

**Witness Name:** Judge Frances Jean Eivers

**Statement No.:** [WITNXXX001]

**Dated:** 17.08.2022

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

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**WITNESS STATEMENT OF JUDGE FRANCES JEAN EIVERS**

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I, Frances Jean Eivers, will say as follows:

## **Introduction**

1. My full name is Frances Jean Eivers (Ngāti Maniapoto, Waikato).
2. I am the current Children's Commissioner. I commenced my tenure as Children's Commissioner on 1 November 2021.
3. Since 30 November 2009, I have been a Judge of the District Court sitting in the Family, Youth and Criminal jurisdictions. Immediately prior to my appointment as Children's Commissioner, I was a Judge at the District Court in Manukau working extensively with mokopuna in the court system. Before my appointment to the Bench, I had practised law for almost 25 years.
4. The following persons are here with me today to assist the Royal Commission:
  - a. Fiona Cassidy, Executive Director at the Office of the Children's Commissioner | Manaakitia Ā Tātou Tamariki (**OCC**); and
  - b. Glenis Philip-Barbara, former Assistant Māori Commissioner at the OCC.
5. I have read, and am familiar with, (a) the briefs of evidence filed by Ms Cassidy 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**).
6. As Children's Commissioner I am an Independent Crown Entity. This means that I am independent of the Government while at the same time I have a responsibility to advise the Executive branch of the Government on issues important to mokopuna of Aotearoa and work closely with the same. This very independence has been a cornerstone of the trust that the public of Aotearoa New Zealand have in the role of the Commissioner.
7. Since starting my role in 2021, my core priorities as Commissioner have been to ensure we:
  - a. advocate for all mokopuna to have access to, and participate in, inclusive and equitable quality education;

- b. advocate for the mental Wellbeing of mokopuna to be prioritised, so that they may thrive and flourish;
  - c. advocate to end family violence and to help families heal; and
  - d. independently and regularly monitor places where mokopuna are deprived of their liberty and advocate for system change.
8. The work of this inquiry touches upon all these priority areas and I welcome the opportunity to contribute to this kaupapa.
9. Looking to the future, my key recommendations for systems change in the care and protection system would be that:
- a. Te Tiriti o Waitangi must be the foundation.
  - b. By Māori, for Māori approaches must be prioritised.
  - c. Appropriate training, guidance and support is critical for all adults involved in delivering care for mokopuna in the state system, and places of detention must move away from a harmful 'prison-like' model towards one of therapeutic care.
  - d. Mokopuna and whānau voices must be listened to in an ongoing and genuine way, allowing them to build trust and feel respected.
  - e. A functional mokopuna and whānau-centred complaints system has never existed and is urgently needed.
  - f. A well-resourced and truly independent monitor is needed; the state cannot monitor itself.

## **Overview**

10. Since the establishment of the role of Children's Commissioner in 1989, the core to all that the Children's Commissioner embodies has been '*Tiakina a tatau tamariki*', an echo of the compelling call to action voiced by Dame Whina Cooper. This call has guided the efforts of all the Children's Commissioners and their kaimahi (staff) throughout the years, and to this day remains etched on the door to the OCC's office.

11. The tragic reality is that the very existence of this Royal Commission holds a mirror up to Aotearoa New Zealand's collective failure as a nation to tiaki those who need it most. The mokopuna who were not protected by the adults in their lives, and so were not given the space and support to thrive, are now adults. They are clearly and powerfully articulating the impact of the abuse they experienced in their lives, and the lives of their whānau and communities.
12. While the scope of this Commission ends in 1999, it is clear the abuse of mokopuna in care continues today. The oversight system created to monitor Oranga Tamariki and its predecessors has always been limited in both design and resourcing. To date, the OCC has never been adequately funded to fully carry out its monitoring mandate, nor have successive Commissioners' recommendations for change been comprehensively responded to by the Government of the day in a way that would benefit mokopuna.
13. As I set out later, an effective, well resourced, and fully independent monitor is vital to prevent, address and eliminate the abuse of mokopuna in care. Without this the system will remain unchanged and Aotearoa New Zealand will remain far from achieving from the OCC's vision, *kia kuru pounamu te rongō* (all mokopuna live their best lives).

### **Impact of the Children's Commissioner**

14. Despite being chronically under-funded, the OCC has had a significant impact on improving the lives of mokopuna since its establishment.
15. Through the process of preparing this response, my kaimahi have compiled a timeline of significant events from the establishment of the OCC to present day. I would like to take this opportunity to highlight some of the successes achieved by my predecessors. Some standout achievements include:
  - a. Advocacy that culminated in the Crimes (Substituted Section 59) Amendment Act change in 2007 (also known as the anti-smacking Bill).
  - b. Raising awareness of the Children's Convention and children's rights in Aotearoa.

- c. Raising awareness of the prevalence of (and possible solutions to) child poverty, through the Expert Advisory Panel on Child Poverty work, the establishment of the Child Poverty Monitor, and ongoing advocacy to eradicate poverty.
- d. Upholding a strong and unwavering commitment to Te Tiriti. The OCC has demonstrated this increasingly over time, especially since 2016.
- e. Holding Oranga Tamariki (and its predecessors) to account and advocating for mokopuna in care and protection and youth justice settings, with an unwavering commitment to their best interests.
- f. Ensuring mokopuna voices were prominent in the development of key pieces of government policy, including through the OCC's *Education Matters to Me* series, which impacted policy development in education, and in the first Child and Youth Wellbeing Strategy in 2019 through the *What Makes a Good Life?* series.
- g. Conducting a significant Maori-led review into removals of pēpi Māori by the state, which culminated in the *Te Kuku O Te Manawa* (2020) reports.
- h. The OCC adopted the Mana Mokopuna approach, which places mokopuna experiences at the centre of OCC's monitoring practice. This shift challenges Oranga Tamariki to be more child-centred and strongly focussed on outcomes for the mokopuna it supports by measuring whether the policy or practice of Oranga Tamariki is translating into good experiences for mokopuna.
- i. Making several other significant contributions to the development of policy and legislation through informal and formal channels, including submissions during select committee and reform processes on a range of issues impacting mokopuna.

## **Resourcing**

16. Considering these achievements there is much more previous Commissioners and myself may have achieved with adequate resourcing and support.

17. Over time Commissioners' roles and actions have encompassed contrasting priorities and approaches. At different times Commissioners have variously emphasised monitoring or advocacy, as resources allowed.
18. In my mind, it is not unreasonable to suggest that had the OCC been adequately resourced from the beginning, that both functions would have been operating at an optimal level from 2003.
19. While there is no way to guarantee what may have been achieved during this time, the 30 years of lost potential by not having a well-funded independent monitor should not be underestimated.
20. The unenviable choices around the allocation of resources have also ruled out larger pieces of work, including thematic reviews and large-scale complaint investigations. These projects are well within the OCC's capability, with the resources being the primary barrier.
21. With the right support and the willingness of the Government, the OCC could add considerable value by working with Oranga Tamariki (and other relevant agencies) to establish system wide change, contributing its view through an independent, Te Tiriti based and child-rights informed lens.
22. As my predecessor stated to the Commission in 2019, "*As the independent monitor, the OCC has never been fully resourced to deliver the full scope of our monitoring functions. This limitation means that over the decades, the seven Children's Commissioners have had to be very selective about what we monitor and how.*"<sup>1</sup>

## **Independence**

23. A well-resourced and truly independent monitor is needed; the state cannot monitor itself.

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<sup>1</sup> Office of the Children's Commissioner to the Royal Commission of Inquiry into Abuse in Care 2019 (EXT0019913) at p3.

24. The OCC was established in 1989 to be an independent advocate for mokopuna. The legislation governing the Children's Commissioner was initially homed within the Children Young Persons and Their Families Act 1989, before the Children's Commissioner's Act 2003 was established. If it has not already done so, the OCC will soon undergo its third legislative transformation with the Oversight Bill currently before Parliament.
25. The Children's Commissioner's Act 2003 set out the Commissioner's core functions as an Independent Crown Entity (ICE) carrying out both monitoring and advocacy under a Commissioner sole model.
26. Current legislation specifies that OCC can investigate issues, but does not specify that they must, to what extent, or how it is done. Each Commissioner has had the independence to set their priorities and allocate resources to different functions.
27. As a well-regarded independent institution, the OCC has acted as a national conduit between policymakers, philanthropies, large national and community organisations, and civil society. This allows the OCC to support transformative change that sees mokopuna supported in the way they tell the OCC works best.
28. Nevertheless, while the OCC has operational independence from decision-makers within Government, resourcing has always been problematic, and the funding structure has impacted the OCC's independence. The OCC has the institutional independence to act in accordance with legislation and purpose but has never been effectively funded to deliver on those obligations. This has become more apparent with the increased monitoring functions over years and the OCC's increasingly in-demand Mai World children's participation work.
29. The significant investment by Government into the Independent Children's Monitor (ICM) has come at a time where, during the same period, the OCC was unable to secure funding from the Ministry of Social Development (MSD) to fully give effect to our monitoring functions. While the investment in monitoring (conducted currently by ICM) is welcomed, it highlights the fact that this funding was not provided to the OCC to carry out the same function.
30. The ICM, the monitor proposed to undertake most of the monitoring of the care system is a departmental agency and therefore not independent of Government.

The OCC has repeatedly stated that independent oversight and advocacy are critical to serving mokopuna and their whānau in Aotearoa. In my view, by reducing the Commissioner's function and establishing a monitoring body within a Government department, the monitoring arrangements as currently proposed cannot purport to be in the best interests of mokopuna.

31. I remain of the view that an effective, well resourced, and fully independent monitor is vital to prevent, address and eliminate the abuse of mokopuna in care. This monitor must ensure that the voices of mokopuna and their whānau are heard and empowered at the highest levels of Government decision making.

## **Conclusion**

32. There can be no doubt that the care system in this country is failing mokopuna. Mokopuna have repeatedly shared with the OCC that the system isn't working for them, as highlighted in the *What Makes a Good Life? Views of children and young people in care on wellbeing* report (2019), *Hard Place to be Happy* report (2019), alongside multiple monitoring reports over the years. In an interview with OCC kaimahi, one mokopuna in a residence said, "*Just to be outta here. I wish these places never existed*" (Māori and Pacific mokopuna).

33. Listening to the messages of the SAGE group representatives on the day this hearing opened reminded me of the responsibility to ensure that the OCC must continue to advocate for mokopuna in state care, to highlight the "gaps" in the services, to not let the "wool be pulled over our eyes", so that the suffering of the past will provide lessons to ensure it is not continued into the future.

34. It is the OCC's long-held position that fundamental and transformative changes are necessary in almost every aspect of the current care and protection system.

35. The OCC has advocated for the phased closure of large-scale residences and their replacement with well-supervised, small community-based group homes. The OCC have called for our obligations as a nation for Te Tiriti o Waitangi to be realised through the transfer of power and resources from the state to whānau, hapū, iwi and Māori organisations so that mokopuna Māori will have the opportunity to be cared for by the people they share whakapapa with. Change is needed across

the State system as a whole, with collaboration between education, health, statutory care and protection, justice, and social services, to better meet the needs of mokopuna and their whānau.

36. The OCC will continue to advocate for a network of supports that centre on whānau decision making, the voices of mokopuna, and guarantees tino rangatiratanga. By Māori, for Māori approaches must be at the centre of shifts to improve services for mokopuna. There is a clear path forward which requires boldness and courage from decision-makers to make that a reality.
37. The first step is for those who have experienced the system to be listened to, and to not be asked to tell their story again and again. We know the harm the system has caused, and we know what needs to happen. The findings of this inquiry must be translated by the State into concrete, transformative change so that we are never be in this position again.
38. I anticipate strong and unwavering recommendations from this inquiry, which represents the voices of survivors heard throughout this review, and countless reviews that have preceded it, which seek to eliminate current and future harm. We have an opportunity to draw together the lessons from those who have been let down by the system as well as the wealth of evidence on what works both domestically and internationally.
39. Essential to the changes required is an independent monitor that has full oversight of the implementation of changes for mokopuna and can ensure those changes are making the impact that is needed. This monitor will need the power to investigate, recommend, and require evidence of actions taken in response to recommendations. A whole-of-system approach is needed to do better for mokopuna. The monitor must have the ability to hold all children's agencies to account on how they are responding to not only this inquiry, but future recommendations made by the monitor.
40. I welcome a future where the monitoring of state care is not necessary in the way that it is so desperately needed right now. Until then, we should all be committed to championing a vision of a better Aotearoa New Zealand, where all mokopuna are listened to, accepted, loved, safe, and able to be supported by their whānau.

41. In closing I want to stress that there is hope if we listen to the voices of mokopuna.

As a mokopuna in care told the OCC so clearly, they wanted "*Support, stability and to be loved unconditionally. When a child is supported and feels the love they are capable of anything*" (Mokopuna from Ōtautahi/ Christchurch).

42. **He mokopuna he taonga** (we must treasure our children and young people).

### **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, Judge Frances Jean Eivers, 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.

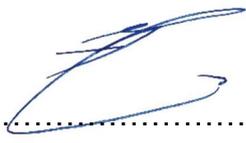
I also confirm that I have been advised of the option to seek anonymity and that if granted my identity may nevertheless be disclosed to a person or organisation, including any instructed legal representatives, who is the subject of criticism in my witness statement in order that they are afforded a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