

**Witness Name:** Fiona Rose Cassidy

**Statement No.:** [WITNXXXX001]

**Exhibits:** [WITNXXXX002 - WITNXXXX004]

**Dated:** 17.08.2022

**ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE**

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**WITNESS STATEMENT OF FIONA ROSE CASSIDY**

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I, Fiona Rose Cassidy, will say as follows:

## **Introduction**

1. My full name is Fiona Rose Cassidy.
2. I am the Executive Director the Office of the Children's Commissioner | Manaakitia Ā Tātou Tamariki (**OCC**). I commenced this role on 21 March 2022.
3. In my capacity as Executive Director, on behalf of the Children's Commissioner, I manage the overall operations of the tari (office). I am on the Senior Leadership Team and all but one of the tari managers report directly to me. My responsibilities include leading a team of senior managers who support the Commissioner to deliver positive outcomes for mokopuna; with the Commissioner leading decision making and performance monitoring across the tari and developing a work programme for the tari which delivers against the Commissioner's statutory responsibilities, priorities and rautaki (strategies).
4. Prior to that, I was the General Manager Communications and Engagement at Oranga Tamariki for one year. I have also held various directorship and managerial roles across the public and private sector.
5. The following persons are here with me today to assist the Royal Commission of Inquiry into Abuse in State Care (**RCOI**):
  - a. Judge Frances Eivers, Children's Commissioner; and
  - b. Glenis Philip-Barbara, former Assistant Māori Commissioner at the OCC.
6. I have read, and am familiar with, (a) the briefs of evidence filed by Judge Eivers and Ms Philip-Barbara; and (b) the OCC's written response to Notice to Produce No 480 pursuant to s 20 of the Inquiries Act 2013 (**the s 20 response**).

## **Overview**

7. Subject to any direction from the Commission as to specific areas of interest, as a witness I wish to speak to the following:

- a. **Funding:** The OCC has never been adequately funded to carry out its wide-ranging statutory duties and functions fully and effectively, including the OCC's monitoring mandates. For the OCC's six overall recommendations<sup>1</sup> to be achieved and to guarantee positive outcomes for mokopuna in care, the monitor must be well resourced to carry out its functions.
  - b. **Complaints:** A functional mokopuna and whānau-centred complaints system has never existed and is urgently needed. The OCC has repeatedly highlighted concerns with the current complaints system, including access to complaint mechanisms, remedy, and redress. An effective complaints system must be mokopuna and whānau-centred, accessible, independent, respond to mokopuna within their timeframes, and subject to robust oversight.
8. My evidence draws largely on the OCC's s 20 response, highlighting for the RCOI some of the most important issues and recommendations relating to funding and complaints systems.

## Funding

### *Broad monitoring mandates but limited resources*

To date, the OCC has not been properly funded to fully carry out its monitoring mandates. Since the OCC was established in 1989, its legal mandate has been far larger than its operating budget. The OCC has previously shared its frustrations with the RCOI around ongoing funding deficit and insufficient powers to fully discharge these functions.<sup>2</sup> Commissioners have also raised funding and resourcing concerns with Ministers, as well as the Ministry of Social Development (**MSD**) Chief Executive, in respective meetings. Commissioners have also repeatedly raised concerns about resources and funding in public facing

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<sup>1</sup> See the "Introduction" document in the OCC's s 20 response (**OCC0008396-0001**).

<sup>2</sup> See for example the Office of the Children's Commissioner Report to the Royal Commission of Inquiry into Abuse in Care November 2019 (**EXT0019913**) at pp 1 and 3.

documents, such as Annual Reports, Select Committee hearings and, on occasion, in the media.

9. In preparing its s 20 response, OCC heard from kaimahi (staff) involved in the establishment of the OCC in 1989. With just five people (including the original Commissioner Sir Ian Hassall) and a \$500,000 budget from the Department of Social Welfare, the OCC was expected to 'monitor' the implementation of the Children, Young Person's and their Families Act 1989.
10. Since 2003, the OCC has held broad legislative functions to monitor and assess the policies and practices of the state care system. Until 2007, the OCC's monitoring activities were conducted solely in accordance with the s13 mandate under the Children's Commissioner Act 2003. In 2007, in addition to these functions, the OCC was designated as a National Preventive Mechanism (**NPM**) under s26 of the Crimes of Torture Act 1989 to monitor youth justice residences. Since 2007, the OCC's OPCAT designations have continued to increase to span a range of places of detention, with monitoring now required in youth justice residences, care and protection residences, community-based remand homes, health and disability places of detention established for the care of children and young people, and Mothers and Babies Units in Corrections facilities. These designations may continue to increase in the future.
11. As things stand, the OCC is responsible for monitoring 33 places of detention: 25 under the s13 mandate, and all 33 under OPCAT. Currently, approximately 8 FTE staff are responsible for monitoring and analysis of a total of 33 places of detention with the goal of visiting each site once a year. Since 2019, the OCC has received an additional 24 places of detention to monitor under s13/OPCAT with minimal baseline adjustment to supplement staffing levels.
12. The limited funding received for monitoring places of detention has enabled the OCC to monitor some, but not all, places of detention on an annual basis. Any funding increases over the years have been minimal and insufficient to keep pace with the changes occurring in Oranga Tamariki since 2017.

### *The need for separate OPCAT funding*

13. A particular problem is that rather than being funded to deliver both s13 and OPCAT monitoring, the OCC has only ever been minimally funded to carry out s13 monitoring. The OCC made repeated submissions to successive Governments, that it was not possible to carry out the full functions, but the issue of underfunding remained unresolved. The OCC continued to balance the rights of mokopuna within the constraints of an inadequate budget, however the funding deficit and its impact on the resources available has resulted in a monitoring shortfall.
14. The underfunding for OPCAT monitoring has continued notwithstanding that the provision of adequate financial and human resources for NPMs constitutes an ongoing legal obligation of the Government under Article 18.3 of the OPCAT.
15. In the United Nations Subcommittee on the Prevention of Torture's (SPT) 2013 report,<sup>3</sup> following their visit to New Zealand, they noted that the OCC was inadequately resourced to carry out its NPM work, stating "*Most of the components of the NPM have not received extra resources since their designation to carry out their OPCAT mandate which, together with general staff shortages, have severely impeded their ability to do so.*" The SPT also noted that "*... the Children's Commissioner and IPCA [Independent Police Conduct Authority] reported that their funding was earmarked for statutory functions, which excluded NPM-related work.... Should the current lack of human and financial resources available to the NPM not be remedied without delay, the State party will inevitably find itself in the breach of its OPCAT obligations.*"
16. With the s13 mandate now going to the Independent Children's Monitor, there is a need for OPCAT monitoring – which comprises 33 places of detention – to be fully and separately funded, or the Government will be in breach of its OPCAT obligations.

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<sup>3</sup> [CAT OP NZL 1 7242 E.pdf \(ohchr.org\)](#) CAT/OP/NZL/1 (para 12)

### *Key tensions relating to the budget process*

17. In terms of OPCAT funding, a key tension point for the OCC in securing funding is that the Ministry of Justice is the 'designator', while the Ministry of Social Development (**MSD**) is the 'funder'.
18. This reflects a broader tension relating to our funding arrangements, where the OCC's funding processes are largely controlled by MSD even though the OCC is an Independent Crown Entity (**ICE**). Unlike other ICEs, the OCC does not hold a direct relationship with Treasury.
19. In particular, the OCC finds it difficult to have its budget bids considered fully. We can only submit a budget bid if invited to do so. It is not the case that we are always invited. When invited, our proposals are often larger in ask than the available funds in the Vote as represented by MSD, with MSD often having to manage back our expectations.
20. For example, in 2018 the OCC adopted the Mana Mokopuna approach which places mokopuna experiences at the centre of our monitoring practice. This shift challenges Oranga Tamariki to be more child-centred and strongly focuses on outcomes for the mokopuna it supports by measuring whether the policy or practice of Oranga Tamariki is translating into good experiences for mokopuna. This has also led to the development of tools and processes that strengthen OCC's engagement with mokopuna and those who support them.
21. In budget discussions, the OCC has been challenged by the Ministry of Social Development (**MSD**) to qualify the benefits of the Mana Mokopuna approach, which requires time to achieve a level of trust from mokopuna who have been let down by the adults in their lives. Consenting and ethical conversations with care experienced mokopuna requires time to build and establish. An 'efficiency' approach would not invest this time, and yet, without it, mokopuna will not share their experiences.
22. Due to the lack of funding, we have faced difficulties in recruiting and adequately training and supporting kaimahi to conduct monitoring in accordance with our Mana Mokopuna approach, in addition to our Statement of Performance Expectations.

## Complaints

### *Issues with the current system and the need for change*

23. The OCC's engagements with mokopuna in state care have repeatedly shown that the current complaint system is not effective for mokopuna. In the OCC's 2019 State of Care Report, *A Hard Place To Be Happy*, mokopuna said they either did not trust the complaint process or did not find it effective. One mokopuna said "...I don't use it 'cause I don't see the point. Nothing's ever done. Have put them in. Don't waste my time doing it."
24. The OCC has provided advice on an alternative complaints system through various submissions and reports over the years. The OCC's submission on the Oversight Bill also provided significant feedback on what is required for an effective complaints system.
25. These submissions and reports included recommendations on improving advocacy services, specifically for mokopuna and whānau Māori.
26. An effective, responsive, child-friendly, and respectful complaints system is vital to ensure that - as the most basic expectation - the State does no harm. The current system not only risks retraumatising mokopuna, but it may also fail to identify those experiencing abuse that the hands of those that they should be able to trust.
27. However vital an alternative complaints system may be, complaints are inherently a response to an event or events that have already happened. As a result, it will not prevent abuse occurring, and cannot solve the issue of abuse within a system that was never designed in the best interests of mokopuna or in line with Te Tiriti. The State must create an environment where mokopuna feel safe to say when things are not right and confident that something will be done to address their concerns fairly, while striving to realise the radical transformation the OCC has called for time and time again.

28. Currently, mechanisms available for mokopuna to make a complaint of abuse or neglect to the OCC are via the Child Rights Line, direct contact with the OCC, our monitoring visits, and via the Oranga Tamariki grievance process.
29. As outlined in reg 69 of the Oranga Tamariki (National Care Standards) Regulations 2018, any complaints or allegations of abuse or neglect (i.e., disclosure) could potentially trigger the Child Protection Protocol, whereby a Report of Concern is lodged with Oranga Tamariki and becomes both an internal Oranga Tamariki issue and potentially trigger a police investigation. This response is possible whether the complaint was made within the grievance process or through other means.
30. Oranga Tamariki effectively operates two complaints systems, one for mokopuna in care within the community, and a grievance process (see paras 36–43) for mokopuna in residential facilities. The critical paths for each differ, and as such do not make either system easy to negotiate.
31. A lack of clarity around the grievance process and what types of behaviours constitute abuse have caused confusion for both OCC staff and mokopuna in residential facilities. Grievances assessed incorrectly under the reg 69 criteria of the National Care Standards meant the OCC was often not made aware of grievances submitted by mokopuna concerning abuse or neglect (as part of independent oversight of the grievance process) (see para 40.d).
32. When dealing with complaints, in line with legislation, the OCC cannot investigate matters before the courts. Instead, the OCC's role has been to support mokopuna and whānau by providing connections to relevant experts, such as disability or legal advocates, who could support them.
33. Previously, the OCC has used the threat of an investigation to compel parties to act in accordance with their own policy and standards and in the interests of mokopuna and their whānau. There are examples of this kind of advocacy over years, where a well-placed phone call or inquiry has compelled urgent action in the interests of mokopuna.
34. While this form of advocacy can be effective on occasion and at an individual level, it is insufficient to address all complaints of neglect and abuse of mokopuna. Issues



requiring a substantial level of resource, or of a systemic nature, are currently being referred to the Office of the Ombudsman. Nevertheless, the Child Rights Line continues to handle high numbers of individual enquiries annually. In 2020/21, the Child Rights Line received 351 calls, with hundreds of other emails and enquiries. If the investigation of complaints and grievances was to grow and expand at OCC, a dedicated team with qualified staff needs to be established.

35. This further reiterates the need for both a child-friendly and effective complaints mechanism, along with a fully resourced and independent monitor that can focus on systemic change designed to prevent current and future harm.

#### *Oranga Tamariki grievance process*

36. Part of the OCC's monitoring role is to review escalated grievances made by mokopuna detained in residences operated by Oranga Tamariki (schedule 10(4) of the Children, Young Persons and Their Families (Residential Care) Regulations 1996).

37. Previous Commissioners have expressed frustration with the grievance process, describing it as cumbersome, not child-friendly, overly bureaucratic, and not fit-for-purpose for supporting mokopuna to resolve issues in places of detention, much less actually deal with address abuse and neglect. When preparing for the s 20 response, one previous Commissioner told the OCC that the entire grievance process needed to be 'retired' and replaced with an independent, child-centred, and trauma-informed mechanism to hear from mokopuna directly on matters that concern them, rather than their issues having to pass through the many hands of kaimahi charged with providing their care.

38. The recurring systemic failures the OCC has identified within the grievance process have informed the perspective that it is not, and has never been, a fit-for-purpose process for mokopuna to voice their complaints.

39. In 2021, the OCC withdrew from chairing the Grievance Monitoring Oversight Committee (GMOC), citing systemic concerns, on the basis that further involvement risked signalling tacit agreement with the status quo. Unfortunately,

this meant the OCC effectively lost oversight of the latest developments within the grievance panel procedure.

40. Some of the OCC's concerns regarding the Grievance Panel and Process include:

- a. Nominations to the Grievance Panel were accompanied by a lack of information about the appointment, making it difficult to make an informed decision about whether to endorse the nomination.
- b. While there is an obligation under reg 29(4) of the regulations for panels to have one tangata whenua member, according to the regulations, panels are still able to operate without such appointments being filled. This has been observed frequently during the fulfilment of independent oversight functions.
- c. There is a need for greater cultural responsiveness within the grievance system. The OCC's contribution to the Broad report (2013) notes *'processes to address complaints made by children from diverse backgrounds must take into account their cultural backgrounds. The implication of this is that those designing and implementing complaints procedures need to consider cultural and systemic barriers to children bringing complaints forward. This is particularly true for indigenous children.'*
  - i. The 2018 Changing Feedback and Complaints report (Oranga Tamariki) described the development of Whaia te Māramatanga regarding its focus on child-friendliness, celebrating its ability to link children's rights to a feedback and complaints policy/mechanism. Yet, there was no mention within the report on enhanced cultural responsiveness.
  - ii. The OCC's response to the Executive Advisory Panel in 2015 noted *'We think the complaints [grievance] system could be improved by better publicising its availability and enabling a wider group of people to access it including making it child-centred and culturally responsive.'*
- d. Non-compliance with the grievance procedure continues to be a theme in the OCC's oversight of the grievance system. The OCC has highlighted this in quarterly and individual monitoring reports. Historically, when presented

with allegations of non-compliance, the OCC was restricted to responding within the limitations of its powers. As outlined in the regulations, the OCC does not have the powers to enforce recommendations or findings where systemic issues are identified. Through the GMOC, OCC raised concerns directly with the Deputy Chief Executive and other key decision makers within Oranga Tamariki.

- e. The regulations currently do not provide a fit-for-purpose mechanism for Grievance Panels to measure and ensure compliance.
- f. Regulation 31(4) and (5) of the regulations outline the need for Grievance Panels to send quarterly reports to the Chief Executive, Principal Youth Court Judge, Principal Family Court Judge and Children's Commissioner. However, these regulations remain silent on what this group is meant to do with these reports, other than determining whether there has been compliance with the grievance procedure or not.

41. The realisation that even if the grievance process functioned exactly as intended it would still not be fit-for-purpose, led the OCC to question its role within the wider GMOC in 2020-2021. Informing this position were the following concerns, which are not exhaustive:

- a. Mokopuna in care have to make a complaint to the people who provide that care and have oversight over both their care and the complaint;
- b. There are no mechanisms to mitigate the issues caused by this power dynamic;
- c. The process rarely brings to light allegations of physical or sexual abuse for the above reasons;
- d. This has been observed as contributing to 'false positives' within Quarterly Grievance reports where no grievances were recorded yet abuse has occurred within these residences; and
- e. Frustration at the lack of accountability shown by Oranga Tamariki residence managers due to GMOC's absence of powers to promote change and improvement in residences.

42. These concerns meant the OCC was forced to choose between standing outside the process, taking a principled approach, and criticising the regulations and practice, or returning to the status quo of the previous 20 years by remaining involved and trying to change it from inside. The OCC opted for the former and withdrew from the Chair of GMOC in 2021.


43. Since that time the OCC has not been consulted by Oranga Tamariki or involved in the next iteration of the Grievance Process, Manaaki Kōrero and cannot comment further.

### **Conclusion**

44. I support the written statements of the Children’s Commissioner Judge Frances Eivers and former Assistant Māori Commissioner Glenis Phillip-Barbara. The OCC hope these insights may assist the RCOI in their inquiry and encourage the RCOI to ensure mokopuna voices, within the context of their whānau, are centred throughout these discussions and in the formulations of recommendations to the Government. The OCC hope these reflections may help inform the design of a new way of working for mokopuna in need of tiaki.

### **Statement of Truth**

This statement is true to the best of my knowledge and belief and was made by me knowing that it may be used as evidence by the Royal Commission of Inquiry into Abuse in Care.

Signed:  \_\_\_\_\_

Dated: \_\_\_\_\_ 18/8/2022 \_\_\_\_\_

## Consent to use my statement

I, Fiona Rose Cassidy, confirm that by submitting my signed witness statement to the Royal Commission of Inquiry into Abuse in Care, I consent to its use in the following ways:

- reference and/or inclusion in any interim and/or final report;
- disclosure to those granted leave to appear, designated as core participants and where instructed, their legal representatives via the Inquiry's database or by any other means as directed by the Inquiry;
- presentation as evidence before the Inquiry, including at a public hearing;
- informing further investigation by the Inquiry;
- publication on the Inquiry website.

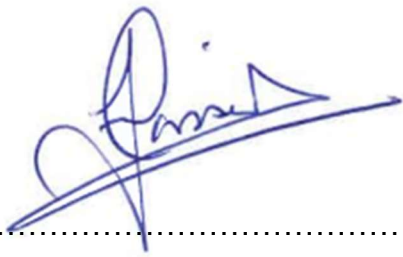
I also confirm that I have been advised of the option to seek anonymity and that if granted my identity may nevertheless be disclosed to a person or organisation, including any instructed legal representatives, who is the subject of criticism in my witness statement in order that they are afforded a fair opportunity to respond to the criticism.

Please tick one of the two following boxes:

if you are seeking anonymity

or

if you are happy for your identity to be known



Signed.....

Date.....18/8/2022.....