

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY  
FAITH-BASED REDRESS INQUIRY HEARING**

**Under** The Inquiries Act 2013

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

**Royal Commission:** Judge Coral Shaw (Chair)  
Dr Andrew Erueti  
Ali'imua Sandra Alofivae  
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Ms Jenny Stevens, Mr Matthew Gale and Ms Jaime Laing for The Salvation Army  
Mrs Fiona Guy Kidd QC, Mr Jeremy Johnson and Ms India Shores for the Anglican Church  
Ms Sally McKechnie, Mr Alex Winsley and Mr Harrison Cunningham for the Catholic Church  
Ms Sonja Cooper, Dr Christopher Longhurst, Dr Murray Heasley and Ms Liz Tonks for survivors

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

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**TRANSCRIPT OF PROCEEDINGS**

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**Hearing opens with waiata and karakia tīmatanga by Ngāti Whātua Ōrākei**

**(10.01 am)**

**CHAIR:** Tēnā tātou katoa, nau mai haere mai ano. Mōrena Mr Mount.

**MR MOUNT:** Good morning Madam Chair, Commissioners, tēnā koutou katoa. After two weeks of evidence we now turn to a day of oral submissions and there are six groups scheduled to speak. First The Salvation Army New Zealand and the Anglican Church, Catholic Church, the Survivors Network of Those Abused By Priests in Aotearoa New Zealand, Sonja Cooper on behalf of the group of clients represented by Cooper Legal, and then last but not least the Network of Survivors of Abuse in Faith-Based Institutions. There won't be a closing address on behalf of Counsel Assisting.

**CHAIR:** Very well, thank you.

**MR MOUNT:** Thank you Madam Chair.

**CHAIR:** Thank you. So we begin with The Salvation Army, good morning Ms Stevens. And thank you for submitting your submissions in writing, that's been very helpful.

**CLOSING STATEMENT BY THE SALVATION ARMY**

**MS STEVENS:** Okay, thank you. Ata mārie i te tiamana. Tēnā koutou e ngā Kōmihana, tēnā tātou katoa. I'm pleased to present these submissions on behalf of Te Ope Whakaora o Aotearoa, The Salvation Army of New Zealand. Thank you for confirming you have the written submissions, Commissioners. I will go through parts of those using as something of a document to talk to and obviously very happy to take any questions or discussion as we go through, otherwise I'll just keep pressing forward.

**CHAIR:** Just keep pressing forward, yes.

**MS STEVENS:** So the Commission has now heard evidence both orally and in writing from survivors and also from the two Army witnesses, Mr Murray Houston and Colonel Gerry Walker, about the Salvation Army's redress process. And most of that evidence about the formal process that The Army has engaged in has been in relation to historical abuse that occurred in Salvation Army's children's homes.

The evidence that has been before the Commission and some of the powerful survivor accounts of engaging with The Army in its redress process has caused The Army to engage in a significant amount of reflection about the process that it has run. The evidence from The Army talked about some missteps along the way. But it's accepted that that description doesn't adequately account for the impact that an insufficiently survivor-focused or insufficiently trauma-informed or insufficiently culturally sensitive process may have had on survivors.

1           The Salvation Army recognises that there are significant and varying barriers for  
2 survivors to overcome in coming forward, and it wants to do more to ensure that the redress  
3 process and people's access to that process is better understood and more trauma-informed.

4           The evidence also talked about lessons that have been learned along the way and the  
5 fact that The Army has adapted. But it is also accepted that there hasn't been a wholesale or  
6 fundamental review of the process that has now operated for nearly 20 years. And The  
7 Army considers that such a review is overdue, it accepts that and this Commission has  
8 already, by their questions that have been asked of our witnesses and from the survivor  
9 evidence we've heard, given us very strong feedback about what should be done and the  
10 impetus to now get on with that work.

11           As we said when I opened a couple of weeks ago, The Army doesn't intend to stand  
12 still and wait for the formal recommendations that may come from this Commission,  
13 because it accepts that there are changes it can make that now actually seem obvious and  
14 are clearly necessary.

15           However, it is clear I think to all of us who have been involved in this process, that  
16 offering the sort of empathetic and effective redress that The Army wishes to strive for is  
17 not easy and that's even for an organisation like The Salvation Army which has within its  
18 ranks many experienced and trained social workers, counsellors, and other persons who  
19 have a good understanding of the effects of abuse.

20           The Army has spoken of the fact and accepts that a redress process does not have a  
21 'one size fits all' approach and we took note of Mr Mount QC's opening remarks when he  
22 opened a fortnight ago, that redress is an area with great potential for this Commission to  
23 provide some practical meaningful recommendations. And those practical  
24 recommendations would be very welcome by The Army as it goes forward in adapting its  
25 process.

26           There were six topics that I was going to cover today. The first is reflecting on The  
27 Army's current process. I don't intend to go over that again, it was set out in Mr Houston's  
28 written evidence. But just in brief, since about 2001 The Army has dealt with over 200  
29 claims in that context of dealing with claims of historical abuse in a children's home  
30 context. And Mr Houston estimated that there's about 166 claims that have been formally  
31 settled, for want of a better description. And The Army has continued, since Mr Houston's  
32 evidence, his primary evidence was filed back in September, to receive and settle other  
33 claims as this Commission has continued.

34           We did just want to talk about the context for the establishment of that process,

1           however. Because, as was discussed, it was hastily established in 2003 in response to a  
2           huge influx of claims. I think, Madam Chair, you and Mr Houston exchanged the word  
3           "unfathomable" and that had been The Army's response. It was taken terribly by surprise at  
4           the extent of the issue that manifested itself so acutely in 2003 despite the fact there had  
5           been some indication earlier in time, including from Ms Janet Lowe's claim, that something  
6           had gone wrong.

7           So The Army considers that context is important, because it became apparent very  
8           quickly that unless The Army developed its own process, survivors would face several  
9           hurdles if they wanted to pursue formal redress. There's obviously the issue of cost if  
10          someone went through the court system, and then also those legal impediments that we've  
11          talked about. And these were the sorts of matters – these legal impediments were the sorts  
12          of things that The Army's lawyers and insurers did point out to it when these claims started  
13          to come in.

14          So while it wasn't an instantaneous response and it's accepted it could have  
15          happened quicker, The Army still did decide fairly early on that it would not stand on the  
16          legal rights that it was told were available to it, it recognised and, consistent with its  
17          Christian values, that it had a moral responsibility to engage with survivors by putting those  
18          legal issues largely to one side.

19       **CHAIR:** Ms Stevens, thank you for that submission. It's clear that Salvation Army paid out  
20          money and found other forms of redress as well. On the basis, I believe you're saying, of  
21          its moral responsibility rather than any attempt to almost legally analyse its legal liability.  
22          Would that be right?

23       **MS STEVENS:** That would be right.

24       **CHAIR:** So it didn't say "We don't in law – if it went to court, we'd succeed because of Limitation  
25          Act, ACC."

26       **MS STEVENS:** I guess it's saying by dealing with the claims it didn't need to reach a view on  
27          those matters, it just wanted to engage by putting those to one side. I think, to be fair, we  
28          have discussed in the evidence that the legal backdrop, you know, provides a backdrop for  
29          engagement.

30       **CHAIR:** That was a point The Salvation Army came to, it had a few hiccups on the way but that's  
31          where it's landed, is that right?

32       **MS STEVENS:** That's right.

33       **CHAIR:** Thank you.

34       **MS STEVENS:** So at about that 2003 period it developed some principles for engagement and

1 one of the most important ones from The Army's perspective was its desire to front up to  
2 the claims that were coming in, to listen, to learn and to engage with survivors, and not to  
3 seek to sweep these claims under the carpet or to fail to take responsibility.

4 As I say, potentially The Army could have moved quicker to askew its reliance on  
5 the legal defences and there were questions put to the witnesses about letters to survivors  
6 that still refer to these things for quite some period of time. However, it does think, on the  
7 whole, it still moved fairly swiftly to adopt this alternative approach to redress.

8 Witnesses were also asked by Commissioners whether in the set-up phase it could  
9 have done more to research approaches to redress in other jurisdictions, whether it could  
10 have done more to have a more trauma-informed process. And again, The Army would  
11 accept that it could have done those things in 2003, including the writing of a formal policy,  
12 and I'll come to that, by doing more research, by engaging with other third parties to assist  
13 them in the set-up phase.

14 But against this, Mr Houston, I think, has described in his evidence the very  
15 dynamic situation The Army found itself in, and that there was a pressing need to provide  
16 this alternative so to address the large volume of claims that were coming in.

17 So there have been some searching questions about the process and I'll discuss those  
18 shortly. But we did want to, I guess, highlight that The Army's view had always been that  
19 there was some intrinsic value in the efficiency of the process that The Army offered,  
20 because without The Army having set up this process and having a model and a way of  
21 engaging with survivors, those who came forward in the early years would have faced  
22 significant delay, and in some cases we accept that would have been further delay, and that  
23 there would have been other barriers and hurdles.

24 So The Army has sought to engage in this process with the very best of intentions  
25 and to offer effective redress and it sincerely regrets some of the evidence that has been  
26 heard that that process has not always been a healing experience for some survivors.

27 I'm up to about paragraph 2.9. We talked about the evolution of the process and  
28 I wasn't going to go over all of those things, but The Army has moved along the way to try  
29 and make the process more empathetic, flexible and survivor-focussed and some of the  
30 ways in which that has already happened has been the subject of evidence.

31 But what we really want to do today is focus our time in this closing submission on  
32 the look forward, and what more can and should be done. Because, as I said at the  
33 beginning of these opening remarks, of my remarks, The Army accepts that a more  
34 fundamental review is overdue and it is committed to now putting in place further

1 adjustments to its redress process and we think, when the Army reflects on why that hasn't  
2 happened earlier and why now is a good time, there's a few things that come together.

3 One is that Colonel Walker gave quite strong evidence about the fact that the degree  
4 of understanding of abuse and its ongoing impacts is much better known today than it was  
5 in the past, even in 2003. So there's a great deal of learning that has gone on in that space  
6 over the 20 years that The Army's process has been operating.

7 Much has changed within The Army itself too. It has, and we'll come back to  
8 discussing its commitment to the Treaty of Waitangi, for example, and its ability to reach  
9 people through the internet and other online means through modern technology, it's also  
10 greatly enhanced, which means providing more information about its redress process is  
11 much easier than it was earlier. The Army also has now that nearly 18-year body of  
12 knowledge regarding survivor experiences and the redress provision that it has engaged in  
13 on which it can draw and reflect.

14 So we're not providing any excuses as to why some of the changes or this more  
15 fundamental review hasn't come about earlier. And it does offer some reflections in the  
16 written submissions as to why things may have been slower than we would have liked, but  
17 it really acknowledges that there's much that we can do now and that we are ready to do so.

18 So I'm at paragraph 3.6 of the written closing.

19 **CHAIR:** Just before you go there, you might not be able to answer this, so apologies if I'm taking  
20 you by surprise. In 3.3(a) you observe that the number of claims have reduced  
21 significantly.

22 **MS STEVENS:** Yes.

23 **CHAIR:** Do you have any information that you can share today, and if you can't then later, on any  
24 contemporary claims? You talk about historic claims and I, for one, have learned a lesson  
25 from some of our witnesses saying we shouldn't use that phrase, they are all claims. But  
26 I'm thinking about claims that may have come through where abuse has been disclosed,  
27 say, in the last five years. Are you aware of that?

28 **MS STEVENS:** Yes, so in response to one of the section 20 notices that The Army received, there  
29 is a schedule which includes some contemporaneous, or things that we're aware about,  
30 I guess, in the last 20 years, so from 1999 forward that we wanted to bring to the  
31 Commission's attention, so that is there.

32 **CHAIR:** Yes, that's my vague memory and I don't have – what I'm really pointing up here is that  
33 any improvements you make is not just for past claims but it's for those that might continue  
34 to come in so that's the benefit of it, isn't it.

1 **MS STEVENS:** Yes, absolutely, yes. And I'll come to that about the look-back claims that we've  
2 already settled, but this is about the process for moving forward and that is one of the things  
3 that The Army has recognised, that the redress process it has engaged in has largely been in  
4 that children's home context, but it accepts that there's no reason why that process, those  
5 principles, could not apply in any other contexts, and the policy that it intends to write  
6 would apply to any forms of abuse.

7 **CHAIR:** Right across The Salvation Army, not just the residential settings, yes.

8 **MS STEVENS:** That's right, and whether that's historical or contemporary. I think one of the  
9 things that I can say now which we do cover in the written submission, is for The Army,  
10 you know, that has largely been an historical issue and the interplay of investigating current  
11 claims with current serving officers or employees with the redress process has not very  
12 often been an issue that's had to be grappled with as much as I understand it has been for  
13 some of the other faith-based institutions. So there is still a question, or an issue to be  
14 worked through as to how those two things go together.

15 **CHAIR:** The disciplinary and the redress.

16 **MS STEVENS:** That's right, that hasn't been a particularly acute issue. But it's certainly  
17 something that came out of questioning that does need to be looked at and fitted together.

18 **CHAIR:** Yes, thank you. I'm sorry, I've probably knocked you off your perch a little bit.

19 **MS STEVENS:** No, that's all right.

20 **COMMISSIONER ERUETI:** I also want to add that the homes closed in the 90s, I think the last  
21 one was 1999 and so we have that lag, right, of 20 years before people come forward, and it  
22 was surprising to us that the numbers have been so low over the last 10 years, for instance,  
23 so that raises questions about publicising and barriers to your current redress process,  
24 including cultural barriers that may be there.

25 **MS STEVENS:** Yes, absolutely, that is taken on board and that may well be the explanation for  
26 that. I should clarify that there's actually – we've popped that in a footnote in the written.  
27 So the last institutional homes, if we could call those, I guess, large residential institutional  
28 children's homes, closed in the 80s. The home that has carried forward is one in Hamilton  
29 which is still residential, so it still falls into that category. And does house children, did  
30 house children, but is not, I guess, the large institution, it's a much smaller residential care  
31 facility. So the larger numbers of people going through the large homes, if you like,  
32 probably tailed off in the 80s.

33 **COMMISSIONER ERUETI:** Okay.

34 **MS STEVENS:** So at 3.6 we talk about some of the things that The Army intends to act on or is

1 already acting on, and one of those is the writing down of the policy on redress. Because it  
2 was a very fair question and possibly something that hadn't really been thought about that  
3 actually, for an organisation that does have a lot of policies and procedures, in fact there  
4 was no written policy about the redress programme, and that clearly that is something that  
5 should happen and that will happen, and drafts are already circulating. Because The Army  
6 can see that from an organisational perspective, having a formal policy would reflect and  
7 ensure that people, or everyone can see that the process is endorsed by leadership, it can  
8 assist in ensuring it's well-understood across the organisation, and ensure consistent  
9 application. And as we've already discussed, not only in a children's home context, but in  
10 all contexts across The Army.

11 The formation of that policy would also present the opportunity to ensure it  
12 encompasses The Army's commitment to the Treaty and Colonel Walker had set out in his  
13 oral evidence the ways in which The Army is dedicated to incorporating and  
14 acknowledging the principles of the Treaty in its work, but at the same time Mr Houston  
15 acknowledged that that had just not been front of mind as he had gone about his work.  
16 Those two things need to be brought together quite clearly and The Army is open to  
17 considering the best means by which it could review, well, ensure that its obligations under  
18 the Treaty are fulfilled in the redress context.

19 At this stage its view is that it probably needs to engage more with third parties to  
20 ensure that is appropriate. It's also an area where some practical recommendations from the  
21 Commission as to how to go about that would be very welcome. But in the meantime,  
22 engagement with survivor groups and a wider source of people within The Army itself may  
23 help to bring in those principles into the redress programme.

24 Transparency and accessibility was a key topic, and, as Commissioner Erueti just  
25 said, one of the reasons why we may have seen a reduction in the number of claims in  
26 recent times may simply be a function of people not knowing it's available and that that  
27 clearly needs to change because it's a barrier to access, and The Army is committed to  
28 removing that barrier by publishing more information about the process. It fully  
29 acknowledges that needs to be published in a way that's readily understandable, that it's  
30 accessible, that it's available to people, to speakers of different languages and those with  
31 disabilities.

32 The example of what The Salvation Army in Australia has published, just a  
33 two-pager, we thought that was actually – which Ms Janes showed to one of our  
34 witnesses – was quite a good example of what's possible in just a short, two-paged

1 document and that's a good reference point in terms of the Army looking at what it can  
2 publish in this area.

3 I've already mentioned the fact that we accept that one size doesn't fit all and there  
4 was a lot of discussion about the face-to-face meetings, that The Army had always seen as a  
5 very important part of its process, because it served not only the purpose of gathering  
6 information about what had occurred, but it also ensured that The Army was seen to front  
7 to survivors and ensure that there was a personal apology.

8 But The Army accepts that more flexibility on that is necessary. Mr Houston gave  
9 some examples of where that's already happening in terms of the referrals he'd received  
10 from the Historic Claims Unit. But it wishes to be very clear today that a face-to-face  
11 meeting with a survivor is no longer a prerequisite for redress within The Army. It can do  
12 more to be clear with survivors at the outset that it will do its best to accommodate  
13 individual circumstances and requirements.

14 And again, this is where engagement with survivor groups and other third parties  
15 may assist in ensuring that where meetings are held they are appropriate and there's been  
16 sufficient information given in advance about what can be done to meet cultural or other  
17 needs in terms of disabilities.

18 I'm now going to talk about the trauma-informed approach. The Army has tried to  
19 ensure its process is appropriately trauma-informed. Again, this is an area where practical  
20 recommendations would be welcome, but just three things that The Army already considers  
21 that it can do to assist with this:

22 It can make more use of the resources and skills it already has within its  
23 organisation in running this redress process. It will continue to ensure that counselling  
24 services are offered and are, where that's wanted, utilised by survivors. It's always been a  
25 part of the Army's process, but potentially not consistently offered and applied and  
26 followed up. So that should become more of a focus moving forward, even though it has  
27 been right from actually 2003 one of the areas of focus.

28 Then there's also –

29 **CHAIR:** I was just going to say that idea of following up is very important.

30 **MS STEVENS:** Yes.

31 **CHAIR:** I think survivors we speak to sometimes feel that they're offered six or a certain number  
32 of counselling sessions and then left to it, and without the follow-up, and I think that's part  
33 of the pastoral duty, responsibility that would really make a difference for survivors.

34 **MS STEVENS:** Yes, that is one of the topics we'll be covering here. I think The Army can

1 absolutely see that for some people that follow-up is important.

2 **CHAIR:** But for some it's not.

3 **MS STEVENS:** There's a tension.

4 **CHAIR:** Exactly, yes.

5 **MS STEVENS:** But I think in terms of a practical step, asking the question would be a good step  
6 in the first direction, a good step in the right direction, would you want that, would you  
7 welcome that. And I guess, Madam Chair, there is a difference between potentially The  
8 Army itself following up, or the counselling service itself being able to follow-up and  
9 feeding that back to The Army where more support was required. But absolutely, The  
10 Army ensuring that people know that they can follow-up and come back to The Army is  
11 something that has been learned already.

12 **CHAIR:** Thank you.

13 **MS STEVENS:** Just another topic is the question of involvement of other people within the  
14 process and whether that's other Salvation Army personnel or third parties. Because The  
15 Army has considered that Mr Houston's central role has had many positives, not only for it  
16 but also for survivors, but it accepts that it needs to plan for the future, that for some  
17 survivors having a second or different person involved in that process would be welcome.  
18 And there's also, related to that, the question of where and how people who do have  
19 concerns or complaints about the process, how they raise those and where they can go.

20 So The Army is considering formally appointing a second person to consider  
21 complaints or concerns as part of its policy, and it can see that for many people  
22 independence will be an important issue. So it needs to carefully consider whether that can  
23 realistically be an Army person or whether an external person should be appointed.

24 That may depend, in part, on if there is an independent body established or  
25 recommended by this Commission and I'll come to that in a moment, what the remit of that  
26 might be. Because I'll talk in a moment that The Army's view is that its own process should  
27 continue alongside any independent body, but there may be ways in which the two can still  
28 work together, and having a complaint mechanism might be one of those ways in which an  
29 independent body could sort of assist with The Army process.

30 **CHAIR:** Just to say that the Australian recommendations included what I think they called the  
31 direct personal response. So that meant the institution still remained engaged, still spoke  
32 where necessary, required and requested to the survivor, still engaged, and still was  
33 involved in other aspects like apologies and payment, inevitably.

34 **MS STEVENS:** Yes.

1 **CHAIR:** So the recommendation certainly, I'm not sure about how it's worked out, contemplated a  
2 relationship between the institution and the independent body so that there would be room  
3 for both.

4 **MS STEVENS:** Yes, and I think that's very much where The Army is heading with its view that it  
5 would support an independent body if that is to be recommended, but thinks it's important  
6 that its own process, for those who want to engage directly with it and accepting some may  
7 not have that option.

8 **COMMISSIONER ERUETI:** I wasn't too sure, so there would be two processes, one would be  
9 internal to The Army and say an independent redress scheme, is that what you're saying?

10 **MS STEVENS:** Yes, just that, I guess, it's providing the option, that if somebody wants to engage  
11 directly with the Army it would continue with this adapted process that we're speaking of,  
12 but that a person may be able to go to an independent body if they wish, and related to The  
13 Army's own processes this question of if you go down that track as a survivor you're not  
14 happy with it, where do you go then. And one option would be at that point you could go  
15 into the independent scheme rather than going still within The Army's process to a third  
16 party appointed but still within The Army process.

17 **COMMISSIONER ERUETI:** Okay, and is it envisaged that it could be yet another process that's  
18 a complaint process that stays within The Army, independent of an independent redress  
19 scheme?

20 **MS STEVENS:** Complaint in relation to its redress scheme?

21 **COMMISSIONER ERUETI:** A complaint – no, separate from concerns about the redress  
22 scheme, but say matters of discipline, or complaints of any nature.

23 **MS STEVENS:** Yes, it's actually a topic on which The Army hasn't, I think for the reasons we  
24 talked about at the start, we haven't had that same acute issue of many complaints of a  
25 contemporary nature where that's had to be grappled with in quite the same way that it has  
26 in some other contexts. So I don't think there is a defined view of that within The Army  
27 yet.

28 Some of the same issues would arise, as it would for other faith-based institutions,  
29 about disciplining your own and obviously The Army has its own processes that Colonel  
30 Walker talked about around how it deals with officers and discipline and potential dismissal  
31 if it's that or that's inside the organisation; and whether that could be dealt with  
32 independently, we don't have a fixed view of that yet, we can see challenges with that.

33 **COMMISSIONER ERUETI:** So is that part of your internal review is to look at that question or  
34 whether that complaints process should be internal or external?

1 **MS STEVENS:** I guess the interplay between the complaints process, if you call it that, and the  
2 redress process, does need to be considered how they can fit together, so yes.

3 **COMMISSIONER ERUETI:** Thank you.

4 **MS STEVENS:** Just one of the other obviously extremely important topics around some of the  
5 things that can change moving forward is the approach to apologies. The Army has long  
6 tried to ensure that survivors who want separate apologies receive one that is appropriate  
7 and meaningful. However, it accepts some of the criticisms that have come through that  
8 these have not always been necessarily well-received or have appeared to use template  
9 wording and The Army's committed to ensuring that that is addressed in the future and that  
10 there is a much more meaningful engagement with survivors around what would suit their  
11 needs, and that apologies are specific to the needs of that survivor.

12 The Army's also willing to work with survivors who would like a more public  
13 apology in addition to the previous public apologies that have been made and reiterated in  
14 the course of this hearing. Some survivor groups have called for that, some of the survivors  
15 whose evidence we heard in December, and that's absolutely something that could be  
16 continued to be worked on with those groups.

17 The more wrap-around support, this is distinct from the follow-up about, you know,  
18 a common theme that came through was that some survivors felt that they would have liked  
19 more wrap-around support tailored to their specific needs and while this does occur, it's  
20 certainly something that can be more actively explored with survivors proactively by The  
21 Army. We talked about some of the prisoner reintegration schemes, and other networks  
22 and social services that The Army offers, and again, it's been a good discussion around how  
23 sort of the wider part of the Army can be brought into the redress process more than that  
24 being seen as a somewhat siloed endeavour.

25 So we've talked about follow-up. I did then just want to briefly touch on the  
26 question of reviewing the past. So these are all things that The Army thinks it can institute  
27 and will look at moving forward. There was discussion about whether and when The Army  
28 might be prepared to revisit past settlements. Mr Houston gave evidence, gave examples,  
29 of where that's already occurred, so revisiting of some survivors' settlements following the  
30 convictions of Mr Gainsford, for example, and then Mr Houston going through claims  
31 which have been declined which is a work in progress.

32 And The Army is open to reviewing previous settlements, particularly where a  
33 survivor has concerns or new information has subsequently come to light. But it is  
34 conscious that any further discussion of previous settlements should only be undertaken in

1 cases whether where that would be welcomed by the survivor and it needs to be facilitated  
2 in a way that's not re-traumatising.

3 So The Army can foresee some real challenges in undertaking a full review of all  
4 past settlements. As Colonel Walker put it, past settlements have been reached in good  
5 faith on both sides, and it offered certainty to both The Army and the survivors. So it sees  
6 that as a wholesale review of the past as a challenge.

7 However, it does want to make clear and it will make it clear in its published  
8 materials and wanted me to ensure that we were clear today, that any survivor who has  
9 given evidence at the Commission or otherwise who has concerns about their treatment in  
10 the process and want to further discuss that, The Army would be very happy to engage with  
11 them to see if those concerns can be addressed.

12 If any survivor wishes to bring new information to The Army's attention, it will  
13 consider that and be open to reopening settlements. If any survivor considers they were not  
14 aware of what a redress package could look like and thinks that there was more that could  
15 have been done that wasn't, that can be considered, and if there's any follow-up the  
16 follow-up support that they wished was there that currently isn't, again The Army is very  
17 open to discussing that. Information about how survivors in that situation can contact The  
18 Army will be published.

19 The Army is conscious that for some survivors they may feel uncomfortable about  
20 raising those concerns with The Army directly, and this is again an area where we need to  
21 look at whether we might need to appoint a third party facilitator so that people are  
22 comfortable raising those issues and it's working through that option, who and what a third  
23 party facilitator might look like. But it acknowledges that coming back to the institution  
24 might not solve the survivor's concern.

25 **CHAIR:** That's a welcome submission on behalf of The Salvation Army, Ms Stevens. Just to be  
26 quite clear, because you said at the beginning, I think you then made it clear, but let's have  
27 no room for doubt; it's not just related people who have given evidence before the  
28 Commission, whether oral or written, or even if they have, as a survivor who's come to a  
29 private account, it's any survivor who may have been through The Salvation Army care  
30 system who wishes to open up their settlement that they've reached already are welcome to  
31 do so.

32 **MS STEVENS:** Yes, are welcome to approach The Army to discuss that.

33 **COMMISSIONER ERUETI:** That does put the onus on the survivor, though. From my memory  
34 of the evidence there would seem to be more of a willingness to review files internally, or

1 even there could be a case there for a third party to come in and check for consistency, but  
2 that's not what you're saying, so the third party is really to be an advocate to support  
3 survivors who do come forward?

4 **MS STEVENS:** What we were talking about in terms of the third – what I just talked about is a  
5 third party who a survivor could approach rather than coming to The Army directly. But to  
6 your first point, that was raised in the evidence, that option of doing a proactive review of  
7 all of the settlements. As we say, The Army can see some real issues with that, it's not  
8 entirely clear, and in fact Mr Houston's experience in trying to go back to survivors who  
9 had previously had settlements declined, it's not, as you would appreciate, quite as easy as  
10 it may first sound, because someone may have moved on from that part of their life, not  
11 want it reopened or discussed again. So how you would actually practically implement that  
12 without the survivor themselves putting their hand up, I guess is difficult for us presently to  
13 see how we could do that. If there's any suggestions that would be welcome. But that is  
14 the issue with that.

15 And it does go back to the fact that those settlements, from The Army's perspective,  
16 were entered into in good faith at the time, it is undoubtedly the case that more information  
17 and understanding exists today. But whether that means sort of a wholesale review of what  
18 was done in the past is appropriate, I guess you may have a view, but The Army's was  
19 unless a survivor felt it wanted to raise that it wasn't really for it to proactively do so.

20 **COMMISSIONER ERUETI:** Okay, thank you.

21 **MS STEVENS:** Just to make some comments on financial redress, because that has been an  
22 important part of The Army's redress process to date; but The Army has not adopted a  
23 claims matrix. Mr Houston noted the broad elements that have been relevant to offers of  
24 financial redress being the individual circumstances of the survivor, both as to the abuse  
25 suffered, but also the impacts on the survivor's life, some legal considerations and the  
26 question of equity and parity between survivors.

27 And in the latter category, Mr Houston did give evidence about the fact that the  
28 input of legal advisors for survivors, including those who have worked across faith-based  
29 and State redress issues, has assisted him in giving confidence through time that The  
30 Army's offers of financial redress have on the whole been fair and reasonable, both for  
31 survivors who are legally represented and those who are not.

32 And The Army can see that the implementation or the publication of a very formal  
33 claims – a formal compensation matrix is actually a relatively vexed issue. As I said at the  
34 start, there's some intrinsic value in efficiency and speed of dealing with financial redress.

1 The Army, for its part, has not taken into account any other payments that a survivor may  
2 have received when assessing its own financial payments. So if a survivor had received  
3 ACC payments or other payments from the State or elsewhere, that has not been a  
4 consideration. And that includes a reasonable number of survivors who were in Salvation  
5 Army homes as State wards and who, therefore, may have also sought and received  
6 compensation from the Crown for that.

7 So The Army did want to record that it does have some concerns or questions as to  
8 what a formal claims matrix might look like. Because that issue of parity is only one factor  
9 and it has strived to achieve outcomes taking into account the broader circumstances, and it  
10 would not want to jeopardise those goals by adopting a matrix that unduly  
11 compartmentalises either the survivors' experiences or indeed the nature of redress  
12 available to them or both.

13 That said, and having reflected on the evidence, The Army can see that, at the least,  
14 some guidelines as to what may be available might assist some survivors to come forward  
15 and assist with that issue of barriers to survivors coming forward. Making its approach to  
16 monetary compensation more transparent and understandable would be useful, The Army  
17 accepts that. And it's therefore considering publishing a more formal set of guidelines as to  
18 what levels of redress may be available as part of its description of its redress process, that  
19 that is being developed to be published. And it can see that guidelines of that nature can  
20 still reserve elements of discretion which The Army considers has been important to it  
21 overall, while at the same time providing that level of transparency of what survivors can  
22 and should expect.

23 And related to this, The Army appreciates that its published material should also  
24 include a much clearer statement about The Army's position on the payment of legal costs  
25 or payments towards counselling costs. So that, again, that is clear not just the financial  
26 payments for survivors before they decide to engage. It does have some concerns about  
27 losing discretion, but recognises there are ways in which survivors can be given broad  
28 parameters in advance while still maintaining that element of discretion, so that redress  
29 packages can ultimately be personalised.

30 Section 5 of the written submission talks about the application of the redress  
31 process, which has largely been developed in this children's home setting to other settings.  
32 I think we've actually already touched on that.

33 The short point is that The Army accepts that it need not be limited, the process that  
34 it has developed over these last 20 years need not be limited to one context. There's no

1 reason not to set out more detail regarding how the redress process could be applied in  
2 other contexts, and its published material would make that clear.

3 I'm now going to touch on the issue of a possible independent body because there  
4 have been a number of calls for the Commission to recommend the creation of such a body  
5 to manage claims from survivors, and for The Army's part it accepts that for some survivors  
6 seeking to engage directly with it on the issue, that may have added to their trauma and had  
7 an alternative option been available they would have preferred to take it.

8 So The Army wants to be clear that it would fully support a recommendation to the  
9 Commission for the establishment of such a body. But there is an ongoing – we sort of  
10 discussed this briefly already, this ongoing tension between the need for redress to be  
11 robust, independent, and a desire of many survivors to engage with and receive their redress  
12 directly from The Army.

13 So The Army considers that its process has been effective for some survivors and  
14 really it's probably echoing where we'd already landed, that having this dual track of some  
15 sort The Army thinks would be important, because it can see potential pitfalls if survivors  
16 are channelled into a formal system that then may lack the immediacy, the personal contact  
17 and the connections that for some have been an important part of the healing process.

18 **CHAIR:** It's also a question, isn't it, of the Army being seen to be taking responsibility and being  
19 engaged, not just handing over the problem to some other body, but maintaining a sense of  
20 ability to be responsible and accountable etc.

21 **MS STEVENS:** Absolutely, and that's really one of – that was one of the very first principles that  
22 The Army, when these claims came in, it wanted to front and accept responsibility, and  
23 I guess we just have some hesitation around a body that ends up as an alternative to a court  
24 system which, of course, is completely depersonalised. So it's sort of with that –

25 **CHAIR:** That caveat.

26 **MS STEVENS:** That caveat.

27 **CHAIR:** That point is well made.

28 **MS STEVENS:** And I guess we've sort of set out in the submissions, I guess, some questions or  
29 issues but we don't have all the answers. But a couple that maybe is just worth  
30 highlighting, was the question of whether and how an independent body that would be  
31 across both State and faith-based can practically handle claims more efficiently than an  
32 individual process like The Army, and that just this issue of the ability to be nimble, if that  
33 was what was in a survivor's best interest.

34 And the other issue just to highlight, is the manner in which a unitary body could

1 cater for survivors with claims against different institutions for the same or related abuse.  
2 So as I've just mentioned, The Army has put settlements – if there had been a payment from  
3 the State that was not relevant to engagement with The Salvation Army. It may be different  
4 if one body is dealing with the compensation elements or the payments in the round.

5 So I guess that's just another item that we wanted to highlight as something that  
6 would need to be worked through if there was otherwise intended to be just a single body.

7 **COMMISSIONER ERUETI:** Could I understand that, are you saying that's a case for a unitary  
8 system where someone has been through several different homes where they could be  
9 reconciled all in place or does that act against?

10 **MS STEVENS:** Unfortunately, it's more the question rather than the answer, but it was just to  
11 highlight the fact that, from The Army's perspective, it hasn't necessarily looked at abuse  
12 claims with the lens of what have other parties done to address that issue, it has dealt with it  
13 itself. But if you were in just one forum, presumably all of those factors may be looked at  
14 in the round.

15 **COMMISSIONER ERUETI:** Contemporaneously, yeah.

16 **MS STEVENS:** Yeah, I guess it's not, as we say, an answer to that, but something just to think  
17 about whether that ends up with a better outcome for survivors or not, because The Army  
18 would say well, it looked just for itself and disregarded those other payments and other care  
19 and other aspects of redress that people may have obtained.

20 Just the last topic we wanted to touch on really comes back to this issue of dealing  
21 with historical complaints, the treatment of alleged perpetrators and record-keeping more  
22 generally. So obviously it's accepted that redress is not just around redress for the survivor,  
23 but also encompasses knowing that there are processes in place for dealing with an alleged  
24 perpetrator.

25 The Commission heard that historically The Army didn't have specific policies  
26 dealing with abuse allegations, they were captured within broader policies related to  
27 misconduct that should have included complaints of abuse. That's now changed, there are  
28 specific policies that deal with abuse allegations and the investigations that would go on in  
29 relation to that.

30 Historically questions were asked of Colonel Walker as to whether the policies that  
31 did exist were properly adhered to, and Colonel Walker's evidence was that it's hard to  
32 know, given the passage of time, whether they were followed in all cases, and he accepted  
33 that in the past there may have been issues, and this goes to this point regarding the  
34 interplay of the Army's pastoral and disciplinary functions in relation to officers and

1 potentially the loyalty to officers and respect for their leadership roles that may have  
2 clouded the operation of those procedures.

3 I guess in short, The Army acknowledges that there may have been historical  
4 failings in the handling of complaints and its management of alleged perpetrators. Counsel  
5 Assisting went through some examples of some perpetrators and, sitting here today in  
6 reviewing the documentary evidence, it's pretty clear that there were red flags on some of  
7 the files, and that that is deeply regretted.

8 Questions were raised about the retention or destruction of historical Army records,  
9 including those that may have related to perpetrators of abuse, and its accepted that there  
10 are some gaps. The Chair observed to Colonel Walker that survivors want to know who  
11 was responsible and accountable for such gaps in the records.

12 As Colonel Walker explained in his evidence, exhaustive searches for documents  
13 have been undertaken where allegations are raised in the current day. And in many  
14 instances, due to the limitations created by the passage of time, it just may simply not be  
15 possible to further investigate why and how documents came to be missing.

16 Generally speaking, The Army has fairly good record-keeping and you've heard  
17 about that, it has an entire archives facility. So it is regrettable if there are records that are  
18 missing, but trying to unpack why that now might be just may simply not be possible.

19 In the present day, Colonel Walker has given clear evidence from his personal  
20 experience about the processes that are in place and that they are more robust and more  
21 strictly adhered to. There are specific policies for dealing with abuse, there are also  
22 specific policies and practises related to the prevention of abuse in the first place, and in the  
23 modern era it is certainly the case that any allegations of abuse against an officer or soldier  
24 would be treated as a disciplinary matter and ensure that prompt action has been taken.

25 **CHAIR:** Ms Stevens, I feel obliged just to say from the survivor perspective, as we have heard it,  
26 that the loss of records for whatever reason, survivors have talked about fires, records being  
27 put out with the rubbish, so in other words being careless; but the other one is a sense by  
28 some that there was a deliberate loss, that files in such a good record-keeping organisation  
29 why would files that relate to a shameful event go missing.

30 And I think you would understand that there is a real sense in the survivor  
31 community that this might have been done deliberately. I feel obliged to raise it so that  
32 survivors know that it's raised but also to give The Army an opportunity to speak to that.

33 **MS STEVENS:** Yes, and we understood that, in your questioning of Colonel Walker, that that is a  
34 concern. I guess what they're saying is sitting here today quite why that is so may not be

1 possible to explain why certain records are not where they should be.

2 **CHAIR:** You can't add to that?

3 **MS STEVENS:** I can't add to that. Madam Chair and Commissioners, I'm sort of at the end. So  
4 we did want to say that The Army is grateful that this Royal Commission has given it the  
5 impetus to review and renew its redress process. As a learning organisation, it's committed  
6 to improving that process. It is not waiting for the final recommendations, the work that  
7 we've talked of will be – it also already started in fact and will continue in the course of  
8 this year, but nonetheless any formal recommendations that are able to be forthcoming will  
9 be considered very carefully, including on some of those very practical matters, that would  
10 be very welcome.

11 **CHAIR:** Thank you. I'm going to ask my colleagues if they have any other questions arising?

12 **COMMISSIONER ALOFIVAE:** Not a question just a reflection really, thank you Ms Stevens.  
13 One of the beauties, of course, of reflection is that we can go over the past sometimes  
14 brutally but with a very fine-tooth comb, so I don't intend to traverse that with you, but  
15 looking forward very encouraged by the comments about what The Army intend to do.  
16 And probably just flagging that in the evidence what came through really clearly is you  
17 have a unique position as The Army with your wrap-around services and the more that can  
18 actually come out of that.

19 So thinking forward in terms of all of your other settings, because what I'm hearing  
20 is that actually in terms of historical settings essentially it is what it is and you'll continue to  
21 improve those processes. But for the benefit of The Army and actually population of  
22 Aotearoa who continue to use the services of The Army, your business is vulnerable  
23 people, everything The Army does in terms of all of its different settings, actually the  
24 power of having your redress stretch across all of those things, and probably as an  
25 encouragement to The Army is that actually you're quite unique in the sense that you could  
26 be an exemplar of what you could offer as a redress overall, simply because of what you  
27 offer right now.

28 And so wanting to do that from your leadership all the way down and then, of  
29 course, the other half of the equation is the survivors who would want to come on board,  
30 but actually even other survivors that might want to use your wrap-around services because  
31 of what you're able to offer, I think that's what we're really looking forward to seeing what  
32 you can do in the interim before our final recommendations come out.

33 **MS STEVENS:** Thank you.

34 **COMMISSIONER ERUETI:** I just wanted to thank you for the clear submissions on behalf of

1 the Army and Colonel Walker and Mr Houston, ngā mihi ki a koutou, thank you.

2 **CHAIR:** Yes, thank you Ms Stevens. The last thing I want to say, and we'll say it to each of the  
3 faith-based institutions here; and that is that this public hearing is not the end of the  
4 investigation into redress, and as you have already flagged, many documents have come in  
5 that haven't even been raised here, so there's a lot more reading, thinking, reflecting to do,  
6 and we do propose to have some quasi-public events, round tables, etc., where we will be  
7 inviting organisations to come and assist us as we develop our recommendations. So I'm  
8 just asking are you able to say, on behalf of The Salvation Army, that The Army is  
9 prepared to engage further with us in the development of our thinking and our  
10 recommendations?

11 **MS STEVENS:** Yes absolutely, and I would hope that our comments about the practical  
12 recommendations being welcome is a shared issue and don't want to suggest we're just  
13 pushing it back on to you, but very much we can see it's a –

14 **CHAIR:** Thank you, it's an enormous burden and indeed one to be shared. Thank you very much  
15 indeed, Ms Stevens, and to your, no doubt, team that's been working hard behind the scenes  
16 to help us present the evidence for The Salvation Army, and indeed for your submissions  
17 and grateful, too, for Colonel Walker and Mr Houston who I know have been sitting there  
18 patiently throughout not just their evidence but the entire evidence, so I'm grateful for that.  
19 Thank you very much.

20 I think what we will do now is take a short adjournment, just to take a breath, gather  
21 our thoughts and then we will proceed after that with the submissions from the Anglican  
22 Church.

### 23 **Adjournment from 11.09 am to 11.32 am**

24 **CHAIR:** Good morning Ms Guy Kidd.

25 **MRS GUY KIDD:** Tēnā koutou katoa. In the spirit of Anglican Church power sharing, I will  
26 address the Commission on the first part of the submissions and then Mr Johnson will  
27 speak to you on the issues of structuring of redress and disciplinary processes.

28 **CHAIR:** Thank you. And thank you for the submission, written submissions which we've  
29 received and read.

### 30 **CLOSING STATEMENT BY THE ANGLICAN CHURCH**

31 **MRS GUY KIDD:** Thank you. Speaking to those, I speak in these submissions on behalf of the  
32 Anglican Church proper and, as you will recall, our representation does extend to six social  
33 services and 30 schools, two of the schools are no longer functioning, 14 are independent  
34 and 14 are now State-integrated.

1 I wish to make it clear, we have gone out to all of our clients and sought their  
2 approval and support for these submissions. And we've done that since the evidence has  
3 been given. Now in that limited time, we have not heard back positively from some of  
4 those entities and so what we propose to do is follow-up with those entities because, of  
5 course, some have to go back to trustees' boards to get approval and come back to you with  
6 a definitive list in relation to whose behalf we are speaking in giving these.

7 We have, in fact, heard from four of our six social services, but I think where real  
8 issues lie in the issues that I'll be discussing relates to schools and in part I have  
9 endeavoured to raise some of the issues that schools are concerned about in these  
10 submissions and I will address those in some more detail.

11 **CHAIR:** What you've gone out to is, just to confirm that they do want to be part of this  
12 submission, is that right?

13 **MRS GUY KIDD:** Yes, that they support what we're saying, particularly it is a submission on  
14 behalf of the core Anglican Church that we support an independent redress process to deal  
15 with complaints of abuse, and so we're asking the schools what their position is on that.  
16 And as you will have heard from the evidence, this is a matter that has been the subject of  
17 some discussion leading up to this with schools.

18 **CHAIR:** Yes.

19 **MRS GUY KIDD:** And often the issue is the detail, isn't it, so that's what we've done and that's  
20 what we're seeking support from them for. The good thing is to date no-one has said no.  
21 And really the thread that links all of our clients is an affiliation to the Anglican Church.  
22 So that is what we and the Archbishops use in this attempt to influence and garner support  
23 for these ideas.

24 **CHAIR:** Thank you for that clarification.

25 **MRS GUY KIDD:** Thank you. So I'm going to address some of the issues that I've addressed  
26 with the redress process, set out the Anglican Church's position on those issues, and in the  
27 process of doing, as I've said, identify some of these issues that really need some further  
28 thought. And we are doing that at this stage, particularly in light of the call from survivors  
29 for an independent body and we've heard that and so we're endeavouring to raise matters  
30 that will facilitate that progressing.

31 I reiterate the apology that has been given by the Archbishops and the Bishops in  
32 evidence. I'm not going to read all of it, but I will just read the following part of what the  
33 archbishops said because this does guide us in our response. "It is horrific, shameful and  
34 completely unacceptable that people in our care have suffered abuse. We recognise and

1 acknowledge that abuse has occurred within our church and we apologise unequivocally.”  
2 We want to acknowledge the courage and the strength of those who have given evidence to  
3 this Royal Commission and the archbishops apologised to those people unequivocally.

4 Abuse within the church was and is obviously wrong. And too often the handling of  
5 disclosures of abuse was not survivor-focused and, even now, the Anglican Church proper  
6 finds itself without an appropriate, consistent redress process.

7 Too often the Anglican Church has been reactive rather than proactive in dealing  
8 with these issues. However, the Anglican Church has attempted and will continue to  
9 attempt to become proactive and ensure a happy and safe culture. An important step, as we  
10 reflected when opening, was being asked to be a part of the work of this Commission.  
11 However, that in itself is not sufficient, and we recognise that we can't wait until this  
12 Commission comes to report to advance important work in this area.

13 So the first topic I will then go on to deal with is keeping vulnerable people safe or  
14 safeguarding. Safeguarding has come up during the discussions regarding redress, because  
15 often it is something that survivors and the Church wish to see ensured that no-one else will  
16 be subject to abuse. And we recognise that there is a fundamental need for safeguarding  
17 policies to be consistent across the core Church. So what has happened to date is that  
18 different dioceses have had their own safeguarding protocols.

19 To that end the Anglican Church will mandate a body within the church to create  
20 consistent safeguarding policies applicable throughout the core church. It will also require  
21 regular external reviews of the policies and their effectiveness. That is consistent with the  
22 recommendations from the Royal Commissions in Australia and the Inquiry in England and  
23 Wales.

24 For schools and care institutions, there are already obligations in place, particularly  
25 through the Children's Act 2014, and for schools, compliance with these obligations is  
26 monitored through the Education Review Office reviews and reports, and in assessing any  
27 recommendations in this area it will be really important that the Commission consider what  
28 there is and the existing framework that schools and institutions are subject to.

29 One of the recommendations of the Australian Royal Commission was that religious  
30 institutions, and highly regulated sectors such as schools and out of home care service  
31 providers, should report their compliance with the Royal Commission's ten child-safe  
32 standards as monitored by the relevant sector regulator to the religious organisation to  
33 which they are affiliated.

34 The Anglican Church does endorse some form of reporting by schools and care

1 institutions of their compliance with safeguarding protocols. We recommend that for  
2 schools, continued reporting should be through the Education Review Office, and for care  
3 institutions reporting should be to an appropriate regulatory body. There is, in our view,  
4 limited utility in reporting that information to the Anglican Church. We do suggest that it  
5 would be preferable if reporting of compliance or non-compliance with such requirements  
6 is publicly disclosed and accessible as Education Review Office reports are.

7 **CHAIR:** Can I just interrogate that point.

8 **MRS GUY KIDD:** Yes.

9 **CHAIR:** There was some evidence given, memorable evidence given about the Anglican way,  
10 about the way in which there is a culture with a spiritual backing of the way in which the  
11 Anglican Church practices its religion. That was referred to in the context of schools,  
12 Anglican schools it was hoped would be following the Anglican way.

13 I can't see why the Anglican Church as an institution would not be interested in  
14 receiving these reports, obviously if they're public, but to signal to its schools "You are  
15 Anglican, we do want to uphold the Anglican way and we're interested in more than just  
16 reading it in a public document, we'd like to know." Do you wish to comment on that?

17 **MRS GUY KIDD:** That's correct and the Church is interested. We can only work in that sphere  
18 of influence. As I'll go on to address, half of these schools we represent are entirely  
19 independent.

20 **CHAIR:** I completely get that and I read your submission about that later and it's not to do with  
21 independence, it is to do with more of the culture, the Anglican way, as I say, because it's  
22 clear from the evidence of the survivors that they don't see these divisions, however right  
23 they are in law and even in practice; for a survivor, if it's an Anglican school, then the  
24 Anglicans did it. Now that might be too simplistic, but I think it's a valid point of view. So  
25 I do wonder why there would be limited utility in the Anglican Church per se knowing  
26 what's going on.

27 **MRS GUY KIDD:** Not all of the schools take that view that the survivors take.

28 **CHAIR:** Of course not, no.

29 **MRS GUY KIDD:** I'm talking about the schools don't take that view.

30 **CHAIR:** Yes.

31 **MRS GUY KIDD:** So—

32 **CHAIR:** So this is not about the law, this is about perception from the survivors' point of view  
33 and the extent to which the church leaders can influence, if not lead and direct, in these  
34 ways, keeping a sort of moral tone, keeping an abuse-free tone.

1 **MRS GUY KIDD:** That is understood, we just wouldn't want the Commissioners or survivors to  
2 think that that in itself will solve the issue. And it's entirely open to some of these schools  
3 to tell us to butt out. But that's really as far as I can take it. There is an interest and that's  
4 what Archbishop Carrell said in maintaining the spiritual approaches of the schools and, of  
5 course, abuse is part of that.

6 **COMMISSIONER ALOFIVAE:** Can I just ask you, Mrs Guy Kidd.

7 **MRS GUY KIDD:** Yes.

8 **COMMISSIONER ALOFIVAE:** So this is the institutional Church drawing a line in the sand  
9 around secular and around pastoral, and then all of the dotted lines or the straight lines in  
10 terms of the separate legal entities. So you've got the school settings and you've got the  
11 church, I just want to be clear this is an institutional line that's being deliberately drawn?

12 **MRS GUY KIDD:** There is no connection there apart from—there aren't lines, so that's where we  
13 are different to the Anglican Church in Brisbane, you heard the evidence, they own those  
14 schools. That doesn't happen, that's not the situation for all these schools.

15 **COMMISSIONER ALOFIVAE:** I appreciate that, you say there aren't that lines, but I think  
16 from the survivors'—taking multiple perspectives, so survivors, students of the schools,  
17 parents, often they just see the overarching covering of the Church. But what I'm hearing is  
18 the church is wanting to be very, very clear in terms of the legalities of its framework.

19 **MRS GUY KIDD:** Yes.

20 **COMMISSIONER ALOFIVAE:** Thank you.

21 **MRS GUY KIDD:** And to be fair, the other side, we also have heard survivors who have said  
22 they didn't think to go to the Church, they saw this as the school. So it's interesting.

23 **COMMISSIONER ALOFIVAE:** It's all part of the transparency.

24 **MRS GUY KIDD:** Yes.

25 **COMMISSIONER ERUETI:** Can I also raise in 7 the mandate and the body to create  
26 safeguarding policies, so that assumes also that there will be some sort of oversight of those  
27 policies to ensure that they're complied with.

28 **MRS GUY KIDD:** Yes.

29 **COMMISSIONER ERUETI:** That is to be welcomed and also external reviews of those  
30 policies, so there isn't—does the Church see some benefit of—you say these will apply to  
31 the core church, so that excludes the schools.

32 **MRS GUY KIDD:** Yes.

33 **COMMISSIONER ERUETI:** Is there not some benefit that could be made from extending these  
34 principles beyond the core Church also to schools?

1 **MRS GUY KIDD:** Of course they already have their own framework which is governed by the  
2 Ministry of Education. I mean there's always scope to offer them this opportunity if they  
3 wish to become part of that and adapt or adopt any of these principles, yes, and processes.

4 **COMMISSIONER ERUETI:** It seems to be developing these principles in a siloed way despite  
5 the many affiliations and connections within the institutions of the church. It seems it could  
6 create inconsistencies, a perception of concern for survivors if there are these  
7 inconsistencies across the Church.

8 **MRS GUY KIDD:** So, and my learned friend behind me acts for the Catholic Church and I mean  
9 a number of their schools are integrated, Catholic schools of a Catholic character, as are  
10 half of the people that we—the schools we represent. So it's very much the same issues  
11 there. So those are integrated schools run by the State.

12 **COMMISSIONER ERUETI:** Yeah.

13 **MRS GUY KIDD:** We're open to discussing these issues, but these are some of the things to  
14 reflect on.

15 **CHAIR:** I'll just check, Commissioner Steenson did you have a question?

16 **COMMISSIONER STEENSON:** Yes, I did. So I guess just to clarify, the schools aren't  
17 necessarily happy being included in the Anglican Church's view, that's correct?

18 **MRS GUY KIDD:** As I said, no-one has said no yet, but not necessarily. And I imagine part of  
19 that, if we're looking at an independent organisation, will go down to that issue of who is  
20 going to pay. Because there's going to be—and what does it cover, and I wish to deal with  
21 those in some more detail.

22 **COMMISSIONER STEENSON:** So my question actually is, what is the Anglican Church's  
23 view on the school's involvement? Is it—

24 **MRS GUY KIDD:** We would like this to cover all Anglican institutions including schools, we  
25 think that is the best way forward.

26 **COMMISSIONER STEENSON:** Okay, thank you.

27 **MRS GUY KIDD:** Now we want to reflect on the issue of what is the real extent of abuse within  
28 the institutions we cover, both the Church, the care organisations and schools, because there  
29 were some questioning from Mr Mount about the applicability of figures from overseas to  
30 New Zealand, and we say to this Commission, there needs to be real caution about that and  
31 that there are similarities between the churches in England and Wales and Australia, but  
32 there are also differences which could be quite key.

33 Firstly, the Australian church is much larger in number and has a much more  
34 extensive network of schools and care organisations than we do. The second point is quite

1 significant and could be lost without further reflection. There is a much greater proportion  
2 of students in church schools in England and Australia than there is in New Zealand.

3 I footnoted there some figures, but what those refer to is that over 30% of children  
4 in Australia are in independent schools. In New Zealand the figures we were able to  
5 identify were that 4% of students are in independent schools or private schools as they're  
6 sometimes called, and 11% are in State-integrated schools in New Zealand. So there's far  
7 more students there who are in the care of the church than in New Zealand.

8 The Church of England and church in Wales are also larger. There can, and this  
9 will be a matter to reflect on, potential issues of class that arise to a greater extent overseas  
10 than here or have done at least historically.

11 Then the factor that I've already referred to, which is the Australian church and the  
12 Church of England and Wales may have, and indeed in relation to Brisbane, do have more  
13 direct ownership, control, over institutions than is the case of schools in New Zealand.

14 So I just wish to identify that the Anglican Church schools differ to the Catholic  
15 Church that in relation to the status of their schools pre-integration, they were owned by the  
16 Church and run by Marist Brothers or other organisations. But that is not the case here for  
17 Anglican schools.

18 The Church of England is more hierarchical and prone to clericalism than in  
19 New Zealand, and in a more positive way since 1980 the New Zealand Church has been  
20 working to understand and discuss the effects of colonialism and power imbalances. We've  
21 allowed the ordination of female priests much earlier than in Australia. You might recall  
22 going back to the original contextual hearing that I asked the two witnesses relating to  
23 Catholic Churches about this and the protective nature of women in our churches and  
24 indeed in our schools would also apply.

25 So I then look at this issue about the wave that might be coming. We need to keep  
26 in mind, of course, that the Australian Commission of Inquiry only related to sexual abuse  
27 and this concept of 30 years to report, if we're applying that we would be seeing that wave,  
28 but we haven't seen it. So either is there a wave to come and there may be, or there may not  
29 be. That very much might relate to barriers to coming forward, but equally it may be that  
30 the problem of sexual abuse, at least in our institutions, is not as prevalent as it is overseas.

31 **CHAIR:** It's got to be speculation on the basis of everything you've said, isn't it, it's just a question  
32 really.

33 **MRS GUY KIDD:** It is, but we need to be evidence-based when looking at this and that is what  
34 you are endeavouring to do and I appreciate that.

1 **CHAIR:** Is it your proposition that we can't and we mustn't extrapolate potential figures for the  
2 New Zealand Anglican Church from overseas figures for the reasons you've given, is that  
3 really the main point?

4 **MRS GUY KIDD:** Yes, it is.

5 **COMMISSIONER ERUETI:** But we also saw in the context of the Anglican Church evidence,  
6 you talked at length about the barriers—

7 **MRS GUY KIDD:** Yes.

8 **COMMISSIONER ERUETI:** —to accessing these redress complaints schemes, so that has to be  
9 recognised.

10 **MRS GUY KIDD:** We're not saying that isn't unreported abuse, it's really the point that the Chair  
11 alluded to, that we can't look at what's happened overseas, we need to look at our Church  
12 because it is unique in many of its structures and its approach.

13 And, of course, this is not something that I've written in my written submissions, but  
14 to the contrary, of course, the extent of abuse other than sexual abuse is not assisted by  
15 those overseas inquiries. And this is where you have the task of considering the unique  
16 New Zealand situation in relation to physical and psychological abuse that has occurred.  
17 And this Commission will need to reflect, when looking to the future, as to the extent to  
18 which bullying and physical abuse was and is a societal problem across schools, evident in  
19 both State schools and independent schools.

20 I would suggest these are issues, particularly from the 1960s, 1970s, 1980s and  
21 particularly in relation to boys' schools. Because there was an article just in Stuff in the  
22 weekend about a particular State school and a survivor referring to the abuse, bullying  
23 abuse he suffered there. So these problems aren't just in the Church faith schools, they  
24 were prevalent in our State schools and be interesting to reflect on what is it about our  
25 New Zealand culture that generated those and look at that.

26 **COMMISSIONER STEENSON:** Sorry, counsel, are you suggesting that because it was societal  
27 that that reduces the duty of care?

28 **MRS GUY KIDD:** No, not at all, not at all, no, I'm saying one of the issues that I think you really  
29 have to grapple with is, is it fair to have an independent organisation that solely helps out,  
30 supports people who went to private or church schools and leaves to one side those who  
31 were abused in State schools. There's an issue about fair boundaries and, of course, when  
32 we remedy one injustice we don't want to create another.

33 **CHAIR:** Of course our remit under our terms of reference do cover State schools as well.

34 **MRS GUY KIDD:** In relation just to boarding or all schools?

1 **CHAIR:** All schools, there are virtually no boundaries there. It just happens that this hearing is  
2 focusing on faith-based but certainly schools are very much within our sights.

3 **MRS GUY KIDD:** That helps then with those lack of—there doesn't need to be those distinctions  
4 drawn.

5 **CHAIR:** That's absolutely right.

6 **MRS GUY KIDD:** Wonderful. I pointed out there are lessons to be drawn from Australia and  
7 England and clearly there has been a lack of a consistent approach to handling disclosures,  
8 providing redress and discernment for ordination in the church proper, and that echoes  
9 findings over in Australia and England. And again, I have reiterated there we don't know  
10 what we don't know and we ask survivors to come forward, so we can be better informed.

11 We have contributed to a lack of clear information through poor and inconsistent  
12 processes for keeping and retaining records, and so that is a specific issue that the Church is  
13 going to address at its General Synod meeting, which will next be in 2022, for a record  
14 retention policy to apply throughout the Anglican Church. And again, our Anglican entities  
15 will be urged to adopt that policy in the same manner that we've spoken about.

16 I've noted, even that there are some schools who have chosen not to be part of our  
17 representation, but whatever this Commission decides will apply to them as well.

18 Just relating to that issue of control. As you will have heard, in some cases the core  
19 church has a bishop as a warden of an entity, the right to appoint boards, the right to  
20 approve trust deeds and exercise more direct control over the entity, but in other cases that  
21 is not present and it is this relationship largely of theological, spiritual oversight.

22 I'll now turn to address this issue. There was some questioning around, particularly  
23 in relation to Bishop Peter Carrell, on the role of a bishop in relation to Anglican schools,  
24 the handling of claims and the suggestion that there should be more active oversight in  
25 relation to the schools safeguarding and redress policies. Obviously some of those  
26 questions need to be addressed to the schools themselves, because it's them really, in one  
27 way, that defines those meets and bounds and what they wish to be subject to and what role  
28 they wish to give to a bishop.

29 And we've noted there, there was indirect questioning about what was going on in  
30 one particular school, Christ's College, in relation to its processes, and they have adopted a  
31 very much survivor-focused non-legalistic process, primarily handled by the Board not by  
32 the Church, and there was some evidence that you received in a statement from Mr Lindo,  
33 who's the Board Chair, but which was not publicly recorded. And that policy has actually  
34 been e-mailed out to all former boys on their database and to all current parents with a link

1 through to the actual abuse policies so they can see how that redress policy operates.  
2 Which is, I would suggest, a positive feature that's something we'd be encouraging other  
3 schools to do.

4 So there's a number of issues, and I'm just raising these so the Commission is aware  
5 of them and can reflect on them. We do, however, the Church accepts that bishops at all  
6 time do have a moral obligation to ensure that boards focus on issues of safekeeping and  
7 redress. And the schools have committed to that through being part of our representation  
8 and giving evidence before the Commission.

9 However, we note there are some issues, some limitations here. Firstly, the current  
10 training which bishops receive on these issues is limited. The reality is their expertise in  
11 these issues is also limited. We're not sure that it would assist in preventing abuse, nor  
12 assist survivors if bishops undertook a more active role as suggested. They may not be the  
13 right person to do that. The second issue is they are busy people being bishops.

14 **CHAIR:** I don't know it was in our minds, I can only speak for myself, whether it would be in my  
15 mind that the bishop personally would do it. My feeling is you have quite, I think rightly,  
16 said that the bishops have the moral obligation to ensure boards focus on these matters, but  
17 of course I'm not suggesting for a moment that they should spend their busy days going off  
18 doing it themselves, but keeping a high level, accepting the moral obligation, holding the  
19 high level responsibility and then making sure that people who do have the expertise do  
20 this. Delegation is something I'm sure bishops have to do at various times.

21 **MS STEVENS:** Yes.

22 **COMMISSIONER ERUETI:** Back to paragraph 7, right, you're establishing the process yourself  
23 that would have the facilities for something like this, yeah.

24 **CHAIR:** For safeguarding.

25 **MRS GUY KIDD:** Yes.

26 **CHAIR:** That's right. The other advantage of that, given and respecting the difference between  
27 dioceses and the responsibilities that bishops have in their own particular areas, it's another  
28 way of getting some unity over the whole thing, isn't it?

29 **MRS GUY KIDD:** [Nods]. We do, the Commission might not be aware of this, we do have an  
30 organisation called Anglican Schools Office which Anglican schools are joined up to and  
31 they do assist in providing materials about a myriad of things to Anglican schools.

32 **CHAIR:** That's an avenue, isn't it.

33 **MRS GUY KIDD:** That's another avenue, yes. I mean ultimately the regulation and supervision  
34 in these obligations are the schools to protect their children, that's what we're saying there.

1 I've addressed orally some of the other issues I raised there. And as I've indicated, we  
2 accept that the approach of Anglican entities in safeguarding and redress does need review.

3 I'm now going to turn to issues of liability and responsibility, which is, of course,  
4 liability is the legal framework we currently operate within. And we see it that the biggest  
5 issue survivors have faced when it comes to redress is that, as the law stands, that law does  
6 not generally make institutions liable for abuse that occurs within them, except, there are  
7 specific conditions for instance, they were aware of a risk and they did nothing to avoid that  
8 risk. Limitation defences are available, vicarious liability is difficult to establish, and in  
9 some cases the ACC bar also complicates matters. So that's how it stands at present as  
10 we're just identifying.

11 And in cases such as the witness who gave, Mr Oakly, where the abuse occurred  
12 outside a church setting and instead in a community-based setting as the law stands it  
13 currently can become even harder to sheet home liability. So compounding those issues is  
14 the court processes that we've heard about, and which, for reasons of public policy and  
15 natural justice, our society has decided that that's the appropriate approach to date and they  
16 do involve a rigorous testing of evidence and they can be re-traumatising for victims.

17 The position of the Anglican Church is that none of that is helpful, and that the  
18 approach needs to move from one of a focus on legal liability to one of moral  
19 responsibility. So that even if the law as it currently stands does not deem the institution as  
20 liable, the approach should be one of acknowledging responsibility.

21 To that end, our House of Bishops does accept that it is, in the words of the current  
22 liability focus, vicariously liable for abuse by priests, whether that is happening within the  
23 Church or within a community setting. So if they are a priest they are our responsibility.

24 So that approach on responsibility is much better trauma-informed and  
25 survivor-focused. However, that approach needs community commitment to it, because it  
26 has implications. We just acknowledge we've got to this point due to societal views about  
27 liability and that sort of thing and the preferences expressed in our law. So it's quite a  
28 significant change that we're really focusing on.

29 **CHAIR:** I don't understand what you mean by community commitment, could you elaborate on  
30 that?

31 **MRS GUY KIDD:** Yes. So are we, for instance, committed to—

32 **CHAIR:** Which community to start with, are you talking about the general community or the  
33 Church community?

34 **MRS GUY KIDD:** I am talking about the general community, yes. For instance, just that we—a

1 number of issues, like we are no longer having to—people do not have to prove things to  
2 the balance of probabilities, we are, as a society, going to take people on their word if that's  
3 what the test becomes, so that's one issue.

4 We will compensate people who have been the subject of bullying at schools. And  
5 in that point I'd ask you to reflect, it's interesting, isn't it, that in our criminal justice process  
6 we have seen a rise in complaints of sexual abuse, but we have not seen a corresponding  
7 rise in complaints within the criminal justice system of abuse within schools, despite the  
8 fact that those things are criminal acts.

9 So there's something within our society, either which has meant that people have  
10 not come forward or maybe that the Police have not decided to prosecute, it could be either  
11 of those matters. Is that a reflection of societal views, that there should not be  
12 compensation for those matters? Who knows, but I'm just—we need societal commitment  
13 and being brought along, all of us, to accepting this is the new way forward.

14 **CHAIR:** On the other hand the Anglican Church can lead society, can't it.

15 **MRS GUY KIDD:** We can.

16 **CHAIR:** It can be a moral leader.

17 **MRS GUY KIDD:** Yes, totally accepted.

18 **CHAIR:** Rather than waiting for the community to change and then follow.

19 **MRS GUY KIDD:** No, accepted, but—

20 **CHAIR:** Yes.

21 **MRS GUY KIDD:** Of course there's different ways it can be achieved, you can recommend  
22 changes to legislation or it could be by way of individual entities signing up to agreed  
23 principles. The former is preferable, in our view, because we see that there's a need for  
24 consistency across all Faith-based organisations and State organisations rather than a  
25 continuation of what might be seen to be happening piecemeal approaches; some signing  
26 up, some not signing up.

27 Of course I've raised there your other tension you have to address is the rights of  
28 people who are accused of this offending, which is what it is, and how that fits into the  
29 process. So that's why when we turn to the next topic of discipline, we see that that is  
30 better to be kept where it is within—that's one of the reasons—within the Church where  
31 there is a standard that needs to be met, because it impacts on those people who were the  
32 respondents of allegations.

33 I'm now going to turn to some features which we see as principles of redress which  
34 should be guiding any new approach. The first are issues of tikanga and cultural

1           appropriateness. I've recorded what our Archbishops said that they believe that a redoubled  
2           effort to continue in a genuine deeply considered and intentional incorporation of the  
3           fundamental principles and frameworks that Māoritanga has to offer, including those are  
4           issues such as whakapapa, whanaungatanga which is your broader whanau obligations,  
5           kaitiakitanga, protection and nurture of the whanau and the environment, manaakitanga  
6           which is effort and resource required to care for others and the greatest of those of course is  
7           aroha, love, empathy, compassion.

8           This is, of course, most relevant to Māori survivors and their whanau but it really  
9           can be beneficial to all of us. And, of course, we suggest that whatever framework is set up  
10          needs to take into account the cultural appropriateness of the particular person involved and  
11          their family.

12          I've also noted there statements that the Archbishop made about whakapono Māori  
13          as being very important and that if it's secular it is, in their view, doomed to fail and to  
14          repeat the failures of the past. Because, of course, just to take one aspect, there is a need  
15          for healing of the entire family and we have seen how abuse can be multi-generational and  
16          have multi-generational impacts.

17          We likewise see that the faith traditions of others, such as Islam, Judaism can also  
18          be incorporated and may assist in the survivors' process of healing for them too. There's a  
19          need for any redress to be holistic, financial redress is a component but can't be and should  
20          not be the only component of redress, spiritual and emotional redress are also important.  
21          So reflection will be needed on how that can be incorporated.

22          Thirdly, it needs to be focused on the needs of the survivor and to be led by their  
23          reasonable wishes. We wish to stress that lump sum payments may not be the best way to  
24          do that, there may need to be that tangible redress on an ongoing basis that a survivor can  
25          return at various stages for support.

26          There needs to be an assessment of the appropriate—redress needs to consider the  
27          nature of the abuse and its impact, and then we've said certainty and consistency are vital.  
28          And these principles create fairness, that it's open, transparent and fair to all. And in our  
29          view, across society, whatever institution a survivor approaches, in general terms should  
30          have the same approach at its core, and generally speaking the outcomes should be similar,  
31          like people should be treated like. Of course, with the scope that my friend from The  
32          Salvation Army brought in that they could be nuanced and personalised.

33          **CHAIR:** Can I just draw out something about the impact. It seems to me that in looking at—I'm  
34          not just talking about the Anglican Church here, I'm talking about all Faith-based and

1 indeed State redress processes, both well-formed and some of them, quite frankly, vestigial,  
2 most of the inquiry seems to be in those to what happened, the nature of the abuse, who did  
3 it, who was responsible, and far less concern with the impact on the person.

4 **MRS GUY KIDD:** I think that's been driven by the liability argument.

5 **CHAIR:** That's exactly where I was going. And it seems to me that that is perhaps one of the  
6 great problems that we have to address here. You and others might be aware of the report  
7 that we commissioned, just a very preliminary report, on the economic consequences of  
8 abuse and shocking figures of the cost, just the money cost to individuals for society. It  
9 seems to me that no redress programme is ever going to work unless it takes into account  
10 the impact on the person as much as the abuse in the first place. Would you agree with  
11 that?

12 **MRS GUY KIDD:** Yes, and recognising that lifelong impact for some survivors.

13 **CHAIR:** Precisely, and it's not going to be cured with six counselling sessions, so there's far more  
14 richness and depth of inquiry and response needed.

15 **MRS GUY KIDD:** Yes, that's understood.

16 **CHAIR:** Thank you.

17 **MRS GUY KIDD:** And when I talk of certainty, consistency, fairness across society, one also  
18 might think of the children who are abused in gym clubs and swim clubs, and again that's  
19 an issue of boundaries, and I raise those because I see that the Survivors Network have  
20 raised fairness to children no matter where they are abused, whether it's by a scout leader  
21 who's not an Anglican member, by Girls' Brigade, all these clubs, we need to reflect on how  
22 we're going to deal with those as well, those young people.

23 **CHAIR:** That's the community part, isn't it.

24 **MRS GUY KIDD:** Yes.

25 **CHAIR:** Fortunately we do have a terms of reference which does give us some small boundaries,  
26 but I think what you're saying is the principles developed here can and should be applied  
27 more widely once we've established them, is that right?

28 **MRS GUY KIDD:** Yes, just so that further injustices aren't created by this, that some people are  
29 looked after and some fall through the cracks.

30 **CHAIR:** And some are not, yes.

31 **MRS GUY KIDD:** There needs to be transparency, so that we all learn from the past and we  
32 acknowledge that survivors are entitled to know what will happen once they make a  
33 disclosure, that was a matter raised in questioning. So we believe that those are principles  
34 that should be included in part of any redress process. We do endorse the concept of a

1 matrix, provided it's nuanced, which takes into account the nature of the abuse and its  
2 impact. And again, I reiterate it should apply across all institutions.

3 Now you will—and this is one of these future issues—have to look at what is the  
4 appropriate level of redress and there's going to be a number of matters you need to  
5 consider there. You may consider past payments that have been made, whether in a  
6 positive or negative way, you may similarly look at what support is provided by ACC,  
7 should that continue or should that now be carved out, and part of this central redress  
8 process that redress for abuse is all dealt with within this new organisation, how does that  
9 work out.

10 International comparisons, however, also always keeping in mind we are different  
11 in what's happening in New Zealand and what is fair and reasonable here. Who will pay  
12 and how will it be funded. And, of course, I've noted what the law has provided, up until  
13 this point, if we're going to make it a direct payment from some institutions then we have  
14 an issue are we actually creating retrospective liability when that wasn't there before. So  
15 they'll now be paying for something that they didn't have to under the law as it stood. It's  
16 got a lot of ramifications.

17 **COMMISSIONER ERUETI:** Can I ask you, I'm puzzled by that because you have, well, you're  
18 developing a redress scheme—

19 **MRS GUY KIDD:** Yes.

20 **COMMISSIONER ERUETI:** —now, so you're already making a commitment to provide  
21 redress—

22 **MRS GUY KIDD:** Yes.

23 **COMMISSIONER ERUETI:** —in that context. How does this differ? Is it the legislation?

24 **MRS GUY KIDD:** I'm particularly talking about if you're going to extend, I mean extending it to  
25 schools and institutions. So if you're going to say from now on this school has to pay in for  
26 when, you know, children are assaulted other children, where they may not have been liable  
27 under the law as it stood at that time, just to recognise what that does involve, that we are  
28 requiring them to be—if that's the approach to be responsible for something they legally  
29 may not have been responsible for you until that date.

30 **COMMISSIONER ERUETI:** We've already established that you're not assuming a legal  
31 obligation under the process.

32 **MRS GUY KIDD:** Correct, this is reflecting on what this means really.

33 **COMMISSIONER ERUETI:** But you're doing that now.

34 **MRS GUY KIDD:** Yes, I am for the Anglican Church we are, yes.

1 **COMMISSIONER ERUETI:** So how is this any different? Why is it now all of a sudden  
2 retrospective liability?

3 **MRS GUY KIDD:** If you're extending it to schools and making individual schools pay, not all  
4 those schools have been engaging in that process, not all those schools have actually had  
5 claims, but we could see into the future that if you're setting up an institution that may well  
6 support people to come forward to make claims, that they haven't felt able to make up until  
7 that point, or supported to make.

8 **CHAIR:** The way the Australians have dealt with it is that they suggested that the Government  
9 legislate for this and the legislation was intended to make the institutions liable for abuse if  
10 the abuse happened in the institutions, unless the institution proved, took on an onus of  
11 proof, that it had taken reasonable steps to protect. So that's the way the Australians have  
12 dealt with that, so it's like a retrospective provision which places liability there.

13 **MRS GUY KIDD:** The concern from some of our schools, particularly as in—not the cases  
14 involving teacher/student, but more difficult cases about student to student, whether it's  
15 sexual abuse or physical abuse, and the extent of that physical abuse problem. I mean in  
16 New Zealand we know that we have a domestic violence problem, we know we have a  
17 violence problem, and we know from what we've heard anecdotally that there were  
18 problems in schools.

19 So just acknowledging that and some schools are very well-funded, some are not,  
20 and some this may result in them going under. So that's an important thing we need to  
21 think about if it's a direct payment, some schools will not be able to continue. And so it's a  
22 societal decision, is that the best way forward, or are there other alternatives. And I raise  
23 there what role or obligation does the State have for what conditions were going on in our  
24 societies and in our schools and in our homes across society.

25 Of course, some of those schools play a valuable part in providing boarding  
26 opportunities for people who live in the country, to provide the expression of faith through  
27 schools, particularly I think of our Māori schools that may not be so well funded, so but not  
28 just limited to them. So that is, to face it, one of the real concerns, what is the extent of this  
29 financial commitment going to be, and the impact that will have.

30 Also, for our institutions who play a very important part in looking after the  
31 vulnerable, they care for—for instance, one of our organisations cares for prison parolees  
32 and has established a residential facilities for them. No-one else wants to do that. So  
33 there's an important role ongoing for these organisations in these schools. So we just raise  
34 that for reflection.

1                   Just in relation to that, in relation to the 248 cases of abuse disclosed within our  
2 schools, a very high proportion of those are physical and psychological abuse claims. So  
3 that's where the bulk of the abuse lies.

4                   I hope I've left in some time but now I'm going to hand you on to Mr Johnson.

5 **CHAIR:** Yes, thank you. Yes Mr Johnson.

6 **MR JOHNSON:** Thank you Madam Chair, I'll address the issue of the structuring of redress  
7 processes first and then move on to that discrete issue of discipline. To start with the  
8 Anglican Church acknowledges and accepts that the handling, independent handling of  
9 redress is critical to survivors. At the same time the way in which, certainly the Anglican  
10 Church has approached issues of redress to date, means that it has quite justifiably lost the  
11 trust of a number of survivors in its own ability to handle redress processes.

12                   Given that, the position of the Church is to support an independent body to handle  
13 redress, and there are a few points to that. The first is it should be created by way of  
14 legislation. The second is that it should cover effectively all institutions; so Faith-based,  
15 State institutions, those who provide care to the vulnerable, the body should apply to all.

16                   And in a sense, the Anglican Church is a good example of why a body like that is  
17 needed. The Anglican Church is a disaggregated federacy in a sense. You have a number  
18 of independent bodies, within New Zealand you have a number of independent churches,  
19 and it's not entirely fair to survivors that you would get different outcomes and different  
20 processes depending on who you approach. So we see ourselves as perhaps a good  
21 example of the reality of New Zealand society in this area.

22                   The third critical point is that any independent body should be based on the  
23 principles that have been identified certainly to the Anglican Church by the network for  
24 survivors of abuse, being those of inclusion, Te Tiriti, accessibility, impartiality,  
25 transparency, consistency, timely access to redress and human rights and natural justice.

26                   There is, of course, two important follow-up points to this proposal. The first is  
27 there has to be a connection and involvement with the Faith-based organisations, or any  
28 entity subject to the body. And that's necessary not just from that question of who pays, but  
29 also from what Ms Stevens identified earlier, the position of the Anglican Church is the  
30 same as that of The Salvation Army, which is that it needs to front up. So that's an  
31 important principle.

32                   At the same time, though, it has to be led by the survivor and what the preferences  
33 of the survivor are, and if the survivor wishes contact, connection and apology, then that  
34 has to be provided for, absolutely.

1           That leads on to the second critical issue, which is that there is nothing more  
2           disempowering than a bureaucracy, that's the critical risk with this proposal. And in a  
3           sense, when Bishop Peter Carrell talked about, in his evidence, the large number of  
4           churches in New Zealand and the large number of Faith-based organisations, it was that  
5           problem he was identifying, when you have a broad body covering a large group, you run  
6           that risk of disempowerment. Which is why any design will have to ensure flexibility and  
7           not a monolithic approach, because, certainly based on the principles endorsed by the  
8           Anglican Church, there will need to be flexibility as to redress, as to process, and, of  
9           course, the approach must be culturally appropriate.

10           In a sense, we talk in the written submissions about how some survivors have had  
11           negative experiences with ACC and also with WINZ and the Department of Social Welfare.  
12           I remember one of the Anglican survivors from last December talking about a redress  
13           payment affecting entitlements elsewhere. And it's exactly that sort of experience that has  
14           to be avoided through design, careful design of the entity.

15           The Anglican Church agrees entirely with the Network For Survivors of Abuse that  
16           this issue demands urgent attention, and that the sooner the recommendations come from  
17           the Commission as to how to approach redress the better. At the same time, there will be a  
18           time lag. The position of the Anglican Church is that where it's dealing with survivors at  
19           the moment and settlements are entered into, then that will not prejudice any future rights  
20           of the survivor, so it ensures there can be at least some interim arrangement or closure  
21           reached, but without in any way undermining anything that this Commission might  
22           recommend.

23           And I will note there was a question to Ms Stevens about the position of The  
24           Salvation Army revisiting past claims. It's not an issue that the core Church has considered  
25           at all levels. But certainly the position of the primates is they would encourage and urge all  
26           past settlements to ultimately be revisited in light of the recommendations. And that is part  
27           of their commitment to a survivor-focused transparent process.

28           At the same time, if the political will is not there for a proposal such as this, that the  
29           church will have to move forward with its own independent body, it will have to be  
30           legislated for by the Church internally, of course, but there will be a commitment to ensure  
31           independence and consistency across the core Church.

32           **CHAIR:** Given that however fast we move, and I can assure you we are endeavouring to move  
33           very fast on this, you've talked about due bureaucracy. Even if we were going to get our  
34           recommendations out, say, by the end of the year it's still going to take a while, isn't it, for

1 the Government to find the money, get it sorted and underway. I think you've addressed  
2 the question of what's going to happen in the meantime in part, but are you suggesting that  
3 you're going to wait and then set up a system, or are you going to set up a system  
4 regardless?

5 **MR JOHNSON:** A system is likely to be set up regardless, so the draft process received some  
6 critique in the examination, so there will be a revisiting of the drafts that have been  
7 circulating, with the idea that it will be revisited by the General Synod Standing  
8 Committee, rather than having to go back to General Synod Te Hīnota Whānui itself which  
9 won't really meet again until later this year or next year.

10 **CHAIR:** So there is a mechanism by which something could be put together, even if it's an  
11 interim arrangement—

12 **MR JOHNSON:** That's exactly right.

13 **CHAIR:** —to give survivors somewhere to go.

14 **MR JOHNSON:** Yes, that's right.

15 **CHAIR:** I raised with Ms Stevens, you might recall, the question of contemporary claims coming  
16 from wherever, whether they be schools, from the core Church, from community care  
17 organisations, it's a possibility they will continue to come and will need to be addressed as  
18 quickly as possible, won't they.

19 **MR JOHNSON:** That's exactly right, and there's a commitment on the part of the Church to  
20 ensure that survivors aren't left waiting.

21 **CHAIR:** In limbo.

22 **MR JOHNSON:** In limbo.

23 **CHAIR:** Yes, thank you.

24 **MR JOHNSON:** So finally, I think it's probably consistent across all counsel so far this morning,  
25 there's been a lot of questions left with the Commissioners with some sort of tentative  
26 answers in some cases. So just at paragraph 72, the Church welcomes further dialogue with  
27 the Commission on the detail. Including on the issues relating to the structure, but also  
28 some of the issues that Ms Guy Kidd has raised which are quite complex and have some  
29 quite big ramifications for the community.

30 **CHAIR:** Yes, thank you.

31 **MR JOHNSON:** Coming on then to the issue of disciplinary processes. Ms Guy Kidd has said  
32 that the position of the Church is that matters of discipline should remain with it, and the  
33 primary reason for that is, of course, that Title D, which relates to fitness to minister, covers  
34 a wide range of potential conduct of which abuse is only part. And at the same time as

1 Ms Guy Kidd has raised, there are standards of proof set out in the canon which are  
2 appropriate, given the stakes for the respondent in those particulars circumstances. But that  
3 is not to say we don't accept changes are needed, and are needed quickly.

4 **CHAIR:** So the Title D process.

5 **MR JOHNSON:** To the Title D, yes, so the Anglican Church is committed to legislating to make  
6 sure that sexual abuse will be a matter for which deposition is expected. Currently the  
7 penalty is not prescribed and that is one of the recommendations that arose out of the  
8 Australian Royal Commission. It will also legislate to ensure that every Church tribunal,  
9 including the Appeal Tribunal, has an independent member on it, who will be neither a  
10 member of nor affiliated with the church. In a sense, adopting a structure similar to the  
11 Health Practitioners Disciplinary Tribunal, and of course the approach to the discipline of  
12 lawyers as well.

13 **CHAIR:** Yes, it's like a professional body disciplinary process.

14 **MR JOHNSON:** Precisely. There's a commitment to getting that done at the next session of the  
15 General Synod Te Hīnota Whānui who ensure that level of independence can be in place.

16 So moving away from the issue of internal church discipline, and I'll just note  
17 briefly there were questions particularly of the primates around issues of tikanga. The  
18 preference in terms of tikanga-appropriate processes is that they are not dealt with by the  
19 canon itself, but are dealt with by the Ministry Standards Commission in the manner it  
20 approaches its work, which will be to produce appropriate guidelines and processes which  
21 are currently sort of underway.

22 Of course they will be dealt with by way of, or produced in consultation with  
23 particularly Tikanga Māori and Tikanga Pasifika. And just for your information, the  
24 Ministry Standards Commission itself is what within the churches call a Three Tikanga  
25 body, in the sense that each tikanga appoints the same number of representatives to it, so  
26 there is a balanced tikanga representation across this body.

27 **COMMISSIONER ERUETI:** This is for Title D, is that right?

28 **MR JOHNSON:** This is for Title D. That's the way in which we'll deal with the Title D issues.

29 **COMMISSIONER ERUETI:** You can see, you know, the questions we raised about on the one  
30 hand redress is independent and yet the disciplinary process has degrees of independence  
31 but is not wholly independent, and surely at some point they start to blur and overlap, the  
32 two processes.

33 **MR JOHNSON:** That's a difficult question in the sense that there's a commitment to the fact that  
34 where complaints come in that involve claims of abuse, then the redress process should be

1 engaged as well. But at the same time, it's entirely possible you will end up with different  
2 standards of proof between the two processes, and for justifiable reasons really, relating to  
3 possibly the nature of the redress process, particularly for more historic claims, and then the  
4 nature of the rights of respondents who might be affected by particular allegations.

5 That's why the current preference of the Church is to keep the two processes  
6 separate, but obviously with an acknowledgment that, whether it comes in via redress or  
7 Title D, they have to be passed across.

8 **COMMISSIONER ERUETI:** What is the difference? Is the question of whether there's a  
9 respondent that needs to be brought before, held to account, or investigated, is that the  
10 distinction between the two between the complaints process and between the redress  
11 scheme?

12 **MR JOHNSON:** Yes, that's a fair distinction, and certainly, as we understand it from Dr Winter's  
13 report, if you look at some of the redress systems set up overseas, when the focus is on  
14 more institutional accountability, there's a lesser focus on proving particular allegations  
15 against individuals, which obviously, particularly given the conduct alleged, is serious,  
16 carries serious consequences if established.

17 I'll just touch very briefly on sort of wider disciplinary issues as well. It was not  
18 dealt with in oral evidence, but the Commission has received evidence on discipline,  
19 particularly in relation to schools. And as with Title D, these are vexed issues, you can  
20 understand why survivors who complain find a respondent who's using every employment  
21 trick in the book a very disempowering process, but of course that's the process that an  
22 employer has to follow.

23 And there are also some anomalies as well, so if you consider, for example, you  
24 have the mandatory reporting obligations now to the Teachers Council, but of course  
25 teachers have rights in relation to that process, and also in relation to the termination of  
26 their employment, and employment law would apply in the key institutions, non-school  
27 care institutions as well.

28 There are also, it seems to us, some limits to the regulatory framework, it might be  
29 worthwhile considering. For example, there is no requirement to report a consensual sexual  
30 relationship between a teacher and a student over the age of 16, particularly not to parents,  
31 and at the same time if there is, as we understand it, a sexual relationship between a teacher  
32 and someone over 16 who they do not teach, then it's not automatically misconduct in terms  
33 of the Teachers Council rules. So there might be some issues there that require further  
34 consideration and exploration. But it highlights the difficulty in this area, particularly when

1           you have different regulators, different rules and different processes, depending on the  
2           precise context that you're engaging in.

3           If you have no further questions in relation though those issues I will hand back to  
4           Ms Guy Kidd.

5   **CHAIR:** You've certainly thrown a curve ball there about the Teachers Council, that's something  
6           we will have to reflect on. But thank you for raising it. I agree, there sounds like some  
7           gaps that may need to be plugged. Thank you Mr Johnson.

8   **MR JOHNSON:** Thank you.

9   **MRS GUY KIDD:** Do you have any further questions for me or we're over?

10   **CHAIR:** You're over, okay, I'll just ask my colleagues.

11   **COMMISSIONER STEENSON:** I do have one, I was just pondering on the discussion around  
12           the different standards of proof and perhaps this is a question for the counsel earlier.

13   **MRS GUY KIDD:** Mr Johnson.

14   **COMMISSIONER STEENSON:** Mr Johnson. Just grappling with the idea of how that would  
15           work in terms of you're suggesting obviously there requires a higher standard for discipline  
16           purposes and how does that work with the survivor?

17   **MRS GUY KIDD:** Well, it's just like the criminal process requires beyond reasonable doubt, the  
18           disciplinary processes, across a number of boards, require a balance of probabilities-type  
19           standard. That's what our standard is for Title D. And that is because, of course, it has  
20           implications for the life and the employment of the respondent, for example, the priest.

21   **COMMISSIONER STEENSON:** So what you're suggesting is that the redress process would  
22           take on the belief of the survivor with less evidence—

23   **MRS GUY KIDD:** Yes.

24   **COMMISSIONER STEENSON:** —than discipline?

25   **MRS GUY KIDD:** Yes.

26   **COMMISSIONER STEENSON:** So the portion of redress that includes the idea that survivor  
27           requires some accountability from the abuser and also one of the key things that they find  
28           particularly important is the safety and that abuser cannot go on and abuse again.

29   **MRS GUY KIDD:** And we as a Church share those views too, so if we get a complaint of sexual  
30           abuse, for instance, we as a Church should want to see that that person is disciplined so that  
31           we can deal with them and not let them remain in as a priest, for instance.

32   **COMMISSIONER STEENSON:** But keep it separate and require a higher standard.

33   **MRS GUY KIDD:** Yes, because it's a fairness to that person. If we just did it on an account from  
34           a survivor, then that's very problematic in a fairness way. I don't know, Mr Johnson may

1 have something.

2 **MR JOHNSON:** Sorry, being very Anglican, I apologise. The issue might be more acute with  
3 historic claims compared to contemporary ones, because of course with contemporary  
4 claims you inevitably have access to better evidence, you have better access to  
5 understandings of where people were, what they were doing, contemporary documents.

6 So it may well be the issue we're talking about is more of a concern for claims that  
7 are 20 or 30 or 40 years past, in which case, of course, the safety concerns might become  
8 less acute, so it may be less of a problem than we all might think.

9 But the fundamental issue, of course, is that you wouldn't want the institution taking  
10 responsibility to be affected by the need for individuals to exercise all their rights to defend  
11 their reputations, if that makes sense.

12 **COMMISSIONER STEENSON:** Thank you.

13 **COMMISSIONER ALOFIVAE:** Thank you to you both. Just some comments. The struggles  
14 of the institutional Church are not lost on us in terms of what is just, what is fair, what is  
15 right, because what I hear you saying in your submission, Ms Guy Kidd, is actually you've  
16 got to put the Church in the context of wider society. And so the grey or the gaps, I think,  
17 is how it was referred to in the cross-over. So unlike The Salvation Army there's a context  
18 that's similar between yourselves and the Catholic Church and that is the schools and the  
19 social services.

20 But what hasn't been, or maybe it is clear—

21 **MRS GUY KIDD:** Just in relation to that, my understanding Catholics do not have any  
22 independent schools, so that's another slight difference.

23 **COMMISSIONER ALOFIVAE:** So there's some nuances and differences that actually  
24 differentiate yourselves, but the issue still remains, how do you knit that together well to be  
25 able to achieve your gospel purposes, but in actual fact be—so that's being a moral, upright  
26 leader, being able to influence wider society, versus the legalities and the accountabilities  
27 that come with being a provider of social services and, you know, services within your  
28 wider core church but also in your care institutions. It's interesting food for thought how  
29 you seek to clarify those lines. I think it's like our Chair indicated to our friends from The  
30 Salvation Army, that actually requires a much more nuanced conversation about how do we  
31 achieve that fairness and justice so that survivors actually get the healing that they're after.

32 **MRS GUY KIDD:** Yes.

33 **COMMISSIONER ALOFIVAE:** And the Church wants to be able to have a sense of relief and  
34 reprieve surely.

1 **MRS GUY KIDD:** Yes.

2 **COMMISSIONER ALOFIVAE:** To get some closure on some of these very difficult issues that  
3 plague us going into the future.

4 **MRS GUY KIDD:** But there's no silver bullet of abuse, it will continue, this is an ongoing issue,  
5 isn't it, for society, as we know.

6 **COMMISSIONER ALOFIVAE:** These are hard and challenging conversations, but they're not  
7 insurmountable conversations.

8 **MRS GUY KIDD:** No.

9 **COMMISSIONER ALOFIVAE:** I wonder if part of your response or the Church's response  
10 might lie in being able to actually separate out some bits of Title D to be dealt with really  
11 effectively in terms of what would really serve a survivor's interests as opposed to what the  
12 Church should really do in that pastoral setting. I just noticed throughout the evidence  
13 there was a real hesitation to try to pull that apart a little bit more.

14 **MRS GUY KIDD:** That is another option, so you're saying take abuse out of it?

15 **COMMISSIONER ALOFIVAE:** Mmm.

16 **MRS GUY KIDD:** Again, what would you—so you have your priest who's accused of sexual  
17 abuse 20 years ago who has a licence to preach, are you then suggesting you'd have a lower  
18 standard for that?

19 **COMMISSIONER ALOFIVAE:** No, I guess I'm just asking for the Church's views on how do  
20 you bring the closure to the survivor. Of course the Church has to deal with the  
21 disciplinary matter, that is your business, that is the business of the Church and so they  
22 should. But in terms of how you would articulate the redress and what is appropriate and  
23 then, of course, using the wider services that your Church has on offer in terms of your  
24 social services, how would you then actually craft that so that it was available to the  
25 survivor if they so chose to take up that package?

26 **MRS GUY KIDD:** In relation to redress, yes, I agree and that's part of what I was saying, it  
27 doesn't just need to be financial, it could be other services provided over the length of the  
28 time and where there's a single contact point within the Church that they come back to, or  
29 whether that's somehow part of this independent process that you have in office that they  
30 can return to for continual assistance. At some point it may depend on the survivor and  
31 whether they want to deal with the independent organisation or they want to go back to the  
32 Church. But that door is open.

33 **COMMISSIONER ALOFIVAE:** So I took away clearly your point about the Commission being  
34 careful not to apply technical solutions to complex adaptive problems that are constantly

1 evolving and we don't know what we don't know, but that the Church as an institution  
2 should have the agility to be open to being flexible in their own processes to actually assist  
3 how matters evolve better, I suppose, in the future.

4 **MRS GUY KIDD:** Yes. Certainly in relation to Title D, part of what the ministry standards will  
5 look at is how can we be survivor-focused to the extent we can for those processes and  
6 that's important, it might be things like how can someone give their evidence, different  
7 methods of that, support that they receive, all of the things that can assist.

8 **COMMISSIONER ALOFIVAE:** Thank you counsel, much appreciated.

9 **CHAIR:** No further submissions?

10 **MRS GUY KIDD:** No further submissions.

11 **CHAIR:** And no further questions. May I on behalf of the Commissioners thank the Anglican  
12 Church for fronting, for providing evidence from the highest levels which was appreciated,  
13 for the apologies which have been rendered and for the willingness to subject yourselves to  
14 questioning at quite an intense level, and we really appreciate that because it's going to  
15 assist us very much with our findings and we also appreciate your commitment to further  
16 dialogue to try and get this right in the future and that is appreciated. So thank you very  
17 much, thank you for your submissions, both of you.

18 **MRS GUY KIDD:** Thank you, and we are committed to assisting the Commission to find  
19 appropriate fora to discuss those matters further, thank you.

20 **CHAIR:** Thank you. Mr Mount, we have 10 minutes before 1, what do you propose we do?  
21 Hardly rocket science I would have thought.

22 **MR MOUNT:** No, indeed my suggestion, Madam Chair, hopefully not controversial, would be  
23 that we break now for lunch and return perhaps at 2 o'clock.

24 **CHAIR:** At 2 o'clock?

25 **MR MOUNT:** Yes.

26 **CHAIR:** Very well, we'll do that and take the lunch adjournment, thank you.

27 **Luncheon adjournment from 12.52 pm to 2.03 pm**

28 **CHAIR:** Good afternoon Ms McKechnie.

29 **MS McKECHNIE:** Commissioners.

30 **CHAIR:** We have your submissions and we've read them thank you.

31 **CLOSING STATEMENT BY THE CATHOLIC CHURCH**

32 **MS McKECHNIE:** Thank you ma'am. Madam Chair Commissioners, we heard extensive  
33 evidence on the redress processes of a number of key Catholic entities last week. Today's  
34 an opportunity to summarise that evidence in the spirit of the Inquiry's focus, what has gone

1 wrong for survivors in the redress process and what can be done to make it right. It's a  
2 strong theme, Commissioners, in my submission, of the Catholic redress scheme that it has  
3 not been approached from the legal question, what am I responsible for, but more from the  
4 moral position, for whom do I care.

5 Before I begin the submissions, Commissioners, I would like to offer words of  
6 thanks on behalf of the church and these acknowledgments are detailed in my submissions.  
7 First to the survivors for their evidence and courage, to the survivor networks and  
8 advocates for assisting them and for being an independent voice on their behalf. To the  
9 witnesses, Dr Doyle, and those from the Salvation Army and Anglican Church, we have  
10 learned much from those comparative experiences. And finally to Counsel Assisting and to  
11 you, Commissioners, for your questions and your focus.

12 The church is seeking the same thing as this Inquiry, Commissioners, the best  
13 outcome for survivors and how to shape a redress process that balances all of the competing  
14 issues and, as I have termed them, tensions that exist in such a process.

15 Commissioners, I make two short preliminary points before I turn to redress. First,  
16 that there were many other issues discussed last week, many of them are quite Catholic, if  
17 you will, and we know and encourage the Commission to return to those issues in time.  
18 There is significant evidence that may be required on some of them, and you have had but a  
19 glimpse of those issues last week and a number of them are valid and serious concerns, the  
20 church acknowledges. In light of the ongoing Catholic Church investigation, there will be  
21 an opportunity for you to do that and so today I focus just on the redress.

22 **CHAIR:** Thank you, and I can assure you that we're conscious this public hearing is just a tip of a  
23 very large iceberg and there's a lot of work going on behind the scenes including the  
24 matters you've referred to, so have no fear we will be looking at those matters.

25 **MS McKECHNIE:** Thank you Madam Commissioner. And secondly, there has been a  
26 significant response in the media to Cardinal John's apology made on Friday. It has been  
27 dismissed by some as a stunt or insincere. And as Cardinal John acknowledged in his  
28 apology, the church is very aware it has no right to the forgiveness of survivors and it has  
29 no right to expect its contrition will be accepted. But Commissioners, my clients are  
30 concerned that survivors reading the media may think that this was the first time that  
31 church leaders have apologised, and that is not the case.

32 Since as early as 2002 formal and sincere apologies have been made publicly by the  
33 bishops and the congregational leaders in New Zealand and I have footnoted a couple of  
34 those for you. We highlight this to assure those watching that this has been acknowledged

1 and recognised for some time for two decades by my clients and recognised how serious  
2 these issues are.

3 Commissioners, moving to paragraph 12 of my submission, looking back in the  
4 church's approach to redress. There are three preliminary issues which I'll highlight. First,  
5 it's acknowledged there are a lack of records of disclosures prior to 1985. It's not clear,  
6 Commissioners, whether those records were never kept in any formal sense or whether they  
7 have been lost. Some early records do exist which record the involvement of Police or  
8 complaints made by parents. Those records do not seem to record requests for redress in  
9 the way that we would understand it in 2021. Commissioners, you have, at a data level at  
10 least, all the information that the church authorities have currently found.

11 So from 1985 onwards the volume of claims and requests for redress have increased  
12 and the response has tracked that rise. Secondly, Commissioners, the structure of the  
13 Catholic Church on which you heard a significant amount of evidence last week, there is  
14 both independence and interdependence and, as one of the witnesses said last week, you  
15 heard evidence on matters ordinary Catholics may not even understand about those  
16 complexities.

17 Commissioners, it is significant for redress for a number of reasons. I have set these  
18 out from paragraph 17. The Catholic Church is a global church, but the response to  
19 disclosures around the world have differed. As Dr Doyle's evidence notes, the Americans  
20 have no concept of redress within the Catholic Church as we understand it here. There will  
21 be lessons that can be learned and have been learned by both the church and the  
22 Commission from other inquiries, but there is also distinct differences here which you will  
23 need to examine.

24 Secondly, the size and sophistication of different church authorities varies  
25 considerably, as do their administrative and operational resources. They are financially  
26 autonomous and independent, and there are significant differences in the asset bases and  
27 annual financial resources of different authorities and organisations within the church. And  
28 this, to be deeply pragmatic, impact on the resources a particular institution or organisation  
29 may have to respond to the financial aspects of a redress programme.

30 Canon law does have some relevance here, Commissioners, but predominantly as a  
31 framework sitting outside and guiding the outer edges of a redress process and particularly  
32 for discipline and the discipline of priests.

33 You heard evidence from a very small number of Catholic entities this last week,  
34 and it is appropriate for me to point out to both the Commission and the public that there

1 are some Catholic congregations who have never, as far as their records demonstrate, had a  
2 complaint of physical or sexual harm and we have given that list to the Commission. They  
3 are small, a number don't have presences in New Zealand anymore, but it is important to  
4 note that not all Catholic congregations in New Zealand have records that they have had to  
5 confront this issue. And accordingly they don't have policies and procedures to confront  
6 this issue because they haven't had to. They are signatories to A Path to Healing should it  
7 become necessary.

8 There is a significant degree of co-ordination amongst these Catholic entities in the  
9 Catholic Church in New Zealand and that is perhaps in contrast to the Anglican structures  
10 which my friends were discussing with you. A Path to Healing has been agreed by all the  
11 bishops and congregational leaders in New Zealand and that is quite a unique feature, as  
12 Cardinal Dew said, in the world. In my submission, it's credit to the church that there is a  
13 policy, it is acknowledged the policy and procedures are in constant need of refinement, but  
14 it is an agreed policy and protocol which has been in place for some time.

15 Thirdly, the nature of the public evidence filed for the hearing, ma'am, that would  
16 really echo your opening comments, thank you, that there is considerable further work to do  
17 and considerable information which the Commission have received that the public has not  
18 and probably will never see due to its volume. The church absolutely invites and accepts  
19 any invitation that it would receive from the Commission to participate in panels of experts,  
20 hui and other fora later in the year.

21 **CHAIR:** Thank you.

22 **MS McKECHNIE:** There are expertise that can be offered, ma'am, and the church would happily  
23 do that. Stepping away from my written submissions, Commissioner, the fourth  
24 preliminary point I wanted to note before I turn to the redress process was perhaps in  
25 contrast to the submissions that you have heard from my friends for the other faith-based  
26 entities. I was struck, listening to them, how different the contexts are for the three faiths  
27 before you. And that's really powerfully struck when you consider the context of the care  
28 that has been and is now provided by the three churches and faiths before you.

29 So for the Catholic Church, previously there has been significant residential social  
30 care, children's homes or orphanages, if you will, though our records do show that very few  
31 children in orphanages were in fact orphans, but none of that care is underway now. So in  
32 2021 Commissioners, Catholic Social Services, which Cardinal Dew mentioned in some of  
33 his evidence, provides a significant amount of support and care to Catholic and  
34 non-Catholic communities, but it is not residential in the classical sense.

1           Next, Commissioners, are schools and here again there are significant differences,  
2 as my friend Mrs Guy Kidd pointed out, between the Anglican schools within the Anglican  
3 Church, or alongside the Anglican Church, and the Catholic schools. Catholic education  
4 was a hugely significant part of the care provided. Our records show there were many  
5 hundreds of Catholic schools in New Zealand at their height and there are still  
6 approximately 230 who have a Catholic character. And for a number of congregations who  
7 provided education, such as the Society of Mary and the Marist Brothers, that is the context  
8 in which a number their claims have come from.

9           But since integration, Commissioners, those schools are all now Crown entities. So  
10 they are governed by the Crown Entities Act and employ teachers quite independently and  
11 separate from the church. You heard considerable evidence last week about the cross-over  
12 and the thresholds at the point it happened and the moral responsibility that is taken for  
13 members of congregations or diocese who may have worked in those schools  
14 post-integration, but it is a material difference in terms of the current ability to influence,  
15 control, oversee, when contrasted to the pre-integration education.

16           There are no schools which are now, by contrast to, say, the United States or  
17 Australia, under the complete control of the Catholic Church in New Zealand.

18           So given the reductions of scope for care, Commissioners, the area now in 2021  
19 where the most care is given by the Catholic Church is in the context of ministry. That is a  
20 pastoral care to communities without the residential aspects that the earlier care models  
21 may have had.

22           So in 2021 the focus on safeguarding is in the context of that work and the priests  
23 and religious who undertake missionary and mission in parishes or in communities to  
24 support those in need. So it is a very significant difference, Commissioners, to the history  
25 of the Catholic Church itself and to some of the other entities before you.

26 **CHAIR:** So the contemporary care profile of the Catholic Church you say is completely different  
27 from former days?

28 **MS McKECHNIE:** Very much so, ma'am. And, Commissioners, there was extensive evidence  
29 last week in questioning of a number of witnesses about lines of responsibility; canonical,  
30 moral. A key feature of the process for many, if not all, of the church institutions before  
31 you from the Catholic Church is that those fine legal distinctions have not been dwelt on.

32           For similar reasons perhaps that my friend Ms Stevens said for the Salvation Army,  
33 the nature of the response is such, because they haven't used legal barriers or legal  
34 mechanisms to resist claims, that those legal accountabilities have not had to be and have

1 not wanted to be finely analysed. This is not a question of trying to avoid vicarious  
2 liability, systemic or direct liability for negligence, those type of legal concepts we'd be  
3 more familiar with in the High Court.

4 So you will have been struck last week by the evidence talking about responsibility  
5 for their people; that is predominantly the structure through which Catholic leaders have  
6 responded. We have a moral responsibility for our own rather than a determination of the  
7 fine legal responsibility.

8 **CHAIR:** You'd have to accept, though, wouldn't you, that like each of the other two churches  
9 there was a period in time where those legal niceties were relied on.

10 **MS McKECHNIE:** Ma'am, I'm not actually sure that there was and I'll come to that later in my  
11 submission. They informed the approach to financial redress in particular, but the records –

12 **CHAIR:** We saw minutes of meetings where these things were discussed, didn't we.

13 **MS McKECHNIE:** They were certainly discussed, ma'am, but the records that we hold don't  
14 seem to demonstrate that those were used to reject claims. There are very limited pieces of  
15 litigation, one where that was used in a case some time ago, but there are very few  
16 instances in the records, Commissioner, where those legal defences have been used in a  
17 hard way to reject claims or deny responsibility. It seems more that they were used to set a  
18 context and, as I say later in the written submissions, particularly when considering what  
19 the financial aspects of the redress were.

20 It's clear that the church authorities were aware that it was very unlikely there was  
21 going to be successful litigation against them. Limitation and ACC meant these individuals  
22 approaching them were not going to sue and win. But the records, Commissioner, in my  
23 submission, don't demonstrate that that point was taken very often. Very, very few cases  
24 where it was forced to that, rather it informed as a background that approach.

25 **CHAIR:** Yes, I don't think we saw any evidence of people were rejected on the basis that they  
26 wouldn't have a good claim in the court, but I think there's still a strong flavour, isn't there,  
27 that in the past the church has to, I think, accept that it was comforted by the fact that it  
28 knew if somebody went to court they wouldn't succeed. And that probably informed the, as  
29 you've said, the level of redress, the level of compensation or ex gratia payments being  
30 made. And also ACC was one of the – I don't want to call it a legal device, it's a law, it's a  
31 statute that we're bound by that obviously influenced the church.

32 **MS McKECHNIE:** Yes, Commissioners, and I think it would be fair to describe it in that way  
33 that you did at the end of your comment, that it is a legal structure and the church has  
34 sought advice on those structures and that they influence them. Levels of comfort or

1 otherwise, ma'am, I understand that to be from the evidence and it's not for me to say, but  
2 certainly it was the framework in which these were responded to.

3 **COMMISSIONER ERUETI:** I thought, wasn't one of the witnesses referred to two factors; one  
4 was mediation results and also the other was court judgments and settling upon the ceiling  
5 of the amount that they were going to offer to survivors. I can't remember who that was,  
6 might have been Tim's evidence.

7 **MS McKECHNIE:** It was the evidence of Peter Horide I think you're referring to, in terms of  
8 other factors taken into account. And like the evidence from the Salvation Army, where  
9 there are lawyers involved and there are negotiated amounts as part of a financial redress  
10 package, there is a level of external check to those payments provided by the legal counsel  
11 representing the survivor in those instances, and I don't understand that the data  
12 demonstrates – the data is not particularly coordinated and coherent, as I go on to say,  
13 across the 49 entities, but it doesn't, I don't think, demonstrate that legally represented  
14 individuals got more money than others. That doesn't appear to have been a determining  
15 factor. So there may have been a comfort provided across all of those approaches.

16 One of the complexities here, Commissioner, of course, is that this is 49 different  
17 sets – in fact it's not 49 because there are a number who have never done this, but of course  
18 who have responded to redress they are all doing it comparatively individually, and so any  
19 kind of cross-comparisons are challenging in a Catholic context.

20 **COMMISSIONER STEENSON:** Sorry, so when you say in your opening moments ago, you  
21 talked about what the church is responsible for but rather for whom do you care.

22 **MS McKECHNIE:** They care.

23 **COMMISSIONER STEENSON:** So what do you mean by what they're responsible for then if  
24 it's not the abuse, is it their legal responsibility?

25 **MS McKECHNIE:** The thrust of the comment, Commissioner, was in the context of the spirit in  
26 which this has been approached, it has not been approached for most entities, if not all,  
27 from a legal responsibility leading the discussion, it has more been an acknowledgment for  
28 whom do we care, who do we care for in terms of our own members and who do we care  
29 for in terms of the community that the church engages with. So it is that spirit rather than a  
30 predominantly legal approach. By contrast perhaps to the Catholic Church in the United  
31 States who have a more legalistic, litigious framing.

32 **COMMISSIONER STEENSON:** Thank you.

33 **MS McKECHNIE:** Commissioners, returning to my submissions, I have set out in the  
34 submissions a brief summary and overarching framework of the key features of the

1 evidence for redress that you heard last week. The two principal strands, and this echoes  
2 some of the comments my friends from the Anglican Church made, are a response to the  
3 survivor and the actions to be taken for the respondent, and there are real tensions created  
4 by those two things both needing to be responses to a disclosure of harm, and that's  
5 acknowledged and is one of the real complexities that we will face in trying to move  
6 forward from here.

7 Sitting alongside that is the discussion in evidence we heard about safeguarding. So  
8 Commissioners, I have set that out in the submissions, I hope, to assist and pull together  
9 some of the themes and threads from last week.

10 Turning to paragraph 44 of my submissions, I made some general observations  
11 about the key features of the Catholic Church response and redress process. Again, with  
12 that caveat that there are a number of independent entities, so not all generalisations apply  
13 to all. It is, as I say at paragraph 45 of my submissions, the experience of the church  
14 authorities, as it clearly has been for you as Commissioners, that survivors wish to be  
15 listened to and also to ensure what happened to them does not happen again. Some  
16 survivors, the evidence and experience of our clients show, want nothing more than this.

17 It is important and acknowledged that a bishop or congregational leader should  
18 apologise and must apologise to the survivor and that should be face-to-face if that is what  
19 the survivor wishes. It is important that counselling is offered. Pastoral support is often  
20 provided, and, Commissioners, I'm conscious this is not a concept that you will have  
21 necessarily heard about in the State hearings, this is not a feature of a State redress process,  
22 and it's also something that differs very much in terms of the detail between entities within  
23 the Catholic Church. There is evidence in Father Duckworth's brief in Sister Sue France's  
24 brief of the response of the Sisters of Mercy and evidence from Cardinal John. There are  
25 common themes by what they mean by pastoral care, but it differs between those entities  
26 what they prioritise and how it is delivered.

27 **CHAIR:** Just on that point, we have the benefit, and I'm not sure if you have yet seen the closing  
28 statements from the Survivors Network.

29 **MS McKECHNIE:** No, ma'am, I haven't.

30 **CHAIR:** And also from SNAP.

31 **MS McKECHNIE:** No, ma'am.

32 **CHAIR:** I think it's only fair I raise a couple of issues they've raised to give you an opportunity to  
33 comment on behalf of the church. Just talking about pastoral care, the closing statement of  
34 the Survivors Network of Those Abused By Priests, that's SNAP, which questions whether

1 the NOPS redress scheme is a healing process.

2 It's referred to as a misnomer, our members have described A Path to Healing as an  
3 inquisition feeling they were the ones being put on trial. That Ms Noonan spoke  
4 confidently about survivors coming with them – that's the Catholic Church – on their  
5 individual healing journeys and the suggestion is that once trust has been lost by abuse and  
6 further betrayal it's misguided to assume it can be so easily regained.

7 I appreciate I'm putting a lot to you, but I think this is the flavour of the distrust  
8 from SNAP of this process which you have referred to as healing. Then finally it said that  
9 Ms Noonan claimed that survivors are offered support throughout the NOPS process, none  
10 can remember it. "From our expectations the NOPS process was never about us or our  
11 healing, it was about protecting the institution."

12 Those, as I say, I think they're all – it's quite long, but I think it all says the same  
13 thing and I think it's appropriate that you be given an opportunity at this stage, if you feel  
14 you can now, unless you'd like to take some instructions and get back to me, I think you're  
15 more than capable of responding.

16 **MS McKECHNIE:** No, Commissioner, my instructions on this point are very clear.

17 Commissioner, it is acknowledged that not all survivors who participated in the NOPS  
18 process find it positive. And that is regrettable and regretted. It is not, however, a  
19 universal experience and I'm conscious that there were a small number of survivors who  
20 gave evidence to the Commission and they are to be encouraged and thanked for that.

21 But it is not a universal experience, there are many letters, comments made to  
22 Ms Noonan and her team of thanks of acknowledgment of the support that they have been  
23 provided. It's not appropriate for us to put those in a public domain without the agreement  
24 of those survivors, but if it would assist they can be provided to the Commission staff to  
25 demonstrate that there is a range of responses. Many do find the process helpful, or at least  
26 clear, and that there is a degree of support and healing, but it is acknowledged and  
27 regrettable that it is not a universal experience.

28 That, in my submission, Commissioners in part informs the impact of trauma on  
29 individuals. And there are files which demonstrate that, there are records of a particular  
30 survivor, for example, saying thank you for a particular part of the process and later  
31 returning having reflected on something else having happened in their lives and they are no  
32 longer happy with the process and that may change again.

33 Some of these engagements in files happen over many, many years, as they need to  
34 and they must, but during that period, Commissioners, it is not a constant story of negative

1 or nor of the positive, it is a much more complex experience reflecting the impact of  
2 trauma. And I probably pick up on Tom Doyle's words as well about transference and  
3 somewhat being a punching bag. Many survivors are rightfully very angry and they're very  
4 angry with the church and Ms Noonan and her team are often the first and principal  
5 sustained engagement and support they have, so often they are very angry with her.

6 And that is not necessarily because of flaws in the redress process, sometimes it  
7 might be, but not necessarily, and nor is it necessarily because, of anything, Ms Noonan  
8 and her team, or their predecessor, Mr Kilgallon is here, they have done. It is because they  
9 are hurt, and they are angry, and that has to be acknowledged, Commissioner.

10 **CHAIR:** You say there's nothing wrong with the process, but I think there were  
11 acknowledgments, weren't there, that –

12 **MS McKECHNIE:** Ma'am, if you had taken that from my submission that was not at all my  
13 intention. There is always, and I think Ms Noonan very responsibly acknowledged, always  
14 work to be done and areas to be improved. But for some, and indeed for a significant  
15 number, this is a positive or neutral experience that does not have the horrors that that  
16 submission makes. And for those who have experienced that, my clients are very sorry that  
17 this process has not given them the positive healing outcomes that they wanted because that  
18 is the intention, but it is acknowledged it's very hard to achieve for everyone.

19 **CHAIR:** I think there were some acceptances that more trauma-informed approach and learnings  
20 in that regard, but I just think around this particular point, I think where some, and maybe  
21 many, have had a positive experience; those who haven't it has added to the trauma of the  
22 abuse in the first place, would you accept that?

23 **MS McKECHNIE:** Yes, I think the witnesses clearly accept that.

24 **CHAIR:** Clearly said that, didn't they.

25 **MS McKECHNIE:** Yes.

26 **CHAIR:** Thank you.

27 **MS McKECHNIE:** Commissioners, on your comment about trauma-informed, it is absolutely  
28 acknowledged and it is seen in Ms Noonan's current professional development that this is a  
29 vital step. It is also because the Catholic Church sadly has had to undertake this process for  
30 so long, the realisation and science of trauma-informed approaches is relatively new, and  
31 the church was doing this and having to respond to people before it was really clear to  
32 psychologists and psychiatrists what the impact of trauma was in this process and how it  
33 could be better structured.

34 And so across time, A Path to Healing has been informed and it is tracking, it is

1 much to do, as Ms Noonan acknowledged, but a trauma-informed approach was not known  
2 to the world in 1985, and certainly not to the Catholic Church. The church is committed to  
3 improving that, ma'am, but there is always more learned in the science of psychology and  
4 so we can improve.

5 **CHAIR:** Yes, thank you.

6 **COMMISSIONER ALOFIVAE:** Just before you carry on, Ms McKechnie, just the issue of  
7 counselling, because it is offered across all of the faiths that counselling be available.  
8 Some of the insights that we're learning here at the Commission is actually understanding  
9 the entry point, so the spiritual abuse that has happened is quite different from any other  
10 form of abuse. So actually having the appropriate counsellors being available to actually  
11 deal specifically to this, it's not just you can refer to a whole range of counsellors who are  
12 all specialists in your own right, otherwise you're applying existing tools to an issue we're  
13 not actually addressing. It's a wider workforce issue, but given the depth and understanding  
14 now within the Catholic Church, if that might be something they're turning their minds to.

15 **MS McKECHNIE:** They certainly are, Commissioner, and it's one of those tensions, because in  
16 order to understand the spiritual trauma of a Catholic caused by the Catholic Church, you  
17 need a level of understanding of the Catholic Church and it runs squarely into the concerns  
18 about independence and engagement and how difficult it is to navigate that in order to  
19 respond in a truly informed way, the person providing that counselling does need a level of  
20 understanding, and certainly Father Tim Duckworth very much feels that some of the  
21 support the Society of Mary provide is of that form.

22 But it is, of course, acknowledged that many survivors don't want anything to do  
23 with the Society of Mary. And so how an individual survivor wishes to do that, how it can  
24 be provided is very complex, but yes, it's acknowledged how fundamental it is, ma'am, and  
25 that's one of the reasons, as I move to later in my submissions, the Catholic Church does  
26 not want an independent process to be so independent that that connection is broken,  
27 because there are so many survivors who come to the church wanting a spiritual element to  
28 their healing; they want to pray with the bishop, they want the spiritual support, they want  
29 an apology and acknowledgment from the senior leadership of the church, that spiritual  
30 harm and spiritual healing is an aspect, not for all, but for many of the survivors. And it's  
31 complex.

32 **COMMISSIONER ALOFIVAE:** I think it's a wider workforce issue in any event and that whole  
33 discipline about how then can independent psychologists or counsellors actually support  
34 survivors of this nature.

1 **MS McKECHNIE:** Very much.

2 **CHAIR:** There's one other part I think I should put to you, just again from the SNAP submission.

3 We were surprised to learn the primary concern of the church authority as outlined in A  
4 Path to Healing was that redress "should be directed towards healing and reconciliation not  
5 compensation and punishment or penalty." And SNAP says we find this statement an  
6 absurdity and appalling evasion of culpability because compensation, punishment and  
7 penalty is healing. Any claim to the contrary can only be motivated by the institution's  
8 further attempts at self-protection."

9 That's another aspect of survivor experience that, yes healing, yes reconciliation, or  
10 perhaps reconciliation; but compensation, punishment of the abuser, or penalty for the  
11 abuser, is important as well. Would you accept that that's a fair assessment of the survivor  
12 perspective or some survivors' perspectives?

13 **MS McKECHNIE:** Yes, Commissioner, and again, as I move to later in my submissions,  
14 compensation and ex gratia, there are particular terms that are used by the church and why  
15 that is used and they are legal and quite moral concepts. I think from a gospel perspective,  
16 Commissioner, to pick up on your word earlier about what can be compensated for in the  
17 context where we're not talking about legal compensation. In terms of --

18 **CHAIR:** Sorry, if I can just make it clear, the point here is the contrast between the church saying  
19 they want healing and reconciliation and survivors are saying "We want more than that, we  
20 want some form of compensation and we want the abuser to be made accountable." Do you  
21 see that that --

22 **MS McKECHNIE:** I certainly see that request, ma'am, and very many survivors do and have  
23 received compensation. As I say from paragraph 46 of my submission, the compensation  
24 provided is variable, prior to this process the church itself was not aware of what the other  
25 parts of the Catholic Church were doing and there is an understandable degree of  
26 dissatisfaction with that. But certainly, compensation like payments referred to by the  
27 witnesses as ex gratia payments or -- and, in my submission, that's predominantly as an  
28 acknowledgment that nothing can compensate, in a spiritual sense, for the harm done.  
29 That's the reason for that word being used.

30 In terms of discipline and responsibility ma'am, absolutely, and as you heard  
31 Cardinal Dew say, historically this was a fundamental and horrific failing of the church,  
32 that the accountability that should have been demanded was not. And you heard  
33 contemporary evidence about the processes used now, and the options for discipline and the  
34 way that that is done.

1 **CHAIR:** Yes.

2 **MS McKECHNIE:** But going back to the tensions, that squarely runs into the level of  
3 information needed from a survivor to understand who harmed them and how, and the  
4 natural justice rights of that individual who, if they did these actions, must and should be  
5 held accountable and punished for them. It's a very fundamental tension that sits at the  
6 heart of these processes.

7 **CHAIR:** Certainly, thank you for covering that. Sorry I've thrown you off your --

8 **COMMISSIONER ERUETI:** Can I just add, sorry to add to --

9 **MS McKECHNIE:** No, please, the church welcomes your questions.

10 **COMMISSIONER ERUETI:** Thank you. Particularly from the Cardinal's evidence that the  
11 question of compensation seemed to take some time to get off the ground. When first  
12 establishing that optional, is it optional protocol -- I'm thinking of international law  
13 now -- the first protocol agreement in the early '90s throughout that time that there's more  
14 of a focus on establishing a process for disciplinary proceedings rather than providing  
15 redress for harm that has been caused. And so it's not until sometime the fact that the  
16 documents and the minutes begin to talk about compensation, I wonder whether there is  
17 part of the frustrations that survivors are voicing.

18 **MS McKECHNIE:** Commissioner, I think there might be two themes there. The first is, as a  
19 matter of fact, was compensation paid. And you have the records at the Commission when  
20 those first payments were made. And they were made, as the evidence is clear, on an ad  
21 hoc basis by leaders in response to particular requests, and where those records are held we  
22 know the dates of those payments. That's quite a different -- linked but different -- factor to  
23 the attempts at co-ordination across the dioceses and congregations that are in the evidence.  
24 I don't understand, Commissioner, that that latter process of trying to work out what to do  
25 and liaise between themselves necessarily prevented payments being made in the  
26 meantime, but the records will show that that we should hold.

27 The second part was an attempt to understand what the others were doing in an  
28 attempted collective response. But I don't understand that that meant payments weren't  
29 made if they were sought and as part of that process, and I'm very mindful of a number of  
30 the questions that were asked last week about asking what somebody wants versus  
31 providing them options, and there may have been an aspect of that in the earlier period, that  
32 this wasn't something survivors were necessarily aware of.

33 But I would suggest that the data provided should be mined to work out whether  
34 there were in fact payments in the 1990s while that discussion was going on as opposed to

1 it being an anchor delaying it. I'm trying to remember from the records, Commissioner, I  
2 can't answer your question with any factual detail now, but you do hold that information.

3 Moving on to paragraph 47. Again, responding to an aspect of the scoping  
4 document for this investigation, there are relatively few records of lawyers being engaged,  
5 from the records that have been found, noting some of them are very partial records.  
6 Approximately 25% of the matters involve the church authorities using lawyers, and the  
7 records differ and the approaches differ. As you heard Brother Horide say, the Marist  
8 Brothers typically use lawyers when they are themselves approached by lawyers. Again,  
9 the records of those have been or can be provided to the Commission. And to your point  
10 before, Commissioner, the approach to legal advice and, as Father Duckworth might frame  
11 it, the usefulness of lawyers has certainly changed over time.

12 **COMMISSIONER ERUETI:** Yes.

13 **MS McKECHNIE:** But there are two key legal influences on the Catholic Church's redress  
14 process and I set those out from paragraph 48. Firstly, the Holy See and canon law, but as I  
15 have said a number of times, that is predominantly for disciplinary options. Some of those,  
16 as you've heard, cannot be directly controlled by the bishops in New Zealand, that's an  
17 involvement of the Pope.

18 Secondly, to your question before, Commissioner Shaw, in relation to the  
19 framework that Limitation Act and ACC provided to the consideration of approach; they  
20 were not legal mechanisms or a coordinated litigation strategy, but they were used. And  
21 I do note in the submissions there has been very little litigation by contrast to some of the  
22 other jurisdictions, there seems to be less than 15 claims brought in the High Court for any  
23 kind of civil claim against any of the church entities in total.

24 **CHAIR:** Churches in total not just the Catholic Church?

25 **MS McKECHNIE:** Different parts of the Catholic Church, ma'am, and it's noteworthy that one of  
26 them where the survivor was unsuccessful in court has subsequently -- she has been offered  
27 support and redress and financial redress has been offered and accepted. So the fact that  
28 she was unsuccessful in her High Court proceedings did not prevent ultimately redress  
29 being provided to her. There were a number of themes in the redress process that you heard  
30 in the evidence and a number of acknowledgments of flaws and work that still needs to be  
31 done.

32 So moving to part C of my submissions, Commissioner, I have set a number of  
33 these out for you. Firstly, the frank acknowledgment from church witnesses that there are  
34 and remain significant barriers to accessing redress, and it's acknowledged that a number of

1 these are cultural. Clericalism and particularly, Commissioner, in parts of the community,  
2 clericalism is stronger than in others, and where there are other taboos around sexual  
3 matters, the church acknowledges it has much to do in reaching those communities, both to  
4 educate the communities and also to access any survivors within those communities who do  
5 not currently wish or feel able to come forward. You heard Cardinal John's firm  
6 commitment to that work and Ms Noonan's as well.

7 A Path to Healing is flexible, you heard some evidence from Father Tim about the  
8 use of ifoga in the context of the Society of Mary. But Ms Noonan acknowledges that  
9 presently that is not commonly used and it may not be an option that survivors are aware of,  
10 and so again, that cultural competence and those options being something that the church  
11 offers to a survivor rather than waiting to be asked is something that needs to be  
12 considered.

13 Commissioners, I talk from paragraph 59 about the issue about the need for an  
14 investigation and what threshold might be used. Commissioner Shaw, this perhaps echoes  
15 one of the points you made before, because in fact the introduction of the type of  
16 investigation that NOPS is using was in response to survivors' requests that the church  
17 investigating itself and using church employees or clerics was inappropriate and was  
18 insufficiently independent.

19 So accordingly, seeking to respond to that, the external contractors, typically with  
20 an investigative Police background and increasingly trauma-informed, were used to do that  
21 process. And it is acknowledged that that process has not been welcome by everyone who  
22 has participated in it. And again, this demonstrates one of the tensions across the period for  
23 the Catholic response, that there is no one survivor voice, as you will know much better  
24 than me from your own discussions, there is not one set of responses that suit all survivors,  
25 and this question of investigation demonstrates that quite succinctly.

26 There were questions --

27 **CHAIR:** Just to be fair and for completeness, the closing statement on behalf of Cooper Legal  
28 raises those issues about investigations where Cooper Legal claimants have been asked to  
29 tell their stories more than once, they felt as though they've been the ones on trial when  
30 facing multiple requests for information including being asked for their criminal history.  
31 They found the meetings with the investigators brutal, intimidating and re-traumatising,  
32 especially because most are former police officers and many of their clients have had a  
33 poor history of interacting with the Police. So you obviously anticipated that, but just so  
34 you know that is a submission that will be made later and you might want to comment

1 further on that.

2 **MS McKECHNIE:** I would echo Ms Noonan's recognition and apology to those survivors who  
3 have found the experience of the sort just described, Commissioner. There is real tension  
4 in this process. It was noteworthy that Dr Doyle considered that independent external  
5 investigators with a Police background would be the appropriate way to do this. There is a  
6 lot of conflicting approach and advice in this area and it is difficult to chart a course.

7 But there are questions from Counsel Assisting at points during the last week about  
8 why an investigation is required at all. And to respond to that, as I set out in my  
9 submissions from paragraph 62, there are a number of key reasons why an investigation of  
10 some form is required, and the form of investigation does vary depending on the nature of  
11 the allegation; if it's contemporary or historic, if the accused is alive or dead.

12 And importantly if the accused is in current ministry, if they are a working priest or  
13 religious, they clearly have natural justice rights that must be respected. The implications of  
14 being found to have harmed somebody, as you heard from Father Duckworth and Cardinal  
15 John, are very significant, as they should be, but as a result of that they have natural justice  
16 rights that need to be responded to.

17 But there is also a safeguarding aspect to this. It is important where possible -- the  
18 church needs to identify who harmed this person. It is not typically a question of belief or  
19 disbelief that they were harmed, you heard Father Tim's evidence very clearly if someone  
20 comes forward in this process he is clear that they have been harmed by someone. But  
21 from a safeguarding perspective, Commissioners, in order to firstly remove that individual  
22 and keep the society safe from the individual, you must have the right individual; and  
23 secondly from a wider systemic issue, in terms of the level of knowledge of the church --  
24 Who was this person? Who knew? There needs to be steps taken, where possible, to  
25 identify the individual.

26 And as you will be aware, there are also now obligations from the Holy See that if  
27 there is any evidence of a cover up or historically knowledge that was not acted on it must  
28 be reported to the Vatican. So again, the identity of the individual responsible for the harm  
29 is important.

30 It does not appear from the records, Commissioners, that failure to identify a  
31 respondent is a barrier to redress being provided. As you'll have seen from the small  
32 snapshot of the documents, redress has been provided to many survivors where they cannot  
33 identify the individual. And in some contexts where priest X is named and it's not priest X  
34 because they weren't there, but in a number of other situations where no priest or religious

1 is named, the memories of young children in particular may remember that a nun hurt them.  
2 But they have never told the Church the name of that woman, because they don't remember  
3 it.

4 The records don't show that that is systematically a barrier to those individuals  
5 receiving redress. It's acknowledged by many of the female congregations that the outfits  
6 that they used to wear, that you will not see on Catholic women now, made it very difficult  
7 to identify them because all you could see was their face and the records show that there are  
8 allegations made against unnamed individuals, particularly where the children are younger  
9 and that's understood. And that does not seem, from the records, to have been a barrier to  
10 redress being provided.

11 **COMMISSIONER STEENSON:** May I ask, counsel, does that mean when they're not upheld  
12 it's not due to the verification of who may have been the abuser?

13 **MS McKECHNIE:** Commissioner Steenson, that's a complex question to answer because who  
14 decided whether they were upheld or not has changed so much over time. So speaking  
15 now, as you'll remember, the Claims Assessment Committee makes the recommendation  
16 about whether a matter should be upheld or not, and then the bishop or congregational  
17 leader is given that recommendation and they're given the investigation report that sits  
18 underneath it and they review that material. Previously, different protocol committees for  
19 the dioceses and for the congregations and then over time aggregations of those committees  
20 have used different approaches. As you'll see, one of the congregations gave evidence that  
21 if it was a living member and they denied it, there was no corroboration, the matter was not  
22 upheld.

23 That is complex in those situations, so different approaches have been used to what  
24 is upheld and not upheld. But what's important, Commissioners, and shows in the data, is  
25 that redress is also provided in situations where a complaint is not upheld. So a matter not  
26 being upheld doesn't mean that redress won't be provided. It will mean that there won't be a  
27 disciplinary outcome for the individual if they are alive, but the records show that in a  
28 number of cases that were not upheld, nonetheless counselling is offered, an apology for  
29 harm or hurt is offered at a more general level and financial redress may be offered as well  
30 in some situations.

31 And, Commissioner, this does differ very much between my clients, so I don't want  
32 to generalise, not all have been so generous to the not upheld, but in many cases the records  
33 show a complaint wasn't upheld but there is still records that forms of redress are provided.

34 **COMMISSIONER STEENSON:** But in terms of whether or not this particular factor, it's been

1           inconsistently applied is what you're saying?

2 **MS McKECHNIE:** That's probably a generalisation you could make about everything that it's  
3           been invariably applied.

4 **COMMISSIONER STEENSON:** Thank you.

5 **MS McKECHNIE:** And it has certainly changed over time within entities as well, Commissioner.

6 **COMMISSIONER STEENSON:** Thank you.

7 **MS McKECHNIE:** Commissioners, I note at paragraph 66 of my submissions the Australian  
8           National Redress Scheme and the concept of reasonable likelihood. The threshold that you  
9           will recommend for any scheme, independent or otherwise, is obviously a key issue, and  
10          the threshold for the disciplinary process and whether that remains the same as the  
11          threshold for the redress process. Informally many of the Catholic entities have not used the  
12          same threshold, because they have provided redress for not upheld complaints. But how  
13          you will recommend that in a more formal way is obviously a vital issue.

14 **CHAIR:** I take it the Church -- you've approved the language of verification used by the Salvation  
15          Army but you don't want to put a line in the sand and say we would support that standard of  
16          proof? I'm not asking you to do, just whether you are able to do it.

17 **MS McKECHNIE:** As I say at the end of the submissions, ma'am, the Catholic Church has not  
18          yet had the opportunity for reflection of even a week, some of my colleagues have had, as  
19          you heard the Cardinal commit, the Catholic Bishops Conference will be considering this  
20          soon.

21 **CHAIR:** It's probably a better question for later in more particularised discussions.

22 **MS McKECHNIE:** Commissioner, I can say, though, that verification for a living respondent  
23          currently in ministry would be -- if by verification you mean the Salvation Army approach  
24          of checking the child was there would be insufficient to meet the natural justice needs and  
25          responsibilities the Church has to the respondent. Where an individual is living and the  
26          complainant does not want to go to the Police, the Church is left in the invidious position of  
27          trying to manage what that threshold will be. That is one of a number of reasons why they  
28          encourage people to go to the Police because it's the appropriate place for these things to be  
29          investigated.

30                 However, ma'am, in the context of a dead respondent, as you heard in some of the  
31          evidence last week, who sadly is a repeat offender, and I won't name them, but sadly there  
32          are a number known to the public who are sadly of that sort, verification is probably all that  
33          is currently done in the investigation, ma'am. Because it is acknowledged if you were  
34          there, that man was an offender and you were more likely harmed.

1 **CHAIR:** That's going to hit the test of more likely than not, isn't it.

2 **MS McKECHNIE:** Indeed ma'am. There were, in a similar way, questions asked of witnesses  
3 last week about pausing Police investigations or pausing redress while Police investigations  
4 are underway. This is an area, Commissioners, where we would encourage engagement  
5 with the Police. This was at the request of the Police and you will understand that the  
6 Church is very anxious not to do anything, anything at all that would jeopardise a  
7 prosecution. And if this is a concern of survivors we would encourage very strongly that  
8 the Police are involved in this. It's not really an area for the Church because of that concern  
9 that justice should be done when it can.

10 The provision of information, Commissioners, particularly about the investigation  
11 process and outcomes for respondents, is another vexed area. We acknowledge the  
12 frustration survivors have that they don't receive full copies of their investigation reports.  
13 As Ms Noonan outlined in her evidence, those documents often contain highly personal  
14 information about the respondent, but also about third parties who may have been witnesses  
15 proposed by the respondent or other survivors.

16 So if in those horrible situations Commissioners of repeat offenders, investigation  
17 reports do provide a level of detail of that, involving other people, to the Complaints  
18 Assessment Committee and to the decision-maker so they are aware of that background.

19 Now that is all, of course, governed by the Privacy Act, and, in my submission,  
20 those highly personal details are not appropriate to provide to the survivor, albeit that the  
21 Church very much understands the frustration that that causes. As Ms Noonan asked in her  
22 evidence, Commissioners, we would welcome any recommendations you have to the  
23 Government about the role of the Privacy Act in this context. Similar issues arise in  
24 employment investigations, and the Church accepts they are particularly acute for  
25 survivors, and how the Privacy Act will work in future we would welcome the  
26 Commission's thoughts.

27 **CHAIR:** Thank you.

28 **COMMISSIONER ERUETI:** Have we skipped over para 68? This is about --

29 **MS McKECHNIE:** We've skipped over quite a few paragraphs, Commissioner, in the interests of  
30 time.

31 **COMMISSIONER ERUETI:** Yeah, I just wondered, because it seems to -- this is about  
32 involvement of whānau and support people in the processes. I don't think there's a lot of  
33 reference to the Treaty in these closing submissions but this seems to be one of them. But  
34 from memory, the Cardinal was committing to more than making the process culturally safe

1 or Māori in others, but also involving Māori in the review of *A Path to Healing*. I think  
2 that's underway at the moment I think, or it's about to take place; recognising the  
3 importance of having Māori involved and provide input in the design of the processes from  
4 the outset, and that hasn't happened or from other survivors.

5 **MS McKECHNIE:** It has happened to a small extent Commissioner, but certainly it is  
6 acknowledged it is a vital aspect and increasingly with the Pasifika community and the size  
7 of the Catholic Pasifika community, that is another vital element, as I think Ms Noonan and  
8 Cardinal John both acknowledged last week, yes.

9 **COMMISSIONER ERUETI:** That's true and there's a reference to Bishop Mariu, for example,  
10 in the review in 2005. But there was another question that stems from this, and it's about  
11 how the Church sees its obligations to Pasifika peoples compared to Māori, a suggestion in  
12 this submission, the flavour of it and the others that both groups fall under this sort of  
13 generic right to culture category, if you like. So to your mind, how do the obligations differ  
14 between Māori on the one hand and Pasifika on the other when it comes to a redress  
15 scheme?

16 **MS McKECHNIE:** Reflecting on the evidence from last week, Commissioner, being as objective  
17 as I can, in my submission, the approach a number of the Church witnesses took to Māori  
18 and to their Māori communities is in part about—it's not so much about Treaty of Waitangi  
19 obligations to do so, and perhaps that's why the statements to the Treaty, which are made  
20 regularly and are heartfelt, are only part of the answer, because it's at least as much about  
21 the commitment to the Māori within their community independent of the Treaty. They  
22 reinforce each other, but the second is not driven by the first, they both inform the approach  
23 of the Church.

24 And there has been a long history, as you heard from a number of the witnesses, of  
25 the Catholic Church and Māori in New Zealand over 180 years right back to, memorably,  
26 Father Duckworth's evidence about being present at the signing. So that is a fundamental  
27 feature, in my submission, of the identity of the Catholic Church in New Zealand,  
28 Commissioner, and the Treaty plays a role but it's not the extent or defining of that role.

29 The Pasifika community within New Zealand, however, is much more  
30 contemporary in volume and raises its own rich culture and cultural challenges that come  
31 from that. The concept of whakamā is common to both, but it is perhaps more intense in  
32 parts of the Pacific community and clericalism, again, is perhaps more intense in parts of  
33 the Pacific community.

34 So I think it would be an unfair characterisation of the evidence last week that

1 Māori and Pacific were put together, lumped together, under cultural—I forgot the phrase  
2 you used, Commissioner—but certainly they are deep and unique connections to both of  
3 those communities; some similar issues and some different.

4 **COMMISSIONER ERUETI:** Just this interesting way of thinking about the Treaty, you talk  
5 about how the Treaty plays a role with the Catholic constituency, if you like, particularly  
6 Māori, but in some way it doesn't—I didn't understand that latter part about how the Treaty  
7 isn't relevant?

8 **MS McKECHNIE:** It's not a submission, Commissioner—I apologise if I was confusing, it's not a  
9 submission that it isn't relevant, it's a submission that the Church is not a Treaty partner so  
10 it is not guided or required to respond to the Treaty as a legal instrument which guides its  
11 response—it's by contrast to the State; the State must respond to Māori as a Treaty partner  
12 and it guides and influences, in my submission, all parts of the—or should, all parts of the  
13 Crown's response.

14 For the Church there is an acknowledgment of the Treaty as a distinct and important  
15 founding document as acknowledged in chapter, it is acknowledged in constitutional  
16 documents, but the relationship with Māori transcends that relationship and is more than  
17 just the Treaty relationship as the fundamental nature of it for the Crown.

18 I'm being rather clumsy here, Commissioner, but it's not that it's not relevant, it's  
19 that it's part of the wider relationship which is fuller and goes to matters of spirituality and  
20 faith and culture, of which the Treaty is part but not all.

21 **COMMISSIONER ERUETI:** Thank you.

22 **MS McKECHNIE:** I hope that's a fair characterisation of my client's evidence from last week.

23 **COMMISSIONER ERUETI:** There are commitments to the Treaty in the chapters and in other  
24 constitutional documents. I would appreciate that the relationship is different from—it's not  
25 a Treaty partner, the Church is not a Treaty partner, but in fact all of them seem to have  
26 made commitments to the Treaty in one shape or another, including the Catholic Church  
27 and the different congregational leaders.

28 There's that, but there's also, if, strictly speaking, there is no binding obligations  
29 under the Treaty because they're not a Treaty partner, international human rights principles  
30 which the Church, all have to recognise and respect, and that includes the obligations owed  
31 to indigenous peoples through, for example, the UN Declaration of the Rights of  
32 Indigenous Peoples.

33 So I wonder, for both the commitments they've made themselves and also the  
34 international human rights obligations, whether they are being given full effect by the

1 Church—focus on the Catholics for now—through its policies and plans on redress?

2 **MS McKECHNIE:** On redress, Commissioner, as the witnesses acknowledged last week, there  
3 should be more done to ensure and embed those practices, both for Māori, because of the  
4 Treaty and independently and for other communities, Pacific and many others that have  
5 significant Catholic communities in New Zealand. But it does transcend that.

6 To Cardinal John's evidence, and this wasn't in his evidence, but I am surmising that  
7 Cardinal John doesn't have a vicar of Māori and a Māori Pastoral Committee because he  
8 has a Treaty of Waitangi obligation to Māori to have one. He has one because he needs one  
9 for his Māori community and he wants that advice. Now in having one, I would submit it  
10 helps him fulfil his obligations, so it's the context of wanting to have it rather than being  
11 compelled to have it, Commissioner, that I'm trying to characterise.

12 **COMMISSIONER STEENSON:** Can I just clarify then, do you mean that that's because Māori  
13 are tangata whenua rather than the Treaty?

14 **MS McKECHNIE:** In part, yes, Commissioner, and in part because they were the community  
15 that the Catholic Church came to New Zealand to look after. The Sisters of Mercy and the  
16 Society of Mary through Bishop Pompallier were asked to go to New Zealand to help look  
17 after Māori community and wāhine tapu were explicitly requested to come. So it has been  
18 fundamental from the very beginning because they are tangata whenua, because they were  
19 the people of the land here when the Church arrived.

20 **COMMISSIONER STEENSON:** Thank you.

21 **MS McKECHNIE:** They are the reason they came.

22 **COMMISSIONER ALOFIVAE:** Counsel, my recall of the evidence, and I think it's as how  
23 you've put it, is that whilst the Catholic Church has grown exponentially here in Aotearoa  
24 and there have been lots of different communities, we heard that there were Indians,  
25 Italians, Filipinos, Asian as well as Pacific, as well as Māori, that actually it's in the  
26 operationalisation of the processes. So when it comes to redress you have a process that  
27 hasn't necessarily taken into account how all of these different cultures work specifically.  
28 And that's the work that is still yet to be undertaken.

29 **MS McKECHNIE:** Commissioner, I think the evidence is, and in view of the witnesses, is that  
30 the process is flexible to allow it, but it has not been proactively offered as options yet, but  
31 the space is there for those options and certainly Ms Noonan, who I doubt was even aware  
32 that an ifoga had been done by the Society of Mary prior to this process, I think was very  
33 clear in her evidence that those options are something that NOPS and the Church should be  
34 proactively considering so they can be provided. The space is there for them within the

1 process but they have not been offered to the extent that they should.

2 **COMMISSIONER ALOFIVAE:** We look forward to the development of those processes and  
3 the progress. Thank you.

4 **MS McKECHNIE:** Maybe, Commissioner, some of those are developed in response to situations,  
5 it may be that an Iranian survivor comes forward, or a Filipino survivor comes forward and  
6 at that point the process is adopted by the first time. I'd be surprised if there were enough  
7 resource to plan for all of the huge number of ethnicities within the Church, but that level of  
8 cultural awareness and the need to do that for a particular survivor responding to their  
9 needs, I think was clear in Ms Noonan's evidence.

10 **COMMISSIONER ALOFIVAE:** Thank you.

11 **CHAIR:** Before we leave the topic of redress, and I see you're looking forward shortly, is that  
12 where we're going now?

13 **MS McKECHNIE:** It is, ma'am.

14 **CHAIR:** Can I just put to you again from briefs, not briefs, closing statements, this one on behalf  
15 of Cooper Legal. I should have referred to it earlier but I missed the moment, I'm doing is  
16 now. It's to do with legal costs and the levels of payment. So the two things, points that are  
17 made is, first Cooper Legal says that it has been a real battle to get the various bishops and  
18 other Catholic institutions to contribute to the legal costs incurred by our claimants. Some  
19 still take the view that they should not have to contribute to the debt.

20 So that's the first point, contribution towards survivors' legal costs when they had to  
21 be incurred. Do you want to—perhaps deal with them one at a time, so that's the first one.  
22 Are you able to comment on that?

23 **MS McKECHNIE:** If you could forgive evidence from the bar ma'am, because I know this is in  
24 the documents you have—

25 **CHAIR:** Yes.

26 **MS McKECHNIE:** —but it wasn't necessarily in oral evidence last week, there is a variety of  
27 practice within the different Church entities, some consistently make contributions towards  
28 legal fees, others have only started doing it recently. There was a proposal, and exact date  
29 of which—recent proposal, that advice would be prepared by NOPS with a  
30 recommendation to each of the Church entities as to the approach. My memory is that they  
31 decided not to make a Church-wide recommendation at that time. It may be now the issue  
32 has been focused on again that a Church-wide recommendation may be made. But there is  
33 force in Ms Cooper's point, there is a variety of practice. Some always do and she may  
34 well be right that some presently refuse to.

1 **CHAIR:** Yes, I think we take her word, she says it's been a real battle. So just flagging it to you  
2 and to the Church that this is an issue. It's an issue of justice and parity and equality, isn't  
3 it, some might get their legal costs, some mightn't. So that feeling they're on shaky ground  
4 or uncertain ground I think that's probably something that needs to be sorted quite rapidly.

5 **MS McKECHNIE:** Yes, and there are also many people who approach the Church for redress  
6 and go through a redress process who do not have lawyers, so...

7 **CHAIR:** It wouldn't apply in those cases. The second point she makes, is that unlike the  
8 Salvation Army and Anglican Churches, which have clearly adjusted their compensation  
9 payments in light of the Royal Commission process, the NOPS process shows no such  
10 adjustment. Payments made are in general lower than those now made by the Salvation  
11 Army and the Anglican Church. There's no figures here to back it.

12 **MS McKECHNIE:** I have two comments on that, Commissioner. First, it's important to  
13 remember it's not the NOPS process that determines the financial redress, it is an outcome  
14 of individual Church authorities. And it would be interesting to look at the statistics of  
15 those authorities who have had redress processes in the last, say, three years, what they  
16 have paid. There aren't very many across the statistical window, and I'm sure Ms Cooper  
17 has been involved with some of them, but they may be different entities and they do have a  
18 variety of approaches.

19 **CHAIR:** The evidence was quite clear, wasn't it, that some entities pay more than others etc. But  
20 I just felt obliged I should put that to you.

21 And the third point is it's stated "We also observe that apology letters are either  
22 completely absent or appear to be templated. Those apology letters that are received are  
23 typically insincere, Mary Marshall's is a good example of that."

24 So here we go again in terms of, I think, probably lack of consistent approach across  
25 the entities, would that be right? Father Duckworth, for example, said he preferred not to  
26 give a letter but to give it verbally face-to-face.

27 **MS McKECHNIE:** Commissioner, I'm not sure that's quite a characterisation of Father Tim's  
28 evidence, his evidence was he always apologised face-to-face and would also provide a  
29 written apology if sought.

30 **CHAIR:** You're completely right.

31 **MS McKECHNIE:** Across time, ma'am, I'm sure there has been a variety of practice and our  
32 records are patchy. If a letter was written and sent prior to the photocopier or the scanner, it  
33 may not have been copied on to the file. And speaking across all of the entities in the  
34 Church, I'm sure there is still a variety of practice.

1           But I think the evidence last week, and as I understand most of the larger  
2 organisations, an apology, where there is found to be any basis upheld or close, is routinely  
3 and always given.

4           Second point I'd make, ma'am, is that the Church apologises if these apologies have  
5 been received and are felt to be insincere. They are not insincere and nor are they intended  
6 to be received that way. But it is acknowledged that the survivor, on receiving an apology,  
7 has a range of emotional reactions to it and one of those may be that they perceive it to be  
8 insincere.

9 **CHAIR:** We discussed that in terms of Cardinal John's apology right at the beginning, didn't we.

10 **MS McKECHNIE:** Also, ma'am, a final point that I'd make is that tension between—in my direct  
11 experience, ma'am, many of the apologies are written by congregational leaders and  
12 bishops themselves without any particular input from lawyers. But they are trying to do the  
13 right thing and that may have led to an unfortunate impression of a template or a lack of  
14 individual engagement.

15           And I certainly can assure you and survivors that that is not done from an  
16 insincerity, it is done from a concern to use the right words and say the right thing. The  
17 Church has absolutely heard that in many cases it's not using the right words and not saying  
18 the right thing and it will very fundamentally reflect on that. I know Brother John  
19 Hazelman is here and he heard those words very deeply, because he writes his own  
20 apologies and his intention in doing that is not as it is received. So I can assure you that the  
21 intention to apologise in a heartfelt way is there but it is acknowledged that is not always  
22 how it is received.

23 **CHAIR:** Thank you. I can promise you I have nothing further to put to you now, so we'll let you  
24 go.

25 **MS McKECHNIE:** I am conscious that I need to give space for my friends later, ma'am, but  
26 please continue to ask any questions that you have.

27 **CHAIR:** No, that's all from me at the moment, so I think we can go looking forward now can we?

28 **MS McKECHNIE:** We can. I'm reluctant to skip over anything, though, following  
29 Commissioner Erueti's comments, so I would briefly note that I do make some comments  
30 here about financial redress, and the acknowledgment that the record-keeping—where the  
31 record-keeping has been good there has been no comparative process undertaken, as the  
32 Cardinal acknowledged. And the body of information now held does give that opportunity.

33           Looking forward, Commissioners, the Catholic Church and Tautoko acknowledges  
34 the other submissions made today by the other faiths. There are a number of questions and

1 tensions within a redress process and particularly the role of independence and an  
2 independent process, and we would share particularly the questions that counsel for the  
3 Anglicans posed to you.

4           Commissioners, these are preliminary observations of Tautoko, as you will have  
5 heard Cardinal John and the bishops, and I'm sure shortly afterwards, if not before, the  
6 congregational leaders are going to discuss this at some length. Unfortunately, the  
7 reflection process within the Catholic Church does take longer and involve more people  
8 than is ideal in a two-and-a-half-week hearing, so we are not coming to you with a  
9 considered position.

10           The Church certainly recognises and acknowledges the value of independence. And  
11 it has sought, as much as it can to this point, to introduce elements of independence. And  
12 as I say in my submissions, parity and consistency are understandable requests from  
13 survivors and that is an advantage of independence, as is legitimacy both for the survivor  
14 and for the community and the Catholic community in particular.

15           And Commissioners, I would particularly emphasise that—it's not in my written  
16 submissions, but in terms of the threshold that might be recommended, one of the aspects  
17 of a threshold is not just the threshold for accepting the survivor but the threshold to say to  
18 the Church and to the Church community, this happened so you must change. There is a  
19 risk, Commissioners, that if the threshold is too low, it can be dismissed by those who need  
20 to hear the call for change.

21           So we pose in our submissions, Commissioners, a number of questions. I, like my  
22 friends, apologise that these are predominantly in the form of questions at this point about  
23 what role the faith-based institutions can and should play and what model or form an  
24 independent entity might play or take.

25           There is a real concern, Commissioners, that independence risks, to use Father  
26 Duckworth's term, outsourcing, and a real risk that both for the Catholic community, the  
27 wider community and survivors, the Church will be seen to have passed the buck, and that's  
28 absolutely not what the Catholic Church wants to do. Both because of its commitment to  
29 the survivors and also because it knows it needs to take responsibility for its actions to drive  
30 the change it needs in its communities. If it's too far away, there is a risk that the harm will  
31 not be owned and that accountability will not be claimed.

32           There is also the perhaps unique concept of spiritual damage or harm and how that  
33 spiritual healing can be facilitated for particular survivors. It's acknowledged that many,  
34 some, many survivors have no desire for spiritual healing and do not wish to come back to

1 the Church. But it is a feature for many survivors that they do. Either as a level of  
2 spirituality or specifically in the context of the Catholic Church and how will that be  
3 managed.

4 So concepts of responsibility, accountability, healing, and at a more pragmatic  
5 level—paragraph 97—in order to make sense of the Church there needs to be a level of  
6 knowledge about the Church and how that can be provided.

7 Another key feature of any entity is how it is going to interact with discipline. Now  
8 this is an important feature for the Catholic Church given its role in ministry. It's perhaps  
9 different for some of the other entities where the harm caused has predominantly happened  
10 in the past. But here, where the harm is some time ago or now and priest and religious are  
11 in active ministry, safeguarding and discipline are a fundamental aspect of the disclosure.  
12 They are not necessarily a fundamental aspect of redress, but we know and we have heard  
13 very clearly from the witnesses, knowing this won't happen again is a fundamental aspect  
14 of what victims and survivors require, so that link to discipline is absolutely fundamental  
15 and complicated.

16 And that particular key question about the threshold that will be used and if they  
17 will be the same threshold for discipline and for redress. And again, the context is the  
18 individual the respondent alive or dead, are they retired, are they in active ministry, the  
19 scale of the allegation are all variables that need to be taken into account in that process.  
20 As is safeguarding and as is natural justice.

21 In context of individuals in ministry now where the complainant does not wish to go  
22 to the Police, how an independent body would investigate that, who is not the Police, and if  
23 they found that there was criminal offending, would it be referred to the Police if that were  
24 not the request of a survivor, how would that be managed.

25 If it was subsequently referred to the Police, how would that ensure that the process  
26 didn't prevent a successful prosecution. And a process which the Church wishes to respect,  
27 as I know the Commission does, the wishes of the survivor, having an independent body  
28 investigate who is not the Police immediately raises those questions.

29 There is a question of scope for the redress scheme as well. There are matters  
30 which must be dealt with within the Church from a discipline perspective which are not  
31 criminal, and in no way could ever be criminal. Consenting relationships between adults  
32 which are breaches of vows are serious disciplinary matters but do not necessarily give rise  
33 to redress and they don't necessarily give rise to prosecutions.

34 So for a faith context, what extent will any independent body have in terms of its

1 scope. And we would echo earlier comments about international redress processes  
2 predominantly being about sexual harm and in New Zealand you are asked and tasked with  
3 looking at a wider scale.

4 So Commissioners, conscious of time, I would conclude—and I have set them out in  
5 my submissions—highlighting the tensions that I raised in my opening submissions, and  
6 I know that you will have seen them demonstrated in the evidence last week, there are a  
7 number of conflicting matters which cannot be resolved but must be balanced and where  
8 that balance is struck and where it lies is complex and will vary.

9 In terms of next steps, Commissioners, in paragraph 109, I reiterate the request of a  
10 number of the witnesses last week for your recommendations in this area. But in the  
11 meantime the Church is not waiting. There are currently a review of *A Path to Healing*  
12 close to completion, and Integrity in Ministry as you heard from Cardinal John is also close  
13 to completion.

14 The specific questions that you asked, Commissioner, of Cardinal John will be  
15 considered in meetings in the near future. And as I've set out at 110, a significant document  
16 has been prepared by Tautoko to distribute to the bishops and congregational leaders  
17 following this hearing which highlights a number of the themes of the evidence and makes  
18 a number of proposals which will be considered by Church leaders, specifically in relation  
19 to redress and also in relation to other matters raised by survivors last year when they told  
20 their full story, as is appropriate.

21 So to conclude, Commissioners, I would go back to the beginning of the redress  
22 hearing to close with an acknowledgment of the survivor evidence. Redress is a difficult  
23 process, even when done well, and the Church acknowledges that while some find redress a  
24 process that contributes to their healing and provides them with closure, some do not.

25 The Church has heard the survivor voices, it has heard comments, queries,  
26 questions, anger, frustration, and it acknowledges the harm caused first by the offending of  
27 priests and religious, and secondly for some, sadly, by their engagement in the redress  
28 process.

29 It is committed to act to improve this process, and also to take serious steps to  
30 prevent future harm in the Church. I think there are 3 minutes, ma'am, if you have any  
31 questions. Are we going to go to an afternoon adjournment, ma'am?

32 **CHAIR:** I think we should and we'll come back and hear from the survivors after that. Just to  
33 thank you very much for your submissions and your team. As I said before, the  
34 Commission really appreciates the fact that the leaders of the Church have come, subjected

1 themselves to questioning, you've subjected yourself to questioning.

2 The questions will not stop, but what we've heard in public so far has been  
3 extremely helpful to us, so I'd just like to express our appreciation to the Church and to  
4 counsel for holding their line and also bowing, also accepting quite openly deficiencies and  
5 starting the process of change which I think is to be welcomed, so thank you very much  
6 Ms McKechnie. We'll take the afternoon adjournment.

7 **Adjournment from 3.29 pm to 3.50 pm**

8 **CHAIR:** Good afternoon Ms Cooper, welcome back.

9 **CLOSING STATEMENT BY SNAP**

10 **MS COOPER:** Tēnā koutou katoa Madam Chair and Commissioners. Ms Whiting and I appear  
11 today again on behalf of the Survivors Network of those abused by Priests, SNAP in  
12 Aotearoa New Zealand. Obviously we are again with Dr Christopher Longhurst and John  
13 O'Malley. Thank you for the opportunity to be part of delivering this closing statement.

14 As noted in the opening address, SNAP is concerned there is a culture of secrecy  
15 and silencing, protectionism, prioritisation of institutional reputations, clericalism and  
16 religious privilege that permeates many faith-based institutions and has created an  
17 environment in which child abusers have been able to operate with impunity.

18 We heard such truisms being echoed by Tom Doyle in his evidence noting how the  
19 structures and systems, of the Catholic Church particularly, directly relate to the  
20 phenomenon of abuse and its cover up in New Zealand and elsewhere.

21 Tom Doyle was emphatic in his evidence that churches, in particular the Catholic  
22 Church, is a universal institution with its global laws and systems operating here in  
23 New Zealand, have failed to combat abuse perpetrated by their own personnel. Instead,  
24 through denial, minimisation, devaluation of victims and survivors and deception in their  
25 redress processes, survivors have been caused tremendous pain, both spiritual and  
26 psychological, and have suffered ongoing damage and harm.

27 SNAP wholeheartedly welcomes Tom's contribution to this Inquiry and the  
28 reflections he made which resonate with the experiences of SNAP members across multiple  
29 faith-based institutions. SNAP's conclusions are that New Zealand is by no means an  
30 exception to his damning critique. This has been reinforced by the evidence we have heard  
31 during the last fortnight.

32 As fits under the SNAP mandate, I'm now going to hand over the rest of the closing  
33 to Christopher Longhurst who, as you know, is the founder of SNAP and is also himself a  
34 survivor.

1 **CHAIR:** Thank you Ms Cooper.

2 **DR LONGHURST:** Tēnā koutou katoa. Tēnei te mihi ngā Kōmihana, me ō koutou mahi  
3 whakahirahira. Mā whero, mā pango, ka oti ai te mahi. Tēnā koutou, tēnā koutou, tēnā  
4 tātou katoa

5 **COMMISSIONER ERUETI:** Tēnā koe.

6 **DR LONGHURST:** Madam Chair and Commissioners, in our opening address we made three  
7 basic pleas: That any redress process be survivor focused and survivor led. That redress  
8 operates entirely independently of the responsible faith-based institution. And that redress  
9 policies be designed to properly compensate survivors and facilitate their rehabilitation.  
10 We also called for a duty of mandatory reporting.

11 Over the past fortnight we heard key witnesses offer half-hearted commitments to  
12 our pleas. During Archbishop Richardson's evidence on behalf of the Anglican Church it  
13 was suggested that consideration be given to an Ombudsman or independent oversight  
14 body. Tim Duckworth for the Catholic Church also agreed that there was a need for  
15 mandatory reporting, though he was disappointingly vague about how this would take  
16 place. Others, including Virginia Noonan appearing for the Catholic Church, evaded our  
17 pleas completely. She falsely claimed that the misleadingly named *A Path to Healing*  
18 document of the Catholic Church's National Office for Professional Standards, or NOPS,  
19 has continued to evolve in response to the needs and feedback of survivors. But not one  
20 concrete example was given.

21 Claims were made by Ms Noonan that the Catholic Church's *A Path to Healing* was  
22 a fair and compassionate process. We reject this claim. Our universal experience indicates  
23 that NOPS conducts an adversarial investigatory process and that survivors have no say  
24 over this process or its outcomes that affect our lives.

25 Claims by Ms Noonan that NOPS is guided by survivors is not our experience.  
26 Even its personnel's pastoral care claims are not our experience. In fact, as a survivor of  
27 clerical and religious sexual abuse, who fully engaged in the NOPS process, I was never,  
28 ever contacted by Ms Noonan or anyone in her office for feedback or guidance, neither  
29 were any of our members who reached out to the same office. Further, if redress processes  
30 have evolved, as Ms Noonan and Ms McKechnie both claimed, then why was there no  
31 explanation given as to why complaints lodged in 2017 still remain to this day unresolved.

32 Further, Ms Noonan spoke entirely of policy while ignoring the effects of her  
33 non-compliance with those policies and the very principles her office espouses. When such  
34 deficiencies were pointed out to her we constantly heard her say "we'll definitely look

1 further into that", or "In the future", or "the next step", or "moving forward". We heard  
2 similar rhetoric from other church officials. But none of this will ever be helpful to us  
3 when what is written in policy and what is practised are two entirely different things. In  
4 reality, while *A Path to Healing* has been tweaked as a document, the process has not  
5 changed in substance or in effect. Hence survivors are experiencing further harm while  
6 sexual predators remain at large and if nothing has really changed until now, what could  
7 make it possibly change in the future?

8 Cardinal John Dew, in response to being asked about the processes for ensuring  
9 survivors feel that they are being listened to and believed, stated how do we hope survivors  
10 would be believed? But there is no such process. Further, given the betrayal of trust that  
11 has occurred, we feel that the church has no capacity to build trust and confidence with  
12 survivors, exhibited also by NOPS lacking people on the ground with required  
13 competencies and integrity to do so.

14 For example, in Ms Noonan's written submission she stated that NOPS is not a  
15 listening service for survivors, but on questioning, she then contradicted this and claimed  
16 that NOPS was there to listen. This double-speak is typical of what our members have  
17 experienced in their interactions with NOPS.

18 Further, when Cardinal Dew was asked about NOPS not being a listening service,  
19 he said that he thought this referred to a counselling process. Sadly, though, clearly the  
20 Cardinal seems to not understand what listening means. SNAP defines listening as  
21 standing in the shoes of one's brother or sister in life and seeing their experience through  
22 their eyes as they express it factually and emotionally as to what occurred and its impact on  
23 them.

24 This listening is a key feature that SNAP would like in any independent body to  
25 hear abuse complaints. It is a feature entirely absent from the NOPS process. To us  
26 survivors, to call the NOPS redress a healing process is a misnomer. As you know, our  
27 members have described *A Path to Healing* as an inquisition, feeling that we were the ones  
28 on trial. Whilst a cursory nod was made to this in Ms Noonan's evidence, no intention to  
29 change the substance and investigative tenor of the NOPS process was expressed; a fact we  
30 find deeply disturbing.

31 Most alarming was the fact that Ms Noonan spoke confidently about survivors  
32 coming with them, the Catholic Church, on their individual healing journeys. This  
33 church-focused suggestion that there be a mutual journey quite frankly terrifies us. Once  
34 trust has been lost by abuse and its subsequent betrayal, then it is highly misguided to

1 assume that it could be so easily regained. The very idea of having any person who is part  
2 of the institution that perpetrated the abuse involved in any decision to heal us must lie  
3 solely with us. Reconciliation, as noted in Archbishop Richardson's evidence, must always  
4 be a prerogative of the survivor.

5 Further, during questioning, Ms Noonan claimed that survivors are offered support  
6 throughout the NOPS process. But none of our members recall this happening. None, not  
7 one. In fact, our requests for support were actually ignored by NOPS personnel. From our  
8 view, the NOPS process was never about our healing, it was about protecting the  
9 institution, mistakenly confounding the church as something other than its members. After  
10 all, we were nearly all abused because we belonged to those churches.

11 Comments were also made by Ms Noonan's evidence about the professional  
12 qualifications of her officers. We were concerned by the absence of any concrete  
13 commitment to survivor-led training on trauma and sexual abuse, or counselling and  
14 psychotherapy, as Tom Doyle and others did recommend.

15 We were also very surprised to learn that the primary concern of the church  
16 authority as outlined in *A Path to Healing* was that redress should, quote, "be directed  
17 towards healing and reconciliation not compensation, punishment or penalty", unquote.  
18 Quite frankly, we find that statement absurd, an appalling attempt to evade culpability  
19 because compensation, punishment and penalty is healing.

20 We feel that any claim to the contrary can only be motivated by the institution's  
21 further attempts at self-protection over and above giving justice where justice is due.

22 We were also concerned by the suggestion during Brother Horide's evidence that a  
23 matrix or band system for compensation payments be introduced. We see this as no more  
24 than another inadequate form of ex gratia payments. We feel that compensation must be  
25 bespoke and assessed on an individual basis according to the needs of individual survivors.

26 Further, prescinding a clear conflict of interest regarding some NOPS investigators  
27 being ex-police officers and on the New Zealand Catholic Bishops Conference payroll,  
28 SNAP has experienced that this has led to "beyond reasonable doubt" burden of proof  
29 being applied, rather than the correct "balance of probabilities", with consequences of  
30 justice being further denied.

31 Overall, we feel that the evidence presented focused unduly on redress  
32 documentation and policy and not on actual application and the subsequent impact on  
33 survivors. We share with you just two of many similar comments made by our members  
34 regarding the *A Path to Healing* process.

1           “While *A Path to Healing* promises an honest and compassionate response, instead  
2 NOPS was used to cover up abuse complaints, through the guise of a well-crafted redress  
3 process.” Another comment: “I expected Catholic leaders to be adamant in their promises  
4 to respond fairly and with compassion, though the response from NOPS demonstrates  
5 another reality.”

6           Commissioners, the documented evidence that our members will further provide  
7 you at this Inquiry in SNAP's written statement will evidence numerous violations of the *A*  
8 *Path to Healing* process, such as: (1) denial of adequate investigator process; (2) denial of  
9 fair review of process; (3) failure to advise; (4) failure to provide copies of letters and  
10 reports; (5) stalling and deception by the NOPS director in relation to important  
11 information provided to her by her own team, and her secretive process that survivors have  
12 no input into or control over. And this is what church authorities call a compassionate  
13 response aimed at the well-being of survivors?

14           Further, we would demonstrate our attempts to draw attention to the  
15 non-performance of NOPS through a complaint to the Committee that oversees NOPS, the  
16 National Committee for Professional Standards was stonewalled by that very committee.  
17 All of this demonstrates that NOPS and *A Path to Healing*, like other church redress  
18 processes or so-called pathways to healing, are not fit for purpose when run by the  
19 institutions responsible for the abuse.

20           Further, over these past two weeks we also heard general public apologies being  
21 made, for example from Archbishop Richardson, from Brother Horide and from Cardinal  
22 Dew. Again, to us survivors, these general public apologies serve no purpose towards  
23 genuine healing when unaccompanied by active and effective change. They are only  
24 acceptable when backed up by restitution and proper compensation and accompanied by  
25 separate and specific apologies to the individuals involved.

26           It seems that this was not something that the witnesses were able to present clear  
27 evidence on. Hence we consider such general public apologies as no more than a public  
28 relations exercise. And also, contrary to what Ms McKechnie again stated, personal written  
29 apologies do come across as legally framed documents, some even still failing to  
30 acknowledge specific abuse.

31           This mode of responding adds to our contention that the claims to reform made by  
32 church leaders are neither realistic nor believable. These church leaders have been saying  
33 the same thing for many, many years. Speaking to the survivors, Cardinal Dew said that  
34 the systems and the culture that failed us must change. However, the church leaders that

1 created those systems and that culture cannot be the ones to implement that change.  
2 Leopards can't change their spots. As Tom Doyle noted, if they could have, they would  
3 have done so by now.

4 SNAP repeats its plea for an independent survivor-led redress process, supported by  
5 people of true integrity, skilled in the profession to assist us as needed. To recall once  
6 again what our champion Judith Herman, long-time expert in this field of work, stated, "No  
7 intervention that takes power away from a survivor can possibly foster her or his recovery,  
8 no matter how much it appears to be in her or his best interest." We will recall this truth  
9 again and again and again until everyone concerned is truly listening.

10 During this hearing, in an attempt to justify the delays and ongoing difficulties,  
11 much was made of the issues raised as being complex. Indeed, this Inquiry may be a long  
12 and complex one, though for us the fundamental issue regarding church redress and  
13 faith-based abuse is not that complex. The excuse of complexity is, for survivors, difficult  
14 to accept because the truth for us is really quite simple. We are talking about child sexual  
15 abuse in religious communities and institutional abuse and its cover-up past and present.  
16 This needs to stop, and the people who enabled this need to be held to account. And the  
17 mechanisms that caused this need to be dismantled, and the victims and the survivors that  
18 suffered this need to be properly compensated.

19 We do hope that the Commissioners will make these recommendations. We believe  
20 that if we do not get this right, right now, in a country which comes after other enlightened  
21 countries have already addressed this issue, then these abusive church structures that have  
22 served to protect their paedophiles and hide the abuse will continue. If we do not get this  
23 right, right now, then we will have failed to resolve one of the most morally straightforward  
24 problems of our time, and our society will continue to suffer because to not restore the  
25 injustice done to its members is not to restore our society.

26 We thank you once again from the bottom of our hearts for this opportunity to speak  
27 here today and we thank you for having provided us with the legal support we needed. Nō  
28 reira, tēnā koutou, tēnā koutou, tēnā tātou katoa.

29 **CHAIR:** Tēnā koe Mr Longhurst.

30 **MS COOPER:** We just wanted to ask before they head back whether there are any questions  
31 from any of the Commissioners that you would like either Dr Longhurst or myself to  
32 respond to.

33 **COMMISSIONER STEENSON:** Not from me thank you.

34 **COMMISSIONER ALOFIVAE:** Nothing from me thank you so much.

1 **COMMISSIONER ERUETI:** No thank you.

2 **CHAIR:** We have no questions for you, Mr Longhurst. I would just like to say two things to  
3 SNAP. We look forward very much to reading your submissions and your further evidence  
4 that I know you're going to be providing, and we will certainly consider that very carefully  
5 in the context of everything we've heard. And you asked the question if nothing has  
6 changed now what could possibly change in the future. That's why we're here,  
7 Mr Longhurst, that's why we're here. Thank you for your submission. Now Ms Cooper in  
8 her own right.

9 **CLOSING STATEMENT BY MS COOPER**

10 **MS COOPER:** Yes. Tēnā koutou. Madam Chair and Commissioners, thank you for the  
11 opportunity to appear today on behalf of the Cooper Legal witnesses who have provided  
12 written statements and given oral evidence during the faith-based and, I should say, the  
13 State hearing as well, because they also addressed some faith-based issues.

14 And I should say that some of the witnesses who the Commission itself called were  
15 obviously former Cooper Legal clients, many of them, so we have a strong connection to  
16 many of the people who have come before this Commission. We've listened to the  
17 evidence given by the faith-based witnesses over the last two weeks, we've waited to hear  
18 whether the witnesses have acknowledged the issues raised by the survivors who provided  
19 evidence to the Royal Commission, including whether there will be change to redress  
20 processes, whether those administering them will upskill and whether faith-based  
21 institutions generally accept the call from survivors for redress processes to be independent  
22 from them.

23 It makes sense to address these topics with reference to the individual faith-based  
24 institutions that gave evidence during the past two weeks, so the representatives from the  
25 Salvation Army, the Anglican Church and finally the Catholic Church.

26 Cooper Legal witnesses who gave evidence about their experiences in Salvation  
27 Army care and the subsequent redress processes have described abuse covering the full  
28 spectrum, so we go from serious sexual assaults by Salvation Army staff members and  
29 other residents through physical assaults, psychological abuse, including being made to feel  
30 worthless and ashamed.

31 The Cooper Legal witnesses have explained the profound impact of their abuse on  
32 their entire lives and often those of their whānau and how the abuse still affects them to this  
33 day. This has been a common theme among all survivors giving evidence before this Royal  
34 Commission.

1 Cooper Legal clients who engaged with the Salvation Army reasonably early on in  
2 its process encountered considerable barriers to resolution. As acknowledged in the  
3 evidence of the Salvation Army witnesses, the Army engaged its lawyers to defend the  
4 claims. The Army relied on its legal defences, including the Limitation Act and the ACC  
5 bar to deny claimants any remedy or at least limit the remedy that was being provided.  
6 Some Cooper Legal claimants were forced into a litigation process because of those  
7 barriers put up by the Salvation Army.

8 While many of those claimants were able to achieve a measure of resolution, often  
9 after a very protracted process, some were left without any remedy. Further, those who did  
10 eventually resolve their claims were essentially forced to take reasonably nominal  
11 compensation sums and then contribute part of their nominal payments to their Legal Aid  
12 debt. At least one claimant who gave evidence in the public hearing last year had expressly  
13 asked for assistance after being released from prison. That was not provided. It has still  
14 not been offered by the Salvation Army to this day.

15 More recent claimants have encountered a more conciliatory process. As Murray  
16 Houston acknowledged for the Salvation Army, the relationship between Cooper Legal and  
17 the Salvation Army has improved in recent years. This has led to a more streamlined and  
18 claimant-focused response by the Salvation Army which has also been reasonably prompt.  
19 More recent claimants have also seen a significant increase in the payments being made to  
20 them. As you've already pointed out, this increase occurred around the same time the  
21 Royal Commission was established and we acknowledge Mr Houston's evidence that the  
22 Royal Commission has caused him to re-evaluate the process, both now and in retrospect,  
23 and take immediate steps to improve it.

24 Nevertheless, more recent Cooper Legal claimants have raised concerns about the  
25 process. In particular, the meetings with Mr Houston need to be more survivor-focused and  
26 less intimidating for claimants. For some, actually there need to be no meetings.

27 Claimants are also concerned that the Salvation Army is doing nothing to ensure  
28 that those who are identified as perpetrators of abuse are punished in some way or at least  
29 in a way that is visible to them. Some have really wanted ongoing support from the  
30 Salvation Army on top of the payments they receive and the apology letters.

31 On behalf of Cooper Legal claimants there are a number of comments to make  
32 about the evidence on behalf of the Salvation Army. We acknowledge the progress made  
33 by the Salvation Army in its processes since they were established. The processes used by  
34 the Salvation Army in the 2000s were, in short, harmful. We acknowledge and appreciate

1 Mr Houston's evidence that the Salvation Army has not always got it right.

2 However, even with the best intentions and the improvements made by Mr Houston  
3 to date, the Salvation Army process lacks the three key elements we say are necessary for a  
4 good process. And you heard that repeatedly when we gave evidence in the State hearing:  
5 independence, transparency and accountability. Of course, this complaint applies to all the  
6 church redress processes.

7 Even though Mr Houston is a lay member of the Salvation Army, he is a long-term  
8 employee of the organisation he both represents and investigates. He can never be truly  
9 independent of the Salvation Army which brings the integrity of its process into question.

10 The process is not transparent, it is entirely run by Mr Houston, and there is no way  
11 for claimants to know, especially non-represented claimants, to know if they are being  
12 treated consistently with people who have had similar experiences. There is no publicly  
13 available information about the process for claimants to help them understand how and why  
14 the Salvation Army makes the decisions it does about their claims. So it was very good to  
15 hear today that that will be coming – we will be watching for it.

16 In addition, as Mr Houston has said, there is no matrix or other guidance used by  
17 him to determine quantum. It's determined by him with reference to a range of factors and  
18 his instinct and experience. This cannot be fair to survivors.

19 There is no accountability in the process. It has been solely run by Mr Houston for  
20 nearly 20 years without any oversight from any person or body outside of the Salvation  
21 Army and with no ability for claimants to appeal to a third party if they disagree with the  
22 Salvation Army's assessment of their claim. We acknowledge that a claimant is always  
23 able to file court proceedings, but this is a fraught process and in New Zealand should very  
24 much be a matter of last resort.

25 The changes and improvements in the process since it began also means that  
26 claimants who approach the Salvation Army early on likely have been disadvantaged. We  
27 have been working with Mr Houston to revisit claims he declined during those early years,  
28 but, with no contact with those individual clients – sometimes for more than a decade –  
29 most of them cannot be found. There has also been no work to assess payments to  
30 claimants from those early days to see if they need to be topped up. Not only for parity  
31 reasons, but because the earlier claimant group had to contribute to their Legal Aid debt.

32 Again, listening today, I heard that the Salvation Army might reconsider claims if  
33 they come back, but the criteria I thought were a little unclear and there was a suggestion  
34 you may have to provide new information rather than there being an undertaking to assess

1 claims generally to achieve some parity for survivors. And that is something I would be  
2 asking the Salvation Army --

3 **CHAIR:** As I heard it, it was, we don't want to just go through all our files and reassess them, but  
4 if a survivor wants us to, we will.

5 **MS COOPER:** Yes, that's how I understood it.

6 **CHAIR:** That was what it was.

7 **MS COOPER:** Yes, whereas I think to be fair to survivors and having listened, the issue of parity  
8 and treating like as like is a really significant one. I understood there are about 200  
9 settlements, so while that's a fair number, it's not thousands and I would have thought that if  
10 there is going to be policy work that is undertaken, it's not completely out of the box to  
11 suggest that that policy work could be applied to past settlements, to say should they be  
12 reviewed and should they be topped up.

13 I just note in that regard, when, with the Lake Alice survivors, with the second  
14 group of claimants who had that notional legal cost deducted, the Ministry of Health took  
15 steps to go back to all of those survivors that it had deducted that notional legal cost from,  
16 and it is still trying to track down survivors to ensure that they got parity with the first  
17 group, and so there is precedent for it and I don't see why that can't be applied here.

18 We next address evidence given to this Inquiry from those who have suffered abuse  
19 in the Anglican Church. We note in that regard, again, that some of the witnesses who gave  
20 evidence in the public hearing are still or were Cooper Legal clients. And again, they've  
21 suffered abuse of a variety – many forms – including, I think in this case, cruelty, and  
22 obviously one of our clients had her child, her baby taken away from her in very traumatic  
23 circumstances.

24 The evidence of Cooper Legal claimants has been that the Anglican Church, at least  
25 in terms of the primates or the bishops, did not assume any real leadership of the various  
26 providers against whom claims were brought. This has meant claimants have been forced  
27 to identify the appropriate organisation against whom their claims should be made, deal  
28 with that organisation's process, and often there have been no processes in place, which has  
29 made it very difficult for progress to be made, and in some cases deal with their lawyers  
30 who have raised the inevitable legal hurdles for survivors.

31 While we acknowledge that the Anglican Church structure is multi-layered and  
32 complex, to our mind this has been used as an excuse for the Anglican Church, particularly  
33 those in leadership, to provide those under their umbrella with no guidance, no protocols or  
34 policies about how to deal with claims of this nature. Again, as with the Salvation Army, it

1 is important to acknowledge the role of the Royal Commission in prompting the Anglican  
2 Church as represented by the bishops and individual organisations to review the way they  
3 approach claims brought by survivors and victims of abuse. Cooper Legal is certainly  
4 seeing the impact of that in the more recent claims brought by those who suffered harm  
5 while they were in the care of the Anglican Trust for Women and Children which we talk  
6 more about below because we suggest that might be a template, at least for the meantime.

7 Ms Whiting and I were present when Archbishops Richardson and Tamihere gave  
8 several unequivocal apologies on behalf of the Anglican Church which were reiterated  
9 today. It is evident from their evidence that the bishops are now assuming leadership,  
10 although it is deeply disappointing to find out that these issues have been on their radar  
11 since the 1980s. As you are aware, Cooper Legal asked the bishops to take a leadership  
12 role in 2016 and when we met in 2017. Whilst some work apparently started in the  
13 following year, listening to the evidence given last week it is clear there is still a lot of work  
14 yet to be done.

15 In the meantime, survivors and victims wait. Some continue to suffer the effects of  
16 ad hoc and non-claimant-focused redress processes; others *die* waiting. To be blunt, while  
17 acknowledging that the bishops have had many issues to grapple with, including Treaty  
18 issues, this claimant group has deserved better treatment by the Anglican Church than they  
19 have received so far.

20 As has been acknowledged by all those giving evidence, this claimant group is a  
21 particularly vulnerable one. The abuse they have suffered results in them having often  
22 lifelong needs which should be met. Many are alienated from their whanau and society,  
23 Māori and Pasifika are disproportionately represented in the claim at group. Many are  
24 alienated from their whānau and society; Māori and Pasifika are disproportionately  
25 represented in the claimant group. These factors alone should have prompted the Anglican  
26 bishops to give this issue more priority than it has been given to date.

27 We've referred to the Anglican Trust for Women and Children, known as the  
28 ATWC, which for a long time was one of the most intransigent organisations through its  
29 lawyers to deal with. In mid-2020 it introduced a drastically different process run primarily  
30 by Mark Wells, a former Social Welfare social worker. Mr Wells has now met with several  
31 claimants; he has treated them with courtesy and with respect and shown a willingness to  
32 engage in a survivor-focused process.

33 We note the following, because it is useful. The key steps in the process are in a  
34 publicly available document, so there is transparency. The ATWC, through Mr Wells,

1 engaged with us about appropriate compensation levels, modelled on other organisations,  
2 so it did its research, and then came to its own decision. It altered its process to suit the  
3 needs of survivors when that is needed. The process is timely, the apologies are given in a  
4 way elected by the client in writing, in person, or both. It has researched options for  
5 ongoing counselling, often providing several options for a claimant to choose what they are  
6 comfortable with.

7 The settlement documentation is simple, it is clear, and it also provides for  
8 compensation levels to be revisited if this Commission makes recommendations that  
9 support a later top-up. In addition, the ATWC has agreed to revisit claims that were not  
10 previously settled. This willingness to apply its new, more pastoral process, to older claims  
11 is commendable.

12 I heard, we heard today the Anglican Church say that it gives its full support to an  
13 independent body dealing with its claims. But in the meantime, and as has been  
14 acknowledged, that's very much subject to Government will. The Anglican Church has to  
15 deal with its own claims. So we suggest here's a good model from an organisation that is  
16 within the Anglican umbrella that is up and running and we suggest that other parts of the  
17 Anglican Church look at that and, at least for the meantime, use that as a potential model to  
18 work from.

19 Having said that, we still note the caveats that this is still not independent because  
20 Mr Wells, even though he's contracted, works within the organisation, so it still doesn't  
21 achieve that true independence, but it's a start and we have to start somewhere.

22 Finally, I want to comment on the Catholic Church. As the Commission is aware,  
23 Cooper Legal has provided witness statements on behalf of seven clients who suffered  
24 abuse at the hands of Catholic clergy. The most recent evidence was submitted to the  
25 Commission earlier this year to draw your attention to the very recent experiences of  
26 Cooper Legal clients of the *A Path to Healing* or NOPS process. In addition, we provided a  
27 separate witness statement which summarised the recent experiences of our clients and our  
28 own concerns about the NOPS process.

29 The concerns raised by us and by our clients are not unique. They have been  
30 referred to in the opening given by Liz Tonks, Murray Heasley, by myself and Dr  
31 Christopher Longhurst on behalf of SNAP and now in the closing. Survivors and advocates  
32 who listened to the evidence last week in my view would have been perplexed and angered  
33 because the way in which the NOPS process was presented to the Commission is a very far  
34 cry from the reality experienced and continuing to be experienced by survivors. Cooper

1 Legal claimants, many of whom are still working through the NOPS process, have referred  
2 to it as, variously, the "trial to suicide", "a path to more trauma", or "a path to stress".

3 Contrary to the evidence given by Virginia Noonan, and as you put already, they  
4 have not been offered support in the form of counselling through the process, indeed no  
5 Cooper Legal claimants ever have been. They have been asked to tell their stories more  
6 than once, and they have certainly felt as if they have been the ones on trial through facing  
7 multiple requests for information, including being asked for their criminal histories. And  
8 part of that you actually saw when we dealt with the evidence of Mary Marshall last year,  
9 you saw the questions that just kept coming, there'd be 10, then there'd be 15, then there'd  
10 be another 20. This has been the common experience of our clients, one of them actually  
11 had 52 additional questions that came towards the end of last year.

12 Some have found the meetings with the investigators brutal, intimidating and  
13 re-traumatising and it is important to note that this is because many are former police  
14 officers. That is a factor that is relevant to Cooper Legal clients because many of them  
15 have had a poor history in their interactions with Police. And that may be something that is  
16 different to New Zealand, looking at the evidence of Tom Doyle, that may be different  
17 from the US experience, but it is certainly an aspect of the New Zealand experience. So if  
18 we're thinking about survivors, that is relevant.

19 One of the big themes from Cooper Legal claimants is the obvious lack of  
20 trauma-informed understanding reflected in the NOPS process. This includes the fact that  
21 survivors disclose abuse incrementally, and that they face particular barriers disclosing  
22 abuse to family members and others, particularly where the perpetrator was in a position of  
23 power, as are priests and nuns, and we see that reflected in some of the Committee  
24 decisions.

25 There is little to no transparency in the NOPS process. Claimants are not provided  
26 with the investigators' reports as a matter of routine. Further, when they are provided, the  
27 reports are heavily redacted and much crucial information is completely blacked out.  
28 Again, this was illustrated when Mary Marshall gave her evidence last year.

29 Claimants and their lawyers never see the report going from the Committee to the  
30 congregation. This is even where the Committee reaches a different outcome from that of  
31 the investigator, and that has happened for a number of our clients, where the investigator  
32 has found the claimant to be credible, but the Committee has reached a different  
33 conclusion.

34 The lack of transparency in the process is deeply concerning, and fosters the view

1 held by survivors and their advocates that the NOPS process is mired in secrecy and  
2 protects the organisation known as the Catholic Church. The delays in a NOPS process is a  
3 common theme among survivors and victims. Many claimants have engaged with the  
4 process for several years. Claimants become exhausted and retraumatised during the  
5 course of engaging with the process and then waiting for an outcome which is often to  
6 dismiss their claim and offer nothing.

7 We finally comment on redress. That's a big topic here. It is clear, and I thought  
8 that came through strongly in the evidence, that the Catholic Church is quite unapologetic  
9 about offering ex gratia payments to claimants, relying on the fact it has legal defences and  
10 its own view about what an appropriate redress process should look like, and this is used as  
11 a barrier to offering more meaningful compensation. As you noted, it has been a real battle  
12 to get the various bishops and other Catholic institutions to contribute to the legal costs  
13 incurred by our claimants.

14 And you have evidence, actually, because it evolved with two of our witnesses who  
15 you have written statements from, you'll see that we actually held on to their witness  
16 statements, it took about six to nine months for the Archdiocese to reluctantly agree to  
17 contribute some costs, and that was in light of work that was undergoing in NOPS about  
18 whether there should be a general policy around that.

19 But some organisations still take the view that they should not have to contribute to  
20 that debt.

21 **CHAIR:** So it's not done as a matter of course?

22 **MS COOPER:** No, absolutely not, and it never has been. I can't think of a single Catholic  
23 organisation, except for those who are actually outside of NOPS and typically overseas,  
24 who have, as a matter of course, offered to contribute to the costs.

25 I should say that's also an issue with the Anglican Church and in the most recent  
26 settlement that we did with one of the witnesses here, there was no contribution to the costs.  
27 So we then had to make submissions to Legal Aid to write off the debt. So that's not just a  
28 Catholic Church issue, it has been a real issue. It's something we now need to tackle with  
29 the Anglican Church as well, because they don't also see they should contribute to costs.

30 As a matter of principle, this claimant group is the most vulnerable in the redress  
31 process, and our perspective is they should be supported to have legal representation and  
32 advice where they ask for that. After all, most of the organisations they are claiming  
33 against have legal representation and advice, and it's another example, in our view, of the  
34 failure to take a trauma-informed approach, that it has been a real battle to obtain this

1 contribution to the legal costs.

2 I did want to reinforce that, unlike the Salvation Army and Anglican Churches,  
3 which to our mind have clearly adjusted their compensation payments in light of the Royal  
4 Commission process, organisations from within – you know, coming through the NOPS  
5 process and then going to the congregation – we haven't seen any adjustment in the  
6 amounts being offered. Payments made in general are lower now than those made by the  
7 Salvation Army and the Anglican Churches, and in fact Cooper Legal claimants only  
8 receive higher offers from those who deal with their claims outside of the NOPS process  
9 and particularly if they are based outside of New Zealand. So from Australian and now the  
10 United Kingdom orders, they are used to dealing with compensation and they are more  
11 willing to negotiate and to offer a more meaningful amount.

12 **CHAIR:** These are Catholic organisations outside New Zealand?

13 **MS COOPER:** Yes, so the Order of St John of God, the Brothers, they will routinely offer at least  
14 double, if not triple what is routinely being offered by other Catholic organisations in  
15 New Zealand, and you heard the evidence with one of the witnesses who gave evidence in  
16 the State hearing how his went from \$25,000 and then we managed to double it.

17 But even those amounts now have significantly increased. And again, they are like  
18 the ATWC and have agreed now in all of their new settlement deeds that if this  
19 Commission makes recommendations that say that compensation should be higher, they are  
20 willing to go back and offer a top-up, so that's been in their settlement agreements now  
21 since last year.

22 And I do want to comment, as Dr Longhurst has, about the apology letters. For  
23 many, apology letters are either completely absent, so there might be a payment but no  
24 apology letter at all, or they are templated. And I would ask you to look, we have two  
25 witness statements that you have from two witnesses who had the same abuser but their  
26 abuse was quite different, and their apology letters are word for word identical from the  
27 Archdiocese of Wellington. So that's an example of a templated apology.

28 Listening to the evidence of those called on behalf of the Catholic Church did not  
29 provide much reassurance that the Catholic Church is really hoping to learn from the Royal  
30 Commission, or is taking on board the evidence of those survivors and victims who have  
31 already provided evidence.

32 I'll hurry up now. A fundamental problem with the Catholic Church process is the  
33 requirement to prove that the abuse occurred and that the perpetrator has been correctly  
34 identified. This can be an almost impossible task for a survivor, given the passage of time

1 and the circumstances in which clerical abuse can occur. So I talked about the survivor  
2 who was abused in the confessional box by a priest, which, by its very nature, is dark; she  
3 didn't know who the priest was; her claim was not upheld in any way.

4 It's concerning too that our experience is that priests and nuns who deny abuse are  
5 inevitably believed, except in circumstances where they may have been convicted or  
6 they've acknowledged the abuse or where the weight of evidence against them presumably  
7 is overwhelming.

8 I think what was heartening today – so listening to the Anglican Church today I was  
9 really heartened to hear that the approach it will now adopt to survivors is to accept their  
10 narrative of the events. Salvation Army – more nuanced. I think they still want to hear, but  
11 I think on the whole I think they'll be looking more towards accepting a survivor's version  
12 of events.

13 Catholic Church seems to be still way over here [gestures, pointing away] in that  
14 there is still a burden on survivors to prove not only that they were abused but who did it,  
15 and as I say, I think that is leaving the Catholic Church sitting out here on its own and my  
16 question is, have you been listening? So that's my challenge to the Catholic Church.

17 While we've heard the church has received in excess of 1,100 disclosures of abuse,  
18 whatever that means, we haven't heard the data about how many of those disclosures have  
19 actually been accepted by the church. And we suspect that the proportion is very low and  
20 that most survivors and victims coming to the Catholic Church have a very unsatisfactory  
21 outcome in which their claim is denied and they are given no outcome and suffer more  
22 trauma.

23 We've heard a lot about the evolution of the processes from all of the church, but it  
24 needs to be done more quickly.

25 Our concluding comment is that the Cooper Legal clients and ourselves were  
26 underwhelmed by the evidence given over the last two weeks. It has been frustrating to  
27 hear apologies and promises for a better future for survivors, which seemed to lack much  
28 substance, and in some ways do not show significant evidence of actually listening to what  
29 survivors want, so I was more heartened listening to the closing today.

30 We leave it now to you, Commissioners, to pass that message on so that there can  
31 be no further untoward delays in faith-based organisations implementing processes that  
32 truly meet survivor needs and acknowledge Treaty principles. Tēnā koutou katoa.

33 **CHAIR:** Kia ora.

34 **COMMISSIONER ERUETI:** Tēnā koe. I just have a quick question about the more

1 forward-looking part of the discussion we've been having today, an independent unitary  
2 scheme, and what's your thoughts about that, in particular the sentiment that it could be  
3 seen as shirking, avoiding responsibility of the church, or any other comments you might  
4 have would be gratefully received.

5 **MS COOPER:** I think the way that the Australian process has been set up, which works in  
6 tandem, actually is a process that I think has its merits. So it still leaves responsibility, in a  
7 sense, with the body, but there are some guiding principles around what redress looks like,  
8 what legal liability looks like, and there is a place to go, I think that's the important thing,  
9 where there is an ability to reach agreement, or where a survivor cannot face actually  
10 dealing with the organisation itself.

11 I was really interested in the submission made on behalf of the Salvation Army  
12 about those survivors, and there are many of them, who have multiple care placements, so  
13 therefore potentially multiple defendants or respondents to their claims. And they were  
14 worried that actually survivors might be disadvantaged because they don't take that into  
15 account under their process, the fact that they might have a claim against the Ministry of  
16 Health or the Ministry of Social Development or the Ministry of Education, or another  
17 NGO.

18 I don't see why individual processes can't still maintain their integrity, you know,  
19 and have their own policies that may be better than what the legislated process provides.  
20 But again, I think this has to be very much around what the survivor wants. Where I see  
21 the independent body, as I say, I think we called it the mother ship, it's important for that –  
22 I think, as I say – there are legislated principles setting out what the legal standards are,  
23 what's expected for compensation, but providing still, I think, that the individual  
24 organisations still take some responsibility and are still involved in the process.

25 An apology coming from an organisation that did not perpetrate the abuse could be  
26 completely meaningless, couldn't it, and again we run the risk of it being templated. And I  
27 think it is important for survivors that those who caused them harm, for some survivors,  
28 that those who caused them harm front up and say "I'm sorry and this is what we've done to  
29 put it right and these are our ongoing steps for those who are still in our care." Does that  
30 help?

31 **COMMISSIONER ERUETI:** I think the Aussies call it the direct personal response or  
32 something along those lines, yeah. That's useful, thank you.

33 **CHAIR:** I have no questions for you, Ms Cooper, just to thank you again, because you have again  
34 contributed to a very important part of our redress inquiry, you've given assistance to

1 survivors, you have provided us with a large number of survivors already packaged up and  
2 ready for delivery, and I mean that respectfully, but just you've done a lot of the  
3 background work which has helped the Commission enormously, so thank you for that and  
4 thank you for these latest submissions which have been very useful.

5 **MS COOPER:** Thank you very much.

6 **CHAIR:** And that brings us to our final submissions, which comes from the Network of Survivors  
7 of Abuse in Faith-Based Institutions. Good afternoon to you Ms Tonks and tēnā koe  
8 Dr Heasley.

9 **CLOSING STATEMENT BY THE NETWORK OF SURVIVORS OF ABUSE**  
10 **IN FAITH-BASED INSTITUTIONS**

11 **DR HEASLEY:** Tēnā koutou i tēnei ahiahi.

12 **COMMISSIONER ERUETI:** Tēnā kōrua.

13 **DR HEASLEY:** Ka pēhea ināianeī, so what now? Kōrero pono kore noa iho te pono, the truth,  
14 nothing but the truth. In our opening we said this truth may be painful, it may be deeply  
15 troubling, but this is what this Royal Commission is pledged to reveal without fear or  
16 favour.

17 **MS TONKS:** Can we just acknowledge, Madam Chair, Sonja's evidence going ahead of us. It is  
18 invaluable and we know how important it is and we're pleased she could share it in this  
19 space with us. With your indulgence I have to confess when she spoke of the Catholic  
20 Church requirement to prove abuse I was reminded of our survivor I supported through the  
21 NOPS process, and continue to support, who as a boy of 8 years old was taken by his report  
22 from Epuni Boys' Home to a Catholic Church establishment in Wellington, and his proof  
23 that he was abused has relied on this 8 year old boy being able to identify where that  
24 building was and who occupied it. It's still waiting to be settled on review.

25 This hearing has confirmed what survivors expected. We have heard nothing that  
26 can give survivors, or you Commissioners, any confidence that, left to the churches, there  
27 will be any change. We have heard witnesses from three churches in this hearing that  
28 confirm their past and current practices for receiving and investigating survivor complaints  
29 are seriously flawed. When questioned, some acknowledgment of the failures of their  
30 protocols and processes that block redress being given, but they did not propose any  
31 significant change.

32 In our opening statement we gave the churches notice that survivors do not want  
33 them to use this hearing and this Commission to forward to survivors their apologies,  
34 especially when they are not followed by action. And yet again, that is what happened.

1 Survivors viewed the apologies and the tears shed as attempts to gain the sympathy  
2 of the Commission and suggest things would now be different, and they are not. The  
3 response of our survivors was represented in the statements to the media by survivor  
4 Frances Tagaloa and Anne Hill. Frances stated her belief that an apology would not have  
5 been forthcoming if this Inquiry had not happened, Anne Hill that the apologies were no  
6 more than a media stunt. Neither are survivors impressed with the Catholic Church  
7 authorities instructing their legal counsel to attempt to undermine the credibility of one of  
8 our expert members of our network who publicly advocates on our survivors behalf and  
9 supports them.

10 It is, however, what they've come to expect. Counsel for the Catholic Church did  
11 her best to undermine the credibility of Tom Doyle, at one point thanking him for his  
12 American testimony. She clearly was not listening when his experience of abuse globally  
13 was noted. But we can help Ms McKechnie by responding to her queries.

14 The relevance of canon law to redress? Because the bishops have used it to argue to  
15 survivors who have come to them that they cannot be held responsible for the harm caused  
16 to them by a member of an order or congregation, which is directly contrary to canon law.  
17 Because your clients', Ms McKechnie, complaints and safeguarding process—A Path to  
18 Healing—clearly states it is based on canon law, not civil law.

19 The Anglican and Catholic Church witnesses refer to their protocols and processes  
20 for receiving and investigating complaints and safeguarding. They confirmed yet again  
21 what survivors have already evidenced and the church has always known: they are  
22 re-traumatising rather than enabling, they don't work, and a barrier rather than a pathway to  
23 redress. The church institutions have not responded to the feedback from survivors to make  
24 them accessible, trauma-free and fit for purpose; their actions to date do not reflect the  
25 change in culture, the authorities of the church suggest has happened.

26 The churches know if they are genuine about taking responsibility for abuse in their  
27 institutions the harm done to those who have suffered abuse and prevention of further  
28 abuse, radical change is needed, not tinkering with church processes and systems.

29 Not only do survivors not trust the churches to do the job, they can never be  
30 impartial. Neither should the Government leave them to do the work that is its  
31 responsibility.

32 **DR HEASLEY:** So Catholic Church witnesses formed the largest part of this hearing. If  
33 survivors are to believe the bishops care enough to address their concerns, why was Bishop  
34 Steve Lowe of Hamilton not giving witness for the Catholic Church, as the delegated

1 bishop responsible for the National Office of Professional Standards, and explaining why  
2 the bishops have not made changes to ensure their processes are trauma-informed and do  
3 meet the principles of openness, transparency, consistency, and will prevent further trauma  
4 and harm to survivors? Why have none of the seven emeritus, retired bishops, not appeared  
5 at these proceedings. They know a great deal about the sexual abuse by clerics and lay  
6 officials of children and vulnerable adults and carry the institutional memory of these  
7 horrific events, they surely have shared with the current five men running the show, none of  
8 whom I believe are here today.

9           Given the response to church witness testimony and questioning of their statements  
10 we heard from the Catholic hierarchy, it is perhaps understandable why the majority of our  
11 survivors are likely to remain silent. The Royal Commission has received 1,119 complaints  
12 about Catholic Church abuse from 1950. When you consider the great majority of records  
13 have been lost or destroyed, this figure is a gross under-estimation. Even so, despite huge  
14 holes in the data, it is greater comparatively than the 4,444 complaints received by the  
15 Australian Royal Commission, whose Catholic population is 10 times that of New Zealand,  
16 by a factor of more than 2.

17           We are equivalent to the Archdiocese of Melbourne—six bishops, dioceses. One  
18 might expect the problem here, therefore, to be at least twice as bad as across the ditch. Of  
19 all the witnesses presented, let us focus on the testimony of Society of Mary witness, the  
20 Provincial, Tim Duckworth. He argued the Society of Mary would go it alone. Our  
21 survivors were also moved to tears from retriggering trauma, which they witnessed the  
22 disjunct between apparent contrition and tearful compassion, while they listened to his  
23 denials and disbelief of the evidence of survivors he had engaged with.

24           Not surprising to these survivors, he doubled down on insulting two survivors who  
25 gave testimony at the first redress hearing, Ann-Marie Shelley and Mr F, taking umbrage at  
26 Ann-Marie's lack of gratitude at the sentencing hearing of her rapist, Hercock, and  
27 impugning Mr F's honesty as related to the nickname "Fred the fiddler" for Frank Durning  
28 SM.

29           He then had a go at lawyers, blaming them all for the Society of Mary woes with  
30 their bad advice. Too bad his tears and dislike of lawyers did not extend to the hideously  
31 cruel and inhuman treatment of Mike Phillips who at page 50 in 2003 and dying of cancer  
32 outed Father Tom Laffey SM as his sexual assailant in the 1960s. All of this is on public  
33 record and readily available. Laffey admitted the crime and admitted to four other assaults.  
34 Mr Phillips felt validated for he was told this by Tim Duckworth. It was healing; he could

1 die in peace. Only for Tim to retract and retreat and deny this, basically calling a man  
2 dying of cancer a liar.

3 Father Duckworth was happy to take legal advice to validate his refusal to talk to  
4 Mr Phillips or to answer his questions. Deeply ironic, this happened in June 2003, yes,  
5 2003, which coincided with an unprecedented public apology from the country's Catholic  
6 bishops who gave a commitment to confront the evil of the past. So Cardinal Dew's  
7 apology on Friday March 23, 2021 last week, despite claims in the media to the contrary,  
8 was not the first public apology, and 18 years later here we go again. More apologies.  
9 Same culture. No change.

10 Change? At the funeral of the self-confessed pederast, Tom Laffey SM, that I just  
11 referred to, the assailant of Mike Phillips, in May 2019 a funeral I attended in person and  
12 videotaped and recorded, the then Provincial, David Kennerley, encouraged everyone in  
13 that church to, I quote, "imitate the faithful spirit of this pederast."

14 Change? On Friday March 26th the day after Tim Duckworth's testimony, the  
15 journalist Mick Hall who had attempted to get a comment from Duckworth on the very day  
16 of his testimony produced a devastating article about Father Phil Roberts, the former rector  
17 of St Augustine's, now Cullinane College, Whangārei [sic], and Pompallier College,  
18 Whanganui [sic], Northland, outing him as a sexual assailant as far back as the 1950s at  
19 St Bede's, Christchurch, and the other locations. The journalist was stonewalled,  
20 Duckworth refused to comment, citing the Royal Commission as the wall he hid behind.  
21 David Kennerley, the former Provincial, who had refused to comment on Roberts in 2018,  
22 where he had to have known about the complaint about Roberts, was the original sinner by  
23 omission.

24 Change? These are the actions of the top Society of Mary men, the ones who make  
25 the decisions, clear cover up, no ifs, no buts, no maybes. Cardinal Dew included with his  
26 apology to survivors an acknowledgment, quote, "that the systems and culture of the  
27 Church allowed abuse to occur, these systems and culture failed you and must change", end  
28 of quote.

29 May I quote just one of many network survivors who approached us after that  
30 apology. "E kore au e ora i tēnei. Ka mate ahau kore rawa e mōhio ki te rangimarie o  
31 tetahi ra mai i ahau i te tuatahi whakararurutia. Tiwhatiwha te po, tiwhatiwha te ao." In  
32 English, "I won't survive this, I will die, never having known a day's peace since I was first  
33 molested. Gloom and sorrow prevail day and night." Thank you Cardinal Dew.

34 We ask the churches giving witness in this hearing to support survivors' call for an

1 independent body. Not only to this Commission, but to the Government and people of  
2 New Zealand. The response of the bishops and religious and the Catholic and Anglican  
3 churches has been varied. Anglican Bishop Peter Carrell called for redress to be left to the  
4 Church. Survivors like Jacinta Thompson are not surprised by the unwillingness of this  
5 bishop to consider survivors first. Jacinta responded to us, and I quote "This response is  
6 not surprising from a man who admitted excusing priestly misconduct as being akin to  
7 accidental shoplifting and admitted not even thinking to ask the survivor what happened."

8 The other Anglican bishops clearly said that they are "committed to finding the best  
9 way forward for redress for survivors and have heard their call for an independent body."

10 We appreciate their willingness to explore this path with survivors and I note that Don and  
11 Philip are here today.

12 **CHAIR:** Can I just stop you there briefly, Dr Heasley, only out of consideration for our --

13 **DR HEASLEY:** For the stenographer.

14 **CHAIR:** -- the stenographer and our signers, because we're well past 5 o'clock and I want to  
15 check. I see you've got probably another 10 minutes or so. Are you able to continue?

16 Please say if you're not. **[Signers and stenographer confirm]** I'm sure they're saying in  
17 their minds, only if he goes a little slower.

18 **DR HEASLEY:** I'll slow down, thank you ladies, I apologise.

19 **CHAIR:** That's all right, thank you, sorry to interrupt you.

20 **DR HEASLEY:** That's all right, these are weighty matters, I tend to get a little bit quick.

21 So in their closing today they have responded and gave a commitment to our  
22 proposal and provided their thoughts on how it could work, this is Philip and Don who are  
23 in the room today, which is something, that the Catholics are not here.

24 Can survivors trust your word for it? They [sic] will understand they are cautious  
25 having trusted in your good intentions before and not seeing the actions to give it meaning.  
26 Thank you the Anglican bishops who are supporting the independent body proposal to this  
27 Commission. However, you are correct, the State has the responsibility to step up. If you  
28 are sincere in this approach, survivors ask that you support them by advocating to  
29 Government they take action and pass the statutory provision requirements under urgency.

30 Cardinal John Dew supported the concept of an independent body. However, in  
31 spite of him being addressed as the leader of the Catholic Church in New Zealand, he does  
32 not have the authority to speak on behalf of the other bishops. He's just a bishop.

33 What we have heard in the closing submission from Ms McKechnie for the Catholic  
34 Church attempts to rationalise the Catholic Church position. In response we ask, why did

1 the church not take action following its apology in 2003? Why have they waited until this  
2 Inquiry to finally collate their records to inform them and survivors.

3 As to the structure of the church, Ms McKechnie, again we see the bishops hiding  
4 their responsibilities behind the other entities you keep referring to. Regardless of how  
5 many entities that exist in New Zealand and that you represent, Tom Doyle left no doubt  
6 the five bishops are the ones with the power and the authority to change this. How the  
7 bishops organised the congregations and orders they contracted to work in their diocese to  
8 contribute financially is not survivors or this Commission's concern. Neither need it be the  
9 concern of an independent body. The bishops are accountable. They must finance the  
10 redress for survivors of abuse that happened in their dioceses, whether they pool their  
11 resources is a matter for them.

12 As we suspected, the Catholic Church is happy to draw out this investigation into  
13 redress in the hope that it will drop out of public view, confirming there is no change of  
14 heart. Reputation protection at the expense of survivors continues to be their modus  
15 operandi. Just as they had to be dragged kicking and screaming into this Inquiry, they will  
16 resist inclusion to an independent body, in an independent body.

17 It is time to go back to the Government and the people of New Zealand. We as a  
18 nation can no longer tolerate the division of State and church that allows the likes of this  
19 Catholic Church to continue to enable abuse. The Salvation Army gave support to the  
20 independent body in principle and acknowledged that delay is costly for survivors, and  
21 I quote "A prolonged Royal Commission process risks further traumatising survivors."

22 It is clear from some of the church's comments they do not see how they could carry  
23 out their responsibilities if an independent body was set up. The churches regard the  
24 priesthood, religious vocations and providers of pastoral care as professions, and the  
25 standards that apply to them, professional standards. No other profession stands outside  
26 statutory regulation and oversight.

27 The medical profession, for example, has their own professional body, the Medical  
28 Council, that requires its professional standards and ethics to be adhered to and functions  
29 under the requirements of statute, the Health Practitioners Competence Assurance Act  
30 2003, which provides a framework for the regulation of doctors and other health  
31 professionals where there is risk of harm from their professional practice. The Medical  
32 Council website makes clear how it works with the independent body, the Health and  
33 Disability Commissioner, when it receives complaints, quote, "If you notify us directly, we  
34 are required by law to refer your notification directly to the Health and Disability

1 Commissioner, HDC. If the HDC starts a formal investigation, they will advise us and we  
2 will determine whether to begin our own processes alongside theirs. The HDC – Health  
3 and Disability Commissioner – and the Medical Council refer doctors who have breached  
4 their standards to an independent Health Practitioners Disciplinary Tribunal."

5 If the Church refer to our proposal, there is no requirement that the churches not run  
6 their own disciplinary system for those who breach their institutional professional  
7 standards, for example breaches of celibacy. They can do this in addition to the  
8 independent one, or put their reliance on the independent body. We are asking for  
9 mandatory reporting of abuse to the independent body when it happens in their institutions.

10 We recognise that only the churches can put safeguarding policies, procedures and  
11 protocols in place. What we are asking is for those to be required by statute and authority  
12 given to the independent body, to have oversight and hold institutions accountable when  
13 they fail to implement them or they are breached. We are not suggesting setting up such a  
14 body will save them from the cost of financial compensation for the victims who are abused  
15 in their care, or that they not respond to survivors who choose to report to them or seek  
16 their pastoral care and spiritual healing.

17 Current processes that lead to redress in the churches and ministries are fatally  
18 flawed. Those institutions cannot be left to do this work for survivors, where they need to  
19 be involved it must be with oversight of statute and an independent body. The choice must  
20 be with the survivor as to what aspects of the redress they are entitled to and they choose to  
21 take up. Redress should not have to be negotiated. Some survivors may choose to have a  
22 church provide some aspect of the redress.

23 **MS TONKS:** Commissioners, we put our proposal to the churches. You have heard their  
24 response. We now put to you, survivors ask that you make the recommendation for an  
25 all-inclusive independent body to Government now at the end of these redress hearings so  
26 survivors of abuse in faith-based institutions are not at risk of being left out of solutions  
27 already being progressed for their fellow survivors of abuse in State institutions.

28 The work to prepare the required statute, policies, protocols and budgets needed for  
29 an all-inclusive body needs to start now. A prolonged delay to accumulate further  
30 information when there is already sufficient survivors believe is unacceptable. The  
31 common barriers that face survivors abused in both State and the church institutions to  
32 receiving adequate redress have been witnessed.

33 As a result of the evidence that has been publicly witnessed in the redress hearings,  
34 both State and faith-based, the Government needs to act. They know they are in breach of

1 their responsibilities while they do not address the needs of survivors of abuse in the care of  
2 institutions. It is irrelevant where the abuse took place. Survivors who have reported to the  
3 Commission, to ministries, to churches have been left unacknowledged and struggling,  
4 others remain silenced. They still wait for redress. The abuse they suffered has been  
5 known about for decades and still they wait. They cannot wait months for this Commission  
6 to give its recommendation and for the Government to act.

7 We know that those who have reported do not represent the numbers abused, but the  
8 Commission has sufficient evidence on which to base your recommendation. Survivors do  
9 not need the Commission to fill the gaps in the stats for redress, as stated at the launch of its  
10 interim report. A delay to collect more data causes more trauma for survivors who have  
11 reported and deprives them of their much-needed redress. There is sufficient evidence now  
12 to show the Government leaving institutions to deal with the abuse of children in their care  
13 has failed. Current systems that exist are failing to provide a pathway to redress. The  
14 current processes for complaints and seeking redress are traumatic, and not  
15 survivor-informed.

16 The cost of waiting is huge. Both in terms of survivor lives not lived as healthy  
17 adults and the contribution they could make and the huge wasted resource poured into  
18 litigation by institutions and the State required by any investigation into redress going on  
19 and on.

20 Commissioners, you have been mandated by survivors and the churches to  
21 recommend this independent body. Survivors ask that you act now on the completion of  
22 these public redress hearings. To them, the cost of not doing so is unacceptable. We thank  
23 you for listening to survivors' voices.

24 **DR HEASLEY:** Fa'afetai lava; malo 'aupito kotoa pe; vinaka vakalevu kemuni na turanga kei na  
25 marama; maraming Salamat sa inyong lahat, ka nui te mihi ki a koutou. Thank you very  
26 much.

27 **CHAIR:** Thank you both for your submissions. **[Applause]** I make no promises, but I can tell  
28 you that tomorrow morning at 9 o'clock the Commissioners are meeting with our team and  
29 we're starting on our deliberations. Beyond that I can say no more. But thank you very  
30 much again for your advocacy on behalf of survivors.

31 **DR HEASLEY:** Thank you.

32 **CHAIR:** Can I just say that I'm conscious the three submissions for Survivor Networks came after  
33 the submissions for the faith-based institutions. I did not have the Network's submission to  
34 be able to put anything to churches during their submissions, so if anything has arisen

1 which any of the churches feel they need and want to respond to, I invite them to make  
2 submissions in writing, which will be taken into account.

3 I think that brings us to the end. Before we formally close, I want to extend – I've  
4 been thanking people all day, but I do so genuinely and my final thanks is no less heartfelt,  
5 and that is to all the people who have contributed to the running of these hearings which  
6 began in terms of the redress way back in October last year or September. There's been an  
7 enormous team effort, our Royal Commission staff, our Royal Commission counsel,  
8 counsel for all of the faith-based institutions and I've referred already to the teams, I know  
9 there are people behind the scenes who are not here, I thank them. And I particularly want  
10 to thank our long-serving and long-patient people who are doing the stenography work and  
11 our signers, they deserve a long and happy break over Easter, so thank you to all of those  
12 people.

13 And just to conclude, Ki te tika ā muri ka pai ki mua, nō reira huri noa i tō tātou nei  
14 whare, tēnā koutou, tēnā koutou, ara tēnā ra koutou katoa. W te rangatira, kei ā koe te wā.

15 **MATUA TEM:** Now, I've got two statements that are not going to take any more than 20  
16 seconds.

17 **CHAIR:** Kei a koe e pa, kei a koe.

18 **MATUA TEM:** Kia ora. The first thing is I'd really like to thank you for having us come along  
19 and if it lifts it a little bit in the morning and then closes it with a little bit of lift, then I'm  
20 doing it.

21 The second thing directly affects the Royal Commission. I turned my phone off out  
22 in the corridor, of course I walked in to turn it off but of course turned it on again. What  
23 happened, it went off. So I reached in and turned it off again. Then I pulled the message  
24 out. I told my mokopuna girls that we were finishing tomorrow. "Grandpa, we're  
25 practising on the piano with our voices."

26 **CHAIR:** Ka aroha. That is a very good plea in mitigation, which we accept.

27 **MATUA TEM:** Now I've got to go home and tell them it's around about the end of May, kia ora.

28 **CHAIR:** Well, the pleasure is all ours and we thank you for your blessings at the beginning and  
29 the end of the day. We're really sorry that we're missing out on your mokos but next time  
30 please.

31 **MATUA TEM:** Kia ora.

32 **Hearing closes with waiata and karakia mutunga by Ngāti Whātua Ōrākei**

33 **Hearing concluded at 5.27 pm**