15.44 30 never turns up late.

31 Broken roads lead to a complete end, a prisoner's
32 journey is always just around the bend.

33 Living life only to die inside the broken and
34 tainted heart I hide.

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1 The worse thing in life that you will never see, is
2 being captured, having never been free".

3 The deepest and the darkest places to be. Waiting
4 for the system to release me. Killing all innocence and
5 hope but not the pain or the mess devastation caused with
6 only me to blame. No-one to love. No-one to hear. The
7 passion and the addiction to fear. Awaiting for life to
8 begin and start, this was the journey of my heart. In
9 the end, what more is left? To live in hell, what then
15.45 10 next? To re-create the cell whenever I'm near but I'm
11 still breathing and I'm still here".

12 Q. Kia ora. That leads me to my last question which is two
13 things; one relating to resilience and the other talking
14 about hope. Do you have some comment from your
15 observation about the resilience of the people that
16 you've worked with?

17 A. An incredible level of resilience, a resilience that has
18 been borne out of struggle and torment. An incredible
19 potential to flourish. For me, in many ways, it is a
15.46 20 social indictment that the incredible potential that I've
21 been able to recognise, to see within the prison, is
22 recognised, it goes behind the wire.

23 What types of intervention, and we have heard some
24 of that this morning and certainly the Inquiry has heard
25 of it, the Whakamana Tangata report speaks to it, the He
26 Waka Roimata report speaks to it, as those early
27 interventions, the way at the community level, at the
28 hapu level, the types of things that we're able to do to
29 allow lives to truly flourish.

15.46 30 So, the potential, certainly these women have real
31 aspirations but they're also social realists. They
32 recognise just how difficult their path on release will
33 be but they have hope, and I think that we have an
34 obligation, a cultural obligation, and a moral

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1 obligation, and a social obligation, and a political
2 obligation, to ensure, through the work of the Inquiry
3 and through the work of all sections across government,
4 that this work is not just the work for those that have
5 been damaged in State care, it is the work of the nation.

6 Q. Whilst speaking about obligations, do you have any
7 comment to add Te Tiriti o Waitangi as forming part of
8 that or not?

9 A. I think it's incredibly significant and certainly when we
15.47 10 travelled up and down the country, that was also one of
11 the - we heard that wherever we went, particularly in
12 smaller communities, small town communities, around the
13 need to really recognise. And my brief of evidence and
14 of course Moana Jackson and Kim Workman and others have
15 spoken to this far more eloquently than I can around the
16 ongoing impact of colonial policies, the need for a true
17 partnership, we saw that in the Inaia Tonu Nei report,
18 the really important need for that. So, I think that
19 does have to be absolutely central. The restoration of
15.48 20 mana and the ability to live life of dignity, a life of
21 knowing who you are. And, as I often say, the right to
22 not only know who you are but to know why you are, where
23 you are.

24 Q. Finally, did you have by way of summary any hopes to
25 share for this Inquiry?

26 A. And in this one I would like to read from the brief of
27 evidence, if I may.

28 I believe the work of the Royal Commission of
29 Inquiry into abuse in care is of critical importance in
15.49 30 acknowledging the harm that was done to children and the
31 intergenerational reach of that harm.

32 Recognition of that harm and the validation of the
33 lives of those that experienced it, is needed as
34 determining the appropriate redress.

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1 Restoration of mana, of the people who have been
2 harmed through emotional, physical, psychological,
3 sexual, verbal, institutional and cultural harm is
4 crucial.

5 While the Royal Commission of Inquiry into abuse In
6 Care has a specific time-span, many of the young women in
7 prison who have experienced abuse in care sit outside of
8 this time period. There needs to be recognition of the
9 ongoing damage that is being caused.

15.50 10 As noted elsewhere in the brief, in too many cases
11 those who experience State care follow in the footsteps
12 of their parents and even their grandparents.

13 In order to ensure that harm is not repeated, we
14 need to be honest with ourselves and understand the
15 critical role that colonisation and racism have played in
16 establishing systems which in turn have allowed abuse in
17 State care settings to continue.

18 In listening to and understanding the voice of
19 survivors and their whanau, there must be a development
15.50 20 of strategies and an implementation that safeguards the
21 rights and the mana of the child, that recognises how
22 valuable they are, that cherishes and upholds the concept
23 of mokopuna tangata, that ensures connection to whakapapa
24 are revealed and nurtured, that understands whanau and
25 hapu settings and works towards collective security and
26 flourishing of all whanau.

27 The abuse of our children in State care is one of
28 the darkest, one of our darkest chapters. In bringing it
29 to light and not turning away from the devastation that
15.51 30 was caused, we can seek to restore those lives and ensure
31 that future generations thrive. Whether a child is in
32 the care of their immediate whanau or in the care of
33 others, that child should benefit from the knowledge that
34 they are loved, wanted and vital for our collective

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1 future as a nation.

2 I think just one thing that I'd like to add here, is
3 with Stan we collected his story from his own
4 recollections obviously but also from the incredible
5 level of documentation that was held by the State about
6 him. When he read through those documents, he saw
7 rationales about his placement, the shifts, his
8 transitions, that he had never, as a child, had access to
9 or been afforded of. He never knew why things happened
10 to him when they happened to him when he was very young.
11 So, I think it is very important as a part of the
12 Inquiry, that we see the absolute need for people who
13 have been placed in State care to be able to access all
14 of their records and that that access to those records is
15 without financial cost and the support is in place to
16 allow them to be able to navigate what is often very
17 difficult systems.

18 **MR MERRICK:** Thank you for that.

19 **CHAIR:** Thank you, Mr Merrick, thank you, Professor.
15.53 20 Have you been given notice by any counsel?

21 **MR MERRICK:** No, I haven't, Sir.

22 **CHAIR:** I take it then, there is no wish to address any
23 questions by counsel to Professor. Can I then
24 invite my colleagues, if they wish to ask any
25 questions of Professor McIntosh.

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PROFESSOR TRACEY MCINTOSH

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QUESTIONED BY COMMISSIONERS

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COMMISSIONER GIBSON: No questions, thanks for your
evidence.

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COMMISSIONER ALOFIVAE: I have a number of questions but
you have so elegantly actually framed a lot of the
responses in your brief.

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If I could just ask you a question around the
early interventions, what would those look like
practically? I think as a nation we're very good
at describing what the problem is and so to move to
the next level of what could possible solutions
look like, any comments on that?

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A. Commissioner, I really think that the solutions are very
much within our communities. I believe, having travelled
around the country, I have listened to many of them. And
many of them are very much place based. One of the big
issues, and we have heard it in other parts of the
Inquiry as well, is around what resourcing would need to
look like, what the shift would need to look like.

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At the moment, I think that many of our State
agencies' resourcing and contracting of these things;
one, often they're near colonial in terms of the
particular practice of them. The sorts of KPIs that are
important to the State may not actually produce really
strong outcomes.

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One of the really important elements of early
intervention where the need is necessary, is it's ongoing
engagement. I think that's a really important element.
We often have contracts that are for 6 weeks, 12 weeks.

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1 Mr Taito the other day talked about 501, for example, and
2 that's an excellent example of people returning from
3 Australia back into New Zealand, often with very, very
4 few familial or social financial connections here and
5 contracts that allow between 3-6 weeks of work with them.
6 They're criminogenic. If we think about something like
7 steps for freedom, what people are released with, \$350 if
8 they meet the very difficult criteria, you think if
9 you're released into Auckland, Hamilton, Wellington, but
10 frankly if you're released into our smaller towns, again
11 I believe they're criminogenic.

12 What we heard was around the types of interventions,
13 particularly if I'm speaking within Maori settings,
14 around the need for the hapu particularly, their ability
15 to identify those that can make the most sustained
16 positive engagement in their broader whanau's lives.

17 In some cases, certainly what we're looking at is,
18 rather than really individualised care, the importance of
19 collective care. But, you know, the issue of poverty,
20 the issue of insufficient income, is a very significant
21 one. It's not enough all on its own but it is
22 significant. People are living lives of real desperation
23 out there and the impact on our children is incredibly
24 marked.

25 So, I do have confidence that we do actually have
26 much of it. I think that, here I'm speaking in much
27 more mywide policy sort of space, that we do look for
28 collective impact and that's a really important element.

29 That we do need to recognise, we do need to
30 truly test things and that there will be failures. I
31 believe in a fail fast philosophy where you have high
32 accountability, high transferability and a high trust
33 environment. Trust our people and resource them.

34 **COMMISSIONER ALOFIVAE:** Thank you very much,

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1 Ms McIntosh.

2 **CHAIR:** Thank you.

3 **COMMISSIONER ERUETI:** I just want to ask about the
4 numbers of Maori women in prison and how did it
5 escalate so quickly over recent decades?
6 Professor, Dr Jackson was here just recently
7 talking about crimes of poverty, are you able to
8 help us unpack that to explain what has happened?

9 A. Certainly what we see here does follow ~~inter-~~
10 nationalinternational trends, which is also very
11 concerning. And I can remember
12 having this question asked about 12-14 years ago in the
13 United States with a very well-known international
14 criminologist, American criminologist, and he was
15 explaining the incredible increase of African American
16 women in the prison system there. Someone asked a very
17 similar question, you know, why is this happening? And
18 he answered very off-the-cuff, in some ways taking light,
19 he says they're running out of men. But then he did, he
16.00 20 said, no, there is something in that, in regards to when
21 you have a group that is targeted and marginalised, that
22 it's likely to expand and that there is some escalation.

23 I think we do have to recognise, I talked about the
24 State's role in gang formation and to recognise that many
25 of these young women have grown up certainly in
26 conditions of deprivation but also often within strong
27 gang associated whanau. Here, I am in no way doing a
28 blame the gangs one. I am just more broadly saying about
29 when you marginalised fathers and mothers and where the
16.01 30 gang member becomes an important space of collectivism
31 and then children are brought up in that, then they're
32 likely also to experience sometimes even harder level of
33 marginalisation that others had. So, that is another
34 feature.

The exclusion from the compulsory education system

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1 is just such an incredible feature common characteristic.
2 So that, of all of the women that I've seen between 16
3 and 18 entering the prison in the last decade, I've only
4 had one that wasn't excluded, only one that wasn't
5 excluded by 13. Some had been excluded as young as 6
6 from our compulsory education system. So, that's an
7 incredible characteristic. It shows the strength of the
8 schools to be able to mitigate issues around poverty and
9 marginalisation but it also shows that the exclusion from
16.02 10 that is important.

11 The other thing is the incredible care to custody
12 pipeline. So, we often talk about the soft pipeline and
13 the hard pipeline, and the care to custody pipeline is
14 certainly a part~~den~~ of the hard pipeline. So, 83% of all
15 young Maori who come into prison young have been in State
16 care. The vast majority at the time of arrest, the State
17 was the parent. So, those sorts of features. I mean, we
18 still have, you know, so we've got a statistical absolute
19 blowout, you know. Overwhelmingly, our prison population
16.03 20 is still male. Men make up 92% of the prison population.
21 But in talking about that 8%, you know, when you think
22 about when Moana Jackson wrote in 1988 about how many
23 women were in prison there compared to now, it's an
24 astonishing, astonishing increase and that they're so
25 young, the vast majority under 30, very, very young.

26 **COMMISSIONER ERUETI:** Kia ora, we were struck by that
27 exclusion from ~~of non~~-compulsory education at such
28 a young age and young women coming through the
29 prison system. I wondered too whether because
16.03 30 we're hearing so much about stigmatisation and
31 stereotyping ~~of about~~ people with disabilities,
32 Pasifika Maori and children generally and about
33 whether you can see that having a role here with
34 Maori women too about them being stereotyped and
about them in ~~ma~~ternalising stereotypes and that
having a role

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1 the way that the State sees them, whether the
2 schools or Police or Child Welfare Officers?

3 A. Certainly one of the things I mention in the brief is
4 that for the women their first experience of
5 incarceration is not their first experience of
6 confinement or of much the prison. So, the experience of
7 prison has largely been through other whanau members,
8 i.e. the fathers and mothers. But that experience of
9 confinement, that line in that poem which came through,
16.04 10 "The worse thing in life that you never see is being
11 captured having never been free". Incredibly high levels
12 around confinement and other elements.

13 So, the stigmatisation at the broader whanau level
14 and the particular stigmatisation on young women,
15 particularly those who have experienced high levels of
16 violence, including sexual violence, some of that
17 violence and sexual violence being under conditions of
18 State care. There is
19 a high level of internalisation and recognition of each
16.05 20 other.

21 I've sat at tables when we're sitting around and
22 people are sharing, these are young, young women, for me
23 as an older women they're children, sharing stories of
24 real horror and no-one reacting to them, no-one reacting
25 to them, because these are the common stories that
26 they've heard.

27 And, in fact, I remember one woman, actually she was
28 an older woman, and in all of these times when we were
29 working together, working on a creative piece actually,
16.06 30 she kept talking about the terrible things that had
31 happened to her when she was 9 years old, she kept
32 repeating around, and in saying in some detail what had
33 happened to her at 9 years old. And one of the other
34 woman just became frustrated by it and she said, "We've
all had a 9 years old". You know, that
experience that she

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1 was saying, you think it's unique to you, it's not.

2 So, I think that's a very significant feature when
3 you see such high levels of victimisation within the
4 group that you're working with.

5 The issue around health, healthcare, around living
6 with disability, it is also much more heightened and
7 marked with this group of women.

8 **COMMISSIONER ERUETI:** Kia ora, Professor. You also
9 spoke about, my colleague Sandra Alofivae asked
16.07 10 about solutions and interventions, you talked
11 about a localised response and that seemed to be a
12 common theme that came through the criminal
13 justice first reports.

14 In tandem with that, there's also that high level,
15 Maori working in partnership with the State, in
16 terms of the framing policy and law. Is that
17 part of, do you see that as part of this package,
18 if you like?

19 A. I do think this is the work of the nation, I absolutely
16.07 20 think that's an important thing. You know, the need for
21 a really, you know, about what mokopuna ~~mana~~ tanga means
22 for us as a nation. The belief that our
23 children's children will flourish. That we have to have
24 confidence in believing it. I think that one of
25 the things that I'm sure as Commissioners that you
26 constantly come against is, you know, when I was
27 listening to Dr Sutherland's evidence last week, how
28 could we treat our children like this? How could we treat
29 our children like this? Children should not be
16.08 30 vulnerable. Children should be valuable. And I think
31 there's something as a nation.

32 One of the things when I was with Professor Jonathan
33 Boston who Co-Chaired the Expert Advisory Group on
34 solutions to child poverty in 2012, one of the things in
the forum and the hui and those other things that we did
for that work over that year, was the incredible high

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1 tolerance we found amongst good people for children to
2 live in poverty. That people were frightened that in
3 supporting our Tamariki, that we would reward bad parents
4 and that they were willing to let children suffer, rather
5 than to address the issues of poverty because of a
6 particular frame that they had around poor parenting.

7 So, there's something that we need to, in the psyche
8 of the nation, we can't keep saying this is a great place
9 to bring up children until every child in this country
16.09 10 says it was a great place to grow up.

11 So, I think that's at that much broader level.
12 That's why I talk about the deep profound honesty that we
13 need to have, that this was systemic, that it has gone
14 across decades and continues today, and that it is
15 sustaining this incredible negative legacy. That we have
16 the power. I believe as a nation we can be absolutely
17 global leaders in regards to our policies in terms of our
18 child and childcare. And the will is there and the
19 people are good but we just, you know I used to say we
16.10 20 have a high incarceration rate. It's not just that we
21 are tolerant of having such a high incarceration rate but
22 we have an enthusiasm for it.

23 I think that enthusiasm is waning. I think we're
24 truly in a time where people are looking for shifts and
25 changes, that we recognise 4.5 million people we 're there
26 ~~an~~ excellent pilot study for the rest of the world.

27 This Inquiry can show real
28 leadership in terms of how we want to see ourselves as a
29 nation and truly, I believe that our children, and it's
16.11 30 not just that they're our future but it's the mark of the
31 nation and the way that all children are treated, and
32 particularly those children who live on the margins. Kia
33 ora.

34 **COMMISSIONER ERUETI:** Kia ora, Professor.

COMMISSIONER SHAW: I just want to ask you about one

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1 area of our work. I am very grateful for what
2 you've just said about the high level systemic
3 matters. The Commission is also required to look
4 into redress and what we have also been referring
5 to as restoration, and that comes to - there two
6 levels of that, of course there's the higher level
7 and then the individual level.

8 I'm struck deeply by your reference to the lack of
9 access to education, the denial of education, the denial
16.12 10 of health, the denial of security. I don't expect you to
11 answer this right now, unless you are already on top of
12 it, but speaking to your women, your Wahine, do you have
13 a sense of what the State could do, even in a small way,
14 to give some redress for the individual hurts that they
15 have suffered and the damage that they have suffered?

16 A. I mean, one, I'm always taken by the generosity of the
17 women I've worked with given the difficulty of their
18 lives and they truly are already thinking of that next
19 generation. They do not want the next generation to
16.12 20 experience the things that they've experienced. That
21 shows the generosity of spirit.

22 Certainly education, without a doubt, has been - I
23 said the work that we do is human work but it is around
24 learning together. And whilst the women, they're
25 excluded from schools so early, and often their schooling
26 experience was not a good one, and yet I see that
27 flourishing, the opportunities, when those opportunities
28 are provided.

29 So, I think education is an incredibly important
16.13 30 element of thinking about as part of the redress.

31 There will need to be an Inquiry as part of this,
32 the education for the nation that this is happening. I
33 think there is that redress.

34 In broader sense of compensation, whatever that

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1 might look like, the restoration of mana seems to be
2 central in all of the korero that I've had with people
3 individually and in groups.

4 And in some ways, I think that compensation will
5 probably be most beneficial at the collective level,
6 though there will be instances where the individual
7 redress is seen as important.

8 If I think about things like ACC sensitive claims,
9 for example, I'm not saying that is the model but it is a
10 model that could be reflected on and thought about.

11 **COMMISSIONER SHAW:** That is a model that has monetary
12 compensation but also provides ongoing support and
13 counselling, whatever is required?

14 A. That's right, yes. And also, and the other thing, I
15 guess, with the ACC model, which is at the moment
16 different than what we would see in terms of say with
17 WINZ, is that the ACC model, in terms of injury, provides
18 access back into workplace support for getting types of
19 work, all of those things. So, sustainable livelihoods
20 is a very important part of a redress system, education,
21 sustainable livelihoods, the ability to live one's life
22 as Maori, as Pasifika, as whatever we are, be able to
23 live our lives as that, to live lives that allow dignity
24 and allow full participation in your community. I think
25 those are very significant areas and these are complex
26 ones for us as a nation to deal with.

27 When I think about the \$1.2 billion that we
28 presently spend on incarceration, we heard this morning
29 around if you had early intervention, particularly around
30 a range of issues, you know, what this would do for adult
31 and adolescent engagement, and I think we can see the
32 same things here.

33 We spend \$1.2 billion every year. Think about what
34 the Treaty settlements are. You know, supposed to be

1 full and final. That's redress and supposed to be
2 flourishing of an iwi. Think about what their quantum is
3 compared to what we're spending every year in locking up
4 our people and largely locking up Maori.

5 So, it's not that we don't have the levers. It's
6 the need to have the courage, conviction, consciousness
7 and the will, including the political will, to make those
8 changes.

9 **COMMISSIONER SHAW:** I apologise for saying that you
10 might not have been prepared for the question. You
11 plainly are. Just to let you know that the
12 Commission will of course be diving deeply into the
13 issue of redress into the future and if you want to
14 continue thinking about it, we would be very
15 interested to hear from you perhaps at a later
16 stage in our deliberations. Thank you very much
17 for your evidence.

18 **CHAIR:** Professor, I am the last of the Commissioners to
19 have an opportunity to ask you a question. I'm
16.17 20 grateful for the wide furrow that's been created by
21 my colleagues. I find the last five paragraphs of
22 your statement and the poem which you read both
23 provocative and compelling. And I have listened
24 carefully to the answers you have given to my
25 colleagues. And there is, surely, a huge challenge
26 in front of the New Zealand community to deal with
27 the problem you have laid out so eloquently.

28 My mind can't get over the unhappy juxtaposition
29 that there is when one drives out of Trentham and you go
16.18 30 past the mothball Central Institute of Technology which
31 is not being used, a multi-storeyed education facility,
32 and you drive on to Rimutaka Prison with its razor wire
33 and electronica, where hundreds of people, many of them
34 Maori, are incarcerated. That juxtaposition has, for a

1 long time, sat unhappily with me and I think that your
2 challenge about needing to educate those people who are
3 in care and in custody is one of the things which ought
4 to be a legacy of this Royal Commission. I hope I make
5 it obvious that I join my colleagues warmly in thanking
6 you for your evidence.

7 A. Thank you.

8 **CHAIR:** Madam Registrar, that brings us to the end of
9 the day. I see our representatives from Ngati
10 Whatua are with us.

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Hearing adjourned at 4.20 p.m.

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