

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
MARYLANDS SCHOOL**

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)
Ali'imuamua Sandra Alofivae

Counsel: Ms Katherine Anderson, Mr Simon Mount QC, Ms Kerry Beaton QC, Ms Jane Glover, Ms Anne Toohey, Ms Kima Tuiali'i, Ms Julia Spelman, Mr Winston McCarthy, Ms Echo Haronga, Mr Michael Thomas and Ms Kathy Basire for the Royal Commission
Ms Rachael Schmidt-McCleave, Ms Julia White and Mr Max Clarke-Parker for the Crown
Ms Sonja Cooper, Ms Amanda Hill, Mr Sam Benton, Ms Alana Thomas and Mr Sam Wimsett as other counsel attending

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

Date: 17 February 2022

TRANSCRIPT OF PROCEEDINGS

Adjournment from 11.41 am to 11.52 am

1
2 **CHAIR:** Before we go to closing submissions, I've just been told, and I'm sorry that I didn't know
3 this earlier, that watching that documentary and the proceedings today in the Christchurch
4 hub were some of our survivors, five of them. I'd just like to acknowledge you who have
5 been watching, that's Stephen Hope, Robin Pearson, Robert Lowe, Julius Thompson and
6 Michael Banks. Thank you for being there, I'm sure it was difficult for you, but thank you
7 for the support that you've been giving the inquiry.

8 I also acknowledge the Australian survivors, Jason van Dyk, Janice van Dyk and
9 Paul Andreasson.

10 Ms Anderson, I have cleverly left behind the order of the submissions, so I wonder
11 if you could just remind me please of the order.

12 **MS ANDERSON:** Yes, so we're starting with the Crown followed by submissions on behalf of
13 the Church, then followed by SNAP, then the Network and then Dr Mulvihill.

14 **CHAIR:** Thank you very much.

15 **MS ANDERSON:** I'll hand over to the Crown.

16 **CHAIR:** Almost good afternoon Ms Schmidt-McCleave.

17 **MS SCHMIDT-McCLEAVE:** Almost, Madam Chair, tēnā kōrua. I have got copies of our
18 written closing that have been provided to the Commission but possibly late for the
19 Commissioners to see. I've got two hard copies here, I'm only going to speak to those and I
20 will be jumping around a little bit. I'll hand them up.

21 **CHAIR:** We haven't seen them so it would be helpful just to have them, thank you.

CLOSING SUBMISSIONS BY THE CROWN

22
23 **MS SCHMIDT-McCLEAVE:** I want to begin by giving a mihi to the Commissioners for the
24 opportunity to present this closing statement on behalf of the Crown response to the Royal
25 Commission and I also want to begin by echoing the words of the Crown witnesses by
26 acknowledging the bravery and strength of the survivors who have come forward to share
27 their kōrero. I'd also want to acknowledge their families, their whānau and other
28 supporters, including their supporters who have given evidence here and who have stood by
29 them offering their aroha and support for many years.

30 It has been humbling to be here and to hear their evidence and I wish to mihi to
31 those survivors who have spoken so movingly and with such extraordinary and inspiring
32 courage.

33 I also want to acknowledge the Mana Whenua, Ngāti Whātua Orakei. I'd also
34 acknowledge Jesse Gubb who has provided such thought-provoking and cleansing karakia

1 through the course of the hearing and to Ngai Tahu, the Mana Whenua where Marylands'
2 school is located.

3 As I explained at the outset of this hearing, the Crown's approach to the Royal
4 Commission of Inquiry overall, and to this Marylands inquiry, is to listen and learn from
5 survivors from their supporters and their communities about their experiences with the
6 New Zealand State and to provide assistance to the Commission where it is needed and
7 where it is possible to do so.

8 I've said it before but I'll say it again, the Crown has been listening. We who are
9 with you in this room, the agencies represented through their witnesses and by the agencies
10 who have been listening remotely on the livestream.

11 The importance of survivors' voices is recognised by the Crown. It is impossible to
12 overstate their contribution to the work of this Royal Commission, and their maia, their
13 kaha moves and inspires us daily. And has always been the case through the life of this
14 Commission, the Crown has been listening carefully so that the lived experiences of those
15 survivors can drive change to prevent further abuse and to improve how it operates.

16 The Crown continues to take what it is hearing and learning into its future planning
17 and it's taking active steps in individual cases to address issues that have been brought to
18 the Crown's attention by the evidence we've heard.

19 As I noted in opening, Marylands was a privately-run Catholic school. The
20 allegations of extremely serious abuse there, which we have been listening to over the
21 course of this hearing, were at the hands of the St John of God Brothers. But important
22 questions do arise around the role of the Crown or the State in relation to these events.

23 So in my written submissions I have set out information and evidence that the
24 Crown has, a summary of the information and evidence that the Crown has previously
25 provided in response to a number of notices to produce, and I'd draw the Commissioners'
26 attention in particular to Notice to Produce 310 that provides a framework for considering
27 some of the questions around Crown responsibility and oversight.

28 I'd just like to note one point on Crown responsibilities owed by particular agencies,
29 and that's that while the Crown or the State is sometimes talked of and thought of as a
30 single unified entity, its statutory roles and responsibilities for the Marylands residents were
31 generally owed by particular Crown agencies. There's never been a single definitive
32 statement of the Crown's responsibilities towards children at a private school run by the
33 Catholic Church, and rather, as our evidence yesterday touched upon, the Crown, through
34 its various agencies, had a range of functions and obligations and that depended on factors

1 such as the status of a child within the school and the applicable policy and statutory
2 schemes at the time.

3 So in my submissions I have, in more detail, set out a number of sources of the
4 various aspects of governmental responsibility for the children of Marylands, and I've done
5 that in relation to the Ministry of Education and its predecessor agencies, Oranga Tamariki
6 and its predecessors, and that's principally in relation to children and young persons who
7 had legal status with those agencies, and in relation to contracted service providers such as
8 the Hebron Trust, and finally the Ministry of Social Development who responds to historic
9 claims by adults placed at Marylands as children.

10 Commissioners will be aware that there hasn't been a witness sought at this hearing
11 from the Ministry of Education, however, I would urge the Commissioners to consider the
12 comprehensive written brief of evidence filed by Ms Helen Hurst on behalf of the Ministry,
13 that's dated 7 October 2021. That outlines the education landscape and statutory
14 framework of the time beginning with the period 1950 and then going through to the
15 Tomorrow's Schools reforms in 1989.

16 So until the establishment of the Ministry of Education in 1989 through that
17 legislation, the primary and secondary schooling systems in New Zealand were overseen
18 through the Department of Education under the Education Acts 1914 and 1964.

19 So in my submissions at paragraphs 15 to 30 I have set out in more detail what
20 those arrangements were, and I don't propose to go through those in detail this afternoon,
21 Commissioners, but what I would do is just to say in summary that while currently the
22 framework, well, it still offers a range of different types of education provision for students,
23 including private State-integrated and State schools, that gives caregivers a variety of
24 options in relation to their children's education, and the control by the Department, now the
25 Ministry of Education, has varied at all times to reflect this.

26 And even today, private schools are, of necessity, subject to less direct State
27 oversight and control than State and State-integrated schools, and what the level of that
28 control has reflected Government policy at the time, and historically churches and private
29 providers have been active players in the provision of private education in New Zealand.

30 Now there's been a number of recent changes to the level of that oversight, and I've
31 set those out in detail at paragraphs 39 through to 40, which is a very long paragraph with a
32 number of subparagraphs, of my submissions. And you'll see there that there've been a
33 number of changes to that oversight in that time.

1 But the distinction I want to draw is that the statutory oversight regime for private
2 schools during Marylands' existence from the mid-1950s through to mid-1980s was quite
3 limited and it was restricted to that concept of efficiency that I raised with the
4 Commissioners in my opening statement, and what that meant is set out in more detail in
5 Ms Hurst's brief as well as in my written submission.

6 But mainly it meant that the Department's oversight was more focused on the
7 adequacy of the curricula, staff numbers and qualifications and school property. More
8 recent changes to legislation, however, have increased the degree of State oversight of
9 private schools and particularly in relation to the safety and well-being of students.

10 **CHAIR:** Can I just stop you there.

11 **MS SCHMIDT-McCLEAVE:** Of course.

12 **CHAIR:** That takes us back, doesn't it, I think, to paragraph 11 where you say that there's never
13 been a single definitive statement of the Crown's responsibility towards children. Now you
14 say at a private school run by the Catholic Church, but I'd expand that to private schools
15 run by any non-State entity.

16 **MS SCHMIDT-McCLEAVE:** Yes, yes.

17 **CHAIR:** That remains the case today?

18 **MS SCHMIDT-McCLEAVE:** Yes, as the submissions point out there's a number of --

19 **CHAIR:** Yes, that's right, so in spite of the recent changes to legislation and the degree of State
20 oversight, there still isn't that single Crown responsibility enacted anywhere in the
21 legislation.

22 **MS SCHMIDT-McCLEAVE:** That's right.

23 **CHAIR:** So it still remains piecemeal. I don't want to put you completely on the spot, but I just
24 wonder whether you have any views that you'd like to share with the Commission, either
25 now or maybe after taking instructions, on the idea of having a single definitive statement
26 such as you suggest in paragraph 11?

27 **MS SCHMIDT-McCLEAVE:** I will take instructions on that, Commissioners, of course, but
28 certainly I will do so and come back to the Commission.

29 **CHAIR:** Good, thank you very much. Sorry I've put you off your stride.

30 **MS SCHMIDT-McCLEAVE:** That's okay, I'm just finding --

31 **CHAIR:** I think we were up to paragraph 144.

32 **MS SCHMIDT-McCLEAVE:** Yes, there was one point, though, that I did want to address,
33 which is at paragraph 32 of my written submissions, and that's that whilst the -- just to
34 clarify that, while the opening comments of Dr Longhurst stated that Marylands was

1 licensed under the Mental Health Act, I've referred in the submissions, and in our noted
2 response to the notice to produce, to a Cabinet memorandum of 1955 which states that the
3 level of the children does not make it necessary to licence the home under the Mental
4 Health Act, but it does require that it should be registered under the Education Act of the
5 Department of Education as a special school and that suitable training should be provided.

6 Now there was then a process of Cabinet approval to the payment of a special grant
7 to the Brothers of St John of God to assist them in establishing Marylands. That approval
8 finally came through in September 1956 and the grant was made subject to certain
9 conditions. One of them being that there was confirmation given by the Education
10 Department of Marylands registration as a private school.

11 And the memoranda that I've referred to there, the Cabinet memoranda, made clear
12 that that caveat of registration as a school before payment was to ensure that the registration
13 process already applied for by St John of God, and that included requisite inspections, had
14 been completed before the funds were paid. So it was not a direction by Cabinet that the
15 Brothers must register a private school to obtain funding.

16 **CHAIR:** Thank you for that.

17 **MS SCHMIDT-McCLEAVE:** So moving to Oranga Tamariki, and I'm at paragraph 45 of my
18 written submissions now. So students were at Marylands for different reasons. Some were
19 placed there by the State. More typically their placement was a private arrangement
20 between the child's parents at the school.

21 I've set out at paragraph 46, and we heard some discussion with Mr Galvin about
22 this yesterday, that if the Department of Social Welfare sought to have a child enrolled at
23 Marylands, then policies in place at the time required the steps I've set out there at 46 to be
24 followed.

25 And I note at paragraph 47, again as discussed by Mr Galvin yesterday, that
26 individual children came into State care for a wide variety of reasons over the period of
27 Marylands' operation, and I've set out there the numbers he discussed that of the 1,539
28 children that were identified by the Commission as having attended Marylands in the time
29 period 1955 to 1984, there were 152 found to have a case file which indicated some form of
30 interaction with Oranga Tamariki's predecessor agencies, and I note there that not all of
31 those 152 children had a status under the Child Welfare legislation.

32 Mr Galvin spoke about their inspection of a sample of 32 of those 152 files, which
33 showed that 12 of the 35 individuals had a status under relevant Child Welfare legislation at
34 the time.

1 So again, as Mr Galvin spoke about --

2 **CHAIR:** Can I just check that, I should have asked Mr Galvin this question, I don't know if --

3 **MS SCHMIDT-McCLEAVE:** I may have to defer to him depending on the question.

4 **CHAIR:** Thank you, so he only did a sample. Do we know why he only did a sample? I'm sorry
5 I didn't ask him.

6 **MS SCHMIDT-McCLEAVE:** That is set out in his brief. I think my understanding it was a
7 matter of logistics involved in the sample and it's quite an immense task is my
8 understanding.

9 **CHAIR:** All right thank you.

10 **MS SCHMIDT-McCLEAVE:** So as he set out, the monitoring by the Child Welfare division of
11 the Department of Education and DSW and regulation of the level of care provided to State
12 wards at Marylands was guided by the statutory and regulatory framework in place at the
13 time, and Mr Galvin spoke a little yesterday and further in his brief about the visiting and
14 reporting processes described in the statutory declarations we've provided.

15 He spoke about the minimum requirements for visiting and the progress reports.
16 They were in line with the regulatory regime in place at the time focused on children who
17 had status under the Child Welfare legislation, rather than the wider cohort of all those in
18 attendance at Marylands.

19 So I would note there that the situation for children in care would be different today
20 and again, I refer to the changes, particularly the recent changes, in the regulatory and
21 legislative scheme which Mr Galvin discussed and he described the closer degree of
22 monitoring and review of the level of care provided to children in the care or custody of the
23 Chief Executive of Oranga Tamariki to those in the care or custody of iwi social services,
24 cultural social services, or the director of a child and family support service.

25 So in particular, Commissioners, I refer to the description Mr Galvin gives in his
26 evidence of the National Care Standards which came in in 2018 and the framework for
27 making reports of abuse contained within those standards.

28 Turning then to the Ministry of Social Development. And again, I refer to
29 Ms Hrstich-Meyer's evidence given yesterday and in his brief, but in the context of the
30 historic claims process at MSD that she spoke about, MSD receives allegations which relate
31 to many aspects of a claimant's care experience, including those relating to abuse at private
32 institutions such as Marylands.

33 And Ms Hrstich-Meyer spoke about how historically those allegations were treated
34 within the scope of the historic claims process and critically how, under the new assessment

1 approach, that a more nuanced approach is taken, and where a claimant who was in State
2 care makes allegations of abuse at faith-based institutions, these may be taken into account
3 depending on the individual circumstances of the claim.

4 Aside from the various sets of obligations that various Crown agencies have had in
5 relation to Marylands and its residents, the Crown also, of course, had an important part to
6 play in the investigations and prosecutions at Marylands, and I refer to the evidence given
7 yesterday by Detective Superintendent Peter Read, which recognises in hindsight that there
8 were areas of practice of Operation Authority that could be improved on, but many of the
9 principles of support and engagement with complainants during that investigation, in
10 particular vulnerable complainants, have driven best practice and are used in investigations
11 today.

12 Current policies incorporate inter-agency collaboration and that provides a
13 framework for supporting survivors of abuse through the criminal justice process. And
14 Police, as Detective Superintendent Read said yesterday, that Police continue to be
15 committed to considering how their processes can be improved to reduce the difficulties for
16 victims in engaging in the criminal justice process. Including, in particular in the context of
17 this hearing, vulnerable survivors. And that includes, as Mr Read noted, further
18 engagement with the Royal Commission.

19 So in conclusion then, I would just like to note that in summarising the situation,
20 while Marylands was operational, the Crown had a number of specific obligations relating
21 to the school's operation. And I've set out there, from an education perspective, the
22 obligation to ensure the school was registered and then those factors which meant that it
23 was efficiency and as that concept was then understood, from the Department of Social
24 Welfare there were obligations to particular residents where those residents had a
25 relationship or status with the Department. And this distinguished Marylands from the
26 State residences where the State rather than the Church was the institution ultimately
27 responsible for running the resident.

28 This quite limited State purview can be contrasted with today's environment which,
29 as I've set out in more detail in these submissions, provides for a greater State oversight of
30 the running of private schools and residential care services. The changes provide numerous
31 safeguards, reducing the risk that the type of abuse that occurred at Marylands can occur
32 and go undetected.

33 So in ending these submissions, the Crown reiterates once again its commitment to
34 the Commission's work. The Crown is committed to continuing to provide information and

1 evidence to enable your recommendations to be fruitful and to ensure that these terrible
2 experiences we've heard about in the last two weeks do not occur again.

3 The Crown echoes the comments made by the Commissioners to the survivors who
4 have given evidence for this hearing and to others. We are grateful to you for sharing your
5 experiences so that the State may learn what more may be done to avoid the abuse that you
6 should never have experienced from ever occurring again.

7 Tēnā kōrua. I'm happy to answer any further questions from the Commissioners.

8 **CHAIR:** I would just add, there is learning, of course, about what must be done to avoid the
9 abuse, but we still have the ongoing responsibilities, don't we, to those survivors who
10 remain with us.

11 **MS SCHMIDT-McCLEAVE:** Absolutely.

12 **CHAIR:** Who still carry the shame, still carry the burden, the pain and the impacts. So I think it's
13 important that the Crown expressly accepts some responsibility in that regard as well.
14 Would that be appropriate?

15 **MS SCHMIDT-McCLEAVE:** Absolutely, I tautoko that sentiment, Madam Chair.

16 **CHAIR:** Thank you.

17 **COMMISSIONER ALOFIVAE:** Ms Schmidt-McCleave, thank you for your submissions. I just
18 wanted to ask in terms of the policy work that might be going out there. You've heard very
19 carefully and you've listened and you've responded in terms of the power of the voices of
20 our survivors.

21 So where there's opportunity, in particular with your ERO office, where there's
22 direct interaction with the schools, whether or not, you know, if there's actually work going
23 on in that space to in actual fact, it's almost like a recalibration, the balance of the voices
24 that you're hearing, the Crown is hearing, when they go into these institutions.

25 **MS SCHMIDT-McCLEAVE:** I can't be as particular as saying specifically the ERO, I don't have
26 that knowledge, but I can find that out. But certainly through the agencies, so to the extent
27 it's coming through the various agencies listening and responding, yes absolutely.

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

29 **CHAIR:** So thank you so much for your presence during this last couple of difficult weeks and
30 thank you for your submissions, Ms Schmidt-McCleave, and no doubt we will see you
31 again at our next hearings.

32 **MS SCHMIDT-McCLEAVE:** Tēnā kōrua.

33 **CHAIR:** Kia ora.

34 Good afternoon Ms McKechnie.

1 **MS McKECHNIE:** Commissioner. Some quick housekeeping to commence. You should both
2 have the skeleton outline of my oral submissions which I see the registrar is handing to you
3 now. Madam Chair, I would make a formal request that we be able to file written
4 submissions. The opportunity to seek leave yesterday was lost in the hearing sitting late.
5 So I should have sought this yesterday, Madam Chair, I apologise, but we will invite the
6 opportunity to be able to file more fulsome written submissions within a couple of weeks to
7 respond to the issues raised.

8 **CHAIR:** Yes, I see no reason and that would be very helpful if you were. So I take it they would
9 be submissions that expand on this synopsis or this outline?

10 **MS McKECHNIE:** Yes, Madam Chair, and indeed respond to any particular questions that the
11 Commissioners have. The scoping document for this hearing, as you will appreciate, is
12 sparse, and there are particular questions that you and your fellow Commissioner may have
13 in the last eight days that we would welcome that indication so we can respond specifically
14 to those.

15 **CHAIR:** Certainly I think that would be very helpful, thank you.

16 **MS McKECHNIE:** Madam Chair, this document is also being provided on the TRT website, so if
17 there are people following along and watching and they wish to see the words of the
18 Brothers and the Church, that is there for them as well and it's been provided electronically
19 to counsel.

20 **CHAIR:** Thank you.